

# Equality and Human Rights Impact Assessment (EHRIA)



To be completed by the person leading the EHRIA	
Title of Policy or Practice:	Guidance document on the Management of Gender Diverse People in Custody
Date EHRIA Commenced:	2023
Version number:	1
Date EHRIA Completed:	February 2024
Date New/revised policy/practice signed off by Management:	26 February 2024
Date EHRIA actions due for review on:	January 2025

Revision History			
Revision Date	Version	Summary of Changes	Authoriser

For official use only by the Equality and Diversity Team	
EHRIA Tracker Number:	
Quality Assessor name:	
Date Quality Assessed:	
Publication date:	

**Remember!** When completing the Equality and Human Rights Impact Assessment policy / practice' must be interpreted in the widest possible sense to include the full range of SPS policies, provisions, criteria, functions, procedures, practices and activities for employment and service delivery.

**Stage 1: Background information**

**What is the title of the new or revised policy/practice?**

Guidance document on the Management of Gender Diverse People in Custody

**What is it?**

A new policy / practice

A revised policy / practice

**Are there any other SPS policies that will be altered by the proposed changes?**

If so, they will also need to be impact assessed separately.

Yes (Please provide details)

The following strategies, policies and procedures will be impacted by or interact with the SPS Guidance on the Management of Gender Diverse People in Custody:

Code of Conduct policy

Cell Sharing Risk Assessment (covers location with an establishment)

Talk to Me

No

## Stage 2: Scoping and evidence gathering

Scoping	
Why are you introducing the new policy / practice, or why are you revising an existing policy / practice?	SPS's Gender Identity and Gender Reassignment (GIGR) policy was published in 2014. A review took place of the policy and the revised SPS Policy on the Management of Transgender People in Custody was published. The review also highlighted the need for specific guidance for staff on how to manage those who identify as gender diverse as a distinct group from those who are transgender and those who are non transgender.
What is the intended outcome(s) and impact of the new policy / practice, or making the changes to an existing policy / practice?	The purpose of the guidance is to set out the standard operating procedures for managing gender diverse people in SPS custody. It intends to ensure that the rights and welfare of gender diverse people in custody are protected through promoting respect for gender identity, ensuring health, safety and wellbeing of gender diverse people through a multi-disciplinary approach, sets out specific processes for staff to follow when managing gender diverse people, and promotes positive relationships between the SPS and other service providers within the criminal justice system to ensure gender diverse people are always treated fairly and with dignity during their sentence.

## Evidence gathering

### WHO did you consult with?

(Have you consulted/involved equality groups or other groups who will be affected by the new/revised policy/practice? The Trade Union Side should be always consulted in support of the SPS Partnership agreement. The PGA (Prison Governor's Association) should be consulted as well. It may also be useful to consult with staff via support networks (e.g. Prism, Race Support Network, Disability Support Network, and Women's Development Network) or with people in custody via focus groups.)

As this guidance is an outcome of the review of the GIGR policy (2014), it covers the same set of evidence and engagement.

See the EHRIA on the Management of Transgender People in Custody for a description of the review methodology and a list of the organisations and agencies who participated.

Young adult gender diverse individuals were interviewed, and this evidence informed both the EHRIA and the CRWIA where relevant.

Although interviews with stakeholders for the review did not focus on the experiences or needs of gender diverse individuals, gender diversity was raised by many interviewees.

In addition, interviews with staff with experience working with children and young adults in custody which were conducted primarily for the CRWIA for the gender diverse guidance and the CRWIA for the transgender policy with staff and findings are included here where relevant.

### What quantitative and/or qualitative evidence, as well as case law relating to equality and human rights, have you considered when deciding to develop new, or revise current, policy/practice? How did it shape your policy/practice?

(This could be in-house or external information such as monitoring data; research; surveys; reports; previous impact assessments; complaints; demographics or best practice relating to equality groups.)

Again, as the guidance is an outcome of the review of the GIGR policy, the same literature review was considered for the development of the guidance document, see the EHIRA of the Transgender Policy for a full list of the other evidence considered. While the literature, case law and policies from prison services in other jurisdictions were focused more on transgender people, some elements did also reference gender diverse people.

The policy review also considered the international human rights framework on the rights of transgender and gender diverse people in prison.

### WHAT did you learn from your evidence-gathering exercises?

#### Individualised case-based approach

As with the management of transgender people in custody, the individualised approach was identified as the most appropriate for the management of gender diverse people in custody. A multi-disciplinary case-based approach enables prison staff to consider multiple needs and provide support from different areas to ensure their safety and wellbeing.

### **Data protection and management**

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

It is important that only information that is necessary for the management of gender diverse individuals is gathered. As gender diverse individuals are not generally subject to decisions about their placement, and how they will be searched or supervised for giving samples for drug and alcohol testing and sampling it would be disproportionate to put gender diverse individuals through the same processes as transgender individuals.

- Accurate data recording and management ensures that those that need to know about a transgender or gender diverse individual's status can know that while maintaining the individual's privacy.
- Ensure proportionality in data gathering for gender diverse people to limit it only to that which is necessary to their management
- Accurate data recording is important for monitoring discrimination against people.

### **Staff knowledge and awareness**

Young gender diverse people in custody interviewed for the CRWIA stated that they felt better supported and more secure when staff used their correct name and pronouns. Gender diverse people were understanding that errors can occur in relation to the use of names, terms or pronouns and that these errors usually came from staff who were unfamiliar to them. Positive relationships with staff were seen to be key to gender diverse people in custody.

It was suggested that SPS should ensure staff receive comprehensive in-person training on gender identity and gender reassignment. It was felt that face-to-face training would be more effective, allowing for staff to ask questions in a safe space and discuss any concerns. It was suggested that this type of training should be made compulsory, particularly for those who are contributing to Gender Diverse Case Conferences (GDCCs).

Stakeholders felt it important that training be developed through a collaborative approach with a broad range of organisations with different perspectives. It was also seen to be important that staff had access to a list of trusted resources. It was also noted that gender diverse people themselves should be involved in designing the training to ensure that it was reflective of the reality of the situation.

#### *Main points:*

- Like for transgender individuals, gender diverse individuals in custody felt more secure, safe and supported when they felt like staff made efforts to use and promote the use of the correct names, terms and pronouns.
- Staff training and awareness raising involving community organisations and gender diverse people and trusted resources would ensure staff obtain correct information which helps them understand the gender diverse experience.

### **Additional support to transgender and gender diverse people in custody**

According to a 2018 study by Stonewall, 46 per cent of transgender people and 50 per cent of non-binary people had thought about taking their own life in the last year, compared to 31 per cent of lesbian, gay and bisexual non-transgender people. Two thirds of transgender people had experienced depression in the last year, and 71 per cent of transgender people had experienced anxiety in the last year. 70 per cent of non-binary people had experienced

depression, and 41 percent had harmed themselves in the last year. A quarter of non-binary people had experienced an eating disorder.<sup>1</sup>

External stakeholders discussed the feelings of anxiety and fear that are often experienced when ‘coming out’. It was generally felt that these feelings are heightened when in a custodial environment. Stakeholders pointed out that unlike in the community, people in custody cannot physically go wherever they want and do whatever they want, some stakeholders noted that this feels like a very dangerous situation for many transgender and gender diverse people as they are having to ‘come out’ within a confined space where they have to see the same people day in, day out and with whom they may not feel safe.

External stakeholders noted that some individuals might not want to necessarily ‘come out’ publicly while in prison. They may not wish to engage with the case conference process or dress in a different way. However, stakeholders emphasised that it is still vital that SPS are in a position to support these individuals in a discrete and respectful manner, emphasising how vital it could be to an individual struggling with their gender identity to have access to staff who were trained and trusted. Stakeholders explained SPS would need to consider ways of making people in custody aware of where and who they can obtain information and support from, in a manner that would not inadvertently ‘out’ them.

The ‘softer’ side of exploring gender identity was raised by external stakeholders as being of high importance during the stakeholder engagement – this relates to contact that is made by individuals who are curious about their gender identity in the early stages, for example, going to clubs or bars specifically for the LGBTQ community, searching the internet for forums, blogs or information, following LGBTQ organisations via social media etc. All of these examples were noted to help someone in the early stages but which an individual in custody would not have access to.

Stakeholders discussed the importance of having access to information and mental health support irrespective of the nature or degree of transition. It was noted that support and information should be easily accessible and available to all individuals in custody. Stakeholders suggested that there are organisations that individuals in custody can link up with, for example, organisations that can provide support through their letter writing scheme which links people up with a pen pal who can provide support and advice. Connections with other individuals from the transgender and gender diverse community were noted to be significant in helping people understand and manage their transition. Particularly when they are in a custodial setting and can otherwise feel very alone in their journey.

SPS staff expressed the need for clear guidance on what support should and could be provided to individuals who identify as gender diverse. While it was understood that gender diverse individuals could not be subject to the same decisions about their admission, placement and management as transgender individuals, their wellbeing and support and respect for their gender identity was deemed necessary. Staff pointed out that the 2014 policy did not provide sufficient clarity about gender diverse individuals what support could to be provided.

*Main points:*

- Availability of support and information about gender diverse and wider LGBTQ issues in prison can support mental wellbeing, prevent social isolation and promote community reintegration.
- Soft contact with LGBTQ communities can be important for those individuals exploring their gender identity and is especially important for people in custody who lack the usual avenues for this in the community.

<sup>1</sup> Stonewall 2018 ‘LGBT in Britain: Health Report’ <https://www.stonewall.org.uk/lgbt-britain-health>

- There is a need to provide clear guidance for staff on how to manage gender diverse individuals to ensure their gender identities are supported and respected while in custody.

**HOW will this shape your policy/practice?**

Analysis of the evidence gathered showed that, while there were few gender diverse people in custody, staff were often not clear about what provisions there were for them in the GIGR policy and how their management differed to that of transgender people in custody.

The new guidance on the management of gender diverse people in custody aims to provide clear guidance for staff on:

- Recording data about gender diverse individuals in prison in SPS's prison record management system.
- How staff should organise and manage GDCCs for gender diverse individuals (if they request this). The new guidance will set the same parameters and standards for GDCCs as for transgender individuals. However, topics to be discussed for gender diverse individuals will be limited to access to property, access to additional support, purposeful activity, cell allocation and recording data on PR2. The chair and individual will have the opportunity to discuss any other additional issues, however, the GDCC cannot make decisions about placement or searching as they can for transgender people in custody.
- The importance of using correct names and pronouns for gender diverse people in custody to ensure gender diverse people are respected and feel supported.

As part of the implementation of the guidance, SPS will raise awareness of staff on gender identity issues more broadly and ensure staff are aware of the expectations around the management of gender diverse prisoners, their needs and support that can be provided through the GDCC as well as access to additional property, should a gender diverse individual require it.

Stage 3: Identifying impact/outcomes

<b>The Public Sector Equality Duty</b>	
<p><b>Will the impact and outcomes of the new/revised policy/practice:</b>                      (Consider for people in custody in terms of the equality risk assessment of the prisoner journey with us, which includes admission, residential care, establishment regime, health and wellbeing, through care, people in custody management, visits etc.)</p> <p>Consider for staff in terms of the equality risk assessment for the staff journey with us which includes recruitment, retention, progression, promotion, training etc.)</p>	
<p><b>Contribute to eliminating discrimination, harassment and victimisation?</b>                      E.g.</p> <ul style="list-style-type: none"> <li>• Raise awareness of our SPS vision and values for equality and diversity</li> <li>• Challenge appropriately any behaviours or procedures which do not value diversity and advance equality of opportunity</li> </ul>	<p><b>POSITIVE:</b>                      It will contribute to eliminating discrimination, harassment, victimisation <input checked="" type="checkbox"/></p>
	<p><b>NO EFFECT:</b>                      It will have no effect on discrimination, harassment and victimisation <input type="checkbox"/></p>
	<p><b>NEGATIVE:</b>                      It will make discrimination, harassment and victimisation worse <input type="checkbox"/></p>
<p><b>Advance equality of opportunity between those who share a protected characteristic and those who do not?</b>                      E.g.</p> <ul style="list-style-type: none"> <li>• Remove or minimise disadvantage</li> <li>• Meet the needs of groups with protected characteristics that are different from the needs of others to ensure their participation in public life</li> </ul>	<p><b>POSITIVE:</b>                      It will advance equality of opportunity <input checked="" type="checkbox"/></p>
	<p><b>NO EFFECT:</b>                      It will have no effect on equality of opportunity <input type="checkbox"/></p>
	<p><b>NEGATIVE:</b>                      It will reduce equality of opportunity <input type="checkbox"/></p>
<p><b>Foster good relations between those who share a protected characteristic and those who do not? E.g.</b></p> <ul style="list-style-type: none"> <li>• Tackle prejudice</li> <li>• Promote understanding</li> </ul>	<p><b>POSITIVE:</b>                      It will foster good relations <input checked="" type="checkbox"/></p>
	<p><b>NO EFFECT:</b>                      It will have no effect on good relations <input type="checkbox"/></p>
	<p><b>NEGATIVE:</b> <input type="checkbox"/>                      It will cause good relations to deteriorate <input type="checkbox"/></p>



<b>Human rights</b>	
<p><b>Will the new/revised policy/practice breach the human rights articles?</b>                  Consider for people in custody in terms of the equality risk assessment of the prisoner journey with us which includes admission, residential care, establishment regime, health and wellbeing, through care, people in custody management, visits etc.</p> <p>Consider for staff in terms of the equality risk assessment for the staff journey with us which includes recruitment, retention, progression, promotion, training etc.</p> <p><b>Consider:</b></p>	
European Convention on Human Rights	
Article 2	Right to life
Article 3	Prohibition of torture and inhuman or degrading treatment
Article 4	Prohibition of slavery & forced labour
Article 5	Right to liberty & security
Article 6	Right to a fair trial
Article 7	No punishment without law
Article 8	Right to respect for private & family life
Article 9	Freedom of thought, conscience & religion
Article 10	Freedom of expression
Article 11	Freedom of assembly & association
Article 12	Right to marry
Article 14	Prohibition of discrimination
Protocol 1 Article 1	Protection of property
Protocol 1 Article 2	Right to education
International Covenant on Economic, Social and Cultural Rights. Rights to: <ul style="list-style-type: none"> <li>• Work in just and favourable conditions;</li> <li>• Social protection;</li> <li>• An adequate standard of living;</li> <li>• The highest attainable standards of physical and mental health; and</li> <li>• Education.</li> </ul>	
It will uphold human rights articles. <input checked="" type="checkbox"/>	
It will breach with human rights articles. <input type="checkbox"/>	

<p><b>When considering all your responses to Stage 3 if you selected <u>POSITIVE</u>:</b></p>	<p>Please move on to <b>stage 4</b> where you will be asked to provide details of the equality group(s) affected, the impact and evidence you considered.</p>
<p><b>When considering all your responses to Stage 3 if you selected <u>NEGATIVE</u>:</b></p>	<p>Please move on to <b>Stage 4</b> where you will be asked to provide details of the equality group(s) affected and the impact and strategies to mitigate the impact to a reasonable level, or to remove the impact altogether.</p>
<p><b>When considering all your responses to Stage 3 if you selected for ALL areas <u>NO EFFECT</u>:</b></p>	<p>Please justify your conclusions here and move directly to <b>Stage 5</b>.</p>

**Stage 4: Analysis of impact/outcomes**

You have indicated that this new/revised policy/practice will have an impact/outcome on one or more of the 3 main duties of the Public Sector Equality Duty and Human Rights articles for people in custody or staff. Use these sections below to indicate whether the impact is positive or negative, and justify your assessment using the data and evidence you have already gathered (via statistics, consultation, etc.)

### What are the positive impacts?

Does the new/revised policy or practice: Advance equality of opportunity? Remove discrimination? Remove harassment? Remove victimisation? Foster good relations? Encourage participation by disabled people? Uphold human rights articles?

Detail the positive impact here:

The guidance for the management of gender diverse people in custody supports the protection of human rights articles.

**Article 2 right to life** - Through the GDCC, gender diverse individuals will have access to additional support to support their mental health and wellbeing as well as express needs for their gender identity to be supported. Article 2 requires SPS to safeguard the lives of those in its custody, including taking preventive operational measures. This positive obligation extends to safeguarding individuals from self-harm which may result in suicide where SPS knows or ought to know of a real and immediate risk to the life of an identified individual. SPS must take measures within the scope of its powers which might be expected to avoid the risk.<sup>2</sup>

There is a known increased risk in relation to death by suicide during the first three months in custody<sup>3</sup> and a known increased risk in relation to death by suicide for gender diverse individuals.<sup>4</sup> This awareness led to the need for additional support for gender diverse individuals to participate in the GDCC process.

SPS's suicide prevention strategy, Talk to Me, has been in place since 2016. It requires a risk assessment to be carried out by reception staff and healthcare teams for every individual at reception, including for new admissions, transfers, returns from court, returns from external escort, video conference court appearances and tribunal hearings, after parole hearings, and following receipt of a parole decision. The reception risk assessment identifies any concerns and records if someone is deemed to be 'at risk' or 'no apparent risk'. If deemed to be 'at risk' the Talk to Me strategy is initiated when the rationale for any regime alterations, change of location or restrictions on normal clothing or items in use etc. is recorded. The maximum contact interval must also be recorded.

A GDCC should be organised and take place, insofar as reasonably practicable, within 72 hours of the admission of a gender diverse individual into custody or, insofar as reasonably practicable, within 72 hours of an individual declaring they wish to seek assistance to live in a gender which is different to that which was assigned at birth (identify as gender diverse). The GDCC is intended to allow better informed, individualised management decisions to be made in relation to the individual. The individual will be offered the opportunity to participate and will be involved in the decision-making process. The GDCC process will continue for the duration of the individual's time in custody and is designed to ensure that the person is treated with dignity and respect, while also allowing risks presented to and by them to be continually assessed. The Talk to Me strategy will also be available throughout the person's time in custody and, as noted above, risk assessments for all individuals happen at key moments of an individual's time in custody. Individuals also have access to support from medical professionals and the Samaritans.

**Article 3 prohibition of torture and inhuman or degrading treatment or punishment** - as outlined in the EHRIA for the policy on the management of transgender people in custody, deliberately referring to a gender diverse individual not by their name or pronouns could amount to harassment and even constitute degrading or ill-treatment under Article 3 of the Human Rights Act. The guidance emphasises the need for staff to respect and promote respect for how a person identifies, including using the individual's correct name and pronouns. If staff do use an individual's incorrect name or pronouns this would mean operating outwith the guidance.

**Article 8** - The policy contributes to the protection of the **right to private and family life** in that it does not force or compel gender diverse individuals to live in a certain way in order to benefit from the provisions of the guidance, or indeed for their identity to be recognised and supported.

**Article 14 Discrimination** is prevented based on the grounds of gender diverse identity, because the policy recognises and supports gender diverse 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 identifying outside the gender norm can be a very challenging and difficult decision for people to arrive at and that peer support can be crucial.

As stated above, both transgender and gender diverse people as a group have higher rates of poor mental health than the general population as shown above in the data from Stonewall (see page 5 above). The new policy promotes **the right to health**, including both physical and mental health by affirming and supporting individuals' gender identity, including mental health as a standing agenda item in case conferences and supporting gender diverse individuals to access NHS services for gender affirming physical and mental healthcare including medication, surgery, and counselling, should they wish.

Please select which group(s) will be affected by the positive impact, and provide details below each category:

**Age** (e.g. older people or younger people):

The CRWIA identified a need for processes and communications to be age appropriate, taking into account a child's level of education and maturity. It also stated that a child-friendly short guide will be put together and issued to any gender diverse 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.

**Race** (e.g. people from black or any minority ethnic groups):

**Sex** (e.g. women or men):

<sup>2</sup> [KEENAN v. THE UNITED KINGDOM \(coe.int\)](#)

<sup>3</sup> [Understanding the Mental Health Needs of Scotland's Prison Population \(www.gov.scot\)](#) p.7

<sup>4</sup> [lgbt\\_in\\_britain\\_health.pdf \(stonewall.org.uk\)](#) and [Cognitive Approaches to Combatting Suicidality | Gender Identity: Why are transgender and non-binary people more at risk of suicide? \(manchester.ac.uk\)](#)

<input type="checkbox"/> <b>Disability</b> (e.g. people with visible or non-visible disabilities, physical impairments):
<input type="checkbox"/> <b>Gender Reassignment</b> (e.g. changed/changing gender from that assigned at birth):
<input type="checkbox"/> <b>Religion or Belief</b> (e.g. belonging to a particular religion/belief or no affiliation):
<input type="checkbox"/> <b>Sexual orientation</b> (e.g. lesbian, gay, bisexual or heterosexual):
<input type="checkbox"/> <b>Maternity and Pregnancy</b> (e.g. pregnant/on maternity leave/breastfeeding):  SPS is aware gender diverse individuals who were assigned female at birth may be able to become pregnant. SPS’s maternity and pregnancy policies apply equally to these individuals as they do to non-transgender women who are pregnant
<input type="checkbox"/> <b>Socio-economic groups:</b>
<input type="checkbox"/> <b>Human rights compliance</b> (e.g. civil, political, economic, social, and cultural rights): As stated above, the revised policy will have a positive effect on enhancing the following human rights: Right to Life Prohibition of torture and inhuman or degrading treatment Prevention of discrimination Right to respect for private and family life Right to health
<input type="checkbox"/> <b>Inclusive Communications.</b> What consideration have you given to the communication needs of those who will be impacted by your policy/practice, and what steps are you taking to ensure your policy/practice will be easily understood by them? For example, accessible formatting of document, alternative formats such as Plain English, Easy Read, foreign language translations, BSL translation, etc.  In formatting the document, good practice principles around engagement and inclusive communications have been adhered to.  All relevant communications relevant to gender diverse people in custody, case conferences, support services available, and all changes to be implemented due to the new policy will be communicated in accessible formats to gender diverse individuals across SPS.



### What are the negative impacts?

Does the new/revised policy or practice: Create any barriers or issues for people from an equality group? Discriminate against any equality group? Have a negative impact on community relations internally and/or externally? Reduce any equality groups' access to a service or any other aspect of prison life? Reduce any equality group entry or progression as a member of staff, breach human rights articles?

**\*\*Any aspect of the policy/practice that has a negative impact must either be mitigated to a reasonable, objectively justifiable level, or abandoned altogether if this is not possible\*\***

#### Detail the negative impacts here:

There is no evidence that the guidance will have a negative impact on human rights articles. Gender diverse individuals are not subject to any decision making which is outwith their sex assigned at birth.

Through the implementation of the guidance and the policy for the management of transgender people in custody, SPS will deliver awareness and sensitisation training for officers, as well as training for those officers working closely with transgender and gender diverse individuals, for example, those involved in GDCCs, to ensure that transgender and gender diverse individuals are treated humanely and that their gender identity is understood and respected. Despite these features, SPS, through this policy, cannot eliminate the potential for misgendering, lack of recognition of transgender or gender diverse individuals' identity, needs and rights, bullying, harassment and discrimination by staff or indeed by others in prison. However, SPS is confident that the oversight and monitoring processes put in place will provide effective oversight of the policy and mean that poor policy implementation, misconduct by staff, or practices which may constitute discrimination, will be identified and corrected.

### Please select which group(s) will be affected by the negative impact, and provide details of the negative impact and how you will mitigate against it below each category:

**Age** (e.g. older people or younger people):

There is no evidence of the guidance having a negative impact on this protected characteristic, however it will be continually monitored henceforth. Gender diverse people will be managed under the guidance regardless of age. A separate CRWIA has been conducted assessing the impact of the guidance on gender diverse children in custody. GDCCs for this group should be cognisant of the age of the child or young person and ensure communication is conducted in a way that is understandable for this age group.

**Race** (e.g. people from black or any minority ethnic groups):

There is no evidence of the guidance having a negative impact on this protected characteristic, however it will be continually monitored henceforth. Gender diverse people will be managed under the guidance regardless of race.

For foreign nationals who are gender diverse and wish to participate in a GDCC, staff should ensure that interpretation provision is provided if necessary.

**Sex** (e.g. women or men):

There is no evidence of the guidance having a negative impact on this protected characteristic, however, it will be continually monitored henceforth. Gender diverse people will be managed under the guidance regardless of sex. As there is no recognition for gender diversity in law, gender diverse individuals will continue to be managed based on their sex assigned at birth. The additional support put in place ensures respect for their gender identity and that support is provided but this will not impact on any major management decisions which require different processes for men or women.

**Disability** (e.g. people with visible or non-visible disabilities, physical impairments):

There is no evidence of the guidance having a negative impact on this protected characteristic, however it will be continually monitored henceforth. Gender diverse people will be managed under the guidance regardless of disability.

**Gender Reassignment** (e.g. changed/changing gender from that assigned at birth):

Gender diverse individuals are not protected under the protected characteristic of gender reassignment. There may be cases of gender diverse individuals wishing to identify as transgender in which case the provisions of the Policy for the Management of Transgender People in Custody should apply.

**Religion or Belief** (e.g. belonging to a particular religion/belief or no affiliation):

The guidance has been designed to ensure that it does not result in discrimination against those with the protected characteristic of religion or belief, although SPS recognises that some religious bodies and those with religious beliefs and values may not agree with this policy. Some of the issues outlined in the EHRIA for the transgender policy may be relevant here regarding use of pronouns and names of gender diverse individuals, however, it is SPS's view that deliberately referring to a gender diverse 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. Any language or behaviour from people in custody or among our staff which constitutes harassment of gender diverse people is dealt with according to SPS's anti-bullying policy Think Twice (for people in custody) and SPS's Dignity at Work policy (for staff).

**Sexual orientation** (e.g. lesbian, gay, bisexual or heterosexual):

There is no evidence of the guidance having a negative impact on this protected characteristic, however it will be continually monitored henceforth. Gender diverse people will be managed under the guidance regardless of sexual orientation. SPS understands that sexual orientation and gender identity are different concerns.

**Maternity and Pregnancy** (e.g. pregnant/on maternity leave/breastfeeding):

There is no evidence of the guidance having a negative impact on this protected characteristic, however it will be continually monitored henceforth. Gender diverse people will be managed under the guidance regardless of maternity and pregnancy.

**Socio-economic groups:**



There is no evidence of the guidance having a negative impact those from a lower socio-economic group.

**Human rights compliance** (e.g. civil, political, economic, social, and cultural rights): Any potential negative impacts of the policy are outlined above. The policy is designed to align with human rights legislation. Oversight of the policy implementation will aim to identify any instances of discrimination, acts which may constitute torture, inhumane or degrading treatment or violations of the right to private and family life and ensure these are corrected.

**Stage 5: Identifying options and course of action**

<p><b>Recommended course of action: select relevant outcome and check the box when prompted:</b></p>
<p><b>Outcome 1:</b> Proceed – no potential for unlawful discrimination or adverse impact or breach of human rights articles has been identified. Policy/practice addresses the intended outcome and is positive in its language and terminology. It advances equality and human rights as well as fosters good relations.</p> <p><input checked="" type="checkbox"/></p>
<p><b>Outcome 2:</b> Proceed with adjustments to remove barriers identified for discrimination, advancement of equality of opportunity and fostering good relations or breach of human rights articles.</p> <p><input type="checkbox"/></p>
<p><b>Outcome 3:</b> Continue despite having identified some potential for adverse impact or missed opportunity to advance equality and human rights (justification to be clearly set out).</p> <p><input type="checkbox"/></p>
<p><b>Outcome 4:</b> Stop and rethink as actual or potential unlawful discrimination or breach of human rights articles has been identified.</p> <p><input type="checkbox"/></p>

<p><b>Summary of outcome decision and any other recommendations</b></p> <p>Please provide summary here:</p>
<p>Consideration has been given to whether the guidance document for the management of gender diverse people in custody would positively or negatively impact the human rights of people in custody and staff and whether it would lead to discrimination or less favourable treatment of people with protected characteristics, hinder the advancement of equality of opportunity or fail to foster good relations between those who share a protected characteristic and those who do not.</p> <p>Through the evidence gathering and engagement conducted for the review of the GIGR policy, there are no major concerns for the protection of the rights of those who identify as gender diverse, nor for any group in prison or staff with protected characteristics in the implementation of this guidance. As the implementation of the guidance does not require major decisions that would change where gender diverse people are admitted to, placed or managed different to that of others and is limited to the provision of additional support, recognition and data recorded, the human rights impacts are limited too. The implementation of the guidance should be monitored to ensure its consistent application to gender diverse individuals in our care.</p>

**Outline plans to action and review the impact of the new/revised policy/practice.**

- Note: any evidence that raises concern would trigger an early review rather than the scheduled date.
- Indicate if there is any data which needs to be collected as part of action to be taken and how often it will be analysed.
- Indicate how the person responsible will continue to involve relevant groups and communities in the implementation and monitoring of the new/changed policy/practice.

<b>What:</b>	Explore development of quality indicators to monitor the impact of the guidance on gender diverse individuals in prison relating. Indicators should examine participation in the GDCC process, quality of data recording, and any instances of discrimination
<b>Why:</b>	To ensure that SPS is consistently applying the principles of the guidance and is compliant with its obligations under the Human Rights Act 1998.
<b>Who:</b>	Corporate Policy Lead
<b>When:</b>	Annual basis
<b>Name of lead:</b>	Corporate Policy Lead
<b>Date:</b>	Year 1