



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



CRIME AND JUSTICE

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

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# Executive summary

1. Between 21 March and 15 July 2016, the Scottish Government undertook a public consultation on a draft Code of Practice ('the Code') to underpin the use of police powers to 'stop and search' in Scotland.<sup>1</sup> The consultation received 38 responses from a range of organisations and individuals.

## Policy background

2. In March 2015 the Scottish Government invited an Independent Advisory Group, chaired by John Scott QC, to consider long-term policy and practice on stop and search. The group included experts from the fields of policing, law enforcement and children's rights. The Advisory Group recommended an end to consensual stop and search, and produced a draft Code of Practice which would underpin the continuing use of statutory stop and search. The draft Code of Practice was based on the Code of Practice currently in place in England and Wales (known as PACE Code A).

3. Subsequent to the work of the Advisory Group, the Criminal Justice (Scotland) Act 2016 made several changes to the law regarding stop and search. The Act made a Code of Practice a statutory requirement; it also made provision for ending the use of non-statutory stop and search in Scotland once a Code of Practice is in place.

4. The consultation issued by the Scottish Government in March 2016 follows on from the work carried out by the Independent Advisory Group, which recommended that its draft Code of Practice be put out to consultation prior to adoption.<sup>2</sup>

5. The consultation paper contained a copy of the draft Code along with eight questions focusing on the possibility of including a statement on the purpose of the Code, the option of including sections on children and young people and adults at risk and vulnerable adults, local scrutiny, and information recording with regard to section 67 searches (i.e. those undertaken as part of the entry requirement for public events).<sup>3</sup> It also invited more general views on the Code as a whole.

6. The consultation received 38 responses – 21 from individuals and 17 from organisations. Two of the responses from organisations were in the form of reports of consultation activities with children and young people. Two respondents submitted published evidence to the consultation.

7. Main findings from the consultation are summarised below.

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<sup>1</sup> <https://consult.scotland.gov.uk/organised-crime-and-police-powers-unit/stop-and-search>

<sup>2</sup> The consultations is one of two consultations arising from the work of the Advisory Group, with a concurrent consultation exercise seeking views on whether the police should have a new **statutory** power to stop and search children and young people for alcohol.

<sup>3</sup> Section 67 of the Criminal Justice (Scotland) Act 2016.

## **The purpose of stop and search**

8. There was a clear view amongst respondents that the Code should contain a statement setting out the purpose of stop and search. Organisations were unanimous on this point, believing that this was needed for reasons of clarity, public understanding about the use of the tactic and its limitations, and public confidence. Further, there was a view that the inclusion of such a statement of purpose would demonstrate a commitment to using the power fairly and to good effect for the benefit of the community.

9. Respondents offered two views on what the purpose of stop and search should be, with slightly different emphases. These were as follows:

- That the purpose should be to promote public safety and ensure community and individual wellbeing, in line with the principles which inform all police work in Scotland (as set out in the Police and Fire Reform (Scotland) Act 2012<sup>4</sup>)
- That the purpose should focus more on the prevention and detection of crime, and be more in line with the purpose included in the Police and Criminal Evidence Act Code of Practice adopted in England and Wales, i.e. to help prevent and detect crime by enabling the police to ‘allay or confirm suspicions about individuals without exercising their power of arrest’.

10. Others, however, focused on practical operational issues and thought the purpose of stop and search should be to safeguard communities by identifying and removing from the public domain potentially harmful items such weapons, drugs (including alcohol) and drugs paraphernalia, and other items linked to criminal activity.

## **Children and young people**

11. There was significant support for the Code to contain a section on children and young people. Respondents thought this would:

- Help ensure that the police understand and take full account of the needs of children and young people – including those with additional needs
- Provide guidance to the police on understanding and responding to the particular dynamics of interacting with this group
- Help inform stop and search practice in relation to prioritising safeguarding and wellbeing issues in dealing with children.

12. This would, in turn, contribute to maintaining good community relations and ensuring that children and young people do not become alienated or criminalised.

13. Two respondents thought a specific section would be particularly important if the police were granted new powers to search children and young people for alcohol.

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<sup>4</sup> Chapter 4, section 32: <http://www.legislation.gov.uk/asp/2012/8/contents/enacted>

14. Those opposed to or expressing reservations about a separate section argued that everyone should be treated the same regardless of age, or that the treatment of children and young people by the police should be addressed through education and training rather than via an 'additional policy'.

15. Respondents noted both principles and specifics in discussing the content of a section on children and young people. Respondents called for a section with a strong 'rights' basis with priority given to protecting the wellbeing of the child or young person involved. They also stressed the importance of addressing the following in the Code:

- Definitions of 'child' and 'young person'
- Grounds for stopping and search children and young people
- The involvement or presence of responsible adults, and parents in particular
- Appropriate ways to deal and communicate with children and young people to take account of their needs, their stage of development, and their vulnerabilities.

16. Other points raised included the need for the Code to be written in a way that was accessible for children and young people; the need for further consultation to be undertaken to ensure that any section reflected best practice; the importance of monitoring the use of stop and search with children and young people; and the need for consistent terminology when referring to children and young people in the Code.

### **Vulnerable adults and adults at risk**

17. There was also support for a separate section on adults at risk and vulnerable adults. Respondents thought that this would be valuable for informing operational practice: it would help ensure that officers were aware of the needs of adults at risk and vulnerable adults, and followed appropriate principles and practice in dealing with such individuals.

18. Respondents were clear that any separate section on vulnerable adults and adults at risk should make reference to, and be informed by, existing relevant legislation, guidance and procedures; and should require and promote the sensitive treatment of vulnerable adults and adults at risk.

19. Respondents suggested a range of issues that the section should provide guidance on. These included the communication needs of vulnerable adults and adults at risk; assessing risk; and involving other services.

20. Other more specific suggestions for procedures for searching this group related to the role of senior officers; the involvement of appropriate adults / relevant authorities; the training of officers; referrals to other services; and recording requirements.

### **Local scrutiny**

21. Respondents were largely in favour of including a section in the Code on local scrutiny, suggesting that this would:

- Indicate the importance attached to public scrutiny of the police

- Help foster public confidence in the police and its approach to using stop and search
- Be helpful to local scrutiny committees and elected representatives.

22. Those who did not support a separate section felt that current arrangements for local scrutiny of police activity should apply and, as such, there was no need for this to be covered in the Code. There was an additional concern that inclusion in the stop and search Code could, in fact, lead to confusion on this point.

23. Those who endorsed the use of existing local arrangements argued that local scrutiny boards were a well-established statutory vehicle which provided the opportunity to hold senior police personnel to account. They involved local stakeholders and elected representatives, were accessible to the public, and had access to relevant information.

24. Those who had reservations about using existing arrangements thought that local boards were too close to the police and did not reflect the communities affected by stop and search.

25. A range of respondents offered suggestions for enhancing existing local arrangements. Most commonly, respondents emphasised the importance of involving a wider range of individuals and groups in the scrutiny process. They also suggested additional methods and mechanisms which might enhance the scrutiny process.

26. Although not all respondents agreed with the need for a separate section in the Code, there was, nevertheless, widespread endorsement of the importance of local scrutiny of stop and search activity. In addition, good quality information, statistics and analysis were seen to be essential for monitoring and scrutiny. It was also agreed that information and statistics on stop and search should be published.

### **Recording of information on section 67 searches**

27. Two-thirds of respondents supported recording information about 'section 67 searches' (i.e. those carried out at public events as a condition of entry). Some respondents did not see any justification for excluding any particular type of search – they thought recording of searches was important for scrutiny reasons and did not think issues of 'practicality' were sufficient reason for recording of information to be deemed disproportionate. These respondents mainly favoured the collection of full information, although some thought that event-level summary information would be sufficient.

28. Those who thought that section 67 searches should be treated as exceptions generally referred to the specific demands of public event environments in their response. They felt that searches at public events were reasonable, and that recording of information would be impractical given the large numbers of people involved and the potential adverse impact on the smooth and safe running of events. There were however, two qualifications noted to this view: that summary information might be recorded for operational review reasons; and that basic demographic information might be recorded in circumstances where attendees were **selected** for searching (as opposed to a situation where **all** attendees were searched).

## **Community wellbeing fairness, integrity, respect and human rights**

29. Respondents offered varied comments on how the Code might help promote community wellbeing and provide confidence that stop and search is being used with due consideration to fairness, integrity, respect and human rights. Common themes in the responses are summarised below:

30. **Human rights and equalities:** The importance of respecting human rights and the needs of different equalities groups was affirmed by respondents. Some offered detailed comments and suggestions with the overall aim of enhancing, protecting or promoting the rights of communities and individuals. Others, however, praised the human rights based approach taken in developing the Code.

31. **Rights of those stopped and searched:** There was a clear view among respondents that the Code should include more guidance on providing those stopped with information about their rights, including the right to complain.

32. **Availability and accessibility:** Respondents stressed the importance of the Code being widely available and easily accessible to the wider community (in police stations, online, etc.). They thought the Code should be produced in accessible language suitable for all ages, with consideration given to producing easy-read and summary versions, and versions in other community languages.

33. **Monitoring:** Respondents stated (or restated) the importance of data collection, analysis and publication in monitoring the use of stop and search, and emphasised the importance of being able to disaggregate data by protected characteristics to ensure that particular groups are not being targeted disproportionately.

## **Other suggested changes to the Code**

34. Respondents offered a wide range of very individual and specific points about different aspects of the Code. The comments included calls for clarification on specific points, and made reference to the potential operational difficulties of particular statements. A small number of respondents (including those representing Police Scotland and the Scottish Police Federation) made multiple and detailed comments about the practical use of the Code in particular situations. All the detailed comments made by respondents have been collated in a separate document (available on the Scottish Government website), and will inform the further development of the Code of Practice.

# 1 Introduction and policy context

1.1 Between 21 March and 15 July 2016, the Scottish Government undertook a public consultation on a draft Code of Practice ('the Code') to underpin the use of police powers to 'stop and search' in Scotland.<sup>5</sup> This report presents findings from the analysis of the responses to the consultation.

## Policy context

1.2 The term 'stop and search' refers to the process by which the police detain and search a person who has not been arrested. Currently in Scotland there are two types of stop and search: statutory and non-statutory (or consensual). There are a number of specific laws – such as the Misuse of Drugs Act 1971 – which give the police the power to search a person in specific situations. This is known as statutory stop and search. In addition, a person can be searched with their consent, in circumstances not covered by a specific law. This is known as non-statutory, or consensual, stop and search.

1.3 The use of stop and search in Scotland has been the subject of some debate over recent years. Although the practice can be a useful tool for the police in carrying out their work, it is also a sensitive issue and it is important to strike an appropriate balance between protecting the public, detecting and preventing crime, and protecting the rights of individuals subject to stop and search procedures.

1.4 There have been a number of investigations into the use of stop and search in Scotland in recent years (undertaken by Police Scotland, Her Majesty's Inspectorate of Constabulary in Scotland, and the Scottish Police Authority), and Police Scotland have taken action to address the concerns raised. Steps taken have included carrying out a pilot exercise in Fife in 2014 focusing on improving stop and search data, and enhancing accountability and public confidence, and the publication of a Police Scotland improvement plan which takes forward the recommendations emerging from the work undertaken.

1.5 In March 2015 the Scottish Government invited an Independent Advisory Group, chaired by John Scott QC and involving experts (practitioners, policy makers and academics) from the fields of policing, law enforcement and children's rights, to consider long-term policy and practice on stop and search. The Advisory Group had a particular focus on (i) consensual stop and search and (ii) the development of a Code of Practice to underpin the use of stop and search by the police in Scotland.

1.6 The Advisory Group recommended an end to consensual stop and search, and produced a draft Code of Practice which would underpin the continuing use of statutory stop and search. The draft Code of Practice was based on the Code of Practice currently in place in England and Wales (known as PACE Code A). This was brought in by the Police and Criminal Evidence Act 1984, and refined over subsequent years.

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<sup>5</sup> <https://consult.scotland.gov.uk/organised-crime-and-police-powers-unit/stop-and-search>

1.7 Subsequent to the work of the Advisory Group, the Criminal Justice (Scotland) Act 2016 made several changes to the law regarding stop and search. The Act made a Code of Practice a statutory requirement; it also made provision for bringing an end to the use of non-statutory stop and search in Scotland, once a Code of Practice is in place.

1.8 The consultation issued by the Scottish Government in March 2016 follows on from the work carried out by the Independent Advisory Group which recommended that its draft Code of Practice be put out to consultation prior to adoption. It is one of two consultations arising from the work of the Advisory Group. The Advisory Group was unable to reach a consensus on whether the police should have a new **statutory** power to stop and search children and young people for alcohol, and they called for further consultation on this issue. This matter was the focus of a separate consultation which ran concurrently with the consultation on the draft Code of Practice.<sup>6</sup>

## About the consultation

1.9 The consultation paper presented a brief background to stop and search powers in Scotland, steps already taken to improve the use of the tactic, and details of the work of the Independent Advisory Group on Stop and Search, along with a copy of a draft Code of Practice as produced by the Advisory Group.

1.10 The paper contained eight questions – seven two-part questions comprising a closed question with a follow-up open question seeking further comment, and one open question.<sup>7</sup> The questions covered: the possibility of including a statement on the purpose of the Code of Practice, the option of including sections on children and young people and adults at risk and vulnerable adults, local scrutiny, information recording with regard to section 67 searches (i.e. those undertaken as part of the entry requirement for public events)<sup>8</sup> – and also invited more general views on the Code of Practice as a whole.

1.11 The consultation was available on the Scottish Government website and consultation hub, from 21 March to 15 July 2016. Respondents had the option to provide an email or online response.

1.12 In addition, the consultation paper on search powers for alcohol (see paragraph 1.8 above) encouraged people to contact the Scottish Government if they wanted someone from the Government to visit their organisation to talk about the consultation and to hear their views and / or the views of young people who they work with. Several organisations took up this offer. The Scottish Government also encouraged stakeholder organisations to carry out their own consultations with children and young people, and a number of meetings and activities took place.<sup>9</sup> Although the main focus of the discussion at these

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<sup>6</sup> <https://consult.scotland.gov.uk/organised-crime-and-police-powers-unit/under18search>

<sup>7</sup> Note that the offline questionnaire was structured slightly differently with five two-part questions (Questions 1 to 5) and three open questions (Questions 6 to 8).

<sup>8</sup> Section 67 of the Criminal Justice (Scotland) Act 2016.

<sup>9</sup> Further information on these consultation activities and meetings is contained in the separate report on the consultation on powers to search children and young people for alcohol available on the Scottish Government website.

activities was the option of new powers on searching for alcohol, some of the meetings explicitly explored views on the Code of Practice and discussion at others also touched on issues of relevance.

## About the analysis

1.13 Frequency analysis was undertaken in relation to all the closed tick-box questions in the consultation and the findings are shown in tables throughout this report. Comments made in response to open questions were analysed qualitatively to identify the main themes – i.e. reasons that respondents gave for their views; differences in views between different groups of respondents; areas requiring clarification; and any concerns raised by respondents.

1.14 The total number of respondents to this consultation is low (38), and not all respondents answered all questions. The base numbers in the individual tables range from 27 to 31. In that context, the findings presented in the tables provide an indication of the balance of opinion among those who responded to the consultation, and provide a framework for considering the qualitative comments received. They should not, however, be seen as representative of the views of any wider population. Further, it should be borne in mind that even ‘common’ themes identified in the qualitative analysis may only have been mentioned by a small number of respondents.

1.15 The quantitative analysis presented in the tables in the report includes a small number of imputed responses (i.e. responses derived from comments made by respondents who did not provide an answer to the closed tick-box question itself).

1.16 The remainder of the report is structured as follows:

- Chapter 2 presents information on the respondents and responses to the consultation.
- Chapters 3 to 9 present the results of the analysis to the consultation questions.
- Annexes to the report present a full list of organisational respondents (Annex 1), and the response rates for individual questions (Annex 2).

## 2 About the respondents

2.1 This chapter provides information about the respondents to the consultation.

### Number of responses received

2.2 The consultation received 38 responses. Just over half of the responses (21 out of 38, 55%) were from individuals, while the remaining 17 responses were submitted by organisations. See Table 2.1 below. Two of the responses from organisations took the form of reports of activities carried out with children and young people. These responses gave the views of the children and young people who participated in the consultation activities rather than of the organisation facilitating the activity and submitting the response. As such, these responses are shown separately in Table 2.1.

**Table 2.1: Number of responses**

Respondent type	n	%
Individuals	21	55%
Organisations	15	39%
Organisations - reports of consultation activities	2	5%
<b>Total</b>	<b>38</b>	<b>100%</b>

Note: Percentages do not sum to 100 because of rounding.

2.3 A complete list of organisational respondents and of organisations submitting reports of consultation activities with children and young people is included at Annex 1.

2.4 Most responses (76%; 29) were submitted through the Scottish Government's online consultation hub. The remaining responses were submitted by email.

2.5 Not all respondents answered all questions in the consultation. Response rates for individual questions ranged from 34% for Question 7 to 82% for Question 4 (tick-box question). See Annex 2 for details.

2.6 Two respondents submitted published research for consideration by the consultation team. One respondent submitting such evidence did not respond to the individual questions or provide any further comment.<sup>10</sup> This evidence is not considered in detail in this report but will be taken into account by the Scottish Government in progressing its work in this area.

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<sup>10</sup> The two pieces of evidence submitted were:

Blake Stevenson Ltd (2016) *A Qualitative Study of the Impact of Stop and Search on Individuals and Communities in Scotland*, Blake Stevenson Ltd.

Lennon, G. (2016) 'Searching for Change: Scottish Stop and Search Powers' in *The Edinburgh Law Review*, 20.2: 178–203.

## **The respondents**

2.7 The 15 organisational respondents included local authorities and community councils; national public sector bodies in the areas of policing, children and young people, mental health, and equalities and human rights; third sector organisations focusing on children and young people and equalities and human rights; and professional and academic bodies.

2.8 Both reports of consultation activities were submitted by third sector organisations.

## 3 The purpose of stop and search (Q1)

3.1 Part 1 of the Code consisted of two chapters: Chapter 1 included an introduction to stop and search and outlined the purpose of the Code; Chapter 2 set out a series of principles governing the conduct of stop and search activity. It did not, however, contain a statement on the purpose of stop and search. Question 1 in the consultation paper asked respondents if they thought the Code should state the purpose of stop and search and, if so, what the primary purpose should be:

**Question 1:** Should the Code of Practice state what the primary purpose of stop and search is? (Yes / No).

**Question 1a:** If yes, please specify what the primary purpose should be.

3.2 Thirty respondents (21 individuals and 9 organisations) answered Question 1, and all but two (93%; 28 out of 30) thought that the Code should state the primary purpose of stop and search. The two respondents who disagreed were both individual (as opposed to organisational) respondents. See Table 3.1.

**Table 3.1: Q1 – Should the Code of Practice state what the primary purpose of stop and search is?**

Respondent type	Yes		No		Total	
	n	%	n	%	n	%
Individuals	19	90%	2	10%	21	100%
Organisations	9	100%	0	0%	9	100%
All	28	93%	2	7%	30	100%

3.3 Twenty-two respondents (13 individuals and 9 organisations) offered additional comments at Question 1a. This comprised twenty-one respondents who had answered 'Yes' at Question 1 and one respondent who had not answered Question 1. Respondents answered the question in two main ways: they explained why they thought the Code should state the primary purpose of stop and search; and / or they outlined what they thought the primary purpose should be. Views on both of these issues are presented in turn below. A final section of the chapter looks at other comments made.

### Should the primary purpose of stop and search be stated?

3.4 Around half of respondents providing comments at Question 1a expanded on why they thought the Code should state the primary purpose of stop and search. There was a high degree of consensus across all respondents that this was needed for reasons of clarity (for all stakeholders), public understanding about the use of the tactic and its limitations, and public confidence.

3.5 Some respondents referred to the contentious nature of police stop and search powers and the potential for the power to be abused. They thought that the inclusion of a clear statement of purpose in the Code would demonstrate a commitment to using the power fairly and to good effect for the benefit of the community, and would reduce fear and confusion among members of the public.

3.6 Neither of the respondents who disagreed that the Code should state the primary purpose of stop and search offered any further comment and so it is not possible to explore their views any further (note that Question 1a was directed specifically at those who answered 'Yes' at Question 1). However, one respondent who did not answer the Question 1 went on to offer comments – they did not think that including a purpose was necessary, but offered a view on what might be covered should it be included in the Code.

## What should be the primary purpose of stop and search?

3.7 Respondents took two approaches to commenting on what the purpose of stop and search should be. Some discussed this in terms of overall policy aims, while others talked about more practical operational objectives.

3.8 Those discussing **overall policy objectives** offered two views on what the purpose of stop and search should be, with slightly different emphases. These were as follows:

- That the stated purpose of stop and search should be to promote public safety and ensure community and individual wellbeing, in line with the principles which inform all police work in Scotland (as set out in the Police and Fire Reform (Scotland) Act 2012<sup>11</sup>)
- That the stated purpose of stop and search should focus more on the prevention and detection of crime, and be more in line with the purpose included in the Police and Criminal Evidence Act Code of Practice adopted in England and Wales, i.e. to help prevent and detect crime by enabling the police to 'allay or confirm suspicions about individuals without exercising their power of arrest'.<sup>12</sup>

3.9 Respondents, for the most part, did not offer a detailed rationale for their views, but one civil rights organisation noted that they thought the 'purpose' adopted in England and Wales was 'simpler to understand and better clarifies the intent and potential outcomes of a stop and search'.

3.10 Those focusing on **practical operational issues** thought the purpose of stop and search should be to safeguard communities by identifying and removing from the public domain potentially harmful items such as weapons, drugs (including alcohol) and drugs paraphernalia, and other items linked to criminal activity.

3.11 There was also a call for the stated purpose of stop and search to include specific reference to its application with children and young people.

## Other comments

3.12 Other comments focused largely on different aspects of public communication and dissemination, with respondents stressing the importance of ensuring that the public in

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<sup>11</sup> Chapter 4, section 32: <http://www.legislation.gov.uk/asp/2012/8/contents/enacted>

<sup>12</sup> PACE Code A, paragraph 1.4.

general and those subject to stop and search were properly informed of the purpose of the tactic, how it is used and what their rights are. Comments included the following:

- That a statement on the purpose of stop and search be added to Appendix B of the Code (Example of Information to be Given to Persons subject to Stop and Search)
- That the Code and any related communication should be in plain English, short and accessible to people with low reading ages, with summary information also available
- That those stopped should be given full information on their rights, but that any information given should not compromise police investigations and / put any person at risk.

## 4 Inclusion of a section on children and young people (Q2)

4.1 There are several references in the draft Code to stop and search situations which might involve children and young people, and section 5.1 states that: ‘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, as required by section 68 of the 2016 Act’. There was, however, no separate section on searches of children and young people in the Code as it was drafted, and Question 2 in the consultation paper asked for views on whether such a section should be included:

**Question 2:** Should there be a separate section of the Code of Practice to deal specifically with searches of children and young people? (Yes / No).

**Question 2a:** If you answered YES to Q2 – do you have any suggestions as to what should be included in a section on children and young people?

4.2 Thirty respondents (21 individuals and 9 organisations) answered Question 2. Table 4.1 shows that the majority of respondents (80%; 24 out of 30 respondents) thought that there should be a separate section on children and young people in the Code. Organisations were unanimous in this view, but more than a quarter of individuals (29%; 6 out of 21) did not think there should be a separate section.

**Table 4.1: Q2 – Should there be a separate section of the Code of Practice to deal specifically with searches of children and young people?**

Respondent type	Yes		No		Total	
	n	%	n	%	n	%
<b>Individuals</b>	15	71%	6	29%	21	100%
<b>Organisations</b>	9	100%	0	0%	9	100%
<b>All</b>	<b>24</b>	<b>80%</b>	<b>6</b>	<b>20%</b>	<b>30</b>	<b>100%</b>

Note: The views of children and young people who took part in consultation activities are not included in the table.

4.3 Twenty-one respondents (11 individuals and 10 organisations) provided comments at Question 2a. In addition, the two reports of consultation activities involving children and young people also covered this question. The remainder of the chapter presents an analysis of the views presented.

4.4 The first section in the chapter presents reasons for agreeing or disagreeing with the option of including a separate section on children and young people; the second section

presents views on what should be included if such a section were included in the Code.<sup>13</sup> A final section of the chapter considers other comments made by respondents.

## Views on a separate section on children and young people

4.5 Those who thought that there should be a separate section on searches of children and young people offered the following main reasons:

- Children and young people have different needs to adults because of their age and stage of development (emotional and intellectual), and stop and search procedures need to take account of this. Children and young people may not understand the reasons for being searched, the processes involved, or their rights, and may find a stop and search situation bewildering and distressing. A separate section in the Code could help ensure that the police understand and take full account of the needs of children and young people – including those with additional needs – and act in an appropriate way towards them to minimise any possible negative effects.
- Children and young people as a group lack power in society, and there is a particular power imbalance between children and young people and the police which needs to be recognised. Young people could, for example, feel victimised by police stop and search activity. A separate section in the Code could provide guidance to the police on understanding and responding to the particular dynamics of interacting with this group.
- The police need to take account of safeguarding and wellbeing issues in dealing with children, and indeed have a duty to treat this as a primary consideration in line with section 68 of the Criminal Justice (Scotland) Act 2016. A separate section in the Code would help inform stop and search practice in relation to this.
- Good practice in relation to the use of stop and search with children and young people is important for maintaining good community relations and ensuring that children and young people do not become alienated or criminalised. A separate section in the Code could help achieve this.

4.6 Two respondents thought a specific section would be particularly important if the police were granted new powers to search children and young people for alcohol (this issue is being considered in a separate concurrent consultation – see Chapter 1, paragraph 1.8)

4.7 Those opposed to or expressing reservations about including a separate section covering searches of children and young people argued that everyone should be treated the same regardless of age. Those expressing this view included some of the children and young people who participated in consultation activities. There was a further suggestion

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<sup>13</sup> It should be noted that some respondents framed their comments in terms of how they thought searches of children and young people should be conducted. This analysis has assumed that respondents would wish the Code to reflect such conduct, and such comments are considered alongside those comments explicitly putting forward suggestions as to what should be included in a section on children and young people.

that the treatment of children and young people by the police should be addressed through education and training rather than via an 'additional policy'.

## **Content of a section on searches of children and young people**

4.8 Respondents offered a range of views about what might be included in a separate children and young people section in the Code. Some respondents focused on the principles which should guide such a section, while others were more concerned about the practicalities of stop and search situations.

4.9 Those focusing on principles called for a children and young people section with a strong 'rights' basis, with clear priority given to protecting the wellbeing of the child or young person involved. Reference was made to a wide range of policy frameworks and legislation which should underpin the guidance provided (e.g. GIRFEC,<sup>14</sup> Police Scotland's existing child protection policies and practices, existing procedures for dealing with vulnerable witnesses and victims, section 68 of the Criminal Justice (Scotland) Act 2016, and relevant equalities legislation).

4.10 More specifically, respondents thought the section should provide full and clear guidance on procedures when dealing with children and young people, the practicalities involved, and the support available in this situation. Different respondents stressed the importance of addressing the following in the Code:

- Age thresholds: Clear definitions of 'child' and 'young person' should be provided.
- Grounds for stop and search: Children and young people should only be stopped and searched in exceptional circumstances, and there should be clarity about appropriate grounds for searching children and young people, and the grounds and purpose of the search should be explained clearly to those involved. Situations involving 'innocent possession' should be covered in the Code. One particular suggestion made by young people was for information on searches of young people to be recorded in a way which allowed officers to be able to check recent stop and search history prior to conducting a search.
- Involvement of responsible adults: An appropriate / responsible adult should be present at a search of a child or young person, and there should be guidance on procedures to be followed when a responsible adult cannot be located. The importance of informing / involving parents in particular was noted by some.
- Dealing with children and young people in appropriate ways: All interaction with children and young people should take account of their needs, their stage of emotional and intellectual development, and their vulnerabilities in finding themselves in a stop and search situation. Officers involved should take account of the emotional impact on children and young people of being stopped, and draw on any previous knowledge about the young person involved.

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<sup>14</sup> *Getting it Right for Every Child* is the Scottish Government's framework for all policy dealing children and young people – the Children and Young People (Scotland) Act 2014 puts GIRFEC on a statutory footing.

- Communication: All communication with children and young people should be age-appropriate and take account of any special needs.

## Other comments

4.11 There was a number of other points made by respondents in answering this question, and in relation to the treatment of children and young people in the Code more generally. These were each made by a one or two respondents only, and focused on the following:

- Accessibility: Any separate section in the Code should be written in a way that was accessible for children and young people.
- Consultation: Further consultation should be undertaken to ensure that any section dealing with children and young people reflected best practice in this area, including in relation to children and young people from particular equality groups. There were several specific suggestions as to individuals / organisations who might contribute to the development of such a section.
- Monitoring: The use of stop and search with children and young people should be closely monitored, and young people should be involved in this scrutiny.
- Terminology: The use of terminology referring to children and young people should be consistent throughout the Code.

## 5 Inclusion of a section on adults at risk and vulnerable adults (Q3)

5.1 The draft Code of Practice made specific reference to searches of vulnerable adults only in Annex D which related to carrying out intimate searches. There were no other references to adults at risk in the Code, as it was drafted. Question 3 in the consultation asked for views on whether the Code should include a separate section on adults at risk and vulnerable adults:

**Question 3:** Should there be a separate section of the Code of Practice to deal specifically with searches of adults at risk and vulnerable adults? (Yes / No).

**Question 3a:** If you answered YES to Q3 – do you have any suggestions as to what should be included in a section on adults at risk and vulnerable adults?

5.2 Twenty-nine respondents (21 individuals and 8 organisations) answered Question 3. Table 5.1 shows that more than two-thirds (69%; 20 out of 29 respondents) thought that the Code should include a separate section relating to adults at risk and vulnerable adults. Organisations were unanimous in believing that such a section should be included in the Code, while individuals were divided in their views – with just over a half agreeing (57%; 12 out of 21).

**Table 5.1: Q3 – Should there be a separate section of the Code of Practice to deal specifically with searches of adults at risk and vulnerable adults?**

Respondent type	Yes		No		Total	
	n	%	n	%	n	%
<b>Individuals</b>	12	57%	9	43%	21	100%
<b>Organisations</b>	8	100%	0	0%	8	100%
<b>All</b>	<b>20</b>	<b>69%</b>	<b>9</b>	<b>31%</b>	<b>29</b>	<b>100%</b>

5.3 Seventeen respondents (8 individuals and 9 organisations) provided comments at Question 3a. All but one of these agreed that there should be a separate section on adults at risk and vulnerable adults; in the one remaining case the respondent indicated they had no strong views on the issue (and had not answered the tick-box question), but went on to provide comments relevant to such a section, should it be introduced. Thus none of those who answered 'No' to this question provided comments to explain their views.

5.4 The comments provided by respondents followed a similar pattern to those discussed in the previous chapter. They focused on reasons for thinking that there should be a separate section on adults at risk and vulnerable adults; and suggestions for what such a section should contain. These comments are covered in the following two sections, while a third and final section of the chapter covers other points made in response to the question.

## **Views on a separate section on adults at risk and vulnerable adults**

5.5 In general, respondents thought that a separate section in the Code would be valuable for informing operational practice: it would help ensure that officers were aware of the needs of adults at risk and vulnerable adults, and followed appropriate principles and practice in dealing with such individuals.

5.6 Some also stressed the importance of providing information aimed at potentially vulnerable people so they could fully understand the stop and search process and outcomes.

## **Content of a section on adults at risk and vulnerable adults**

5.7 As with Question 2, respondents provided comments relating to the principles which should underpin any guidance and the practicalities which should be covered.

Respondents were clear that any separate section on vulnerable adults and adults at risk should:

- Make reference to and be informed by existing relevant legislation, guidance and procedures (e.g. the Mental Health (Care and Treatment) (Scotland) Act 2003, adult support and protection arrangements, use of Appropriate Adults, relevant equalities legislation and duties)
- Require and promote the sensitive treatment of vulnerable adults and adults at risk with regard to their specific needs and any equality characteristics (mental health, sexuality, ethnicity, life experiences, intellectual capacity, social functioning etc.).

5.8 Respondents suggested a range of issues that the Code should provide guidance on. These included:

- The communication needs of vulnerable adults and adults at risk, and the importance of ensuring that these individuals understood the procedures involved and their rights in stop and search situations
- Assessing and responding to risk, including suicide risk
- Action to take if an individual does not appear to understand what is happening and why they are being searched
- When to involve other services (e.g. mental health services).

5.9 In terms of the conduct of searches, the following were also proposed:

- A senior officer should be informed and present at a search (if possible).
- An Appropriate Adult / relevant authority should be informed and in attendance (if possible).
- Searches of vulnerable adults or adults at risk should only be carried out by specially trained officers.
- There should be involvement of / referral to appropriate services, and information should be available to officers on this.

- The vulnerable status of the individual should be recorded.

## **Other comments**

5.10 Three further points were made by respondents as follows:

- Identifying vulnerable adults or adults at risk: It was pointed out that it may not be immediately obvious to officers undertaking a search that an individual was a vulnerable adult or adult at risk, and that this had operational implications for adhering to any separate section in the Code.
- Consultation: Advice should be sought from relevant organisations and individuals with expertise in this area (including within the police) to ensure the Code reflected best practice in this area. There were several suggestions as to specific individuals / organisations who might contribute to the development of such a section.
- Format: Specific guidance on dealing with vulnerable adults and adults at risk should be presented in an annex to the Code.

## 6 Local scrutiny of stop and search (Q4)

6.1 Section 7 of the draft Code outlined requirements relating to monitoring and supervising stop and search activity. It set out roles for frontline supervising officers and senior officers with force-wide responsibilities. The section also outlined requirements relating to the collection and publication of statistics on stop and search. The Code did not, however, set out any requirements relating to the external scrutiny of stop and search activity, although there are already existing arrangements for local scrutiny of policing in general.

6.2 The consultation asked if the Code should include a section on local public scrutiny, and what the arrangements for carrying out such scrutiny should be:

**Question 4:** Should the Code of Practice include a section about local public scrutiny of how stop and search is used? (Yes / No)

**Question 4a:** If you answered YES to Q4 – do you think the existing local scrutiny arrangements should be used, or do you have any other suggestions?

6.3 Thirty-one respondents (21 individuals and 10 organisations) answered Question 4. Three-quarters of respondents (74%; 23 out of 31) thought that the Code should include a section on local public scrutiny, with organisations somewhat more likely than individuals to give this view (80% compared to 71%). See Table 6.1.

**Table 6.1: Q4 – Should the Code of Practice include a section about local public scrutiny of how stop and search is used?**

Respondent type	Yes		No		Total	
	n	%	n	%	n	%
<b>Individuals</b>	15	71%	6	29%	21	100%
<b>Organisations</b>	8	80%	2	20%	10	100%
<b>All</b>	<b>23</b>	<b>74%</b>	<b>8</b>	<b>26%</b>	<b>31</b>	<b>100%</b>

6.4 Twenty-four respondents (12 individuals and 12 organisations) made comments at Question 4a. Comments covered the following main issues: reasons for agreeing or disagreeing with the inclusion of a separate section on local public scrutiny; the scrutiny arrangements which should be in place (including views on whether existing arrangements should be used); and information and dissemination. Each of these is addressed in turn below. A final section considers other comments made by respondents.

### Views on a separate section on local public scrutiny

6.5 Respondents who agreed and respondents who disagreed with the inclusion of a section on local public scrutiny offered reasons for their views.

6.6 Those who supported inclusion of a separate section in the Code thought that this approach would:

- Indicate the importance attached to public scrutiny of the police

- Help foster public confidence in the police and its approach to using stop and search
- Be helpful to local scrutiny committees and elected representatives.

6.7 Those who did not support a separate section felt that current arrangements for local scrutiny of police activity should apply and, as such, there was no need for this to be covered in the Code as requirements were already laid out in the Police and Fire Reform (Scotland) Act (section 45). There was an additional concern that inclusion in the stop and search Code could, in fact, lead to confusion on this point.

6.8 Although not all respondents agreed with the need for a separate section in the Code, there was, nevertheless, widespread endorsement of the importance of local scrutiny of stop and search activity. The point was also made, however, that it was important that the police acted on the findings of local scrutiny by making changes to procedures and practices.

## Local scrutiny arrangements

6.9 Those who endorsed the use of existing local arrangements highlighted what they saw as key features of the current system, arguing that local scrutiny boards:

- Were well-established statutory vehicles for local scrutiny of policing which provided the opportunity to hold senior police personnel to account
- Involved senior police commanders and an appropriate – albeit varied – range of local stakeholders and elected representatives, and were accessible to the public
- Had access to relevant information.

6.10 One respondent noted, however, that steps would have to be taken to ensure that stop and search was sufficiently covered by current local arrangements.

6.11 A few respondents expressed concerns or reservations about using current local arrangements as they thought that this would inhibit effective scrutiny and public confidence, arguing that local scrutiny boards:

- May be ‘too close’ to the police
- Did not reflect the communities affected by the use of stop and search.

6.12 A range of respondents offered suggestions as to how existing local arrangements might be enhanced, often in ways which might address the concerns noted above.

6.13 Most commonly, respondents emphasised the importance of involving a wide range of individuals and groups in the scrutiny process. Specific suggestions included:

- Members of the wider community, including those most likely to experience stop and search
- Schools / education establishments
- Health / care commissioning groups
- Representatives of minority or equality groups

- Parents and children and young people – the importance of using creative ways to effectively engage this latter group in the scrutiny process was noted.

6.14 Alongside the suggestions for community involvement of various types, there was also a note of caution, with respondents stressing that clarity of purpose, transparency and accountability (e.g. in relation to which groups were involved and how they were selected) were also essential to effective local scrutiny.

6.15 Respondents identified a range of mechanisms and methods which might be used to improve local scrutiny. These were each mentioned by one or two respondents only and included :

- Scrutiny of police records
- Citizens' panels offering a second line of scrutiny to that offered by local scrutiny bodies
- Lay observation of police activity or of probationary or leadership training programmes
- The establishment of 'triggers', based on the number of stop and searches carried out or the number of complaints received, which might then lead to additional investigation.

6.16 The English and Welsh guidance *Best Use of Stop and Search Scheme*<sup>15</sup> and Northamptonshire Police's Reasonable Grounds Panels were both noted as offering possible learning points in developing scrutiny of stop and search activity.

## Information for scrutiny purposes

6.17 Good quality information, statistics and analysis were widely seen to be essential for monitoring and scrutiny, and for ensuring that the use of stop and search by the police is justifiable and understood. It was also agreed that information and statistics on stop and search should be published.

6.18 Respondents made a few more specific points about information recording and analysis as follows:

- The Code should include details about information to be recorded on stop and searches that do not result in arrest in order to monitor for potential discrimination.
- Data on stop and search should be recorded in a way which allowed analysis by different protected characteristics.
- There should be analysis and reporting of complaints relating to stop and search activities.

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<sup>15</sup> <https://www.gov.uk/government/publications/best-use-of-stop-and-search-scheme>

- Video evidence might form part of the data collected on stop and search activity. (The use of video recording was noted in response to other consultation questions too, as a possible way of providing evidence on how searches are conducted and whether individuals' rights are being respected.)

## 7 Recording of section 67 searches (Q5)

7.1 Section 6 of the Code set out requirements to record information in relation to searches carried out under stop and search powers. The Code stated that a record must be made for all searches – whether or not they result in an arrest – and it set out the information to be recorded in each of these situations.

7.2 The Code allowed for a record NOT to be made in exceptional circumstances where it would be ‘wholly impractical’ for operational reasons, and noted, in particular, that ‘it is unlikely to be practicable to make a record of a search carried out under section 67 of the Criminal Justice (Scotland) Act’. This section authorises searches carried out on entry to relevant premises or events, where consent has been given as a condition of entry. Question 5 asked for respondents’ views on whether a record was necessary in such circumstances:

**Question 5:** Do you think it is necessary to record any information about searches carried out under section 67 of the Criminal Justice (Scotland) Act 2016? (Yes / No)

**Question 5a:** Which information should be recorded?

7.3 Twenty-seven respondents (19 individuals and 8 organisations) answered Question 5. Table 7.1 shows that almost two-thirds of respondents (63%; 17 out of 27) thought that information should be recorded about section 67 searches, with organisations and individuals equally likely to offer this view.

**Table 7.1: Q5 – Do you think it is necessary to record any information about searches carried out under section 67 of the Criminal Justice (Scotland) Act 2016?**

Respondent type	Yes		No		Total	
	n	%	n	%	n	%
<b>Individuals</b>	12	63%	7	37%	19	100%
<b>Organisations</b>	5	63%	3	38%	8	100%
<b>All</b>	<b>17</b>	<b>63%</b>	<b>10</b>	<b>37%</b>	<b>27</b>	<b>100%</b>

Note: Percentages do not all sum to 100 because of rounding.

7.4 Nineteen respondents (11 individuals and 8 organisations) provided comments at Question 5a. Respondents focused on two main issues: their reasons for answering ‘Yes’ or ‘No’ at the first part of the question; and their views on the information which should be recorded. Each of these is addressed below.

7.5 It should be noted that two respondents queried whether people would know what a section 67 search was and whether they would be able to comment in an informed way. Further, respondents – particularly those answering ‘Yes’ at Question 5 – often provided relatively brief comments, with little direct reference to the specific environment of public events. It is therefore not possible to judge the extent to which all respondents were familiar with section 67 searches and how they might be affected by a new Code, and whether this had an impact on the responses to Question 5 and 5a.

## Views on the need to record information on section 67 searches

7.6 Respondents who gave reasons for supporting the recording of information on section 67 searches made the following points:

- They did not see any justification for excluding any particular type of search from the requirements.
- They thought it was important that all searches were recorded for supervisory, monitoring and scrutiny reasons, to ensure searches are carried out fairly and in a non-discriminatory way and to foster public confidence and support.
- They did not think issues of practicality were sufficient for recording to be deemed disproportionate. One respondent specifically queried whether recording of section 67 searches was impractical, suggesting that even at large events a police search (as opposed to a search by security staff) ought to be the exception and the recording of such activity was therefore important.

7.7 Those offering such comments included individuals and public sector organisations (including one policing organisation).

7.8 Those who explained their reasons for believing that section 67 searches should be treated as exceptions generally referred to the specific situation of a public event in their response. They agreed that searches at events were reasonable, and thought that recording of information would be impractical given the large numbers of people involved and the potential adverse impact on the smooth and safe running of events. Policing organisations were amongst those offering such views.

7.9 There were, however, two qualifications offered to the views of those disagreeing with the recording of information on section 67 searches:

- That basic information on the number of searches carried out might be collected for 'post-operational feedback'
- That basic demographic information might be recorded in circumstances where attendees were **selected** for searching (as opposed to a situation where **all** attendees were searched).

## Information which should be recorded on section 67 searches

7.10 Respondents who supported the recording of information on section 67 searches provided a range of views on what information should be recorded (in most cases they did so without specific reference to the public event environment). Some respondents simply called for full information to be recorded, comparable to that recorded for other searches (as set out in paragraph 6.6 of the Code). Others were more specific in their comments, with different respondents called for the following to be recorded:

- Information about the individual: name, address, age, sex
- Information about the search: time and place; reason for the search, including details of any specific intelligence leading to the search; what the search was for; the outcome of the search (some thought the latter two items should only be

recorded if a prohibited item was found during the search); how the stop and search was conducted; and details of any follow up to the search.

7.11 There were some differing views on the recording of personal characteristics or equalities information (on ethnicity in particular). Some felt this information should not be recorded, while others felt it was important for monitoring purposes, particularly if only a selection of attendees at an event were searched.

7.12 Although most respondents discussed the information that should be recorded in terms of individual searches, a few called for **event-level** information only to be recorded. This would provide a summary of all searches undertaken and items found at a particular public event, and could be used for operational and monitoring purposes.

7.13 One respondent felt that the information to be recorded should be kept under review.

## 8 Community wellbeing, fairness, integrity, respect and human rights (Q6)

8.1 Part 1 of the Code included reference to the principles which inform all police work in Scotland (as set out in the Police and Fire Reform (Scotland) Act 2012):

- The main purpose of policing is to improve the safety and wellbeing of persons, localities and communities in Scotland; and
- The Police Service, working in collaboration with others where appropriate, should seek to achieve that main purpose by policing in a way which is accessible to, and engaged with, communities, and promotes measures to prevent crime, harm and disorder.

8.2 Part 1 also set out specific principles that should underpin the use of stop and search. It states that all stop and search activity must be 'lawful', 'proportionate', 'justifiable' and 'accountable'. It also stated that stop and search must be carried out in accordance with the Constable's Declaration (also set out in the Police and Fire Reform (Scotland) Act 2012), drawing attention to the following principles and their implications: **fairness, integrity, respect and human rights.**

8.3 The consultation asked respondents if anything else should be included in the Code to ensure the use of stop and search is aligned with these principles:

**Question 6:** Is there anything else that should be included within the Code that would help further promote community wellbeing and provide confidence that Stop and Search is being used with due consideration to Fairness, Integrity, Respect and Human Rights?

8.4 The comments made in response to this question are presented here.<sup>16</sup>

8.5 Nineteen respondents (12 individuals and 7 organisations) commented on Question 6. One consultation report based on discussion with groups of children and young people also included information relevant to this question. This question prompted a wide range of comments – some were general in nature, while others focused on more specific issues. The main issues covered were: human rights and equalities; the rights of those subject to stop and search; availability and accessibility of the Code; and monitoring of stop and search. Each of these is addressed below.

8.6 It should be noted that many of the comments were relevant to the issues of community wellbeing, public confidence, fairness, integrity, respect and human rights, but respondents did not always explicitly suggest additional things that might be included in the Code.

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<sup>16</sup> The chapter does not include a table presenting the analysis of the tick-box question at Question 6. Those respondents offering additional comments included all those answering 'Yes' at the tick-box question; none of those answering 'No' offered comments. Including a table would not add value to the understanding of respondents' views.

## General comments

8.7 Those responding to the question at a general level provided the following comments:

- The Code should focus on operational stop and search practices, rather than wider issues of community wellbeing.
- The Code should take account of the newly introduced Community Justice (Scotland) Act 2016.
- Confidence in the police stemmed from wider ongoing community engagement and local relationships, not on adherence to specific policies.
- Stop and search practice has to be fair to all members of the community, not just those who are searched; it should allow the police to carry out their work in a way that a member of the public would judge reasonable in the circumstances.

8.8 A few respondents also took the opportunity to comment positively on the Code, and the extent to which it reflected its underpinning principles.

## Human rights and equalities

8.9 The importance of ensuring that stop and search practice respected human rights and the needs of different equalities groups was affirmed by respondents. Although there were some detailed comments and suggestions with the overall aim of enhancing, protecting or promoting the rights of communities and individuals (see also Chapter 9), others were positive about the human rights based approach taken in developing the Code.

8.10 Respondents suggested, however, that:

- The Code might make more detailed reference to appropriate legislation, Equality Act 2010, Children (Scotland) Act 1995) and related anti-discrimination legislation: the Disability Discrimination Act 1995; the Sex Discrimination Act 1975; and the Race Relations Act 1976.
- The Code should reflect the fact that stop and search is essentially ‘an intrusive police power that interferes with the free movement and ‘self-esteem’ of the citizen’.
- The requirements in the Code relating to the removal of ‘disguises’ should be reviewed to take account of items such as wigs that are legitimately used either by individuals as an expression of their gender identity, or by individuals who have suffered hair loss as a result of a medical condition. Individuals in these circumstances should be treated sensitively and allowed to remove items in a private place.
- The requirements in the Code relating to the removal of headgear / outerwear should be reviewed to take account of items worn as an expression of religious beliefs, such as headscarves.

## Rights of those subject to stop and search

8.11 There was a clear view among respondents that the Code should include more guidance on providing those stopped with information about their rights, including the right to complain. Respondents made the following points:

- Those subject to stop and search should be informed of their rights, and should be given information about why they had been stopped and searched – this was seen as particularly important for reassuring those who may think they have been stopped because of their ethnicity.
- Any information should be provided in plain English / an appropriate language.
- The police should be required to ensure that people understand the proceedings and their rights, and the guidance provided should take account of those who do not speak fluent English, and those who may become anxious in a stop and search situation.
- Rather than being entitled to a copy of the search report, individuals should be given a copy automatically following a search, or as soon as possible thereafter.
- There should be a complaints procedure and the information given to those subject to stop and search should include how to report bad practice and make a complaint.

8.12 Ensuring that individuals were properly informed of their rights, understood proceedings and knew how to make a complaint were key issues for young people in particular.

## Availability and accessibility of the Code

8.13 Respondents stressed the importance of the Code being widely available and easily accessible to the wider community (in police stations, online, etc.). They thought the Code should be written in accessible language, with consideration given to producing easy-read and summary versions, and versions in other community languages.

## Monitoring of stop and search

8.14 Respondents stated (or restated) the importance of data collection, analysis and publication in monitoring the use of stop and search, and emphasised the importance of being able to disaggregate data by protected characteristics to ensure that particular groups are not being targeted disproportionately.

## Other comments

8.15 There was a small number of additional points made by one or two respondents only. These included the following:

- Stop and search should only be used when there is serious and immediate risk to individuals or communities.

- The police (frontline officers and those in supervisory roles) should be fully trained in the use of stop and search, and should have easy access to local support and advice.
- Additional guidance or clarification was needed on carrying out specific types of searches, including those which do not have to meet the usual tests regarding 'reasonable grounds for suspicion' (e.g. section 60 searches, searches under the Terrorism Act, searches carried out under warrant, vehicle searches).

## 9 Suggested changes to the draft Code of Practice (Q7 and Q8)

9.1 The final two questions in the consultation sought views from respondents about whether anything was missing from the Code (Question 7), and whether anything should be deleted or changed (Question 8). The comments made in response to both these questions are considered together in this chapter.<sup>17</sup>

**Question 7:** Is there anything missing from the draft Code of Practice that should be added?

**Question 8:** Is there anything in the draft Code of Practice that should be deleted and / or changed?

9.2 Thirteen respondents made comments at Question 7 and nineteen made comments at Question 8. A small number of respondents (including those representing Police Scotland and the Scottish Police Federation) made multiple and detailed comments about the practical use of the Code in particular situations. Such comments often requested clarification, highlighted perceived difficulties, or suggested changes to the specific wording of certain paragraphs. Other respondents made a smaller number of comments on one or two aspects of the Code or they made more general comments. The suggestions made by respondents were almost all unique – i.e. there was not a great deal of overlap in the comments made. Any ‘common themes’ that existed were generally based on comments made by no more than two or three respondents.

9.3 The first part of this chapter gives a summary of respondents’ suggested changes to each of the sections of the draft Code. This is intended to illustrate the types of comments received, but does not by any means cover all the comments made. Most respondents discussed specific issues in relation to sections 4 to 7 of the Code. More general comments are discussed at the end of this chapter. A complete list of all comments made in response to Questions 7 and 8, collated by Code section, has been provided separately to the Scottish Government.<sup>18</sup>

### The nature of stop and search; why it is used (paras 1.1 – 1.7)

9.4 Section 1 provided an introduction and set out the purpose of and context for the Code. Few respondents made comments on this section. Those who did mostly focused on paragraph 1.3: ‘The Code of Practice must be available online and at all police stations for consultation by constables, police staff, detained persons and members of the public’.

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<sup>17</sup> Tables presenting the analysis of the tick-box questions at Question 7 and 8 are not included in the chapter. The number of ‘Yes’ responses to these questions simply reflects the number of respondents who provided a comment, and including the tables would not add value to the understanding of respondents’ views.

<sup>18</sup> A document containing all comments on detailed aspects of the Code of Practice is available on the Scottish Government online consultation hub: <https://consult.scotland.gov.uk/organised-crime-and-police-powers-unit/stop-and-search>. This is largely based on comments made in response to Questions 7 and 8, but also includes a small number points made in response to Questions 1 to 6.

9.5 There were concerns about the proposed requirement for the Code to be made available in paper format to all the groups listed. First, it was suggested that the creation of physical copies would have significant and prohibitive cost implications which should not be borne by Police Scotland. Second, it was also noted that the supply of paper to individuals in police custody ('detained persons') could result in significant damage to property (for example, if the paper is used to obstruct a toilet in a cell), and can be used for the purposes of self-harm. It was also pointed out that if a copy of the Code were made available to a detainee **outside** of a police cell, an officer would have to be present while the person reads the document. It was thought this could result in excessive time away from normal duties by police officers.

9.6 It was suggested, instead, that detainees should obtain information about the Code from their own solicitors, and that those who are released from police custody could obtain a copy at the public counter upon release, or online.

9.7 There may also be a need to clarify that the use of the phrase 'for consultation by' in paragraph 1.3 simply means that the groups listed should be able to read and refer to the Code, rather than that the police are expected to consult with the specified groups in an ongoing way about its contents – which would require significant additional resources.

## Principles governing stop and search (paras 2.1 – 2.2)

9.8 Section 2 of the draft Code set out the principles governing the use of stop and search – that it should be 'lawful', 'proportionate', 'justifiable' and 'accountable'. It also stated that stop and search should be carried out in accordance with the following principles in the Constable's Declaration: 'fairness', 'integrity', 'respect' and 'human rights'.

9.9 Few respondents made comments on this section and, in general, those who did made very specific suggestions. These were intended either to simplify the Code or to make it clearer. For example:

- Justifiable – It was suggested that this should be amended to say 'backed by intelligence and / or reliable information' to make this section consistent with the wording at paragraph 4.9.
- Accountable – There was a view that the word 'verifiable' should be removed, or clarity provided regarding the expectations this could place on Police Scotland. It was unclear how a stop and search should be verified, at what point this should be done, and by whom.
- Integrity – Clarity was requested in relation to the meaning of 'it will reflect the principles of good conduct and personal responsibility'.
- Fairness / Integrity / Human Rights – It was thought that the descriptions given to these three terms could all be incorporated under the heading of 'Lawful' and therefore it was unnecessary to list them separately.
- Respect – It was thought that the description given to this term was encompassed under 'Accountable'. However, it was also noted that there may be many situations in which a person is not able to understand the reasons given by

the police for being stopped and searched – for example, due to impairment by drink, drugs, mental illness or distress.

- Human Rights – There was a view that the final sentence defined the utility of stop and search in terms of identifying and removing an item from a person’s possession. This implies that searching for items is the only basis for stop and search and presumes that the person stopped is in possession of such an item. It was suggested that this statement should be deleted or expanded to refer to the other objective of stop and search – to confirm or allay suspicions of criminal wrongdoing.
- At paragraph 2.2, it was thought that clarity was needed about **who** may challenge evidence obtained from a search, for example: ‘*During court proceedings, evidence obtained from a search...*’

## Applicability of the Code (paras 3.1 – 3.6)

9.10 This section set out the circumstances in which the Code would be applicable and those in which it would **not** apply. It also provided a definition of ‘statutory stop and search’.

9.11 Comments on this section were very specific and covered a range of issues. For example:

- At paragraph 3.2, respondents suggested adding that the Code also does **not** apply to:
  - Searches under Schedule 7 of the Terrorism Act 2000, or to 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. **However**, there was also an alternative view that the Code should include a section on stop and search powers under the Terrorism Act 2000.
  - Searches of premises *that do not also involve a search of a person*. This additional wording was thought to be needed to clarify circumstances in which officers might search a house under warrant. The point was made that if the search involved the house alone, and did not involve a search of a person within the house, then the Code would not apply. However, if persons within the house were searched (including under the power of warrant), then the Code would apply and the search would be recordable as a statutory stop and search.
- At paragraph 3.5 of the Code (unnumbered in the current draft), it was suggested that if non-statutory stop and search is no longer permitted, there is no need to define a ‘statutory stop and search’.
- At paragraph 3.6, it was noted that this paragraph and section 65 of the Criminal Justice (Scotland) Act 2016 provide no option for a person to be searched (for example, to remove a rope, tablets or knife) if that person is intent on suicide or self-harm as there is no statutory power of search applicable in such circumstances.

## **Basis for carrying out stop and search (paras 4.1 – 4.28)**

9.12 Section 4 of the Code provided information about the basis for, and circumstances in which, a stop and search may be carried out. It stated that ‘reasonable grounds for suspicion’ is the legal test which a police officer must satisfy before they can stop and search a person under statutory provisions, and it set out how ‘reasonable grounds for suspicion’ may be determined.

9.13 This section of the Code discussed practical issues. In general, comments sought clarification, or they pointed out the practical difficulties of certain statements. Many of the comments on this section focused on the material in paragraphs 4.6, 4.9 to 4.10 and 4.13 to 4.15 as discussed below.

### **Reasonable grounds for suspicion based on personal factors (para. 4.6)**

9.14 Paragraph 4.6, in particular, which states that ‘personal factors can never support reasonable grounds for suspicion’, received considerable comment from respondents, and these comments generally fell into two categories:

- Those that sought to clarify and / or strengthen the statements made at 4.6; and
- Those that highlighted the practical difficulties of entirely disregarding personal factors in forming grounds for suspicion.

9.15 The first group suggested that:

- The Code might benefit from including a section on ‘profiling’ which clarifies its distinction from ‘suspicion based on information / intelligence’ and ‘suspicion based on reasonable factors’. In particular, a clear explanation of the difference between intelligence-led policing and racial profiling was seen to be necessary.
- The use of the wording ‘for example’ in item (a) implies that there may be other aspects of a person’s personal appearance, beyond the protected characteristics, which police may **not** take account of in forming reasonable grounds for suspicion. It was suggested that ‘for example’ should be removed from this item, as there may be situations in which a person’s physical appearance is an important factor in forming grounds for suspicion (e.g. the person is seen with symptoms of substance misuse; the person has torn or dishevelled clothing; the person is agitated and looking for an escape route).
- A statement should be included that a person’s clothing cannot be used alone or in combination with the protected characteristics to provide reasonable grounds for suspicion unless paragraph 4.9 (regarding distinctive style of dress by gangs) applies.
- It should be clarified that ‘the fact that a person is known to have a previous conviction’ is not a protected characteristic under the Equality Act 2010. This statement should be removed from item (a) and inserted separately at the end of paragraph 4.6 as item (c).

9.16 The second group pointed out the following practical difficulties with the statements made in paragraph 4.6:

- The Code appears to expect that no account be taken of statistical information which indicates that, for example, young males are more likely than older females to be perpetrators of crime.
- Legislation relating to age-restricted items such as fireworks or crossbows might provide a basis to search a person because of their apparent age if an officer has reasonable grounds to suspect they may be in possession of one of these items.
- Any protected characteristic could be used by a witness to describe a suspect. This information may therefore be used to form part of the reasonable grounds for carrying out a search. Furthermore, it is possible in smaller, more remote or less populous communities that a suspect could be identified on the basis of those characteristics alone.
- Offences under section 58 of the Civic Government (Scotland) Act may be predicated on the knowledge that an individual has previous convictions. It was suggested, therefore, that the Code should not require the police to disregard a person's **recent or unspent** previous convictions.
- Moreover, the requirement to give no consideration to a person's previous convictions appears to contradict paragraph 4.9 which states that 'where there is reliable information or intelligence that members of a group or gang habitually carry knives unlawfully or other weapons or controlled drugs...' It was noted that this type of reliable information or intelligence may be derived from the knowledge of a person's previous convictions.

### **Reasonable ground for suspicion and searching groups (paras 4.9 – 4.10)**

9.17 Regarding paragraphs 4.9 and 4.10, respondents requested greater clarity in relation to what constitutes reasonable grounds for suspicion in searching groups.

Different respondents asked for clarification of:

- The definition of a 'gang' and the characteristics that may define or identify a gang
- The term 'members of' (in 4.9) – it was thought that paragraph 4.9 had been included in the Code to allow officers to consider known links or affiliations to a particular group or gang in establishing reasonable grounds to search; however, this requires further clarification so that officers can avoid the discriminatory behaviours set out in paragraph 4.6
- What is meant by 'particular protest groups' (in 4.10) – it was suggested that removal of the word 'particular' would avoid confusion
- Use of word 'damage' (in 4.10(a)) – it was noted that there is no power of search in Scotland for items that can cause damage.

9.18 There were requests that this section of the Code give examples to assist with clarification, and that explicit guidance should be given on not interfering with the rights to assembly and free speech.

### **Questioning to decide whether to carry out a search (paras 4.13 – 4.15)**

9.19 Regarding paragraphs 4.13 to 4.15, there was a view that the Code should explicitly refer to the earlier stage of 'questioning to decide whether to carry out a search' as 'Stop

and Account'. The point was made that not every stop would necessarily result in a search and that it would be useful (both for members of the public and for the police) to be able to distinguish between when a stop results in a search and when it does not. However, others had contrasting views on this section of the Code. Different respondents commented that:

- Paragraphs 4.13 and 4.14 may contradict existing legal direction (*Cadder vs HM Advocate*), which stipulates that a police officer should not question a suspect prior to the suspect being told of their right to consult a solicitor.
- The statutory powers to which this Code pertains are the 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.
- It was suggested that paragraph 4.15 should include the requirement for a suspect to be 'cautioned at common law'. (This comment would also relate to paragraph 5.9 which discusses steps to be taken prior to a search.)

#### **Other comments on Section 4**

9.20 Other comments on section 4 were wide-ranging and highly individual. Some of these other comments included:

- Requests for further clarification on several points, including the definition of 'reasonable grounds for suspicion' in paragraph 4.2, and the use of the word 'likely' in paragraph 4.2(i).
- A request for examples as to what constitutes reasonable grounds for suspicion based on behaviour, time and location (paragraph 4.11).
- A query about the level of detail provided on section 60 of the Criminal Justice Public Order Act (paragraphs 4.16 – 4.24), which was thought to be disproportionate with regard to its current use in Scotland. One respondent made the point that the Code was simply restating existing legislative provisions and it was unclear why this information was being included. However, another suggested that the detail given in this part of the Code appeared to be adding additional considerations to the powers provided by section 60, which are not currently specified within the legislation.
- That paragraphs 4.25 to 4.28 should be considered as a separate section which could be titled: 'Powers to search in the exercise of a power to search premises'.

#### **Conduct of searches (paras 5.1 – 5.11)**

9.21 Section 5 of the Code provided detailed information about the way in which searches should be conducted. Some of the comments made about this section were repeated by more than one respondent. These were that:

- The use of the term 'forcible search' in paragraph 5.3 was unclear and possibly inconsistent with current law. The point was made that 'reasonable force' is established in law and understood by police officers, but may not be understood

by members of the public. Where force has been used, the question of whether this was reasonable or not would depend on the circumstances.

- Searching or touching of hair or feeling inside clothing should not be carried out in public.
- The use of body camera recording by officers during searches should be considered.

9.22 The remaining comments were all unique and included suggestions about specific wording and punctuation. Some respondents also suggested the removal of different words, phrases, or paragraphs which were either seen to be unnecessary or likely to cause confusion. In addition, clarification was requested in relation to:

- The phrase ‘superficial examination’ (paragraph 5.6) – further information was requested about what a public search of a person’s clothing may involve
- What further information (see paragraph 5.9(e)) would need to be explained to a person before they are searched
- The role of an accompanying person in relation to interpretation or translation during stop and search (paragraph 5.11) which, it was suggested, should be consistent with ‘The Right to Interpretation and Translation in Criminal Proceedings (Scotland) Regulations 2014’
- How officers should respond to individuals (including children or vulnerable adults) who are in the company of a person who is about to be stopped and searched, but who are not otherwise involved in the process.

9.23 Concern was also voiced about:

- The possible limitations placed on operational policing by paragraph 5.4: It was suggested that this paragraph should make it clear that the extent of a search must be appropriate to the item being searched for, and that, in some cases, if a prohibited item is discovered, this may provide grounds for a continued search.
- The requirement (in paragraph 5.9(d)) to disclose known intelligence to a person being searched: This could compromise the intelligence process and put the source of the intelligence in jeopardy.
- The requirement that officers give a person being searched details of their station / office to which they are attached: This was seen to potentially compromise security, and it was suggested that the warrant number, or equivalent, would be sufficient for a police officer to be identified in any follow-up communication.
- The practical difficulties of giving people information about police powers to stop and search (paragraph 5.10) when attempting to search large numbers of people – for example, fans entering a football match or during a major public order incident where the availability of officers may be limited.

9.24 There was a suggestion that this section should stipulate that searches be carried out by two officers, and that further information should be included about searches involving (i) intimidated and (ii) hostile individuals.

## Recording requirements (paras 6.1 – 6.12)

9.25 Section 6 of the Code set out the requirements to record information following a search. Multiple comments were made in relation to paragraphs 6.6 to 6.12 which specified the requirements for the record of a search, and these will be discussed first before discussing the remaining comments on section 6.

### Record of search (paras 6.6 – 6.12)

9.26 Four specific points received multiple comments from respondents:

- Several respondents commented that there should be no requirement to record 'national origin', as well as ethnicity (or perceived ethnicity, if the person searched declines to state their ethnicity). The term 'national origin' was thought to be unclear and likely to cause confusion among officers and individuals being searched. Potentially, having to ask a person about their 'national origin' could also cause offence, and it was noted that the requirement to ask a person two or three questions about their cultural background could prove to be counterproductive. (This comment also applies to paragraph 7.4(b) and Note 13.)
- Concerns were voiced about the IT implications of the data recording requirements for arrestees (paragraph 6.5). It was thought that significant additional custody processing time would be required to record the information specified in the Code. Moreover, this requirement would result in duplication as the custody officer would have to type the full record into the prisoner processing system, and the searching officer would have to enter it into the national stop and search database. It was also pointed out that there were currently different data retention protocols for the prisoner processing database and the national stop and search database. (This point would also have implications for Note 11.)
- One respondent commented that the record of the search should include the station of the constable (which would have been given to the person in any event at the time of the search, cf. paragraph 5.9(b)). However, as noted above, others argued that this information should not be recorded for security reasons, and that the warrant number (or equivalent) (as stated in paragraph 6.8) would be adequate to be able to identify the officer conducting the search.
- There were questions about the requirement to ask an individual for their name, date of birth or address if a search was carried out and nothing was found. One respondent suggested that the officer should inform the person they do not need to provide this information, while another thought that this information should only be required if the person is arrested. For the purposes of monitoring the use of stop and search, it was suggested that only age, gender and ethnicity were needed.

### Other comments on section 6

9.27 Different respondents made a variety of suggestions about the wording of certain paragraphs for the purposes of clarification. Some examples are as follows:

- At paragraph 6.1, it was suggested that the current wording implied that a record of the search only had to be made if a person was not arrested. It was suggested

that this section should clarify that a record must be made of the search whether or not the person is arrested.

- At paragraph 6.4, change ‘an incident of higher priority’ to ‘an urgent incident’.
- At paragraph 6.9, change ‘a separate record is required for each person searched’ to ‘a separate record for each person must be available should a copy be required’.

9.28 Other suggestions included:

- At paragraph 6.3, a timeframe should be stated (the example given was three months), after which a person may no longer request a copy of the record of the search.
- At paragraph 6.5, a copy of a record of the search should be offered to arrestees and, if requested, should be placed within their property bag and recorded in the property field on the prisoner processing system.

9.29 Respondents also pointed out the practical difficulties with certain statements in section 6. For example:

- Paragraph 6.3: Plain clothes officers may need to undertake searches at any time (on production of a warrant card), but would not ordinarily carry receipt books.
- Paragraph 6.5: The searching and / or arresting officer does not always convey the accused into custody; and the accused may have been released before the arresting officer returns to the station.

## **Monitoring and supervising stop and search (paras 7.1 – 7.6)**

9.30 Section 7 of the draft Code set out the arrangements for monitoring and supervising stop and search powers. Respondents’ comments on this section tended to be more general than comments on the previous sections.

9.31 Policing respondents acknowledged the importance of stop and search powers being subject to supervision, monitoring and scrutiny. However, they also identified a number of practical difficulties and resource implications:

- The expectations placed upon supervisors were considered to be onerous. The Code appeared to require that supervisors examine and review **all** records submitted by individual officers. This was seen to be operationally impracticable, and it was suggested instead that local supervisors should use their experience and discretion to audit individual officers’ use of stop and search.
- There was a question about what a supervision intervention would entail – i.e. what ‘appropriate action’ (discussed in paragraph 7.1) would involve. At the same time, there was also a comment that the behaviours that had discredited stop and search in the first place had been ‘supervisor driven’.
- The requirements for recording and publishing as set out in the draft Code, and the ability to identify trends and patterns would be impossible without substantial IT investment.

- It was noted that the Code of Ethics for Policing could not be the basis for considering misconduct proceedings against any police officer.

9.32 Other respondents discussed the need for published data on stop and search to enable effective accountability. There were, in some cases, calls for additional information (or more detailed information) to be published. For example, different respondents suggested that stop and search statistics should:

- Be able to be disaggregated by statutory power used (with less frequently used powers grouped together), personal characteristics, reason for the search and location of the search
- Include details of the outcome in relation to the objective of the power (which would allow an assessment of whether the safeguard of ‘reasonable grounds for suspicion’ is being adhered to and whether the power is being used appropriately)
- Be published quarterly, and reported both nationally and by policing division and made available to local scrutiny committees and the local authority
- Include the number of authorisations issued under section 60 of the Criminal Justice and Public Order Act 1994
- Include information about individuals who were detained with the intention of a search, but who were not searched following questioning (c.f. paragraph 6.11) as this would show whether certain groups are being stopped without sufficient justification to warrant a search.

## Comments on Notes and Annexes

9.33 The draft Code included a section of notes for guidance and four annexes:

- Annex A: List of main statutory powers of stop and search of the person
- Annex B: Example of information to be given to persons subject to stop and search
- Annex C: Establishing gender of persons for the purpose of searching
- Annex D: Conduct of intimate and strip searches.

## Comments on Notes

9.34 Comments on the notes were detailed and specific and sought clarification of certain statements, and were mainly offered by policing respondents. Comments included the following:

- Note 3A: The reporting of searches involving children should be linked to the Children and Young People (Scotland) Act 2014, rather than the Children’s Hearing (Scotland) Act 2011, and concerns about the wellbeing of a child should be shared with the child’s Named Person in the first instance.
- Note 4: This note should reiterate that the person being stopped must be informed that they are not required to respond to any questions.

- Note 9: Regarding requests to remove outer coat, jacket or gloves in public, wording should be consistent with paragraph 5.7.
- Note 10: Clarification was required on which officers would be considered to be 'engaged in the search'. In general, one officer would carry out the physical search of a person, while one or more other officers would be present and observe. It would be impractical to record the identities of **all** the officers involved in these circumstances.

## **Comments on Annexes**

9.35 No comments were made in relation to Annex A. However, there were several common themes in the comments made in relation to Annexes B to D as follows.

### *Annex B*

9.36 Respondents thought that the information set out in Annex B did not sufficiently detail the rights of persons who are stopped. Some respondents made very specific suggestions about how Annex B should be amended. Some included detailed revisions of the annex in their comments.

9.37 There were suggestions that Annex B should include information about: (i) the requirement and meaning of 'reasonable grounds'; (ii) how the stop and search should be conducted; (iii) the right of a person to request a record of the search and details of how to obtain this; (iv) how people can complain, including details of the complaints procedures or potential outcomes; and (v) why monitoring data is requested and collected.

### *Annex C*

9.38 There was a comment that stop and search guidance in relation to the searching of transgender persons should, where appropriate, be consistent with procedures outlined in the Scottish Prison Service's Gender Identity and Gender Reassignment Policy for people in custody. These procedures were considered to represent best practice in treating transgender people with dignity and respect.

9.39 It was also noted (in relation to paragraphs 11 and 12) that the reference to recording should be removed in line with section 22 of the Gender Recognition Act 2004, which states that this information is protected and should not form part of a search record which could be open to scrutiny.

### *Annex D*

9.40 There were several comments about the references made in Annex D to the role of an Appropriate Adult. First, it was noted that there is currently no Appropriate Adult Service available for children; rather the Appropriate Adult Service is for adults at risk or vulnerable adults. There was a suggestion that Annex D should refer to the role of 'Appropriate Adult' for vulnerable adults and a 'Responsible Person' for children under the age of 18.

9.41 Second, respondents commented that the Appropriate Adult is not necessarily someone who is known to the vulnerable adult, but may not be someone who has been called out for the purpose of aiding communication between the adult and the police. At the same time, they are not normally experts in particular kinds of assisted communication

(like a speech and language therapist). There was an agreed view that the Appropriate Adult should **not** be present during an intimate search or examination unless the vulnerable adult specifically requests this. There was also a comment that there should be no role for Appropriate Adults during fitness for interview assessments.

9.42 Only two other respondents commented in relation to Annex D, as follows:

- There was a query about the extent to which the Code would apply to strip searches, which would ordinarily only be authorised by a custody officer for safety and welfare reasons. There was a separate view that intimate searches should not be permitted under any stop and search power (in line with PACE, Code A, paragraph 3.7).
- It was noted that police officers are not medically trained and cannot diagnose mental disorder or mentally vulnerable persons. It was suggested that the Code should reflect this.

## General comments

9.43 As well as their comments on specific sections of the Code of Practice, some respondents also made more general comments.

9.44 One view expressed by several respondents was that the absence of a power to search persons with consent (consensual stop and search) would become a significant barrier to policing, and that statutory stop and search would introduce the use of coercive police powers into situations where a less intrusive action was currently available. Concern was voiced that the Code would appear to prevent a member of the public from fully cooperating with the police in any manner they deem appropriate, which might include consenting voluntarily to a search.

9.45 Other general comments were wide-ranging and made a variety of points. For example:

- It was suggested that searches of animals and related legislation should also be included in the Code.
- There was a call for the general public to be informed about the Code and its contents, and another call for the Code to be reviewed on an ongoing basis. In relation to this, it was suggested that a two-page summary in plain English would be particularly helpful for members of the public.
- There was a view that there should be a flexible approach to stop and search which allowed adaptation to local circumstances (e.g. rural vs urban) without undermining national consistency.

# Annex 1: Organisational respondents

- British Transport Police
- Centre for Youth and Criminal Justice
- Children & Young People's Commissioner Scotland
- Coalition for Racial Equality and Rights
- COSLA
- Cults Bielside and Milltimber Community Council, Aberdeen
- Equality & Human Rights Commission
- Highland Council
- Mental Welfare Commission for Scotland
- Police Scotland
- Scottish Appropriate Adult Network
- Scottish Children's Reporter Administration
- Scottish Police Authority\*
- Scottish Police Federation
- Stonewall Scotland

## ***Submissions giving the view of groups of children / young people***

This consultation received two submissions giving the views of a group of children / young people. These came from:

- Good Shepherd Centre
- Scottish Youth Parliament

\*Respondent submitting response consisting solely of published evidence (i.e. the respondent did not also answer the individual consultation questions).

## Annex 2: Response rates for individual consultation questions

Consultation question		number	% of all responses (38)
Q1	Should the Code of Practice state what the primary purpose of stop and search is? (Yes / No)	30	79%
Q1a	If yes, please specify what the primary purpose should be.	22	58%
Q2	Should there be a separate section of the Code of Practice to deal specifically with searches of children and young people? (Yes / No)	30	79%
Q2a	If you answered YES to Q2 – do you have any suggestions as to what should be included in a section on children and young people?	21	55%
Q3	Should there be a separate section of the Code of Practice to deal specifically with searches of adults at risk and vulnerable adults? (Yes / No)	29	76%
Q3a	If you answered YES to Q3 – do you have any suggestions as to what should be included in a section on adults at risk and vulnerable adults?	17	45%
Q4	Should the Code of Practice include a section about local public scrutiny of how stop and search is used? (Yes / No)	31	82%
Q4a	If you answered YES to Q4 – do you think the existing local scrutiny arrangements should be used, or do you have any other suggestions?	24	63%
Q5	Do you think it is necessary to record any information about searches carried out under section 67 of the Criminal Justice (Scotland) Act 2016? (Yes / No)	27	71%
Q5a	Which information should be recorded?	19	50%
Q6	Is there anything else that should be included within the Code that would help further promote community wellbeing and provide confidence that stop and search is being used with due consideration to Fairness, Integrity, Respect and Human Rights? If so please specify below.	19	50%
Q7	Is there anything missing from the draft Code of Practice that should be added? If so please specify below.	13	34%
Q8	Is there anything in the draft Code of Practice that should be deleted and/or changed? If so, please specify below.	19	50%

Note: Questions 6, 7 and 8 were presented as single part open questions in the offline questionnaire but as two-part questions (with an initial Yes / No tick-box question) in the online questionnaire.



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