

# Equality Impact Assessment (EqIA) Template



## The General Equality Duty

The Equality Act 2010 requires the SPS to have 'due regard' to 3 needs:

1. To eliminate unlawful discrimination, harassment and victimisation
2. To advance equality of opportunity between people who share a protected characteristic and those who do not
3. To foster good relations between people who share a protected characteristic and those who do not

## Public Sector equality Duty

Places on the SPS a duty to assess and review new or revised policies and practices and ask the following questions:

- What is the impact of the proposed new or revised policy or practice on the 3 needs of the Equality Act (above)?
- What evidence have you considered relating to people who share a protected characteristic?

Then, you *must*:

- Use the results to shape the policy or practice - *the assessment take place BEFORE a policy is decided and CANNOT be retrospective! You must consider taking action to address any issues identified, such as removing or mitigating any negative impacts and exploiting any potential for positive impact*
- Build in review mechanisms
- If necessary, review and revise any other policy or practice that is also affected
- Complete the Publishing Template summarising the EqIA – *using the template at the end of this document*

**Remember!** The word 'policy' must be interpreted in the widest possible sense to include the full range of SPS policies, provisions, criteria, functions, practices and activities including the delivery of services.

## Stage 1: Scoping Exercise

|                     |      |
|---------------------|------|
| Date EqIA Commenced | 2007 |
| Date EqIA Completed | 2014 |
| Date EqIA Reviewed  | Tbc  |

|   |                                     |   |   |
|---|-------------------------------------|---|---|
| <b>What is the title of the new or revised policy/practice?</b> |                                     | <b>Gender Identity and Gender reassignment Policy for Prisoners</b> |   |
| What is it?   |                                     | Does it impact on any other policies or practices?                  | Yes <input checked="" type="checkbox"/> Prisoners Searching, Recording information on PR2.<br><i>If so these will also need to be impact assessed</i> |
| A new policy or practice  | <input checked="" type="checkbox"/> |   |   |
| A revised policy/practice                                       | <input type="checkbox"/>            | No <input checked="" type="checkbox"/>                              |   |

|   |                |             |                         |                      |                        |
|---|----------------|-------------|-------------------------|----------------------|------------------------|
| <b>Who is the owner or lead implementing the new or revised policy/practice?</b>  |                |             |                         |                      |                        |
| <i>This duty cannot be delegated – it must be considered by the person with the ultimate responsibility for the policy or the service and for the decision to implement the policy.</i> |                |             |                         |                      |                        |
| <b>NAME</b>   | Vince Fletcher | <b>ROLE</b> | E&D Manager (Prisoners) | <b>BUSINESS AREA</b> | Operations Directorate |

|   |                    |             |                        |                      |                                     |
|---|--------------------|-------------|------------------------|----------------------|-------------------------------------|
| <b>Who else is involved in the Equality Impact Assessment?</b>  |                    |             |                        |                      |                                     |
| <i>Those involved must have a detailed understanding of the policy area and must be in a position to ensure that changes can be made to a developing policy where they are required. It is advisable to seek the support of an Equality &amp; Diversity manager or practitioner for expert input. The Trade Union Side should be involved in support of the SPS Partnership agreement. Add additional boxes as necessary.</i> |                    |             |                        |                      |                                     |
| <b>NAME</b>   | Ian Gunn           | <b>ROLE</b> | SPS Deputy Director    | <b>BUSINESS AREA</b> | Operations Directorate              |
| <b>NAME</b>   | Priscilla Marongwe | <b>ROLE</b> | E&D Business Partner   | <b>BUSINESS AREA</b> | HR Directorate                      |
| <b>NAME</b>   | James Morton       | <b>ROLE</b> | Scottish Trans Manager | <b>BUSINESS AREA</b> | Scottish Trans Alliance             |
| <b>NAME</b>   | Teresa Medhurst    | <b>ROLE</b> | Governor HMP Edinburgh | <b>BUSINESS AREA</b> | HMP Edinburgh                       |
| <b>NAME</b>   | Gordon Pike        | <b>ROLE</b> | TUS Secretary          | <b>BUSINESS AREA</b> | HR Directorate                      |
| <b>NAME</b>   | Brian Gowans       | <b>ROLE</b> | SPS Religious Advisor  | <b>BUSINESS AREA</b> | Strategy and Innovation Directorate |
| <b>NAME</b>   | Bryan Wallace      | <b>ROLE</b> | E&D Manager            | <b>BUSINESS AREA</b> | HMP Cornton Vale                    |
| <b>NAME</b>   | Tom McMurchie      | <b>ROLE</b> | Head of SPSC           | <b>BUSINESS AREA</b> | Scottish Prison service College     |

|   |  |  |  |  |  |
|---|--|--|--|--|--|
| <b>Have you consulted with any equality groups or other groups who will be affected by the new/revised policy/practice?</b> |  |  |  |  |  |
| <i>The Trade Union Side should be always consulted in support of the SPS Partnership agreement.</i>                         |  |  |  |  |  |

*It may also be useful to consult with staff via support networks (e.g. Prism, Race Support Network, Disability Support Network, Women's Support Network) or with prisoners via focus groups*

|   |  |   |
|---|--|---|
| Yes <input type="checkbox"/><br>No <input type="checkbox"/> | <b>WHO did you consult with?</b>       | <b>Trans people in prison and in the community</b><br><b>SPS Mangers and Officers ( including E&amp; D Managers)</b><br><b>Trade Union</b><br><b>Government Agencies (including Scottish Government and English Prison Service)</b><br><b>SPS Legal Branch</b><br><b>Scottish Transgender Alliance</b><br><b>Capability Scotland</b><br><b>Stonewall Scotland</b>   |
|   | <b>WHAT did you learn?</b>             | <b>There was a lack of understanding on how to manage a trans person who enters the Prison setting</b><br><b>There is no clear guidance on the Management of Trans People in a prison setting</b><br><b>2012 EIA of prison rules recognised Gender Reassignment as a protect characteristic</b><br><b>Potentially a trans person could be discriminated as no current guidance on the management of trans people in prison if this policy is not introduced</b><br><b>Transferring a person to a prison that matches their social gender has risks attached</b><br><b>SPS Searching of a trans person could mean a change in policy</b> |
|   | <b>HOW did this shape your policy?</b> | <b>A comprehensive policy is required to support transgender people</b><br><b>A risk assessment is required</b><br><b>Staff training is required</b>  |

| Consideration  |  |
|--|--|
| <b>Why are you introducing the new policy/practice, or why are you revising an existing policy/practice?</b> | <p>The 2010 Equality Act introduced the protected characteristic of Gender reassignment, which introduced no required for medical intervention or requirement of a gender recognition certificate.</p> <p>The public sector Equality duty requires the SPS to eliminate discrimination, harassment and victimisation and other conduct that is prohibited by the Equality Act 2010, not respecting a trans person rights would be discriminatory.</p> <p>Advance Equality of opportunity between people who share a relevant protected characteristic and those who do not, A Transgender person is a minority group in the community.</p> |

|  |   |
|--|---|
|  | <p>Transgender people potential could come to prison and the SPS policy or guidance to support or manage a transgender person if they come into prison.</p> <p>SPS could be at risk of corporate discrimination if they miss manage a transgender person</p>  |
| <p><b>What is the intended outcome(s) of the new policy/practice, or making the changes to an existing policy/practice?</b></p>  | <ul style="list-style-type: none"> <li>• provide accurate and current information for all SPS employees in relation to gender reassignment and gender identity equality and human rights;</li> <li>• outline the SPS procedures to be followed in the event of a transgender person being brought into custody;</li> <li>• Enable all people in custody within SPS custody to be treated fairly and without discrimination or harassment on grounds of gender identity and gender reassignment.</li> </ul>  |
| <p><b>What evidence relating to equality groups have you considered?</b><br/><i>This can be in-house information such as monitoring data; external research; or national data.</i></p> | <p>2010 Equality Act<br/>         Equality Act 2010 Code of Practice (Services, public functions and associations – Statutory code of practice<br/> <a href="#">Transgender online survey 2011</a><br/> <a href="#">The Yogyakarta Principles</a> ( Principles of the application of international human rights law in relation to sexual orientation and gender identity<br/> <a href="#">Collecting Information on Gender Identity</a> – Equality and Human Rights Commission<br/> <a href="#">Trans Mental health Study 2012</a><br/> <a href="#">A guide for parents and Family members of trans people in the UK</a><br/>         Review of SPS information on current Trans people in custody<br/> <a href="#">Reducing health inequalities for Lesbian, Gay, Bisexual and trans people</a> – Briefing for health and social care staff<br/> <a href="#">Domestic Violence – A resource for Trans people</a></p>  |
| <p><b>Which equality groups will be affected by the new or revised policy/practice?</b><br/><i>Select all that apply</i></p>   | <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> <b>Age</b> (e.g. older people or younger people)</li> <li><input type="checkbox"/> <b>Race</b> (e.g. people from black or any minority ethnic groups)</li> <li><input type="checkbox"/> <b>Gender</b> (e.g. women or men)</li> <li><input type="checkbox"/> <b>Disability</b> (e.g. people with visible or non-visible disabilities, physical impairments or mental health conditions)</li> <li><input checked="" type="checkbox"/> <b>Gender Identity</b> (e.g. people who will change/have changed/ are changing their gender from that assigned at birth)</li> <li><input type="checkbox"/> <b>Religion or Belief</b> (e.g. belonging to a particular religion, holding a particular belief, or have no affiliation to any particular religion or belief)</li> <li><input checked="" type="checkbox"/> <b>Sexual orientation</b> (e.g. lesbian, gay, bisexual or heterosexual)</li> </ul> |

|  |  |
|--|--|
|  | <ul style="list-style-type: none"><li><input type="checkbox"/> <b>Maternity and Pregnancy</b> <i>(e.g. women who are pregnant/on maternity leave/breastfeeding)</i></li><li><input type="checkbox"/> <b>Marriage and civil partnership</b></li><li><input type="checkbox"/> <b>Socio-economic groups</b></li></ul> |
|--|--|

| <b>The Public Sector Equality Duty</b>   |   |                                     |
|--|---|-------------------------------------|
| <b>Will the new/revised policy or practice:</b>  |   |                                     |
| <b>1. Eliminate discrimination, harassment and victimisation?</b> <ul style="list-style-type: none"> <li>- Raise awareness of our SPS vision and values for equality, diversity and human rights</li> <li>- Challenge appropriately any behaviours or procedures which do not value diversity and equality of opportunity</li> </ul>                         | <b>It will eliminate discrimination, harassment and victimisation</b>         | <input checked="" type="checkbox"/> |
|  | <b>It will have no effect on discrimination, harassment and victimisation</b> | <input type="checkbox"/>            |
|  | <b>It will make discrimination, harassment and victimisation worse</b>        | <input type="checkbox"/>            |
| <b>2. Advance equality of opportunity between those who share a protected characteristic and those who do not?</b> <ul style="list-style-type: none"> <li>- Remove or minimise disadvantage</li> <li>- Meet the needs of particular equality groups that are different from the needs of others</li> <li>- Encourage participation in public life</li> </ul> | <b>It will advance equality of opportunity</b>                                | <input checked="" type="checkbox"/> |
|  | <b>It will have no effect on equality of opportunity</b>                      | <input type="checkbox"/>            |
|  | <b>It will reduce equality of opportunity</b>                                 | <input type="checkbox"/>            |
| <b>3. Foster good relations between those who share a protected characteristic and those who do not?</b> <ul style="list-style-type: none"> <li>- Tackle prejudice</li> <li>- Promote understanding</li> </ul>   | <b>It will foster good relations</b>  | <input checked="" type="checkbox"/> |
|  | <b>It will have no effect on relations</b>                                    | <input type="checkbox"/>            |
|  | <b>It will cause relations to deteriorate</b>                                 | <input type="checkbox"/>            |

|  |   |
|--|---|
| <b>If you selected green for <u>ANY</u> above</b>          | Please continue the EqIA on the following pages where you will be asked to provide details of the equality group(s) affected, the impact and evidence you considered.   |
| <b>If you selected red for <u>ANY</u> above</b>            | Please continue the EqIA on the following pages where you will be asked to provide details of the equality group(s) affected, the impact and strategies to mitigate the impact to a reasonable level, or to remove the impact altogether. |
| <b>If you selected orange for <u>ALL</u> of the above.</b> | Please justify your conclusions and move directly to <a href="#">Stage 3</a> .  |

## Stage(s) 2: Justification of positive or negative impact

You have indicated that this new/revised policy or practice will have an impact on one or more of the 3 main duties of the Public Sector Equality Duty. Use this section 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.)

| Indicate below which equality group(s) is affected.  | POSITIVE IMPACT  | NEGATIVE IMPACT  |  |
|--|--|--|--|
|  | Does the new/revised policy or procedure:<br><i>Promote of equality of opportunity?</i><br><i>Remove discrimination?</i><br><i>Remove harassment?</i><br><i>Promote good community relations?</i><br><i>Encourage participation by disabled people?</i><br><i>Promote or protect human rights/FREDA?</i>   | Does the new/revised policy or procedure:<br><i>Create any barriers or problems for people from an equality group?</i><br><i>Reduce any equality groups' access to a service or any other aspect of prison life?</i><br><i>Have a negative impact on community relations internally and/or externally?</i><br><i>Discriminate against any equality group?</i><br><b>**Negative Impacts must either be <u>mitigated</u> to a reasonable, objectively justifiable level, or <u>abandoned altogether</u> if this is not possible**</b>  | Impact   |
| <input type="checkbox"/> Age<br><input type="checkbox"/> Race<br><input type="checkbox"/> Gender<br><input type="checkbox"/> Disability<br><input checked="" type="checkbox"/> Gender Identity<br><input type="checkbox"/> Religion or Belief<br><input checked="" type="checkbox"/> Sexual orientation<br><input type="checkbox"/> Maternity and Pregnancy<br><input type="checkbox"/> Marriage and civil partnership<br><input type="checkbox"/> Socio-economic groups | <p><i>This Policy will provided a clear and transparent pathway for Tran's people entering prison, it will take massive steps in eliminating discrimination towards trans people by treating trans people with respect in the SPS. By providing staff with information of the correct steps to support the transition of a person enter or in prison.</i></p> <p><i>A Trans person will be not be treated less favourably on the grounds that they intend to undergo gender reassignment, are in the process of undergoing gender reassignment, or have at some time in the past undergone gender reassignment.</i></p> <p><i>The SPS respects an individual's rights to self-identify as male or female and commits to recognising People in prison or entering prison as the gender in which they choose to present.</i></p> <p><i>The policy make it clear Transphobic abuse will not be tolerated in the SPS. This is a hate crime and will be reported to the police, this potential will reduce harassment towards trans people.</i></p> <p><i>The policy has options to support a person who is already in prison that might have hidden their gender identity because of potential of harassment, misunderstanding or prejudice which will support fostering good relations and reducing prejudice</i></p> | <p><i>Some people in prison may be refused the same conditions as other trans people due to their index offence.</i></p> <p><i>There are vulnerable people in prison when faced by a trans person (pre operation) might induce fear to that person</i></p> <p><i>A risk assessment is required which is not required in the community</i></p> <p><i>There are people in prison for transphobic crimes</i></p> <p><i>It is problematic to change gender status on PR2. Which means a trans person might be recorded in the birth gender and not recorded in their social gender</i></p> | <p><i>SPS has a duty of care to all people in prison and will risk assess the dangers present by offences</i></p> <p><i>SPS will take steps to support vulnerable and trans people.</i></p> <p><i>SPS is aware of the risks presented by trans people and before making a decision have to be aware of all risks. A comprehensive risk assessment will give the SPS protection and protection to the trans person.</i></p> <p><i>SPS have a duty of care and will take steps. A trans person should not have any contact or be in the same location at any time with a person who has been charged or sentenced to a transphobic crime. Cell risk assessment recorded on PR2 will identify anyone who is in prison for a trans phobic hate crime.</i></p> <p><i>If a Trans person is transferred to a prison that supports their Social gender they will be issued with a new number and a link to their old number will be recorded on PR2.</i></p> |

If you are not able to fully review the impact at this point, what further work needs to be done, why, with and by whom and when?

|              |  |
|--------------|--|
| <b>WHAT?</b> |  |
| <b>WHY?</b>  |  |
| <b>WHO?</b>  |  |
| <b>WHEN?</b> |  |

**Stage 3 : Identifying options and course of action**

|  |   |                                     |
|--|---|-------------------------------------|
| <b>Recommended course of action:</b><br><i>select relevant outcome and check the box when prompted</i> | <b>Outcome 1: Proceed – no potential for unlawful discrimination or adverse impact has been identified, and all opportunities to promote equality have been taken</b> | <input type="checkbox"/>            |
|  | <b>Outcome 2: Proceed with adjustments to remove barriers identified or to better promote equality</b>  | <input checked="" type="checkbox"/> |
|  | <b>Outcome 3: Continue despite having identified some potential for adverse impact or missed opportunity to promote equality</b>                                      | <input type="checkbox"/>            |
|  | <b>Outcome 4: Stop and rethink as actual or potential unlawful discrimination has been identified</b>   | <input type="checkbox"/>            |

**Any other Recommendations?**

There is no direct evidence that this policy will be discriminatory or will breach any article or protocol in the Human Rights Act.  
 It is expected that the most significant impacts, and the most positive impacts, will be on an inclusive approach to People in prison or admission to prison who wish to be treated in their social gender.

A potential negative impact for a trans person is the SPS have a duty of care to everyone in our care, a risk assessment process will highlight potentials risk and give the SPS information to make effect and defendable decisions, this potential could be discriminatory against a trans person and stop transfers to prison to support a



person living in their social gender however this is a proportionate means of achieving a legitimate aim in supporting the health, safety and welfare of individuals in Prison.

Taking the above into account the new process should not have a detrimental effect on any protect characteristics in the Equality Act or any Human Rights Articles.

#### **Stage 4: Monitor and Review**

##### **Outline plans to action and monitor the impact of the proposal**

- 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 policy

| Action to be taken  | Person responsible                             | Review Date      |
|---|--|------------------|
| Develop a training package to support the policy                                | HQ E&D Manager, SPSC and transgender alliance. | December 2013    |
| Support trans case conference in prisons  | Establishments and HQ E&D Manager              | March 2014       |
| Delivery training in establishments, support policy introduction and on request | HQ E&D Manager and Scottish trans alliance     | July 2014        |
| Monitor numbers of trans people, monitor complaints from trans people           | HQ E&D Manager and establishment E&D Managers  | Ongoing          |
| Name of lead: Vince Fletcher  |  | Date: March 2014 |

#### **Stage 5: Publishing**

- The completed EqIA must be published in full on the intranet website of each establishment/business area.
- Complete the accompanying **Publishing Template** (below) to provide an accessible summary of this EqIA for the SPS external website.

## Equality Impact Assessment Publishing Template

This template summarises the key decisions/actions taken in the EqIA, and will be separated from the document above and published on the SPS external website in compliance with legal requirements.

Every EqIA and Publishing Template must be reviewed by the Equality & Diversity Team at HQ who will be responsible for publishing the template on the SPS external website.

|                                       |  |  |   |
|---------------------------------------|--|--|---|
| <b>Title of Policy:</b>               | <b>Gender Identity and Gender reassignment Policy for Prisoners</b>  |  |   |
| <b>EqIA Lead Person:</b>              | Vince Fletcher   | <b>Role &amp; Establishment/Business Area:</b>   | <b>E&amp;D Manager (Prisoners) Operations Directorate</b> |
| <b>Date EqIA Completed:</b>           | 2014   | <b>Is this a new or revised policy/function?</b> | <b>New</b> <input checked="" type="checkbox"/>            |
| <b>Date EqIA published and where:</b> | July 2014  |  | <b>Revised</b> <input type="checkbox"/>                   |
| <b>Review Date and frequency:</b>     | 3 year policy review   |  |   |
| <b>Aims of policy/function:</b>       | <p>The 2010 Equality Act introduced the protected characteristic of Gender reassignment, which introduced no required for medical intervention or requirement of a gender recognition certificate.</p> <p>The public sector Equality duty requires the SPS to eliminate discrimination, harassment and victimisation and other conduct that is prohibited by the Equality Act 2010, not respecting a trans person rights would be discriminatory.</p> <p>Advance Equality of opportunity between people who share a relevant protected characteristic and those who do not, A Transgender person is a minority group in the community.</p> <p>Transgender people potential could come to prison and the SPS policy or guidance to support or manage a transgender person if they come into prison.</p> <p>SPS could be at risk of corporate discrimination if they miss manage a transgender person<br/>Provide accurate and current information for all SPS employees in relation to gender reassignment and gender identity equality and human rights;<br/>Outline the SPS procedures to be followed in the event of a transgender person being brought into custody;<br/>Enable all people in custody within SPS custody to be treated fairly and without discrimination or harassment on grounds of gender identity and gender reassignment.</p> |  |   |

|                                  |   |
|----------------------------------|---|
| <b>Who did you consult with?</b> | <p>Trans people in prison and in the community<br/>SPS Mangers and Officers ( including E&amp; D Managers)<br/>Trade Union<br/>Government Agencies (including Scottish Government and English Prison Service)<br/>SPS Legal Branch<br/>Scottish Transgender Alliance<br/>Capability Scotland<br/>Stonewall Scotland</p> |
| <b>Why did you consult?</b>      | <p><b>There was a lack of understanding on how to manage a trans person who enters the Prison setting</b></p> <p><b>There is no clear guidance on the Management of Trans People in a prison setting</b></p>  |

|   |   |
|---|---|
|   | <p>2012 EIA of prison rules recognised Gender Reassignment as a protect characteristic</p> <p>Potentially a trans person could be discriminated as no current guidance on the management of trans people in prison if this policy is not introduced</p> <p>Transferring a person to a prison that matches their social gender has risks attached</p> <p>SPS Searching of a trans person could mean a change in policy</p> |
| How did what you learnt shape the policy? | <p>A comprehensive policy is required to support transgender people</p> <p>A risk assessment is required</p> <p>Staff training is required</p>  |

| What effect does the new/revised policy or function have on the need to:                                    |  |
|---|--|
| 1. Eliminate discrimination, harassment and victimisation?  | Positive <input checked="" type="checkbox"/> |
|   | Negative <input type="checkbox"/>            |
|   | No effect <input type="checkbox"/>           |
| 2. Advance equality of opportunity between those who share a protected characteristic and those who do not? | Positive <input checked="" type="checkbox"/> |
|   | Negative <input type="checkbox"/>            |
|   | No effect <input type="checkbox"/>           |
| 3. Foster good relations between those who share a protected characteristic and those who do not?           | Positive <input checked="" type="checkbox"/> |
|   | Negative <input type="checkbox"/>            |
|   | No effect <input type="checkbox"/>           |

| Recommended Course of Action   |                                     |
|--|-------------------------------------|
| Outcome 1: Proceed – no potential for unlawful discrimination or adverse impact has been identified, and all opportunities to promote equality have been taken | <input type="checkbox"/>            |
| Outcome 2: Proceed with adjustments to remove barriers identified or to better promote equality  | <input checked="" type="checkbox"/> |
| Outcome 3: Continue despite having identified some potential for adverse impact or missed opportunity to promote equality                                      | <input type="checkbox"/>            |
| Outcome 4: Stop and rethink as actual or potential unlawful discrimination has been identified   | <input type="checkbox"/>            |

|   |   |
|---|---|
| <p><u>Summary of results, including the likely impact of the proposed policy promoting equality</u></p> | <p>There is no direct evidence that this policy will be discriminatory or will breach any article or protocol in the Human Rights Act.</p> <p>It is expected that the most significant impacts, and the most positive impacts, will be on an inclusive approach to People in prison or admission to prison who wish to be treated in their social gender.</p> <p>A potential negative impact for a trans person is the SPS have a duty of care to everyone in our care, a risk assessment process will highlight potentials risk and give the SPS information to make effect and defendable decisions, this potential could be discriminatory against a trans person and stop transfers to prison to support a person living in their social gender however this is a proportionate means of achieving a legitimate aim in supporting the health, safety and welfare of individuals in Prison.</p> <p>Taking the above into account the new process should not have a detrimental effect on any protect characteristics in the Equality Act or any Human Rights Articles.</p> |
|---|---|

**Next Steps**

Develop a training package to support the policy  
Support trans case conference in prisons  
Delivery training in establishments, support policy introduction and on request  
Monitor numbers of trans people, monitor complaints from trans people