

Statement by Teresa Medhurst, Chief Executive of SPS

Today, SPS publishes the SPS Policy for the Management of Transgender People in Custody (2023).

This policy (and separate operational guidance) has been written for SPS staff and is based on evidence gathered during the review of SPS's Gender Identity and Gender Reassignment Policy (2014), conducted between 2021 and 2023.

To the people who contributed to the SPS policy review, thank you.

To the more than 200 people in custody who contributed to the review, from across the men's and women's estate, thank you. Your input is vital in ensuring that transgender people are admitted to Scotland's prisons and placed and managed in a way that is rights-based for all and ensures the health, safety, and wellbeing of transgender people without negatively impacting on others.

To the wider SPS staff group who work hard to provide the best environment for the people in prison, thank you. I know that, while the new policy brings some changes, the work that you do daily and the care that you show helps keep people safe and improves people's lives. Your professionalism, support, and energy will be critical to the successful implementation of the policy in the coming weeks, months, and years.

To our Trade Union partners, thank you for your constructive engagement throughout the course of the policy review and I look forward to our ongoing work on this and other shared challenges and shared priorities.

SPS Policy Review

In 2019, the then Cabinet Secretary for Justice committed SPS to a policy review of the Gender Identity and Gender Reassignment Policy (2014). Running from 2021 to 2023, the policy review was conducted in 5 stages:

- Policy initiation.
- Evidence and engage.
- Analyse and recommend.
- Authorise and publish.
- Implement, monitor, and review.

The evidence and engage stage of the policy review received input from over 200 people across the men's and women's estate through an anonymised survey (a 50 per cent return rate), followed up with interviews with people in prison who are transgender and people who are not. The policy review also engaged with stakeholders from a range of public bodies, academia, communities of interest and identity, including organisations who work with women in prison and people with expertise in preventing Violence Against Women and Girls (VAWG). Critically, the review engaged with prisons staff with experience in managing transgender people as well as prisons and justice expertise from other jurisdictions in the UK and further afield. A public consultation was also conducted.

The policy review:

- Identified some improvements to prisons policy and practice to ensure transgender people are managed in a way which seeks to prevent transgender women with a

history of VAWG, who present a risk to women and girls, from accessing the women's estate, is rights based and ensures the health, safety, and wellbeing of all people in prison.

- Consolidated existing good searching practice to allow deviation from searching transgender people in line with affirmed gender through defensible, transparent decision making
- Identified and assessed the options available to SPS for the management of transgender people

This assessment of the options by the policy review concluded that:

- SPS would not be able to adequately consider and manage risk, including VAWG risk, if SPS was to adopt a blanket approach to the management of transgender people in prison, based on sex, gender identity or someone's status as a transgender person.
- SPS would not be operating in a way which was consistent with its statutory or regulatory obligations if SPS was to adopt a blanket approach to the management of transgender people in prison, based on sex, gender identity or someone's status as a transgender person.
- Prisons policy and practice for transgender people should be individualised as far as is operationally practicable at each stage of their admission, placement, and management, in line with wider prisons policy and practice.

The conclusion of this review is the updated, evidence based, policy and underpinning evidence published today.

SPS Policy for the Management of Transgender People in Custody (2023)

The policy published today (and the separate Operational Guidance) for SPS staff, states clearly the process for SPS to admit transgender people to Scotland's prisons and ensure that they are placed and managed in a way which seeks to prevent transgender women with a history of Violence Against Women and Girls (VAWG) and who present a risk of harm to those in the women's estate, from accessing that estate. It is rights based and ensures the health, safety, and wellbeing of all people in prison.

Some key changes include:

- The introduction of greater detail on operational processes and guidance at all stages in a transgender person's journey into and through prison.
- The introduction of more detailed case management processes which balance robust risk assessment with ensuring the rights and wellbeing of transgender people are maintained.
- A set of searching arrangements, which consolidate existing good practice, reflect staff wellbeing and other operational requirements and enable deviation from searching in line with affirmed gender through transparent decision making.
- A clear set of assurance arrangements for evidence-based decision making at prison and corporate levels.

Strategic alignment

This policy, taken together with delivery of other key commitments set out in the SPS Strategy for Women in Custody, and the SPS Vision for Young People in Custody, will support delivery of SPS strategic priorities. SPS places the delivery of this updated policy as

an important commitment within the SPS Corporate Plan 2023 – 2028 (CP2328), requiring a coordinated, cross-Directorate SPS approach across Scotland's prisons, in accordance with the principles set out in the CP2328:

- Equalities and human rights.
- Person centred and trauma informed.
- Evidence-based.
- Collaboration and partnership.
- Environmental sustainability.

It is especially important that the distinctive role and contribution of health services and justice services is recognised and facilitated in the way the policy is delivered, particularly through the case conference process.

As a public body, SPS must ensure our policies, our resourcing and our statutory and regulatory framework is aligned, to enable this updated, evidence-based policy to be delivered.

The processes

The policy will be delivered through updated processes. These processes will be provided for staff in separate operational guidance and documentation.

Over the course of 2023 there has been an unprecedented level of interest in the way that Scotland's prisons manage transgender people. SPS is acutely aware of the impact this has had, especially on the health, safety and wellbeing of people affected in Scotland's prisons, and continues to support and protect people in custody.

SPS is alert to the potential impact that this may have had on public confidence in Scotland's prison system. Today's publication is therefore a positive opportunity to increase public understanding and awareness of this important issue. Therefore, today, I am publishing:

- *The SPS Policy for the Management of Transgender People in Custody (2023)* [[e-links to these documents will be provided on day of publication and included here](#)]
- An executive summary of the policy review
- A policy summary
- The Equalities and Human Rights Impact Assessment (including international comparator), the Children's Welfare and Rights Impact Assessment (CWRIA) and the Data Protection Impact Assessment (DPIA)

Next steps: SPS' commitment to implementation, monitoring, and evaluation

The effective implementation of any policy is critical, and we have now begun to shift our attention to delivery. The go live date for the policy will be just under 12 weeks from today and this will allow SPS and partners time to ensure full training and compliance. The arrangements I introduced in early 2023 for admission of transgender people will continue to be in place until the go live date on **Monday 26 February 2023**. The separate operational guidance for staff will be available on the SPS website from that date onwards.

In presenting this updated policy and underpinning documents, I do so with thanks to the range of people involved in the development of this policy, most notably, the SPS policy review team, prisons staff, and SPS's key partners who continue to work hard to keep Scotland's prisons safe.

Teresa Medhurst,
Chief Executive, SPS