

Background	
<b>Title of the Policy</b>	<b>Compulsory Substance Misuse Testing Guidance Manual</b>
<b>EHRIA Lead (role)</b>	SPS Head of Operational planning
<b>Date EHRIA completed</b>	15/08/16
<b>Review date and frequency</b>	
<b>Is this a new or revised policy/practice?</b>	New <input type="checkbox"/> Revised <input checked="" type="checkbox"/>

Scoping
<p><b>What are the aims of this policy/practice?</b></p> <p>To provided staff who are participating/ completing compulsory substance misuse testing with training that relevant and legal To update the EHRIA that was produced in 2013 to included Human Rights and the Children’s Act</p>
<p><b>WHO did you consult with?</b></p> <p>SPS testing staff at HMP Edinburgh and Cornton Vale, Ruth Parker (SPS Head of Health and Well-being) SPS Religious advisors, Nancy Louckes (Director of Families outside). SPS Equality and Diversity Team (SPS HQ), GIC’s. James Morton (Scottish Transgender Alliance), Lesley McDowall SPS clinical adviser (Strategy &amp; Innovation Directorate), HMPS and SPS Legal Branch</p>
<p><b>WHAT did you learn?</b></p> <p>There has to be included in the manual directions and instructions in managing the drug testing for prisoners relating to their physical health, disabilities and mental health. Religious and cultural have to be understood and respected. The SPS Gender Identity and Gender Reassignment policy must be adhered to managing a transgender Person</p>
<p><b>HOW will this shape your policy/practice?</b></p> <p>The information gained through consultations and evidence gathering has provided the foundation to provide a fair and informative process in testing all prisoners who might have misused substances that are forbidden in the SPS</p>

It will give staff and managers clear direction on process which is complainant against Equality Act 2014, Human Rights Act and the Children's Act

**What quantitative and/or qualitative evidence as well as case law relating to equality and human rights have you considered when deciding to develop new or revise current policy/practice?**

**The Prison (Scotland ) ACT 2011**

**SPS Prison Rules 2011**

**Equality Act 2010**

**Gender Recognition Act 2004**

**SPS Gender Identity and Gender Reassignment Policy**

**Previous MDT policy and testing procedures**

**HMPs Policies on drug testing**

**Impact**

Will the impact and outcomes of the new/ revised policy/practice:

<p><b>Contribute to eliminating discrimination, harassment and victimisation?</b> E.g.</p> <ul style="list-style-type: none"> <li>• Raise awareness of our SPS vision and values for equality and diversity</li> <li>• Challenge appropriately any behaviours or procedures which do not value diversity and advance equality of opportunity</li> </ul>	<p><b>POSITIVE:</b> It will contribute to eliminating discrimination, harassment, victimisation <input checked="" type="checkbox"/></p>
	<p><b>NO EFFECT:</b> It will have no effect on discrimination, harassment and victimisation <input type="checkbox"/></p>
	<p><b>NEGATIVE:</b> It will make discrimination, harassment and victimisation worse <input type="checkbox"/></p>
<p><b>Advance equality of opportunity between those who share a protected characteristic and those who do not?</b> E.g.</p> <ul style="list-style-type: none"> <li>• Remove or minimise disadvantage</li> <li>• Meet the needs of equality groups that are different from the needs of others participation in public life</li> </ul>	<p><b>POSITIVE:</b> It will advance equality of opportunity <input checked="" type="checkbox"/></p>
	<p><b>NO EFFECT:</b> It will have no effect on equality of opportunity <input type="checkbox"/></p>
	<p><b>NEGATIVE:</b> It will reduce equality of opportunity <input type="checkbox"/></p>
<p><b>Foster good relations between those who share a protected characteristic and those who do not?</b> E.g.</p> <ul style="list-style-type: none"> <li>• Tackle prejudice</li> <li>• Promote understanding</li> </ul>	<p><b>POSITIVE:</b> It will foster good relations <input checked="" type="checkbox"/></p>
	<p><b>NO EFFECT:</b> It will have no effect on good relations <input type="checkbox"/></p>
	<p><b>NEGATIVE:</b></p>

## Impact

Will the impact and outcomes of the new/revised policy/practice:

	It will cause good relations to deteriorate <input type="checkbox"/>
<b>Ensure Human Rights Compliance?</b>	It will uphold human rights articles. <input checked="" type="checkbox"/>
	It will breach human rights articles. <input type="checkbox"/>

**Please summarise the results of the Equality & Human Rights Impact Assessment, including the likely impact of the proposed policy/practice advancing equality and human rights.**

## Positive Impacts

Protected characteristics affected: Age, Race, Gender, Disability, Gender Identity, Religion or Belief and Maternity and Pregnancy.

*As there is a compulsory requirement (the Prison (Scotland) Act 1989 provides powers for testing prisoners for drugs.)*

*The manual has in place positive actions that has positive effect on the following groups*

*Age – If prisoners of any age have a medical condition or are on medication a medical consent form will be provided to provide the testers this information on drugs official taken.*

*Prisoners who have difficulties in providing a sample (possible psychological conditions) will be given extra time/ private location to provide a sample.*

*Disability – Any prisoner who are unfit to attend at the sample collecting area for drug testing will be excluded from providing a sample, any prisoner who is considered to be a danger to themselves or are segregated on health grounds from the rest of the prison or awaiting transfer to a mental hospital will be excluded from having to provide a test.*

*Any prisoner who has a indwelling urinary catheter or has had a Urostomy will be excluded from having to provide a test*

*Gender – Because of the physical and to some extent, cultural differences between males and females in relation to urination, the direct observation of woman when providing samples may be less acceptable to staff and prisoners than the direct observation of male prisoners so conditions for woman are in place to respect privacy.*

*Maternity and Pregnancy – Women with babies will not be separated for a lengthy period; arrangements will be made for providing a sample at another location.*

*Pregnant woman who are unable to provide a sample quickly, Will be allowed to provide a sample at a different location, their own cell should be considered (this will be supervised)*

*Religion and belief- Some religions (Sikhs, Muslim and those of the Jewish faith) will not allow viewing of the genitalia. This prohibition may be relaxed in the wider interests of enforcing law and order within the Prison and stop any possible opportunity to cheat on a drug test.*

### Positive Impacts

*Women from Muslim or Jewish faith would be strongly opposed to exposing blood and therefore, to provide urine samples of this contained traces of blood (as may happen occasionally during menstruation). This sample could be taken in privacy.*

*If any prisoner refuses to provide a sample on grounds of religion and is charged with disobeying a lawful order, then the Governor will need to consider each individual case on its merits and decide to what extent a genuine religious belief can be used as mitigation at the orderly room.*

*Gender Identity - The SPS Gender Identity and Gender Reassignment policy will control conditions for searching transgender prisoners, The Gender Recognition ACT 2004 will provided privacy for transgender prisoners.*

### Negative Impacts

Protected characteristics affected: No negative impacts identified

Impact	Mitigation

### Recommended course of action

<b>Outcome 1:</b> Proceed – no potential for unlawful discrimination or adverse impact or breach of human rights articles has been identified.	<input checked="" type="checkbox"/>
<b>Outcome 2:</b> Proceed with adjustments to remove barriers identified for discrimination, advancement of equality of opportunity and fostering good relations or breach of human rights articles.	<input type="checkbox"/>
<b>Outcome 3:</b> Continue despite having identified some potential for adverse impact or missed opportunity to advance equality and human rights (justification to be clearly set out).	<input type="checkbox"/>
<b>Outcome 4:</b> Stop and rethink as actual or potential unlawful discrimination or breach of human rights articles has been identified.	<input type="checkbox"/>

### Summary of Outcome decision and Recommendations

The compulsory substance misuse testing guidance manual assessment has shown no potential for unlawful discrimination or adverse impact or breach of human rights articles has been identified.

There are several positive impacts that are in place to protected prisoners who are protected under the Equality Act, who are required to take a Compulsory test this protection extends to prisoners who are required to take a test for medical purposes and for non-medical voluntary tests.

This guidance manual is compliant when compared against the Human Rights Act and 2010 Equality Act.

## Summary of Outcome decision and Recommendations

There is no quantitative information that could evidence that any of the nine protected characteristic would be disadvantage during the processes of drug testing.

It is recommended that a process is introduced to monitor the percentage of prisoners who are being compulsory tested (this should include their protected characteristic, any refusals and the reason, orderly room decisions and complaints) to monitor for any disadvantage. A report should be provided to the E&D team yearly who will table for discussion and review of the manual and EHRIA at the Operations Directorate E&D group.

## Next steps

Review Equality Human Rights Impact Assessment on any legal changes or changes to the guidance manual

Review yearly results from compulsory drug testing for any possible disadvantage

If you require this document in an alternative format, please contact [SPSEqualityandDiversityTeam@sps.pnn.gov.uk](mailto:SPSEqualityandDiversityTeam@sps.pnn.gov.uk)