

Instructions for using this form: Once completed you should save the document and send it to the Information Management Unit (IMU). If you have any problems with the form or require additional guidance contact Duncan Harkins on 0131 330 3704.	
Project Title:	Gender Identity and Gender Reassignment (2014) Policy Review and production of a revised policy entitled SPS Policy For The Management of Transgender People in Custody (MTPC).
Project Description:	The purpose of the policy review was to develop an updated and evidence-based corporate policy position which would clearly articulate an updated intent and how this would be achieved, consistent with the obligations of SPS as a public body and as a prison service. The project here refers to the revised SPS Policy For The Management of Transgender People in Custody (MTPC).
Project Executive:	Click here to enter text.
Project Manager:	

Has an SPS DPIA Screening Questionnaire already been completed?	Yes	No
If YES, please attach a copy of the SPS DPIA Screening Questionnaire .	<input checked="" type="checkbox"/>	<input type="checkbox"/>

STEP 1: Identify the NEED for a DPIA.
Describe how the need for a DPIA was identified. Was it identified as part of the standard SPS project management process **or** by using the **SPS DPIA Screening Questionnaire**?

The policy requires a full data protection impact assessment because the collection and processing of data is likely to entail high risk to the rights and freedoms of individuals. This includes making decisions about the admission and placement of individuals in the prison estate based on evidence (or lack of) about an individual's risk and offending history which they may present to others and vulnerabilities they may face as a result of being housed in a particular location.

STEP 2: Description of the Processing.
Describe the process. Explain what personal data is being processed, what it is used for, who it is disclosed to, who will have access to it and any other relevant information.

Scope - What is the nature, scope, context and purposes of the processing?
Information is collected about transgender people in custody for the purposes of ensuring these individuals are admitted, placed and managed in the prison estate in a way that allows SPS to manage risk and vulnerability and at the same time protects their rights. This information is also collected to ensure their safety, security and wellbeing and the rights and safety of other people in custody and staff, through minimising and mitigating any negative impacts identified, and to evidence that the measures taken are proportionate.
SPS has also committed to publishing data about the transgender population in custody on a quarterly basis on the SPS website. SPS will publish data on the total number of transgender individuals in custody and present these numbers as a percentage of the total prison population but will no longer publish a breakdown of what estate they are housed in (female or male estate). Where the number of transgender people falls below five, SPS will make use of disclosure control and will not publish the actual number in line with guidance from the Chief Statistician.

Description of Personal Data - What personal data and in particular what sensitive personal data will be processed?

Under the revised policy, SPS will seek to collect and process personal data about transgender people in custody. This will include information about how transgender people identify through a proposed amendment to PR2.

For transgender persons being admitted into custody information will be collected in Annex 2 Transgender Admission Form. This information and data includes personal information about the individual which is similar to that input into PR2 as for every other individual coming into custody. It also includes information about the individual's affirmed gender, information from the warrant if the offence indicates violence against women and girls, collation of information from external partners including justice social work and the NHS relating to the individual's gender identity, information about when the individual began their transition, information about when/if the individual is receiving medical treatment for their transition, previous prison sentences in Scotland and what their gender was during these sentences and any available intelligence about the individual from previous prison sentences.

For transgender persons who may be placed in the estate that aligns with their affirmed gender, there will be the collection and processing of extensive evidence to inform these decisions. The full list of information asked for can be found in Annex 3 – Case Conference for Initial Assessment. This form also collects basic personal information that would also be stored on PR2 for any prisoners. It also asks for information if available from the trial judge report, social enquiry reports, psychiatric reports, GRC (if information about this is offered by the individual – the policy makes it clear that staff cannot ask transgender individuals if they have one), information about addictions, physical or mental health needs, prison intelligence, information about previous admissions into SPS custody and ICM documentation.

For the location assessment information is required to be completed about the individual's preferred location, details of index offence and previous offending that resulted in custodial and non-custodial sentences, any justice social work analysis of offending, information about lifestyle, health and wellbeing including about gender identity, physical and mental health, involvement with gender identity clinics, substance use, information which indicates the individual may be especially vulnerable in prison and information about previous custody including conduct and intelligence. This form should be completed only for those individuals who seek to be placed in the estate which aligns with their affirmed gender identity or those where SPS believes they could be considered for placement in the estate which aligns with their affirmed gender.

Where a prisoner informs a member of prison staff that they are applying for, or have obtained, a GRC, information about the application or, if they have obtained the GRC, their gender history may only be shared among SPS staff and with staff from other criminal justice agencies, for example prison-based social workers or the Parole Board, who are involved in the management of that offender where it is required for the purposes of managing that offender in prison or on release to the community.

Volume of Personal Data - How many individuals' personal data will be processed?

As of 30 September, there are 22 transgender individuals in SPS custody. Although it is expected that the number of transgender individuals in SPS custody will rise over the next few years, the number is expected to remain small as a proportion of the total prison population.

Recipients – Who will access or receive copies of personal data?

Personal data regarding a person's transgender status will be accessible on PR2 and so accessible by all those who have access to PR2. Information discussed for the purposes of Transgender Case Conferences (TCC) will be recorded in minutes and annexes and will be circulated to the participants of the TCC and will be saved on the individual's PR2 record. Participants of the TCC include: the individual in custody, the individual's personal officer, relevant Unit Manager (Chair) and the establishment's E&D Manager. The following individuals are also invited to attend: the individual's social worker, a representative from an LGBT or transgender community organisation, a

peer of the individual (at the discretion of the Chair) a representative of the local healthcare team (if the individual is being managed under Rule 41 or Talk to Me a local healthcare professional must attend).

Information which is strictly necessary for ensuring safety and dignity during transportation between establishments and/or courts may also be shared with transportation escort providers. The gender identity related information to be shared should usually be limited to: the current name, title and gender pronoun used by the person in custody; the current gender of staff that should search the person in custody; any medication or additional property in use which the person in custody needs access to during transportation (medication which is not needed during the transportation period does not need to be notified to the escort provider); the extent to which the person in custody needs protection from other people in custody during transportation.

The Parole Board is another recipient of personal data as information on individuals' gender may be shared with the Parole Board as part of their dossier.

Retention - How long will personal data be retained? What is the basis for the retention period? Data and information about an individual related to the transgender status and management is stored for the duration of the individual's sentence in custody. Retention and deletion of information is applied to removal of photographs and manual deletion of intelligence. In relation to information share with transport and escort providers, SPS requires the transportation escort provider to ensure that full compliance with data protection and medical confidentiality standards is maintained at all times and that information about a person in custody's gender reassignment is handled as highly sensitive information.

Processing Operation – Provide a functional description of the processing operation. See above describing how information is gained and stored. Information about individuals' gender identity is gained at reception and in advance of and during the case conference process. All information is intended to be stored in an individual's PR2 record both through the gender reassignment tab and through the Prisoner Due Assessments tab.

Assets - Which assets will be used to carry out the processing (e.g. hardware, software, networks, people, paper, transmission channels)?

PR2

Staff: prison officers and managers, the Gender Identity SRO, the MTPC policy lead, the Service User Rights and Equalities Manager at HQ

Paper and word processor recording of minutes to be uploaded to PR2. Any handwritten paper records should be destroyed after they are recorded on a computer.

Email

Other Information - Add any other useful information or explanation here. (e.g. flow diagram)
Click here to enter text.

STEP 3: Necessity and Proportionality of the Processing.

Describe how the processing complies with the data protection principles. Explain the purpose and legal basis of the processing and what measures will be put in place to ensure that personal data is adequate, relevant and limited to what is necessary and is retained only for as long as necessary.

Purpose - What is the specific purpose or purposes of the processing?

As stated above, the purposes of processing the data is to inform admission, management and placement decisions, including making decisions on how an individual should be searched and should give samples for drug and alcohol testing, in a way that protects their rights and safety and does not negatively impact the rights and safety of others in custody or staff.

SPS previously published quarterly data on the transgender population in prison, unfortunately due to the small numbers, this could potentially render individuals identifiable. In accordance with our public body obligations to protect the data of those in our care and to balance transparency with the need to mitigate the risk of identification of individuals SPS will be unable to release this data. SPS will continue to publish the number of transgender people in prison on a quarterly basis but will no longer report on the gender of estate that people have been placed in. SPS will keep this reporting under review.

Legal Basis - What is the legal basis for carrying out the processing?

Equality Act 2010

The Equality Act 2010 makes it unlawful to discriminate based on a person's protected characteristics, of which gender reassignment is one unless an exemption under that Act applies. To apply an exemption under that Act SPS requires the personal data collected on the person under the policy for the purposes of informing decisions about where to place them within the SPS estate and their general management, including how they are searched. The personal data collected informs the risk assessments which ensure the person and others in SPS custody are managed safely. Please refer to the policy document and EHRIA for further explanation.

The Equality Act 2010 Code of Practice states: *2.27 Transsexual people should not be routinely [unnecessarily] asked to produce their Gender Recognition Certificate as evidence of their legal gender. Such a request would compromise a transsexual person's right to privacy. If a service provider requires proof of a person's legal gender, then their (new) birth certificate should be sufficient confirmation.*

Data Protection Act (DPA) 2018 Part 3 Law Enforcement:

Processing of Personal Data:

- DPA Section 35(2): The processing is necessary for the performance of a task carried out for a law enforcement purpose by a competent authority.

Sensitive processing (to the extent that the processing is sensitive processing under section 35(8) of the DPA):

- DPA Section 35(5): The processing is strictly necessary for a law enforcement purpose; the processing meets at least one of the conditions in Schedule 8; and at the time when the processing is carried out, the controller has an appropriate policy document in place.

- DPA Schedule 8 Paragraph 1: Statutory etc. purposes: The processing is necessary for the exercise of a function conferred on a person by an enactment or rule of law, and is necessary for reasons of substantial public interest.

- DPA Schedule 8 Paragraph 3: Protecting individual's vital interests This condition is met if the processing is necessary to protect the vital interests of the data subject or of another individual.

Section 3(3) of the Prisons (Scotland) Act 1989: The Secretary of State shall make contracts and do all other acts necessary for the maintenance of the prisons and prisoners therein.

Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 and rule 5 of the Parole Board (Scotland) Rules 2022 both of which apply to sharing information with the Parole Board.

Sections 1, 10 and 11 of the Management of Offenders etc. (Scotland) Act 2005 for sharing with MAPPA responsible authorities.

Sections 102 to 104 of the Criminal Justice and Public Order Act 1994 for sharing under contractual arrangements with escort provider.

Adequate, Relevant and Limited – What measures will be put in place to ensure that any personal data processed is adequate, relevant and limited to what is necessary for the specified purpose?

Information regarding an individual's gender identity is only collected for the purpose of informing management decisions including where to place a transgender individual and how they will be searched. It is intended that the information collected will contribute to defensible decision making and ensure that transgender individuals, others living alongside transgender individuals and staff working directly with transgender individuals will be kept safe.

It may be required to share information about a transgender person's identity or possession or application for a GRC. Where a prisoner informs a member of prison staff that they are applying for, or have obtained, a GRC, information about the application or, if they have obtained the GRC, their gender history may only be shared among SPS staff and with staff from other criminal justice agencies, for example prison-based social workers or the Parole Board, who are involved in the management of that offender where it is required for the purposes of managing that offender in prison or on release to the community.

Retention - What measures will be put in place to ensure that personal data is only kept for as long as necessary and is destroyed when no longer required?

See above previous section on retention.

STEP 4: Rights of the Data Subject

Describe how the processing will ensure the rights of the data subject are met.

Transparency - What information will be provided to the data subject about the processing and how will this information be provided?

Transgender individuals will be fully informed of how their data will be recorded and stored through verbal and written communication before each Case Conference. For transgender individuals coming into custody, they will be informed of the need to record information that they are transgender (transition date) and their gender identity in PR2. Some information will come from external agencies to SPS, particularly those who are being considered for a move to the estate which aligns with their affirmed gender but transgender individuals going through this process will be informed of this. Some information gathered about transgender individuals is shared by these individuals themselves and they take part in the conversation about management decisions made about them in the case conference process.

Rights of the Data Subject – Describe the processes that will be followed if the data subject:

- requests access to their personal data

Transgender individuals are to be provided with a copy of TCC minutes after each TCC meeting and have the right of access and request all the personal data that SPS is processing about them. SPS must respond to requests for this data within 28 days.

- requests that their personal data be corrected or erased

Information regarding a person's gender identity can be changed if an individual requests. For example if a person no longer identifies as transgender then the establishment unit manager who leads on their case (the TCC chair) or establishment E&D manager can request that PR2 remove their transition date and information indicating they are transgender.

If an individual believes that the personal data that SPS is processing about them is inaccurate then they are entitled to request to have that data corrected and SPS will rectify the data without undue delay provided it is factually inaccurate. Data subjects also have the right to ask for their personal

data to be erased and SPS will consider whether to do so. Where SPS has a legitimate reason for processing the data and processing complies with data protection legislation is it unlikely that SPS will erase the data. The SPS will inform the data subject in writing whether their request has been granted and if it has been refused the reasons for refusal.

- objects to their personal data being processed

Individuals have the right to object to SPS processing their personal data and SPS will consider each request carefully. Where the SPS has a legitimate reason for processing the data and the processing complies with data protection legislation, it is unlikely that SPS will stop processing the data.

- requests that processing of their personal data is restricted

Individuals have the right to ask for the processing of their personal data to be restricted. Where the SPS has a legitimate reason for processing the data, and the processing complies with data protection legislation, it is unlikely that SPS will restrict processing.

Processors - Will any of the data subject's personal data be processed by another organisation on behalf of SPS? If so, what measures will be put in place to ensure this processing complies with data protection legislation and SPS policies?

The escort provider gathers some initial data for SPS so they are a processor on behalf of SPS (under a contract made under section 102 of the 1994 Act noted above). The escort provider is also given information about prisoners who it is transporting thus they need to be provided information in a way that limits access only to those who need to see it.

International Transfers - Will any of the data subject's personal data be transferred outside of the EU? If so, what measures will be put in place to ensure this processing complies with data protection legislation and SPS policies?

Data pertaining to an individual's transition or gender identity which does not align with their legal sex or sex assigned at birth will only be shared with the receiving jurisdiction with the consent of the individual in custody in relation to an international transfer request.

STEP 5: Risks to the Rights and Freedoms of Data Subjects

The three main risks to an individual's personal data are:

- illegitimate access
- undesired modification
- disappearance of data

Describe the risks from the perspective of the data subject and what measures will be put in place to address the risks.

Illegitimate access to personal data:

- What is the source of the risk?

Staff misuse of PR2, or mishandling of electronic files or paperwork

- What impact would it have on the rights and freedoms of the data subject?

Illegitimate access to a transgender individual's PR2 record could result in a violation to the right to private life as it could "out" an individual who does not wish for information about their gender identity to be shared.

- What threats could lead to the risk happening?

Failure to close PR2, laptops or computers when not at a desk, paperwork being left on a desk, filling cabinets left unlocked, files sent to wrong email accounts

- How likely is such an event?

Unlikely due to control measures already in place related to other policies and guidance

- How severe would the impact be?

Severity would depend on the information disclosed. The disclosure of information could cause a great deal of distress to an individual and could result in a complaint and a fine from the ICO.

- What measures will be put in place to address the risk?

Existing training and guidance for data handlers, clear desk policy, IT security measures, e-learning every two years and for local teams where any issues are identified.

Undesired modification of personal data:

- What is the source of the risk?

Access to hard copy or electronic records of prisoners' personal data

- What impact would it have on the rights and freedoms of the data subject?

Wrong information inputted into an individual's PR2 regarding gender reassignment or gender identity could result in an individual being misgendered or wrongly outed as transgender and could make the individual vulnerable to harassment and violence from others.

- What threats could lead to the risk happening?

Failure to close PR2, laptops or computers when not at a desk, paperwork being left on a desk or filing cabinets left unlocked.

- How likely is such an event?

Unlikely due to measures in place related to other policies and guidance

- How severe would the impact be?

Severity depends on how the information is amended and how this information is used but severe impact is outlined above.

- What measures will be put in place to address the risk?

Existing training and guidance for data handlers.

Disappearance of personal data:

- What is the source of the risk?

Failure or mistakes by data handlers to safely back up hard or electronic copies

- What impact would it have on the rights and freedoms of the data subject?

Personal and sensitive data could go missing or be seen by those unauthorised to see it.

- What threats could lead to the risk happening?

IT failure, personal error by the data handlers

- How likely is such an event?

Unlikely due to control measures related to other policies and guidance

- How severe would the impact be?

Could result in information being found by unauthorised individuals and could result in an individual being outed thus a potential violation of their right to private life. It could also mean that crucial information relevant to a decision about an individual's management or placement is lost and could cause delays or decisions being made based on insufficient information. It could also result in lost time due to the need to replicate the information.

- What measures will be put in place to address the risk?

IT Secure Data Centres provide back-up and recovery for SPS held data.

Protection of Personal Data - Describe any safeguards, security measures and mechanisms that will ensure that personal data is adequately protected.

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- All information held in PR2 is only accessible by SPS staff. All electronic records will be held on a password protected computer and computers must be locked when not in use.
- Alongside this is the risk that transgender individuals in prison may be identified through public reporting arrangements if SPS publish a breakdown of the estate where transgender men and women are held. SPS should no longer report the number of transgender women and men as separate categories nor on the gender of estate that people are placed in on a quarterly basis. The annual reporting on the transgender population being introduced may include details of the estate that people are placed within, provided the risk of identification

of individuals can be mitigated. In accordance with our public body obligations to protect the data of those in our care and to balance transparency with the need to mitigate the risk of identification of individuals in this response, SPS is unable to release this data. SPS will continue to publish the number of transgender people in prison on a quarterly basis but is unable to report on the gender of estate that people have been placed in, but will keep under review in case of such times as the risk of identification of individuals can be mitigated.

Estimate of Risk Score – use DPIA Risk Assessment Matrix to help decide (select ONE only). Based on the information provided above in this DPIA you are required to consider the level of risk remaining to the rights and freedoms of individuals in relation to the personal data we are or intending to collect. Any assessment of risk should be made after you apply the actions, steps and processes aimed at protecting the rights of the individual.

Low 1-5	<input type="checkbox"/>	Moderate 6-10	<input checked="" type="checkbox"/>	High 11-15	<input type="checkbox"/>	Extremely High 16-25	<input type="checkbox"/>
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Where the remaining risks are scored as extremely high the SPS will be required to consult with the Information Commissioner’s Office (ICO) before doing any processing of personal data.

STEP 6: Involvement of Data Subjects

Where appropriate, were data subjects involved in developing the process.

Were the views of the data subjects sought and how? If the data subjects were not consulted, why not?

During the evidence gathering and engagement process (see full EHRIA for evidence gathering methodology and details on who was involved in the engagement process), issues relating to data protection were raised, although explicit questions about data protection were not asked.

What were the views of the data subjects?

Stakeholders highlighted the importance of accurate recording of both sex and gender in SPS’s prisoner records database (PR2). There have been a number of calls for accurate data collection about the transgender population in prison but also ensuring that this information should only be shared with those who need to know. Accurate data recording of sex and gender that is available to officers and staff working with transgender individuals in custody would help reduce the risk of transgender people being misgendered. Accurate and confidential data recording also ensures consideration for individuals’ privacy.

“I think having really clear rules about who needs to know what and why. Because I think there’s again an assumption that if someone discloses that they’re trans or think they might be that everybody needs to know. And I actually don’t think that’s the case. I think there’s lots of reasons why even a very few number of people need to know. And I think providing really clear guidance that specifies who needs to know and why because if someone discloses to somebody and they know that that then means that everyone is gonna know then they are just not gonna disclose where as if they know I can tell this one officer that I can trust who I think cares about me and is concerned about me and they can support me kind of quietly around this I think that then makes a difference, especially if they are not seeking to publically transition because then you don’t necessarily have to have a case conference in the same way, because they’re not asking to dress in a particular way, or they’re not asking to move prisons and they’re not asking for particular things, but having a trusted person that knows that this is part of what they are going through and what they’re experiencing. If they hear someone else being transphobic to another trans person, that is probably going to have an impact on them.” - SH1

Accurate data recording also allows for monitoring discrimination against transgender individuals. Although numbers remain small at the time of publication and thus trends may be difficult to discern, this recording is nonetheless important.

There is a need to ensure information about Gender Recognition Certificates is kept confidential . SPS's previous GIGR policy stated that officers should not ask individuals if they have a GRC. According to guidance from the Equality and Human Rights Commission: "In most circumstances it would be inappropriate to ask a person to prove their legal sex by producing a birth certificate or Gender Recognition Certificate, and in some circumstances this could be unlawful."

STEP 7: Sign Off and Record the DPIA Outcomes
 Make sure risks are signed off at appropriate level, which could be part of a wider project approval:

- DPIA report should summarise the process and steps taken to remove/reduce risks to privacy
- Publishing a DPIA Report improves transparency and accountability and lets individuals learn more about how the projects affect them

Add any comments or description of how this has been done below.

Click here to enter text.

State who (names) has approved the solutions described in **STEP 4** and **STEP 5** above?

Click here to enter text.

STEP 8: Integrate the DPIA Outcomes back into the Project or Process
 Findings and actions should be integrated into the project plan. There may be a requirement to return to the DPIA at various stages of project development and implementation:

- Monitor any actions which were generated through the DPIA
- Record what you have learned from the DPIA for future projects

Describe how learning and improvements have been incorporated into the project / process.

Ensure the policy and Q&A for service users sufficiently covers how individuals should be informed of their data rights and the usage of their data.

Any Other Relevant Comments (add anything here that is not fully captured or goes beyond STEPS 1-6):

Click here to enter text.

Submit DPIA to Information Management Unit

Signed:	Project Executive: Click here to enter text.	Project Manager: Click here to enter text.
	Signature: Date: Click here to enter a date.	Signature: Date: Click here to enter a date.

For Official Use by Information Management Unit: To provide feedback on **DPIA**

Information Management Unit	<input type="checkbox"/> Agree that Project Team has presented a full description and viable solutions <input type="checkbox"/> Agree that Project Team has followed the DPIA process
	Comments: Click here to enter text.

<p>Signed</p>	<p>Information Management Unit Member: Click here to enter text. Signature:</p>	<p>Date: Click here to enter a date.</p>
<p>Signed</p>	<p>Data Protection Officer: Click here to enter text. Signature:</p>	<p>Date: Click here to enter a date.</p>