

Police Scotland Interim Guidance – Searching of transgender persons and searching by transgender police officers and police staff

This Interim Guidance has been developed to support Police Scotland officers and staff in relation to the searching of members of the transgender community and searches carried out by transgender officers and staff. In accordance with our Code of Ethics, Police Scotland remains committed to serving all members of the public, including our transgender community, and our own workforce with fairness, dignity, and respect.

Background

On 16 April 2025, the UK Supreme Court handed down judgment in the case of *For Women Scotland Limited v The Scottish Ministers*. The key issue in the case concerned the meaning of the words used in the Equality Act 2010 (the Equality Act) to protect women and members of the transgender community against discrimination.

The Supreme Court ruled that when the Equality Act refers to a ‘woman’, a ‘man’ and ‘sex’, it is referring to a biological woman, a biological man and to biological sex (i.e. the sex of a person at birth). This means that a Gender Recognition Certificate does not change a person’s legal sex for the purposes of the Equality Act. However, the Supreme Court made clear that this biological sex interpretation did not remove important protections against discrimination and harassment under the Equality Act for transgender people.

As a public service and an employer, Police Scotland has legal duties under the Equality Act. It also has duties as a public authority under the Human Rights Act 1998. It is therefore important for us to carefully consider and respond to the Supreme Court’s ruling and provide clarity to our colleagues and communities. The work we have already undertaken as part of our ongoing Sex and Gender Review has enabled us to make good progress and move things forward as quickly as possible, while still undertaking consultation with people and partners.

Following legal advice and engagement with Scottish Government and wider partners, Police Scotland is publishing this interim guidance on search. The guidance will be reviewed and finalised following publication of the Equality and Human Rights Commission’s revised Code of Practice on services, public functions

and associations¹ and any revisions to the Scottish Government's Code of Practice on Stop and Search.²

Scope of Interim Guidance

Subject to the guidance below in relation to searches of transgender persons, all relevant officers and staff (referred to in this guidance as 'Officer') will undertake the following searches, whether in custody or as part of a stop search interaction, on the basis of **biological sex**:

- search involving the removal of more than outer coat, jacket, gloves, headgear or footwear, but not revealing intimate parts of the body (in other words, removal of any item of clothing that is not covering an intimate part of the body); and
- a search involving the removal of more than outer coat, jacket, gloves, headgear or footwear that exposes intimate parts of the body.

This means in practical terms that these searches may only be carried out by Officers of the same biological sex as the person who is the subject of the search. The biological sex of a person will be assessed by the Officer conducting the search. Where an Officer is uncertain of the biological sex of the person to be searched, the Officer should engage with the person as per the further guidance set out below.

Searches of transgender persons

We have a duty to respect the dignity and privacy of transgender persons in the manner in which we conduct searches. Therefore, as far as operationally viable, where an individual's lived gender (with or without a Gender Recognition Certificate) is not the same as their biological sex and the individual expresses a preference to be searched by an Officer of their lived gender, efforts will be made by Police Scotland to ensure an appropriate Officer is identified to conduct the search. This is to ensure the dignity of the transgender person is respected and in order to minimise distress. In these circumstances, the search will require the written consent of the authorising officer (of the minimum rank of Inspector), the transgender person to be searched and the particular Officer(s) who will conduct the search.

More detailed guidance is provided below-

Can an Officer refuse to search a transgender detainee?

Yes - and there will be no career detriment to the Officer.

¹ Following the Supreme Court's ruling, the Equality and Human Rights Commission, the national body with responsibility for the enforcement of equality legislation, is reviewing and consulting on its national Code of Practice on public services, public functions and associations.

² The Scottish Government Code of Practice on the Exercise by Constables of Stop and Search of the Person in Scotland 2017.

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Can a lawful order be given to search a transgender detainee?

No

What if a transgender detainee consents to the search by an Officer of their lived gender but then retracts consent?

The search will then need to be completed by an Officer of their biological sex.

Can a transgender detainee ask for a separate area search depending on anatomical presentation?

Yes - a transgender detainee can ask for a separate area search. This means that one half of their body will be searched by one biological sex Officer and the other half of their body will be searched by a different biological sex Officer.

What if a transgender detainee wants to be searched in line with their lived gender but no Officer can be found who is willing to conduct the search?

The transgender detainee will be supervised until an Officer is identified who consents to carry out the search. Should this not occur within a reasonable time, or the risk be deemed too great, the search will be carried out by an Officer of the same biological sex as the transgender detainee.

How will written consent be recorded?

Within the custody environment, a hard copy consensual search form will be stored and can be completed when required. This includes a form of words to be read out to the detainee. The signed form should be retained. The National Custody system must also be updated to record that consent has been provided in line with this guidance.

Relevant to statutory stop and search, Officers can access the form of words from the Policing Together Stop and Search Intranet Page via their PDA, read the form of words contained within the consensual search form and obtain the detainee/Officers consent via a signed statement.

Given potential operational viability issues, verbal consent from the authorising Inspector can be given at the material time, with written consent being facilitated as soon as reasonably practical.

What if the biological sex of the detainee cannot be determined?

A conversation should be undertaken with the detainee to establish biological sex for the purpose of a search. If the detainee engages, act in line with this guidance. If the detainee will not engage, conduct the search in line with the detainee's documentation or presentation. Once biological sex is established, act in line with this guidance.

Searches by transgender Officers

The following guidance is provided for transgender Officers-

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Who can a transgender Officer search?

A transgender Officer will search in line with biological sex.

Can a transgender Officer be exempt from searching?

A transgender Officer can be exempt from searching. Current operational practice permits Officers to be excused from searches for a variety of reasons. The Officer will state that they wish to be excused from searching, with no further justification required. There will be no career detriment to the transgender Officer.

Will a transgender Officer be given a lawful order to search?

No

Can a transgender Officer search a detainee not of the same biological sex if the detainee agrees?

No - the purpose of the proposed consensual regime is to preserve the integrity and dignity of transgender individuals who are subject of search where the alternative of a search carried out in line with biological sex might amount to an interference with their ECHR Article 3 and/or Article 8 rights. The same does not apply to an Officer.

Can a transgender Officer search a transgender detainee?

Yes - if both the Officer and the detainee are of the same biological sex this complies with the interim guidance. If the Officer and the detainee are of different biological sexes, both the Officer and the detainee would need to consent to the search.

Can a detainee refuse to be searched by a transgender Officer?

Yes - Officers will be swapped out if a detainee refuses the search by a transgender Officer.

Further updates will be provided in due course.

Appendix A

List of main statutory powers of Search in Custody or Stop and Search of the person.

(note: other statutory powers of search may also exist)

Sections 47 and 48 of the (Criminal Justice Scotland) Act 2016

Section 47 Firearms Act 1968 (firearms)

Section 23 Misuse of Drugs Act 1971(drugs) Section 60 Civic Government (Scotland) Act 1982 (stolen property)

Section 4 Crossbows Act 1987 (crossbows)

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Section 11 Protection of Badgers Act 1992 (evidence of commission of an offence under that Act)

Section 60 Criminal Justice & Public Order Act 1994 (power to stop and search in anticipation of violence)

Section 101 Conservation (Natural Habitat etc) Regulations 1994 (evidence of commission of an offence under that Act)

Section 4 Wild Mammals Protection Act 1996 (evidence of commission of an offence under that Act)

Section 21 Criminal Law (Consolidation) (Scotland) Act 1995 (control of alcohol at sporting events)

Section 48 Criminal Law (Consolidation) (Scotland) Act 1995 (offensive weapons)

Section 50 Criminal Law (Consolidation) (Scotland) Act 1995 (knives) Section 7 Protection of Wild Mammals (Scotland) Act 2002 (evidence of commission of an offence under that Act)

Section 11A Fireworks Act 2003 (possession of a firework in contravention of a prohibition imposed by fireworks regulations) Section 66 Criminal Justice (Scotland) Act 2016 (power to search a person who is to be, or is being taken from one place to another, to ensure not in possession of an item that could cause harm to self or others)

Section 67 Criminal Justice (Scotland) Act 2016 (power to search on entry to relevant premises or events, where consent to the search has been consented to as a condition of entry imposed by the organiser)

25 June 2025

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