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Convener Criminal Justice Committee
The Scottish Parliament
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By Email: justice.committee@parliament.scot

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Dear Convener

Data reporting on transgender population in prisons

I am writing to follow up on the further detail requested by Members during the Criminal Justice Committee on 11 January 2024 regarding the Scottish Prison Service's (SPS) future publication of data on the number of transgender population in custody.

SPS has statutory obligations as a public body to comply with Data Protection legislation when processing the personal data of individuals in our care. Processing of personal data of all individuals held in custody must comply with Part 3 of the Data Protection Act 2018 (Law Enforcement Processing). While there is also a duty for SPS to be transparent and publish information about its population where this is in the public interest, as outlined to the Committee, we must legally comply with the Data Protection Principles.

SPS previously published data in its Publication Information Page (PIP) which included small numbers (under 5) of transgender individuals in some categories such as the gender of estate they were accommodated in. During the review of SPS's Gender Identity and Gender Reassignment policy (2014) and based on the fact the policy would result in SPS making decisions about individuals in ways which could have a significant impact on them a Data Protection Impact Assessment (DPIA) was conducted. As part of this, SPS reviewed how it processes personal data pertaining to transgender individuals, including what data is published.

To ensure SPS were processing this data lawfully in accordance with the data protection rights of these individuals, a Legitimate Interests Assessment (LIA) was carried out along with additional Motivated Intruder Testing. These assessments were conducted based on advice provided by SPS and SG Information Governance experts in conjunction with best practice guidance published by the Information Commissioner's Office.

These assessments found that as a result of the increased public interest in the transgender population, there was a greater risk of potential jigsaw identification of individuals should SPS data be pieced together with other publicly available information.

As highlighted by Ms McNeill, we recognise that there is press reporting on some high-profile individuals and while this is outside of our control, the publication of data by SPS as an Executive Agency should not contribute or aid the identification of individuals in custody. The review also found that it is also not common practice for SPS to publish any information regarding the placement of any groups of the prison population and that transgender people in prison should be treated no differently.

As a result of the policy review and the above assessments, SPS has concluded that the PIP and any other publication or release of data should have disclosure control applied where numbers are less than 5, to protect the identity of individuals. SPS is committed to publishing data about the prison population, including about the transgender population, will continue to publish the number of transgender people in prison on a quarterly basis however, in order to mitigate any risk of identification, SPS will not report on the gender of estate that people are placed in.

SPS will apply disclosure control to all data in the PIP, as well as all other formats where population data is published. This will include data on which estate transgender men and women are placed in. It will also extend to other areas of the PIP such as data on the number of people in custody by local authority. Presenting the data in this way causes less intrusion to individuals concerned whilst still demonstrating to the public that we are committed to public knowledge and understanding of our prison population.

The 2023-24 Quarter 1 report is to be published imminently with the revised presentation of data. As part of the ongoing review of this publication, we are currently reviewing whether it will be possible to publish annual figures on the average number of transgender women and men held in custody and the estate they were housed in during the previous year. This will aid the needed transparency on the population without risking identifying any individuals.

We remain committed to keeping data reporting arrangements under review if there are significant changes in the transgender population. SPS will reconsider publication of numbers by estate if risks to identification can be sufficiently mitigated.

A full data protection impact assessment (DPIA) was published along with the new policy on 5 December 2023 and a direct link is provided here: [DPIA - SPS Policy for the Management of Transgender People in Custody \(1\).pdf](#)

Finally, in terms of scrutiny and monitoring the overall impact of the transgender policy, I have committed to an independent evaluation of the new policy within 5 years.

I trust this detailed response is helpful.

Yours sincerely



TERESA MEDHURST
Chief Executive

Copy to:
Cabinet Secretary for Justice & Home Affairs