



Sir Robert Neill MP

Chair of the Justice Select Committee
House of Commons
London
SW1A 0AA

6 October 2021

Dear Sir Bob,

**THE GENDER RECOGNITION (DISCLOSURE OF INFORMATION) (ENGLAND AND WALES) ORDER
2021**

I am writing to make you aware of a Statutory Instrument (SI) that may be of interest to you.

The Gender Recognition (Disclosure of Information) (England and Wales) Order 2021 makes a minor change under the Gender Recognition Act 2004 in response to operational challenges faced by Her Majesty's Prison and Probation Service (HMPPS) in its work with offenders.

The background to the SI is as follows. Section 22 of the Gender Recognition Act creates a criminal offence of disclosing protected information acquired in an official capacity. 'Protected information' is information about the legal gender of a person with a Gender Recognition Certificate (GRC) before it became their acquired gender, or about a person's application for a GRC. In effect, this makes it an offence for a person acting in an official capacity to disclose information about the gender history of a person with a GRC. There are exemptions to the offence, such as where disclosure is to prevent or investigate crime, or where the subject of the information agrees to the disclosure. Prison staff will always aim to get the agreement of the prisoner before disclosing this information, but this is not possible or appropriate in every case.

The purpose of this instrument is to create a further exception to the section 22 offence to enable the disclosure of protected information, where *necessary* for the purposes of offender management. Examples of where disclosure may be necessary for offender management purposes are:

- to safeguard the offender who is the subject of the protected information;
- to safeguard other offenders (where this is relevant);
- to ensure the safe and effective operation of a prison or other custodial setting;
- to make effective shared decisions regarding offenders with GRCs.

A practical example of when this SI may be used is as follows: a prison officer discloses to a colleague that a prisoner (with a GRC) is transgender because the prisoner's gender dysphoria is a factor in their propensity for self-harm. If the prisoner did not agree to this, but the prison officer was so concerned they felt they had to share the information anyway, they could use the exception in this SI.

The Ministry of Justice and HMPPS remain committed to upholding the rights and privacy of transgender offenders. That is why the threshold for disclosure under this Order is 'where necessary'. This SI will ensure that transgender prisoners can be properly cared for, supported and managed.

This SI will be accompanied by guidance for HMPPS staff which will be published in due course. We have consulted the HMPPS Transgender Advisory Board, which advises HMPPS on the safety and wellbeing of transgender people in custody or serving a sentence in the community, on this guidance, as well as the content of the SI itself. We are publishing a summary of this consultation (see attached).

If you have any concerns about this SI, please get in touch with my office who will arrange for you to meet the officials working on its introduction.

For further information on how we support and manage transgender prisoners, please see the policy framework 'The Care and Management of Individuals who are Transgender', available on www.gov.uk.

Yours ever,

A handwritten signature in blue ink that reads "Victoria Atkins". The signature is written in a cursive style with a large, stylized 'V' and 'A'.

VICTORIA ATKINS MP