

# SPS Policy for the Management of Transgender People in Custody

An operational policy for SPS Staff

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**Unlocking Potential - Transforming Lives.**

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# 1. Intent

## 1.1 Policy intent

The SPS Policy for the Management of Transgender People in Custody (2023) is an operational policy for prisons staff. The policy intent is:

*We will admit, place, and manage transgender people in a way which is rights-based, consistent with the obligations of SPS as an Executive Agency of the Scottish Government, as a public body, and as a prison service which seeks to promote the health, safety, and wellbeing of all people who live in Scotland's prison system.*

This approach enables prison staff to consider multiple factors when making decisions about management of transgender people, including any risk they may pose to other individuals or groups in prison, and the safety and wellbeing of the transgender individual. This policy intent:

- Aligns with the strategic intent set out in SPS Corporate Plan 2023 – 28 for: 'person-centred, inclusive, trauma-informed and rights-based prison services which promote the health, safety, and wellbeing of all people who live in Scotland's prison system'.
- Is consistent with SPS commitment to Equality, Diversity and Human Rights through an evidence-based approach to the design, delivery, and improvement of prison services.
- Promotes an individualised, case-based, evidence-based approach to the admission, placement, and management of transgender people in SPS custody.

# 2. Purpose

This policy protects the rights and welfare of transgender people living in Scotland's prisons in a way which promotes the safety of all people in custody. This is enabled by clear and robust guidance and processes for managing transgender people in custody including evidence-based decision-making processes for admission, placement, and management.

# 3. Scope

This policy is specifically for transgender people on admission, those already in custody, and also for those proposing to transition.

**Transgender refers to persons with the protected characteristic under the Equality Act 2010 of gender reassignment. This covers a person who is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex. Individuals do not need to have undergone any medical or surgical procedure to reassign their sex to their preferred gender to be protected under the protected characteristic of gender reassignment. A Gender Recognition Certificate (GRC) is not required for an**

individual be protected under the protected characteristic of gender reassignment under the Equality Act 2010.

### **Transitioning in custody**

SPS will support people in custody that request assistance because they are considering transitioning. If the individual indicates that as part of their transition, they wish to be considered for a move to the estate which aligns with their gender identity, this will be considered through the Transgender Case Conference (TCC), which should take place, where reasonably practicable, within 72 hours of the individual making their desire to transition known.

This **policy does not apply to people who are gender diverse** (for example, people who are non-binary or gender fluid), who will be managed in accordance with their sex at birth.

## **4. Policy Principles**

### **Admission, placement, and management of transgender people in custody**

Transgender individuals will be supported and their gender identity recognised. The person in custody's gender identity and corresponding name and pronouns will be respected irrespective of where they are accommodated.

#### **Admission**

When a transgender person is admitted into custody, they should be considered on an individual basis as far as possible. However, if placing them in accommodation which accords with their affirmed gender gives rise to unacceptable risks that cannot be mitigated or this risk is as yet unknown, they will initially be located in an establishment that aligns with their sex assigned at birth.

If a transgender woman meets the Violence Against Women and Girls (VAWG) criteria (see Annex 1 of this document), they will be admitted to accommodation in the male estate.

All standard risk assessments and management procedures, including 'Talk to Me' should be carried out, as they would for any other person in custody. The person in custody's behaviour should be managed as standard.

#### **Placement and Management**

When managing a transgender person in custody there may be additional processes and considerations required to ensure that the individual receives the appropriate level of care and support. The appropriate processes and considerations should be developed according to the specific needs of each individual.

This is to be achieved through the mechanism of a Transgender Case Conference (TCC), which allows the transgender person, staff, and other relevant stakeholders to contribute to the decisions made about the individual's support and management arrangements while in custody, including healthcare, searching arrangements, and any other factors which may be relevant to ensuring that they are managed securely and with respect and dignity.

The TCC is also the mechanism through which decisions about the individual's longer-term placement within the prison estate can be made.

The TCC allows staff to consider evidence about the person's behaviour which may have an impact on the safety or vulnerability of anyone who they are or may be accommodated alongside. It is through this approach that SPS can protect the rights and safety of transgender people, whilst also protecting the rights and safety of others in custody and staff.

SPS's policy position is that a person's status as a transgender person does not automatically identify risks or vulnerability, nor that others who live and work within Scotland's prisons are automatically at risk of harm from them. However, where evidence exists that the current or proposed arrangements for the management, or placement, of a transgender person in custody would be a risk to the safety of that person, another person living in custody, or to staff members (**note the VAWG criteria in Annex 1**), steps should be taken to ensure that this risk is minimised as far as practicable. These steps could include, but are not limited to:

- Placing the transgender person into an estate that does not align with their gender identity.
- Enhanced monitoring of the transgender person.
- Placement of the transgender person into a different area of the establishment where the risk can be acceptably mitigated and managed.
- Escalation of decisions on location through standard Risk Management Team (RMT) processes at local establishment level with the option of further escalation to executive level for more complex location decisions.

### Ensuring participation of transgender people in their management

SPS aims to ensure that both its staff, and people in custody, know their rights and are empowered to claim these. Transgender people should be given a copy of this policy and should be informed of their rights and the provisions of the policy.

The TCC process (see Operational Guidance Document for details) allows for individuals to make representations in decisions that affect their lives in prison, including placement decisions and searching arrangements. As with all people in custody, transgender people should be provided the opportunity to input to the agenda set for each case conference.

### The health and wellbeing of people living in Scotland's prisons

People in custody have the right to access NHS medical assessment and treatment. NHS Scotland is responsible for the provision of primary and community healthcare for those in Scottish prisons.

In the context of transgender people, provision of healthcare also refers to access to specific gender-related healthcare services.

People in custody also have a right to adequate positive social contact to support mental health and wellbeing.

The risk of depression, anxiety, self-harm, and suicide is higher among the transgender population than the general population; the TCC must establish the level

of risk and current needs for the individual person in custody and this should be reviewed and recorded at each TCC. Where difficulties in accessing gender reassignment services, or experiencing prejudice, are damaging the mental health of a transgender person in custody, these should be addressed as a priority.

As with all people in custody, concerns about mental health and wellbeing should be addressed urgently by SPS. 'Talk to Me': The Prevention of Suicide in Prison Strategy must be utilised for any person at risk of suicide or self-harm (['Talk to me' Strategy \(sps.gov.uk\)](https://www.sps.gov.uk)).

SPS is committed to supporting access to throughcare support for people leaving custody and will facilitate access to any transgender person in, or leaving SPS custody, by third sector throughcare support providers. This will be done in the same voluntary way as is in place for anyone else in or leaving SPS custody. SPS will do so in accordance with its obligations as a public body under relevant legislation.

Throughcare support for transgender people should also be considered during the TCC process. Transgender people may be faced with a unique set of challenges upon liberation from custody. Ensuring that SPS works with healthcare and throughcare partners collaboratively is paramount to ensuring that a person's status as transgender does not represent a barrier to the provision of necessary healthcare and support.

## 5. Policy in Practice

There are additional processes and considerations to be undertaken to ensure that the transgender person's rights are protected alongside receiving the appropriate level of care and support. These processes and considerations are outlined in full in the accompanying Operational Guidance Document and cover the following:

- Admission and first 72 hours in custody
- Reception process and confirming gender identity
- Transgender Case Conferences
- Longer term placement of transgender people in custody
- Complex location decisions including those involving VAWG
- Escalation processes to local Risk Management Team (RMT) and assurance route at executive level
- Processes dealing with the significant change in a person's circumstances or sentencing
- Data recording
- Transitioning whilst in custody
- Searching and Sampling
- Access to property
- Peer and community support

## 6. Monitoring and Evaluation

Monitoring and evaluation of the policy is proportionate and consistent with wider organisational performance arrangements. There are five components to the monitoring and evaluation arrangements for the policy:

1. Ongoing quality assurance and monitoring of policy and guidance

2. Revised operational audit arrangements
3. Testing of self-evaluation/quality indicators for transgender people (as part of wider self-evaluation arrangements for other populations/prisons)
4. Regular reporting through the SPS Public Information Page (PIP) [on SPS's website](#) (as part of wider prisons public reporting)
5. An independent evaluation of policy (to be conducted within five years of publication)

The policy and guidance will require to keep pace with any legislative, regulatory, or wider evidence or learning that emerges in the intervening period between publication and future policy evaluation.

SPS public reporting will be done in a way which mitigates the risk of identification of individuals. SPS will continue to publish the number of transgender people in prison on a quarterly basis. SPS may publish more detailed annual data relating to the transgender prison population in Scotland as part of our annual reporting, provided the risk of identification of individuals can be mitigated. This will be kept under review.

## ANNEX 1: Violence Against Women and Girls (VAWG) criteria

A transgender woman **will not** be eligible to be considered for admission or transfer to a women's prison, where they are: convicted, or have previously been convicted, remanded for examination or trial, remanded following conviction but awaiting sentence for, or found to have committed, any of the offences detailed below, or are/have been subject to any of the orders detailed below, where the victim was female. A transgender woman who meets these criteria will not be transferred to a women's prison unless the Risk Management Team, and subsequently the Executive Panel, are satisfied there is compelling evidence that they do not present an unacceptable risk of harm to those in the women's prison.

A transgender man who meets the above criteria but is admitted to the female estate can be managed under rule 95(1) conditions until his initial Transgender Case Conference, if it is deemed necessary and proportionate to keep women in custody safe. That means they may be kept separate from any other person in prison until SPS has been able to assess their risk and vulnerability.

### Offences:

- Any offences that perpetrate violence against a female that results in physical, sexual, or psychological harm or suffering to a female, which includes but are not limited to:
  - Murder
  - Culpable homicide
  - Assault
  - Robbery
  - Abduction
  - Threatening personal violence
  - Rape
  - Sexual harassment, bullying and intimidation in any public or private space, including work
  - Commercial sexual exploitation of women and girls including trafficking of women and girls for that purpose. Commercial sexual exploitation includes prostitution, lap dancing, stripping and pornography.
  - Breach of the peace
- Any other offences which are listed in Schedule 3 of the Sexual Offences Act 2003.
- Any offence that is aggravated as described in section 1(1)(a) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016.
- Any offence under section 1(1) of the Domestic Abuse (Scotland) Act 2018.



- An offence under section 7(1) or 17(1) of the Domestic Abuse (Protection) (Scotland) Act 2021 which involved violence against a female that results in physical, sexual or psychological harm or suffering to that female, which includes stalking; and
- Any offences where the governor of the prison the transgender person is admitted to or detained in considers the circumstances of their offence would pose a risk of harm to females.

## Orders

- A non-harassment order imposed under section 234A of the Criminal Procedure (Scotland) Act 1995 or section 8 or 8A of the Protection from Harassment Act 1997;
- A Risk of Sexual Harm Order (RoSHO) or an interim RoSHO imposed under the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005;
- A sexual offences prevention order (SOPO) made under sections 104 or 105 of the Sexual Offences Act 2003;
- A sexual harm prevention order made under sections 11 or 12 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016, which are due to replace SOPOs;
- Sexual Risk Orders (SROs) imposed under provisions of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016, which are due to replace RoSHOs;
- A domestic abuse protection order imposed under section 8 of the Domestic Abuse (Protection) (Scotland) Act 2021 (or an interim domestic abuse protection order under section 10 of that Act); and
- Another other relevant orders SPS are made aware which would include orders for civil damages awarded to rape or other sexual assault/assault victims

## Further Information

SPS recognises that from time-to-time employees may have questions or concerns relating to policy. In certain situations, employees' rights and obligations regarding this document may change. In these circumstances, SPS will abide by such rights and obligations.

SPS wishes to encourage open discussion with employees to ensure that questions and problems can be resolved as quickly as possible. Employees are encouraged to seek clarification on any issues with the appropriate line manager in the first instance.

## Sustainability

Improving our environmental performance and doing things in a more sustainable way should be seen as integral to our core business practices.

In line with SPS Sustainable Policy and to demonstrate compliance with the Scottish Government's commitment to improving environmental and sustainable development performance, please be mindful if printing this document – keeping paper usage to a minimum (print only version), printing on both sides, and recycling.

## Policy and Guidance in SPS

SPS policies take into account current legislation, rules, regulations and best practice guidance from a range of professional and public bodies, including the following:



UK Civil Service  
Management Code



Scottish and UK  
Legislation



ACAS



CIPD Best Practice