

21st December 2023

Written submission to the Criminal Justice Committee:

Updated SPS Policy on the Management of Transgender People in
Custody

The Prisons and Young Offenders Institutions (Scotland)
Amendment Rules 2023

Gender Recognition (Disclosure of Information) (Scotland) Order
2023

Dear Members of the Criminal Justice Committee,

This submission is on behalf of Scottish Trans, which works to improve gender identity and gender reassignment equality, rights and inclusion in Scotland.

We are writing in advance of your proposed meeting on 11th January 2024 to discuss the recently updated SPS “Policy on the Management of Transgender People in Custody”, and consideration of the two SSIs the “Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2023” and the “Gender Recognition (Disclosure of Information) (Scotland) Order 2023”.

If you have any questions relating to any of our views provided below, we would be happy to discuss them further.

Vic Valentine

1. Updated SPS Policy on the Management of Transgender People in Custody

We were invited to provide a written response to the Scottish Prison Service in March 2022 when they were in the process of updating their policy on managing trans people in custody. We have included our response in full at Annexe A of this letter, in order for the committee to understand our complete view on the most appropriate way for SPS to operate a policy on the management of trans people in custody.

Overall, we think the updated policy strikes the right balance in ensuring that the equality and human rights of all people in custody are upheld. It does this by seeking to respect trans people's lived gender identities, while considering the safety and dignity of all people in custody, and aiming to promote people in custody's wellbeing. We think that using comprehensive individualised risk assessments is the only appropriate way of taking decisions about which estate trans people in custody are housed on.

However, one area of concern we have where the policy may not achieve its aims is in relation to non-binary people in custody. The policy states that:

“This **policy does not apply to people who are gender diverse** (for example, people who are non-binary or gender fluid), who will be managed in accordance with their sex at birth.”

This will result in some non-binary people being held in either the male or female estate when this is clearly inappropriate to their particular personal circumstances. We are concerned that SPS have not properly understood the range of ways in which non-binary people may transition. Operating a blanket policy about where they will be housed will have the same potential negative consequences on the safety, dignity and wellbeing of non-binary people, that operating a blanket policy to hold all trans men and trans women on the estate corresponding to their sex registered at birth would have on them.

For example, a non-binary person may have socially transitioned, changed their name and gender expression, or undergone gender affirming medical interventions which mean that they are mostly or wholly perceived by others as either male or female, or as gender non-conforming and/or androgynous. Insisting on housing them in accordance with their sex at birth could place them at significant risk of abuse, harassment and violence.

We think that that this is a significant and serious gap in the current policy, and that as well as potentially leading to non-binary people facing abuse, harassment and violence, could also potentially lead to breaches of their human rights.

2. The Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2023

Overall, we feel neutrally about the changes that would be made to the Prisons and Young Offenders Institutions (Scotland) Rules 2011 by this SSI. However, we think it will be extremely important that prisons monitor changes to their practice as a result of this amendment to the law, and review whether changes have resulted in any negative impact on people in custody and people visiting and working in prisons.

As we understand it, the SSI would amend the rules on searching prisoners, conducting compulsory drug and alcohol testing, searching visitors, searching of specified persons, and searching of officers and employees, so that searches and tests may be conducted by an officer of a different gender to the person being searched or tested. This would be allowed only if the Governor considers it to be necessary for the purpose of protecting the health, welfare or safety of any person, or the security or good order of the prison.

We imagine that there could be a variety of situations, all of which would be described by the reasons prescribed in the SSI, that might mean that the most appropriate course of action would be to require an officer of a different gender to conduct a search or test of a person.

However, it will be important to ensure that the amendment to the rules does not result in people in custody, or people visiting and/or working in prisons, being routinely tested or searched by officers of a different gender. The initial intention of Parliament when passing the rules in 2011 was clearly that in all instances searches and tests should be conducted by an officer of the same gender as the person being searched or tested. The proposed amendments seem to us to be aimed at providing for some exceptional circumstances in which this approach can be disapplied. It is important that this exceptionality is then reflected in the practical application of the law within prison estates.

It would be wholly inappropriate, for example, for this SSI to result in all trans people in custody being searched or tested by officers of a different gender to them as a blanket policy, or, for example, for visitors to prisons to be routinely searched by officers of a different gender to them due to workforce issues.

We would suggest that the Governor should record all instances where they have taken the decision to require an officer of a different gender to conduct a search or test, and the reason for doing so. This should include both which of the reasons within the law is being relied on to take the decision, as well as a short description of the circumstances and rationale. This record should be kept under regular review, to ensure that:

- a) No groups of people in custody or people visiting and working in prisons, who share a protected characteristic, are experiencing discriminatory application of the exception to the general principle that people are searched or tested by an officer of the same gender. This is particularly important given that the Governor is required by Section 6 of The Prisons and Young Offenders Institutions (Scotland) Rules 2011 to “seek to eliminate within the prison discrimination on the grounds of” all protected characteristics in the Equality Act 2010, and “other status”. Whilst this submission is focused on trans people in custody, and thus those with the protected characteristic of gender reassignment, it would of course be extremely important to ensure that there was no discriminatory application of the rules for any groups.
- b) Where the reason within the law that is recorded for the Governor to require an officer of a different gender to conduct a search or test is ‘good order of the prison’, Governors should consider whether there are wider issues that need to be addressed, to reduce the need to rely on the exception to the general rule. We think that ‘good order of the prison’ is the reason which has the highest risk of being relied upon in circumstances where this is not the most appropriate course of action, because the circumstances could and should be addressed in other ways. For example, if a Governor was routinely recording this as a reason for a search or test being conducted by an officer of a different gender, and the additional observation included remarks about availability of staff, then urgent action should be taken to rectify staffing levels rather than continuing to rely on the exceptions.

3. Gender Recognition (Disclosure of Information) (Scotland) Order 2023

This SSI makes changes to the operation of the Gender Recognition Act 2004, around the exceptions to the offence of disclosing ‘protected information’ that is obtained in an ‘official capacity’. We think that these changes seem reasonable and proportionate, and will ensure that relevant criminal justice agencies can share such ‘protected information’ where it is necessary for offender management.

Annexe A: Our response to the SPS Gender Identity and Gender Reassignment Policy review

1st March 2022

Policy intent

1 What do you think the main objectives of the policy should be? What are the outcomes that you think the policy should set out to achieve?

The policy should seek to respect trans people's lived gender identities and to uphold the human rights and equality of all people in custody. It should set out to achieve safety and dignity for all people in custody, and to promote their wellbeing. It should support trans people in custody to express the gender with which they identify and to access NHS gender identity services. It should ensure that accommodation decisions take into account the trans person's preferences and their lived gender identity, together with comprehensive individualised risk assessment that considers their safety and needs and the safety and needs of others. It should be clear, and allow staff to have confidence in the process and in the decisions they are taking.

2 When we consider the existing policy, we could say that the SPS considers a persons lived gender identity in concert with risks and the security and safety of both the transgender person, and others that they will be living alongside.

- **What other policy options should SPS consider?**
- **What are the key considerations that should SPS should take into account when considering these policy options?**

A policy which "considers a person's lived gender identity in concert with risks and the security and safety of both the transgender person and others that they will be living alongside" is a policy that is addressing all the legitimate considerations. There are no other policy options that better respect equality, diversity, human rights and safety. In particular, the management of trans people in custody cannot lawfully be reduced down to purely their genitals or their birth certificate - the wider circumstances of a person's lived gender identity, risks and vulnerabilities need to be considered and individualised decisions made.

The only way of ensuring that trans people in custody have their human rights lawfully upheld is to operate a policy that considers lived gender identity alongside risks and security and safety of trans people and others that they will be living alongside when making decisions about their accommodation and treatment. The best way of ensuring safety for all is to centre risk assessment within individualised decision-making.

Although SPS may want to make specific changes to the operation of the policy, such as what factors should be accounted for when determining risk, and how the case conference decision-making process functions, the principles of the current policy – that it “considers a person’s lived gender identity in concert with risks and the security and safety of both the transgender person and others that they will be living alongside” – is the correct approach.

3 Thinking about this policy as a whole, how should SPS assess whether it is being delivered successfully? What do you think the indicators for success should look like?

- **How do we successfully deliver this policy in practice? Are there barriers to delivering this policy that could stop it being successful?**

To help assess whether the policy is being delivered successfully, SPS should keep records of:

- the number of trans women, trans men and non-binary trans people known to have been in SPS custody during each year and which estate each was accommodated in;
- all decisions made using the policy, including risk assessments carried out;
- any complaints raised by trans people in custody, other people in custody, or by staff, about any decision made using this policy;
- any incidents of physical or sexual harassment or assault reported within the prison estate where the victim or the accused is a trans person;
- any incidents of self-harm or psychological crisis experienced by trans people in custody.

After 3 years of policy operation, the above data should be analysed and combined with research interviews of trans people in custody, others in custody, staff and equality organisations about their experiences and views of the policy’s operation in order to determine how successfully the policy is functioning.

Barriers that could stop the policy from being successful could include:

- lack of staff training on how to use the policy;
- inconsistent record-keeping of risk assessments and justifications for decisions;
- prejudice and discrimination towards trans people leading to biased decisions.

4. Are there any particular groups or individuals that you believe SPS should include within the review process?

Trans people in custody, other people in custody who are living alongside trans people, SPS staff, LGBT equality organisations and women's equality organisations.

Assessing risk

5. What are the potential risks that transgender and cisgender populations could face when being cared for in a custodial environment?

The risks that transgender people in custody face include:

- transphobic discrimination by staff or by other people in custody;
- physical and sexual harassment, assault or exploitation by staff or by other people in custody;
- psychological harm from verbal abuse mocking their gender identities or deliberately misgendering them by staff or by other people in custody;
- psychological harm from restrictions on their association with other people in custody who share their lived gender identity;
- psychological harm from denial of access to reasonable items that enable their expression of their gender identity, such as hair pieces, prosthetics, binders, make-up, etc.;
- physical and psychological harm from denial of, or interruption of, access to gender identity healthcare such as hormone therapy, post-op dilation equipment, etc.

It is important to note that there have been recorded cases of severe self-harm and suicide among trans people in custody as a result of psychological harm from repeated misgendering, restrictions on association and denial of access to items and healthcare to support expression of their gender identity.

The risks that cisgender people in custody could face from a trans person include:

- physical and sexual harassment, assault or exploitation by a trans person;

- psychological harm if forced to share a cell or communal shower with a trans person whom they perceive as a different sex from themselves, particularly if this would trigger previous traumatic experiences. (All other areas of all SPS estates are non-intimate and have a mixture of male and female staff and visitors present so there is no reason why a trans person simply also being present would cause psychological harm to a cisgender person if not sharing a cell or communal shower.)

- 6. Are the potential risks any different for:**
- a. transgender male to female**
 - b. transgender female to male**
- How could these risks be mitigated against?**

The risks depend more on the individual circumstances of each trans person, rather than simply whether they are a trans woman or a trans man. It is important not to make assumptions based on sexist stereotyping when considering risks for trans people. The risk of being sexually assaulted or exploited by men is not necessarily higher for an individual trans man than for an individual trans woman. How masculine or feminine a trans person currently appears, and whether or not they have had any surgeries, can impact on their level of risk of being sexually assaulted or exploited but those are just two of many factors and are not directly aligned to whether they are a trans man or a trans woman. Similarly, there are cisgender women and trans men who have physically and sexually assaulted women and there are trans women who are no risk to women. The number of trans people in custody is very small, less than 30 people in SPS custody at any time, so it is possible to carefully assess each trans person's risks individually. Individual risk assessments for each trans person is more accurate and reliable than using general assumptions of the relative risks of cisgender men or cisgender women.

- 7. Are there any other specific groups or individuals working or living in Scottish Prisons, who you think will be directly or indirectly affected as a result of decisions on how transgender people are held in custody?**
- If yes, in what way will groups or individuals be affected? How do you believe any significant impact can be mitigated against?**

SPS staff are highly skilled professionals working in teams and frequently dealing with various stressful and challenging situations for which they require to be

psychologically robust. They regularly conduct searches on people with a wide range of physical circumstances, including distressing medical conditions and hygiene problems. Therefore, searching transgender people in accordance with their gender identity does not pose SPS staff a general risk of psychological harm. If a risk assessment indicated that a particular trans person in custody posed a specific risk to staff safety, then this can be addressed using the same range of management options as for other people in custody who pose a risk to staff safety. Furthermore, the current policy also allows for staff to raise at any point any safety concerns about searching procedures for a trans person. Therefore, where necessary due to a trans person's individual evidenced risk, searching can be adjusted to protect staff safety. Similarly, general management of trans people in custody utilises the same SPS staff team work approach as for other people in custody and, where there is risk of violence towards staff, can implement the same range of safety measures and restrictions as used for other people in custody.

8. What key risk factors do you think should be considered upon reception of a transgender person into custody? Are there different issues to be considered for transgender male to female and transgender female to male?

The key risks factors to consider broadly fall into two categories: factors that may mean a trans person is at risk from others and factors that may mean a trans person is a risk to others. There are no distinct risk factors to consider separately for trans women or trans men: the overarching principles of what is important for determining risk is the same.

Potential factors that impact on trans person being vulnerable and at risk from others, include:

- History of being attacked, bullied or victimised;
- Evidence of coercion, manipulation, or threats towards the individual
- Individual's perceptions of their vulnerability in a particular location, or from a particular person or group of other people in custody;
- Mental health, history of self-harm and risk of suicide;
- Drug addictions and medication use;
- Physical health and anatomy;
- Learning disabilities or autism;
- Age.

Potential factors that impact on trans person being a risk towards others, include:

- Offending history, including index offence, past convictions and intelligence of potential criminal activity, particularly any sexual offences.
- Past behaviour in custody, the community, and in the care of the police or other services;
- Evidence of threats, bullying, coercion or manipulation towards others;
- Sexual behaviours and relationships within custodial/residential settings.

9. What key risk factors do you think should be considered upon an individual making the decision to transition while in custody? Are there different issues to be considered for transgender male to female and transgender female to male?

The same risk factors should be considered for all types of trans people. When an individual has not been transitioning prior to entering custody and instead is starting to transition while in custody, it is particularly important to support their exploration and increasing expression of their gender identity at an individualised pace which may be quite gradual. If they are currently sharing a cell, it is important to assess whether this remains safe. The individual's perception of their vulnerability from other people in custody can have a large impact on how they begin their transition so it is important to listen to and address any concerns. The same range of risk factors as discussed in question 8 will be relevant. Regular case conferences and detailed ongoing risk assessment are important to support the person's transition with appropriately paced adjustments to their items in use, name, pronouns, searching and accommodation. They should be supported to access NHS gender identity services if they wish to do so, but their social transition is not dependent upon accessing medical transition options.

10. How could SPS most effectively assess risk?

- **In your opinion what should the risk assessment process look like?**
- **what are the key factors?**
- **who do you feel should be involved in this process?**

It is likely to be the case that more often than not, it is the trans person in custody who is likely to face significant risks to their security and safety, rather than the trans person in custody posing a significant risk to others.

Whilst being trans should not be considered a risk factor in and of itself, SPS should always conduct risk assessments as part of taking decisions about how a trans person in custody is treated or where they are housed, in a way that is identifiably evidenced.

We believe the current risk assessment process detailed in the existing SPS policy is generally an appropriate and effective process. This involves the unit manager leading the collection of relevant evidence to inform the risk assessment and then arranging a case conference bringing together relevant staff and the trans person for detailed discussion. Potentially, a formal mechanism for additional review at SPS senior management level of particularly complex decisions in high risk cases could be a useful new addition.

Housing Transgender people in custody

11. In responding to the questions below please consider if there may be different issues in housing transgender male to female and transgender female to male:

The factors that should be considered by SPS in making decisions about housing trans people in custody are the same, regardless of whether the trans person is a trans woman or a trans man.

- **What do you think is the most appropriate way to house transgender people in custody?**

Trans people in custody should be housed in the estate that aligns with their lived gender identity, unless there is evidenced significant safety risk, posed either to the trans person themselves or to others they will be housed alongside, to housing them in that estate. It is essential that this risk is assessed on an individual basis and not be the subject of blanket decisions. Trans people, like all people in custody are individuals and each of them pose a different set of risk in different settings.

Privacy and dignity can be upheld for all by never forcing a cisgender person to share a cell with a trans person whom they perceive as a different sex from themselves and by ensuring that showering facilities used are fully enclosed individual cubicles so that people do not need to see each other undressed. It is important to consider the specific unit that a person in custody is housed in within an estate, as some SPS units provide significantly greater privacy, for example in the showering facilities, than others.

Trans people are very diverse in risk levels and needs and are very small in number so it would not be acceptable to try to create a transgender specific custody unit to keep them all together isolated from cisgender prisoners. Such an arrangement would have a disproportionate and unjustified negative impact on the educational, occupational, and rehabilitation opportunities, safety and wellbeing of trans people who are low risk towards others. The long acknowledged inequality of opportunities for women in custody compared to men in custody that results from the smaller size of the womens' estate would be far worse for a tiny transgender unit. If there is a trans person in custody who is a high risk sexual offender, then that trans high risk sexual offender should be housed with cisgender high risk sexual offenders and not with low risk trans people who would be vulnerable to abuse by them.

- **What factors do you think should be considered in reaching a decision on this matter?**

The key factors should be the trans person's lived gender identity and their actual, evidenced individual safety risks, especially risk relating to whether or not they might be victim to or perpetrators of sexual assault.

Concerns about possible psychological discomfort for cisgender people about simply sharing spaces with trans people should be taken into account in regard to cell occupancy and use of showering facilities, but not allocation to an estate. After all, there are many situations where a cisgender person in custody may feel psychological discomfort or even acute distress about the presence of another particular cisgender person in custody but, in the absence of actual threatening or abusive behaviour, SPS would manage the situation simply by preventing them entering each other's cells and not by removing either from the unit. Providing that a cisgender person is not forced to share a cell with, or to shower with, a trans person who they perceive to be a different sex from them, all other areas of the unit are non-intimate and will have a mixture of male and female staff and visitors present so the presence of a trans person is not objectively harmful or unreasonable.

- **Why do you think it is important to consider these factors?**

It is important to respect the trans person's lived gender identity because it can be direct or indirect gender reassignment discrimination under the Equality Act 2010 to treat only as their birth sex a trans person who has transitioned to live permanently in their gender identity. It is important to carefully assess and address safety risks for all people in custody because the SPS has a duty of care to all in its custody.

- **Why do you believe that is the most appropriate way to house this population?**

It is the fairest, safest way of dealing with the complex and diverse situations of trans people and balancing the wellbeing of all people in custody.

- **With said preferred option in mind, how do you think this would impact on the health, safety and security and wellbeing of transgender people involved?**

It would benefit the health, safety and security and wellbeing of trans people who pose a low risk to other people in custody because it would enable them to continue to be accommodated in accordance with their gender identity without harm to other people in custody.

It would not benefit the wellbeing of trans people who are determined to be too high risk to others to be approved to be housed in accordance with their gender identity. However, their evidenced individual safety risk would be legitimate justification for the negative impact on them.

- **With said preferred option in mind, how do you think this would impact on the health, safety and security and wellbeing of the cisgender population involved?**

It would benefit the health, safety and security and wellbeing of cisgender people because it would prevent any high risk sexual offender who also happened to be trans from being moved to an estate where they posed a greater risk to cisgender people. It would also benefit the wellbeing of cisgender people who would be distressed by sharing a cell or showering in front of a trans person whom they perceive as a different sex from themselves, because it would not ever force them to do so.

It would not benefit the wellbeing of cisgender people who object to a trans person simply being present fully clothed in supervised communal dining, recreation, educational and occupational areas of the estate where cisgender male and female staff and visitors can also be present. However, it is not objectively harmful or unreasonable for a trans person to be present in such areas so it would not be proportionate to exclude the trans person.

Provision of Healthcare

12. With said preferred housing option in mind, do you think there would be any implications in relation to the provision of healthcare for transgender people in custody?

No.

13. With said preferred housing option in mind, do you think there would be any implications in relation to the provision of healthcare for cisgender people in custody?

No.

Preparation for liberation

14. With said preferred housing option in mind, how do you think this would impact on the preparation for reintegration of transgender people back into their communities?

It would be beneficial because it would be easier for a trans person who has been accommodated in custody successfully in their lived gender identity to then reintegrate back into the community in that lived gender identity.

15. With said preferred housing option in mind, how do you think this would impact on the preparation for reintegration of cisgender people back into their communities?

It would be neutral because it mirrors how they will encounter trans people generally using facilities and accommodation such as toilets, hostels and hospital wards in the community.

Staff Training

16. With said preferred housing option in mind how can the SPS prepare staff for housing transgender people in this way?

It would be the same general situation as has been operated by SPS for a decade in regard to accommodation of trans people, so it should not require significant

preparation. Additional training on how to conduct and record the risk assessment process and how to write up the detailed justifications for the case conference decisions would be beneficial to ensure all the case conference decisions are robustly evidenced.

Equalities and Human Rights

17. What are the impacts and implications on equalities and human rights for transgender people of your preferred option?

Continuing to take the same broad approach as that taken in the current SPS policy will uphold the human rights of all people in custody. Trans people should be able to be held in the estate that aligns with their lived gender identity, unless there is a credibly assessed reason that to do so would place either them or others at significant risk of harassment or assault.

18. What are the impacts and implications on equalities and human rights for cisgender populations said preferred option?

It would uphold equalities and human rights for cisgender people because it would still provide adequate privacy in regards to cell sharing and showering and would help protect their safety from harassment or assault by a trans person.

19. What quantitative and/or qualitative evidence have you considered when proposing your preferred option?

We developed our position on the most appropriate approach to housing trans people in custody through many years of work with SPS, trans people in custody themselves, and through the knowledge of staff who have extensive previous working experience in prison settings. We have previously attended case conferences for trans people in custody at those individuals' requests, and have a deep understanding of the real life working of the policy, and the situation within the Scottish prison estate for trans people in custody.

We are also experts in trans equality and human rights, having been funded since 2007 by the Scottish Government as a specific trans equality project, with a key function of our organisation being to provide best practice guidance and advice to public bodies and service providers on these issues.

20. What case law relating to equality and human rights have you considered when proposing your preferred option? (please provide references)

In particular, we have considered the decision in England & Wales in *R (FDJ) v Secretary of State for Justice [2021] EWHC 1746 (Admin)*: <https://www.bailii.org/ew/cases/EWHC/Admin/2021/1746.html> in which a cisgender woman challenged the lawfulness of the policy that manages the treatment of trans people in custody in England. Although not identical to the current SPS policy, it takes the same approach: one that considers the trans person's lived gender identity, alongside the risks and the security and safety of both the transgender person, and others that they will be living alongside. The Judge's found in that case that the policy that operates in England is lawful, and that it would very likely be unlawful to operate a policy in which all trans women are held on the male estate.

21. Do you think your preferred option would contribute to eliminating discrimination, harassment and victimisation? If yes, in what way?

Yes, it will help prevent discrimination against trans people because it does not perpetuate the myth that all trans people are sexual predators, and it does not falsely treat all trans people as inherently unsafe to be in accommodation that reflects their lived gender identity. It recognises the diversity of trans people in custody and individually risk assesses them in a fair and balanced way to uphold everyone's safety. Other approaches, such as placing trans people according to their genitals or their birth certificate, would without justification leave vulnerable trans people at risk of harassment, without dignity or safety, in accommodation that fails to respect their lived gender identity.

22. Do you think your preferred option would advance equality of opportunity between those who share a protected characteristic and those who do not? If yes, in what way?

Yes, since it will enable trans people and cisgender people to have similar experiences in custody and reduce the degree to which having the protected characteristic of gender reassignment causes people to experience additional harm and inequalities within custody.

23. Do you think your preferred option will foster good relations between those who share a protected characteristic and those who do not? If yes, in what way?

Yes, reassuring people that safety risks will be carefully assessed when making accommodation decisions will help foster good relations because it will help allay the major public concern that predatory sexual offenders would be entitled to be automatically placed in the women's estate.

24. Will your preferred option breach or uphold human rights? If so, how?

Continuing to take the same broad approach as that taken in the current SPS policy will uphold the human rights of all people in custody. Trans people should be able to be held in the estate that aligns with their lived gender identity, unless there is a credibly assessed reason that to do so would place either them or others at significant risk.

A policy that sought to insist that all trans people must be held on the estate of their sex recorded at birth would breach trans people's human rights.

A policy that did not adequately assess risk to ensure that no one is placed inappropriately in an estate where they may threaten the safety or security of others, or have their own safety or security threatened, would also breach the human rights of all people in custody.

The suggested approach is the only option that will allow the human rights of all to be upheld.

25. Do you foresee negative impacts? What are they? How would you propose to mitigate them?

As described in previous answers, ensuring adequate shower facility privacy and non-sharing of cells would mitigate the main potential negative psychological impact that some cisgender people in custody might otherwise risk experiencing.

For any high risk trans person in custody who was unable to be accommodated in line with their lived gender identity, there would be potential negative psychological impact. This could be mitigated by ensuring that their name and pronouns are respected by staff and they still receive access to NHS gender identity services and to any reasonable items that they need in order to express their gender identity. They should be allowed to have their risk levels reassessed over time in order to take account of any changes in their circumstances.