

Final CRWIA - Web publication of Bill / Secondary Legislation CRWIA

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

Date of publication 11 January 2017

Executive Summary

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.

Policing plays a particularly important role in protecting and promoting the rights and well-being of children and young people. In preparing a Code of Practice on Stop and Search, the Scottish Government, taking advice from an independent Advisory Group, took full account of how the Code would impact on children and young people.

Through public consultation and discussions with a wide range of stakeholders, including children and young people's organisations, Scottish Government officials identified a need to include within the Code a separate section dealing exclusively with children and young people. This was subsequently discussed by Independent Advisory Group members. A separate section has been incorporated in the final version of the Code (chapter 7).

In addition, Chapter 4 of the Code (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, including age) cannot be used as a reason to stop and search a person. Chapter 9 (recording requirements) includes the person's age 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.

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

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| | <p>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.</p> |
| <p>Background</p> | <p>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 at Stage 2 to give effect to the group's recommendations.</p> <p>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.</p> <p>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</p> <p>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 , CRWIA and the consultation responses.</p> |
| <p>Scope of the CRWIA</p> | <p>The CRWIA informed the drafting of the consultation papers and the consultation process. The consultation asked respondents whether the Code should contain a separate sections on searches of children and if so what should that section contain. It also asked respondents whether there was anything in the draft Code that should be altered, and whether anything should be added.</p> |

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| | <p>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.</p> <p>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 and Action for Children. 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.</p> <p>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 the option of new police powers for alcohol, many of the meetings also explored views on the Code of Practice.</p> <p>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 and Child Support and Wellbeing.</p> |
| <p>Children and young people's views and experiences</p> | <p>There was significant support for the Code to contain a section on children and young people. Respondents thought this would:</p> <ul style="list-style-type: none"> • Help ensure that the police understand and take full account of the needs of children and young people – including those with additional needs • Provide guidance to the police on understanding and responding to the particular dynamics of interacting with this group • Help inform stop and search practice in relation to prioritising safeguarding and wellbeing issues in dealing with children. <p>This would, in turn, contribute to maintaining good community</p> |

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| | relations and ensuring that children and young people do not become alienated or criminalised. |
| Key Findings | <p>The Scottish Government is committed to recognising, respecting and promoting children’s rights as part of its wider commitment to improving life chances for all children and young people. The United Nations Convention on Rights of the Child (UNCRC) lies at the heart of the Scottish Government’s policy and practice. The Convention sets out these rights in 54 articles and 2 optional protocols. There is scope for the Code of Practice on Stop and Search to impact on a significant number of these articles. These include (but are not limited to):</p> <ul style="list-style-type: none"> • Article 1 – Definition of the Child • Article 2 – Non-Discrimination • Article 3 – Best Interest of the Child • Article 4 – Protection of Rights • Article 5 – Parental Guidance • Article 6 – Survival and Development • Article 12 – Respect the Views of the Child • Article 19 – Protection from all Forms of Violence • Article 23 – Children with Disabilities • Article 24 – Health and Health Services • Article 25 – Review of Treatment in Care • Article 33 – Drug Abuse • Article 34 – Sexual Exploitation • Article 35 – Abduction, Sale and Trafficking • Article 36 – Other Forms of Exploitation • Article 37 – Detention and Punishment <p>Policing is also relevant to the eight well-being indicators – Safe, Healthy, Achieving, Nurtured, Active, Respected, Responsible, Included (SHANARRI) – developed by the Scottish Government as part of the GIRFEC approach.</p> <p>It is important that, in carrying out their role, Police Scotland builds strong relationships with all communities and groups within Scotland, including children and young people. The Code of Practice includes a section specifically aimed at children and young people. This section of the Code is designed to provide officers with assistance in recognising and understanding the needs of children and young people in relation to stop and search. It acknowledges that children and young people have different requirements to adults and that they may require additional support to help them comprehend and participate fully in the search process.</p> <p>This dedicated section does not replace any requirements</p> |

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| | <p>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.</p> |
| <p>Conclusions and Recommendations</p> | <p>Having consulted widely with a number of children and young people's organisations and listened to their views, the Scottish Government is confident that the Code of Practice on Stop and Search will enable and encourage Police Scotland to operate a stop and search policy which protects, promotes and has regard to the rights and wellbeing of all age groups, including children and young people.</p> <p>The CRWIA 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. Consultation questions were used to seek views on whether the Code should contain a new section on searches of children and young people, and if so, what that section should contain.</p> <p>The CRWIA and the responses to the consultations have shaped revisions to the draft Code. In particular, as a result of the assessments and consultations, a new chapter has been added to the Code on searches involving children (chapter 7). 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, including age) cannot be used as a reason to stop and search a person. Chapter 9 (recording requirements) includes the person's age 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.</p> <p>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.</p> <p>The Scottish Government announced on 4 November 2016 that</p> |

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| | there is insufficient evidence to support creating a police power to search children for alcohol at this time. However, the situation will be re-assessed after the Code of Practice has been in force for 12 months (with an interim assessment after 6 months, during which time a range of further evidence will be gathered). This approach was recommended by the Advisory Group and is supported by Police Scotland. |
| Monitoring and review | 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. |
| CRWIA Declaration | |
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| CRWIA required | CRWIA not required |
| Yes | |
| Authorisation | |
| Policy lead Stephen Jones Head of Police Powers Police Division | Date 11 January 2017 |
| Deputy Director or equivalent Don McGillivray Deputy Director Police Division | Date 11 January 2017 |