Consultation on a Draft Code of Practice for Stop and Search: Analysis of Responses

Collated Comments on Detailed Aspects of the Draft Code of Practice

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Introduction

Between 21 March and 15 July 2016, the Scottish Government undertook a public consultation on a draft Code of Practice (referred to hereafter as the Code) to underpin the use of police powers to ‘stop and search’ in Scotland.[[1]](#footnote-1) The consultation received 38 responses from a range of organisations and individuals.

This document presents a collation of the comments made by respondents on detailed aspects of the draft Code of Practice in responding to Question 7 and 8 of the consultation.

* Question 7: Is there anything missing from the draft Code of Practice that should be added? If so please specify below.
* Question 8: Is there anything in the draft Code of Practice that should be deleted and/or changed? If so, please specify below.

It also includes a small number of detailed points made in response to Questions 1 to 6 – these are indicated in the text.

The full analysis of responses to the consultation is available on the Scottish Government website.

| **Para** | **Text** | **Suggested change / comment** | **ID** | **Respondent** |
| --- | --- | --- | --- | --- |
| 1.1 |   | We simply note with interest the “without unjustified interference from the state” yet find this incompatible with the state interfering to unjustifiably prevent a member of the public from fully cooperating with the police in any manner they deem appropriate; including a voluntary search (paragraph 3.6) | 32 | Scottish Police Federation |
| 1.1 | ...'this Code must therefore be read in light of that fundamental right' | The final sentence refers to ‘…that fundamental right’ – this is unclear in the context. If this is meant to refer to the right referred in the first sentence, ‘of every person to go about their lawful business without unjustified interference from the State’, this is confusing as this is not recognised as a legal ‘right’, although it is certainly a fundamental value of society. It would therefore be clearer to refer in the final sentence to ‘their fundamental rights and freedoms’.  | 1 | Indiv respondent |
| Sec 1 |   | CRER believes the Code would be improved by the addition of a definition and purpose statement for the Code, which would provide context and clarification for the police as well as the public. | 36 | CRER |
| 1.2 |   | Police Officers in Scotland have increasingly acted to promote the safety and wellbeing of persons in ways that sit outside the duties of a constable as defined in the Act.However it should not be the case that the principles of policing are the default reference point when drafting codes over how constables are expected to perform elements of their duties. We consider this needs reflected in the code. | 32 | Scottish Police Federation |
| 1.3 |   | On the face of it this seems an inconsequential element. However the ‘making available’ has implications beyond physical copies, which in any event will result in additional costs.In order to ‘consult,’ unless there is an expectation that the police will simply be expected to print as many copies as may be necessary (which comes at a cost), the police will need to make people available to accommodate such consultation. This will place a further pressure on an already overstretched and under resourced police service. We see no reason why this burden should be borne by the police. | 32 | Scottish Police Federation |
| 1.3 |   | Remove the reference to detained persons. The provision to supply or have available a copy of the COP for detained persons would be operationally impracticable. Currently low risk prisoners receive a letter of rights within their cell. Experience has shown that the supply of paper to a prisoner has provided the opportunity for some to self-harm and couldn’t be given to those identified as vulnerable, violent or high risk. Providing a copy of the code may allow the paper to be used as an obstruction to the toilet within the cell causing flooding / damage etc. Furthermore, any binding such as staples could be used to inflict harm on themselves or others. To publish, print and provide prisoners with the Code would be cost prohibitive as each copy is likely to be unusable once placed in a cell. Police Scotland processed 162,608 prisoners in 2015/16(1) which would require in excess of 150,000(2) copies to be printed each year. Given the diverse nature of Scotland, different languages and reading formats would be required at each custody centre. If a copy of the code requires to be made available to prisoners on request, it still creates the self-harm risk and risk of damages to the cell. If a copy of the code is made available to a prisoner out with the cell, an officer would require to be present in that area whilst the prisoner reads the pages resulting in an excessive extraction from duties for officers. Recommendation: Every detainee/ arrested person is offered access to a solicitor upon arrival at a police office and the recommendation would be for the solicitor to have access to a copy of the code at the Police Office. Those persons that are released from police custody could obtain a copy of the code at the public counter within the Police Office if requested or may be able to access it via an online version. The receipt offered to all persons searched will have the web link to the Police Scotland website which will have the Code of Practice located on the external website. | 30 | Police Scotland |
| 1.4 | ‘It applies to situations involving the exercise of particular statutory powers of Stop and Search, and covers all searches unless the search is expressly excluded, either under this Code or by statute, or by virtue of the search being subject to a separate statutory Code or guidance as to its exercise.’ | Suggest the removal of the word ‘particular’. The use of the word ‘particular’ raises a question as to which statutory powers are being referred to. The code does not describe what the particular stop and searches are.  | 30 | Police Scotland |
| 2.1 |   | The SPF notes the inclusion Fairness, Integrity & Respect and whilst we have no issue with the values in their own right we do consider that their inclusion in the code is entirely superfluous.On Fairness, the draft code states; a Stop and Search must be carried out fairly and impartially, and without unlawful discrimination – we consider this is more than encompassed under Lawful.On Integrity the draft code states; a Stop and Search will not be carried out in a manner which is abusive, discriminatory, or which amounts to harassment or intimidation, the purpose of the search must be genuinely to find a particular item in the person’s possession – we consider this is more than encompassed under Lawful.We are not clear what is meant by; it will reflect the principles of good conduct and personal responsibility;On Respect the draft code states; the person being searched must understand why they are being stopped and searched, and the procedure will be carried out with respect for individual needs – including religious and cultural values and beliefs – we consider this is more than encompassed under Accountable.We also consider that in many instances the police simply cannot guarantee the capacity of the person being searched to understand the reasons, whether through impairment through drink or drugs or potential mental illness.We see no need for the repetition on Human Rights at the bottom of this section, given it is explicitly provided for at the beginning, under Lawful.  | 32 | Scottish Police Federation |
| 2.1 | Justifiable – not applied indiscriminately; backed by intelligence and/or reasonable suspicion; and Accountable – properly recorded, verifiable and justifiable.  | Justifiable: Suggest the insertion of the phrase ‘backed by intelligence and or reliable information’. The insertion of the wording ‘reliable information’ will make this section consistent with the wording at 4.9. Accountable: Consider the removal of ‘verifiable’ or clarify the expectations that this could place on Police Scotland. The use of the word verifiable is not further explained. As a result the code is unclear as to what the expectations are around how a stop and search should be verified, at what point this should be done and by whom.  | 30 | Police Scotland |
| 2.1 | Human Rights | The final sentence defines the utility of stop and search in terms of identifying and removing the item from the person’s possession. […could use to identify and remove the item from the person’s possession.] This incorrectly implies that searching for articles is the only basis for stop and search and presumes the person being stopped has the article on their person. (A presumption the hit-rate clearly shows to be incorrect.) It should be deleted or expanded to include reference to the other objective of stop and search – to confirm or allay suspicions of criminal wrongdoing. If expanded, the current wording should be changed to: ‘…could use to confirm whether the person is carrying a prohibited article and, if so, to remove the item from the person’s possession.’ | 1 | Indiv respondent |
| 2.1 | Principles Governing Stop and Search | One principle which should be inserted into this section of the Code is the principle that the power to stop and search is designed to prevent and detect crime in the community and is an effective policing tool when used legally and fairly with respect. | 37 | British Trans Police |
| 2.2 | Evidence obtained from a search to which this Code applies may be open to challenge if the provisions of the Code are not observed. | Insert: ‘During court proceedings’ evidence obtained from a search…..”The code does not specify who may challenge and what the legal process is for such a challenge. Should this be an inference that the challenge may be within a court, then it is suggested that this is clarified specifically. | 30 | Police Scotland |
| 3.2 | This Code does not apply to Searches of Premises. | Additional wording required; “This code does not apply to Searches of premises … (insert) ‘that do not also involve a search of a person”.This additional wording is required to clarify the following circumstances: In the instances where officers search a house under a warrant, i.e. drugs warrant, it is assessed that the search of the house alone would not be covered by the Code and therefore not recordable. If any person within the premises is searched under the power of a warrant then it is assessed that the code is applicable and the search would be recordable. If persons attended at the door of the address during the search of the premises under warrant and those persons were searched under legislation it is assessed that the code is applicable and the search would be recordable. | 30 | Police Scotland |
| 3.2 | This Code does not apply to.... | It should be added that this Code does not apply to searches under Schedule 7 of the Terrorism Act 2000 or searches of persons and vehicles in specified locations authorised under section 47A of the Terrorism Act 2000. (Both of which are governed by separate Codes of Practice). | 1 | Indiv respondent |
| 3.4 | Terminology | CRER feels that the section addressing terminology (3.4) could be improved to provide additional clarification for members of the public. Simple definitions of terms used throughout the Code would also be beneficial. | 36 | CRER |
| 3.5 | A statutory stop and search is.... | If non-statutory stops and searches are no longer to be permitted, there is no need to define a statutory stop and search. (Also, presumably this sentence should be para. 3.5?)  | 1 | Indiv respondent |
| 3.5 |   | Insert numbering 3.5. | 30 | Police Scotland |
| 3.5 |   | We note there is no 3.5 | 32 | Scottish Police Federation |
| 3.6 | Constables must not search a person, even if they are prepared to submit to a search voluntarily, where no statutory power to search is applicable, and they have no warrant to do so. | We find this section incompatible with the basic tenet that laid out in paragraph 1.1.If a member of the public seeks to cooperate with the police in any way they deem appropriate, this should not be subject to interference by the state. We see this as being particularly illiberal and effectively demands the use of coercive measures, including the associated psychological impact on the person, where none might lead to speedier and less adversarial resolution. | 32 | Scottish Police Federation |
| 3.6 |   | This paragraph and Sec 65 CJSA leaves no option to search a person to save life or reduce the risk of serious harm to a person or others. Consideration should be given to an exemption to afford officers the confidence to conduct urgent searches to save life or negate the risk of serious harm.In the case of people who are intent on suicide or self-harm, officers may need to search the person for the purposes of locating and removing harmful items such as rope, tablets or a knife. It appears from the text within paragraph 3.6, and from the terms of S65 of the CJSA 2016, that a search of this nature becomes unlawful, implying that officers must not carry out a search of this type as no statutory power of search is applicable. Further guidance in the Code will afford officers the confidence to conduct urgent searches to save life or negate the risk of serious harm to themselves or others. | 30 | Police Scotland |
| Sec 4 | Basis for Carrying out Stop and Search | No cognisance is taken within the code of the statistical analysis and inherent prejudices that every person will hold from this.Statistically an 18 year old male is more likely to carry a knife than a 70 year old female, however the code implies that this cannot be a factor which influences whether a constable conducts a search or not.A Constable attending a location where a person in a red hooded jacket (unknown age and sex) has been seen in possession of a knife and they see a young male walking in one direction and a middle aged female walking in the other direction. Every single person who has any knowledge of the likelihood of either being caught with a knife would try to detain and search the male.Whilst this is a very obvious scenario, there are always grey areas and failure by the code of practice to take cognisance of these socioeconomic factors is a failure.I do not have the answers as to how this should look but ignoring the different socioeconomic factors (as happens in so much legislation) will inherently lead to faults and criticisms.  | 7 | Indiv respondent |
| Sec 4 | Basis for Carrying out Stop and Search | Section 4 – general.This section is confusing for several reasons. As currently structured, 4.1–4.2 appears to imply a different test of reasonable suspicion depending on the objective of the power. This is incorrect. 4.1 also incorrectly implies that reasonable grounds are required for all statutory searches, despite the later detail given on suspicionless statutory searches such as under s.60 of the Criminal Justice & Public Order Act 1994 (not to mention s47A of the Terrorism Act 2000 to which the Code does not apply). This section should be reorganised to open with a clear statement of what reasonable grounds for suspicion means and the title changed to ‘Basis for Reasonable grounds’. Recommend amending as follows (note that the suspicion must be reasonable c.f. current wording):‘4.1. Reasonable grounds for suspicion is the legal test which a constable must satisfy before they can stop and detain a person to carry out a search under almost all statutory provisions. The usual requirement is a reasonable suspicion that the person has committed, or is committing, or is about to commit a particular crime or is in possession of a prohibited article. 4.2 Reasonable grounds for suspicion require(i) First, the constable must have formed…..(ii) Second, the suspicion….’ [I.e. current sub-paragraphs to 4.2].’This should be followed by paras 4.6–4.15. Paras 4.3–4.5 should be moved to a separate section (para 4.3 and note 3A could come under a separate heading regarding searches of children). Para 4.6Add: (c) the fact that the person is known to have a previous conviction. Consider adding that a person’s appearance outwith the protected characteristics, for example, their clothing cannot be used alone or in combination with each other to provide reasonable grounds unless para 4.9 applies. Para 4.10This should be deleted. At the very least, explicit guidance on not interfering with the rights to assembly and free speech (including through the chilling effect) should be given. [For a discussion on the use of stop and search in relation to the rights to free speech and assembly see: Joint Committee on Human Rights, Demonstrating Respect for Rights? A human rights approach to policing protest (HL 47-I, HC 320-I: 2009)].Para 4.11This paragraph fails to clearly express the requirement that reasonable grounds must be linked to a particular offence or the carrying of a particular prohibited article. The second sentence should be amended to read: ‘A constable must be able to explain, with reference to the specific aspects of the person’s behaviour or conduct which they have observed, why they formed that opinion’. Para 4.13The various statutory powers to which this Code pertains are powers of stop and search, **not** stop and question. The police cannot compel a person detained under these powers to answer any questions and should inform the person of this fact.Add the following: ‘A constable must inform the person being detained that they are not required to answer any questions, although providing a satisfactory answer to questions may obviate the need for a search.’ Section on searches under section 60 of the Criminal Justice and Public Order Act 1994 (paras 4.16–4.25)Guidance should be included on the authorisation of section 60 searches along the lines of PACE Code A, notes 10–13.The conduct of section 60 authorisations and searches should be amended in line with the Best Use of Stop and Search Scheme (https://www.gov.uk/government/uploads/system/uploads/attachment\_data/file/346922/Best\_Use\_of\_Stop\_and\_Search\_Scheme\_v3.0\_v2.pdf) section 4, i.e. require authorisation by an assistant chief constable or chief constable; limit the maximum duration to 15 hours; and, provide notification to the public in areas where authorisation will be put in place (in advance, where practicable). While a statutory amendment would be preferable, if that route is not chosen, these changes should be included in the Code. (For further detail see: Lennon ‘Searching for change’ (2016) 20 Edinburgh Law Review 178, 191–192.)Paras 4.25–4.28These should be in a separate section titled: ‘Powers to search in the exercise of a power to search premises’. | 1 | Indiv respondent |
| 4.1 | Basis for Carrying out Stop and Search | Consideration should be given to inserting a reminder to officers that they must explain the justification for carrying out a stop search to the subject of the search as well as to their supervisor or relevant body i.e. police scrutiny panel or court. | 37 | British Trans Police |
| 4.1 and 4.2(ii) | reasonable suspicion' | [Delete / change] That Constables only need reasonable suspicion.This is far too subjective and a more objective quantifiable measure should be made available to constables which must be completed before carrying out a search. | 27 | Indiv respondent |
| 4.2(i) | First, the constable must have formed a genuine suspicion in their own mind that they are likely to find the object for which the search power being exercised allows them to search;  | The word likely, when applied to a legal context would imply a greater than 50% possibility. There is no chance that Police will seize items in 50% of searches so this terminology inherently implies that the Police are incorrectly applying the legislation. This would be open to legal challenge on the legality of searches.The wording should be changed to "that they may find the object" or something similar. | 7 | Indiv respondent |
| 4.3 | The exercise of these Stop and Search powers depends on the likelihood that the person searched is in possession of an item for which they may be searched; it does not always depend on the person concerned being suspected of committing an offence in relation to the object of the search. A constable who has reasonable grounds to suspect that a person is in innocent possession of a stolen or prohibited article, controlled drug or other item for which the constable is empowered to search, may Stop and Search the person even though there would be no power of arrest.This would also apply when a child under the age of criminal responsibility is suspected of carrying any such item (see Note 3A). | This is one example where the consent to search being removed from the member of the public makes what could be a passive and non-intrusive act to one which demands coercive police powers. See comments at 3.6 | 32 | Scottish Police Federation |
| 4.4 | Some search powers are exercised to ensure the care and protection of the person being searched and/or to ensure the safety of others. The exercise of these powers does not depend on the person concerned being suspected of a crime.Under the powers in Section 66 of the Criminal Justice (Scotland) Act 2016 a constable may search a person who is being taken, or is to be taken, from one place to another. The purpose of a search under this section is to ensure that the person is not in possession of any item or substance that could cause harm to them or someone else. | We consider that in many instances searches conducted to ensure the care and protection of the person being searched will not be capable of meeting Respect the test at 2.1 the person being searched must understand why they are being stoppedand searched.It is not uncommon for police officers to be dealing with individuals in distress whose understanding is impaired for a multitude of reasons. | 32 | Scottish Police Federation |
| 4.5 | Under the powers in Section 67 of the CJSA 2016, a constable may search a person who is seeking to enter or attend, or who has entered or is attending a relevant premises or event.... | We find a supreme irony in the fact that a general provision for the creation of what is by any definition a random non intelligence supported search provision is created by this code.It is difficult to see how justification for such an approach can exist for what are by any measure commercial events, but the same principle does not apply to general health, safety or security of people elsewhere.It is worth noting one of the greatest (justifiable) criticisms of the recent approach to the use of search was its random and non-intelligence led basis. | 32 | Scottish Police Federation |
| 4.6 | The following cannot be used, alone or in combination with each other, or in combination with any other factor, as the reason for stopping and searching any individual: (a) A person’s physical appearance with regard, for example, to any of the ‘relevant protected characteristics’ set out in the Equality Act 2010, section149, which are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. | If this section only relates to the protected characteristics, the wordings ‘for example’ should be removed.It is unclear from the wording of this paragraph, if the reference to someone’s physical appearance applies to all circumstances where the grounds for a search are being considered. The use of the wording ‘for example’ implies that this paragraph extends to all references to a person’s physical appearance, and is not limited to the relevant protected characteristics. If this is not limited to relevant protected characteristics, it will exclude the following examples from being reasonable grounds to search: · person seen with symptoms of substance misuse, e.g. blue foam around the mouth; · person with torn or dishevelled clothing (from a fight); · person out of breath (running from the locus); · person who is agitated, looking for an escape route. Recommendation is to remove this paragraph completely or consider removing the wording ‘or in combination with any other factor’.It is recognised that the use of stop and search must be proportionate and appropriate, and that a person should not be discriminated against, based on the relevant protected characteristics. Certain legislation that relates to age restricted items provide officers with grounds to search a person based on the appearance of their age if the officer has reasonable grounds to suspect they have possession of an age restricted item, i.e. Possession of fireworks / crossbows. Furthermore, any protected characteristic could be used in the description of a suspect from a witness by way of identifying this person. This information may be used to form part of the reasonable grounds for carrying out a search. | 30 | Police Scotland |
| 4.6 | ... or the fact that the person is known to have a previous conviction; | The reference to ‘previous convictions’ should stipulate that recent and relevant previous convictions can be considered if appropriate but cannot be used alone to justify reasonable grounds for search.Information relating to a person with previous convictions or pending cases for a certain crime type may be relevant when considering grounds for search. It is recognised that this fact should not be used alone to justify a search, and should be supported by further information before reasonable grounds are established. An officer should be able to demonstrate and justify the relevance of the information of previous convictions. For example the previous convictions or pending cases must be linked to the suspected offence and must be ‘recent’. A court would decide if an officer had sufficient reasonable grounds at the time of the search. Previous convictions are sometimes used to determine the status of a person in such cases as Section 58 Civic Government Scotland Act – Possession of tools from the possession of which it may be reasonable inferred that they intended to commit theft and has 2 or more unspent convictions. Section 4.6 may contradict section 4.9 of the code. ‘Where there is reliable information or intelligence that members of a group or gang habitually carry knives unlawfully or other weapons or controlled drugs’. This reliable information or intelligence may be derived from knowledge of a person’s previous convictions. | 30 | Police Scotland |
| 4.6(a) | Personal factors can never support reasonable grounds for suspicion | In the section prohibiting the use of personal factors to support reasonable grounds for suspicion (4.6 (a)), a list of protected characteristics as set out in the Equality Act 2010 are given. Alongside these “the fact that the person is known to have a previous conviction” is listed in the same sentence. We are concerned that someone reading this section who is not familiar with the Equality Act 2010 or the protected characteristics may believe that this is one of them and mistakenly believe that persons with previous convictions are an equality group. This should be separated from the list of relevant protected characteristics both for clarification and to make clear the legal status of these groups versus other groups.  | 36 | CRER |
| 4.6(b) | Generalisations or stereotypical images that certain groups or categories of people are more likely to be involved in criminal activity. | Consider removing this sentence as it contradicts 4.9.This sentence contradicts 4.9 which states: “Where there is reliable information or intelligence that members of a group or gang habitually carry knives unlawfully or other weapons or controlled drugs”. | 30 | Police Scotland |
| 4.6(a) and (b) |   | We see some difficulties here. The police are not in control of the information we receive from members of the public. It may well be that the only information passed by way of description for any suspect is based entirely on such protected characteristics. It is equally possible that particularly in smaller and more remote communities; such suspects could be identifiable on such basis alone.Police officers cannot unlearn what they have learnt. Offences under section 58 of the Civic Government (Scotland) Act for example are predicated on knowledge that an individual has previous convictions. We consider this particular reference should be removed.We also question whether the provisions at (b) are at variance with paragraph 4.9 | 32 | Scottish Police Federation |
| 4.6 |   | the Code may benefit from the inclusion of a section addressing profiling which makes clear its distinction from suspicion based on information/intelligence and suspicion based on reasonable factors. A clear explanation of the difference between intelligence led policing and racial profiling is crucial.  | 36 | CRER |
| 4.8 | Searches based on accurate and current intelligence or information are more likely to be effective.... | Whilst we agree with the sentiments laid out, we see no reason for the inclusion of this paragraph. | 32 | Scottish Police Federation |
| 4.9 | Where there is reliable information or intelligence that members of a group or gang habitually carry knives unlawfully or other weapons or controlled drugs | This may be reliant on the use of previous convictions and therefore contradicts 4.6. The term ‘reliable information’ in this context suggests the officer may require to use information relating to previous convictions or pending cases.Suggest the term ‘members of’ requires further clarification. It is assessed that this paragraph has been included to allow officers to consider known links or affiliations to particular group or gang as forming part of reasonable grounds to search. Recognising paragraph 4.6 above, the “membership” of the group may be significant in applying the rules of 4.9, without risking discriminatory behaviours as set out in 4.6. Therefore it is recommended that this is clarified for ease of understanding. | 30 | Police Scotland |
| 4.9 |   | See comments at 4.6. | 32 | Scottish Police Federation |
| 4.9 | ...members of a group or gang... | Section 4.9 also makes reference to “members of groups or gangs”. The definition of a “gang” and what characteristics may define or identify a gang should be made explicit. Examples may be useful in these instances. | 36 | CRER |
| 4.9 | Reasonable Grounds for Suspicion and Searching Groups | Examples need to be given under this section as to what constitutes reasonable grounds in such cases. Officers need clarity here and it is likely that this section is too vague and open to interpretation. | 37 | British Trans Police |
| 4.10 | 4.10 – A similar approach would apply to particular organised protest groups where there is reliable information or intelligence. | Consider removing ‘particular”. Consider clarifying what is meant by “protest groups”.It is unclear what the “particular protest groups” are as these are not defined. As much as this is an example of reasonable grounds, the removal of the wording ‘particular’ would avoid any confusion. | 30 | Police Scotland |
| 4.10 | 4.10 – ...'that at one or more previous meetings or marches arranged by that group, such articles have been used and resulted in damage and/or injury and...' | Remove the word ‘damage’ or further define what this means.It is assessed that the reference to the word damage in the code has been taken from Pace Code A. This may be a reference to “Criminal Damage”. There is no power of search for items that can cause damage in Scotland. England and Wales have that power under PACE. | 30 | Police Scotland |
| 4.11 | Reasonable suspicion may also exist without specific information or intelligence and on the basis of the behaviour of a person.... A hunch or instinct which cannot be explained or justified to an objective observer can never amount to reasonable grounds. | We simply point out that many criminals including high profile cases like the paedophile Alan Hopkins were brought to justice as a consequence of constables acting on a hunch or instinct.Police officer’s instincts should no more be dismissed than those of any other professional in their own areas of work.We consider this reality needs to be reflected. | 32 | Scottish Police Federation |
| 4.11 | Reasonable Grounds for Suspicion based on Behaviour, Time and Location | Examples need to be given under this section as to what constitutes reasonable grounds in such cases. For example, it needs to be made clear that the use of the words furtive, acting suspiciously etc. are insufficient as a recorded grounds. | 37 | British Trans Police |
| 4.12 | All police officers must recognise that searches are more likely to be effective, legitimate and secure public confidence when their reasonable grounds for suspicion are based on a range of objective factors. The overall use of these powers is more likely to be effective when up-to-date and accurate intelligence or information is communicated to constables and they are well informed about local crime patterns.Local senior officers have a duty to ensure that those under their command who exercise Stop and Search powers have access to such information, and the constables exercising the powers have a duty to acquaint themselves with that information. | Whilst it is difficult to take issue with the provisions of this paragraph, we believe there is a need for a “reasonable” provision in terms of access to information. Quite simply at this time and indeed likely for some considerable time to come, the ability to access such information is hindered considerably by technology. This needs to be recognised. | 32 | Scottish Police Federation |
| 4.13 | A constable who has reasonable grounds for suspicion may detain the person concerned in order to carry out a search. Before carrying out the search the constable should, as a matter of good practice, ask questions about the person’s behaviour or presence in circumstances which gave rise to the suspicion. As a result of questioning the detained person, the reasonable grounds for suspicion necessary to detain that person may be confirmed or, because of a satisfactory explanation, be dispelled, (See Notes 4 and 5). | Possible contradiction with the Cadder Ruling which stipulates that an officer should not question a suspect prior to being afforded the right to consult with a solicitor. This paragraph requires to be assessed by legal representatives to ensure compatibility with existing legal direction. (HMA v Cadder). Recommendation to remove sections 4.13 and 4.14. Retain section 4.15 as it explains these scenarios sufficiently and does not contradict the Cadder Ruling.  | 30 | Police Scotland |
| 4.13 | Questioning to decide whether to carry out a search | [Question 6] Additional direction or guidance on the language and manner of questioning an individual prior to a search should be considered. Particular thought should be given to situations in which an individual is not fluent in English or a situation in which a person is likely to be made exceptionally anxious from aggressive questioning. Police must also ensure as far as is reasonable that the individual has a clear understanding of the questions being asked and his/her rights during a Stop and Search. We feel that an explanation regarding the reasons for search is particularly important, especially for those who may believe they are being searched due to their actual or perceived ethnicity. | 36 | CRER |
| 4.15 (and 5.9) | As soon as detention begins, and before searching, the constable must inform the person that they are being detained for the purpose of a search and take action in accordance with paragraphs 5.9 to 5.11 under “Steps to be taken prior to a search”. | Insert ‘and cautioned at common law’ within the sentence. For sections 4.15 and 5.9. This would be in line with legal direction and be consistent with existing legislation. | 30 | Police Scotland |
| 4.16–4.24 | Section highlighting powers under Section 60 CJPO Act | Consider reducing the amount of information focusing on the Criminal Justice and Public Order Act 1994. The inclusion of such a detailed section of the Code on Section 60 Criminal Justice Public Order Act appears to be disproportionate with regards its current use in Scotland. A considerable part of the code appears to reproduce the legislation which is available elsewhere. | 30 | Police Scotland |
| 4.16–4.27 |   | This is simply a restating of the legislative provisions and we see no reason forrepeating them in the code. | 32 | Scottish Police Federation |
| 4.20 | Although the powers in Section 60....  | It appears from the content of this section that the COP is making further stipulations on the use of the statutory legislation. The detail currently captured in the code, appears to add additional considerations to the powers provided by S60 of the Criminal Justice and Public Order Act 1994 which are not currently specified within the legislation. The code of practice applies to all statutory powers of search. Therefore the reference to S60 of the Criminal Justice and Public Order Act 1994, within the code will ensure that the wider provisions set out in the Code will apply automatically to this act. | 30 | Police Scotland |
| 4.22 | Section 60(4A) of the Criminal Justice and Public Order Act 1994 also provides a power to constables to demand the removal of disguises. The constable exercising the power must reasonably believe that someone is wearing an item wholly or mainly for the purpose of concealing identity. There is also a power to seize such items where the constable believes that a person intends to wear them for this purpose. | [Question 6] There is a lack of clarity around the term “disguise” and Stonewall Scotland is concerned that this could be misinterpreted to include items that are legitimately used by individuals as an expression of their identity.In particular requiring an individual to publically remove items such as wigs may be degrading and humiliating for trans individuals, and could put their safety at risk by exposing their trans identity in a public place.The guidance should make clear that where individuals are required to remove items on suspicion of them being used as a “disguise”, they should be offered the opportunity to do so in a private place. It should also be made clear that items such as wigs should not be presumed to be worn for the purpose of disguise. | 28 | Stonewall Scotland |
| 4.22 | Searches Authorised Under Section 60 of the Criminal Justice and Public Order Act 1994 | Reference is made to Section 60(4A) of the Criminal Justice and Public Order Act 1994 which provides the power for constables to demand the removal of disguises. This is an error and should be Section 60(AA). | 37 | British Trans Police |
| 4.24–4.25 | Between paragraph 4.24 and 4.25 | Insert new heading. Previous paragraphs relate to a specific topic and this new subject requires a new heading. | 30 | Police Scotland |
| 4.28 | Searches authorised under a warrant do not require prior specific grounds to suspect that the person to be searched is in possession of an item for which there is an existing power to search. However, it is still necessary to ensure that the selection and treatment of those searched under these powers is based upon objective factors connected with the search of the premises, and not upon personal prejudice. | We are not sure what is meant by 'the selection … of those searched' given that such authority will be contained within the warrant. | 32 | Scottish Police Federation |
| Sec 5 |   | Provisions requiring all stop and search to be conducted in a non-threatening/ intimidating manner. | 18 | Indiv respondent |
| Sec 5 |   | Another section could also be on intimidated, well as hostile individuals. [DG comment: I think the suggestion here is that this section should include sections on searches of hostile or intimidated individuals.] | 11 | Indiv respondent |
| 5.1 | All Stop and Search activity must be carried out with courtesy, without prohibited discrimination, and with respect for the human rights of the person concerned. When deciding whether to search a child or young person who is under 18 years old the constable must treat the need to safeguard and promote the wellbeing of the child as a primary consideration. | We consider the first half of this section is superfluous as it simply restates the provisions at 2.1 | 32 | Scottish Police Federation |
| 5.1 (and Note 3A) |   | Here and at note 3A, reference is made to ‘a child or young person’, however, only child is used later in the respective paragraphs. Is there a distinction between these terms? If not, using only one term would be clearer. | 1 | Indiv respondent |
| 5.3 | The co-operation of the person to be searched must be sought in every case, even if the person initially objects to the search. A forcible search may only be made if it has been established that the person is unwilling to co-operate or resists. Reasonable force may be used as a last resort if necessary to conduct a search or to detain a person for the purposes of a search. | The Code of Practice makes reference to a forcible search. It is unclear what constitutes a forcible search. The concept of reasonable force is well established in law. Where force has been used, the question of whether this has been reasonable or not, will depend on the individual circumstances. The draft Code of Practice outlines specific conditions around a “forcible search” and we believe these are inconsistent with what the law currently states in relation to reasonable force.Recommendation would be to review the wording of the paragraph. | 30 | Police Scotland |
| 5.3 |   | We believe reasonable force is understood by police officers but not by the generalpublic. For example taking hold of someone’s arm may be all the force that’sreasonable necessary. We believe the term ‘forcible’ has the potential to confuse. | 32 | Scottish Police Federation |
| 5.4 | If the suspicion relates to a particular article which is seen to be slipped into a person’s pocket or bag, then subject to a reasonable consideration of the safety of the searching constable, and in the absence of other grounds for suspicion or an opportunity for the article to be moved elsewhere, the search must be confined to that pocket or bag. | Requires rewording to stipulate; The extent of the search must be appropriate to the item being searched for. If a prohibited item is recovered, this may provide the grounds to continue the search.The recovery of a prohibited article from a person’s possession may provide reasonable grounds that they have additional items in their possession. In the circumstances that a person is seen to place a weapon into their pocket, irrespective of the officer safety implications, that officer would require to search that person to ensure they do not have any additional weapons. It would be down to an officer to justify, in a court, their actions and degree of search, ensuring that their search activity was appropriate and was relevant to the items being searched for. The current wording in Section 5.4 in the draft code places unjustified limitations on operational policing activity. | 30 | Police Scotland |
| 5.4 |   | We believe the words “which is seen” are overly prescriptive and do not reflect the realities of human fallibility. We consider “believed to have been slipped …” would be more realistic. | 32 | Scottish Police Federation |
| 5.5 | The search must be carried out at or near the place where the person was first detained. (See Note 8). | We consider that in addition to the narrative in note 8, an additional sentence similar to “this will be determined by the circumstances of each particular case” would prove useful here. | 32 | Scottish Police Federation |
| 5.6 | There is no power to require a person to remove any clothing in public otherthan an outer coat, jacket, gloves, headgear or footwear except under section 60(4A) of the Criminal Justice and Public Order Act 1994 (which empowers a constable to require a person to remove any item worn to conceal identity).  | [Question 6] The guidance should be clear that individuals should be offered the opportunity to move to a private place if ordered to remove headgear which may be an important part of their gender expression or religious beliefs, such as headscarves or wigs. This may also impact on individuals who have experienced hair-loss due to heath conditions. | 28 | Stonewall Scotland |
| 5.6 | For the same reasons, subject to the restrictions on the removal of headgear, a person’s hair may also be searched in public. | Insert at the end of the sentence; ‘Paying due regard to cultural differences (See Note 6 of the code).’The searching or touching of hair in public may be disrespectful to individuals with certain religious beliefs and should be conducted in private where possible. | 30 | Police Scotland |
| 5.6 | A search in public of a person’s clothing which has not been removed must be restricted to superficial examination of outer garments. | The term ‘superficial examination’ requires to be clarified or simplified with the removal of the word “superficial.” The code under this section specifies further direction on what a search can involve. The use of the word superficial may add confusion. | 30 | Police Scotland |
| 5.6 |   | Searching hair and feeling inside clothing, e.g., collar, should not be permitted in public.  | 18 | Indiv respondent |
| 5.7 | …may only be made by a constable of the same sex as the person searched and may not be made in the presence of anyone of the opposite sex unless the person being searched specifically requests it, (see Annex C). | Recommend the removal of the wording ‘unless the person being searched specifically requests it’ and replace it with: “See Annex C for exceptions”.Appendix C provides guidance on dealing with transgender persons. The term “unless the person searched specifically request it” may be misinterpreted if considered in isolation from the guidance provided within Annex C. | 30 | Police Scotland |
| 5.9 |   | Any individual should have access to information as to why they were stopped and searched and certain individuals shouldn't be unfairly targeted. | 16 | Indiv respondent |
| 5.9 |   | Searches should always be carried out by two officers, with at least one of the officers wearing a body camera & recording the search. | 19 | Indiv respondent |
| 5.9 | Steps To Be Taken Prior To Search | Consideration should be given to inserting some reference into this section on body worn camera recording requirements. | 37 | British Trans Police |
| 5.9 | Steps To Be Taken Prior To Search | It is extremely important that the Code of Practice mentions that there is a stage before the officer utilises the power of search. This will remind both the public and officers that not every stop has to result in a search and that by simply talking to a subject, this may negate the need to utilise a power to search. As a result of no such distinction currently made in the England and Wales Stop and Search Code of Practice, some police officers and members of the public incorrectly define a stop and account as being the same as a stop and search, when in fact no search power was used. | 37 | British Trans Police |
| 5.9 (and 4.15) | As soon as detention begins, and before searching, the constable must inform the person that they are being detained for the purpose of a search and take action in accordance with paragraphs 5.9 to 5.11 under “Steps to be taken prior to a search”. | Insert ‘and cautioned at common law’ within the sentence. For sections 4.15 and 5.9. This would be in line with legal direction and be consistent with existing legislation. | 30 | Police Scotland |
| 5.9(b) | the constable’s name and number (except where the constable reasonably believes that giving their name might put them in danger, in which case a warrant or other identification number shall be given) and the name of the police station to which the constable is attached; | Suggest the removal of the reference to an officers police station. The office to which the constable is attached may not be a public police office or its location may be sensitive and not generally released to the public for security reasons. The warrant number or equivalent is sufficient for a Police Officer to be identified. | 30 | Police Scotland |
| 5.9(d) | the grounds for that suspicion. This means explaining the basis for the suspicion by reference to information and/or intelligence about, or some specific behaviour by, the person concerned; | Consider the removal of the wording ‘intelligence’. This reference implies that an officer should disclose known intelligence to the person being searched. This intelligence may be sensitive and may, if disclosed, compromise the intelligence process, including the protection of the source. | 30 | Police Scotland |
| 5.9(d)(ii) | all other powers requiring reasonable suspicion; | There should be a comma, not a semi-colon after the second bullet point. | 1 | Indiv respondent |
| 5.9(e) | that they are entitled to a copy of the record of the search in accordance with the requirements set out in Chapter 6 of this Code. The constable must explain to the person to be searched what those requirements are. | Remove sentence or clarify what information is required to be explained.Where an officer communicates the necessary points that require to be provided, it is assessed that this requirement is met. If this is the case, there appears to be no further need to explain what the requirement is to the subject. | 30 | Police Scotland |
| 5.9(e) |  | [Question 6] The Code states that those searched are “entitled to a copy of the record of the search”. It is CRER’s opinion that rather than individuals being entitled to a record, they should automatically be given a copy of the record immediately following the search. If an exceptional circumstance prohibits this, they should be given a receipt of the search and should be given a copy of the record as soon as possible. Individuals may be put off by being told they can obtain a record in accordance with the requirements set out in Chapter 6 of the Code and may believe it is too difficult to try to seek out a copy. By supplying a copy of the record automatically, there are further accountability and transparency measures in place, as the individual will be able to read the record immediately following the search. This is much more straightforward than having to request a copy after the incident is over. | 36 | CRER |
| 5.10 | The person should also be given information about police powers to Stop and Search and the individual’s rights in these circumstances. The information should reflect the same information included in the example at Annex B. | We have concerns that this will not be practically do-able in all circumstances. For example 50,000 football fans entering a match or in cases where there is a real pressure to perform large number of searches quickly as a consequence of a volatile public order incident where resources do not match demand. | 32 | Scottish Police Federation |
| 5.11 | If the person is deaf or cannot understand English and is accompanied by someone, then the constable must try to establish whether that person can interpret or otherwise help the constable to give the required information. | Consider the addition of: ‘It should be noted that an accompanying person cannot assist with legal requirements such as informing a person of their arrest. An official translator would be required to complete all legal processes relating to arrest and arrest on suspicion. An accompanying person may assist with explaining a detention such as Section 23 Misuse of Drugs Act.The Right to Interpretation and Translation in Criminal Proceedings (Scotland) Regulations 2014 stipulates the rights for translating service and will cover arrests and arrest on suspicion, but does not cover detention for stop and search powers, e.g. Section 23 MDA. | 30 | Police Scotland |
| 5.11 |   | Refer to SPF comments at 2.1 and 4.4. | 32 | Scottish Police Federation |
| 5.11 |   | A section should also be included as to how the police officers should respond to individuals who are in the company of the person who is about to be stopped and searched, but they are not otherwise involved in this process. Particular regard should be given if those individuals are either children or vulnerable adults. | 11 | Indiv respondent |
| 6.1 | When a constable carries out a search in the exercise of any power to which this Code applies and the search does not result in the person searched being arrested, a record must be made of it, electronically or on paper, | Consider rewording 'When a constable carries out a search in exercise of any power to which this code applies, a record must be made of it, electronically or on paper irrespective of whether that person is arrested or not'.The original wording infers that if the person is searched, an item is found and the person is arrested that there is no need to record the search electronically or on paper. | 30 | Police Scotland |
| 6.1 | a record must be made of it, electronically or on paper, unless there are exceptional circumstances which make this wholly impracticable | Consider removal of the word ‘wholly’. The use of the word may lead to a lack of clarity on what constitutes “wholly impracticable”. | 30 | Police Scotland |
| 6.3 |  If the record is made at the time, the person who has been searched must be asked if they want a copy and if they do, they must be given immediately, either: • a copy of the record; or • a receipt which explains how they can obtain a copy of the full record or access to an electronic copy of the record. | As per Pace Code A, stipulate a timeframe (3 months) for a person to request a copy of the record of search. Without an expiry date on the period when a person can request a copy of their search, the record may be removed during the retention and weeding process. | 30 | Police Scotland |
| 6.3 |   | This has immediate and additional cost considerations for the police service that already have to carry myriads of forms and paperwork whilst on duty. Additionally the expectation plain clothes officers in particular; who may need to undertake searches at any time (on production of a warrant card) are expected to carry receipt books is wholly impractical. | 32 | Scottish Police Federation |
| 6.4 | A constable is not required to provide a copy of the full record or a receipt at the time if they are called to an incident of higher priority, (see Note 15). | Higher Priority should be replaced with ‘Urgent incident’ Should read (see Note 14). Majority of calls could be classed as higher priority and may not provide sufficient clarity. ‘Urgent incident’ would define the level more accurately. Reference relates to ‘Note number 14’. Note 15 does not exist. | 30 | Police Scotland |
| 6.5 | If a search in the exercise of any power to which this Code applies results in a person being arrested, the constable carrying out the search is responsible for ensuring that a record of the search is made as part of their custody record. The custody officer must then ensure that the person is asked if they want a copy of the record and, if they do, that they are given a copy as soon as practicable. | Reword this paragraph completely to: ‘If a person is arrested following a search, the receipt or a copy of the record should be offered and if requested should be placed within the prisoner’s property bag and recorded within the prisoner’s property field.'The additional requirement to record the full search on the prisoner process data base would have significant implications for Police Scotland. Recording the full information on the prisoner system will place custody processing under significant additional pressure as well as extending the processing time. It would also require a considerable upgrade to numerous existing prisoner processing systems which would be cost prohibitive. The requirement would result in double keying as the Custody Officer would type the full record within the prisoner processing system and the searching officer would be required to duplicate that typing within the National Stop and Search Database. The recording and retention of the information within the prisoner processing system may not be used as the stop and search database is the source of stop and search data. The retention of stop and search data within the prisoner processing database would conflict with the retention protocols as agreed for the stop and search database. The proposed facility to provide a person with a receipt or a copy of the record would equally suffice for a prisoner. The receipt or record of search can be placed within the prisoner property bag and is equivalent to it being handed to the person on the street. The retention of the form within the property bag would be recorded in the prisoners’ property field. | 30 | Police Scotland |
| 6.5 |   | This does not reflect the realities of policing. The searching and/or arresting officer is not always the officer who conveys the accused into custody. It is possible the accused could be released before the arresting officer returns to the police station.We also believe the requirement for additional information on the custody record will significantly hamper the effective management of custodies and create significant IT difficulties that are not easily addressed without considerable investment (which the service does not currently have). | 32 | Scottish Police Federation |
| 6.6 (and linked to 7.4(c) and 7.4(d)) | The record of a search must always include the following information: • Self – defined ethnicity and national origin (if provided) Linked to 7.4 (C) & 7.4 (d) | Remove all references to ‘National Origin’. The requirement to ask and record: 1) Ethnicity (as per the current practice) 2) National Origin 3) High level ethnicity grouping may cause confusion amongst officers and persons being searched. ‘National Origin’ is the country of birth. It would not be practical to facilitate a drop down menu to record national origin. Furthermore, it would not be practical to capture this information as free text on the database. In this format it is exceptionally difficult to accurately report statistics from an open text box. Population comparison figures are currently based on ethnicity descriptors as per the Scottish Census data and not on National Origin. Police Scotland record, monitor and report on ethnicity data already using the recognised standard of the Census data to monitor levels of different cultural backgrounds. The principles of recording and retaining personal data must be justified and for a policing purpose. A Privacy Impact Assessment of this requirement may identify that this information is surplus to requirements, have no legitimate purpose and we would not be justified in recording this information.The requirement to seek 3 different methods of classifying a person’s cultural background was presented to the Stop and Search Equalities Sub Group (3) and it was deemed excessive to ask a person 2–3 questions based on their cultural background and may have a counterproductive and negative effect. The group recommended that only one question is sought and that should be based on the ethnicity descriptors as per the Scottish Census data. Through these ethnicity descriptors, the 5 high level ethnicity groupings can be identified automatically by assigning each ethnicity descriptor to one of the 5 high level groupings using a back office ICT fix. It is noted that the requirement to record National Origin is within Section 69 CJSA 2016 but stipulates the requirement to record National Origin ‘so far as practical’. | 30 | Police Scotland |
| 6.6 |   | We consider there is no legitimate purpose for asking for National Origin (country of birth) as we understand the police service of Scotland uses population comparators based on ethnicity as per the Scottish Census Data. We are not convinced this would meet the requirements of the data protection act. | 32 | Scottish Police Federation |
| 6.6 | Record of Search | The record should include the station of the constable (which will have been given to the person in any event – see para 5.9(b)). The outcome of the stop and search should be sub-divided. See the Best Use of Stop and Search Scheme para 1.3 for examples.  | 1 | Indiv respondent |
| 6.6 | Record of Search | Ref section 4 – that Constables only need reasonable suspicion is far too subjective and a more objective quantifiable measure should be made available to constables which must be completed before carrying out a search. This measure should be included in the report and recorded. | 27 | Indiv respondent |
| 6.6 | Record of Search | The officer should be required to record an estimated age of the person subjected to the stop and search if age is not given. A reminder should also be given to officers in this section that the recorded grounds for the search should be detailed in nature. Consideration should also be given to recording whether more than a jacket/outer garment was removed and rationale for this; whether intimate parts were exposed; whether a different sex search was carried out and whether restraints were used and why. | 37 | British Trans Police |
| 6.6 – 6.8 | ‘national origin' and name, etc. of individual searched. | CRER also notes that in section 6.8, which addresses the record of the search, both the “defined ethnicity and national origin” of the individual searched are to be recorded, if provided. We are not convinced that the recording of both characteristics is necessary and useful. Indeed, the meaning of “national origin” is not made explicit. Does it pertain to an individual’s nationality, place of birth, place of parent’s birth? If this question is going to be asked, clarification is needed. Additionally, when an individual is asked, “What is your national origin,” it often furthers a sense of not belonging in Scotland and may cause additional distress, mistrust, and anger for those undergoing a Stop and Search. For example, a 3rd generation individual of a Pakistani ethnic background may be justifiably offended to be asked what his/her national origin is, as though it is presumed to not be Scottish. We believe in most cases, asking only about ethnicity should be enough to identify bias or, which is a much less emotionally-charged matter. If the purpose of these monitoring questions is to ensure one group is not being disproportionately targeted for Stop and Search, national origin will not matter as much as the presumed ethnicity of the individual, and in a Stop and Search situation, it is likely better to as fewer questions. Additionally, if an individual who has been detained for a Stop and Search declines to state his/her ethnicity, then the officer should record his/her perceived ethnicity and note that the individual declined to state an ethnicity. CRER also questions the need to ask an individual who has been detained his/her name. If, as is stated in the draft Code, a name is not a requirement if nothing is found, it may be better to ask the name of the individual at the end of the search, and only if something is uncovered in the search. We believe that more individuals will feel comfortable enough to offer monitoring information if their name has not yet been recorded. Additionally, if nothing is found on a person who has been searched, we question if it is necessary to have their name, address, and date of birth on the record. Perhaps it would be more beneficial to only ask an individual monitoring questions prior to the search (i.e. age, gender, ethnicity) and ask questions regarding name, date of birth, and address if necessary following the search. If not, then the reasons for these questions should be clearly explained to the individual who has been detained.  | 36 | CRER |
| 6.7 | For the purposes of completing the search record, there is no requirement to record the name, address and date of birth of the person searched where this is not provided by the person being searched. | Add the requirement that a constable must inform the person that they do not need to provide their name, date of birth or address.  | 1 | Indiv respondent |
| 6.8 | Nothing in this Code requires the names of constables to be shown on the search record or any other record required to be made under this Code where a constable reasonably believes that recording names might endanger themselves or other constables. In such cases the record must show the constables’ warrant or other identification number and duty station. | Recommended rewording to ‘The record must show the constables warrant or other identification number. The removal of the station identifier is for security purposes as some offices are not routinely disclosed to members of the public. The warrant number or equivalent is sufficient for a Police Officer to be identified. | 30 | Police Scotland |
| 6.9 | A separate record is required for each person searched.  | Recommend the re-wording to ‘A separate record for each person must be available should a copy be required.’ This additional comment provides clarity on the requirement to how searches are recorded and produced where requested.  | 30 | Police Scotland |
| 6.11–6.12 | Where officers detain an individual with a view to performing a search, but the need to search is eliminated as a result of questioning the person detained, a search should not be carried out and a record is not required. Nothing in this Code requires a constable who requests a person in a public place to account for themselves, i.e. their actions, behaviour, presence in an area or possession of anything, to make any record of the encounter or to give the person a receipt. | We believe these paragraphs are unnecessary. | 32 | Scottish Police Federation |
| Sec 7 | Monitoring and publishing statistics | • COSLA welcomes the four principles that Stop and Search should be ‘lawful’, ‘proportionate’, ‘justifiable’ and ‘accountable’. For the approach to be ‘accountable’ data and should be available to local scrutiny committees to enable them to monitor and scrutinise any trends in Stop and Search tactics.• For any meaningful analysis to be made, robust and clear data must be available to all stakeholders and communities. Section 45 of the Police and Fire Reform Act outlines that the local commander is required to provide the local authority with any reports that it requests on the carrying out of police functions in its area; statistical information on police complaints in its area; and any other information about the policing of its area that the local authority might reasonably require. | 33 | COSLA |
| 7.1–7.6 |   | Would recommend rearranging the order of paragraphs to be 7.1, 7.2, 7.5, 7.6, 7.2, 7.4. The order of paragraphs appears to be mis-aligned and would benefit from being refigured. | 30 | Police Scotland |
| 7.1 | Any misuse of Stop and Search powers is likely to be harmful to policing and lead to mistrust of the police by the local community and by the public in general.Supervising officers must monitor the use of Stop and Search powers and should consider in particular whether there is any evidence that they are being exercised on the basis of stereotyped images or inappropriate generalisations.Supervising officers must satisfy themselves that the practice of constables under their supervision in stopping, searching and recording is fully in accordance with this Code.Supervisors must also examine whether the records reveal any trends or patterns which give cause for concern and, if so, take appropriate action to address this. | We consider the expectation on supervisors is onerous. Ultimately it is for the courts to determine whether searches are undertaken in accordance with the code.Every constable has to account for their actions (or lack of action) and we consider this to be a sufficiently high expectation.In any event there is no indication as to what supervisor intervention could look like we would also highlight that the behaviours that discredited stop and search were supervisor driven.We also consider that without significant investment in IT, the ability to identify ‘trends or patterns’ is otherwise non-existent. | 32 | Scottish Police Federation |
| 7.1 | Supervising officers must satisfy themselves that the practice of constables under their supervision in stopping, searching and recording is fully in accordance with this Code. | Consider rewording the paragraph to provide clarity on the proportionate supervision of officers around their use of stop and search.It is important that the use of stop and search is subject to supervision and scrutiny. This remains an important aspect of the role of any supervisors. It will be their responsibility to ensure that their officers comply with the code of practice. The wording of this section implies that it is a requirement for a supervisor to review every stop and search individually. Police Scotland believes that this is unnecessary and that local supervisors must be given the discretion to audit and check compliance based on their experience and their knowledge of the officers concerned. | 30 | Police Scotland |
| 7.1 | Supervisors must also examine whether the records reveal any trends or patterns which give cause for concern and, if so, take appropriate action to address this. | Consider rewording the paragraph to provide clarity on the proportionate supervision of officers around their use of stop and search.It is important that the use of stop and search is subject to supervision and scrutiny. This remains an important aspect of the role of local supervisors, to ensure that officers who carry out stop and searches are doing so appropriately and in compliance with the Code of Practice. From the wording of this paragraph, it is implied that there is a requirement by supervisors to examine and review all records submitted by individual officers to identify potential trends and patterns. This would require extensive data analysis for each officer. This would include individual equality monitoring reports for each officer under their command. This would be operationally impracticable and Police Scotland believes that local supervisors should use their experience and discretion to audit individual officers. By way of reassurance national equality monitoring will take place on a 1/4ly basis and any adverse trends will be fully investigated. | 30 | Police Scotland |
| 7.2 | Senior officers with area or force-wide responsibilities must also monitor the broader use of Stop and Search powers and, where necessary, take action at the relevant level. | We would highlight that senior officers were responsible for driving the stop and search behaviours.This paragraph is largely meaningless – what does ‘where necessary’ mean? More? Less? More of a certain kind? Less of a certain kind?In any event there is no indication as to what “action” should look like. | 32 | Scottish Police Federation |
| 7.3 | Supervision and monitoring must be supported by the compilation of comprehensive statistical records of stops and searches at force and local authority level. Any apparently disproportionate use of the powers by particular constables or groups of constables or in relation to specific sections of the community should be identified and appropriate action taken. | Ultimately the courts will determine whether the use of powers is disproportionate. It is difficult to see how a constable abiding by the provision of the remainder of this code could be considered to be in need of “appropriate action” | 32 | Scottish Police Federation |
| 7.4 | In accordance with section 69 of the 2016 Act, as soon as practicable after the end of each reporting year (ending 31 March), Police Scotland must publish information on how many times during the reporting year a Stop and Search was carried out by a constable. So far as practicable, the information is to disclose (in addition)(a) how many persons were searched on two or more occasions,(b) the age and gender, and the ethnic and national origin, of the persons searched,(c) the proportion of searches that resulted in(i) something being seized by a constable,(ii) a case being reported to the procurator fiscal,(d) the number of complaints made to the Police Service of Scotland about the carrying out of searches (or the manner in which they were carried out). | The expectations at paragraph c can only be delivered with significant investment in IT and people. The service has the luxury of neither at this time.The wider expectations will result in a significant bureaucracy for the police service and ultimately the time needs to come where politicians decide whether they are happy for more people to be counting, and fewer ‘doing’ as without considerable investment, that is the only likely outcome. | 32 | Scottish Police Federation |
| 7.4 | ...publish information.... | The final sentence of the first paragraph ends ‘(in addition)’ – in addition to what? Published data must provide sufficient granularity to enable effective accountability. To achieve this additional information should be required to be published.Stop and search statistics should be broken down by the statutory power used. It is appropriate to group the less frequently used powers together. Individual statistics must be provided for section 60, Criminal Justice and Public Order Act 1994 given the distinctive nature of that power as a statutory power that does not require the constable to have reasonable grounds to deploy it. For the same reasons, separate data should be provided on section 47A of the Terrorism Act 2000, if it is authorised. In addition, the outcome *in relation to the object of the power* should be published. These changes would enable some assessment of whether the major safeguard of reasonable grounds is being adhered to, permit the identification of policing trends, and may provide an indication of whether the powers are being used appropriately. For example, if a high proportion of items seized under a particular power were not the object of the search (e.g. drugs found in an offensive weapons search), this could indicate that constables are not employing the appropriate legislation or are acting without reasonable suspicion; further evaluation would then be merited. Stop and search statistics should be broken down geographically by division. The number of authorisations issued under section 60 of the Criminal Justice and Public Order Act 1994 should be published. This bare data is not sensitive. Ideally it should be linked to the number of stops and searches under each authorisation.  | 1 | Indiv respondent |
| 7.4 |   | We also believe that statistics on Stop and Search should be published quarterly, rather than at the end of each reporting year. Furthermore, statistics should be made available both at a national level and at a local policing level. All information published regarding Stop and Search should be able to be disaggregated by personal characteristic, reason for the search, and location. This will allow local and national trend analysis to take place on a relatively frequent basis to address any areas of concern. Cross-referencing characteristics, location, reason for the search, etc. is critical to be able to identify potential bias and discrimination. CRER also considers that, even if a record is not made following a situation in which an individual is detained with the intention to search but is not searched following questioning (section 6.11), the monitoring data should still be collected and reported. The stop is as much a concern as the search itself, and this data could tell if some groups are being stopped without enough justification to eventually warrant a search or if profiling is potentially happening based on a certain location or appearance. This data is important to collect and monitor as it could speak to trends that demonstrate discrimination or prejudice.[Question 4] Police Scotland should publish a list of groups it has engaged with through local scrutiny arrangements in its reports on Stop and Search to ensure the process is transparent and open. | 36 | CRER |
| 7.4(b) | the age and gender, and the ethnic and national origin, of the persons | As per 6.6 above. It is recognised that this is replicated from the Criminal Justice Act. | 30 | Police Scotland |
| 7.4(c) | c) the proportion of searches that resulted in…. (ii) a case being reported to the procurator fiscal, | Consider the removal of this section from the Code. It is recognised that this is replicated from the Criminal Justice Act.In order to accurately record and report on this data, substantial ICT development would be required to validate the stop and search data against the numerous crime reporting and criminal justice systems. Police Scotland currently report on a quarterly basis the number of stop searches that have been recorded on the stop and search database, where the submitting officers have indicated that a crime report has been submitted. This information is published publically with a caveat that the related databases, (e.g. crime recording systems) are not audited to validate the database disposals. |   |   |
| 7.5 | Police supervisors must monitor the use of Stop and Search powers by individual constables to ensure that they are being applied appropriately and lawfully.Monitoring takes many forms, such as direct supervision of the exercise of the powers, examining Stop and Search records (particularly examining the constable’s documented reasonable grounds for suspicion) and asking the constable to account for the way in which they conducted and recorded particular searches or through complaints about a Stop and Search that a constable has carried out. Training opportunities for individual constables and for the wider force should be identified as a result of such monitoring, withbest practice identified and communicated proactively throughout Police Scotland. | Refer to comments at 7.3. | 32 | Scottish Police Federation |
| 7.6 | Where a supervisor identifies issues with the way that a constable has used a Stop and Search power, the facts of the case will determine whether the standards of professional behaviour as set out in the Code of Ethics for Policing in Scotland (http://www.scotland.police.uk/about-us/Code-of-ethics-forpolicing-in-scotland/) have been breached and which formal action is pursued. Improper use might be a result of poor performance or a conduct matter, which will require the supervisor to take appropriate action such as performance or misconduct procedures. It is imperative that supervisors take both timely and appropriate action to deal with all such cases that come to their notice. | We consider this paragraph unhelpful. It is predicated on wrongdoing as is demonstrated by the words “have been breached and which formal action …”In any event the code of ethics for policing in Scotland is NOT the basis for consideration of misconduct proceedings against police officers. | 32 | Scottish Police Federation |

## Comments on Notes

| **Note** | **Text** | **Suggested change / comment** | **ID** | **Respondent** |
| --- | --- | --- | --- | --- |
| Note 3A | Safeguarding considerations will also apply to other persons aged under 16 who are stopped and searched under any of the powers to which this Code applies and constables should, where appropriate, report any such interaction to the relevant authorities. Similarly, any contact with children aged between 16 and 18 who are subject to compulsory supervision under the terms of the Children’s Hearings (Scotland) Act 2011 should be reported to the appropriate authorities. | Consider rewording to reflect the following; ‘Under the Children and Young People (Scotland) Act 2014, Police Scotland will have a statutory responsibility to share (lawfully, proportionately and appropriately) any wellbeing concerns with a child’s Named Person. Officers must always submit a wellbeing concern report where there are concerns for the person’s wellbeing or when an illegal item is recovered. The 2014 Act defines a child as under 18 years of age (or aged 18 years if they have remained a pupil at school). The definition in the Code of Practice would therefore be better linked to the Children and Young People (Scotland) Act 2014, rather than the Children’s Hearing (Scotland) Act 2011. And constables should, where welfare concerns are evident, report any such interaction to the relevant authorities.The reporting of all searches of children under the age of 16 to other authorities may be excessive and be counter-productive in safeguarding children. Police Scotland policy is to raise a child concern referral if a person under the age of 18 is reported for an offence or if the officer has a concern for their welfare. To raise a concern referral for every child may detract resources away from those requiring additional support. | 30 | Police Scotland |
| Note 4 | ...preparatory questioning.... | Reiterate that the person being stopped must be informed that they are not obliged to respond to the questions (see recommended change to para. 4.13 above). | 1 | Indiv respondent |
| Note 9 | Although there is no power to require a person to do so, there is nothing to prevent a constable from asking a person voluntarily to remove more than an outer coat, jacket or gloves in public. | Recommend adding ‘Headgear and footwear’ to the list of articles. Further recommendation to add: ‘Paying due regard to cultural differences (See Note 6).’Wording would be consistent with 5.7. | 30 | Police Scotland |
| Note 10 | The identity of all the constables engaged in the search must be recorded on the record. | The term ‘engaged in the search’ requires to be clarified to establish which officers would be classed as being engaged in the search.In the vast majority of cases, one person carries out the physical search of a person, supported by one or more other officers. This is to ensure the safety of the person and the officer involved. Other officers may be present and merely observe the search. It would be impractical to record each officer under these circumstances. | 30 | Police Scotland |
| Note 11 | When the search results in the person searched being arrested, the requirement to make the record of the search as part of the person’s custody record does not apply if the person is liberated before being taken in custody to the police Station. | Consider removing this section if the requirement to record the search on a custody record is removed.As per the rationale stipulated within section 6.5. | 30 | Police Scotland |
| Note 13 | Constables should record the self-defined ethnicity and national origin of every person stopped. The person should be asked to select one of the five main categories representing broad ethnic groups and then a more specific cultural background from within this group, using the groups listed in the census questionnaire. An additional “Not stated” box is available but should not be offered to respondents explicitly. Constables should be aware and explain to members of the public, especially where concerns are raised, that this information is required to obtain a true picture of Stop and Search activity and to help improve ethnic monitoring, tackle discriminatory practice, and promote effective use of the powers. If the person gives what appears to the constable to be an “incorrect” answer (e.g. a person who appears to be white states that they are black), the constable should record the response that has been given and then record their own perception of the person’s ethnic background. If the “Not stated” category is used the reason for this must be recorded on the form. | See comments at 6.6We consider asking for ethnicity, national origin and identification from the 5 main ethnic grouping could be confusing and has the potential to create unnecessary conflict. | 32 | Scottish Police Federation |
| Note 13 |   | Remove the term ‘National Origin.’ Reword the sentence to ‘Police Scotland should publish data based on the 5 main categories representing the broad ethnic groups with a breakdown based on their self-defined ethnic description.As per 6.6 for the removal of National Origin. It is suggested that any reference to National Origin is removed from within the Code of Practice. Police will be able to automatically align and produce data on the 5 main categories based on the ethnicity descriptor selection using an ICT Software. This eliminates the need to ask the person the question on the 5 main categories but allows for Police Scotland to produce the relevant data on the 5 categories and the wider ethnicity descriptions. | 30 | Police Scotland |

## Comments on Annexes

| **Annex** | **Text** | **Suggested change / comment** | **ID** | **Respondent** |
| --- | --- | --- | --- | --- |
| Annex B | Example of information to be given to the searched person | Annex ‘B’ of the Code has been reviewed and a suggested rewording has been provided in **Appendix B of the full response**.The current wording used within Annex B requires to be more concise. This would facilitate the provision of the advice on an appropriate receipt to be issued during a stop and search. | 30 | Police Scotland |
| Annex B | Example of information to be given to the searched person | General commentsThis annex fails to detail the rights of persons who are stopped. It should include – at the least – details of the requirement and meaning of reasonable grounds and how the stop and search should be conducted. The following should be added:(i) Stop and search can only be conducted if the constable has reasonable grounds to suspect you are committing, have committed or are about to commit a criminal offence or are carrying a prohibited article. (ii) There are two exceptions to this where a constable can stop and search you without any need for reasonable grounds. These are a stop and search under section 60 of the Criminal Justice and Public Order Act 1994 and under section 47A of the Terrorism Act 2000. (iii) Reasonable grounds require a constable to have an objective basis for their reasonable suspicion. This may be based on intelligence or on your behaviour. Unless you match the description of a suspect, a constable cannot base their grounds upon your appearance. Conduct during a stop and search(iv) The constable must tell you: their name and/or warrant number and station; that you are being stopped and searched; what power is being used; what they are searching for; why they reasonably suspect you of having the object they are searching for; that you are entitled to a record or receipt of the stop and search. If you are being stopped under section 60 of the Criminal Justice and Public Order Act 1994 or section 47A of the Terrorism Act 2000, the constable must also inform you that the power has been authorised in that locality for that time period. (v) The constable will try to ensure your cooperation but may use reasonable force if required.(vi) The search should take no longer than necessary. You may be required to remove your outer clothing (outer coat, jacket, gloves, headgear or footwear). If the item to be removed is being worn for religious reasons, this is done out of public view. Officers conducting a search under section 60 of the Criminal Justice and Public Order Act 1994 may require you to remove anything that they believe is being used to conceal your identity. Searches involving the removal of anything more than outer clothing will be done out of public view and only in the view of constables of the same sex.(vii) The search record must contain: the constable’s name and/or warrant number; the date, time and place where the stop and search took place; the power that was used; the grounds for the search; the outcome of the search; your ethnicity and gender. If you wish you may provide your name, date of birth and address but you are not required to do so. **Specific commentsWhy do the police use Stop and Search? ‘When can police stop and search you?’**First bullet point: add ‘reasonably’ before suspect to read: ‘If they reasonably suspect that you ….’Fourth bullet point: this implies some generalised search powers for ‘anti-terrorism’ and should be reworded to indicate the specific breadth of the powers under section 47A of the Terrorism Act 2000. E.g.: ‘To determine whether a person is a terrorist or a vehicle is being used for terrorist related purposes’. Final bullet point: If this is reference is solely to the warrants mentioned in para 4.25, this should be made clear. If not, this Code should focus solely on the statutory powers of stop and search. Either full details of when such search warrants can be issued and related safeguards should be included or they should not be discussed in this Code. **Your right to complain**Simply providing a police number to contact to complain about the police is unlikely to encourage people to report incidents in which they feel a stop and search was not conducted according to the rules. Add reference to right to complain to the Police Investigations & Review Commissioner, to the Scottish Police Authority, to the Citizens Advice Bureau, and to the relevant local scrutiny mechanisms. For the online version (presuming there will be one), hyperlinks should be included to each. **Vehicle Stop**This is confusing. Add the following at the end: ‘Such a search may only be conducted if the officer has reasonable grounds, as detailed above, or is conducting a search under section 60 of the Criminal Justice and Public Order Act 1994 or section 47A of the Terrorism Act 2000 ’.  | 1 | Indiv respondent |
| Annex B | Summary of information to be given to the searched person | CRER believes the Code or related guidance should make clear what will happen if a member of the public makes a complaint about a Stop and Search. Annex B includes a section entitled “Your right to complain” but does not provide details about the complaints procedure or potential outcomes. This information may be beneficial to members of the public who are considering making a complaint, but are doubtful that it will be taken seriously or are worried about the process they may have to go through. Further clarification is necessary and will likely encourage complaints addressing situations in which the Code not followed. The right of an individual to request a record of the search (if it is not automatically given) should also be included in this document along with details about how to obtain this. Finally, information on why monitoring data is requested and collected would also be useful in this document. An individual may be more forthright with providing this information if he/she clearly understands the purpose of it.[Question 1] It would be beneficial if this definition [the definition of stop and search] were added to Appendix B (Example of Information to be Given to Persons subject to Stop and Search), as this may clarify the situation for those who are being searched. | 36 | CRER |
| Annex C | Establishing gender of persons for the purpose of searching | Stonewall Scotland recommends that the stop and search guidance in relation to the searching of transgender persons should, where appropriate, be in line with the procedures outlined in the Scottish Prison Service’s Gender Identity and Gender Reassignment Policy for those in custody. This would ensure a consistent experience across the criminal justice system and is a policy which represents best practice in treating trans people with dignity and respect. The principles which underpin this are being as unobtrusive as possible, ensuring that personal questions are limited to strictly need-to-know information, and that people are treated with dignity and respect for their gender identity throughout the search process. Stonewall Scotland and the Scottish Transgender Alliance recently advised Police Scotland on the Stop and Search SOP based on these principles. We believe that similar changes should be made to Annex C on establishing the gender of persons for the purpose of searching. In particular the following points should be considered:Point 2. Use of the term “transvestite”The term “transvestite” is one that is not routinely used by the trans community in Scotland, and one which many trans people find outdated and offensive. Instead, the term “transgender” should be used throughout the document, and the guidance should include a definition of this term which highlights that it is an umbrella term which also includes non-binary identities. Notes A1–3 should also be amended accordingly. The definition that we would recommend is:The terms “transgender people” and “trans people” are equivalent inclusive umbrella terms for anyone whose gender identity (including their gender expression) does not fully correspond with the sex they were assigned at birth. This is inclusive of:Trans women (people who were assigned male at birth but who identify as a woman)Trans men (people who were assigned female at birth but who identify as men)Non-binary people (people who do not identify solely as men or solely as women. Instead their gender identity is between or beyond the man/woman binary or they have no gender.)Cross-dressing people (people whose gender expression includes dressing in clothing which does not fully correspond with the sex they were assigned at birth but otherwise identify with their assigned sex.)Point 3. Gender Recognition CertificatesStonewall Scotland believes that this paragraph places unhelpful emphasis on an individual’s legal gender as on their birth certificate. Best practice, and the procedure outlined in the recently revised Police Scotland Stop and Search SOP as well as Scottish Prison Service guidance, establishes that in their interactions with the criminal justice system individual’s should be treated in line with the gender in which they live their life, regardless of whether they have a GRC. | 28 | Stonewall Scotland |
| Annex C, para 12 | Where the person elects which gender they consider themselves to be but is not treated in accordance with their preference, the reason must be recorded in the search record, in the constable’s notebook or, if applicable, in the person’s custody record. | Remove the reference to recording this within the search record as this may be an unlawful disclosure of protected information.As per Section 22 Gender Recognition Act 2004, this information is protected and should not form part of a search record which could be open to scrutiny. | 30 | Police Scotland |
| Annex D | Conduct of intimate and strip searches | Intimate searches should not be permitted under any stop and search power. (Compare PACE, Code A para 3.7). | 1 | Indiv respondent |
| Annex D 3(d) (e) 7.10. | References to Appropriate Adults | The term Appropriate Adult is used in the above sections in relation to children. This needs to be clarified as there is currently an Appropriate Adult Service for Adults who require communication support during police process’. This service is not available for children.Adults at Risk or Vulnerable Adults In relation to Strip Searches or Intimate Body Searches for Adults at Risk or Vulnerable Adults we do not agree that it is necessary for the Appropriate Adult to in the room where these procedures are taking place, unless the Adult involved specifically requests this. The current guidance for Appropriate Adults is Appropriate Adults may be requested to be present during intimate body searches/medical examinations. The procedure should, where possible, be carried out in the presence of an Appropriate Adult of the same gender as the person undergoing the procedure. Their attendance should be at the consent of all parties involved, i.e. victim or suspect, Forensic Physician and Appropriate Adult. If all parties are in agreement then the Appropriate Adult must ensure they are positioned at the other side of the screen to preserve the person’s dignity. The Appropriate Adult’s role will be to ensure, as far as possible that the person understands the procedures that are about to be undertaken as explained by the Forensic Physician.We also do not agree that there is role for an Appropriate Adults during fitness for interview assessments. | 5 | Scottish Appropriate Adult Network |
| Annex D | References to Appropriate Adults | The provisions in Annex D regarding the role of appropriate adults in relation to searching etc. require review. It is important to understand that an appropriate adult in relation to a vulnerable adult is not someone who will typically be known to the vulnerable adult – they will be someone who has been called out specifically for the purpose of aiding communication between the adult and the police. They are also not normally experts in particular kinds of assisted communication (like speech and language therapists). Consideration needs to be given to whether a healthcare professional undertaking an intimate search or examination would need the assistance of the appropriate adult to communicate with the vulnerable adult. We hope that healthcare professionals would generally have experience and training in communicating with vulnerable persons. Even if some involvement in the conversation is appropriate, we do not feel the appropriate adult should be present during an intimate search or examination. This risks adding to the distress and confusion of the person, rather than providing comfort and reassurance. There might be an exception if the vulnerable adult specifically asks for them to be present. | 2 | Mental Welfare Commission |
| Annex D – para 3(a) | The strip search must be authorised by a constable of the rank of Inspector or above. | Clarity is sought on the parameters of the Code governing the authorisation of a strip search. It is suggested that the wording of this section of the code clearly identifies that this is not applicable to the strip searching of persons who have been arrested and the search is for safety and welfare reasons within the custody setting.A Custody officer may authorise a person to be strip searched for safety and welfare reasons within the custody setting. This reflects the Custody and Welfare of Prisoners SOP. It is assessed that the code does not apply to the above scenario and if this is the case, it is recommended that the wording of section 3(a) of Annex D is changed to clarify this position. | 30 | Police Scotland |
| Annex D – para 3(e) | Except in cases of urgency, where there is risk of serious harm to the detainee or to others, whenever a strip search involves exposure of intimate body parts, there must be at least two people present other than the detainee, and if the search is of a child or mentally disordered or otherwise mentally vulnerable person, one of the people must be the appropriate adult. Except in urgent cases as above, a search of a child may take place in the absence of the appropriate adult only if the child signifies in the presence of the appropriate adult that they do not want the adult to be present during the search and the adult agrees. A record shall be made of the child's decision and signed by the appropriate adult. The presence of more than two people, other than an appropriate adult, shall be permitted only in the most exceptional circumstances; | We would point out that police officers are not medically trained and cannot diagnose mental disorder or otherwise mentally vulnerable persons. All police officers can do is make a consideration on the likelihood of such matters and this should be reflected in the code. | 32 | Scottish Police Federation |
| Annex D – para 3(e) |   | Remove the requirement to have the appropriate adult or ‘responsible adult’ present during the physical search. Suggest that the paragraph is split between those that require an appropriate adult (Mentally vulnerable person) and children that require a ‘Responsible Person’ (children under the age of 18). Suggest changing the wording from ‘must’ to ‘should’ in case the length of time required or actual availability of an adult exceeds the acceptable time that a person can be detained for a strip search.The availability of appropriate adults can cause extensive delays in the process prolonging the detention of a person for a search. This would also require the appropriate adult to be the same gender as the person being searched thus possibly extending the length of time for an available person to attend. The presence of one more person within a room during a strip search could increase the embarrassment factor of the person being searched. A responsible or an appropriate adult should be there to assist the person so that they understand the procedure but not to be present within the room. | 30 | Police Scotland |
| Annex D – para 12, point 2 | the fact that the appropriate consent was given by the detainee to the CHP or (as the case may be) refused, and if refused, the reason given for the refusal (if any) | Error: Should read ‘HCP’ (Health Care Professional as per section B (6)). | 30 | Police Scotland |
|  |  |  |  |  |

## Other comments

|  |  | **Suggested change / comment** | **ID** | **Respondent** |
| --- | --- | --- | --- | --- |
|   |   | The Code should be reviewed on an ongoing basis. | 6 | Indivrespondent |
|   |   | Provisions for ensuring all people are informed about the code of practice and its contents. | 18 | Indivrespondent |
|   |   | Search of animals and related legislation should also be included in the code.  | 11 | Indivrespondent |
|   |   | The absence of a power to search persons consensually is now a major inhibitor to everyday policing. It has been exercised with discretion for decades with few complaints and has simply become a political football. The withdrawal of consensual search will lead to a reduction in community wellbeing, of that there is no doubt. The power to search consensually should be available in instances where an officer has no statutory power but believes their actions are necessary owing to risk to life or serious crime. | 12 | Individual resp |
|   |   | Consideration should be given to a section on stop and search powers under the Terrorism Act 2000. | 37 | British Transport Police |
|   |   | There could be a greater emphasis on the importance of localism and the need to adapt practices to the culture, demographic nature and priorities of the local area. Locally sensitive approaches to stop and search can be deployed without undermining national consistency in how the law is applied and it stands to reason that the approach taken in a large urban environment would differ to that taken in rural areas.Similarly, existing pieces of work between the police and the community (particularly with youth groups) may have an impact on how stop and search is deployed and constables in the local area should be encouraged to take local circumstances into consideration. This requires a level of flexibility with the Code of Practice and a level of autonomy for Local Divisional Commanders. | 33 | COSLA |
|   |   | There was/is nothing wrong with existing powers given in to law enforcement authorities for Stop and Search.The problem was that certain senior officers in Police Scotland and the legacy Strathclyde Force overtly instructed officers to use stop/search when it was not appropriate, in pursuit of self created and politically endorsed targets in a performance regime that did nothing to benefit communities and was entirely inward facing/meaningless. Negativity was whipped into a frenzy by media and politicians who sought to distance themselves from the beast they had created in Police Scotland. The failed to deal with the root cause in terms of the relevant senior officers and their pursuit of personal glory and meaningless performance indicators.This has proved ultimately self defeating in that it has come to a lack of public trust and surveys and consultations such as this. Police officers in lawful execution of their duty and exercising their legitimate powers are now viewed with suspicion and tainted by the policies of those who misguidedly lead Police Scotland.  | 13 | Indivrespondent |
|   |   | Yes there should be a caveat in for consensual search where the circumstances meet a threat to life or risk of serious crime. I would also comment that whilst the code states that nothing in the code alters or otherwise affects any provision of any statute, that the majority of these statutes were passed when the power to search consensually was available and I wonder whether the provisions in some of these Acts would have been as they are had the power of consensual search been absent. | 12 | Indivrespondent |
|   |   | The code has become a complete, and hence vast and somewhat repetitive document. It were helpful for constables and public alike if it could start with a two page summary setting out in clear straight forward language the main line of practice leaving the detail of ‘ifs and buts’ to the main body of the report or – better still – to appendices. | 25 | Cults Bieldside and Milltimber CC |
|   |   | COSLA elected members agreed the following principles in relation to this consultation: • COSLA previously lobbied for “a clear statement or guidance ensuring that non-statutory searches were made only by exception”. This draft Code of Practice delivers on this call. It should be made widely available to relevant communities of interest so the public can understand Police Scotland’s approach.• With this in mind, Police Scotland should accompany the Code of Practice with a communications exercise and accessible material.• COSLA welcomes a human rights based approach. | 33 | COSLA |

1. <https://consult.scotland.gov.uk/organised-crime-and-police-powers-unit/stop-and-search> [↑](#footnote-ref-1)