

Scottish Prisoner Service Prisoner Gender Identity and Gender Reassignment Policy

FINAL CONSULTATION DRAFT



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INTRODUCTION

Introduction - SPS commitment to Equality, Diversity and Human Rights

SPS is fully committed to equality, diversity, inclusion, and respect for human rights. The SPS actively values diversity and inclusion, tackles inequalities, promotes and respects equality and human rights by taking action through a dynamic, systematic and evidence based approach.

The Mission Statement of the Scottish Establishment Service is:

- to keep in custody those committed by the courts;
- to maintain good order in each establishment;
- to care for prisoners with humanity;
- to play a full role in the integration of offender management services that provide prisoners with a range of Opportunities to prepare for release

The Values of the Scottish Establishment Service are:

- Respect: We work with fairness, justice and honesty and have proper regard for others needs and rights.
- Integrity: We apply high ethical, moral and professional standards in our conduct.
- Teamwork: We work together and with partners to provide safety, support, efficiency and improved outcomes.
- Equality: We work together to embed the principles of equality, diversity and inclusion to promote a culture of openness, transparency and fairness in all we do.

The SPS Strategy Framework for Valuing Diversity, Promoting Equality and Human Rights enables equality, diversity, inclusion and human rights to be mainstreamed at the core of all our work and to be embedded at all levels within the organisation.

The Scottish Establishment Service recognises that its prisoners must not unlawfully discriminate against or harass any prisoner in regard to any protected characteristic, including gender reassignment and gender identity. SPS will work hard to continue to develop as an organisation by implementing trans-inclusive policies and practices with a view to becoming a trans positive organisation.

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Introduction - Purpose of the policy

SPS is committed to equality of opportunity, both in the provision of services and in our role as an employer. All staff, volunteers, applicants and prisoners have the right to be treated with fairness, dignity and respect and to ensure that the establishment environment is fair and supportive to individual needs.

This policy aims to ensure that individuals who either self-identify as transgender people or who intend to undergo, are undergoing or have undergone gender reassignment receive respect and fairness at all times from the Scottish Prison Service.

The purpose of this policy document is to:

- provide accurate and current information for all Scottish Establishment Service employees in relation to gender reassignment and gender identity equality and human rights,
- outline the Scottish Establishment Service procedures to be followed in the event of a transgender person being brought into custody,
- enable all prisoners within Scottish Establishment Service custody to be treated fairly and without discrimination or harassment on grounds of gender identity and gender reassignment.

Ensuring that equality and human rights are upheld throughout all aspects of the prisoner's journey will require liaison between the Scottish Prison Service and other service providers within the criminal justice system, such as the Police Service, the Scottish Courts Service, the Crown Office Procurator Fiscal Service and Local Authority Social Work Departments.

The Scottish Prison Service requires all its sub-contractors to ensure that they are complying at all times with UK equalities and human rights legal requirements.

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Introduction - Overview of equality and human rights legislation

The Equality Act 2010 - Gender reassignment

Under the Equality Act 2010, a person has the protected characteristic of gender reassignment if the person 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.

Gender reassignment does not need to involve any medical supervision or surgical procedures; it could simply involve a permanent change of the social gender role in which the person lives their life, (for example through a permanent change of name and dress).

The Equality Act 2010 provides the following types of gender reassignment protection in employment and the provision of goods, facilities and services:

Gender reassignment direct discrimination is when someone is treated less favourably than others because of the protected characteristic of gender reassignment, where this is not a necessary and proportionate single sex service response to achieve a legitimate aim.

Example:

- Not allowing a prisoner equal access to social, educational or rehabilitative opportunities within the establishment because the prisoner has the protected characteristic of gender reassignment.

Gender reassignment discrimination by association is when someone is treated less favourably than others because they are connected in some way (such as a friendship or a family relationship) with another person with the protected characteristic of gender reassignment.

Example:

- Not allowing a prisoner equal access to visits from a friend or relative because that friend or relative has the protected characteristic of gender reassignment.

Gender reassignment discrimination by perception is where someone is treated less favourably as if they have the protected characteristic of gender reassignment even though the person doesn't actually have that protected characteristic.

Example:

- Not allowing a prisoner equal access to social, educational or rehabilitative opportunities within the establishment because the prisoner's gender identity appears to differ in some way from their birth sex (for example the prisoner occasionally cross-dresses or presents androgynously), even where it is known that the prisoner does not intend to undergo gender reassignment..

Gender reassignment indirect discrimination is where a rule or policy or way of doing things has a worse impact on someone with the protected characteristic of gender reassignment than someone without that protected characteristic, where this cannot be objectively justified.

Example:

- Not allowing any changes to the title and gender (PR2 is currently not able to change a prisoners gender and an interim solution will be needed) held on any

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prisoner's paper or electronic records. Although applied equally to all prisoner records, such a policy would not respect the dignity of any prisoner who changed their name and gender as part of a process of gender reassignment.

Gender reassignment harassment is unwanted conduct related to the protected characteristic of gender reassignment which has the purpose or effect of violating someone's dignity or which creates a hostile, degrading, humiliating or offensive environment.

Example:

- Establishment employees refusing to refer to a prisoner who is undergoing gender reassignment by the prisoner's new name, title and pronoun or using derogatory language about transsexual people more generally.

Victimisation is treating someone less favourably because they have taken (or might be taking) action under the Equality Act or because they are supporting somebody who is doing so.

Example:

- Removing privileges from a prisoner because they made a complaint about being subjected to gender reassignment discrimination or harassment by a establishment employee.

The Equality Act 2010 - Disability

In addition, under the Equality Act 2010, some people with the protected characteristic of gender reassignment will also count as having the protected characteristic of disability if diagnosed as being affected to a substantial degree by Gender Dysphoria (also known as Gender Identity Disorder). The Equality Act 2010 creates a legal requirement to make reasonable changes to the way things are done (such as changing a policy), to the built environment and to provide auxiliary aids and services (such as additional staff support) to improve service provision for people with the protected characteristic of disability.

The Human Rights Act 1998

The Human Rights Act 1998 incorporates the European Convention on Human Rights into UK law for everyone. It means that everyone has the right not to be discriminated against on grounds of gender identity and gender reassignment in relation to any of the human rights contained in the European Convention on Human Rights.

Two human rights most relevant to gender identity and gender reassignment are:

The right to respect for private and family life, home and correspondence

This includes the right to privacy about undergoing gender reassignment so the Scottish Establishment Service must not reveal without permission, except to protect safety or prevent crime, any information about a prisoner's gender reassignment.

This includes the right to have any new name, title and gender used in all correspondence and in public sector records.

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The right to freedom of expression

This includes the right to freedom of expression of gender identity whether or not this conforms with the sex assigned at birth. Free expression of gender identity can involve modification of bodily appearance or function by medical, surgical or other means and other expressions of gender, including dress, speech and mannerisms.

The Gender Recognition Act 2004

Two years after a transsexual person has permanently changed the gender in which they live, they can opt to apply for full UK gender recognition under the Gender Recognition Act 2004. They are not obliged to apply for gender recognition, it is meant as **a way of providing additional privacy rights and of ensuring there can be absolutely no remaining legal doubt about the individual's acquired gender for any purpose, especially in regard to the right to enter into a marriage.**

To be granted full UK gender recognition, a transsexual person is required to evidence to the UK Gender Recognition Panel that the following are true:

- that it has been over two years since they permanently changed the gender in which they live and they intend to continue to live as their acquired gender for the rest of their life;
- that they are not in an existing marriage or civil partnership;
- that they have previously been diagnosed as transsexual / experiencing gender dysphoria by a medical doctor who is a specialist in regard to gender reassignment.

Genital surgery is not required to be granted full UK gender recognition.

If a transsexual person has a gender recognition certificate, then they are granted additional privacy protection in regard to their gender history and must be fully regarded as being their acquired gender for all purposes.

If a prisoner confirms that they have a gender recognition certificate, service providers should immediately familiarise themselves with the detailed information available at: www.grp.gov.uk

The Data Protection Act 1998

Under the Data Protection Act 1998, transsexualism and gender reassignment would constitute 'sensitive data' for the purposes of the legislation. It can only be processed for certain specified reasons set out in the Act.

For more information, see guidance from the Information Commissioner at <http://www.informationcommissioner.gov.uk/>

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Introduction - Overview of gender identity and gender reassignment definitions and the most common journey route through gender reassignment process

The terminology we use to communicate is very important to enable equality of opportunity and creating a respectful culture towards each other. The following definitions are some of those that are commonly used with gender identity and gender reassignment.

The term **gender identity** refers to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth. It includes the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.¹

The terms **transgender** and **trans** are both used to refer to a diverse range of people who find their gender identity does not fully correspond with the sex they were assigned at birth.

The term **transsexual** is used to refer specifically to the sub-set of trans people who share the protected characteristic of gender reassignment. A person has the protected characteristic of **gender reassignment** if the person 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.² Gender reassignment does not need to involve any medical supervision or surgical procedures; it could simply involve a permanent change of the social gender role in which the person lives their life, (for example through a permanent change of name and address).

When considering appropriate prisoner management decisions relating to gender identity and gender reassignment, it can be helpful to particularly consider three key groupings of trans people who are likely to have different needs and issues:

- **trans men: female-to-male (FTM) transsexual people who have started living permanently as men** as part of a process of gender reassignment. They may or may not have undergone any genital surgery.
- **trans women: male-to-female (MTF) transsexual people who have started living permanently as women** as part of a process of gender reassignment. They may or may not have undergone any genital surgery.
- **non-reassigned trans people: transgender people who have not permanently changed the gender in which they live.** They may have proposed to undergo future gender reassignment but at present are still continuing to live predominantly as the gender/sex they were assigned at birth. Additionally, this group can also potentially include:
 - **transvestite/cross-dressing people** who occasionally wear items of clothing traditionally associated with the other gender without proposing to undergo gender reassignment,

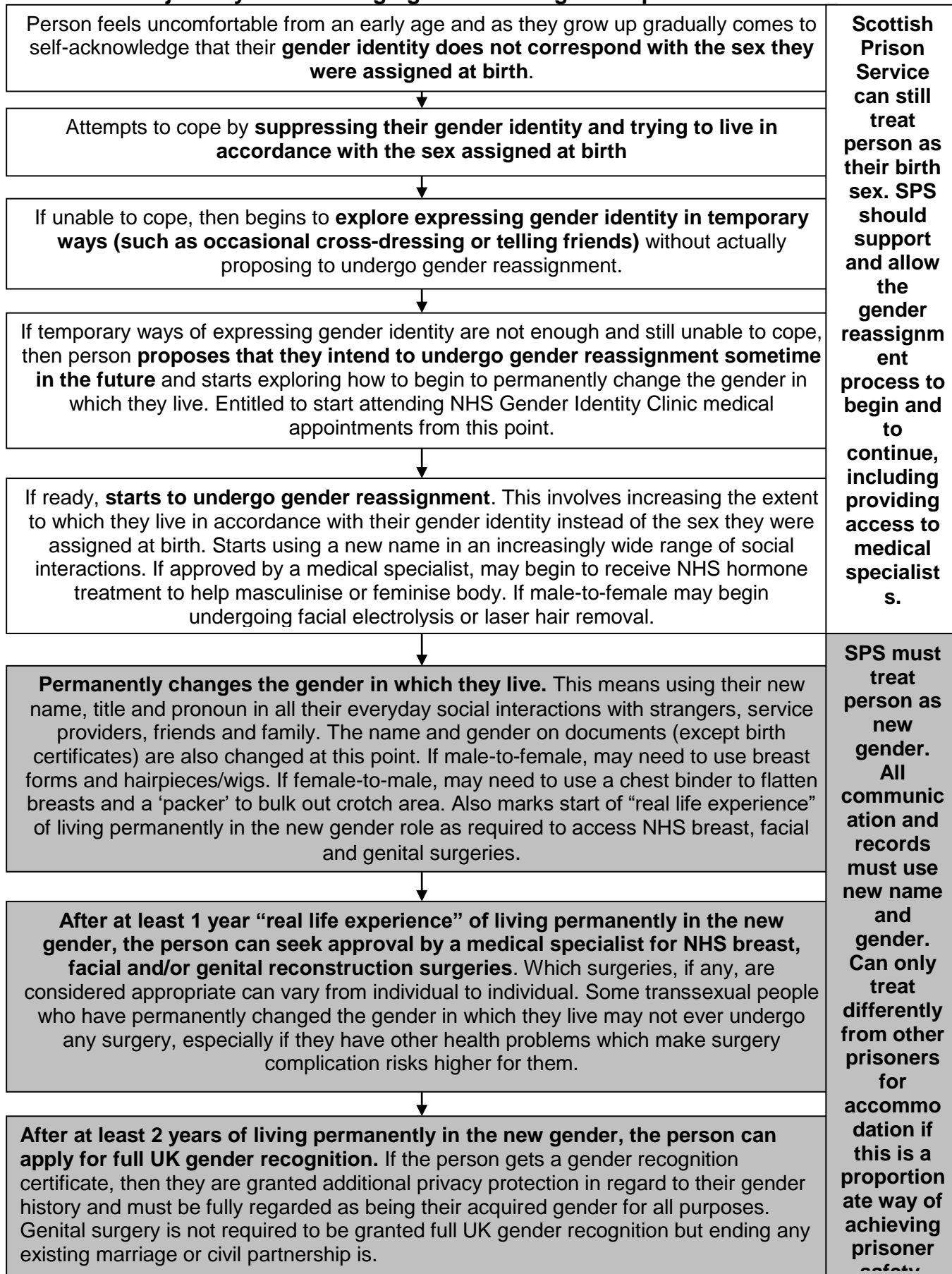
¹ Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity <http://www.yogyakartaprinciples.org>

² Equality Act 2010

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- **gender variant people** who have highly complex gender identities and reject identifying clearly as either men or women,
- **intersex people** who have been born with aspects of their chromosomes, internal reproductive systems or external genitals which are not clearly male or female.

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Most common journey route through gender reassignment process:

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INFORMATION SHARING

This section set out the prisoner's and SPS's rights and responsibilities in relation to information sharing with other relevant agencies and organisations.

1 Information Sharing - Liaison between different service providers within criminal justice system on information about the prisoner's identity:

All prisoners have the right to safety, dignity and privacy.

Where there is a perceived conflict between the right to privacy about prior gender reassignment and the right to safety of the prisoner, ensuring the prisoner's safety should take precedence.

The prisoner has a right to expect that information about their gender reassignment will only be shared between service providers in a manner which is fair and proportionate to achieve the legitimate aims of ensuring the safety and dignity of the prisoner and the safe operation of the service more generally.

Information about a prisoner's gender reassignment must be handled very carefully and in full compliance with data protection standards because it is highly sensitive information with serious potential safety and security consequences. It is particularly important that it is not revealed by service providers either deliberately or accidentally to other prisoners without the permission of the transgender prisoner.

Where a prisoner who has received additional privacy rights under the Gender Recognition Act 2004 refuses to give permission to share information about their gender reassignment history with a third party but the information needs to be shared to prevent or investigate a crime then the information can be shared despite the prisoner's objection. Where the purpose of the information sharing is for risk assessment purposes then the sharing of anonymised information can be carried out to enable risk assessment in situations where there is no prevention of crime rationale.

The prisoner has the right to know what information about their gender identity and gender reassignment is being shared between different service providers within the criminal justice system.

The prisoner has the right to check the accuracy of the information which is being proposed to be shared between different service providers within the criminal justice system. The prisoner has a right to expect the information which is held and shared about them to be accurate and up-to-date.

If the prisoner believes that the information which is to be shared is not accurate information about them, then their concerns must be seriously considered and any mistakes or out-of-date information quickly corrected and updated.

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The related responsibility of the prisoner is to promptly and accurately notify service providers of any changes to their circumstances which may require the information held about them to be updated.

2 Information Sharing - Prior to reception in establishment

Transgender people who are facing the potential of being remanded or sentenced to establishment custody have the right to expect the Scottish Prison Service, the Scottish Court Service, the Police and other service providers to engage effectively with each other to ensure consistency in upholding gender identity and gender reassignment equality and rights.

Where other service providers are aware that a transgender person may potentially require to be received into establishment, notification should be given to the Scottish Prison Service by the other service providers at the earliest possible opportunity so that coordinated work can be undertaken to ensure appropriate consistency of care for the transgender person. A member of the local or Headquarters Scottish Prison Service Headquarters Equality and Diversity Team and the Contract Team for the Private Establishments should be notified at the earliest possible opportunity. Where the Scottish Prison Service or other service providers anticipate that a transgender person may need to be received into a particular establishment then the Governor of the establishment concerned should also be notified at the earliest possible opportunity.

Coordinated work between different service providers prior to reception of a transgender person into establishment, should be undertaken with the aim of addressing:

- Consistency in respecting the transgender person's gender identity, name, title and pronoun use.
- Consistency in provision of any medical assistance required, such as access to hormone medications and additional property in use (for example, hair-pieces, make-up, gendered clothing and prosthetics).
- Health and social care needs: especially relating to mental health issues, potential fears about safety, privacy and dignity within establishment custody and ongoing or anticipated gender reassignment medical needs (such as those relating to hormones or surgery)
- Risk assessments for the safety of the prisoner and others

The related responsibility of the potential future prisoner is to promptly and accurately notify service providers prior to reception in establishment about their gender identity and gender reassignment status, their current health and social care needs (including required access to ongoing gender reassignment medical treatment and additional property in use), and any potential fears about safety, privacy and dignity within establishment custody. If the potential future prisoner does not notify this information to any service providers prior to reception in establishment then the risk of incorrect initial establishment allocation, incorrect initial name and pronoun use and delays in arranging specialist medical assistance will be increased.

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3 Information Sharing - Transportation between establishments and/or courts:

The prisoner has a right to expect that only the information which is strictly necessary for ensuring safety and dignity during transportation between s and/or courts is shared with subcontracted transportation providers. The gender reassignment related information to be shared should usually be limited to:

- The current name, title and gender pronoun used by the prisoner.
- The current gender of staff that should search the prisoner.
- Any medication or additional property in use which the prisoner needs access to during transportation (medication which is not needed during the transportation period does not need to be notified to the sub-contracted transportation provider).
- The extent to which the prisoner needs protection from other prisoners during transportation.

The Scottish Prison Service expects all its subcontractors to ensure that full compliance with data protection standards is maintained at all times and that information about a prisoner's gender reassignment is handled very carefully as highly sensitive information.

The Scottish Prison Service expects all its subcontractors to follow its instructions and policy regarding gender identity and gender reassignment equality, including specific instructions about how to refer to the gender of particular individual prisoners, the gender of staff to search particular prisoners and how to manage any safety concerns for particular prisoners.

The prisoner has the right to know what information about their gender identity and gender reassignment is being shared between the Scottish Prison Service and its sub-contractors.

The prisoner has the right to check the accuracy of the information which is being proposed to be shared between the Scottish Prison Service and its sub-contractors. The prisoner has a right to expect the information which is held and shared about them to be accurate and up-to-date.

If the prisoner believes that the information which is to be shared is not accurate information about them, then their concerns must be seriously considered and any mistakes or out-of-date information quickly corrected and updated.

The related responsibility of the prisoner is to promptly and accurately notify the Scottish Prison Service of any changes to their circumstances which may require the information shared to sub-contractors about them to be updated.

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SPS PROCEDURES

ESTABLISHING AND CONFIRMING THE PRISONER'S GENDER

1 Establishing and confirming a prisoner's gender at initial reception:

At the time of initial reception of a prisoner, Scottish Prison Service reception staff must clarify that the name and gender details of the warrant are correct.

Where staff are uncertain about the gender identity and gender reassignment status of any prisoner, they are entitled to sensitively ask the prisoner to clarify in private:

- how they self-identity,
- which gender they are living in,
- whether they have formally changed their name, title and/or gender on any personal documents (such as their bank card, drivers licence, DWP benefits book, NHS card, etc) and
- whether they have received any medical gender reassignment treatments (such as assessment by a gender identity clinic specialist, hormone treatment or any surgeries).

Effort must be made to try to establish the current gender in which the prisoner is living. This should include

- checking any personal paperwork the prisoner has in their possession,
- checking how the prisoner was identified by the police and courts, and
- attempting to contact any other agencies as requested by the prisoner, such as a medical provider or support worker.

If any aspect of the prisoner's appearance, behaviour or statements gives cause for uncertainty about the correctness of the gender recorded on the warrant, or the prisoners is perceived as transgender or potentially has the protected characteristic of gender reassignment, then the following important steps must be taken:

- The phrase: **“placed on protection status due to perceived gender identity or gender reassignment status”** must be recorded within the prisoner's SPS PR2 record under “Risk and Conditions” section in “Protection” recorded in the “Other” section and relevant information placed in “Notebook”
- The reception staff must notify a member of the establishment's senior management team (who in turn must also notify a member of the Scottish Prison Service local or Headquarters Equality and Diversity team and the Contract Team for the Private Establishments) that **“reception staff have placed a new prisoner on protection status due to perceived gender identity or gender reassignment status”**.

Records must be made and kept of any information successfully gathered about:

- the name, title and gender self-identified by the prisoner and which gender they want to be searched by,

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- any medical gender reassignment treatment they have undergone or are currently undergoing,
- whether the prisoner has permanently changed the gender in which they live and, if so, how long ago this permanent change took place.

The name, title and pronouns self-identified by the prisoner should be used in all verbal communication with and about the prisoner, even where these do not correspond with the details recorded on the warrant. Written communication can be left as per the details recorded on the warrant until full clarification of the prisoner's gender is established at a gender reassignment case management conference held within seven days of reception in establishment.

It is the prisoner's responsibility to help provide the Scottish Prison Service with evidence confirming that they have permanently changed the gender in which they live and how long ago this permanent change took place. The Scottish Prison Service recognises that prisoners can often be in crisis at the time of reception into establishment and will therefore only require one source of evidence to establish that a prisoner has changed their gender. Some examples of possible evidence are:

- a full or provisional Driver's Licence;
- a Passport;
- a Department of Work & Pensions or Inland Revenue letter;
- a Statutory Declaration (or a Deed Poll) for their change of name;
- a wage slip or P60;
- a bank statement or utility bill;
- a letter, fax or statement from their employer, educational , social worker, lawyer, doctor or any other professional person to whom they are known, confirming the prisoner has permanently changed the gender in which they live.

The individual's birth certificate is the only personal documentation which cannot be immediately updated when the individual permanently changes the gender in which they live. All other personal documents, such as a UK driving licence, a UK passport, employment records, NHS medical records, etc can all be updated immediately to show the new name and gender when the individual starts to live permanently in their new social gender role.

2 Confirming additional privacy and gender recognition rights under the Gender Recognition Act 2004

Two years after a transsexual person has permanently changed the gender in which they live they can opt to apply for full UK gender recognition under the Gender Recognition Act 2004. They are not obliged to apply for gender recognition, it is meant as a way of providing additional privacy rights and of ensuring there can be absolutely no remaining legal doubt about the individual's acquired gender for any purpose, especially in regard to the right to enter into a marriage.

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To be granted full UK gender recognition, a transsexual person is required to evidence to the UK Gender Recognition Panel that the following are true:

- that it has been over two years since they permanently changed the gender in which they live and they intend to continue to live as their acquired gender for the rest of their life;
- that they are not in an existing marriage or civil partnership;
- that they have previously been diagnosed as transsexual / experiencing gender dysphoria by a medical doctor who is a specialist in regard to gender reassignment.

If a *transsexual person has a gender recognition certificate, then they are granted additional privacy protection in regard to their gender history and must be fully regarded as being their acquired gender for all purposes. Genital surgery is not required to be granted full UK gender recognition.*

If a prisoner confirms that they have a gender recognition certificate, detailed further information is available on: www.gpr.gov.uk

If a prisoner chooses to provide evidence that they have received full legal gender recognition of their permanent change of gender, they can do so either by showing their new birth certificate with their new acquired legal gender on it, or by showing their gender recognition certificate.

If such evidence is provided by the prisoner, then it is particularly vital that Scottish Prison Service treat them as their acquired legal gender for all purposes, including establishment allocation and searching, and also that Scottish Prison Service fully uphold their additional rights to privacy about their previous gender history as provided under the Gender Recognition Act 2004. In particular, the Gender Recognition Act 2004 restricts the circumstances in which it is lawful to disclose a prisoner's gender history to a third party without the prisoner's permission.

3 Prisoner name and pronoun use during verbal communication

The name and associated title (*Mr* or *Ms*) and pronoun (*he* or *she*) by which a prisoner genuinely self-identifies should be used by SPS during verbal communication with, or about, the prisoner.

If the prisoner self-identifies as neither male nor female then service providers should seek where possible to avoid using any titles (*Mr.* or *Ms*) and use the gender-neutral pronoun *they* rather than *he* or *she* during verbal communication with, or about, the prisoner.

The related responsibility of the prisoner is to appropriately inform SPS in a clear and consistent manner of the name and pronoun by which the prisoner genuinely self-identifies.

If the prisoner does not inform SPS appropriately about the name and pronoun by which the prisoner genuinely self-identifies (for example, if the prisoner repeatedly gives inconsistent answers or falsely claims to self-identify in an unusual manner

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with the aim of causing disruption to service provision), then the SPS should use the existing formally recorded legal name and associated title and pronoun during verbal communication with, or about, the prisoner.

4 Prisoner name and pronoun use on paper and electronic records

All prisoners have the right to change their formal legal name and to have paper and electronic records updated to show any such change of name.

Where a change of name is not part of a process of gender reassignment (for example, the name is changed simply to an androgynous name and the prisoner is not trying to permanently change the gender in which they live), then the process should be managed in exactly the same way as for any other change of name.

Where it is established that a prisoner has changed their name due to gender reassignment and the prisoner has permanently changed the gender in which they live, then the prisoner has the right to not only change their name on Scottish Prison Service paper and electronic records but also to change the associated title (*Mr.* or *Ms*) and pronoun (*he* or *she*).

In such situations, a new PR2 record should be created in the new name and gender for the prisoner and the prisoner's original PR2 record should be deactivated. Any information required from the previous record should be entered onto the new PR2 record in the "Incident and Intelligence" section marked as an "incident" referring to "other" using the incident descriptor "medical" in order to maintain future privacy about the prisoners' gender reassignment history

Prisoners with the protected characteristic of gender reassignment have the right to privacy about their gender reassignment history. Therefore the revelation of different gender previous names to third parties should be avoided unless there is a significant unavoidable need to reveal this private personal data as part of investigating or preventing crime or as part of court proceedings. For example, appropriate recording of prior criminal convictions under previous names may make limited revelation to third parties unavoidable.

If the prisoner is currently using more than one formal name and has some paper and electronic records in more than one name, then the prisoner should be asked which name is the name they use predominantly in their everyday life and the other less frequently used name(s) then entered as "also known as" names. It is perfectly legal for anyone to use more than one formal name so long as they are not doing so for the purpose of committing fraud.

The related responsibility of the prisoner is to formally request any change of name in a clear and appropriate manner. Where the change of name is part of a process of gender reassignment the prisoner should state this clearly as part of the request. The current formal name of a prisoner (where a prisoner has changed their name prior to imprisonment) can be evidenced by the prisoner in a variety of ways including:

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- a statutory declaration or deed poll detailing the change of name;
- valid identity documents which have already been updated to show the changed name;
- or a letter from a doctor, social worker, lawyer or other service provider or professional person confirming the name by which the prisoner is known to them.

If a prisoner does not provide appropriate evidence of a change of name, then the SPS should continue using the existing formally recorded legal name and associated gender title and pronoun on paper and electronic records.

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INITIAL PRISONER ADMISSION PROCESSES

1 Establishment allocation:

All prisoners have the right to dignity and to respect for their gender identity.

In order to minimise distress for the prisoner and improve ease of reception into establishment, it is important to determine as early as possible any relevant information about the prisoner's gender reassignment circumstances, including the prisoner's views about establishment allocation. The Scottish Prison Service is dependent upon the assistance of the Scottish Court Service and other criminal justice service providers in this regard.

If a prisoner is proposing to undergo gender reassignment or is in the early stages of undergoing gender reassignment but the prisoner has not yet permanently changed the gender in which they live, the default initial establishment allocation upon remand or conviction should be in accordance with the sex assigned at birth

If the prisoner can evidence that they have permanently changed the gender in which they live then the default initial establishment allocation upon remand or conviction should be in accordance with the new gender in which they are permanently living.

Where a prisoner has some aspects of their physical appearance which does not fully conform to conventional expectation for the gender in which they are permanently living, this can pose a risk to their safety, dignity and privacy in establishment. The following is designed to try to minimise those risks:

- Prisoner Records (PR2)
All prisoners perceived as transgender or as potentially having the protected characteristic of gender reassignment must be initially classified with a protection status and a "placed on protection status due to perceived gender identity or gender reassignment status" must be recorded within the prisoner's SPS PR2 record under "Risk and Conditions" section in "Protection" recorded in the "Other" section and relevant information placed in "Notebook" A gender reassignment case conference can subsequently decide that a protection status is no longer required (for example in cases where the prisoner has completed gender reassignment and has been successfully full integrated into an appropriate gender establishment).
- Cell sharing risk assessment
Where the prisoner is a new prisoner, they must be placed in a single cell until such time as a gender reassignment case management conference decides that the prisoner is able to share a cell without serious safety, dignity or privacy concerns.

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- ACT 2 Care

The key aims of ACT 2 Care are

- to assume a shared responsibility for the care of those at 'risk' of self harm or suicide,
- to work together to provide a person centred caring environment based on individual assessed need where prisoners who are in distress can ask for help to avert a crisis and
- to identify and offer assistance in advance, during and after a crisis.

The needs of prisoners perceived as transgender or as potentially having the protected characteristic of gender reassignment should also be taken into account when following the ACT 2 Care procedures.

- Female-to-male trans men who have not undergone genital surgery

If a prisoner who is undergoing, or has undergone, gender reassignment from female-to-male, still has female genitals and as a result requests to be allocated to a female establishment due to concerns about sexual assault risk in a male establishment, this request should be urgently responded to. Where such a prisoner is living permanently as a man but is placed in a female establishment for safety he must still be allowed to continue living as a man and all verbal and written communication with him and about him must refer to him using male pronouns, name and title.

- Male-to-female trans women who have not undergone genital surgery

If a prisoner who is undergoing, or has undergone, gender reassignment from male-to-female, still has male genitals and as a result requests to be allocated to a male establishment due to concerns about sexual assault risk in a female establishment, this request should be urgently responded to. Where such a prisoner is living permanently as a woman but is placed in a male establishment for safety she must still be allowed to continue living as a woman and all verbal and written communication with her and about her must refer to her using female pronouns, name and title.

Where a prisoner has permanently changed the gender in which they live so that they are living full-time in their new gender role, this can be evidenced through the name and gender on their personal documents such as drivers licence, passport, medical records, etc or through a statutory declaration of change of name or a letter from their doctor, social worker or other service provider. If such a prisoner is requesting to be allocated to an establishment in accordance with their new gender then this request should be responded to positively unless there are serious safety risks which are unable to be resolved. Only exceptional safety concerns should ever lead to consideration of possibly placing a prisoner in an establishment which does not accord with the gender in which they are permanently living.

A prisoner is considered to have permanently changed the gender in which they live if they have begun using their new name, title and pronouns in their everyday social interactions with strangers, service providers, friends and family.

If there is any evidence that the prisoner has permanently changed the gender in which they live then the default initial establishment allocation

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should be in accordance with the new gender in which they are permanently living, even if some aspects of their physical body do not fully conform to conventional expectations for that gender.

If the prisoner evidences that they have been living permanently in their new gender role for over two years (and hence would fulfil the key requirement for UK gender recognition under the Gender Recognition Act 2004) then the prisoner's request to be allocated to an establishment in accordance with their new/acquired gender should not be refused.

Establishment allocation in accordance with the new gender is usually relatively problem free where a prisoner has already undergone gender reassignment and has been fortunate to end up with a physical appearance which closely matches the new gender in which they are permanently living. However, it is vital in such cases to ensure that privacy is carefully maintained about the prisoner's gender reassignment history so that other prisoners do not become aware.

The related responsibilities of the prisoner are to promptly and accurately notify the Scottish Prison Service about their personal views and concerns about establishment allocation and to provide evidence if they have permanently changed the gender in which they live.

2 Searching

In general prisoners should be searched in accordance with the gender in which they are permanently living, even if some aspects of their physical body do not fully conform to conventional expectations for that gender.

Where the gender in which the prisoner is permanently living has not yet been clarified, the prisoner must be asked which gender they wish to be searched by and their answer recorded and the search conducted accordingly.

Any physical variation encountered due to gender reassignment during searching should be responded to in a similar professional and respectful manner as per any physical variation encountered due to for example disability during searching.

Where there are any difficulties experienced, or concerns expressed, by the prisoner or by staff in regard to searching a prisoner with the protected characteristic of gender reassignment, then a gender reassignment case management conference should be convened to review the full details of the case and decide how to conduct future searches.

Often difficulties can be resolved through the provision of specific information and training to staff about gender identity and gender reassignment so the case conference should explore such provision. These difficulties should be recorded in

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writing and the local or Headquarters Equality and Diversity Manager and Establishment Governor should both be notified at the earliest possible opportunity.

Searching is usually problem free where a prisoner has already undergone gender reassignment and has been fortunate to end up with a physical appearance which closely matches the new gender in which they are permanently living. However, staff training is vitally important to ensure appropriate searching can be carried out where a prisoner is living permanently in their new gender but still has some aspects of their physical body which do not fully conform to conventional expectation for that gender. It is important to remember that it is not the prisoner's fault if their physical body does not fully conform to conventional expectations and the prisoner is highly likely to experience distress about any physical variation.

There is no legal requirement for people to undergo genital surgery as part of their process of gender reassignment and therefore the appearance of someone's genitals cannot be used as a reason not to recognise the gender in which they are permanently living.

All prisoners must be searched in accordance to SPS security standards and professionalism. Prisoners have the right to expect any physical variation encountered due to gender reassignment during searching to be responded to by staff in a similar professional and respectful manner as per any physical variation encountered due to, for example, disability during searching.

The related responsibilities of the prisoner are:

- To promptly and accurately notify the Scottish Prison Service about any concerns they have about being searched and about any physical variations which are likely to be encountered during searching.
- To provide evidence if they have permanently changed the gender in which they live.
- To avoid provocative, disruptive or offensive language or behaviour towards Scottish Prison Service staff during searching.

3 Access to existing medication and medical equipment

Regardless of any establishment allocation decisions, all prisoners with the protected characteristic of gender reassignment must be permitted to access

- gender reassignment specialist medical assessment if they request such assessment.
- any new or ongoing gender reassignment medical assistance, such as hormone treatment or surgery, which has been approved by a medical specialist.

Prisoners have the right to access to their existing medication and medical equipment, including medication and equipment relating to gender reassignment. Only in exceptional circumstances, such as acute suicide or self-harm risk, should access to such items be temporarily restricted in any way.

All prisoners with the protected characteristic of gender reassignment should be permitted to access

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- any existing gender reassignment medication (such as hormone tablets, injections and topical gels) providing that their GP or another medical specialist has confirmed the prescription details. Only in exceptional circumstances, such as new serious contra-indications or side-effects being identified by establishment medical staff, should any existing gender reassignment medication be stopped. If any existing gender reassignment hormone medication is believed to need to be stopped or changed, the prisoner should be permitted to access specialist medical advice from the Sandyford Gender Identity Clinic and from an endocrinologist.
- any existing gender reassignment medical equipment (such as prosthetics, hair-pieces, chest-binders and dilators) which they have within their possession upon reception into establishment. Only in exceptional circumstances, such as acute suicide or self-harm risk, should access to such items be temporarily restricted in any way. Even where suicide or self-harm risk temporarily prevents unsupervised access to certain gender reassignment medical equipment, access should still be provided while the prisoner is accompanied by Scottish Prison Service staff.

Where a prisoner requests access to existing medical equipment which they do not already have within their possession upon reception into establishment, reasonable steps should be taken to arrange for either delivery of the requested medical equipment from home by their friends, family or another service provider or the purchase of replacement medical equipment where their GP or another medical specialist or service provider has confirmed the necessity of the equipment.

The related responsibilities of the prisoner are to promptly and accurately notify the Scottish Prison Service about their existing medication and medical equipment and to give permission for the Scottish Prison Service to contact their GP or another medical specialist or service provider to confirm prescription details and other relevant information.

4 Initial Gender Reassignment case management conference

A gender reassignment case management conference must be carried out within seven days of reception of a new prisoner by an establishment. This could include

- Reviewing longer-term cell sharing suitability for the prisoner.
- A full risk assessment within the gender reassignment case management conference should be carried out prior to a new prisoner who is perceived to have the protected characteristic of gender reassignment being placed into the general establishment population.
- The case management conference must make and record clear decisions for the initial and ongoing needs of the prisoner
- The case conference must address any searching difficulties or concerns expressed by the prisoner or by staff. The case conference must record a clear decision for managing ongoing searching of the prisoner and determine strategies, such as additional training provision, to try to resolve any searching difficulties while still respecting the gender identity of the prisoner

5 Accommodation allocation

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All prisoners have the right to safety, dignity and privacy. Accommodation provided to prisoners must adequately address these rights.

The initial period following reception of a new prisoner by an establishment represents a particularly high risk period in terms of safety as the Scottish Prison Service may only have limited information about the prisoner’s individual needs and circumstances. Therefore particular caution is needed in terms of initial accommodation decisions for prisoners who may have the protected characteristic of gender reassignment

Initially the following can be considered for immediate accommodation needs:

- A prisoner who may have the protected characteristic of gender reassignment should be placed in single cell accommodation prior to a gender reassignment case management conference being held to consider the prisoner’s individual needs and circumstances. A full risk assessment within a gender reassignment case conference must be carried out within seven days of reception of a new prisoner by an establishment
- Where suitable First Night Accommodation Facilities exist, a prisoner known to have the protected characteristic of gender reassignment may remain in the First Night Accommodation Facilities for up to seven days rather than just one night to enable an initial case conference to decide upon longer-term accommodation.
- Alternatively, medical wing or protective custody options may be utilised for up to seven days prior to the initial case conference.

A prisoner who may have the protected characteristic of gender reassignment must NOT be placed into the general establishment population prior to a gender reassignment case management conference being held to consider the prisoner’s individual needs and circumstances.

A prisoner who may have the protected characteristic of gender reassignment **should be placed in single cell accommodation prior to a gender reassignment case conference being held** to consider the prisoner’s individual needs and circumstances.

Segregation of a prisoner

Long-term segregation for any prisoner is likely to have serious mental health consequences on the prisoner and should be avoided wherever possible. Where any period of segregation is necessary to ensure a prisoner’s safety due to their gender reassignment, it is vital that the period of segregation is kept as short as possible, that there is no withdrawal of establishment privileges and that psychological support, recreational activities and educational opportunities are provided to the segregated prisoner.

Segregation periods due to gender reassignment status are not punishments and therefore all possible efforts must be made to minimise the potential negative psychological impact of such segregation. Segregation would be on the grounds of the assessment of risk posed to (or by) the prisoner, not because of their gender reassignment and therefore no different to any other prisoner in segregation (excluding those awarded cellular confinement in the orderly room) in that defensible decisions have to be recorded and the segregation authorised by a

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senior manager and Prisons Directorate if for more than 72 hours – no request for segregation for the reason ‘the prisoner has gender reassignment status’ should ever be authorised without supporting justification. The case management information must be updated weekly where a prisoners is held out of association.

6 Access to assessment by gender reassignment medical specialist

Prisoners have the right to access to NHS medical assessment and treatment.

A prisoner who may have the protected characteristic of gender reassignment should receive a gender reassignment management case conference within seven days of reception of the prisoner by an establishment. Prior to the gender reassignment case conference, the prisoner should be asked if they have previously been assessed by a gender reassignment medical specialist and, if the prisoner gives permission, the relevant medical information relating to any previous assessment should be requested from the specialist and/or from the prisoner’s GP so that it can be taken into account during the first case conference.

In addition, prior to the first gender reassignment case conference, the prisoner should be offered access to assessment by a gender reassignment medical specialist (see Part C of this document for contact information for the Scotland-wide Sandyford Gender Identity Clinic). Where the prisoner agrees to specialist assessment and the assessment is able to be arranged in time, the case management conference should include the medical opinion of the gender reassignment medical specialist within its consideration of the prisoner’s individual needs and circumstances. If the prisoner agrees to specialist assessment but this is unable to be arranged prior to the first case conference, then any existing medical information provided by the prisoner’s GP or other medical specialist should be considered and a further case review conference convened as soon as a new assessment by the gender reassignment medical specialist has taken place.

If the prisoner refuses to access the offered assessment by a gender reassignment medical specialist, the prisoner should be informed that it will not be possible to progress any further access to gender reassignment medical assistance such as hormones or surgery without agreeing to such assessment. Prisoners still have the right to change their name, title and social gender role at any time without requiring any specialist assessment. However, a full gender recognition certificate cannot be received without submitting a specialist medical assessment report.

A prisoner who initially refuses to access the offered assessment by a gender reassignment medical specialist has the right to change their mind and request assessment at any later date. Whenever a prisoner requests such specialist assessment, the necessary arrangements to facilitate this should be undertaken promptly.

The related responsibilities of the prisoner are:

- To promptly and accurately notify the Scottish Prison Service about any previous assessment they have received from a gender reassignment medical specialist.

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- To give permission for the Scottish Prison Service to contact their gender reassignment medical specialist and/or their GP to confirm relevant medical assessment information.
- To engage in a new assessment by a gender reassignment medical specialist and give permission for the gender reassignment medical specialist to provide information to the case conference (if the prisoner wishes to continue a medical process of gender reassignment while in establishment).
- To submit any request for assessment by a gender reassignment medical specialist to either their Establishment Healthcare Team, their Establishment Governor, or to the Scottish Prison Service local or Headquarters Equality and Diversity Team.

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EXISTING PRISONER BEGINNING GENDER REASSIGNMENT PROCESS

1 Initial discussion with prisoner's to determine prisoner needs

Where an existing prisoner informs the SPS of their intention to undergo gender reassignment, an initial discussion should be arranged promptly to sensitively enable the prisoner to clarify in private:

- how they self-identity their gender,
- how they feel about potentially undergoing gender reassignment while still in prison,
- any concerns they have about their current and future safety, dignity and privacy,
- whether they are seeking to formally change their name, title and/or gender on personal documents (such as their bank card, drivers licence, DWP benefits book, NHS card, etc) and
- whether they are seeking to undergo any particular medical gender reassignment treatments (such as assessment by a gender identity clinic specialist, hormone treatment or any surgeries).

The information provided by the prisoner during this initial discussion should be recorded on PR2 ready for consideration within a gender reassignment case management conference for the prisoner. However, it must also be recognised that at the time of the initial discussion the prisoner may be in significant distress and/or not yet be sure exactly how they self-identity or what their future gender reassignment plans or concerns are. Therefore the prisoner should be given subsequent opportunities to further discuss these matters and any new information provided by the prisoner should be immediately added to PR2.

The related responsibility of the prisoner is:

- To submit a request for initial discussion about possible future gender reassignment to either their Establishment Healthcare Team, their Establishment Governor, or to the Scottish Prison Service local or Headquarters Equality and Diversity Team.

2 Initial access to assessment by gender reassignment medical specialist

An existing prisoner has the right to change their name, title and social gender role at any time regardless of whether or not they have undergone any gender reassignment medical specialist assessment. However, in order to assist the prisoner to make fully informed decisions about gender reassignment and to provide expert medical specialist input to aid the SPS in case management decisions, any existing prisoner proposing to undergo gender reassignment should be promptly offered access to assessment by a gender reassignment medical specialist (via the Sandyford NHS Gender Identity Clinic).

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The prisoner should be informed that it will not be possible to progress any access to gender reassignment medical assistance such as hormones or surgery without agreeing to gender reassignment medical specialist assessment.

A prisoner who initially refuses to access the offered assessment by a gender reassignment medical specialist has the right to change their mind and request assessment at any later date. Whenever a prisoner requests such specialist assessment, the necessary arrangements to facilitate this should be undertaken promptly.

The related responsibilities of the prisoner are:

- To promptly and accurately notify the Scottish Prison Service about any previous assessment they have recently received from a gender reassignment medical specialist (for example, while on a period of home leave).
- To give permission for the Scottish Prison Service to contact the Sandyford Gender Identity Clinic to make arrangements for gender reassignment medical specialist assessment.
- To engage in the assessment by a gender reassignment medical specialist and give permission for the gender reassignment medical specialist to provide information to the case conference (if the prisoner is seeking to begin a medical process of gender reassignment while in establishment).
- To submit any request for assessment by a gender reassignment medical specialist to either their Establishment Healthcare Team, their Establishment Governor, or to the Scottish Prison Service local or Headquarters Equality and Diversity Team.

3 Initial access to medication and medical equipment

Where an existing prisoner requests initial access to medication or medical equipment to assist a process of gender reassignment, confirmation of the need for the medication or medical equipment should be promptly sought from a gender reassignment medical specialist. Once confirmed as approved by the gender reassignment medical specialist, reasonable steps should be taken to arrange for prompt access to the medication and medical equipment. Sometimes certain medical equipment (such as hairpieces/wigs, chest binders and prosthetics) are restricted in terms of the quality available through NHS suppliers. If the prisoner is able to self-finance a better quality piece of equipment from the private sector, they should not be unreasonably prevented from doing so.

Regardless of any establishment allocation decisions, prisoners have the right to access to confirmed medication and equipment relating to gender reassignment. Only in exceptional circumstances, such as acute suicide or self-harm risk, should access to such items be temporarily restricted in any way.

Only in exceptional circumstances, such as new serious contra-indications or side-effects being identified by establishment medical staff, should any confirmed gender reassignment medication be stopped. If any existing gender reassignment hormone

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medication is believed to need to be stopped or changed, the prisoner should be permitted to access specialist medical advice from the Sandyford Gender Identity Clinic and from an endocrinologist.

Only in exceptional circumstances, such as acute suicide or self-harm risk, should access to confirmed gender reassignment medical equipment (such as prosthetics, hair-pieces, chest-binders and dilators) be temporarily restricted in any way. Even where suicide or self-harm risk temporarily prevents unsupervised access to certain gender reassignment medical equipment, access should still be provided while the prisoner is accompanied by Scottish Prison Service staff.

The related responsibilities of the prisoner are to promptly and accurately notify the Scottish Prison Service of any new requests for gender reassignment medication and medical equipment and to give permission for the Scottish Prison Service to contact their gender reassignment medical specialist for confirmation.

4 Searching

In general prisoners should be searched in accordance with the gender in which they are permanently living, even if some aspects of their physical body do not fully conform to conventional expectations for that gender.

Any physical variation encountered due to gender reassignment during searching should be responded to in a similar professional and respectful manner as per any physical variation encountered due to for example disability during searching.

Where an existing prisoner reaches the stage of permanently changing the gender in which they are living, a gender reassignment case conference should be convened to formally determine how to manage effectively the process of changing over to the new gender for the purpose of searching.

5 Accommodation allocation

Where an existing prisoner who is already successfully sharing a cell begins a process of gender reassignment, then the prisoner may remain sharing the cell so long as no concerns have been raised by staff or by either of the sharing prisoners. However, a gender reassignment case management conference must still be held to review longer-term cell sharing suitability.

Where an existing prisoner reaches the stage of permanently changing the gender in which they are living, a gender reassignment case conference should be convened to formally determine the appropriateness of their current accommodation allocation and how to manage effectively any necessary transfer.

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ONGOING CASE MANAGEMENT

The prisoner's ongoing gender reassignment case management should include an initial case conference within seven days of reception to establishment and then quarterly gender reassignment case review conferences.

If the prisoner's circumstances change significantly then a gender reassignment case review conference can be held sooner than quarterly if required.

1 Aim and purpose of the gender reassignment management case conferences

Gender reassignment case management conferences can be integrated into other case management conferences being held in regard to the prisoner but must still address the issues given below and include the people specified during the gender reassignment related discussions and decision-making. **Consideration must be given to the prisoner's rights measured against perceived threats to the prisoner from others and to others from them.**

The gender reassignment case conferences should examine all the circumstances of the particular case, including the prisoner's viewpoint and wishes, take into account the expert opinion of any gender reassignment medical specialist who treating the prisoner, and conduct full risk assessments in order to make decisions about how to ensure:

- the safety, dignity and privacy of the prisoner (and others where relevant), especially in terms of accommodation and searching;
- the provision of access to gender reassignment specialist medical assessment and treatment;
- the provision of the opportunity for the prisoner to permanently change the gender in which they live.
- the provision of access to mainstream offender outcomes provision;
- the provision of access to social contact to support mental health and wellbeing;
- the provision of access to additional "property in use" necessary for gender reassignment (such as gendered clothing, wigs, make-up, prosthetics, etc).

Once the prisoner has permanently changed the gender in which they live, a gender reassignment case review conference should be convened to reconsider searching procedures and establishment allocation. It is very important that a prisoner living permanently in a new gender is treated by the Scottish Prison Service as being that new gender wherever possible and certainly for communication and records. However, it is possible to treat the prisoner differently from other prisoners in limited single sex service provision circumstances, such as for accommodation purposes, if this is a proportionate way of achieving a legitimate aim such as prisoner safety. The case conference should consider any such issues and record fully the rationale for its decisions.

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The appropriateness of transferring, to a different gender of establishment, a prisoner who has permanently changed the gender in which they live should be considered carefully in terms of the usual risk assessments and via a gender reassignment case review conference which takes into account the prisoner's viewpoint and the viewpoint of any gender reassignment medical specialist who has assessed the prisoner's gender reassignment needs.

The prisoner has the right to a copy of any reports (other than highly confidential reports of a security intelligence nature) written in preparation for the case conference and a full copy of the case conference decisions and rationale. Where reports refer to other named prisoners, these names will be blacked out. Where reports refer to named staff, these names may be blacked out where deemed necessary by the Establishment Governor.

2 People who should be at the gender reassignment case management conferences

The gender reassignment case conferences should involve the following people wherever possible:

- the prisoner concerned;
- a representative of the establishment healthcare team;
- a representative of the establishment senior management team;
- a representative of the Scottish Prison Service Equality and Diversity team;
- a gender reassignment medical specialist (if the prisoner has undergone such assessment);
- a representative of a transgender equality organisation (if the prisoner wishes);
- if required by the prisoner, an interpreter or sign language facilitator.

The prisoner has the right to be present at all gender reassignment case management conferences relating to the prisoner and have the right to raise within the case conferences any gender identity or gender reassignment equality concerns, comments or complaints they have regarding the Scottish Prison Service or any other criminal justice system service providers or sub-contractors. If the case conference is unable to resolve the concern or complaint to the prisoner's satisfaction, information should be provided to the prisoner about relevant further standard complaint procedures.

The related responsibilities of the prisoner are:

- To promptly and accurately notify the Scottish Prison Service about their preferences regarding the case conference attendance of a representative of a transgender equality organisation.
- To avoid provocative, disruptive or offensive language or behaviour towards Scottish Prison Service staff during the case conference.

3 Ongoing access to gender reassignment medical specialists and treatments

Prisoners have the right to access to NHS medical assessment and treatment.

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Decisions on the appropriateness of hormones or surgery as part of a process of gender reassignment are clinical decisions, which should be taken by doctors, specialised in the field of gender reassignment, endocrinology and/or surgery applying the same principles as would be applied in relation to people at liberty.

The fact of a person's imprisonment, and the situation in which that places them, especially if a long-term high security prisoner, may have a bearing on the exercise of that clinical judgement in that it may be more difficult for the prisoner to effectively live in their acquired gender during the early stages of their assessment and treatment.

Where a clinical need for hormones or surgery has been established, and the appropriate NHS commissioning authority has agreed funding in the case of surgery, it would be inappropriate for the Scottish Prison Service to refuse to allow the hormones or surgery to proceed for non-medical reasons. Occasionally, in cases where there are specific risk factors (to the prisoner, other prisoners/staff and/or the public), it may be appropriate for the Governor to provide a report as to the practical effects in an establishment context of any medical decisions. This should be based on risk of harm and may include providing a risk assessment – especially for high security category prisoners and those whose index offence is of a sexual or violent nature.

The World Professional Association for Transgender Health's Standards of Care can be accessed at: www.wpath.org

A prisoner who initially refuses assessment by a gender reassignment medical specialist has the right to change their mind and request assessment at any later date. Whenever a prisoner requests such specialist assessment, the necessary arrangements to facilitate this should be undertaken promptly.

The related responsibilities of the prisoner are:

- To give permission for the Scottish Prison Service to contact their gender reassignment medical specialist and/or other health service providers in order to progress medical gender reassignment treatments and funding.
- To engage in relevant assessment by medical specialists and give permission for such medical specialists to provide information to their case conferences (if the prisoner wishes to undergo a medical process of gender reassignment while in establishment).
- To submit any request for medical gender reassignment treatment provision to either their Establishment Healthcare Team, their Establishment Governor, or to the Scottish Prison Service local or Headquarters Equality and Diversity Team.

4 Ongoing access to mainstream offender outcomes provision

Prisoners have the right to access mainstream offender outcomes provision without discrimination or harassment on grounds of gender reassignment. Prisoners who have permanently changed the gender in which they live have the right to access mainstream offender outcomes provision in their new gender. **If there is a need to consider how this can be done in a safe environment this could be discussed and decisions agreed at the gender reassignment case management conference**

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Prisoners who have permanently changed the gender in which they are living have the right to receive in their new name, title and gender, any certificates, reports and references relating to mainstream offender outcomes provision. In order to provide privacy about their gender reassignment history, prisoners who have permanently changed the gender in which they are living have the right to get any existing certificates, reports and references reissued to reflect their new name, title and gender.

Prisoners have a right to expect that only the information which is strictly necessary for ensuring safety and dignity during mainstream offender outcomes provision is shared with subcontracted service providers. The gender reassignment related information to be shared should usually be limited to:

- The current name, title and gender pronoun used by the prisoner.
- The current gender of staff who should search the prisoner.
- Any medication or additional property in use which the prisoner needs access to during periods of mainstream offender outcomes provision (medication which does not need to be taken specifically during these periods does not need to be notified to the sub-contracted provider).
- The extent to which the prisoner needs protection from other prisoners during provision of mainstream offender outcomes provision.

The Scottish Prison Service expects all its subcontractors to ensure that full compliance with data protection standards is maintained at all times and that information about a prisoner's gender reassignment is handled very carefully as highly sensitive information.

The Scottish Prison Service expects all its subcontractors to follow its instructions and policy regarding gender identity and gender reassignment equality, including specific instructions about how to refer to the gender of particular individual prisoners, the gender of staff to search particular prisoners and how to manage any safety concerns for particular prisoners.

The prisoner has the right to know what information about their gender identity and gender reassignment is being shared between the Scottish Prison Service and its sub-contractors.

The prisoner has the right to check the accuracy of the information which is being proposed to be shared between the Scottish Prison Service and its sub-contractors. The prisoner has a right to expect the information which is held and shared about them to be accurate and up-to-date.

If the prisoner believes that the information which is to be shared is not accurate information about them, then their concerns must be seriously considered and any mistakes or out-of-date information quickly corrected and updated.

The related responsibility of the prisoner is to promptly and accurately notify the Scottish Prison Service of any changes to their circumstances which may require the information shared to sub-contractors about them to be updated.

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5 Ongoing access to social contact to support mental health and wellbeing

Prisoners have a right to adequate positive social contact to support mental health and wellbeing.

Staff or prisoner concerns about social contact and mental health and wellbeing should be addressed in the prisoner's gender reassignment case management conferences and clear decisions recorded. This is particularly vital for prisoners who are unable to be accommodated within the general establishment population due to safety concerns and are instead within a protective custody, medical facility or segregation accommodation unit.

Where any period of segregation is necessary to ensure the prisoner's safety this must be kept as short as possible and it is vital that greater psychological support, recreational activities and educational opportunities are provided to the segregated prisoner than would be provided if the segregation period had been for breaking establishment rules. Segregation periods due to gender reassignment status are not punishments and therefore all possible efforts must be made to minimise the potential negative psychological impact of such segregation.

Prisoners have the right to receive visits from friends or relatives without discrimination or harassment on grounds of gender reassignment from staff or other prisoners. Adaptations to standard visiting procedures should be considered where necessary to enable a more adequate level of positive social contact for prisoners with the protected characteristic of gender reassignment.

For particularly complex situations, specialist medical guidance should be sought from a gender reassignment medical specialist and specialist gender reassignment equality guidance should be sought from an equality organisation.

6 Ongoing access to additional property in use

Prisoners with the protected characteristic of gender reassignment may require access to property in use which may not be traditionally associated with their social gender role or readily available in a particular gender establishment. Suitable access to additional property in use which is necessary to support their gender reassignment process should be provided to all remand and sentenced prisoners with the protected characteristic of gender reassignment, regardless of which establishment they have been allocated to.

Access to this additional property in use should not be viewed as 'special' treatment. It is more appropriately viewed as a form of accessibility requirement. Many of the items count as medical equipment. The additional property should not be withheld unless due to suicide and self-harm concerns, which should be reviewed at the next case conference opportunity.

Additional property in use items should be reviewed and agreed at the prisoner's gender reassignment case management conferences in consultation with any gender reassignment medical specialist and the prisoner. It is important to note that

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the items required may change over time as many are dependent upon the stage of gender reassignment reached by the prisoner.

Some examples of possible additional property which may be needed is set out below but this list should not be considered to be exhaustive:

- Clothing (including underwear) in accordance with the prisoner’s gender identity
- Sanitary wear
- Shaving equipment and cream
- Hair removal cream
- Facial Cosmetics
- Binder for breasts
- Wigs and hair pieces
- Prosthetics (breast or genital forms)
- Dilation medical supplies

7 Ongoing accommodation

A transgender prisoner should only be allocated to share a cell with another prisoner if a gender reassignment case management conference has determined that this does not pose serious safety dignity or privacy concerns and through the Cell Sharing Risk Assessment process determining that cell sharing is appropriate.

It is anticipated that sharing a cell may be determined as possible where a prisoner has already undergone gender reassignment and has been fortunate to end up with a physical appearance which closely matches the new gender in which they are permanently living and has received full legal gender recognition. Sharing a cell is unlikely to be determined as possible where a prisoner still has some aspects of their physical appearance which do not fully conform to conventional expectation for the gender in which they are permanently living and/or has not received full legal gender recognition.

The gender reassignment case management conference may recommend a prisoner with the protected characteristic of gender reassignment to only share a cell with specific other prisoners, for example, with a particular named prisoner who has been established not to be a significant safety threat.

8 Ongoing searching

Any changes to how a prisoner with the protected characteristic of gender reassignment is to be searched must be determined and the decision rationale recorded fully at a gender reassignment case management conference.

Staff concerns about performing searches on such prisoners should be addressed through the provision of additional staff training and information about gender reassignment and equality requirements. There is likely to be particular staff training needs if a prisoner has significant physical variations combined with pain or mobility difficulties as a result of genital surgery complications. For particularly complex

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situations, specialist medical guidance should be sought from a gender reassignment medical specialist and specialist gender reassignment equality guidance should be sought from an equality organisation.

Provocative, disruptive or offensive language or behaviour by a prisoner towards Scottish Prison Service staff during searching can be addressed by placing the prisoner on report as per any other prisoner violation of establishment rules.

9 Transfer to an alternative establishment

Where a transfer to an alternative establishment is being considered for a prisoner with the protected characteristic of gender reassignment an urgent gender reassignment case management conference should be convened involving a senior management representative from the potential alternative.

The case conference should explore the specifics of how the prisoner will be accommodated if transferred to the alternative establishment and the decision rationale recorded fully. The case conference should consider whether the transfer can be expected to improve or reduce the following:

- respect for the prisoner's gender identity;
- the dignity of the prisoner in regard to their gender identity;
- the prisoner's mental health and wellbeing;
- the prisoner's social integration and access to mainstream offender outcomes provision;
- the safety of the prisoner and other prisoners

Where there are concerns about potential reduction in any of the above as a result of the proposed transfer, the gender reassignment case management conference should consider and record decisions about potential strategies for preventing such reduction and clarify the rationale behind the proposed transfer.

10 Liberation of prisoner and subsequent probation social work

Prisoners have the right to access liberation and subsequent probation social work provision without discrimination or harassment on grounds of gender reassignment.

Prisoners who have permanently changed the gender in which they live have the right to access liberation and subsequent probation social work provision in their new gender.

Prisoners who have permanently changed the gender in which they are living have the right to receive in their new name, title and gender, any certificates, reports and references relating to liberation and subsequent probation social work provision. In order to provide privacy about their gender reassignment history, prisoners who have permanently changed the gender in which they are living have the right to get any existing certificates, reports and references reissued to reflect their new name, title and gender. Payment of any associated administration charge made by

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examination bodies is the responsibility of the prisoner and not of the Scottish Prison Service.

Prisoners have a right to expect that only the information which is strictly necessary for preventing crime during subsequent probation social work provision is shared with social work service providers without their consent. The final gender reassignment case management conference held by the Scottish Prison Service should seek to determine what gender reassignment information the prisoner consents to being passed to probation social work service providers and then conduct a full risk assessment to determine whether any additional gender reassignment information needs to be passed on to probation social work services for the purpose of preventing crime.

The prisoner has the right to know what information about their gender identity and gender reassignment is being shared between the Scottish Prison Service and the probation social work service providers.

The prisoner has the right to check the accuracy of the information which is being proposed to be shared between the Scottish Prison Service and the probation social work service providers. The prisoner has a right to expect the information which is held and shared about them to be accurate and up-to-date.

If the prisoner believes that the information which is to be shared is not accurate information about them, then their concerns must be seriously considered and any mistakes or out-of-date information quickly corrected and updated.

The related responsibility of the prisoner is to promptly and accurately notify the Scottish Prison Service of any changes to their circumstances which may require the information shared to probation social work service providers about them to be updated.

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Annex A

Equality Assessments: Main areas Quick guides

Remember what is paramount and overrides when making considerations and decision making that all staff and prisoners (including the particular prisoner) are safe and secure.

Introduction

When assessing the needs of any prisoner the general issues relating to prisoners of high risk, long term sex or violent offender should still be taken into consideration. Everyone’s needs have to be assessed in terms of being safe and secure. Risk assessments should be carried out for the following areas for discrimination, harassment and victimisation for all the 9 protected characteristics and Human Rights:

- What is the risk for prisoner?
- What is the risk for other prisoners?
- What is the risk for staff and other SPS agencies?

The following are quick guides for the following main areas:

- 1 Liaison with other agencies prior to coming to establishment
- 2 Establishing and confirming the prisoner’s gender
- 3 Initial prisoner admission processes
- 4 Existing prisoner beginning gender reassignment process
- 5 Ongoing case management:

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Equality Assessments: Main areas Quick guides

1 Liaison with other agencies prior to coming to establishment

Transgender people who are facing the potential of being remanded or sentenced to establishment custody have the right to expect the Scottish Prison Service, the Scottish Court Service, the Police and other service providers to engage effectively with each other to ensure consistency in upholding gender identity and gender reassignment equality and rights.

Where other service providers are aware that a transgender person may potentially require to be received into establishment, notification should be given to the Scottish Prison Service by the other service providers at the earliest possible opportunity so that coordinated work can be undertaken to ensure appropriate consistency of care for the transgender person.

In order to minimise distress for the prisoner and improve ease of reception into prison, it is important to determine and share as early as possible any relevant information about the prisoner's gender reassignment circumstances, including the prisoner's views about prison allocation. The Scottish Prison Service is dependent upon the assistance of the Scottish Court Service and other criminal justice service providers in this regard.

All prisoners have the right to safety, dignity and privacy while being transported between establishments and/or courts.
Where there is a perceived conflict between the right to privacy about prior gender reassignment and the right to safety of the prisoner, ensuring the prisoner's safety should take precedence.

Information about a prisoner's gender reassignment must be handled very carefully and in full compliance with data protection standards because it is highly sensitive information with serious potential safety and security consequences. It is particularly important that it is not revealed by service providers either deliberately or accidentally to other prisoners without the permission of the transgender prisoner.

A member of the local or Headquarters Scottish Prison Service Headquarters Equality and Diversity Team and the Contract Team for the Private Establishments should be notified at the earliest possible opportunity.

Coordinated work between different service providers, should be undertaken with the aim of addressing:

- Consistency in respecting the transgender person's gender identity, name, title and pronoun use.
- Consistency in provision of any medical assistance required, such as access to hormone medications and additional property in use (for example, hair-pieces, make-up, gendered clothing and prosthetics).
- Health and social care needs: especially relating to mental health issues, potential fears about safety, privacy and dignity within establishment custody and ongoing or anticipated gender reassignment medical needs (such as those relating to hormones or surgery)

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2 Establishing and confirming the prisoner's gender

Where staff are uncertain about the gender identity and gender reassignment status of any prisoner, they are entitled to sensitively ask the prisoner to clarify in private:

- how they self-identity,
- which gender they are living in,
- whether they have formally changed their name, title and/or gender on any personal documents (such as their bank card, drivers licence, DWP benefits book, NHS card, etc) and
- whether they have received any medical gender reassignment treatments (such as assessment by a gender identity clinic specialist, hormone treatment or any surgeries).

Effort must be made to try to establish the current gender in which the prisoner is living. This should include

- checking any personal paperwork the prisoner has in their possession,
- checking how the prisoner was identified by the police and courts, and
- attempting to contact any other agencies as requested by the prisoner, such as a medical provider or support worker.

If any aspect of the prisoner's appearance, behaviour or statements gives cause for concern as transgender or potentially has the protected characteristic of gender reassignment, then the following important steps must be taken:

- The phrase: "placed on protection status due to perceived gender identity or gender reassignment status" must be recorded within the prisoner's SPS PR2 record under "Risk and Conditions" section in "Protection" recorded in the "Other" section and relevant information placed in "Notebook"
- The reception staff must notify a member of the establishment's senior management team (who in turn must also notify a member of the Scottish Prison Service local or Headquarters Equality and Diversity team and the Contract Team for the Private Establishments) that "reception staff have placed a new prisoner on protection status due to perceived gender identity or gender reassignment status".

The name, title and pronouns self-identified by the prisoner should be used in all verbal communication with and about the prisoner, *even where these do not correspond with the details recorded on the warrant.*

It is the *prisoner's responsibility* to help provide the Scottish Prison Service with evidence confirming that they have permanently changed the gender in which they live and how long ago this permanent change took place.

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3 Initial prisoner admission processes

If a prisoner is proposing to undergo gender reassignment or is in the early stages of undergoing gender reassignment but the prisoner has not yet permanently changed the gender in which they live, the default initial establishment allocation upon remand or conviction should be in accordance with the sex assigned at birth

If the prisoner can evidence that they have permanently changed the gender in which they live then the default initial establishment allocation upon remand or conviction should be in accordance with the new gender in which they are permanently living.

The ACT to Care procedures should take into account the additional needs relating to prisoners with the protected characteristic of gender reassignment.

In general prisoners should be searched in accordance with the gender in which they are permanently living, even if some aspects of their physical body do not fully conform to conventional expectations for that gender.

Prisoners have the right to access to their existing medication and medical equipment, including medication and equipment relating to gender reassignment. Only in exceptional circumstances, such as acute suicide or self-harm risk, should access to such items be temporarily restricted in any way.

The initial period following reception of a new prisoner by an establishment represents a particularly high risk period in terms of safety as the Scottish Prison Service may only have limited information about the prisoner's individual needs and circumstances. Therefore particular caution is needed in terms of initial accommodation decisions for prisoners who may have the protected characteristic of gender reassignment.

Prisoners have the right to access to NHS medical assessment and treatment. In addition, prior to the first gender reassignment case conference, the prisoner should be offered access to assessment by a gender reassignment medical specialist

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Equality Assessments: Main areas Quick guides

4 Existing prisoner beginning gender reassignment process

Where an existing prisoner informs the SPS of their intention to undergo gender reassignment, an initial discussion should be arranged promptly to sensitively enable the prisoner to clarify in private:

- how they self-identity their gender,
- how they feel about potentially undergoing gender reassignment while still in prison,
- any concerns they have about their current and future safety, dignity and privacy,
- whether they are seeking to formally change their name, title and/or gender on personal documents (such as their bank card, drivers licence, DWP benefits book, NHS card, etc) and
- whether they are seeking to undergo any particular medical gender reassignment treatments (such as assessment by a gender identity clinic specialist, hormone treatment or any surgeries).

The information provided by the prisoner during this initial discussion should be recorded on PR2 ready for consideration within a gender reassignment case management conference for the prisoner.

The related responsibility of the prisoner is:

- To submit a request for initial discussion about possible future gender reassignment to either their Establishment Healthcare Team, their Establishment Governor, or to the Scottish Prison Service local or Headquarters Equality and Diversity Team.

The prisoner should be informed that it will not be possible to progress any access to gender reassignment medical assistance such as hormones or surgery without agreeing to gender reassignment medical specialist assessment.

An existing prisoner has the right to change their name, title and social gender role at any time regardless of whether or not they have undergone any gender reassignment medical specialist assessment.

to assist the prisoner to make fully informed decisions about gender reassignment and to provide expert medical specialist input to aid the SPS in case management decisions, any existing prisoner proposing to undergo gender reassignment should be promptly offered access to assessment by a gender reassignment medical specialist (via the Sandyford NHS Gender Identity Clinic).

The prisoner should promptly and accurately notify the Scottish Prison Service about any previous assessment they have recently received from a gender reassignment medical specialist (for example, while on a period of home leave).

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Equality Assessments: Main areas Quick guides

5 Ongoing case management:

Gender reassignment case management conferences *can be integrated into other case management conferences* being held in regard to the prisoner.

The gender reassignment case conferences should examine all the circumstances of the particular case, including the prisoner's viewpoint and wishes, take into account the expert opinion of any gender reassignment medical specialist who treating the prisoner, and conduct full risk assessments in order to make decisions about how to ensure:

- the safety, dignity and privacy of the prisoner (and others where relevant), especially in terms of accommodation and searching;
- the provision of access to gender reassignment specialist medical assessment and treatment;
- the provision of the opportunity for the prisoner to permanently change the gender in which they live.
- the provision of access to mainstream offender outcomes provision;
- the provision of access to social contact to support mental health and wellbeing;
- the provision of access to additional "property in use" necessary for gender reassignment (such as gendered clothing, wigs, make-up, prosthetics, etc).

Prisoners have the right to access to NHS medical assessment, treatment and access to assessment by a gender reassignment medical specialist.

Prisoners have the right to access mainstream offender outcomes provision without discrimination or harassment on grounds of gender reassignment.

Prisoners who have permanently changed the gender in which they live have the right to access mainstream offender outcomes provision in their new gender.

Prisoners have the right to have access to social contact and mental health support throughout their journey route through the Gender reassignment process.

The provision of access to additional "property in use" necessary for gender reassignment (such as gendered clothing, wigs, make-up, prosthetics, etc).

A transgender prisoner should only be allocated to share a cell with another prisoner if a gender reassignment case management conference has determined that this does not pose serious safety, dignity or privacy concerns

Prisoners should be searched in accordance with the gender in which they are permanently living, even if some aspects of their physical body do not fully conform to conventional expectations for that gender.

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Annex B

The Equality Act 2010

Generally this sets out the **9 Protected Characteristics** and **Prohibited Conduct** relating to discrimination, harassment and victimisation. Annex A has a summary of these definitions. The Act includes a Public Sector Equality Duty which requires public bodies to have *due regard* to the need to:

- **eliminate unlawful discrimination, harassment, victimisation** and any other conduct prohibited by the Act;
- **advance equality of opportunity** between people who share a protected characteristic and people who do not share it; and
- **foster good relations** between people who share a protected characteristic and people who do not share it.

The Protected Characteristics

- Age
- Disability
- Gender Reassignment
- Marriage and Civil Partnership
- Race
- Religion or Belief
- Sexual Orientation
- Pregnancy and Maternity
- Sex

The Prohibited Conduct

Direct discrimination occurs when a person treats one person less favourably than they would another because of a protected characteristic they have.

Associative discrimination (Discrimination based on association)

This is direct discrimination against someone because they associate with another person who possesses a protected characteristic.

Perceptive discrimination (Discrimination based on perception)

This is direct discrimination against an individual because others think they possess a particular protected characteristic. It applies even if the person does not actually possess that characteristic.

Indirect discrimination

Indirect discrimination can occur when you have a condition, rule, policy or even a practice in the organisation that applies to everyone but particularly disadvantages people who share a protected characteristic. Indirect discrimination can be justified if you can show that you acted reasonably in managing your business, i.e. that it is 'a proportionate means of achieving a legitimate aim'. A *legitimate aim* might be any lawful decision you make in running your organisation, but if there is a discriminatory effect, the sole aim of reducing costs is likely to be unlawful. Being proportionate really means being fair and reasonable, including showing that you've looked at 'less discriminatory' alternatives to any decision you make.

Discrimination arising from a disability

Treatment of a disabled person amounts to discrimination where:

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- The disabled person is treated unfavourably
- The treatment is because of something arising in consequence of the disabled person's disability and
- It cannot be shown that this treatment is a proportionate means of achieving a legitimate aim

Unless it is not known, and cannot reasonably be expected to have been known that the person had a disability.

Harassment

The Act outlines three types of harassment:

- unwanted conduct that has the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for the complainant, or violating the complainant's dignity (this applies to all the protected characteristics apart from pregnancy and maternity, and marriage and civil partnership)
- unwanted conduct of a sexual nature (sexual harassment)
- treating a person less favourably than another person because they have either submitted to, or did not submit to, sexual harassment or harassment related to sex or gender reassignment

Associative and perceptive harassment (based on perception and association)

Harassment based on perception and association will also be covered so that a person who is harassed because of their spouse's religious beliefs or because they are wrongly perceived to be gay, would have a claim.

Third party harassment

Employers can be held liable for harassment of employees by a third party (such as a prisoner, visitor or contractor) over whom the employer does not have direct control, if harassment has occurred on at least two earlier occasions and the employer has failed to take reasonably practicable steps to stop it.

Victimisation

Victimisation takes place where one person treats another less favourably because he or she has asserted their legal rights in line with the Act or helped someone else to do so.

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Annex C

Glossary

In order to understand the medical and legal implications of transgender issues and the impact they have on the Scottish Prison Service equality agenda and employment practices, it is important to be aware of the variety of transgender terminology. The following section provides explanations of the terms used throughout this policy.

James queries on the following and any other terms

- Sex assigned at birth
- Dress
- Cross dress

Gender Recognition Act 2004

Under the Gender Recognition Act of 2004, trans men and women can:

- apply for and obtain a Gender Recognition Certificate to acknowledge their gender identity
- get a new birth certificate, driving licence and passport
- marry in their new gender

To apply for a Gender Recognition Certificate, you must be over 18 years of age.

The application process requires you to prove that:

- you have or have had gender dysphoria
- you have lived as your preferred gender for the last two years
- you intend to live permanently in your preferred gender

Find out more about the [Gender Recognition Act 2004](#) and how to [apply for a Gender Recognition Certificate](#).

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Annex D

Sources of additional information and assistance:

SPS Equality and Diversity Headquarters Staff

<p>Priscilla Chipu Marongwe Equality and Diversity Business Partner Scottish Prison Service Room 120, Calton House 5 Redheughs Rigg EDINBURGH EH12 9HW</p> <p>Direct: 0131 244 8620 General: 0131 244 8587 priscilla.marongwe@sps.pnn.gov.uk</p>	<p>Grant Marshall Equality and Diversity Manager Scottish Prison Service Prisons Directorate Calton House 5 Redheughs Rigg EDINBURGH EH12 9HW</p> <p>Tel: 0131 2448606 Grant.marshall@sps.pnn.gov.uk</p>
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Scottish Transgender Alliance (STA)

Funded by the Scottish Government Equality Unit to assist public bodies in Scotland with transgender equality, human rights and inclusion.

James Morton, STA Coordinator

Address: Equality Network, 30 Bernard Street, Edinburgh, EH6 6PR.

Mobile: 07840 570 202

Email: sta@equality-network.org

Website: www.scottishtrans.org

Sandyford Gender Identity Clinic

An initial appointment with one of the Sandyford gender reassignment medical specialists can be arranged by phoning the clinic administrator on 0141 211 8137. This NHS service will see anyone of any age who lives in Scotland.

Address: 2-6 Sandyford Place, Glasgow, G3 7NB

Website: www.sandyford.org

Online booklet:

[www.sandyford.org/media/88274/genderidentityservice_sf\[1\].pdf](http://www.sandyford.org/media/88274/genderidentityservice_sf[1].pdf)

World Professional Association for Transgender Health

Publish the international medical standards of care for gender reassignment.

Website: www.wpath.org

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