

Child Rights and Wellbeing Impact Assessment (CRWIA)

For *The SPS Policy for the Management of Transgender People in Custody*

Disclaimer

This document is an **initial assessment** of the impact of *The SPS Policy on the Management of Transgender People in Custody*. SPS will continue to review and update this document where required. Any future iterations will reflect an increased understanding of these impacts as the amount of data and research available continues to grow.

This impact assessment should be read in conjunction with the Equality and Human Rights Impact Assessment.

CRWIA Stage 1 – Screening

(Please note, the CRWIA should be started as soon as possible in the development process for the relevant proposal)

1. Brief Summary (Guidance Section 2.1)

Name the relevant proposal and describe its overall aims.

The Scottish Prison Service is launching its new policy *SPS Policy for the Management of Transgender People in Custody* in 2023. The policy's intent is:

We will admit, place, and manage transgender people in a way which is rights-based, consistent with the obligations of SPS as an Executive Agency of the Scottish Government, as a public body, and as a prison service which seeks to promote the health, safety and wellbeing of all people who live in Scotland's prison system.

The policy seeks to ensure that SPS is fulfilling its obligations under the Equality Act 2010, including the Public Service Equality Duty, the Human Rights Act 1998, and the UNCRC, and that our practice is in line with a human rights-based approach and our broader approaches to the management and social rehabilitation of all individuals in custody.

The policy and accompanying guidance seek to ensure a comprehensive and consistent approach is taken across SPS towards the admission, placement and management of transgender individuals in our care. This CRWIA examines the impact on UNCRC rights and the GIRFEC principles of the policy for the management of transgender individuals in custody and its guidance document.

Start date of relevant proposal: the policy will be published on 5 December 2023 and be fully implemented across all establishments on 26 February 2024.

Start date of CRWIA process: The CRWIA was begun in April 2023

2. Which aspects of the relevant proposal currently affects, or will affect, children and young people up to the age of 18? (Guidance Section 2.1)

There are no transgender children in custody at the time of writing and it is envisaged that the custody of children will end in 2024 with the passing of the Children (Care and Justice) (Scotland) Bill. However, a transgender child may come into custody before that. All aspects of the policy are likely to apply to transgender children and there may be impacts on other children held alongside them.

3. Which groups of children and young people are currently, or will be, affected by the relevant proposal? (Guidance Section 2.1)

Currently no children or young people are impacted by the policy as there are no transgender children in custody. If the Children (Care and Justice) (Scotland) Bill

passes, there will no longer be children under the age of 18 held in SPS custody from mid-2024. Nevertheless, there may be transgender children held on remand or sentenced to prison before this. Other children in custody may also be impacted if they are living alongside a transgender child. It is not envisaged that the policy will have an impact on other children, for example the children of people in custody but this will be monitored.

Declaration

4. Is a Stage 2 Children's Rights and Wellbeing Impact Assessment required? (Tick relevant requirement) (Guidance Section 2.1)

CRWIA required No explanation required, please complete questions 5 and 6

CRWIA not required Please explain why below and contact the children's rights unit to discuss this decision crwia@gov.scot

Explanation why CRWIA is not required:

5. Sign & Date

Policy Lead Signature & Date of Sign Off: 01 December 2023

CRWIA author, if different from policy lead, Signature & Date of Sign Off: 01 December 2023

Deputy Director Signature & Date of Sign Off: Linda Pollock, Deputy Chief Executive SPS, 01 December 2023

Date SGLD contacted: 01 December 2023

Once signed off, please send to CRWIA@gov.scot and publish on gov.scot or relevant Executive Agency website.

6. Preparation Phase if undertaking a CRWIA (Guidance Section 2.1)

If CRWIA is required, please engage in the preparation phase as early as possible. This phase consists of a research and consultation plan.

Evidence: Please list any research you are currently aware of that is relevant to this relevant proposal

There is a lack of research into the experiences of transgender children in the criminal justice system as well as a lack of research on the impact of policies for the management of transgender children in custody on non-transgender children. This paucity of research is both due to the very small numbers of transgender children in the criminal justice system as well as lack of recognition of transgender identities in many criminal justice systems around the world. In gathering data for this impact assessment, one paper with some relevancy was found: Global Initiative on Justice with Children and Child Friendly Justice European Network (December 2022) *Towards LGBTI+ sensitive justice systems for children in Europe: Challenge Paper*

There is research on the experiences of transgender children in other settings such as education and healthcare as well as guidance for how to manage transgender children in education and residential and secure care settings which may be relevant for prisons.

Stakeholder engagement: Please describe your initial plans for stakeholder engagement, including which organisations you would like to engage directly with.

Engagement with stakeholders from comparative arenas such as secure care as well as engaging relevant operational staff within SPS.

Involvement of children and young people: Please describe your initial plans for involving children and young people in the development of this relevant proposal, including any specific groups of children you would like to engage directly with.

There are no recent records of transgender children in custody thus it was not possible to include any in the engagement phase of the policy review. The policy review also sought to engage non-transgender individuals who had had experience living alongside transgender individuals while in custody, again as there were no known transgender children in custody when the engagement was being conducted, no children were included because they did not meet this criterion.

It may be relevant, and to provide some background information, to interview any young transgender individuals in custody. Although older than 18, their experiences of being transgender in custody may be similar to the experiences of under 18s.

CRWIA Stage 2 – Assessment of Impact and Compatibility

1. What evidence have you used to inform your assessment? What does it tell you about the impact on children’s rights? (Guidance Section 2.2)

Evidence was drawn from engagement with young transgender young adults in custody, SPS staff with experience working with children and young adults in custody and representatives of secure care facilities who had had experience of working with transgender children.

Evidence was also drawn from the following publications:

The Care Inspectorate (May 2023) *Guidance for CYP services on the inclusion of transgender including non-binary young people*

Global Initiative on Justice with Children and Child Friendly Justice European Network (December 2022) *Towards LGBTI+ sensitive justice systems for children in Europe: Challenge Paper*

It was not possible to engage any transgender children in custody due to there being no known transgender children in custody at the time of the evidence gathering. The policy review sought to engage non-transgender individuals who had had experience living alongside transgender individuals while in custody, again as there were no known transgender children in custody when the engagement was being conducted, no children were included because they did not meet this criterion.

2. Evidence from stakeholders/Policy Colleagues (Guidance Section 2.2)

Questions 2 and 3 here will be answered together as evidence is grouped by theme rather than stakeholder:

1. The need for and benefits of an individualised approach to management of transgender children

Stakeholders interviewed for the CRWIA emphasised that all children coming into prison or secure care are likely to have experienced trauma. Transgender have heightened vulnerability and this needs to be considered in any risk assessment or assessments for the purposes of making management decisions.

“I think it’s about being aware of that and being aware of the set up in which the young people are going to be living, you know the group context and the dynamics of that group. So that’s where the individualized plan incomes for these young people to enable them to be themselves and be supported, but also to be protected and feel safe and secure in that environment.” – secure care representative

“We use the same risk assessments and things that are individualised and they assess what we should be doing for all young people and taking into consideration the possible increased vulnerabilities, you know, and the scope for bullying within a group context for these young people.” – secure care representative

The Care Inspectorate's recent guide *Guidance for children and young people's services on the inclusion of transgender including non-binary young people* also recommends that young people and risk assessments should inform individualised approaches for each young person.¹

While external stakeholders emphasised that a transgender identity may contribute to increased vulnerability, for some it was seen as only an additional factor to consider when managing an individual.

"we do something called a matching process anyway, but there's always a lot more discussion for someone who's trans coming in and just making sure that it's they're still going to feel safe and valued and that we're going to meet their needs." – secure care representative

An individualised approach also means a flexible approach which takes account of young people's needs, wishes and rights. This may require some flexibility in how policies are implemented to ensure that children feel safe and secure.

Stakeholders from secure care were keen to emphasise that no two transgender individuals are the same, have the same experiences or the same feelings about their gender identity and that only an individualised approach would be able to respond to their unique circumstances and needs. Secure care stakeholders had had experience of both transgender children who were very confident in their identity and had already sought medical treatment and did not require support with this decision as well as children who were at the start of exploring their identity.

Some stakeholders discussed their experience with some transgender children who exhibited some behaviours as trauma responses. A secure care interviewee stated that a child:

"may identify as male because 'men don't get abused in my family and so if I identify as male, the abuse will stop.' It may be that somebody does want to transition, but for some young people it's in relation to the trauma that they've experienced and that it's not necessarily, it is more about making themselves unattractive to a potential abuser."

It is not for SPS to assess if a child's transgender identity is genuine or not, SPS cannot do this and it serves no purpose for making management decisions. However it is important to ensure that support is provided to children in custody who have experienced trauma and may exhibit unhealthy coping mechanisms.

2. Location and placement decisions

SPS has only three prisons that can accommodate under 18s – HMP & YOIs Polmont, Stirling and Grampian. For prison staff there was a challenge therefore in placing any child, transgender or non-transgender that would be in their best interests:

"we are limited in where we can put them around the estate and this means they may not always be close to their home. There's that tug between bringing children into national facilities give them the best possible opportunity, services and support, but that are far away from their homes, or do you put one child and half a dozen YOIs in Dumfries, Greenock or Inverness? what's the right thing? services and opportunities or family contact and close to home?" – SPS staff member

¹ [Guidance for CYP services on the inclusion of transgender including non-binary young people.pdf \(careinspectorate.com\)](https://www.careinspectorate.com/guidance-for-cyp-services-on-the-inclusion-of-transgender-including-non-binary-young-people.pdf)

This may be compounded for transgender children where efforts to keep them or other children safe may lead to their isolation, due to their small numbers, risk and vulnerability they may present being placed with others.

In secure care units, all accommodation is mixed gender, albeit, children and young people have their own single occupancy bedrooms and ensuite bathroom facilities, so placement decisions are not an issue from a gender perspective. Staff at secure care facilities do make placement decisions which consider the potential impact of an individual on others. Children are always included in decisions about their management in secure care and asked for their preferences and invited to share concerns.

In line with the individualised approach, stakeholders were keen that decisions on where to place transgender child also considered an individual's circumstances, vulnerabilities and needs:

"It's really different for each young person because you get the trans girl we had, I think if you were tell her she was then having go and live with males she would be really upset. And it would be really hard for her whereas actually with the trans boy we've got, if we were to tell him you're going to jail and you're going to live with males, I think he would actually struggle with that more I think he would feel much safer with being with the females. And that's why it's really important to understand what they're gender identity is and how that relates to their trauma." – secure care representative

"I would certainly say from our transgender male at the moment I would be really worried if they were going into an environment a male population like that. I wouldn't have been so worried if we'd had a trans girl going into a women's prison , I think it also again could be an individualised situation as well" – secure care representative

Many stakeholders discussed the possibility of trans-exclusive accommodation. Among transgender individuals interviewed there was a desire to be housed alongside other transgender individuals for feelings of safety and that others would understand their situation. Staff also suggested that a separate model for transgender people may be something to explore, similar to models of custody for women and young people which exist in SPS. However, given the small number of transgender individuals in custody in Scotland there is likely only ever to be one transgender child at a time, housing them in separate transgender accommodation would inevitably mean they are housed alone with no one to associate with.

The challenge paper *Towards LGBTI+ sensitive justice systems for children in Europe* also highlighted the risk of LGBTI+ children being isolated from the rest of the population on the grounds of protecting their safety to ensure they are not bullied or assaulted by peers.² Isolation can be highly detrimental for wellbeing and can increase risk of denial of access to education and purposeful activity, all core components of successful rehabilitation.

3. Improving the culture and support for trans and lesbian, gay and bisexual (LGB) individuals

All stakeholders mentioned the need to create a more supportive culture and environment for transgender children. Staff in SPS and in secure care facilities were well aware of the vulnerability of transgender children and young people and the risk of bullying they faced from others and high levels of anxiety they had about coming into secure care or prison. Improving the culture and environment for trans young people in secure care was done through education with young people to better understand and promote acceptance of

² Global Initiative on Justice with Children and Child Friendly Justice European Network (December 2022) *Towards LGBTI+ sensitive justice systems for children in Europe: Challenge Paper*

lesbian, gay, bisexual, transgender and queer (LGBTQ) issues, training staff to understand transgender issues and links with LGBTQ community organisations. Both secure care facilities interviewed also stated that they were working towards accreditation with an LGBTQ Charter. The Care Inspectorate Guidance sets out a number of steps that secure care settings can take to be more inclusive and welcoming to transgender children as well as non-binary and LGB children. These include ensuring staff are confident and competent. Children interviewed for the guidance document spoke of the importance of having supportive and understanding members of staff and that this can help create a positive inclusive culture for LGBTQ children.

As stated above, some of the young adults interviewed for the CRWIA said that ideally, they would be housed alongside transgender people in a separate unit because they would feel safer and more comfortable. Although they understood that logistically this may not be possible, this may point to the need for improved acceptance and understanding of their identities.

Prison staff also understood the need to improve the environment for transgender individuals:

“if there was a transgender person here I think our surroundings are quite intimidating. But this is the size of prisons that we build. So how do we soften our approach? can we soften our accommodation? That leads me back then if we have specialists through our staff, do we have specialist areas where will they go? Not to seclude them from others but actually to protect their personal identities and make sure... Do we consider what items I know there's lists of potential for items that allow the use what else? Can they have family links? Or, you know, if it's mobile phones at the moment or in cell telephony in the future? If they have strong family links? Do they have family ties on the outside that offer good support? Do they, because of their additional needs, get additional phone minutes? Do they get additional visits? Can we give them visits to appropriate places to support any change and their status.” – SPS staff member

Secure care had contacts with LGBTQ community organisations who were able to offer some support to transgender children coming into care and worked to create an inclusive and supportive environment for young transgender people to feel accepted.

“when a young person comes to us and they may identify as trans in the community, then we ensure that we let LGBTQ Youth know. And we're quite lucky that I've got it kind of working relationship with one of the staff members over there...they can offer a Teams call and support when the young person is back in the community” – secure care representative

“When that young person did come out as transgender they were assured, and we supported the other young people around that in terms of not misgendering them but again it's just about educating other young people the staff being really there. We've got three staff to six young people so we are able to be there and support them and challenge attitudes that aren't appropriate whereas you might not always have that. So the risks might be a bit different then.” – secure care representative

Staff in secure care were aware of the need to be sensitive about asking about children's sexuality and gender identity, especially given the backgrounds of many of the children coming into care and the level of distrust they may have with adults:

“But we also have a lot of kids that are gay or are trans, and they're just not ready to tell us and you're just going to trigger them, a complete stranger asking them something, so we just make sure that they've got, as part of the information pack, they've got leaflets on it so that they know that there's people here that that are open and willing to speak about that. But we're not gonna force that up on you until you're ready to do so” – secure care representative

Stakeholders emphasised the need for staff to understand the importance of using correct names and pronouns to ensure transgender people feel included and respected:

“the staff that I know call me [my name] but an officer might say, “that’s the females down from [name of hall]” and not “that’s the males and females down from [name of hall]”” – transgender young person in custody

“When someone transitions while they are here, there's mistakes made by staff unintentionally. And we know that that can cause a lot of harm to them when they're getting misgendered or mis-pronounced.” – secure care representative

SPS staff also recommended an awareness raising campaign for staff to better understand what it means to be transgender and to explore the possibility of more specialised training such as what already exists for staff working with women and young people:

“I think there's a communication campaign or a campaign of information given to staff and I think that we need to do that and manageable chunks and actually dependent on what the future the prison service looks like. And dependent on the numbers of trans people in our care in the future and the recognition know that they need different management and more support, do we do we need specialist training for staff to say actually, that there will be areas and different prisons that support people over trans nature and that we invest in staff training? Because you've got working with young people training, working with women training, the prison service is going through trauma informed training. There's various safeguarding elements that we train our staff and etc” – SPS staff member

4. Education and activities

As with transgender adults, there is a need to provide appropriate activities which cater to their interests and support their gender identity. Transgender boys for example may have no interest in what are typically perceived to be female activities such as hairdressing and may prefer to do activities more typically perceived to be male activities, however as activities and work parties are often based on the majority interests, these tend to be the ones available meaning that transgender males housed in the female estate may only have access to these activities. There is a difficulty with numbers when it comes to providing activities that only a few want to do:

“We have in the past said, “Do you want a joiners?” and one or two of them will say, yes, but to run a whole joinery workshop we need more than one or two. So the painters has happened in my time and that seems quite successful. None of them have expressed an interest in engineering.” – SPS staff member

In secure care this was less of an issue due the facilities all being mixed gender:

“I mean we've got a lot of males and females in here who do the very opposite activities, you know boys who love beauty nights all that kind of thing and so, it depends, you know obviously who they're in with, but obviously if it's a male orientated, kind of culture or whatever then how does that and you know things like that I suppose.” – Secure care representative

5. Ensuring transgender children are communicated with in a way that they understand

Stakeholders were all in agreement that communication with children in secure care and prison is of great importance and when it comes to transgender children this is even more important due to additional considerations that need to be made.

“what I do know from working with children and young people for a number of years now is that communication is absolutely key, that giving them a voice is absolutely key...and if for any reason a young person is a reclusive or wants to step away or not engage, I think that we need to have a constant reminders or timeframes in terms of going back and encouraging and using other specialists.” – SPS staff member

“It's giving them a voice, taking time with them, explaining really well, and making sure that, you know, if they, if they don't engage the first time, we should not at that point, just effectively, stop engaging and accept that we need to keep going back. There's a lot of mistrust, a social isolation for some of the young people, so we need to work.” – SPS staff member

“We used tools such as a communication passport written by the young person to be able to communicate with friends within [secure care facility], the teaching team within [secure care facility], the care staff within [secure care facility].” – Secure care representative

6. Searching

Searching of under 18s in custody is prohibited unless there is intelligence that indicates its necessity, or it is deemed necessary for the preservation of life or personal safety. Children should not be subjected to routine body searches, that is searches during routine cell searches and searches after visits. Body scanners are present in HMP & YOIs Stirling and Polmont to reduce the need for searching further and standard operating procedures are in place at all three establishments where under 18s may be held to ensure that searching is not routinely conducted. Nonetheless, there still may be a need to conduct a search to retrieve an item found on an individual through a scan. This is the same at secure care facilities.

The previous 2014 policy stated that transgender people should be searched in line with their affirmed gender, with the intention of respecting the individual's lived gender. However interviews conducted for the policy review and EHRIA and for this CRWIA found that not all transgender individuals wished to be searched in line with their affirmed gender. External stakeholders interviewed for the EHRIA and those from secure care interviewed for this CRWIA recommended that individuals should have the right to request the gender of officer by which they are searched. Some prison services in other jurisdictions and some secure care facilities made use of searching agreements to this end.

There are considerations to be made when searching a transgender individual, they may wish to be searched in line with their affirmed gender, that is a transgender girl may prefer to be searched by an officer who is a woman, or they may prefer to be searched in line with their sex assigned at birth. Interviewees were keen to emphasise the need for discussion with the individual on how they would like to be searched to ensure it respects their wishes and does not trigger trauma or upset:

“Obviously a lot of people have been sexually assaulted in the past, a lot of trans people and if it was a trans man and they'd been sexually assaulted by a male I don't think they'd want a male searching them and I don't think anyone should be forced to have a strip search or be held down by a male if they've been assaulted. Some people flip out if they are being touched.” – transgender young person in custody

“we did do a personal search, which required two members of staff to be present, and we did it and we still have to do this on occasion, depending on the circumstances. So when they come in our care, we would have two members of staff and they would require the young people to take their clothes off, put them to where, you know the view staff and then they put their dressing gown on. And so we'll try and have that conversation whether the trans young person would prefer that to be

same-sex staff that are, you know, supervising that and carrying out the personal search of whether it's the opposite sex in terms of the staff and we've not had that kind of difficulty since we installed our airport scanner.” Secure care representative

“The airport scanner has given a lot of reassurance to staff and searches are not being done as frequently” – Secure care representative

One secure care facility made use of a form of searching agreement for all children in its care:

“For young people we have search forms anyway for any young person, doesn't matter if they are trans or not. They would sign their search form anyway to make sure that they agree with their search in general and that this part of the matching process at the beginning is well. So any young person that comes to us, it's an agreement with social work or through the courts, but there's that discussion held in advance about young people coming and things like that are generally agreed in advance even down to searching, you know whoever it is and whether they feel that the risk is so great that then need a full personal search.” – Secure care representative

7. Family support and homelessness

The Challenge Paper cites a study which shows that judges are more likely to sentence LGBTI+ youth to detention and that this may be due to their lack of family support.³ Furthermore, research by the Albert Kennedy Trust found that in the UK as many as 25% of young homeless people are LGBT and that 69% of homeless LGBT young people had experienced violence, abuse or rejection from the family home.⁴ It is likely that due to homelessness they may have more interactions with the police and end up in the criminal justice system and subsequently in prison due to vulnerability and other challenges which may make them more likely to engage in criminal behaviour.⁵

Secure care representatives stated that some family members of transgender children would refuse to call them by their new name or pronouns. The lack of family support may require staff and support workers to take differing approaches for transgender young people in custody.

3. Evidence from children and young people (Guidance Section 2.2)

See 2 above, evidence from stakeholders and from young people was analysed together.

Analysis of the evidence

Using evidence detailed above, please answer the following questions on how this relevant proposal will impact children.

³ Global Initiative on Justice with Children and Child Friendly Justice European Network (December 2022) *Towards LGBTI+ sensitive justice systems for children in Europe: Challenge Paper* p. 22

⁴ LGBT Youth Youth Commission: Housing and Homelessness <https://www.lgbtyouth.org.uk/national-programmes/youth-activism/youth-commission-housing-and-homelessness/>

⁵ <https://centrepoin.org.uk/about-us/blog/is-there-a-link-between-youth-homelessness-and-youth-offending/>

4. How have the findings outlined in questions 1-3 influenced the development of the relevant proposal? (Guidance Section 2.2)

The findings will largely impact on how the policy is implemented. Should a transgender child come into SPS custody, it will be necessary to take specific steps to protect their rights and wellbeing. This may include ensuring communications are delivered in an accessible way that reflects the maturity level and capacity of the child, close monitoring of the admissions and case conference process and ensuring advocates for the child, social workers and others who may be familiar with the child are involved in the case conference process.

5. Assessing for compatibility against the UNCRC requirements (Guidance Section 2.2)

Complete the below matrix, placing a tick against each article which is relevant to your existing legislation or decision or relevant proposal. Further on in the form you will be able to explain these answers in more detail.

UNCRC Articles

Please click on the triangle to expand and collapse the text for a full definition of each article.

What impact does/will your relevant proposal have on children's rights (Please tick positive, negative or neutral)

	Positive	Negative	Neutral
Article 1 Definition of the child	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 2 Non-discrimination	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Article 3 Best interests of the child	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Article 4 Implementation of the Convention	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 5 Parental guidance and a child's evolving capacities	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 6 Life, survival and development	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 7 Birth registration, name, nationality, care	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 8 Protection and preservation of identity	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Article 9 Separation from parents	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 10 Family reunification	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 11 Abduction and non-return of children	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 12 Respect for the views of the child	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Article 13 Freedom of expression	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 14 Freedom of thought, belief and religion	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Article 15 Freedom of association	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 16 Right to privacy	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Article 17 Access to information from the media	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 18 Parental responsibilities and state assistance	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 19 Protection from violence, abuse and neglect	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Article 20 Children unable to live with their family	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 21 Adoption	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 22 Refugee children	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 23 Children with a disability	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 24 Health and health services	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Article 25 Review of treatment in care	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 26 Social security	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 27 Adequate standard of living	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 28 Right to education	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 29 Goals of education	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 30 Children from minority or indigenous groups	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 31 Leisure, play and culture	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 32 Child labour	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 33 Drug abuse	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 34 Sexual exploitation	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 35 Abduction, sale and trafficking	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 36 Other forms of exploitation	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 37 Inhumane treatment and detention	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 38 War and armed conflicts	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 39 Recovery from trauma and reintegration	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 40 Juvenile justice	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 41 Respect for higher national standards	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 42 Knowledge of rights	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
First optional protocol	Positive Negative Neutral		
Article 4	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 5	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Nothing in the present Protocol shall be construed as precluding provisions in the law of a State Party or in international instruments and international humanitarian law that are more conducive to the realization of the rights of the child.

Article 6

Article 7

Second Optional Protocol

Article 1

Article 2

Article 3

Article 4

Article 6

Article 7

Article 8

Article 9

Article 10

Article 11

6. Impact on children and young people (Guidance Section 2.2)

In relation to the UNCRC articles that you have ticked above, please explain how your relevant proposal will impact or currently impacts on individual or groups of children. Please give consideration to groups who may be considered at greatest risk of not having their right fulfilled.

Article 2 – Non-discrimination

The policy aims to be non-discriminatory in that it will apply to all transgender children under the age of 18 no matter their status or any characteristics such as disability, race, nationality etc.. The EHRIA identifies considerations made for transgender people in custody who also fall under other protected characteristics in the Equality Act 2010. As stated in the EHRIA, discrimination is prevented based on the grounds of gender reassignment or transgender status because the policy recognises and supports transgender people. The policy actively promotes respect for how an individual identifies and requires staff to use an individual's correct name and pronouns and allows for the provision of property and support from outside agencies, recognising that transition can be a very challenging and difficult decision for people to arrive and that peer support can be crucial. Transgender children are not excluded from being housed in the prison estate that aligns with their social gender by virtue of their transgender status but rather through an individualised assessment which considers

risk and vulnerability. Transgender girls with VAWG markers are unlikely to be housed in the female estate unless the risk they present can be managed and/or mitigated. However if SPS is to take custody of a transgender girl, it is more likely that SPS would place her in the young people's estate alongside boys even if there is insufficient information about her offending background where we cannot be certain of the risk she presents. Likewise, a transgender boy is more likely to be housed in the women's estate alongside girls if there are concerns or insufficient information about their vulnerability if they were placed alongside boys. Although there are processes in place to obtain information about children coming into custody from local authorities and/or from secure care facilities, this may not be obtained before a child enters custody (there is a very short window between court and arrival at a prison). This information may however be available by the time a case conference takes place and decisions about longer-term placement are made.

Article 3 – The best interests of the child

The policy emphasises and puts first the safety and wellbeing of transgender and non-transgender children where they may also be impacted by living alongside a transgender child. The individualised approach taken by the policy, specifically in areas related to placement and searching, allows staff to make decisions in the best interests of the child. The mechanism for achieving this is the case conference process which invites the participation of the transgender individual and as well as professionals with an interest in the individual's care and management and are able to consider and discuss the range of needs an individual may have. Admission, placement and management decisions aim to have the best interests of the transgender child while not negatively impacting on others. SPS, as the corporate parent has a duty to ensure best possible care and safeguarding for all children in its custody. The approaches to admission and placement seek to be flexible enough to ensure that the best interests of the child, including their safety and the safety of other children are prioritised.

As stated above, the lack of family support may require staff and support workers to take differing approaches for transgender young people in custody to ensure they are supported.

Article 8 – Protection and preservation of identity

The policy emphasises the need to respect and support the identity of transgender individuals no matter where they are located in the prison estate and no matter if they are housed in a prison which aligns with their affirmed gender. The policy emphasises the importance of staff using appropriate terms and pronouns and inclusive language. The evidence gathered for this CRWIA found that use of language was an extremely important factor in making children feel welcomed, included and recognised. In the policy's implementation, it will be crucial to ensure staff are sensitised and aware of transgender issues and the particular issues which may impact transgender children, are educated on the importance of using correct terms and pronouns and are aware of the impact of transphobic abuse, stereotyping, misgendering etc. This training and awareness raising will enable and empower staff to better protect transgender children in prison in a way that does not force resort to isolation or segregation.

External stakeholders interviewed for the EHRIA stated:

"The policy should seek to respect trans people's lived gender identities and to uphold the human rights and equality of all people in custody." – SH2

'I am of no doubt that transgender people remain a highly vulnerable group who face continued discrimination and that recognition of one's identified gender is essential to human rights and individual wellbeing. This recognition in wider society should, as with all other rights, also apply to prisons' - SH7.

While it may be necessary to accommodate transgender individuals in a prison which does not align with their affirmed gender, there may be other ways of supporting their gender identity, for example through access to activities with others of their gender identity. This is something that should be explored for any transgender child coming into SPS custody.

Article 12 – Respect for the views of the child and General Comment 12 on the right to be heard

Many of the processes contained within the policy allow for the views of transgender individuals to be considered. Transgender individuals entering custody and those who wish to transition while in custody are able and supported to self-identify their gender identity for the purposes of recording their personal information on prisoner records and for the purposes of management. Transgender children will be actively encouraged to participate in their case conferences and their views will be considered as part of placement and searching decisions.

In implementing the policy, SPS must ensure effective and accessible forms of communication are adopted that account for children's levels of maturity and understanding and enable them to participate in decisions made about them.

Article 14 - Freedom of thought, conscience and religion.

As in the EHRIA, there may be concerns about religion or belief issues that arise as a result of housing transgender people in an estate that aligns with their gender identity as opposed to their sex assigned at birth. The policy has been designed to ensure it does not result in discrimination against those who are religious or have beliefs, nor does it violate the right to freedom of thought, conscience and religion. Some stakeholders interviewed for the EHRIA felt very strongly about protecting individuals' beliefs and religion as well as the right to freedom of expression and, for example, that non-transgender women in prison and staff should not be punished for misgendering transgender women. It is SPS's view that deliberately referring to a transgender person not by their name or their pronouns could amount to harassment and even constitute degrading or ill-treatment under Article 3 of the European Convention of Human Rights and Article 19 of the UNCRC. Any transphobic language or behaviour from people in our care or among our staff is dealt with according to SPS's anti-bullying policy Think Twice (for people in our care) which covers transphobia and SPS's Dignity at Work policy (for staff).

Other external stakeholders also raised concern over the impact of this policy on those from religious and faith groups, particularly for staff with a religious background and/or beliefs who may feel uncomfortable searching someone they perceive as the opposite gender and for people in custody who feel uncomfortable living alongside someone they perceive to be a different gender. Although the evidence gathering did not produce evidence to show that non-transgender women or men in custody with religious beliefs would be discriminated against as a result of this policy, the policy does safeguard their beliefs. The policy reinforces privacy for all people in custody, both transgender and non-transgender individuals: transgender individuals should be housed in single cells, and both groups are afforded privacy for showering and dressing.

Article 16 – Right to privacy

The revised policy's admission process may lead to transgender children being outed due to the new guidelines which would result in transgender girls being placed in the male estate where there is a known or unknown risk that they have VAWGs markers and transgender

boys would be placed in the women's estate where they have a known or unknown vulnerability that would place them at risk if placed in the male estate. Being outed, i.e. having their transgender status made known because of this initial admission policy, may put individuals at risk of harassment and violence from others in custody. This can even be the case if someone is held on Rule 95 in the main hall and not in the SRU as individuals can be harassed by other outside of their cell.

Routine body searches of under 18s has ended in line with recommendations from the Expert Review of Mental Health. Decisions to search children are only taken when there is an intelligence-led need for the preservation of life or personal safety in respect of the Talk To Me process, or at the conclusion of a control and restraint intervention on the authorisation of a first line manager. Prisons where children are held also make use of body scanners, cell sense and BOSS chairs to ensure that searches are minimised and are on an as need basis only. Transgender children will also be invited to agree and sign a Searching and Sampling Arrangement where they can input into the gender of the officer who will conduct any required search. Searches can be conducted in line with the individual's gender unless the individual specifies they wish to be searched in line with their sex assigned at birth or unless there are no overriding risks to the health, welfare or safety of the individual or officer conducting the search, or to the security or good order of the prison which cannot be mitigated. While mandatory testing for drugs and alcohol is a rare occurrence for children in custody, legally it is permitted. As with decisions to search under 18s, it would only take place if sufficient intelligence indicated it was a necessity. All sampling would take place in a way that ensures the individual's safety and dignity, as it would for adults. Decisions on the officer who will oversee a sample being given will follow the same procedure as for searching decisions and be documented in the Searching and Sampling Arrangement form.

Article 19 - Protection from violence, abuse and neglect

Of relevance here also is General Comment 13 on freedom from all forms of violence. The General Comment (GC) aims to strengthen the provisions of Article 19 and specifically makes provision for transgender children, those in conflict with the law, and those not living with biological parents – living in alternative care, of which prison may fall under, as children especially vulnerable to violence, abuse and neglect. The policy aims to protect Article 19 by ensuring transgender children are kept safe at all times during their time in custody. The policy acknowledges the vulnerability of transgender people in prison and measures are in place to ensure their safety. For children, this may require them to be housed separated from their peers, however officers will mitigate any isolation by accompanying the child at all times during the day.

Article 24 – Right to health and health services

People in custody, including children, have the right to access NHS medical assessment and treatment including specific gender related healthcare services. Discussions about access to healthcare are held at case conferences with the presence of a local healthcare professional. The Age of Legal Capacity (Scotland) Act 1991 recognises that a young person aged 12 and over is presumed to have sufficient capacity to make decisions about medical treatment.

7. Negative Impact/Incompatibility (Guidance Section 2.2)

If negative impact is identified in Question 5 above, can you elaborate on this and explain why impact is or will be negative?

Are there any potential concerns about compatibility with the UNCRC requirements? Please explain these here.

There are concerns about the realisation of the following articles:

As stated above, there are concerns about the ability of SPS to protect transgender children's right to privacy (Article 16) under the revised policy. The revised policy's admission process may lead to transgender children being outed due to the new guidelines which require that transgender girls would be placed alongside boys where there is a known or unknown risk that they have VAWGs markers and transgender boys would be placed in the women's estate where they have a known or unknown vulnerability that would place them at risk if accommodated alongside boys. Being outed, i.e. having their transgender status made known because of this initial admission policy, may put individuals at risk of harassment and violence from others in custody (Article 19). This can even be the case if someone is held on Rule 95 in the main hall and not in the SRU as individuals can be harassed by other outside of their cell. While the policy acknowledges the vulnerability of transgender people in prison, they may be at risk of violence or harassment and in an effort to protect them from this they may require separation from their peers.

8. Options for modification or mitigation of negative impact or incompatibility (Guidance Section 2.2)

What options have been considered to modify the existing legislation or decision or relevant proposal in order to mitigate negative impact or potential incompatibility issues?

Please summarise mitigation actions taken in the below table:

Mitigation table

Issue or risk Identified per article/ Optional Protocol	Action Taken/ To Be Taken	Date action to be taken or was taken
Article 16	Avoiding a transgender individual from being outed. Ensuring availability of sufficient information to make a decision that would allow them to be	As required if a transgender child were to

	housed in line with their affirmed gender as long as this is safe for the individual. Provide close supervision if there are concerns about any risk the child may present to others.	be in this situation
Article 19	Ensuring any transgender children who require to be separated from their peers for their own safety are not isolated and are accompanied throughout their day.	As required if a transgender child were to be in this situation

9. Positive impact: Giving better or further effect to children's rights in Scotland (Guidance Section 2.2)

If positive impact is identified in Question 5, please reflect on and explain how your relevant proposal currently protects, respects and fulfils children's rights in Scotland or will do so in future.

The policy is envisaged to have a positive impact on the following articles:

Article 2 - The policy aims to be non-discriminatory in that it will apply to all transgender children under the age of 18 no matter their status or any characteristics such as disability, race, nationality, care experience etc. The EHRIA identifies areas considerations made for transgender people in custody who also fall under other protected characteristics of the Equality Act 2010. As stated in the EHRIA discrimination is prevented based on the grounds of gender reassignment or transgender status because the policy recognises and supports transgender people. The policy actively promotes respect for how an individual identifies and requires staff to use an individual's correct name and pronouns and allows for the provision of property and support from outside agencies, recognising that transition can be a very challenging and difficult decision for people to arrive and that peer support can be crucial. Transgender children are not excluded from being housed in the prison estate that aligns with their social gender by virtue of their transgender status but rather through an individualised assessment which considers risk and vulnerability.

Article 3 - The policy emphasises and puts first the safety and wellbeing of transgender and non-transgender children where they may also be impacted by living alongside a transgender child. The individualised approach taken by the policy specifically in areas related to placement and searching allow staff to make decisions in the best interests of the child. The mechanism for achieving this, the case conference process invites the participation of the transgender individual and as well as professionals with an interest in the individual's care and management and are able to consider and discuss the range of needs an individual may have. Admission, placement and management decisions aim to have the best interests of the transgender child while not negatively impacting on others. SPS, as the corporate parent has a duty to ensure best possible care and safeguarding for all children in its custody. The approaches to admission and placement seek to be flexible enough to ensure that the best interests of the child, including their safety and the safety of other children are prioritised.

As stated above, the lack of family support may require staff and support workers to take differing approaches for transgender young people in custody to ensure they are supported.

Article 8 - The policy emphasises the need to respect and support the identity of transgender individuals no matter where they are located in the prison estate and no matter if they are housed in a prison which aligns with their affirmed gender. The policy emphasises the importance of staff using appropriate terms and pronouns and inclusive language. The evidence gathered for this CRWIA found that use of language was an extremely important factor in making children feel welcomed, included and recognised. In the policy's implementation, it will be crucial to ensure staff are sensitised and aware of transgender issues, the particular issues which may impact transgender children, are educated on the importance of using correct terms and pronouns and are aware of the impact of transphobic hate crimes, stereotyping, misgendering etc. This training and awareness raising will enable and empower staff to better protect transgender children in prison in a way that does not force resort to isolation or segregation. While it may be necessary to accommodate transgender individuals in a prison which does not align with their affirmed gender, there may be other ways of supporting their gender identity, for example through access to activities with others of their gender identity. This is something that should be explored for any transgender child coming into SPS custody.

Article 12 - Many of the processes contained within the policy allow for the views of transgender individuals to be considered. Transgender individuals entering custody and those who wish to transition while in custody are able and supported to self-identify their gender identity for the purposes of recording their personal information on prisoner records and for the purposes of management. Transgender individuals are actively encouraged to participate in their case conferences and their views are considered as part of placement and searching decisions.

In implementing the policy, SPS must ensure effective and accessible forms of communication are adopted that account for children's levels of maturity and understanding and enable them to participate in decisions made about them.

Article 14 – As in the EHRIA, there may be concerns about religion or belief issues that arise as a result of housing transgender people in an estate that aligns with their gender identity as opposed to their sex assigned at birth. The policy has been designed to ensure it does not result in discrimination against those who are religious or have beliefs, nor does it violate the right to freedom of thought, conscience and religion. Some stakeholders interviewed for the EHRIA felt very strongly about protecting individuals' belief and religion as well as the right to freedom of expression and that non-transgender women in prison and staff should not be punished for referring to transgender women with he/him pronouns. It is SPS's view that deliberately referring to a transgender person not by their name or their pronouns could amount to harassment and even constitute degrading or ill-treatment under Article 3 of the European Convention on Human Rights or violation of Article 19 of the UNCRC. Any transphobic language or behaviour from people in our care or among our staff is dealt with according to SPS's anti-bullying policy Think Twice (for people in our care) which covers transphobia and SPS's Dignity at Work policy (for staff).

Other external stakeholders also raised concern over the impact of this policy on those from religious and faith groups, particularly for staff with a religious background and/or beliefs who may feel uncomfortable searching someone they perceive as the opposite gender and for people in custody who feel uncomfortable living alongside someone they perceive to be a different gender. Although the evidence gathering did not produce evidence to show that non-transgender women or men in custody with religious beliefs would be discriminated

against as a result of this policy, the policy does safeguard their beliefs. The policy reinforces privacy for all people in custody, both transgender and non- transgender individuals: transgender individuals should be housed in single cells, and both groups are afforded privacy for showering and dressing.

Article 19 - The policy aims to protect this article by ensuring transgender children are kept safe at all times during their time in custody. The policy acknowledges the vulnerability of transgender people in prison and measures are in place to ensure their safety. For children, this may require them to be housed separated from peers, however officers will accompany the child at all times during the day to ensure they are not isolated.

Article 24 - People in custody, including children, have the right to access NHS medical assessment and treatment including specific gender related healthcare services. Discussions about access to healthcare are held at case conferences with the presence of a local healthcare professional. The Age of Legal Capacity (Scotland) Act 1991 recognises that a young person aged 12 and over is presumed to have sufficient capacity to make decisions about medical treatment.

10. Impact on Wellbeing: does or will the relevant proposal contribute to the wellbeing of children and young people in Scotland? (Guidance Section 2.2)

Please tick all of the wellbeing indicators that are relevant to your proposal.

Wellbeing Indicator	Will there be an improvement in wellbeing in relation to this indicator: yes/no
<p>Safe - Growing up in an environment where a child or young person feels secure, nurtured, listened to and enabled to develop to their full potential. This includes freedom from abuse or neglect.</p>	<p>Yes - The policy emphasises the importance of staff using the correct pronouns and names with transgender individuals in custody to help them feel acknowledged, safe and included. The case conference process is a forum designed for the participation of transgender individuals to voice their needs and views and to be listened to. As stated under Article 19 above, the policy and guidance prioritise the safety of transgender individuals.</p>

Healthy - Having the highest attainable standards of physical and mental health, access to suitable healthcare, and support in learning to make healthy and safe choices.	Yes - As stated above under article 24, people in custody, including children, have the right to access NHS medical assessment and treatment including specific gender related healthcare services. Discussions about access to healthcare are held at case conferences with the presence of a local healthcare professional. The Age of Legal Capacity (Scotland) Act 1991 recognises that a young person aged 12 and over is presumed to have sufficient capacity to make decisions about medical treatment.
Achieving - Being supported and guided in learning and in the development of skills, confidence and self-esteem, at home, in school and in the community.	No impact
Nurtured - Growing, developing and being cared for in an environment which provides the physical and emotional security, compassion and warmth necessary for healthy growth and to develop resilience and a positive identity.	Yes - As with Safe, the policy seeks to promote the principle of Nurtured through ensuring the safety and wellbeing of transgender children. Through training and awareness raising, staff will understand the importance of using correct pronouns and inclusive language, and ensuring transgender children are supported in the case conference process.
Active - Having opportunities to take part in activities such as play, recreation and sport, which contribute to healthy growth and development, at home, in school and in the community.	No impact
Respected - Being involved in and having their voices heard in decisions that affect their life, with support where appropriate.	Yes - As stated above under Article 12 Respect for the Views of the Child, many of the processes contained within the

	<p>policy allow for the views of transgender individuals to be considered. Transgender individuals entering custody and those who wish to transition while in custody are able and supported to self-identify their gender identity for the purposes of recording their personal information on prisoner records and for the purposes of management. Transgender individuals are actively encouraged to participate in their case conferences and, for transgender children, their views are considered as part of placement and searching decisions.</p> <p>There must also be acknowledgement that all children in prison are extremely vulnerable and may feel unable or lack the confidence to speak up, make complaints or voice concerns in a prison setting. SPS staff and any external stakeholders must make specific efforts to ensure that children are able to speak up and be heard in fora where decisions are made about them.</p>
<p>Responsible - Having opportunities and encouragement to play active and responsible roles at home, in school and in the community, and where necessary, having appropriate guidance and supervision.</p>	<p>No impact</p>
<p>Included - Having help to overcome inequalities and being accepted as part of their family, school and community.</p>	<p>Yes – efforts will be taken to ensure transgender children are able to participate fully in the prison regime alongside their peers. Where possible and if safe, transgender children may be able to participate in activities that support and align</p>

	with their gender identity and interests.
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Post Assessment Review and sign-off

11. Communicating impact to children and young people (Guidance Section 2.2)

How will you communicate to children and young people the impact that the relevant proposal is having or will have on their rights?

A child-friendly short guide will be put together and issued to any transgender child coming into custody to inform them of the processes involved in their management including how they will be supported to participate in their case conference. It will also include a summary of how their rights will be protected.

Providing information to children and young people on how their rights are being or will be impacted helps to ensure that policy-development is transparent. Are you publishing a child-friendly or accessible CRWIA?

It is not envisaged that a child-friendly or accessible CRWIA is necessary at this point. As noted above, a summary of the rights protected by the policy will be included in the short guide produced for any transgender children coming into custody.

12. Planning for the review of impact on child rights (Stage 3) (Guidance Section 2.2)

As part of the decision-making process, plans for reviewing the impact on child rights need to be developed.

- How is the impact of the relevant proposal on child rights being monitored or how will it be monitored in the future?
- When will you review your CRWIA and complete Stage 3?

SPS will monitor the impact of the policy on any transgender child that comes into custody. There will be close monitoring of the implementation of the policy in the first year of implementation including close scrutiny of case conferences and admission processes as well as processes to obtain feedback from transgender people in custody.

Should there be a number of transgender children come into custody prior to Children (Care and Justice) (Scotland) Bill being passed, an impact evaluation will take place.

13. Compatibility sign off statement (Guidance Section 2.2)

This relevant proposal has been assessed against the UNCRC requirements and has been found to be compatible.

Policy Lead Signature & Date of Sign Off: 1 December 2023

Deputy Director Signature & Date of Sign Off: 1 December 2023

SGLD Sign Off: Yes No

**Once signed off, please send to CRWIA@gov.scot
and publish on gov.scot or relevant Executive
Agency website.**

