

# **Consultation on the revised Code of Practice on the use of stop and search in Scotland**

**February 2026**

## Ministerial foreword

Scotland is a country that values fairness, justice, and respect for individual rights. These principles must remain at the heart of how we police our communities.

The power to stop and search is one of the most visible and impactful tools available to the police, but it is also a power that must be exercised with care, transparency, and the appropriate justification.

Since its introduction in 2017 through the Criminal Justice (Scotland) Act 2016, the Stop and Search of the Person in Scotland: code of practice for constables ('the Code') has provided a framework for when and how officers may stop and search individuals, helping to ensure such powers are used lawfully, proportionately, and with respect for the dignity of all people.

The legislation requires the Code to be reviewed every four years. The Scottish Government has worked closely with policing partners and other key stakeholders to undertake this review, and this consultation seeks views on a revised Code for Scotland.

I would like to take this opportunity to thank our policing partners and the many stakeholders who worked with the Scottish Government to revise the existing Code. Their insight has been vital in ensuring the revised Code remains fit for purpose and continues to support effective stop and search practice across Scotland.

This consultation is an opportunity to listen, reflect and to strengthen public trust. We want to ensure that the updated Code incorporates recent legislative and operational developments, and - equally importantly - strengthens safeguards for vulnerable people in our society.

I encourage everyone with an interest in justice, equality and community safety to take part. Your views will help ensure that the Code remains robust, fair, and fit for the future - supporting effective policing while upholding the rights and freedoms that define our society.



Angela Constance MSP  
Cabinet Secretary for Justice and Home Affairs



## **1. Purpose of this consultation**

This consultation seeks views on the draft revised Code of Practice for Stop and Search. The draft Code is included as Annex A of this paper.

## **2. Introduction**

Respect for human rights lies at the heart of our democratic society. Everyone has the right to go about their daily lives without undue interference from the State. When the State is required to intervene — particularly through policing — the State must exercise its powers lawfully, fairly, and with respect for people’s freedoms and dignity.

In Scotland, the Police and Fire Reform (Scotland) Act 2012 sets out clear statutory policing principles and establishes that the core purpose of policing is to improve the safety and wellbeing of individuals and communities. Policing must also be grounded in human rights and delivered in collaboration with partners and the public. The legislation requires this to be achieved in a way which prevents and reduces harm, maintains order and protects individuals’ rights and freedoms. These duties apply to the exercise of all policing powers.

The Stop and Search of the Person in Scotland: code of practice for constables (the ‘Code’), introduced through the Criminal Justice (Scotland) Act 2016, provides the framework for how constables’ powers should be exercised in respect of stop and search encounters. It ensures that searches are:

- Lawful – conducted within statutory powers and human rights obligations
- Proportionate – balancing public safety with individual freedoms
- Accountable – supported by robust recording, monitoring and oversight

The revised Code reaffirms these principles. It also reflects developments in law, policing practice and society, and responds to feedback from policing partners and key stakeholders.

This consultation seeks your views on the revised draft Code, including whether it provides sufficient clarity, safeguards and balance between effective policing and protection of human rights.

## **3. Consultation areas**

### **Scope and clarity of the revised Code of Practice**

The revised Code aims to provide a clear, consistent, and legally robust framework for the use of stop and search powers by constables in Scotland. It sets out:

- The legal basis for stopping and searching individuals who are not in police custody
- The scope and principles governing the conduct of searching individuals with an enhanced focus on human rights considerations
- Steps to be taken before, during and after a search

- Updated guidance for engaging with children and vulnerable individuals
- Enhanced requirements for recording, monitoring and oversight

This consultation seeks views on whether the revised Code:

- Clearly defines when and how powers to stop and search may be used
- Adequately outlines safeguards for equality, privacy and human rights, in line with the Human Rights Act 1998 and the Equality Act 2010
- Is accessible and understandable to officers and the public
- Ensures adequate protections for children and young people and vulnerable people
- Provides sufficient data recording and oversight requirements to allow proper scrutiny of powers to stop and search in Scotland.

### Consultation questions

1. Does the revised Code clearly set out the circumstances in which a search of a person may be carried out when the person is not in police custody?

Yes  No  Don't know

2. Does the revised Code clearly set out the procedures to be followed in carrying out a search of a person who is not in police custody?

Yes  No  Don't know

3. Please suggest any areas that could be made clearer or more detailed, or any other improvements that would support better understanding.

### Equality and human rights

The revised Code ensures compliance with the appropriate legal landscape, including the Human Rights Act 1998 and the Equality Act 2010.

It emphasises:

- The importance of upholding an individuals' rights while understanding officers must balance this with the safety of themselves and the public
- The prohibition of unlawful discrimination, harassment or victimisation based on protected characteristics
- The due regard required in the exercise of police functions, as part of The Public Sector Equality Duty
- The importance of ensuring decisions to search are not unduly influenced by a person or groups physical appearance or protected characteristics
- Respect for cultural and religious practices during searches

### Consultation questions

4. Does the revised Code provide clear guidance to ensure everyone is treated fairly and respectfully during a search?

Yes  No  Don't know

5. Please provide any suggestions where the Code could be strengthened or provide stronger protection for individual or group rights?

### **Strip and intimate searches**

The revised Code aims to more clearly define the terms 'strip' and 'intimate' search, and outline the protocols and data recording requirements associated with each.

6. Does the revised Code provide clear guidance on how strip searches and intimate searches should be conducted?

Yes  No  Don't know

7. Please provide any suggestions for how the guidance on strip or intimate searches could be improved/strengthened.

### **Establishing sex for strip and intimate searches**

The revised Code provides guidance on how constables should establish the sex of a person for the purpose of conducting a strip and intimate search. It reflects the recent legal clarification of sex under the Equality Act 2010 and acknowledges the wider human rights landscape and the need to uphold the dignity and privacy for everyone.

This section of the Code seeks to balance:

- The requirement for searches to be carried out lawfully and in accordance with equality law
- The need to treat everyone with dignity and respect
- The operational realities faced by officers when conducting searches

### **Consultation questions**

8. Does the revised Code provide clear guidance on establishing the sex of a person for the purposes of a search?

Yes  No  Don't know

9. Please provide further comments if you think the Code could be strengthened to support consistent and respectful practice.

## Children and young people

The revised Code re-states and strengthens protections for children and young people (under 18), ensuring a trauma-informed, age-appropriate approach. It includes:

- A requirement that the wellbeing of the child or young person is a primary consideration
- Clearer expectations around communication
- Enhanced guidance on recognising additional support needs and vulnerabilities

## Consultation questions

10. Does the revised Code clearly explain how children and young people should be treated when being stopped and searched by police?

Yes  No  Don't know

11. Please provide further comments if you think the Code could be strengthened to ensure children and young people are safeguarded and treated fairly and respectfully.

## Vulnerable individuals

The revised Code provides strengthened guidance on identifying and supporting vulnerable people, including those with mental health conditions and disabilities.

It emphasises:

- Active assessment of vulnerability
- Adaptation of communication and approach
- Carefully balancing operational necessity alongside risk and harm to the individual

## Consultation questions

12. Does the revised Code provide sufficient guidance on how police should identify and interact with people who may be vulnerable or need extra support?

Yes  No  Don't know

13. Please provide further comments if you think the revised Code could include additional measures or safeguards to ensure vulnerable people are adequately protected during a search.

## Data collection, recording and oversight

The revised Code seeks to strengthen requirements around recording and monitoring of searches to improve consistency, transparency and accountability.

This section of the code seeks to ensure:

- All searches are properly recorded, including the use of Body Worn Video (BWV) wherever practicable, to ensure transparency and accountability
- Comprehensive recording standards, requiring clear documentation of officer details, grounds for the search, statutory powers used, outcomes and demographic information to support equality monitoring
- Supervisors and senior officers actively monitor the exercise of powers to stop and search, reviewing records, BWV footage and data to ensure powers are used lawfully and proportionately

### **Consultation questions**

14. Does the revised Code clearly set out what information and records are to be kept in relation to a search of a person who is not in police custody?

Yes  No  Don't know

15. Does the revised Code clearly set out the right of someone to receive a copy of the information and record kept in relation to a search of a person who is not in police custody?

Yes  No  Don't know

16. Please provide further comments if there are improvements you would like to see in how stop and search data is collected, monitored or reported.

### **Public confidence and community engagement**

Public confidence is essential to the established principle of policing by consent. The revised Code aims to promote trust through clear communication, transparency, and respect during all stop and search encounters.

### **Consultation questions**

17. Does the revised Code support respectful and transparent communication between police and the public during a search of a person?

Yes  No  Don't know

18. Please provide further comments if there are additional steps the revised Code could take to strengthen trust and understanding, particularly with communities that may have concerns about stop and search.

### **Additional information**

19. Is there anything in the revised Code that should be added, changed or removed?

Yes    No    Don't know

20. Please provide any further comments about the Code.

**Code of Practice on the Exercise by Constables of Powers of Stop and Search of the Person in Scotland – revised version – February 2026**

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## **1. Chapter 1 - Purpose and scope**

### **Purpose**

1.1 The Code of Practice (referred to as the Code) provides guidance on constables carrying out a search of a person who is not in police custody in Scotland. The purpose of the Code is to:

- set out the principles and procedures under which stop and search is undertaken
- provide assurance to the public and constables on the appropriate use of stop and search
- ensure consistency in the application of stop and search
- explain why, when and how, stop and search is used
- detail how the use of stop and search is to be recorded, monitored and scrutinised

### **Scope**

1.2 This Code governs all situations in which constables use their statutory powers to stop and search a person without first making an arrest. The main stop and search powers to which the Code applies are set out in Annex A.

1.3 This Code applies to all constables carrying out their duties in Scotland.

1.4 As set out in the Police and Fire Reform (Scotland) Act 2012 the policing principles in Scotland are:

- that the main purpose of policing is to improve the safety and wellbeing of persons, localities and communities
- that the police should be accessible to, and engaged with communities, and promote measures to prevent crime, harm and disorder

1.5 These principles inform all police work and, by extension, this Code.

1.6 This Code does not change any laws or legal procedures about how stop and search powers must be used. It also does not change existing legal rules, such as what counts as reasonable suspicion or how evidence can be used in court.

### **Legislative requirements**

1.7 Under the Criminal Justice (Scotland) Act 2016, it is a requirement for Scottish Ministers to publish and then regularly review a stop and search code of practice.

## **2. Chapter 2 - Principles governing stop and search**

### **Principles governing stop and search**

2.1 Stop and search is an operational tactic constables use when investigating, detecting and preventing crime with the aim to keep people safe and ensure the wellbeing of individuals and communities.

2.2 Stop and search situations can be dynamic and fast-moving and constables must make quick decisions based on the risks to them, the public and the person being searched. Recognising that stopping and searching members of the public is a significant intrusion into their personal liberty and privacy, all actions carried out by constables must balance a person's rights with public safety. All stop and search activity must be:

- Legally compliant - that means in accordance with any legal duties imposed on constables, in particular under the Human Rights Act 1998 and the Equality Act 2010, as well as any requirements of the statute(s) under which the search is being conducted
- Necessary - that means that the search is required to locate a harmful item or confirm the possession of an illegal item
- Proportionate - both in the decision to carry out a stop and search and in the way in which a stop and search is conducted

2.3 A constable must not search a person, even with their consent, where no power to search is applicable. Even where a person is prepared to submit to a search voluntarily, the person must not be searched unless the necessary legal power exists, and the search must be in accordance with the relevant power and the provisions of this Code.

2.4 Any stop and search must be carried out in accordance with the Constable's declaration, and in particular, the following values:

- Fairness - a stop and search must be carried out fairly and impartially, and without unlawful discrimination
- Integrity - a stop and search will not be carried out in a manner which is abusive, discriminatory, or which amounts to harassment or intimidation; the purpose of the search must be genuinely to find a particular item in the person's possession; and it will reflect the principles of good conduct and personal responsibility
- Respect - a constable must ensure that, so far as is reasonably practicable, the person being searched understands why they are being stopped and searched and the procedure must be carried out with respect for individual needs, including religious and cultural values and beliefs
- Human rights - in carrying out a stop and search, constables must uphold and respect the fundamental human rights of all people and groups

2.5 Constables should also adopt trauma-informed principles, which ensure individuals are treated with compassion and safeguarded from further harm.

2.6 The Equality Act 2010 prohibits unlawful discrimination, harassment or victimisation based on protected characteristics. It is unlawful for a constable to base

the decision to stop and search a person on protected characteristics. Section 149 of the Equality Act 2010 sets out the Public Sector Equality Duty, which applies to police officers, to have due regard to the need to eliminate discrimination, harassment, and victimisation. This applies to all stop and search powers, including those that do not require reasonable suspicion.

2.7 Constables must act with candour, openness, professionalism and truthfulness in all stop and search encounters. Constables must also adhere to the standards of ethical and professional conduct in the police service they represent. For example, Police Scotland officers must comply with the Police Scotland Code of Ethics which sets out the standards the public should expect of those who contribute to policing in Scotland.

### **Accountability and governance**

2.8 Constables carrying out stop and search are fully accountable for their actions. When a constable carries out a search to which this Code applies, a record must be made unless there are exceptional circumstances which make this wholly impracticable.

2.9 All stop and search activity must be accurately recorded, monitored, and open to scrutiny with a publicly available report published annually.

2.10 Any misuse of stop and search powers is likely to be harmful to policing and lead to mistrust of the police by the local community and by the public in general.

### **Reasonable grounds for carrying out a stop and search**

2.11 Searches are more likely to be effective, legitimate and secure public confidence when a constable's reasonable grounds for suspicion are based on a range of objective factors.

2.12 The decision to carry out a search cannot be based on personal factors alone or protected characteristics. For example a person's physical appearance, age, race, religion or clothing are not reasonable grounds for a stop and search.

### **Accessibility**

2.13 This Code must be accessible to every constable and available to view online.

2.14 If the person to be searched does not appear to understand what is being said or what is happening, the constable must take reasonable steps to bring information regarding the situation, the person's rights and any relevant provisions of this Code to their attention.

### **Right to complain**

2.15 If the person being searched is dissatisfied with the actions of police officers or the standard of service then they can make a formal complaint. Information on how to make a complaint must be provided on the receipt issued by a constable following a search.

### **3. Chapter 3 - Applicability of this Code**

3.1 This Code governs the exercise by police constables of statutory powers to search a person. The main stop and search powers to which this code applies are set out in Annex A, but that list should not be regarded as definitive.

3.2 This Code applies to:

- (a) all stops and searches of a person who is not in police custody carried out in accordance with a statutory power
- (b) searches of a person carried out in accordance with a search warrant issued by a court in Scotland

3.3 This Code does not apply to:

- searches of persons in custody
- searches of persons under arrest
- searches of vehicles and vessels that do not also involve a search of a person
- searches of premises that do not also involve a search of a person
- searches under Schedule 7 of the Terrorism Act 2000 (which are governed by a separate code)
- searches of persons and vehicles in specified locations authorised under section 47A of the Terrorism Act 2000 (which are governed by a separate code)

3.4 Constables must not search a person, even if they are prepared to submit to a search voluntarily, where no statutory power to search is applicable, and they have no warrant to do so.

## **4. Chapter 4 - Legal basis for carrying out stop and search**

### **Reasonable grounds for suspicion**

4.1 Reasonable grounds for suspicion is the legal test that a constable must satisfy before they can stop and detain a person to carry out a search under almost all statutory provisions. The usual requirement is a reasonable suspicion that the person has committed, is committing, or is about to commit a particular crime, or is in possession of a prohibited article.

4.2 The test must be applied to the particular circumstances in each case and is in two parts. First, the constable must have formed a genuine suspicion in their own mind that they are likely to find the object for which the search power being exercised allows them to search. Second, the suspicion must be reasonable. Reasonable grounds for suspicion must be based on facts, intelligence or information which are relevant to the likelihood that the object in question will be found, so that a reasonable person would be entitled to reach the same conclusion based on the same facts, intelligence or information.

4.3 Such intelligence might include a description from a member of the public or other officers describing:

- a person who has been seen carrying such an article or a vehicle in which such an article has been seen
- crimes committed in relation to which such an article would constitute relevant evidence, for example, property stolen by theft or housebreaking; an offensive weapon or a bladed or sharply pointed article used to assault or threaten someone; or an article used to cause criminal damage to property

4.4 Personal factors alone can never support reasonable grounds for suspicion. This includes a person's physical appearance with regard to the relevant protected characteristics set out in the Equality Act 2010, (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation); a person's clothing or general appearance; generalisations or stereotypical images that certain categories of people are more likely to be involved in criminal activity; the fact that a person has any previous convictions.

4.5 However, reasonable suspicion can be supported by intelligence that might include a description of a person suspected of carrying an article for which there is a power of search. Such a description may refer to a person's physical appearance. Information relating to a person's previous convictions or pending cases may be relevant in certain circumstances, for example where prior behaviour, in combination with other information or intelligence, provides reasonable grounds of suspicion for a search.

4.6 Reasonable suspicion may also exist without specific information or intelligence and on the basis of the behaviour of a person. In such circumstances a constable must be able to explain, with reference to specific aspects of the person's behaviour or conduct which they have observed, why they formed that opinion. A constable should always be alert to the possibility of innocent explanations for apparently suspicious behaviour.

### **Questioning to decide whether to carry out a search**

4.7 Constables have many encounters with members of the public which do not involve detaining people against their will. Constables do not require any statutory power to speak to a member of the public. There is no power for constables to stop or detain a member of the public in order to find grounds for a search. If reasonable grounds for suspicion emerge during such an encounter, a constable may detain the person to search them. Reasonable grounds for suspicion cannot be provided retrospectively by such questioning during a person's detention, or by refusal to answer any questions asked.

4.8 If, as a result of questioning the person before a search, or of other circumstances which come to the attention of the constable, there ceases to be reasonable grounds for suspecting that an article of a kind for which there is a power to stop and search is being carried, no search may take place. In the absence of any other lawful power to detain the person, they are free to leave at will and must be told that.

### **Searches not requiring reasonable grounds for suspicion**

4.9 There are occasions where reasonable grounds for suspicion are not required prior to a search taking place:

- section 60, Criminal Justice and Public Order Act 1994
- section 66, Criminal Justice (Scotland) Act 2016
- section 67, Criminal Justice (Scotland) Act 2016

### **Searches authorised under section 60 of the Criminal Justice and Public Order Act 1994**

4.10 The powers under section 60 are separate from and additional to the normal stop and search powers which require reasonable grounds for suspicion.

4.11 Section 60 of the Criminal Justice and Public Order Act 1994 allows for searches to be carried out in a particular locality, for a specific limited period of time, where an authorising officer believes that incidents involving serious violence may take place or that persons are carrying dangerous instruments or offensive weapons in that locality without good reason. This power applies to all individuals within that locality, including children.

4.12 The 1994 Act also lays down various steps which must be taken in relation to use of section 60 powers. The legislation is to be authorised for a specified period not exceeding 24 hours. The period of authorisation can continue for a further 24 hours where circumstances detailed in the legislation are met.

4.13 Where an authorising officer authorises any operation under section 60, they must, where practicable, inform relevant members of the community about the authorisation, both before and after any relevant action. The public should be informed of the purpose and outcomes of each section 60 operation including the nature of the power, the authorisation, and the fact that it has been given. It is important for monitoring purposes to specify the time period for which authority is given for exercising the power.

4.14 Although the powers in section 60 provide that a constable in uniform may stop any person or vehicle and make any search they see fit whether or not they have grounds for suspecting that the person or vehicle is carrying weapons or articles of the relevant kind, the selection of persons and vehicles under section 60 to be stopped and, if appropriate, searched should reflect an objective assessment of the nature of the incident or weapon in question and the individuals and vehicles thought likely to be associated with that incident or those weapons.

4.15 When selecting persons and vehicles to be stopped in response to a specific threat or incident, constables must not discriminate unlawfully against anyone on the grounds of any of the relevant protected characteristics set out in the Equality Act 2010.

4.16 Section 60(4A) of the Criminal Justice and Public Order Act 1994 also provides a power to officers in uniform to require a person to remove any item which the constable reasonably believes that person is wearing wholly or mainly for the purpose of concealing their identity.

4.17 This power can only be used if an authorisation given under section 60 is in force. Officers must ensure an appropriate balance between powers exercised under section 60(4A) and the need to ensure respect for individuals, bearing in mind that some individuals wear items as a legitimate expression of their identity, and not with a view to concealing their identity for a criminal purpose, for example for cultural or religious reasons.

#### **Searches authorised under section 66 of the Criminal Justice (Scotland) Act 2016**

4.18 Under the powers in section 66 of the Criminal Justice (Scotland) Act 2016 a constable may search a person who is being taken, or is to be taken, from one place to another. The purpose of a search under this section is to ensure that the person is not in possession of any item or substance that could cause harm to them or someone else. The exercise of these powers does not depend on the person concerned being suspected of a crime.

#### **Searches authorised under section 67 of the Criminal Justice (Scotland) Act 2016**

4.19 Section 67 of the Criminal Justice (Scotland) Act 2016 gives constables power to search a person who is seeking to enter or attend, or who has entered or is attending a relevant event or premises where the person has consented to the search as a condition of entry imposed by the occupier or organiser. The purpose of a search under this section is to ensure the health, safety or security of people on the premises or at the event.

#### **Searches of persons not suspected of an offence**

4.20 The exercise of some stop and search powers depends on the likelihood that the person searched is in possession of an item for which they may be searched. It does not always depend on the person concerned being suspected of committing an offence in relation to the object of the search.

4.21 Innocent possession means that the person does not have the knowledge that they are carrying an unlawful item. Ordinarily such knowledge is required before arrest can be considered.

### **Powers to search persons in the exercise of a power to search premises**

4.22 The following powers to search premises also authorise the search of a person, not under arrest, who is found on the premises during the course of the search:

- a) section 49B of the Criminal Law (Consolidation) (Scotland) Act 1995 under which a constable may enter school premises and search the premises and any person on those premises for any bladed or pointed article or offensive weapon
- b) under a warrant issued under section 23(3) of the Misuse of Drugs Act 1971, to search premises for drugs or documents but only if the warrant specifically authorises the search of persons found on the premises
- c) under a search warrant or order issued under paragraphs 22, 31 and 28 of Schedule 5 of the Terrorism Act 2000, to search premises and any person found there for material likely to be of substantial value to a terrorist investigation
- d) under a warrant issued under section 52 of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003, to search any premises and any person found there for: evidence of an offence under that Act; illegally taken salmon or trout; or illegal fishing equipment
- e) under a warrant issued under Schedule 2: Part 2 (paragraphs 18-30) and schedule 11 of the National Security Act 2023, to search for and to seize evidence as part of UK national security investigations

4.23 Before the power under section 49B of the Criminal Law (Consolidation) (Scotland) Act 1995 may be exercised, the constable must have reasonable grounds to suspect that an offence under section 49A of that Act (having a bladed or pointed article or offensive weapon on school premises) has been or is being committed.

4.24 A warrant to search premises and persons found therein may be issued under section 23(3) of the Misuse of Drugs Act 1971 if there are reasonable grounds to suspect that controlled drugs or certain documents are in the possession of a person on the premises.

4.25 Searches of a person authorised under a warrant do not require separate grounds in addition to those used to obtain the warrant. However, it is still necessary to ensure that the selection and treatment of those searched under these powers is based upon objective factors connected with the search of the premises, and not upon personal prejudice or relevant protected characteristics.

## **5. Chapter 5 - Conduct of searches**

### **Considerations prior to conducting a search**

5.1 The use of stop and search powers has a significant impact on the person being searched and public confidence in the police. Every reasonable effort should be made to minimise disruption to a person or group being searched and to respect their dignity and human rights. In determining the approach to the search, constables must consider the risk of harm to themselves, the public and the person being searched.

5.2 The co-operation of the person to be searched must be sought in every case, even if they initially object to the search. The law allows constables to use reasonable force if necessary to conduct the search. This means the minimum amount of force necessary to accomplish the lawful objective of the search, for example the use of handcuffs to safeguard all those involved.

5.3 If there are reasonable grounds to carry out a search, the person to be searched cannot refuse to be searched. Resisting or actively obstructing the search are criminal offences.

5.4 The length of time for which a person may be detained must be reasonable and kept to a minimum. The thoroughness and extent of a search will depend on the circumstances of the search, including what is suspected of being carried, and by whom.

5.5 If the suspicion relates to a particular article which is seen to be, or there is good reason to suspect has been, slipped into a person's pocket or bag, then subject to reasonable consideration of the safety of the searching constable, and in the absence of other grounds for suspicion or an opportunity for the article to be moved elsewhere, the search must be confined to that pocket or bag. In the case of a small article which can readily be concealed, such as a drug, and which might be concealed anywhere on the person, a more extensive search may be necessary including a strip search or intimate search.

5.6 Similarly, the recovery of a stolen or prohibited article (such as a knife) from a person's possession may provide reasonable grounds for a constable to suspect that they have additional items in their possession which would warrant a more extensive search including a strip search or intimate search.

### **Considerations when searching groups**

5.7 Where constables encounter a group of people and have grounds to carry out a search of individuals within the group there must be reasonable grounds for suspicion for each individual to be searched. The presence of a person within a group does not, on its own, provide reasonable grounds for a search of that person.

5.8 In determining the approach to the searching of groups, constables must consider the risk to themselves, the individuals in the group and the public, using clear communication and the appropriate level of force while treating everyone with fairness, integrity and respect.

5.9 Where practicable, constables should explain the reason for any searches to those involved and take reasonable steps to minimise disruption and safeguard the wellbeing of everyone present.

### **Steps to be taken before carrying out a search**

5.10 Constables must ensure, so far as is reasonably practicable, that the person understands why they are to be searched and what the search will involve. If the person to be searched does not appear to understand what is being said, the constable must take reasonable steps to bring information regarding the person's rights and any relevant provisions of this Code to their attention.

5.11 Before any search takes place, the constable must, if not in uniform, show their warrant card to the person(s) to be searched. When in uniform the constable must show their warrant card if requested.

5.12 Prior to commencing a search, constables should ask if the person has any items in their possession that may potentially harm a searching officer. They should also be notified that a failure to disclose such information may constitute an offence.

5.13 Members of the public have the right to volunteer information with a view to avoiding a search and constables must give a member of the public an opportunity to provide information if they wish to do so.

5.14 Prior to a search, a person is under no obligation to provide their name, address and date of birth to the constable.

### **Steps be taken during a stop and search encounter**

5.15 How constables engage with the public during stop and search is a key factor in determining outcomes including establishing grounds for search or allaying suspicions.

5.16 Constables should use everyday language, build a rapport where possible and treat everyone with fairness, integrity and respect. All searches must take into consideration any cultural and religious sensitivities.

5.17 Every effort should be made to explain the reasons for deciding to search a person in a way they understand. Constables should ensure that the person understands what is happening before, during and after a search.

5.18 All constables must provide the person to be searched with their name and number and the name of the police station to which the constable is attached. Except where the constable reasonably believes that giving these details might put them, or another constable, in danger, in which case a warrant or other identification number should be given.

5.19 Constables must give the person(s) being searched the following information:

- that they are being detained for the purposes of a search
- that for the purposes of the search they do not have to provide any information about themselves, or to say anything
- the legal search power which is being exercised

- a clear explanation of the object or article being searched for
- that the constable is required to make a record of the search and that they are entitled to a copy of the record of the search

5.20 Constables must also inform the person if they are being recorded, for example by Body Worn Video (BWV). Constables don't require the person's consent to record a stop and search encounter.

5.21 In the case of powers requiring reasonable suspicion, the constable must inform the person(s) being searched of the grounds for that suspicion. This means explaining the basis for the suspicion by reference to facts, intelligence or information.

5.22 The search must be carried out at or near the place where the person was first detained. A person may be detained at a place other than where they were first stopped only if that place is within a reasonable travelling distance. This applies to all searches under stop and search powers. If a search involves exposure of intimate parts of the body this must take place in private, such as in a private residence or in a police station but not in a police vehicle. Chapter 8 provides details on how strip searches and intimate searches must be carried out.

5.23 In certain circumstances, a constable may exercise stop and search powers in anticipation of violence through powers conferred under section 60(4A) of the Criminal Justice and Public Order Act 1994. This grants a constable with the power to require any person to remove and seize any item which the constable reasonably believes that person is wearing wholly or mainly for the purpose of concealing their identity.

5.24 Where there may be religious or cultural sensitivities about the removal of an item, the constable should permit the item to be removed out of public view. Where practicable, the item should be removed in the presence of a constable of the same sex as the person and out of sight of anyone of the opposite sex.

5.25 A search in public of a person's clothing which has not been removed must be restricted to superficial examination of outer garments. A constable can place their hand inside the pockets of the outer clothing, or feel round the inside of collars, socks and shoes if this is reasonably necessary in the circumstances to look for the object of the search or to remove and examine any item reasonably suspected to be the object of the search.

### **Steps to be taken after a search**

5.26 The person who has been searched should be given a receipt immediately following a search which includes the following information:

- grounds on which the search was based and the legislation used
- the right of a person searched to obtain a copy of the record of the search
- the right of a person searched to complain, including how to go about making a complaint

5.27 Where constables stop and search multiple persons at one incident, they must issue a receipt to each person searched.

5.28 If the stop and search of a person fails to provide reasonable grounds for the constable to arrest, then the searched person is under no obligation to provide identifying information to the police. If the stop and search of a person provides reasonable grounds for the constable to arrest, then the searched person is required to provide identifying information to the police.

5.29 Constables should explain that the person who has been searched is entitled to obtain a copy of the record of search, provided they ask for it from the police within six months of the date on which they were searched.

5.30 Constables should also explain that the right to obtain a copy of a record of the search will only apply where the person has provided their name, address and date of birth.

5.31 Where a constable who is conducting a search is called to an urgent incident, in exceptional circumstances, it may be wholly impracticable to provide a receipt. In that event, if the person has provided their details, the constable should explain the circumstances and advise them that they can access a copy of the record of search by calling at any police station.

5.32 This does not apply where there are exceptional circumstances which make it wholly impracticable to make a record of the search at the time or the person searched has not provided their name, address and date of birth.

## **6. Chapter 6 - Considerations when engaging vulnerable people**

6.1 Throughout the Code, 'vulnerability' refers to individuals who have additional needs, who may be unable to properly safeguard themselves from harm. People may be affected by:

- Disabilities (including deafness)
- Learning difficulties
- Mental illnesses
- Personality disorders
- Neurodivergence
- Addiction

6.2 These examples are not exhaustive, and constables should remain alert to any indication that an individual may require additional support or adjustments.

6.3 If a person is vulnerable, it may impact on the way that the person is able to understand and communicate. Constables must be aware of the need to modify their language, tone of voice and physical behaviours to assist in communicating.

6.4 Identifying the best way to communicate with, and support, an individual may also include collaboration with other agencies, identifying a responsible or appropriate adult or communicating through an interpreter (including BSL interpreters).

6.5 If a person is considered vulnerable, constables must consider whether they are able to safeguard their own interests and whether they may be at risk of harm. If an individual meets the three point test under the Adult Support and Protection (Scotland) Act 2007, police and other named public bodies must make a referral to the local council if they know or believe that an adult is at risk of harm and that action is needed to protect them.

6.6 An inability to safeguard oneself is not the same as lacking mental capacity. Adults with capacity retain the right to make their own choices, but trauma or adverse experiences may affect how those choices are made or acted upon. Constables should therefore adopt a trauma-informed approach, respect decisions made freely, and remain alert to the possibility that non-engagement may reflect vulnerability.

6.7 All reasonable steps should be taken to ensure the person being searched understands the reason for the search and what it will involve. This includes ensuring that a vulnerable person is aware of the nature and potential significance of police actions and questioning, understands their rights, and is able to exercise those rights meaningfully.

6.8 In every interaction with a vulnerable person, constables must assess the operational need to carry out a search against any potential risk of harm to the person. In doing so, they should consider the individual's vulnerability and capacity; the operational circumstances; and any risks to the person, the officer, or others, before determining whether it is necessary and proportionate to proceed.

6.9 Vulnerable persons may also be witnesses to searches and constables must be aware of the effect that such a search of another person may have on them. In some circumstances, it may be appropriate to explain the process to those individuals to reduce distress or confusion.

## **7. Chapter 7 - Conduct of searches - additional considerations where a child or young person is involved**

7.1 This section of the Code is designed to offer constables assistance in recognising and understanding the unique needs of children and young people in relation to stop and search.

### **Safeguarding and promoting the wellbeing of the child**

7.2 This section does not replace any requirements placed on constables elsewhere in the Code. Rather, it provides additional guidance and suggests ways in which constables can tailor their approach towards children and young people.

7.3 For the purposes of this Code, children and young people are defined as those being under the age of 18. Where a constable believes a person to be under the age of 18, but they are unwilling or unable to provide their age, the constable should proceed as if the person is under 18.

7.4 In taking a decision to search a child or a young person, a constable must treat the need to safeguard and promote the wellbeing of that child or young person as a primary consideration. Once a decision has been made to search a child, then the search should be planned in terms of how it will proceed, where it will take place, who will be present and how this will be communicated with the child.

7.5 Where a constable believes it to be more harmful to a child or young person to carry out a search than not, then the search should not proceed or be paused until a responsible adult can be present (where this is practicable and the child or young person wishes this to happen). Constables should carefully consider and balance the child's wellbeing with the operational circumstances, and any risks to the person, the officer, or others, before determining whether it is necessary and proportionate to proceed.

7.6 Constables' actions should be compatible with the child or young person's human rights. This Code has been designed to comply with the UN Convention on the Rights of the Child.<sup>1</sup> In their considerations of the conduct of searches where a child or young person is involved, constables should be cognisant of Article 3 of the United Nations Convention on the Rights of the Child (UNCRC) which states that:

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

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<sup>1</sup> The Scottish Ministers are required to comply with the UNCRC in exercising their relevant function under section 74 of the Criminal Justice (Scotland) Act 2016 of updating the Stop and Search Code of Practice. Police constables in Scotland must comply with the UNCRC when exercising search functions conferred by Acts of Scottish Parliament or common law – but they do not have to comply with the UNCRC when exercising search functions conferred by Acts of the UK Parliament. While Scottish Ministers must comply with the UNCRC when updating the Code, police constables acting under that Code will only have to comply with the UNCRC when exercising search functions conferred by an Act of the Scottish Parliament or common law.

7.7 It is also consistent with the Scottish Government's GIRFEC (Getting It Right for Every Child) approach. While GIRFEC is primarily focused on children and young people under 18, it extends to age 26 in specific circumstances, such as care-experienced young people, young adults with additional support needs and youth justice and transitions. The approach ensures that young adults are not abruptly cut off from support and that their wellbeing continues to be a priority during key life transitions.

7.8 Constables should have an awareness of how the minimum age of criminal responsibility (12 years and over) might affect their interactions with children and young people. For example, when responding to a child or young person's question about the potential outcome of a search, constables should be prepared to provide the appropriate response, based on whether the child or young person will (or will not) be held criminally responsible for their actions.

7.9 As is explained in Chapter 4, some stop and search powers do not depend on the person concerned being suspected of committing an offence in relation to the object of the search. A child or a child's pram may also be used to conceal an item on behalf of an adult. A constable who has reasonable grounds to suspect that a child or young person is in innocent possession of an item is empowered to search, and may stop and search the child or young person. Constables should ensure that such searches are carried out in such a way as to minimise distress to the child or young person.

7.10 Where a constable believes a search is necessary, they should be aware of the inherent power imbalance that exists between a constable and a child or young person and how this may affect their interactions with them. It should not be assumed, for example, that because a child or young person is compliant and/or silent, that they are fully comfortable with a search being carried out. Equally, if a child or young person appears to be acting unreasonably, the root of such behaviour may be in fear or confusion.

7.11 Constables should be aware that, on occasion, children and young people may display behaviour which arouses suspicion of wrong-doing, but which is in fact related to a communication impairment, vulnerability or additional learning support need. This may include gesturing, shouting or avoiding eye contact. When a search of a child or a young person is being considered, a constable should make efforts to determine what additional support they might require to participate in a search. Constables should bear in mind that a person with such a disability may have difficulty articulating the nature of that disability or what additional support they might require to participate in a search.

7.12 As outlined in Chapter 5, constables may engage with members of the public as part of their duties. When engaging with children or young people, constables should consider the potential negative impact of such interactions. This should be carefully balanced with the best interests of the child.

7.13 Constables should use age-appropriate terms when engaging with children and young people and avoid the use of technical or legal language unless required to do so by law. For example, where a constable is required to state the statutory basis for

a search, then they should also be prepared to explain this in terms the child or young person can understand. Constables should be aware that not all children of the same age will have the same level of understanding and, where practicable, should allow time for the child or young person to ask questions before a search begins.

7.14 Constables should be mindful of adultification - a bias where children and young people, especially from marginalised communities, are perceived and treated as older or more culpable than they are. This can lead to disproportionate suspicion and failure to recognise their vulnerability and rights. Constables should always consider the young person's age, developmental stage, and potential safeguarding needs before initiating a stop and search.

7.15 Constables should be aware that the status of a child or young person, such as looked after or care experienced, with previous or current experience of the criminal justice system, asylum seekers or from an ethnic minority group, can be relevant to how such people engage with constables. For example, they may find it more difficult to engage with the police as a result of previous trauma. When engaging a child or young person, constables should be sensitive about whether and how they ask questions about a person's status, bearing in mind that some looked after and care experienced children and young people can regard questions about their status as stigmatising, and also that their peers may be unaware of their status.

7.16 Children or young people who have experienced abuse may also react strongly to the prospect of being searched, particularly if they believe that the search is likely to involve strip-searching or intimate searching. The extent of the search should be made clear by the constable prior to the search commencing, and the use of any protective equipment to be worn or used by the constable explained.

7.17 When considering a search of a child or young person, a constable should attempt to minimise any embarrassment they might feel. This might include, for example, carrying out a search discreetly and away from a peer group. Where practicable, a constable should involve the child or young person in considering where the search should take place. A constable should not assume that places considered suitable for adults will be where a child or a young person would feel most at ease.

7.18 Where a search takes place and no item is found (a negative search) and the child or young person has provided their name, address and date of birth, a constable should clearly explain how the information will be stored, the length of time it will be kept and the purposes for which it may be used.

### **Informing a parent and/or guardian**

7.19 Consideration should be given as to whether or not the child's parent or guardian should be informed that a search has taken place. However, in doing so, constables should consider whether informing a child or a young person's parents or guardian might inadvertently suggest that their child has been involved in wrongdoing, when they have not.

7.20 In deciding whether or not to inform a parent or guardian, constables should consider: the age of the child or young person; the circumstances in which the stop and search took place; any views expressed by the child or young person; and any perceived ongoing risk to the child or young person and/or others.

7.21 Constables should also be aware that some children and young people may be placed at increased risk by their parents being notified of a search. This would include, for example, a child or young person living in a household where there is a history of domestic abuse.

### **Searches of adults in the presence of children**

7.22 As well as being subject to a search, children and young people may also be witnesses to searches. Where an adult in the company of a child is being searched, constables should be aware of the effect such a search may have on them. For younger children, witnessing something they do not understand or being parted from their parent or care-giver for the duration of the search can be particularly upsetting. Care should be taken to ensure that the child is reassured and that any separation from the parent or care-giver is either avoided or kept to an absolute minimum.

### **Seizure of alcohol for children and young people**

7.23 There is currently no specific statutory power that legally authorises a police constable to conduct a physical search of a young person for alcohol under existing stop and search powers. However, police can require young people to surrender alcohol if it is suspected they are consuming it, which must be grounded in observable facts, such as seeing the alcohol or witnessing its consumption. A seizure occurs when alcohol is surrendered by a person to the police using statutory provisions or is removed from a person in pursuance of an alcohol byelaw, where no physical search of the person takes place or prior to any search.

## **8. Chapter 8 - Strip and intimate searches**

8.1 This chapter outlines the distinction between strip searches and intimate searches, which are two separate forms of search. It provides clear definitions and sets out the protocols to be followed for each type of search. For the purposes of this Code, the term 'detainee' refers to the individual who has been detained and is subject to the search process.

### **Strip search**

8.2 A strip search may only take place if a constable reasonably considers that the detainee might have concealed an article which the detainee would not be allowed to keep and the constable considers that a strip search is necessary to remove such an article from them. The extent of the strip search will be determined by information reasonably available to the constable at the time.

8.3 A strip search is a search involving, at minimum, the removal of a base layer which is the removal of more than an outer coat, jacket, gloves, headgear or footwear.

8.4 If upon removal of the base layer, constables continue to have reasonable grounds to suspect that a detainee is hiding an article, then the search may require the removal of additional clothing to search for concealed articles. A strip search may involve the exposure of body parts including genitalia, buttocks, and/or breasts.

8.5 If necessary to assist the strip search, the detainee may be required to undertake a range of movement to expose areas that cannot be seen. This may include movement that exposes areas around genitalia and/or the anus. At no time will a constable make physical contact with any orifice of the detainee.

### **The conduct of strip searches**

8.6 Before carrying out a strip search, authorisation is required by a constable of the rank of Inspector or above. This includes all strip searches conducted within homes under powers contained within a search warrant. Where it is decided that the detainee should be subject to a strip search, the reason for this must be recorded and the name of the authorising officer should also be included. The reason for the search must be fully explained to the detainee.

8.7 A constable carrying out a strip search must be the same sex as the detainee.

8.8 A person may be detained under a stop and search power at a place other than where the person was first detained, only if that place, be it a police station or elsewhere, is nearby. Searches involving exposure of intimate parts of the body may be carried out only at a nearby police station or other nearby location which is out of public view. A police vehicle cannot be used for a strip search. The search should take place in an area where the detainee cannot be seen by anyone who does not need to be present, nor by a member of the opposite sex, except in cases where a responsible adult of the opposite sex has been specifically requested by the detainee.

8.9 If a strip search involves exposure of body parts such as genitalia, buttocks, and/or breasts, constables must restrict the number of persons witnessing the strip search to the absolute minimum amount required, which must always include the detainee, the constable conducting the search, and one other witness present during the search.

8.10 A constable should try to have a responsible adult present when strip searching a child or young person. Unless it's urgent, when there is risk of serious harm to the detainee or to others, the search can only happen without the adult if the child states while the adult is there that they don't want them present, and the adult agrees to leave. A record must be made of the child or young person's decision and signed by the responsible adult.

8.11 The search should be conducted with proper regard to the sensitivity and vulnerability of the detainee in the circumstances and every reasonable effort should be made to secure the detainee's co-operation and minimise embarrassment. Detainees should not normally be required to remove all their clothes at the same time.

8.12 If articles are found, the detainee should be asked to hand them over. If articles are found within any body orifice other than the mouth and the detainee refuses to hand them over, their removal would constitute an intimate search, which must be carried out as described in the following section.

8.13 A strip search must be conducted as quickly as possible, and the detainee allowed to dress as soon as the search is complete.

### **Intimate search**

8.14 An intimate search is distinct from a strip search. It consists of the physical examination of a detainee's orifices, other than the mouth and is conducted only by an authorised Health Care Professional (HCP) in the presence of constables. Examination by a HCP can take place only with the consent of the detainee.

8.15 An intimate search requires higher authorisation than a strip search and may only take place under the authority of a warrant issued by a Sheriff.

8.16 A constable of the same sex as the person to be searched must be present to corroborate the search.

8.17 Before the search begins, a constable, must tell the detainee that a warrant to carry out the search has been issued.

8.18 In the case of children or young persons, or in the case of a person who has a mental illness, personality disorder, learning disability or are neurodivergent (or are otherwise vulnerable), the seeking and giving of consent must take place in the presence of a responsible adult of the same sex as the person to be searched, unless the detainee specifically requests a responsible adult of the opposite sex who is readily available.

8.19 Except in urgent cases where there is risk of serious harm to the detainee or to others, an intimate search of a child or young person or otherwise vulnerable person may take place in the absence of a responsible adult only if the child or young person or otherwise vulnerable person signifies in the presence of the responsible adult that they do not want that person to be present during the search, and that person agrees. A record must be made of the child or detainee's decision and signed by the responsible adult.

8.20 Except in urgent cases where there is risk of serious harm to the detainee or to others, whenever an intimate search occurs, the number of persons who witness the intimate search must be kept to the absolute minimum necessary, although there must always be at least two persons other than the person who is being searched present during the search.

8.21 The search must be conducted with proper regard to the sensitivity and any vulnerability of the detainee.

### **Record of intimate search**

8.22 The following should be recorded as soon as practicable for an intimate search:

- the date the warrant was issued and the fact that the warrant was produced
- the fact that the appropriate consent was given by the detainee to the health care professional or (as the case may be) refused, and if refused, the reason given for the refusal (if any)
- which parts of the person's body were searched
- who carried out the search
- who was present
- the outcome of the search

### **Establishing the sex of a detainee for the purpose of strip and intimate search**

8.23 Strip and intimate searches must be conducted by, or in the presence of, constables of the same sex as the detainee being searched. For the purpose of this document, sex refers to an individual's biological sex which means sex at birth.

### **Searching a transgender detainee**

8.24 If a detainee's gender identity differs from their biological sex (whether or not they have a gender recognition certificate), and the detainee expresses a preference to be searched by a constable of the same gender identity as the detainee, the police service, if operationally feasible, should identify an appropriate and consenting constable to conduct the search.

8.25 Searches of detainees by constables of the opposite sex require written consent from the detainee, a senior constable of the rank of Inspector or above, and the constable conducting the search.

8.26 Police constables retain the right to decline participation in the search of a transgender detainee. This decision must be respected and constables will not face any career detriment as a result of such a refusal.

8.27 If no constable of the requested opposite sex is presently available to conduct the search, then the detainee will be supervised until a constable who consents to

carry out the search is identified. If no such officer can be found within a reasonable timeframe, or if the operational risk is deemed too great, the search will be conducted by a constable of the same sex as the detainee.

### **Determining sex**

8.28 Where there is uncertainty about a detainee's sex, constables should engage in a conversation with the individual to establish their sex in a respectful and non-intrusive manner.

8.29 If sex cannot be identified or the person does not engage, constables can refer to official documentation or identity documents that indicate sex, although constables should bear in mind that official documentation is not definitive evidence of a person's biological sex.

8.30 If uncertainty remains, constables should record the steps taken to establish the detainee's sex and, where operationally necessary, proceed on the basis of the officer's honest and reasonable belief of the person's biological sex, applying the safeguards and dignity requirements set out in this Code.

8.31 In such cases, constables must document the rationale for their decision in the stop and search record, and a supervisor should review the circumstances at the earliest opportunity.

### **Documentation**

8.32 The sex of the detainee, as determined for the purpose of the search, must be recorded in the custody record, search record, or constable's notebook. Where a detainee expresses a preference that cannot be accommodated due to operational or other constraints, this must also be documented.

### **Disclosure and privacy**

8.33 Information regarding a detainee's gender identity or transgender status is confidential and must be treated as such. This information will only be lawfully shared when in accordance with the Human Rights Act 1998, the Gender Recognition Act 2004, the Data Protection Act 2018 and any other relevant data protection legislation.

### **Deployment of transgender staff**

8.34 Chief constables are responsible for ensuring that operational deployment of transgender constables and policing staff complies with the relevant legal framework.

## **9. Chapter 9 - Recording requirements**

9.1 When a constable carries out a search in the exercise of any power to which this Code applies, a record must be made of it, electronically or on paper, unless there are exceptional circumstances which make this wholly impracticable, for example in situations involving public disorder. It is unlikely to be practicable in most cases to make a record of a search under section 67 of the Criminal Justice (Scotland) Act 2016 (searches on entry to relevant premises and events, where consent has been given as a condition of entry imposed by the organiser).

9.2 The constable carrying out the search must make the record as soon as practicable after the search is completed. Where a stop and search is conducted by more than one constable the identity of all the constables involved in carrying out the search, including any constable supporting another constable who is physically carrying out the search, must be recorded.

9.3 To ensure full transparency, where the technology is available all use of stop and search powers must be recorded, for example on BWV, unless there are exceptional and justifiable circumstances not to do so. Footage for all searches should be handled and retained in line with current practice. Constables should refer to operational guidance or standard operating procedures for more detailed information on the use of BWV in connection with stop and search.

9.4 The record of a search must always include the following information:

- Details of the constable conducting the search (including the police station to which they are attached (see 9.7 below)
- Details of the corroborating constable
- Time of search
- Date of search
- Location of search
- Whether the search was a standard search (i.e. a search which is not a strip or an intimate search), a strip search within a police station, a strip search out with a police station, or an intimate search
- The legal basis of the search
- The grounds on which the search is based, including the grounds for reasonable suspicion
- The outcome of the stop and search
- Details of any item(s) recovered
- In the case of a search conducted in accordance with the power under section 60 of the Criminal Justice and Public Order Act 1994, the nature of the power, the authorisation and the fact that it has been given
- In the case of a search of a person in accordance with a warrant, the date the search warrant was issued and the fact that the warrant was produced
- The details and registration of any vehicle searched in connection with the search

### **Personal details**

- Name of person searched (if provided - there is no requirement for a person to provide their name if nothing is found but it should be recorded if given)

- Age of person searched (if provided)
- Constable's estimate of the age of the person searched (if not provided and the constable estimates the person's age to be under 18 years)
- Sex (if provided)
- Gender identity (if provided, respecting privacy and dignity - disclosure is voluntary). Constables must avoid asking questions that would disclose a person's trans history in public or otherwise risk undermining their dignity
- Date of birth of person searched (if provided)
- Address of person searched (if provided)
- Self-defined ethnicity, aligned to Scottish Census categories (if provided)

### **Searches which do not result in an arrest**

9.5 The person who has been searched should be given at the time of the search a receipt which explains how they can obtain a copy of the record. Where a search does not result in recovery of any item ('negative search'), the same recording requirements apply.

### **Searches which result in an arrest**

9.6 If a person is arrested as a result of a search to which this Code applies and they are taken into custody, as well as the stop and search being recorded in accordance with this Code, the receipt of stop and search should be placed into their property once in the custody suite and recorded on the national custody system.

9.7 This Code does not require the names of constables to be shown on the record of search or any other record required to be made under this Code where a constable reasonably believes that disclosing names might endanger themselves or other constables. In such cases the record should disclose the constable's warrant or other identification number and the police station which they are attached to, except where the constable reasonably believes that giving the name of the police station might put them or other constables in danger.

9.8 A separate record for each person searched must be available should a copy be required.

9.9 The record of the grounds for making a search must briefly but informatively explain the reason for suspecting the person concerned, by reference to facts, intelligence or information.

9.10 This Code does not require a constable who requests a person in a public place to account for themselves, in relation to their actions, behaviour, presence in an area or possession of anything, to make any record of the encounter or to give the person a receipt where no search is conducted.

## 10. Chapter 10 - Monitoring and supervising stop and search

10.1 Any misuse of stop and search powers is likely to be harmful to policing and lead to mistrust of the police by the local community and by the public in general. Supervising officers must proportionately monitor the use of stop and search powers by individual constables to ensure that they are being applied appropriately and lawfully.

10.2 They must also ensure that the practice of constables under their supervision in stopping, searching and recording is fully in accordance with this Code. Monitoring may take many forms including: direct supervision of the exercise of the powers; examining records held on the stop and search database (particularly examining the constable's documented reasonable grounds for suspicion); examining body worn footage; asking a constable to account for the way in which they conducted and recorded particular searches; or through complaints about a stop and search that a constable has carried out. Training opportunities for individual constables and for the wider police service should be identified as a result of such monitoring, with best practice identified and communicated proactively throughout the service.

10.3 Senior officers with local responsibilities for stop and search and those who have the national policy leads for stop and search must also undertake regular monitoring of the broader use of stop and search powers to ensure that they are used fairly and proportionately and, where necessary, take action at the relevant level. They must also examine whether the records reveal any trends or patterns which give cause for concern and, if so, take appropriate action to address this.

10.4 Supervision and monitoring must be supported by the compilation of comprehensive records of stops and searches at national and divisional levels. Any apparently disproportionate use of the powers by particular constables or groups of constables or in relation to specific sections of the community, or repeated searches of the same individuals, should be identified and reviewed to determine the reasons and where appropriate, action should be taken.

10.5 As soon as practicable after the end of each reporting year (ending 31 March), the Chief Constable of a relevant police service<sup>2</sup> must publish, as a minimum, information on how many times during the reporting year a stop and search was carried out in Scotland by constables of that service. In addition, so far as practicable, the information is to disclose:

- the number of stops and searches carried out under each statutory power
- how many persons were searched on two or more occasions
- the age, sex, gender identity, and the ethnicity of the persons searched
- the proportion of searches that resulted in something being found or recovered by a constable, including information as to the number of cases in which the item seized was of the type suspected by the constable at the outset of the search
- a case being reported to the procurator fiscal

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<sup>2</sup> "relevant police service" means the Police Service of Scotland and any other police organisation which has constables, as defined in section 73 of the Criminal Justice (Scotland) Act, exercising functions in respect of which Parts 1 and 2 of that Act apply.

- the number of authorisations issued under section 60 of the Criminal Justice and Public Order Act 1994
- the number of complaints made to a relevant police service about the carrying out of searches (or the manner in which they were carried out) in Scotland by constables of that service
- the number of receipts issued

10.6 Annual reporting should be presented in a manner accessible to the public, including clear visual data such as dashboards and infographics, along with qualitative commentary explaining trends, outcomes and actions taken to identify and address any areas for improvement.

10.7 The relevant police service should consider engaging with communities, including equality and human rights organisations, to review stop and search data, discuss concerns, and identify improvements; and ensure the Code is applied in a way that is fair, lawful, and respectful of all individuals.

## **Annex A**

### **List of Statutory Powers**

#### **Animals and game**

**Source:** Section 11 of the Protection of Badgers Act 1992

Types of items: Evidence of the commission of offence

Power: A constable who suspects with reasonable cause that any person is committing or has committed an offence under this Act may, without warrant, stop and search that person if the constable suspects with reasonable cause that evidence of the commission of the offence is to be found on that person.

**Source:** Regulation 101 of the Conservation (Natural Habitats, &c.) Regulations 1994

Types of items: Evidence of the commission of offence

Power: If a constable suspects with reasonable cause that any person is committing or has committed an offence under Part III of the Regulations (Protection of Species), the constable may without warrant stop and search that person if the constable suspects with reasonable cause that evidence of the commission of the offence is to be found on that person.

**Source:** Section 4 of the Wild Mammals (Protection) Act 1996

Types of items: Evidence of the commission of offence

Power: Where a constable has reasonable grounds for suspecting that a person has committed an offence under the provisions of this Act (various harms to wild mammals) and that evidence of the commission of the offence may be found on that person, the constable may without warrant, stop and search that person.

**Source:** Section 19 of the Wildlife & Countryside Act 1981

Types of items: Evidence of the commission of offence

Power: If a constable suspects with reasonable cause that any person is committing or has committed an offence under Part 1 of the Act, the constable may without warrant stop and search that person if the constable suspects with reasonable cause that evidence of the commission of the offence is to be found on that person.

**Source:** Section 27 Deer (Scotland) Act 1996

Types of items: Evidence of the commission of offence

Power: If a constable has reasonable grounds to suspect that evidence of the commission of the relevant offence is to be found in any vehicle; and believe that by reason of urgency or other good cause it is impracticable to apply for a warrant to search such a vehicle. A constable may search the vehicle and any person who is found within or whom there is reasonable grounds to believe to have recently left or to be about to enter the vehicle.

**Source:** Section 53(1) Salmon & Freshwater Fisheries (Consolidation) (Scotland) Act 2003

Types of items: Evidence of the commission of the offence

Power: If a constable has reasonable grounds to suspect that an offence against any of the provisions of this act has been committed, and that evidence of the commission of the offence is to be found in any vehicle, but considers that by reason of urgency or other good cause it is impracticable to apply for a warrant to search such a vehicle, may stop and search that vehicle and any person who is found in, or whom there are reasonable grounds to believe to have recently left or to be about to enter the vehicle.

## **Aviation**

**Source:** Section 24B of the Aviation Security Act 1982

Types of items: Stolen or prohibited articles in aerodromes

Power: A constable can stop and search, without warrant, any person, vehicle or aircraft in any area of an aerodrome for stolen or prohibited articles (articles made or adapted for use in the course of, or in connection with, criminal conduct, or intended by the person having it with them for such use by them or another), where they have reasonable grounds to suspect that they will find such articles.

**Source:** Edinburgh Airport Byelaw 9(2) 2015

Types of items: Interest of public safety

Power: A constable can stop and search, without warrant, any person or belongings, vehicle or any item under their control in the interest of public safety

## **Drugs and other substances**

**Source:** Section 23 of the Misuse of Drugs Act 1971

Types of items: Controlled drugs

Power: If a constable has reasonable grounds to suspect that any person is in possession of a controlled drug in contravention of the Act or of any regulations or

orders made thereunder, the constable may search that person and detain them for the purpose of searching them.

**Source:** Section 23A of the Misuse of Drugs Act 1971

Types of items: Temporary Class Drugs

Power: Where a constable has reasonable grounds to suspect that a person is in possession of a temporary class drug and it does not appear to the constable that a power under section 23(2) applies to the case, they may search the person and detain them for the purposes of searching them for temporary class drugs.

**Source:** Section 36 Psychoactive Substances Act 2016

Types of items: Psychoactive substances

Power: If a constable has reasonable grounds to suspect that a person has committed, or is likely to commit one of the following offences:

- Produces a psychoactive substances
- Supplies a substance to another person
- Possess and intends to supply the psychoactive substance to another person
- Import or exports a substance
- Possession of a psychoactive substance in a custodial institution
- Person against whom a prohibition order or a premises order is made commits an offence by failing to comply with the order they may stop and detain the person for the purposes of the search

## Events

**Source:** Section 21 of the Criminal Law (Consolidation) (Scotland) Act 1995

Types of items: Alcohol, controlled articles/substances/containers

Power: A constable may without warrant search a person who they have reasonable grounds to suspect is committing or has committed an offence in relation to controlled items at sporting events.

**Source:** Section 67 Criminal Justice (Scotland) Act 2016

Types of items: To ensure the health, safety or security of people on the premises or at the event.

Power: A constable may without warrant search any person entering a premises or event where the entry is controlled by or on behalf of the occupier of the premises or the organiser of the event and the person has given consent as a condition of entry

## Firearms and crossbows

**Source:** Section 47 of the Firearms Act 1968

Types of items: Firearms

Power: If a constable has reasonable cause to suspect a person of having a firearm with them in a public place, or to be committing or about to commit, elsewhere than in a public place, an offence relevant for the purposes of this section, the constable may search that person and may detain them for the purpose of doing so.

**Source:** Section 4 of the Crossbows Act 1987

Types of items: Crossbows or part of a crossbow

Power: If a constable suspects with reasonable cause that a person is under the age of eighteen (who is not supervised by a person who is twenty-one years of age or older) and has with them a crossbow (with a draw weight of 1.4 kilograms or more) which is capable of discharging a missile or parts of a crossbow which together can be assembled to form a crossbow capable of discharging a missile, the constable may search that person for a crossbow or parts of a crossbow and may detain a person for the purpose of that search.

## **Fireworks**

**Source:** Section 11A of the Fireworks Act 2003

Types of items: Fireworks

Power: A constable may search a person without warrant if the constable has reasonable grounds for suspecting that the person possesses a firework in contravention of a prohibition imposed by fireworks regulations. Prohibitions include possession of “adult fireworks” in a public place by persons under the age of 18.

## **Proceeds of crime**

**Source:** Section 289 Proceeds of Crime Act 2002

Types of items: Cash gained by illegal or immoral means

Power: If a constable has reasonable grounds for suspecting that a person is carrying cash\*, which is recoverable property, or is intended by any person for use in unlawful conduct and, the amount of which is not less than the minimum amount. The officer so far as he thinks it necessary or expedient require the suspect (a) to permit a search of any article he has with him, (b) to permit a search of his person

\*Cash means – notes and coins in any currency, postal orders, cheques of any kind, including travellers cheques, bankers drafts, bearer bonds and bearer shares, gaming vouchers, fixed-value casino tokens and betting receipts found at any place in the UK.

**Source:** Section 303C(6) Proceeds of Crime Act 2002

Types of items: Listed Assets gained by illegal or immoral means

Power: Allows for a constable to search a person for a listed asset\* if:

- All or part of it is recoverable property (i.e. property obtained through unlawful conduct) or is intended by any person for use in unlawful conduct; and
- The value of the asset. Or the relevant part of the asset, is not less than the minimum value (currently £1000)

The constable must have reasonable suspicion that person is carrying the asset.

\*A listed asset means an item of property that falls within one of the following descriptions of property – precious metals, precious stones, watches, artistic works, face value vouchers and postage stamps.

### **Public Order**

**Source:** Section 60 of the Criminal Justice and Public Order Act 1994

Types of items: Offensive weapons, dangerous instruments and items for concealing identity

Power: Where an authorisation has been made under this section for a particular area, a constable in uniform may stop pedestrians or vehicles and search persons for offensive weapons, dangerous instruments (items which have a blade or are sharply pointed) or items for concealing identity.

### **Removal of persons**

**Source:** Section 66 Criminal Justice (Scotland) Act 2016

Types of items: Care and Welfare

Power: A constable may, without warrant, search any person who is not in police custody and is being taken to or from any place to ensure the person is not in, or does not remain in possession of any item or substance that could cause harm to the person or someone else where the constable believes that it is necessary to do so with respect to the care or protection of the person.

### **Stolen property**

**Source:** Section 60 of the Civic Government (Scotland) Act 1982

Types of items: Stolen Property

Power: If a constable has reasonable grounds to suspect that a person is in possession of any stolen property, the constable may search that person or anything in their possession and detain them for as long as is necessary for the purpose of that search.

## **Terrorism**

**Source:** Section 45 of the Terrorism Act 2000

Types of items: Evidence of terrorism

Power: A constable may stop and search a person they reasonably suspect to be a terrorist to discover whether they have in their possession anything which may constitute evidence that they are a terrorist. A power conferred by virtue of this Act to stop a person includes power to stop a vehicle.

**Source:** Section 47A of the Terrorism Act 2000

Types of items: Evidence of terrorism

Power: Where an authorisation has been made for searches in specified areas or places a constable in uniform may, without suspicion, stop a vehicle or pedestrian in the specified area or place and to search the vehicle, persons in the vehicle or pedestrian and anything carried by the pedestrian for the purpose of discovering whether there is anything which may constitute evidence that the vehicle concerned is being used for the purposes of terrorism or (as the case may be) that the person concerned is a terrorist.

## **Weapons**

**Source:** Section 48 of the Criminal Law (Consolidation) (Scotland) Act 1995

Types of items: Offensive weapon

Power: Where a constable has reasonable grounds for suspecting that any person is carrying an offensive weapon and has committed or is committing an offence under Section 47 of the Act, the constable may search that person without warrant and detain them for such time as is reasonably required to permit the search to be carried out.

**Source:** Section 49B of the Criminal Law (Consolidation) (Scotland) Act 1995

Types of items: Offensive weapons/bladed or pointed articles in Schools

Power: A constable may enter school premises and search those premises and any person on those premises for any article to which section 49 of the Act applies, or any offensive weapon within the meaning of section 47 of the Act, if they have reasonable grounds for suspecting that an offence under section 49A of the Act is being, or has been, committed.

**Source:** Section 50 of the Criminal Law (Consolidation) (Scotland) Act 1995

Types of items: Bladed or pointed articles

Power: Where a constable has reasonable grounds for suspecting that a person has with them an article to which Section 49 of the Act applies and has committed or is committing an offence under subsection (1) of that section, the constable may search that person without warrant and detain them for such time as is reasonably required to permit the search to be carried out.

## **Responding to this consultation**

The deadline for responding to the consultation is **05 May 2026**.

Please respond to this consultation using the Scottish Government's consultation hub - [Citizen Space](#). You can save and return to your responses while the consultation is still open.

If you are unable to respond using our consultation hub, please complete the Respondent Information Form included at the end of this paper (see 'Handling your response' below) and send to [stopandsearchreview@gov.scot](mailto:stopandsearchreview@gov.scot) or:

Stop and Search Code of Practice review team  
Scottish Government  
Area 1WR  
St Andrew's House  
Edinburgh  
EH1 3DG

This consultation, and all other Scottish Government consultation exercises, can be viewed online on the consultation pages of the Scottish Government website at <https://consult.scotland.gov.uk/>

## **Handling your response**

If you respond using the consultation hub, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form provided alongside this document.

To find out how we handle your personal data, please see our [privacy policy](#).

## **The consultation process**

In addition to publishing this consultation paper, the Scottish Government will continue to discuss the draft revised Code with policing partners and key stakeholders with a focus on gathering views of those impacted by stop and search in our communities.

## **Next steps in the process**

Where respondents have given permission for their response to be made public and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at [Citizen Space](#). If you use Citizen Space to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so. An analysis report will also be made available.

### **Comments and complaints**

If you have any comments about how this consultation exercise has been conducted, please send them to the contact details above.

### **Scottish Government consultation process**

Consultation is an essential part of the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online at [Citizen Space](#). Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.



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