

**Immigration and Border Policy Directorate
Criminality and Enforcement Policy**

Title	Detention Services Order 11/2012		
	Care and Management of Transsexual Detainees		
Process	Accommodating and managing transsexual detainees		
Implementation Date:	February 2015	Review Date:	June 2017

CONTAINS MANDATORY INSTRUCTIONS

For Action

DEPMU, immigration removal centres, residential and non-residential STHFs, pre-departure accommodation, escorting officers

Author and Unit

Detention policy, criminality and enforcement policy, immigration and border policy directorate

For Information

All detention operations and service providers' staff

Owner

Assistant director, detention policy, criminality and enforcement policy, immigration and border policy directorate

Contact Point

Detention policy

Processes Affected

Allocation of transsexual detainees to accommodation and their management in detention.

Assumptions

All staff will have sufficient knowledge to follow these procedures.

NOTES

This DSO replaces DSO 11/2012 version 2.0, which is cancelled.

Issued 24 June 2015

Version 2.1

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Detention Services Order 11/2012

Care and management of transsexual detainees

1. Introduction

- 1.1. A transsexual person, as defined by the Equality Act 2010, is a person who is proposing 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.
- 1.2. The gender in which the transsexual person lives or proposes to live is known as that person's acquired gender.
- 1.3. Immigration removal centres (IRCs), short-term holding facilities (STHFs), pre-departure accommodation (PDA), holding rooms and escorting officers must treat transsexual detainees as members of the gender in which they live. Detainees who consider themselves transsexual, and who have undergone, are beginning to undergo, or wish to begin gender reassignment, must be permitted to live permanently in their acquired gender.
- 1.4. Although the general principles set out in this DSO will apply to holding rooms and escorts, only the specific guidance in section 3 on searching will be relevant in these settings. References to "centre" in this document denote IRCs residential STHFs and PDA.
- 1.5. If a detainee presents as male, he should be treated as male; and if a detainee presents as female, she should be treated as female. If there is uncertainty about a detainee's gender, the detainee should be asked which gender they consider themselves to be and treated accordingly, if appropriate. Where the detainee expresses a preference to be treated as a particular gender, this should be recorded and the detainee asked to sign the record. A care plan, covering issues such as searches, accommodation and other relevant matters, will also need to be agreed with the individual detainee (see section 2 below). Where there is doubt about a detainee's gender and the detainee is unwilling to state the gender they consider themselves to be, they should be dealt with according to the gender indicated in official documentation such as a passport or birth certificate.
- 1.6. Where staff need to ask detainees about their gender, they should be mindful of the need to treat everyone with sensitivity and respect.
- 1.7. This DSO contains guidance on the care, management and treatment of transsexual detainees. It covers living in an acquired gender role, where to locate the person in the detention estate, searching, and explains the legal position. It

does not cover medical treatment, which would be a clinical matter for the healthcare team at the centre in which the detainee is located.

- 1.8. A short guide containing information to help staff manage transsexual detainees appropriately is available at Annex C. The guide should be used in conjunction with the rest of this document.

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2. Care plan

- 2.1. Transsexual detainees at all stages of the gender reassignment process must be asked if they wish to enter into a voluntary written agreement (care plan) in respect of their stay and treatment whilst at the IRC, PDA or residential STHF. The advantages of entering a plan should be explained to the detainee.
- 2.2. The purpose of the care plan is to provide clear information for the detainee and staff about the requirements, obligations and entitlements in respect of the individual detainee. The care plan should be drawn up by local management and should cover issues such as accommodation, dress code, facilities and searching. The arrangements for searching must be clearly set out, including the gender of searching staff. See Annex A for a suggested care plan, which can be adapted for local use.
- 2.3. The signing of the care plan must be voluntary and there must be scope for it to be amended where necessary. Detainees will be able to withdraw from the care plan at any time.
- 2.4. Transsexual detainees who do not wish to sign a care plan, or who subsequently withdraw from one, may, depending on the particular circumstances of the case, have to be treated as the gender indicated in their passport or birth certificate.

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3. Searching

- 3.1. It is recognised that a full search of a transsexual detainee may cause some practical difficulties. A primary consideration must be to maintain the detainee's dignity although it is recognised that there is also a need to be sensitive to the dignity of staff who may not feel comfortable with searching detainees who may not have undergone surgery or may be in the process of undergoing surgery and have physical attributes of the gender opposite to that in which they are living and opposite to those of the member of staff.
- 3.2. Under no circumstances should a physical search or examination of a detainee be conducted for the purpose of determining their gender. Nor may a detainee be asked whether they have a UK Gender Recognition Certificate (see 5.4 below) although they may volunteer this information. Staff must ensure that the handling of any information so volunteered is consistent with the confidentiality requirements of

the Data Protection Act 1998 and Gender Recognition Act 2004 (see sections 5.3 and 5.4 below).

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Full searches

This section explains how to ensure that searches are conducted in an appropriate way. Examples of how to search are given, but they are not exhaustive and each case must be treated sensitively on its individual merits.

Legally and fully physically one sex, but transitioning to the other

- 3.3. Detainees transitioning from male to female, but who are currently legally and fully physically male, would be full searched by male officers and detainees transitioning from female to male, but are currently legally and fully physically female, would be full searched by female officers.
- 3.4. Searches should be carried out with proper regard to the sensitivity and vulnerability of the detainee concerned and every reasonable effort made to secure their co-operation and to minimise embarrassment. The detainee, in these circumstances, has no right to insist on being searched by staff who are of the opposite sex. Staff should bear in mind that receipt of treatment may not be evident – any claim in such circumstances must be considered before a reasonable decision is reached as per paragraph 3.6 – 3.8 below.

Legally one gender, physically the other

- 3.5. For detainees who have completed surgery and treatment who, whilst legally of one gender, are in all or most other respects physically identical to the opposite sex, it may be appropriate for staff who are the same gender as the detainee's acquired gender to search the detainee despite the lack of legal recognition. This will need to be decided on a case by case basis and reference made to the care plan where one is in place. In these instances, a male to female transsexual detainee with female genitalia can be asked to agree to be full searched by female officers and female to male transsexual detainees with male genitalia can be asked to agree to be full searched by male staff.
- 3.6. In cases where the detainee and centre staff are not able to reach agreement on the gender of the staff member to undertake the search, the centre has the right to require whatever searching arrangements are considered to be the most appropriate in order to provide an effective searching strategy.
- 3.7. Proper consideration must be given to the wishes of the detainee and these should be respected unless there are good grounds to provide for different arrangements.
- 3.8. The decision taken and the factors considered in making the decision must be documented.

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Rub down searches

- 3.9. Rub-down searches are categorised as either level A or level B. Neither level involves removal of clothes and the rub-down process does not involve contact with genital or breast areas. In this type of search, the main issue is not physical appearance and genitalia but the potential vulnerability of the detainee and whether he or she would feel the same vulnerabilities as, say, a woman might have if she were to be rub-down searched by a man.
- 3.10. Male staff may only carry out rub-down searches of transsexual detainees, following a full assessment and agreement of a care plan, taking into account the potential vulnerability of the detainee, in circumstances in which this is deemed by the IRC/STHF to be most appropriate and seemly for the detainee.
- 3.11. Female staff are allowed to carry out rub-down searches on all detainees irrespective of their gender (except for male detainees with a religious or cultural objection to being searched by a female member of staff). There are therefore no restrictions on female staff carrying out rub-down searches of transsexual detainees.
- 3.12. Transsexual people of some faiths may find it unacceptable to be subject to a search by a member of the opposite sex, even if other factors indicate this might be necessary. So, for example, where a male to female transsexual person, irrespective of their legal gender or surgery, has a religious or cultural objection to being searched by a female member of staff, the detainee should be searched by a male member of staff.

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Issues of which staff need to be aware

- 3.13. Staff need to be aware that transsexual people may go to great lengths to 'pass' as their acquired gender. Officers should be aware of some of the things they may find about a person that enable them to 'pass'. For example:
- Female to male transsexual detainees may bind their breasts prior to chest surgery in an attempt to create a male looking chest area. A rub-down search may detect the bindings and raise concerns – it will probably not be known to any person carrying out the search what the bindings are for and that they are not worn for the purpose of concealing any illegal substances/items. Bindings may be very tight fitting vest tops, neoprene back supports worn across the breasts or elastic type bandages swathed around the breast area.
 - Female to male transsexual detainees may wear a prosthetic penile device. Such devices may be attached to the body by surgical adhesive; may be held in place by straps or other attachments; or may be loose within underwear. These devices come in different forms; some are designed simply to be worn as "packers", whilst others are more complex designs with additional features to

simulate realistic functions. Prosthetic devices tend to be quite expensive and may not be affordable to all – in these cases other materials may be used, for example: rolled up socks; or condoms filled with substances such as hair gel then tied up and inserted into another condom which may then in turn be placed into a sock.

- Male to female transsexual detainees may wear wigs.
- Male to female transsexual detainees may pack out bras with silicone devices (artificial gel implants or breast forms) or cotton wool.

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4. Accommodation

Location in the estate

- 4.1. Rule 10 of the Detention Centre Rules 2001 requires that female detainees must be provided with sleeping accommodation separate from male detainees.
- 4.2. In most cases, detainees must be located according to their gender that would be recognised under UK law. Where there are issues to be resolved, such as a detainee presenting in a gender opposite to the one that would be recognised under UK law, a discussion should take place promptly to consider the most appropriate location and involve all or some of the following, depending on the circumstances: AD DEPMU (or deputy), the Immigration Enforcement Delivery Manager, IRC Manager (or deputy) and IRC healthcare, and a multi-disciplinary risk assessment should be undertaken to determine how best to manage a transsexual detainee's location.
- 4.3. A male to female transsexual person recognised as female under UK law is legally entitled to be located in the female estate.
- 4.4. Similarly, a female to male transsexual person recognised as male under UK law is legally entitled to be located in the male estate.
- 4.5. Some transsexual people will have reached a point (e.g. partially or fully completed surgery and treatment) 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 recognise them in their acquired gender. In such cases, DEPMU would have to make a judgement, in consultation, as appropriate, with the persons mentioned in 4.2 above, as to the most appropriate accommodation in which to place the person, based on the individual circumstances of the person concerned. If a decision is made to place the detainee in the estate opposite to the gender recognised in law, the detainee must be provided with their own room so as not to breach Rule 10 of the Detention Centre Rules 2001.
- 4.6. In considering allocation to male or female accommodation, the following factors should be taken into account:
 - The risks to the individual from other detainees in male or female accommodation;
 - The risks from the individual to other detainees in either male or female accommodation;
 - Where the detainee would feel most comfortably housed and the reasons for this. Detainees 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 detainees, 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 detainee would be likely to spend an extended period in isolation (whether under Rule 40 or Rule 42) if located in the estate of the detainee's acquired gender;
 - Whether the detainee has a formal diagnosis of gender dysphoria and/or can demonstrate that they have lived full-time and exclusively in their acquired gender for a minimum of two years.
- 4.7. If a transsexual detainee requests location in the estate for the gender opposite to their gender recognised under UK law, a discussion, as outlined in 4.2 above, should take place, with participants considering all relevant factors before a decision is made. Where a decision is taken to accept the transsexual detainee's request, he/she must be provided with his/her own room to ensure compliance with Rule 10 of the Detention Centre Rules 2001. If there is any doubt, it is advisable to seek advice from Detention Policy Team, Immigration and Border Policy Directorate and Home Office Legal Advisers. Specific reasons must be documented in any case where a transsexual detainee's request concerning location in the estate is rejected. Requests from service providers for such advice should be made via the DEPMU Assistant Director (or deputy) or the Immigration Enforcement Delivery Manager for the centre concerned.
- 4.8. Under no circumstances should a physical search or examination of a detainee be conducted for the purpose of determining their gender. Nor may a detainee be asked whether they have a UK Gender Recognition Certificate (see 5.4 below) although they may volunteer this information. Staff must ensure that the handling of any information so volunteered is consistent with the confidentiality requirements of the Data Protection Act 1998 and Gender Recognition Act 2004 (see sections 5.3 and 5.4 below). The detainee should be placed according to the best evidence available. If it subsequently emerges that a transsexual detainee has been placed in the estate opposite to the legally recognised gender, a transfer must be arranged as soon as possible unless the detainee requests location in this estate (see 4.7 above) or if the consideration outlined in paragraphs 4.5 and 4.6 above would be likely to result in no change of location.

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Risk management

- 4.9. Centres must produce a management care plan outlining how the individual will be managed safely and decently within the detention environment. Advice on producing this may be sought from the National Offender Management Service's (NOMS) Equalities Group (Equalities.Group@noms.gsi.gov.uk).
- 4.10. When producing management care plans outlining how the individual will be managed safely and decently within the detention environment, in addition to seeking advice from the NOMS Equalities Group, advice can be sought from staff responsible for equalities issues locally as well as the healthcare team.
- 4.11. Transsexual detainees should generally be viewed as presenting a higher risk of suicide and self-harm than other detainees. Assessment, Care in Detention and

Teamwork (ACDT) procedures should be utilised for any detainees at risk of suicide or self-harm. Staff should also be alert to the fact that transsexual detainees are likely to be at increased risk of bullying and harassment. The centre's anti-bullying strategy or care plan for the individual should contain measures to mitigate this risk.

4.12. Any risks to and from a transsexual detainee must be identified and managed appropriately, as would be the case with any other detainee. Centres 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.

4.13. It may be useful for centres to have in place advice/guidance and training about gender reassignment and the prevention of transphobia for staff who may be required to work with transsexual detainees.

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Respecting gender identity

4.14. Difficulty accommodating someone living in their acquired gender will not normally and on its own constitute grounds for transferring a detainee to another centre.

4.15. Transsexual detainees should be offered as wide a regime of activities as other detainees.

4.16. Particular care should be taken where the detainee is likely to be held separately from other detainees as the effects of this, if protracted, may have mental health consequences for the detainee. This is the case even where the detainee consents to being held separately. Any decision to isolate the detainee should be made very carefully and, if appropriate, be supported by legal and/or medical advice.

4.17. Detainees should be allowed to dress according to their acquired gender, i.e. male to female transsexual people should be able to wear female clothing and female to male transsexual people able to wear male clothing. This includes where the detainee is located in a centre opposite to the presented gender because this is different from the gender recognised under UK law.

4.18. 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 (see 3.13 above). Regardless of their level of sophistication, access to these must only be restricted in exceptional circumstances.

4.19. These items may only be prohibited when it can be demonstrated that they present a security risk which cannot be reasonably mitigated. Any restriction of these items could be subject to legal challenge. If a centre decides to apply restrictions, it must be able to provide a detailed and reasonable justification for doing so.

4.20. 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 although containers may need to be modified, if justified by risk assessment.

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5. Legal Background

5.1. Equality Act 2010

- 5.1.1. 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.
- 5.1.2. The Equality Act 2010 also extends the public sector equality duty fully to gender reassignment. This duty requires that a public authority 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.

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5.2. Human Rights Act 1998

- 5.2.1. 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.
- 5.2.2. 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.
- 5.2.3. 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.

5.2.4. If the Home Office, or its service provider, acts in a way that interferes with a transsexual person's personal autonomy, preventing that detainee from living fully in that detainee's acquired gender irrespective of whether they have legal recognition in the UK, then they may be liable under the Human Rights Act 1998 for violation of Article 8 of the European Convention on Human Rights. Consideration must therefore be given to whether there is any interference with Article 8 when taking decisions regarding transsexual detainees.

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5.3. Data Protection Act 1998

5.3.1. The Data Protection Act 1998 (DPA) sets out the circumstances in which personal data can be processed (including whether it can be shared with other organisations). Information about an individual's gender history or gender reassignment would be considered to be **sensitive** personal data under the Act. Therefore any processing of this data must be in line with the common law duty of confidentiality, the DPA, including meeting one of the conditions in Schedule 2 and Schedule 3 to the Act and Article 8 of the ECHR. In most cases the Home Office (and service providers acting on the Home Office's behalf) would be able to process this data as it is required for the exercise of government functions. However, staff will also have to ensure that any processing is proportionate and for a legitimate aim. For further guidance on this, Home Office Immigration Enforcement staff should refer to the Manage Information page on Horizon, which includes information on [Sharing Personal Data with other organisations](#) or the [Horizon > Requests for personal information \(data protection\)](#) page. If you have further DPA queries you should contact Home Office Information Management Services.

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5.4. Gender Recognition Act 2004

5.4.1. The Gender Recognition Act 2004 provides for transsexual people to apply to the Gender Recognition Panel for legal recognition of their acquired gender. Applicants 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 (GRC). Many transsexual people choose not to apply for a GRC, and detainees should not be asked if they have one.

5.4.2. It is unlikely that staff would encounter transsexual detainees who have been granted a full GRC but detailed information about the certificate is available at Annex B for reference where needed.

5.4.3. Staff need to be aware that section 22 of the Gender Recognition Act contains provisions to protect the privacy of transsexual people, which has implications for staff in relation to sharing information. It is a criminal offence

for a person to disclose “protected information” to any other person where that information has been obtained in an official capacity, for example, as a member of the civil service, a police constable, or the holder of any local or public authority office, or in the conduct of business or the supply of professional services. 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.

5.4.4. There are exemptions to section 22, for example, where the disclosure of protected information is for the purpose of preventing or investigating a crime. The exemptions in section 22 are drawn tightly to prevent misuse. Anyone relying on an exemption under section 22 would need to have a proper justification. Further information can be found at Annex B.

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6. Terminology

- 6.1. **Acquired gender:** The gender in which a transsexual person lives or proposes to live.
- 6.2. **Gender Dysphoria:** 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”.
- 6.3. **Transsexual person:** Someone who lives or proposes to live in the gender opposite to the one assigned at birth.

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Annex A – Care plan template

IRC/STHF

Care plan between: IRC/STHF & ...name of detainee.....

Date.....

Introduction

The purpose of this care plan is to provide clear information for you and staff about the requirements and entitlements of an individual who has gone through or who is going through gender reassignment whilst in detention. Unless otherwise specified, your regime will be the same as all other detainees in this IRC/STHF.

The care plan covers the following areas:

- Accommodation
- Showers
- Laundry
- Dress code
- Facilities list
- Named liaison / Personal Officers / key workers [*as appropriate*]
- Support
- Searching

Accommodation

Whilst at [*name of IRC/STHF*] 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 room sharing risk assessment and any specific vulnerability you may have.

Showers

If the centre 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 detainee will be allowed to use the shower at the same time as you, 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.
- 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 a Detainee Custody Officer/ Manager who will take the appropriate action.
- You must use the showers as directed by the staff on duty.

Laundry (IRCs only)

All clothing in your possession will be washed in accordance with centre 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, subject to general decency standards.

During work or recreational activity periods you will dress appropriately for the work or activity in question 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 a centre of your acquired gender.

Facilities list

The list of facilities available to you will be in line with the current facilities list of this centre, along with some items permitted in centres of your acquired gender. These items will be subject to security approval. Certain items in possession will be negotiated and agreed locally. However, it will not be possible for you to retain any items posing a security risk that cannot be reasonably mitigated.

Named Liaison / Personal Officers / key workers

Your Named Liaison/Personal Officer/key worker will be: -

.....

Support

Although you have been allocated the individual staff member(s) 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, 76 The Ridgeway, Astwood Bank, Worcestershire, B96 6LX.
(Helpline: 01527 894 838); Email: info@gendertrust.org.uk

Searching

You and your room will be searched in accordance with [Name of IRC's] local searching 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 centre considers to be the most appropriate to provide an effective searching strategy, having regard to your legally recognised gender.

Searching agreement [Insert details here]

Detainee's
signature.....

Detainee's
name.....

Date.....

Unit Manager's
signature.....

Unit Manager's
name.....

Date.....

Annex B – Gender Recognition Certificates

- B.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 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 (GRC).
- B.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 at <http://www.justice.gov.uk/tribunals/gender-recognition-panel>. This includes guidance on a separate application process for those who have already obtained legal recognition in a foreign country or territory on the list approved by the Secretary of State for Justice.
- B.3. From the date of recognition the applicant is seen in law as being of the acquired gender for all purposes. Centres should treat holders of a full UK 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 detention estate.
- B.4. If a successful applicant's birth was registered in the UK, the gender recognition certificate will be sent to the appropriate Registrar General who will issue a new birth certificate in the person's acquired gender. A centre may not ask for a copy of someone's gender recognition certificate as proof that the detainee's acquired gender is recognised by law, but a centre may ask for a copy of the detainee's birth certificate which will state the detainee's legal gender.
- B.5. If a detainee's birth was registered outside the UK then the detainee's gender recognition certificate will still be valid and the UK will still recognise the detainee's acquired gender. In such a situation detainees will have to provide a gender recognition certificate if they wished to prove that the law recognises their acquired gender.
- B.6. If a detainee presents evidence that they have obtained legal recognition in another country, they should normally be treated as someone in possession of a UK-issued GRC.
- B.7. Following the implementation of the Marriage (Same Sex Couples) Act 2013 and the Marriage and Civil Partnership (Scotland) Act 2014, many applicants who are married or in civil partnerships are now eligible to apply for gender recognition without ending their marriage or civil partnership. Details are available [here](#).
- B.8. Under section 22 of the Gender Recognition Act 2004, it is an offence for a person to disclose to any other person protected information acquired in connection with a person's functions as a member of the civil service, police

constable, or holder of any local or public authority office, or in the conduct of business or the supply of professional services. 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.

B.9. However, it is not an offence to disclose protected information related to a detainee if:

- the information does not enable the detainee to be identified;
- the detainee has agreed to the disclosure of the information;
- the information relates to the detainee'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 under section 22(5); or
- the disclosure is in accordance with any provision of any other law.

B.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;
- certain religious purposes;
- 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

- certain reasons related to insolvency.

B.11. There may be a situation in which protected information about a transsexual detainee with a gender recognition certificate is recorded or shared to prevent and detect crime and to fulfil responsibilities under MAPPA (multi agency public protection arrangements).

B.12. The exemptions in section 22 are drawn tightly to prevent misuse and anyone relying on an exemption would need to have a legitimate reason for doing so and would need to record their justification.

B.13. Information about detainees 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 5.3.1 above.

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Annex C – Short guide on working with transsexual detainees

Reception

If there is no doubt about a detainee's gender, or there is no reason to suspect that a detainee is not the gender they appear to be, you should treat them as that gender on reception.

If there is uncertainty about a detainee's gender, you should ask them which gender they consider themselves to be and treat them accordingly, if appropriate.

A voluntary care plan covering issues such as searches, accommodation and other relevant matters should be agreed with the individual detainee.

There may be issues around detainees having or needing access to medication and/or items necessary for maintaining their acquired gender. Centre management, in conjunction with the healthcare team, need to be aware of this and consider on reception and thereafter.

Location

The risks to and from a transsexual detainee should be considered when deciding where in the immigration detention estate to locate the detainee, as would happen when deciding where to locate detainees who are not transsexual.

Where a decision is taken to place a transsexual detainee in the estate opposite to that of the legally recognised gender, the detainee should be given their own room so as to avoid a breach of Rule 10 of the DC Rules.

Activities

Transsexual detainees should be offered as wide a range of activities as other detainees. Any risks to and from the detainee will need to be managed appropriately. Consideration of risk management approaches should be recorded in the detainee's management care plan.

Clothing

Detainees should be allowed to dress according to their acquired gender, that is, male to female transsexual people should be able to wear female clothing and female to male transsexual people able to wear male clothing. This includes where the detainee is located in a centre opposite to the presented gender because this is different from the gender recognised under UK law.

Sharing Information

Where a transsexual detainee does not have a gender recognition certificate, information about that detainee's gender history must not be shared with any other person unless this is in accordance with the provisions of the Data Protection Act

1998, any duty of confidentiality, and the obligations under Article 8 ECHR (right to privacy).

Where a transsexual detainee has a gender recognition certificate, information about the detainee's gender history must not be shared unless one of the following conditions applies:

- The information does not enable the detainee to be identified.
- The detainee has (explicitly) agreed to the sharing of the information.
- The disclosure is for the purpose of preventing or investigating crime.
- The disclosure is for the purpose of proceedings before a court or tribunal.
- The disclosure is for the purpose of obtaining legal advice.

Even where one of these conditions applies, data may only be shared where this is in accordance with the requirements of the Data Protection Act 1998, Article 8 of the ECHR and any duty of confidentiality. For further guidance on this, Home Office staff should refer to the Manage Information page on Horizon, which includes information on [Sharing Personal Data with other organisations](#) or the [Horizon > Requests for personal information \(data protection\)](#) page. If you have further DPA queries you should contact Home Office Information Management Services.

Revision History

Review date	Reviewed by	Review outcome	Next review
02/2015	Detention Policy	Outdated terms/contact details replaced; references to 'compact' replaced with 'care plan' throughout document; adjustments for clarification made to paragraphs: 1.4, 1.5, 2.4, 3.1, 4.3, 4.4, 4.5 and 4.6.	02/2017
06/2015	Detention Policy	Adjustments to 5.4.1 and Annex B to reflect legislative changes. Drafting adjustments to paragraphs 1.2, 1.3, 1.5, 2.1, section 3, 4.7 and 4.11.	06/2017

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