



# **Transgender Employees Policy & Guide**

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## NHS SHETLAND DOCUMENT DEVELOPMENT COVERSHEET\*

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Please record details of any changes made to the document in the table below

<b>DATE</b>	<b>CHANGES MADE TO DOCUMENT</b>
04/10/2016	Appendix D – more detail added in relation to dealing with abusive callers. 5.7 – Single Sex Facilities – amended to reflect that reasonable measures will be taken to upgrade facilities.

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**Acknowledgement and thanks are given to colleagues at NHS Forth Valley for the development of the original version of this policy.**

## **1. Introduction**

NHS Shetland 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 an exemplar employer.

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

As gender reassignment is a protected characteristic under the Equality Act 2010 we must ensure that people are not discriminated against or disadvantaged by service delivery or prejudice of NHS Shetland's employees, other patients or the public.

We also recognise that being transgender is only one aspect of the individual's identity and therefore it is not a case of "one size fits all". Each person will have different needs and as such, a person-centred approach will be taken.

### **1.1 NHS Shetland's Approach**

NHS Shetland recognises that transgender people are entitled to fair and equal access to all NHS services. A person's gender status will not exclude them from the high standards of employment expected from NHS Shetland.

NHS Shetland recognises:

- 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 access NHS medical gender reassignment provision and that such provision can be a vital life-saving treatment for transgender people experiencing intense gender dysphoria.

- That people have the right to live with dignity and privacy in the gender with which they identify, and that there must be no exceptions to this when a transgender person is an employee or using services and facilities.

For a member of staff who is transgender, any changes to working conditions or access to facilities should have a negotiated approach between the staff member and their manager.

This policy therefore needs to be considered alongside other NHS Shetland policies such as, Eliminating Bullying & Harassment, Promoting Attendance, Supporting the Work Life Balance, Uniform Policy and Embracing Equality, Diversity & Human Rights.

## **1.2 Scope of the Policy**

The policy applies to all NHS Shetland employees and workers. Staff will be expected to comply with the Policy at all times and positively challenge colleagues and users of services who act in a manner that breaches the legal aspects of NHS Shetland's responsibilities.

The organisation's legal duties as a health care service provider and employer are outlined in Appendix B.

## **1.3 Policy Review**

This is NHS Shetland's first Transgender Employee Policy and will be subject to review within 2 years of implementation to ensure it fulfils its operational use as a tool for practice and as a source of guidance for the organisation.

The Policy will evolve through testing against real situations and will grow in its utility through a process of feedback from the wider system.

## 2. Aims of the Transgender Policy

This policy applies to all staff, patients and members of the public detailing how a transgender person should be treated in a dignified, non-discriminatory way.

Its aims are to support the organisation in its delivery of inclusive services and ensure that it does not breach the Equality Act 2010.

Under this legislation it states that a transgender person no longer has to be under medical supervision or have a gender recognition certificate to prove that they have the protected characteristic of gender reassignment. For example, a trans person who simply starts using different pronouns (she, he, and they) is protected by the Equality Act regardless of whether or not they wish to take any hormones or have any surgeries. They must be treated in accordance with their self-declared gender identity.

Discrimination against a transgender person should be challenged, whether the discrimination stems from staff, patients or the public.

Priorities:

- We are committed to ensuring equality of opportunity for transgender employees.
- All transgender employees have legal rights that are set out in Appendix B.
- The fundamental directive of this Policy is that transgender people will be treated in their self-identified gender at all times.
- The Policy will support legal compliance in NHS Shetland's responsibilities as an employer of transgender people.

To support work in these areas, NHS Shetland 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
- Have a Transgender Awareness e-learning package in place as soon as feasible for all staff to complete as part of their KSF Core 6 Equality and

Diversity competency requirements. Those managers and staff not under Knowledge and Skills (KSF) Framework should also be encouraged to complete same.

- Provide information to transgender people regarding their rights to equality of access of service and employment opportunities.
- Ensure that employees who intend to undergo, are undergoing, or have undergone gender reassignment are treated with fairness and support in their recruitment and development.
- Support staff to contribute to culture change within this organisation.

### **3. What does transgender mean?**

Transgender is an umbrella term for people who, for whatever reason, feel their gender identity or gender expression differs from their sex assigned at birth.

While the organisation is committed to understanding the context of transgender issues within a social model of health, for the purposes of this policy NHS Shetland understands the term transgender and its legal protections to include anyone self-identifying as transgender and anyone proposing to undergo, undergoing or having undergone any part of a process for the purpose of gender reassignment.

A small number of people may not identify with a binary (male/female) concept of gender and instead identify as having an androgynous non-binary gender or as having no gender. Some of them may experience their gender identity as fluid and changeable. Where this is the case, discussions relating to provision of services must take place with this broader understanding of gender and gender identity.

A detailed explanation of transgender terminology is included in Appendix A.

The terms transgender person, trans man, trans women etc are usually the preferred terms for this community; 'transgender' is how people will be referred to in this policy.



## **4. NHS Shetland – Our responsibilities as an employer**

NHS Shetland supports and respects 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 will enjoy the right to equal treatment and protection from discrimination and harassment as outlined in the organisation's Eliminating Bullying & Harassment Policy.

It is estimated there are between 5,000 – 10,000 transgender people in Scotland, including around 2000 that intend to undergo, are undergoing or have undergone gender reassignment (Scottish Transgender Alliance).

National evidence has shown that a disproportionate number of transgender people are unemployed or employed in low paid work. Much of this relates to perceived or real discrimination in the workplace and NHS Shetland will work to promote the organisation as a credible employer of choice for transgender people.

NHS Shetland commits to uphold our legal responsibilities to transgender employees as set out in Appendix B.

### **4.1 Respecting the gender identity of transgender employees**

NHS Shetland will ensure that transgender staff are treated as being of the gender in which they are living irrespective of whether they have undergone any hormonal or surgical treatment or have a Gender Recognition Certificate.

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 should use the relevant policies/procedures to deal with the situation.

As a Public Body we have a Duty under the Equality Act to foster good relations between individuals who have protected characteristics and those who do not.

## **4.2 Genuine Occupational Qualification (GOQ)**

The Equality Act 2010 provides limited exemptions for GOQ 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 General Occupational Qualifications, consistent with the gender in which they are living.

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 their original gender, 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.

## **4.3 Harassment**

NHS Shetland adopts an all-encompassing anti-harassment stance to protect our employees. This means harassment will not be accepted be it perpetrated by staff, visitors or service users. A 2000 report looking at workplace harassment issues for transgender people found that more than a quarter of transgender employees faced harassment and discrimination (verbal and physical) on a regular basis.

These actions would be in breach of NHS Shetland workplace policies and in some circumstances may constitute criminal behaviour under Hate Incident legislation. NHS Shetland considers harassment and bullying to be pernicious in the extreme and will act swiftly to deal with all cases as part of our commitment to providing an inclusive workplace.

#### **4.4 A Shared Vision**

NHS Shetland trust that our transgender staff feel fully supported in relation to all aspects of their gender identity and gender expression and will continue to develop better ways of working to ensure transgender people feel happy, safe and secure in all their dealings with us and come to recognise NHS Shetland as a leader in best practice across our systems.

### **5. Gender Reassignment – Points for consideration**

#### **5.1 Managing Staff going through Transition**

The successful support and management of an employee's gender reassignment depends crucially on taking account of the individual's views on how to proceed. Gender reassignment is a personal process (rather than a medical process), which involves a person expressing their gender in any way that differs from the physical sex they were assigned at birth. This personal process may include undergoing medical procedures or may include choosing to dress in a different way as part of the personal process of change.

It is best practice to assume any transgender person has a gender recognition certificate and to treat them accordingly.

It should be noted that the first contact may be just to "sound out options". Some transgender people may take several months or years to gradually explore the possibility of gender reassignment. Some may only change their outward gender presentation after a period of varying gender expression.

When a member of staff considers embarking on gender reassignment, 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 Resources Manager, Equality and Diversity Lead, Occupational Health Department, or any other appropriate member of staff. At this stage it may be that the individual does not wish this to be discussed any further and this decision must be respected.

All must maintain confidentiality except as agreed otherwise by the individual. It is vital to assure that the Health Board will be supportive and that it does not tolerate discrimination against or harassment of transgender employees.

### **Role of the Managers**

Every manager employed by NHS Shetland 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 Policy and attend any relevant training
- Challenging staff who discriminate and ensuring that the relevant procedures are followed i.e. Dignity and Respect at Work, , Managing Employee Conduct Policy 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.

Initially, managers (and any other member of staff acting as a point of contact) should ensure they are familiar with this policy and any other appropriate in order to support the individual fully.

Through discussion with the employee an NHS Shetland main point of contact will be agreed. A meeting will be arranged with the nominated person to have a more detailed discussion and to support the process for handling the transition.

Where appropriate the individual concerned should be provided with an agreed member of the Human Resources Team or Equality Leads 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.

## **5.2 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 undergoing gender reassignment, 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 gender reassignment process.

It may help to support discussion to use Appendix F as a guide to work with the staff member as a joint action 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.

### **Developing a joint plan for managing transition at work:**

The action plan could include:-

- The anticipated point or phase of change of name, personal details and social gender.
- Discussing who will be told and when
- Date of starting to work in new gender.

- Discuss the amendments that will need to be made to records and systems as well as if required notification to Nursing and Midwifery Council, General Medical Council or other relevant regulating body. (See 6.6)
- 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 new gender.
- Transition whilst in employment/post – discussion with the employee should inform any actions of when and how colleagues should be informed – the employee should decide who performs the task – and whether any training in gender identity issues is needed. The staff member may prefer the manager to do this or identify they will do this themselves.
- Discuss if the team require training or information on transgender issues to support the member of staff and to ensure no discrimination occurs over and above that already completed as part of existing equality and diversity training including NHS Shetland Transgender e-learning and classroom based transgender awareness?
- Whether a transgender employee is adequately covered by existing Policy on issues such as confidentiality, harassment and insurance and if not, how these will be amended.
- Discuss if the change of gender identity may affect the job role i.e. does the role have a “genuine occupational requirement” to be a particular gender? (See section 4.2.)
- Discuss any employee concerns about whether they wish to stay in their current position or if they wish to be redeployed – this will be the choice of the individual. It is inappropriate to redeploy someone who wishes to transition just because you think it is in his or her best interests.

- Time off required for medical treatment (if known), this may vary considerably in accordance with the needs of individuals concerned. To be discussed with Occupational Health Department and identified point of contact.
- Discuss and prepare an agreed statement which could be used in the event of any adverse media enquiries. After a person has successfully transitioned into their new gender role, it would not be appropriate to keep these records within the personal file.

Any information relating to an individual's gender reassignment 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 6

An example of an Action Plan to support discussion is available in Appendix F.

### **5.3 Change in Social Gender**

At some point the employee will likely wish to present themselves at work in their new gender. When the employee indicates that they are ready to begin working in their new 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.

If appropriate records and documents have not been updated to reflect the employee's new name and title (if applicable) by this time, they must be updated at this time. Appropriate procedures for this are discussed Section 6.

### **5.4 Informing and Supporting Colleagues**

It is good practice for employers to take responsibility for informing whoever needs to know, unless the individual going through the process would prefer to do this. The Health Board **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 agreement**.

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 acquired gender. Colleagues should be given general information or awareness training about transgender issues and specific information to help people to understand the needs of the person transitioning. Any additional issues or areas of concern or requiring further clarity can be discussed with the Equality Lead or identified point of contact.

Each team is different and support either as a team or on a 1:1 basis should be met on a need led basis.

It is never appropriate to inform colleagues, clients and the public that an employee has in the past undergone gender reassignment. This is a private matter since gender reassignment will have no bearing on that person's ability to do their job.

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 those who have transitioned to their acquired gender have a GRC.

## **5.5 Staff in Public Facing Roles**

A member of staff's gender transition may be unavoidably visible to the public especially in the early stages of gender transition. Although many people cease being visibly different as transition progresses, there are others for whom it will continue to be a reality.



There is no general need or obligation to inform colleagues, clients or the public that a person is undertaking gender reassignment. However, such information may be considered appropriate where the relationship with that individual was established prior to their change of gender 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 informing people should be delivered on needs led basis. Examples of a range of statements which can be used dependant on circumstances are reflected in Appendix D. These however can only be used with prior approval from the individual concerned.

In such a case an explanation may be considered necessary; however the manager should discuss and agree with the transgender person if and how the information should be given.

In these circumstances, it is important that managers support the member of staff in a positive manner and listen to how they feel about things and how they feel they are coping. Managers should be willing to explore equitable solutions. Colleagues may also benefit from advice on how to contribute.

Some staff may elect to move to another 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.

## **5.6 Time off for appointments**

In line with the NHS Shetland's Promoting Attendance Policy, any absence from work for medical requirements would need to be covered by a 'Fit Note'. Any additional leave for specialist appointments would be classed the same as other hospital / GP appointments and in accordance with organisational procedures.

The public sector duty to advance equality requires organisations to have regard to the need to remove or minimise disadvantage and meet the different needs of

those with a protected characteristic. This encourages employers to take positive action that removes the significant disadvantage that would inevitably be incurred by staff undergoing gender reassignment. This would be discussed on an individual basis.

## **5.7 Single Sex Facilities**

NHS Shetland supports the use of single sex facilities for transgender people in accordance with the gender in which they are living.

Where sex specific facilities do not afford reasonable levels of privacy for male and female staff (shared changing areas etc.) reasonable measures will be taken to upgrade facilities 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, gender recognition, race/ethnicity, religion/belief or sexual orientation is accorded the right to privacy.

### **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 undergoing gender reassignment, with a view to agreeing the point at which the use of facilities should change from one gender to the other. An appropriate stage for using the facilities of the new 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 lived gender. It is not good practice to allocate specific facilities for the individual undergoing gender reassignment.

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 trans 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.

If it is genuinely impossible to adapt such changing/shower facilities to accommodate this, then there is one very limited example of an instance where the law permits an employer to make separate arrangements. Such special arrangements must be time limited unless the trans person has a non-binary gender identity and wishes to keep the separate arrangements in place indefinitely.

It would not be acceptable to expect an individual undergoing gender reassignment to use facilities designated for use by those of their birth gender. Following gender reassignment, whether or not this has involved surgical procedures, the individual should be fully supported in using all facilities appropriate to his or her acquired gender.

The Health Board 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 Director of HR & Support Services as soon as possible.

## **5.8 Dress Code**

At the time of writing this Policy, NHS Shetland does not have a detailed dress code other than those instructions to relevant professional groups identified by their formal workplace uniforms (nursing, allied health professionals etc.); as per the Uniform Policy. In all other circumstances it is enough to ask staff to wear attire that is appropriate for their duties and compliant with infection control guidance.

We would therefore fully support any transgender member of staff with regard to the clothing they feel best represents their gender identity.

## **6. Personal Data & Information**

### **6.1 Retention**

Employees at all levels who could learn about an individual's gender reassignment history in the course of their work need to be very clear about the handling of this information. This could apply to: -

- The information that can be entered into Workforce files where other staff might have access.
- Discussion about an applicant's job interview.
- 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" (Data Protection Act) 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.

### **6.2 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 the Human Resources Department 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 trans person who is a UK national to obtain a UK passport with their new gender identity at the start of their gender reassignment.

If a trans person does not have a UK passport in their new gender identity then their original name and gender may be present on a document shown. In such cases the Human Resources Representative 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 Human Resources can replace the document kept on file. Confidentiality must be maintained.

### **6.3 Record Keeping**

All records should be updated to reflect the new name, title and gender simply on receipt of a written request from the trans person. No formal evidence is required in support of the written request, although many trans 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 trans person has any medical treatment or gender recognition certificate.

After two years living in their acquired gender with all their records updated (except their birth certificate), transgender people have the option of applying to the Gender Recognition Panel for a gender recognition certificate which updates the gender on the person's UK birth certificate and provides enhanced gender history privacy protections.

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

The Manager and appointed Human Resources Representative should advise on where records are maintained that need to be changed. Managers and Human Resources Representative should ensure that all documents, public references (such as telephone directories, web biographies etc) and employment details display only their new name, title and gender.

Wherever possible, all records that disclose previous gender history should be withdrawn and destroyed as soon as the person makes a written request for their name and gender to be updated on their employment records. Any copies needing to be kept for legal reasons (for example, proof of right to work in the UK) in the person's Central HR file have to be treated as sensitive data under the Data Protection Act and not disclosed to anyone not specifically authorised to see them.

When documents have been seen and copies taken at the point of starting employment (such as birth certificate) then every effort will be made to replace those with equivalent documents in the new name and gender. The Data Protection Act limits the purposes for which information may be kept. When the information is no longer useful, it must be destroyed. In some instances, it is necessary to retain records relating to an individual's identity at birth, for example, for pension or insurance purposes prior to obtaining gender recognition. However, once a person has obtained a gender recognition certificate, these must be replaced with new details.

Access to records showing the change of name and any other details associated with the individuals transgender status (such as records of absence for medical treatment) must be restricted to staff who need the information to do their work. Such people could include those directly involved in the administration of a process, for example, Occupational Health Professional, or the person who authorises payments into a pension scheme. They do not include colleagues, line managers or third parties.

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.

It must also be recognised that such disclosure after the receipt of a gender recognition certificate is a strict liability of a criminal offence and may be subject to internal investigation in line with NHS Shetlands Managing Conduct Policy. Information about exceptional circumstances where it is lawful to disclose someone's gender history can be found in Appendix B.

Transgender staff may choose voluntarily to disclose information at a secondary level, e.g. answering a staff survey or asking for support from a line manager. Again, strict confidentiality must be observed as further disclosure must not be made without the express written permission of the individual. This means that

such questionnaires must be assessed for impact beforehand to determine how such circumstances are going to be handled in confidence.

It is not an offence to disclose protected information if the person cannot be identified or if they give their consent. Such consent however must not be forced, and should be written confirmation of consent from the individual concerned.

## **6.4 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 reassignment in order that the work permit/visa continues to be valid.

## **6.5 National Insurance**

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

People will be referred to in their new gender pronouns by HM Revenue and Customs, but any gender-specific calculations relating to their pension, national insurance contributions or benefits will be based upon their original birth gender unless and until they receive a gender recognition certificate.

## **6.6 Regulated Professions**

Staff that are members of a regulated healthcare profession are advised to contact their regulating 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.

## **7. Recruitment and Selection**

### **7.1 Recruitment**

It is intended that there be no barriers to a person who identifies as transgender from applying for employment within Shetland.

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

### **7.2 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 and also non-disclosure or subsequent disclosure are not grounds for dismissal.

### **7.3 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 their previous gender (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 their named HR Manager who can also assist with this process.

## **8. Dissemination and Implementation of Policy**



The Director of Human Resources & Support Services, who is executive lead for Equality, and the Equality Lead are responsible for the implementation of this policy.

- To be submitted to Area Partnership Forum and Staff Governance Committee for approval.
- Following approval, the policy plus the Equality Impact Assessment will be added to the NHS Shetland document library accessible through the Intranet site.
- A clear communication will be sent to all managers and staff publicising its existence.
- Training will be provided with the launch of the policy and reference to the policy will be made within the Equality and Diversity session within corporate induction.
- Transgender e-learning package will be available for all staff within Learn Pro system and Transgender Policy will be identified within same.

## **Managers**

Every manager employed by NHS Shetland 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 policy and attend 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 trans person is addressed and treated as the gender they identify with.

## **Role of the Equality Lead**

They are responsible for:

- Overseeing the development and monitoring of the Transgender Policy
- Consulting with members of the transgender community when appropriate
- Reporting and responding to any issues of discrimination or non compliance of the Transgender Policy.

## **Role of Individual Staff**

All employees have a personal responsibility to support the equal and fair treatment of colleagues to ensure people are treated consistently in a non-discriminatory manner.

All staff members are responsible for:

- complying with the Transgender Policy
- challenging/reporting discriminatory practice or language

## **Updating and Review**

The policy will be fully reviewed in two years then subsequently every three years or earlier if indicated from the result of monitoring and review, legislative changes, a national policy instruction or NHS Shetland decision.

## Appendix A

### What Does Transgender Mean?

When a child is born, the midwife or doctor declares it to be a boy (male) or a girl (female) through a belief that a person's gender status can be ascribed on the basis of the visual appearance of their external genitals. The early assumption made is that sex and gender are interchangeable and that everyone can be neatly divided into two, mutually exclusive gender categories – boy or girl. In most cases, the gender assumptions made on the basis of the external genitals of the baby work, with maturing children feeling a sense of comfort with their assigned gender.

However, sex and gender are more complex than just the visual appearance of external genitals at birth. Variance can therefore occur in any of three main ways – biological sex variance; gender identity variance; and gender expression variance.

A person's **biological sex** includes all aspects of their sex-related biological structure: not only their external genitals but also their internal reproductive system, their chromosomes and their secondary sexual characteristics such as breasts, facial and body hair, voice, and body shape. Most people's biological sex will be clearly and consistently female or male. However, a small but significant number of people have bodies which are not completely male or female. People born with these kinds of physical variations are referred to as **intersex people**.

An individual's **gender identity** is their internal self-perception of their own gender. A person may identify as a man, as a woman, or as having a 'non-binary' gender identity which is more complex or fluid.

A person's gender identity may not match up with their biological sex. A person's understanding of their own gender identity usually develops during the early years of their childhood and often (but not always) becomes permanently the time they go through puberty. Unlike someone's physical body, a person's

gender identity is as invisible as their personality when they are born. A person's gender identity remains hidden from others unless the person decides to articulate or express it in some way.

An individual's **gender expression** is how they present themselves through their external gender-related appearance (including clothing and hairstyle) and their behaviour (including hobbies/interests and mannerisms). A person may have masculine, feminine or androgynous aspects of their appearance or behaviour.

In Scotland, it is currently common to use the terms **transgender people** and **trans people** as 'umbrella' terms to cover the many diverse ways in which people can find their personal experience of their gender and possible variations from the assumptions and expectations of the society they live in. The umbrella terms **transgender people** or **trans people** can therefore include transsexual people, cross-dressing people, people with non-binary gender identities and others.

**Transsexual people** consistently and strongly self-identify as a different gender from the gender they were assigned at birth based on their biological sex and therefore experience an intense need to transition from male to female (trans women) or from female to male (trans men). This may or may not involve hormone treatment or undergoing various surgical procedures.

**Transitioning** is also known as **gender reassignment**. It is an individualised process which varies in length, stages and complexity from person to person. In addition to social changes such as starting to use a new name and pronouns, it may (but does not have to) involve physical changes through hormone treatment and sometimes surgical procedures. Whether or not someone accesses hormone treatment or various surgeries is a private and personal decision and is not relevant to their right to have their gender identity respected.

**Gender dysphoria** is a recognised medical issue for which gender reassignment treatment is available on the National Health Service in Scotland. Gender Dysphoria is distress, unhappiness and discomfort experienced by someone about their biological sex not fully matching their gender identity.

A **trans woman** is someone who was assigned male at birth but has a clear and constant gender identity as a woman. She therefore experiences an intense need to undergo male to female (MTF) gender reassignment to live completely and permanently as a woman.

A **trans man** is someone who was assigned female at birth but has a clear and constant gender identity as a man. He therefore experiences an intense need to undergo female to male (FTM) gender reassignment to live completely and permanently as a man.

People with **non-binary gender identities** find they do not feel comfortable thinking of themselves as simply either men or women. Instead they feel that their gender identity is more complicated to describe. Some may identify their gender as being a combination between a man and a woman, or alternatively as being neither. Like transsexual people, non-binary people can experience gender dysphoria (sometimes as intensely as transsexual people do) and may undergo a process (or part of a process) of gender reassignment.

**Cross-dressing people** simply wear, either occasionally or more regularly, clothing associated with the opposite gender (as defined by socially accepted norms). Cross-dressing people are generally happy with the gender they were labelled at birth and do not want to permanently alter the physical characteristics of their bodies or change their legal gender. They may dress as the opposite gender for emotional satisfaction, erotic pleasure, or just because they feel more comfortable doing so.

## **General Information**

People who intend to transition (undergo any part of a process of gender reassignment) or have transitioned to live permanently in their self-identified gender have legal protection in regard to employment and goods, facilities and services provision under the Equality Act 2010. Therefore, public sector organisations such as the National Health Service must give due regard to

promoting equality and eliminating discrimination and harassment on grounds of gender reassignment as part of the General Equality Duty (GED).

NHS Shetland has voluntarily adopted best practice (as recommended by a number of Scottish equality organisations and trade unions) to promote equality on the grounds of gender identity and gender expression and to eliminate transphobic discrimination and harassment for all employees and service users, regardless of whether or not they intend to undergo gender reassignment.

Details of the types of discriminatory behaviour often experienced by transgender people are included as **Appendix B** to this Protocol.

The Scottish Transgender Alliance has a range of guidance and resources to support people transitioning or have transitioned or staff who require further information. <http://www.scottishtrans.org/>

## Appendix B

### Legal protection

The foundation of delivering services that are non-discriminatory must be compliance with the law. As a starting point on the journey to delivering fully inclusive and accessible services, NHS Shetland staff must be familiar with their legal responsibilities in relation to working with transgender service users and transgender staff. This section details the relevant legal considerations for practice.

Employment and goods, facilities and services equality law makes clear that gender reassignment direct discrimination, indirect discrimination and harassment are all unlawful. A person has the protected characteristic of gender reassignment if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex.

It is important to recognise that this means someone has the protected characteristics of gender reassignment if they simply propose to change the gender of name and pronouns they use, even if they do not wish to change any aspect of their physical body.

People are also protected if they face discrimination due to being associated with a trans person (for example, if they are a friend or family member) and due to being incorrectly perceived to be trans when they are not actually a trans person.

### **Legislative Definitions of Unlawful Behaviour Relating To Gender Reassignment**

**Direct discrimination** - Treating a person less favourably than another in comparable circumstances because of their gender identity.

**Associative discrimination** - is direct discrimination against someone because they are associated with another person with the protected characteristic of gender reassignment.

**Discrimination by perception** - is direct discrimination against someone because others think they have the protected characteristic of gender reassignment even if they do not.

**Indirect discrimination** - Putting in place a Protocol or practice that has a differential (positive or negative) impact on someone who has the protected characteristic of gender reassignment when this cannot be objectively justified.

**Harassment or bullying** - unwanted conduct which has the purpose or effect of violating someone's dignity, or which is hostile, degrading, humiliating or offensive to someone who has the protected characteristic of gender reassignment.

**Victimisation** - treating someone unfavourably because they have taken (or may be taking) action under the Equality Act or supporting someone who is doing so.

***The Equality Act (2010) (Specific Duties) (Scotland) (2012)***

The Equality Act 2010 places a statutory duty on all public sector organisations, when carrying out their functions, to have due regard to the need: to eliminate unlawful discrimination and harassment; promote equality of opportunity and promote good relations between people who have the protected characteristic of gender reassignment and those who do not. The Act places a responsibility on statutory services to pro-actively promote non-discriminatory practice, moving the focus away from an historic reactive complaints-orientated approach. This means services must invest significant resource in ensuring functions (including promotion of services) are fit for purpose and meet the needs of diverse groups through an intensive process of planning, development and reflection/assessment.



### ***Gender Recognition Act 2004***

This Act of Parliament gave legal recognition to transgender people following a permanent change of gender. It sets out the process for individuals to apply for a Gender Recognition Certificate (GRC) after living full-time in their acquired gender for at least 2 years. It is not necessary for someone to have undergone genital surgery or any other medical intervention other than a diagnosis of gender dysphoria to receive a full GRC.

Once a full GRC is issued to a person, their legal sex/gender henceforth becomes for all purposes their acquired gender – including for marriage and civil partnership purposes and for employment in posts where a Genuine Occupational Qualification to be a particular sex/gender applies. People with a GRC can apply for a corrected birth certificate if their birth was registered in the UK. A person who has received a GRC is not required to show their GRC to others such as employers or service providers. It is not an identity document and will not be carried on the person.

It is very important to note that employers and service providers must change on first request by an individual, their name and gendered title (i.e. Mr, Miss, Ms) on all their employment, medical and other records, identity badges and future correspondence. All that the individual needs to state in their request is that they are starting a process of gender reassignment to live permanently in their acquired gender.

They 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 acquired gender. Indeed, as it is necessary to live fully in the acquired 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.

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, or about the gender history of a successful applicant. 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 acquired 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 exempt situations of relevance to NHS Shetland are where:

- 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 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).

## **Appendix C**

### **Health Outcomes for Transgender People**

There is strong evidence that transgender people as a social group experience disproportionately poorer health than the majority of the population who 'fit' their assigned birth gender. Transgender people are more likely to suffer from mental health issues including depression, suicide ideation, addiction-related behaviour and self-harm. Transgender people are also more likely to be victims of crime and where their transgender status is known, be subject to bullying and harassment throughout their lives. Transgender people are also more likely to have difficulty accessing sports and leisure facilities necessary to maintain good physical health.

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.

### **Discriminatory practice**

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 in their acquired 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.

As an employer in Scotland with a workforce of around 750 people, NHS Shetland cannot claim to have a shared value base across its work force in relation to understanding of transgender issues.

However, as both an employer and deliverer of care for transgender people we will ensure that 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.

## Appendix D

### Brief For Public Facing Staff / Reception Staff

**This guidance can only be used with the transitioning employee's permission.**

Where patients have not previously met face-to-face with the transitioning employee, there should not be any need to link the two names or provide any explanation.

#### **Patient**

Can I have an appointment with John Smith?

#### **Response**

You may not as yet be aware of a recent change within the Department/Directorate/Clinic but **John Smith** will now be known as **Mary Smith**. The first available appointment with **Mary Smith** will be.....

#### **Patient**

No I want to see someone else

#### **Response**

OK, I can offer you an appointment with someone else on.....

#### **Patient**

Are you telling me that **John Smith** is now a woman?

#### **Response**

**Yes, John Smith** will now be known as **Mary Smith**.

The department/Directorate/organisation/Clinic is very supportive of this change and we can reassure you that this change will not have an impact at all on the care that we deliver.

Would you like me to make you an appointment with **Mary Smith**? I can give you the first available appointment which will be.....or I can offer you an appointment with someone else on.....

OR

**Patient**

So has John Smith left?

**Response?**

No, **John Smith** will now be known as **Mary Smith** The Department/Directorate/Organisation/clinic is very supportive of this change and we can reassure you that this change will not have an impact at all on the care that we deliver.

Would you like me to make you an appointment with **Mary Smith**, I can give you the first available appointment which will be.....or I can offer you an appointment with someone else on.....

If the caller persists in making any requests/comments beyond those included above the following statement may also prove helpful.

“I am very sorry, I am sure you will understand I am not at liberty to discuss any details beyond what I have already shared as you will understand the organisation very much want to respect **Mary Smith’s** confidentiality.”

If the patient raises concerns the caller should be referred to someone else more senior for further discussion. If the patient becomes abusive staff are advised they can inform the caller that they are about to end the conversation, and why, and can opt to put the phone down. Likewise, in a face to face conversation, they can opt to walk away. In both cases, abuse can lead to police being informed.

## **Appendix E: Case Study**

### **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 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**



## Appendix F

### 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
<b>Main Contact</b>	
<p>Identify a single point of contact to support the individual, agree an action plan and coordinate arrangements between NHS Shetland 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>	
<b>Timetable</b>	
<p>What is likely timetable for transition? e.g.</p> <ul style="list-style-type: none"> <li>• Dates for name change (Individual to identify preferred name)</li> <li>• Use of facilities (toilets, changing rooms)</li> <li>• Change of presentation e.g. from suit to a dress or change of uniform attire?</li> <li>• Change of records</li> </ul>	
<p>What identification needs to be changed?</p> <ul style="list-style-type: none"> <li>• e-mail address</li> <li>• web link</li> <li>• ID - Name badge</li> </ul>	
<p><b>What documents and records need to be changed?</b></p> <ul style="list-style-type: none"> <li>• NHS Shetland records</li> <li>• Department records</li> <li>• Professional bodies</li> <li>• Trade Union membership</li> <li>• Payroll (and banking details)</li> <li>• Pension scheme</li> <li>• Web details</li> <li>• Committees and groups (at agreed time)</li> <li>• Does the employee have multiple posts within NHS?</li> </ul>	

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