

Response ID ANON-BEC3-1YEW-3

Submitted to **Draft Code of Practice for Stop and Search**
Submitted on **2016-07-15 16:12:13**

Information about you

Are you responding as an individual or an organisation?

Organisation

What is your name or your organisation's name?

Name/orgname:

Coalition for Racial Equality and Rights

What is your email address?

Email:

rebecca@crer.org.uk

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

Publish response with name

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

PAGE ONE

1 Should the Code of Practice state what the primary purpose of Stop and Search is ?

Yes

If yes, please specify below:

There is a need for a simple statement at the beginning of the Code to make the purpose of Stop and Search clear, both to police officers and to members of the public. This will put the rest of the Code in context and may help the public to understand their rights in regard to this.

CRER prefers the definition used by the Code of Practice in England and Wales (i.e. "The primary purpose of Stop and Search powers is to enable officers to allay or confirm suspicions about individuals without exercising their power of arrest."), rather than the definition given in the footnotes (i.e. "Police Scotland aims to ensure that Stop and Search is used in a proportionate and accountable way to prevent and detect crime, keep people safe and improve community wellbeing."), as we feel it is simpler to understand and better clarifies the intent and potential outcomes of a Stop and Search.

It would also be beneficial if this definition were added to Appendix B (Example of Information to be Given to Persons subject to Stop and Search), as this may clarify the situation for those who are being searched.

2 Should there be a separate section of the Code of Practice to deal specifically with searches of children and young people?

Not Answered

2A If you answered YES to Q2 – do you have any suggestions as to what should be included in a section on children and young people? (if so, please specify below)

If you answered YES to Q2 – do you have any suggestions as to what should be included in a section on children and young people?:

3 Should there be a separate section of the Code of Practice to deal specifically with searches of adults at risk and vulnerable adults?

Not Answered

3A If you answered YES to Q3 – do you have any suggestions as to what should be included in a section on adults at risk and vulnerable adults? (if so, please specify below)

If you answered YES to Q3 – do you have any suggestions as to what should be included in a section on adults at risk and vulnerable adults?:

4 Should the Code of Practice include a section about local public scrutiny of how Stop and Search is used?

Yes

4A If you answered YES to Q4 - do you think the existing local scrutiny arrangements should be used, or do you have any other suggestions? (if so, please specify below)

If you answered YES to Q4 - do you think the existing local scrutiny arrangements should be used, or do you have any other suggestions? :

Existing local scrutiny arrangements should be used, but CRER also believes it is important that Police Scotland utilise the findings of scrutiny to make changes where appropriate.

It is also important to note that Stop and Search may not be naturally included with general Police Scotland scrutiny, and that special efforts will have to be made to include it in these.

Furthermore, working in partnership with local groups and officials does not necessarily equate to scrutiny of services. The meaning, purpose, and intended outcomes of scrutiny need to be better detailed and scrutiny procedures need to contain elements of transparency and accountability.

We note that Footnote 4 states that local partners involved in the local scrutiny arrangements include "multicultural and faith groups". Further clarification is needed as to who these groups are and how they are chosen, as the strength and rigour of the scrutiny will depend upon who is involved in the process. Engagement with diverse groups is critical and consultation on these matters should be open to all communities, organisations, and individuals. If those engaged in local scrutiny arrangements are hand-picked, the voices of all concerned will not be heard. Police Scotland should publish a list of groups it has engaged with through local scrutiny arrangements in its reports on Stop and Search to ensure the process is transparent and open.

5 Do you think it is necessary to record any information about searches carried out under section 67 of the Criminal Justice (Scotland) Act 2016 ? (if so, please specify below what information should be recorded)

Yes

Which information should be recorded?:

Recording must occur in order to allay fears of racial profiling, which could occur in the situations described under section 67, or even especially in the case of a high profile public event.

Simply because consent to be searched has been given as a condition of entry does not make it non-practicable to record information on searches. Indeed, at large events, event management should provide security staff to carry out searches, while the police concentrate on instances in which there is reasonable grounds for suspicion rather than random searches. A police search in this case should be the exception, not the rule, and therefore should be recorded and monitored to ensure there is not discrimination and profiling present in the decision to Stop and Search.

6 Is there anything else that should be included within the Code that would help further promote community wellbeing and provide confidence that Stop and Search is being used with due consideration to Fairness, Integrity, Respect and Human Rights? (if so, please specify below)

Yes

Is there anything else that should be included within the Code that would help further promote community wellbeing and provide confidence that Stop and Search is being used with due consideration to Fairness, Integrity, Respect and Human Rights? :

Firstly, CRER is supportive of requiring that the Code of Practice be available in all police stations and online. We would encourage Police Scotland to ensure that the Code is readily available on its website and is straightforward for members of the public to find, access, and search. A simple English version or a summary should be considered.

Furthermore, additional direction or guidance on the language and manner of questioning an individual prior to a search (section 4.13) should be considered. Particular thought should be given to situations in which an individual is not fluent in English or a situation in which a person is likely to be made exceptionally anxious from aggressive questioning. Police must also ensure as far as is reasonable that the individual has a clear understanding of the questions being asked and his/her rights during a Stop and Search. We feel that an explanation regarding the reasons for search is particularly important, especially for those who may believe they are being searched due to their actual or perceived ethnicity.

CRER also believes that the publication of statistics regarding Stop and Search should include the reason for the search. This information should be able to be disaggregated by ethnicity, as well as other characteristics. This will provide an additional level of accountability to ensure that searches are not carried out due to the personal characteristics of an individual and will allow any concerning trends regarding the reasons for searches to be identified and addressed.

Furthermore, the Code states that those searched are "entitled to a copy of the record of the search" (section 5.9). It is CRER's opinion that rather than individuals being entitled to a record, they should automatically be given a copy of the record immediately following the search. If an exceptional circumstance prohibits this, they should be given a receipt of the search and should be given a copy of the record as soon as possible. Individuals may be put off by being told they can obtain a record in accordance with the requirements set out in Chapter 6 of the Code and may believe it is too difficult to try to seek out a copy. By supplying a copy of the record automatically, there are further accountability and transparency measures in place, as the individual will be able to read the record immediately following the search. This is much more straightforward than having to request a copy after the incident is over.

7 Is there anything missing from the draft Code of Practice that should be added? (if so, please specify below)

Yes

Is there anything missing from the draft Code of Practice that should be added?:

CRER believes the Code would be improved by the addition of a definition and purpose statement for the Code, which would provide context and clarification for

the police as well as the public.

Furthermore, the Code may benefit from the inclusion of a section addressing profiling which makes clear its distinction from suspicion based on information/intelligence and suspicion based on reasonable factors. A clear explanation of the difference between intelligence led policing and racial profiling is crucial. Section 4.9 also makes reference to "members of groups or gangs". The definition of a "gang" and what characteristics may define or identify a gang should be made explicit. Examples may be useful in these instances.

Finally, CRER believes the Code or related guidance should make clear what will happen if a member of the public makes a complaint about a Stop and Search. Annex B includes a section entitled "Your right to complain" but does not provide details about the complaints procedure or potential outcomes. This information may be beneficial to members of the public who are considering making a complaint, but are doubtful that it will be taken seriously or are worried about the process they may have to go through. Further clarification is necessary and will likely encourage complaints addressing situations in which the Code not followed. The right of an individual to request a record of the search (if it is not automatically given) should also be included in this document along with details about how to obtain this. Finally, information on why monitoring data is requested and collected would also be useful in this document. An individual may be more forthright with providing this information if he/she clearly understands the purpose of it.

8 Is there anything in the draft Code of Practice that should be deleted and/or changed? (if so, please specify below)

Is there anything in the draft Code of Practice that should be deleted and/or changed? :

CRER feels that the section addressing terminology (3.4) could be improved to provide additional clarification for members of the public. Simple definitions of terms used throughout the Code would also be beneficial.

Additionally, in the section prohibiting the use of personal factors to support reasonable grounds for suspicion (4.6 (a)), a list of protected characteristics as set out in the Equality Act 2010 are given. Alongside these "the fact that the person is known to have a previous conviction" is listed in the same sentence. We are concerned that someone reading this section who is not familiar with the Equality Act 2010 or the protected characteristics may believe that this is one of them and mistakenly believe that persons with previous convictions are an equality group. This should be separated from the list of relevant protected characteristics both for clarification and to make clear the legal status of these groups versus other groups.

CRER also notes that in section 6.8, which addresses the record of the search, both the "defined ethnicity and national origin" of the individual searched are to be recorded, if provided. We are not convinced that the recording of both characteristics is necessary and useful. Indeed, the meaning of "national origin" is not made explicit. Does it pertain to an individual's nationality, place of birth, place of parent's birth? If this question is going to be asked, clarification is needed. Additionally, when an individual is asked, "What is your national origin," it often furthers a sense of not belonging in Scotland and may cause additional distress, mistrust, and anger for those undergoing a Stop and Search. For example, a 3rd generation individual of a Pakistani ethnic background may be justifiably offended to be asked what his/her national origin is, as though it is presumed to not be Scottish. We believe in most cases, asking only about ethnicity should be enough to identify bias or, which is a much less emotionally-charged matter. If the purpose of these monitoring questions is to ensure one group is not being disproportionately targeted for Stop and Search, national origin will not matter as much as the presumed ethnicity of the individual, and in a Stop and Search situation, it is likely better to ask fewer questions.

Additionally, if an individual who has been detained for a Stop and Search declines to state his/her ethnicity, then the officer should record his/her perceived ethnicity and note that the individual declined to state an ethnicity.

CRER also questions the need to ask an individual who has been detained his/her name. If, as is stated in the draft Code, a name is not a requirement if nothing is found, it may be better to ask the name of the individual at the end of the search, and only if something is uncovered in the search. We believe that more individuals will feel comfortable enough to offer monitoring information if their name has not yet been recorded. Additionally, if nothing is found on a person who has been searched, we question if it is necessary to have their name, address, and date of birth on the record. Perhaps it would be more beneficial to only ask an individual monitoring questions prior to the search (i.e. age, gender, ethnicity) and ask questions regarding name, date of birth, and address if necessary following the search. If not, then the reasons for these questions should be clearly explained to the individual who has been detained.

We also believe that statistics on Stop and Search should be published quarterly, rather than at the end of each reporting year. Furthermore, statistics should be made available both at a national level and at a local policing level. All information published regarding Stop and Search should be able to be disaggregated by personal characteristic, reason for the search, and location. This will allow local and national trend analysis to take place on a relatively frequent basis to address any areas of concern. Cross-referencing characteristics, location, reason for the search, etc. is critical to be able to identify potential bias and discrimination.

CRER also considers that, even if a record is not made following a situation in which an individual is detained with the intention to search but is not searched following questioning (section 6.11), the monitoring data should still be collected and reported. The stop is as much a concern as the search itself, and this data could tell if some groups are being stopped without enough justification to eventually warrant a search or if profiling is potentially happening based on a certain location or appearance. This data is important to collect and monitor as it could speak to trends that demonstrate discrimination or prejudice.

Yes

Evaluation

Please help us improve our consultations by answering the questions below.

Matrix 1 - How satisfied were you with this consultation?:

Slightly satisfied

Please enter comments here.:

Matrix 1 - How would you rate your satisfaction with using Citizen Space to respond to consultations?:

Slightly satisfied

Please enter comments here.: