
To: POLICE AND FIRE & RESCUE SCRUTINY SUB-COMMITTEE

On: 15 JANUARY 2019

Report by: DIRECTOR OF COMMUNITIES, HOUSING AND PLANNING SERVICES

Heading: HMICS and HMIPS - REPORTS ON THE REVIEW OF ARRANGEMENTS FOR HOME DETENTION CURFEW

1. Summary

- 1.1 HM Inspectorate of Constabulary in Scotland (HMICS) is established under the Police and Fire Reform (Scotland) Act 2012 and has wide ranging powers to look into the 'state, effectiveness and efficiency' of both the Police Service of Scotland (Police Scotland) and the Scottish Police Authority (SPA).
- 1.2 HM Inspectorate of Prisons for Scotland (HMIPS) has the role to inspect and monitor conditions in prisons and the treatment of prisoners, and inspect court custody provision in Scotland, and to report publicly on findings. The inspectorate is independent of the Scottish Prison Service (SPS), the Scottish Court Service and the Scottish Government, allowing HMIPS to report their findings impartially.
- 1.3 In June 2018, following the sentencing of James Wright for the murder of Craig McClelland, a crime committed while the offender was 'unlawfully at large' having breached his home detention curfew in Renfrewshire, both HMICS and HMIPS were requested to undertake an independent assessment of the processes that operate in the Scottish Prison Service and Police Scotland with respect to the Home Detention Curfew system.
- 1.4 A short life working group was also initiated by the Scottish Prison Service and Police Scotland in June 2018 to develop and change processes to assess what can be done differently and any learning that might arise.

- 1.5 Following the review, both HMICS and HMIPS have made a number of recommendations that have either already been implemented or are being considered moving forward.
- 1.6 The HMIPS report can be reviewed on-line at the following address:
<https://www.prisonsinspectoratescotland.gov.uk/publications/report-review-arrangements-home-detention-curfew-within-scottish-prison-service>
- 1.7 The HMICS report can be downloaded from the following address:
<https://www.hmics.scot/sites/default/files/publications/HMICS20181025PUB.pdf> and has also been attached as Appendix 1 to this report.
-

2. Recommendations

- 2.1 It is recommended that the Police and Fire & Rescue Scrutiny Sub Committee:
- (i) notes the reviews undertaken by HMICS and HMIPS on the arrangements for home detention curfew; and
 - (ii) notes in particular the recommendations in the HMICS report that have particular reference to Police operations at a local level and seeks reassurances from Police representatives at the meeting on progress in implementing these recommendations
-

3. Background

- 3.1 The Prisoners and Criminal Proceedings (Scotland) Act 1993 (as amended by the Management of Offenders etc. (Scotland) Act 2005) provides the power to release prisoners on Home Detention Curfew in Scotland.
- 3.2 The two Acts enable the Scottish Prison Service, on behalf of the Scottish Ministers, to release certain prisoners early on Home Detention Curfew licence. On 3 July 2006 the provisions came into force for short-term prisoners (those sentenced to less than four years).
- 3.3 In 2008, Home Detention Curfew was extended to certain prisoners serving long-term determinate sentences (those sentenced to over four years). The Parole Board for Scotland must first recommend release on parole at the parole qualifying date (after serving one half of the sentence) before the Scottish Prison Service can make the decision to release a long-term prisoner on Home Detention Curfew.
- 3.4 The decision to release any prisoner on Home Detention Curfew must take into account the following considerations:
- protecting the public at large;
 - preventing re-offending by the offender; and

- securing the successful re-integration of the prisoner into the community
- 3.5 All prisoners granted Home Detention Curfew are on licence subject to standard conditions and are subject to a curfew. The standard conditions have been specified by order and differ for long-term and short-term prisoners. In given circumstances, such as to accommodate an individual's working hours, the standard conditions e.g. hours of curfew, can be altered.
 - 3.6 In June 2018, following the sentencing of James Wright for the murder of Craig McClelland, a crime committed while the offender was 'unlawfully at large' having breached his home detention curfew in Renfrewshire, both HMICS and HMIPS were requested to undertake an independent assessment of the processes that operate in the Scottish Prison Service and Police Scotland with respect to the Home Detention Curfew system. It is evident from both reports that the Scottish Prison Service and Police Scotland have undertaken significant internal reviews of their processes. The establishment of a joint short-life working group to look at identifying improvements to the operation of the Home Detention Curfew process is also a welcome response.
 - 3.7 Many thousands of individuals from Scottish prisons have undertaken a period of Home Detention Curfew, the vast majority of whom have successfully completed periods of up to six months in the community. It is evident through the process of the HMIPS review that Home Detention Curfew has assisted a considerable number of individuals to successfully re-integrate into their communities. Many of whom have found employment during their time on Home Detention Curfew.
 - 3.8 Following the reviews, HMIPS have provided 21 recommendations to be considered by Scottish Prison Service and Police Scotland, and the HMICS report has 16 recommendations. Many of the recommendations have originated from the short life working group attended by both bodies.
 - 3.9 A number of the recommendations in the HMICS report have a particular focus on the work that is carried out at a Divisional level in Police Scotland – in particular recommendations 4, 5, 6 and 7. The Sub Committee may wish to seek an update from representatives from Police Scotland at the meeting in relation to progress in implementing these recommendations as well as other aspects of the HMICS report.

Implications of the Report

1. **Financial** – None.
2. **HR & Organisational Development** – None.

3. **Community Planning –**

Our Renfrewshire is safe – By reviewing the arrangements for Home Detention Curfew, this should lead to a safer Renfrewshire once recommendations are implemented.

4. **Legal – None.**

5. **Property/Assets – None.**

6. **Information Technology – None.**

7. **Equality & Human Rights –**

The Recommendations contained within this report have been assessed in relation to their impact on equalities and human rights. No negative impacts on equality groups or potential for infringement of individuals' human rights have been identified arising from the recommendations contained in the report. If required following implementation, the actual impact of the recommendations and the mitigating actions will be reviewed and monitored, and the results of the assessment will be published on the Council's website.

8. **Health & Safety – None.**

9. **Procurement – None.**

10. **Risk – None.**

11. **Privacy Impact – None.**

12. **Cosla Policy Position – None.**

List of Background Papers

None

OR
13 December 2018

Author Oliver Reid, Head of Communities & Public Protection
e-mail: oliver.reid@renfrewshire.gov.uk

HM INSPECTORATE OF CONSTABULARY IN SCOTLAND

Strategic review – an independent assessment of Police Scotland’s response to a breach of Home Detention Curfew (HDC)

October 2018

© Crown copyright 2018

Produced and Published by Her Majesty's Inspectorate of Constabulary in Scotland

~~QJ078-1-910165-43-0~~

V@Ádæ* ÆÄçā, Ā ĀPolice Scotland's response to a breach of Home Detention Curfew , æĤā^&cāĤ^Ā
 Û& cā ĆĀ ā ācĀ•Ā}āĤ Ā~&cā} ĀĬ ĤDĀ Ĥ@ĀĬ ĤāĤā āĤāĤĀ~Ĭ Ĭ{ ĀĬ& dā āDĤcĀĤFGā āĤ^ āĤā @āĤ Ā
 cĬ Ĭ{ •Ā~Ĭ&cā} ĀĬ ĤDā āĤDĀ ĤcāĀBē

PT QUÊ 18/06

SG/2018/158

www.hmics.scot



HM Inspectorate of Constabulary in Scotland

HM Inspectorate of Constabulary in Scotland (HMICS) is established under the Police and Fire Reform (Scotland) Act 2012 and has wide ranging powers to look into the 'state, effectiveness and efficiency' of both the Police Service of Scotland (Police Scotland) and the Scottish Police Authority (SPA).¹

We have a statutory duty to inquire into the arrangements made by the Chief Constable and the SPA to meet their obligations in terms of best value and continuous improvement. If necessary, we can be directed by Scottish Ministers to look into anything relating to the SPA or Police Scotland as they consider appropriate. We also have an established role in providing professional advice and guidance on policing in Scotland.

- Our powers allow us to do anything we consider necessary or expedient for the purposes of, or in connection with, the carrying out of our functions
- The SPA and the Chief Constable must provide us with such assistance and co-operation as we may require to enable us to carry out our functions
- When we publish a report, the SPA and the Chief Constable must also consider what we have found and take such measures, if any, as they think fit
- Where our report identifies that the SPA or Police Scotland is not efficient or effective (or best value not secured), or will, unless remedial measures are taken, cease to be efficient or effective, Scottish Ministers may direct the SPA to take such measures as may be required. The SPA must comply with any direction given
- Where we make recommendations, we will follow them up and report publicly on progress
- We will identify good practice that can be applied across Scotland
- We work with other inspectorates and agencies across the public sector and co-ordinate our activities to reduce the burden of inspection and avoid unnecessary duplication
- We aim to add value and strengthen public confidence in Scottish policing and will do this through independent scrutiny and objective, evidence-led reporting about what we find

Our approach is to support Police Scotland and the SPA to deliver services that are high quality, continually improving, effective and responsive to local needs.²

This strategic review of Police Scotland's approach to a breach of home detention curfew was directed by Scottish Ministers under Section 74(1) of the Police and Fire Reform (Scotland) Act 2012 and published in terms of Section 78(1) and (2) of that Act.

¹ Chapter 11, Police and Fire Reform (Scotland) Act 2012.

² HMICS, [Corporate Strategy 2017-20](#) (2017).



Contents

	Page
Our review	3
Key findings	6
Recommendations	8
Key facts	11
Context	12
Part one - Case study	15
Part two - Strategic review	24
Appendix 1 - Timeline	36
Appendix 2 - Glossary	38
Appendix 3 - Scottish Prison Service Notification Template - Home Detention Curfew Revocation of Licence - Criminal Justice Agencies	40
Appendix 4 - Home detention curfew process chart (July 2018)	41
Appendix 5 - Review methodology	43



Our review

I would like to start by offering my sincere condolences to the family of Craig McClelland, whose murder gave rise to this strategic review of the police response to a breach of home detention curfew.

Following the sentencing of James Wright (hereinafter referred to as offender 'A') for the murder of Craig McClelland, a crime committed while offender 'A' was '*unlawfully at large*' having breached his home detention curfew, the Cabinet Secretary for Justice wrote to HMICS on 7 June 2018 and set out the following expectations of the strategic review:

- to provide an independent assessment of the operation, procedures and safeguards in place by Police Scotland in relation to apprehending individuals who have breached their home detention curfew terms with the objective of providing assurance to Scottish Ministers, the Scottish Parliament and the public and
- where appropriate, this should include recommendations to address any gaps in the current operation, processes, safeguards and available police powers³ or where opportunities to drive improvement are identified.

The background to this review is outlined within our terms of reference, which was published on 28 June 2018.⁴ Our report is presented in two parts:

Part one – This case study comprised a review and assessment of the circumstances relating to the breach of the home detention curfew licence conditions by the offender 'A' and Police Scotland's response. We have produced a timeline of key events at Appendix 1.

Part two – Using the HMICS Inspection Framework,⁵ we carried out a proportionate and risk-based review of Police Scotland's response to apprehending individuals following revocation of their home detention curfew licence. We engaged with police officers and members of police staff across eight local police divisions who have day-to-day responsibility for the administration, management and execution of criminal justice warrants including revocation of home detention curfew licences.

It is important to place this strategic review in context,

- since the introduction in 2006 of the home detention curfew policy, more than 20,000 offenders have been released on home detention curfew by the Scottish Prison Service
- for most offenders eligible for release under the policy, home detention curfew is considered a routine progression through their sentence towards reintegration into the community
- the overall successful completion rate is around 80%
- there are approximately 300 offenders living in the community on home detention curfew at any given time.

³ On the 27 June 2018, Mr Yousaf, the Cabinet Secretary for Justice refined the Terms of Reference to include a review of powers available to Police Scotland whilst an individual remains 'unlawfully at large'.

⁴ HMICS, [Strategic review – an independent assessment of Police Scotland's response to a breach of Home Detention Curfew \(HDC\) - Terms of Reference](#), 28 June 2018.

⁵ HMICS, [Inspection Framework](#), May 2018



Home detention curfew notifications, revocations and cancellation of revocations are required to be recorded on two core police information systems:

- i. the Police National Computer (PNC)⁶ is a national database available to all United Kingdom (UK) police forces and holds information on individuals including details of convictions, and whether an individual is 'wanted' and/or 'missing'. The PNC is used to carry out real-time checks on people most obviously by police officers when they are dealing with members of the public
- ii. the Scottish Criminal History System (CHS) is the database used to hold details of criminal justice disposals and criminal conviction information in Scotland.

In order for the two core police information systems to be updated effectively in relation to home detention curfews there requires both timely and accurate information exchange between the Scottish Prison Service and Police Scotland.

On 18 June 2018, the Scottish Prison Service provided Police Scotland with a list detailing 54 offenders who had been released from Scottish prisons on home detention curfew and recorded as being '*unlawfully at large*'. Police Scotland identified irregularities in the data sets and, in response, a Joint Police Scotland and Scottish Prison Service, Home Detention Curfew, Short Life Working Group (SLWG) was established to reconcile the data held by both organisations. HMICS and HM Inspectorate of Prisons for Scotland (HMIPS)⁷ attended meetings of the SLWG as observers.

During our initial scoping we found significant inconsistencies between the data held by Police Scotland relating to the '*unlawfully at large*' status of some individual offenders who had been released on home detention curfew, and data held by the Scottish Prison Service. On 13 July 2018, I wrote to Police Scotland to highlight that immediate steps were required to reconcile the information held with police and the Scottish Prison Service ensuring that information recorded on the PNC in relation to home detention curfew notifications, revocations and cancellation of revocations was accurate.

For the purposes of this review and in order to provide a meaningful assessment our fieldwork was carried out between 29 June 2018 and 13 September 2018. We carried out a quantitative and qualitative audit of the number of individuals recorded as '*unlawfully at large*' as at 29 June 2018. This date coincided with the weekly figures published by the Scottish Prison Service on the number of offenders (291 offenders) in the community having been released on home detention curfews.⁸

Through the work of the SLWG we established that on 29 June 2018,

- a total of 44 offenders who had been released from Scottish prisons on the home detention curfew scheme were recorded by the Scottish Prison Service as '*unlawfully at large*'.
- of the 44 offenders recorded as '*unlawfully at large*' by the Scottish Prison Service, 24 offenders had been '*unlawfully at large*' for a period of over four years.
- of the 44 offenders recorded as '*unlawfully at large*' by the Scottish Prison Service, 19 offenders were at large from curfew addresses in Scotland, and 25 from curfew addresses in England.
- of the 44 offenders recorded as '*unlawfully at large*' by the Scottish Prison Service, 38 offenders were not recorded as being '*unlawfully at large*' on police systems. This meant that the true status of 38 offenders was unclear to law enforcement agencies across the UK.

⁶ <http://www.college.police.uk/What-we-do/Learning/Professional-Training/Information-communication-technology/Pages/PNC-Police-National-Computer.aspx>. See glossary.

⁷ On 7 June 2018, the Cabinet Secretary for Justice directed HMIPS to review the arrangements for home detention curfew within the Scottish Prison Service.

⁸ SPS, [Prison Population](#).



On 23 August 2018, we selected at random 10% of the 291 offenders (30 case files in total) and reviewed the status of individual offenders and accuracy of information held on police systems. Our findings are outlined at page 26.

Our approach provided an in-depth understanding of the operational and strategic issues relative to the electronic monitoring of offenders released on home detention curfew and the police response in relation to notifications of release, revocations (where an offender is deemed to be '*unlawfully at large*') and the cancellation of revocation process.

Our fieldwork stage concluded on 13 September 2018, however we acknowledge that the work of the SLWG continues to reconcile the information held between the police and the Scottish Prison Service. It is our assessment that the information provided in this report as it relates to those deemed to be '*unlawfully at large*' should not be considered conclusive until the reconciliation process is concluded.

As a consequence of my review I have made a number of recommendations across key processes that can be delivered by Police Scotland at an operational level and where implemented could improve the overall management of those offenders who having been released on the home detention curfew scheme subsequently breach their licence conditions and are deemed to be '*unlawfully at large*'.

I have also made a number of wider recommendations relating to policy on risk assessment of those considered eligible for release under home detention curfew, changes to legislation, and cross-border provisions, which should be taken forward by the Scottish Government in partnership with Police Scotland, the Scottish Prison Service and other key stakeholders.

I would like to record my thanks to all who contributed to the strategic review including police officers, members of police staff, the short life working group and other stakeholders. The strategic review was led by Stephen Whitelock, Lead Inspector, HMICS and Steven Tidy, Support Inspector, HMICS. The review was supported by colleagues from within HMICS and the executive lead was provided by me as HM Chief Inspector of Constabulary.

Gill Imery QPM

HM Chief Inspector of Constabulary in Scotland
October 2018



Key findings

Part one - case study

- We compared the approach to the release of offenders on home detention curfew from prisons in England and found that whilst an offender may be considered eligible in law for release on the home detention curfew scheme there are policy considerations that would deem an offender to be 'presumed unsuitable' for release. Such a presumption of unsuitability includes serving a prison sentence for a conviction for possession of an offensive weapon. This policy consideration does not extend to Scotland.
- On 13 February 2017 offender 'A' was released from HMP Low Moss on the home detention curfew scheme. Police Scotland was advised by the Scottish Prison Service and core information systems were updated. HMICS is satisfied that the notification process carried out by the Scottish Prison Service and Police Scotland was correctly adhered to and in compliance with current guidance.⁹
- On 23 February 2017 offender 'A' breached his home detention curfew licence and the following day Police Scotland was advised by the Scottish Prison Service and core information systems updated. HMICS is satisfied that the revocation process carried out by the Scottish Prison Service and Police Scotland's response adhered to and was fully compliant with agreed guidance.¹⁰
- A revocation of home detention curfew is a notice issued by the respective HM Prison and is not a judicial warrant. The revocation authority relates to the recall of the individual offender and the police have power of arrest under section 40 Prisons (Scotland) Act 1989. This power of arrest is enabled when the revocation notice is signed by the governor of the recalling prison. In practice, police officers will only consider the power of arrest, under the 1989 Act, when the revocation notice is received by Police Scotland from the Scottish Prison Service and the PNC record updated. The revocation notice does not provide the police with a power to force entry to premises or the power to search premises for the offender.
- In Scotland it is not a separate offence to remain '*unlawfully at large*' following recall to prison and if no other offence is committed by the offender who has failed to return to custody he/she is only required to serve the outstanding part of his/her original sentence.
- We found that police officers allocated responsibility for the home detention curfew revocation in respect of offender 'A' were unable to demonstrate that a professional level of enquiry was carried out due to non-recording of activity undertaken to trace the offender.
- We found that there was limited evidence to demonstrate effective supervisory oversight of the enquiry or of a robust process to escalate matters to the senior police management team for consideration of further action.
- Police Scotland has conducted an internal review of the circumstances around the case study. The findings of that internal report have assisted in the work of the SLWG to drive improvement.

⁹ Scottish Prison Service Home Detention Curfew Guidance for Agencies (April 2018). Not published.

¹⁰ Ibid.



Part two – strategic review

- We found inconsistencies between data held by Police Scotland and the data held by the Scottish Prison Service relating to the status of individual offenders who had been released on home detention curfew and recorded as '*unlawfully at large*'. It is our assessment that the information provided in this report as it relates to those '*unlawfully at large*' should not be considered conclusive until the work to reconcile the respective data sets is complete.
- We found that on 29 June 2018, of the 44 offenders recorded as '*unlawfully at large*', by the Scottish Prison Service, 19 were at large from curfew addresses in Scotland and 25 from curfew addresses in England.
- We found that on 29 June 2018, of the 44 offenders recorded as '*unlawfully at large*', by the Scottish Prison Service, 24 offenders had been '*unlawfully at large*' for over four years.
- We found that on 29 June 2018, of the 44 offenders recorded as '*unlawfully at large*' by the Scottish Prison Service, 38 were not recorded as being '*unlawfully at large*' on the PNC, therefore the accurate status of the 38 offenders was unclear to law enforcement agencies across the UK.
- As at 13 September 2018, of the 44 offenders, nine offenders remained '*unlawfully at large*'. Four from curfew addresses in Scotland and five from curfew addresses in England.
- As at 13 September 2018, of the 44 offenders, 19 have been reassessed by the Scottish Prison Service and are considered to be no longer '*unlawfully at large*' due to time served in custody on other matters.
- There is no power of arrest available to police officers in Scotland should they encounter an individual they suspect to be breaching home detention curfew conditions. In such circumstances details of the breach are reported to the Scottish Prison Service for their information and consideration. The power of arrest comes from the revocation notice which is generated by the Scottish Prison Service.
- We found that the Police Scotland standard operating procedures were of good quality and provided clear direction on the roles and responsibilities of each person involved in the process.
- On 10 September 2018, Police Scotland established a single point of contact for all home detention curfew notifications, revocations and revocation cancellations emanating from the Scottish Prison Service. Whilst a positive development it is not yet possible to measure the success or otherwise of the single point of contact.
- We found a general lack of understanding by local divisional police officers and members of police staff of the process around home detention curfew revocations across the country. We believe that this was primarily due to the small number of individuals who breach their licence conditions and are reported by the Scottish Prison Service to police as being '*unlawfully at large*'.
- The police systems used to administer criminal justice warrants including revocations are based on legacy IT arrangements and differ across the country.
- Across the local policing divisions visited we found some police officers and members of police staff were extremely knowledgeable and experienced operators of the PNC and CHS, with others less experienced especially those officers and staff engaged in backfilling roles (warrants officer and intelligence officer roles) due to absence.
- During our review we found evidence of strong partnership working between Police Scotland and the Scottish Prison Service.



Recommendations

We have identified a number of recommendations across key processes that can be delivered locally by Police Scotland at an operational level and where implemented could improve the overall management of those offenders who having been released on the home detention curfew scheme subsequently breach their licence conditions and are deemed to be '*unlawfully at large*'.

Recommendations 2,3,9,12 are more strategic in design and should be taken forward by the Scottish Government in partnership with Police Scotland, the Scottish Prison Service and other key stakeholders¹¹ setting overall strategic direction and national guidance on the future management of offenders in Scotland.

Part one - case study

Recommendation 1

Police Scotland in partnership with the Scottish Prison Service should develop an approach that enhances the information sharing arrangements for offenders who are eligible and being considered suitable for release on home detention curfew giving due regard to the core principles of protecting the public at large, preventing re-offending and securing the successful re-integration of the offender into the community.

Recommendation 2

Scottish Government in consultation with criminal justice partners and key stakeholders should consider development of national policy on risk factors that assess not only the eligibility of an offender for release on home detention curfew but his/her suitability for release based on a presumption of refusal where the conviction that the person has been sentenced for relates to violence, possession of an offensive weapon or having known links to serious organised crime.

Recommendation 3

Scottish Government in consultation with criminal justice partners and key stakeholders should consider introducing a statutory offence where an offender who breaches his/her home detention curfew licence conditions remains '*unlawfully at large*' for a designated period of time.

Recommendation 4

Police Scotland should ensure a robust process is established in each local policing area where all enquiries carried out by police officers and members of police staff are accurately recorded in a clear and appropriately evidenced manner that is available for internal audit and external scrutiny purposes. This would comply with the existing standard operating procedures.

Recommendation 5

Police Scotland should ensure a robust process is established in each local policing area where local supervisors allocate home detention curfew revocation notices without undue delay and in any case within 48 hours and that the progress of enquiries is regularly monitored and reviewed ensuring that a professional standard of enquiry is completed timeously and within the relevant timescales. This would comply with the existing standard operating procedures.

¹¹ Criminal Justice partners and key stakeholders include, Scottish Government, Police Scotland, Scottish Prison Service, Local Authority Criminal Justice Social Work (CJSW), Social Work Scotland (SWS), Crown Office and Procurator Fiscal Service (COPFS), National Police Chiefs' Council (NPCC), HM Prison and Probation Service (HMPPS) and electronic monitoring service providers (G4S).



Recommendation 6

Police Scotland should ensure a robust process is established in each local policing area where the local senior management team is provided with a status report in relation to offenders deemed '*unlawfully at large*' and a means to escalate related offenders to the local tasking and delivery board for further action.

Recommendation 7

Police Scotland should support Divisional Commanders to carry out an internal self-assessment as a process of continuous improvement against each of the listed recommendations to ensure that there are robust local procedures and safeguards in place in relation to locating and apprehending offenders who have breached their home detention curfew licence conditions and are deemed to be '*unlawfully at large*'.

Part two – strategic review

Recommendation 8

Police Scotland should align the enquiry timescales outlined in the electronic monitoring of offenders standard operating procedures and the warrants standard operating procedures to ensure consistency of guidance.

Recommendation 9

Scottish Government in consultation with criminal justice partners and key stakeholders should develop statutory guidance for the discharge of their respective functions under the Management of Offenders (Scotland) Bill which includes the response to the recommendations outlined in the strategic reviews by HMICS and HMIPS.

Recommendation 10

Police Scotland in partnership with the Scottish Prison Service should develop a robust, sustainable and auditable approach to the two-way flow of information relative to the notification, revocation and cancellation of revocation notices of offenders released on home detention curfew by the Scottish Prison Service enabling a 24 hours a day, 7 days a week, 365 days a year policing response to updating core information systems.

Recommendation 11

Police Scotland in partnership with the Scottish Prison Service should audit, monitor and review the revised arrangements (see paragraph 90) for information sharing in relation to the notification, revocation and cancellation of revocation notices of offenders released on home detention curfew ensuring that the information held by Police Scotland and the Scottish Prison Service is accurate and relevant.

Recommendation 12

Scottish Government in consultation with criminal justice partners and key stakeholders including the National Police Chiefs' Council (NPCC), HM Prison and Probation Service (HMPPS) and electronic monitoring service providers should develop cross border provisions relative to the notification, revocation and cancellation of revocation notices of offenders released on home detention curfew to an address outside Scotland and by extension for offenders who have been released by HMPPS to an address in Scotland.

Recommendation 13

Police Scotland should assess and evaluate the financial and resource implications of introducing new processes in relation to offenders being considered for release under terms of the Management of Offenders (Scotland) Bill and articulate the findings to Scottish Government.



Recommendation 14

Police Scotland should provide clear guidance for police officers and members of police staff to enable a consistent approach to the submission and management of intelligence for offenders released on home detention curfew and those deemed to be '*unlawfully at large*'.

Recommendation 15

Police Scotland in partnership with the Scottish Prison Service should raise awareness of the roles, and responsibilities of police officers and members of police staff involved in the notification, revocation and revocation cancellation process of offenders released on home detention curfew in Scotland. This should extend to the use of police powers when an offender is deemed to be '*unlawfully at large*'.

Recommendation 16

Police Scotland should ensure that police officers and members of police staff involved in the management and administration of home detention curfew notifications, revocations and cancellation of revocations are fully conversant with the roles and responsibilities outlined in the standard operating procedures and are appropriately supported, experienced, trained and have access to core police information systems.



Key facts

The Prisoners and Criminal Proceedings (Scotland) Act 1993 (as amended by the Management of Offenders etc. (Scotland) Act 2005) makes provision for offenders to be released from a Scottish Prison to complete their sentence in the local community under the conditions of a home detention curfew.

In Scotland prisoners sentenced to a term of less than four years are automatically released once they have served half of their sentence and are not subject to any licence conditions.

Only offenders identified as low risk are eligible for release on the home detention curfew scheme and the selection and release of an offender is the responsibility of the Scottish Prison Service.

Home detention curfew allows an offender to serve up to a quarter of his/her sentence for a maximum of 180 days (6 months) and a minimum of 14 days (2 weeks) on licence in the community while wearing an electronic tag.

Since 2006 over 20,000 offenders have been released on home detention curfew by the Scottish Prison Service. The successful completion rate is about 80%.



There is no police involvement in the home detention curfew risk assessment or the release process.

Between 1 January 2017 and 29 June 2018, 2091 offenders were released on home detention curfew by the Scottish Prison Service.

On 29 June 2018, the number of prisoners released from prison under the home detention curfew scheme was 291 offenders, comprising 253 men and 38 women. There are approximately 300 offenders on home detention curfew at any given time.

Offenders who breach their home detention curfew licence and are recalled by the Scottish Prison Service are categorised as '*unlawfully at large*'.

In Scotland radio frequency (RF) technology is used to monitor curfew conditions (where an individual's movement is restricted to be in a specified place between a specified period of time, typically from 1900 hrs to 0700 hrs).



Context

Background

1. The electronic monitoring of offenders is an established feature of the criminal justice system across the UK.
2. In Scotland current legislation allows for the electronic monitoring of offenders daily, using radio frequency (RF) technology for the following purposes:
 - as part of a Restriction of Liberty Order (ROLO)¹²
 - as a licence condition imposed or recommended by the Parole Board for Scotland following early release from prison
 - as part of a Restricted Movement Requirement (RMR)¹³ imposed for breach of a Community Payback Order (CPO)
 - as a condition of a Drug Treatment and Testing Order (DTTO)¹⁴ and
 - as a Movement Restriction Condition (MRC)¹⁵ for young people imposed by a Children's Hearing.
3. Electronic monitoring is also used as a licence condition for the purposes of home detention curfew and is seen as an effective way to monitor an individual's presence or absence at addresses, in line with conditions of his/her licence.
4. An international review of literature shows that offenders and families who have experience of home detention curfew strongly support its availability. Being released from prison and having a family member back home were the main reasons cited however, the condition of being on a curfew and required to be inside one's residence for 12 hours a day (as is the default period in Scotland) can create stress for both the released offender and their family.¹⁶
5. On 1 November 2004, the Victim Notification Scheme (VNS)¹⁷ created the statutory basis on which to provide victims of offenders who had been sentenced for certain crimes and to a sentence of four years or more with the right to receive information about the offender's progression within prison and eventual release.
6. On 15 May 2008, the right to receive information was extended to victims of offenders who had been sentenced to 18 months or more. The scheme entitles victims to information about the offender being considered either for parole or release on home detention curfew.
7. We found limited academic research regarding the impact of home detention curfew on victims of crime their families and on re-offending rates.^{18 19}

¹² See glossary.

¹³ See glossary.

¹⁴ See glossary.

¹⁵ See glossary.

¹⁶ Scottish Government, [Evaluating the Effectiveness of Home Detention Curfew and Open Prison in Scotland](#), No.32/2011.

¹⁷ SPS, [Victim Notification Scheme - What Information You Will Receive](#).

¹⁸ Scottish Government, [Evaluating the Effectiveness of Home Detention Curfew and Open Prison in Scotland](#), No.32/2011.

¹⁹ Ministry of Justice, [The effect of early release of prisoners on Home Detention Curfew \(HDC\) on recidivism](#), May 2011.



The statutory framework

8. The statutory framework for home detention curfew is provided through the Prisoners and Criminal Proceedings (Scotland) Act 1993 (as amended by the Management of Offenders etc. (Scotland) Act 2005) and provides the authority for the Scottish Prison Service, on behalf of Scottish Ministers to release offenders from prison on home detention curfew.
9. On 3 July 2006, the provisions came into force for short term offenders (those sentenced to less than four years in custody) and in 2008 the scheme was extended to offenders serving long term determinate sentences (over four years). Home detention curfew allows an offender to serve up to a quarter of his/her sentence - for a maximum of six months (180 days) and a minimum of two weeks (14 days) on licence in the community, while wearing an electronic tag.
10. Since its introduction (2006) over 20,000 offenders have been released on home detention curfew by the Scottish Prison Service. The successful completion rate for home detention curfews is about 80%.
11. The Scottish Prison Service identify offenders who present a low risk of reoffending if released and must as required in the legislation²⁰ take into account the following key principles:
 - protecting the public at large
 - preventing re-offending by the offender, and
 - securing the successful re-integration of the offender into the community.
12. There are a number of statutory exclusions ²¹ (see page 15) that disqualify an offender from being considered for release on home detention curfew. For most eligible offenders home detention curfew is considered a routine part of progression through their sentence unless there are clear grounds to indicate they are unlikely to complete successfully the period on curfew. Between 1 January 2017 and 29 June 2018, the Scottish Prison Service released 2091 offenders on home detention curfew. The Scottish Prison Service report that there are approximately 300 offenders living in the community on home detention curfew at any given time.²²
13. Offenders must pass a risk assessment and have suitable accommodation approved by the local authority criminal justice social work before they can be granted home detention curfew. The sole responsibility for selection and release on home detention curfew rests with the Scottish Prison Service and there is no police involvement in the assessment or release process. A notice of intended release will be submitted by the Scottish Prison Service to Police Scotland at least seven days prior to an offender's release.
14. All offenders granted home detention curfew are on licence subject to standard conditions and a curfew condition. Additional conditions may also be added on the licence at this time. Responsibility for monitoring compliance with the curfew condition of the licence lies with the electronic monitoring service provider²³ contracted by the Scottish Government. Police Scotland have no responsibility in monitoring the licence conditions. Furthermore, no organisation has responsibility for monitoring compliance of any additional conditions.
15. The electronic monitoring service provider will fit a personal identity device (electronic tag) usually to the offender's ankle. The tag communicates electronically with the site monitoring unit which relays a signal via a telephone line to the electronic monitoring central computer system. The service provider is only responsible for the installation/removal of the equipment and the monitoring of the data received from it.

²⁰ <http://www.legislation.gov.uk/asp/2005/14>

²¹ Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9), Section 3AA(5) as inserted by Section 15(5)(5) of the Management of Offenders (Scotland) Act.

²² SPS, [Prison Population](#).

²³ In Scotland this function is carried out by G4S.



16. Where the system detects interference or tampering with the equipment or where the offender leaves the set range, the centralised system is alerted and the electronic monitoring service provider will make contact with the offender and carry out a home visit to the curfew address. The police are not required to monitor compliance.
17. Where there has been a breach the Scottish Prison Service will be notified and a decision made to revoke the licence and recall the offender to custody. The Scottish Prison Service will then notify the police and send a revocation notice²⁴ via email to police. Although the 1989 Act provides the power for prison officers to arrest an offender '*unlawfully at large*', the long established protocol is that the responsibility for the arrest and return to custody of the offender rests with the police.
18. In Scotland and unlike England and Wales²⁵ it is not a separate offence to remain '*unlawfully at large*' following a recall to prison and if no other offence is committed by the offender he/she is only required to serve the remainder of his/her original sentence.

²⁴ A specimen revocation notice has been provided at Appendix 3.

²⁵ Ministry of Justice, [Criminal Justice and Courts Act 2015, Circular No.2015/01](#), 23 March 2015.



Part one - Case study

Background

In relation to the case study we have produced a timeline of key events shown at Appendix 1.

19. On 23 July 2017 Craig McClelland was murdered and following police enquiry the perpetrator James Wright (hereinafter referred to as offender 'A') was arrested and convicted having been found guilty of the murder. He was sentenced to life imprisonment with a punishment part of 20 years. At the time of sentencing²⁶ the trial judge, Lord Matthews, commented that questions would be asked as to why the offender who had breached his home detention curfew licence and was '*unlawfully at large*' some five months prior to the murder had not been arrested and returned to prison.

Consideration for release

20. By way of background, only offenders identified as low risk of re-offending are eligible for release on the home detention curfew scheme and the selection and release of an offender is the responsibility of the Scottish Prison Service. All home detention curfews include conditions specifically the requirement of the released individual to remain at a curfew address for a specified time period. The Scottish Prison Service decision to release an offender on home detention curfew must take into account the following key principles:
- protecting the public at large
 - preventing re-offending by the offender and
 - securing the successful re-integration of the offender into the community.
21. There are a range of statutory exclusions that disqualify an offender from being considered for release and these relate to those who:
- are required to register as sex offenders
 - are subject to an extended sentence
 - are subject to a supervised release order
 - are subject to a hospital direction
 - are awaiting deportation.
22. Those offenders who are not statutorily excluded must undergo a risk assessment and the local authority criminal justice social work, at the request of the Scottish Prison Service, assess the suitability of the curfew address. In addition to the statutory exclusions, the following aspects are also considered as part of the overall risk assessment process by the Scottish Prison Service as to whether or not an offender is considered suitable for release,²⁷
- offenders with a history of sexual offending
 - offenders whose history includes a conviction for a Schedule 1 offence²⁸
 - offenders whose conviction includes an element of domestic violence
 - offenders who have previously failed to comply with the conditions of a home detention curfew licence
 - offenders who have failed to engage in the core screen/ community integration plan (CIP)²⁹ processes inclusive of accessing interventions and
 - offenders whose behaviour while in prison has given cause for concern.

²⁶ High Court in Livingston 4 June 2018.

²⁷ Scottish Prison Service Home Detention Curfew Guidance for Agencies (April 2018). Not published.

²⁸ <http://www.legislation.gov.uk/ukpga/1995/46/schedule/1>

²⁹ See glossary.



23. The effect of knife crime in Scotland is well documented³⁰ and there have been a number of national initiatives to tackle problems associated with knives such as the establishment of the Scottish Violence Reduction Unit,³¹ 'No Knives Better Lives' which aims to reduce the incidence of violence and knife carrying among young people³² and the Offensive Weapons Bill.³³
24. In 2016 the maximum custodial sentence available to Scottish courts in relation to offensive weapon offences, including knife possession in public places, was increased by the Criminal Justice (Scotland) Act 2016 on indictment from four years to five years.
25. A Scottish Government report (2018) indicated that over the past decade there has been a significant and long term reduction in the handling of offensive weapons in Scotland. The report also recognised that when bladed or pointed articles were used against other people in a public setting, they caused a serious level of injury in 21% of cases (such as stab wounds or other permanent disfigurement).³⁴
26. In relation to the case study, in October 2016, offender 'A' was convicted of section 49 (1) Criminal Law (Consolidation) (Scotland) Act 1995 having in a public place an article with blade or point (knife) and sentenced to 21 months imprisonment.
27. In Scotland prisoners sentenced to a term of less than four years are automatically released once they have served half of their sentence and are not subject to any licence conditions.³⁵ As the offender's sentence was backdated to time spent in custody (11 July 2016) he was eligible for consideration of release on the home detention curfew scheme and subsequently released from HMP Low Moss on 13 February 2017 to a curfew address in the Renfrewshire and Inverclyde Police Divisional area.
28. As there is no legal power to detain an individual beyond the end of the requirements of his/her sentence - unless he/she is convicted and imprisoned for another offence - the Earliest Date of Liberation (EDL) for offender 'A' was 26 May 2017.
29. We compared the approach to the release of offenders on home detention curfew in England and Wales and found that similar arrangements exist. We found that whilst an offender may be considered eligible in law for release on a home detention curfew there are further policy considerations that would deem an offender to be 'presumed unsuitable' for such release which includes serving a prison sentence for a conviction for possession of offensive weapons (bladed or pointed articles-knife). We found that such a policy consideration in relation to weapons does not extend to Scotland.
30. During our analysis of home detention curfew case files we found that a small number of offenders with known connections to serious organised crime in Scotland had been released on home detention curfew and had breached their licence conditions and were '*unlawfully at large*'. Having connections with serious organised crime is not a statutory exclusion or indeed a consideration of refusal for release. We believe that in support of the Scottish Serious Organised Crime Strategy³⁶ there should be further consideration given to not releasing such offenders on home detention curfew. This would necessitate greater exchange of information and intelligence between Police Scotland and the Scottish Prison Service to disrupt serious organised crime groups and their networks across Scotland.

³⁰ Scottish Parliament, [SPICe Briefing, Knife Crime](#), 7 March 2011.

³¹ <http://actiononviolence.org/>

³² <http://noknivesbetterlives.com/>

³³ The Offensive Weapons Bill is a UK Government Bill that combines both devolved and reserved issues around offensive weapons, and it has been developed with input from the Scottish Government.

³⁴ Scottish Government, [Recorded Crime in Scotland: Handling Offensive Weapons](#), 26 June 2018.

³⁵ Scottish Sentencing Council, [Prison sentences](#).

³⁶ Scottish Government, [Scotland's Serious Organised Crime Strategy](#), June 2015.



31. The police have access to a range of information including the criminal history of an offender, known external factors including a pattern of behaviour which may indicate a likelihood of re-offending, victim issues or potential risks to members of the public, which would be directly relevant to decision making about release under home detention curfew. Whilst each case for home detention curfew must be looked at and considered on its own merits, we believe that the Scottish Prison Service should include Police Scotland as a source of information where they decide that this would support delivery of the key principles in terms of releasing an offender on home detention curfew, namely:
- protecting the public at large
 - preventing re-offending by the offender and
 - securing the successful re-integration of the offender into the community.
32. We found that there is an established police / prison liaison network (see paragraphs 121 – 122) where information is shared between both organisations. The police should be asked for information where an offender is being considered for release on home detention curfew and is serving a prison sentence for a conviction for violence, possession of an offensive weapon (a bladed or pointed article) or has known connections to serious organised crime. However, we believe that it is not the function or responsibility of the police to reach a judgement on whether an individual offender is suitable or not for release on the home detention curfew scheme: that decision remains with the Scottish Prison Service.

Recommendation 1

Police Scotland in partnership with the Scottish Prison Service should develop an approach that enhances the information sharing arrangements for offenders who are eligible and being considered suitable for release on home detention curfew giving due regard to the core principles of protecting the public at large, preventing re-offending and securing the successful re-integration of the offender into the community.

33. We recommend that Scottish Government in consultation with criminal justice partners and key stakeholders should consider the experiences of Her Majesty's Prison and Probation Service (HMPPS) in setting out policy direction for the suitability for release. We believe that within the policy considerations provided by HMPPS that an offender serving a sentence of imprisonment for possession of an offensive weapon would be 'presumed unsuitable' unless there were robust qualifying reasons to support the release of the offender on home detention curfew.³⁷ HMICS believes that the policy considerations in Scotland (see page 15) should be extended to include i) violence ii) possession of offensive weapons and iii) connections to serious organised crime.

Recommendation 2

Scottish Government in consultation with criminal justice partners and key stakeholders should consider development of national policy on risk factors that assess not only the eligibility of an offender for release on home detention curfew but his/her suitability for release based on a presumption of refusal where the conviction that the person has been sentenced for relates to violence, possession of an offensive weapon or having known links to serious organised crime.

³⁷ HM Prison & Probation Service, [Home Detention Curfew Assessment Process](#), 2 January 2018.



Notification of release

34. A notice of intended release on home detention curfew will be provided by the Scottish Prison Service to Police Scotland at least seven days prior to the offender’s release. We found that in the case study the Scottish Prison Service notified Police Scotland via email of details of the proposed release date of offender ‘A’ and of the curfew address. This email was sent to three separate business areas in Police Scotland:
- Police Scotland Records Branch (West) Glasgow
 - Specialist Crime Division, National Intelligence Bureau, Prison Intelligence Unit
 - Renfrewshire and Inverclyde Police Divisional intelligence office (K Division - Paisley).
35. There are 13 local policing divisions across Police Scotland each responsible for the administration and management of a range of criminal justice warrants³⁸ (including revocation of home detention curfew licences). We found that across Scotland there are local variations in procedures and IT systems. The 13 local police divisions are supported by eight Records Branches (see Exhibit 7) aligned to legacy force arrangements responsible for maintaining data on PNC and CHS.
36. In this case study we reviewed the flow of information between the Scottish Prison Service and Police Scotland and are satisfied that at the initial and subsequent notification of release on home detention curfew the communication flows between the Scottish Prison Service and Police Scotland were in accordance with current guidance.³⁹ This notification of release resulted in Police Scotland updating core information systems (the PNC and the CHS)⁴⁰ with details of the offender’s release on home detention curfew, the curfew address and Earliest Date of Liberation (EDL). See Exhibit 1.

Exhibit 1 - Criminal History System - Extract of Record for offender ‘A’ Notification of release

```
*****
ESTABLISHMENT:    HMP LOW MOSS
RELEASE DATE:     13.02.17
RELEASE ADDRESS:  [REDACTED]
REASON:           HOME DETENTION CURFEW ORDER- TAGGED
CONDITIONS:       TO RESIDE WITHIN RELEASE ADDRESS BETWEEN 1930 & 0730 HOURS DAILY
COMMENTS:         CONTACT G4S FOR TAG ISSUES
*****
```

37. The Scottish Prison Service made the decision to release offender ‘A’ on home detention curfew and carried out the associated risk assessment. As per the current process, there was no police involvement in the home detention curfew risk assessment or the release. The electronic monitoring service provider was responsible for monitoring the electronic tag. Again, as per the current process, there is no role for the police to monitor an offender once released on home detention curfew.

³⁸ Warrants see glossary.
³⁹ Scottish Prison Service Home Detention Curfew Guidance for Agencies (April 2018). Not published.
⁴⁰ Police National Computer (PNC) and Criminal History System (CHS) see glossary.



Notification of breach of home detention curfew

38. Where the Scottish Prison Service revoke a home detention curfew licence and recall an offender to prison a home detention curfew revocation notice (see Appendix 3) is issued to the police.
39. On 23 February 2017, offender 'A' breached the conditions of his home detention curfew, removed his electronic tag and left the curfew address. The electronic monitoring service provider (G4S) were alerted to the removal of the electronic tag and as part of agreed procedures informed the Scottish Prison Service. The following day (24 February 2017), the Scottish Prison Service alerted Police Scotland that offender 'A' had been recalled to prison and was deemed to be '*unlawfully at large*'. The revocation notice was sent as an attachment via email to Police Scotland Records Branch (West) Glasgow with copies sent to the Specialist Crime Division, National Intelligence Bureau, Prison Intelligence Unit and Renfrewshire and Inverclyde Police Divisional intelligence office (K Division - Paisley).

Initial police response

40. On being notified of the revocation of the home detention curfew licence, Police Scotland updated core information systems PNC and CHS. See Exhibit 2.

Exhibit 2 - Criminal History System - Extract of Record for offender 'A' Revocation of home detention curfew licence

```
*****
ESTABLISHMENT:    HMP LOW MOSS
RELEASE DATE:     13.02.17
RELEASE ADDRESS:  [REDACTED]
REASON:           HOME DETENTION CURFEW ORDER- TAGGED
CONDITIONS:       TO RESIDE WITHIN RELEASE ADDRESS BETWEEN 1930 & 0730 HOURS DAILY
COMMENTS:         CONTACT G4S FOR TAG ISSUES
*****
24.02.17 REVOCATION OF HOME DETENTION CURFEW ORDER -NOW UNLAWFULLY AT LARGE- TO BE RETURNED TO PRISON
AS SOON AS POSSIBLE
*****
```

41. A locate / trace entry was inserted onto the 'wanted/missing' section of the offender's PNC record. See Exhibit 3.

Exhibit 3 - PNC Extract of Record for offender 'A' Now *unlawfully at large*

Revocation of Home Detention Curfew Order – Now *unlawfully at large* – To be returned to custody as soon as possible. There is no power of entry attached to this order.

42. Although a revocation notice is **not** a warrant, for the purposes of administration the recall notice was entered on the local warrants enquiry system by the Records Branch (West) Glasgow and electronically transferred to the local warrants unit at Renfrewshire and Inverclyde Police Division. The revocation notice was processed and categorised as a priority and allocated within 48 hours to the local Community Investigations Unit (CIU) at Paisley for enquiry.
43. HMICS is satisfied that the revocation process carried out by the Scottish Prison Service and Police Scotland was in compliance with guidance and standard operating procedures and the initial police response was professional with core information systems updated.
44. We found that on being notified of the revocation notice an electronic-briefing (e-briefing) was provided for police officers in the Paisley area advising that offender 'A' was '*unlawfully at large*' and had a documented history of possession of offensive weapons.



Police powers

45. A revocation notice is a written instruction by the relevant prison alerting police that an offender has breached his/her home detention curfew licence conditions, is *'unlawfully at large'* and should be returned to prison.
46. Section 40 of the Prisons (Scotland) Act 1989 (the 1989 Act) provides a power of arrest and states: *"a constable or prison officer may arrest an individual 'unlawfully at large' without warrant, and take him/her to the place in which he/she is required to be detained, in accordance with law"*.
47. During our fieldwork we found that in practice police officers will only consider using the power of arrest provided by the 1989 Act once the PNC shows the fact that the offender is *'unlawfully at large'*. For this reason, it is vital that the PNC is updated timeously with the notification of release, revocation or cancellation of revocation status of the offender. The 1989 Act does not provide the police with the power of forced entry or search and during our review we heard anecdote from police officers about situations where an offender being *'unlawfully at large'* remained within the house and simply evaded arrest by failing to answer the door.
48. Section 40A of the 1989 Act provides for the application of a warrant for the arrest of an escaped prisoner *'unlawfully at large'* from a prison or other institution as outlined in legislation⁴¹ and a Justice may issue a warrant to arrest the offender and bring him/her before any Sheriff. The Sheriff may order the offender to be returned to the prison or other institution. We found that there is a lack of understanding around the provision of section 40A of the 1989 Act specifically in relation to a breach of a home detention curfew and whether such a statutory provision would provide the requisite authority, where necessary, for a police officer to search for (and to force entry) in relation to an offender being *'unlawfully at large'*.
49. During our review we found no evidence to demonstrate that section 40A of the 1989 Act had been used successfully by police to search for (and force entry) in relation to an offender being *'unlawfully at large'* having breached the home detention curfew conditions. We found that one local policing area had considered this approach to locate an offender but had withdrawn from the process due to the following requirements:
 - i. belief amounting to certainty that the offender is within a specific place
 - ii. a continued police presence at that specific location
 - iii. police representation at a Justice.
50. We compared the arrangements in England and Wales (Merseyside Police and HMPPS) and established that section 17 Police and Criminal Evidence Act (PACE) 1984 provides that a constable may enter and search any premises for the purpose of recapturing any person who is, or is deemed for any purpose to be *'unlawfully at large'* while liable to be detained in a prison, young offender institution, secure training centre or secure college. PACE does not extend to Scotland.
51. In Scotland it is not a separate offence to remain *'unlawfully at large'* following a recall to custody and if no other offence is committed by an offender who has failed to return to custody, he/she can only be required to serve the outstanding part of his/her original sentence. In the case of offender 'A' this was estimated at **92 days**.⁴²

⁴¹ The Prison Act 1952 or the Prison Act (Northern Ireland) 1953.

⁴² Calculated from 24 February 2017 until the Earliest Date of Liberation on 26 May 2017.



52. In England and Wales, section 12 of the Criminal Justice and Courts Act 2015⁴³ which amended the Criminal Justice Act 2003 and the Crime (Sentences) Act 1997, created a new offence of '*remaining unlawfully at large*' following a recall from licence for determinate and indeterminate sentence prisoners.⁴⁴ The offence is committed once the offender has been notified of the recall and, without reasonable excuse, fails to take all necessary steps to surrender to custody. Breaches carry a punitive element with a maximum penalty of two years' imprisonment and/or a fine. There is no similar offence or sanction in Scotland.
53. In the case of offender 'A' having left the curfew address on the 23 February 2017 until his arrest he was '*unlawfully at large*' for a total of **168 days**.
54. Having compared the police powers available, we believe that police officers in England and Wales have greater options through the use of PACE and/or section 12 of the Criminal Justice and Courts Act 2015 to arrest an offender who is '*unlawfully at large*', than police officers in Scotland.

Recommendation 3

Scottish Government in consultation with criminal justice partners and key stakeholders should consider introducing a statutory offence where an offender who breaches his/her home detention curfew licence conditions remains '*unlawfully at large*' for a designated period of time.

55. Should an offender be suspected of a breach of home detention curfew conditions by police (in circumstances where a police officer sees an offender in a public place during the curfew period or in circumstances where an offender is arrested on a separate matter and therefore in breach of home detention curfew), there is no immediate power of arrest available under section 40 of the Prisons (Scotland) Act 1989 until the Scottish Prison Service send a revocation notice to the police. This approach results in the breach being reported to the Scottish Prison Service for their information and consideration and no further action taken against the offender at that time.
56. We believe that the current process could be more dynamic with information being forwarded by Police Scotland to the Scottish Prison Service to enable an early assessment of the facts and a decision as to whether or not the circumstances merit a recall to prison and the issue of a revocation notice to enable police to arrest the offender for a breach of curfew conditions.

Police enquiry

57. We found that the content of the Police Scotland Electronic Monitoring of Offenders standard operating procedures and Warrants standard operating procedures were comprehensive providing clear guidance and instruction for police officers and members of police staff in relation to the roles, responsibilities and procedures to be followed in relation to a revocation of a home detention curfew licence and the course of action to be taken where an offender breaches his/her licence conditions.
58. It is expected that supervisors will monitor the progress of enquiries made ensuring they are carried out to a sufficient standard. Supervisors are also responsible for ensuring that all enquiries carried out are accurately recorded.⁴⁵

⁴³ <http://www.legislation.gov.uk/ukpga/2015/2/contents/enacted>

⁴⁴ See glossary.

⁴⁵ Police Scotland Electronic Monitoring of Offenders standard operating procedures, paragraph 7.



59. The enquiry officer is responsible for completing enquiries in a timeous manner and to a professional standard ensuring that all activities are updated on the warrants enquiry system. The person responsible for processing and administration of warrants is also responsible for providing the local area police commander with a status report in relation to unexecuted warrants.⁴⁶
60. In this case study there was little evidence on the local warrants enquiry system to demonstrate the level and standard of police enquiry carried out in relation to arresting the offender. We also found little evidence to demonstrate effective supervisory oversight and that enquiries to trace the offender were not documented or had vague or incomplete entries on the warrants enquiry system.
61. During our wider review some police officers told us that they do not routinely record negative outcomes in their notebooks and/or in the warrants enquiry system. This would include attendance at the curfew address or an associate's address to make enquiry and receiving no reply. From our engagement with front line officers we found that in general, warrants (including revocation of licence) are allocated and executed as soon as practicable subject to prioritisation of demand.
62. We believe that much more police activity is undertaken in relation to locating offenders whether 'wanted' on warrant or '*unlawfully at large*' than officially recorded in notebooks and/or warrants enquiry systems.
63. Failure to record accurately such activity is at odds with the police standard operating procedures and means the service cannot demonstrate a clear and documented process that will withstand audit and external scrutiny. HMICS believes that all action taken to effect the arrest of an offender, including enquiries where there has been a negative outcome, should be recorded.

Recommendation 4

Police Scotland should ensure a robust process is established in each local policing area where all enquiries carried out by police officers and members of police staff are accurately recorded in a clear and appropriately evidenced manner that is available for internal audit and external scrutiny purposes. This would comply with the existing standard operating procedures.

Recommendation 5

Police Scotland should ensure a robust process is established in each local policing area where local supervisors allocate home detention curfew revocation notices without undue delay and in any case within 48 hours and that the progress of enquiries is regularly monitored and reviewed ensuring that a professional standard of enquiry is completed timeously and within the relevant timescales. This would comply with the existing standard operating procedures.

Recommendation 6

Police Scotland should ensure a robust process is established in each local policing area where the local senior management team is provided with a status report in relation to offenders deemed '*unlawfully at large*' and a means to escalate related offenders to the local tasking and delivery board for further action.

⁴⁶ Police Scotland Warrants standard operating procedures, paragraph 30.



64. Having reviewed the facts relating to the revocation of the home detention curfew by the Scottish Prison Service in respect of offender 'A' and the subsequent police enquiry, we are satisfied that the necessary briefings were delivered and that core police information systems were updated with appropriate 'wanted/missing' markers. Whilst attempts were made by police officers to locate and arrest the offender at addresses known to be frequented by him, the following shortcomings have been identified:
- i. there was a distinct lack of a documented approach
 - ii. the local police division was unable to demonstrate that a professional level of enquiry was carried out
 - iii. there was inadequate evidence to demonstrate effective management oversight and supervision of the enquiry
 - iv. there was no documented means to escalate matters to senior management for further consideration.
65. We acknowledge that Police Scotland have conducted an internal review of the circumstances around the case study and have identified areas for improvement. In order to support continuous improvement we recommend that all Divisional Commanders across Police Scotland carry out an internal self-assessment against each of listed recommendations and establish a baseline against which to measure compliance with the standard operating procedures ensuring that there are robust processes in place locally to manage and where applicable locate and arrest those offenders who have been deemed to be '*unlawfully at large*'.

Recommendation 7

Police Scotland should support Divisional Commanders to carry out an internal self-assessment as a process of continuous improvement against each of the listed recommendations to ensure that there are robust local procedures and safeguards in place in relation to locating and apprehending offenders who have breached their home detention curfew licence conditions and are deemed to be '*unlawfully at large*'.



Part two - Strategic review

66. Using the HMICS Inspection Framework, we have conducted a thorough review of Police Scotland's response to a reported breach of a home detention curfew and revocation notice testing operational practices and procedures. We carried out fieldwork in eight local police divisions across Police Scotland (see Appendix 5).

Outcomes

67. Since this matter was brought to the attention of Police Scotland there has been a significant focus on home detention curfew revocations and on 7 June 2018 Police Scotland issued a memorandum⁴⁷ advising officers of the processes involved.
68. There are three core documents that provide guidance / instruction for police officers and members of police staff in relation to the management and administration of criminal justice warrants and revocation of home detention curfew licences. Two are Police Scotland's standard operating procedures entitled:

- Police Scotland Electronic Monitoring of Offenders standard operating procedures (May 2018)
- Police Scotland Warrants standard operating procedures (May 2018)

The third document is the:

- Scottish Prison Service Home Detention Curfew Guidance for Agencies (April 2018).

69. We found that the Police Scotland standard operating procedures were of good quality and provided clear direction on the roles and responsibilities of each person involved in the process. Police officers and members of police staff told us that they could easily access the standard operating procedures for direction and guidance albeit as the warrants standard operating procedures comprised 61 pages and the electronic monitoring of offenders standard operating procedures 24 pages they were too lengthy in design and difficult to find key information quickly and therefore not routinely accessed. Police officers and members of police staff deployed in key roles such as warrants officer were more familiar with the standard operating procedures, which were seen as good points for reference.
70. Searching the Police Scotland intranet using the term '*home detention curfew*' identified the Police Scotland Electronic Monitoring of Offenders standard operating procedures. We found that the title of the document whilst accurate would benefit from a slight adjustment to include the phrase '*home detention curfew*'. This matter was resolved by Police Scotland and a revised version of the operating procedures published.⁴⁸ We are aware that Police Scotland are reviewing the number and design of the standard operating procedures across all business areas and we support any effort to communicate key messages to officers and staff in a concise and readable format.
71. We found that the Police Scotland Electronic Monitoring of Offenders standard operating procedures instructed that a home detention curfew revocation notice would be allocated one of three priority categories with definitive enquiry periods:

- A. Priority (14-day enquiry period set; albeit in urgent or particularly serious cases, this timescale may be reduced)
- B. Medium (21-day enquiry period set)
- C. Routine (28-day enquiry period set).

⁴⁷ Police Scotland memorandum PS088 /18.

⁴⁸ Police Scotland, [Electronic Monitoring Offenders - SOP](#).



72. We found that irrespective of the individual circumstances in every case a revocation notice was categorised as 'A-Priority' setting out a 14-day enquiry period.
73. The Police Scotland Warrants standard operating procedures instructs that all warrants must be executed without undue delay. We found that the initial enquiry periods outlined in the Electronic Monitoring of Offenders standard operating procedures are different from the timescales outlined in the Warrants standard operating procedures which are categorised as:
- A. requiring the warrant to be executed within 21 days from date of receipt
 - B. requiring the warrant to be executed within 28 days from date of receipt
 - C. requiring the warrant to be executed within 60 days from date of receipt
74. There is an opportunity for Police Scotland to simplify the process and align the enquiry timescales outlined in both standard operating procedures to remove any potential for ambiguity and support consistency of practice across the service.

Recommendation 8

Police Scotland should align the enquiry timescales outlined in the electronic monitoring of offenders standard operating procedures and the warrants standard operating procedures to ensure consistency of guidance.

75. Outwith Police Scotland's Criminal Justice Services Division, we found that the Scottish Prison Service Home Detention Curfew Guidance for Agencies (April 2018) was not readily accessible and that the contents were unfamiliar to police officers and police staff across the eight local police divisions visited during the review. We found that a statutory exclusion that prohibits an offender from being considered for release on home detention curfew (those who have previously been recalled to prison having been released on licence) was removed by the Home Detention Curfew Licence (Amendment) (Scotland) Order 2106. However, the Scottish Prison Service Home Detention Curfew Guidance for Agencies (dated April 2018) did not reflect the change. The SLWG have also identified a number of areas within the guidance that require amendment and work in this area continues.
76. We believe that criminal justice partners would benefit from statutory guidance outlining the discharge of their respective functions under the proposed Management of Offenders (Scotland) Bill.

Recommendation 9

Scottish Government in consultation with criminal justice partners and key stakeholders should develop statutory guidance for the discharge of their respective functions under the Management of Offenders (Scotland) Bill which includes the response to the recommendations outlined in the strategic reviews by HMICS and HMIPS.

77. As part of the policing role in dealing with home detention curfew all notifications, revocations and cancellation of revocations are required to be recorded on the PNC, CHS and, where applicable, on the local warrants enquiry system.⁴⁹ Recording on PNC and CHS are administrative functions designed to 'place on record' the fact that an offender has been released on home detention curfew and where breached to circulate nationally the fact that the offender is '*unlawfully at large*' and to be arrested if encountered by police officers anywhere in the UK. The PNC is the primary system and is generally sufficient to enable the arrest of an offender irrespective of local police systems. See Exhibit 4.

⁴⁹ Some offenders may be '*unlawfully at large*' from a curfew address in England and would not be managed on a Police Scotland warrants enquiry system.



78. It is crucial that the core information systems (PNC and CHS) are effectively managed, that data integrity and quality are maintained and the information held about an offender is accurate and reliable. This requires both timely and correct information exchange between the Scottish Prison Service and Police Scotland.
79. We found that in the small number of cases where individuals had breached their home detention curfew conditions and been recalled to prison, the PNC had not been updated. We also found inconsistencies between data held by the PNC relative to the status of individual offenders who had been released on home detention curfew and deemed to be '*unlawfully at large*' and the data held by the Scottish Prison Service. We raised our concerns with Police Scotland highlighting the requirement for immediate action to reconcile the information held on police and prison service databases.⁵⁰
80. Through the work of the SLWG we established that on 29 June 2018, the Scottish Prison Service had a record of 44 offenders who had been released from Scottish prisons on the home detention curfew scheme and were recorded as being '*unlawfully at large*'. Of the 44 offenders, 19 were at large from curfew addresses in Scotland, and 25 from curfew addresses in England.
81. Of these 44 offenders recorded as '*unlawfully at large*' by the Scottish Prison Service, 24 offenders had been '*unlawfully at large*' for a period of over four years. We evidenced that a small number of offenders who were '*unlawfully at large*' had been arrested or detained by police on a separate matter and not detected for the breach of licence due to either gaps in the quality and accuracy of the information on the PNC or through operator error where 'wanted' and / or 'missing' markers were overlooked.
82. We found that 38 of the 44 offenders recorded on the system as being '*unlawfully at large*' did not have a 'live' PNC marker to alert police officers to recall the offender and return to prison. The consequence is that police officers across the UK who encounter any of these individuals and conducted a check on PNC would be unaware of their status as '*unlawfully at large*'.
83. Over and above our review of the 44 offenders recorded as having breached their home detention curfew we later (23 August 2018) selected at random 10% of the 291 offenders, comprising 253 men and 38 women, reported by the Scottish Prison Service as the prison population on home detention curfew as at 29 June 2018.⁵¹ We reviewed the status of individual offenders and accuracy of information held on police systems.
84. We found that:
- 18 offenders had successfully completed their home detention curfew scheme
 - Nine offenders were still 'live' and subject of continued curfew conditions
 - Two offenders deemed '*unlawfully at large*' had been arrested by police and returned to prison
 - One offender had been recalled to prison as the curfew address was no longer suitable.
85. One offender had been released from a prison in England to a curfew address in Scotland. We found that details were uploaded to the PNC and Police Scotland advised. We found that in all 30 case files reviewed the PNC had been updated with the accurate status of the offender. In two cases the CHS had not been updated with the status of the offender highlighting the need for continued monitoring, audit and review of the processes.

⁵⁰ HMICS letter to Police Scotland dated 13 July 2018.

⁵¹ SPS, [Prison Population](#).



86. The Scottish Prison Service Prison Records (PR 2) is a database which stores information and is accessed across the Scottish Prison Service. Police Scotland have core systems in the PNC and CHS. Having a common IT system with appropriate levels of access would be the most effective way to share information between both organisations however, there is no direct technical interface between the Scottish Prison Service and Police Scotland. This results in over-reliance on the use of business email and manual systems involving files of hard copy emails and/or spreadsheets to manage information (including revocation notices) to maintain a record of the status of an offender being considered and subsequently released on home detention curfew.
87. The use of business email has resulted in congestion in the system and we found evidence of operator error where emails had been missed. We found that there is no formal process between the Scottish Prison Service and Police Scotland to acknowledge receipt and acceptance of an email or to confirm that it has been acted upon.
88. We found that in relation to home detention curfew notifications, revocations and cancellation of revocations the information exchange between the Scottish Prison Service and Police Scotland was described by users as a “*scattergun approach*” which involved the Scottish Prison Service sending an email in each case to:
- the appropriate Records Branch, Police Scotland
 - Specialist Crime Division, National Intelligence Bureau, Prison Intelligence Unit (for information purposes only)
 - the local police division where the curfew address is located.
89. During our fieldwork across the local police divisions we found that police officers and members of police staff preferred the multi-email approach as opposed to a single point of contact explaining that there was less risk of the information being inadvertently overlooked. HMICS suggest that this thinking indicates a lack of confidence with the arrangements by both organisations. Although information has been shared and acted upon, there is evidence that the flows of information (specifically in relation to home detention curfews) between the Scottish Prison Service and Police Scotland are not sufficiently robust to prevent omissions and failures on core systems.⁵² This is primarily caused by a cluttered process (see Appendix 4) which has evolved from legacy arrangements, and compounded by human error, resulting in inconsistencies in data input, data updates and search capability.
90. On 10 September 2018, Police Scotland established a single point of contact for all home detention curfew notifications, revocations and revocation cancellations from the Scottish Prison Service. While this is a positive development it is not yet possible to measure the success or otherwise of the single point of contact.

Recommendation 10

Police Scotland in partnership with the Scottish Prison Service should develop a robust, sustainable and auditable approach to the two-way flow of information relative to the notification, revocation and cancellation of revocation notices of offenders released on home detention curfew by the Scottish Prison Service enabling a 24 hours a day, 7 days a week, 365 days a year policing response to updating core information systems.

⁵² SPS PR2, PNC and CHS. See glossary.

Recommendation 11

Police Scotland in partnership with the Scottish Prison Service should audit, monitor and review the revised arrangements (see paragraph 90) for information sharing in relation to the notification, revocation and cancellation of revocation notices of offenders released on home detention curfew ensuring that the information held by Police Scotland and the Scottish Prison Service is accurate and relevant.

91. Revocation of licence conditions and the recall of an offender from a curfew address in England requires effective communication between the Scottish Prison Service and police. We found that in relation to offenders being released by the Scottish Prison Service to a curfew address in England, the Scottish Prison Service do not have access to current contact lists and are reduced to finding their own way of identifying the relevant policing area through internet searches using postcodes. This is compounded by the fact that individual police forces in England do not have the responsibility for updating PNC with details of offenders being released on home detention curfew including revocation of licence. This process is carried out on behalf of the 43 police forces in England and Wales by the Metropolitan Police Service.
92. Where a revocation notice is issued by the Scottish Prison Service for an offender released on home detention curfew to an address outside of Scotland, it is the responsibility of the Scottish Prison Service to notify Police Scotland whose responsibility it is to ensure that details may be circulated on the PNC. If the Scottish Prison Service fail to alert Police Scotland, details of the offenders status is not visible on the PNC. This means that police officers anywhere in the UK who may deal with the offender will not be alerted to the fact that the offender is '*unlawfully at large*', should be arrested and returned to prison.
93. Our review highlighted this as a significant area of concern with 24 out of 25 offenders deemed '*unlawfully at large*' having been released by the Scottish Prison Service to a curfew address in England. As Police Scotland had not been informed the PNC had not been updated.

Exhibit 4 – Example

Offender breached home detention curfew licence condition from a curfew address in England (October 2012). Police Scotland alerted of the fact 6 years later (August 2018) and PNC updated. The offender was '*unlawfully at large*' and technically '*invisible*' to law enforcement agencies throughout this period. Two days after the PNC was updated with the accurate status of the offender, the offender was subject of a routine stop by police traffic officers in England and following a check with PNC was arrested and returned to prison to complete the outstanding sentence.

94. During our review Police Scotland was unable to demonstrate current guidance in relation to the cross border arrangements for home detention curfews. We found HM Prison Service Instructions (PSI) 41/2008 which provided information relative to cross border arrangements between England & Wales and Scotland for home detention curfew purposes.⁵³ However, the instruction, which had been issued on 15 October 2008, expired on 19 October 2009. Police officers and members of police staff were unfamiliar with this specific document. There is a requirement for clear and current cross border provisions relating to home detention curfews that outline the arrangements for the notification of release, revocations and cancellation of revocation notices of offenders from Scottish prisons to curfew addresses in England and for those offenders released from English prisons on home detention curfew to addresses in Scotland.

⁵³ <https://www.justice.gov.uk/offenders/psis/prison-service-instructions-2008>



95. We believe that Scottish Government in partnership with Police Scotland and the Scottish Prison Service should engage with key stakeholders including the National Police Chiefs' Council, HM Prison and Probation Service and electronic monitoring service providers to develop such a cross border protocol that supports the effective and efficient notification, revocation and cancellation of home detention curfew revocation notices. This should also include scenarios where an offender having been released on home detention curfew by the Scottish Prison Service to a curfew address in England breaches his/her licence conditions and is deemed '*unlawfully at large*' and subsequently surrenders to a local prison in England that the cancellation process involving all parties results in the PNC being updated with the accurate status of the offender.

Recommendation 12

Scottish Government in consultation with criminal justice partners and key stakeholders including the National Police Chiefs' Council (NPCC), HM Prison and Probation Service (HMPPS) and electronic monitoring service providers should develop cross border provisions relative to the notification, revocation and cancellation of revocation notices of offenders released on home detention curfew to an address outside Scotland and by extension for offenders who have been released by HMPPS to an address in Scotland.

96. Since its introduction (2006) over 20,000 offenders have been released on home detention curfew by the Scottish Prison Service. For most eligible offenders home detention curfew is considered a routine part of progression through their sentence unless there are clear grounds to indicate that they are unlikely to complete successfully the period on curfew. The successful completion rate is about 80%.
97. Between 1 January 2017 and 29 June 2018, the Scottish Prison Service released 2091 offenders on home detention curfew. As at 29 June 2018, 291 offenders were in the community having been released on home detention curfew comprising 253 men and 38 women. At any given time, the figure for those subject to home detention curfew and living in the community is consistently around 300.⁵⁴
98. In England we found that typically the curfew period will end at midnight on the last day of the curfew whereas in Scotland this is normally at 0700 hrs the following morning. We have examined case files where an offender has removed his/her electronic tag on the day of his/her EDL and in doing so breached the licence conditions (albeit only for several hours).

Exhibit 5 – Example

Offender breached home detention curfew licence condition the day before the Earliest Date of Liberation (EDL). July 2007.

Offender breached home detention curfew licence condition the day before the Earliest Date of Liberation (EDL). July 2011.

99. We found that the individuals highlighted at Exhibit 5 appeared on the '*unlawfully at large*' list of 44 (29 June 2018), even though only having several hours remaining of their sentence. HMICS could find no record that the police had been notified that the individuals had breached his/her licence conditions and were to be regarded as '*unlawfully at large*'.

⁵⁴ SPS, [Prison Population](#).



100. Where an offender makes a decision to breach his/her curfew conditions there should be a clear process to alert the offender that he/she breached his/her licence conditions removing any possible confusion caused by a lack of understanding of the timescales for curfew (see recommendation 3).
101. On 13 September 2018, the SLWG having reconciled data between prisons and police information systems advised HMICS and HMIPS that of the 44 offenders deemed '*unlawfully at large*' on the 29 June 2018, nine offenders remained '*unlawfully at large*' with four from curfew addresses in Scotland and five from curfew addresses in England. Further analysis by the SLWG highlighted that:
- **Recall Served** – Four offenders had returned to custody and served the outstanding period of their sentence.
 - **Time in Custody on Other Matters** – Nineteen offenders have been identified by the SLWG as having spent time in custody on other matters during the period they were recorded as '*unlawfully at large*'. This time is equivalent to or greater than the outstanding number of days to serve from the original sentence and therefore no longer deemed to be '*unlawfully at large*'.
 - **In Custody** – Four offenders are currently being held in custody of Scottish Prison Service or Her Majesty's Prison and Probation Service (HMPPS (England & Wales)) serving their recall or being detained on other unrelated matters and therefore no longer categorised as being '*unlawfully at large*'.
 - **Pending** – Eight offenders are categorised as pending and enquiries are ongoing to determine the status of the offender. Information exists on Scottish Prison Systems or police systems that indicate that the offender may not be '*unlawfully at large*.' There are uncertainties in terms of the accurate status of the offenders who may have been in prison in England which would count towards the days owed and with the passage of time it may be considered disproportionate to return them to custody.
102. Notwithstanding our fieldwork stage concluded on 13 September 2018, we acknowledge that the work of the SLWG continues to reconcile the information held with the police and the Scottish Prison Service. It is our assessment that the information provided in this report as it relates to those deemed to be '*unlawfully at large*' should not be considered conclusive as work continues to reconcile the respective data sets.⁵⁵ The information proved by the SLWG (see Exhibit 6) provides the most current status of the original 54 offenders recorded by the Scottish Prison Service on the 18 June 2018 as '*unlawfully at large*.' This data has not been subject of independent review by HMICS.

Exhibit 6 –Status of the original list of 54 offenders as on 21 September 2018

Original List		Scotland	England
Recall Served	24	13	11
Unlawfully at Large	6	3	3
Pending	7	2	5
In Custody	9	5	4
Time in Custody on Other Matters	8	5	3
Total:	54	28	26

⁵⁵ On the 21 and 24 September 2018, Police Scotland advised HMICS that the figure of 44 has been revised to 41 after prison establishments in England confirmed that 3 offenders had served their remaining sentences in English prisons and the information contained within Scottish Prison Service PR2 system showing them as '*unlawfully at large*' on 29 June 2018 was inaccurate.



Leadership and Governance

103. Chief police officers and senior police managers from Criminal Justice Services Division have co-operated fully with our review and are committed to driving improvement. This was demonstrated by the early creation of the SLWG.
104. We found that various operating models are in place across police divisions in relation to the management of criminal justice warrants and home detention curfew revocation notices. The models that were more effective resulted in the home detention curfew revocation notice being managed by each shift or allocated to a dedicated local policing team. We recognise that there will be local approaches however, irrespective of whatever operating model is in place it remains the responsibility of first line managers to examine officers' workload and to check quality and provide direction. Where the home detention curfew revocation is allocated to a shift and subject to a documented handover at the change of each shift we saw greater supervisory input. Less so when the home detention revocation notice was allocated to a single police officer. The local area police commander is responsible for quality assurance ensuring that warrants (and revocation notices) remain a standing agenda at the local tasking and delivery board meeting.

Planning and process

105. Police are subject to various demands from immediate response to incoming calls and attending incidents to carrying out a wide range of reactive enquiries including Bail enquiry checks to serving citations and executing warrants. We found that professional judgement played a key role in deciding the allocation of resources based on the known level of threat, risk and harm. All home detention curfew revocations irrespective of circumstance are deemed to be a priority and are assessed against other priorities including criminal justice warrants. In terms of context there are 4 offenders '*unlawfully at large*' from curfew addresses in Scotland (as at 13 September 2018) and in excess of 8,000 unexecuted apprehension warrants across policing in Scotland.⁵⁶
106. There is an expectation that police will prioritise those warrants and activities based on assessment of threat, risk and harm to the public. We found that operationally across local police divisions a home detention curfew revocation is regarded as a policing priority based on the fact that the offender has breached his/her licence conditions and is deemed to be '*unlawfully at large*'.
107. There are clear resource implications for policing should there be an increased use of electronic monitoring as new methods are developed and deployed such as Global Positioning System (GPS) technology that enables the monitoring of movement over a wide area rather than the monitoring of presence at a single location and trans-dermal alcohol monitoring (TAM) technology that can support and enforce prohibitions on alcohol use.
108. Police Scotland provided information to Justice Committee in relation to Part 1 of the Management of Offenders (Scotland) Bill concerning the expansion of the uses of electronic monitoring of offenders in the community whilst further protecting public safety. In light of the key findings and recommendations from this strategic review we recommend that Police Scotland should reassess the financial and resource implications associated with introducing new processes in relation to offenders being considered for release under terms of the Management of Offenders (Scotland) Bill.

⁵⁶ <http://www.scotland.police.uk/assets/pdf/434027/434083/492216/18-1960-Response?view=Standard>. See glossary for other types of warrant.

Recommendation 13

Police Scotland should assess and evaluate the financial and resource implications of introducing new processes in relation to offenders being considered for release under terms of the Management of Offenders (Scotland) Bill and articulate the findings to Scottish Government.

109. The process for the allocation of revocation licences is managed through the warrants system for that local policing area and arrangements differ across the country. There are eight Record Branch Sites across Scotland serving 13 local policing areas. See Exhibit 7.

Exhibit 7 – Record Branch Sites Police Scotland

Region	Local Police Area	Division	Criminal Justice Services Division Record Branch Sites
West Command Area	Greater Glasgow	G	Pinnacle House Glasgow 24/7 response ⁵⁷
	Renfrewshire and Inverclyde	K	
	Argyll and West Dunbartonshire	L	
	Lanarkshire	Q	
	Ayrshire	U	
	Dumfries and Galloway	V	Dumfries Record Branch Site
East Command Area	Forth Valley	C	Falkirk Record Branch Site
	Edinburgh City	E	Fettes Record Branch Site Edinburgh 24/7 response National role for PNC
	Lothians and Scottish Borders	J	
	Fife	P	Glenrothes Record Branch Site
North Command Area	North East	A	Kittybrewster Record Branch Site
	Tayside	D	Dundee Record Branch Site
	Highlands and Islands	N	Inverness Record Branch Site

110. We found that there are a number of key roles involved in the planning and operational management of home detention curfew notifications, revocations and cancellation of revocations and include,

- The local divisional intelligence manager
- The local divisional warrants officer
- The local operational response team
- The local area police commander

⁵⁷ Pinnacle House, which is the Glasgow Records Branch site is governed by the C3 Command portfolio and not Criminal Justice Services Division (CJSD). This area of business is subject of transition to CJSD.



The local divisional intelligence manager

111. We found that the local divisional intelligence manager and the warrants officer have a key role in ensuring effective communication across the local policing area acting as gatekeepers and overseeing the process. The divisional intelligence manager carried out a number of functions:
- creates a Scottish Intelligence Database (SID) intelligence log containing relevant details of the offender, the curfew address and licence conditions
 - details of the release on home detention curfew are circulated via the weekly divisional intelligence bulletin which enables local police officers and supervisors to consider the community impact of such a release
 - alerts the local area command performance support team of the revocation notice
 - creates and publishes intelligence bulletins to ensure police officers and members of police staff are regularly briefed
 - develops intelligence and overt opportunities to locate the offender
 - carries out background system and local community checks to establish if the offender is still residing in the local policing area.
112. In some local police divisions, it was a matter of routine to create and or update a SID log containing all relevant details of the home detention curfew. We found that there was inconsistent understanding and use of SID to record release details and revocation notices across the country. As not all police officers are trained in or have direct access to PNC and CHS (indirect access is provided through other trained officers and staff) we found that police officers would routinely interrogate the local warrants systems and SID for the previous 24 hours to self-brief on local issues and details of 'wanted' and / or 'missing' people.
113. HMICS view is that intelligence products such as a subject profile⁵⁸ can provide a detailed report of an offender to assist in workload prioritisation, to identify intelligence gaps and to highlight enforcement and public reassurance opportunities. We believe that there needs to be a clear and consistent policy on the use of SID in respect of home detention curfews by Police Scotland.

Recommendation 14

Police Scotland should provide clear guidance for police officers and members of police staff to enable a consistent approach to the submission and management of intelligence for offenders released on home detention curfew and those deemed to be '*unlawfully at large*'.

The local divisional warrants officer

114. Local divisional warrants officer should provide a status report on all unexecuted warrants to the local area police commander. All allocations, enquiries and finalising of warrants are processed through the relevant warrants enquiry system and allocated to an operational team to enable police officers to make enquiries to locate and arrest the offender.

The local operational response team

115. The local operational response team are allocated the home detention curfew revocation notice for enquiry. In general, and notwithstanding our findings from **the part one case study**, we found police officers carried heavy workloads which were regularly monitored by first line managers.

⁵⁸ <https://www.app.college.police.uk/app-content/intelligence-management/intelligence-products/#subject-profile>



The local area police commander

116. It is the responsibility for the local area police commander to make best use of the resources available to record, monitor and direct enquiries associated with a revocation notice. We found that this is achieved through the local daily governance meetings. We found the use of a daily briefing and handover report outlining notable incidents, key operational tasks, bail checks, forthcoming events and missing and wanted persons was effective in maintaining continuity and oversight.

People and resources

117. The move to a single police service has been the most significant change to policing in Scotland in four decades. Police Scotland inherited a range of disparate IT systems and despite five years since police reform the criminal justice aspect of Police Scotland remains complex based on legacy police forces systems and processes for the management of criminal justice warrants including the revocation of home detention curfew licences.
118. We found that different IT systems are used across Police Scotland to administer, allocate and record operational activity and decisions relative to the management of warrants and home detention curfew revocations. While this is not an issue for local policing it does provide a challenge in overseeing on a Scotland wide basis the nature and extent of warrants and home detention curfew revocations.
119. We found a general lack of understanding of the process around home detention curfew revocations across the country primarily due to the small number of individuals who breach their licence conditions and are reported by the Scottish Prison Service to police as '*unlawfully at large*'.

Recommendation 15

Police Scotland in partnership with the Scottish Prison Service should raise awareness of the roles and responsibilities of police officers and members of police staff involved in the notification, revocation and cancellation process of offenders released on home detention curfew in Scotland. This should extend to the use of police powers when an offender is deemed to be '*unlawfully at large*'.

120. Across the local police divisions we found some police officers and members of police staff were extremely knowledgeable and experienced operators of the PNC and CHS, others less experienced especially where staff backfilled key roles (such as warrants officer, intelligence officer) during periods of absence. We found that some officers and staff found it difficult to locate the home detention curfew entry on the PNC and CHS system. In relation to the CHS this issue could be resolved through adjustment to the CHS to highlight the revocation requirements at the front of the individual CHS record. We recognise that this may be a complex technical fix and in the interim this issue could be resolved through awareness training and guidance to ensure that police officers and members of police staff have knowledge and understanding of the home detention curfew requirements around notification, revocation, cancellation of revocation and available police powers.

Recommendation 16

Police Scotland should ensure that police officers and members of police staff involved in the management and administration of home detention curfew notifications, revocations and cancellation of revocations are fully conversant with the roles and responsibilities outlined in the standard operating procedures and are appropriately supported, experienced, trained and have access to core police information systems.



Partnerships

121. Our review focused on the relationship between police and the Scottish Prison Service and we found evidence of strong partnership working between both organisations at various levels. The National Intelligence Bureau (NIB) supports local policing through the prison intelligence unit which is managed and tasked centrally and has prison intelligence officers (PIO) posted across the Scottish Prison estate. This approach is regarded by police officers as productive supporting the exchange and sharing of information around offenders released and the development of a subject profile based on research and analysis of a wide range of information sources.
122. The Prison Intelligence Unit (PIU), which is part of the National Intelligence Bureau (NIB) is the recognised primary single point of contact for all external enquiry forms submitted by Police Scotland to the Scottish Prison Service and the relationship between each prison establishment and local police division were reported as positive.
123. The SLWG met for the first time on 10 July 2018 to discuss the effective flow of communication between the Scottish Prison Service and Police Scotland and the reconciliation of home detention curfew information. We found that the establishment of the SLWG is positive evidence of joint working.
124. We believe that every effort should be made to maximise existing opportunities to improve the information exchange between both organisations. Where required Police Scotland should contribute to the Scottish Prison Service risk assessment (see recommendation 1) and the arrangements of the information exchange, the approach to quality assurance and oversight of the process including source protection requirements need to be clearly documented.
125. Effective data management by the Scottish Prison Service and Police Scotland is fundamental to the effective management of offenders and we found that in practice liaison between the organisations in relation to general police / prison related matters was good however, the processes around home detention curfew notifications, revocations, and cancellation of revocations require to be significantly improved.



Appendix 1 - Timeline

The following timeline provides visibility of the circumstances relating to offender 'A'.

Date (times where relevant)	Event
26 October 2016	Offender 'A' convicted of contravention of section 49 (1) of the Criminal Law (Consolidation) (Scotland) Act 1995. Having in a public place an article with blade or point and was sentenced to 21 months' imprisonment. His sentence was back-dated to time already spent in custody (11 July 2016)
13 December 2016	In Scotland prisoners sentenced to a term of less than four years are automatically released once they have served half of their sentence and are not subject to any licence conditions Offender 'A' was eligible for consideration of release on home detention curfew. Scottish Prison Service refused the initial home detention curfew request due to an unsuitable address
9 January 2017	Home detention curfew process initiated subject of an alternative address
25 January 2017	Home report received from Local Authority and curfew address assessed as suitable. Police are not involved in this process
30 January 2017	Home detention curfew application approved by the Scottish Prison Service
6 February 2017	Police Scotland provided with advanced notification of home detention curfew release date and details
7 February 2017	Local Police Division (K Division – Paisley) create an entry on the Scottish Intelligence Database (SID) outlining details of the release on home detention curfew
10 February 2017	Local Police Division (K Division – Paisley) through the internal e-briefing system published details of the release of the offender on home detention curfew
13 February 2017	Offender 'A' released from HMP Low Moss on home detention curfew licence with standard conditions. Subject of electronic tagging with curfew times 1930hrs - 0730hrs. Police Scotland updated core police information systems; PNC and CHS. Local e-briefing of the release to a curfew address in the Renfrewshire and Inverclyde Police Division area with an Earliest Date of Liberation (EDL) of 26 May 2017
23 February 2017 02.15 hrs	Offender 'A' interferes with the electronic tag alerting the G4S electronic monitoring facility
23 February 2017 02.18 hrs	G4S responded and made contact made with the curfew address
23 February 2017 02.25 hrs	G4S advise the Scottish Prison Service of the breach
23 February 2017 17.30 hrs	Site visit by G4S to the curfew address
23 February 2017 21.56 hrs	G4S notification to the Scottish Prison Service confirming breach of home detention curfew licence conditions
24 February 2017 09.19 hrs	Scottish Prison Service revocation of licence and recall the offender to prison
24 February 2017 10.07 hrs	Police Scotland notified by the Scottish Prison Service that offender 'A' had breached the licence conditions and was ' <i>unlawfully at large</i> '. Revocation notice administered as a priority warrant and details sent electronically to Renfrewshire and Inverclyde Division
27 February 2017	Local Police Division (K Division – Paisley) warrants section allocate the



	revocation notice for enquiry to the K Division Paisley Community Investigations Unit via internal email
22 March 2017	Systems checks carried out by local police officer and warrant enquiry log updated
4 April 2017	The revocation notice is reallocated to the K Division Paisley Alcohol and Violence Reduction Unit (AVRU) for enquiry
25 April 2017	Warrant enquiry form updated by a first line manager
27 April 2017	Local Police Division (K Division – Paisley) warrant profile created by a first line manager to monitor progress of the enquiry. Three possible addresses for the offender are identified
1 May 2017	Local Police Division (K Division – Paisley) warrant profile updated and systems checks carried out
4 May 2017	Address check carried out no trace of offender 'A'
5 May 2017	On a separate matter a warrant to search the address of an associate is carried out by local police officers. Offender 'A' not present
13 May 2017	Scottish Intelligence Database updated that offender 'A' remains ' <i>unlawfully at large</i> '
15 May 2017	e- briefing delivered to all Local Police Division (K Division – Paisley) front line operational officers that offender 'A' remained ' <i>unlawfully at large</i> '
26 May 2017	Earliest Date of Liberation for offender 'A'
5 June 2017	On a separate matter a warrant to search the address of an associate is carried out by local police officers. Offender 'A' not present
15 June 2017	Warrants enquiry system updated and systems checked
22 June 2017	Warrants enquiry system updated that there had been several visits to the address
30 June 2017	On a separate matter a warrant to search the address of an associate is carried out by local police officers. Offender 'A' not present
3-7 July 2017	Force Prevention Taskforce support Local Police Division (K Division – Paisley) on the revocation for offender 'A'. Enquiries made at a number of locations without success
18 July 2017	Addresses checked in respect of the offender 'A'
23 July 2017	Murder of Craig McClelland. Murder investigation conducted by Major Investigations Team, Specialist Crime Division, Police Scotland
25 July 2017	e- briefing delivered to all Local Police Division (K Division – Paisley) front line operational officers that i) offender 'A' remained ' <i>unlawfully at large</i> ' and ii) to be traced in relation to the murder enquiry
26 July 2017	Operational activity to trace the offender 'A' by the AVRU and the MIT
27 – 28 July 2017	Apprehension warrant obtained for separate offences
31 July 2017	Warrant enquiry log updated
13 August 2017	Offender 'A' surrenders himself and is arrested at the Local Police Division (K Division – Paisley)
3 May 2018	Offender 'A' convicted for the murder of Craig McClelland
4 June 2018	Following conviction for murder of Craig McClelland offender 'A' is sentenced to life imprisonment with a punishment part of 20 years

Appendix 2 - Glossary

ACC	Assistant Chief Constable
APP	Authorised Professional Practice, College of Policing
AVRU	Alcohol and Violence Reduction Unit, Paisley, K Division, Police Scotland
CHS	Criminal History System (Scotland)
CIP	Community Integration Plan – a plan for liberation that is worked on during the latter part of an individual’s sentence and finalised 6 weeks before liberation that identifies and puts in place the support and services that will assist with reintegration. This is a voluntary process
CIU	Community Investigations Unit, Paisley, K Division, Police Scotland
CJSW	Criminal Justice Social Work
COPFS	Crown Office and Procurator Fiscal Service
Core Screen	A basic assessment tool of needs that is undertaken soon after arrival in prison - participation is voluntary
Curfewed Address	Set up under current Radio Frequency technology to ensure a monitored person remains within a specified address (temporarily, occasionally or permanently) over a set period of time as detailed in their order. This requires a base unit/s being installed in the specified place
DCC	Deputy Chief Constable
Determinate sentence prisoners	Sentences that are set for a certain length of time are called determinate sentences
DTTO	Drug Treatment and Testing Orders section 234CA of the Criminal Procedure (Scotland) Act 1995 as inserted by section 47 of the Criminal Justice (Scotland) Act 2003. DTTOs were out of scope
EDL	Earliest Date of Liberation
EM	Electronic monitoring was first piloted in 1998 before being rolled-out nationally in 2002 as a Restriction of Liberty Order. It is now used to monitor a number of different community disposals as well as being included as a licence condition on release from prison
EMP	Electronic monitoring provider. In Scotland this service is provided by G4S
GPS	Global Positioning System technology enables the monitoring of movement over a wide area rather than the monitoring of presence at a single location
HDC	Home detention curfew is provided by the Prisoners and Criminal Proceedings (Scotland) Act 1993 (inserted by section 15 (5) of the Management of Offenders etc.(Scotland) Act 2005) and is the legislative provision that allows the early release of offenders on home detention curfew. The duration of a home detention curfew is a minimum of 2 weeks and a maximum of 6 months
HMICS	Her Majesty’s Inspectorate of Constabulary in Scotland has statutory responsibility for inspection of the state, effectiveness and efficiency of Police Scotland and the Scottish Police Authority
HMIPS	Her Majesty’s Inspectorate of Prisons for Scotland is an agency which has responsibility for inspecting prisons in Scotland
HMPPS	Her Majesty’s Prison and Probation Service
Indeterminate sentence prisoners	Sentences that do not have an end point, such as a life sentence, are called indeterminate sentences
Long term	Long term determinate sentence offenders (those serving more than four years)
MIT	Major Investigation Team, Police Scotland
MRC	Movement Restriction Condition allows the Children’s Panel to issue a Movement Restriction Condition in respect of a young person. Section 70 of the Children (Scotland) Act 1995 as amended by Part 12 of the Anti-Social Behaviour etc. (Scotland) Act 2004. MRCs were out of scope
NIB	National Intelligence Bureau, Police Scotland



NPCC	National Police Chiefs' Council (comprising of Chief Police Officers across England & Wales)
PACE	Police and Criminal Evidence Act 1984 (England and Wales only)
PIU	Prison Intelligence Unit, Police Scotland
PNC	The Police National Computer (PNC) is the primary police computer system in the UK. It holds details of people, vehicles, crimes and property that can be electronically accessed 24 hours a day by the police and other criminal justice agencies. It allows information to be shared through a secure network and is also electronically linked to a number of other databases used in public protection and law enforcement
RF	Radio Frequency technology (electronic tagging system currently used by the electronic monitoring company)
RMR	Restricted Movement Requirement is a sanction following breach of a Community Payback Order. Section 227ZE-227ZK of the Criminal Procedure (Scotland) Act 1995 as inserted by section 14 of the Criminal Justice and Licensing (Scotland) Act 2010. RMRs were out of scope
ROLO	Restriction of Liberty Orders provided by section 245A of the Criminal Procedure (Scotland) Act 1995 as inserted by the Crime and Punishment (Scotland) Act 1997 is a community based sentence where time and locational restrictions are imposed upon a person. A Restriction of Liberty Order may require an offender who consents to the Order, to be restricted to a specific place for a maximum period of 12 hours per day for up to 12 months; and/or restricted from a specific place or places for 24 hours a day for up to 12 months. ROLOs were out of scope
SCD	Specialist Crime Division, Police Scotland
SG	Scottish Government
Short term	Short term determinate sentence offenders (those sentenced to less than four years)
SID	Scottish Intelligence Database
SPA	Scottish Police Authority
SPS	Scottish Prison Service
SPS PR 2	Scottish Prison Service Prison Records -version 2- management information system
TAM	Trans-dermal alcohol monitoring technology can support and enforce prohibitions on alcohol use
Warrants	<p>There are a number of different types of criminal justice warrants managed by local policing divisions. They include:</p> <p>Apprehension warrants - are issued by a Court to bring an accused person before that Court in respect of a crime or offence</p> <p>Extract conviction warrants - are issued by a Court where an offender has failed to pay an outstanding fine and an alternative prison sentence has been imposed. The Police are entitled to collect the outstanding fine or arrest the offender and convey him / her to prison</p> <p>Means enquiry warrants - are issued by a Court where an offender, who has been fined, has failed to pay the fine within the stipulated period. The Warrant empowers the Police to collect the outstanding fines or bring the offender to Court</p>



Appendix 3

Scottish Prison Service Notification Template Home Detention Curfew Revocation of Licence – Criminal Justice Agencies



Home Detention Curfew Revocation of Licence – Criminal Justice Agencies

To: Force Intelligence Bureau
Police Scotland

From: HMP
Address
Address
Address
Telephone:
Date:

On *(insert date)* the Offender named below was released from HM Prison *Establishment* on a Home Detention Curfew Licence. We have been notified that he/she has failed to comply with the conditions of his/her licence.

In accordance with the Prisoners and Criminal Proceedings (Scotland) Act 1993, his/her licence has been revoked with immediate effect and he/she is therefore now regarded as being **unlawfully at large**.

He/she should therefore be returned to the custody of HM Prison *Establishment* as soon as possible. If it is not practical to return the prisoner to the above establishment, he/she should be taken to the local prison serving the force area in which he/she was apprehended.

Name:	Date of Birth:
Last Known Address:	E.D.L.:
SCRO Number:	Prisoner Number:

Sent electronically on behalf of the Governor HM Prison *Establishment*

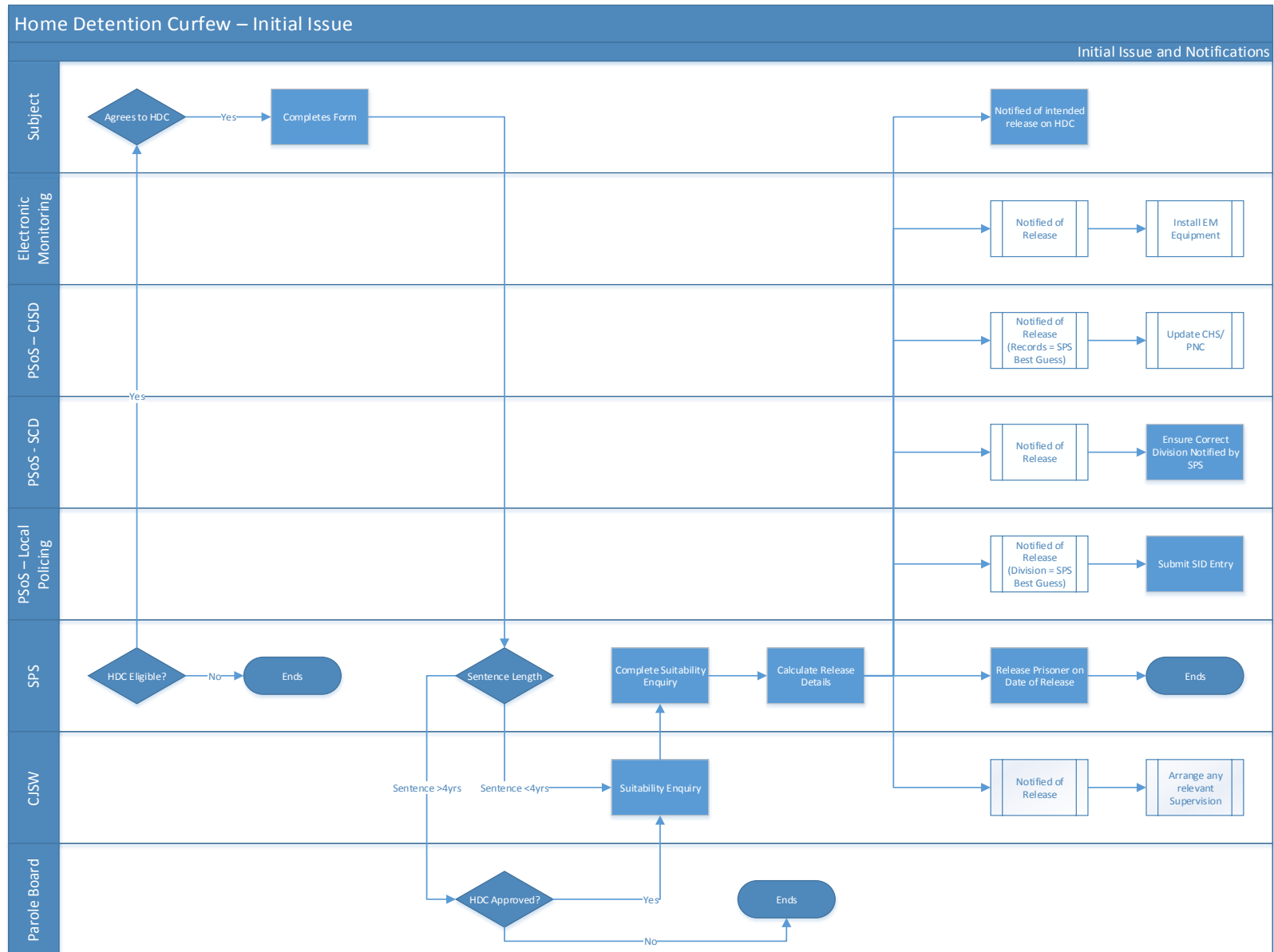
For Administration Purposes:

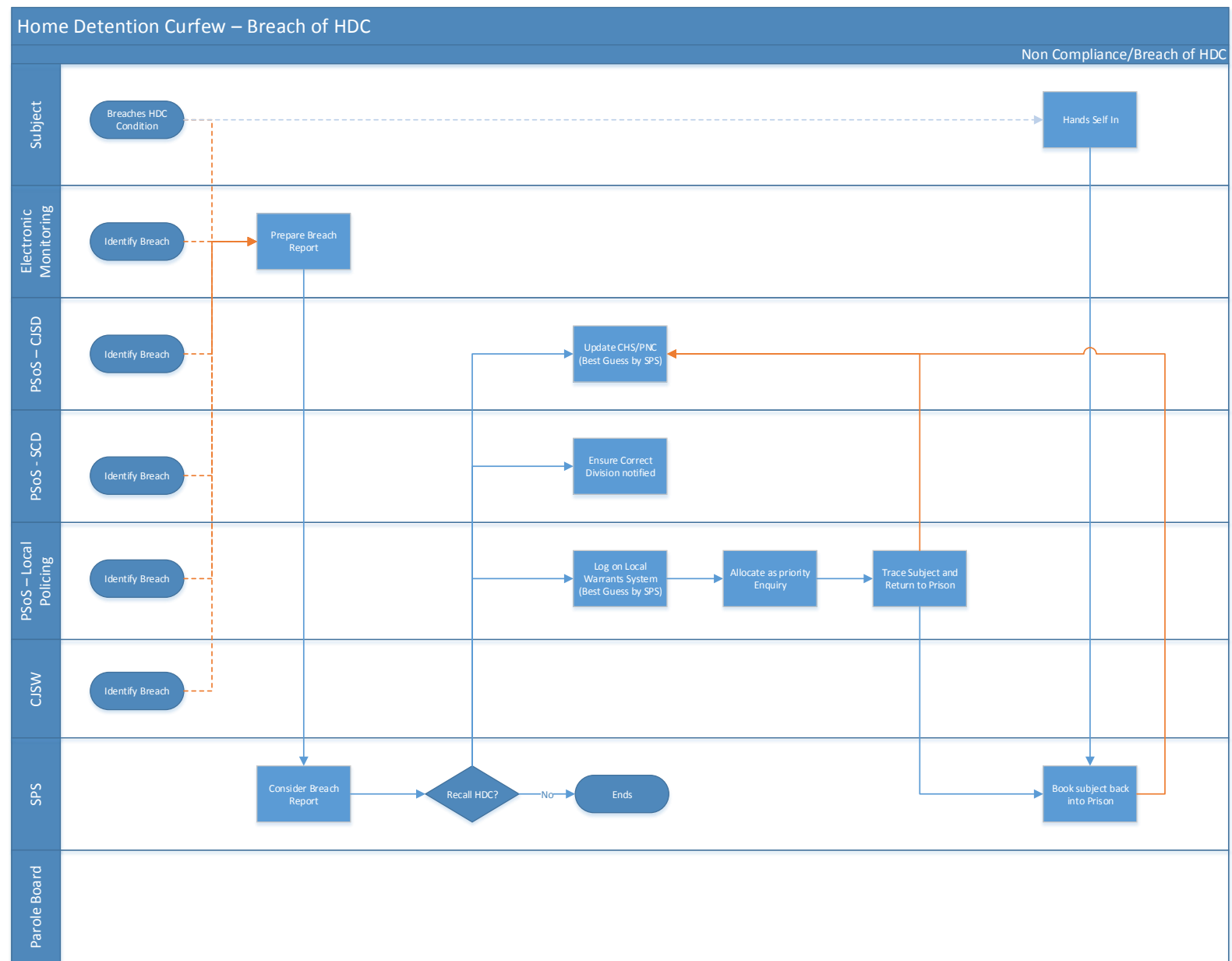
Date EMPS informed of HDC Release	Date Recall Notice Issued	Date Prisoner returned to Custody

Copies to: Electronic Monitoring Service Provider
 Warrant Administration
 Criminal Justice Social Work



Appendix 4 - Home Detention Curfew process map (27 July 2018)







Appendix 5 - Review methodology

Stage One - Initial scoping, design and planning

This stage involved the development of our inspection framework and the design of review tools and scrutiny processes for the collection and assessment of evidence. We published our terms of reference and methodology on 28 June 2018.

Stage Two - Fieldwork

This stage involved the fieldwork element of our review and focused on testing the operational response to a reported breach of home detention curfew and the procedures and safeguards in place to apprehend and return to custody an individual whose licence had been revoked.

We also carried out a quantitative and qualitative audit of the number of individuals who have been released under home detention curfew including those categorised as being '*unlawfully at large*' having breached their licence conditions. We reviewed every case file of offenders released by the Scottish Prison Service and deemed '*unlawfully at large*' as at 29 June 2018 and accessed PNC, CHS, local warrants systems and carried out a qualitative review of the police response.

During this stage we visited eight local police divisions across Police Scotland and interviewed police officers and members of police staff who have day-to-day responsibility for the administration, management and execution of home detention curfew revocation notices.

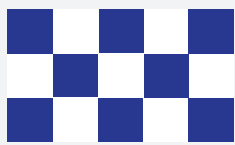
Local Police Divisions	Fieldwork
Renfrewshire and Inverclyde Division	6 July 2018
Edinburgh City Division	24 July 2018
Tayside Division	26 July 2018
Dumfries and Galloway Division	30 July 2018
Greater Glasgow Division	1 August 2018
Ayrshire Division	7 August 2018
North East Division	9 August 2018
Fife Division	10 August 2018

Stage Three - Review and analysis of evidence

During this stage, HMICS reviewed and assessed the information and evidence collected during our fieldwork stage.

Stage Four - Reporting, quality assurance and publication

Following conclusion of our fieldwork and analysis this report was prepared in line with HMICS reporting guidelines. Quality assurance was provided through internal review and factual accuracy checking by relevant stakeholders who contributed to the evidence base of our report.



HMICS HM INSPECTORATE OF
CONSTABULARY IN SCOTLAND

HM Inspectorate of Constabulary in Scotland
1st Floor, St Andrew's House
Regent Road
Edinburgh EH1 3DG

Tel: 0131 244 5614

Email: hmic@gov.scot

Web: www.hmics.scot

About Her Majesty's Inspectorate of Constabulary in Scotland

HMICS operates independently of Police Scotland, the Scottish Police Authority and the Scottish Government. Under the Police and Fire Reform (Scotland) Act 2012, our role is to review the state, effectiveness and efficiency of Police Scotland and the Scottish Police Authority. We support improvement in policing by carrying out inspections, making recommendations and highlighting effective practice.

978-1-910165-43-0

© Crown copyright 2018