

This template summarises the key decisions/actions taken in the EHRIA, and has been separated from the full EHRIA document for publication on the SPS external website in compliance with statutory requirements.

Background	
Title of the Policy	Prioritisation Policy: Offending Behaviour Programmes
EHRIA Lead (role)	Divisional Head of Offender Outcomes
Date EHRIA completed	25/04/17
Review date and frequency	24/04/20
Is this a new or revised policy/practice?	New <input type="checkbox"/> Revised <input checked="" type="checkbox"/>

Scoping	
What are the aims of this policy/practice?	<p>To ensure that the SPS are meeting their obligations towards prisoners accessing Offending Behaviour Programmes which allows prisoners to be in the best position possible for progressing to less secure conditions or/and parole. It is clear that the risk of legal challenge is reduced where access to programmes meets demand. This is easiest achieved by increasing resources and delivery however, the group recognised that this would require significant additional resource that may not be available and that existing resources could be used to better effect. The ability to use resources differently does not wholly mitigate the risk and by changing the critical date to align with the Progression Pathway (Management Rule), indeterminate sentenced prisoners will be prioritised ahead of determinate prisoners, mitigating current legal challenge.</p> <p>To improve our practice and ensure that we can:</p> <ul style="list-style-type: none"> • Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010; • Advance equality of opportunity between people who share a relevant protected characteristic and people who do not share it and;

Scoping	
	<ul style="list-style-type: none"> Foster good relations between people who share a relevant protected characteristic and people who do not share it;
WHO did you consult with?	Heads of Psychology, Principal Psychologists, Psychology Managers Deputy Governors, Legal Services and Operations Directorate, Trade Union Side
WHAT did you learn?	That there was a need to consider that prisoners should be prepared in line with the management rule which allows them time to prepare for release with access to offending behaviour programmes when applicable within a timeframe which supports an assets based approach.
HOW will this shape your policy/practice?	<p>This policy will allow the SPS to better plan its resources both within Psychology and within Programmes teams to meet the risks, needs and responsivity levels of individuals within our care. It will further enhance the case management pathway for prisoners, supporting the pathway to desistance and encouraging behaviours that enable prisoners to address their criminogenic needs. It is importance to indicate the importance that this will place on indeterminate prisoner's human rights. As the law stands, the ancillary duty does not apply to determinate sentenced prisoners who will ultimately be released at least by their sentence expiry date.</p> <p>There is sufficient user voice through FOI's from indeterminate prisoners since the policy was first issued in 2013 to suggest that they feel discriminated against since as a Life tariff prisoner must first of all gain testing in less secure conditions though a top end and Order of Lifelong Restrictions (OLR) and determinate sentenced prisoners can access less secure condition by transferring straight to the Open Estate. The complexities of maintaining family contact for indeterminate prisoners would also have to be considered in that they are less likely to access offending behaviour programmes as a determinate sentenced prisoner or OLR prisoner which could also be raised as a human rights issue. The legal impact on determinate sentenced prisoners will be beneficial in that they have a liberation date and will be released at either their Parole Qualifying Date, Earliest Date of Liberation or Sentence Expiry Date.</p>
What quantitative and/or qualitative evidence as well as case law relating to equality and human rights have you	<ul style="list-style-type: none"> Data Protection Act 1998 Information Commissioner Guidance Human Rights Act 1998 Equality Act 2010

Scoping

considered when deciding to develop new or revise current policy/practice?

- Scottish Prison Service Organisational review
- Purposeful Activity review
- SPS equality policies of age, disability, religion or belief, sexual orientation and Transsexual.
- EHRIA Audit standards for offending behaviour
- EHRIA Offending behaviour programmes

It is not possible to extract the equality data required to analyse the full impact on prisoners therefore we cannot fully predict if this will have some negative or positive aspects for certain characteristics. This is unfortunately due to the data not being available. However, the policy's overarching aim is to uphold human rights and any unintended damage to persons with certain characteristics who may be disadvantaged because the prioritisation lists have changed is unlikely to amount to unlawful discrimination since this group of prisoners is guaranteed a liberation date compared to Lifers and OLR's who require to be paroled by the Parole Board.

Given that there is the risk of legal challenge to our current policy, we will proceed with this policy despite not having the full data set. We will of course seek to try and gain this data so that greater clarity when the EHRIA is review in one year's time. There is a prisoner complaints process where prisoners can raise any concerns if persons feel that they are being disadvantaged. The extent of any complaints can be monitored through the Prisoner Complaints system.

Impact

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

Contribute to eliminating discrimination, harassment and victimisation?

E.g.

- Raise awareness of our SPS vision and values for equality and diversity
- Challenge appropriately any behaviours or procedures which

POSITIVE:

It will contribute to eliminating discrimination, harassment, victimisation

NO EFFECT:

It will have no effect on discrimination, harassment and victimisation

NEGATIVE:

It will make discrimination, harassment and victimisation worse

Impact Will the impact and outcomes of the new/revised policy/practice:	
do not value diversity and advance equality of opportunity	
Advance equality of opportunity between those who share a protected characteristic and those who do not? E.g. <ul style="list-style-type: none"> Remove or minimise disadvantage Meet the needs of equality groups that are different from the needs of others participation in public life 	POSITIVE: It will advance equality of opportunity <input checked="" type="checkbox"/>
	NO EFFECT: It will have no effect on equality of opportunity <input type="checkbox"/>
	NEGATIVE: It will reduce equality of opportunity <input type="checkbox"/>
Foster good relations between those who share a protected characteristic and those who do not? E.g. <ul style="list-style-type: none"> Tackle prejudice Promote understanding 	POSITIVE: It will foster good relations <input checked="" type="checkbox"/>
	NO EFFECT: It will have no effect on good relations <input type="checkbox"/>
	NEGATIVE: It will cause good relations to deteriorate <input type="checkbox"/>
Ensure Human Rights Compliance?	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
<p>Equality/Human rights impacted: socio-economic groups, human rights compliance</p> <p>The current waiting lists for access to programmes are lengthy and many prisoners cannot access programmes (specifically Moving Forward, Making Changes and Self-Change) until they are approaching or even past their progression date. By reviewing this policy, it will ensure that the SPS is able to fulfil its duty to provide a life sentenced prisoner with a reasonable opportunity, by the time of the punishment part expiry (PPE), to demonstrate that they are suitable for release by the Parole Board for Scotland. Currently, many are only able to access treatment on or after their PPE and it is envisaged that this situation will deteriorate over time. A Short Term Working Group was established to consider the current policy in terms of costs of programme delivery and risk to public protection, risk of legal challenge and risk to reputational damage. Currently, many prisoners are only able to access treatment on or after their PPE and it is envisaged that this situation will deteriorate over time. By reviewing this policy, the risk of litigation will be reduced and life sentence prisoners will be afforded the opportunity to access Offending Behaviour Programmes at an earlier time in their sentence.</p> <ul style="list-style-type: none"> The Policy upholds Human Rights Article 14 (Protocol 1, Article 2): right to education. Whereas offending behaviour treatment programmes are not (strictly speaking) education, they provide the opportunity to learn about oneself and all programmes have some psychoeducational components.

Positive Impacts

- The Policy also upholds Article 10 - Freedom of expression by allowing access to programmes and allowing prisoners the opportunity to express themselves while ensuring they respect the rights of other group members who also have the opportunity to express themselves
- The Policy upholds Article 4; Right to Liberty. This change to the policy will allow indeterminate prisoners a more realistic prospect of liberation.

Negative Impacts

Protected characteristics affected:

The data set to explore the full impact of this policy has not been available however, it is foreseen that this will be requested when the policy is due for review. However, it is not envisaged that this policy will unlawfully discriminate against prisoners who share protected characteristics as we will keep this under review and monitor prisoner complaints.

Impact	Mitigation

Recommended course of action

Outcome 1: Proceed – no potential for unlawful discrimination or adverse impact or breach of human rights articles has been identified.	<input checked="" type="checkbox"/>
Outcome 2: 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"/>
Outcome 3: 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"/>
Outcome 4: 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 Equality and Human Rights Impact Assessment has recognised that there is no detrimental impact to those prisoners accessing Offending Behaviour Programmes. There is currently no evidence that the change in criteria for Access to Offending Behaviour Programmes will be discriminatory or will breach any article or protocol in the Human Rights Acts. It has been endorsed by the Executive Management Group and Legal Services.

An effective communications plan to staff and prisoners will be made available in the form of a Frequently Asked Questions document to ensure that the changes are effectively communicated. We will request that prison forums are held in establishments and a communication strategy is established by establishments to ensure that staff and prisoners are aware of the change to this policy e.g. easy to read, foreign languages.

Next steps

Ensure that local and national lists are effectively managed in establishments by Psychology departments to monitor for unfair use of the policy against certain groups of prisoners.

Once the policy is implemented, each Psychology Department will be responsible for ensuring that data bases are updated continually to ensure consistency throughout the estate. To review the number of complaints, Freedom of Information requests and parliamentary Questions. This will ensure that robust processes are in place and that prisoners are afforded opportunities in line with this policy

Review Impact Assessment in 3 year (from the date of this assessment).

If you require this document in an alternative format, please contact SPSEqualityandDiversityTeam@sps.pnn.gov.uk