



# Ministry of JUSTICE

National Offender  
Management Service

THE CARE AND MANAGEMENT OF TRANSEXUAL PRISONERS		
This instruction applies to :		Reference :
Prisons		<b>PSI 07/2011</b>
Issue Date	Effective Date	Expiry Date
2 March 2011	14 March 2011	14 March 2015
Issued on the authority of	NOMS Agency Board	
For action by	All prisons (references to Governors should be taken to include Directors of contracted-out prisons)	
For information	All staff	
Contact	<a href="mailto:equalities.group@noms.gsi.gov.uk">equalities.group@noms.gsi.gov.uk</a>	
Associated documents	Annexes A-E	
<p><b>Audit/monitoring :</b> Regional Custody Managers should ensure that the mandatory actions throughout this PSI are fully complied with.</p>		
<p><b>Introduces amendments to the following documents :</b></p> <p>PSO 4455 Requests from prisoners to change their name</p> <p>Copies held on the HMPS Intranet will be amended; hard copies must be amended or cross referenced locally.</p>		

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## 1. Executive summary

### Background

- 1.1. A transsexual person is someone who lives or proposes to live in the gender opposite to the one assigned at birth. The gender in which the transsexual person lives or proposes to live is known as that person's acquired gender. A transsexual person may or may not have been diagnosed with gender dysphoria, which is described in detail at [Annex A](#).
- 1.2. The Gender Recognition Act 2004, described in detail at [Annex E](#), provides for transsexual people to apply to the Gender Recognition Panel for legal recognition of their acquired gender through the issue of a gender recognition certificate.
- 1.3. This PSI contains guidance on the care, management and treatment of transsexual prisoners – both with and without gender recognition certificates. It covers medical treatment, living in an acquired gender role, location in the estate, and searching, and explains the legal position.
- 1.4. Recent legislative changes and court judgments have had implications for how we care for and manage transsexual prisoners. This PSI reflects the advice that has been given about these changes and clearly sets out how prisons can comply with the law in a way that is safe for the transsexual prisoner and others.

### Desired outcomes

- 1.5. To ensure that all transsexual prisoners are treated fairly and in accordance with the law.

### Mandatory actions

- 1.6. *Establishments must ensure that the care and management of transsexual prisoners is undertaken in accordance with this PSI. Mandatory actions are in italics.*

### Resource Impact

- 1.7. The numbers of transsexual prisoners are low and likely to remain so. Any additional costs will therefore be minimal.

### **Further advice or information on this PSI can be sought from:**

Chris Barnett-Page (policy issues) [christopher.barnett-page@noms.gsi.gov.uk](mailto:christopher.barnett-page@noms.gsi.gov.uk) 0300 047 5263

Trudy McCaffery (operational support) [trudy.mccaffery@noms.gsi.gov.uk](mailto:trudy.mccaffery@noms.gsi.gov.uk) 01283 524 526

Emma Prince (searching issues) [emma.prince@noms.gsi.gov.uk](mailto:emma.prince@noms.gsi.gov.uk) 0300 047 6202

(signed)

**Phil Copple**  
**Director of Offender Management for the North East**

## 2. Medical treatment

- 2.1. A convicted prisoner retains all civil rights that are not taken away expressly or by necessary implication.
- 2.2. *Establishments must provide prisoners who have been diagnosed with gender dysphoria with the same quality of care (including counselling, pre-operative and post-operative care and continued access to hormone treatment) that they would expect to receive from the NHS if they had not been sent to prison. See [Annex A](#) for more details.*
- 2.3. There must be sound and demonstrable clinical reasons for allowing access to private health services. There should be evidence that this will improve the health of the individual and is not based on uninformed personal choice.
- 2.4. If medical treatment for gender dysphoria is commenced before reception into prison, and the prisoner applies for it to be continued, it should be continued until the prisoner's gender specialist has been consulted on the appropriate way to manage the prisoner's treatment – unless the doctor working in the prison has reasonable clinical grounds for not doing so.

### Applications to begin hormonal treatment for gender dysphoria

- 2.5. An unconvicted prisoner who asks to begin treatment for gender dysphoria should be advised that generally the matter will be re-considered by prison medical services in the event that the court orders a subsequent custodial sentence. *If the prisoner has any pre-arranged appointments, guidance must be sought from the specialist clinician providing care to the prisoner when they were in the community, to ascertain whether there exists any clinical or other imperative that those appointments should be attended during the remand period or whether they could be postponed until the outcome of any court proceedings are known.* Time to trial is not, of itself, a sufficient reason to allow the prisoner to attend the outpatient appointment unless that has direct clinical or psychological consequences that adversely affect the health and well-being of the prisoner.
- 2.6. *The prison health care team must inform the relevant NHS commissioning authority of any request from a sentenced prisoner to begin medical treatment for gender dysphoria. The prison GP and other medical staff in-reaching into the prison should request a suitable contact point for liaison purposes, and guidance as to whether the authority has any preference as to which gender dysphoria specialist the prisoner be referred.*
- 2.7. The doctor working in the prison should take full account of any possible coexisting psychopathology that may require expert forensic psychiatric assessment and refer the prisoner to a forensic psychiatric service if appropriate.

### Applications for gender reassignment surgery

- 2.8. *The doctor working in the prison must refer all applications for gender reassignment surgery to a consultant specialising in gender dysphoria and will ordinarily accept advice from the consultant about whether gender reassignment surgery is considered appropriate in a particular case.*
- 2.9. It may be appropriate for the Governor to provide a report to the consultant as to the practical effects in a prison context of any medical decision.
- 2.10. *Applications for reversal of gender reassignment surgery must be dealt with through full reference to the gender dysphoria specialist and psychiatrist familiar with the case.*

**3. Prisoners living in their acquired gender role**

- 3.1. *When a prisoner proposes to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning their sex by changing physiological or other attributes of sex, the prisoner is considered to have the protected characteristic of gender reassignment for the purposes of the Equality Act 2010 and must not be discriminated against or harassed because of this.*
- 3.2. *An establishment must permit prisoners who consider themselves transsexual and wish to begin gender reassignment to live permanently in their acquired gender. Where a young person under 18 is concerned, the establishment must be satisfied that this is consistent with its duty to promote the young person's wellbeing. Where a young person under 18 expresses a desire to live permanently in their acquired gender, advice must be sought from the Equalities Group or Women's Team as appropriate.*
- 3.3. *Permitting prisoners to live permanently in their acquired gender will include allowing prisoners to dress in clothes appropriate to their acquired gender and adopting gender-appropriate names and modes of address. See [Annex B](#) for more details. An establishment must allow transsexual people access to the items they use to maintain their gender appearance, at all times and regardless of their level on the Incentives and Earned Privileges Scheme or any disciplinary punishment being served. See [Annex C](#) for a suggested compact which can be adapted for local use.*
- 3.4. *Establishments must produce a management care plan outlining how the individual will be managed safely and decently within the prison environment. Advice on producing this must be sought from the Equalities Group or Women's Team as appropriate.*
- 3.5. *Any risks to and from a transsexual prisoner must be identified and managed appropriately, as would be the case with any other prisoner. Establishments must put in place measures to manage the risk of transphobic harassment and transphobic hate crime. This may necessitate re-visiting their violence reduction strategy.*
- 3.6. *Difficulty accommodating someone living in their acquired gender will not normally and on its own constitute grounds for transferring a prisoner to another establishment.*
- 3.7. *Transsexual prisoners should be offered as wide a regime of activities as other prisoners.*
- 3.8. *Information concerning a prisoner's application for a gender recognition certificate or any information concerning the gender history of a prisoner whose application is successful must not be disclosed, unless a specific exemption applies. See [Annex E](#) for more details.*

#### 4. Location within the estate

- 4.1. Prison Rule 12(1) provides that women prisoners should normally be kept separate from male prisoners.
- 4.2. *In most cases prisoners must be located according to their gender as recognised under UK law. Where there are issues to be resolved, a case conference must be convened and a multi-disciplinary risk assessment should be completed to determine how best to manage a transsexual prisoner's location. See [Annex D](#) for more details.*
- 4.3. A male to female transsexual person with a gender recognition certificate may be refused location in the female estate only on security grounds – in other words, only when it can be demonstrated that other women with an equivalent security profile would also be held in the male estate. *In such circumstances she will be considered a female prisoner in the male estate and must be managed according to PSO 4800 Women Prisoners.*
- 4.4. A female to male transsexual person with a gender recognition certificate may not be refused location in the male estate. This is because there are no security grounds that can prevent location in the male estate.
- 4.5. *If a prisoner requests location in the estate opposite to the gender which is recognised under UK law, a case conference must be convened to consider the matter. The case conference will consider all relevant factors and make a recommendation to a relevant senior manager above establishment level who will make the final decision. If there is any doubt, it is advisable to seek legal advice from the Offender Management Team in the Ministry of Justice Legal Directorate.*
- 4.6. *Before a prisoner is placed in custody, attempts must be made to determine which gender is recognised under UK law. This is a legal issue rather than an anatomical one, and under no circumstances should a physical search or examination be conducted for this purpose. If attempts are unsuccessful, the prisoner should be placed according to the best evidence available and the prisoner's gender status must be determined as soon as possible. If it emerges that a prisoner has been placed in the estate opposite to the legally recognised gender, a transfer must be arranged as soon as possible unless the prisoner requests location in this estate.*

5. **Change of name**

5.1. The Prison Service policy for prisoners who wish to change their name is set out in Prison Service Order 4455. The changes made to PSO 4455 by this PSI are detailed in the following paragraphs.

5.2. Paragraph 1.2 of PSO 4455 will now read:

“When Governors are considering name change requests, the following factors may be regarded as indications that the intended change is genuine and permanent, and should therefore be acknowledged officially:

- When the request is the result of a change of marital status
- When the change of name is on genuine religious grounds. *If a prisoner wishes to change his/her name on such grounds, Operational Managers must obtain the views of the Chaplain (or equivalent) of the relevant faith.*
- When not to acknowledge the new name may cause severe psychological harm to the prisoner. Medical advice should be sought.
- When the change of name is because of gender reassignment. In such a case the change of title (Mr, Ms etc.) should also be acknowledged.”

5.3. Paragraph 1.3 of PSO 4455 will now read:

“A name change by Deed Poll or statutory declaration is also generally an indication of genuineness on behalf of the prisoner and should be acknowledged officially. Governors may refuse a name change by Deed Poll or statutory declaration but only in exceptional circumstances such as where the name is considered to be offensive or obscene.”

5.4. Annex A to PSO 4455 will now read:

“Notice of name change from H.M.Prisons

H.M.Prison .....

Current name of prisoner .....

CRO/PNCID number .....

Prison number .....

Reason/grounds for name change, please tick, (delete not applicable)

Gender reassignment

Religious

Psychological/medical

Compassionate

Marital change

New name .....

Confirmed by Deed Poll/Statutory Declaration, please tick, (delete not applicable)

Yes / No

**6. Searching**

- 6.1. *Transsexual prisoners at all stages of the gender reassignment process must be encouraged to enter into a voluntary written agreement in respect of their searching arrangements as soon as possible after arrival at an establishment.*
- 6.2. For further information and guidance, please refer to Annex H of [PSI 48/2010](#) Searching of the Person.



## **Annex A – Guidance on medical treatment**

### **The treatment for gender dysphoria in the NHS**

- A.1. Gender dysphoria is the disorder variously referred to as gender dysphoria, gender identity disorder and transsexualism. Transsexualism is defined by the World Health Organisation in its International Statistical Classification of Diseases and Related Health Problems (Tenth Revision), ICD 10, as a “desire to live and be accepted as a member of the opposite sex, usually accompanied by a sense of discomfort with, or inappropriateness of, one's anatomic sex, and a wish to have surgery and hormonal treatment to make one's body as congruent as possible with one's preferred sex”.
- A.2. Medical and surgical treatment to effect gender reassignment is available in England and Wales to people with gender dysphoria without any legal formalities, either under the NHS or in the independent sector. However, individual NHS health commissioners do vary in the priority they afford to funding treatment for gender dysphoria.
- A.3. Anyone wanting gender reassignment treatment will first have to undergo a period of specialist diagnosis, assessment and counselling by a gender specialist. This is usually a consultant psychiatrist, senior psychologist, GP with a special interest, or a combination of such professionals working in a team, possibly at a Gender Identity Clinic.
- A.4. This could lead to the commencement of hormone therapy. If the person is comfortable on hormones and intends to progress towards surgery then a period of living in the new gender role will follow, usually for a minimum period of 12 months. The person should be able to demonstrate acceptance by society in this role and improved social and psychological functioning.
- A.5. In the case of a female to male transsexual person with large breasts, the time to undergo a chest reconstruction may be reduced considerably if the prognosis for gender reassignment based on other factors is good.
- A.6. After successfully completing a period of time living in the new gender role under the supervision of a gender specialist, or team of specialists, the person should then receive two written opinions referring the person to a competent and experienced surgeon.
- A.7. Providing the surgeon is satisfied the person is a suitable candidate for surgery, the person may then be placed on a waiting list for a gender reassignment operation. It is regarded as essential that someone awaiting such an operation continues to undergo counselling and assessment for the interim period, of what may be up to two years, before one can take place. Hormone treatment continues after the operation, usually on a life-long basis, and there may be a continuing need for psychiatric care and counselling.
- A.8. The Medical Royal Colleges in the UK have worked in association with related professional, clinical, and user groups to develop standards of care which should apply as minimal service provision for patients with gender dysphoria accessing health care services within the UK. These will provide clinicians throughout the UK with a minimum set of professional standards of care.

### **Applications to begin hormonal treatment for gender dysphoria**

- A.9. An unconvicted prisoner who asks to begin treatment for gender dysphoria should be advised that generally the matter will be re-considered in the event that a custodial sentence is received. In the meantime, the prisoner may require counselling or other support as appropriate to the prisoner's mental condition. Medical interventions during this phase should only involve routine primary care or emergency care for underlying or new

clinical problems, and should not be directed towards initiating care normally considered to be part of gender reassignment processes.

- A.10. Every effort should be made to ensure that prisoners with gender dysphoria are retained in one establishment during the period they are on remand, subject to security requirements and population pressures, to provide stability of counselling and other support services and to maintain some aspect of confidentiality concerning their medical status.
- A.11. The gender dysphoria specialist and, if there is one, the forensic psychiatrist will advise the doctor working in the prison on the feasibility of treating a convicted prisoner on a case-by-case basis. They will take into account all the prisoner's circumstances, including the length of sentence, security categorisation, risk to others, and how those risk factors might be minimised. If either service requires it, the prison health care team will arrange for the forensic psychiatrist and the gender dysphoria specialist to liaise. A treatment plan will be drawn up to meet the patient's needs. The gender dysphoria specialist should advise the prison health care team on any through-care or follow-up issues to facilitate a smooth transition on the prisoner's release.

#### Applications for gender reassignment surgery

- A.12. It is important to ensure the synchronisation of clinical and management decisions so that individuals do not proceed to surgery until a clear plan for their care, management and custody has been agreed. This includes identifying risks that the prisoner may face from other prisoners and risks they may pose to other prisoners. It also includes an assessment of risk to the public as with ordinary categorisation assessments.
- A.13. The supervising consultant will advise the doctor working in the prison and the Governor on all clinical aspects of care and the individual needs of the patient will be considered in all cases. These needs will be met by appropriate medical and psychiatric supervision during treatment.
- A.14. Genital reconstruction surgery is provided under the NHS as a core commissioned service, which will be provided when the individual has met the conditions required by the gender specialist or gender identity clinic and two opinions supporting surgery are provided. Treatments such as facial electrolysis, hair transplant surgery, facial cosmetic surgery, breast augmentation, and any other like procedures will be permitted, if recommended, provided they are funded by the appropriate NHS commissioner (core services) or the individual prisoner (non-core/cosmetic services). The services that can be obtained under the NHS can vary between Primary Care organisations and their specialist commissioning teams and this would be assessed on a case by case basis, based upon other local competing priorities.

## **Annex B – Guidance on prisoners living in their acquired gender role**

### Dress code

- B.1. Prisons should obtain from an equivalent opposite gender prison a set of guidelines for what clothing and make up is acceptable. Such guidelines can often be adopted almost entirely for transsexual prisoners.
- B.2. The following options for obtaining clothing may be available:
- If prisoners have funds available, they can purchase gender-appropriate clothing from mail order catalogues.
  - Visitors may bring prisoners clothing or other items that assist them in presenting in their acquired gender.
  - Prisoners may have clothing or other items that assist them in presenting in their acquired gender sent to them.
  - Otherwise, you may be able to get clothing from that donated to nearby prisons appropriate to the transsexual prisoner's acquired gender.
- B.3. Female prisoners wear their own clothes – there is no uniform. A male to female transsexual prisoner should be allowed to wear female clothing, regardless of any restrictions imposed through IEP. The only exception will be for relevant work clothes.
- B.4. Allowing male to female transsexual prisoners to wear their own clothes is not a privilege. This approach is necessary to ensure that such prisoners can live in the gender role that they identify with. It may be helpful to explain this to other prisoners who are required to wear prison uniform.

### Items used to present in the acquired gender

- B.5. Transsexual people, particularly those who have not undergone surgery or extended hormone therapy, may use various items to assist with their presentation in their acquired gender. These can range from sophisticated prostheses to padded bras. Regardless of their level of sophistication, access to them can only be restricted in exceptional circumstances. IEP is not a justifiable reason for restricting access.
- B.6. These items may only be prohibited when it can be demonstrated that they present a security risk which cannot be reasonably mitigated. The test that is applied to these items is the same as that applied to other items in the prison in which the prisoner is held. Any restriction of these items could be subject to judicial review. If a prison decides to apply such restrictions, they must be able to provide a detailed and reasonable justification for doing so.
- B.7. Both male to female and female to male transsexual people may use make up to present more convincingly in their acquired gender. Make up that is vital to presenting in the acquired gender, such as foundation to cover up beard growth, may not be restricted. Other make up may be restricted within the framework of IEP.

### Risk management

- B.8. When producing management care plans outlining how the individual will be managed safely and decently within the prison environment, in addition to seeking advice from the Equalities Group or Women's Group, advice can be sought from staff responsible for equalities issues locally as well as the health care team.

- B.9. Transsexual prisoners should be viewed as an 'at-risk' group in terms of suicide and self-harm. ACCT procedures should be utilised for any prisoners at risk of suicide or self-harm.
- B.10. It may be useful to have education and training about gender reassignment and the prevention of transphobia for staff working with transsexual prisoners. This can be delivered by the Women's Team at no cost to the establishment. The Women's Team can also provide advice on working with prisoners who are not transsexual with a view to educating them about gender reassignment and preventing transphobia.

#### Prison NOMIS

- B.11. The information entered onto Prison NOMIS for a transsexual prisoner's gender should match the type of prison in which the prisoner is located. Transsexual prisoners in a male prison will therefore have their gender entered as male on Prison NOMIS, unless they have a gender recognition certificate and are being held for security reasons as a female prisoner in the male estate, as described at paragraph 4.3 above. Transsexual prisoners in a female prison will have their gender entered as female.
- B.12. When a prisoner acquires a gender recognition certificate and moves into the estate of the acquired gender, a new record should be created for the prisoner on Prison NOMIS - leaving the old record intact. The new record should be in the prisoner's acquired gender. Information on this new record can be made less specific to ensure staff who have no need to know about the prisoner's gender history cannot identify any gender reassignment due to details such as prison names.

**Annex C – Compact template**

**Ministry of  
JUSTICE**

National Offender  
Management Service



Public Sector Prisons

HMP .....

Compact between: HMP ..... & .....

Date.....

### **Introduction**

The purpose of this compact is to provide clear information for you and staff about the requirements and entitlements of an individual going through transition whilst in prison custody. Unless otherwise specified, your regime will be the same as all other prisoners in this establishment.

The compact covers the following areas:

- Accommodation
- Showers
- Laundry
- Dress code
- Employment
- Offending behaviour
- Facilities list
- Monthly review
- Named liaison / Personal Officers / key workers
- Support
- Searching

The compact reflects current Prison Service policies and legislation, but revisions will be made as policies, legislation and needs change.

### **Accommodation**

Whilst at HMP..... accommodation will be provided for you to afford the maximum amount of privacy possible whilst still providing access to a full regime. This will take into account your cell sharing risk assessment and any specific vulnerabilities you may have.

## Showers

If the establishment is unable to provide en suite showering or bathing facilities, you will be afforded as much privacy as possible by the following means:

- No other prisoner will be allowed to use the shower, to ensure your privacy and decency.
- You are responsible for ensuring that the shower curtain/screen or bathroom door is closed, to ensure privacy and decency for both yourself and others.
- You must be fully and appropriately dressed when walking to and from the shower area. This includes wearing appropriate footwear.
- You must not use or attempt to use the shower facilities outside the specified times. If there are exceptional circumstances when you need to use the shower facilities outside of the specified times, such as prior to escort, you must discuss this with the Wing Senior Officer who will take the appropriate action.
- You must use the showers as directed by the staff on duty.

## Laundry

All clothing in your possession will be washed in accordance with the wing laundry procedures. You may wash personal items such as underwear by hand in your room. If needed, a bowl will be provided for this purpose.

## Dress code

You will be allowed to wear clothing appropriate to your acquired gender and as permitted in establishments of your acquired gender, subject to general decency standards.

During work periods you will dress appropriately for the work you do and in accordance with health and safety regulations.

You will be permitted to have in your possession those toiletries and cosmetics necessary to present in your gender role. These items can be purchased in the same manner as in an establishment of your acquired gender.

## Employment

Employment will be provided for you in accordance with the normal manner for labour allocation, but will take into account any specific risks or vulnerabilities you may have in relation to your gender role.

## Offending behaviour

You are expected, as are all other prisoners, to comply with sentence planning/OASys and to undertake any offending behaviour programmes for which you are assessed as suitable.

## Facilities list

The list of facilities available to you will be in line with the current facilities list of this establishment, along with some items permitted in establishments of your acquired gender. These items will be subject to security approval. Certain items in possession will be negotiated and agreed locally.

**Monthly review**

You will have a review on a monthly basis with your Personal Officer, and quarterly with your designated liaison officer. This will give you the opportunity to discuss any issues and raise any points that you think are relevant to you. This is not prescriptive and any problems and concerns can be dealt with as and when they arise.

**Named Liaison / Personal Officers / key workers**

Your Personal Officer will be: - .....

Your liaison Senior Officer will be: - Senior Officer .....

**Support**

Although you have been allocated the individual staff members above, you can also speak to any member of staff about any issues you may have.

If you need further support specific to your gender role, you can contact:

The Gender Trust, Community Base, 113 Queens Road, Brighton, BN1 3XG.  
(Helpline: 0845 231 0505)

**Searching**

You and your cell will be searched in accordance with the Prison Service National Security Framework and HMP .....’s local security strategy. This includes any personal items that you may have in your possession.

The way in which you are searched, and the gender of the staff searching you, will be discussed with you with the aim of reaching a mutual agreement.

If agreement cannot be reached, you will be searched in the way that this establishment considers to be the most appropriate to provide an effective searching strategy - having regard to your legally recognised gender.

Searching agreement	

Prisoner’s signature.....	Wing Manager’s signature.....
Prisoner’s name.....	Wing Manager’s name.....
Prison number.....	
Date.....	Date.....

**Annex D – Guidance on location within the estate****In the estate according to the gender recognised under UK law**

- D.1. In most cases, prisoners should be located according to their gender as recognised under UK law. This will usually be the prisoner's birth gender. However, UK law recognises that transsexual people with gender recognition certificates have a gender opposite to the one assigned at birth.
- D.2. If you wish to determine a prisoner's gender you should ask for a copy of the prisoner's birth certificate. When people have received a gender recognition certificate they will be entitled to have a new birth certificate issued in their acquired gender, provided their birth was registered in the UK.
- D.3. If a transsexual prisoner's birth was registered outside the UK, but the prisoner received gender recognition in the UK, the prisoner may not have a birth certificate in the acquired gender. Such a prisoner will have to show you a gender recognition certificate if the prisoner wishes to prove the acquired gender is recognised under UK law.
- D.4. A prison is not entitled to ask for a copy of a prisoner's gender recognition certificate or even to ask whether or not a prisoner has a gender recognition certificate. However, if a prisoner chooses to show you a gender recognition certificate, then that constitutes proof that the acquired gender is recognised under UK law and you will not need to ask for a birth certificate.
- D.5. Transsexual prisoners who obtain a gender recognition certificate while located in a prison appropriate to their birth gender should in most cases be transferred to the estate of their acquired gender. A case conference should be convened and a multidisciplinary risk assessment should take place to determine whether the prisoner should be transferred and what procedures need to be put in place to manage risks to and from the prisoner, and to ensure that the prisoner may fully engage with the regime in the new establishment.
- D.6. The case conference should include, but need not be limited to, relevant senior managers from the sending and proposed receiving prisons, representatives from the offices of the relevant senior managers above establishment level, offender managers, staff responsible for equalities issues locally, a representative from health care, and the prisoner or an appropriate representative. In this case conference you may also wish to include the prisoner's supervising gender specialist, or seek advice from them, and a psychiatric assessment.
- D.7. There are some women who are guilty of violent crimes against other women and are still managed safely in the female estate. Any transsexual women with a gender recognition certificate who pose similar risks should be managed in a similar way in the female estate. In a judicial review of September 2009 (*R (on the application of AB) v Secretary of State for Justice* [2009] EWHC 2220 (Admin)) the judge held that a male to female transsexual prisoner with a gender recognition certificate had to be transferred to the female estate even though one of her index offences was attempted rape of a woman.
- D.8. In a few very rare cases it may be necessary to refuse a transfer to the female estate for a male to female transsexual person with a gender recognition certificate. This can only happen if the security concerns surrounding the prisoner are sufficiently high that other women with an equivalent security profile would also be held in the male estate. If a transfer is refused, the prisoner will be a female prisoner in the male estate. She must be held separately and according to a female prisoner regime as set out in PSO 4800.



D.9. A female to male transsexual person with a gender recognition certificate may never be refused a transfer to the male estate. This is because there are no security grounds that can prevent location in the male estate.

In the estate opposite to the gender recognised under UK law

D.10. Some transsexual people will be sufficiently advanced in the gender reassignment process that it may be appropriate to place them in the estate of their acquired gender, even if the law does not yet recognise they are of their acquired gender. In such cases establishments may wish to seek guidance from the Women's Team.

D.11. As the dissolution of any marriage or civil partnership is a requirement for receiving a full gender recognition certificate some transsexual people who are married or in civil partnerships choose not to apply for one even when they are eligible. Others choose not to for ideological reasons or are unaware that they exist. A prisoner in such circumstances may wish to be located in the estate of their acquired gender and NOMS must seriously consider any request to do so. Where there are issues to be resolved, a case conference should be convened similar to that described at D.5. and D.6. above.

D.12. The case conference should review the prisoner's individual circumstances and make a recommendation to the relevant senior manager above establishment level who will make the final decision.

D.13. The case conference should consider the following:

- Whether the prisoner would likely meet the criteria for receiving a gender recognition certificate (i.e. a diagnosis, two years to date consistently living in the acquired gender role, and a firm intention to live permanently in the acquired gender).
- The risks from the individual to other prisoners in the current and potential establishments.
- The risks to the individual from other prisoners in the current and potential establishments.
- The advice of the gender specialist and supervising psychiatrist.
- Where the prisoner would feel most comfortably housed and the reasons for this. Prisoners may feel that they will become suicidal or prone to self-harm if they are placed or remain in the estate of their birth gender. Alternatively, some prisoners, such as female to male transsexual people with vaginas, may feel that they will be very vulnerable if placed in the estate of their acquired gender.
- Whether the prisoner would be likely to spend an extended period in segregation if located in the estate of the prisoner's acquired gender.
- Whether the prisoner would be able to complete the sentence plan in the estate of the prisoner's acquired gender, for example male to female transsexual prisoners who need to complete offending behaviour programmes related to sexual offending.

D.14. Particular care should be taken where the prisoner is likely to be put into long-term segregation as the effects of long-term segregation may have serious mental health consequences on the prisoner. PSO 1700 Segregation contains advice and guidance in relation to promoting and safeguarding the mental health of prisoners held in segregation units. The consent of the prisoner to undergo such treatment would not be a defence on

which a Governor could rely. The decision to put the prisoner in long term segregation should be made very carefully and be supported by legal advice.

### Remand

- D.15. If a prisoner is remanded before it can be determined which gender is legally recognised, it will be necessary to make a determination based on the best information available. Birth certificates (if the prisoner's birth was registered in the UK) will prove a prisoner's gender. Whilst you may not ask whether a prisoner has a gender recognition certificate, if the prisoner chooses to show you one, this will also prove a prisoner's gender. Identifying documents such as a passport and driving licence are useful evidence but are not conclusive. If such information is not available, prisons should rely on the gender recorded in the police national database until more authoritative sources of information can be found.
- D.16. If a prisoner states that they have a gender recognition certificate, but they do not have their new birth certificate or their gender recognition certificate with them, the prisoner should be allowed to call the Gender Recognition Panel on 0845 355 5155 with the duty governor present. The prisoner will need to explain that they are in custody. The prisoner will be asked to state their password and may be asked for other information to confirm their identity (e.g. National Insurance number and date of birth). The prisoner should then give the Gender Recognition Panel permission to disclose information about the prisoner's gender status to a third party.
- D.17. If prisoners do not offer any proof of their gender they may be assumed to be of their birth gender, for the purpose of location within the estate. They must still be allowed to live in their acquired gender role and be searched with appropriate sensitivity.

## **Annex E –Guidance on the legal position**

### **Gender Recognition Act 2004**

- E.1. The Gender Recognition Act 2004 provides for transsexual people to apply to the Gender Recognition Panel for legal recognition of their acquired gender. Applicants not married or in civil partnerships, who can satisfy the Gender Recognition Panel that they fulfil the legal requirements for recognition in their acquired gender, will be granted a full gender recognition certificate.
- E.2. Neither surgery nor hormone therapy are prerequisites for receiving a full gender recognition certificate. Further advice on applying for a gender recognition certificate is available on the Gender Recognition Panel website at [www.grp.gov.uk](http://www.grp.gov.uk). This includes guidance on a separate application process for those who have already obtained legal recognition in a foreign country.
- E.3. From the date of recognition the applicant is seen in law as being for all purposes of the acquired gender. Establishments should treat holders of a full gender recognition certificate in the same way as any other person of their acquired gender. This will have ramifications for areas such as searching and location in the prison estate.
- E.4. If a successful applicant's birth was registered in the UK, the gender recognition certificate may be presented to the appropriate Registrar General who will issue a new birth certificate in the person's acquired gender. A prison may not ask for a copy of someone's gender recognition certificate as proof that the prisoner's acquired gender is recognised by law, but a prison may ask for a copy of the prisoner's birth certificate which will state the prisoner's legal gender.
- E.5. If a prisoner's birth was registered outside of the United Kingdom then the prisoner's gender recognition certificate will still be valid and the law will still recognise the prisoner's acquired gender. In such a situation prisoners will have to provide a gender recognition certificate if they wished to prove that the law recognises their acquired gender.
- E.6. If a prisoner presents evidence that they have obtained legal recognition in another country, this will not automatically mean that their acquired gender is recognised under UK law. You can contact the Ministry of Justice gender recognition policy team for advice on 020 3334 3735.
- E.7. Married applicants and those in civil partnerships are only eligible for an interim gender recognition certificate. The interim gender recognition certificate allows the successful applicant to dissolve the marriage or partnership. An interim gender recognition certificate does not entitle the holder to the rights associated with a full gender recognition certificate, but it is evidence that the person has met all the criteria for a full certificate. If the divorce or annulment of the marriage or civil partnership takes place and proceedings in this respect were begun within six months of the issue of the interim gender recognition certificate, a Gender Recognition Panel will convert the interim certificate into a full gender recognition certificate.
- E.8. It is an offence for a person to disclose protected information acquired in connection with a person's functions as a member of the civil service (which includes prison staff), police constable or holder of any local or public authority office. Protected information is defined as any information concerning a person's application for a gender recognition certificate or any information concerning the gender history of a successful applicant.
- E.9. However, it is not an offence to disclose protected information related to a prisoner where it is necessary and proportionate to do so if:

- the information does not enable the prisoner to be identified;
- the prisoner has agreed to the disclosure of the information;
- the information relates to the prisoner's previous gender and the person by whom the disclosure is made does not know or believe that a full gender recognition certificate has been issued;
- the disclosure is in accordance with an order of a court or tribunal;
- the disclosure is for the purpose of instituting, or otherwise for the purposes of, proceedings before a court or tribunal;
- the disclosure is for the purpose of preventing or investigating crime;
- the disclosure is made to the Registrar General for England and Wales, the Registrar General for Scotland or the Registrar General for Northern Ireland;
- the disclosure is made for the purposes of the social security system or a pension scheme;
- the disclosure is in accordance with an order made by the Secretary of State; or
- the disclosure is in accordance with any provision of any other law.

E.10. The Gender Recognition (Disclosure of Information) (England, Wales and Northern Ireland) (No. 2) Order 2005 (No. 916) provides that it is not an offence to disclose protected information:

- for the purpose of obtaining legal advice;
- for certain religious purposes;
- for medical purposes to a health professional where the person making the disclosure reasonably believes that the subject has given consent to the disclosure or cannot give such consent; or
- for certain reasons related to insolvency.

E.11. There may be a situation in which protected information about a transsexual prisoner with a gender recognition certificate is recorded or shared to prevent and detect crime and to fulfil prison and probation public protection responsibilities under MAPPA. Specific arrangements have been made to ensure that information recorded on ViSOR is exempt. However, general offender records are not exempt.

E.12. Information about prisoners who do not have gender recognition certificates and are not applying for one is not protected information. However, staff should still be sensitive to the needs of individuals when recording information about their gender and should note the requirements of the Data Protection Act 1998 as described in E.13 below.

#### Data Protection Act 1998

E.13. The Data Protection Act 1998 sets out the circumstances in which sensitive personal data can be used or transmitted. The definition of sensitive personal data would include information about an individual's gender history or gender reassignment. As such, explicit consent from the prisoner would be required for that data to be shared without restriction.

Equality Act 2010

- E.14. The Equality Act 2010 extends protections for people against direct and indirect discrimination and harassment because of the protected characteristic of gender reassignment. Direct discrimination and harassment because the victim is wrongly thought to be a transsexual person is prohibited, as well as direct discrimination and harassment because the victim associates with someone who is transsexual. The Equality Act 2010 also prohibits victimisation: where someone is treated badly because they have made or supported a complaint under that Act.
- E.15. The Equality Act 2010 also extends the public sector equality duty fully to gender reassignment, and this is due to come into force in April 2011. This duty will require that a public authority (including NOMS) in the exercise of its functions must have due regard to the need to eliminate unlawful discrimination, harassment and victimisation; advance equality of opportunity between transsexual people and non-transsexual people; and foster good relations between transsexual people and non-transsexual people.

Human Rights Act 1998

- E.16. In the case of *Goodwin v The United Kingdom and I v The United Kingdom* (2002) 35 EHRR 18 the European Court of Human Rights ruled that the refusal legally to recognise a transsexual person's acquired gender constituted a violation of Articles 8 and 12 of the European Convention on Human Rights. Article 8 states that everyone has the right to respect for his private life and Article 12 states that men and women of marriageable ages have the right to marry and to found a family.
- E.17. In *R (on the application of AB) v Secretary of State for Justice* [2009] EWHC 2220 (Admin) a transsexual prisoner with a gender recognition certificate challenged the decision of the Secretary of State to keep her within the male prison estate and not to transfer her to a female prison. The gender identity clinic treating the prisoner would not approve her gender reassignment surgery until she had spent a period living as a woman within a female prison.
- E.18. The judge considered that the decision to retain the prisoner in the male prison estate effectively barred her ability to qualify for surgery which interfered with her personal autonomy in a manner which went beyond that which imprisonment is intended to do. The judge went on to hold that the decision to keep the prisoner in a male prison was not proportionate and violated her Article 8 rights.
- E.19. If NOMS or an establishment acts in a way that interferes with a transsexual person's personal autonomy, preventing that prisoner from living fully in that prisoner's acquired gender, even if the prisoner is not seeking a gender recognition certificate, then it may be liable under the Human Rights Act 1998 for violation of Article 8 of the European Convention on Human Rights.

# Equalities Impact Assessment

## Policy Assessment

<b>Policy</b>	The care and management of transsexual prisoners
<b>Policy lead</b>	Chris Barnett-Page
<b>Group</b>	Equalities Group
<b>Directorate</b>	Operations

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### What is an Equality Impact Assessment (EIA)?

An EIA is a systematic appraisal of the (actual or potential) effects of a function or policy on different groups of people. It is conducted to ensure compliance with public duties on equality issues (which in some areas go beyond a requirement to eliminate discrimination and encompass a duty to promote equality), but more importantly to ensure effective policy making that meets the needs of all groups.

Like all other public bodies, the National Offender Management Service is required by law to conduct and publish impact assessments of all functions and policies relevant to the equality issues.

### The EIA process

The EIA is a two-stage process, to reduce the amount of work involved where a policy proves not to be relevant to any of the equality issues.

1. An initial screening which should be completed in all cases and
2. the full EIA which should be completed where the initial screening shows relevance to any equality issue.

## Initial screening

The first stage of conducting an EIA is to screen the policy to determine its relevance to the various equalities issues. This will indicate whether or not a full impact assessment is required and which issues should be considered in it. The equalities issues that you should consider in completing this screening are:

- Race
- Gender
- Gender identity
- Disability
- Religion or belief
- Sexual orientation
- Age (including younger and older offenders).

## Aims

### What are the aims of the policy?

The aim of the policy is to ensure that the National Offender Management Service meets its moral and legal obligations to treat transsexual prisoners fairly.

## Effects

### What effects will the policy have on staff, offenders or other stakeholders?

Staff will have the support and guidance necessary to allow them to sensitively and appropriately manage transsexual prisoners. As a consequence of the policy, transsexual prisoners should be managed more consistently across the prison estate, allowing them to live in the gender role that they identify with.

## Evidence

### Is there any existing evidence of this policy area being relevant to any equalities issue?

This policy is specifically designed to impact upon people with the protected characteristic of gender reassignment, as defined in the Equality Act 2010.

## Stakeholders and feedback

### Describe the target group for the policy and list any other interested parties. What contact have you had with these groups?

The target group for this policy will be governing governors, heads of residence, healthcare and any other operational staff who have transsexual prisoners under their care. Other interested parties include: the NOMS Women's Team; the gender reassignment policy unit in MOJ; the Gender Recognition Panel; and the Government Equalities Office (GEO). Copies of a draft of the PSI have been submitted to the gender reassignment policy unit and the GEO for consultation and legal advice. Additionally, the Equalities Group has discussed specific issues concerning the care and management of transsexual prisoners on a case by case basis with various operational staff in different establishments and also with the NOMS Women's Team.

**Do you have any feedback from stakeholders, particularly from groups representative of the various issues, that this policy is relevant to them?**

The NOMS Women's Team provide advice on the management of female prisoners and are looking for a national policy on the management of transsexual prisoners. A number of establishments have expressed an interest in the production of a national policy and in the meantime have produced local policies of their own. The Gender Recognition Panel has declared an interest in this policy and wishes to further understand how transsexual people are managed in prisons so that they can understand how to respond to applications for gender recognition certificates from prisoners.

## Impact

**Could the policy have a differential impact on staff, prisoners, visitors or other stakeholders on the basis of any of the equalities issues?**

The policy is specifically designed to impact on transsexual prisoners in a positive manner.

## Local discretion

**Does the policy allow local discretion in the way in which it is implemented? If so, what safeguards are there to prevent inconsistent outcomes and/or differential treatment of different groups of people?**

The policy allows some discretion in creating dress codes for transsexual prisoners in their acquired gender and making decisions about location for prisoners without Gender Recognition Certificates. However, the policy provides advice on who to consult and what issues may and may not be considered when determining the appropriateness for transfer of a transsexual prisoner without a gender recognition certificate. In addition, the policy sets out clearly what items cannot be withheld from prisoners.

## Summary of relevance to equalities issues

Strand	Yes/No	Rationale
Race	No	No evidence to suggest there is a problem
Gender (including gender identity)	Yes	The policy will specifically ensure that the moral and legal rights of people with the protected characteristic of gender reassignment are protected. The policy will not negatively impact upon such people.
Disability	No	No evidence to suggest there is a problem
Religion or belief	No	No evidence to suggest there is a problem
Sexual orientation	No	No evidence to suggest there is a problem
Age (younger offenders)	No	No evidence to suggest there is a problem
Age (older offenders)	No	No evidence to suggest there is a problem



### Monitoring and review

You now need to put in place monitoring arrangements to ensure that any future impact on any of the equality areas is identified and also set a date to review the findings of the monitoring.

### Management and monitoring arrangements

Describe the systems that you are putting in place to manage the policy and to monitor its operation and outcomes.

### Review

How will the review be conducted?

When will the review be carried out?

	Name and signature	Date
Policy lead	Chris Barnett-Page	February 2011
Head of group	Claire Cooper	February 2011