

## Equality Impact Assessment Record

**Annex A**

<b>Name of new / revised Policy:</b>	Guidance for prosecutors in relation to Transgender accused
<b>Purpose of Policy:</b>	To provide guidance to prosecutors in relation to transgender accused generally and specific guidance on the approach to be taken when an allegation is made that a transgender accused has committed a sexual offence involving non-disclosure of their birth gender
<b>Lead EIA Officer:</b>	XXXX
<b>Team / Federation:</b>	Equality and Diversity team, Policy Division, Crown Office
<b>Email Address:</b>	DiversityTeam@copfs.gsi.gov.uk
<b>Others involved:</b>	XXXX
<b>Date Assessment Completed:</b>	Nov 2014
<b>Assessment Record Authorised by:</b>	XXXX

This new / revised policy was fully assessed for any equality impact based on the General Equality Duty of the Equality Act (2010).

### Summary of research and consultation carried out:

- In depth consultation exercise took place with Scottish Transgender Alliance and Equality network over a series of meetings which informed content of first draft of the policy
- Consultation meeting took place between COPFS and CPS where prosecutorial approach was generally discussed.
- Consultation with a number of organisations and stakeholders thereafter took place between 12 March and 22 April 2014 (List of those consulted produced at Annex A)
- Members of staff from COPFS also attended the Trans access to Justice Conference on 26 March 2014 and hosted a workshop session where the draft policy was discussed.
- English and European case law was researched to inform policy. A number of research articles were also read and the approach taken in other jurisdictions across the world were considered.

### Key issues identified: - (Note here if you conclude there are no equality issues relating to the new / revised policy)

Feedback from Police Scotland was that the policy read as unbalanced. That it was strong from perspective of the transgender accused but

underwritten in relation to impact such an offence would have on a victim. Their feedback suggested that views or comments from the SHRC should be obtained.

Scottish Human Rights Commission were consulted. Feedback from SHRC and a number of other organisations/stakeholders was to the effect that in order to ensure compliance with ECHR the policy ought to be amended to make clearer that failure to disclose birth gender could not be taken to vitiate consent to sexual activity as this was something that was relevant to the status of the transgender accused rather than the nature of the act that had taken place and thus would interfere with a transgender accused's right to privacy.

Other feedback was to the effect that more detailed explanation of section 7 of the Equality Act 2010 should be included along with exploration of the differences that exist between that legislation and the Gender recognition Act.

### **Changes made to new / revised Policy**

Policy amended to include more in depth analysis of Article 8 issues arising and to make clearer that failure to disclose birth gender not the relevant factor in deciding whether consent vitiated but instead (along with other relevant factors) what needs to be considered is whether the nature of the act that has taken was the same as that to which the complainant consented to. Policy also strengthened in relation to impact on the complainant to include reference to psychological and emotional impacts.

Greater detail provided in relation to the Equality Act and the Gender recognition Act.

### **Review Process for Policy**

The European Court of Human Rights has said repeatedly that it is important to keep the need for appropriate legal measures in this area under review having regard to scientific and societal developments. It is therefore appropriate to review the policy regularly to take account of any developments in the law or changing societal attitudes and behaviours. The policy will therefore be reviewed on a yearly basis