



The Scottish Parliament
Pàrlamaid na h-Alba

Published 1st December 2016

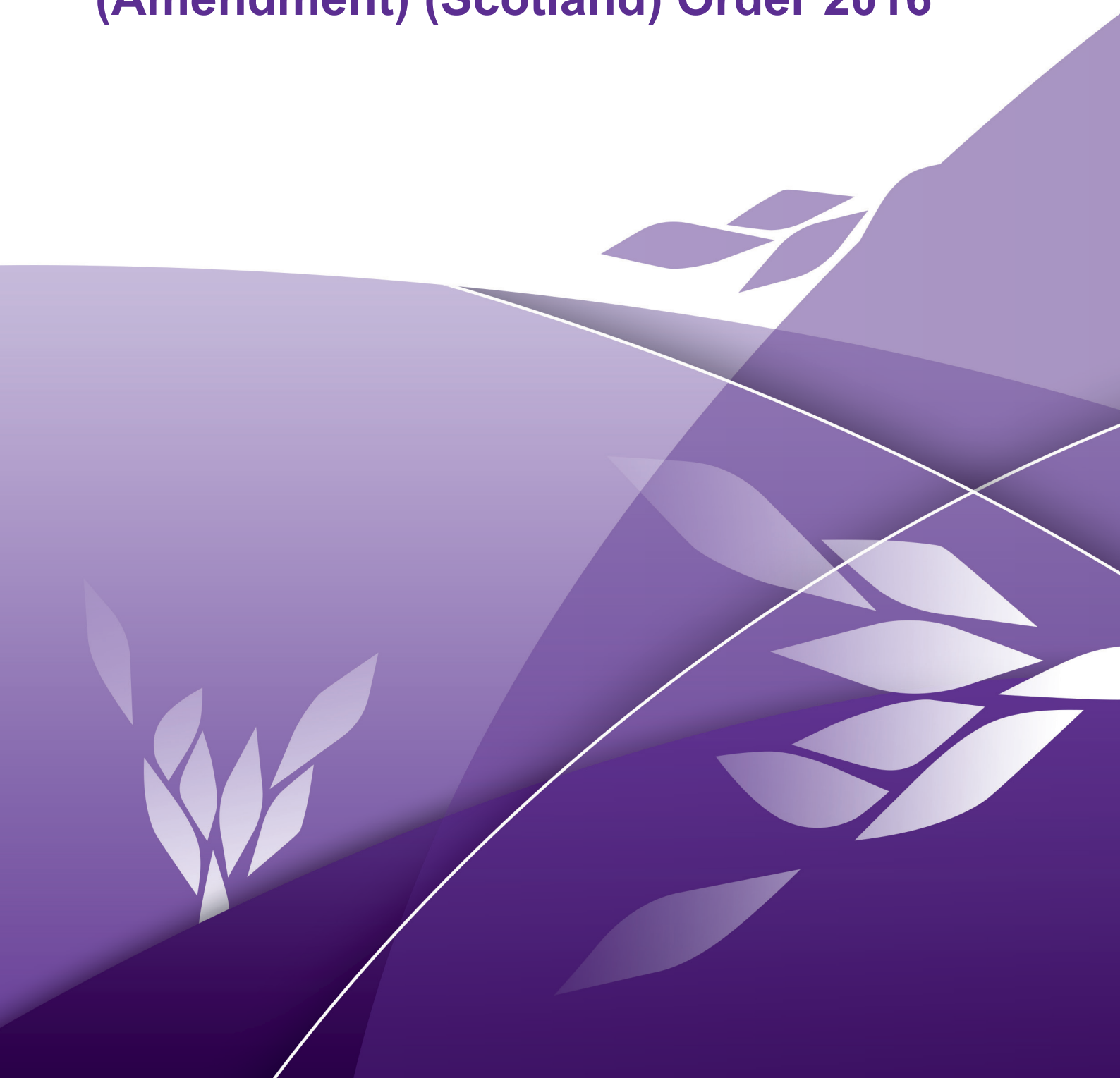
SP Paper 45

7th Report, 2016 (Session 5)

Web

Justice Committee

Home Detention Curfew Licence (Amendment) (Scotland) Order 2016



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Justice Committee

Remit: To consider and report on matters falling within the responsibility of the Cabinet Secretary for Justice.



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Introduction

1. The Committee has considered the following instrument—

Home Detention Curfew Licence (Amendment) (Scotland) Order 2016 [draft]

2. The instrument was referred to the Justice Committee as lead committee and was subject to affirmative procedure. The Minister for Community Safety and Legal Affairs, Annabelle Ewing, attended the Committee at its meetings on 15 November 2016¹ and 22 November 2016² to give evidence on the instrument and, on the latter day, also to move the relevant motion recommending approval of the instrument.

Home Detention Curfew Licence (Amendment) (Scotland) Order 2016 [draft]

3. The instrument was made under section 3AA(6) of the Prisoners and Criminal Proceedings (Scotland) Act 1993. The Order amends section 3AA(5) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 by repealing paragraphs (f) and (g), which create statutory exclusions from Home Detention Curfew (HDC) for those prisoners who have been recalled or convicted while serving a sentence in the community.
4. Currently, prisoners who are released on licence and recalled for non-compliance with their licence conditions (section 17) or for committing a new crime while serving a sentence of imprisonment in the community (section 16) are permanently excluded from applying for HDC again in the future. Under the instrument, the Scottish Ministers would have discretion to release those prisoners from prison on HDC.

Scrutiny by the Delegated Powers and Law Reform Committee

5. The Delegated Powers and Law Reform Committee considered the draft instrument at its meeting on 25 October 2016 and agreed that it did not need to draw it to the attention of the Parliament on any grounds within its remit.

Justice Committee consideration

6. The Justice Committee considered the draft instrument at its meeting on 15 November 2016, when Annabelle Ewing, Minister for Community Safety and Legal Affairs, attended to give evidence on the instrument.

7. Ms Ewing explained that a number of exclusions from HDC would continue to apply. She confirmed that life prisoners, sexual and violent offenders serving an extended sentence under section 210A of the Criminal Procedure (Scotland) Act 1995 and sex offenders who are subject to the notification requirements in part 2 of the Sexual Offences Act 2003 would remain ineligible for HDC.

8. The Committee sought clarity on the role of the Scottish Ministers in making decisions in respect of granting of HDCs. The Minister confirmed that

” Although in statute, the decision is the Scottish Minister’s decision, the decision making is in fact exercised through the Scottish Prison Service.

9. Mr McGuffie, a Scottish Government official, added that a decision taken by the Scottish Prison Service (SPS) would be a decision by the Scottish Ministers as the SPS is an executive agency of the Scottish Ministers and therefore its decision stands as a decision of Scottish Ministers. The Committee further heard³ that delegated authority is given to the Chief Executive of the SPS who is accountable to Ministers and this is published in the SPS framework agreement and available online.⁴

10. The Committee also questioned what types of sentences were being served by the 300 people who may become eligible for HDC, should the instrument be approved. The Minister responded that the instrument would make it possible, but not automatic, to grant HDC to people who had committed a breach while on licence and those who had committed a crime while serving a community sentence.

11. The Committee sought clarity on statistics that were referred to in the final report of the Electronic Monitoring in Scotland Working Group⁵ but could not be sourced from the report and asked that they be provided. A letter from the Minister and the statistics provided can be found at Annexe A.

12. The Minister agreed not to move the motion at the meeting on the 15 November and to return to give further evidence at the Committee’s meeting on 22 November, once the statistics had been provided.

13. At the meeting on the 22 November the Committee considered the information provided in the statistics and noted that 6 per cent of recalls for HDC are due to re-offending. The Committee also heard from the Minister that a pilot project is scheduled to begin early next year which would look at how people who have been granted HDC are supported in the community to ensure compliance with the conditions of HDC. Some Members expressed concerns that the changes proposed in the instrument did not take into account the interests of victims. The Minister said that the Working Group included a cross section of representative organisations including Scottish Women’s Aid.

14. Ms Ewing moved the motion lodged in the name of Michael Matheson, the Cabinet Secretary for Justice: S5M-02127—That the Justice Committee

recommends that the Home Detention Curfew Licence (Amendment) (Scotland) Order 2016 [draft] be approved.

15. The motion was agreed to (by division: For 8, Against 2, Abstentions 0).

Recommendation

16. The Justice Committee recommends to the Parliament that it approve the draft instrument. On the basis of the evidence provided, a majority of the Committee are satisfied that it is appropriate to increase the Scottish Ministers' discretion in relation to home detention curfews in the manner proposed in the instrument.
17. In doing so the Committee ask the Scottish Government to provide it with an update on the forthcoming pilot project on the support being provided to help individuals who are granted Home Detention Curfews to comply with its conditions.

Justice Committee

Home Detention Curfew Licence (Amendment) (Scotland) Order 2016, 7th Report, 2016 (Session 5)

¹ Scottish Parliament Justice Committee. *Official Report 15 November 2016* Cols 2-12. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=10633&mode=pdf>

² Scottish Parliament Justice Committee. *Official Report 22 November 2016* Col 2-9. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=10643&mode=pdf>

³ Scottish Parliament Justice Committee. *Official Report 22 November 2016* Cols 4. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=10643&mode=pdf>

⁴ SPS framework agreement. Available at: <http://www.sps.gov.uk/Corporate/Publications/Publication-3925.aspx>

⁵ Scottish Government, *Electronic Working Group in Scotland Final Report*, September 2016. Available at: <http://www.gov.scot/Resource/0050/00506734.pdf>

Annexe A

Letter from the Minister for Community Safety and Legal Affairs

21 November 2016

Dear Ms Mitchell,

HOME DETENTION CURFEW LICENCE (AMENDMENT) (SCOTLAND) ORDER 2016

At the Justice Committee's meeting last week, during your consideration of the above Order, a Committee member asked about the statistical evidence that the Expert Working Group on Electronic Monitoring in Scotland referred to in support of its Recommendation no. 7 on removing certain exclusions to the Home Detention Curfew (HDC) scheme.

My officials have engaged with Working Group members and with the Scottish Prison Service to confirm and re-establish the relevant data. The statistics available to the Group provided a snapshot of the population within the prisons' estate which were subject to the specific exclusions currently in place for HDC that we are now seeking to remove; and also some information on the factors that give rise to individuals on the HDC scheme being recalled to custody and, therefore, being excluded from the scheme in future.

While the majority of prisoners released on HDC complete the HDC period successfully, of those individuals who do not complete their HDC period, only a minority of those recalled were due to the individual having committed a further offence whilst on HDC.

The Expert Working Group's overall conclusion was that HDC is helpful for reintegration and supporting offenders to desist, whilst ensuring an appropriate element of control. At present, Section 16 and 17 prevent this measure from being used to its full potential and acts as a barrier preventing offenders from demonstrating progress in their rehabilitation. The Working Group felt that this exclusion was unfair and should be removed, and as such included this recommendation in their report.

As I set out during the Committee session, it is important to emphasise that, even if these specific exclusions are removed, release on HDC will not be automatic. Before being released on HDC, prisoners will be assessed by the prison authorities to ensure that they are not a risk to the public and that their risk of reoffending is low. A number of other important exclusions from HDC will remain, for example for sexual and violent offenders who are serving an extended sentence imposed under Section 210A of the Criminal Procedure (Scotland) Act 1995 and sex offenders who are subject to the notification requirements of Part 2 of the Sexual Offences Act 2003.

I hope this information is helpful to the Committee ahead of its further consideration of this Order at its meeting on 22 November.

Yours sincerely,
Annabelle Ewing

Statistics

Home Detention Curfew recalls

Month	Other Breach	New Warrant / Offence
Apr-12	13	14
May-12	24	9
Jun-12	20	8
Jul-12	25	9
Aug-12	22	12
Sep-12	18	15
Oct-12	15	9
Nov-12	23	10
Dec-12	19	19
Jan-13	14	8
Feb-13	9	13
Mar-13	17	12
Apr-13	18	5
May-13	15	8
Jun-13	17	16
Jul-13	18	12
Aug-13	12	7
Sep-13	12	8
Oct-13	14	10
Nov-13	15	9
Dec-13	17	6
Jan-14	16	10
Feb-14	13	4
Mar-14	15	13
Apr-14	19	13
May-14	16	9
Jun-14	13	8
Jul-14	22	11
Aug-14	16	9
Sep-14	18	7
Oct-14	22	5
Nov-14	12	8
Dec-14	19	9
Jan-15	19	8
Feb-15	12	10
Mar-15	19	5
Apr-15	13	7

May-15	8	9
Jun-15	16	4
Jul-15	11	10
Aug-15	8	9
Sep-15	11	9
Oct-15	9	5
Nov-15	11	2
Dec-15	21	6
Jan-16	10	0
Feb-16	9	2
Mar-16	7	9
Total	742	420

Month	Other Breach	New Warrant / Offence
2012-13	219	138
2013-14	182	108
2014-15	207	102
2015-16	134	72
Total	742	420

Prisoners currently subject to exclusion

Establishment	Current Process	Without exclusion 16/17	Without exclusion 17A	Total
Addiewell	16	16	7	39
Barlinnie	7	21	5	33
Cornton Vale	3	2	0	5
Dumfries	0	5	0	5
Edinburgh	21	21	3	45
Glenochil Prison	7	10	1	18
Grampian	4	14	1	19
Greenock	0	11	2	13
Inverness	2	2	1	5
Kilmarnock	7	13	1	21
Low Moss	9	21	4	34
Open Estate	2	0	1	3
Perth	13	19	4	36
Polmont	16	3	0	19
Shotts	0	0	0	0
SPS:	107	158	30	295

