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by email:



01 March 2022

Dear All,

SPS GENDER IDENTITY AND GENDER REASSIGNMENT POLICY REVIEW

Thank you for your correspondence dated 2nd February 2022, setting out a range of questions emerging from your analysis of the policy review process for the SPS' Gender Identity and Gender Reassignment Policy (2014).

Policy review process

SPS welcomes your detailed analysis of the policy review process and we are keen to respond positively to your constructive feedback. More detailed responses to each of your questions are attached at [Annex A](#).

Timelines

Please note that the current policy review process, which commenced Spring 2021, supersedes any work undertaken on this policy previously. Between Spring and Winter 2021, the policy review process focused on:

- initial policy work on the placement and management of transgender people in prisons
- developing and exploring methodologies for engagement, including pros and cons
- preparatory work for engagement with staff, service users and stakeholders
- putting all the logistics in place in support of all of these arrangements

The engagement phase of the policy review commenced Winter 2021 and will continue until early Summer 2022. The policy work and engagement processes will run in tandem before we bring all the evidence together, enabling us to undertake policy assessment and development. We anticipate publication of an updated policy in late Summer 2022, contingent on engagement and analysis.

SPS position on Gender recognition reform

You asked about the SPS position in relation to Gender Recognition reform. As a public body and an Executive Agency of the Scottish Government, SPS is concerned with upholding the law and ensuring the rights of prisoners are observed. We have a duty to ensure that the design and delivery of prison services is consistent with our obligations as a public body in accordance with relevant legislative and regulatory frameworks.

SPS policy position

As noted in your correspondence, the current Gender Identity and Gender Reassignment policy (2014) makes it clear that the social gender in which the person in custody is living should be fully respected regardless of whether or not the person in custody provides evidence of having a Gender Recognition Certificate (GRC). Decisions taken by the SPS seek to protect both the wellbeing and rights of the individual as well as the welfare and rights of others around them, including staff. SPS use an individualised approach, informed by a multi-disciplinary assessment of both risk and need, in order to achieve an outcome that balances risks and promotes the safety of all to inform decisions such as the appropriate location of transgender people in custody.

It is important to state that where a transgender person is thought to present a risk to another person, the transgender person would be kept out of association until the concerns have been appropriately managed through a case conference. These circumstances would be managed in the same way as for any other person in custody posing such a risk or in fear of harm. Managing people in custody with a violent or sexual offending history and managing the risks they pose to others is a daily reality for prisons across Scotland.

Data

SPS is taking steps to provide accurate data on the transgender population in Scotland's prisons, in accordance with recent guidance from the Chief Statistician. Scotland's prison population constantly fluctuates and any information gathered is only accurate at the point it's obtained from the prison records system. In addition, people do have the right to change their mind about the way their gender identity is recorded at any time so this number is susceptible to change. SPS will be publishing a snapshot of transgender prisoners on a quarterly basis from early April 2022 as part of wider public SPS data and Management Information improvements. Please note that there are no plans for this population to be included in official prison statistics.


As of 20th January 2022 there were 12 transgender people in SPS custody, accommodated across the Scottish prison estate (3 Transgender men, 9 Transgender women). Of the nine transgender women in custody, five were accommodated within the women's estate and four were accommodated within the men's estate. Of the three transgender men in custody, two were accommodated in the men's estate and one within the women's estate. In order to avoid the potential indirect identification of individuals, it is not appropriate to disaggregate elements of the management information held on transgender people in custody any further, given the very small size of the transgender prison population.

Next steps

In addition to your input on process, SPS would welcome your views on the content of the policy review, as set out in the questions on prisoner management (attached to invitation) at the interview scheduled for 10th May 2022.

Finally, may I take this opportunity to thank you once again for your engagement in the process and the constructive feedback provided.

Yours faithfully



Sue Brookes

Interim Director of Strategy and Stakeholder Engagement

Annex A

1. Publication of draft policy

We plan to publish the final policy alongside supporting documents, including the range of evidence that has informed the review. We will not be seeking further input externally or internally from stakeholders once the policy is final and published. The review process and the evidence gathering will be thorough and comprehensive and provide us with relevant information in order to come to a preferred policy position.

We have invited a wide range of people and organisations with expertise on gender, human rights and prison management who will be able to provide us the necessary evidence to inform the policy review. We anticipate this wide ranging engagement will allow the final policy publication to have considered as many potential insights as possible to ensure that our policy is fit for purpose. We will also subject it to operational assurance.

We anticipate monitoring and evaluation arrangements being put in place, for example, evaluation of policy implementation as well as how the policy has impacted on those who live and work within Scotland's prisons, at the appropriate time.

2. Short-life working group

The short-life working group that provides oversight of the policy review process consists of SPS operational, strategy and corporate services staff with an invitation also extended to SG prisons policy team. The group is chaired by SPS Director of Strategy and Stakeholder Engagement. The working group does not include anyone externally.

3. Shared evidence base

The review of international approaches to the placement and the management of transgender people is being collated from international examples of policy and practice, alongside research conducted around prison management and the management of transgender people in custody. This review is iterative, ongoing and non-prescriptive, given the political and legislative context of the landscape around transgender issues. We want to ensure that the context of the international examples of practice, the political and legislative environment, and the discourse and landscape specific to Scotland and Scotland prisons is captured within this review, which will be presented as part of the publication of the policy.

We appreciate the need for SPS to consider the most up-to-date and relevant papers that have been produced on these topics. Whilst we have no plans to publish a bibliography ahead of the final publication, if there are particular articles or sources that you believe require our attention, please do draw our attention to them so that we can ensure that all relevant evidence can be pulled together for the purposes of this review. The email address for submission is included in your invitation letter.

4. Drawing on academic expertise on the female prison population

SPS is committed to engagement with academia as part of this policy review as well as wider design, delivery and improvement of prisons services. A discussion with academics who have

published and shown an interest in the substantive areas of prison management, gender issues related to the prison population, and the management of transgender people in custody is to form part of our engagement phase. Thank you for your steer on those academics with expertise on vulnerabilities of female prisoners. The lead for this part of our engagement work is reaching out to the academics you recommended.

Please note that the points raised in relation to the findings of Dr Maycock's research were noted in the development of our research questions used at all levels of engagement with staff, stakeholders and people in custody, as well as the framework for assessing evidence. Please also note that this policy review process supersedes work previously conducted by SPS.

5. Risk assessment and potential for abuse

As noted above, the policy review is incorporating a wide range of evidence including a literature review. The literature review examines current international practice in the housing and management of transgender prisoners to inform a range of policy options, including an examination of risks associated with each of these options. Questions about risk, including in relation to the potential risks associated with where transgender individuals are housed, are informing our engagement and the questions being asked to staff and people in custody about prisoner safety and security. These risks have informed the development of our research questions which are used at all levels of engagement with staff, stakeholders and people in custody, and the framework for assessing evidence.

Given that our current policy review is looking at all aspects of the management of transgender prisoners, we will be examining how risk features and factors into decision making processes within the case management of individuals in our care. We would anticipate providing more clarity on the way that risk is considered within the case management process.

6. Terminology

The terms transgender and cisgender should have been defined in the Annex of questions provided alongside the invitation to participate in an interview. Throughout the policy review process, we use the terms transgender and cisgender to distinguish those for whom their gender identity does not match or is different from their biological sex assigned at birth (transgender) and those for whom their gender identity does match their sex assigned as birth (cisgender). The Scottish Prison Rules also state that prisoners are categorised based on gender, not sex¹.

In the use of the term cisgender, we do not imply any innate gender identity and make no assumptions or extrapolations about how persons who are transgender or cisgender should express their identity; we use it to be clear and specific about to whom we are referring. Assumptions about how trans and cis-gendered persons should express their identity are not relevant to the policy review or indeed how the policy will be operationalised.

7. Interviews with prisoners

The original plans for our methodology to engage with people in custody, and understand how the current policy impacts their experience of custody, focused on surveying as a data collection method for two reasons. Firstly, we want to engage as many people in custody as possible. We believe that a survey that could be distributed to as many individuals as possible – specifically, to all women and to a proportionate number of men living in custody – was the optimal way to

¹ The Prisons and Young Offenders Institutions (Scotland) Rules 2011 Rule 14 p. 17

approach this. Secondly, given the scale of engagement that we anticipated to conduct, and the capacity of the team assigned to data collection, a survey represented the most efficient way to engage with the intended frequency of respondents.

The survey that is being constructed has been informed by previous engagement with staff and transgender people in custody, and will take a mixed qualitative and quantitative approach, including a mixture of open and closed questions, and the inclusion of 'vignette style' questions to help contextualise particular answers for the purposes of understanding the impact of current policy. We appreciate your comments about the need to ensure that this method takes into account the literacy of respondents. We are working with staff within establishments to ensure that support will be offered to individuals to fill out the survey where these concerns exist.

Additionally, we appreciate your comments that the proposed methods may create a disparity between the level of engagement with transgender people, and the level of engagement with other people in custody who the policy will impact. Please be assured that our methodology will include interviews with people in custody that can complement and expand on the findings of the survey. In relation to the staff who will carry out interviews with women, these will be conducted by a non-operational member of SPS staff. In the past, interviews between non-operational SPS staff members and people in custody have been carried out without prison officers present, and we would assume this would be the case here. We would also extend assurances of anonymity and non-identification to all participants involved in these interviews.

8. Interviews with prison officers

All interviews with prison officers conducted as part of this policy review are being carried out on a one-to-one basis with an SPS researcher, and assurances have been given to participants ahead of the interview that the data collection process is anonymous, and will not be shared with any other staff member outside of the immediate policy review team. The consent of the participants is obtained only after these confidentiality concerns are raised and understood, and staff have been candid in their responses thus far. Responses given to these questions will only be used to help SPS evaluate the policy options; this process is not one that will seek to make normative judgements about the nature of these responses.