

EQUALITY IMPACT ASSESSMENT - RESULTS

Title of Policy	The Stop and Search Code of Practice (Appointed Day) (Scotland) Regulations 2017
Summary of aims and desired outcomes of Policy	This instrument brings into effect a code of practice about the carrying out of a search of a person who is not in police custody (commonly referred to as 'stop and search'). The code of practice ('the Code') applies to the functions exercisable by a constable. It sets out the circumstances in which a search of such a person may be carried out, the procedure to be followed in carrying out such a search, the record to be kept in relation to such a search and the right of someone to receive a copy of that record.
Directorate: Division: team	Safer Communities Directorate: Police Division: Police Powers and Finance Unit

Executive summary

The public sector equality duty requires the Scottish Government to assess the impact of applying a proposed new or revised policy or practice. It is a legislative requirement. Equality legislation covers the characteristics of: age, disability, gender reassignment, gender including pregnancy and maternity, race, religion and belief and sexual orientation.

An equality impact assessment (EQIA) aims to consider how a policy (a policy can cover: activities, functions, strategies, programmes, and services or processes) may impact, either positively or negatively, on different sectors of the population in different ways. This EQIA has been undertaken to consider the impacts on equality of the Code of Practice on stop and search.

The Code of Practice will affect any member of the public in Scotland who is stopped and searched by the Police. Policing is relevant to everyone in society, including people with any of the protected characteristics. In drafting the Code of Practice, the Scottish Government has considered the issues affecting all of the above mentioned equality groups, reflecting the Government's expectation that policing in Scotland should have a positive impact on each and every individual and community across Scotland.

The instrument does not discriminate on the basis of any of the protected characteristics. At every stage in the development of the Code of Practice there has been research and consultation with criminal justice partners, key stakeholders and the wider public. Policy officials have created an evidence base from which to develop and assess provisions against the Scottish Government's equality duty and human rights legislation.

The EQIA identified positive impacts against the protected characteristics. It did not identify any negative impacts.

Background

Provisions to enable a Code of Practice were added to the Criminal Justice (Scotland) Act 2016 ('the 2016 Act') following recommendations made by an independent advisory group on stop and search, chaired by John Scott QC. The group had a broad membership that included Police Scotland, the Scottish Police Authority, the Crown Office and Procurator Fiscal Service, academics, representatives from Scotland's Commissioner for Children and Young People, and Anne Houston, Chair, Child Protection Committees Scotland and former Chief Executive of Children 1st. The group published its report on 3 September 2015. The Justice Secretary lodged amendments to the Criminal Justice Bill (now the Criminal Justice (Scotland) Act 2016) at Stage 2 to give effect to the group's recommendations.

To comply with the requirements of section 76 of the 2016 Act, Scottish Ministers consulted publicly on a draft of the Code from 21 March 2016 until 15 July 2016. An analysis of the consultation responses was published on 4 November 2016. When preparing a draft code for public consultation, Scottish Government officials wrote to the persons listed in section 76(2) of the 2016 Act.

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The Scottish Government also undertook a concurrent public consultation on whether the police should have legal powers to stop and search children and young people for alcohol. Many responses to this consultation raised wider issues about stop and search that have informed the development of the Code. A list of the organisations that Scottish Government officials met during the course of this consultation is included at Annex 1 in the analysis of consultation responses, available on the Scottish Government website

At the request of the Cabinet Secretary for Justice, the Advisory Group met on 11 October 2016, 14 October, 1 December and 9 December to help the Government revise the Code to address issues raised in the EQIA and the consultation responses.

The Scope of the EQIA

The EQIA informed the drafting of the consultation papers and the consultation process. The consultation asked respondents whether the Code should contain separate sections on searches of children and vulnerable adults, and if so what should those sections contain. It also asked respondents whether there was anything in the draft Code that should be altered, and whether anything should be added.

As part of the consultation on alcohol search powers, the Government was keen to hear the views of children and young people on this issue and an 'easy-read' summary of the consultation paper was produced. The consultation paper invited people to contact the Scottish Government if they wanted someone from the Government to visit their organisation to talk about the consultation and to hear their views and / or the views of young people who they work with. Several organisations took up this offer.

Scottish Government officials were proactive in arranging meetings with a number of stakeholders to listen to and hear their views at first hand. Organisations included Scottish Children's Parliament, Scottish Youth Parliament, Who Cares Scotland?, Young Scot, Children in Scotland, Action for Children and the Mental Welfare Commissioner for Scotland. Many of these meetings included workshops with Scottish Government Officials and children and young people. A full list of the organisations that Scottish Government officials met during the course of this consultation is included at Annex 1 in the analysis of consultation responses, available on the Scottish Government website.

The Scottish Government particularly welcomed the contribution made by the Coalition for Racial Equality and Rights (CRER) who engaged with a number of organisations at the Government's request, liaising with members, setting up and facilitating meetings; and seeking views on stop and search

In addition, the Scottish Government encouraged stakeholder organisations to carry out their own consultations with children and young people, and a number of such meetings and activities took place. Although the main focus of the discussion at these events was police powers to search for alcohol, many of the meetings also explored views on the Code of Practice.

There was also internal engagement carried out with policy officials from across the Scottish Government to consider equality issues arising from the Code of Practice, including officials from Equality Unit, Victims and Witnesses Team, Child Protection, Youth Justice, Care and Justice, Child Support and Wellbeing and Autism and Learning Disability.

Key Findings

The consultation on alcohol search powers received 130 responses from a range of individuals and organisations. This included 11 reports of consultation activities held with children and young people in different parts of Scotland. Although this consultation was focussed on alcohol search powers, many consultation responses raised wider issues about stop and search. These responses have informed the development of the Code of Practice.

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

Analysis of the responses showed:

- significant support for the Code to contain a section on children and young people.
- support for a separate section on adults at risk and vulnerable adults.
- Respondents offered varied comments on how the Code might help promote community wellbeing and provide confidence that stop and search is being used with due consideration to Fairness, Integrity, Respect and Human Rights.

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- Respondents offered a wide range of very individual and specific points about different aspects of the Code.
- A small number of respondents (including those representing Police Scotland and the Scottish Police Federation) made multiple and detailed comments about the practical use of the Code in particular situations.

As part of the EQIA process, the Scottish Government has also carried out a Children’s Rights and Wellbeing Impact Assessment (CRWIA) and a Business and Regulatory Impact Assessment.

Recommendations and Conclusion

The Equality Impact Analysis (EQIA) has shaped the consultation process, in terms of the consultation questions that were asked and also about the engagement activities that were undertaken. In particular, activity to engage directly with children and young people and to actively seek views from equality groups. Consultation questions were used to seek views on whether the Code should contain sections on searches of children and vulnerable adults, and if so, what those sections should contain.

The EQIA and the responses to the consultations have shaped revisions to the draft Code. In particular, as a result of the assessments and consultations, new chapters have been added to the Code on searches involving children (chapter 7) and vulnerable adults (chapter 8). Chapter 4 (legal basis for carrying out a search) has been revised to make it clearer that personal factors alone (including a person’s appearance with regard to the protected characteristics) cannot be used as a reason to stop and search a person. Chapter 6 (how stop and search is to be used) has been revised to make it clearer that a constable must pay due regard to gender, identity or other relevant religious and cultural differences. Chapter 6 also provides that if there is doubt about a person’s ability to understand English, a constable must take reasonable steps to bring information regarding the person’s rights and any relevant provisions of the Code to the person’s attention. Chapter 9 (recording requirements) includes the person’s age, gender and ethnicity in the list of information that must be recorded and published. Chapter 10 (monitoring and supervising) provides that supervising officers must ensure that constables are using stop and search powers fully in accordance with the Code, and that any apparently disproportionate use of the powers in relation to specific sections of the community should be identified and reviewed to determine the reasons and, if appropriate, action should be taken.

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The impact assessments and consultation also highlighted the need for an easy to understand guide to the Code, aimed at members of the public. Scottish Government officials are working with the Advisory Group to prepare a plain English guide to the Code of Practice, A version of this guide aimed specifically at children will also be prepared. These guides will be made available on the Scottish Government website in advance of the Code coming into effect.

The 2016 Act provides for the Code to be regularly reviewed. The first review must take place no later than 2 years after the Code comes into effect, with subsequent reviews no later than every four years.