



**POLICE
SCOTLAND**

Keeping people safe

POILEAS ALBA

Stop and Search
Code of Practice Review
(June 2017 – May 2018)

EXECUTIVE SUMMARY

Police Use of Stop and Search

The Code of Practice for Stop and Search (the Code) was introduced on 11 May 2017. Police Scotland welcomed the introduction of the Code and acknowledge the emphasis on quality of search over quantity. Nationally the stop and search positive rate in the year after the Code was introduced increased to 38% from 31% the previous year despite the overall level of stop and search encounters reducing by 20% to 29,773. The longer-term change in stop and search trends can be traced back to the implementation of Police Scotland's Stop and Search Improvement Plan in 2015 and is not solely attributable to the introduction of the Code of Practice in May 2017. Following the introduction of the Code, Divisional levels in the use of stop and search varied with no clear pattern, suggesting the use of the tactic was being influenced at a local level¹.

Changes to Working Practice

The way in which Stop and Search is conducted in Scotland has changed significantly. Along with the end to the non-statutory search of a person, officers now seek authorisation from an officer of at least the rank of Inspector before carrying out any strip search and officers now issue a stop and search receipt following each encounter. The majority of officers have indicated that they are comfortable with stop and search receipts and strip search authorisation, seeing benefits in their introduction.

Children and Young People

Searches of young people continue to fall across all age categories, whilst also experiencing a rise in the positive rate. The average positive rate for ages 12-24 years in the year after the Code was introduced was 33.3%, compared with 25.3% the previous year.

Currently alcohol seizures are not recordable under the Code, however the purpose of recording these seizures was to support the IAGSS review of the Code and also inform whether there is any need for a power to search young people for alcohol. Seizures of alcohol from those Under 18 reduced by 50% to 858 in the year after the Code was introduced, compared with the previous year and the rate of seizures per 10,000 population for those under 18 reduced from 50.7 to 25.6². This may reflect the changing picture of alcohol consumption among young people which has been in long-term decline as outlined within the most recent Scottish Schools Adolescent Lifestyle and Substance Survey (SALUS) conducted in 2015².

Other methods of recording interactions and concerns for children and young people and alcohol is another consideration which is explored in this report.

During focus group discussions, officers acknowledged some interactions with young people were becoming more challenging around the seizure of alcohol. They did recognise the importance of positive interactions and the impact a negative experience can have with young people. Officers' understanding is also borne out in survey work carried out by the NSSU with young people, which

¹ McVie, S (2019) Twelve month review of the Code of Practice for Stop and Search in Scotland (rates calculated per 10,000 people aged 12 to 80 years)

² McVie, S (2018), Twelve month review of the Code of Practice for Stop and Search in Scotland.

identified good engagement and positive experiences with officers generally. However a small proportion of young people also told of negative experiences in relation to stop and search, which Police Scotland are looking to address through engagement with children and young people's groups.

Officers who took part in focus groups across the country were clear in their view that a power to search young people for alcohol in specific circumstances could provide a more proportionate approach (as opposed to arrest) and benefit public safety. Examples include cases of large-scale unplanned gatherings of young people possessing and consuming alcohol, particularly in circumstances likely to lead to anti-social behaviour and disorder.

Potential Legislative Gaps

Protection of Life

Searching a person to protect life or due to an individual's vulnerability has generated the greatest amount of feedback from officers. This feedback suggests that searches to protect life are some of the most challenging situations faced by both themselves and for the people being searched. Incidents include individuals self-harming using weapons and overdosing, or attempting to, on illicit and prescribed drugs. Officers act to protect life in moments of crisis and recover harmful items including bladed or sharply pointed instruments and drugs that can cause harm and injury not only to the individuals, but others.

Sections 20 and 32 of the Police and Fire (Reform) (Scotland) Act 2012 offer justification for officers to act, but not a specific power of search, which potentially contradicts Section 65 of the Criminal Justice (Scotland) Act 2016 (making it unlawful for an officer to search a person otherwise than in accordance with a power of search).

There should be no ambiguity in the lawfulness of the police to intervene and where necessary search an individual to protect lives.

Fireworks, Flares and Pyrotechnics

Police Scotland continues to consider any incidents / circumstances which arise and may provide evidence of the potential need for legislative change in relation to the possession of fireworks, flares and pyrotechnic devices both generally and at events. Safer Communities are liaising with the Scottish Government and partners to establish evidence of the impact these items can have on the safety and wellbeing of communities.

Governance

Police Scotland and the SPA have in place a process of stop and search analysis and assurance that provides national and local monitoring and publicly available information of all stop and search activity. This includes protected characteristics (i.e. age, sex and ethnicity), search rates per capita and positive rates across all search recording categories.

The Stop and Search Mainstreaming and Assurance Group (SSMAG), chaired by the Executive Lead for Stop and Search, will consider the outcomes of the Independent Advisory Group for Stop Search (IAGSS) review of the Code and oversee progress towards more proportionate methods of assurance.

Ongoing assurance processes have been integrated into local policing to ensure the sustainable delivery of stop and search governance and compliance with the Code, supported by national audit, ensuring that reliable information is available for future reviews. Police Scotland will continue to report on stop and search activity on a quarterly basis through public management information reports and to the SPA through quarterly performance reporting and Stop and Search Assurance Report.

CONTENTS

Introduction	Page 6
Police Powers	Page 7
Police Use of Stop and Search	Pages 7 -11
Changes to Working Practice	Pages 11 - 13
Children and Young People	Pages 14 - 20
Potential Legislative Gaps	Pages 21 - 23
Future of Stop and Search	Pages 23 - 24
Conclusion	Pages 25 - 26
Appendix	Page 27

INTRODUCTION

The Code of Practice for Stop and Search (the Code), was implemented in Scotland on 11 May 2017. The Code introduced significant changes to the way Police Scotland's officers and staff, use, record, monitor and analyse stop and search activity. The introduction of the Code was supported by Police Scotland's Stop and Search Improvement Plan introduced in June 2015 which included a programme of national stop and search training, communications programme, and enabled Police Scotland's National Stop and Search Unit (NSSU) to support the organisation to implement the improvement changes needed to both policy and operational practice.

The Independent Advisory Group on Stop and Search³ (IAGSS), appointed by the Scottish Government, conducted a 6 month review of the Code⁴ to evaluate its implementation and also consider whether any legislative gaps exist. The 6 month review sign posted considerations for the 12 month review and was supportive of the way the Code had been implemented and was being used by officers.

This review focuses on the first full 12 months since the introduction of the Code of Practice (June 2017 – May 2018) and aims to provide contextual information gained from a variety of sources. This includes police officer focus groups; call for feedback submissions from officers and Police Scotland's audit and review of stop and search records submitted on the National Stop and Search Database. It aims to provide qualitative context in support of the statistical analysis and independent research conducted as part of the IAGSS review and identify any potential areas for improvement.

³ <https://www.webarchive.org.uk/wayback/archive/20170105091226/www.gov.scot/About/Review/stopandsearch>

⁴ McVie, S (2018) Twelve month review of the Code of Practice for Stop and Search in Scotland

POLICE POWERS

Section 65 of the Criminal Justice (Scotland) Act 2016 (which came into effect on 11 May 2017 with the Code) makes it unlawful for an officer to search a person otherwise than in accordance with a power of search conferred in express terms by an enactment or under the authority of a warrant conferring a power of search. The introduction of Section 65 brought the previous police use of non-statutory (consensual) searching to an end, albeit this practice had all but ceased before the introduction of the Code.

The Code of Practice for stop and search applies to the search of a person not in police custody including the searches of persons carried out in accordance with a search warrant. The Code does not extend to the seizure of an item from a person where there has been no use of a stop and search power. Nevertheless, Police Scotland continue to collate, on the National Stop and Search Database, information on the seizure of alcohol⁵ and tobacco⁶ products in accordance with police powers including specific powers to require the surrender of those items from children and young people under 18 years.

This was deemed necessary following the Scottish Government's public consultation in 2016, regarding whether there should be a police power to search children and young people for alcohol. The consultation concluded that the need for such a search power would be re-assessed after the Code had been in effect for 12 months. That being the case it is important to have an understanding of stop and search activity and alcohol seizures from children and young people; changes in recording practice; and other methods of measuring police intervention and recording of concern.

The extent to which evidence exists to support the need for a power to search young people for alcohol and the need for a power to search people in circumstances where it is needed to protect life will be explored later in this review.

POLICE USE OF STOP AND SEARCH

In the year following the Code's introduction (June 2017 to May 2018) 29,773 stop and search encounters were recorded compared with 37,334 in the year before the Code. Statutory searches reduced by 19% over the period with the positive rate increasing from 31% in the year before the Code to 38% in the year following its introduction.

Geographical changes in the use of stop and search are evident and comparisons are most reliably made using rates per capita from the 2011 census. Following the implementation of the Code, the search rate in the West Command reduced from 95 to 64 per 10,000 people, increased from 34 to 48 in the East and from 35 to 81 in the North.

The use of stop and search on a monthly basis has seen a reduction from around 3,500 per month in the year preceding the introduction of the Code to around 2,700 (on average) following the Code. Positive searches have been sustained at around 950 per month (the highest being 1,048 during August 2017 and the lowest 803 during February 2018).

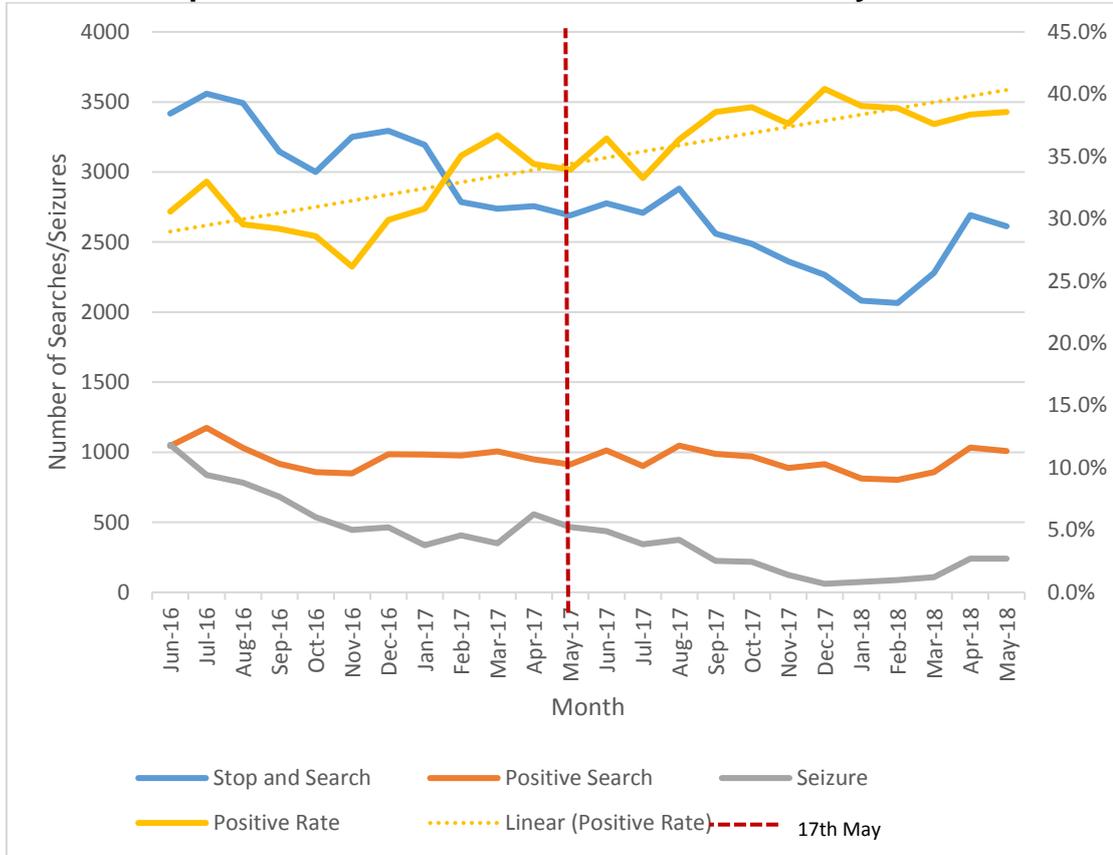
⁵ Section 61 Crime and Punishment (Scotland) Act 1997

⁶ Section 7 Tobacco and Primary Medical Services (Scotland) Act 2010

The positive rate has therefore seen an increase from its lowest of 26.2% during Nov 2016 to 38.6% in May 2018 (peaking at 40.4% in December 2017).

Table one shows the trend in the use of stop and search over the 2 year period - June 2016 to May 2018:

Table 1: Stop and Search and Seizures: June 2016 – May 2018⁷



The number of police seizures in the year after the introduction of the Code was 2,534 compared with 6,915 the previous year, a reduction of 63%.

In terms of geographical comparison, seizures in the West reduced from 411 to 133 per 10,000 people (aged 12-17 years) whilst small reductions in the East and North brought their seizure rates to 34 and 24 respectively. The changes in relation to the level of seizures is primarily related to seizures of alcohol and is explored under the section ‘Young People and Alcohol’.

Table 2 shows that since the Code came into effect, stop and search powers for Drugs accounted for 82% of total searches, Stolen Property 8% and Weapons 5%. These remained the most commonly used search powers, yielding positive rates of 38%, 44% and 26% respectively. In addition, the new recording of searches under warrant resulted in 1,122 records with a 41% positive rate.

⁷ All statistics are provisional and should be treated as management information. All data have been extracted from Police Scotland internal systems and are correct as at 7th June 2018.

Table 2: Stop and Search by Legislation: June 2017 – May 2018⁸

Legislation	Number 16/17	Number 17/18	Positive 17/18	Positive Rate 17/18 (%)	Proportion Percentage 17/18 (%)
Total Searches	37 334	29 773	11 236	37.7	100.0
Drugs	32 287	24 538	9293	37.8	82.4
Stolen Property	2 586	2297	1011	44.0	7.7
Weapons	1 888	1470	380	25.9	4.9
Search Warrants	47	1122	456	40.6	3.8
Fireworks	112	56	13	23.2	0.2
Firearms	65	79	22	27.8	0.3
Care and Welfare	2	139	34	24.5	0.5
Protection of Life	-	34	16	47.0	0.1
Other Search Categories⁹	347	38	11	28.9	0.1

The 34 Protection of life searches can be some of the most challenging situations faced by officers, involving people in moments of crisis. The critical nature of the circumstances can be grouped as detailed in the table below and the rationale for carrying out these types of search are focussed on protecting life and not for evidential purposes. The number recorded is small, but are clearly justified and reflected in a 47% positive rate, where police officers took action and as a result harmful items were recovered.

Table 3: Police, Fire & Reform (Scotland) Act 2012 – Search Justification

Section 20/32 Police, Fire & Reform (Scotland) Act 2012			
Reason	Total	Positive	Proportion Percentage
Self Harm	23	11	32%
Overdose	5	3	9%
Welfare	6	2	6%
Overall Total	34	16	47%

Of the 23 searches relating to Self-Harm, 11 positive searches included 6 bladed or sharply pointed instruments.

The remaining 5 recovered both illicit and prescription drugs and, in one instance, lighters from a person threatening to set themselves on fire.

All 5 of the overdose incidents involved the use of drugs. 3 led to a recovery of illicit drugs, however in the remaining 2 incidents the drugs had already been consumed. Of the 6 welfare searches, illicit drugs were recovered in 1 incident and the remaining 5 involved the search for identification from injured / incoherent people.

⁸ All statistics are provisional and should be treated as management information. All data have been extracted from Police Scotland internal systems and are correct as at 7th June 2018.

⁹ Categories include New Psychoactive Substances, Sporting Events, Terrorism, Public Order, Wildlife, Aviation, non-statutory searches before the Code.

POLICE OFFICER EXPERIENCE

Focus Groups

During the 12 month period since the introduction of the Code, Police Scotland's NSSU have carried out Focus Groups with officers in all territorial divisions. A total of 238 officers (2 inspectors, 40 sergeants and 196 constables) took part in the groups. The focus groups' aim was to gather officers' opinions and experiences of using stop and search and help understand the impact of the Code on operational practice. The groups have provided views on potential gaps in existing police search powers and potential future improvements to inform the IAGSS in respect of any amendment to the Code or associated legislation. This has provided information from officers on how the NSSU can better support local policing to implement the requirements of the Code and is not intended to duplicate any other work in support of the IAGSS review.

Call for Feedback

The 'Call for Feedback' is facilitated via Police Scotland's intranet and administered by the NSSU, directly linking police operational practice to the development of any additional support, guidance or information following national stop and search training. This supports officers and encourages them to share their experiences using stop and search, share good practice and highlight any challenges faced, to allow potential areas for improvement to be discussed and considered.

The 'Call for Feedback' has generated over 100 responses contributing to the review and helped demonstrate the impact of the code. The following table gives an indication of the categories and related quantities:

Police Scotland: Stop and Search 'Call for Feedback'

Evidence Type	Count
Protecting Life / Vulnerability	51
Alcohol	8
Weapons	13
Searching for Evidence	17
Searching at Events	4
The Code of Practice Content	11
Grand Total	104

100% Review

Following the introduction of the Code, Police Scotland have continued with a 100% review of all stop and search records submitted onto the National Stop and Search Database to support officers with the implementation of the new working practices and inform any areas for improvement.

Throughout this review, evidence from the Officer Focus Groups, 'Call for Feedback' and the 100% Review will be drawn on to explore, provide context and help understand the reasons behind stop and search statistical trends.

Summary of Police Focus Groups Findings

The majority of officers welcome the introduction of the Code of Practice and the clarity it has brought to stop and search, acknowledging an emphasis on quality over quantity. Officers also recognise the Code's focus on engagement and establishing reasonable grounds in the use of statutory search powers, essentially removing any ambiguity as to what is required to meet a threshold of suspicion. Some officers draw comparisons between the current use of stop and search under the Code and its use in their legacy force areas, whilst others describe the Code as driving a more professional approach to the use of stop and search.

Some officers suggest the changing levels of stop and search before and after the introduction of the Code are a result of demands on resources which impact on their levels of proactivity. These include increasing numbers of calls to the police and the amount of time spent dealing with incidents – particularly incidents involving vulnerability and concern for people. Additionally officers highlighted that the Code's new working practices have taken time to become business as usual. The varying changes in search rates across the country combined with the focus group evidence indicates that stop and search can and is being utilised to meet local policing priorities.

CHANGES TO WORKING PRACTICES

The way in which Stop and Search is conducted in Scotland has changed significantly. A national training programme was required to prepare officers for the changes to working practice introduced by the Code. After benchmarking across the United Kingdom and in liaison with Police Scotland's Training, Leadership and Development (TLD), the programme was agreed, meeting national training standards. The programme included dedicated sections on engagement, reasonable grounds, (including scenario based discussion), children and young people and unconscious bias.

All officers up to the rank of Inspector received the training programme which was delivered in a blended approach of E learning on the Police Scotland online learning platform (Moodle) and a half days face to face input by dedicated trainers throughout the country.

Strip and Intimate Searches

Strip and intimate searches have been recorded on the National Stop and Search Database since the introduction of the Code. Officers on the whole are comfortable with the new definition of 'strip search' brought into effect by the Code and the requirement that strip searches are authorised by officers of or above the rank of Inspector.

There were 1,537 strip searches conducted during the year following the introduction of the Code – an average of 128 per month¹⁰. Strip searching accounted for 5% of all stop and searches, with a positive rate of 49% (compared with 38% overall). There were 54 strip searches of individuals aged under 18, which represents 3.5% of the total, with a positive rate of 48%.

¹⁰ The number of strip searches includes only those conducted in accordance with stop and search powers and does not include such searches of arrested people

When considering strip searches of females and males the numbers differed significantly. 319 females were strip searched for the period under review compared to 1218 males. Both genders positive rates exceeded the national average (42.3% for females and 50.3% for males). Whilst the strip search of females appears to be less successful in terms of items recovered and can be viewed as a measure of the quality of reasonable grounds, the governance around authorising a strip search is subject to additional review and justification by an Inspector or above, which provides a degree of assurance police activity is lawful, justified and proportionate.

There have been no intimate searches of a person under stop and search powers conducted during the same period.

Receipts

Under the Code, a person stopped and searched should be given a stop and search receipt. Whilst officers are obliged to offer a receipt, individuals may refuse that receipt. On occasion, it may be impracticable for an officer to provide a receipt because they are called to a more urgent incident.

In the year following the Code's introduction, stop and search receipts were issued on 86% of occasions. From the focus groups and call for feedback, many officers acknowledge the receipt is a positive step toward informing people searched of their rights, but in practice the receipt is not always being accepted by those searched.

People subject to a search are not required to accept the receipt. Refusal to accept a receipt accounts for 98% of cases where a receipt was not issued.

A review of stop and search records made on the National Stop and Search Database highlights additional reasons for receipts not being issued, including officers being called to other incidents, or it not being appropriate in some circumstances.

In the latter circumstances officers have made attempts later to deliver the receipt to the person searched or at least provide them with a verbal update about how they can get access to a copy of their record.

Section 60 Criminal Justice & Public Order 1994 Authorisations

Section 60 of the Criminal Justice and Public Order Act 1994 allows for searches to be carried out in a particular locality, for a specific limited period of time, where an authorising officer believes that incidents involving serious violence may take place or that persons are carrying dangerous instruments or offensive weapons in that locality without good reason. Any authorisation of the related search powers in Scotland is based on *necessity* ensuring compliance with Article 8 of the ECHR (the right to respect for private life).

In the year following the Code's introduction, Section 60 of the Criminal Justice and Public Order Act 1994 has been authorised on three occasions. The authorisations were based on intelligence that individuals were attending football matches with the intention of causing serious disorder and violence. The need to search people under this authorisation only occurred on 1 of the 3 occasions, when 2 young people under the age of 18 years were searched. Neither of these searches were positive. There was no use of Section 60 of the Criminal Justice and Public Order Act 1994 powers in the year prior to the introduction of the Code.

Protection of Life Searches

Section 65 of the Criminal Justice (Scotland) Act 2016, provides that the police may only search a person not in police custody where there exists a search power in *express terms by enactment*.

The searching of a person to protect life is considered lawful in accordance with an officer's power to intervene under Section 20 & 32 of the Police and Fire (Reform) (Scotland) Act 2012 to protect life, property or improve the safety and wellbeing of persons. Searching a person to protect life or due to an individual's vulnerability has generated the greatest number of responses from officers.

Almost half the feedback from officers and a priority area during focus groups centred on police powers to search to protect life and support vulnerable people. Further commentary is provided on pages 9 and 21.

Section 66 Criminal Justice Scotland Act 2016

Section 66 makes it lawful for an officer to search a person not in police custody being taken to or from place, where the search is necessary for the person's care or protection.

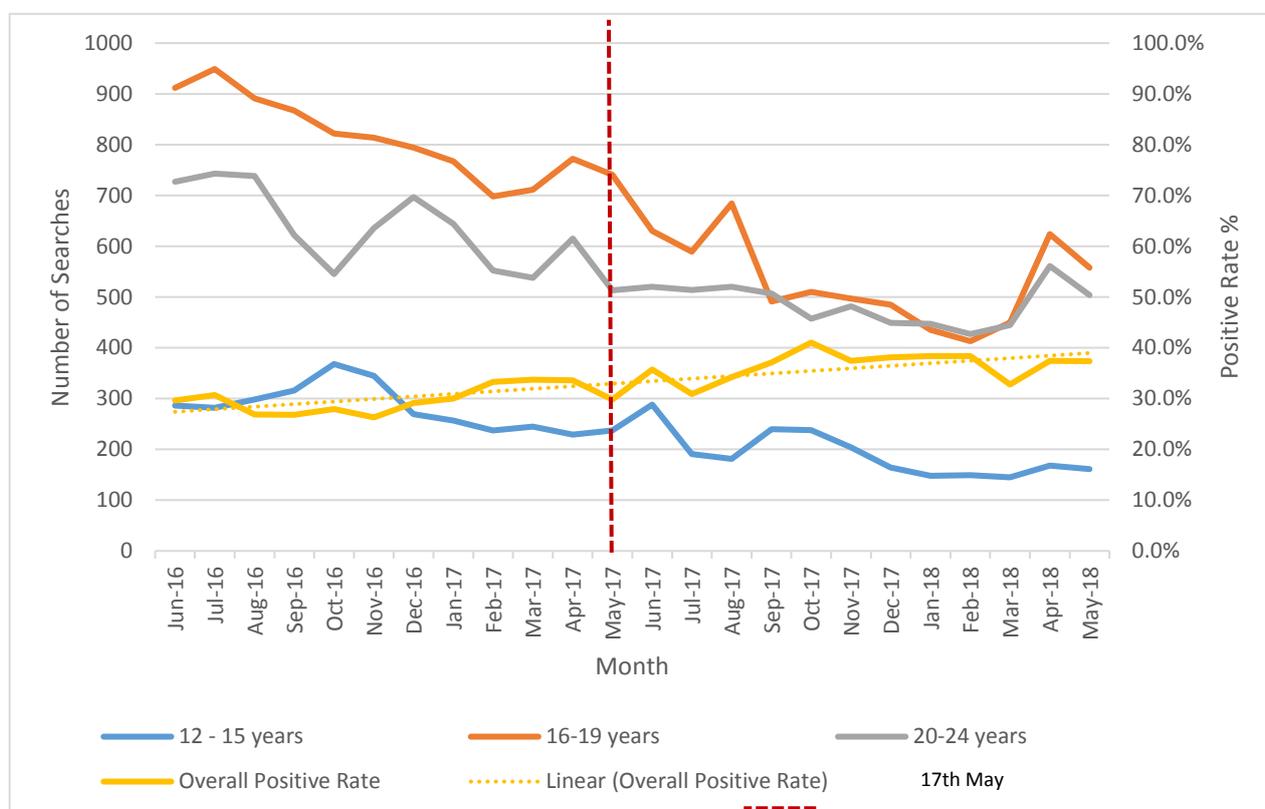
There have been 139 such searches recorded for the period of the review and officers have expressed they find the power effective in supporting them to search in the relevant operational circumstances.

CHILDREN AND YOUNG PEOPLE

Stop and Search

Table 3 shows that the total searches of young people (12-24 years) continues to fall across all age categories, whilst also experiencing a rise in positive rates. The average positive rate for ages 12-24 years for the first 12 months of the Code's introduction was 33.3%, slightly below the overall positive rate of 37.7%, however an increase from 25.3% the year before the Code. There were 17 searches of children under the age of 12 in the first year of the Code, compared with 11 the previous year.

Table 3: Stop and Search: 12-24 Years: Jun16-May18¹¹



A recommendation contained within the Police Scotland Improvement Plan was to ensure all engagement with children and young people is delivered in a positive manner, centred on building trust and positive outcomes.

To fulfil this recommendation the training programme contained dedicated inputs on engagement and children and young people in line with 'Our Policing Approach to Children and Young People (Our Approach)'. [Children-young-people-our-approach](#).

To explore children and young people's experiences, perceptions and feelings in relation to stop and search and police engagement, the NSSU devised a questionnaire to capture young people's views, which have provided Police Scotland with a better understanding of the impact stop and search can have and discover better ways to engage with young people.

¹¹ All statistics are provisional and should be treated as management information. All data have been extracted from Police Scotland internal systems and are correct as at 7th June 2018.

The NSSU carried out a simple 3 question survey of 442 children and young people through police engagement at youth events across Scotland. Only a small proportion (71 (16%)) of participants had experience of stop and search. Overall 340 (77%) reported having interacted with the police, of which 295 (86%) indicated that it was a positive experience. Some of the positive feedback confirmed the police were nice to them, friendly and asked them questions, again reinforcing the importance of positive engagement and interaction with young people and the impact that can have on longer term relationships. Of the 71 children that had been searched, 37 advised it had been a negative experience and typical comments included feeling uncomfortable, nervous and confused.

In line with Our Approach, improving communication with children and young people to build trust and forge better relations is an area of continued focus. In support of this, the survey's findings have been shared with Police Scotland's lead for Children and Young People, and both Probationer and Divisional Training to allow for further consideration of where additional training or guidance may be required for officers. Further to this, having an understanding of the perceptions and feelings of young people when being searched may also benefit the 'trauma informed' approach being pioneered by officers in Ayrshire Division. Police Scotland will consider any learning from the trauma informed approach to further enhance officers' understanding and help to improve engagement with children and young people.

An opportunity also exists for a more statistically recognised survey, which can be used as a measure and representation of regional and national experiences and perceptions of children and young people. Sharing these findings with Children and Young Person leads within Police Scotland, as well as the lead for Engagement, might act as a basis for such a survey, which can help inform the organisation of the experiences, perceptions and relationships Police Scotland have with children and young people, not only for stop and search, but across all interactions. Progress is already being made, with the launch in November 2018, of a Facebook Page specifically designed for children and young people.

Young People and Alcohol

Currently officers have no power to search for alcohol. In accordance with police powers under Section 61 of the Crime and Punishment (Scotland) Act 1997, officers can require the surrender of alcohol from a person under the age of 18 suspected of being in possession of alcohol in a public place.

However, failure to secure surrender of the alcohol puts officers in a position to consider arrest under Section 1 Criminal Justice Scotland Act 2016, to satisfy themselves of their suspicion and seize the alcohol.

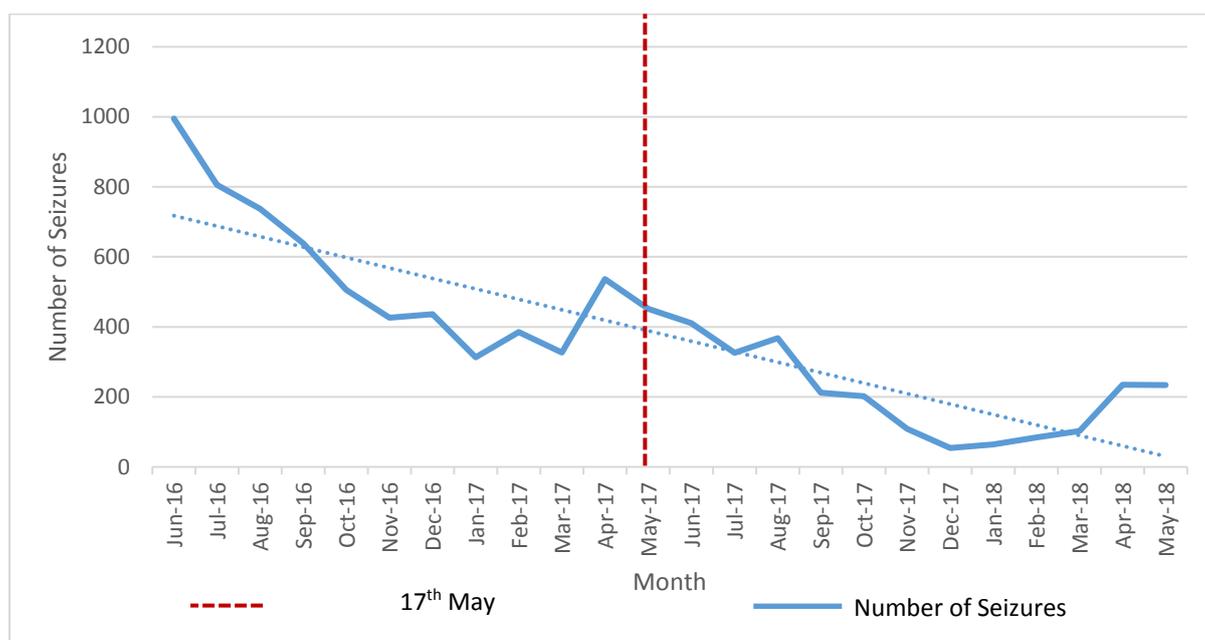
Despite the fact seizures of alcohol are not recordable under the Code, Police Scotland has continued to record these seizures from young people on the National Stop and Search Database. The purpose of recording these alcohol seizures is to support the IAGSS review of the Code and inform discussion and decisions on whether there is a need for a power to search young people for alcohol.

Table 4 highlights the level of recorded alcohol seizures in the 12 months before and after the introduction of the Code. During the year following the Code there were 2,401 recorded alcohol seizures in total, compared with 6,559 the previous year, representing a 63% reduction.

Of those recorded alcohol seizures during the year before the Code, 1,688 (25%) involved people under 18 years of age, compared with 858 (36%) in the year after the Code. While there has been a reduction in the overall number of alcohol seizures, including those under 18 years, the proportion of alcohol seizures involving under 18s has increased to over one-third.

The rate of seizures per 10,000 population for those under 18 reduced from 50.7 to 25.6 but still remain more likely than those over 18 to have alcohol confiscated¹².

Table 4: Seizures of Alcohol: Jun 2016 – May 2018¹³



The level of incidents reported to the police about ‘drinking in public’, the level of street drinking offences detected by the police, and the level of incidents involving young people and alcohol all provide context when considering the reduction in alcohol seizures and when considering the need for any power to search young people for alcohol.

Total reported incidents of ‘drinking in public’ reduced by 32% to 2,215 in the year after the introduction of the Code, compared with the previous year and the number of detected ‘street-drinking’ offences reduced by 50% to 6,114 over the same period. Further to that, there were 2,329 reported incidents involving children and young people and alcohol in the year before the Code, compared with 2,206 the year after, a 5% reduction¹⁴. And finally, the Scottish Schools Adolescent Lifestyle and Substance Use Survey (SALSUS) highlights a long-term decline in problematic drinking among young people².

In relation to the reducing number of recorded alcohol seizures, there is some evidence that the nature of ‘street drinking’ is changing, in that there are generally fewer incidents of young people drinking in public.

¹² McVie S Prof (2018), Twelve month review of the Code of Practice for Stop and Search in Scotland, University of Edinburgh

¹³ All statistics are provisional and should be treated as management information. All data have been extracted from Police Scotland internal systems and are correct as at 7th June 2018.

¹⁴ Police Scotland Analysis and Performance Unit; Source: Police Scotland Database STORM Unity. A & N Divisions have been excluded as STORM Unity did not include those divisions until 28 March 2017 and 6 February 2018 respectively. STORM Unity included D Division from 15 June 2016.

Police Focus Groups and Call for Feedback

The reducing level of alcohol seizures by the police may demonstrate a more proportionate use of police powers of seizure and enforcement of street-drinking byelaws which is reflecting wider shifts in the prevalence of alcohol consumption among young people.

The NSSU liaised with Divisions to understand the reductions in seizures following the introduction of the Code. Significant reductions at local policing divisions of up to 97%, contributed to an overall 63% reduction nationally. Whilst the increasing demand on officer's time, particularly dealing with vulnerable people, redeployment to address emerging trends and resourcing of events are considered contributory factors by some officers, the means by which officers' record seizure activity is also a focus for the NSSU, which is explored below.

The NSSU asked officers whether any barriers to recording seizures of alcohol existed. Some officers questioned the need to record a related seizure onto the database and viewed this as duplication of effort and time, given they record details in notebooks or PDA's. Officers argued this was not the most efficient use of their time and found the process overly bureaucratic.

In line with the United Nations Convention on the Rights of the Child (UNCRC), Police Scotland do not wish to unnecessarily criminalise children and are focussed on their wellbeing. This can be evidenced by the number of incidents where officers have recorded concern reports on the vulnerable persons database (VPD) that focus on safeguarding children and young people.

The number of recorded incidents indicate the number of times officers have dealt with children and young people where alcohol was a factor along with concerns for their wellbeing. For the period of the review, 5059 concern reports were raised on the VPD system for children and young people where alcohol was a factor influencing the concern. This compares to 5315 for the previous year, June 2016 – May 2017. This is a reduction of 5% since the Code came into effect.

These figures are only indications (not official statistics) of officer activity in recording concerns for children and young people where that incident involved alcohol and was of a sufficient nature for the officer to raise a concern report.

Potential Legislative Gaps

In relation to whether there is a need for a power to search young people for alcohol, some officers advise their engagement and communication is becoming more challenging when trying to persuade young people to surrender alcohol. On the occasions where officers suspect possession of alcohol in a young person's bag and engagement has not led to the surrender of the alcohol, officers are reluctant to proceed to use Section 61 (Crime and Punishment (Scotland) Act 1997) leading to an arrest. Since January 2018, the arrest power associated with the (CPSA 1997) has been repealed, with Section 1 of the Criminal Justice (Scotland) Act 2016 now providing the power to arrest. To arrest in such circumstances is not considered to be acting in the best interests of the child by criminalising low level behaviour, and not consistent with the 'presumption of liberty' set out in the Criminal Justice (Scotland) Act 2016.

Specific evidence has also emerged involving police interacting with crowds (between 10 –100) of young people acknowledging that, although police powers to require alcohol to be surrendered are available to officers along with a conditional power of arrest (upon refusal to surrender the alcohol), it is not always practicable to arrest, when dealing with such large numbers. Officers also expressed concerns when suspecting young people to be in possession of alcohol in bags, but where those young people deny possession, officers are reluctant to proceed to arrest to confirm their suspicion.

Operational scenario's faced by officers

Further evidence has been provided in the form of case studies provided by Divisions, with particular reference to a situation in Ayrshire during July 2017. Comparison is drawn with 'planned' events such as sporting events and concerts. The salient point is that the circumstances in all cases can be largely similar, but planned events and concerts benefit from the statutory police power to search people in accordance with Section 67 of the Criminal Justice (Scotland) Act 2016 in the interest of public safety.

Ayrshire, July 2017

During July 2017 at beaches in South and North Ayrshire the use of intelligence-led stop and search was a focus to help ensure public safety. In summary, several thousand people travelled to Ayrshire by train with it being evident that many were in possession of and / or drinking alcohol. Many were under the age of 18. Social media messages quickly outlined a firm policing stance on public drinking and related legislation with there being a visible policing presence at train stations. Local off sales premises were also engaged with a view to limiting further sales of alcohol. Significant quantities of alcohol were surrendered and seized as people alighted from trains and left station platforms (in accordance with legislative police powers – Section 61 Crime and Punishment (Scotland) Act 1997).

In the circumstances taking the personal details of all people involved would have been a risk to safety at the station platform given the significant crowding of the trains. Additionally the time taken to note personal details and provide stop and search receipts, as per the Code, would have created a disproportionate focus on administration to the detriment of mitigating personal safety and engagement with those travelling by train.

Whilst the Code acknowledges that there may be exceptional circumstances which make it wholly impracticable to provide a receipt or even make a record of the search, this incident has highlighted some important points in relation to police powers of search. Since the Code came into effect the police use of stop and search is carried out in accordance with statutory police powers only. The use of non-statutory searching of a person is not permitted.

Lanarkshire, May 2017

Between May and December 2017, Motherwell experienced anti-social behaviour and disorder involving large numbers of young people, mostly under the age of 18 years.

This involved spontaneous gatherings of between 50-100 young people, gathering in woodland/parkland adjacent to residential dwellings and consuming alcohol. The meetings were arranged via social media sites, with young people from various areas of Lanarkshire attending, utilising efficient rail links to travel.

As a result of the alcohol consumption, anti-social behaviour escalated to incidents of assault, vandalism and wilful fire-raising, resulting in increasing levels of complaints from local residents. If not tackled, these situations can lead to more serious incidents including serious assaults and incidents of young people throwing bottles at fire service staff attempting to deal with ongoing incidents.

Local police action plans have had a positive impact through engaging licensed premises to reduce instances of young people obtaining alcohol and through work with agencies including RSPB and Education to deliver school talks to explain the impacts on the nature reserve and wildlife.

However officers involved in policing such spontaneous incidents highlight the importance of early and effective intervention which often involves removing alcohol associated with the escalation of anti-social behaviour whilst at the same time safeguarding young people's safety and wellbeing.

Whilst officers acknowledge that the police powers to require the surrender of alcohol under Section 61 of the Crime and Punishment (Scotland) Act 1997 are on the whole successful, there is a reluctance among officers to use the associated power of arrest where a young person was to refuse to surrender alcohol, particularly where alcohol is suspected of being in bags. This is in part because of the large crowds which are challenging to manage, making arrests are viewed as a disproportionate response and because officers are sensitive to unnecessarily criminalising young people.

Inverclyde, Summer 2018

Inverclyde has experienced an increase in the number of incidents involving large groups of young people involved in alcohol consumption and the subsequent disorder and safeguarding concerns for these children and young people that are often the outcome.

As part of a school amalgamation program in Inverclyde, localised gangs appear to have dissolved, which is a positive position. However the use of social media to arrange and/ or promote large gatherings (of up to 100 – 200 people) within various areas throughout Inverclyde, utilising transport links, are a cause for concern within communities.

Monitoring social media is key to support local policing activity to effectively manage these types of gatherings, but officers' engagement with children and young people is becoming increasingly difficult with the concealment of alcohol in rucksacks and bags.

The use of legislation for the surrender of alcohol (section 61 Crime and Punishment (Scotland) Act 1997) is having a limited effect and children and young people appear to be aware that police powers do not enable a search for alcohol. Officers are reluctant to use arrest powers where a child or young person refuses to surrender alcohol as it is viewed as disproportionate and criminalising their behaviours.

The officers involved recognise the importance of recording concern reports involving children and young people where alcohol is involved on the VPD system, however are feeling increasingly frustrated at the inability to be able to search for the alcohol using legislation rather than rely on persuasion or punitive measures such as arrest in particular circumstances to safeguard children and young people.

Summary

The overall reduction in levels of alcohol consumption, particularly amongst young people, needs to be considered alongside the reduction in STORM incidents involving drinking in public. The opinion of officers suggests that availability of resources, re-deployment to address emerging trends, and/or competing demands for additional resourcing has impacted on officer proactivity, which may also have led to a reduction in the number of alcohol incidents involving young people being dealt with.

Whilst police powers exist allowing officers to require young people under 18 years to surrender alcohol in public, there is a reluctance amongst officers to utilise a power of arrest. The primary consideration is the safeguarding and wellbeing of young people over criminalising low level offending, despite the impact alcohol fuelled ASB can have on communities. Officers understand the impact these challenges can have on relationships between not only young people and the police, but the wider community and therefore public confidence.

Despite the reported reduction in levels of alcohol consumption and incidents involving drinking alcohol in public, some officers do not believe the current legislation provides a proportionate power to effectively deal with young people in possession of alcohol that does not lead to officers potentially arresting young people who fail to surrender alcohol. Instead, in order to promote the safety and wellbeing of young people and communities, officers must rely on their ability to establish a rapport and engage positively in order to persuade the surrender of alcohol.

POTENTIAL LEGISLATIVE GAPS

Protection of Life Searches

There were 34 'protection of life' searches recorded in the year following the Code, which represent some of the most serious and severe situations officers face. The specific incidents include individuals reporting they are suicidal, self-harming with items including knives, razor blades and firearms, or in some cases being found unconscious. Officers' intervention in these circumstances have included searching individuals where appropriate and justified to immediately remove any items that might cause further harm either to them, the officers, or other people and to assist in identify people and / or identifying any medical conditions from medical bracelets, pendants or cards in their possession (see page 13 for further detail).

The searching of a person to protect life is currently considered lawful in accordance with an officer's power to intervene under Section 20 & 32 of the Police and Fire Reform (Scotland) Act 2012 to protect life, property or improve the safety and wellbeing of persons.

In support of providing evidence of any potential legislative gaps when searching a person to protect life the National Stop and Search Database was amended to allow officers to record when they had searched a person to protect life. The nature and circumstances of these searches are highlighted above.

Police Focus Groups and Call for Feedback

The Focus Groups and Call for Feedback along with a review of the searches to protect life recorded on the National Stop and Search Database offers some context to help understand the severity of the situation in which officers are searching to protect life. Officers also highlight through the focus groups that as a core function of policing they should, without any restriction, be allowed to search people where there is reason to do so in the interest of protecting life in accordance with their general police duties and policing principles set out in the 2012 Act.

The focus groups and call for feedback also provides evidence of other potential gaps in legislation discussed below.

Searching at Events

The use of search powers at designated sporting and other events are also detailed within the Criminal Justice (Scotland) Act 2016. Section 67 provides the power to carry out condition of entry searches to venues.

These types of search are exempt from the issuing of receipts as its primary aim is to ensure the safety of persons attending the event and is not practical to have to issue potentially thousands of receipts for a search in these circumstances.

A development over time at sporting and other events relates to the possession and use of pyrotechnics, flares and fireworks.

Specifically in relation to designated sporting events defined in the Criminal Law Consolidation (Scotland) Act 1995, the search powers provided for under Section 21 allows officers to search an individual they suspect is committing / has committed a related offence (in this case possession of a flare / firework) whilst *attempting to enter* the relevant area of a designated sports ground. The question arises over police search powers in situations where a person (over 18 years) is in possession of a flare / firework, and it appears they will be attending the related sporting event, but have *not yet* 'attempted to enter'.

One incident highlights an officer's encounter with 5 adult males travelling in a vehicle through Glasgow City centre making their way to a football match at Hampden Park (6 miles away) and at that time in possession of a bag containing flares / fireworks. A further 3 incidents involve crowds of football supporters making their way to designated football sporting events but not yet *attempting to enter* or yet within the *relevant area*. During the latter 3 incidents, individuals have activated smoke devices, flares and flash bangs and threw these devices into the curtilage of residential premises increasing risk to public safety. It is an offence to throw or let off fireworks in a public place. The question arises around the ability of the police to proactively intervene and where necessary, search a person suspected of being in possession of pyrotechnics who is yet to *attempt to enter* an event, is intent on using such a device on approach to an event or more generally using such devices in a way that presents a risk to public safety. The same would also apply to individuals approaching venues of large events which are not designated sporting events, for example concerts.

A review of available evidence and the potential need for legislative change to existing legislation for fireworks is being considered by the Scottish Government after public consultation concluded in May 2019. Police Scotland are in liaison with the Scottish Government and an appointed lead for Pyrotechnics with a view to establishing an evidence base to inform discussions and consideration of new powers and legislation for the illicit use of pyrotechnics in public places.

Weapons

There is evidence on 5 occasions of searches being carried out for weapons in justifiable circumstances however, these appear to be at odds with the Criminal Law Consolidation (Scotland) Act 1995, which extends to searches only in public places. This included searches of people in private places for offensive weapons / knives in circumstances of criminality on 2 occasions and to protect life on the other 3 occasions. The latter point on protecting life is closely connected with the previous points about whether the police powers under Section 20 and 32 of the 2012 Act are sufficient to justify police actions in such circumstances.

Further evidence relates to officers searching for weapons under the Criminal Law Consolidation (Scotland) Act 1995 which extended to vehicles. This has been raised to highlight that the police search powers under the 1995 Act do not expressly and specifically include vehicles, (unlike for example the Misuse of Drugs Act 1971).

Police Scotland are working with the Crown Office and Procurator Fiscal Service (COPFS) to understand the effect this might be having on cases proceeding to trial. From a review of prosecutions that involve circumstances involving the recovery of weapons from vehicles, those progressed have involved other offences which have led to the recovery rather than solely down to the use of search powers to recover weapons.

Searching for Evidence

The focus groups and call for feedback highlights examples of where a power to search people suspected of being in possession of evidence of a crime or offence may be useful. For example, prior to the Code's introduction an officer detected 8 individuals involved in vandalism offences through the use of non-statutory search. In addition officers raised concerns about incidents of vandalism and fire-raising where, in the absence of any specific search power in such circumstances, they have relied on individuals in possession of related evidence, presenting the evidence to them to progress the investigation.

Corrosive Chemical Crimes

The increase in the use of corrosive chemicals involved in criminal attacks on victims has seen a recent increase across the UK. Whilst the main increase is being experienced elsewhere in the UK, and to a lesser extent in Scotland, Police Scotland has nevertheless identified the criminal use of corrosive substances in attacks as a potential emerging threat.

To that end Police Scotland are monitoring related trends to help understand the reasons behind such incidents and are involved in discussions with the Scottish and United Kingdom Governments on the UK legislative developments, operational guidance and procedures required to effectively deal with incidents of this nature.

Laser Pens

The absence of a search power for laser pens has previously been raised. The Laser Misuse (Vehicles) Act 2018 introduces new offences of shining or directing a laser beam towards a vehicle vessel or aircraft, however the Act makes no direct reference to a related search power. The position in Scotland might be worth further consideration, including whether police search powers for weapons under the Criminal Law (Consolidation) (Scotland) Act 1995 are wholly appropriate in such circumstances.

FUTURE GOVERNANCE OF STOP AND SEARCH

In October 2017, Police Scotland agreed a process of stop and search analysis and assurance with the Scottish Police Authority (SPA), at a meeting of the SPA Policing Committee¹⁵. The process draws on the good practice provided by Professor Susan McVie and Dr Kath Murray through their presentation of *Stop and Search Scrutiny: Proportionality, fairness and effectiveness*¹⁶.

The report demonstrated good practice using existing data to inform formal stop and search scrutiny. In addition the SPA emphasised the value in determining whether stop and search is aligned to policing priorities, emerging intelligence threats and contributing to improved outcomes for

¹⁵ <http://www.spa.police.uk/assets/126884/409451/441181/423061/6.2sandsearch>

¹⁶ <http://www.spa.police.uk/assets/126884/409451/441181/409541/psitem6stopandsearch>

communities. The diagram in Appendix A provides an overview of the agreed stop and search analysis & assurance framework.

Using the information held on the National Stop and Search Database, Police Scotland's National Stop and Search Unit (NSSU) and Analysis and Performance Unit (APU) provide regular reports to Divisions in relation to their use of the tactic. Local Area Command Monitoring Reports (ACMON) include search rates and positive rates overall and by protected characteristics. Automated Multiple Interaction Reports (AMIR) provide information on individuals searched more than once in a 26 week period.

The ACMON and AMIR enable the use of stop and search to be monitored by senior officers nationally and locally¹⁷.

In addition, frontline supervisory access to reviewing officers stop and search records is now embedded at Divisions and shows good understanding of the process ensuring the ongoing fair and effective use of stop and search and providing full compliance with the supervisory oversight set out in the Code¹⁸.

To sustain the improved use of stop and search into the future, Police Scotland have established a Stop and Search Mainstreaming and Assurance Group (SSMAG). This Group will consider the outcomes of IAGSS review of the introduction of the Code. The SSMAG in conjunction with the Police Scotland's Business Assurance Unit have agreed an audit and assurance model and associated processes that meets organisational assurance needs and provides a statistically sound methodology for transparent scrutiny within recognised confidence levels. This model is integrated at local, Divisional and National levels and aligned to the SPA Quarterly Reporting and the Police Scotland Performance Framework. The SSMAG will continue to support Police Scotland to provide management information in support of local governance and meaningful public information in line with the Code.

Oversight

Police Scotland will continue to report on stop and search to the SPA primarily through the established route of quarterly performance reporting and the Performance Framework.

¹⁷ Extract from the Stop and Search Code of Practice: *Senior officers with local responsibilities for stop and search and those who have the national policy leads for stop and search must also undertake regular monitoring of the broader use of stop and search powers to ensure that they are used fairly and proportionately and, where necessary, take action at the relevant level. They 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.*

¹⁸ Extract from the Stop and Search Code of Practice: *Supervising officers must monitor the use of stop and search powers by individual constables to ensure that they are being applied appropriately and lawfully.*

CONCLUSION

Police Scotland welcome the introduction of the Code of Practice and acknowledge the emphasis placed on quality over quantity of searches. Positive rates have increased to 38% in the year after the Code's introduction compared with 31% the year before. Recorded data shows a reduction in the overall number of stop and search encounters by 20% to 29,773. The reduction is evident before the introduction of the Code, and can be traced back to the implementation of Police Scotland's Stop and Search Improvement Plan in 2015. As a result, no significant impact has been experienced through the implementation of the Code. Some of the overall reduction in the levels of stop and search may also be attributable to demand on officers' time in other areas of policing including increased calls involving concern for people and their vulnerability, competing demands for resources to address emerging trends and policing events.

Specific Areas of Focus

Young People

Searches of young people continue to fall across all age categories, whilst also experiencing a rise in positive rates. The average positive rate for ages 12-24 years in the year after the Code was 33.3%, compared with 25.3% the year before.

In relation to young people and alcohol, there is evidence of a longer-term reduction in alcohol consumption amongst young people, which may be a factor leading to the reduction in alcohol seizures by police. However, other methods of recording does indicate officers are raising concern reports when engaging with children and young people when in possession or under the influence of alcohol and vulnerability is identified.

Some officers do not believe the current legislation provides a proportionate power to effectively deal with young people in possession of alcohol that does not potentially lead to officers arresting those young people who fail to surrender alcohol. In order to rectify this some officers believe a power to search for alcohol will provide the means and ability to effectively deal with the surrender and, where refused, seizure of alcohol from children and young people which will not criminalise behaviours. This will protect them from exploitation and potential exposure to dangers associated with alcohol misuse.

Searching people to protect life

There is evidence of officers searching to protect life, which are some of the most serious situations faced by officers and the people searched. There is unanimous feedback that as a core function of policing, officers should, without any lawful restriction, be allowed to search people to protect life in accordance with their general police duties and policing principles set out in the 2012 Act.

However the Police and Fire Reform Act does not provide a power of search, but instead a justification to act and protect life. Section 65 of the Criminal Justice (Scotland) Act 2016 is clear, the search of a person should only be carried out under express legislative powers of search. However, these searches do introduce ambiguity in relation to the legal basis for searches conducted in these circumstances. This should be addressed in any future iteration of the Code.

Other Emerging Areas

The possession of fireworks, flares and pyrotechnic devices at events (particularly football matches) was a focus of the Police Scotland's Pyrotechnic Short Life Working Group in 2017. The report was shared internally for further consideration and could assist Police Scotland contributing to and providing any available evidence to inform discussion on the use of Pyrotechnics and the risk to public safety they present.

The absence of a power of search for weapons in private, as set out in the Criminal Law (Consolidation) (Scotland) Act 1995, and the power not extending to vehicles does provide operational challenges, however there are only limited examples available.

Future Governance of Stop and Search

Police Scotland and the SPA have in place a process of stop and search analysis and assurance that provides national and local monitoring of stop and search levels, positive rates, search rates per capita, as well as search rates involving people with protected characteristics (age, sex and ethnicity).

The Stop and Search Mainstreaming and Assurance Group (SSMAG) will consider the outcomes of IAGSS review of the introduction of the Code and new assurance model Supervisory monitoring and review of officers records is integrated into local policing to ensure the effective delivery of stop and search assurance in accordance with the Code. Police Scotland will continue to report on stop and search activity to the SPA through quarterly performance reporting and through the Police Scotland Performance Framework.

Stop & Search Analysis & Assurance

