



# Scottish Police Federation

5 Woodside Place Glasgow G3 7QF

## JCC Circular 28 of 2016

Ref: CS/SF

6 July 2016

Attachment – Stop & Search Code – SPF Comments

Dear Colleague

### **Stop & Search – Consultations**

As you will recall the SPF responded at length to previous consultations on the above subject and I am grateful for your assistance with this.

The Scottish Government has sought further views on a number of aspects of the code of practice on stop and search and in particular on whether any elements of the draft code should be amended. I am mindful that all of you have been exceptionally busy and as I have been a participant of the Stop Search Strategic Group for some time, I have prepared the following for your considerations. I have taken your previous contributions on board during this exercise and trust you will find the content reflective of your views.

In addition the Scottish Government is also conducting a consultation on whether the police should have a general statutory power to search persons under the age of 18 for alcohol. I am mindful that in the past the JCC has expressed this was desirable for safety and wellbeing reasons, albeit it was recognised there were some vagaries in searching for items that were not in themselves illegal to possess.

I would be grateful if you could review the attached and confirm if you are content for the general approach laid out on both subjects and I will respond accordingly.

Please provide your responses to [Lesley.stevenson@spf.org.uk](mailto:Lesley.stevenson@spf.org.uk) no later than Wednesday 13<sup>th</sup> July 2016.

Yours sincerely

**Calum Steele**  
General Secretary

Code of Practice – Stop and Search	SPF Comment
<p>1.1 It is a fundamental value of our society that we respect the right of every person to go about their lawful business without unjustified interference from the State. Where the State does interact with any person, that interaction should be governed by a respect by the State for that person, and for that person's freedoms and rights. In all its interactions the State must act with fairness and integrity, and in compliance with the law. Police work is an example of the interaction between the State and the individual, sometimes when the individual is at their most vulnerable; this Code must therefore be read in light of that fundamental right.</p>	<p>We note with interest the “without unjustified interference from the state” yet find this incompatible with the state interfering to unjustifiably prevent a member of the public from fully cooperating with the police in any manner they deem appropriate; including a voluntary search (paragraph 3.6)</p>
<p>1.2 Police work in Scotland is carried out in accordance with the policing principles agreed by the Scottish Parliament in the Police and Fire Reform (Scotland) Act 2012. These are:</p> <ul style="list-style-type: none"> <li>• that the main purpose of policing is to improve the safety and well-being of persons, localities and communities; and</li> <li>• that the police should achieve that purpose by policing in a way which is accessible to, and engaged with, communities, and promotes measures to prevent crime, harm and disorder.</li> </ul> <p>These principles inform all police work and, by extension, this Code.</p>	<p>Police Officers in Scotland have increasingly acted to promote the safety and wellbeing of persons in ways that sit outside the duties of a constable as defined in the Act. However it should not be the case that the principles of policing are the default reference point when drafting codes over how constables are expected to perform elements of their duties.</p>
<p>1.3 This Code of Practice must be available online and at all police stations for consultation by constables, police staff, detained persons and members of the public.</p>	<p>On the face of it this seems an inconsequential element. However the ‘making available’ has implications beyond physical copies, which in any event will result in additional costs. In order to ‘consult,’</p>

	<p>unless there is an expectation that the police will simply be expected to print as many copies as may be necessary, the police will need to make people available to accommodate such consultation. This will place a further pressure on an already overstretched and under resourced police service.</p> <p>We see no reason why this burden should be borne by the police.</p>
<p>1.4 This Code governs all situations in which constables Stop and Search a person without first making an arrest. It applies to situations involving the exercise of particular statutory powers of Stop and Search, and covers all searches unless the search is expressly excluded, either under this Code or by statute, or by virtue of the search being subject to a separate statutory Code or guidance as to its exercise. The Code also sets out the requirements to be followed by the Police for recording information in relation to all Stop and Search activity covered by this Code.</p>	
<p>1.5 The purpose of this Code is to:</p> <ul style="list-style-type: none"> <li>• set out the principles under which Stop and Search is undertaken;</li> <li>• ensure a consistency in the application of Stop and Search;</li> <li>• set the standard to which constables can be scrutinised and evaluated;</li> <li>• explain why, when and how Stop and Search is used.</li> </ul>	
<p>1.6 Nothing in this Code alters or otherwise affects any provision in any statute which makes express provision as to the exercise of powers of stop or search, or which specifies any procedural</p>	

requirements relating to stop or search.	
1.7 Nothing in this Code alters or otherwise affects any existing rule of law or legal test, e.g. as to what amounts to reasonable grounds for suspicion or as regards admissibility of evidence.	
<p>2.1 Recognising that stopping and searching members of the public is a significant intrusion into their personal liberty and privacy, all Stop and Search activity must be appropriate, as defined by this Code. To be appropriate it must be:</p> <ul style="list-style-type: none"> <li>• <b>Lawful</b> – in accordance with the law and in accordance with any legal duties which are imposed on constables, with particular regard to the Human Rights Act 1998 and the Equality Act 2010;</li> <li>• <b>Proportionate</b> – both in the decision of the constable to carry out a Stop and Search and in the way in which a Stop and Search is conducted. It must balance the rights of the individual against the necessity of the search;</li> <li>• <b>Justifiable</b> – not applied indiscriminately; backed by intelligence and/or reasonable suspicion; and</li> <li>• <b>Accountable</b> – properly recorded, verifiable and justifiable.</li> </ul> <p>In addition, any Stop and Search must be carried out in accordance with the Constable's declaration, and in particular, the following principles:</p> <ul style="list-style-type: none"> <li>• <b>Fairness</b> – a Stop and Search must be carried out fairly and impartially, and without unlawful discrimination;</li> <li>• <b>Integrity</b> – 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; it will reflect the principles of good conduct and personal responsibility;</li> </ul>	

<ul style="list-style-type: none"> <li>• <b>Respect</b> – the person being searched must understand why they are being stopped and searched , and the procedure will be carried out with respect for individual needs – including religious and cultural values and beliefs; and</li> <li>• <b>Human rights</b> – Stop and Search powers must be used compatibly with an individual's human rights, with particular regard to whether a Stop and Search is necessary and is the least intrusive method a constable could use to identify and remove the item from the person's possession.</li> </ul>	
<p>2.2 Evidence obtained from a search to which this Code applies may be open to challenge if the provisions of the Code are not observed.</p>	
<p>3.1 This Code applies to:</p> <p>(a) all stops and searches of the person who is not in police custody carried out pursuant to a statutory power (see Annex A for a non-exhaustive list) and</p> <p>(b) Searches of the person carried out in accordance with a warrant issued by a court in Scotland</p>	
<p>3.2 This Code does not apply to;</p> <ul style="list-style-type: none"> <li>• Searches of persons in custody</li> <li>• Searches of persons under arrest under section 1 of the Criminal Justice (Scotland) Act 2016</li> <li>• Searches of vehicles that do not also involve a search of a person</li> <li>• Searches of premises</li> </ul>	
<p>3.3 A court or tribunal in civil or criminal proceedings must take this Code of Practice into account when determining any</p>	

<p>question arising in the proceedings to which the Code is relevant.</p>	
<p>3.4 A statutory Stop and Search is one conducted by a Constable in the course of their duties where the individual is searched using a specific statutory provision or search warrant.</p>	
<p>3.5</p>	<p>We note there is no 3.5</p>
<p>3.6 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.</p>	<p>We find this section incompatible with the basic tenet that laid out in paragraph 1.1. if a member of the public seeks to cooperate with the police in any way they deem appropriate, this should not be subject to interference by the state.</p>
<p>4.1 Reasonable grounds for suspicion is the legal test which a constable must satisfy before they can stop and detain a person to carry out a search under statutory provisions. The usual requirement is a suspicion that the person has committed, or is committing, or is about to commit, a crime. Constables must therefore be able to explain and justify the basis for their suspicion by reference to intelligence or information about, or some specific behaviour by, the person concerned.</p>	
<p>4.2 Some search powers are exercised on the basis that a constable suspects a person of carrying certain items. Suspicion that the person has committed or is committing an offence is not always required (see for example, paragraph 4.3 below). The test must be applied to the particular circumstances in each case and is in two parts:</p> <p>(i) First, the constable must have formed a genuine</p>	

<p>suspicion in their own mind that they are likely to find the object for which the search power being exercised allows them to search; and</p> <p>(ii) Second, the suspicion that the object will be found must be reasonable.</p> <p>This means that there must be an objective basis for that suspicion based on facts, information and/or intelligence 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 and information and/or intelligence.</p>	
<p>4.3 The exercise of these 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. A constable who has reasonable grounds to suspect that a person is in innocent possession of a stolen or prohibited article, controlled drug or other item for which the constable is empowered to search, may Stop and Search the person even though there would be no power of arrest.</p> <p>This would also apply when a child under the age of criminal responsibility is suspected of carrying any such item (see Note 3A).</p>	<p>This is one example where the consent to search being removed from the member of the public makes what could be a passive and non-intrusive act to one which demands coercive police powers.</p>
<p>4.4 Some search powers are exercised to ensure the care and protection of the person being searched and/or to ensure the safety of others. The exercise of these powers does not depend</p>	

<p>on the person concerned being suspected of a crime.</p> <p>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.</p>	
<p>4.5 Under the powers in Section 67 of the Criminal Justice (Scotland) Act 2016, a constable may search a person who is seeking to enter or attend, or who has entered or is attending a relevant premises or event, 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.</p>	<p>We find a supreme irony in the fact that a general provision for the creation of what is by any definition a random non intelligence supported search provision is created by this code. It is difficult to see how justification for such an approach can exist for what are ostensibly commercial events, but not elsewhere. It is worth noting one of the greatest (justifiable) criticisms of the recent approach to the use of search was its random and non-intelligence led basis.</p>
<p>4.6 Reasonable suspicion can be supported by information or intelligence which provides a description of a person suspected of carrying an article for which there is a power to Stop and Search. The following cannot be used, alone or in combination with each other, or in combination with any other factor, as the reason for stopping and searching any individual:</p> <p>(a) A person's physical appearance with regard, for example, to any of the „relevant protected characteristics“ set out in the Equality Act 2010, section 149, which are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation or the fact that the person is known to have a previous conviction; and</p>	<p>We see some difficulties here. The police are not in control of the information we receive from members of the public. It may well be that the only information passed by way of description for any suspect is based entirely on such protected characteristics. It is equally possible that particularly in smaller and more remote communities, such suspects could be identifiable on such basis alone.</p> <p>Police officers cannot unlearn what they have learnt. Offences under section 58 of the Civic Government (Scotland) Act for example are predicated on knowledge that an individual has previous convictions.</p>

<p>(b) Generalisations or stereotypical images that certain groups or categories of people are more likely to be involved in criminal activity.</p>	<p>We consider this particular reference should be removed.</p> <p>We also question whether the provisions at (b) are at variance with paragraph 4.9</p>
<p>4.7 Reasonable grounds for suspicion should normally be linked to accurate and current intelligence or information, relating to articles for which there is a power to Stop and Search, being carried by individuals in any locality. This would include reports from members of the public or other constables describing:</p> <p>(a) a person who has been seen carrying such an article.</p> <p>(b) crimes committed in relation to which such an article would constitute relevant evidence, for example, property stolen in a theft (including by housebreaking) or an offensive weapon or bladed or sharply pointed article used to assault or threaten someone.</p>	
<p>4.8 Searches based on accurate and current intelligence or information are more likely to be effective. Targeting searches in a particular area at specified crime problems not only increases their effectiveness but also minimises inconvenience to members of the public. It also helps in justifying the use of searches both to those who are searched and to other members of the public. This does not, however, prevent Stop and Search powers being exercised in other locations where such powers may be exercised and reasonable suspicion exists.</p>	<p>Whilst we agree with the sentiments laid out, we see no reason for this paragraphs inclusion.</p>
<p>4.9 Where there is reliable information or intelligence that members of a group or gang habitually carry knives unlawfully or other weapons or controlled drugs, and dress in a distinctive manner or use other means of identification in order to identify</p>	<p>See comments at 4.6</p>

<p>themselves as members of that group or gang, that distinctive style of dress or other means of identification may provide reasonable grounds to Stop and Search any person believed to be a member of that group or gang.</p>	
<p>4.10 A similar approach would apply to particular organised protest groups where there is reliable information or intelligence:</p> <p>(a) that the group in question arranges meetings and marches to which one or more members bring articles intended to be used to cause damage and/or injury to others in support of the group's aims;</p> <p>(b) that at one or more previous meetings or marches arranged by that group, such articles have been used and resulted in damage and/or injury; and</p> <p>(c) that on the subsequent occasion in question, one or more members of the group have brought with them such articles with similar intentions.</p> <p>These circumstances may provide reasonable grounds to Stop and Search any members of the group to find such articles.</p>	
<p>4.11 Reasonable suspicion may also exist without specific information or intelligence and on the basis of the behaviour of a person. For example, if a constable encounters someone on the street at night who is obviously trying to hide something, the constable may (depending on the other surrounding circumstances) base such suspicion on the fact that this kind of behaviour is often linked to stolen or prohibited articles being carried.</p> <p>A constable who forms the opinion that a person is acting suspiciously or that they appear to be nervous without good</p>	<p>We simply point out that cases like the paedophile Alan Hopkins were solved as a consequence of constables acting on a hunch or instinct. Police officer's instincts should no more be dismissed than those of any other professional in their own areas of work.</p>

<p>reason 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.</p> <p>A hunch or instinct which cannot be explained or justified to an objective observer can never amount to reasonable grounds.</p>	
<p>4.12 All police officers must recognise that searches are more likely to be effective, legitimate and secure public confidence when their reasonable grounds for suspicion are based on a range of objective factors. The overall use of these powers is more likely to be effective when up-to-date and accurate intelligence or information is communicated to constables and they are well-informed about local crime patterns.</p> <p>Local senior officers have a duty to ensure that those under their command who exercise Stop and Search powers have access to such information, and the constables exercising the powers have a duty to acquaint themselves with that information.</p>	<p>Whilst it is difficult to take issue with the provisions of this paragraph, we believe there is a need for a "reasonable" provision in terms of access to information. Quite simply at this time, and indeed likely for some considerable time to come, the ability to access such information is hindered considerably by technology. This needs to be recognised.</p>
<p>4.13 A constable who has reasonable grounds for suspicion may detain the person concerned in order to carry out a search. Before carrying out the search the constable should, as a matter of good practice, ask questions about the person's behaviour or presence in circumstances which gave rise to the suspicion. As a result of questioning the detained person, the reasonable grounds for suspicion necessary to detain that person may be confirmed or, because of a satisfactory explanation, be dispelled. (See Notes 4 and 5).</p> <p>Questioning may also reveal reasonable grounds to suspect the possession of a different kind of unlawful article from that</p>	

originally suspected.	
<p>4.14 If, as a result of questioning before a search, or other circumstances which come to the attention of the constable, there cease 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 is free to leave at will and must be so informed.</p>	
<p>4.15 There is no power to stop or detain a person in order to find grounds for a search. Constables have many encounters with members of the public which do not involve detaining people against their will and do not require any statutory power for a constable to speak to a person.</p> <p>However, if reasonable grounds for suspicion emerge during such an encounter, the constable may detain the person to search them, even though no grounds existed when the encounter began. Reasonable grounds for suspicion however cannot be provided retrospectively by such questioning during a person's detention or by refusal to answer any questions asked.</p> <p>As soon as detention begins, and before searching, the constable must inform the person that they are being detained for the purpose of a search and take action in accordance with paragraphs 5.9 to 5.11 under "Steps to be taken prior to a search".</p>	
<p>4.16 Authority for a constable in uniform to Stop and Search under section 60 of the Criminal Justice and Public Order Act 1994 may be given if the authorising constable reasonably</p>	<p>This is simply a restating of the legislative provisions and we see no reason for repeating them in the code</p>

<p>believes:  (a) that incidents involving serious violence may take place in any locality, and it is expedient to use these powers to prevent their occurrence; or  (b) that persons are carrying dangerous instruments or offensive weapons without good reason in any locality.</p>	
<p>4.17 An authorisation under section 60 may only be given by a constable of the rank of inspector or above and in writing (although the requirement for the order to be in writing need not be met immediately and can be satisfied when it is practicable to do so). The authorisation must specify the grounds on which it was given, the locality in which the powers may be exercised and the period of time for which they are in force. The period authorised may not exceed 24 hours.</p>	<p>This is simply a restating of the legislative provisions and we see no reason for repeating them in the code</p>
<p>4.18 Where an officer below the rank of assistant chief constable authorises Section 60 powers, this should be reviewed as soon as is practicable by an officer of at least the rank of assistant chief constable.</p>	<p>This is simply a restating of the legislative provisions and we see no reason for repeating them in the code</p>
<p>4.19 A constable of the rank of superintendent or above may direct that the authorisation shall be extended for a further 24 hours if it is necessary to do so, having regard to the offences which have been (or are suspected of having been) committed, or the on-going activity in the area. That direction must be given in writing unless it is not practicable to do so, in which case it must be recorded in writing as soon as practicable afterwards.</p>	<p>This is simply a restating of the legislative provisions and we see no reason for repeating them in the code</p>
<p>4.20 Although the powers in section 60 provide that a constable may stop any person or vehicle and make any search they see fit whether or not they have grounds for suspecting that the</p>	

<p>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. When selecting persons and vehicles to be stopped in response to a specific threat or incident, constables must take care not to discriminate unlawfully against anyone on the grounds of any of the protected characteristics set out in the Equality Act 2010.</p>	
<p>4.21 The driver of a vehicle which is stopped under section 60 and any person who is searched under section 60 are entitled to a written statement if they apply within twelve months from the day the vehicle was stopped or the person was searched. This statement is a record which states that the vehicle was stopped or (as the case may be) that the person was searched under section 60 and it may form part of the search record or be supplied as a separate record.</p>	<p>This is simply a restating of the legislative provisions and we see no reason for repeating them in the code</p>
<p>4.22 Section 60(4A) of the Criminal Justice and Public Order Act 1994 also provides a power to constables to demand the removal of disguises. The constable exercising the power must reasonably believe that someone is wearing an item wholly or mainly for the purpose of concealing identity. There is also a power to seize such items where the constable believes that a person intends to wear them for this purpose. There is no power to Stop and Search for disguises.</p> <p>A constable may seize any such item which is discovered when exercising a power of search for something else, or which is being carried, and which the constable reasonably believes is</p>	<p>This is simply a restating of the legislative provisions and we see no reason for repeating them in the code</p>

<p>intended to be used for concealing anyone's identity. This power can only be used if an authorisation given under section 60 is in force.</p>	
<p>4.23 Authority under section 60(4A) for a constable in uniform to require the removal of disguises and to seize them may be given on the same grounds as specified in paragraph 4.16.</p>	<p>This is simply a restating of the legislative provisions and we see no reason for repeating them in the code</p>
<p>4.24 An authorisation under section 60(4A) may only be given by a constable of the rank of inspector or above, in writing, specifying the grounds on which it was given, the locality in which the powers may be exercised and the period of time for which they are in force. The period authorised may not exceed 24 hours.</p>	<p>This is simply a restating of the legislative provisions and we see no reason for repeating them in the code</p>
<p>4.25 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:</p> <ul style="list-style-type: none"> <li>(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;</li> <li>(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;</li> <li>(c) under a search warrant or order issued under paragraph 1, 3 or 11 of Schedule 5 to the Terrorism Act 2000 to search premises and any person found there for material likely to be of substantial value to a terrorist investigation; and</li> <li>(d) under a warrant issued under section 11 or section 52 of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act</li> </ul>	<p>This is simply a restating of the legislative provisions and we see no reason for repeating them in the code</p>

<p>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.</p>	
<p>4.26 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.</p>	<p>This is simply a restating of the legislative provisions and we see no reason for repeating them in the code</p>
<p>4.27 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.</p>	<p>This is simply a restating of the legislative provisions and we see no reason for repeating them in the code</p>
<p>4.28 Searches authorised under a warrant do not require prior specific grounds to suspect that the person to be searched is in possession of an item for which there is an existing power to search. 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.</p>	
<p>5.1 All Stop and Search activity must be carried out with courtesy, without prohibited discrimination, and with respect for the human rights of the person concerned. When deciding whether to search a child or young person who is under 18 years old the constable must treat the need to safeguard and promote the wellbeing of the child as a primary consideration.</p>	

<p>5.2 The use (and misuse) of Stop and Search powers has a significant impact on public confidence in the police. Every reasonable effort should be made to minimise the disruption and embarrassment that a person being searched may experience.</p>	
<p>5.3 The co-operation of the person to be searched must be sought in every case, even if the person initially objects to the search. A forcible search may only be made if it has been established that the person is unwilling to co-operate or resists. Reasonable force may be used as a last resort if necessary to conduct a search or to detain a person for the purposes of a search.</p>	<p>We believe reasonable force is understood by police officers but not by the general public. For example taking hold of someone's arm may be all the force that's reasonable necessary. We believe the term 'forcible' has the potential to confuse.</p>
<p>5.4 The length of time for which a person may be detained must be reasonable and kept to a minimum.</p> <p>The thoroughness and extent of a search must depend on the circumstances of the search, including what is suspected of being carried, and by whom.</p> <p>If the suspicion relates to a particular article which is seen to be slipped into a person's pocket or bag, then subject to a 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.</p> <p>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.</p>	<p>We believe the words "which is seen" are overly prescriptive and do not reflect the realities of human fallibility. We consider "believed to have been slipped ..." would be more realistic.</p>

<p>5.5 The search must be carried out at or near the place where the person was first detained. (See Note 8).</p>	<p>We consider that in addition to the narrative in note 8, an additional sentence similar to “this will be determined by the circumstances of each particular case” would prove useful here.</p>
<p>5.6 There is no power to require a person to remove any clothing in public other than an outer coat, jacket, gloves, headgear or footwear except under section 60(4A) of the Criminal Justice and Public Order Act 1994 (which empowers a constable to require a person to remove any item worn to conceal identity). (See Notes 6 and 8).</p> <p>A search in public of a person’s clothing which has not been removed must be restricted to superficial examination of outer garments. This does not, however, prevent a constable from placing his or her hand inside the pockets of the outer clothing, or feeling 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. For the same reasons, subject to the restrictions on the removal of headgear, a person’s hair may also be searched in public.</p>	
<p>5.7 Where on reasonable grounds it is considered necessary to conduct a more thorough search (e.g. by requiring a person to take off a T-shirt), this must be done out of public view, for example, in a police van unless paragraph 5.8 applies, or police station if there is one nearby (see Note 8). Any search involving the removal of more than an outer coat, jacket, gloves, headgear or footwear, or any other item concealing identity, may only be made by a constable of the same sex as the person searched and may not be made in the presence of anyone of the opposite sex unless the person being searched specifically requests it.</p>	

<p>(See Annex C).</p>	
<p>5.8 Searches involving exposure of intimate parts of the body must not be conducted as a routine extension of a less thorough search, simply because nothing is found in the course of the initial search. 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 (but not a police vehicle). These searches must be conducted in accordance with Annex D.</p>	
<p>5.9 Before any search of a detained person takes place the constable must take reasonable steps, if not in uniform (see paragraph 5.10), to show their warrant card to the person to be searched and whether or not in uniform, to give that person the following information:</p> <ul style="list-style-type: none"><li>(a) that they are being detained for the purposes of a search;</li><li>(b) the constable's name and number (except where the constable reasonably believes that giving their name might put them in danger, in which case a warrant or other identification number shall be given) and the name of the police station to which the constable is attached;</li><li>(c) the legal search power which is being exercised;</li><li>(d) a clear explanation of:<ul style="list-style-type: none"><li>(i) the object of the search in terms of the article or articles for which there is a power to search; and</li><li>(ii) in the case of:<ul style="list-style-type: none"><li>• the power under section 60 of the Criminal Justice and Public Order Act 1994 (see paragraphs 4.14 to 4.21), the nature of the power, the authorisation and the fact that it has been given;</li><li>• all other powers requiring reasonable suspicion;</li><li>• the grounds for that suspicion.</li></ul></li></ul></li></ul>	

<p>This means explaining the basis for the suspicion by reference to information and/or intelligence about, or some specific behaviour by, the person concerned; and</p> <p>(e) that they are entitled to a copy of the record of the search in accordance with the requirements set out in Chapter 6 of this Code. The constable must explain to the person to be searched what those requirements are.</p>	
<p>5.10 The person should also be given information about police powers to Stop and Search and the individual's rights in these circumstances. The information should reflect the same information included in the example at Annex B.</p>	
<p>5.11 Constables must make every effort to satisfy themselves 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, or there is any doubt about the person's ability to understand English, the constable must take reasonable steps to bring information regarding the person's rights and any relevant provisions of this Code to his or her attention.</p> <p>If the person is deaf or cannot understand English and is accompanied by someone, then the constable must try to establish whether that person can interpret or otherwise help the constable to give the required information.</p>	
<p>6.1 When a constable carries out a search in the exercise of any power to which this Code applies and the search does not result in the person searched being arrested, a record must be made of it, electronically or on paper, unless there are exceptional</p>	

<p>circumstances which make this wholly impracticable (e.g. in situations involving public disorder or when the constable's presence is urgently required elsewhere).</p> <p>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).</p>	
<p>6.3 If the record is made at the time, the person who has been searched must be asked if they want a copy and if they do, they must be given immediately, either:</p> <ul style="list-style-type: none"> <li>• a copy of the record; or</li> <li>• a receipt which explains how they can obtain a copy of the full record or access to an electronic copy of the record.</li> </ul>	<p>This has immediate and additional cost considerations for the police service who already have to carry myriads of forms and paperwork whilst on duty. Additionally the expectation plain clothes officers in particular, who may need to undertake searches at any time (on production of a warrant card) are expected to carry receipt books is wholly impractical.</p>
<p>6.4 A constable is not required to provide a copy of the full record or a receipt at the time if they are called to an incident of higher priority (see Note 15).</p>	
<p>6.5 If a search in the exercise of any power to which this Code applies results in a person being arrested, the constable carrying out the search is responsible for ensuring that a record of the search is made as part of their custody record.</p> <p>The custody officer must then ensure that the person is asked if they want a copy of the record and, if they do, that they are given a copy as soon as practicable (see Note 11).</p>	<p>This does not reflect the realities of policing. The searching and arresting officer is not always the officer who conveys the accused into custody. It is possible the accused could be released before the arresting officer returns to the police station.</p> <p>We also believe the requirement for additional information on the custody record will significantly hamper the effective management of custodies and create significant IT difficulties that are not easily addressed without considerable investment (which the</p>

	service does not currently have)
<p>6.6 The record of a search must always include the following information:</p> <ul style="list-style-type: none"> <li>• Details of the constable conducting the search</li> <li>• Details of the corroborating constable</li> <li>• Time</li> <li>• Date</li> <li>• Locus (nearest address, private place or street)</li> <li>• Name (if provided. There is no requirement for a person to provide their name if nothing is found, but it should be recorded if given)</li> <li>• Age (if provided)</li> <li>• Gender (if provided)</li> <li>• Date of Birth (if provided)</li> <li>• Address (if provided)</li> <li>• Self - defined ethnicity and national origin (if provided)</li> <li>• Type of search</li> <li>• The legislation used</li> <li>• The grounds on which the search is based, including the grounds for reasonable suspicion</li> <li>• The outcome of the Stop and Search</li> <li>• Details of any item(s) recovered</li> <li>• In the case of a search conducted pursuant to 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.</li> </ul> <p><input type="checkbox"/> In the case of a search of a person pursuant to a warrant the date the search warrant was issued and the fact that the warrant was produced.</p>	<p>We consider there is no legitimate purpose for asking for National Origin (country of birth) as we understand the police service of Scotland uses population comparators based on ethnicity as per the Scottish Census Data.</p> <p>We are not convinced this would meet the requirements of the data protection act.</p>

<p>6.7 For the purposes of completing the search record, there is no requirement to record the name, address and date of birth of the person searched where this is not provided by the person being searched. The person is under no obligation to provide this information and they should not be asked to provide it for the purpose of completing the record.</p>	
<p>6.8 Nothing in this Code requires the names of constables to be shown on the search record or any other record required to be made under this Code where a constable reasonably believes that recording names might endanger themselves or other constables. In such cases the record must show the constables' warrant or other identification number and duty station.</p>	
<p>6.9 A separate record is required for each person searched.</p>	
<p>6.10 The record of the grounds for making a search must, briefly but informatively, explain the reason for suspecting the person concerned, by reference to information and/or intelligence about, or some specific behaviour by, the person concerned.</p>	
<p>6.11 Where officers detain an individual with a view to performing a search, but the need to search is eliminated as a result of questioning the person detained, a search should not be carried out and a record is not required.</p>	<p>We believe this paragraph is unnecessary</p>
<p>6.12 Nothing in this Code requires a constable who requests a person in a public place to account for themselves, i.e. 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.</p>	<p>We believe this paragraph is unnecessary</p>

<p>7.1 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.</p> <p>Supervising officers must monitor the use of Stop and Search powers and should consider in particular whether there is any evidence that they are being exercised on the basis of stereotyped images or inappropriate generalisations.</p> <p>Supervising officers must satisfy themselves that the practice of constables under their supervision in stopping, searching and recording is fully in accordance with this Code.</p> <p>Supervisors 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.</p>	<p>We consider the expectations on supervisors is onerous. Ultimately it is for the courts to determine whether searches are undertaken in accordance with the code.</p> <p>Every constable has to account for their actions (or lack of action) and we consider this to be a sufficiently high expectation.</p> <p>In any event there is no indication as to what supervisor intervention could look like we would also highlight that the behaviours that discredited stop and search were supervisor driven.</p> <p>We also consider that without significant investment in IT, the ability to identify 'trends or patterns' is otherwise non-existent.</p>
<p>7.2 Senior officers with area or force-wide responsibilities must also monitor the broader use of Stop and Search powers and, where necessary, take action at the relevant level.</p>	<p>We would highlight that senior officers were responsible for driving the stop and search behaviours.</p> <p>This paragraph is largely meaningless – what does 'where necessary' mean? More? Less? More of a certain kind? Less of a certain kind?</p> <p>In any event there is no indication as to what "action" should look like.</p>
<p>7.3 Supervision and monitoring must be supported by the compilation of comprehensive statistical records of stops and searches at force and local authority level. Any apparently disproportionate use of the powers by particular constables or</p>	<p>Ultimately the courts will determine whether the use of powers is disproportionate. It is difficult to see how a constable abiding by the provision of the remainder of this code could be considered to be in need of</p>

<p>groups of constables or in relation to specific sections of the community should be identified and appropriate action taken.</p>	<p>“appropriate action”</p>
<p>7.4 In accordance with section 69 of the 2016 Act, as soon as practicable after the end of each reporting year (ending 31 March), Police Scotland must publish information on how many times during the reporting year a Stop and Search was carried out by a constable. So far as practicable, the information is to disclose (in addition)</p> <p>(a) how many persons were searched on two or more occasions,</p> <p>(b) the age and gender, and the ethnic and national origin, of the persons searched,</p> <p>(c) the proportion of searches that resulted in</p> <p>(i) something being seized by a constable,</p> <p>(ii) a case being reported to the procurator fiscal,</p> <p>(d) the number of complaints made to the Police Service of Scotland about the carrying out of searches (or the manner in which they were carried out).</p>	<p>The expectations at paragraph c can only be delivered with significant investment in IT and people. The service has the luxury of neither at this time.</p> <p>The wider expectations will result in a significant bureaucracy for the police service and ultimately the time needs to come where politicians decide whether they are happy for more people to be counting, and fewer ‘doing’ as without considerable investment, that is the only likely outcome.</p>
<p>7.5 Police supervisors must monitor the use of Stop and Search powers by individual constables to ensure that they are being applied appropriately and lawfully.</p> <p>Monitoring takes many forms, such as direct supervision of the exercise of the powers, examining Stop and Search records (particularly examining the constable’s documented reasonable grounds for suspicion) and asking the 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 force should be identified as a result of such monitoring, with best practice identified and</p>	<p>Our comments at 7.3 refer.</p>

<p>communicated proactively throughout Police Scotland.</p>	
<p>7.6 Where a supervisor identifies issues with the way that a constable has used a Stop and Search power, the facts of the case will determine whether the standards of professional behaviour as set out in the Code of Ethics for Policing in Scotland  <a href="http://www.scotland.police.uk/about-us/Code-of-ethics-for-policing-in-scotland/">(http://www.scotland.police.uk/about-us/Code-of-ethics-for-policing-in-scotland/)</a>  have been breached and which formal action is pursued. Improper use might be a result of poor performance or a conduct matter, which will require the supervisor to take appropriate action such as performance or misconduct procedures. It is imperative that supervisors take both timely and appropriate action to deal with all such cases that come to their notice.</p>	<p>We consider this paragraph unhelpful. It is predicated on wrongdoing as is demonstrated by the words “have been breached and which formal action ...”</p> <p>In any event the code of ethics for policing in Scotland is NOT the basis for consideration of misconduct proceedings against police officers.</p>
<p>Notes for Guidance – para 13</p> <p>Constables should record the self-defined ethnicity and national origin of every person stopped. The person should be asked to select one of the five main categories representing broad ethnic groups and then a more specific cultural background from within this group, using the groups listed in the census questionnaire. An additional “Not stated” box is available but should not be offered to respondents explicitly. Constables should be aware and explain to members of the public, especially where concerns are raised, that this information is required to obtain a true picture of Stop and Search activity and to help improve ethnic monitoring, tackle discriminatory practice, and promote effective use of the powers. If the person gives what appears to the constable to be an “incorrect” answer</p>	<p>See comments at 6.6</p> <p>We consider asking for ethnicity, national origin and identification from the 5 main ethnic grouping could be confusing and has the potential to create unnecessary conflict.</p>

<p>(e.g. a person who appears to be white states that they are black), the constable should record the response that has been given and then record their own perception of the person's ethnic background. If the "Not stated" category is used the reason for this must be recorded on the form.</p>	
<p>Annex A</p>	
<p>Annex B</p>	
<p>Annex C</p>	
<p>Annex D – Paragraph 3(e)</p> <p>Except in cases of urgency, where there is risk of serious harm to the detainee or to others, whenever a strip search involves exposure of intimate body parts, there must be at least two people present other than the detainee, and if the search is of a child or mentally disordered or otherwise mentally vulnerable person, one of the people must be the appropriate adult. Except in urgent cases as above, a search of a child may take place in the absence of the appropriate adult only if the child signifies in the presence of the appropriate adult that they do not want the adult to be present during the search and the adult agrees. A record shall be made of the child's decision and signed by the appropriate adult. The presence of more than two people, other than an appropriate adult, shall be permitted only in the most exceptional circumstances;</p>	<p>We would point out that police officers are not medically trained and cannot diagnose mental disorder or otherwise mentally vulnerable persons. All police officers can do is make a consideration on the likelihood of such matters and this should be reflected in the code.</p>