

## Response ID ANON-3B57-KS7F-V

Submitted to Stop and search code of practice: review  
Submitted on 2026-05-05 20:12:22

### Questions

1 Does the revised Code clearly set out the circumstances in which a search of a person may be carried out when the person is not in police custody?

Not Answered

2 Does the revised Code clearly set out the procedures to be followed in carrying out a search of a person who is not in police custody?

Not Answered

3 Please suggest any areas that could be made clearer or more detailed, or any other improvements that would support better understanding.

Enter your answer here:

4 Does the revised Code provide clear guidance to ensure everyone is treated fairly and respectfully during a search?

Not Answered

5 Please provide any suggestions where the Code could be strengthened or provide stronger protection for individual or group rights?

Enter your answer here:

6 Does the revised Code provide clear guidance on how strip and intimate searches should be conducted?

No

7 Please provide any suggestions for how the guidance on strip or intimate searches could be improved strengthened.

Enter your answer here:

### GENERAL

We welcome the clarity brought by the definition of sex as biological at §8.23 of the consultation document, and the definitive statement at §8.7 that strip searches must be conducted by a constable of the same sex as the detainee.

Both Police Scotland's Interim Guidance and the minutes of the Scottish Government meeting in June 2025 [1] are clear that this clarification was in response to the UK Supreme Court judgment in *For Women Scotland v The Scottish Ministers*. A reference to the ruling should be added to the updated Code, in much the same way as it was added as an explainer in the new version of the Scottish Government's "Supporting Transgender Pupils in Schools Guidance" [2] and the revised statutory guidance for the Gender Representation on Public Boards (Scotland) Act 2018. [3]

Combining the rules for strip searches and intimate searches in the same sentence at §8.23 with the use of "or" leads to some confusion, and should be redrafted.

In line with the Equality and Human Rights Commission's advice on good practice [4] the justification for same search searches should also be recorded in the Code. Strip searches and intimate searches clearly engage privacy and dignity issues for the detainee which justifies a same sex procedure. Reasons also include safeguarding both the detainee and constable against allegations of misconduct and minimises either party feeling intimidated, degraded or humiliated (as per s26 of the Equality Act on harassment related to sex).

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### STRIP SEARCHES

We strongly disagree with §8.24: no female officer should be asked to strip search a male detainee (or vice versa). It is extremely disappointing to see this contradiction to the clear rule set out at §8.7 that strip searches MUST be carried out by a constable of the same sex. If it is recognised that a same sex procedure is necessary to safeguard all parties, then we can see no justification in asking constables to waive this right. There are no exceptions to the exceptions for same sex provision in Schedule 3 of the Equality Act.

Introducing the concept of consent is an unwelcome return to the era before searches were put on a statutory footing. We are sceptical that meaningful consent can be freely given by a female constable in an organisation where senior ranks are male dominated, [5] and one in which the Chief Constable confessed, less than three years ago, as suffering from institutional misogyny. [6]

The pressures felt by female constables to comply with a request to strip search a male detainee are not insignificant. An expectation to obey senior

officers is embedded in the police service and causing delays to a search being conducted, or a refusal leading to an inexperienced constable being called upon instead, may well lead to female officers agreeing to perform the search when they would otherwise have refused.

The policy also disproportionately affects female constables. There is no available data on the proportion of detainees who hold the protected characteristic of gender reassignment or who claim a gender identity. But given that such an identity is unfalsifiable it is conceivable that any male detainee may, in line with the draft Code, request to be strip searched by a female constable, and it is not unknown that this may be done for reasons of sexual arousal or to cause humiliation. It is clear that detainees are predominantly male since the most recent criminal statistics for Scotland (2023-24, published December 2025), show that males accounted for 83% of all convictions, with females making up the remaining 17%. [7] Males made up 80% of convictions for non-sexual crimes of violence and 96% of convictions for sexual crimes. [8] This means that female constables are more likely to be requested to conduct an opposite sex strip search than their male colleagues.

There is a similar imbalance between the sexes within Police Scotland where there are almost twice as many male police officers as there are female police officers. [9] This compounds the disparity in search requests since the limited number of females means that each is more likely to face repeated requests to conduct an opposite sex strip search compared to a male colleague.

The impact on women who carry out opposite sex strip searches is more likely to be negative than it is for men. Social norms around undressing and nudity mean that female constables are more likely to find the experience embarrassing or degrading and a proper trauma-informed policy would not put women as a group, where one in four have experienced sexual assault, [10] in such a situation.

The statistics above show quite clearly that, although the opposite sex search policy applies to all constables, it is more likely to disadvantage those who are women and therefore constitute indirect sex discrimination.

We strongly recommend that this section is removed from the Code. However, if it is to remain, it should be mitigated by not asking probationary officers to conduct opposite sex searches, and not making any further requests to a female constable once she has declined to conduct such a search.

The language in §8.24 is also problematic as it introduces the concept of "gender identity" without providing a definition or recognising that it is not widely understood or accepted. It is likely many constables would not consider themselves to have a gender identity which creates an issue if trying to collect non-existent data for search willingness purposes. It is far better to consistently use the chosen terminology on sex and refer to searches by constables of the opposite sex. We note that the very next paragraph at §8.25 does exactly this.

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## DOCUMENTATION

We agree with §8.32 that the sex of the detainee must be recorded in order for the Code to be workable. A person's sex is not private data and is essential information to uphold anti-discrimination and safeguarding measures, and to comply with Police Scotland's Public Service Equality Duty.

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## DISCLOSURE

In §8.33, neither "gender identity" or "transgender status" is a protected characteristic, and it should be clear that the only protected information that cannot be disclosed within the organisation relates solely to those who hold, or have applied for, a gender recognition certificate (subject to the disclosure exceptions in §22 of the Gender Recognition Act). Since the Code is to be applied equally to those with or without a GRC it should not be necessary to seek or record information on GRCs.

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## DEPLOYMENT OF TRANSGENDER STAFF

There is a significant gap in §8.34 with no indication as to why the provisions of the Interim Guidance have not been replicated, namely "A transgender Officer will search in line with biological sex." and "A transgender Officer can be exempt from searching."

The "relevant legal framework" should be specified. It has long been a matter of public concern that male officers who hold the protected characteristic of gender reassignment have been permitted to search female detainees and it appears that the resolution reached in the Interim Guidance is now in doubt. As a matter of clear operational rules and public confidence that women will not be subject to strip searches by men, it is vital that this section of the draft Code is expanded and the situation clarified.

The default position here is that searches should be conducted in line with the same biological sex, as outlined at §8.7. However, the Supreme Court judgment gave an explanation of the law which would allow transgender officers to be exempt from such searches if the gender reassignment process resulted in changes to appearance to which reasonable objection might be taken in the context of same sex provision. [11]

This would amount to a subjective assessment and decision by senior officers on how successfully the transgender officer 'passes' as the opposite sex, and when it would be appropriate to exclude them from carrying out same sex strip searches. This may cause distress to both the officer and vulnerable detainees if they take a different view. To ensure consistent and objective rules that officers and the public can trust, we think it is necessary that transgender officers are fully exempt from conducting strip searches, and that this provision should be stated in the Code.

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## RECORDING AND MONITORING

§9.4 and §10.5 on data recording and publication state that the information should include “gender identity”, if provided by the detainee. Throughout the consultation document the terms: transgender, trans history, gender reassignment, gender identity, and transgender status have variously been used which is inconsistent and there is no assurance that they all have the same meaning.

In a previous response to a Police Scotland consultation we recommended that the term “gender identity” is best avoided. [12] It is a contested concept which has no agreed definition. It is not a protected characteristic so has no basis in law, and there is no obligation under the Public Sector Equality Duty for it to be collected. Since the term is so subjective, responses are likely to cover multiple sub-categories which provide little to no value for analysis or monitoring purposes. Guidance published by the Scottish Government Chief Statistician in 2024 listed dozens of genders, including obscure terms such as “autigender”, “demigender” and “genderqueer”. [13] Unsurprisingly, it was publicly ridiculed. [14]

It is far preferable to collect data which aligns with equality purposes and directly assists in compliance with the Public Sector Equality Duty by asking the direct question: “Do you have the protected characteristic of gender reassignment?”, with an explanation to be provided, if necessary, of its definition in the Equality Act. Despite the cumbersome language of the legislation, testing by the Equality and Human Rights Commission suggests that respondents are willing to answer a question framed in these terms. This is one of the recommendations suggested by the Sullivan Review: “Review of data, statistics and research on sex and gender” and it is worth following to ensure consistency across organisations. [15]

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## INTIMATE SEARCHES

While the draft Code specifies at §8.16 that a constable witness to an intimate search must be the same sex as the detainee, it is strangely silent regarding the sex of the Health Care Professional conducting the physical examination of the detainee’s orifices. This is a significant oversight which should be corrected. Except in urgent cases where there is risk of serious harm to the detainee or to others, the detainee must be provided with a same sex HCP.

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## REFERENCES

[1] <https://www.gov.scot/publications/police-scotland-and-scottish-government-meeting-june-2025/>

[2] <https://www.gov.scot/publications/supporting-transgender-pupils-schools-guidance-education-authorities-schools-revised/>

[3] <https://www.gov.scot/publications/gender-representation-public-boards-scotland-act-2018-statutory-guidance-2/pages/errata/>

[4] page 7,

<https://www.equalityhumanrights.com/sites/default/files/2022/guidance-separate-and-single-sex-service-providers-equality-act-sex-and-gender-reassignment-exce>

[5] Of those ranked Inspector or above, 900 are male and 350 are female.

<https://www.scotlandibdems.org.uk/news/article/analysis-shows-the-inequalities-within-police-scotlands-ranks>

[6] <https://www.scotland.police.uk/what-s-happening/news/2023/may/chief-constable-statement-on-institutional-discrimination/>

[7] <https://www.gov.scot/publications/criminal-proceedings-in-scotland-2023-24/pages/trends-in-people-proceeded-against-and-convicted/>

[8] <https://www.gov.scot/publications/criminal-proceedings-in-scotland-2023-24/pages/people-convicted-by-crime-or-offence/>

[9] <https://www.scotlandibdems.org.uk/news/article/analysis-shows-the-inequalities-within-police-scotlands-ranks>

[10] According to the latest Crime Survey for England and Wales data for the year ending March 2025, 25.6% of females aged 16 and over have experienced sexual assault (including attempts) since the age of 16. This compares to 5.9% of males.

<https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/sexualoffencesvictimcharacteristicsenglandandwales/yearendingmarch2025>

[11] §221

[https://supremecourt.uk/uploads/uksc\\_2024\\_0042\\_judgment\\_updated\\_16f5d72e76.pdf](https://supremecourt.uk/uploads/uksc_2024_0042_judgment_updated_16f5d72e76.pdf)

[12] <https://forwomen.scot/22/06/2025/police-scotland-review-of-sex-and-gender-data-recording/>

[13] <https://www.gov.scot/publications/data-collection-publication-guidance-sex-gender-identity-trans-status/documents/>

[14] <https://www.telegraph.co.uk/politics/2024/10/21/elon-musk-and-jk-rowling-mock-snp-list-24-official-genders/> (Archived: <https://archive.ph/q4IQY>)

[15] <https://assets.publishing.service.gov.uk/media/67d98b8a4ba412c67701ed92/review-of-data-statistics-research-on-sex-and-gender.pdf>

8 Does the revised Code provide clear guidance on establishing the sex of a person for the purposes of a search?

Not Answered

9 Please provide further comments if you think the Code could be strengthened to support consistent and respectful practice.

Enter your answer here:

10 Does the revised Code clearly explain how children and young people should be treated when being stopped and searched by police?

Not Answered

11 Please provide further comments if you think the Code could be strengthened to ensure children and young people are safeguarded and treated fairly and respectfully.

Enter your answer here:

12 Does the revised Code provide sufficient guidance on how police should identify and interact with people who may be vulnerable or need extra support?

Not Answered

13 Please provide further comments if you think the revised Code could include additional measures or safeguards to ensure vulnerable people are adequately protected during a stop and search.

Enter your answer here:

14 Does the revised Code clearly set out what information and records are to be kept in relation to a search of a person who is not in police custody?

Not Answered

15 Does the revised Code clearly set out the right of someone to receive a copy of the information and record kept in relation to a search of a person who is not in police custody?

Not Answered

16 Please provide further comments if there are improvements you would like to see in how stop and search data is collected, monitored or reported.

Enter your answer here:

17 Does the revised Code support respectful and transparent communication between police and the public during a search of a person?

Not Answered

18 Please provide further comments if there are additional steps the revised Code could take to strengthen trust and understanding, particularly with communities that may have concerns about stop and search.

Enter your answer here:

19 Is there anything in the revised Code that should be added, changed or removed?

Not Answered

20 Please provide any further comments about the Code.

Enter your answer here:

## About you

What is your name?

Name:

Trina Budge

Are you responding as an individual or an organisation?

Organisation

What is your organisation?

Organisation:

For Women Scotland

Further information about your organisation's response

Please add any additional context:

For Women Scotland is a not-for-profit organisation working to protect women and children's rights. We secured the landmark UK Supreme Court judgment providing clarity on the definition of sex as a biological term in the Equality Act 2010.

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

Publish response only (without name)

Do you consent to Scottish Government contacting you again in relation to this consultation exercise?

Yes

What is your email address?

Email:  
info@forwomen.scot

Where did you hear about this consultation?

Scottish Government website

If other, please say where::

Evaluation

How satisfied were you with this consultation?

Not Answered

Please enter comments here.:

How would you rate your satisfaction with using this platform (Citizen Space) to respond to this consultation?

Not Answered

Please enter comments here.: