



National Offender  
Management Service

The Care and Management of Transgender Offenders		
This Instruction applies to :		Reference :
NOMS Headquarters Prisons Providers of Probation Services		<b>AI 13/2016</b> <b>PSI 17/2016</b> <b>PI 16/2016</b>
Issue Date	Effective Date	Expiry Date
9 November 2016	1 January 2017	
Issued on the authority of	NOMS Agency Board	
For action by	<p>All staff responsible for the development and publication of policy and instructions</p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> NOMS HQ</li> <li><input checked="" type="checkbox"/> Public Sector Prisons</li> <li><input checked="" type="checkbox"/> Contracted Prisons*</li> <li><input checked="" type="checkbox"/> National Probation Service (NPS)</li> <li><input checked="" type="checkbox"/> Community Rehabilitation Companies (CRCs)</li> <li><input checked="" type="checkbox"/> Governors</li> <li><input checked="" type="checkbox"/> Heads of Groups</li> <li><input checked="" type="checkbox"/> NOMS Rehabilitation Contract Services Team</li> <li><input checked="" type="checkbox"/> Prison Escort Custodial Services</li> <li><input checked="" type="checkbox"/> NOMS Immigration Removal Centres (IRCs)</li> <li><input checked="" type="checkbox"/> Other Providers of Probation and Community Services</li> </ul> <p><i>* If this box is marked, then in this document the term Governor also applies to Directors of Contracted Prisons</i></p>	
Instruction Type	Service Improvement	
For information	<p>All staff in NOMS HQ All staff in Prison establishments Deputy Directors of custody All staff in the National Probation Service and Community Rehabilitation Companies All agencies delivering services on behalf of NOMS</p>	
Provide a summary of the policy aim and the reason for its development/revision	This joint instruction replaces PSI 07/2011 and provides an operational framework for the care and management of transgender offenders in the community as well as in custody.	
Contact	<a href="mailto:NOMS_equalities@noms.gsi.gov.uk">NOMS_equalities@noms.gsi.gov.uk</a>	
Associated documents	<p><a href="#">PSI 26/2009 Amendments to PSO 1700 Segregation</a>  <a href="#">PSI 12/2011 Prisoners' Property</a>  <a href="#">PSI 32/2011 Ensuring Equality</a>  <a href="#">PSI 64/2011 Management of prisoners at risk of harm to self, to others and from others (Safer Custody)</a>  <a href="#">PSI 02/2012 Prisoner Complaints</a></p>	

	<p> <a href="#">PSI 08/2012 Care and Management of Young People</a>  <a href="#">PSI 37/2012 PI 19/2012 Supervision of Young Offenders</a>  <a href="#">PSI 30/2013 Incentives and Earned Privileges</a>  <a href="#">PSI 24/2014 PI 18/2014 AI 18/2014 Information Assurance Policy</a>  <a href="#">PSI 01/2015 AI 01/2015 The allocation of prisoners liable to deportation or removal from the United Kingdom</a>  <a href="#">PSI 07/2015 PI 06/2015 Early Days in Custody</a>  <a href="#">PSI 33/2015 AI 23/2015 External Prisoner Movement</a>  <a href="#">PSI 06/2016 PI 08/2016 AI 08/2016 Information Risk Management Policy</a>  <a href="#">PSI 07/2016 Searching of the Person</a>  <a href="#">PSO 1700 Segregation</a>  <a href="#">PSO 3050 Continuity of Healthcare for Prisoners</a>  <a href="#">PSO 4455 Requests from Prisoners to Change their Name</a>  <a href="#">PSO 4600 Unconvicted, Unsented and Civil Prisoners</a>  <a href="#">PSO 4800 Women Prisoners</a>  <a href="#">PI 32/2014 NOMS Approved Premises Manual</a>  <a href="#">PI 48/2014 Victim Contact Scheme Guidance Manual</a>  <a href="#">PI 51/2014 NOMS Probation Standard Complaints Procedure</a>  <a href="#">PI 59/2014 Management of Offender Records</a>  <a href="#">PI 03/2016 AI 03/2016 Unpaid Work</a>  <a href="#">PI 04/2016 Determining Pre-Sentence Reports</a>            Mar 2009 NOMS Public Protection Manual            Sept 2015 Reviewing and Consistently Continuing Segregation and Temporary Confinement in Special Accommodation            Jan 2016 Statutory MAPPA Guidance            Service Specifications for Commissioning Intentions 5 (a &amp; b)         </p>
	<p><b>Replaces the following document which is hereby cancelled on 1 January 2017:</b> PSI 07/2011 The Care and Management of Transsexual Prisoners</p>
	<p><b>Audit/monitoring:</b> Mandatory elements of instructions must be subject to management checks and may be subject to self or peer audit by operational line management, contract managers and HQ managers, as judged to be appropriate by the managers with responsibility for delivery. In addition, NOMS will have a corporate audit programme that will audit against mandatory requirements to an extent and at a frequency determined from time to time through the appropriate governance."            Internal Audit and Assurance will conduct baseline measurements to ensure compliance with this Instruction.</p>
	<p><b>Introduces amendments to the following documents:</b> None</p>
	<p><b>Notes:</b> <i>All mandatory actions throughout this instruction are in italics and must be strictly adhered to.</i></p>

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N.B.

The term 'offenders' includes prisoners and individuals subject to statutory supervision in the community.

## Executive Summary

- 1.1 This instruction provides information and guidance on the care and management of offenders who identify as transgender<sup>1</sup> in prisons and in the community in statutory contact with providers of probation services.

### Scope

- 1.2 The primary focus of this policy are offenders who identify as transgender and who have expressed a consistent desire to live permanently in the gender they identify with which is opposite to the biological sex assigned to them at birth. This includes offenders who are intersex and who wish to transition to a gender different from the sex assigned to them at birth.
- 1.3 Offenders who have a permanent neutral (non-binary) gender identity and offenders who have a more fluid gender identity (including those who identify as gender-fluid and/or transvestite) are included in this policy. A glossary of terms is provided in [Annex I](#) for terms and definitions used with this policy.
- 1.4 Transgender offenders who have applied for or gained legal recognition of the gender they identify with (via a Gender Recognition Certificate) are included in this policy in terms of any support, care and management needs relating to their transgender status.
- 1.5 The Equality Act 2010 makes it unlawful to discriminate against or harass any person because they are proposing to undergo, are undergoing, or have undergone gender reassignment.

### Desired outcomes

- 1.6 To treat all transgender offenders in our care and under our supervision fairly, decently and lawfully.

### Mandatory actions

- 1.7 *Establishments, the National Probation Service (NPS), CRCs (where indicated) and providers of services contracted by NOMS must ensure that the care and management of transgender offenders is undertaken in accordance with this instruction. Mandatory actions are in italics.*
- 1.8 *The instruction introduces and mandates data capture on offenders who declare the protected characteristic (under the Equality Act 2010) of Gender Reassignment within NOMS. All agencies operating on behalf of NOMS will need to demonstrate how compliance with the Public Sector Equality Duty is met in relation to transgender equality.*

### Implementation

- 1.9 *The principles and approach of the instruction must be applied with immediate effect with full implementation by 1 January 2017. During this period the current policy PSI 07/2011 will apply and staff are encouraged to seek advice from the NOMS Equalities team.*

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<sup>1</sup> The refreshed policy uses the broader term of 'transgender' as this places an emphasis on gender identity of the 'whole person' rather than sexual functioning. Being transgender is independent of sexual orientation. Transgender people may identify as heterosexual, homosexual, bisexual, asexual or may not identify with conventional sexual orientation labels.

Resource impact

- 1.10 Accommodating the needs of offenders who identify as transgender is a duty that will be met locally through case management, access to regimes, programmes, medical care and appropriate treatment from staff. This will have an impact on local resources, particularly with the introduction of evidence based assessments and criteria as outlined in this policy. Some central support will be available to staff who are convening Transgender Case Boards and managing complex cases (see section 5).
- 1.11 The need to keep staff informed of their duties and responsibilities via clear and current information is recognised. Guidance materials will be developed for staff, and training needs considered. Staff should make use of the guidance provided by the NOMS Equalities Team to apply this policy locally and contact the functional mailbox below for any additional advice.
- 1.12 Communications to transgender offenders will be developed electronically and printed and distributed as necessary.

Policy Development and Review

- 1.13 A NOMS Transgender Advisory Board will be established to enable NOMS to develop further guidance and policy in response to the rapid pace of academic research, social and legislative changes within this policy area in order to advance transgender equality for offenders.
- 1.14 It is anticipated that this policy will be reproduced as a framework document.

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

[NOMS equalities@noms.gsi.gov.uk](mailto:NOMS_equalities@noms.gsi.gov.uk) 0300 047 5005

(Signed)

**Digby Griffith**  
**Director of Commissioning, NOMS**

## 2. Relevant Legislation

### Equality Act 2010

- 2.1 Section 149 of the Equality Act 2010 created a Public Sector Equality Duty (PSED) which states that a public authority must ‘in the exercise of its functions have due regard<sup>2</sup> to the need to:
- Eliminate discrimination, harassment, victimisation and any other conduct prohibited by or under the Act.
  - Advance equality of opportunity between persons who share a protected characteristic and those who do not share it.<sup>3</sup>
  - Foster good relations between persons who share a relevant protected characteristic and persons who do not share it’.
- 2.2 Gender reassignment is one of nine characteristics<sup>4</sup> protected under section 7 of the Equality Act 2010, as follows: “A person has the protected characteristic of gender reassignment if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person’s sex by changing physiological or other attributes of sex.” This means that the protected characteristic in the Equality Act is framed around gender reassignment rather than a broader concept of gender identity.

### Gender Recognition Act 2004

- 2.3 The Gender Recognition Act (GRA) provides a mechanism to allow people to obtain legal recognition of their ‘acquired’ gender via a Gender Recognition Certificate (GRC), which can then be used to create a new birth certificate in the gender they identify with. (See [Annex I](#) glossary of terms). The criteria for obtaining a GRC through a standard route requires the applicant to:
- be 18 years old or over
  - have a diagnosis of gender dysphoria (see [Annex I](#) glossary of terms)
  - have lived in the gender they identify with in the UK for at least 2 years
  - have an intention to live in the gender they identify with for life<sup>5</sup>
- 2.4 Not all transgender people who live in the gender with which they identify will have obtained legal recognition via a GRC. Without a GRC the new gender will not be recognised in law as this is a form of legal proof of gender change. A GRC is costly to obtain, the process can be lengthy and it is not a necessity of day to day living. Whilst NOMS recognises a GRC as a full legal transition to the gender identified with (in alignment with other government departments such as the Department of Work and Pensions) a more flexible approach to location within part of the prison or approved premises estate will be applied to transgender offenders who can demonstrate consistent evidence of living in the gender they identify with.

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<sup>3</sup> Section 149(3), which confirms that having due regard to the need to advance equality of opportunity involves having due regard to the need to remove or minimise disadvantages connected to a relevant protected characteristic, and to take steps to meet the differential needs of a person with a relevant protected characteristic.

<sup>4</sup> Characteristics protected by the Equality Act 2010 are Age, Disability, Gender reassignment, Marriage and civil partnership, Pregnancy and maternity, Race, Religion or belief, Sex, and Sexual orientation.

<sup>5</sup> Source: Government Equalities Office Gov.UK webpage.

- 2.5 Whilst a GRC is proof of legal gender, the absence of it does not automatically prevent that prisoner being located in the part of the estate consistent with the gender they identify with. This will be expanded on below (see also [Annex E](#) Further Relevant Legislation).
- 2.6 Disclosing information acquired in an official capacity, relating to an application for a GRC, or where a GRC application has been granted, relating to the individual's previous gender, is a criminal offence under section 22 of the GRA 2004, subject to some listed exemptions (see [Annex E](#)).
- 2.7 Article 8 of the European Convention of Human Rights relates to the right to respect for private life. A state can only interfere with this right where the interference is in pursuit of a legitimate aim (prevention of crime, protection of rights and freedoms of others), in accordance with the law, and necessary and proportionate (see [Annex E](#)).

### 3 Policy Context

3.1 Transgender equality is a rapidly developing area of policy:

- In 2011, NOMS published an instruction PSI 07/2011 'The Care and Management of Transsexual Prisoners' relating primarily to sentenced prisoners.
- In 2015 the Women and Equality Select Committee's Inquiry into Transgender Equality recommended that NOMS review location decision processes for transgender offenders and that specific training is made available to staff when caring for and managing transgender offenders. This Inquiry is available via the following link:

<http://www.publications.parliament.uk/pa/cm201516/cmselect/cmwomeq/390/390.pdf>

The Government Response to the WESC Inquiry into Transgender Equality is contained in the link below:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/535764/Government\\_Response\\_to\\_the\\_Women\\_and\\_Equalities\\_Committee\\_Report\\_on\\_Transgender\\_Equality.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/535764/Government_Response_to_the_Women_and_Equalities_Committee_Report_on_Transgender_Equality.pdf)

- A wide review was completed by the Ministry of Justice in 2016 and the instruction was developed as a response to conclusions made (available on Gov.UK webpages).

#### Refreshed Policy Approach

3.2 The broader term 'transgender' is used within this refreshed policy. It replaces the term 'transsexual' used in the previous policy which is no longer widely used due to its reference to 'sex' and 'anatomy' whilst 'transgender' is a preferential term which describes the 'whole person' (including mannerisms, appearance, pronouns etc.). Whilst 'transgender' is a broad term, the focus of the policy is, in the main, on those offenders who wish to live consistently in the gender with which they identify (opposite to the sex assigned at birth).

3.3 The policy includes offenders who have a more fluid or a neutral approach to their gender identity (including individuals who identify as non-binary, gender fluid and/or transvestite) and whilst these offenders will continue to be managed in accordance with their legal gender assigned at birth, access to the facilities list should be afforded to enable expression of the gender the offender identifies with. This will be subject to an assessment of all known risk, security and operational factors. It may be necessary for the personal record for gender fluid or transvestite prisoners to contain additional information and photographs in order to reflect differing expressions of gender identity (see Prison Rule 42 which provides a power to take subsequent photographs of the prisoner).

3.4 Publication of NOMS official statistics on transgender offenders will be published for the first time in autumn 2017 and thereafter incorporated into the NOMS annual offender equalities report. Data capture plans are in place to build a more informed and responsive approach.

3.5 Where NOMS provides binary (male or female) services, this refreshed instruction reflects the recommendations of the wider review by:

- adopting a 'system wide' approach to managing transgender offenders
- maximising opportunities for early decision making and contingency planning mandating local case boards for all transgender offenders who have expressed an intention to permanently change their gender opposite to the biological sex assigned at birth
- guidance on ensuring that case records and communications are handled in a manner which is compliant with the GRA 2004 (see [Annex B](#) Recording)

- providing support and guidance via the prisons' Regional Lead Psychologists transgender (specific points of contact) SPOCs, the NPS divisional transgender SPOCs, the NOMS Women's and Equalities team, local equality leads or via referral to a centrally managed Transgender Case Board for complex cases (see section 5).
- establishing a Transgender Advisory Board to develop policy and good practice.

#### **4 Early Identification of and Communication with Transgender Offenders**

- 4.1 *Arrangements must be in place to determine the legal gender of all offenders at the first point of contact. This will inform assessments and decisions where binary (male/female) services for offenders are required<sup>6</sup>. Where legal gender cannot be determined, staff must use the best information available and consult with equality leads where necessary (sources of advice and support are listed in [Annex F](#)). Staff must not ask to see a GRC but can request sight of a birth certificate. Where an offender does offer a GRC as form of evidence and identity, they must be treated in the gender identified on the certificate.*
- 4.2 *Deputy Directors of Custody (DDCs), National Probation Service Deputy Directors (NPS DDs), Governors, NPS heads of Local Delivery Units (LDUs) and Public Protection Units (PPUs), and all agencies operating on behalf of NOMS must ensure that transgender offenders (remanded or sentenced) have the opportunity to express the gender they identify with at the earliest opportunity. Staff must communicate with transgender offenders in ways that respects the gender they identify with, including appropriate verbal communication (e.g. use of pronouns 'she' or 'he') and allowing physical presentation (e.g. clothing, hair, make-up etc. subject to risk, security and operational assessments). In respecting the offender's gender identity, this does not oblige the organisation to make decisions (such as location to the part of the prison estate which accords with their treatment) as this must be decided via a Transgender Case Board. All transgender offenders (irrespective of prison location) must be allowed to express the gender with which they identify.*

#### **Gaining written consent to disclose the gender assigned at birth**

- 4.3 *DDCs, NPS DDs, Governors, NPS heads of LDUs and PPUs, CRCs, and all agencies operating on behalf of NOMS (including Prisoner Escorts Custodial Services) must ensure that all offenders who disclose that they have transitioned or are consistently living in the gender they identify with are asked to provide written consent for the gender assigned at birth to be disclosed to relevant staff in or on behalf of NOMS ([Annex H](#) provides a template for recording consent). If consent is withheld by a transgender offender who has legally changed their gender, the previous gender must not be disclosed unless exemptions under s 22 of the GRA apply (see [Annex E](#)).*
- 4.4 *The purpose of gaining such consent for transgender offenders and those who have gained legal recognition of gender reassignment via a GRC is to gain a more informed approach in planning their care and management. This may also assist in gaining an increased understanding of the triggers for offending and to improve sentencing outcomes.*
- 4.5 *Early communications must include an awareness by staff that transgender offenders may be at high risk of self-harm and/or self-inflicted death and that additional support may be required during their first night in custody. Transgender offenders must be informed that an initial local Transgender Case Board will be convened to consider their care and management within three working days of reception into custody.*

#### **Initial Prison Location Decisions**

- 4.6 *Transgender offenders must be asked their view of the part of the prison estate (i.e. male or female) that reflects the gender with which they identify. It must be explained to the offender that decisions to locate in part of the prison estate which is not in accordance with their legal gender (or best available evidence of gender where legal gender is not*

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<sup>6</sup> Rule 12(1) of the prison rules 1999 requires that women prisoners shall normally be kept separately from male prisoners.

confirmed), can only be made following a local Transgender Case Board (either during pre-sentence report preparation or within three working days of reception into custody).

- 4.7 *If the prisoner's view accords with their legally recognised gender this must be recorded and they must be located accordingly. Exemptions apply to women offenders (whether or not transgender) where the risk posed to other offenders and/or staff prevents location in the female estate (Further information is contained in paragraph 6.3 and [Annex B](#)).*
- 4.8 *Where a transgender offender expresses a view of prison location that is not consistent with their legally recognised gender the offender must be asked to provide evidence of living in the gender with which they identify (see chart in [Annex A](#)). The strength of this evidence must be considered within the context of a Transgender Case Board together with all known risk factors before a decision is made. Each offender must be assessed on a case by case basis and discretion may be applied following a Transgender Case Board. Transgender offenders must be allowed to live in the gender they identify with during this process. (See section 5 below).*
- 4.9 *If relevant, it must be made clear to the offender that disclosing a gender identity other than that assigned at birth does not oblige the organisation to locate them accordingly; it is one of many factors that may influence such decisions. The process through which decisions about location are made is outlined in full below and contained in a chart in [Annex J1](#).*
- 4.10 *Should issues relating to transgender status arise immediately upon being received into custody relating to transgender status, and prior to a Transgender Case Board being convened within 3 working days, a senior manager must be informed to manage all known risks and needs and where necessary seek advice from staff listed in paragraph 3.5 above.*
- 4.11 *Information advising all transgender offenders of the facilities they will be able to access in custody should be made available at the earliest opportunity. This applies to offenders who are intersex and those who identify as non-binary, gender fluid or transvestite.*
- 4.12 *The chart in [Annex J1](#) shows the entry points into custody and how initial location decisions must continue to be made in accordance with the legal gender (or best available evidence where this is not known) unless a Transgender Case Board has secured agreement with the receiving DDC to locate in the part of the estate which is not consistent with the legally recognised gender.*

#### Transgender women (male to female) who express a view to remain in the men's estate

- 4.13 *Prisoners who identify as female but whose legal gender remains male and who express a view to serve their custodial sentence within the male estate must remain in the male estate. (Reasons may include the geographical location of the prison or familiarity with the male estate).*

#### Transgender men (female to male) who express a view to remain in the women's estate

- 4.14 *Prisoners who identify as male but whose legal gender remains female and who express a view to serve their custodial sentence within the women's estate must be located within the women's estate. (Reasons may include fear of location within a male establishment).*

## 5 Early Assessments and Informed Pre-emptive Decisions via Transgender Case Boards

- 5.1 NOMS will maximise opportunities to make early decisions about how transgender offenders are cared for and managed and, in the likelihood or event of being remanded into custody pending trial or sentence or of a custodial penalty being imposed, in which part of the estate they should be located. This will be achieved by:

### Care and Management whilst in custody of the PECS contractors

- 5.2 *All transgender prisoners must be supported to express the gender with which they identify whilst in court custody. A Voluntary Agreement is provided for Prisoner Escort Custodial Service (PECS) escort contractor's staff in [Annex D3](#) to support consideration of privacy, dignity, well-being, and arrangements for searching and personal care whilst in custody of the PECS contractors. The Voluntary Agreement must not record whether or not a prisoner has obtained a GRC or any confidential medical or anatomical information. The template in [Annex D3](#) takes into account prisoners who may have learning difficulties or disabilities and may be adapted as necessary.*
- 5.3 *Transgender prisoners who provide full evidence of their legally affirmed or acquired gender must be transferred to the part of the prison estate consistent with their legal gender ('Affirmed gender' is a term used to describe the gender after a person has transitioned and is generally a preferred to the term 'acquired gender'). This includes those who can demonstrate that they have commenced the process of applying for a GRC.*
- 5.4 *Transgender prisoners who cannot provide full evidence of their legal gender must be permitted to express a view of the part of the prison location that best reflects the gender they identify with and this must be recorded by the PECS provider.*
- 5.5 *If a Transgender Case Board has not been convened during pre-sentence report preparation, transgender prisoners must be initially located according to their legal gender (or best available evidence where legal gender has not been confirmed).*
- 5.6 *If the legal gender cannot be confirmed, PECS escort contractor's staff must consult the prison regional office who will decide the part of the prison estate the prisoner will be transferred to, based on the best available evidence.*
- 5.7 *Transgender prisoners must be informed by PECS escort contractor's staff that a local Transgender Case Board will be convened within three working days of reception into custody to review their care and management (including location) and they will be able to participate in and/or make their views known to this Board.*
- 5.8 *Where transgender offenders are returned to court for hearings whilst in custody, PECS escort contractor's staff must be notified by the prison if the transgender care and management plan for the prisoner has changed in relation to location within the prison estate .*

### Pre-Sentence Report Preparation

- 5.9 *PSR writers must consider requesting a full adjournment for the preparation of a pre-sentence report where an offender discloses that they are transgender and/or who has protection under section 7 of the Equality Act 2010 (see paragraph 2.2). An adjournment is an opportunity to propose a sentence to the court that takes account of the offender's transgender status. Where a custodial sentence is likely, an adjournment allows relevant professionals to contribute to decisions to confirm the part of the estate the offender should be located in and how they can be properly cared for and managed whilst in custody. Where a custodial*

*sentence is likely, PSR writers must attempt to convene a pre-sentence local Transgender Case Board to agree initial prison location and initiate a care and management plan. NPS DDs must make available a divisional SPOC to advise the Board. All decisions where proposed location is not in accordance with legal gender must be approved by the DDC of the likely receiving prison.*

### Remanded Prisoners

- 5.10 *Prisoners must be located in accordance with their legally recognised gender and a local Transgender Case Board must be held within three working days of reception following remand into custody. Discretion may be applied in relation to location decisions within part of the prison estate not in accordance with legal gender if there is strong evidence that this is the best decision on the grounds of safety and well-being.*

### Sentenced Prisoners

- 5.11 *A local initial Transgender Case Board must be held within three working days of reception following sentence where this has not been convened at the pre-sentence report stage. Thereafter a Review Board may be convened as necessary at any stage during the sentence (including post release licence or recall to custody) following disclosure of transgender intention or status.*
- 5.12 A referral to a centrally managed Complex Case Board may be made at any point (see below).
- 5.13 Some transgender offenders may have been living in the gender with which they identify for a considerable period. Others may be at the early stages of transitioning or decide to transition at any point during the sentence. Gender transitioning is a dynamic process and the pace and progress will be determined by the offender, by the availability and speed of delivery of health and gender identity services and, where relevant, by medical staff.
- 5.14 *Informed pre-emptive decisions must not place obligations on another part of the organisation or providers of services unless this is explicitly agreed by all parties. Examples include decisions at the pre-sentence stage or in preparation for release from custody where location decisions require the agreement and authorisation of different service providers.*
- 5.15 It is not envisaged that a local Transgender Case Board will be routinely convened for offenders who are intersex or who identify as non-binary, gender fluid or transvestite who will primarily be managed on a case by case basis via offender supervisors, personal officers, prison equality leads and regional psychologists. The use of Voluntary Agreements will assist in establishing with such offenders how they will be enabled to express the gender they identify with following risk, security and operational assessments. (See [Annex D1](#) Voluntary Agreement for Transgender Prisoners).

### Transgender Case Boards

- 5.16 This instruction introduces three types of multi-agency Transgender Case Board:

#### Initial Local Transgender Case Board

- 5.17 A locally arranged Board (where possible during pre-sentence report preparation or within three working days following reception into custody for remanded or sentenced prisoners) to:

- determine the individual's location within the correct part of the prison estate, based on the strength of evidence of living in the gender the offender identifies with and all known risk factors
- form a local agreement for an initial care and management plan
- draw up a Voluntary Agreement where such an agreement is agreed as per [Annex D1](#).

#### Local Transgender Review Board

- 5.18 A locally arranged Board that provides all parties with an opportunity to revisit earlier decisions made to:
- provide further evidence of living in the gender the offender identifies with
  - review new information
  - review complaints by a prisoner in respect of earlier decisions
  - make arrangements for transfers to other parts of the prison estate.
- [Annex C](#) contains checklist for managers chairing a Transgender Case Board.

#### Complex Case Board for Transgender Offenders

- 5.19 This is a centrally managed Board for offenders who present a significant level of complexity and/or risk of harm which will make decisions about prison location and sentence management on behalf of the whole estate as follows:
- to be chaired by the DDC for women's estate who will ensure appropriate consultation with other colleagues
  - core attendance may include; NOMS equalities team, a senior manager from the prison where the offender is located, the potential receiving prison, the Regional Lead Psychologist, the offender manager, healthcare lead, PD pathway lead, NOMS women's and equalities teams, and any other member of NOMS staff who has a significant knowledge or expertise of the case
  - *the view of the offender must be presented to the Board*
  - a referral to the Complex Case Board may be made at any point during sentence and a referral form is provided in [Annex C4](#).
- 5.20 *The offender must be provided with an opportunity to participate in and/or make their views known to all Transgender Case Boards either in person, via telephone, video-link or written submission.*
- 5.21 *A management and care plan must be produced as a result of all Transgender Case Boards and reviewed as necessary.*
- 5.22 In the community, Multi-Agency Public Protection Arrangements (MAPPA) eligible transgender offenders will be managed via MAPPA. Non-MAPPA transgender offenders presenting a significant level of complex risks and/or needs will be managed at the discretion of senior managers with support from the NOMS equalities team.

#### Electronic Monitoring Services

- 5.23 *Providers of Electronic Monitoring must seek the view of all transgender offenders regarding the gender of staff. Offenders who have obtained legal recognition of the gender with which they identify must be managed in accordance with their legal gender.*

## **6 Sentence Management of Transgender Prisoners – Custody Only**

- 6.1 *Prison Rule 12(1) provides that “Women prisoners shall normally be kept separate from male prisoners”. Unless there are exceptional circumstances, as determined by any type of Transgender Case Board expressly convened for the purpose of determining the most appropriate location, prisoners must be located according to their legal gender.*
- 6.2 Women offenders who present a high risk of harm to other women are managed safely in the female estate. Transgender women who pose similar risks should be managed in a similar way in the female estate. In a judicial review of September 2009 (R (on the application of AB) v Secretary of State for Justice [2009] EWHC 2220 (Admin)) the judge held that a male to female transsexual prisoner with a GRC had to be transferred to the female estate even though one of her index offences was attempted rape of a woman.<sup>7</sup>
- 6.3 *There may be exceptional cases where it is necessary to refuse a transfer to the female estate for a transgender (male to female) prisoner with a GRC. This can only happen if the risk concerns surrounding the prisoner are sufficiently high that other women with an equivalent security profile would also be held in the male estate. If a transfer is refused, the prisoner will be a female prisoner in the male estate. She must be held separately and according to a female prisoner regime as set out in [PSO 4800](#). This provision exists as the male estate has greater capacity to manage prisoners who pose an exceptionally high risk to others.*
- 6.4 *A female to male transgender offender with a GRC must not be refused a transfer to the male estate. This is because there are no security grounds that can prevent location in the male estate.*
- 6.5 *If a prisoner is placed in the estate opposite to their legally recognised gender, a transfer must be arranged as soon as possible (unless there are exceptional circumstances determined through a local Transgender Case Board above). Whilst the most appropriate location for the prisoner is being considered, they must be held in a suitably supportive environment and protected from risk of harm from other prisoners. The risk-assessed daily regime must be structured to ensure that all the requirements for minimum standards, facilities and activities within the Prison Rules 1999 must be adhered to. This would include access to exercise and recreation and some measure of planned, supervised contact with other, trusted prisoners. Where relevant, clothing and toiletries will be provided to enable the prisoner to present in the gender they identify with.*
- 6.6 DDCs and Governors have discretion to provide the same approach described in 6.5 above for transgender prisoners who have not obtained legal recognition of the gender with which they identify if the strength of evidence and assessment of all known risk factors are such to enable a decision to transfer during the custodial term.
- 6.7 *Where an offender discloses that they identify as non-binary, gender fluid, transvestite or are intersex and do not intend to transition permanently to a different gender, or refuses to state a gender, decisions in relation to location, services and interventions within custody must be based on the legal gender (whilst allowing the prisoner to express the gender they identify with subject risk, security and operational assessments).*

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<sup>7</sup> The court held that the decision to keep her in the male estate interfered with article 8 (as she could not live in role and so could not progress to full gender reassignment), and that the interference was not proportionate.

- 6.8 *Reception processes in custody must be respectful and afford transgender prisoners dignity throughout with immediate consideration given to the safety of the transgender prisoner and other prisoners.*

#### Searching of the Person

- 6.9 *Searching of transgender prisoners must comply with the policy and guidance contained in Annex H of [PSI 07/2016 Searching of the Person](#).*
- 6.10 *Prisoners who have applied for or have obtained legal recognition of the gender with which they identify must be searched in accordance with their legal gender unless alternative arrangements are agreed as part of a Voluntary Agreement (see [Annex D1](#) Voluntary Agreement for Transgender Prisoners). In the case of a prisoner who has a pending application for a GRC, searching arrangements must be communicated by the chair of the Transgender Case Board, other appropriate manager or staff completing a voluntary agreement (where this is agreed) to relevant staff responsible for searching to reflect the legal gender that is sought by the prisoner.*
- 6.11 *A physical search or examination must not be conducted for the purpose of determining gender. Searching arrangements must be recorded on a Voluntary Agreement, in cases where an Agreement has been established with the prisoner. Where a Voluntary Agreement is not achieved, searching procedures must be referred to senior managers at the earliest opportunity and if necessary, a local Transgender Case Board convened.*
- 6.12 *For prisoners who have not obtained legal recognition but who have expressed a consistent desire to live permanently in the gender with which they identify (opposite to the sex assigned at birth), their view of the searching procedures to be applied to them must be sought by staff at the earliest opportunity. Searching arrangements must be recorded on a Voluntary Agreement as outlined above. Further information can be found at Annex H of [PSI 07/2016 Searching of the Person](#).*
- 6.13 *References to whether or not the prisoner has obtained a GRC or any medical information relating to anatomy must not be recorded on the voluntary agreement. Rather the actions agreed within the Voluntary Agreement (e.g. gender of the staff conducting the search) should be included which must be reviewed if gender transition progresses which necessitates further agreement of different arrangements.*
- 6.14 *Prisoners who have a more fluid approach to living in a different gender role (for example individuals who cross-dress or are non-binary) will be normally be searched according to their legal gender in accordance with [PSI 07/2016 Searching of the Person](#) unless a Voluntary Agreement has been completed – see 6.20).*
- 6.15 *If a Voluntary Agreement cannot be reached with the prisoner, this can be referred for further advice to the Regional Lead Psychologist, the local equality lead, NOMS Equalities team or to the local or central Transgender Case Board.*

#### Living in the gender with which the prisoner identifies whilst in custody

- 6.16 *All transgender prisoners covered in this policy must be allowed to express their gender identity, including dressing in clothes suited to the gender with which they identify (or gender-neutral presentation), in line with relevant dress codes or, where relevant, subject to any requirement to wear prison issue clothing policy. (See [Annex A](#) 'Living in the Gender with which the offender identifies' and [Annex D1](#) Voluntary Agreement for Transgender prisoners and [PSI 30/2013 Incentives and Earned Privileges](#)). Dress codes must be based on decency and take into account any potential vulnerability of the prisoner. Transgender prisoners must be allowed to adopt a gender-appropriate or gender-neutral name and be*

addressed by others consistent with the gender (or neutral gender) they identify with. (See [Annex B](#) for recording of names and [Annex E](#) for examples of supporting case law).

- 6.17 *Transgender prisoners who are pursuing a permanent ‘actual life’ in the gender with which they identify must be permitted and supported to present and express themselves in the relevant gender at all times. This will include access to clothing and items from the relevant facilities list subject to any risk, security or operational assessments and agreement should be sought via the Voluntary Agreement in [Annex D1](#).*
- 6.18 *Where there are exceptional circumstances (for example, if an item presents a specific security risk) these must be considered by a senior manager or as part of a Transgender Case Board review. Senior managers must ensure that there is an evidence-based assessment and any reasons for the refusal are clearly documented.*
- 6.19 *For prisoners who identify as non-binary, gender fluid or transvestite or who are intersex, agreement must be sought with them, subject to risk, security or operational assessments<sup>8</sup>, to express themselves according to the gender with which they identify or as gender neutral. Assessments for such prisoners will need to take account of the level and degree of presentational change where this is intermittent. A fair approach in facilitating gender presentations would include not being unduly restrictive, meaning that any restrictions imposed must be based on justifications which are properly evidenced and reasoned, and that those restrictions must be proportionate. This means, for example, that if a prison were to refuse to allow a prisoner access to particular items, or to refuse to allow them to present in different genders intermittently, there would need to be genuine and weighty operational and/or security reasons for why these restrictions were necessary. For example one reason may include changes to appearance such as the use of wigs which may present an escape risk. (See [Annex E](#), for case law examples).*

#### Voluntary Agreement

- 6.20 The provision of a Voluntary Agreement for transgender prisoners is to support consideration of privacy, dignity, well-being, and arrangements for searching and personal care whilst living in a communal environment. All transgender prisoners covered in this policy, including prisoners who have applied for or gained legal recognition of the gender they identify with, should be encouraged to enter into a Voluntary Agreement, subject to risk, security and operational assessments, whether located in the male or female part of the estate.
- 6.21 *The Voluntary Agreement must be consistent with the overall sentence plan and must not record whether or not a prisoner has obtained a GRC or any confidential medical or anatomical information.*
- 6.22 The Voluntary Agreement template is provided in [Annex D1](#) applies to all transgender offenders within this policy and may also be helpful for offenders who have gained legal recognition of the gender they identify with. The template provided takes account of prisoners who may have learning difficulties or disabilities and may be adapted as necessary.
- 6.23 *Where agreement cannot be reached with the prisoner via a Voluntary Agreement, a Transgender Case Board must be convened to establish the care and management plan which must include decisions on gender expression.*

#### Healthcare including mental healthcare

- 6.24 *Establishments must ensure that prisoners who have been diagnosed with gender dysphoria have access to the same quality of care (including counselling, pre-operative and post-operative care and continued access to hormone treatment) that they would expect to receive from the NHS if they had not been sent to prison. Prison Rule 20 states that:*

“Rule 20 of the Prison Rules 1999 applies to all prisoners

**Medical attendance**

20 – (1) The medical officers of a prison shall have the care of the health, mental and physical, of the prisoners in that prison.

(2) Every request by a prisoner to see the medical officer shall be recorded by the officer to whom it is made and promptly passed on to the medical officer.

(3) The medical officer may consult a medical practitioner who is a fully registered person within the meaning of the Medical Act 1983. Such a practitioner may work within the prison under the general supervision of the medical officer.

(4) The medical officer shall consult another medical practitioner, if time permits, before performing any serious operation.

(5) If an unconvicted prisoner desires the attendance of a registered medical practitioner or dentist, and will pay any expense incurred, the governor shall, if he is satisfied that there are reasonable grounds for the request and unless the Secretary of State otherwise directs, allow him to be visited and treated by that practitioner or dentist in consultation with the medical officer.

(6) Subject to any directions given in the particular case by the Secretary of State, a registered medical practitioner selected by or on behalf of a prisoner who is party to any legal proceedings shall be afforded reasonable facilities for examining him in connection with the proceedings, and may do so out of hearing but in the sight of an officer.”

- 6.25 *There must be sound and demonstrable clinical reasons for allowing access to private health services. There must be evidence that this will improve the health of the individual and is not based on uninformed personal choice.*
- 6.26 *If medical treatment for gender dysphoria is commenced before reception into prison, and the prisoner applies for it to be continued, it should be continued until the prisoner’s gender specialist has been consulted on the appropriate way to manage the prisoner’s treatment unless the doctor working in the prison has reasonable clinical grounds for not doing so.*
- 6.27 *It is advisable that transgender prisoners be viewed as an ‘at-risk’ group in terms of suicide and self-harm. Assessment Care in Custody Team (ACCT) procedures must be utilised for any prisoner at risk of suicide or self-harm. (Research examples to support this approach include Pace, a mental health charity for LGB&T people, in partnership with Brunel University, the University of Worcester, and London South Bank University who found that nearly half of young transgender people have attempted suicide. It involved interviews and a survey of more than 2,000 people in England from 2010 to 2014).*

Gender Dysphoria and Gender Reassignment pathways: Applications to begin hormonal treatment for gender dysphoria

- 6.28 *The prison health care team must inform the relevant NHS commissioning authority of any request from a prisoner (whether remanded or sentenced) to begin medical treatment for gender dysphoria and request a contact point for liaison purposes.*
- 6.29 *The prison GP must take full account of any possible coexisting psychopathology that may require expert forensic psychiatric assessment and refer the prisoner to a forensic psychiatric service if appropriate.*

### Applications for Gender Reassignment Surgery

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

### Care and Separation

- 6.33 Particular care should be taken when a transgender prisoner is likely to be located in long-term care and separation as this may have serious mental health consequences for the prisoner. [PSI 26/2009 'Amendments to PSO 1700 Segregation](#) contains advice and guidance in relation to promoting and safeguarding the mental health of prisoners held in care and separation units. Removal from association under Rule 45 can only lawfully take place when the test in rule 45(1) is met i.e. it is desirable for the maintenance of good order or discipline, or in the prisoner's own interests. The consent of the prisoner to undergo such treatment would not be a defence on which a Governor could rely. The decision to place a transgender prisoner in long term care and separation should be made very carefully in accordance with Prison Rule 45, the published policy on Segregation and be supported by legal advice and reviewed in accordance with the system of segregation reviews as contained in [PSO 1700 Segregation](#).
- 6.34 It is not advisable to use Care and Separation as a method of managing risks to transgender prisoners from other prisoners. In these circumstances, where possible, the establishment should seek to manage the prisoner in an appropriate supportive environment away from the main regime of the prison whilst sentence management decisions are made.
- 6.35 *Where it is necessary to locate a transgender prisoner in a Care and Separation Unit, a referral to the centrally managed Transgender Case Board must be made within seven calendar days of the decision. This referral may be withdrawn if an alternative care and management plan is produced and commenced within seven days.*

### Integration and Interventions in custody

- 6.36 Establishments should strive to enable equal access for transgender prisoners, consistent with safe methods for managing prisoners on normal location, to all services and facilities, including accredited programmes, purposeful activities and other interventions which may assist their sentence plans and reduce re-offending.
- 6.37 Where a transgender prisoner has committed an offence in a different gender and this is relevant to their sentence plan, specialist advice may be gained directly from the Regional Lead Psychologist, via a Transgender Case Board, NOMS Equalities team or via referral to the Complex Case Board.

### Prison Transfers

- 6.38 *All local location and transfer decisions must be taken on a case by case basis where discretion may be applied. Where location decisions are agreed which are not in accordance with the legal gender of the offender, this must be signed off by the DDC of the receiving prison region<sup>9</sup>. For prisoners referred to the centrally managed Complex Case Board, decisions will be signed off by the chair of this Board.*

#### Transfers between different parts of the prison estate

- 6.39 *Transfers from the men's estate to the women's estate must be approved by the DDC for the women's estate. Transfers from the women's estate to the men's estate must be approved by the receiving Governing Governor and DDC. (This includes transfers to NOMS operated Immigration Removal Centres).*

#### Young Transgender Prisoners

- 6.40 *The care and management of young transgender prisoners who express a desire to transition or propose to live permanently in the gender they identify with, must be consistent with the duty to promote their wellbeing<sup>10</sup>.*
- 6.41 *Younger transgender prisoners may be particularly vulnerable and specific risks may be exacerbated by living within a custodial environment including risk of self-harm and an enhanced risk of sexual exploitation. All known risk factors must be thoroughly considered via a local or central Transgender Case Board to review location decisions and develop a care and management plan.*
- 6.42 *Whilst this policy applies equally to young offenders, it is recommended that in this context, a case involving anyone under the age of 21 be automatically referred to the Complex Case Board for transgender offenders. This is due to the fact that young prisoners may not have had the opportunity to gather sufficient evidence of living in the gender they identify with and they are precluded from the GRC application process until the age of 18. (See [Annex A](#) 'Living in the gender the offender identifies with').*

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<sup>9</sup> This criteria might include the lessons learned from the case of AB (see section 6). Considerations may include if the decision will prevent progression towards gender reassignment, and if so, how that may impact on the prisoner's state of mind, risk profile and sentence progression.

<sup>10</sup> Section 11 of the Children Act 2004 places duties on a range of organisations and individuals to ensure their functions and any services they contract out to others, are discharged having regard to the need to safeguard and promote the welfare of children.

## **7 Sentence Management: Community only**

### **Pre-Sentence Report (PSR) Preparation**

- 7.1 *If an offender discloses that they identify as transgender and/or that section 7 of the Equality Act applies<sup>11</sup> at the first point of contact with the NPS, this must be recorded on the Equality Information Form (as mandated in [PI 04/2016 Determining Pre-Sentence Reports](#)) and inputted into the case management system and written consent sought to disclose the previous gender.*
- 7.2 *The PSR writer must consider requesting a full adjournment with the court on the basis that those protected under the gender reassignment characteristic may have complex needs. Exceptions to this would include where custody is not a likely sentencing outcome and the delay in proceedings may disadvantage the offender by requiring a further attendance at court.*
- 7.3 *Wherever practicable, a pre-sentence local Transgender Case Board should be convened in order to agree the initial prison location should custody be imposed.*
- 7.4 *NPS Deputy Directors must nominate a Single Point of Contact in order to convene the local pre-sentence Transgender Case Board. The Board must be attended by a prison governor (within the prison region that is likely to receive the offender) and any recommendation to locate a prisoner which is not in accordance with their legal gender identity must be approved by the DDC within the court area and the DDC of the potential receiving prison (if different). If a decision is made to locate a prisoner in part of the prison estate not in accordance with their legal gender, the chair of the local pre-sentence Transgender Case Board must inform the DDC and the governing Governor of any prison identified and the PECS manager of the sentencing court.*
- 7.5 *The above measures will not apply to transgender offenders who identify as non-binary, gender fluid, transvestite or those who are intersex (unless there are exceptional circumstances) and who will continue to be located in the part of the prison estate consistent with their legal gender.*

### **Pre-Release Planning and Residence in NPS Approved Premises (AP)**

- 7.6 *The chart in [Annex J2](#) sets out the release arrangements which must be in place prior to and immediately following release from custody to Approved Premises, including a local Transgender Case Board convened within three working days of arrival at the AP.*
- 7.7 *NPS DDs and Community Rehabilitation Company (CRC) Chief Executives must ensure that referrals to Approved Premises include the legal gender of the prospective resident.*
- 7.8 *The majority of AP residents are MAPPA eligible and subject to post-release licences. NPS DDs must ensure that release plans to AP are fully informed by decisions made within the prison estate in relation to the care and management of transgender offenders and follow the principles contained within the guidance for location decisions in custody including:*
- *Seeking the defendant/offender's view of location*

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<sup>11</sup> That a person has the protected characteristic of gender reassignment if they are proposing to undergo, are undergoing or have undergone a process or part of a process for the purpose of reassigning their sex by changing physiological or other attributes of sex.

- *Assessing evidence of living in the gender the person identifies with alongside all known risk factors via a local Transgender Case Board and achieve agreement between NPS divisions where necessary*
- *Approval by the receiving NPS DD is gained prior to an offender being released from part of the prison estate (male/female) to a different part (male/female) of the AP estate or when transferring a transgender offender between parts of the AP estate*
- *Convening a local Transgender Case Board within three working days of the offender arriving at the AP or following disclosure that they are transgender.*

7.9 In the AP estate there is no equivalent in requiring female offenders to reside in the male AP estate due to security considerations as in the custodial estate. *Where a transgender offender without a GRC is deemed to present a very high risk of harm to other female AP residents, as part of the standard pre-release MAPPA process, advice must be sought from a local or centrally managed Transgender Case Board, and the choice of AP must be informed by decisions made during the custodial term, including the offender's behaviour. Transgender offenders must not be treated differently from other offenders with the same or similar risk profiles in access to opportunities for rehabilitation and reintegration. This may result in an AP location decision in accordance with the legal gender rather than the gender which the offender identifies with, because of risk and operational assessments.*

7.10 *For transgender individuals required to reside in APs for a period of bail assessment, a local Transgender Case Board must be convened to determine the appropriate location and to consider the safety of all residents.*

#### Voluntary Agreements for Transgender Residents in APs

7.11 The provision of a Voluntary Agreement for transgender AP residents is to support consideration of privacy, dignity, well-being, and arrangements for personal care whilst living in a communal environment. All transgender offenders covered in this policy, and those who have applied for or gained legal recognition of the gender they identify with should be encouraged to enter into a Voluntary Agreement. The template provided in [Annex D2](#) takes account of offenders who may have learning difficulties or disabilities and may be adapted as necessary.

7.12 *Any agreement with the AP resident must take account of and be consistent with licence conditions, sentences of the court and the national and local AP Rules. Where a resident does not wish to enter into a Voluntary Agreement and there are unresolved issues relating to their care and management, these must be addressed via a MAPPA review and/or a Transgender Case Board.*

#### Healthcare including Mental Healthcare

7.13 *Transgender offenders residing in APs must have equal access to all healthcare services as any member of the public as reflected in the NOMS AP Manual.*

#### Gender Dysphoria and Gender Reassignment Pathways

7.14 *Offender Managers (OMs) must ensure that statutory supervision appointments as part of a post-release licence, community sentence or suspended sentence order do not prevent transgender offenders attending a Gender Identity Clinic (GIC) or other healthcare appointment relating to gender dysphoria. If the location of the GIC is within an exclusion zone, or healthcare appointments are within a curfew time, then consideration should be given to identifying an alternative medical venue. If that is not possible, a licence or sentence variation must be considered by the OM in consultation with the Victim Liaison Officer (VLO), and the VLO informed of the outcome.*

Interventions

- 7.15 OMs may need to consider the delivery methods for transgender offenders required to complete rehabilitative interventions usually delivered within a binary service (i.e. male or female) such as some accredited programmes. *These decisions must be made on a case by case basis taking into account all known risk factors.*
- 7.16 *Transgender offenders must be permitted to present and express themselves in the gender they identify with (or in a gender neutral way) when completing interventions.*

Contingency Planning for Recall or Breach of Sentences Resulting in a Custodial Sentence

- 7.17 *NPS DDs and Heads of LDUs must ensure that for transgender offenders subject to Suspended Sentence Orders, post-release licence, or civil orders which, if breached could result in a custodial sentence, consideration and contingency decisions are agreed in principle with the DDC regarding prison location should it be necessary to place the offender in custody. All decisions must be made on the basis of up to date evidence and considerations.*

## 8. Complex and/or High Risk Offenders

### Personality Disorder

- 8.1 *Where a transgender offender is thought likely to have a personality disorder, a referral must be made to the community Offender Personality Disorder (OPD) service in each LDU.*
- 8.2 The criteria for referral is contained on the NOMS Intranet:  
<https://intranet.noms.gsi.gov.uk/support/a-z-what-works/personality-disorder>  
 Further information is available in the service directories published by NOMS and the criteria and principles are contained on the NHS England website at  
<https://www.england.nhs.uk/commissioning/wp-content/uploads/sites/12/2016/02/opd-strategy-nov-15.pdf>
- 8.3 NOMS recognises that there are a small number of offenders where personality disorder may impact on the decision to transition to an opposite gender and/or where motivation is not sincere. In such cases a referral for specialist advice, which may include the local healthcare teams, Regional Lead Psychologist, NOMS Equalities team and the centrally managed Complex Case Board, should be considered.

### Multi Agency Public Protection Arrangements (MAPPA)

- 8.4 Pre-release MAPPA meetings for MAPPA eligible transgender offenders will enable a holistic approach to risk management and sentence planning. This may be especially important for offenders who have transitioned to the gender they identify with during the custodial term.
- 8.5 *NPS DDs and Heads of LDUs must ensure that MAPPA eligible transgender offenders are referred to MAPPA in accordance with the MAPPA Guidance and a meeting convened at least 6 months prior to release to determine the MAPPA management level and to consider all known risk factors to enable the most appropriate and effective risk management plan to be developed by the Offender Manager.*

### Services to Victims (victims of offences specified in Schedule 15 of the Criminal Justice Act 2003)

- 8.6 Victims who are receiving the services of the NPS Victim Contact Service are generally provided with baseline information, such as key stages of an offender's sentence. *Victims are not generally provided with personal information about the offender, and the fact that an offender is transitioning or has transitioned during a custodial sentence must be considered as personal information.* Chapter 6 of the [Victim Contact Scheme Guidance Manual \(PI 48/2014\)](#) sets out the policy in respect of disclosing personal information or other information above the baseline. *NPS must discuss at a MAPPA meeting any case where they consider there is a strong argument for disclosing such information, where the case is one which falls to be managed under MAPPA, and seek legal advice.* Information to victims where a prisoner has transitioned during custodial sentence will be decided on a case by case basis in accordance with the NOMS Victim Liaison Scheme.

**9. Training and Expertise**

- 9.1 Training, guidance and awareness materials for the care and management of transgender offenders will be made available to all staff within NOMS following the release of this instruction. This will include specific guidance to Pre-Sentence Report writers, custody reception staff, offender managers, offender supervisors, AP staff and managers convening local Transgender Case Boards.
- 9.2 Access to specialist advice will be available via a nominated Regional Lead Psychologist, NOMS Equalities team, NPS divisional transgender Single Point of Contact, Equality leads within each prison, and the centrally managed Complex Case Board for transgender offenders.

## **10. Recording, Monitoring and Data Reporting**

- 10.1 *Records, communications and disclosures must be handled in compliance with the Gender Recognition Act 2004 and in accordance with NOMS policies [Information Risk Management Policy AI 08/2016](#), [PSI 06/2016](#), [PI 08/2016](#) and [Information Assurance Policy AI 18/2014](#), [PSI 24/2014](#), [PI 18/2014](#).*
- 10.2 *Wherever possible, written informed consent to disclose the gender assigned at birth must be obtained with an explanation of the benefits of disclosure.*
- 10.3 *Where consent is withheld and the transgender offender has protection under the GRA 2004 (for example they have been issued with a new birth certificate), all reference to the gender assigned at birth must be redacted on a case by case basis as follows:*
- *for transgender offenders who have obtained a legal change of gender*
  - *where the exemptions contained in the Gender Recognition Act do not apply. (See section 2.4 and [Annex B](#) Recording).*

### Offenders who have legal protection under the GRA and where consent to disclose the previous gender is withheld

- 10.4 *For offenders in possession of a GRC, the person's gender becomes for all purposes the legal gender. Systems must be in place to maintain records for existing and new offenders which are compliant with the Gender Recognition Act 2004 and does not identify a different gender where consent has not been given and none of the other exemptions apply.*
- 10.5 *It is an offence for a person acting in an official capacity who has gained protected information relating to a person's application for a GRC or information concerning the gender history of a successful GRC applicant to disclose the information to any other person. Unlawful disclosure is a criminal offence (Gender Recognition Act 2004, s22). All staff must comply with their statutory obligations under the Gender Recognition Act 2004 and its accompanying secondary legislation. This includes any member of staff who acquires the information whilst acting in the course of their employment. The legislation does permit disclosure in certain circumstances, including the prevention of crime. (See [Annex E](#) Further Relevant Legislation).*
- 10.6 *DDCs, NPS DDs, Governors, NPS heads of LDUs and PPU's and all agencies operating on behalf of NOMS must demonstrate that reference to medical information relating to transgender offenders is treated as 'medical in confidence' and only considered where necessary as part of the individual's care and management. Data relating to physical or mental health or conditions is sensitive personal data and must be processed in accordance with the provisions of the Data Protection Act 1998.*

### Sharing information about a previous gender with partnership agencies

- 10.7 *There are clear restrictions when sharing information about a previous gender with partnership agencies. All information sharing must be compliant with the GRA 2004 and the DPA 1998 (see [Annex E](#)).*

### Data Reporting

- 10.8 *Data reporting must be provided as required for inclusion in the NOMS Annual Offender Equalities Report.*

**11. Complaints**

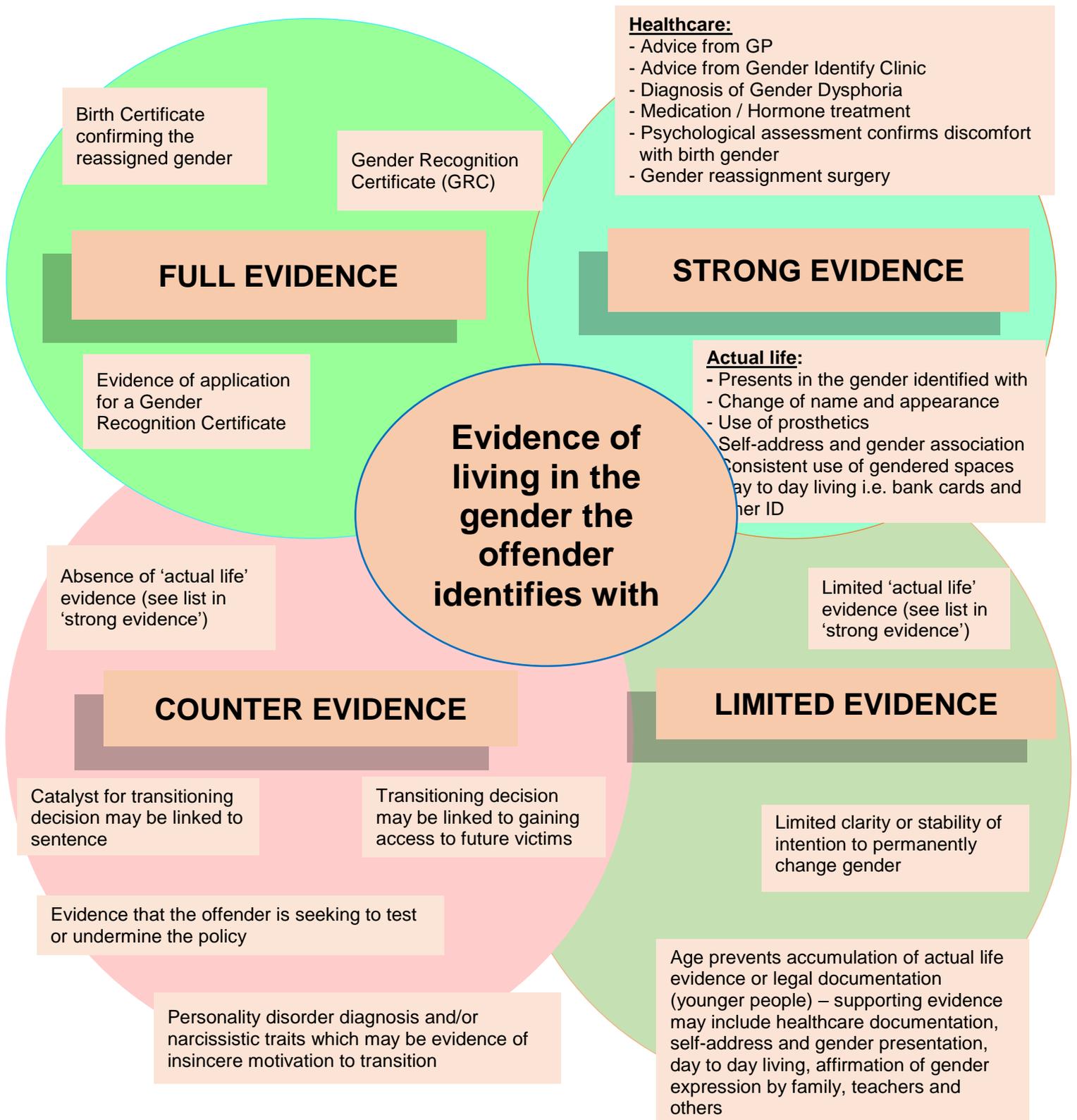
- 11.1 *Transgender offenders who raise complaints about any aspect of their care and management (including decisions made within Transgender Case Board within the framework of this policy) must be dealt with via the complaints procedures set out in [PSI 2012-02 Prisoner Complaints](#).*
- 11.2 [PI 51/2014](#) contains the NOMS Probation Standard Complaints Procedure for NPS.
- 11.3 *Providers delivering services on behalf of NOMS must demonstrate transparent and robust processes for responding to complaints made by transgender offenders.*

**12. Policy Review**

- 12.1 NOMS will establish a Transgender Advisory Board to:
- develop policy in response to changing legislation
  - review assessment systems based on binary measures and interventions
  - address concerns of transgender prisoners with regards to access to facilities in order to support gender expression, consistent with IEP and with any core offer relating to the national facilities list, whilst recognising local variations
  - consider the wider policy of provision of a gender neutral prison uniform
  - explore the advantages and disadvantages of clustering transgender prisoners when located in part of the prison estate not consistent with the gender with which they identify

**Evidence of Living in the Gender with which the Offender Identifies**

When an offender discloses that they are transgender, the following chart may assist in assessing the strength of evidence of living in the gender the offender identifies with in order to inform location decisions and sentence plans.



## **Guidance on supporting prisoners to live in the gender with which they identify in custody**

### Dress code

- A1 Prisons should obtain from an equivalent opposite gender prison a set of guidelines for what clothing and personal care products is acceptable. Such guidelines can often be adopted almost entirely for transgender prisoners.
- A2 The following options for obtaining clothing may be available:
- If prisoners have funds available, they may purchase gender-appropriate clothing from mail order catalogues
  - Governors have discretion to allow a parcel of clothing to be sent into the prison following conviction
  - Clothing may be available within nearby prisons and donated.
- A3 *Female prisoners are allowed to wear their own clothes. A male to female transgender prisoner must be allowed to wear female clothing, regardless of any restrictions imposed through Incentive and Earned Privileges (IEP). The only exception will be for relevant work clothes.*
- A4 Allowing male to female transgender prisoners to wear their own clothes is necessary to ensure that such prisoners can live in the gender with which they identify. It may be helpful to explain this to other prisoners who are required to wear prison uniform.
- A5 *Where transgender prisoners who identify as gender fluid or transvestite wish to express their identity on an intermittent basis, prison staff must establish with the prisoner the degree and level of expression of gender identity. This may range from minor changes to appearance (e.g. wearing of nail varnish, minimal face make up and prosthetics) which may be accommodated without further action. If the expression of gender identity is more profound (e.g. use of wig, heavy make-up) this may require a security assessment and an additional photograph. All transgender prisoners should be encouraged to enter into a voluntary agreement in relation to gender presentation and changes to appearance. This should not enable the effective opportunity to impersonate managerial staff (i.e. through the wearing of suits). Voluntary agreements must not contradict Annex F [of 30/2013 Incentives and Earned Privileges policy](#).*

### Items used to present in the relevant gender

- A6 Transgender people, particularly those who have not undergone surgery or extended hormone therapy, may use various items to assist with their presentation in the gender they identify with. These can range from sophisticated prostheses to padded bras. Regardless of their level of sophistication, access to them can only be restricted in exceptional circumstances. IEP is not a justifiable reason for restricting access.
- A7 These items may only be prohibited when it can be demonstrated that they present a security risk which cannot be reasonably mitigated. The test that is applied to these items is the same as that applied to other items in the prison in which the prisoner is held. *If a prison decides to apply such restrictions, they must be able to provide a detailed and reasonable justification for doing so.*
- A8 Transgender prisoners may use make up to present more convincingly in the gender they identify with. Make up that is vital to presenting in the gender identified with, such as

foundation to cover facial hair, may not be restricted. Other make up may be restricted within the framework of IEP.

### **Use of name**

- A9 All transgender offenders covered in this policy should be asked to confirm the name they wish to be used consistent with the gender they identify with. For offenders who identify as gender fluid or transvestite who wish to be called by a different first name when expressing a different gender identity, agreement should be sought via a voluntary agreement subject to risk, security and operational assessments.

### **Change of name**

- A10 The Prison Service policy for prisoners who wish to legally change their name is set out in [Prison Service Order 4455](#) 'Requests from Prisoners to Change their Name'.
- A11 Paragraph 1.2 of [PSO 4455](#) states: "When Governors are considering name change requests, the following factors may be regarded as indications that the intended change is genuine and permanent, and should therefore be acknowledged officially:
- When not to acknowledge the new name may cause severe psychological harm to the prisoner. Medical advice should be sought.
  - When the change of name is because of gender reassignment. In such a case the change of title (Mr, Ms etc.) should also be acknowledged."
- A12 Paragraph 1.3 of [PSO 4455](#) states: "A name change by Deed Poll or statutory declaration is also generally an indication of genuineness on behalf of the prisoner and should be acknowledged officially. Governors may refuse a name change by Deed Poll or statutory declaration but only in exceptional circumstances such as where the name is considered to be offensive or obscene."

## Annex B

**Case Recording and Communications Compliant with the Gender Recognition Act 2004**Recording Legal Gender

- B1 *The processing of all data is required to be compatible with the Data Protection Act 1998, and any disclosure is compatible with the GRA 2004. (See [Annex E](#) Relevant Further Legislation).*
- B2 *The legally recognised gender must be recorded, where a recording of gender is required, on all offender recording systems within NOMS.*
- B3 *When a prisoner acquires a new birth certificate via a GRC, the record must be updated with the new legally recognised gender and written informed consent to disclose the previous gender should be sought at the earliest opportunity. If this is gained, the previous existing record will remain intact with the updated change of gender and relevant pronouns used.*
- B4 *If a transgender offender does not provide consent to disclose the previous gender and where exemptions in s22 of the GRA 2004 do not apply, in such cases the previous record will need to be redacted in order that the previous gender (including pronouns) is not disclosed. Communications relating to the prisoner must not disclose the previous gender. (See [Annex E](#))*

Recording of Names

- B5 *Transgender offenders may elect to change their legal name whether or not they are pursuing legal recognition of the gender they identify with. Records must be updated to reflect the legal name. If an offender has legal protection under the Gender Recognition Act 2004 and has provided written consent to disclose their previous gender, previous names will remain on the record.*

Prison NOMIS

- B6 *The information entered onto Prison NOMIS for a transgender prisoner's gender should match the type of prison in which the prisoner is located. Transgender prisoners in a male prison will have their gender entered as male on Prison NOMIS, unless they have obtained legal recognition of the gender they identify with and are awaiting transfer to the women's estate or being held for security reasons as a female prisoner in the male estate, as described in section 4 of this instruction.*
- B7 *Transgender prisoners in a female prison will have their legally recognised gender entered. This will mean that for transgender females who have strong evidence of living in the gender they identify with (but have not obtained legal recognition via a GRC), and following relevant assessment, are located in the women's estate, their gender must be recorded as 'male'.*

NPS nDelius

- B8 *The nDelius case management system used in NPS contains a field within the Equality Monitoring section to record if an offender has declared that they are transgender. A subsequent field will appear to confirm if the offender has given consent to disclose their previous gender. If they have not provided consent further advice must be sought from*

*senior managers or from the NOMS Equalities Team to decide if the case and other documents held need to be redacted.*

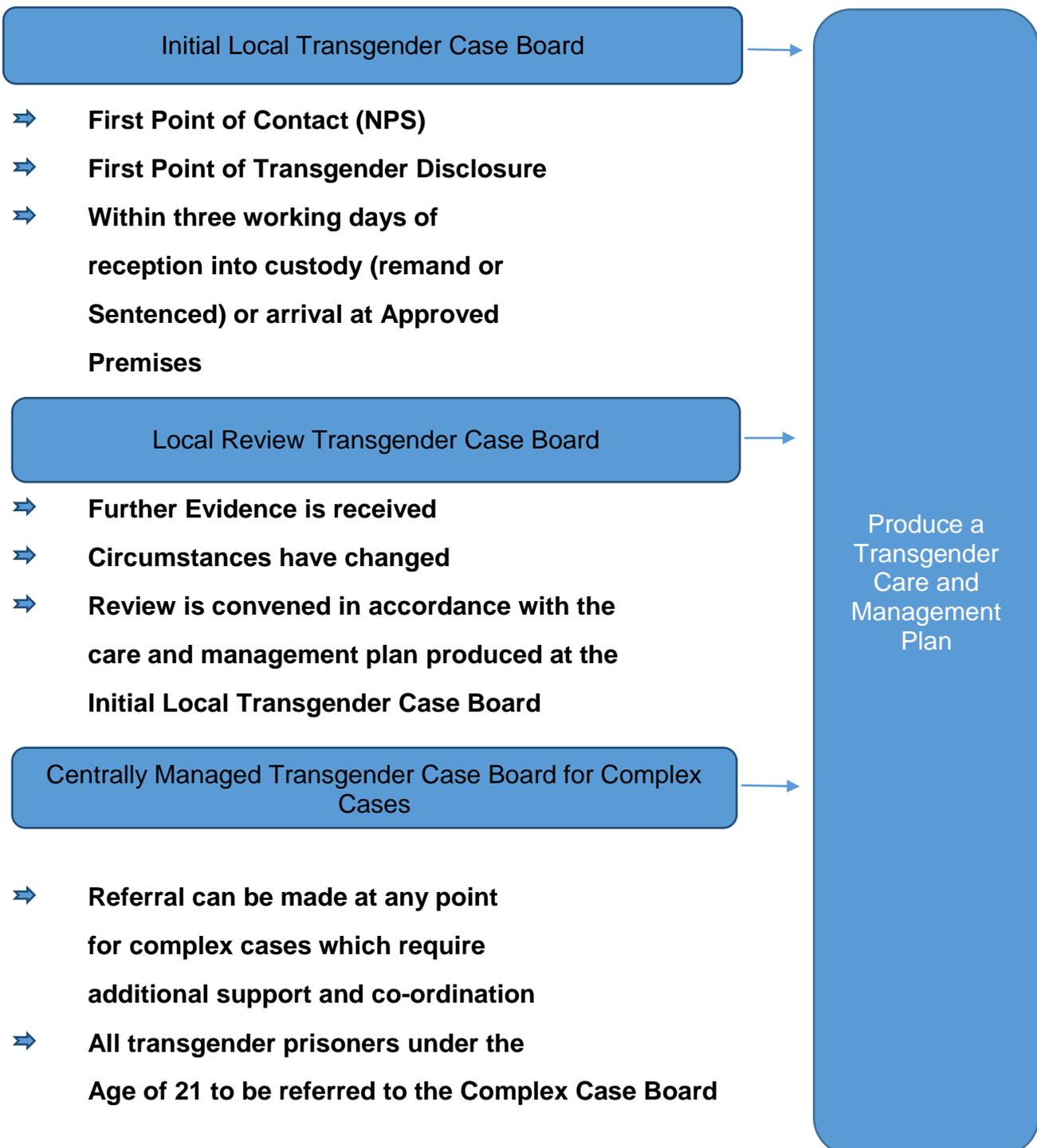
Providers of Services on behalf of NOMS

B9 *All organisations providing services on behalf of NOMS must ensure that their case recording systems are compliant with the Gender Recognition Act 2004.*

Medical information

B10 *Medical (including anatomical) information relating to medical interventions for transgender offenders must routinely be treated as 'medical in confidence' unless exemptions apply. (Exemptions to 'Medical in Confidence' include prevention of crime).*

## Convening a Transgender Case Board



## Checklist for Manager Chairs of a Local Transgender Case Board

### Attendance

- ➔ Has a multi-agency approach to the Board taken account of all key stakeholders relevant to the individual case (e.g. DDC and/or prison governor representative, NPS divisional transgender SPOC, offender manager, offender supervisor, Regional Lead Psychologist, gender identity specialist, GP, approved premises manager, NPS divisional SPOC, NOMS equalities team)?
- ➔ Has the offender been invited to contribute to the Board in person (for a designated part of the meeting), in writing, video-link or via a family member with consent?

### Written consent

- ➔ For transgender offenders subject to the gender reassignment protected characteristic, has written informed consent to disclose the previous gender been sought, thereby allowing previous records to remain intact?

### Assessments

- ➔ Assess all known risk factors:
  - to others offenders
  - from other offenders
  - to self
  - to staff
- ➔ What is the strength of evidence of living in the gender (Full/strong/limited/counter)?
- ➔ Is the location/proposed location to part of the prison or AP estate consistent with the offender's view of where they wish to be located and the gender they identify with?
- ➔ Is the location/proposed location to part of the prison or AP estate consistent with offender's legal gender?
- ➔ What are the health and well-being and social care considerations (current medication, continuity of healthcare, any Gender Identity Clinic appointments) etc.?
- ➔ Is the offender considered to be vulnerable? Do they need to be in accommodation away from the main regime in a supportive environment? If not, how will participation in the main regime be supported?
- ➔ Is a referral to the centrally managed transgender Complex Case Board necessary? (Examples to prompt a referral would include very high risk of harm to others, severe personality disorder, complex mental health problems, high profile case, inability to agree a transfer within the estate, etc.)

### Sentence Management

- ➔ Has a care and management plan ensuring that this plan supports the aims of the sentence plan and is consistent with licence or other conditions been developed?
- ➔ What awareness, knowledge and support do staff have for caring and managing the transgender offender?
- ➔ Has the offender agreed to a Transgender Voluntary Agreement and has this been completed? (see annex D)
- ➔ Are there any unresolved matters that require further action or a Transgender Case Board Review?

*All decisions and recommendations from the Transgender Case Board which seeks to locate offenders in a part of the prison or approved premises estate which is not consistent with their legal gender must be approved by the receiving Deputy Director and the Governing Governor of Custody of the proposed establishment or NPS Deputy Director for AP decisions.*

Official sensitive when complete

## Annex C3

**Transgender Case Board Record** (template to be adapted as necessary)

<b>Transgender Case Board Record</b>	
<i>Tick as appropriate</i>	
<b>Initial Local Transgender Case Board</b>	
• During pre-sentence report preparation	<input type="checkbox"/>
• Within three working days of reception into custody (remand or sentenced)	<input type="checkbox"/>
• Within three working days of arrival into Approved Premises	<input type="checkbox"/>
<b>Local Transgender Review Board</b>	<input type="checkbox"/>
1	Date of Board
2	Location of Board
3	Chair
4	Attendees
5	Apologies
6	Name of offender
7	Prison number or case reference number
8	Views of the offender (in person, in writing, via telephone etc.)
9	Location decision – is this consistent with the view of the offender and/or their legal gender? Record the reasons for the location decision
10	Summary of all known risks relating to transgender status (include risks to the offender, to other offenders, to staff and including self-harm)
11	Summary of operational and/or security considerations
12	Has the offender provided written consent to disclose their previous gender?
13	Healthcare considerations (including mental health)

14	Supporting gender expression – living in the gender the offender identifies with
15	Location considerations within the main regime and access to purposeful activities and interventions
16	Voluntary Agreement – has the offender participated in a voluntary agreement and if not what decisions are required?
17	If searching arrangements have not been agreed via the Voluntary Agreements, what decisions needs to be made and who do these need to be communicate to?
18	Input from Regional Lead Psychologist or Equality leads
19	Input from Offender Manager
20	Support of family members or external organisations
21	Is a referral to the centrally managed Transgender Case Board for complex offenders necessary?
22	Summary of actions from the Transgender Case Board (timescales and names of individuals to be included)
23	Any other considerations
24	Review date (where necessary)

## Annex C4

<b>Referral to NOMS Complex Case Board for Transgender Offenders</b>	
Date of referral	
Name of referring manager	
Contact details of referring manager	E-mail: Direct dial:
Name of prison or approved premises	
Name of offender	
Prison Number or Case Reference Number	
Sentence	
Index offence	
Summary of reasons for referral	
Provide names contact details for suggested attendees at the Complex Case Board:  These may include Healthcare professionals, Offender Manager, Programme Tutors, Regional Psychologist Lead, Personality Disorder lead, local and national Equality leads) etc.	
Attach the minutes of any local Transgender Case Boards	

Submit to: [CCSSwomensteam@noms.gsi.gov.uk](mailto:CCSSwomensteam@noms.gsi.gov.uk)

Telephone Equalities Adviceline: 0300 047 5005

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## Annex C5

**Care and Management Plan for Transgender Offenders** (template to be adapted as necessary)

*All care and management plans must be consistent with national and local prison or approved premises policies and rules and with the wider sentence management plan, licence conditions or other orders of the court (including those conditions relating to victims where applicable).*

Care and Management Plan for Transgender Offenders	
1	Offender's name
2	Prison Number or Case Reference Number (NPS)
3	Date of plan
4	Review date of plan (where applicable)
5	Summary of care and management within the prison or approved premises location and main regime, including if a change of location is requested
6	Views of the offender (including location, care and management)
7	Actions needed to support gender expression
8	Healthcare and management
9	Management of risks (consider all known risks to the offender (including self-harm), by the offender to other offenders, staff and known victims)
10	Any other agreed care and management needs identified by staff, offender or others
11	Support from family or voluntary groups
12	Any other considerations

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Annex D



**Ministry of JUSTICE**  
National Offender Management Service

**Annex D1: Voluntary Agreement for Transgender Prisoners – prison only**

*Note to staff: All care and management plans must be consistent with national and local prison policies and rules and with the wider sentence management plan, licence conditions or other orders of the court (including those conditions relating to victims where applicable).*

Voluntary Agreement between: HMP/YOI .....

and .....

**1 The reason for this agreement**

The reason for this agreement is to keep a record of the things we agree will happen to help you live in the gender you feel is right for you. This agreement sticks by Prison Service rules and will be updated if the rules change. Unless otherwise agreed, your daily plan will be the same as all other prisoners in this prison.

**2 Living space**

Whilst at HMP/YOI..... space will be provided to give you the most privacy possible but still allowing you to take part in all the prison activities. This will take into account your cell sharing risk assessment and any problems you may have.

**3 Showers/bathing**

If the prison is unable to provide showering or bathing option in your cell, you will be given as much privacy as possible by:

- No other prisoner will be allowed to use the shower/bathing space when you are using it.
- You must make sure that the shower curtain/screen or bathroom door is closed.
- You must be fully dressed when walking to and from the shower area. This includes wearing proper footwear.
- You will be told the times you can use the shower/bathroom and you must not use or attempt to use the shower outside these times.
- If there are times when you need to use the shower/bathroom facilities outside of the proper times, such as prior to escort, you must speak to the Wing Supervising Officer or Custodial Manager.
- You must use the showers/bathroom as directed by the staff on duty.

#### **4 Laundry**

All your clothing will be washed in line with the wing/unit laundry rules. You may wash personal items such as underwear by hand in your room. If needed, a bowl will be provided for this purpose. If a sink is not available in your room, other plans will be made for you to wash personal items in private.

#### **5 Dress code**

You will be able to wear clothing that fits your gender as long as it fits with the prison rules. During work periods you will dress correctly for the work you do and in line with health and safety regulations.

If your gender changes (for example, if you cross-dress or change your dress between male and female), a security assessment will be completed and access to clothing and other items such as make-up or jewellery will be agreed with you. (delete this paragraph if not relevant to the prisoner)

#### **6 Employment**

Employment will be provided for you in line with the usual prison rules, but will take into account any issues you may have in relation to your gender.

#### **7 Offending behaviour**

You are expected to follow your sentence plan and to do any offending behaviour programmes which you need. You will be able to do your programmes in the gender you identify unless that means you are unable to follow the health and safety rules.

#### **8 Items you can have**

The list of items you can have will be the same as other prisoners, along with some items that help you to live in your gender. Certain items will be agreed locally.

You will be allowed to buy toiletries to help you live in your gender as long as these meet with prison rules.

If your gender changes (for example, if you cross-dress or change your dress between male and female presentation), a security assessment may need to be completed and access to items will be agreed with you. Photographs may need to be taken of you in your male and your female roles. If you change your gender regularly, this should be shared with .....  
(insert staff name) so that an agreement can be reached. (Delete this paragraph if not relevant to the prisoner)

#### **9 Support**

You have the support of (insert staff name) but you can also speak to any member of staff about any concerns you may have.

If you need further support with gender identity, you can contact:  
The Gender Trust, 76 The Ridgeway, Astwood Bank, Worcestershire, B96 6LX  
Telephone: 01527 894 838, e-mail: info@genderttrust.org.uk



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**Annex D2: Voluntary Agreement for Transgender Residents– Approved Premises**

*Note to staff: All Voluntary Agreements must be consistent with national and local approved premises policies and rules and with the wider sentence management plan, licence conditions or other orders of the court (including those conditions relating to victims where applicable)*

Voluntary Agreement between: ..... Approved Premises (AP)

and .....

**1 The reason for this agreement**

The reason for this agreement is to keep a record of the things we agree will happen to help you live in the gender you feel is right for you. This agreement sticks by National Probation Service and AP rules and will be updated if the rules change. Unless otherwise agreed, your daily plan will be the same as all other people in this AP.

**2 Living space**

Whilst at..... AP space will be provided to give you the most privacy possible but still allowing you to take part in all activities. This will take into account any risk assessments and any problems you may have.

**3 Showers/bathing**

If the AP is unable to provide showering or bathing option in your room, you will be given as much privacy as possible by:

- You must make sure that the shower curtain/screen or bathroom door is closed
- You must be fully dressed when walking to and from the shower area. This includes wearing proper footwear.

**4 Laundry**

All your clothing will be washed in line with AP laundry rules. You may wash personal items such as underwear by hand in your room. If needed, a bowl will be provided for this purpose.

**5 Dress code**

You will be able to wear clothing that fits your gender, as long as these fit with the AP rules.

**6 Offending behaviour**

You are expected to follow your sentence plan and to do any offending behaviour programmes which you need. You will be able to do your programmes in the gender you identify with.

**7 Support**

You have the support of .....(insert staff name) but you can also speak to any member of staff about any concerns you may have.

If you need further support with your gender identity, you can contact:

The Gender Trust, 76 The Ridgeway, Astwood Bank, Worcestershire, B96 6LX  
Telephone: 01527 894 838, e-mail: info@gendertrust.org.uk

**8 Named AP key worker and AP manager**

Your AP Keyworker is .....

Your AP Manager is .....

**9 Monthly review**

You will have a review every month with your key worker, and every three months with your AP manager. This will give you the time to discuss any problems or ask for help.

**10 Searching**

Your room will be searched in line with the AP procedures.

Offender's signature..... Keyworker's signature.....

Offender's name..... Keyworker's name.....

Date ..... / ..... / ..... Date ..... / ..... / .....

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**Ministry of  
JUSTICE**

National Offender  
Management Service

## **Annex D3: Voluntary Agreement for Transgender Prisoners in custody of PECS contractors only**

*Note to staff: Voluntary agreements must be consistent with prison rules and with the wider sentence management plan, licence conditions or other orders of the court (including those conditions relating to victims where applicable).*

Voluntary Agreement between:

Prisoner Escort Custodial Service at .....Court

and ..... (name of prisoner)

### **1 The reason for this agreement**

The reason for this agreement is to keep a record of the things we agree will happen to support you in the gender you feel is right for you whilst you are in the court cells.

If you are taken to prison we want you to tell us your view of going to either a men's or women's prison. We will need other information to make the final decision.

This agreement sticks by prison rules and will be updated if the rules change. Unless otherwise agreed, your daily plan will be the same as all other people held in the cells.

### **2 Dress code**

You will be able to wear clothing that fits your gender, as long as this fits with the court and the prison service rules.

### **3 Searching**

You and your cell will be searched in line with the prison rules. This includes any personal items that you have.

The way in which you are searched, and the gender of the staff searching you, will be discussed with you to reach an agreement. If agreement cannot be reached, you will be searched in the way that staff consider to be the best for security and for your welfare and privacy.

Searching agreement

**4 Prison Location**

It will help us to make a decision about which prison we should take you to if you can give us proof of your legal gender (e.g. birth certificate).

If you have not changed your gender legally, but you are living in the gender you identify with, it will help us to make a decision if you can give us proof of this. This could be a letter from your GP, Gender Identity Clinic, change of name (on your driving licence or other forms of identity).

If you cannot prove your legal gender, the prison service will make a decision based on the best information we have. Staff working in the court cells do not make this decision.

If you do not agree with the decision, a local Transgender Case Board will be held about you within three working days of you going to prison. This will be sorted out by the prison. You will be able to make your views known to this Board.

If you cross-dress, are gender fluid or do not think of yourself as either male or female, you will be located in a prison which fits with your legal gender or, if this is not known, based on the best available evidence we have. You will be able to dress in the gender you identify with as long as this fits with prison rules.

**5 Support**

You can speak to any member of staff about any concerns you may have. If you need further support you can contact:

The Gender Trust, 76 The Ridgeway, Astwood Bank, Worcestershire, B96 6LX  
Telephone 01527 894 838, e-mail info@gendertrust.org.uk

Prisoner's signature

PECS escort contractor's staff signature

.....

.....

Prisoner's name

PECS escort contractor's staff name

.....

.....

Date ..... / ..... / .....

Date ..... / ..... / .....

## Annex E

**Further Relevant Legislation**Gender Recognition Act 2004

- E1 The Gender Recognition Act 2004 provides a mechanism to allow people to apply to the Gender Recognition Panel (GRP) for legal recognition of the gender the person identifies with. Applicants not married or in civil partnerships, who can satisfy the GRP that they fulfil the legal requirements for recognition in their acquired gender, will be granted a full gender recognition certificate (GRC). Section 9 of the GRA 2004 states:
- (i) 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 women).
- E2 Neither surgery nor hormone therapy are prerequisites for receiving a full GRC. Further advice on applying for a GRC is available on the GRP website at [www.grp.gov.uk](http://www.grp.gov.uk). This includes guidance on a separate application process for those who have already obtained legal recognition in a foreign country.
- E3 From the date of recognition the applicant is seen in law as being for all purposes of the person's gender. *Establishments must treat holders of a full GRC in the same way as any other person of their acquired gender.* This will have ramifications for areas such as searching and decisions relating to location in the prison estate or Approved Premises
- E4 If a successful applicant's birth was registered in the UK, the GRC may be presented to the appropriate Registrar General who will issue a new birth certificate in the person's acquired gender. *An offender must not be asked for a copy of their GRC as proof that the person's gender is recognised by law, but a staff may ask for a copy of the offender's birth certificate which will state the offender's legal gender.*
- E5 If an offender's birth was registered outside of the United Kingdom then the GRC will be valid and the person's gender is recognised in UK law. In such a situation offenders will have to provide a GRC if they wish to prove legal recognition of their gender.
- E6 If an offender presents other evidence that they have obtained legal recognition in another country, this will not automatically mean that their acquired gender is recognised under UK law. Further advice can be obtained from the Government Equalities Office<sup>12</sup> or the NOMS Equality Team NOMS\_Equalities@noms.gsi.gov.uk

Interim GRCs

- E7 An interim GRC is evidence that the person has met all the criteria for a full certificate. An interim certificate is granted to successful applicants who are married and those in civil partnerships in order to dissolve the marriage or partnership but does not entitle the holder to the rights associated with a full GRC. If the divorce or annulment of the marriage or civil partnership takes place and proceedings in this respect were begun within six months of the issue of the interim GRC, the GRP will convert the interim certificate into a full GRC.

---

<sup>12</sup> Government Equalities Office (see annex F for full address)

Disclosure of Protected Information (section 22 Gender Recognition Act 2004)

- E8 (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 section 5(2) or 6(1) or
- (b) If the application under section 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 (which includes prison and probation staff), a constable or the holder of any 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
- (c) In the course of, or otherwise in connection with, the conduct of business or the supply of professional services.

Exemptions to Disclosure within the Gender Recognition Act 2004

- E9 It is not an offence under section 22 (4) of the GRA 2004 to disclose protected information relating to a person if –
- (a) the information does not enable the person to be identified;
- (b) that 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 a 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;
- (g) the disclosure is made to the Registrar General for England and Wales, the Registrar General for Scotland or the Registrar General for Northern Ireland;
- (h) the disclosure is made for the purposes of the social security system or a pension scheme;
- (i) the disclosure is in accordance with an order made by the Secretary of State; or
- (j) the disclosure is in accordance with any provision of, or made by virtue of, an enactment other than this section (e.g. any other law)
- E10 The Gender Recognition (Disclosure of Information) (England, Wales and Northern Ireland) (No. 2) Order 2005 (No. 916) provides that it is not an offence to disclose protected information:
- for the purpose of obtaining legal advice;
  - for certain religious purposes
  - for medical purposes to a health professional where the person making the disclosure reasonably believes that the subject has given consent to the disclosure or cannot give such consent; or
  - for certain reasons related to insolvency.
- E11 There may be a situation in which protected information about an offender with a GRC is recorded or shared to prevent and detect crime and to fulfil prison and probation public protection responsibilities under MAPPA. Specific arrangements have been made to

ensure that information recorded on ViSOR ([see Glossary](#)) is exempt. **However, general offender records are not exempt.**

- E12 Information about prisoners who do not have a GRC 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 below.

#### Data Protection Act 1998

- E13 The Data Protection Act 1998 sets out the circumstances in which sensitive personal data can be used or transmitted. The definition of sensitive personal data would include information about an individual's gender history or gender reassignment. As such, explicit consent from the prisoner would be required for that data to be shared without restriction unless one of the other conditions in schedule 3 of the DPA 1999 is fulfilled.
- E14 Explicit consent may be obtained via the Equality Information Form at the first point of contact during the preparation of a pre-sentence report or at any stage following reception into custody. The Equality Information Form can be found in Annex B of [PI 04/2016](#) Determining PSRs.

#### Human Rights Act 1998

- E15 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 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.
- E16 Generally NOMS must not seek to interfere with a person's personal autonomy, preventing that person from living fully in the gender with which they identify, even if they not seeking a GRC, or it may be liable under the Human Rights Act 1998 for violation of Article 8 of the European Convention on Human Rights. However an interference may be lawful provided it is in pursuit of a legitimate aim, in accordance with the law, necessary and proportionate.

#### European Convention of Human Rights: Article 8

- E17 Article 8 includes the right to respect for private life. The private life limb has been very expansively interpreted in case law by the ECtHR. An illustrative example of this was the case of *Pretty v UK* (2002), in which the ECtHR found that private life encompasses physical and psychological integrity, physical, personal and social identity, gender identification, name, sexual life and sexual orientation, personal autonomy and lifestyle. Case law indicates that the right to self-determination includes the right to shape and define your identity through personal choices. One core aspect of self-determination is the protection of sexual identity, which is treated as a core aspect of the right to private life. This means that Article 8 includes the right to be yourself and live as yourself, and it may, in particular circumstances, protect an individual's right to choose matters like their mode of appearance and dress, clothing, haircut etc.
- E18 Article 8 comprises of both negative and positive obligations. The negative obligation is an obligation to refrain from taking steps that would violate article 8 e.g. to refrain from taking steps that would have an adverse impact on an individual's mental health/integrity in order to preserve their mental stability. Examples of positive obligations would include facilitating gender expression and choices as outlined in paragraph E17 above.

- E19 ECtHR case law on the issue of gender identity has evolved, and in the case of Goodwin v UK (2003), the ECtHR found that failure to provide for transsexual individuals to have full legal recognition of their new identity when they underwent gender reassignment violated article 8. This resulted in the UK legislating in response via the Gender Recognition Act 2004 to create the system of GRCs.

Case law relating to presentation of gender and access to gender appropriate facilities

- E20 In the case of R (E) v Ashworth Hospital Authority (2001) the subject of clothing for incarcerated people was raised. The claimant was a man detained in a high security hospital following criminal conviction, and wished to dress as a woman within the hospital. The hospital refused to allow him to dress as a woman. The Admin court dismissed the JR, finding that the hospital had the (implied) statutory power to decide what detained patients wore; the hospital had valid security concerns to support its approach, the restrictions imposed pursued a legitimate aim, and there was a rational connection between the aims and concerns advanced; therefore the restrictions placed on his freedom to dress and assume the appearance of a woman were lawful.
- E21 In the case of R (Green) v SS for justice 2003, a male transsexual prisoner complained that lack of access to various female items in a male prison (including wigs, prosthetic devices etc) constituted a breach of published policy and was discriminatory. The court held that the governor concerned had acted reasonably because of legitimate security considerations and reflected that the governor had a discretionary area of judgment in managing the internal security of the prison.

**Support and Advice**

- F1 NOMS Equality Teams can be contacted at [NOMS Equalities@noms.gsi.gov.uk](mailto:NOMS_Equalities@noms.gsi.gov.uk)  
Telephone **Equalities Adviceline**: 0300 047 5005
- F2 Referrals to the Transgender Complex Case Board  
[CCSSwomensteam@noms.gsi.gov.uk](mailto:CCSSwomensteam@noms.gsi.gov.uk)
- F3 The NOMS Women's Team can be contacted at  
[WomensTeam@noms.gsi.gov.uk](mailto:WomensTeam@noms.gsi.gov.uk)
- F4 NOMS Staff Network for Lesbian, Gay, Bi-sexual and Transgender staff:  
Pride in Prisons and Probation, [PiPP@noms.gsi.gov.uk](mailto:PiPP@noms.gsi.gov.uk)
- F5 Regional Lead Psychologist Transgender SPOCs (contacted via prison regional offices)
- F6 NPS Divisional Transgender Specific Point of Contact (SPOC)  
Contacted via NPS Divisional Headquarters or Divisional Equality Managers
- F7 Prison Equality leads  
Contact via each establishment
- F8 Government Equalities Office  
Government Equalities Office  
Department for Education  
Piccadilly Gate, Store Street  
Manchester  
M1 2WD  
Enquiries: 0370 000 2288
- F9 Gender Identity Clinics  
Contacted via prison health care teams
- F10 Voluntary and Community Transgender Support Groups  
Details to be produced in further guidance

**Guidance on medical treatment****The treatment for gender dysphoria in the NHS**

- G1 Gender dysphoria is the disorder variously referred to as gender dysphoria, gender identity disorder and transsexualism. Transsexualism is defined by the World Health Organisation in its International Statistical Classification of Diseases and Related Health Problems (Tenth Revision), ICD 10, as a “desire to live and be accepted as a member of the opposite sex, usually accompanied by a sense of discomfort with, or inappropriateness of, one's anatomic sex, and a wish to have surgery and hormonal treatment to make one's body as congruent as possible with one's preferred sex”.
- G2 Medical and surgical treatment to effect gender reassignment is available in England and Wales to people with gender dysphoria without any legal formalities, either under the NHS or in the independent sector. However, individual NHS health commissioners do vary in the priority they afford to funding treatment for gender dysphoria.
- G3 Anyone wanting gender reassignment treatment will first have to undergo a period of specialist diagnosis, assessment and counselling by a gender specialist. This is usually a consultant psychiatrist, senior psychologist, GP with a special interest, or a combination of such professionals working in a team, possibly at a Gender Identity Clinic.
- G4 This could lead to the commencement of hormone therapy. If the person is comfortable on hormones and intends to progress towards surgery then a period of living in the new gender role will follow, usually for a minimum period of 12 months. The person should be able to demonstrate acceptance by society in this role and improved social and psychological functioning.
- G5 After successfully completing a period of time living in the new gender role under the supervision of a gender specialist, or team of specialists, the person should then receive two written opinions referring the person to a competent and experienced surgeon.
- G6 Providing the surgeon is satisfied the person is a suitable candidate for surgery, the person may then be placed on a waiting list for a gender reassignment operation. It is regarded as essential that someone awaiting such an operation continues to undergo counselling and assessment for the interim period, of what may be up to two years, before one can take place. Hormone treatment continues after the operation, usually on a life-long basis, and there may be a continuing need for psychiatric care and counselling.
- G7 The Medical Royal Colleges in the UK have worked in association with related professional, clinical, and user groups to develop standards of care which should apply as minimal service provision for patients with gender dysphoria accessing health care services within the UK. These will provide clinicians throughout the UK with a minimum set of professional standards of care.

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

- G8 Every effort should be made to ensure that prisoners with gender dysphoria are retained in one establishment during the period they are on remand, subject to security requirements and population pressures, to provide stability of counselling and other support services and to maintain some aspect of confidentiality concerning their medical status.
- G9 The gender dysphoria specialist and, if there is one, the forensic psychiatrist will advise the doctor working in the prison on the feasibility of treating a convicted prisoner on a case-by-

case basis. They will take into account all the prisoner's circumstances, including the length of sentence, security categorisation, risk to others, and how those risk factors might be minimised. If either service requires it, the prison health care team will arrange for the forensic psychiatrist and the gender dysphoria specialist to liaise. A treatment plan will be drawn up to meet the patient's needs. The gender dysphoria specialist should advise the prison health care team on any through-care or follow-up issues to facilitate a smooth transition on the prisoner's release.

#### Applications for gender reassignment surgery

- G10 It is important to ensure the synchronisation of clinical and management decisions so that individuals do not proceed to surgery until a clear plan for their care, management and custody has been agreed. This includes identifying risks that the prisoner may face from other prisoners and risks they may pose to other prisoners. It also includes an assessment of risk to the public as with ordinary categorisation assessments.
- G11 The supervising consultant will advise the doctor working in the prison and the Governor on all clinical aspects of care and the individual needs of the patient will be considered in all cases. These needs will be met by appropriate medical and psychiatric supervision during treatment.
- G12 Genital reconstruction surgery is provided under the NHS as a core commissioned service, which will be provided when the individual has met the conditions required by the gender specialist or gender identity clinic and two opinions supporting surgery are provided. Treatments such as facial electrolysis, hair transplant surgery, facial cosmetic surgery, breast augmentation, and any other like procedures will be permitted, if recommended, provided they are funded by the appropriate NHS commissioner (core services) or the individual prisoner (non-core/cosmetic services). The services that can be obtained under the NHS can vary between Primary Care organisations and their specialist commissioning teams and this would be assessed on a case by case basis, based upon other local competing priorities.

## Annex H

**Gaining Informed Written Consent to Disclose a Previous Gender or Pending Application for a GRC**

<b>Gender Reassignment</b>	
<p>There are special rules about how we treat information relating to gender reassignment particularly if you have a Gender Recognition Certificate (Gender Recognition Act 2004).</p> <p>It may be an offence for us to tell anyone about your previous gender, unless you consent to us doing so.</p> <p>Giving your consent by signing in the box below will allow us to record and share this information with partnership agencies, when necessary, to support the management of your case. We will usually tell you this beforehand, except in some circumstances where there is a risk of serious harm to yourself or another person.</p> <p>You may withdraw your consent at any time.</p>	
Signed	Date
Print Name	
Staff Name (print)	Date

## Annex I

## Glossary of Terms

Terms and language regarding transgender people and transgender issues are evolving rapidly and many terms may mean different things to different people. The definitions given here are common, but not universal, understandings of these terms<sup>13</sup>.

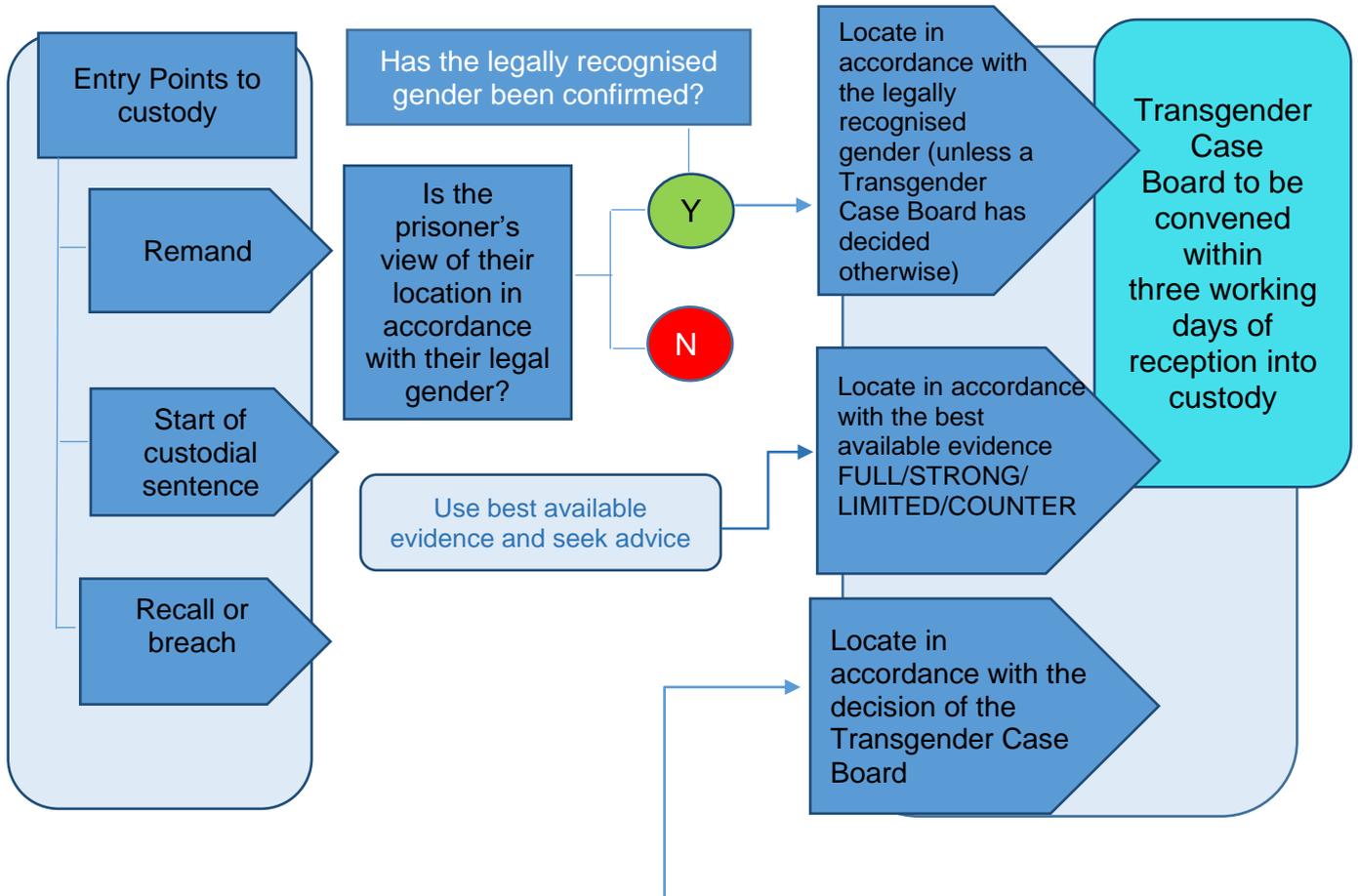
Acquired gender	The law uses the phrase 'acquired gender' to refer to the gender in which a transgender person lives and presents to the world. This is not the gender that they were assigned at birth, but it is the gender in which they should be treated. The 'acquired' gender is a legal term which describes a person's gender following reassignment but is unpopular with transgender campaigners. This is because it implies that the 'true' gender has been acquired following reassignment rather than being 'true' before the person had the confidence or resources to transition. A preferred term has been adopted within this policy which is 'the gender the person identifies with'
Affirmed Gender	Term used to describe the gender after a person has transitioned (generally preferred to the term 'acquired gender').
Cis-gender	Someone whose gender identity matches the gender they were assigned at birth
Cross Dresser	Someone who wears the clothes usually expected to be worn by someone of the opposite gender, typically of a part time activity. They may dress to express the more masculine or feminine side of themselves, for their own sense of comfort. It may have an erotic component for some people
Due Regard	Having <b>due regard</b> means consciously thinking about the three limbs of the Public Sector Equality Duty (as contained in the Equality Act 2010) in how NOMS designs, delivers and evaluates its services, and in how NOMS commissions, procures and manages contracts in respect of the protected characteristic of 'gender reassignment.' The PSED also applies to contracted providers in the execution of their public duties.
Gender binary	A binary system allows only two things or states – for example, on/off. In terms of gender, it refers to the either/or categories of male/female that do not allow for, or recognise, other experiences of gender.
Gender dysphoria	Where a person experiencing discomfort or distress because there is a mismatch between biological sex and gender identity.
Gender-fluid	This refers to a gender identity which varies over time (see also 'gender variance').
Gender identity	A person's sense of self as a man, woman, non-binary person or other sense of gender. A person's gender identity is typically expected to follow directly from the sex they were assigned at birth (based on physical attributes), but this is not always the case.
Gender reassignment	The process of changing or transitioning from one gender to

<sup>13</sup> The definitions and terms presented in this glossary are taken from the Government Equalities Office 'Providing services for transgender customers', Gendered Intelligence 'Trans Awareness' and the Women and Equalities Select Committee Inquiry into Transgender Equality report.

	<p>another and when a person takes steps to alter the outward expression of their gender so that it better aligns with their sense of who they are. Examples include changing their name, title and pronoun and/or by wearing different clothing, altering their body language, speech and hairstyle, they have reassigned their gender. As part of their gender reassignment some people may choose to take hormones and/or have surgery but medical intervention is not an essential part of gender reassignment.</p> <p>Increasingly transgender people prefer the term 'gender confirmation'.</p>
Gender Recognition Certificate (GRC)	A certificate issued under the GRA18 which enables someone to be legally recognised in their acquired gender
Gender variance	The term 'gender variance' may be used to refer to behaviour and interests that are outside what is considered 'normal' for a person's assigned (biological) sex
Intersex	Previously known as 'hermaphrodite' – is someone who has physical characteristics that differ from the typical male or female. They are most likely to be intermediate between the sexes, having some male and some female characteristics, or to have under-developed sex characteristics. Intersex babies have to be registered as either male or female. Not all intersex conditions are apparent at birth and may appear later, for example during puberty.
LGB&T	Lesbian, Gay, Bi-sexual and Transgender
MAPPA	Multi Agency Public Protection Arrangements
Mis-gendering	You 'mis-gender' someone when you refer to them using a word, especially a pronoun or a form of address, that does not correctly reflect the gender with which they identify
Non-binary person	Someone who does not subscribe to the customary binary approach to gender, and who may regard themselves as neither male nor female, or both male and female, or take another approach to gender entirely.
Pronouns	For example 'she' or 'he'. Some intersex people may prefer the pronoun 'they'.
Sex	Is assigned as male/female based on the appearance of a baby's genitalia at birth.
Sexual orientation	This includes lesbian, gay man, bisexual person and heterosexual.
Stealth	Some transgender people prefer to keep their transgender history as a private matter and does not wish other to know about their past history. For some people, this can lead to stress and anxiety in attempting to prevent past history from being discovered.
Trans	'Trans' is sometimes adopted to emphasise that the full spectrum of gender variant, gender non-conforming, gender diverse or gender atypical identities is being referred to.
Transgender (or trans) person	A broad, inclusive term referring to anyone whose personal experience of gender extends beyond the typical experiences of those of their assigned sex. Amongst others, transsexual people, non-binary people and cross-dressers may all consider themselves transgender people.
Transgender man	A transgender man is a female-to-male transgender person who was assigned female at birth but has a male gender identity.
Transgender woman	A transgender woman is a male-to-female transgender person

	who was assigned male at birth but has a female gender identity.
Transition	The journey a transgender person takes from their assigned gender to the one they know themselves to be. This may refer to social transition (changing name, clothes etc), medical transition (hormones and/or surgery) or both.
Transsexual person	This term is most closely associated with the legally protected characteristic of 'gender reassignment'. A transsexual person may be a person assigned female at birth who has transitioned or is transitioning to live as a man, or a person assigned male at birth who has transitioned or is transitioning to live as a woman. The law does not require a person to undergo a medical procedure to be recognised as a transsexual person. Once a transsexual person has acquired a GRC, they should generally be treated entirely as in their acquired gender. Now considered an older term and 'transgender' is preferred.
Transvestite person	Someone who feels compelled to wear clothing normally associated with the opposite sex, but does not desire to live permanently as a member of the opposite sex.
ViSOR	ViSOR is a police managed recording system for violent and sexual offenders (see statutory MAPPA guidance).

Transgender Prisoners – Initial Prison Location Decisions



Has a Transgender Case Board\* been convened taking account of the evidence of living in the gender the prisoner identifies with?

FULL/STRONG/LIMITED/COUNTER

\*This may be held during pre-sentence report preparation or as a contingency plan for recall or breach and location decision must be communicated to PECS

Pre-release Approved Premises Location Decisions

