**Text

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| TRANSGENDER & NON-BINARY SEARCHING CONSIDERATIONS |

The following sections outline instructions and guidelines that must be followed when undertaking searches of transgender and non-binary individuals. It must also be considered when drawing up a voluntary agreement.

It should be noted that how a person transitions is very personal to them. Regardless of whether or not they hold a Gender Recognition Certificate (GRC), some individuals may have undergone medical treatment and/or interventions that result in physical changes to their presentation, but this will vary from person to person and no assumptions should be made by staff.

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| **TRANSGENDER PRISONERS SEARCHING CONSIDERATIONS** | |
| Careful consideration must be given to arrangements for searching transgender prisoners. In determining arrangements, it is essential that staff consult sensitively with the prisoner concerned and those involved in their care. It may also be necessary to consult with healthcare professionals (with the prisoner’s consent).  If the prisoner is unable to provide confirmation of their legal gender via birth certificate or GRC, the establishment should request permission to contact the Gender Recognition Panel (GRP) who can provide confirmation of whether a GRC has been issued.  Tel: 0300 1234 503 or GRPenquiries@hmcts.gsi.gov.uk  In the interim, or if the prisoner does not provide consent to contact the GRP, best available evidence should be used in the absence of confirmed legal gender.  The starting point for any searching arrangements is that a transgender prisoner who holds a Gender Recognition Certificate (GRC) is legally of the gender outlined on the GRC irrespective of their birth gender and therefore must be searched by a member of staff of the same gender as the prisoner’s affirmed (GRC) gender. Alternatives to this can be agreed as long as the individual agrees, and this is detailed on a voluntary agreement.  Transgender prisoners who do not hold a GRC do not have the right to insist on being full searched by staff who are (in these circumstances) of the opposite legal sex | |
| **NON-BINARY PRISONERS SEARCHING CONSIDERATIONS** | |
| Non-binary is widely used to describe gender identities that cannot be categorised as exclusively male or female. Non-binary people may experience their gender in many different ways. It could be experienced as a combination of male and female, neither male nor female, or something completely independent of notions of conventional gender identities. It also includes identities where an individual’s gender identity or expression is not ‘fixed’ (often referred to as ‘gender-fluid). Non-binary is an expansive umbrella term, and many gender identities fall under it.  Searching arrangements for a prisoner who identifies as non-binary is that they must only be full searched by a member of staff of the same gender as the prisoner’s legal gender. | |
| **RUB DOWN SEARCHES** | |
| Rub down searches do not involve removal of clothes and the rub-down process does not involve contact with genital or breast areas and as such do not carry the same sensitivities as full searches.  Rub down searching is however, carried out with greater frequency than full searches and rules in this area need to be clear and easy to operate.  In this type of search the main issue is not so much about physical appearance and genitalia (although that may impact any decision on rub-down searches) but more about the potential vulnerability of the prisoner.  Rub down searches on transgender prisoners who hold GRCs should be conducted in line with their legal gender. Therefore, the policy for rub down searches of women should be applied to transgender women with GRCs, and the policy for rub down searches of men should be applied to transgender men with GRCs. | |
| **GRC** | **NO GRC** |
| Transgender women with a GRC should be rub down searched by female staff.  Transgender men with a GRC can be rub-down searched by male or female staff. | Transgender women who remain legally male can be rub-down searched by either male or female staff.  Transgender men who remain legally female, should be rub down searched by female staff. |
| **FULL SEARCHING** | |
| It is recognised that a full search of a transgender prisoner may cause some practical difficulties and that some staff may not feel comfortable with this.  Local arrangements should be made by prisons to deploy additional measures to put staff at ease, this could include the use of technical aids or the presence of additional staff in the vicinity of the search whilst still ensuring the decency and privacy of the prisoner. If a member of staff is still uncomfortable and it is operationally viable to have someone else complete the full search, this should be considered. Any staff concerns must, however, be raised and handled sensitively and respectfully to avoid causing any undue distress.  If it is not operationally viable to remove the staff member from these searching duties then local management is expected to provide adequate support and training to assist staff in undertaking this task.  When undertaking a full search, if the individual is required to remove prosthetics, ask them to remove the items themselves, search the items and return them, giving the individual privacy and facility to adjust and replace the removed items. If necessary, this can form part of the searching aspect of the voluntary agreement. The removal of any prosthetic as part of a full search must be undertaken both out of hearing and sight of other prisoners and staff. Staff must be aware of the potential impact on the individual, as well as the risks of breaching Article 8 ECHR, if the prisoner’s transgender status or history is made known to other prisoners by being asked (or being heard to be asked) to remove their prosthetics. | |
| **GRC** | **NO GRC** |
| Transgender women with a GRC must be full searched by female officers according to the women’s full search procedures outlined in **Annex D**.  Transgender men with a GRC must be full searched by male officers. | Transgender women who remain legally male should be full searched by male officers.  Transgender men who remain legally female, should be full searched by female officers.  This search will need to be carried out with proper regard to the sensitivity and vulnerability of the prisoner concerned and every reasonable effort made to secure their co-operation and to minimise any distress or embarrassment. |
| **SEARCHES INVOLVING A SQUAT** | |
| Squatting within the women’s estate is not identified as an effective searching method in respect of the fact that secreted items would not be visible even if a squat were undertaken.  The basic principle here is that anyone who is legally female (from birth or affirmed via a GRC) or who was assigned female at birth must not be asked to bend or squat and, in addition, prisoners must only be searched involving a squat in accordance with the part of the prison estate they are located. | |
| **GRC** | **No GRC** |
| Transgender women with a GRC located in either the men’s or women’s estate must not be asked to squat (based on legal gender)  Transgender men with a GRC in the men’s or women’s estate must not be asked to squat (based on birth gender) | Transgender women without a GRC and located in the men’s estate can be asked to squat.  Transgender women without a GRC and located in the women’s estate cannot be asked to squat (based on the prison estate in which they are located)  Transgender men without a GRC located in either the women’s or men’s estate must not be asked to squat (based on birth gender). |

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| **TRANSGENDER STAFF AND VISITORS SEARCHING CONSIDERATIONS** |
| **Rub Down Searches**  Female staff can carry out rub-down searches on all transgender visitors and staff because they can rub down search both men and women.  Male staff must not carry out rub-down searches on **transgender women** visitors and staff regardless of GRC.  Male staff can carry out rub-down searches on **transgender men** visitors and staff regardless of GRC unless they object to being searched by a male member of staff.  **Full Searches**  Full searches on transgender visitors and staff must be in exceptional circumstances and only if:   * The designated in-charge governor has authorised the search; and * The police will not attend, or the in-charge governor considers the delay in waiting for the police will hinder the purpose of the search.   Transgender visitors and staff must be asked their preferences in respect of the gender of the staff undertaking the search prior to the search taking place.  It is recognised that a full search of a transgender visitor or staff may cause some practical difficulties and that some staff may not feel comfortable with this.  Local arrangements should be made by prisons to deploy additional measures to put staff at ease, this could include the use of technical aids or the presence of additional staff in the vicinity of the search whilst still ensuring the decency and privacy of the visitor or staff member. If a member of staff is still uncomfortable and it is operationally viable to have someone else complete the full search, this should be considered. Any staff concerns must, however, be raised and handled sensitively and respectfully to avoid causing any undue distress.  If it is not operationally viable to remove the staff member from these searching duties, then local management is expected to provide adequate support and training to assist staff in undertaking this task. |
| **NON-BINARY STAFF AND VISITORS SEARCHING CONSIDERATIONS** |
| **Rub Down Searches**  Female staff can carry out rub-down searches on all non-binary visitors and staff because they can rub down search both men and women.  Male staff must not carry out rub-down searches on non-binaryvisitors and staff who are legally female, or if they object to being searched by a male member of staff.  **Full Searches**  Full searches on non-binary visitors and staff must be in exceptional circumstances and only if:   * The designated in-charge governor has authorised the search; and * The police will not attend, or the in-charge governor considers the delay in waiting for the police will hinder the purpose of the search.   Non-binary visitors and staff must be full searched according to their legal gender. |