[](http://dc1-hv-intranet1/wordpress/wp-content/uploads/2013/11/SPS-refreshed-logo-November-2013.jpg)

# HEADQUARTERS

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## Sue Brookes

Interim Director of Strategy and Stakeholder Engagement

21st December 2021

**INVITATION TO ENGAGE IN SPS GENDER IDENTITY AND GENDER REASSIGNMENT POLICY REVIEW**

I am writing to invite you, and/or a nominated representative from your organisation, to participate in the SPS Gender Identity and Gender Reassignment (2014) policy review process. The terms of reference for this review are attached (Annex A).

You and/or your organisation’s nominated representative are invited to attend a **one-hour** discussion with the SPS policy leads for this work, to explore some key questions. The types of questions we wish to explore in the course of stakeholder discussions are attached at Annex B. Time pressures mean that we will look to prioritise discussion around what you think the policy should seek to achieve (policy intent) and how you think it should be achieved (policy option) as well as equalities and human rights. Please complete the attached doodle poll: <https://doodle.com/poll/fxqrnchxvvkuyre5?utm_source=poll&utm_medium=link>

The range of questions have been provided in advance to help you and your organisation prepare for the discussion and where you feel appropriate, submit any responses in writing in advance along with any supporting evidence you wish SPS to consider. To prevent malicious submissions, please ensure your input is provided on your organisation’s letter headed paper and is submitted to: [SPSGenderIdentityPolicyReview@sps.pnn.gov.uk](mailto:SPSGenderIdentityPolicyReview@sps.pnn.gov.uk). You will then be asked to confirm content of input received. Furthermore, it is important that you canvas views across your organisation in advance so that you are able to bring forward your organisation’s position or range of positions. To help facilitate effective discussion, please familiarise yourself with current SPS’ policy:

[SPSGenderIdentityandGenderReassignmentPolicy20142562\_1392 (17).pdf](file:///C:\Users\u113378\Downloads\SPSGenderIdentityandGenderReassignmentPolicy20142562_1392%20(17).pdf)

Our discussion with you is part of an extensive, inclusive engagement process with over 30 cross sector organisations, representing a range of public bodies as well as communities of interest and identity, between February and May 2022. This engagement is consistent with public commitments made previously and will be complemented by engagement with service users across the men’s estate and the women’s estate, transgender men and transgender women in prison as well as prisons staff who have experience of working with transgender people in Scotland’s prisons.

Upon completion of this engagement work it is our intention to undertake an analysis of feedback received and to then publish an updated SPS policy for the placement and management of transgender people in Scotland’s prisons in Summer 2022. Please note that the policy development process will mainstream an Equalities and Human Rights Impact Assessment (EHRIA). Please accept my thanks in advance for your constructive engagement in this policy process.

Best wishes,

**Sue Brookes**

Interim Director of Strategy and Stakeholder Engagement

**Terms of reference: SPS Gender Identity and Gender Reassignment (2014) policy review**

In late 2019, SPS made a commitment to review theGender Identity and Gender Reassignment Policy (2014). This commitment was reiterated by the then Cabinet Secretary for Justice in February 2020. SPS paused the review process due to COVID19 pressures and detailed preparatory work for the policy review recommenced early 2021.

**Purpose**

The purpose of the policy review is:

* to develop an updated, evidence-based corporate policy position for the placement and management of transgender people in Scotland’s prisons
* to update the policy intent for the placement and management of transgender people in Scotland’s prisons
* to set out how this policy intent will be achieved, consistent with the statutory and regulatory obligations of SPS as a public body and as a prison service

An Equality and Human Rights Impact Assessment (EHRIA) will be completed as part of the policy process.

**Scope**

The policy review will develop an updated evidence based policy for the placement and management of transgender people in Scotland’s prisons, to include those who identify as transgender but do not seek to acquire a new gender. The policy review will include:

* case studies
* lessons learned and areas of best practice
* implementation, monitoring and evaluation arrangements as required, including data/management information (including accurate and timely public reporting)

**Review stages**

The review will be conducted in 4 main stages:

* Review of international approaches to placement and management of transgender people, based on international examples of practice and academic research, informed by current and forthcoming policy and legislation (March 2021 onwards)
* Research and engagement: preparatory work (decision log; scope; policy assessment and implementation framework; options appraisal of methodologies, influence and interest assessment, initial contact with stakeholders – March to December 2021; engagement plan – December 2021 to May 2022)
* Analysis and recommendations (June & July 2022)\*
* Authorising route and publication (August & September 2022)\*

\*contingent on engagement process

**Engagement**

The engagement plan is as follows:

* engagement with prisons staff who have experience of working with transgender people in Scotland’s prisons, commencing December 2021
* a series of interviews with transgender men and transgender women in prison, commencing January 2022
* a survey of men and women living in custody across establishments in Scotland, commencing February 2022
* one to one discussions with stakeholders, between February and May 2022
* advise Chairs of the Criminal Justice Committee and the Equalities, Human Rights and Civil Justice Committees of status of the policy review

**Oversight**

Provided by a short life working group, chaired by Director of Strategy and Stakeholder Engagement.

**Review**

These terms of reference are iterative, subject to ongoing development.

**Gender Identity and Gender Reassignment Policy (2014) Review**

To be considered alongside SPS Gender Identity and Gender Reassignment (2014) Policy.

This discussion seeks to inform the review and refresh of that policy, and your input to that is valued.

**Policy intent**

1. What do you think the main objectives of the policy should be? What are the outcomes that you think the policy should set out to achieve?
2. When we consider the existing policy, we could say that the SPS considers a persons lived gender identity in concert with risks and the security and safety of both the transgender person, and others that they will be living alongside.

* What other policy options should SPS consider?
* What are the key considerations that should SPS should take into account when considering these policy options?

1. Thinking about this policy as a whole, how should SPS assess whether it is being delivered successfully? What do you think the indicators for success should look like?

* How do we successfully deliver this policy in practice? Are there barriers to delivering this policy that could stop it being successful?

1. Are there any particular groups or individuals that you believe SPS should include within the review process?

**Assessing risk**

1. What are the potential risks that transgender and cisgender populations could face when being cared for in a custodial environment?
2. Are the potential risks any different for:
3. transgender male to female
4. transgender female to male

- How could these risks be mitigated against?

1. Are there any other specific groups or individuals working or living in Scottish Prisons, who you think will be directly or indirectly affected as a result of decisions on how transgender people are held in custody?

* If yes, in what way will groups or individuals be affected? How do you believe any significant impact can be mitigated against?

1. What key risk factors do you think should be considered upon reception of a transgender person into custody? Are there different issues to be considered for transgender male to female and transgender female to male?
2. What key risk factors do you think should be considered upon an individual making the decision to transition while in custody? Are there different issues to be considered for transgender male to female and transgender female to male?
3. How could SPS most effectively assess risk?

* In your opinion what should the risk assessment process look like?
* what are the key factors?
* who do you feel should be involved in this process?

**Housing Transgender people in custody**

1. In responding to the questions below please consider if there may be different issues in housing transgender male to female and transgender female to male:

* What do you think is the most appropriate way to house transgender people in custody?
* what factors do you think should be considered in reaching a decision on this matter?
* Why do you think it is important to consider these factors?
* why do you believe that is the most appropriate way to house this population?
* With said preferred option in mind, how do you think this would impact on the health, safety and security and wellbeing of transgender people involved?
* With said preferred option in mind, how do you think this would impact on the health, safety and security and wellbeing of the cisgender population involved?

**Provision of Healthcare**

1. With said preferred housing option in mind, do you think there would be any implications in relation to the provision of healthcare for transgender people in custody?
2. With said preferred housing option in mind, do you think there would be any implications in relation to the provision of healthcare for cisgender people in custody?

**Preparation for liberation**

1. With said preferred housing option in mind, how do you think this would impact on the preparation for reintegration of transgender people back into their communities?
2. With said preferred housing option in mind, how do you think this would impact on the preparation for reintegration of cisgender people back into their communities?

**Staff Training**

1. With said preferred housing option in mind how can the SPS prepare staff for housing transgender people in this way?

**Equalities and Human Rights**

1. What are the impacts and implications on equalities and human rights for transgender people of your preferred option?
2. What are the impacts and implications on equalities and human rights for cisgender populations said preferred option?
3. What quantitative and/or qualitative evidence have you considered when proposing your preferred option?
4. What case law relating to equality and human rights have you considered when proposing your preferred option? (please provide references)
5. Do you think your preferred option would contribute to eliminating discrimination, harassment and victimisation? If yes, in what way?
6. Do you think your preferred option would advance equality of opportunity between those who share a protected characteristic and those who do not? If yes, in what way?
7. Do you think your preferred option will foster good relations between those who share a protected characteristic and those who do not? If yes, in what way?
8. Will your preferred option breach or uphold human rights? If so, how?
9. Do you foresee negative impacts? What are they? How would you propose to mitigate them?

Thank you for taking the time to respond to these questions.