

Division	Criminal Justice Services Division	Department	Custody
File Path Record			

Police Scotland / SPA Equality and Human Rights Impact Assessment (EQHRIA)

This form is to be completed in accordance with the instructions as set out in the EQHRIA SOP and the EQHRIA Form Guidance.

Name of Policy / Practice (include version number)	Care and Welfare of Persons in Police Custody Standard Operating Procedure
Owning Department	Criminal Justice Services Division

1. Purpose and Intended Outcomes of the Policy / Practice - Consider why this policy / practice is being developed / reviewed and what it aims to achieve.

This SOP provides instruction and guidance to all Police Officers/Members of Police Staff responsible for the care and welfare of persons in police custody. This applies to staff working in all divisions/departments who are involved with custodies. A consistent, justifiable and proportionate response to the care, custody and welfare of persons in police custody. The care, welfare and security of persons held in police custody are to be maintained to consistently high standards, and they are to be treated with care and consideration, ensuring that their fundamental human rights are maintained. No person in custody should receive less favourable treatment on the grounds of age, disability, gender, race, religion or belief, relationship status, sexual orientation or transgender identity.

2. Other Policies / Practices Related or Affected - Which other policies / practices, if any, may be related to or affected by the policy / practice under development / review?

The Custody Officer's Guide
 NPIA Safer Detention and Handling of Persons In Police Custody
 The Articles and Conventions of the Human Rights Act 1998
 Police and Fire Reform (Scotland) Act 2012 – Section 29
 Use of Force SOP
 Armed Forces Personnel SOP
 Custody Division - Custody Transfer Guidance document
 Appropriate Adult SOP

Interpreting and Translating Services SOP.
 Police Scotland Diversity Booklet - A Practical Guide
 Criminal Procedure (Scotland) Act 1995
 Section 199 of the Children's Hearing (Scotland) Act 2011
 Police Service of Scotland Solicitor Access Guidance
 Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010
 Offending by Children SOP
 Lord Advocate's Guidelines on Offences Alleged to have been Committed by Children
 Gender Recognition Act 2004
 Diplomatic Privileges Act 1964
 Management Guidelines for Persons Suspected of Having Controlled Drugs Concealed Internally
 Adult Support and Protection SOP.
 Drugs Investigation SOP
 Custody Division – Adverse Incidents Guidance
 Deaths or Serious Injury in Police Custody SOP.
 Section 18 of the Criminal Procedure (Scotland) Act 1995
 Complaints about the Police SOP.
 Guidelines by the Lord Advocate to Chief Constables relating to Liberation by the Police
 Lord Advocate's Guidelines to the Chief Constable on the Reporting to Procurators Fiscal of offences alleged to have been committed by children
 Terrorism Act (TACT) 2000

3. Who is likely to be affected by the policy / practice? (Insert 'X' in one or more boxes)

No impact on people		Police Officers	x	Special Constables / Cadets	x	SPA / Police Staff	x	Communities	x	Partnerships	x
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3.1 Screening for Relevance to Equality Duty – if the policy / practice is considered to have no potential for direct or indirect impact on people, an Equality Impact Assessment is not required. Provide information / evidence to support this decision below, then proceed to Section 5 of the form.

It has been decided not to complete an equality impact assessment because N/A

4. Equality Impact Assessment - Consider which Protected Characteristics, if any, are likely to be affected and how.

4.1 Protected Characteristics Groups	4.2 Likely Impact Positive, Negative or No Impact (Assessment of Low / Medium / High impact)	4.3 Evidence Considered (e.g. legislation / common law powers, community / staff profiles, statistics, research, consultation feedback) Note any gaps in evidence and any plans to fill gaps.	4.4 Analysis of Evidence (Summarise how the findings have informed the policy / practice – include justification of assessment of No Impact)
General / relevance to all	Medium	Every person brought into Police Custody will be assessed on an individual basis as their needs.	The SOP highlights to officers the need to treat people according to their needs and with care and respect. No custody should receive less favourable treatment based on any of the protected characteristic groups.
Age	Medium	It is acknowledged that there is a gap in evidence as consultation with age related organisations, which still requires to be conducted.	There are several provisions made for the treatment of children and young persons in custody and the SOP allows officers to follow legislation and Lord Advocates Guidelines as listed within section 3 of this form. The SOP takes account of the rights of children. There is no specific provision for elderly persons, however their fitness for detention in police custody will be assessed as part of the initial risk assessment and any concerns considered.
Disability	Medium	The SOP highlights that, where a person is arrested or detained, consideration must always be given to any immediate medical needs or mental health assessments. Furthermore, it details measures to be taken in relation to prisoners with specific disabilities.	There are several provisions for individuals with mental illness and learning disability in relation to relevant medical care, use of Appropriate Adults and isolation from other persons in custody. There are also provisions to ensure persons with physical disabilities are transported

			<p>in vehicles which are suitable in terms of accessibility and to preserve the safety and dignity of the individual. Similarly, interpreters should be provided for those who are hearing and/or speech impaired.</p> <p>The SOP requires officers to carry out risk assessments to establish individuals' mental and physical health as soon as they arrive at the custody centre to assess their vulnerability. Where an individual normally requires glasses, hearing aid, dentures, etc. consideration will be given to allow them to have the items within a cell unless there is an identified risk. Items should be given to the custody when they require understanding of what is being communicated.</p> <p>There is a section within the SOP that covers consideration carry out searches of persons with prosthetic limbs to preserve the custodies dignity and respect.</p>
Gender Reassignment	Medium	The SOP highlights the measures to be taken in order to care for transgender/inter sex prisoners, particularly in relation to searching, cell occupancy and confidentiality.	There is a comprehensive section on trans persons in custody which covers gender identity and disclosure of information. There are known sensitivities related to the treatment of lesbian, gay, bi-sexual and transgender custodies (particularly in terms of searching transgender people). These are already recognised within this custody guidance.
Marriage and Civil Partnership	No Impact	The SOP does not discriminate in any way in relation to this specific characteristic. Prisoners are afforded their rights in accordance with law.	No specific provisions are contained within the SOP document. On very isolated occasions a person may be in custody when they are due to be married. The decision on whether to liberate from custody would remain with the custody

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			supervisor, in line with the Lord Advocates Guidelines on Liberation from Police Custody.
Pregnancy and Maternity	Low	The SOP details positive measure to ensure the care and welfare of prisoners who may or are pregnant.	There is dedicated guidance on dealings with pregnant females in custody. Specific procedures are to be followed whereby the healthcare professional must be contacted, and consideration must be given to release of the person by way of undertaking wherever possible.
Race	Medium	The SOP details the information sharing protocol which exists between PSoS and HOIE in relation to non UK nationals and potential immigration offenders. It also stipulates the measure to be taken to observe ethnic cultures and practices as well as measures to be taken in relation to interpreters and communication needs.	<p>Race (inc nationality/colour/citizenship/ethnic origins):-</p> <p>There are provisions relating to nationality and language. Foreign Nationals are treated unequally in that there is agreed protocol between Police Service of Scotland and the Home Office Immigration Enforcement (HOIE) that their details will be shared and possible further action taken in terms of immigration offences. Any individual requiring the use of an interpreter will have one provided for them.</p> <p>Custodies from minority ethnic and religion or belief groups often have specific language, dietary and religious practice needs; relevant guidance is included within the SOP</p>
Religion or Belief	Medium	The SOP highlights the importance of allowing prisoners their legal and religious beliefs. It contains information of what measures should be permitted/considered and also, should they be denied, the need for comprehensive and proportionate justification for doing so.	There is a short section on Cultural and Religious Awareness, containing reference to the general principle of granting any reasonable request which does not interfere with operational requirements or security. Included in the SOP is a section relating to searching of persons wearing cultural/religious clothing or articles. There is further provision regarding the

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			feeding of prisoners where this is guided by religious beliefs
Sex	Medium	The SOP highlights measures to be taken in relation sex/gender specific searching, visits, hygiene arrangements, etc. These gender specific issues are continually assessed and reviewed to ensure that they are proportionate and fit for purpose.	There are many provisions for gender differences to be included in custody procedures, particularly in relation to the searching of persons, performing routine cell visits and keeping male and female prisoners separate while being transported to a custody centre and while in custody. It is known that there are more men than women in custody however staffing ratios are appropriate to this.
Sexual Orientation	Low	The SOP is silent on sexual orientation but stipulates the requirement to treat all individuals in PSoS's care with fairness, integrity and respect. There is no differing practices or protocols with are affected by sexual orientation.	No reference is made in the SOP document to any difference in treatment between persons of differing sexual orientation. An individual's Sexual Orientation is not a specific question during the process of obtaining personal data, however under the risk assessment and care plan questions Q14 provides opportunity for individuals to disclose their sexual orientation if they choose ("Are there any other issues which may affect your time in custody?") . Section 1.1.3 of the SOP provides that people in custody must be considered as an individual with specific needs relevant to his or her particular circumstances.

5. Human Rights Impact Assessment - Consider which rights / freedoms, if any, are likely to be protected or infringed?

5.1 Rights / Freedoms Relevant to Policing	5.2 Assessment Protects and / or Infringes or Not Applicable	5.3 Analysis What evidence is there as to how the process / practice protects or infringes Human Rights.	5.4 Justification – Summarise the following: <ul style="list-style-type: none"> • Legal Basis • Legitimate Aim • Necessity
Article 2 Right to Life	Protects	The core purpose of the SOP is to maintain life by stipulating stringent care and welfare practices.	The over-riding principle of individuals who are in police custody is their welfare and care. A risk assessment is carried out for every person

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			<p>which will inform officers of the care and welfare measures that will need to be provided. Quick assess to first aid equipment and adequate training of staff are essential and must be valid in order that it can be utilised to preserve life.</p> <p>Searching of custodies should ensure that they do not have the opportunity to cause injury to themselves or any other persons. (protecting article 2)</p> <p>The SOP states that at all times officers must be aware of the risks associated with positional asphyxia. Therefore, transportation of custodies in the prone position, face down, or any other manner which is likely to increase this risk, should be avoided. If it is unavoidable, the custodies should be constantly monitored. (protecting article 2)</p> <p>Constant observations may be required where the custody supervisor deems it appropriate to prevent individuals from harming themselves.</p>
<p>Article 3 Prohibition of Torture</p>	<p>Protects</p>	<p>The SOP details rigorous measures to ensure that all individuals are cared for with dignity, fairness and respect. The document cover various potentially sensitive areas in relation to article 3 such as provision of healthcare, food/water, rousing. Where potential conflicts may arise is when article 3 rights are balanced against article two. The SOP stipulates that in all instances full justification must be documented and regularly reviewed.</p>	<p>Treating each person with dignity and respect is referenced throughout the SOP.</p> <p>The SOP states that consideration must always be given to any immediate medical or mental health requirements and thus promotes Article 3. This should negate a person being kept in custody if this would impact negatively on their condition.</p> <p>Initial apprehension should be made with the minimum amount of force necessary and the initial search should be conducted thoroughly and discreetly, attempting to avoid public embarrassment or humiliation. (protecting</p>

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			<p>Article 3) The SOP highlights that where a strip search is carried out the custody's dignity should be preserved at all times.</p> <p>The rousing of custodies every hour may be interpreted as infringing a persons rights under article 3. Although article 3 is an absolute right the principle to infringe this right by the rousing of person hourly is to protect their life and this is deemed to be proportionate and necessary. Where it is deemed necessary in terms of the risk a custody may present; the custody may be roused at 30 minute or 15 minute intervals, this should only be carried for as long as absolutely necessary</p>
Article 4 Prohibition of Slavery and Forced Labour	N/A	N/A	No person held within police custody will be required to work or carry out any labour tasks
Article 5 Right to Liberty and Security	Protects	<p>The SOP highlights the range of security measures which must be taken for each individual in custody. To that end it protects this element of article 5.</p> <p>In relation to liberty, the SOP repeatedly instructs that arrests and detentions should be continually reviewed to ensure that they remain appropriate and necessary. The document is clear that no one should be deprived of their liberty unnecessarily regularly cites the Lord Advocate's guidelines which outlines criteria for custodial disposals.</p>	<p>The restriction of a person's liberty is applied when they are held within police custody. The SOP states that the custody supervisor must be satisfied that proper grounds exist for the arrest or detention of an individual prior to accepting that person into police custody and those grounds are Proportionate, Lawful, Accountable, Necessary and Ethical (PLANE).</p> <p>A person who is held in custody is entitled to security and should not be placed in any risk of harm (relevant if multiple cell occupancy is considered as a tactical option)</p>
Article 6 Right to a Fair Trial	Protects	The SOP has dedicated section which covers the rights of accused and detained persons. Furthermore, details the additional measure to be taken with juvenile offenders and those under	A person apprehended must be promptly informed, in a manner he or she can understand, of the reason for the apprehension. This SOP allows for each custody centre to

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		social work supervision.	<p>have private facility to allow persons held in police custody to have private consultation with solicitors.</p> <p>The Police Service of Scotland Solicitor Access Guidance is linked to this SOP as listed in section 3 of this form.</p> <p>The law in Scotland requires that children must not be deprived of their liberty and must not be detained in police custody for any period unless there are exceptional circumstances.</p> <p>Where a suspect is a child they must be provided with access to a solicitor prior to interview.</p> <p>Suspects of any age who require the support of an appropriate adult must be provided with access to a solicitor prior to interview and should not be allowed to waive this right.</p>
Article 7 No Punishment without Law	N/A	The SOP is predominately focused on care and welfare measures, and therefore, makes no reference to punishment. Notwithstanding the foregoing the document does include guidance to custody supervisors to ensure that they accurately assess the circumstances for arrest/detention prior to acceptance at the custody centre	N/A
Article 8 Right to Respect for Private and Family Life	Protects	The SOP outline various measures in terms of confidentiality, including rights of notification when arrested or detained.	Section 22 of the Gender Recognition Act 2004 (GRA) defines any information relating to a person's application for a Gender Recognition Certificate (GRC) or to a successful applicant's original gender as protected information. It is not authorised or permitted for any police officer or any member of police staff who has acquired

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			<p>information relating to this legal change (while performing their official duties) to disclose that information to any other person. To do so constitutes an offence in contravention of the GRA.</p> <p>Disclosure occurs if a record of this protected information is read by others. For example, if the existence of a GRC (that states that the detainee is transgendered) is noted in the relevant custody record, and that custody record is later viewed by an independent custody visitor, this constitutes a disclosure and is an offence under section 22 of the GRA.</p>
Article 9 Freedom of Thought, Conscience and Religion	Protects	The SOP outlines the need to respect and observe reasonable requests and grant access to religious items, etc. Furthermore, where this is not possible, and to further protect this right, the SOP states that the rationale must be fully documented and regularly reviewed.	A person held in police custody can make reasonable requests and this would include access to religious items. Custody staff should know and provide information to the correct geographical direction (North, East and West).
Article 10 Freedom of Expression	N/A	The SOP references the complaints procedure as well as noting contemporaneous responses from individuals in custody. It also emphasises the importance of granting reasonable requests and documenting rationale.	The SOP references the complaints procedure as well as noting contemporaneous responses from individuals in custody.
Article 11 Freedom of Assembly and Association	N/A	The SOP is silent on article 11. It details care and welfare measure to be taken when individuals are arrested/detained.	Freedom of Assembly and Association will be infringed as this right will be superseded by the engagement of article 5.
Article 14 Prohibition of Discrimination	Protects	The SOP, outlines additional special measures to be taken into consideration to a range of special characteristics	A full equality impact assessment should mitigate any potential infringements to this article.
Protocol 1, Article 1 Protection of Property	Infringes and protects	The SOP outlines the search requirements of individuals arrested and detained. As such, it could be construed that the document infringes	The primary purpose in searching custodies is to ascertain and record everything a person has with him/her when brought to the custody centre

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		<p>protocol 1 of article 1. However, the document details procedures and protocols which are justified under law and also article 2.</p>	<p>and to remove any articles that;</p> <ul style="list-style-type: none"> • May be used by the custody to harm himself/herself or others • May be used to aid escape or cause damage • Requires safe keeping • Is evidence <p>The removal of property from a person who is brought into police custody can be justified on the grounds listed.</p>
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6. Decision - Decide how you will proceed in light of what your analysis shows (Place 'X' in box)

6.1	<p>Actual or potential unlawful discrimination and / or unlawful interference with human rights have been identified, which cannot be justified on legal / objective grounds. Stop and consider an alternative approach.</p>	
6.2	<p>Proceed despite a potential for discrimination and / or interference with human rights that cannot be avoided or mitigated but which can and have been justified on legal / objective grounds.</p>	X
6.3	<p>Proceed with adjustments to remove or mitigate any identified potential for discrimination and / or interference in relation to our equality duty and / or human rights respectively.</p>	
6.4	<p>Proceed without adjustments as no potential for unlawful discrimination / adverse impact on equality duty or interference with human rights has been identified.</p>	

7. Monitoring and Review of Policy / Practice - State how you plan to monitor for impact post implementation and review policy / if required, and who will be responsible for this.

This EQHRIA will be reviewed on a 6 monthly basis.

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8. Mitigation Action Plan - State how any adverse / disproportionate impact identified has been or will be mitigated.

Issue / Risk Identified	Action Taken / to be Taken	Action Owner / Dept.	Completion Date	Progress Update
Minimum one hour rousing policy may be seen to infringe article 3.	Review of this policy/practice	Custody Project Team	TBC	Review currently underway
Restraint of all custodies.	Review of this policy/practice	Custody Project Team	TBC	Review currently underway
All measures in relation to protected characteristics	Continuous review	Audit & Scrutiny Team	Continuous	

9. Management Log

9.1 EQHRIA Author Log

Name and Designation	Sergeant John Kerr	Date (DD/MM/YY)	13/06/16
Comments	Reviewed and in order.		
Name and Designation	Sergeant John Kerr	Date (DD/MM/YY)	18/07/17
Comments	New para 12.1.12 added. Reviewed and not infringement on EQHRIA		
Name and Designation	Sergeant John Johnston	Date (DD/MM/YY)	14/09/2017
Comments	Section 4.1 (Age) wording amended so that it forms a proper sentence. No affect on the whole EQHRIA.		

9.2 Quality Assurance Log

Name and Designation	Sgt Aaron Chadha	Date	15/06/2016	Document Version	4.00
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Comments	Accurate assessment.				
Name and Designation	PC Stephen Mathieson, Policy Support	Date	14/09/17	Document Version	9.00
Comments	EqHRIA reviewed as per updated Version 9.00 SOP. No infringement on EqHRIA				
Name and Designation		Date		Document Version	
Comments					

9.3 Divisional Commander / Head of Department Log

Name and Designation	Garry McEwan Chief Superintendent	Date (DD/MM/YY)	19/04/2016
Comments			
Name and Designation	Garry McEwan Chief Superintendent	Date (DD/MM/YY)	20/07/2017
Comments	Approved		
Name and Designation	Garry McEwan Chief Superintendent	Date (DD/MM/YY)	30/10/17
Comments	None		

9.4 Publication of EQHRIA Results Log

Name and Designation		Date Published		Location of Publication	
Comments					
Name and Designation		Date Published		Location of Publication	
Comments					
Name and Designation		Date Published		Location of Publication	

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Comments	
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