**Gold Briefing – Capacity Contingency Options and the Lock-Out Process (25.10.21)**

**Purpose**

On 10 August 2021, we issued a briefing which reminded establishments of the key principles of compartmentalisation following a meeting held by COVID-19 Gold with PGDs about the ongoing capacity pressures across the estate. As part of that briefing we reinforced the message that fulfilling our requirements to the courts must take priority over regime delivery, and where we are required to make defensible decisions against the compartmentalisation strategy to avoid locking out, we must do this. We are now experiencing increased instances of locking out across the estate.

Locking a prisoner out into police custody increases risk in terms of both public health/COVID and public safety. Alongside safety risks not being suitably managed, locking out also generates further movement in the system and additional pressure around movement in the following days. Police colleagues are not obliged to take prisoners who are locked out and therefore a decision to receive may also be enforced by not having any other suitable location to secure the prisoner and the need to protect the public. We would not expect that prisoners with vulnerabilities to be locked out. Population pressures could mean that there may be increased numbers of vulnerable prisoners exposed to lock outs and therefore it is critical that we are able to balance Covid-19 controls with the need to manage these high-risk groups.

Prisons are protected not only by the individual controls operating locally but also by the system-level controls operating for the whole estate.  It is understood that lockouts and redirections increase the requirement to move prisoners overall, which increases the system-level risk as well as being disruptive for the individuals concerned.

Considering the risks outlined above, reducing compartmentalisation controls may be the least risky, and most defensible option in some situations. The purpose of this briefing is therefore to provide further information on the processes that prisons are expected to follow if they experience a situation where capacity requirements mean that they are unable to deliver Compartmentalisation as per the current policy in order to avoid locking out. It also provides a template document that establishments must use to evidence that they have exhausted all other options around compartmentalisation to avoid locking out prior to making this decision.

The contingency options explored within this guidance are not proposed to replace existing processes and are only intended for use in exceptional circumstances. Establishments are kindly reminded that in order to avoid the need to utilise these options, it is critical that they continue to liaise with PMU to ensure that prisoner transfers are fully used to create spaces, particularly between the local and training estate such as utilising overcrowding draft moves, filling the training and resettlement estate (including open prisons) to capacity. Similarly, continued focus on existing approaches to the management of capacity and available spaces is critical. This includes: ensuring that managers meet regularly with estates managers (FM) to discuss and review out of use cells and the timelines for getting them back on line; management of CSRA processes; management of prisoners who refuse to share cells despite their CSRA rating and compliance with the National Allocation Protocol.

Establishments are advised to consider the options detailed below ahead of the necessity to use them and should work with their local trade union branches to determine which options may be most suitable for local application however responsibility for defensible decision making continues to sit with the Governor.

V7 of the Compartmentalisation guidance is currently being developed and will be published in due course, once stakeholder consultation has been completed. The contents of this briefing are applicable to the currently live V6 and will then also apply to V7 once published and subsequent updates

**Summary of Process**

If an establishment experiences an urgent need to access prison spaces due to an operational pressure (i.e police operation, decanted accommodation, prison incident or population pressure) which means they are unable to deliver Compartmentalisation as per the current policy they should follow the below process of options:

1. Notify Population Management Unit (PMU) of the issue. This should happen via the dedicated establishment Population Manager, but the Population Management section can also be reached via : pms@justice.gov.uk
2. PGD offices will provide support to ensure that the avoidance of lock out is a priority and therefore the establishment must consider access to **all** available spaces. Compartmentalisation of all types (reverse cohorting, shielding and protective isolation) should be treated as a **process** rather than a unit as per the Compartmentalisation Guidance (accessible [here](https://pogp.hmppsintranet.org.uk/2020/04/15/cohorting-and-population-management/)). So long as regimes are managed separately to ensure there is no mixing of cohorts, cohorting prisoners can be located in different areas across the establishment and establishments should utilise all available spaces regardless of location.
3. Once all available spaces have been utilised, if the requirement to reverse cohort the prisoner(s) in question is the barrier to accessing spaces then establishments should consider whether Reverse Cohorting is feasible for prisoner(s). The current policy permits reverse cohorting as a process in any location and therefore in most circumstances reverse cohorting will still be possible, albeit in a different location to where prisoners are normally received into. However, local circumstances will vary, and there may still be further need to create access to additional spaces and therefore establishments may wish to consider:
* Exemption from full reverse cohorting period for those who are fully vaccinated against Covid-19 arriving newly into custody from the community.
* Exemption from full reverse cohorting period for those who are fully vaccinated against Covid-19 on inter prison transfer.
* Only RCing prisoners who have transferred from sites marked as ‘Red’ by the heatmap.
* Co-locating prisoners received into RC conditions on different days (keeping both for the duration informed by the prisoner last into RC or released from RC when a double negative test is received)
* Shortening the time of some prisoners in RC conditions (though still maintaining some limits on full regime participation for the period on the wing)
* Locating an individual in an available space and if full RC as a process can’t be achieved then aiming to reduce contact, limit regime access and require their wearing of an FRSM when out of cell for the first 10 days.

When considering the options above, it will be necessary to consider the local risk picture. The establishments outbreak status and local community risk (both reflected in establishment RAG rating, available [here](https://hmppsintranet.org.uk/ersd-guidance/2020/09/28/heat-map-for-reverse-cohorting-requirements-to-review-regime/)), consideration of the vaccination status of the prisoners in question, the vulnerability of the wider prison population and the overall safety of the individual(s) who may be locked out if not taken into custody.

The purpose of reverse cohorting is to maintain separation between new arrivals and the rest of the population and therefore to control the risk that a prisoner new to an establishment seeds and outbreak.  When considering inter-prison transfers, the Covid risk at the sending establishment is relevant to the local risk assessment.

It remains the case that the dominant risk of incursion of infection to a prison is through staff.  If pressures are affecting an establishment and may lead to a lessening of some controls, it is helpful to consider whether it is possible to enhance other controls, such as increased prisoner and staff testing and more general compliance with controls which may have lapsed due to fatigue.

1. Any exceptional decisions made must be approved by the Governor IC and recorded in the establishment’s COVID-19 Defensible Decision log and will form part of the decision to lock out or not by the PGD. It remains public health advice that compartmentalisation is maintained but we must consider all risks that we are responsible for as HMPPS. This process therefore gives support to local decisions to balance these risks but should be used **exceptionally** where lockouts would result rather than routine practice.

COVID-19 Gold or Incident Gold may need to direct the PGD and establishment to take prisoners and record a defensible decision based on public protection and safety risk outweighing COVID risk. Police colleagues are not obliged to take prisoners who are locked out and therefore a decision to receive may also be enforced by not having any other suitable location to secure the prisoner and the need to protect the public.

1. Exceptional decisions applied temporarily to respond to an operational pressure must be reviewed within **24hrs** to consider whether the risk can be mitigated in a different manner (ie. once spaces are created the following day with discharges this may prompt a different approach). Any decision to continue the reduction in controls must be recorded via the defensible decision log.
2. In the event that establishments have considered all available options as outlined above but are still unable to achieve the capacity required to avoid locking out, the decision to lock out must be taken by the PGD. As part of this process, the establishment must be able to evidence why the various options within the cohorting guidance and this exceptional contingency could not achieve the required capacity. A template has been provided below to guide this process, for completion by the Duty Governor (or IC making the decision to lock out) and then submitted to the PGD for agreement to lock out. Establishments cannot make the decision to lock out without PGD agreement, and this is not a local decision.

**Please direct any queries on this matter to** **COVID19.RegimesOpsGuidance1@justice.gov.uk** **in the first instance.**

**Annex – Template for Locking-Out Decision Making**

