

Search Position

Subject	Transgender and Non-Binary Search Position
Date / Version	12/09/2024 (Version 5.1)
Authoriser / Sponsor	ACC Network Policing
Author	Stop & Search Strategic Support Sergeant

1. PURPOSE

1.1 The purpose of this position is to ensure a consistent searching policy in relation to transgender and non-binary officers and detained persons across British Transport Police (BTP) nationally. This is to ensure all such searches, procedures and requirements must be carried out with courtesy, consideration and respect for the persons concerned following legal advice.

1.2 This position covers guidance contained within the [APP from the College of Policing Detention and Custody](#)

1.3 This position will comply with The Police and Criminal Evidence Act (PACE) 1984, Codes A and C_ and [Code of Practice on the Exercise by Constables of Powers of Stop and Search of the Person in Scotland 2017](#) Annex B&C

'Chief Officers are responsible for providing corresponding operational guidance and instructions for the deployment of transgender officers and staff under their direction and control to duties which involve carrying out, or being present at, searches and procedures. The guidance and instructions must comply with the Equality Act 2010.'

[College APP Stop and Search](#)



2. BACKGROUND

- 2.1 Certain provisions in law explicitly state that searches and other procedures may only be carried out by, or in the presence of, persons of the same sex as the person subject to the search.
- 2.2 In law, the sex of an individual is their sex as registered at birth unless they have been issued with a Gender Recognition Certificate (GRC) under the Gender Recognition Act 2004 (GRA), in which case the person's sex is their acquired sex.
- 2.3 Individuals are not required to possess a Gender Recognition Certificate (GRC) to have the protected characteristic of gender reassignment (as per Equality Act 2010).
- 2.4 British Transport Police recognises the status of Transgender and Non-Binary detainees/staff from the moment they identify in that gender with or without a GRC. This does not supersede the requirements set by statute that provide a power of search.
- 2.5 This position is aimed at complying with requirements of the Police and Criminal Evidence Act 1984 Code of Practice on the Exercise by Constables of Powers of Stop and Search of the Person in Scotland regarding the sex of those conducting More Thorough and Exposing Intimate Parts (EIP or Strip) searches.

3. OVERVIEW

- 3.1. This position covers More Thorough and EIP (Strip) searches conducted outside of the custody environment and those conducted within British Transport Police Custody Suites. For searches conducted within Home Office Police and other State Custodies, officers will revert to the local force/organisations policy for the purpose of how the detainee is searched. However, this policy will apply to whom our officers can search.

- 3.2. Where the term officer/officers are utilised, this refers to warranted police officers or designated detention officers (DDO) with powers of search designated under s38 or s39 of the Police Reform Act 2002.
- 3.3. More Thorough Searches (Strip) in the context of searches involve the removal of more than, jacket, outer coat, gloves, headwear, and footwear. EIP Searches are searches that expose buttocks, genitalia, and (female) breasts.
- 3.4. Who Transgender officers may search, in line with their legal authority and training (as a police officer, or powers conferred or designated under s38 or s39 of the Police Reform Act 2002), is determined by an interaction between PACE 1984, [the Code of Practice on the Exercise by Constables of Powers of Stop and Search of the Person in Scotland](#) and the Equality Act 2010 and not limited to the provisions of the [Gender Recognition Act 2004](#).
- 3.5. Statutory searches specifically Strip and EIP Searches under Sections 9 through to 12 within Code C, Annex A of The Police and Criminal Evidence act and Annex C of the [Code of Practice on the Exercise by Constables of Powers of Stop and Search of the Person in Scotland](#) specifically require that the officer and the subject must be the same sex. For searches conducted under these powers particularly the provisions set under for searches under Section 54 and 55 of PACE.1984, BTP officers/Staff will only search persons of the same sex as either their Birth Certificate or GRC.
- 3.6. British Transport Police recognises the status of Transgender and Non-Binary detainees/staff from the moment they permanently identify in that gender with or without a GRC. This means that even when a person has not legally changed their sex, we should continue to use the correct pronouns and recognise the person's gender.
- 3.7. It is recognised that some colleagues may be in the process of transitioning or have a gender identity that does not easily fit with the binary regime contemplated when PACE 1984 was enacted, for example non-binary, gender fluid or agender. A discussion may be necessary with such a colleague to

establish how they can participate in conducting searches with their respective line manager and agree in advance what searches if any they will conduct. Individual tailored support can be offered through the Strategic Inclusion and Diversity Team. For statutory searches, these officers will only be able to search persons of the same sex on their Birth or Gender Recognition Certificate (GRC).

- 3.8. Following the guidance allows forces to meet obligations under the Equality Act 2010 while complying with the Police and Criminal Evidence Act 1984 and [Code of Practice on the Exercise by Constables of Powers of Stop and Search of the Person in Scotland](#)

4. OPERATIONAL GUIDANCE FOR STATUTORY SEARCHING OF TRANS AND NON-BINARY DETAINEES

- 4.1. Transgender includes a person who has the protected characteristic of gender reassignment or a person who adopts, fully or partially, dress, appearance and/or behaviour normally identified as belonging to the opposite gender.
- 4.2. The term also applies 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 that sex. That person is not required to be under medical care to satisfy this definition.
- 4.3. In law, the sex of an individual is their sex as registered at birth unless they have been issued with a Gender Recognition Certificate (GRC) under the Gender Recognition Act 2004 (GRA), in which case the person's sex is their acquired sex.
- 4.4. [Annex L to PACE Code C](#) and Annex B of the [Code of Practice on the Exercise by Constables of Powers of Stop and Search of the Person in Scotland](#) provide information on the approach to be followed to establish the gender of the detainee for the purposes of a search or procedure.

- 4.5. It is BTP policy that the guidance contained within Annex L Police and Criminal Evidence Act and Annex B Code of Practice in the Exercise by Constables of Powers of Stop and Search of the Person in Scotland is not to be used for Strip and Intimate Searches. BTP officers will use the guidance in section 6 assist with deciding how to conduct these searches.
- 4.6. A person should not be asked for their GRC as part of a search unless utilising the process under Section 6 (**More thorough Searches Exposing Intimate Parts**) for searches under Section 54 and 55 of PACE. However, any disclosed information regarding the persons GRC during a search is Protected Information and is not disclosable to any other parties without explicit written permission from the owner of the Protected Information. Disclosure of this can be an offence under section 22 of the Gender Recognition Act
- 4.7. Dealing with detainees with respect and consideration increases the likelihood of their cooperation and decreases the level of risk and vulnerability posed.
- 4.8. Gender critical or sex realist beliefs can be protected under the Equality Act 2010.
- 4.9. As policing professionals, we are expected to understand our role in acknowledging and responding to our diverse society, and to treat all people and their property with fairness, dignity and respect, in accordance with their needs.
- 4.10. This includes using appropriate language and behaviour in our dealings with the public and our colleagues as well considering our personal views, values or beliefs, so that they do not affect our professional relationships or the service we provide.

5. CONSENSUAL SEARCHES

5.1. More Thorough Searches (Strip) in the context of searches within this position involve the removal of more than, jacket, outer coat, gloves, headwear and footwear. EIP Searches within this guidance are searches that expose buttocks, genitalia and (female) breasts.

5.2. Statutory More Thorough and EIP (Strip) searches within this position are those within 5.1 conducted under Code C Annex A of the Police and Criminal Evidence Act 1984 and Code C of the of Practice on the Exercise by Constables of Powers of Stop and Search of the Person in Scotland where a person is searched under compulsion (under the legal power) with or without consent of the person being searched and force can be used to enact these powers. These powers require that the officers searching, and detained person are the same sex.

5.3. However, where the relevant criteria are present in section 5.2 above the detained person can explicitly consent to a search outside of the requirements of the legal power (Consensual Search). Specifically, consenting to be searched outside the requirement made for the sex of the person searching, i.e where the detained person indicates a preference to be searched by an officer of a sex in contradiction of the requirements of statutory powers. **The person must be capable of giving consent and should not be sought if the person is deemed unfit through drink or drugs and have the relevant mental capacity to decide this. For vulnerable individuals the consent of an appropriate adult will be required.**

5.4. This means where an officer has the relevant power to search, the person may consent to a search outside of the compulsion of the statutory powers. i.e. a person who may present in a gender other than their birth gender or listed on their GRC they can explicitly consent to a consensual More Thorough or Exposing Intimate Parts Search outside of that power by an officer of a sex of their preference.

5.5. Prior to a consensual search officers will inform the officer authorising for approval of the consensual search. For searches conducted outside of the

custody environment an officer of the rank of Inspector must be notified prior to the search.

5.6. When authorising an Exposing Intimate Parts search out of custody the authorising officer will utilise the Inspector Authority Consensual Search template on EPNB to document this.

5.7. It is important to note that consensual searches cannot be done under compulsion and force cannot be used. The officer will revert to the statutory power to conduct the search if any person within the interaction withdraws their consent (officer or person being searched). The authorising officer must be informed of this.

5.8. It is important to note that the relevant requirements outside of the sex of the person searching in law must still be maintained. This includes location of searching, the requirement of appropriate adults, the provision of GOWISELY and the entitlement to a stop and search record will still exist (not exhaustive).

6. MORE THOROUGH SEARCHES (MTS) AND SEARCHES EXPOSING INTIMATE PARTS (EIPs)

It is important that transgender Stopped and Searched people (more commonly self-described by the shortened term trans) receive the same respect and dignity as any other members of the public. There is also a requirement to be sensitive to the dignity of police officers called upon to carry out procedures such as searches which expose intimate parts (EIPs)

6.1. More Thorough Searches (Strip) in the context of searches within this guidance involve the removal of more than, jacket, outer coat, gloves, headwear and footwear.

6.2. EIP Searches within this guidance are searches that expose buttocks, genitalia and (female) breasts.



- 6.3. **In law, a person must be searched as the sex stated on their birth certificate or as acquired under a gender recognition certificate when conducting More Thorough and EIP (Strip) searches under statutory powers. (Police and Criminal Evidence Act 1984 and Code of Practice on the Exercise by Constables of Powers of Stop and Search of the Person in Scotland)**
- 6.4. Prior to commencement of More Thorough or Exposing Intimate Parts Search the detainee should be asked what sex they are.
- 6.5. If there is no doubt as to as to whether the person concerned is male or female as per their declaration in 6.4 above, they should be dealt with as being of that sex and a search conducted under statutory powers.
- 6.6. If there are grounds to doubt that the declared sex in 6.4 accurately reflects the person's sex for the purpose of statutory searches, officers may take steps to ascertain the sex of the detained person. This will usually require the person being asked their sex as recorded on their birth certificate, exceptionally and only where strictly necessary this may include asking if the person has a GRC and this must not be disclosed (see section 7.3). In the absence of any further information, officers will search the detainee according to what appears to be their sex and not their stated declaration for statutory searches. If evidence becomes available during the search that the person is of a different sex to that initially ascertained, then officers will deal with them as being of the sex as later ascertained as part of a statutory search. However, they may be offered an option of a consensual search as detailed in 6.7 - 6.13
- 6.7. The person must be asked how they would prefer the More Thorough and EIP (Strip) to be conducted and who they are more comfortable with conducting that search. If the person is unwilling to express a preference a consensual search cannot take place and they will be subjected to a statutory search
- 6.8. Where the detainee indicates a preference to be dealt with by officers of a different sex to them for More Thorough and EIP (Strip) searches, the detained person is to be informed that this can only be conducted as a consensual search (Section 5 of this guidance) with both the officers and detained person



explicit consent. This consent can be removed at any time from either party and the search conducted under the statutory powers as per section 6.3. **If the person is deemed as vulnerable, then an appropriate adult will be required, and their consent must be obtained in conjunction with the detainee.**

- 6.9. If any officer conducting the search is not comfortable with the detained persons request, then that officer will notify the officer authorising the search so an alternative searching officer can be sought if practicable to accommodate the detainee's request subject to consent in 6.11.
- 6.10. Prior to conducting a consensual search officers will notify the authorising officer for approval. For searches outside of the custody environment officers must make an officer of the rank of Inspector aware for authorisation via EPNB Inspector Consensual Search Authority template prior to search.
- 6.11. If all officers authorising or conducting the search are in agreement with the detainee's request in 6.8, officers will ask the detained person to sign the below template prior to the commencement of a consensual search.

Whilst a statutory power exists to search you. You explicitly provide your consent to this search based on your gender and preference for a search to be conducted by an officer of specified sex. This search will not be conducted using powers conferred by the Police and Criminal Evidence Act 1984 or other statutory powers/equivalent Scottish powers of Stop and Search. You understand:

- That it will involve the removal of outer clothing/may expose your breasts, buttocks and Genitals as far as necessary to identify if you have an article on you for which we have a power to search.
- You can withdraw consent at any point.
- That this search is consensual, and in accordance with your wishes in respect of the sex of officers searching you.

Upon withdrawal of any consent, or where it is decided that a search needs to be conducted utilising a statutory power an officer will inform you of that statutory power prior to conducting the search.

- 6.12. Where If consent is withdrawn at any point officers may revert to their statutory powers and a record of this change will be made at the time, these searches

will be conducted in accordance with section 6.3 with the searching officers and the detained person being the same sex.

- 6.13. If the person is taken to a British Transport Police Custody Suite, the custody officer will be responsible for making the determination of the sex of the detained person for the purposes of a statutory search and/or whether a consensual search may be conducted based on the advice contained within this section. For searches being conducted as part of a stop and search, a skeletal custody record will be created detailing the authorising officer, the custody officer's rationale for supporting the search, the decision on how the search will be conducted, and the consent detailed in 6.11 as appropriate.
- 6.14. Officers should consider accommodating trans detainees in a suitable side room and the preference of the person being searched should be sought on this, please refer to searches exposing intimate parts guidance note [here](#).
- 6.15. Searches that Expose Intimate Parts should not normally take place in a cell or room with CCTV that can be monitored as a live feed, Body Worn Video should be on audio record only during the part of the search exposing intimate parts.
- 6.16. Statutory Search table

BRITISH TRANSPORT POLICE

	On the street	Out of public view (for example, a police van)	Out of public view (in a police station or other nearby location, but not in a police vehicle)
JOG	✓ Yes Police officer of any sex can search.	✓ Yes Police officer of any sex can search.	✓ Yes Police officer of any sex can search.
JOG + Headwear and Footwear	✗ No	✓ Yes Police officer of any sex can search.	✓ Yes Police officer of any sex can search.
***** Anything More that JOG + Headwear + Footwear	✗ No	✓ Yes Inspector Authority required in Scotland Police officer must be of same sex as person being searched..	✓ Yes Inspector Authority required in Scotland Police officer must be of same sex as person being searched.
Search Exposing Intimate Parts ***** Search Exposing Breasts Buttocks Genitalia	✗ No	✗ No	✓ Yes Inspector Authority in Scotland Sergeant Authority in England and Wales Police officer must be of same sex as person being searched. <u>Must be conducted in accordance with PACE Code C, Annex A, paragraph 11</u>

7. GENDER RECOGNITION ACT (GRA) – REDACTIONS AND CONSIDERATIONS

7.1. [The GRA 2004, section 9](#) enables people to change their legally recognised sex by obtaining a GRC, which entitles the holder to be treated for legal purposes in line with their acquired sex.

7.2. In practical terms, legal recognition under this Act has the effect that, for example, a male-to-female transgender person is legally recognised as a woman in UK Law. On the issue of a full GRC, the person is entitled to a new



birth certificate reflecting the acquired sex (provided a UK birth register entry already exists for the person).

- 7.3. [The GRA section 22](#) defines any information relating to a person's application for a GRC or to a successful applicant's original gender as protected information. It is not authorised or permitted for any police officer or any member of police staff who has acquired information relating to this legal change (while performing their official duties) to disclose that information to any other person without legal exemption. To do so constitutes an offence in contravention of the GRA.
- 7.4. Disclosure occurs if a record of this protected information is read by others. For example, if the existence of a GRC (that states that the detainee is transgendered) is noted in the relevant custody record, and that custody record is later viewed by an independent custody visitor, this constitutes a disclosure and is an offence under [the GRA section 22](#).
- 7.5. Officers and staff involved with handling of this information should secure search records containing any reference to a GRC for transgender detainees (protected information) against disclosure.

8. **OPERATIONAL GUIDANCE FOR OFFICERS WHO ARE NON-BINARY, HAVE TRANSITIONED OR ARE IN THE PROCESS OF TRANSITION**

- 8.1. Who Transgender and Non-Binary colleagues may search, in line with their legal authority and training (as a police officer, or powers conferred or designated under s38 or s39 of the Police Reform Act 2002), is determined by an interaction between the Police and Criminal Evidence Act (1984), Code of Practice on the Exercise by Constables of Powers of Stop and Search of the Person in Scotland 2017, and the Equality Act (2010), with the correct application of occupational requirement, and not limited to the provisions of the Gender Recognition Act (GRA) (2004).

8.2. **Therefore, an officer may only search as the sex indicated on their birth certificate or listed on their GRC, whichever is the most recent when enacting a statutory power of search under compulsion. They may also conduct consensual searches as prescribed in section 6 of this guidance.**

8.3. It is recognised that some colleagues may have a gender identity that does not easily fit with the binary regime contemplated when PACE 1984 was enacted, for example non-binary, intersex, gender fluid or agender. A discussion may be necessary with such a colleague to establish how they can participate in conducting statutory searches.

That conversation will be held sensitively with their line manager (unless the colleague requests this be discussed with a more senior colleague) and before the colleague is put in a position where they may be required to participate in searches.

9. **FURTHER CONSIDERATIONS FOR THE WELFARE OF POLICE OFFICERS AND STAFF**

9.1. If a colleague has made the decision to transition or are Non-Binary, they should be given the option of being exempt from conducting statutory searches. This decision should be reviewable over the course of an individual's transition. This ensures compliance with Section 2 (2) (e) of the Health & Safety at Work Act (1974)

9.2. In these circumstances and with their consent, the officer should be advised there may be circumstances when their supervisor may inform others of any restrictions on their operational capabilities.

9.3. If the person being searched objects to being searched by any colleague, it is advisable for them to be replaced by another team member to search that person. This is regularly done in practice, regardless of the reasons for objection, to de-escalate any potential conflict. If such a decision must be



made, it is essential to support the affected colleague and consider the adverse impact on other colleagues.

- 9.4. Where officers are subjected to abuse that constitutes a criminal offence it is British Transport Police’s position that a crime recorded and the person to be dealt with for that offence. The affected colleagues will be offered support, and where possible removed from the interaction.
- 9.5. Gender critical or sex realist beliefs can be protected under the Equality Act 2010.
- 9.6. As policing professionals, we are expected to understand our role in acknowledging and responding to our diverse society, and to treat all people and their property with fairness, dignity and respect, in accordance with their needs.
- 9.7. We must ensure that our behaviour and language are not discriminatory, abusive, oppressive, harassing, bullying or victimising to the general public, our partners in providing services to the public or our policing colleagues.
- 9.8. This includes using appropriate language and behaviour in our dealings with the public and our colleagues as well considering our personal views, values or beliefs, so that they do not affect our professional relationships or the service we provide.
- 9.9. Where an officer is uncomfortable with conducting a More Thorough and EIP (Strip) search with regards any advice contained within this guidance the officer will contact the officer authorising the search for an alternative officer to be sought.

FURTHER SUPPORT

If there are any queries which relate to stop and search guidance, please email

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For further support around any topics in this document please contact the Inclusion and Diversity Team at ██