

Final Business and Regulatory Impact Assessment

Title of Proposal

The Stop and Search Code of Practice (Appointed Day) (Scotland) Regulations 2017

Purpose and intended effect

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.

Consultation

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 QC¹. The group published its report on 3 September 2015². The Justice Secretary lodged amendments to the Criminal Justice Bill 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 2016³. When preparing a draft code for public consultation, Scottish Government officials wrote to the persons listed in section 76(2) of the 2016 Act.

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 of the analysis of consultation responses, available on the Scottish Government website⁴

Revisions to the Code to address issues raised in the consultation

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 consultation. There is consensus

¹ 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.

² <http://www.gov.scot/Resource/0048/00484527.pdf>

³ <http://www.gov.scot/Resource/0050/00509193.pdf>

⁴ <http://www.gov.scot/Resource/0050/00509077.pdf>

among advisory group members about all of the changes that have been made to the draft Code. Of most significance:

- A new section has been added (paragraph 1.3) that states the primary purpose of stop and search (to promote public safety and help prevent and detect crime).
- A new chapter (chapter 7) has been added on searches where a child is involved
- A new chapter (chapter 8) has been added on searches where a vulnerable person is involved
- Significant revisions have been made to chapter 4 (legal basis for carrying out a search) and chapter 10 (monitoring and supervising stop and search). These sections have been restructured to make them flow in a more logical order, and have been amended to make them clearer.
- Chapter 9 (recording requirements) has been amended to ensure that information about strip searches (including strip searches of children) will be recorded.

Issues raised in the consultation not included in the draft Code of Practice

There was consensus amongst the Advisory Group members that it would be impractical to record information about searches carried out as a condition of entry to sports and other events. Notwithstanding that two thirds of consultation respondents said this was necessary, the Advisory Group unanimously considered that there would be significant practical and operational difficulties in recording searches on entry to large scale events.

Business Consultation

As stated above the Scottish Government consulted widely with stakeholders about the Code of Practice. Government officials actively brought the consultation process to a wide range of stakeholders, encouraging them to participate and a number of organisations who have a particular interest in the Code provided responses, including children and young people's organisations, justice organisations Black and Minority Ethnic Groups, British Transport Police, Police Scotland, Scottish Police Authority, Mental Welfare Commission for Scotland and CoSLA.

Scottish Government officials have worked closely with Police Scotland to develop the Code. DCC Rose Fitzpatrick is a member of the Stop and Search Advisory Group and officials have been in close contact with Police Scotland's National Stop and Search Unit to revise the draft Code to address issues raised in consultation responses.

Options

Scottish Ministers are required to lay this instrument, together with a copy of the draft Code, before Parliament within 12 months of the date that the 2016 Act received Royal Assent⁵, as a consequence of sections 73 to 77 of the 2016 Act. There has been full public consultation on the contents of the draft Code as stated above.

⁵ The Criminal Justice (Scotland) Act 2016 received Royal Assent on 13 January 2016

Sectors and groups affected

The Scottish Police Authority and the Police Service of Scotland will be affected by this instrument, as the Code applies to the functions exercisable by a constable.

The instrument has no financial impact on other business sectors or groups.

Benefits

The Code will set out the circumstances in which a search of a person not in police custody 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. This will give effect to a key recommendation made by the Stop and Search Advisory Group.

Costs

Preparation for the introduction of the Code has resulted in costs for the Scottish Police Authority related to the training of police constables, amendments to business processes and database enhancements. Police Scotland has advised that the total costs associated with the introduction of the Code is **£2,802,483. This is a one off cost.** Further detail behind this total is set out below.

Training

Police Scotland's original assessment, as referred to in the Supplementary Financial Memorandum for the Criminal Justice Bill, was that all officers up to and including the rank of inspector would require one full day face to face training. The cost of this would have been £3,852,637. Police Scotland subsequently decided that it would be more effective to design a multi-faceted training programme that included a mixture of e-learning and a half day face to face training for all officers up to the rank of Inspector, at a total (cash plus non cash) cost of £2,738,083. The non-cash costs relate primarily to the time to train officers across Scotland. This includes the training of 16850 officers and 750 special constables. Each of these officers will receive 4 hours of classroom based training supported by a 2 hour e-learning package. This will be met from within existing resources. The training of new recruits will be incorporated within the probationary training programme. The cost of time to train the officers equates to £2,532,088.

The cash costs for the training have been estimated at £205,995 and incorporate additional travel, accommodation and printing of course materials. This is a one off cost.

Amendments to business process

The Code required officers to issue a receipt to persons subject to a stop and search. This receipt will provide information on how to obtain a copy of the record of search and provide guidance on an individual's rights. The initial costs associated with the production of the receipt is £8400. This is a one off cost. The annual estimated replenishment cost of £1500. This figure can be further off set by £2480.03, which is the annual replenishment costs associated with the advice slip and aide memoire that is currently issued. The year on year savings comparing the existing annual replenishment costs to future replenishment costs of the receipt is an annual saving of £980.03.

Database enhancements

The Code of Practice requires Police Scotland to record and provide statistical information. This required amendments to the National Stop and Search Database. The cost of this amendment is approximately £56,000. This is a one off non cash cost that comprises of staff time and will be met from existing resources.

Scottish Firms Impact Test

It was not considered necessary for Scottish Government officials to carry out face-to-face discussions with business about this instrument.

Competition Assessment

This instrument will not have any impact on competition. It will not limit the number or range of suppliers, limit the ability of suppliers to compete, limit suppliers' incentives to compete vigorously or limit the choices and information available to consumers.

Test run of business forms

This instrument does not bring in any new forms for business etc. to complete.

Legal Aid Impact Test

The provisions in this instrument have been discussed with the Access to Justice team in Scottish Government. They have confirmed that as the Government is not creating any new offences or penalties and the Code does not introduce any significant changes in practice there is nothing to indicate that there will be an increase on individuals seeking legal advice as a result of the legislation. There is therefore no requirement to carry out a legal aid impact test.

Enforcement, sanctions and monitoring

A court or tribunal must take the Code of Practice into account when determining any question arising in the proceedings to which the Code is relevant in terms of section 75 of the 2016 Act.

Chapter 10 of the Code sets out how the use of Stop and Search is to be monitored.

Implementation and delivery plan

The instrument specifies that the Code will come into effect on Thursday 11 May 2017. This takes into account the logistical implications for Police Scotland in terms of training and ensuring that the necessary arrangements are in place. A midweek date has been chosen as Police Scotland advises that there is typically a lower number of stops and searches carried out at this time.

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.

Summary and recommendation

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. 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. Scottish Ministers are required to lay this instrument, together with a copy of the draft Code, before Parliament as a consequence of sections 73 to 77 of the 2016 Act. There has been full public consultation on the contents of the draft Code as stated above.

Preparation for the introduction of the Code has resulted in costs for the Scottish Police Authority related to the training of police constables and enhancements to business processes and databases. Police Scotland has advised that the total costs associated with the introduction of the Code is **£2,802,483**. This is a one off cost.

This instrument has no impact on other business sectors or on competition.

Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:

Date: 10 January 2017

**Michael Matheson MSP
Cabinet Secretary for Justice**

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