



The Gender Recognition Act 2004

Guidance for Police Officers and Staff



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DEVON & CORNWALL
CONSTABULARY

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EXECUTIVE SUMMARY

The Gender Recognition Act 2004 has implications for the police service. From October 2005 (April 2005 for some individuals) people who have lived in their preferred gender for at least two years will be entitled to apply for a gender recognition certificate (GRC) and, if a UK citizen, a new birth certificate. This will have an impact on employment and service delivery policies.

Changes to the Police National Computer are required to reflect the gender change of successful applicants. The Act also creates a new offence of disclosing confidential information. Force IT systems will need to be reviewed to ensure that they are GRA compliant. There are training implications for employees, particularly in the custody environment.

A person granted a GRC and birth certificate will assume all of the legal entitlements of a person of the same birth sex, for example, employment, marriage and pension rights. They will also be dealt with within the criminal justice system as a person of that sex when it comes to gender specific sexual offences.

RECOMMENDATIONS

- ◆ All staff are aware of the new offence created by the GRA relating to prohibited disclosure of personal information relating to gender reassignment.
- ◆ Those staff with responsibility for initiating, updating, amending or using PNC to understand how nominal records can be linked.
- ◆ Forces to review their IT systems against the requirements of the GRA 2004.
- ◆ HR and Pension Departments are aware of the changes and are able to deal with the needs of any existing or potential applicants.
- ◆ Forces to conduct impact assessments on their internal and service delivery policies.
- ◆ Custody staff to be made aware and to recognise the sensitivities involved in arrest, detention and searching of trans persons.
- ◆ Ensure all staff are aware of the requirement to inform NIS if a new birth certificate is produced.
- ◆ To ensure a memorandum of understanding with transitioning individuals is implemented as soon as practicable.

INTRODUCTION

The Association of Chief Police Officers (ACPO), the body representing the most senior police officials in England, Wales and Northern Ireland, have established a Race and Diversity Business Area with the following terms of reference:

'In the context of the overarching aims, objectives and guiding principles for the service, to develop in partnership with others guidance and direction for police officers and support staff to assist them to deliver a professional and responsive service to diverse, vulnerable and hard to reach groups in the community...'

Overall responsibility for trans issues lies within the Lesbian, Gay, Bisexual and Trans (LGBT) portfolio. This document has been developed by the LGBT portfolio group to advise forces on how best to incorporate the implications of the GRA 2004 into their existing policies.

This document is intended to give guidance to the Police Service on trans issues generally and the implications of Gender Recognition Act 2004 (GRA 2004) specifically.



In July 2003 the Government published a draft bill which allows transgender people, who have taken decisive steps to live fully and permanently in their acquired gender, to gain legal recognition in that gender. Under this bill, the UK will deliver its obligation to give transgender people their rights under the European Convention on Human Rights. This bill became the Gender Recognition Act in October 2004. This Act has implications for the police service in terms of the employment of, and services delivery to, transgender people in general terms.

From October 2005 (April 2005 for some people) persons will be able to apply for a gender recognition certificate (GRC), which, in turn, will allow UK citizens to have a new birth certificate that shows their acquired gender. Certificates will be issued from October 2005. For detailed information on the three different types of application - fast track, overseas and standard, see the Gender Recognition panel website at www.grp.gov.uk

The GRA 2004 not only outlines new legislation for transgender people who wish to acquire recognition in their preferred gender, but also introduces a new offence of disclosure that all police officers and staff must be aware of.

DISPELLING THE MYTHS

Cross-dressers/transvestites through to post-operative transgender covers a huge spectrum of individuals, each of whom have their own individual needs. Not every male or female that dresses as the opposite gender (transvestite) do so because they wish to permanently be defined in the opposite gender (e.g. transgender). Some do it as a fetish or for sexual gratification, some are simply driven by an unexplained urge to dress as a woman and are considered to be transvestites, but will have no desire to change their gender. Transvestites can be happily married individuals who have no desire to remain in the opposite gender but have a personal need to cross-dress, whether it be for comfort or just to express their feelings.

The majority of known transvestites and cross-dressers are heterosexual men and they are often married with families. Although some individuals may be bisexual they rarely define themselves as gay. This may explain why the gay community do not always readily relate to transvestites and cross-dressers, and why police officers and staff must never assume anything about a trans person and their sexual orientation.

What is transgenderism? There is no universal definition that can be quoted but the following gives a good guideline and is the most frequently used:

A generic term commonly used to cover those people who do not conform to the existing social and cultural classifications of men and women. It embraces transsexual people, intersex people and those who are gender dysphoric.

It follows that there are individuals that are not comfortable with their birth gender and will dress and live in their preferred gender. Some of them will undertake counselling and will have surgery to alter their gender. Some may not be able to have the surgery for health reasons but will live in their preferred gender. It may take years of cross-dressing before they get to this stage and along the way they may have become estranged from family and friends who have not been able to accept the change. This can lead to acute stress in the individual who has yet to understand or declare their status.

Whatever their needs each and everyone must be treated with dignity and respect. Understanding some of the background should assist the service in our contact with individuals with this background, allowing a better relationship and co-operation to develop. We need to aim to prevent the following incident from happening again.

'Rang to report an incident and gave my name as.... (female name), the operator insisted in asking me again what it was and constantly referred to me as he'



GLOSSARY

It is difficult to give clear definitions that are universally agreed, but so as to assist with the reading of this document the definitions below are generally accepted or are medically based. Whilst they are generally accepted and are used throughout this document, they should not be used as 'labels' as this may be offensive to an individual. This glossary is not intended for that purpose.

ANDROGYNY

Refers to those who are intermediate in gender.

BISEXUALITY

Is where sexual attraction is to either or both sexes. In general, people who define themselves as homosexual, intersex or bisexual are quite satisfied with their gender and body.

CROSS-DRESSING

Is the desire to adopt the clothes, appearance and behaviour normally associated with the opposite gender. For some it is simple 'dressing up', while for others, known as Dual Role Cross-Dressers, it is a need to adopt the opposite role as fully as possible, on a temporary, or on a full-time basis. Sometimes such individuals are medically referred to as 'Transgenderist'. Do not assume that men or women who cross-dress are gay.

'EN FEMME'

The term preferred when a male is dressed as a female.

GENDER ROLE

Is expressed in terms of masculinity and femininity. It is how people perceive themselves and how they expect others to behave. It is largely culturally determined.

GENDER DYSPHORIA

The term Dysphoria describes the discomfort experienced when the innate gender identity is inconsistent with the visible sex characteristics, e.g. genitalia, and gender role. This appears to be a biological condition where small parts of the brain develop inconsistently with the visible sex characteristics. Unusual genetic and hormonal influences during the development of the foetus in the womb appear to be implicated in this atypical development.

GENDER IDENTITY

A person's own psychological identification as male or female.

GENDER REASSIGNMENT

The Sex Discrimination (Gender Reassignment) Regulations 1999 define this as 'a process that is undertaken under medical supervision for the purpose of reassigning a person's sex by changing physiological or other characteristics of sex, and includes any part of such a process'. You should try to avoid the term 'sex change' as it can be considered inappropriate.

HERMAPHRODISM OR INTERSEXUALITY

Is where the physiological sex is ambiguous or dual. The situation may, or may not, be accompanied by various degrees of Gender Dysphoria. The condition may be due to chromosomal complexes, such as Turner's or Klinefelter's Syndromes, congenital errors of metabolism such as androgen insensitivity syndrome and adrenogenital syndrome. There may also be effects from the hormone balance in the foetus or the placenta.

HETEROSEXUALITY

Is a situation where the sexual attraction is felt for people of the opposite sex.



HOMOSEXUALITY

Is a situation where the sexual attraction is felt for people of the same sex rather than the opposite sex, (gay/lesbian is the preferred term to be used).

POST-OPERATIVE STAGE

This is when an individual has undergone surgery and is now in their preferred gender. Until the GRA 2004 they have not been able to apply for a new birth certificate. Unless they apply for, and are granted a GRC and birth certificate (for UK nationals) they will still be legally classed according to their birth sex.

PRESENT

When a trans person is in the clothes of their preferred gender and wish to be treated as that gender they 'present'.

SEX

The physical and biological form of being male or female or both (hermaphrodite or intersexual) or neither (asexual).

'TRANS'

A generic term used by the transexual community.

TRANSITIONAL PERIOD

When a trans person decides to fully live in their preferred gender. They must do so for two years to be able to apply for a gender recognition certificate. Normally during this time they will receive counselling, medication and, if they so wish, prepare for surgery (this can then also be known as the 'pre-operative stage' or the 'real life experience (RLE)').

TRANSVESTISM

It is generally accepted that this refers to men/women who cross-dress with the intention of adopting the appearance, mannerisms and behaviour of women/men. Most transvestites are content with their gender and biological sex and have no desire to permanently alter their body. This is not to say that some transvestites, due to a change or alteration of their life, may not choose to alter their gender at some stage in their life. It is not necessarily a fixed state and can change many times throughout a person's life.

TRANSSEXUALISM/TRANSGENDER

Transgender appears to be the preferred term amongst trans persons as it removes the emphasis away from sexuality and towards gender. It is an acute form of gender dysphoria where a person's perception of their gender is opposite of their biological sex. Some evidence suggests that the condition is now being seen equally in men and women. The accepted ratio is approximately between three male to female (MTF) transsexual people to each one female to male (FTM) but the gap is narrowing especially in the under 30 age group. It is a condition independent of sexual orientation and should not be confused with transvestism.

GENDER RECOGNITION ACT 2004

The following is a summary of the key sections within the GRA 2004.

Applications for gender recognition certificate:

Section 1 – Applications

(1) *A person of either gender who is aged at least 18 may make an application for a gender recognition certificate on the basis of -*



- (a) *living in the other gender, or*
 - (b) *having changed gender under the law of a country or territory outside the United Kingdom.*
- (2) *In this Act 'the acquired gender', in relation to a person by whom an application under Subsection (1) is or has been made, means-*
- (a) *in the case of an application under paragraph (a) of that Subsection, the gender in which the person is living, or*
 - (b) *in the case of an application under paragraph (b) of that Subsection, the gender to which the person has changed under the law of the country or territory concerned.*
- (3) *An application under Subsection (1) is to be determined by a Gender Recognition Panel.*
- (4) *Schedule 1 (Gender Recognition Panels) has effect.*

Section 2 - Determination of applications

- (1) *In the case of an application under Section 1(1)(a), the Panel must grant the application if satisfied that the applicant -*
- (a) *has or has had gender dysphoria,*
 - (b) *has lived in the acquired gender throughout the period of two years ending with the date on which the application is made,*
 - (c) *intends to continue to live in the acquired gender until death, and*
 - (d) *complies with the requirements imposed by and under Section 3.*

NOTE: To clarify Section 1(1)(a), there will be applicants for a GRC that will not have had gender reassignment surgery and may never have the surgery, thereby retaining their original genitalia, but will live and be legally recognised in their acquired gender.

The applicant has to produce certain evidence as set out in the GRA 2004. If successful, a gender recognition certificate (GRC) will be issued to the applicant. A full GRC can only be issued to an unmarried applicant. If the applicant is married an interim GRC may be issued until dissolution or annulment of the marriage is granted. In that case a full certificate may then be issued.

A guide to applying to the Gender Recognition Panel, as laid down in the Gender Recognition Act 2004, has been produced by the Department for Constitutional Affairs and is set out at Annex 1.

Section 9 - General

- (1) *Where a full gender recognition certificate 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).*
- (2) *Subsection (1) does not affect things done, or events occurring before the certificate is issued; but it does operate for the interpretation of enactments passed, and instruments and other documents made, before the certificate is issued (as well as those passed or made afterwards).*





(3) *Subsection (1) is subject to provision made by this Act or any other enactment or any subordinate legislation.*

Once a GRC has been issued, if the person was born within the UK, the Registrar General will be informed and an entry will be made in the record containing the person's birth or adoption. This will permit UK citizens in possession of a full GRC to apply for a new birth certificate should they wish. There are certain occasions where it is necessary to confirm the change in a person's gender by the production of a new birth certificate. These are changes to PNC (recommended for Force IT systems) and pension entitlements.

The issuing of a GRC has implications for the police around 'gender specific offences'.

Section 20 - Gender - specific offences

- (1) *Where (apart from this Subsection) a relevant gender-specific offence could be committed or attempted only if the gender of a person to whom a full gender recognition certificate has been issued were not the acquired gender, the fact that the person's gender has become the acquired gender does not prevent the offence being committed or attempted.*
- (2) *An offence is a 'relevant gender-specific offence' if -*
 - (a) *either or both conditions in Subsection (3) are satisfied, and*
 - (b) *the commission of the offence involves the accused engaging in sexual activity.*
- (3) *The conditions are-*
 - (a) *that the offence may be committed only by a person of a particular gender, a*
 - (b) *that the offence may be committed only on, or in a relation to, a person of a particular gender,**and the references to a particular gender include a gender identified by reference to the gender of the other person involved.*

Sexual Offences Act 2003 Section 1 - Rape of a woman 16 years of age or over

This is an offence that can only be committed by a man on a woman as it specifies 'of a woman with your penis' as part of the offence.

Where an offender was a female at birth, but has since been legally acknowledged as a man by the application and grant of a Gender Recognition Certificate, he will have acquired the male gender at the time of the offence. In this case he is quite capable of committing the offence of rape (subject to all other considerations) and the offence will still be complete as per Section 3(a) above.

Conversely, if a victim was a male at birth but had acquired the female gender at the time of the offence, and is raped by a male, then the offence is similarly made out as per Section 3(b) above.

It also follows that if a male rapes a woman and later the victim or the offender applies for and is granted a Gender Recognition Certificate changing their gender, the original rape is committed based on the gender at the time of the offence.

Section 22 - Prohibition on disclosure of information

- (1) *It is an offence for a person who has acquired protected information in an official capacity to disclose the information to any other person.*



- (2) 'Protected information' means information which relates to a person who has made an application under Section 1(1) and which-
- (a) concerns that application or any application by the person under Subsection 5(2) or 6(1), or
 - (b) if the application under Subsection 1(1) is granted, otherwise concerns the person's gender before it becomes the acquired gender.
- (3) A person acquires protected information in an official capacity if the person acquires it-
- (a) in connection with the person's functions as a member of the civil service, a constable or the holder of any other public office or in connection with the functions of a local or public authority or of a voluntary organisation,
 - (b) as an employer, or prospective employer, of the person to whom the information relates or as a person employed by such an employer or prospective employer, or
 - (c) in the course of, or otherwise in connection with, the conduct of business or the supply of professional services.
- (4) But it is not an offence under this section to disclose protected information relating to a person if-
- (a) the information does not enable the person to be identified,
 - (b) the person has agreed to the disclosure of the information,
 - (c) the information is protected information by virtue of Subsection 2(b) and the person by whom the disclosure is made does not know or believe that a full gender recognition certificate has been issued,
 - (d) the disclosure is in accordance with an order of the court or tribunal,
 - (e) the disclosure is for the purpose of instituting, or otherwise for the purposes of, proceedings before a court or tribunal,
 - (f) the disclosure is for the purpose of preventing or investigating crime,
- (8) A person guilty of an offence under this Section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Guidance on disclosure

Section 22 of the GRA 2004 creates an offence for an individual who has acquired 'protected information' (i.e. information relating to a person who has made an application under the Act) in their official capacity (including as a police officer or police staff) if they disclose this to any other person. It is not an offence under this Section to disclose protected information relating to a person who has applied for a GRC if, among other reasons, the disclosure is for:

- (e) the purpose of instituting, or otherwise for the purposes of, proceedings before a court or tribunal.
- (f) the purpose of preventing or investigating crime.

It is vital, therefore, that gender change information is handled sensitively and professionally, and is **not communicated** to any person inappropriately, where the purpose of the disclosure is not in accord with the legislation above. This will be particularly important where communication is made over airwaves or other insecure method, or where printouts are used.

PNC AND GENDER REASSIGNED MARKER

The GRA 2004 allows a person to apply for a GRC, which has the effect of lawfully changing the person's sex. The recording of a person's sex is a standard entry on most police nominal systems. The Police National Computer (PNC)



is one (but by no means the only) such system. Section 22 will have an impact on the way we use PNC due to the nature of information held and how it is passed to, and between, police officers and staff.

The following national guidelines will be implemented from 1st April 2005.

If at any point during detention the detainee informs the police that they are in possession of a new birth certificate then, subject to documentary confirmation, the National Intelligence Service (NIS) must be contacted by way of fax with the following information - Full Name, Date of Birth, Change of Sex, CRO No/PNCID Number and confirmation that the subject has produced a GRC to show their change of sex. NIS has the responsibility for updating the PNC records to reflect the gender change.

NIS will then undertake to:

1. Add a Gender Reassigned (GR) Information Marker (once PNC functionality has been changed). In the meantime they will enter the words **Gender Re-assigned** on the OD page.
2. Change the sex marker as required.
3. Change the file name to reflect the person's new name.
4. Record their former filename as an Alias Name.

The GR marker is simply to indicate why the PNC subject might have a different entry in a different male or female name. The new name/sex will become the main record and the previous name/sex will become the alias, therefore, creating the link between the two records. The notifying force will be shown as the 'owner' of the information. All original associated records such as fingerprints, court records etc. will remain in the persons original name. All new records will be in the persons new name.

If a person with a criminal record voluntarily attends a police station to notify the police of a change of gender, and they supply the necessary documentation (a new birth certificate), their PNC record will be updated by notification to NIS in exactly the same way as an arrested person.

CHANGE OF IDENTITY

There is no legal obligation on any person in possession of a GRC and a new birth certificate to inform the police that they have changed their name or gender. It is, therefore, quite possible that an arrested person could be released or otherwise dealt with before any link to their previous offending history is known (through confirmation by fingerprints).

This situation may arise currently whenever a person uses a false or assumed name. Recent legislation does allow for fingerprints and DNA to be taken after arrest and before charge for any offence. If there is any doubt over the identity of an arrested person forces are encouraged to take and check fingerprints at the earliest opportunity.



DETENTION AND SEARCHING

The relevant legislation regarding both detention and searching is contained within the Codes of Practice issued under the Police and Criminal Evidence Act 1984 (PACE) and, more recently the Human Rights Act 1988, Article 8 – Right to Family and Private Life.



NOTE:

- ◆ A failure to comply with any provision of the Codes may make a police officer or member of police staff liable to disciplinary proceedings.
- ◆ The Act also stipulates that persons other than police officers who investigate offences (e.g. store detective) or charge offenders must have regard to the Codes.
- ◆ However, a breach of the Codes by a police officer or any other such person will not, of itself, render him or her liable to any criminal or civil proceedings.
- ◆ Evidence obtained in breach of the Codes may be held inadmissible in any subsequent court case.
- ◆ Some aspects of the law in relation to the searching and detention of trans persons are capable of different interpretations. ACPO is committed to applying the statutory provisions in a way that is fair and respects the individual's dignity.

A number of forces have developed 'good practice' in this area. This guidance is promulgated as best practice based on those policies.

Detention

If there is any question over the detained person's gender you should ask the individual in which gender they wish to be addressed. A person who is 'en femme' may be comfortable with their male birth gender and wish to be treated as such. They may want to be addressed and dealt with as a female as that is the gender they identify with. Never assume sex or gender identity, each trans person will be unique in how they want to be treated. If asked sensitively you will not offend and you can simplify the process.

There will be some individuals that will not be confident enough to declare their transgenderism to the police. This could lead to a situation where the individual is being dealt with in a way that makes the whole interaction uncomfortable, even traumatic, for them. If you suspect transgenderism treat the detained person with sensitivity, but do not force the issue.

It must be considered that many transvestites are not 'out' within their family or work environment. They may leave one venue wearing one type of clothing and arrive at another wearing something different. Dressing as a female en-route to a venue and changing on the return journey is common and could lead to police attention.

Arrest and the fear of exposure could be traumatic for those individuals. Everything should be done to ensure that we do not expose their cross-dressing to others. Some transvestites, on advice from support groups such as The Beaumont Society, will disclose their identity immediately when questioned by the police. They should be offered washing facilities and a change of clothing if they do not have access to their own, before being interviewed or released from custody. This will allow them to retain their dignity whilst in our custody and protect them on release.

A 'custody record' must be opened for all arrested persons in police detention. All information relating to the detention must be recorded as soon as practicable in this record. Although not specifically included in the Code, it is recommended that any decision reached regarding a detained person's gender should be fully recorded and explained in the custody record. The decision should be communicated as soon as practicable to the detainee, who should be invited to sign the record to indicate his/her agreement or disagreement.

While in custody a detained person may be placed in a cell or other secure room. The Code stipulates that so far as practicable, not more than one person shall be detained in each cell. Because of the potential vulnerability of trans persons, it is recommended that such persons should be detained in a cell on their own.



Searching

Code of Practice A to PACE governs the exercise by police officers of their statutory powers to stop and search someone, without first arresting that person.

Paragraph 3.1 states:

'All stops and searches must be carried out with courtesy, consideration and respect for the person concerned. This has a significant impact on public confidence in the police. Every reasonable effort must be made to minimise the embarrassment that a person being searched may experience.'

Paragraph 3.6 states:

*'Any search involving the removal of other 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.***

The application of PACE - Code A and The Human Rights Act 1998 (HRA) - Article 8, in their application to trans people can cause some confusion and it is helpful to set out good practice for police staff. Remember that the HRA is likely to take precedence over PACE in any subsequent inquiry into why something was done in a particular way.

Where a male to female (MTF, but exactly the same issues arise for FTM) transgender person asks to be searched by a female officer (or male in the case of FTM), then, depending upon where they are in the transitional process, the legal position regarding a person's biological sex at birth may create a technical infringement of paragraph 3.6.

However, if this is the specific request of the person being searched, and the decision is fully documented, under HRA, Article 8 (right to respect for private and family life) the detainee will be exercising that right. Such a search will comply with paragraph 3.1 above by reducing any embarrassment to a minimum. It is an absolute requirement that the custody record reflects all the actions taken by custody staff to comply with the detainee's requests.

If a person of the requested gender to conduct the search is not available, or is available but is not comfortable with the search, and there is no other member of staff of the requested gender available to conduct the search, this must be fully recorded on the custody record.

Particular sensitivity is required when searching someone who is in the 'transitional phase' of gender assignment. At this time they will be presenting in their preferred gender and they will feel that they are a person of that gender. They will still have the genitalia of their birth sex. For such a person being searched by an officer of the same birth sex can be extremely traumatic. In this case the views of all parties to the search should be fully taken into account before reaching any decision on who should conduct the search.

Where a detainee has been granted a GRC they must, in every respect, be treated as a person of the new acquired sex recognised by the gender recognition panel. To do otherwise would be unlawful. For some people in possession of a GRC, for medical reasons, gender reassignment surgery is not an option. Even though they are legally classed as a person of their acquired gender they may still have the genitalia of their birth sex.

Strip and Intimate Searches

In certain prescribed circumstances a person in detention may be subject to further intrusive searches. Annex A to Code C relates to 'strip' and 'intimate' searches.



A 'strip' search is a search involving the removal of more than outer clothing. In this Code, outer clothing includes shoes and socks. A strip search may take place only if it is considered necessary to remove an article that a detainee would not be allowed to keep, and the officer reasonably considers the detainee might have concealed such an article. Strip searches shall not be routinely carried out if there is no reason to consider that articles are concealed.

Paragraph 11 states:

When strip searches are conducted:

- (a) *a police officer carrying out a strip search must be the same sex as the detainee;*
- (b) *the search shall take place in an area where the detainee cannot be seen by anyone who does not need to be present, nor by a member of the opposite sex except an appropriate adult who has been specifically requested by the detainee;*
- (c).....
- (d) *the search shall be conducted with proper regard to the sensitivity and vulnerability of the detainee in these circumstances and every reasonable effort shall be made to secure the detainee's co-operation and minimise embarrassment.*

In these situations if it is possible to accommodate the detainee's request to be searched by an officer of their choice this should be done. This will minimise embarrassment to the detainee and will demonstrate regard to their sensitivity and vulnerability.

Equally an officer or member of police staff must not be compelled to complete a search that they are not comfortable with if requested to search a trans person.

An 'intimate' search under PACE consists of the physical examination of a person's body orifices other than the mouth.

Intimate searches of persons arrested and in police detention may be authorised by an officer of inspector rank or above. The authorising officer *'must have reasonable grounds for believing that such persons may have concealed on themselves either anything which they could and might use to cause physical injury to themselves or others at the station or a Class A drug which they intend to supply to another or to export and an intimate search is the only means of removing those items'*.

Code C, Annex A, paragraph 6, stipulates that where an intimate search for an article, which could be used to cause injury, is carried out by a police officer, the officer must be of the same sex as the detainee. A minimum of two people other than the detainee must be present during the search. Subject to one exception (relating to juveniles or mentally disordered/vulnerable persons) no person of the opposite sex, who is not a medical practitioner or a nurse, shall be present, nor shall anyone whose presence is unnecessary. The search shall be conducted with proper regard to the sensitivity and vulnerability of the detainee.

Where a detainee has been granted a GRC they should be dealt with as a person of their acquired sex.

Where a transgender person has not been granted a GRC but they are in a period of transition leading to an application for a GRC, unless it is urgent, it is recommended that a medical practitioner should be called to conduct an intimate search. If urgent and the detainee has expressed a view on who they would be more comfortable with searching them then we should attempt to comply with their wishes on the grounds of respecting the sensitivity and vulnerability of the detainee and minimising embarrassment. All decisions made and the reasons for making them should be fully recorded and explained in the custody record. The signed consent of the detainee to support the decisions made must be included in the custody record.



Custody staff should be mindful of what medical treatment the person is undergoing. Pre-operative transgender people may well be on medication and receiving counselling. This could have an impact on their mental state of mind. Anyone who is recently post-operative will also have medical requirements and these should be taken into consideration, if being detained.

TRANS VICTIMS AND WITNESSES

As with trans employees, alleged trans victims and potential witnesses will need to be treated with the same respect for their privacy whether or not they have a GRC. If they do have such a Certificate, any leakage of such information could result in a criminal prosecution. A tactful, sensitive approach to the use of titles and names is required, especially if a court appearance is likely. If a change of name and /or gender status has occurred since any alleged incident, the implications will need to be addressed with the CPS and possibly with Witness Support. If it appears that it will be necessary to make such disclosure of sensitive information to lawyers and court staff, it is advised that the extent of this disclosure be negotiated and agreed with the trans person and that, where a GRC is held, written consent is given. No unnecessary or irrelevant information must be disclosed. Any records, involving GRCs held by trans individuals, which could give rise to 'outing' them, must be properly secured and not unnecessarily shared with other personnel. The usual courtesy of facilitating the use of appropriate toilets, will need to be extended from the police station precincts, to the court concourse.

EMPLOYMENT OF TRANSGENDER STAFF

All staff, volunteers, applicants and members of the public have the right to be treated with fairness, dignity and respect to ensure that the working environment is fair and supportive to individual needs.

The Protective Legislation relating to trans employees is the Sex Discrimination Act (Gender Reassignment Regulations) 1999. These regulations clarify UK domestic law relating to gender reassignment and prevent discrimination against trans people on the grounds of sex in pay, treatment in employment and vocational training. The effect of the regulations is to insert a provision that extends the Sex Discrimination Act 1975 (SDA 1975) to include individuals who intend to, or have undergone, gender reassignment. Employers/employees who breach the SDA 1975 in respect of discrimination on gender reassignment grounds will be liable in the same manner as they would, for example, for discrimination against a woman on the grounds of her sex.

The individual is protected by the SDA from the time they indicate that they intend to undergo gender reassignment. As well as protecting individuals from discrimination in recruitment and employment, harassment of an individual on the grounds of gender reassignment, either by his or her employer or by fellow employees, will give rise to unlawful discrimination and potential criminal offences.

The Regulations are used to clarify UK law relating to gender reassignment and reflect a ruling by the European Court of Justice, which effectively established that any form of discrimination against an employee undergoing gender reassignment is contrary to the European Equal Treatment Directive. The UK and all member states are obliged to implement such European law. The law gives protection to individuals at all stages of the gender reassignment process.

The law in respect of less favourable treatment of a person prohibits discrimination on the grounds that she/he 'intends to undergo, is undergoing or has undergone reassignment'. To fall within the regulations an employee would need more than just a wish to change gender. He or she must actually intend to commence the process of change under medical supervision. This would also cover those who are undergoing medical and/or psychiatric and/or psychological evaluation prior to any treatment being given.



HARASSMENT/VICTIMISATION

Harassment of an individual on the ground of gender reassignment - either by his or her employers or by fellow employees - will be seen as unlawful discrimination.

The regulations make it unlawful to victimise a person on the grounds of their gender reassignment in just same way, as it would be to victimise them as a result of their race or sex. It is equally unlawful to victimise someone who gives evidence on behalf of a person who has complained.

LEGAL STATUS OF TRANS MEMBERS OF STAFF

The Gender Recognition Act 2004 will, as of April 2005, allow individuals to legally apply for a GRC and, as a consequence, legally change their sex. They will be able to permanently alter their employment records to reflect their new acquired gender. Staff must be aware of the prohibition of disclosure as discussed above when disclosing such information. Each individual is entitled to their privacy and this must be respected.

The Human Rights 1998, Article 8 - right to respect for private and family life, and Article 10 - freedom of expression, are also highly relevant in this respect.

Whilst the searching of a detained person is explained earlier there are potential operational implications for a trans member of staff which should be seen in the light of 'is the member of staff in possession of a GRC?'

Where an officer or member of police staff has been granted a GRC they should be identified as a person of their acquired sex. Accordingly they should be able to search a detainee of that same sex without any reference being made to the fact that they have acquired a new sex. Indeed any such reference would be a breach of Section 22, GRA 2004

Under PACE it is not the norm for a search to be conducted on any person by a person of the opposite sex. Before the gender is changed through the grant of a GRC, a persons gender is identified and fixed as being that declared on their original birth certificate (as stated by PACE). Therefore, any trans member of staff who is living in their preferred gender (say for example a male living as a female) but without a GRC, they will not be able to search a person of that gender (female). Each force will need to assess their own policy and decide how they will deal with such a situation. It must be remembered that any action may result in the status of the trans person being identified and, therefore, must be carefully considered.

Individuals should always be addressed in the terms in which they identify and present themselves. An individual who presents and identifies as a male should be referred to as 'Mr' or he, and a person who presents and identifies as a female should be referred to as 'Miss, Ms, Mrs' or she.

PERSONAL RECORDS AND REFERENCES

Forms used for security checks and medical screening will seek information that could lead to identification of transgender status. This information will remain 'confidential' and the disclosure of this information will be restricted to those personnel closely involved who will be expected to honour that confidentiality. Section 22 of the GRA 2004 creates a criminal offence if this information was inappropriately disclosed.

Individuals in possession a new birth certificate will be entitled to a full update of their personnel records to reflect their new sex.

Everyone, male and female, born after April 1955 will be entitled to their state pension at 65. Women born before 1950 can claim a state pension at 60 and those born between 1950 and 1955 can claim it at a point between 60



and 65. Trans persons who acquire a new birth certificate will be treated in the same way as every other person of that acquired sex. Those who do not apply for a new birth certificate will be treated as their birth sex and may, therefore, have an apparently late or early retirement. It is the responsibility of the employer to take suitable steps to maintain confidentiality as to the reasons behind this.

It should be remembered that matters relating to trans staff must be handled sensitively. Personal information must be treated with confidentiality and with due regard to the Data Protection Act as well as the GRA 2004.

TIME ALLOWED FOR MEDICAL TRANSITION

The Sex Discrimination Act (Gender Reassignment) Regulations 1999 do not specify a minimum or maximum time employers should allow a person undergoing medical and/or surgical treatment related to the process of their gender reassignment. However, an employer must not treat any less favourably a person absent while undergoing gender reassignment than they would treat a person absent due to illness or to some other cause (e.g. prolonged absence to nurse a relative).

USE OF SINGLE SEX FACILITIES

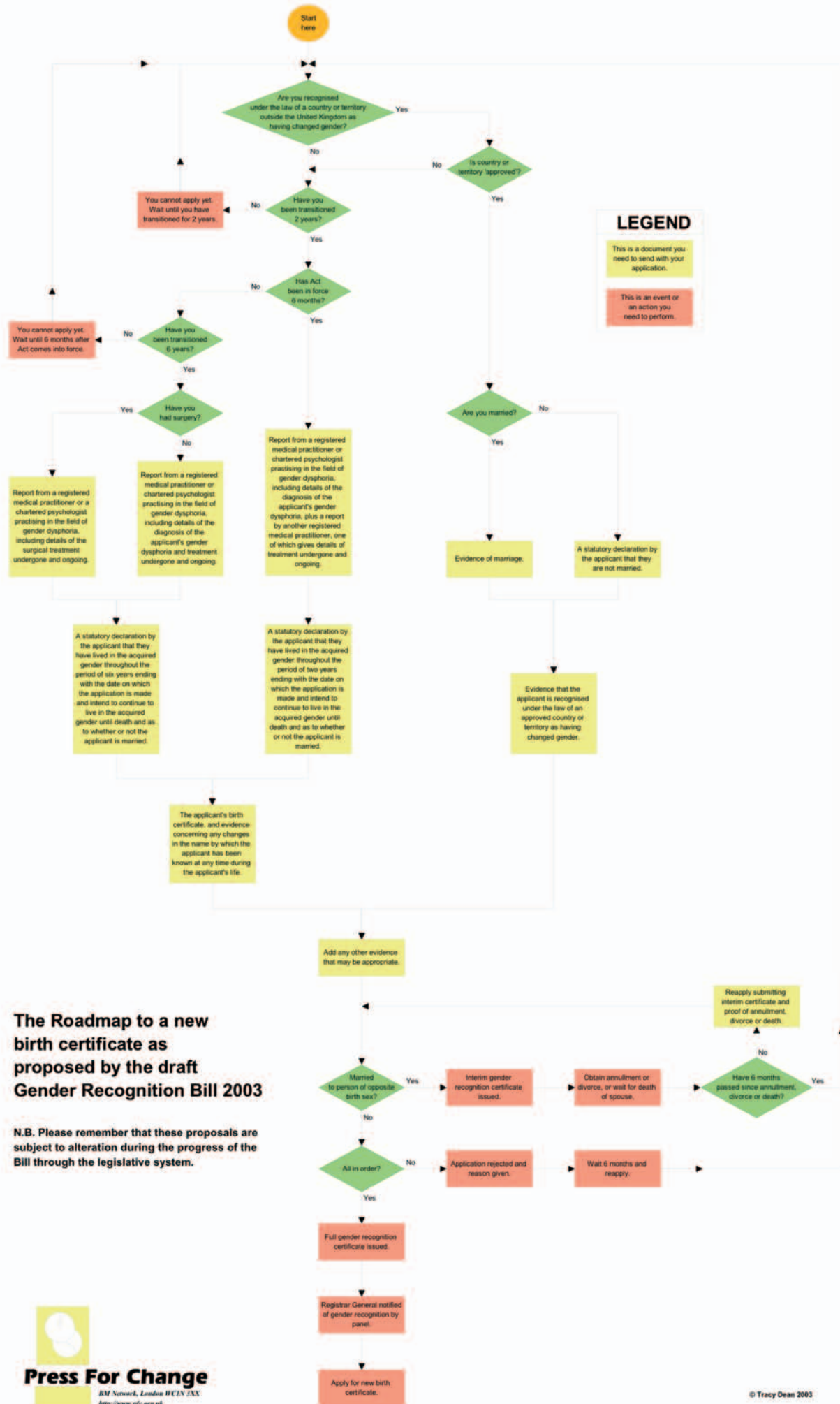
The employer and employee should agree the point at which the use of facilities such as changing rooms and toilets should change from one sex to another. An appropriate point for a change in use of the facilities to those of the employee's 'new' sex may, for example, be the point at which the individual begins to present permanently in the sex to which they identify.

It is not acceptable to insist, for the long term, on a transgendered employee using separate facilities, for example a disabled toilet. Such long term use could be seen as a breach of the Sex Discrimination Act (Gender Reassignment Regulations) 1999. Other staff may express concerns but that will not justify, in law, discriminatory treatment. Trans employees are entitled to expect support from their employer including any necessary discussions and explanations with other members of the workforce or members of the public.

Similarly, a trans employee should be granted access to 'men only' or 'women only' areas according to the sex which they permanently present. Extra care and sensitivity needs to be taken in the case of FTM employees who will not be able to use urinals.

MEMORANDUM OF UNDERSTANDING WITH TRANSITIONING INDIVIDUALS

All agreements arising from the initial meetings with an individual intending to transition should be drawn up into a written 'Memorandum of Understanding'. This will not only cover time off for medical treatment and use of single sex facilities but also: form of address, timings of the transition process, communication with and training for colleagues and other staff, dealing with the press, revised duties and uniform change, warrant card/ID, search exemption certificate, liaison with CPS in respect of current cases and confidentiality of personal information, including the location of copies and who should have access. The transsexual member of staff and their Service Unit Manager should sign this document. It should then be reviewed at least every three months, but should also be reassessed at each significant stage of the process.





ANNEX 2 - SOURCES OF ADVICE AND INFORMATION

This is by no means a comprehensive list of organisations, but may be a helpful starting point when trying to find information and help on transgender issues.

CLARE PROJECT

0870 225 6401

Website www.clareproject.org.uk

Access to experienced gender counselling

DEPEND

BM Depend, London, WC1N 3XX

Email- info@depend.org.uk

Website www.depend.org.uk

Offers support for all family members

FTM LONDON

BCM FTM London, WC1n 3XX

Email- info@ftmlondon.org.uk

Website www.ftmlondon.org.uk

FTM NETWORK

0161 432 1915 (Wed 2000-2230hrs)

FTM Network, BM Network, London WC1N 3XX

website www.ftm.org.uk

GENDER RECOGNITION PANEL

0845 355 5155

P.O. Box 6987, Leicester, LE1 6ZX

Website www.dca.gov.uk/constitution/transsex

GENDER TRUST

01273 234024

Persia West

PO Box 3192, Brighton, BN1 3WR

Website www.gendertrust.org.uk

Email: info@gendertrust.ork.uk

(Persia also runs Gender Diversity Training Days)

GENDY'S

BM Gendy's, London WC1N 3XX

GERRY SMALL

07940 706413

e-mail GerryS@lgbtag.org

FTM Community



GIRES (GENDER IDENTITY RESEARCH and EDUCATION SOCIETY)

01372 801554

Melverley, The Warren, Ashted, Surrey, KT21 2SP

website www.gires.org.uk

LANCASHIRE HEAL (HEALTH EDUCATION AIDS LIAISON)

0845 6000184 OR 01695 720044

West Lancashire H.E.A.L., OFFICE 3, Ecumenical Centre, Firbeck, Northway, Skelmersdale, Lancashire, WN8 6PN

Website www.lancashireheal.co.uk

MERMAIDS/MERMEN

Helpline 07020 935 066 (1200-2100hrs)

Mermaids, BM Mermaids, London, WC1N 3XX

Email- Mermaids@freeuk.com

Website www.mermaids.freeuk.co

For children and teenagers and their families

MIND OUT

01273 739847

79 Buckingham Road, Brighton, BN1 3RE

NORTHERN CONCORD

P.O. Box 258, Manchester, M60 1LN

Website www.northernconcord.org.uk

PRESS FOR CHANGE

BM Network, London, WC1N 3XX

Website www.pfc.org.uk

(Not a support group but a political lobbying and educational organisation)

THE BEAUMONT SOCIETY

24 Hour Information Line 0158 412220

27 Old Gloucester Street, London WC1N 3XX

Website www.beaumontsociety.org.uk

THE BEAUMONT TRUST

Helpline 07000 287878 (Tue/Thu 1900-2300hrs)

Beaumont Trust, BM Charity, London WC1N 3XX

Website www.members.aol.co.uk/Bmonttrust

THE GENDER TRUST

Helpline 07000 790 347 Office 01273 234024

P.O. Box 3192, Brighton, BN1 3WR

www.gendertrust.org.uk

THE RUBICON SOCIETY

Helpline 020 8252 2623 of 07891 613367

London – provides national advice

(provides help, advice and support for those with gender dysphoria and their families)



THE RUBICON TRAINING AND DEVELOPMENT

020 8252 2623 OR 07891 613367

(provides training, policy and management consultation to companies, statutory and voluntary organisations, to enable safe transition for employees/volunteers already within organisations and those who wish to proactively recruit people undergoing or having undergone transition/gender reassignment)

THE WOMEN OF THE BEAUMONT SOCIETY (WOBS)

Helpline - 01223 441246 (1930-2230hrs)

BM WOBS, London WC1N 3XX

TRANS-ACTION

0115 958 7408

Nottingham region

TRANSGENDER- UK

0151 709 1432 (24 hour answerphone)

TRANSGENDER- UK, 136 Bedford Street South, Liverpool L7 7DB

Website www.transgender-uk.info

TRANSLIVING

Transliving, P.O. Box 3, Basildon, Essex SS14 1PT

WESTERN BOYS

Helpline (answerphone service) 07811 814302

Website www.westernboys.co.uk

covers the south-west region



ANNEX 3 - EXPERIENCES OF TRANS PEOPLE WITH THE POLICE

Not all experiences are bad!

'I have only ever had minor dealings with the police and they were excellent'

Manchester

'Never had any problems with me being out dressed, always found them very easy to talk to'

Manchester

'Got stopped and the policeman was OK, he checked the vehicle on me, as if I would nick a car in a dress'

South Yorkshire

'The police have been very good when I've had dealings with them. On one occasion though the officer was a little embarrassed when I gave him my driving documents in male name and I was dressed as a female. He clearly didn't know what to say other than that's OK you can go'

West Yorkshire

