



Force Policy Justice Services

Transgender Searching Guidance

Search Procedures:

- Searching Trans-detainees in custody
- Searching by Trans-employees
- Stop Search Guidelines

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1. Executive summary and NPCC Guidance

1.1 Summary

This policy gives the current guidance on the criteria for searching persons who are transgender, both in the context of searching detainees in custody and the searching of people outside of custody under the stop/search codes of practice. Additionally, this document gives guidance to trans-employees (police officers and police staff) when they are having to conduct searches in custody or searches under stop/search guidelines.

Legislative requirements have to be considered under the following:

- Note L5 of Annex L to the Police and Criminal Evidence Act 1984 (PACE 1984) Code C. **(Appendix A)**.
- Section 117 PACE 1984; Provides the authority of a constable to use reasonable force when exercising a power conferred by the act as long as the power does not require consent from someone other than a police officer
- Equality Act 2010 and the principles of Protected Characteristics.
- The Gender Recognition Act 2004, Sec 9: Acquired gender recognised in law.
- Human Rights Act 1998, Article 8.

Aspects of search are enshrined by legislation, predominantly by the PACE Act 1984 and the corresponding codes of practice. The PACE Act 1984 is not the exclusive framework which this policy will refer to, noted by the above list where other enactments have to be examined alongside the principles of use with PACE. The most recent advice from the National Police Chiefs Council (NPCC) is outlined in section 1.2; and details draft interim guidance on searches of members of the transgender community, as well as searches carried out by transgender police officers. The NPCC can only set guidance, and it is for chief officers to set their own policies in force in consultation with the workforce, unions, relevant staff networks and any other stakeholders to understand their views.

Our aim is to ensure we are implementing the law in a pragmatic and consistent way that treats people with fairness, dignity and respect. This guidance has been informed by NPCC by instructing independent legal advice. It also reflects working practice which already happens every day across policing, where officers and detainees make requests about searches for a multitude of reasons.

It must be noted that the NPCC will continue to work with the Home Office to consider the impact of the Supreme Court decision on legislation and help ensure there is consistency and clarity for policing, our partners and the public.

Staffordshire Police will remain aligned to the operational aspects of transgender searching, maintaining the adopted principle:

"Police searches, such as those which expose intimate body parts, should be carried out by police officers and staff of the same biological sex as the detained person."

The guidance sets out where very limited exceptions can be requested by the transgender community where they ask to be searched by someone of their lived gender. Police will endeavour to accommodate such requests where this is operationally viable and agreed upon by the detainee, authorising of icer and searching officer."

All searches are carried out in line with the officer or staff members training and legal authority, considering our responsibilities under both the Equality Act 2010 and Police and Criminal Evidence Act 1984."

NB:

- The Staffordshire Police policy on **Stop and Search** has been developed separately; however, there are extracts from the stop/search principles included here, (Section 8) to ensure clarity of operation when supporting those persons, when searched, who are transgender.
- For a wider remit on **"Trans Guidance – Offering support to trans & non-binary staff, their colleagues and families in Staffordshire Police"** and **"Trans Guidance for the Policing Sector"**, please refer to a separate policy governed by Force Corporate Development.

1.2 Relevant Law

PACE 1984 and PACE CODE C Annex L Section 54(9) of PACE 1984 provides that a constable carrying out a search under that section must be of the same sex as the person searched.

Section 54A(7) of PACE 1984 provides that a person may not under that section (concerning searches and examination to ascertain identity) carry out a search or examination of a person of the opposite sex or take a photograph of any part of the body of a person of the opposite sex.

Section 55(7) of PACE 1984 provides that a constable may not carry out an intimate search of a person of the opposite sex.

Various parts of the PACE Codes also contain provisions (over and above those specified with ss54(9), 54A(7) and 55(7) of PACE 1984) requiring that certain searches must not be attended by someone of the opposite sex of the person being searched (subject to certain exemptions). These are set out in Note L1 of Annex L to PACE Code C and will be referred to below as 'the ancillary requirements.'

GRA 2004 Section 9(1) of the GRA 2004 states that where a full Gender Recognition Certificate (GRC) is issued to a person, the person's gender becomes for all purposes the 'acquired gender', (so that, if the acquired gender is the male gender, the person's sex becomes that of a man and, if it is the female gender, the person's sex becomes that of a woman). If an application for a GRC is successful, that person's birth certificate is amended accordingly.

The Equality Act 2010 (EqA 2010) Section 13 and section 19 of the EqA 2010, prohibit direct and indirect discrimination against a person as a consequence of a protected characteristic, including the protected characteristic of gender reassignment. Indirect gender reassignment discrimination can be objectively justified but direct gender reassignment discrimination cannot.

Application of the law and competing considerations

For the purposes of this guidance, the sex that a person is treated in law as possessing will be referred to as the 'legal sex status' of that person.

As such, in so far as that person conducts a search or procedure of someone of the opposite sex (to their legal sex status) in contravention of ss54(9), 54A(7) and 55(7) of PACE 1984, such search or procedure would be unlawful. Further, it is the NPCC's understanding that if such a member were to contravene any of the ancillary requirements relating to searches under the PACE codes (for example by attending an intimate search as an appropriate adult for a person of the opposite sex without them requesting it), then such searches may likely be found unlawful.: Section 54A(7) of PACE 1984 provides that a person may not under that section (concerning searches and examination to ascertain identity) carry out a search or examination of a person of the opposite sex or take a photograph of any part of the body of a person of the opposite sex.

The potential risks of an unlawful search or procedure are:

- a complaint by the person searched pursuant to the Police Reform Act 2002 against the individuals authorising and/or conducting the search and subsequent regulatory process;
- a civil claim by the person searched for trespass to the person, assault and/or a human rights breach; and / or
- an application in respect of the admissibility of any evidence obtained as a result of the search in a criminal case and/or issues arising as to disclosure (to the CPS and/or the defence) concerning the legal sex status of a person conducting or attending an alleged unlawful search.

Should any of the above risks materialise, this could likely result in the legal sex status of the relevant transgender member of the police being subject to enquiry and potentially having to be disclosed more widely which could be very distressing for them

However, if transgender members of the police are required to disclose their legal sex status to others in the force there is a risk of complaints of discrimination and/or Article 8 claims from those persons.

Recommended approach

Having carefully considered the relevant issues, and recognising the risks attached to this approach, NPCC guidance continues to encourage forces to put in place local operational guidance.

While the risks identified above are legislative, considering the need to be supportive of transgender members of police, this balances in favour of enabling such persons to participate in all activities of the police service. In February 2024 NPCC released guidance which states that all searches are carried out in line with the officer or staff members training and legal authority, considering our responsibilities under Police and Criminal Evidence Act 1984, and as authorised by the Custody Sergeant. This authorisation must take into consideration the response of the detainee and officers concerned to ensure that any conflict is reduced or avoided, and that searches are conducted safely and with dignity.

The IOPC remain independent but have been consulted and involved in the creation of this guidance and commit to this document being shared across the organisation so that our staff can take compliance with the guidance into account when dealing with complaints about, or investigations into, transgender officers or staff conducting searches.

In terms of the content of operational guidance, the recommendation is it advisable to be transparent about the risks associated with searches in contravention of PACE 1984 and the PACE Codes (set out above); and

- Allow individual transgender members of police to choose to be exempt from conducting such searches and have discreet processes in place to allow them to do this; this may be in the form of a suitable adjustment in relation to the potential for psychological harm from negative encounters with detainees.
- It is strongly advised that there is an early and professional discussion between the transgender individual and the manager considering the risks to the individual and the organisation based upon the likelihood of challenge from a detainee. It is acknowledged that this is a sensitive issue that could be difficult to broach and manage. It may be that inclusion in training for searching and leadership events can facilitate the learning and understanding with more specific training for managers with the support of networks and champions.
- Set out that, where a member of the police is in the process of transitioning (person in transition), management will support them in that process.
- Construct a process whereby management can make decisions in respect of the involvement in searching by a person who is transitioning/has transitioned which are fully informed by the member of police's views, and renewable from time to time.
- Consider putting in place awareness initiatives for managers and staff to compliment your operational guidance.
- Include the process in recruitment materials and for internal staff and officers from other forces working in your custody facilities as a result of mutual aid or prisoner transportation.
- Consider a professional discussion between non-binary officers/staff and managers in order to agree to what searches, if any, they may conduct.

On a final note, as is clear, the interaction of the three key pieces of legislation in this area do not create a seamless process and the law is often slow to evolve to accurately reflect society, its views and values. A change in legislation in this area would arguably better reflect our transgender members of the police and diminish the issues currently in play and is something the NPCC will be working with the Home Office on in the future.

2. Code of Ethics

Treating people with dignity and respect

The APP guidance through the College of Policing defines the Code of Ethics. The Code of Ethics sets and defines the exemplary standards of behaviour for everyone who works in policing. All officers and staff must be aware of the framework and should know that they have a personal responsibility to exercise professional judgement so that everyone in policing does the right thing. The Code details a set of principles along with the standards expected of individuals working in the police service.

In terms of the procedural justice approach for stop-search and searching detainees in custody, it must be shown that every person who is dealt with in this way by the police must be treated with the utmost courtesy, consideration and respect.

The evidence shows that dignified and respectful treatment has a significant impact on public confidence. Any search should be conducted to minimise the impact on the person and cause as little embarrassment as possible. Officers must never be disrespectful to members of the public during stop and search (for example, being rude or belittling, or making derogatory remarks).

Even if a person appears confrontational or agitated, officers should make every effort to be polite when speaking to them (for example, greeting them, using their name, thanking them for cooperative behaviour). Being polite can encourage a person to adopt a more positive attitude. Encouraging a person to do something voluntarily, by acknowledging their emotional state and being polite to them, may be more effective and safer than ordering or physically compelling them to do so.

While a person's cooperation should always be sought, the officer should respond in a proportionate manner if they do not cooperate, using the minimum level of force necessary to conduct the search.

Another important element of the procedural justice approach is for officers to demonstrate their trustworthiness. During stop and search and custody detainee search, this could involve officers reassuring a person who is concerned, asking about their

wellbeing or offering practical advice – for example, about how to stay safe. Again, doing so can encourage a person to become more positive during the interaction.

The APP guidance on 'Equality and Individual Needs' iterates the principle that detainees come from all areas of the community. They each have their own particular needs and vulnerabilities – some are obvious, others less so. The police service should take all reasonable steps to ensure that these needs and vulnerabilities are identified to help mitigate any risks.

Officers conducting stop-search and officers/staff conducting searches in custody must be aware of the protected characteristics set out in the ***Equality Act 2010, Part 2, Chapter One (sections 4-12)***:

- Age
- Disability
- Gender Reassignment
- Marriage and Civil Partnership
- Pregnancy and maternity
- Race
- Religion or Belief
- Sex
- Sexual Orientation

3. Police Approach and Decision Making

Lawful Arrest after search

Under the Police and Criminal Evidence Act 1984 (PACE), a lawful arrest by a police constable requires two elements:

- A person's involvement, suspected involvement or attempted involvement in the commission of a criminal offence
- Reasonable grounds for believing that the person's arrest is necessary. Both elements must be satisfied.

Officers must always consider whether a person's arrest for an offence is lawful in accordance with section 24 of PACE and necessary under paragraph 2.9 of Code G of PACE.

Diversity and Inclusion - Arrest

In all instances, arresting officers and custody officers must review and monitor the impact of the Public Service Equality Duty (PSED) requirements at the point of arrest and subsequent admissions into custody for persons with protected characteristics. In context, there is a need for all arresting officers, custody officers and custody detention officers to understand the impact of the arrest and detention requirements, and ensure that there is absolute elimination of any discrimination, harassment, victimisation, and any other conduct that is prohibited by the Equality Act 2010.

The NPCC 2018 -2025 Diversity and Inclusion (DEI) toolkit emphasises that regular cultural audits of teams and departments should be made to eliminate discriminatory attitudes, and inclusive and culturally sensitive team/units should be developed. Officers exercising the power of arrest must understand the impact of arresting someone in the community, and therefore should be reflective and sensitive to the need for greater integration, engagement with all communities resulting in enhanced trust and confidence.

De-arrest (general).

If an officer receives information that indicates the suspect is not responsible for the offence for which they were arrested, or the grounds for arrest otherwise cease, the officer must release that person. If a person is de-arrested prior to the arrival at a police station, the officer must record the detail on a STORM serial and within his/her electronic PNB.

If the person is to be de-arrested whilst at a police station, they must be brought before the custody officer where a custody record will be commenced.

Where a person has been arrested or detained solely to prevent a breach of the peace, the detainee must be released once the breach, or potential breach, has ended and is not likely to reoccur.

4. APP Guidance: Transgender detainees

It is necessary that transgender detainees receive the same respect and dignity as any other members of the public. There is also a requirement to be sensitive to the dignity of police officers called upon to carry out procedures such as strip searches.

Transgender includes a person who has the protected characteristic of gender reassignment (previously referred to as transsexual) and also a person who adopts, fully or partially, dress, appearance and/or behaviour normally identified as belonging to the opposite gender.

The term also applies if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of that sex. Such a person is not required to be under medical care to satisfy this definition.

In law, the gender of an individual is their gender as registered at birth unless they have been issued with a Gender Recognition Certificate (GRC) under the Gender Recognition Act 2004 (GRA), in which case the person's gender is their acquired gender. **Annex L to PACE Code C** provides useful information on the approach to be followed to establish the gender of the detainee for the purposes of a search or procedure. **See Appendix A.**

Dealing with detainees with respect and consideration increases the likelihood of their cooperation and decreases the level of risk and vulnerability posed.

Note: not all menstruating detainees will identify as female. A person who identifies as a transgender man might still require menstrual products, especially at the start of hormone therapy, as may some people who identify as non-binary. Menstrual products and care should be provided to transgender detainees as with any other detainee as required.

4.1 Strip Searches

Custody officers should follow the following approach when establishing whether the person concerned should be treated as being male or female for the purposes of strip searches and related procedures.

If there is no doubt that the person concerned should be treated as being male or female, officers should deal with them as being of that biological sex. Police will undertake searches exposing intimate parts (EIP) or more thorough searches in accordance with PACE which states that these searches must be conducted with officers of the same biological sex as the person being searched.

If at any time there is doubt about whether the person should be treated, or continue to be treated, as being male or female, officers should consider the following stages.

4.1.1 Ask the detainee

Officers should ask the person what gender they consider themselves to be. If they express a preference to be dealt with as a particular gender, officers should ask them to indicate and confirm their preference by signing the custody record or, if a custody record has not been opened, the search record or the officer's notebook. Officers must not ask the person whether they have a GRC.

Therefore, where an individual whose lived in gender is not the same as their biological sex, expresses a preference to be searched by an officer of their lived gender, efforts will be made to ensure an officer is identified to conduct the search. In such circumstances, the search would require the written consent of the authorising officer, the person detained and the particular officer/s conducting the search.

A detainee can be charged in any name presented. A person is charged by name, not gender. However, care must be taken to ascertain the identification of that detainee to ensure formal records are accurate.

4.1 2 Grounds for doubt

If there are grounds to doubt that the preference in 4.1.1 accurately reflects the person's predominant lifestyle, for example if they ask to be treated as a woman but documents and other information make it clear that they live predominantly as a man, or vice versa, officers should refer to the guidance whereby an individual whose lived in gender is not the same as their biological sex expresses a preference to be searched by an officer of their lived gender, efforts will be made to ensure an appropriate officer is identified to conduct the search. In such circumstances, the search would require the written consent

of the authorising officer, the person detained and the particular officer/s conducting the search.

4.1.3 Detainee unwilling to express their preference

If the person is unwilling to express a preference as in 4.1.1 above, A conversation should be undertaken with the detainee to establish sex for the purpose of a search. If the detainee engages, act as per questions above. If the detainee will not engage, conduct the search in line with documentation or presentation until sex can be established.

4.1.4 None of the above applies

If none of the above applies, officers should deal with the person according to what reasonably appears to have been their sex as registered at birth.

4.2 Respect and Consideration

If a trans detainee consents to the search by an officer of their lived gender with the appropriate officer consent, but then retracts consent, the search will then need to be completed by an officer of their biological sex.

A trans detainee can ask for a separate area search. (One half of their body to be searched by one biological sex officer and the other half of their body to be searched by a different biological sex officer.) This would require 2 pairs of searching officers and can be an option for searching trans detainees.

If a trans detainee wants to be searched in line with lived gender but no officer can be found who is willing to conduct the search, the detainee should be placed on a constant watch until a willing officer is found. Should this not occur within a reasonable time or the risk be deemed too great, the search will be completed by officers of the same biological sex. The term "reasonable" is commonly used in legal contexts to represent the fairness or rationality of a particular action given the circumstances. It is a highly contextual term and can change depending on circumstances.

Officers must always accommodate transgender detainees in a cell or detention room on their own.

Once a decision has been made about which sex a transgender detainee is to be treated as, the officer or staff member who will carry out the search should be advised of that

decision, and the reasons supporting it, prior to carrying out the search. This is important to maintain the dignity of the officer or staff member concerned. Sensible application of the above principles should protect officers and staff and help to minimise the risk of conflict and embarrassment.

5. Gender Recognition Act (GRA) 2004

The GRA 2004, section 9 provides that where a full GRC is issued to a person, for all purposes that person's gender becomes their acquired gender. In practical terms, legal recognition under this Act has the effect that, for example, a trans-woman is legally recognised as a woman in English law. On the issue of a full GRC, the person is entitled to a new birth certificate reflecting the acquired gender (provided a UK birth register entry already exists for the person). Of note, under the passing of the Marriage (Same Sex Couples) Act 2013, all persons can marry someone of the same sex.

GRA section 22 gives definition with regard to the information relating to a person's application for a 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 information relating to this legal change (while performing their official duties) to disclose protected information to any other person. To do so constitutes an offence in contravention of the GRA.

Disclosure of an individual's gender history is permitted under certain circumstances (as per Sec 22.4) of the GRA 2004. 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 trans) 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 the GRA section 22 because it does not fall within one of the specific permitted exceptions.

Officers and staff should secure custody records containing any reference to a GRC for trans-detainees (protected information) against unlawful disclosure. Possible relevant exceptions relating to a trans-detainee may include disclosure in the following form:

- In accordance with an order from a court or tribunal, (S.22(4)(d)).
- For the purpose of instituting, or otherwise for the purpose of proceedings before a court or tribunal, S.22(4)(e).
- For the purpose of preventing or investigating crime.

6. Recommended Guidance for transgender employees of the Police Service:

NB: The terms used in this guidance are reflective of the language used in the Equality Act 2010, Annex L, Code C of the Police and Criminal Evidence Act (1984) and case law. The guidance relates to determining whom a Transgender officer or staff member (including those who identify as non-binary) may search, in relation to:

- Code C; paragraph 4.1 and Annex A paragraphs 5, 6, and 11 (searches, strip and intimate searches of detainees under sections 54 and 55 of PACE);
- Code A; paragraph 3.6 and Note 4 in stop and search scenarios (Any search involving the removal of more than an outer coat, jacket, gloves, headgear or footwear, or any other item concealing identity, may only be made by an officer of the same sex as the person searched and may not be made in the presence of anyone of the opposite sex unless the person being searched specifically requests it);
- Code D; paragraph 5.5 and Note 5F (searches, examinations and photographing of detainees under section 54A of PACE) and paragraph 6.9 (taking samples);
- Code H; paragraph 4.1 and Annex A paragraphs 6, 7 and 12 (searches, strip and intimate searches under sections 54 and 55 of PACE of persons arrested under section 41 of the Terrorism Act 2000).

6.1 Guidance

Note L5 from Annex L CODE C Police and Criminal Evidence Act 1984 (PACE), provides statutory guidance in relation to searching by transgender police officers, police staff and special constables (henceforth described as transgender colleagues) as follows:

*L5 Chief officers are responsible for providing corresponding operational guidance and instructions for the deployment of transgender officers and staff under their direction and control to duties which involve carrying out, or being present at, any of the searches and procedures described in **paragraph 1**. The guidance and instructions must comply with the Equality Act 2010 and should therefore complement the approach in this Annex.*

Who transgender colleagues may search, in line with their legal authority and training (as a police officer, or powers conferred or designated under s38 or s39 of the Police Reform Act 2002), is determined by an interaction between the Police and Criminal Evidence Act (1984),

and the Equality Act (2010), with the correct application of occupational requirement, and not limited to the provisions of the Gender Recognition Act (GRA) (2004).

Employers should treat people in accordance with their lived gender identity, whether or not they have a GRC, and should not ask Transgender colleagues if they have a GRC or new birth certificate.

Accordingly, with regards to the issue of searching, Chief Officers are advised to recognise the status of Transgender colleagues from the moment they transition, considered to be, **the point at which they present in the gender with which they identify**. A transgender colleague's birth certificate is not relevant to the equality protections enshrined in the Equality Act 2010.

Searching guidance

A trans officer will search in line with biological sex. A trans officer can be exempt from searching. There will be no career detriment to the officer or member of staff, and no lawful order can be given to search.

A transgender officer cannot search a detainee who is not of the same biological sex even if the detainee agrees. The purpose of the proposed consensual regime is to preserve the integrity and dignity of trans detainees who are in custody where the alternative of a PACE search might amount to an interference with their Art 8/Art 3 rights. The same does not apply to an officer.

A trans officer may search a trans detainee if both the officer and the detainee are of the same biological sex. If the officer and the detainee are of different biological sexes, both the officer and the detainee (as well as authorising officer), would need to consent to the search.

If a detainee refuses to be searched by a trans officer, as per current operational practice officers will be swapped out for an alternative officer.

It is recognised that some colleagues may have a gender identity which does not easily fit within the binary regime contemplated when PACE 1984 was enacted, for example non-binary, gender fluid or agender. A discussion may be necessary with such a colleague to establish how they can participate in conducting searches. This conversation will be held sensitively (at a suitably senior level) and before the colleague is put in a position where they may be required to participate in searches.

6.2 Considerations around welfare of staff

If a colleague has made the decision to transition, they should be given the option of being exempt from conducting searches. This decision should be reviewable over the course of an individual's transition. This ensures compliance with Section 2 (2) (e) of the Health & Safety at Work Act (1974)

To introduce an official stance with regard to this aspect, an officer or member of staff should complete a Reasonable Adjustment Passport (RAP). The onus is on the individual to organise the RAP through Human Resources, and inform their supervisor as soon as is necessary. The RAP will afford the protection of being exempt from having to conduct searches under the PACE Act 1984, both in custody and stop searches.

If the person being searched objects to being searched by any colleague, it may be advisable for them to be replaced by another team member to search that person. This is regularly done in practice, regardless of the reasons for objection, to de-escalate any potential conflict. If such a decision must be made, it is essential to support the affected colleague and consider the adverse impact on other colleagues, bearing in mind the confidentiality of

If the refusal is based on discriminatory views, consideration should be given for the incident be recorded as a non-crime hate incident unless the circumstances amount to a recordable crime. This is in accordance with the College of Policing's Authorised Professional Practice on internal hate crime and incidents. These incidents should be treated in the same way as any other allegation of a hate crime or non-crime hate incident. The victim should receive the same standard of care as any other victim of a crime.

If a colleague has decided to transition, current force trans guidance suggests consultation with their supervisor or line manager should take place, to ensure a sensitively managed process whilst at work. During that process exemption from searching is available, and should be fully informed by the individual's views, and reviewable from time to time to avoid putting them in a position of risk.

7. Stop/Search Guidelines

Please refer to the Staffordshire Police Stop/Search policy for the full scope of considerations.

The Police and Criminal Evidence Act (PACE 1984) provides that stop searches that go no further than the outer clothing can be conducted by either sex, so consequently, there are no restrictions on trans officers conducting such searches.

This section refers to additional advice for stop/searches of trans-individuals, but due consideration should be given to all of the aspects contained in this guidance – such as the Code of Ethics and the Police Approach/Decision Making.

Points to note for officers stopping and searching trans-individuals:

- The normal protections against direct/indirect discrimination and discrimination by victimisation apply to trans-people.
- The **protected characteristic of gender reassignment** where the change of gender identity involves a move away from sex assigned at birth, includes the gender identities of: non-binary, genderfluid, a-gender and genderqueer

Appendix A

ANNEX L - ESTABLISHING GENDER OF PERSONS FOR THE PURPOSE OF SEARCHING AND CERTAIN OTHER PROCEDURES

1. Certain provisions of this and other PACE Codes explicitly state that searches and other procedures may only be carried out by, or in the presence of, persons of the same sex as the person subject to the search or other procedure or require action to be taken or information to be given which depends on whether the detainee is treated as being male or female. See Note L1.

2. All such searches, procedures and requirements must be carried out with courtesy, consideration and respect for the person concerned. Police officers should show particular sensitivity when dealing with transgender individuals (including transsexual persons) and transvestite persons (see Notes L2, L3 and L4).

(a) Consideration

3. In law, the gender (and accordingly the sex) of an individual is their gender as registered at birth unless they have been issued with a Gender Recognition Certificate (GRC) under the Gender Recognition Act 2004 (GRA) in which case the person's gender is their acquired gender. This means that if the acquired gender is the male gender, the person's sex becomes that of a man and, if it is the female gender, the person's sex becomes that of a woman and they must be treated as their acquired gender.

4. When establishing whether the person concerned should be treated as being male or female for the purposes of these searches, procedures and requirements, the following approach which is designed to maintain their dignity, minimise embarrassment and secure their co-operation should be followed:

(a) The person must not be asked whether they have a GRC (see paragraph 8);

(b) If there is no doubt as to whether the person concerned should be treated as being male or female, they should be dealt with as being of that sex.

(c) If at any time (including during the search or carrying out the procedure or requirement) there is doubt as to whether the person should be treated, or continue to be treated, as being male or female:

(i) the person should be asked what gender they consider themselves to be. If they express a preference to be dealt with as a particular gender, they should be asked to indicate and confirm their preference by signing the custody record or, if a custody record has not been opened, the search record or the officer's notebook. Subject to (ii) below, the person should be treated according to their preference except with regard to the requirements to provide that person with information concerning

menstrual products and their personal needs relating to health, hygiene and welfare described in [paragraph 3.20A](#) (if aged under 18) and [paragraphs 9.3A](#) and [9.3B](#) (if aged 18 or over). In these cases, a person whose confirmed preference is to be dealt with as being male should be asked in private whether they wish to speak in private with a member of the custody staff of a gender of their choosing about the provision of menstrual products and their personal needs, notwithstanding their confirmed preference (see [Note L3A](#));

(ii) if there are grounds to doubt that the preference in (i) accurately reflects the person's predominant lifestyle, for example, if they ask to be treated as a woman but documents and other information make it clear that they live predominantly as a man, or vice versa, they should be treated according to what appears to be their predominant lifestyle and not their stated preference;

(iii) If the person is unwilling to express a preference as in (i) above, efforts should be made to determine their predominant lifestyle and they should be treated as such. For example, if they appear to live predominantly as a woman, they should be treated as being female except with regard to the requirements to provide that person with information concerning menstrual products and their personal needs relating to health, hygiene and welfare described in [paragraph 3.20A](#) (if aged under 18) and [paragraphs 9.3A](#) and [9.3B](#) (if aged 18 or over). In these cases, a person whose predominant lifestyle has been determined to be male should be asked in private whether they wish to speak in private with a member of the custody staff of a gender of their choosing about the provision of menstrual products and their personal needs, notwithstanding their determined predominant lifestyle (see [Note L3A](#)); or

(iv) if none of the above apply, the person should be dealt with according to what reasonably appears to have been their sex as registered at birth.

5. Once a decision has been made about which gender an individual is to be treated as, each officer responsible for the search, procedure or requirement should where possible be advised before the search or procedure starts of any doubts as to the person's gender and the person informed that the doubts have been disclosed. This is important so as to maintain the dignity of the person and any officers concerned.

(b) Documentation

6. The person's gender as established under paragraph 4(c)(i) to (iv) above must be recorded in the person's custody record or, if a custody record has not been opened, on the search record or in the officer's notebook.

7. Where the person elects which gender they consider themselves to be under paragraph 4(b)(i) but, following 4(b)(ii) is not treated in accordance with their preference, the reason must be recorded in the search record, in the officer's notebook or, if applicable, in the person's custody record.

(c) Disclosure of information

8. Section 22 of the GRA defines any information relating to a person's application for a GRC or to a successful applicant's gender before it became their acquired gender as 'protected information'. Nothing in this Annex is to be read as authorising or permitting any police officer or any police staff who has acquired such information when acting in their official capacity to disclose that information to any other person in contravention of the GRA. Disclosure includes making a record of 'protected information' which is read by others.

Notes for Guidance

L1 Provisions to which paragraph 1 applies include:

- In Code C; paragraphs 3.20A, 4.1 and Annex A paragraphs 5, 6, and 11 (searches, strip and intimate searches of detainees under sections 54 and 55 of PACE) and 9.3B;
- In Code A; paragraphs 2.8 and 3.6 and Note 4;
- In Code D; paragraph 5.5 and Note 5F (searches, examinations and photographing of detainees under section 54A of PACE) and paragraph 6.9 (taking samples);

- In Code H; paragraphs 3.21, 4.1 and Annex A paragraphs 6, 7 and 12 (searches, strip and intimate searches under sections 54 and 55 of PACE of persons arrested under section 41 of the Terrorism Act 2000) and 9.4B.

L2 While there is no agreed definition of transgender (or trans), it is generally used as an umbrella term to describe people whose gender identity (self-identification as being a woman, man, neither or both) differs from the sex they were registered as at birth. The term includes, but is not limited to, transsexual people.

L3 Transsexual means a person who is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of gender reassignment, which is a protected characteristic under the Equality Act 2010 (see paragraph 1.0), by changing physiological or other attributes of their sex. This includes aspects of gender such as dress and title. It would apply to a woman making the transition to being a man and a man making the transition to being a woman, as well as to a person who has only just started out on the process of gender reassignment and to a person who has completed the process.

Both would share the characteristic of gender reassignment with each having the characteristics of one sex, but with certain characteristics of the other sex.

L3A The reason for the exception is to modify the same sex/gender approach for searching to acknowledge the possible needs of transgender individuals in respect of menstrual products and other personal needs relating to health, hygiene and welfare and ensure that they are not overlooked.

L4 Transvestite means a person of one gender who dresses in the clothes of a person of the opposite gender. However, a transvestite does not live permanently in the gender opposite to their birth sex.

L5 Chief officers are responsible for providing corresponding operational guidance and instructions for the deployment of transgender officers and staff under their direction and control to duties which involve carrying out, or being present at, any of the searches and procedures described in paragraph 1. The guidance and

instructions must comply with the Equality Act 2010 and should therefore complement the approach in this Annex.

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APPENDIX B

Escalation Policy Recommendations and Guidance: Searching by Transgender Employees of the Police Service

Following the removal of recommended guidance by NPCC whilst a national legal review is completed into searching by Trans employees. Recommendations have been received that forces revert to using local adopted policies on this matter.

Therefore, a full Staffordshire review of Transgender stop and search policy is being conducted, to ensure clear and transparent guidance for Police employees and the public.

Whilst this review process takes place it is recognised the importance of having an interim escalation process, that ensures trust and confidence within both our communities and colleagues.

Matters relating to Trans-persons requiring a 'strip search' will be escalated by the Custody Sergeant through the duty FIM to the on-duty Silver Commander in order that an assessment of the situation can be considered. The assessment will include the requirements and wishes of both the detainee and the police employee. Any decision must be aligned with the Police and Criminal Evidence Act 1984 (PACE) and the Equality Act 2010, ensuring a balance between the rights of the detainee and the police employee.

In matters of emergency, when there is a dynamic risk of harm, then the safety of the detainee and others within the custody environment will take precedence and the trans-police employee will be replaced having due consideration to all circumstances.

To aid the decision making the following persons are available to provide guidance.

[REDACTED]
[REDACTED]
[REDACTED]
NPCC Lead Staff officer [REDACTED]
Joint Legal Services [REDACTED]
Unison [REDACTED]
Federation [REDACTED]
Staffordshire Support Networks

Legislation considerations

Transgender colleagues may search in line with their legal authority and training (as a police officer, or powers conferred or designated under s38 or s39 of the Police Reform Act 2002), is determined by an interaction between the Police and Criminal Evidence Act (1984), and the Equality Act (2010), with the correct application of occupational requirement, and not limited to the provisions of the Gender Recognition Act (GRA) (2004).

Police will undertake searches exposing intimate parts (EIP) or more thorough searches in accordance with PACE which states that these searches must be conducted with officers of the same biological sex as the person being searched. Policing remains committed to serving all members of the public with fairness, dignity, and respect, including the Trans community. The police have a duty to respect Article 8 rights. Therefore, as far as operationally viable, where an individual whose lived in gender is not the same as their biological sex expresses a preference to be searched by an officer of their lived gender, efforts will be made to ensure an appropriate officer is identified to conduct the search. In such circumstances, the search would require the written consent of the authorising officer, the person detained and the particular officer/s conducting the search