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Stop and Search

Standard Operating Procedure

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1. Purpose

- 1.1 This Standard Operating Procedure (SOP) supports the Police Service of Scotland's (hereafter referred to as Police Scotland) Stop and Search Policy.
- 1.2 In May 2017, the Code of Practice on the Exercise by Constables of Powers of Stop and Search of the Person in Scotland (COP) was introduced. The COP governs all situations in which officers stop and search a person without first making an arrest, unless the search is expressly excluded:
- either under this COP, by statute, or
 - by virtue of the search being subject to a separate statutory code or guidance as to its exercise.
- 1.3 The definitions and instruction contained herein and within the Stop and Search Guidance Document have been developed and adopted by Police Scotland to support police officers in the lawful, proportionate and effective use of stop and search as an operational tactic, whilst ensuring that any such use remains COP compliant.
- 1.4 A stop and search to which the policy and this SOP applies is considered the search of a person or of a person's immediate possessions when an officer:
- a) Requests a person to open their mouth/hands
 - b) Opens a bag in their possession
 - c) Turns out a person's pockets
 - d) Conducts a physical (non-intimate) search of body / clothing
 - e) Requests a person to carry out actions described at b) and c) above.
- In effect, it involves any situation where an officer searches for an item which is not on open display or readily visible.
- 1.5 It is crucial that all officers adhere to Police Scotland's Code of Ethics and Values and the principles of the COP when considering and conducting a stop and search. All actions carried out by officers must balance public safety with a person's rights. For further information refer to the Stop and Search Guidance Document.

2. Definitions

- 2.1 The following definitions have been adopted by Police Scotland to support operational practice and recording frameworks:
- a) **Stop and Search**
A stop and search is one conducted by a police officer in the course of their duties where a person who is not in police custody is searched using a specific statutory provision or in accordance with a search warrant issued by a court in Scotland.

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b) **Positive Stop and Search**

A positive stop and search is when an item is recovered where possession of same implies criminality on the part of the person being searched or any other or where an item has been recovered which is potentially harmful.

N.B When a stop and search under a statutory provision has taken place and alcohol, tobacco or NPS is recovered, depending on the circumstances, this should be recorded as a positive stop and search on the Stop and Search Database (see Appendix E of the Stop and Search Guidance Document).

c) **Recordable Stop and Search (must be recorded on the National Stop and Search Database)**

A recordable stop and search is any stop and search, with the exception of condition of entry searches (Section 67 Criminal Justice (Scotland) Act 2016) or Schedule 7 of the Terrorism Act 2000 (which is governed by a different Code of Practice).

3. Stop and Search

3.1 Principles Governing Stop and Search

3.1.1 Stopping and searching members of the public is a significant intrusion into their personal liberty and privacy and therefore all stop and search activity must be appropriate as defined in the COP. To be appropriate it must be:

- **Lawful:** That means in accordance with any legal duties imposed on officers, in particular under the Human Rights Act 1998 and the Equality Act 2010, as well as any requirements of the statute(s) under which the search is being conducted;
- **Necessary:** That means that the search is required to locate harmful items or confirm the possession of an illegal item(s); and
- **Proportionate:** Both in the decision to carry out a stop and search *and* in the way in which a stop and search is conducted. In every case, officers must balance the rights of the person against the perceived benefit of the search

3.1.2 All stop and search activity must be in accordance with the Code of Ethics and Values which sets out the standards expected of all of those who contribute to policing in Scotland.

3.2 Accountability

3.2.1 Officers carrying out stop and search are fully accountable for their actions. Stop and search activity must be accurately recorded and will be open to scrutiny.

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3.3 Extent of Powers

3.3.1 Section 65 Criminal Justice (Scotland) Act 2016 – limitations of search

(1) This Section applies in relation to a person who is not in police custody

(2) It is unlawful for a constable to search the person otherwise than –

- (a) In accordance with a power of search conferred in express terms by an enactment, or
- (b) Under the authority of a warrant expressly conferring a power of search

3.3.2 Officers 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.

3.3.3 Notwithstanding section 3.3.1 or 3.3.2, an officer must take all steps necessary to protect life in accordance with the overarching principles of Section 20 and 32 of the Police and Fire Reform (Scotland) Act 2012.

3.3.4 Please refer to the Stop and Search Guidance Document for further details.

3.4 Reasonable Grounds

3.4.1 In the case of powers requiring reasonable suspicion, the legal basis for conducting a stop and search is defined in the COP. The two part legal test that must be applied to the particular circumstances in each case is:

- (i) The officer must have formed a genuine suspicion that they are likely to find the object for which the search power being exercised allows them to search; and
- (ii) The suspicion that the object will be found must be reasonable

N.B. The test does not require belief or certainty regarding possession of a prohibited item, merely suspicion based on reasonable grounds. It does not mean that an officer has to be right.

3.4.2 What is reasonable?

Reasonable means:

- (i) That there must be an objective basis for that suspicion based on facts, information and/or intelligence; and
- (ii) The facts, information and/or intelligence must be relevant to the likelihood that the object in question will be found; and
- (iii) A reasonable person would be entitled to reach the same conclusion based on the same facts, information and/or intelligence

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3.4.3 Applying the two part legal test, when deciding whether a police officer has reasonable grounds to stop and search a person they must consider the following:

- Does (a) the **relevant information** and/or (b) **observed behaviour** indicate that the person **at this time** is in possession of an article to which a power of search applies

3.4.4 **Relevant Information:** should be accurate and current and relate to an article for which there is a power of search. For example this could include:

- Reports from witnesses or members of the public reporting that a person has been seen carrying such an article; or
- Information from a briefing that a person carries such articles at specific times in specific places; or
- Reports of crimes committed in relation to which such an article would constitute relevant evidence, e.g. property stolen in a theft (including by housebreaking) or an offensive weapon or bladed or sharply pointed article used to assault or threaten someone

3.4.5 **Observed Behaviour:** Reasonable suspicion may exist on the basis of the behaviour of the person alone, e.g. if an officer encounters a person on the street at night who is trying to hide something, the officer may (depending on the other circumstances) base such suspicion on the fact that this kind of behaviour is often linked to stolen or prohibited articles being carried. Where a police officer forms an opinion that a person is acting suspiciously or that they appear to be nervous without good reason, the officer must be able to explain with reference to specific aspects of the person's behaviour or conduct that they observed, why they formed that opinion.

3.5 Steps to Be Taken During a Stop and Search Encounter

3.5.1 Before any search of a detained person takes place, officers must take reasonable steps, if not in uniform, to show their warrant card to the person about to be searched and – whether or not in uniform – to give that person the following information:

- (i) (a) The officers name and collar/shoulder number (except where the officer reasonably believes that giving their name might put them, or another officer, in danger, in which case a Police Scotland Identifier (PSI) number shall be given); and
 - (b) The name of the police station to which the officer is attached (except where the officer reasonably believes that giving the name of the station might put them or another officer in danger);
- (ii) They are being detained for the purposes of a search;
- (iii) They do not have to give any information about themselves, or to say anything;
- (iv) The legal search power which is being exercised;

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(v) A clear explanation of the object or article being searched for; along with

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(a) In the case of powers requiring reasonable suspicion, the grounds for that suspicion. This means explaining the basis for the suspicion by reference to information and/or intelligence about, or some specific behaviour by, the person concerned;

OR

(b) In the case of 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 (see Section 60 Criminal Justice and Public Order Act 1994), and

(vi) Unless an exception as per the note below applies, the officer is required to make a record of the search and the person searched is entitled to a copy of the record of the search.

N.B. When an officer carries out a search in the exercise of any power to which this code applies, a record must be made, electronically or on paper, unless there are exceptional circumstances which make this wholly impracticable (e.g. the officer needs to respond to an urgent incident, see section 6.14 of the COP). It is unlikely to be practicable in most cases to make a record 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).

3.5.2 Section 6 of the COP provides greater details about the conduct of searches and the steps to be taken prior to, and immediately after a stop and search encounter.

3.6 Notebook Recording

3.6.1 When an officer carries out a search in the exercise of any statutory power or in accordance with a warrant, a record must be made electronically or on paper, unless there are exceptional circumstances which make this wholly impractical e.g. in situations involving public disorder or when the officers presence is urgently required elsewhere.

3.6.2 It is incumbent on all officers and supervisors to ensure that stop and searches are recorded accurately. A system of quality assurance checks will sample officer notebook/PDA recording standards and the stop and search record on the National Stop and Search Database (see Stop and Search Guidance Document, Part 2 – Supervisory Guidance, Section 3 – Divisional Notebook/PDA Quality Assurance Audit).

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3.6.3 Every stop and search must be recorded accurately providing sufficient information that clearly demonstrates that it has been conducted in accordance with the law, and that it was necessary and proportionate. Supervisors have a key role in checking their officer's stop and search activity which must be clearly recorded in police notebooks/PDA.

3.7 Receipt of Stop and Search

3.7.1 For every stop and search to which the COP applies officers are required to complete a receipt of stop and search (Force Form 128–011), which has a unique receipt number.

3.7.2 A person who has been searched using a specific statutory provision or in accordance with a warrant issued by a court in Scotland must be given, at the time of the search, a receipt (with the exception of condition of entry searches or where the searching officer is diverted to an urgent incident and it was impractical to issue the receipt).

3.7.3 Please refer to the Stop and Search Guidance Document for further details.

3.8 Database Recording

3.8.1 To ensure accuracy of data, it is essential that **all** recordable stop and search activity is accurately recorded on the National Stop and Search Database.

3.8.2 In all instances of positive stop and searches nominal details must be obtained and linked to the recovered item.

3.8.3 If a person refuses to provide their self-defined ethnicity and national origin, officers must record that it was 'not provided' on the database.

3.8.4 Please refer to the Stop and Search Guidance Document for further details.

3.9 Disclosure of Stop and Search Record

3.9.1 In serious and solemn cases the stop and search record must be printed and lodged as a case related document in order to circumvent the 2 years plus current year data retention on the database content.

3.9.2 Guidance on the disclosure of stop and search records is contained within Stop and Search Guidance Document, Part 1 – Operational Guidance.

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3.10 Officer Safety Implications

3.10.1 Officers must follow their Operational Safety Training (OST) taking cognisance of the surrounding environment and the physical attributes of the person to be searched ensuring that an officer's safety and the safety of others is paramount. Officers must be in possession of their full personal protection equipment (PPE) prior to conducting a search. Officers must record all accidents/injuries and near misses using the appropriate recording mechanism.

3.11 Senior Officer Responsibility

3.11.1 The COP states that senior officers with local responsibilities for stop and search and those who are the national policy leads for stop and search must regularly monitor the broad 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 (see Stop and Search Guidance Document, Part 3 – Senior Officer Guidance).

List of Associated Legislation

- Criminal Justice (Scotland) Act 2016
- Terrorism Act 2000
- Human Rights Act 1998
- Equality Act 2010
- Police and Fire Reform (Scotland) Act 2012
- Criminal Justice and Public Order Act 1994

List of Associated Reference Documents

Policy

- Stop and Search Policy

Guidance

- Code of Practice on the Exercise by Constables of Powers of Stop and Search of the Person in Scotland
- Stop and Search Guidance Document

Forms

- 128-011 Receipt of Stop and Search Booklet