

**Supporting Transgender Staff
in the Workplace**

Protocol & Guidance

NHS Highland

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Data Protection Statement

NHS Highland is committed to ensuring all current data protection legislation is complied with when processing data that is classified within the legislation as personal data or special category personal data.

Good data protection practice is embedded in the culture of NHS Highland with all staff required to complete mandatory data protection training in order to understand their data protection responsibilities. All staff are expected to follow the NHS policies, processes and guidelines which have been designed to ensure the confidentiality, integrity and availability of data is assured whenever personal data is handled or processed.

The NHS Highland fair processing notice contains full detail of how and why we process personal data and can be found by clicking on the following link to the 'Your Rights' section of the NHS Highland internet site.

<http://www.nhshighland.scot.nhs.uk/Pages/YourRights.aspx>

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1. Introduction

NHS Highland is committed to leading and promoting Equality and Diversity, equal opportunities and supporting human rights in terms of the provision of health services for the community it serves and in its practice as a leading employer.

This Protocol and guidance sets out NHS Highland's responsibilities as an employer of transgender people.

Transgender, or trans, refers to anyone whose gender does not unambiguously align with the gender they were assigned at birth. Transgender is an umbrella term used to cover numerous types of gender identity labels such as transsexual, transvestite, non-binary, bi-gendered or non-gendered (see Appendix A terminology)¹. Some, but not all, intersex people identify as transgender. Gender identity may not fit neatly into society's idea of gender, they may feel they are not totally one gender or the other, they may not identify with the assigned birth gender or they may not identify with any gender at all.

Transitioning is a process in which a trans person adjusts their life and/or their body to better reflect their gender. Transitioning is a unique process for each individual and may include any number of changes to a person's life. It could involve dressing differently, changing official documents, telling friends, family, colleagues or a number of other things.

While it is not possible to find a precise estimate of the number of transgender people in Scotland, the most commonly used figure is 0.6% of the population circa 32,428 adults.²

The number of transgender people accessing services at the Scottish Gender Identity Clinics is much smaller, around 1,800 adults and 600 children over the four year period from 2014 – 2017. (Stonewall)

- *One in eight trans employees (12%) have been physically attacked by a colleague or customer in the last year*
- *Half of trans people (51%) hide their identity at work for fear of discrimination*
- *Half of trans and non-binary people (51% and 50% respectively) have hidden or disguised the fact that they are LGBT at work because they were afraid of discrimination*
- *35% of trans respondents had experienced negative comments or conduct from colleagues because of their gender identity³.*

¹ We acknowledge that terminology may vary and may also continue to change over time. In this Protocol and guidance, we are using terminology in accordance with the Scottish Transgender Alliance glossary as at 2019.

² National Gender Identity Clinical Network for Scotland 2018

³ LGBT in Britain – Trans Report by Stonewall 2018

Some trans people undergo various medical procedures as part of their transition. These include — but do not necessitate — hormone replacement therapy, chest surgery, genital reassignment surgery, tracheal shave, facial feminisation surgery, laser hair removal, and vocal surgery. These procedures are currently referred to in non-discrimination legislation (such as the Equality Act 2010) as “gender reassignment”, but this nomenclature does not reflect the experiences or narratives of many trans people.

Some may feel they can cope with their bodies without medical intervention so opt not to medicalise their transition, although this is a decision which may change over time. Some trans people may want to pursue medical aspects of transition but are unable to because they have incompatible health requirements, e.g. if a trans person has liver damage they may be unable to use hormone replacement therapy.

Under the Equality Act 2010, all employers have a legal obligation to prevent and respond to these forms of discrimination and harassment in the workplace.

This policy will be:-

- Submitted to Area Partnership Forum for approval
- Following approval, the Protocol plus the Equality Impact Assessment will be added to the NHS Highland document library
- Communicated to all managers and staff publicising its existence
- Equality and Human Rights training is mandatory via learnPro and additional training is available on learnPro (NES: Stonewall Good Practice)
- Monitored and reviewed in 12 months

Role of Managers

Every manager employed by NHS Highland is responsible for promoting equal opportunities in practice and, where applicable, for preventing patient and staff discrimination.

Line managers are responsible for:-

- ensuring that all staff are aware of this Protocol and participate in any relevant training
 - challenging staff who discriminate and ensuring that the relevant procedures are followed i.e. Dignity and Respect at Work etc
 - supporting their staff to challenge discrimination from patients or the public
 - agreeing a plan with a staff member who is proposing to transition to ensure that they are supported throughout the process
 - ensuring that a transgender person is addressed and treated as the gender they identify with
-

Role of Individual Staff

All employees have a personal responsibility to support the equal and fair treatment of colleagues and to ensure patients are treated consistently in a non-discriminatory manner and in line with Codes of Conduct and best clinical practice. All staff members are responsible for challenging/reporting discriminatory practice or language.

1.1 NHS Highland's Approach

NHS Highland is committed to providing an inclusive workplace and service, and does not tolerate discrimination on the basis of any protected characteristic including transgender status (known in legislation as gender reassignment). Trans staff and service users are entitled to dignity, privacy, and freedom from discrimination.

NHS Highland does not discriminate in any way on the basis of sex, sexual orientation, gender identity or gender expression. The Equality Act 2010 prohibits gender reassignment discrimination, harassment and victimisation in many areas including the provision of goods, facilities and services. Furthermore, the Public Sector Equality Duty places on NHS Highland a duty to eliminate unlawful treatment, advance equality of opportunity and foster good relations between people with protected characteristics and those without.

This Protocol does not anticipate every situation that might occur with respect to transgender, gender non-conforming or transitioning employees. Each person will have different needs and as such, a person centred approach will be taken. The aim is to ensure the safety and healthy development free from discrimination, harassment and victimisation.

NHS Highland recognises

- That everyone has a:
 1. Sex assigned at birth
 2. Gender identity
 3. Gender expression and
 4. Sexual orientation
- The broad spectrum of gender diversity within society and that traditional gender stereotypes are inadequate in reflecting the lives of employees and service users.
- That people have the right to undergo medical intervention, such a hormone treatment or surgery, or gain a Gender recognition certificate (GRC). If a trans person chooses not to undergo any medical intervention or gain a GRC, they are still entitled to dignity, respect and privacy.
- Gender dysphoria is the clinical diagnosis for someone who does not feel comfortable with the gender they were assigned with at birth. Many trans people reject the idea that gender dysphoria is a pre-requisite for being trans and it should

not be assumed that everyone who wishes to transition has or is experiencing gender dysphoria.

- For a member of staff who is in transition in our workplace, any changes to working conditions or access to facilities should be as a result of an agreement between the staff member and their manager.

1.2 Scope of the Protocol

This Protocol provides guidance for NHS Highland employees on the expectations and other considerations that may be necessary for transgender people. It also applies to NHS Highland employees who are trans and reinforces that gender reassignment should be treated with respect and dignity by managers, colleagues and the public.

All staff will be expected to comply with the Protocol at all times and positively challenge colleagues and users of services who act in a manner that breaches the legal aspects of NHS Highland's responsibilities, in terms of but not limited to:

The Equality Act 2010
The Equality Act 2010 (Specific Duties) (Scotland) 2012
The Gender Recognition Act 2004
GDPR
Public Sector Equality Duty

1.3 Protocol

The Highland Supporting Transgender Staff in the Workplace Protocol will be subject to review in 12 months time to ensure it meets its objectives to support staff and as a source of guidance for the organisation. Thereafter it will be reviewed every two years.

2. Aims of the Supporting Transgender Staff in the Workplace

The aims of this Protocol are to support the organisation in its delivery of inclusive services and ensure that it does not breach the relevant legislation.

Staff must be treated in accordance with their self-declared gender regardless of whether they are under medical supervision or have a gender recognition certificate. A transgender person who simply starts using different pronouns for example 'she, he, ze, xe, zir or they' is protected by legislation regardless of whether or not they wish to take any hormones or have any surgeries.

As both an employer and deliverer of care for transgender people we will aim to ensure that trans health and life experience are not diminished but rather enhanced through celebrating and embracing diversity.

We will develop a shared understanding and response to the needs of transgender people and become a catalyst for change, taking our understanding back to the communities where we work to challenge attitudes and discrimination that perpetuate and contribute to poor health outcomes for all marginalised groups.

3. Our responsibilities as an employer

NHS Highland is committed to supporting and respecting diversity in all aspects of its functions, including those relating to our responsibilities as an employer. The organisation views discrimination against employees as unacceptable in any form. Transgender employees have the right to equal treatment and protection from discrimination and harassment as outlined in the organisation's Preventing Bullying and Harassment Policy.

To support work in these areas, NHS Highland will:-

- Ensure transgender employees can work in an environment without fear of prejudice, discrimination or harassment
- Provide management and staff with guidance on the rights of transgender employees and the legal context for this
- Continue to develop Transgender Awareness via LGBTI e-learning available to staff as part of their Equality and Diversity competency requirements.
- Ensure that employees who intend to undergo, are undergoing, or have undergone gender reassignment are treated with fairness and support in all aspects of their employment
- Support staff to contribute to culture change within this organisation.

3.1 Respecting gender identity

It is unacceptable for colleagues and managers to refuse to recognise, for any period of time, a member of staff as belonging to the gender in which they are currently living.

Discrimination from staff, other patients or the public will not be tolerated. In the case of staff being discriminatory, the manager will use the relevant policies/procedures to address the situation.

3.2 Harassment

NHS Highland adopts an all-encompassing anti-harassment stance to protect employees. This means harassment will not be accepted be it perpetrated by staff, visitors or service users.

Transphobic (discriminatory behaviour based someone's transgender status) attitudes not only impact on the health of transgender people but on the health and wellbeing of family and friends. Children of transgender people and other family members and friends can, through association, face verbal and physical abuse on a daily basis.

Transgender people may experience some or all of the following examples of discriminatory practice:

- People refusing to associate with or ignoring them because of their transgender status
- Not being addressed, or thought of, as belonging to their gender or not having their new name used
- Having their personal life and relations probed into

- Having malicious gossip spread about them
- Having confidential information relating to their transgender status released without their approval
- Not being allowed to use sanitary facilities that are appropriate to the gender in which they live
- Being treated less favourably than others in regard to sickness or other absences
- Being refused access to services, facilities or premises due to prejudice from staff or other service users
- Being verbally abused or physically assaulted because of their transgender status.

3.3 Genuine Occupational Qualification (GOQ)

The Equality Act 2010 provides limited exemptions for Genuine Occupational Qualification positions to restrict access to members of a particular gender. These exemptions can only be applied in order to achieve a legitimate operational need. All efforts should be made to enable transgender employees to work in positions, including those covered by GOQ, consistent with the gender with which they identify.

Where a person has a gender recognition certificate they must be regarded as being that gender for the purposes of GOQ positions. As the gender history of an employee is a matter of strictest confidentiality, this information should never be shared with service users.

Where an employee undergoing gender reassignment currently works in a GOQ position restricted to the gender they were assigned at birth, every effort will be taken to work collaboratively with them to either adapt the duties of the post to enable them to continue working in it or to redeploy them to a suitable alternative post.

4. Gender Reassignment – Points for consideration

4.1 Supporting Staff going through Transition

The successful support and management of an employee's transition at work crucially depends on taking account of the individual's views on how to proceed (see Appendix C for suggestions on topics to discuss and agree with any individual considering transitioning).

It should be noted that the first contact from an employee to a manager may be just to confide in and not to request support. The individual's expectations should be clarified at the outset. Some transgender people may take several months or years to gradually explore the possibility of transitioning. Some may only change their outward gender presentation after a period of varying gender expression.

When a member of staff considers embarking on transitioning, the initial point of contact may vary according to the nature of the workplace and preference of the individual, but could be; an immediate line manager, a senior manager, Human Resource representative, Occupational Health Department, or any other appropriate member of staff.

Confidentiality must be maintained except as agreed otherwise by the individual. It is vital to assure the employee that NHS Highland will be supportive and that it does not tolerate discrimination against or harassment of employees.

Managers (and any other member of staff acting as a point of contact) must ensure they are familiar with this Protocol and any other resources or systems in place in order to support the individual.

Through discussion with the employee, an NHS Highland main point of contact will be agreed. A meeting will be arranged with the nominated person to have a more detailed discussion and support the employee in the process of transitioning at work.

Where appropriate the individual concerned should be provided with an agreed member of the Human Resource Team to act as an advisor and to provide guidance and advice to the member of staff and their manager. They may also wish to bring a friend or support with them to the first meeting.

4.2 First Meeting

Depending on the circumstances the employee may be anxious at the first meeting so it is important to spend time building trust and rapport.

If an employee is transitioning it is good practice for the manager to consult with them sensitively about their needs in the workplace and whether there are any reasonable and practical steps that can be taken to help the employee as they undergo their transition.

It may help to support discussion to use Appendix C as a guide to work with the staff member as a plan for managing the transition at work.

This, along with any other notes of the meeting, must be kept strictly confidential in a secure location.

4.3 Developing a Workplace Support Plan

Listed below are areas that you may wish to discuss with your employee (where appropriate):-

- The anticipated point or phase of change of name, personal details and social gender. This is the time that the employee may change their gender expression, name and pronouns; but bear in mind that transition is not usually a single moment, and not necessarily a linear process.
- Date of changing their gender presentation at work.
- The amendments that will need to be made to records and systems as well as notification to the relevant professional bodies (if applicable).
- A procedure for adhering to any change in dress code/uniform.
- Agreeing the point at which an individual will commence using single sex facilities such

as toilets, changing rooms and showers in their affirmed gender.

- Discussion with the employee should inform any actions relating to communication with colleagues. The employee must decide who performs the task and what is disclosed. Consideration should be given to whether any training in gender identity issues is needed. The staff member may prefer the manager or identified other person to do this.
- If the employee has a clinical role, agreement should be reached regarding communication with any existing and returning patients.
- Whether the employee's job role has a Genuine Occupational Requirement to be a particular gender. (See section 3.3).
- Time off required for medical treatment as a reasonable adjustment (if known). This may vary considerably in accordance with the needs of individuals concerned and can be discussed with the Occupational Health Department.
- All documents held by NHS Highland with personal details should be identified so that a discussion can take place as to documents and systems that are to be/can be updated. After a person has transitioned into their affirmed gender role it would not be appropriate to keep the records associated with the transition within the personal file.

Any information relating to an individual's transition should be destroyed unless there is an essential reason for keeping it. If such reasons can be evidenced, the documents should be secured to restrict access to authorised personnel and must not be passed to any third party without the specific consent of the member of staff. It may be useful to involve Occupational Health and Data Protection Department for advice (See section 5).

The individual should be treated as a member of their affirmed gender from the point that they ask for such a change, whether or not they have begun other aspects of transition. If a trans person has asked for their gender and trans status to be kept confidential because they are not 'out' yet (e.g. they request that you continue using their old pronouns), this too should be respected.

4.4 Social Transition

At some point the employee may wish to present themselves at work in their affirmed gender. When the employee indicates that they are ready to begin working in their affirmed gender, the plans agreed to under the previous section should be implemented.

It is important to allow the employee to be in control of the timetable for this and to be flexible in the case that the employee decides that the experience is too difficult, and wishes to delay any part of it.

At the planning stage, it would be appropriate to identify all records and documents that may require to be updated. Measures ought to have been put in place to amend accordingly.

Where documents have been seen and copies taken at the point of starting employment (such as a birth certificate) then every effort should be made to replace those with

equivalent documents in the new name and gender. It is the responsibility of the employee to provide new versions of documentation.

To maintain confidentiality, where possible new records should be produced; for instance the cover of a personnel file should be replaced and a new name included rather than the old file have the name crossed out and replaced.

In some instances, however, it may be necessary to retain records relating to an individual's identity at birth, for example, for pension or insurance purposes prior to obtaining a Gender Recognition Certificate. It should be noted that once a person has obtained a Gender Recognition Certificate these **MUST** be replaced with new details; however, it is the responsibility of the employee to provide updated documentation.

Where a trans employee does not have a Gender Recognition Certificate, their records should still be updated as much as possible to reflect any change of name, title and gender marker, insofar as the employee wishes to make these record changes.

4.5 Informing and Supporting Colleagues

How colleagues are informed of a member of staff's transition is a decision to be made by the member of staff who is transitioning. They should be offered a choice as to which colleagues are informed, and how the information is communicated. They can choose who they would like to inform their colleagues, and what method of communication they would like to be used.

NHS Highland **must not** inform colleagues, clients or the public that an employee is intending to undergo or is undergoing or has undergone gender reassignment without the employee's **explicit written consent**.

Such disclosure may result in a criminal offence if the person concerned has a Gender Recognition Certificate (GRC) and it is done without the explicit consent of the individual concerned. It is good practice to assume that 'all trans people have a GRC'.

It is never appropriate to inform colleagues, clients and the public that an employee has in the past undergone gender transition.

If information acquired about someone's transgender status is disclosed (without consent of the individual), criminal proceedings may be brought.

Section 22 of the Gender Recognition Act 2004 makes it a criminal offence, with a fine of up to £5000 on conviction, for any person to disclose information which they have acquired in an official capacity about an individual's application for a Gender Recognition Certificate. If a person has a Gender Recognition Certificate or it could be assumed they might have a Gender Recognition Certificate (for example they are living permanently in their affirmed gender), then this cannot normally be disclosed further in a way which identifies the person involved without that person's express consent or, more exceptionally, a specific order by a court or tribunal.

Section 22(4) of the Gender Recognition Act 2004 states specific exempt circumstances where it is not an offence to disclose protected information about a person's application for a Gender Recognition Certificate, or about that person's gender history:-

- The information does not enable that person to be identified;
- That person has agreed to the disclosure of the information;
- The disclosure is in accordance with an order of a court or tribunal;
- The disclosure is for the purposes of preventing or investigating crime.

The Gender Recognition (Disclosure of Information) (Scotland) Order 2005 provides a further limited exception permitting disclosure for medical purposes of the protected information about someone's gender recognition history only where the following three criteria are all met:

- The disclosure is made to a health professional; and
- The disclosure is made for medical purposes; and
- The person making the disclosure reasonably believes that the subject has given consent to the disclosure or the subject cannot give such consent (for example, unconscious).

With regard to the change of name, all staff must refer to the transgender person by their preferred name and use pronouns appropriate to their affirmed gender.

Trans people do not need to show a Gender Recognition Certificate in order to change over their day-to-day documentation or to use the toilet facilities of their affirmed gender. Indeed, as it is necessary to 'live fully' in the affirmed gender for at least two years before applying for a Gender Recognition Certificate, a refusal by an employer or service provider to allow these changes at the start of an individual's gender reassignment process would unfairly prevent that individual from later being able to apply for a Gender Recognition Certificate and consequently would be discriminatory.

Advice can be provided from the LGBT Scotland Helpline and you can find more details here:

<http://intranet.nhsh.scot.nhs.uk/Staff/EqualityAndDiversity/Lists/Announcements/DispForm.aspx?ID=5&Source=http%3A%2F%2Fintranet%2Enhsh%2Escot%2Enhs%2Euk%2FStaff%2FEqualityAndDiversity%2FPages%2FDefault%2Easpx> .

Equality and Human Rights Module is available on Learnpro here

<https://nhs.learnprouk.com> click on view all learning and the module is in the statutory/mandatory section. Under the CPD section the NES: Stonewall Good Practice module is also available.

4.6 Staff in Public Facing Roles

A member of staff's gender transition may be unavoidably visible to the public. There is no general need or obligation to inform colleagues, clients or the public that a person is transitioning however, such information may be considered appropriate where the relationship with that individual was established prior to their transition and is to continue.

This however should only be completed with permission from the member of staff who is transitioning. Each situation is different and the ways in which people are informed should be considered on a needs led basis. The manager should discuss and agree with the staff member if and how the information should be given.

Some staff may elect to move to a non-public facing role during transition; however, they cannot be required to do so. Similarly, the way someone looks and the negative reactions this might be expected to elicit from certain members of the public must not be a barrier to people undertaking a public facing role.

4.7 Time off for appointments

In line with NHS Highland's Special Leave Policy, employees will be given reasonable time off for hospital appointments. The manager and employee should discuss and agree what time is required. If there is a requirement to attend a hospital out with Highland then the manager should make allowances for travel to and from that location.

4.8 Staff Facilities

NHS Highland supports the right to use the facilities that they feel are the most appropriate to their gender. This includes the right of non-binary people to use the facilities that they feel are most appropriate to them, i.e. male, female or accessible facilities.

It is advised that the individual starts to use the facilities for their affirmed-gender at the point where they begin to socially transition, irrespective of the progress of surgical procedures.

Where sex specific facilities do not afford reasonable levels of privacy for staff (shared changing areas etc) measures will be taken to make reasonable adjustments to meet this need. This is not a consideration to 'protect' transgender or non-transgender staff, but rather to ensure that all members of staff, irrespective of their age, disability, gender, trans status, race/ethnicity, religion/belief or sexual orientation are accorded the right to privacy.

4.9 Use of Changing/Shower Facilities and Toilets

The use of changing/showering facilities and toilets will be part of the discussion process with the member of staff transitioning, with a view to agreeing the point at which the use of facilities should change from one gender to another. An appropriate stage for using the facilities of their affirmed gender is likely to be the change of social gender.

Should there be any objections to this; the objections will be dealt with by a manager in a sensitive and understanding way while not denying the transgender person access to facilities appropriate to their affirmed gender. It is not good practice to allocate specific facilities for the individual who is transitioning.

A trans person should be granted access to men-only and women-only facilities according to the gender in which they most closely identify with. It would not be acceptable to expect an individual undergoing transition to use facilities designated for use by the gender they were assigned at birth.

In particular, trans people must not be asked, expected or required to use accessible facilities allocated for people with disabilities (unless they have a disability which requires this). Where a transgender person freely prefers to use accessible gender neutral facilities, perhaps because they have a non-binary gender identity, then this should be permitted.

Where changing or shower facilities are open plan, then it is good practice to review this and at least make some provision (e.g. curtained spaces) where staff need not be in a state of undress in the presence of others.

Whether or not a person's transition has involved any medical processes, the individual should be fully supported in using facilities appropriate to their gender.

NHS Highland will ensure that any arrangements for toilet/shower/changing facilities are satisfactory to the transgender member of staff and their colleagues and patients as appropriate. Any unsatisfactory practical arrangements must be reported to the designated manager as soon as possible.

4.10 Uniform & Dress Code

Within NHS Highland, uniforms and clothing must be compatible with NHS Highland Uniform Policy and Dress Code which aims to minimise the risk of cross infection, whilst importantly maintaining staff and patient safety at all times. As with any healthcare organisation it is vital that all staff portray a positive and professional image to enhance public trust and confidence.

Transgender employees will be fully supported with regard to the clothing they feel best represents their gender identity.

5. Personal Data & Information

In the UK, anyone can start using a new name whenever they want. You can change your forename and/or surname, add or rearrange your names. Many transgender people will choose to change their name in order to reflect their gender identity. This may mark the end of a transition process or simply how they feel at the moment. In many cases there is no legal process required for using a new name and a transgender person does not need to hold a Gender Recognition Certificate in order to do so. Also, it is perfectly legal to use two different sets of names at the same time, including on documents. The exception is when the intention is to defraud.

There are some circumstances which require a legal change of name or a Gender Recognition Certificate before you can use it. This can be done by making a statutory declaration, or change of name via General Registers Office or Deed Poll.

5.1 Retention

Employees at all levels who learn (or may learn) about an individual's transgender history in the course of their work need to be aware of how to handle information. This could apply to:

- The information that can be entered into workforce files where other staff might have access
- Discussion about an individual's application form and applicant's job interview.
 - Please note: it is possible that certificates may not use their birth name and gender.
- The contents of Occupational Health Reports
- Information that can be passed from one medical professional to another in the course of referral or when discussing a case
- Information stored in medical records where others could access that data.

Any such information must be treated with the utmost confidentiality and included only as "sensitive data" in any records which must not be available to or accessible by anyone not specifically authorised or agreed with the specific employee to have access.

All employees are entitled to have all their workplace records changed to reflect the name, title and gender that they have adopted. There are, however, some documents, such as pensions, National Insurance and tax-records, that require a Gender Recognition Certificate in order to be amended. In cases where an employee has changed their personal information on some documents but not others it is important for employers/managers and HR staff to consider how these different documents are stored and who has access to them so that the employee is not inadvertently "outed" if a member of staff is able to link up old and new documents. The manager or HR staff should also inform the transgender employee which documents contain old information.

5.2 Pensions

A transgender person with a Gender Recognition Certification will be able to change their name and gender for their state and workplace pension, national insurance and tax records. This means that their state pension age will be the same as for other members of their gender so legally changing their gender marker may affect the age of retirement, pension and benefits entitlements.

Transgender people who do not obtain a GRC retain their state pension rights in accordance with the sex that is recorded on their birth certificate. This means that for transgender people who do not have a GRC, the name and gender stated on their pensions, National Insurance and benefits will not be able to be changed. Therefore, employers and HR staff handling these documents are recommended to think about how these documents are stored and who has access to them. However, once a person has obtained a GRC, these must be replaced with new details.

5.3 Proof of right to work in UK

A passport, national identity card or Home Office issued residence document are the relevant primary identification documents that Employment Services should request in order to prove a person has the right to work in the UK. A birth certificate should only be requested if none of those documents are available.

It is possible for a transgender person who is a UK national to obtain a UK passport with their new gender marker at the start of their transition.

If a transgender person does not have a UK passport which reflects their current gender, their birth name and gender may be present on documents. In such cases, Employment Services should explain that retaining a copy of the document on the employee's record is a legal requirement imposed by the UK Government. They should also explain that if the employee later gains a new document then can replace the document kept on file. Confidentiality must be maintained.

5.4 Record Keeping

All workplace records should be updated to reflect the new name, title and affirmed gender simply on receipt of a written request from the transgender person. No formal evidence is required in support of the written request, although many transgender people may choose to provide a statutory declaration or deed poll confirming their change of name. Records must be updated regardless of whether or not the transgender person has any medical treatment or a GRC.

A transgender member of staff is under no obligation to provide a GRC to their employer; nor, should anyone be asked if they hold one.

Managers must seek advice from Human Resource on the current legislative requirements in relation to record keeping. Managers should ensure that all documents, public references (such as telephone directories, web biographies etc) are updated and do not disclose gender history.

Breaches of confidentiality about a person's gender history and transgender status must be treated in the same serious manner as disclosure of sensitive personal information (for example, medical details) of any other member of staff. In addition to being data protection violations, breaches of confidentiality can be gender reassignment discrimination or harassment under the Equality Act 2010.

5.5 Work Permits

Staff who are working in the Health Board on a work permit or student visa are asked to comply with any work permit/visa regulations, which may relate specifically to name change or gender recorded on file in order that the work permit/visa continues to be valid.

5.6 National Insurance

Staff who change their name will need to inform the local Department of Work and Pensions office.

5.7 Professional Registration

Staff who are professionally registered are advised to contact their professional bodies to find out whether there are any specific requirements in terms of name changes etc.

Where the organisation has to keep evidence of professional status or qualifications, it should be discussed with the member of staff how this information will be retained so as not to compromise or breach disclosure of protected information.

6. Recruitment and Selection

6.1 Recruitment

There should be no barriers to a person who identifies as transgender or people with transgender histories from applying for employment within NHS Highland.

All those involved in the recruitment and selection process must be made aware of their responsibilities to select fairly and without prejudice.

6.2 Confidentiality within the recruitment and selection process

Applicants do not have to disclose their transgender status during the recruitment and selection process including at interview, or as any condition of employment.

If applicants choose to disclose their status this must not be used as a reason for not offering the person employment with the organisation. Non-disclosure or subsequent disclosure are not grounds for dismissal.

6.3 Protection of Vulnerable Groups (Scotland) Act 2007

Specific guidance for transgender people completing a Disclosure form is available for information on the Disclosure Scotland website. Disclosure Scotland operates an application process for transgender people to assist in ensuring discretion is afforded to such individuals who do not wish the gender assigned at birth (and names) to be disclosed to the person or organisation requesting the Disclosure. Any questions on this process should be directed towards Disclosure Scotland Helpline on 0870 609 6006 (please ask to speak in confidence with the Operations Manager).

Existing employees may also seek advice from Human Resource to assist with this process.

Definitions and commonly used terms regarding trans people

Glossary**Gender Expression**

Can be understood as the way in which a person expresses themselves through their external appearance and/or manifestations marked by behaviour, clothing, haircut, voice, body, language, and other external and physical characteristics. (Poštić et al)

Gender Identity

Each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms. (Yogyakarta Principles)

Trans* Activist

A person who participates in funded or unfunded social support provision, legislation reform, information provision, campaigning and other activities to create social change to improve trans* equality and human rights. A trans* activist may not necessarily identify as trans*.

Trans* People

A term encompassing a diverse range of people who find their gender identity or gender expression does not fully correspond with the sex they were assigned at birth. This term can include, but is not limited to, people who identify using the following more specific terms: transsexual people, transgender people, transvestite/ cross-dressing people, non-binary, gender-variant people.

**Transition/
Gender Reassignment**

Equivalent terms for a process (or any part of such a process) through which a person re-defines the gender in which they live their life in order to better express their gender identity. Aspects and order of such a process can vary and may or may not involve medical and social aspects.

Transphobia

A term meaning negative cultural and personal beliefs, opinions, attitudes and behaviours based on prejudice, disgust, fear and/or hatred of trans* people or against variations of gender identity and gender expression. Transphobia can take various forms, such as direct physical violence, harassment, threats, hate speech and insulting, discriminatory media coverage and social exclusion. It also includes institutionalised forms of discrimination and stigmatisation, such as treating people as criminal or mentally ill simply for being trans* or expressing gender variance. (Adapted from Transrespect versus Transphobia Worldwide Project working definition)

Workplace Scenario:

A department manager is approached by a male colleague who asks for 'five minutes' to discuss a personal matter. The manager is informed that a member of staff from another department (who is currently transitioning from female to male) had entered the male toilet while a male member of staff was using a urinal. The employee feels it is inappropriate that this can happen; stating rights to privacy have been compromised through having to share facilities with this colleague. He states the previous month, the member of staff in question was 'coming to work as a woman'. He suggests it might be better for everyone if separate toilet facilities are organised for 'her' – there is a single toilet for disabled people that is rarely used – this should be ideal.

The manager considers the issues as detailed by her colleague. She explains that it can be difficult to segregate toilet facilities for staff in this way and that she's pretty sure the transgender person has legal rights that could be enforced. That aside she can understand that some members of staff may feel uncomfortable with the present arrangements and promises to speak to the manager of the transgender person to see if a compromise can be reached.

The immediate problem appears to be apparent lack of planning and support for the transition of a member of the workforce. While not all transgender employees will want to publicly announce their intended transition, it is unacceptable for the workplace not to have put in place arrangements to support the employee in this instance. It may be that in the early days of transitioning another member of staff who's a bit more sympathetic can accompany the transgender employee to the toilet facilities.

The above aside, the manager has a clear duty to ensure that the transgender person does not feel excluded or harassed in the workplace and is afforded the same level of dignity and respect as cisgender (non-transgender) employees. This needs to be explained clearly together with an expectation that support from colleagues will be required. The manager needs to be familiar with legal rights in this instance and perhaps some contextual information relating to the challenges faced by transgender people in society.

This can help explain the process and create a better understanding of gender variance. An agreement to provide a separate toilet facility for the transgender person is unreasonable and inappropriate and would result in the employee feeling excluded in the workplace.

It could also be challenged legally – similar cases where transgender people have been forced to use disabled toilets etc. have resulted in significant awards in favour of the transgender person.

Kindly provided by: NHS Greater Glasgow and Clyde

Points to discuss or consider for Supporting Staff Transitioning.

A Person Centred approach should be taken and all discussions/actions should be discussed and agreed on a 1:1 basis with the individual concerned.

Details	Date
<p>Main Contact</p> <p>Identify a single point of contact to support the individual, agree an action plan and coordinate arrangements between NHS Highland and member of staff. This would normally be a manager, equality lead, HR or senior member of the department, who would liaise with Human Resource Services, or the Occupational Health Service. It can also be someone from a similar professional body i.e. RCN, RCGP etc</p> <p>Consider if the role has any occupational requirements</p>	
<p>Time table</p> <ul style="list-style-type: none"> • What is likely timetable for transition? e.g. • Dates for name change (Individual to identify preferred name) • Use of facilities (toilets, changing rooms) • Change of presentation e.g. from suit to a dress or change of uniform attire? • Change of records 	
<p>What identification needs to be changed?</p> <ul style="list-style-type: none"> • e-mail address • web link • ID - Name badge 	
<p>What documents and records need to be changed? e.g.</p> <ul style="list-style-type: none"> • NHS Highland records • Department records • Professional bodies • Trade Union membership • Payroll (and banking details) • Pension scheme • Web details • Committees and groups (at agreed time) • Does the employee have multiple posts within NHS? 	

Details	Date
<p>Transition Process</p> <ul style="list-style-type: none"> • Is the individual taking any extended time off? Is this additional paid/unpaid leave? • Is time off needed for medical appointments (which may require to be taken during normal working hours) • How can ongoing medical procedures be accommodated i.e. facial hair removal. Consider whether this can be accommodated by working flexi hours/or home working • Does the person need time off for medical reasons or appointments? • If an individual undergoes any surgery, recovery may take between one to twelve weeks.' Please refer to sickness absence policy • What arrangements have been put in place to support an individual's return to work? Occ Health may support phased return? 	
<p>Support for individual/communication</p> <ul style="list-style-type: none"> • How will colleagues be informed? Can statement be agreed and who delivers it? • How and when will external contacts be informed? • Is there training needed? • Impact change may have on their work and adjustments that could be made. 	
<p>Discrimination</p> <ul style="list-style-type: none"> • Are there clear guidelines and processes to deal with direct or indirect discrimination or harassment of transgender people? • Are systems in place in to address any adverse publicity or reactions from patients etc to ensure the employee is supported? 	

Highland LGBT Forum

This is a registered charity and run by volunteers. They organise social events and were the organisers of ProudNess 2018.

Contact: <https://www.facebook.com/highland.lgbt/>

<https://twitter.com/highlgbtforum?lang=en>

LGBT Youth Scotland – Pillar

Pillar is the youth group for LGBT young people aged 13-25 in Inverness. The group runs every Tuesday evening from 7pm to 9pm at the Bike Shed, Merkinch, Inverness. Young people can also access 1-2-1 support in the area through the group or online through the website.

Contact: <http://hi-hope.org/directory/listing/lgbt-youth-scotland-pillar>

LGBT Youth Scotland

LGBT Youth Scotland provides youth work to LGBTI young people

Contact: <https://www.lgbtyouth.org.uk/>

LGBT Helpline Scotland

Providing information and emotional support to lesbian, gay, bisexual and transgender people and their families, friends and supporters across Scotland. Also offer support to those questioning or wanting to discuss their sexuality or gender identity.

Contact: <http://www/lgbt-helpline-scotland.org.uk>

National Gender Identity Clinical Network for Scotland

There are four main centres in Scotland:-

Glasgow Sandyford – for people up to 16.5yrs (accepts self referral)

Glasgow Sandyford – for adults (accepts self referral)

Edinburgh Chalmers – for people over 16.5years (GP referral)

Aberdeen – pilot adult service as of March 2018 (GP referral)

Inverness – adult service (GP referral)

Contact: <https://www.ngicns.scot.nhs.uk/services/gender-identity-clinics/>

NHS Scotland Gender Reassignment Protocol –

<https://www.ngicns.scot.nhs.uk/wp-content/uploads/2015/07/Gender-Reassignment-Interim-Guidance-2.pdf>

https://www.sehd.scot.nhs.uk/mels/CEL2012_26.pdf

Contact: Email: nss.ngicns@nhs.net

Call 0131 275 6192

Non-Binary Scotland

Non-Binary Scotland is a group which provides support and social opportunities for people who either self-identify as out with the gender binary of men and women or are questioning whether they might.

Contact: email: nonbinaryscotland@gmail.com

You can tweet them: @NonBinaryScot

Facebook group at: <http://www.facebook.com/groups/nonbinaryscotland/>

Scottish Trans Alliance

Working to improve gender identity and gender reassignment equality, rights and inclusion in Scotland.

Contact: <http://www.scottishtrans.org>

Stonewall Scotland

Campaign for the equality of LGBT people across Britain.

Contact: <https://www.stonewallscotland.org.uk/>

Swans of Scotland

Self supporting help group for all Trans folk in the North of Scotland.

Contact: www.spanglefish.com/swansofscotland

Trans Unite

A website which allows members of the transgender & non-binary communities to find a support group local to them (or even an online-only group):

Contact: <https://www.transunite.co.uk/>

Trans Masculine Scotland

Trans Masculine Scotland is a support group run by and for the trans masculine community.

Contact: transmasculinescotland@gmail.com

Publications in Alternative Formats –

NHS Highland is happy to consider requests for publications in other language or formats such as large print. **contact Principal Officer Health Inequalities, Equality and Diversity for further advice**