

Title: Extension of Home Detention Curfew period IA No MoJ031/2019: RPC Reference No: N/A Lead department or agency: Ministry of Justice Other departments or agencies: N/A	Impact Assessment (IA)			
	Date: 18/7/2019			
	Stage: Final			
	Source of intervention: Domestic			
	Type of measure: Secondary legislation			
	Contact for enquiries: Miranda Wilkinson (Miranda.wilkinson1@justice.gov.uk)			
Summary: Intervention and Options				
RPC Opinion: N/A				

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year	One-In, Three-Out	Business Impact Target Status
-£1m	N/A	N/A	N/A	Not a regulatory provision

What is the problem under consideration? Why is government intervention necessary?

The Home Detention Curfew (HDC) scheme was introduced following the passage of the Crime and Disorder Act 1998. The purpose of the scheme is to manage more effectively the transition of offenders from custody back into the community. The scheme enables prisoners to be released from prison early, while remaining subject to significant restrictions on their liberty. The current maximum period that an offender may spend in the community on HDC is 135 days. Extending this period to a maximum of 180 days (6 months) will provide further opportunities for offenders to prepare for the transition from custody to supervision under licence in the community, while subject to strict monitoring conditions. Government intervention is required as extending the maximum period on HDC requires secondary legislation.

What are the policy objectives and the intended effects?

The policy objective is to extend the resettlement benefits of HDC to those already eligible for the scheme by increasing the maximum period to 6 months, enabling them to better manage the release from custody and prepare for supervision on licence in the community. It will also reduce the prison population by allowing suitable offenders to be managed in the community rather than in custody for up to 6 weeks (45 days) longer. In reducing prison population pressures, this may contribute to making prisons safer places for both staff and offenders.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

- Option 0: do nothing.
- Option 1: legislate to increase the maximum HDC curfew period from 135 days to 180 days

The government's preferred option is option 1 as this best meets the policy objectives. Increasing the period of HDC to 180 days will increase the benefits associated with opportunities to prepare for resettlement, while being consistent with previous increases and maintaining public confidence in the administration of justice. Under the preferred option all those released on HDC will be required, as now, to serve at least half the custodial element of their sentence but some offenders will be released a maximum of 45 days earlier than currently, subject to a corresponding additional period of electronic monitoring.

Will the policy be reviewed? It will not be reviewed. If applicable, set review date: n/a				
Does implementation go beyond minimum EU requirements?			N/A	
Are any of these organisations in scope?			Micro No	Small No
			Medium No	Large No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/A	
			Non-traded: N/A	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: Robert Buckland QC Date: 18.07.2019

Summary: Analysis & Evidence

Policy Option 1

Description: Legislate to increase the maximum HDC curfew period from 135 days to 180 days

FULL ECONOMIC ASSESSMENT

Price Base Year 19/20	PV Base Year 19/20	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -1.0	High: -1.1	Best Estimate: -1.0

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	£1.1m	£8.8m
High	Optional	£1.3m	£10.6m
Best Estimate	n/a	£1.1m	£8.8m

Description and scale of key monetised costs by 'main affected groups'

In steady state there will be no additional HDC releases although some offenders will be released up to 45 days earlier than at present. Under our lower scenario we estimate this will increase the HDC population by around 500. Under this lower scenario, the main monetised costs of this increased HDC population would be as follows (rounded to nearest £100k):

- Probation Services: Additional costs for supervision of around £1m per annum
- Electronic Monitoring Services (EMS): Additional costs for electronic tagging of around £0.1m per annum.

The lower scenario is our best estimate. A higher scenario where the HDC population increases by around 600 is associated with additional costs of around £1.2m and £0.1m to Probation Services and EMS respectively.

Other key non-monetised costs by 'main affected groups'

Any increase in the HDC population is likely to increase the demand for beds from Bail and Accommodation Support Services (BASS). However, the actual population and BASS resources are interlinked such that the capacity of BASS accommodation will limit the number of HDC releases of offenders with access to no other suitable accommodation.

Increasing the duration of HDC may mean more offenders breach their licence conditions leading to more recalls to custody, creating additional costs to police (for arrest and return to custody) and HMPPS (for processing the recalls).

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A	£1.0m	£7.9m
High	N/A	£1.2m	£9.5m
Best Estimate	N/A	£1.0m	£7.9m

Description and scale of key monetised benefits by 'main affected groups'

HMPPS may benefit from prison place savings which are assumed to be equivalent to the increased HDC population. Based on a marginal prison place cost of £1,500, we estimate the annual steady state savings as between £1.0m and £1.2m for the lower and higher scenarios respectively.

Other key non-monetised benefits by 'main affected groups'

Earlier resettlement will limit the harmful effects of custody and have a positive impact for offenders and their families; for example, earlier re-employment will allow them to support themselves and their families earlier in their sentence. Reducing the prison population will contribute to improving the conditions for both offenders and staff and enable prisoners to feel safer, calmer and readier to engage in their rehabilitation.

Key assumptions/sensitivities/risks

Discount rate

3.5%

- Release rates, average delays from eligibility to release, recall rates and average time of recall are assumed to remain as currently observed for this group. There is a risk that these will not remain constant.
- The higher scenario assumes no impact of the increased pressure on BASS accommodation on HDC releases. However, there is a risk that BASS accommodation will not be available for the additional period meaning prison place savings cannot be achieved for those whose release is dependent on this type of accommodation. The lower scenario has been modelled to estimate the impact of this limiting factor.
- There is a risk that offenders are not released as early as this option allows for if there are insufficient staff resources to manage the additional population. Given these risks, the lower estimate is taken as the best estimate.
- A 20% 'optimism bias' has been built into all estimated impacts (costs and benefits), as is standard practice in IAs.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m: N/A
Costs:	N/A	Benefits: N/A	
		Net: N/A	

EVIDENCE BASE

A. Background

1. Current release provisions, set out in part 2 of the Criminal Justice Act 2003, require that offenders serving standard determinate sentences must be released at the halfway point of their sentence (the 'conditional release date'). The Home Detention Curfew (HDC) scheme, which became available in 1999 following the passing of Crime and Disorder Act 1998, enables certain offenders to be released ahead of this halfway point.
2. The policy objective of the HDC is to enable suitable and eligible offenders to be released early from prison, in order to have a transition period between leaving custody and beginning supervision in the community on licence. During this transition period, they are subject to restrictions that limit their movements and activity but are able to begin reintegrating into the community sooner. In particular, offenders must be subject to an electronically monitored curfew at their home address and, since April 2019, may also be subject to electronic monitoring of their location beyond the home address where this is considered necessary and proportionate.
3. Certain categories of prisoner are statutorily excluded from HDC, principally¹:
 - those sentenced to 4 years or more;
 - those sentenced to less than 12 weeks;
 - those liable to deportation;
 - those who have previously breached the curfew condition of HDC; and
 - registered sex offenders.
4. Other offenders are, as a matter of policy, presumed to be unsuitable for the scheme in the absence of exceptional circumstances. Offenders presumed to be unsuitable for release on HDC include those serving a sentence for terrorism offences, cruelty to children and homicide.²
5. When the HDC provisions were commenced in 1999 the maximum HDC period was 60 days. This was increased to 90 days in 2002 and to 135 days in 2003. The offender must serve at least a quarter of the sentence (or a minimum of 28 days, whichever is greater) in custody before release on HDC. These limits combine to give a tapering effect depending on sentence length, as seen in Table 1 below.

Table 1: Current minimum custodial terms and maximum curfews by sentence length

Sentence length	Minimum custodial term	Range of curfew lengths
12 weeks to 16 weeks	28 days	2 weeks to 4 weeks
16 weeks to 18 months ³	One quarter of sentence	4 weeks to 135 days
18 months to less than 4 years	135 days before sentence midpoint	135 days

6. In January 2018, the HDC process was amended to make it more streamlined and straightforward to administer, reflecting the original policy intention that most offenders eligible for the scheme should be released. This has resulted in a 40% rise in the number of offenders on HDC in the community at any one time (the HDC population) from around 2,200 at the end of 2017 to around 3,050 at the end of the 2018.⁴

¹ This list is not exhaustive, for full details of HDC eligibility see Criminal Justice Act 2003 s.246

² For full details of those presumed unsuitable see Home Detention Curfew Policy Framework <https://www.gov.uk/government/publications/home-detention-curfew>

³ Note that we regard a month as comprising a fixed 30 days

⁴ *Offender management statistics quarterly publication*

7. The objective of the options assessed in this Impact Assessment (IA) is to further extend the resettlement and rehabilitative benefits of HDC to those offenders eligible for the scheme, i.e. those offenders not statutorily excluded or presumed to be unsuitable, by increasing the maximum period from 135 days to 180 days (6 months).

B. Policy Rationale and Objectives

8. The conventional economic approach to government intervention is based on efficiency and equity arguments. The government may consider intervening if there are failures in the way markets operate (e.g. monopolies overcharging consumers) or there are failures with existing government interventions (e.g. waste generated by misdirected rules). The proposed new interventions should avoid creating a further set of disproportionate costs and distortions. The government may also intervene for equity (fairness) and re-distributional reasons (e.g. to reallocate goods and services to groups in society in more need).
9. The primary rationale and policy objective for the options assessed in this IA is efficiency. Extending the maximum HDC period from 135 days to 180 days will further limit some of the harmful effects of custody which will have a positive impact for offenders and their families: for example, earlier re-employment will allow them to support themselves and their families earlier in the sentence.
10. Extending the maximum HDC period will also reduce the prison population by allowing suitable offenders to be managed in the community rather than in custody for up to 45 days longer. This will contribute to improving prison conditions and enable prisoners to feel safer, calmer and readier to engage in their rehabilitation. A reduction in prison population may also contribute to making them safer places for staff and other offenders.

C. Affected Stakeholder Groups, Organisations and Sectors

11. The following groups will be most affected by the options considered in this IA:
- HM Prison and Probation Services (HMPPS)
 - Ministry of Justice electronic monitoring services (EMS)
 - Police service
 - Bail and Accommodation Support Services (BASS)
 - Offenders eligible for the HDC scheme (and their families)
12. HMPPS includes prisons, the National Probation Service (NPS), and Community Rehabilitation Companies (CRCs) providing probation services on behalf of the Ministry of Justice. Existing CRC contracts will require an amendment to accommodate any change of service, while they remain in place. Following their termination, the NPS will take over all supervision of offenders on licence, under probation reforms announced in May 2019. BASS provides accommodation to offenders on bail and after release from prison if they lack their own housing.

D. Description of Options Considered

13. To meet the policy objectives, the following options are assessed in this IA:
- **Option 0: Do nothing:** Make no changes to the maximum periods of HDC eligibility;
 - **Option 1: Legislate to increase the maximum HDC curfew period from 135 days to 180 days**
14. The preferred option is Option 1 as it best supports the policy objectives.

Option 0: Do nothing

15. Under option 0, it is assumed that the HDC population would follow existing trends and remain stable against the figures that have been observed since the changes to the process from January 2018.

Option 1: Legislate to increase the maximum HDC curfew period from 135 days to 180 days

16. This option would involve introducing a Statutory Instrument (SI) to increase the current maximum time on HDC from 135 days to 180 days (six months).

17. Existing constraints on the minimum custodial terms – that an offender must serve at least a quarter of their sentence or 28 days in prison (whichever is greater) to be eligible for HDC – will continue, meaning this option will only affect offenders with sentences over 18 months. The effect of this option on how long offenders serving different sentence lengths could spend on a curfew with an electronic tag (in addition to supervision on the community) may be seen by comparing Table 2 to Table 1.

Table 2: Minimum custodial terms and maximum curfew lengths under Option 1

Sentence length	Minimum custodial term	Range of curfew lengths
12 weeks to 16 weeks	28 days	2 weeks to 4 weeks
16 weeks to 18 months	One quarter of sentence	4 weeks to 135 days
18 months to 2 years	One quarter of the sentence	135 days to 180 days
2 years to less than 4 years	180 days before sentence midpoint	180 days

18. Our assumed implementation date for this option is 1 November 2019.

E. Cost and Benefit Analysis

19. This IA follows the procedures and criteria set out in the IA Guidance and is consistent with the HM Treasury Green Book.

20. Where possible, IAs identify both monetised and non-monetised impacts on individuals, groups and businesses in England and Wales with the aim of understanding what the overall impact on society might be from the proposals under consideration. IAs place a strong focus on monetisation of costs and benefits. There are often, however, important impacts which cannot sensibly be monetised. These might be impacts on certain groups of society or data privacy impacts, both positive and negative. Impacts in this IA are therefore interpreted broadly, to include both monetisable and non-monetisable costs and benefits, with due weight given to those that are not monetised.

21. The costs and benefits of each proposal are compared to option 0, the counterfactual or “do nothing” scenario. As the counterfactual is compared to itself, the costs and benefits are necessarily zero, as is its net present value (NPV).

22. The annual costs and benefits are presented in steady state throughout this IA. All estimates, unless stated otherwise, are annualised figures in 2019-20 prices rounded to nearest £100k.

23. Unless otherwise stated, at 20% optimism bias has been applied to all impacts (costs and benefits).

Option 1: legislate to increase the maximum HDC curfew period from 135 days to 180 days

24. Before detailing the costs and benefits of option 1, we set out the estimated impacts of the change in terms of changes to the population of HDC cases and the prison population itself.

25. We consider every addition to the HDC population to be a saving from the prison population.

26. The impacts are based on internal forecasting of the prison population and custodial sentences between the beginning of 2018 and 2023⁵.
27. All impacts of this option relate to offenders serving sentences of more than 18 months and less than 4 years being released earlier in their sentence than at present and therefore remaining on HDC for longer (as detailed in Table 2 above). This option will not affect eligibility for HDC release or alter the process by which a decision is made regarding their release on HDC.
28. MoJ statistics show that 7,698 offenders released from custody in 2017-18 were released to bail/probation accommodation⁶ and 37,303 were released to settled accommodation. The remaining offenders were released to accommodation that is not suitable for HDC⁷. Therefore, 17% of offenders released to accommodation suitable for HDC (settled or bail/probation accommodation) were released to bail/probation accommodation. This provides an indicative figure of 17% for the proportion of HDC releases which go to BASS accommodation.
29. We have attempted to account for the demands on BASS spaces by modelling two scenarios:
- A lower scenario where BASS beds are at capacity under Option 0 and therefore any additional population observed under the policy can only be realised for offenders with settled accommodation.
 - A higher scenario which corresponds to a situation in which the impact of BASS bed availability is the same under the policy as Option 0, i.e. the effect on the release rate and delays between eligibility and release are not affected by the increased demand.
30. Therefore, the lower scenario represents a situation where the additional HDC population is reduced by 17% to model this limitation of BASS accommodation and is considered the best estimate.
31. For each scenario we assume the impact on recall would be negligible and that the rate of recall remains constant with the 15% observed for the affected cohort of offenders released in Q2 2018⁸.
32. There will be an initial backlog of people on the date of implementation who will immediately become eligible due to that date falling between their eligibility dates under the new rules and Option 0, respectively.
33. We assume that for these offenders, operational colleagues will pre-emptively work on preparing their applications and that the majority would be released on the implementation date, with a partial exception for those whose new eligibility date falls just before the date of implementation. The effects of this is a spike of around 600 in the estimated releases for the quarter in which the implementation date falls after which we would not expect any additional releases in subsequent quarters.
34. Following the initial spike of releases in Q3 2019/20, we arrive at the steady state impacts of Option 1 in Q4 2019/20. In the lower scenario described above we estimate an additional HDC population of around 500 at steady state (rising from c.3,400 under Option 0 to c.3,900 under Option 1) with this being reflected in an equivalent reduction in the prison population. Under the higher scenario, we estimate the additional population would be around 600 in the steady state.
35. The issues and risks associated with these – and other – assumptions are detailed in section F.

Costs of Option 1

Monetised costs

⁵ For more information around prison population projections, please consult <https://www.gov.uk/government/statistics/prison-population-projections-ns> (although this is not the particular instalment used here)

⁶ <https://www.gov.uk/government/statistics/community-performance-quarterly-mi-update-to-march-2018>

⁷ Releases to Unknown accommodation are assumed to be unsuitable.

⁸ *Offender management statistics quarterly publication*; rates are based on the proportion of those released in the given quarter who are recalled from HDC within the same, or ensuing, two quarters, given that offenders may currently spend at most 135 days on tag.

36. The estimated monetised costs are approximately £1.1m per annum under the steady state for the lower scenario of an additional caseload of around 500 offenders and £1.3m (rounded to nearest £100k) for the higher scenario of around 600 offenders. These costs would fall on the providers of probation services and the EMS.

Probation Services

37. Under the steady state the model estimates an additional HDC population of between around 500 and 600 offenders who will therefore be under supervision in the community rather than in custody.

38. For the purposes of this IA we cost impacts based on the tiering of the current HDC-eligible cohort of offenders (as of 31 August 2018). This tiering informs the staff allocations per offender between probation B3 and B4 staff as well as the number of hours dedicated to each offender over the course of their time under supervision.

39. Based on this we arrive at an estimated annual steady state cost (in 19-20 prices) of **£1.0m to £1.2m**. These are the estimated additional staff costs for supervision of offenders under licence only.

40. These estimates assume that eligible offenders continue to be released on HDC at the same rate as now. However, there is a risk that offenders are not released as early as this option allows for, if there are insufficient staff resources to manage the additional population.

EMS

41. The additional HDC population will require electronic monitoring. Based on internal analysis we expect no additional monitoring costs as the increased population falls within the caseload limits of triggering such costs. We do expect an increase in equipment costs of around **£0.1m** under either scenario. This includes an assumption that 10% of the HDC cases will have a satellite-enabled location monitoring tag fitted rather than a Radio Frequency-enabled curfew monitoring device.

Non-monetised costs

Police service

42. As some offenders will spend up to an additional 45 days on HDC under this option, it is possible that there will be an increased incidence of recall arising from the increased risk of offenders breaching their licences during this extra period. This could lead to more work for the police service (for arrest and return to custody) and HMPPS staff involved in the administration of the recall process.

43. Such impacts are expected to be marginal given that there will be the same number of releases under Option 1 and Option 0. However, it is unclear how being released at an earlier point in a sentence of 18 months to 4 years may impact on the likelihood of recall.

BASS

44. Any increase in the population of HDC licensees will have implications for the demand on BASS beds. As noted above, it is possible that a limitation on BASS bed availability will restrict any potential savings for offenders who lack suitable accommodation for HDC.

45. The lower scenario assumes no additional BASS bed availability to accommodate the additional population whereas the higher scenario assumes that the impact of BASS bed availability is the same under the policy as Option 0.

Benefits of Option 1

Monetised benefits

HMPPS

46. Any impacts on the prison population will have a significant interdependency with other wider systemic policies occurring at the time. This means that a reduced prison population would not necessarily translate into the closure of prison cells, wings or entire prisons.
47. Based on internal analysis and advice from operational experts, it is deemed to be unlikely that the impacts forecasted by this change – around 500-600 fewer prisoners in the steady state – will be sufficient to result in wing closures.
48. As such, when considering the monetisable savings from reductions of the prison population it is not necessarily appropriate to use the cost per prisoner figure in the HMPPS Annual Report and Accounts of £24,151⁹ which is derived from the expenditure recorded directly in all prisoners divided by the average prison population over the year.
49. Therefore, we use a marginal cost per prisoner of £1,500¹⁰, which translates to the additional cost per year of housing an offender where their addition to the prison estate simply leads to an increase in the prison population with no effect on fixed overheads.
50. This leads to estimated annual savings of **£1.0m to £1.2m**.

Non-monetised benefits

HMPPS

51. The change may contribute to making prisons safer places for both prisoners and staff, by delivering a modest reduction in prison population as a result of the reduced prison population.

Offenders eligible for HDC, and their families

52. Offenders eligible for HDC would benefit from longer periods of time to settle into their post-release phase, bridging the gap between incarceration and standard licence. Earlier resettlement into the community will also mean they will be able to support themselves and their families earlier in the sentence.

F. Assumptions, Risks and Sensitivity Analysis

53. The impacts estimated in this IA are based on certain assumptions. These assumptions, and the associated risks, are described in Table 3 below.

Table 3: Risks and Assumptions

Assumptions	Risks / uncertainties
Rates of release to HDC will remain constant at current levels	Actual release rates may vary from those previously observed and may be higher or lower than estimated.
Delays between date an offender becomes eligible for release on HDC and their actual release will not be affected by the preferred option.	Increased delays could have a negative impact on the realisable impacts of this option. The introduction of the preferred option will coincide with a change in probation resourcing (with some staff moving from community-based to custody-based to support a new offender management model in custody). Earlier releases could be delayed due to insufficient staff availability.

⁹ <https://www.gov.uk/government/statistics/prison-performance-statistics-2017-to-2018>

¹⁰ Sourced from HMPPS internal analysis

	Offender Managers must carry out pre-release planning with prisoners who are approaching their conditional release date. Bringing forward the HDC eligibility date for offenders serving sentences over 18 months may mean there is insufficient time to prepare for their release at this date, reducing the realisable impacts of the policy change.
Rates of recall will not be affected by the preferred option.	Some offenders will be released on HDC up to 45 days longer than under the current policy meaning there is more time for them to breach their licence conditions. Therefore, it is possible that recall rates will increase which would reduce the prison place savings and result in additional costs to HMPPS and the police service.
The high scenario assumes the impact of limited BASS accommodation on release rates is the same under the counterfactual and the preferred option.	BASS capacity limitations may mean that as the HDC population increases fewer BASS beds are available and HDC releases will be delayed or not take place at all. Therefore, the actual prison place savings that could be achieved may be lower than estimated under this scenario.
The low scenario reduces the additional HDC population by 17% based on the assumption that BASS accommodation is at capacity and so only HDC releases of individuals with settled accommodation are possible. This assumes that the proportion of HDC releases to settled accommodation matches that observed for all custodial releases in published data.	The proportion of HDC releases to settled versus BASS accommodation may differ to that of all custodial releases meaning the impact of BASS being at capacity could be lesser or greater than that modelled here.
An optimism bias of 20% is applied to all impacts.	This standard practice to account for unforeseen costs or over-estimated benefits. Therefore, it may be the case that monetised costs and benefits are lower than forecast.

G. Wider Impacts

Equalities

54. The preferred option will simply amend the maximum period on HDC without changing the criteria for eligibility or the process by which HDC is granted to eligible offenders. Consequently, we do not foresee any change in the treatment of affected groups to that observed under Option 0. Our assessment is that this policy is not directly discriminatory within the meaning of the Equality Act 2010, as the changes from the preferred option apply in the same way to all prisoners eligible for HDC, regardless of their protected characteristics. Whether or not the extension applies is not a matter of discretion, it is automatically added to the HDC eligibility period for those sentenced to 18 months or more. An equality impact assessment has been undertaken in preparation for this change.

Better Regulation

55. These proposals do not meet the definition of regulation under the Small Business Enterprise and Employment Act 2015. Any costs which arise will not score against the department's business impact target and will met by MoJ and HMPPS.

H. Monitoring and Enforcement

56. The impact of the changes will be monitored closely by MOJ and HMPPS jointly. Prison population and HDC release data is monitored weekly and an HMPPS HDC Working Group will oversee the implementation period to assess the impacts are as assessed here.