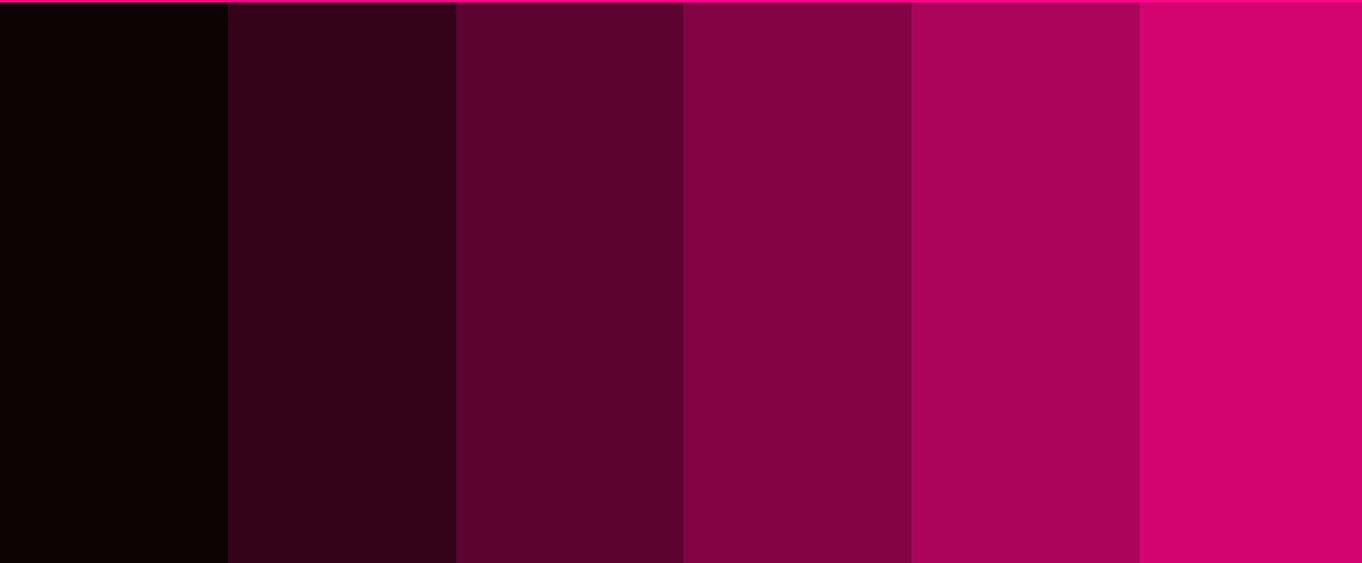


KPSS / November 2021

**EXCLUDING FEMALE OFFENDERS  
IN POLICY AND PRACTICE**  
HOW THE SCOTTISH PRISON SERVICE  
OVERLOOKS THE SEX-BASED  
NEEDS OF WOMEN IN PRISON





# CONTENTS

EXECUTIVE SUMMARY	5
A NOTE ON LANGUAGE	6
WOMEN IN PRISON IN SCOTLAND	9
SCOTTISH PRISON SERVICE POLICY	15
HOW MANY TRANSGENDER PRISONERS ARE THERE?	21
MIXED-SEX PRISONS: THE IMPACT ON WOMEN	25
SCOTTISH TRANS ALLIANCE & THE SCOTTISH PRISON SERVICE	33
RECOMMENDATIONS	37
REFERENCES	41
APPENDICES	45



## EXECUTIVE SUMMARY

It has long been accepted that female offenders in Scotland, as elsewhere, exhibit patterns of exceptional vulnerability across many indices. As such, their needs are recognised as distinct from those of male offenders. It is for good reason that approaches to tackling female offending in Scotland consistently emphasise the importance of trauma-responsive services.

Female-only services are recommended as key to enabling women in prison to have the best chance for lasting rehabilitation. Repeated exposure to male violence, including sexual violence, is common within the female prison population. Such experiences mandate single-sex prison accommodation. Single-sex accommodation enables the Article 3 rights of women in prison not to be subjected to inhuman or degrading treatment or punishment to be upheld (Human Rights Act, 1998). The Equality Act (2010) contains specific provision to enable the provision of single-sex services.

However, women's prisons in Scotland are effectively mixed-sex facilities. This is because Scottish Prison Service (SPS) policy and practice is to house prisoners of the male sex in the female prison estate based on their self-declared gender identity. These prisoners participate fully in the activities provided in the female estate. This includes showering with women.

The SPS policy permitting this and the associated Equality Impact Assessment reveal that the legitimate needs of female prisoners were excluded from consideration, as were their Article 3 rights. Notwithstanding that the policy addresses the needs of transgender prisoners, by providing that the female prison estate be mixed-sex, the needs of female prisoners are also impacted and their interests also engaged. However, no individual or organisation representing the needs of female offenders was included in the consultation process.

These and subsequent documents reveal that Scottish Trans Alliance and Stonewall Scotland enjoy an active presence throughout the SPS that includes delivering mandatory officer training, advising on new infrastructure, delivering workshops to women in prison and advising which prisoners of the male sex are appropriate for transfer to the female prison estate. Arguably, the evidence indicates that these organisations exert undue influence.

The documented evidence consistently demonstrates that housing prisoners of the male sex with female offenders has a negative impact on women in prison including sexual assault. Yet, the legitimate needs of female offenders are consistently overlooked.

## A NOTE ON LANGUAGE

When discussing sex-based rights and the need for single-sex service provision, clarity of language is of critical importance. In our view, terminology such as ‘transwoman’, ‘trans woman’ and the use of pronouns which correspond to an individual’s adopted gender identity impede this discussion. Regardless of gender identity, or being in possession of the protected characteristic gender reassignment, sex does not, indeed cannot, change. Single-sex service provision is predicated upon femaleness and maleness and that the services for the members of one sex should not be used by the members of the other.

For these reasons we have elected to use the phrase **‘individual of the male sex who identifies as transgender’** in place of ‘transwoman’ or ‘trans woman’. This report avoids the use of pronouns entirely. No offence is intended.

# WOMEN IN PRISON IN SCOTLAND



# WOMEN IN PRISON IN SCOTLAND

The current national facility for women is at HMP Cornton Vale. Other facilities for women are located at HMP Grampian, HMP Greenock, HMP Edinburgh and HMP Polmont.

The female prison population has remained relatively stable since 2013. At just under 400 women, this represents around 4% of the total prison population in Scotland (Scottish Prison Service, 2020).

## Women in prison: a vulnerable population

The experiences of female offenders in Scotland have been a focus for policy and practice which was initially prompted by a series of suicides of women at HMP Cornton Vale: between 1995 and 2002, 11 women killed themselves. These tragic events led to a series of reports, inspections and practice initiatives including:

**Women Offenders: A Safer Way** (Social Work Services & Prisons Inspectorate for Scotland, 1998);

**A Better Way: The Report of the Ministerial Group on Women's Offending** (Scottish Executive, 2002);

**Female Offenders in the Criminal Justice System** (Equal Opportunities Committee, 2009);

**Report of the Commission on Women Offenders** (Commission on Women Offenders, 2012).

The findings and recommendations are consistent across these reports:

- Women in prison, considered as a group, exhibit patterns of vulnerability that distinguish them both from women in the wider community and from male offenders.
- Female offenders report disproportionately high rates of previous experience of violent and sexual abuse and often present with complex and enduring physical and mental health conditions that directly contribute to their vulnerability.
- Many female offenders are imprisoned for relatively minor offences. There are strong links between women's acquisitive crime, for example theft and benefit fraud, and their social and personal circumstances, including their need to provide for their children. Coercion, usually from a male partner, is also a significant factor in female crime.
- The lives of many women who end up in the criminal justice system are characterised by poverty, addiction, experiences of violence, multiple instances of bereavement and often major physical and mental health problems.

# WOMEN IN PRISON IN SCOTLAND

In 2021, the evidence indicates that these patterns have simply continued for women in prison. Despite successive government commissioned reports confirming the vulnerability of women in prison, there has been a failure to make any meaningful change.

A recent study found a high prevalence of significant head injury in their sample of 109 women in prison in Scotland of almost 80% (McMillan et al, 2021).

These injuries were most often caused by repeated incidents of domestic abuse occurring over several years. In 40% of the women in whom significant head injury was found, the injuries were associated with disability.

Throughout the criminal justice system in Scotland, the vulnerabilities of female offenders are recognised: it is for good reason that approaches to tackling female offending have consistently emphasised the need for not simply a trauma-informed approach, rather that trauma-responsive services are required.

## Women in prison: a trauma-responsive approach

Notwithstanding that incarceration should not be a gateway to otherwise unavailable services, for many female offenders prison is the first opportunity to tackle the complex issues around offending, improve their health and access the services they need. Where women in prison are victims of sexual and violent assault, prison is often the first time they are away from their (usually male) abusers.

## A Better Way: The Report of the Ministerial Group on Women's Offending (Scottish Executive, 2002) and the Report of the Commission on Women Offenders

(Commission on Women Offenders, 2012) found that female offenders were marginalised within a criminal justice system designed by men for men and recognised that specific programmes should be developed that would address female offenders' particular needs in a safe, nonthreatening environment.

## The Report of the Commission on Women Offenders

(Commission on Women Offenders, 2012) emphasised the high levels of trauma, anxiety and mental health problems experienced by female offenders.

The fundamental differences between male and female offenders meant that a distinct approach was needed for women. Female-only services were seen as key, to enable women offenders to have the best chance for rehabilitation.

# WOMEN IN PRISON IN SCOTLAND

## Women in prison: the need for single-sex provision

Where women in prison have been the victims of sexual and violent abuse at the hands of men, the presence of any offender of the male sex may have an inherently traumatising effect, regardless of the nature of offence committed.

In wider society, the statement is often made that if a woman does not wish to share a single-sex space with a person of the male sex who identifies as transgender, then she is at liberty to simply not use that space. The statement that she should remove herself and seek an alternative facility is made throughout policy as well as in less formal discourse.

Regardless of the acceptability or otherwise of such a statement, this is manifestly not the case for women in prison. A female offender who objects to sharing prison accommodation, including shower and toileting facilities, with a prisoner of the male sex who identifies as transgender is unable to choose to not use those facilities, or to choose to use them at a different time. She cannot remove herself and seek an alternative facility which remains single-sex.

Women in prison are entitled to single-sex prisons for the same reason that all women and girls are entitled to single-sex spaces and services: for reasons of dignity, privacy and safety. The provision of these is permitted via the single-sex exceptions in the [Equality Act \(2010\)](#) at Schedule 3, paragraphs 26, 27 & 28 and at Schedule 23, paragraph 3.

These allow that it is lawful to exclude all males, including those who have the protected characteristic of gender reassignment, and those who have obtained a Gender Recognition Certificate, where it is a proportionate means to achieving a legitimate aim of maintaining a space or a service as separate-sex and single-sex for females only.

[The Equality Act \(2010\)](#) at Section 212 provides a sex-based definition of a woman as being a female of any age and of a man as being a male of any age. Exclusion is on the basis of being of the male sex, not on the basis of being transgender.

Where single-sex spaces are denied to women in prison and where they are compelled to share accommodation, including toileting and showering facilities, with prisoners of the male sex who identify as transgender, this is arguably a violation of the Article 3 rights of women in prison not to be subjected to inhuman or degrading treatment or punishment ([Human Rights Act, 1998](#)). At the very least, there is the strong possibility of those rights being engaged.

Article 3 is an absolute right, meaning that it cannot be balanced against different sets of rights (not even the Article 3 rights of another group), and it is incumbent on all service providers to ensure that the Article 3 rights of service users are not violated.



# SCOTTISH PRISON SERVICE POLICY



# SCOTTISH PRISON SERVICE POLICY

The Scottish Prison Service Policy Gender Identity and Gender Reassignment Policy for those in our Custody was published in 2014 (see Appendix 1).

## Introduction & Background

The stated aim of the policy is:

“To ensure that individuals who identify as transgender people or who intend to undergo, are undergoing or have undergone gender reassignment receive respect and fairness at all times from the Scottish Prison Service.”

Whilst this is a legitimate aim, the provisions the policy contains go far beyond ensuring respect and fairness and are to the detriment of women in prison, whose legitimate needs were not considered during policy development.

The document is written from the perspective of queer theory and strongly advances gender identity theory as established and incontrovertible fact. The front cover gives equal prominence to the logos of Scottish Trans Alliance and the SPS, with the logo of Stonewall Scotland also featured.

Although this is surprising, it reflects the degree to which Scottish Trans Alliance influenced the policy: the metadata of the original PDF document lists James Morton of Scottish Trans Alliance as the author (see Appendix 1).

Scottish Trans Alliance’s interest in prisons and ensuring that SPS policy foregrounds transgender interests was made clear in a chapter written for the collection of essays *Trans Britain Our Journey From the Shadows*, edited by Christine Burns (2018). In the chapter titled, *A Scottish History of Trans Equality Activism*, James Morton writes:

“Another key priority was pushing for public services to always respect trans people’s gender identities, even if they have not changed all their official documents or attended an NHS gender identity clinic. We strategised that by working intensively with the Scottish Prison Service to support them to include trans women as women on a self-identification basis within very challenging circumstances, we would be able to ensure that all other public services should be able to do likewise” (pp 240-241).

The intention is clear: women’s prisons were used to secure a precedent that could be used to argue that single-sex spaces for women provided in other sectors should also admit people of the male sex on the basis of their self-identification.

# SCOTTISH PRISON SERVICE POLICY

## Allocation: male or female estate?

The position on housing prisoners who identify as transgender is clear: prisoners should be housed according to their 'social gender' which is determined on the basis of self-identification. There is no requirement for a Gender Recognition Certificate nor for any 'reassignment' treatment or surgery. Hence:

**"The accommodation provided must be the one that best suits the person in custody's needs and should reflect the gender in which the person in custody is currently living"** (p. 5).

In respect of prisoners of the male sex who identify as transgender:

**"A male-to-female person in custody living permanently as a woman and without genital surgery should be allocated to a female establishment. She should not be automatically regarded as posing a high sexual offence risk to other people in custody and should not be subject to any automatic restrictions of her association with other people in custody"** (p. 26).

This means that prisoners of the male sex with fully functioning male genitalia may be allocated to the female estate where they identify as transgender on the basis of their self-declared gender identity.

Gender Reassignment Case Management Conferences, as the name suggests, assist in decision-making regarding the management of a prisoner who identifies as transgender. The list of case conference participants does not include a representative of the estate into which the prisoner intends to be allocated.

The interests of women in prison are unrepresented when decisions are made concerning the management of a prisoner of the male sex who identifies as transgender. In our opinion, this is a concerning oversight.

By contrast, a representative from a transgender advocacy group may attend and Unit Managers are urged to seek their input:

**"The transgender organisation representative should bring relevant expert transgender-specific equality knowledge, information and perspectives to all aspects of the case conference discussion."**

**"If the person in custody does not agree to a representative of a transgender equality organisation being included in the case conference, the Unit Manager [who chairs the case conference] can still provide anonymised information to gain their expert perspective"** (p. 24).

# SCOTTISH PRISON SERVICE POLICY

## The Equality Impact Assessment

Although prima facie the policy concerns the care and management of prisoners who identify as transgender, by allowing that prison accommodation shall be rendered mixed-sex, the policy impacts upon all prisoners, including those who do not identify as transgender.

However, the potential impact of allocation decisions on prisoners other than the transgender prisoner in question is given cursory consideration. The legitimate needs of female prisoners, including where those needs necessitate single-sex spaces and services, are ignored.

Prior to implementation of the policy, an Equality Impact Assessment was completed (see Appendix 2). This document was obtained via a Freedom of Information Access request in 2018 (Ref: FOIHQ18106). It reveals the following:

- Women in prison were not consulted, nor was any organisation representing the interests of women in prison.
- By contrast, transgender prisoners, transgender people in the community, Scottish Trans Alliance and Stonewall Scotland each representing transgender interests, and James Morton from Scottish Trans Alliance were consulted.
- No written evidence relating to the needs of women in prison was considered. Written evidence exclusively related to the needs of prisoners who identify as transgender.
- The list of protected characteristics under the Equality Act (2010) was incorrectly specified: 'gender identity' was listed, where the correct protected characteristic is 'gender reassignment'; 'gender' was listed, in place of the correct protected characteristic 'sex'.
- Notwithstanding this incorrect specification, 'gender' was not considered to be a protected characteristic that would be affected by the policy.
- The single-sex exceptions in the Equality Act (2010) at Schedule 3, paragraphs 26, 27 & 28 and at Schedule 23, paragraph 3 are ignored. These allow that where it is a proportionate means to a legitimate aim, males and persons of the male sex who have the protected characteristic gender reassignment may be excluded from services for females that are designated as separate-sex and single-sex. The document is written as if these provisions simply do not exist and as if the need for such single-sex spaces is inconceivable.

# SCOTTISH PRISON SERVICE POLICY

- The document states in respect of the Human Rights Act (1998): **“There is no direct evidence that this policy will be discriminatory or will breach any article or protocol in the Human Rights Act”**. This ignores the Article 3 rights of women in prison not to be subjected to inhuman or degrading treatment or punishment: accommodating prisoners of the male sex who identify as transgender in the female prison estate should at least be considered a potential breach of those rights. Article 3 is an absolute right, meaning that Article 3 rights of an individual cannot be balanced against the rights of another. It is incumbent on all service providers to ensure that the Article 3 rights of service users are not violated.

We consider that the lack of consideration given to the potential impact on women in prison and the absence of any consultation, either with women in prison or with groups representing the interests of women in prison, means that the SPS is in breach of their Public Sector Equality Duty.

As such the Equality Impact Assessment is not fit for purpose.

Further, the omission of the very possibility of women being adversely affected by the policy leads us to conclude that any risk assessment processes developed in consideration of the issues raised by the Equality Impact Assessment are not fit for purpose.

## **Searching: male or female officer?**

Decisions concerning searching, including rubdown searches through clothing and body searches, colloquially known as strip searches, also take place on the basis of self-declared gender identity. Genitalia are of no relevance:

**“People in custody should be body searched in accordance with the social gender in which they are living. Where social gender is unclear, the person in custody must be asked which gender they wish to be searched by and their answer recorded and the body search conducted accordingly”** (p. 17).

**“Rubdown and body searches should be conducted in accordance with the gender in which the person in custody is currently living, rather than their physical characteristics”** (p. 6).

Where a search is conducted on a prisoner of the male sex who identifies as transgender, the female staff are encouraged to view the presence of male genitalia as akin to any other physical variation that may be encountered during a search (p. 26).

**HOW MANY TRANSGENDER  
PRISONERS ARE THERE?**



# HOW MANY TRANSGENDER PRISONERS ARE THERE?

**There are no routinely collected data published on the number of transgender prisoners held in Scottish prisons, much less whether they are accommodated in the male or female estates.**

Information received by us from the Scottish Prison Service at the end of September 2021 states that the SPS only collects data on self-declared gender identity: this is for all prisoners, not just those who identify as transgender.

There is no record kept either of prisoners' biological sex or of their legal sex. Legal sex differs from biological sex where a prisoner has obtained legal recognition of acquired gender in accordance with the Gender Recognition Act (2004) and has been issued with a Gender Recognition Certificate. A GRC enables an individual to obtain a new birth certificate with the sex marker changed to reflect that individual's acquired gender, together with their new chosen name. This means that an individual's biological sex may be male, yet their legal sex is female. And vice versa. The SPS records neither.

This means that male prisoners who identify as transgender are hidden in the data: a request for the number of male prisoners held in the female estate will be answered with reference to the number of female prisoners who identify as transgender. It is now impossible to ascertain the number of male prisoners held in the female estate, nor the impact of their accommodation in women's prisons on female offenders.

In our view, this actively frustrates service development and management. We believe that anonymised data on transgender prisoners should be recorded and made available by the SPS as a matter of course.

The decision to record data in this way is relatively recent as some data pertaining to previous years have been available through Freedom of Information Access requests and Parliamentary Questions. The most recent figures were provided in response to a series of Parliamentary Questions lodged by Liam Kerr MSP on 06/01/2020 (S5W-26836; S5W-26837; S5W-26838) and answered on 20/01/2020:

- There were 11 transgender prisoners
- One of these was a transgender prisoner of female sex who was held in female estate
- Ten of these were transgender prisoners of male sex
- Seven transgender prisoners of male sex had at some point requested accommodation in the female estate, and four were currently housed there. Two of the three who were housed in the male estate had previously been housed in the female estate but had requested transfer to men's prison. Three transgender prisoners of male sex had never requested to be housed in female estate



**MIXED-SEX PRISONS  
THE IMPACT ON WOMEN**



## MIXED-SEX PRISONS: THE IMPACT ON WOMEN

Information received by us from the Scottish Prison Service at the end of September 2021 states that the SPS only collects data on self-declared gender identity: this is for all prisoners, not just those who identify as transgender.

This means that it is impossible to ascertain the impact on female offenders of the practice of housing prisoners of the male sex who identify as transgender with them.

An incident involving a prisoner of the male sex who identifies as transgender will have that prisoner's involvement recorded as being that of a woman.

In the absence of data reporting by the SPS, academic research, media reports and first-hand testimony provides evidence of the impact on women in prison when prisoners of the male sex who identify as transgender are housed with them.

This evidence consistently demonstrates that when the female prison estate is rendered mixed-sex, there is a negative impact on women in prison.

### **Academic Research: The Maycock Papers (2020, 2021)**

In 2020, Maycock reported on a qualitative interview study investigating the beliefs and experiences of different stakeholders in Scottish prisons in respect of the allocation of prisoners who identify as transgender. Interviews were conducted with prisoners who identify as transgender, prison officers, female prisoners and male prisoners (see Appendix 3).

To date, two papers reporting on the interviews with transgender prisoners and the interviews with women in prison have been published (Maycock, 2020a; Maycock, 2021). The papers reporting on interviews with male prisoners and with prison officers remain unpublished.

**'She was Just Like a Lassie' Analysing the Views of Cis-Women in Custody About their Experiences of Living with Transgender Women in the Scottish Prison Estate**, Maycock (2021)

As Maycock correctly observes, there is a lack of research on the experiences of female prisoners who are accommodated with prisoners of the male sex who identify as transgender.

Our own observation is that a significant reason for this is the difficulty of obtaining access to this cohort of prisoners for the purposes of researching this subject.

## MIXED-SEX PRISONS: THE IMPACT ON WOMEN

It is notable that Maycock was a member of the SPS at the time of conducting the research and it is likely that this facilitated access.

Semi-structured interviews were conducted with 15 female prisoners distributed across four Scottish prisons. All 15 were accommodated on a wing that also housed a prisoner of the male sex who identified as transgender.

Only three women were reported to be 'almost entirely accepting' of sharing prison accommodation with prisoners of the male sex who identify as transgender.

Concerns raised by those who were unaccepting of sharing prison accommodation with prisoners from this cohort included the negative psychological impact on women who had experienced abuse and violence from men and that some male prisoners could 'game the system' either to escape the male prison estate or to access victims within the female estate.

Some women referred to situations where prisoners of the male sex had identified as transgender whilst in prison, only to revert to male after release.

Around half the women interviewed stated that they perceived prisoners of the male sex who identify as transgender as men, not as women. An unstated number said that all such prisoners should be accommodated in male prisons.

Women stated that some of these prisoners presented unambiguously as men and exhibited typically 'male behaviours'. Particular concerns were raised where a prisoner of the male sex who identifies as transgender retained functioning male genitalia. Women also reported instances of sexual relations occurring between these prisoners and female prisoners.

Despite the impression given by the title of this paper, the results presented indicate that women in prison have negative experiences of being housed with prisoners of the male sex who identify as transgender and that many in the sample were not favourably disposed to being housed with them. It is not the case that they perceive prisoners of the male sex as 'just like a lassie'.

## MIXED-SEX PRISONS: THE IMPACT ON WOMEN

'Outside in society, society moves on, society attitudes change, within a prison that doesn't happen unless you're forced to.' Operational prison staff's attitudes to working with transgender people in custody (Maycock, 2020b, see Appendix 3)

Maycock's paper reporting on interviews with prison officers remains unpublished. This is regrettable given the difficulties of obtaining access to this population who, by virtue of the Official Secrets Act (1989), is unable to speak freely about their professional experiences. This paper was obtained via a Freedom of Information Access Request to the Scottish Prison Service in 2021 (ref: HQ20261).

The paper reports on interviews with 10 operational prison staff members working in halls that also housed prisoners who identify as transgender. Interviewees were split equally between men and women.

The most notable finding is that all female officers reported discomfort with strip searching prisoners of the male sex who identify as transgender. As Maycock correctly states, SPS policy states that both rub down and strip searches should be conducted in accordance with the gender in which the prisoner is currently living, rather than their physical characteristics.

This means that a prisoner of the male sex with intact male genitalia must be strip searched by female officers where the prisoner identifies as transgender.

The women interviewed recognised that they were searching male bodies and they were particularly concerned where the prisoner had retained male genitalia. The reactions of these female officers ranged from doing the search anyway to refusing.

One officer was uncertain whether she was permitted to refuse. Some participants described how their female colleagues were also uncomfortable conducting these strip searches. Some expressed feelings of vulnerability.

An example was also given of male staff who had refused en masse to strip search a prisoner of the female sex who identified as transgender.

Here, as in the other papers reporting on this study, Maycock appears to approach the research with pre-determined theoretical assumptions and set views concerning attitudes and behaviour that are and are not acceptable.

There is evidence in the narratives that these have been imposed on the data and have influenced analysis resulting in a narrow framework for interpretation. For example, in the paper reporting on interviews with operational prison staff members, Maycock writes, "Are Scottish prisons places where staff are perpetrators of transphobia or accepting of transgender people?"

# MIXED-SEX PRISONS: THE IMPACT ON WOMEN

Elsewhere he states, “Professional behaviour which supports a biological definition of gender, rather than the self-identified lived gender is inconsistent with SPS policy and the professional standards required of officers.”

It is our hope that when this paper is published, it will reflect the 2021 Employment Appeal Tribunal judgement in *Forstater v CGD Europe & Others (2021)* where the EAT found that gender critical beliefs, which can broadly be described as a belief in the immutability and importance of biological sex, are consistent with the law on sex and gender and that holding such beliefs is a protected characteristic under the Equality Act (2010).

This judgement means that it is unlawful for employers and service providers to discriminate against or harass employees or customers simply for holding or expressing such beliefs.

More generally, we would welcome all four sets of interview transcripts and interview schedules being made available to an independent researcher for secondary analysis.

No paper reporting on the interviews with men in prison has been published, neither was this made available to us through the Freedom of Information Access request we submitted. This is regrettable and we hope that this paper will be made available in due course.

## Media Reports

Appendix 4 presents a table of incidents reported in the media that have arisen as a result of prisoners of the male sex who identify as transgender being housed in the female estate in Scotland. These reports provide a useful addition to the research findings summarised above and support the findings that women in prison are adversely affected by the inclusion of prisoners of the male sex who identify as transgender in the female prison estate. This list of reports should not be considered exhaustive.

Reported incidents include:

- sexual assault and threats of rape
- sexualised behaviour in public
- sharing showering facilities with women
- consensual sexual relationships

# MIXED-SEX PRISONS: THE IMPACT ON WOMEN

## First-hand Testimony

The Official Secrets Act (1989) prohibits former or current prison staff from speaking about their professional experiences. This means that it is challenging to obtain first-hand testimony from officers.

Appendix 5 presents statements from Rhona Hotchkiss, former prison governor, recounting her professional experiences of this 2014 SPS policy.

Also presented is a statement from a member of staff at a women's prison in England who wishes to remain anonymous. This reports her professional experiences of the MoJ policy on the care and management of transgender prisoners.

The final statement in Appendix 5 is from FDJ, the female prisoner in England who brought a judicial review against the Secretary of State for Justice challenging the lawfulness of the policies that permit the allocation of prisoners of the male sex who identify as transgender to the female prison estate (R (FDJ) v Secretary of State for Justice & Others, 2021).

Again, the statements are consistent with the research findings and the media reports:

- Women were exposed to sexualised and aggressive behaviour
- Female prisoners and officers were threatened with rape
- The presence of prisoners of the male sex had a retraumatising effect on women
- Women were compelled to shower at the same time as prisoners of the male sex who retained male genitalia
- Women were subjected to sexual assault
- Prisoners of the male sex intentionally exposed their intact male genitalia
- Women were compelled to refer to prisoners of the male sex as 'she' and use their adopted female names. A refusal to comply resulted in punishment



**SCOTTISH TRANS ALLIANCE  
AND THE SCOTTISH  
PRISON SERVICE**



# SCOTTISH TRANS ALLIANCE AND THE SCOTTISH PRISON SERVICE

The Stonewall Workplace Equality Index Submission completed by the Scottish Prison Service and dated 6th September 2019 reveals that the relationship between Scottish Trans Alliance and the SPS has progressed in accordance with the intentions expressed in the 2014 policy (see Appendix 6).

The Equality Impact Assessment conducted in connection with the 2014 SPS policy stipulated that Scottish Trans Alliance should be involved in developing a training package to support the 2014 policy and should deliver training in SPS establishments.

The legitimate needs of prisoners from all protected characteristics should be considered in order that prisoners are treated equitably with fairness, respect and dignity. It is appropriate that SPS consults those organisations who are best placed to advise on policy development and practice in respect of these protected characteristics.

Gender reassignment is one such characteristic (although gender identity, contrary to the 2014 policy and associated Equality Impact Assessment, is not).

However, our concern is that in respect of transgender issues, a situation has resulted where there is lack of balance, with trans advocacy groups, including Scottish Trans Alliance, having undue and unchallenged influence.

We are concerned that this has resulted in a lack of impartiality within SPS. The 2014 policy and associated Equality Impact Assessment are examples of this.

The Stonewall Workplace Equality Index Submission completed by the SPS reveals that Scottish Trans Alliance is involved at many levels of the SPS:

- STA designs and delivers staff training, including that which is mandatory
- STA advises on new infrastructure for the female prison estate and how this can be made 'trans inclusive'
- STA provides in-prison activities in the female prison estate, emphasising the importance of inclusivity
- STA attends and advises on transgender prisoner case conferences

We have also been informed that Scottish Trans Alliance advises on which prisoners of the male sex who identify as transgender are appropriate for allocation to the female estate.

## TABLE 1: SCOTTISH TRANS ALLIANCE INVOLVEMENT WITH SPS

Area	Reference	Scottish Trans Alliance Involvement
Staff Training	Section 9.A.4	The Officer Foundation Programme is undertaken by all frontline operational staff as part of their first three months' training in SPS. The Programme includes Gender Identity & Gender Reassignment training which has been co-designed and is co-delivered by SPS and Scottish Trans Alliance
	Section 4.5	A trans-awareness programme for staff members was developed in 2014 and is jointly delivered by SPS and Scottish Trans Alliance.
	Section 7.4	Joint training undertaken by SPS Equality & Diversity Managers for Prisoners in conjunction with Scottish Trans Alliance was provided to staff at HMP Addiewell & HMP Kilmarnock.
Infrastructure	Section 9.A.1	The impact assessment of the new building for the women's national facility included an all-day workshop with representatives from Stonewall Scotland and Scottish Trans Alliance. This allowed for the needs of LGBT people (prisoners, visitors and staff) to be considered in every aspect of the build. Particular impacts on LGBT people include provision of gender neutral toilets and changing facilities.
In-prison activities	Section 3.4	A trans-awareness day was held at HMP Grampian. Justine Smithies, trans activist, and staff from Scottish Trans Alliance attended the establishment to talk to women in custody about their personal journeys and the importance of inclusiveness for the trans community.
	Section 3.6	A trans-remembrance day was held at HMP Grampian with transactivists and staff from Scottish Trans Alliance in attendance.
Transgender prisoner case conferences	Section 9.A.3	Numerous case conferences have been held at which the trans prisoner is empowered to participate fully to shape the plan for managing their safety and their transition journey in custody. Often representatives from Scottish Trans Alliance attend.

# RECOMMENDATIONS



## RECOMMENDATIONS

Scottish Trans Alliance has disproportionate and excessive influence on matters that affect the female prison estate and which impact on women in prison.

The result is that the legitimate needs and rights of women in prison have been, and continue to be, at a minimum significantly minimised and at the maximum excluded entirely from consideration.

**This must change.  
Organisations that advocate for the sex-based rights of women in prison must be a given a voice to advocate on behalf of women in prison.**

In 2020, it was reported that the Scottish Prison Service policy Gender Identity and Gender Reassignment Policy for those in our Custody would be reviewed. Notwithstanding that this policy concerns the needs of prisoners who identify as transgender, by rendering the female prison estate mixed-sex, the needs of female prisoners are impacted.

It is imperative that this time women in prison and organisations representing the interests of women in prison are included in the consultation process.

Due consideration must be given to the Article 3 rights of women in prison not to be subjected to inhuman or degrading treatment or punishment and to the single-sex exceptions in the Equality Act (2010). The protected characteristics in the Equality Act should be correctly specified.

The final revised policy should clearly be the work of the SPS and should not be written by a member of Scottish Trans Alliance nor by anyone working for any advocacy group.

The Stonewall Workplace Equality Index Submission completed in 2019 indicates that Scottish Trans Alliance has significant influence and involvement throughout the SPS and that this involvement impacts on the rights of women in prison.

We recommend that this be subject to full scrutiny and external review.

## RECOMMENDATIONS

We recommend that data on the numbers of transgender prisoners be publicly reported as a matter of course by the SPS. These data should include prisoners with a Gender Recognition Certificate in order to determine the true number of prisoners who identify as transgender.

This recommendation is in keeping with data collection practices in England and Wales: in April 2021, the MoJ announced in response to parliamentary question 183091 that the publicly available data on transgender prisoners would, from the 2021 data collection point onwards, include data on those with GRCs. Data collection across the SPS should record, and publicly report, biological sex.

In 1998, the Social Work Services and Prisons Inspectorate for Scotland concluded that for many female offenders, custody was an unsafe environment. Successive government commissioned reports have confirmed the vulnerability of women in prison and their consequent need for female-only services.

More than 20 years later, the evidence clearly indicates that women's prisons remain unsafe and traumatising environments due at least in part to the SPS practice of housing prisoners of the male sex alongside vulnerable women in prison.

**The legitimate needs of all prisoners should be equitably met. The evidence demonstrates that the legitimate needs of female prisoners necessitate single-sex provision.**

**Policies that impact on women in prison must no longer side line female offenders and ignore their legitimate needs and rights.**

# REFERENCES



## REFERENCES

- Commission on Women Offenders (2012) *Report of the Commission on Women Offenders*, Edinburgh: Scottish Government.
- Equal Opportunities Committee (2009) *Female Offenders in the Criminal Justice System*, Edinburgh: Scottish Parliament.
- Equality Act* (2010)
- Forstater v CGD Europe & Others UKEAT/0105/20/JOJ* (2001)
- Human Rights Act* (1998)
- McMillan TM, Aslam H, Crowe E, Seddon E & Barry SJE (2021). Associations between significant head injury and persisting disability and violent crime in women in prison in Scotland, UK: a cross-sectional study. *Lancet Psychiatry*, vol 8 (June 2021): 512-520.
- Maycock, M (2020a). The transgender pains of imprisonment. *European Journal of Criminology*, doi:10.1177/1477370820984488
- Maycock, M (2020b). 'Outside in society, society moves on, society attitudes change, within a prison that doesn't happen unless you're forced to.' Operational prison staffs' attitudes to working with transgender people in custody. (Unpublished)
- Maycock, M (2021). 'She Was Just Like A Lassie' Analysing The Views of Cis-Women In Custody About Their Experiences of Living With Transgender Women In The Scottish Prison Estate. *The British Journal of Criminology*, doi.org/10.1093/bjc/azab091
- Morton, J (2018) A Scottish History of Trans Equality Activism. In: Burns, C (ed.) *Trans Britain Our Journey From the Shadows*. London: Unbound Press
- Official Secrets Act* (1989)
- R (FDJ) v Secretary of State for Justice & Others* (2021)
- Scottish Executive (2002) *A better way: The report of the Ministerial Group on Women's Offending*, Edinburgh: Scottish Executive.
- Scottish Prison Service (2014) *Gender Identity and Gender Reassignment Policy for Those in our Custody*.
- Scottish Prison Service (2020) *Scottish Prison Population Statistics 2019-2020*, Edinburgh: The Scottish Government.
- Social Work Services and Prisons Inspectorate for Scotland (1998) *Women offenders: A safer way*, Edinburgh: The Scottish Office.



# APPENDICES



# APPENDICES

## Appendix 1

[kpssinfo.org/excluding-female-offenders-appendix-1](https://kpssinfo.org/excluding-female-offenders-appendix-1)

- Gender Identity and Gender Reassignment Policy for Those in our Custody, Scottish Prison Service, 2014
- Copy of metadata relating to original PDF of policy

## Appendix 2

[kpssinfo.org/excluding-female-offenders-appendix-2](https://kpssinfo.org/excluding-female-offenders-appendix-2)

- Equality Impact Assessment for Gender Identity and Gender Reassignment Policy for Prisoners

## Appendix 3

[kpssinfo.org/excluding-female-offenders-appendix-3](https://kpssinfo.org/excluding-female-offenders-appendix-3)

- Transgender People in Custody - Overview of Research, Maycock, 2020
- 'Outside in society, society moves on, society attitudes change, within a prison that doesn't happen unless you're forced to.' 'Operational prison staffs' attitudes to working with transgender people in custody, Maycock, 2020

## Appendix 4

[kpssinfo.org/excluding-female-offenders-appendix-4](https://kpssinfo.org/excluding-female-offenders-appendix-4)

- Assault and Other Incidents in Female Estate, Scotland

## Appendix 5

[kpssinfo.org/excluding-female-offenders-appendix-5](https://kpssinfo.org/excluding-female-offenders-appendix-5)

- Statement by Rhona Hotchkiss
- Statement by anonymous staff member, England
- Statement by FDJ, female former offender, England

## Appendix 6

[kpssinfo.org/excluding-female-offenders-appendix-6](https://kpssinfo.org/excluding-female-offenders-appendix-6)

- Scottish Prison Service Workplace Equality Index Submission dated 06/09/2019

## Report available at

[kpssinfo.org/excluding-female-offenders-pdf](https://kpssinfo.org/excluding-female-offenders-pdf)



## ABOUT **KEEP PRISONS SINGLE SEX**

Keep Prisons Single Sex campaigns throughout the United Kingdom for the sex-based rights of women in prison to single-sex accommodation and same-sex searching. We also campaign for data on offending to be recorded by sex throughout the criminal justice system.

**KEEP  
PRISONS  
SINGLE  
SEX  
XX**

[kpssinfo.org](http://kpssinfo.org)

