SCOTTISH POLICE
**AUTHORITY**

| | Agenda Item 5 |
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| Meeting | **SPA Board Meeting** |
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| Date | **26 June 2019** |
| Location | **Pollock Halls, Edinburgh** |
| Title of Paper | **Stop and Search - Final Report from Independent Advisory Group** |
| Presented By | **Superintendent Ian Thomson, Safer Communities** |
| **Recommendation to Members** | **For Discussion** |
| Appendix Attached | Appendix A: Independent Advisory Group on Stop and Search (IAGSS) – Twelve Month Review of Operation of Code of Practice

Appendix B: Qualitative Report Twelve Month Review of the Code of Practice for Stop and Search in Scotland: Report by Professor Susan McVie

Appendix C: Quantitative Report Twelve Month Review of the Code of Practice for Stop and Search in Scotland : Report by Ipsos MORI

Appendix D: Police Scotland Twelve Month Review - Internal Evaluation of the Impact of the Code of Practice for Stop and Search |

**PURPOSE**

The purpose of this paper is to provide SPA Board Members with an overview of the Independent Advisory Group for Stop Search (IAGSS) 12 Month Review of the introduction of the Code of Practice for Stop Search and the future assurance of Stop Search by Police Scotland.

Members are invited to discuss the content of the paper.

## 1. BACKGROUND

1.1 Stop and search remains a valuable policing tactic which helps prevent, investigate and detect crime. In March 2015, following a series of recommendations, Scottish Ministers established an Independent Advisory Group on Stop and Search (IAGSS) to work with Police Scotland and other interested bodies to advise ministers on the use of Stop and Search in Scotland and develop a Code of Practice (the Code) to underpin the use of the tactic.

1.2 The Code was implemented in Scotland on 11 May 2017 under the Criminal Justice (Scotland) Act 2016 (CJSA 2016). The Code, which puts individuals' rights at the centre of any decision to stop and search a person, introduced significant changes to the way Police Scotland's officers and staff use, record, monitor and analyse stop and search activity.

1.3 The introduction of the Code was supported by Police Scotland's Stop and Search Improvement Plans, which included a programme of national stop and search training and communications. This enabled Police Scotland's National Stop and Search Unit (NSSU) and Improvement Delivery Team (NSSIDT) to support the organisation to introduce changes in policy and operational practice.

1.4 Scottish Ministers agreed that the IAGSS would review the Code throughout its first year to identify areas of improvement and inform any future amendments to the Code or associated legislation. An interim update was provided after 6 months.

1.5 The specific purpose of the 12 month review was to examine evidence on how effectively the Code was operating since implementation with particular focus on four key areas:

- identifying any potential gaps in the legislation around young people and alcohol
- identifying any other potential gaps in the legislation or lack of clarity in the Code
- whether there has been any increase in the use of Section 60 of the Criminal Justice and Public Order Act 1994
- searches of individuals with protected characteristics

1.6 This report provides an overview of the findings of the 12 month review presented to the Scottish Government by the IAGSS and published on 13th June 2019 (see appendices) and outlines the assurance methods adopted by Police Scotland.

## 2. FURTHER DETAIL ON THE REPORT TOPIC

2.1 The Code of Practice for Stop and Search was implemented in Scotland on 11 May 2017 under the Criminal Justice (Scotland) Act 2016 (CJSA 2016). Section 65 CJSA 2016 (which came into effect on the same date) made 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 Code 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.

2.2 As previously highlighted, the review of stop and search by the IAGSS and the introduction of the Code of Practice brought about significant changes in the use of the tactic in Scotland. The introduction of Section 65 ended the previous police use of non-statutory (consensual) searching, albeit this practice had all but ceased before the introduction of the Code through the implementation of a series of improvement plans.

2.3 The qualitative analysis of available data for the period of the review was conducted by IAGSS member Professor Susan McVie of Edinburgh University. The qualitative analysis was undertaken by Ipsos MORI (commissioned by the Scottish Government on behalf of the IAGSS) who canvassed the views and experiences of police officers, young people and practitioner groups. The full reports are appendix B & C, however the key findings are referenced in the IAGSS report (appendix A).

2.4 The IAGSS findings were reported to the Scottish Government and published on 13 June 2019. The broad findings include the following:

- For such a major change in police powers and culture throughout Police Scotland, the transition to exclusively statutory stop and search seems to have been remarkably effective.

- Overall, the introduction of the Criminal Justice (Scotland) Act 2016 and the Code has been successful in terms of improving the effectiveness and proportionate use of stop and search in Scotland.

- There is a more reliable and accurate system of recording stop and search which allows for greater confidence in the data and more robust independent scrutiny.

- An increase in the recovery of illicit items, searches conducted with a greater standard of reasonable suspicion and officers more discerning use of stop search is evidence of the change in culture that encourages and promotes public confidence and legitimacy in the use of the tactic.

- Where trends or issues are identified in the use of stop and search through ongoing monitoring by local policing divisions and nationally by the NSSU, these should be addressed through existing local and national governance and subject to scrutiny through SPA reporting structures.

2.5     The report recognises the positive and significant developments introduced in preparation for the implementation of the Code as well as the improvements that have been introduced since.

The report also makes recommendations and comments, based on the evidence gathered, for the Scottish Government to consider on the specific areas identified at paragraph 1.5.

2.5.1 Potential Gaps around Young People and Alcohol

A key issue considered at each stage of the review relates to searching young people for alcohol. Based on the qualitative and quantitative analysis, available evidence and supporting research, the IAGSS considered there was insufficient evidence to justify the introduction of a power to search young people for alcohol. The arguments for and against such a power remain, but, informed by the evidence, IAGSS recommend that no such general power be introduced.

IAGSS do however recommend that work to explore the possibility of specific legislative provision for a power of search related to large spontaneous gatherings (such as those at Troon beach) are progressed. Limitations similar to the governance around Section 60 Criminal Justice & Public Order Act 1994, (i.e. spontaneous, time limited and to a specific geographical area) could be considered.

**Police Scotland Response**

Police Scotland are supportive of this recommendation and will provide the Scottish Government with any information or assistance

they require to review operational circumstances and develop potential new legislation.

2.5.2 Possible Legislative Gap Regarding Preservation of Life

A gap has been identified in relation to searches that are considered necessary in order to preserve life, but for which there is no specific legislative provision for a power of search. This is in line with the overarching duty of officers to protect life and property and the principle that the main purpose of policing is to improve the safety and well-being of persons, localities and communities in Scotland (as set out respectively in sections 20 and 32 of the Police and Fire Reform (Scotland) Act 2012).

IAGSS recommend that there should be specific legislative provision to cover situations involving protection or preservation of life.

**Police Scotland Response**

Police Scotland are supportive of this recommendation and the opportunity to remove any ambiguity in relation to officers' powers to search in circumstances where the protection of life is the paramount consideration.

2.5.3 Section 60, Criminal Justice And Public Order Act 1994

This area was highlighted in case of any possible displacement of stop and search occurring without reasonable grounds to suspect possession of an illicit item. The IAGSS were reassured that there was no such displacement and made no recommendations.

**Police Scotland Response**

Police Scotland will continue to monitor the authorisation and use of these search powers to ensure fair, effective and proportionate use and report such activity through the performance framework.

2.5.4 Protected Characteristics

Children and Young People

The IAGSS report identified the disproportionate use of stop and search, coupled with low rates of positive detection, amongst children and young people prior to the introduction of the Code, which was a cause for concern.

However the quantitative research shows that the rate of search continued to fall across all age groups following the introduction of the Code and the degree of disproportionate searching amongst young people reduced significantly.

**Police Scotland Response**

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.

Police Scotland recognise the importance of understanding the impact police activity can have on children and young people and continue to monitor for evidence of disproportionality.

In line with 'Our Policing Approach' to Children and Young People, improving communications to build trust and forge better relations is an area of continued focus and activity. 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.

Gender Searches

The vast majority of searches carried out in Scotland involve males and this has not changed since before the introduction of the Code. However, the research found that search rates declined more for males than for females, and searches of males were more likely to detect items than those involving females, following the introduction of the Code. There also appears to be some equivalent disparity in the use of strip searches by sex.

The IAGSS report identifies around one in twenty searches involved a strip search. These types of search had a higher than average detection rate (42% for females and 50% for males), which exceeded the national average of 38%.

**Police Scotland Response**

The data identifies that women are more likely than men to be subject to a strip search and detection rates are lower for women who were strip searched. The reason for this is not immediately

evident, however the majority of strip searches that take place are for drugs.

By their nature, size and how drugs are often packaged make them easy to secrete about the person and may only be possible to recover under strip search authorisation and conditions. 319 females were strip searched over the 12 month review period (less than 27 a month on average) and if considered by Division amounts to just over 2 per territorial Division a month. Ostensibly this does not appear excessive.

Governance for the decision to strip search requires an officer of the rank of Inspector or above to authorise the search as detailed in the Code. This authorisation is in addition to initial reasonable grounds to search, including search powers granted under a warrant and informed by the scenario and circumstances, providing additional levels of assurance when accounting for a decision to conduct a strip search.

Police Scotland continue to monitor and review all searches to ensure they are justified, lawful and proportionate in line with the Code.

### 2.5.5 Ethnicity

The report highlights that the rate of searches declined across all ethnic groups, but the reductions were greater for encounters involving people who self-defined as Non-White than White.

The report also found that rates of stop and search were higher amongst men than women, and there were some ethnic disparities (although the lack of accurate population data on minority ethnic groups means that no definitive conclusions can be drawn about ethnic bias in the use of searches).

**Police Scotland Response**

Searching of all ethnic groups will continue to be monitored on a monthly basis using analytical reports to ensure searches comply with the Code of Practice and to understand and address any potential disproportionality. Any specific issues identified are reported to the Executive lead within Police Scotland and SPA.

## 2.6 Other matters highlighted in the IAGSS report

2.6.1 Seizures

The report highlights a significant reduction in the numbers of seizures of alcohol, with the largest reductions occurring in the West of Scotland, particularly Greater Glasgow. This was contrary to the expectations of the IAGSS.

The extent of the decline in seizures across Scotland was not consistent with the much shallower decline in alcohol-related incidents recorded by the police, so it is not fully explained by a change in policing demand.

**Police Scotland Response**

The National Stop and Search Unit (NSSU) has explored the reasons for these reductions during the review of the Code. There is evidence of a 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 2015.

Officers suggested the recording rules for seizures on the database was a duplication of effort explaining details recorded in a notebook, crime recording systems and vulnerable person database (VPD) with further expectation it should be recorded on the database.

Crime recording and VPD systems are outcome focused and can result in a referral for appropriate support, however the stop and search database is only a recording device.

Information Management (IM) within Police Scotland were consulted and advised the recording of seizures and retention of personal information on the database with no outcome beyond measuring for statistical purpose alone was insufficient to be considered a policing purpose.

After careful consideration through the Mainstreaming and Assurance Group chaired by ACC Higgins and in discussion with IAGSS, it was agreed that the National Stop Search database is not the appropriate place to record these events given they do not relate to 'search' under the Code of Practice and therefore what is recorded provides an incomplete picture. As a result, the recording of seizures ceased from 1st June 2019.

2.6.2 Training

Training for officers has been key to successfully delivering change to stop and search practice. IAGSS members have experienced the training provided to officers and complimented the content to both experienced officers and probationers.

Ipsos MORI suggest areas for refresher training, which Police Scotland have already developed, implemented and is detailed below.

**Police Scotland Response**

Police Scotland have implemented additional support and guidance for officers through routine training opportunities. These include developing a Trauma Informed Approach, particularly for children and young people to better understand individual's needs. Planned activity with children and young people utilising dedicated resources in partnership with service providers to ensure a broad spectrum of participants will help shape future policy, guidance and training, where required.

Police Scotland have also introduced additional levels of training since the 12 month review period. This began with a review of probationer training and refresh of teaching material; enhanced stop and search guidance for Tutor Constables; and scenario based knowledge checks of search powers as part of the annual Officer Safety Training requalification.

**2.7   Next steps – Assurance of Stop and Search**

The assurance approach of reviewing every stop and search recorded by officers through the NSSU continued for 2 years following the introduction of the Code. This has long been considered as overly bureaucratic and required a more proportionate approach.
Options for future assurance were considered and a proposed model for local and national levels of assurance agreed. Through continued scrutiny and analysis the NSSU ensure meaningful management information is available to support local governance. This model has been endorsed by Governance, Audit and Assurance Unit of Police Scotland as appropriate and proportionate to the level of risk presented to the organisation.

Four main elements support the revised assurance approach: Local Supervision; Dip Sampling of records; Quality Assurance and Database Quality Checks.

The national roll-out of divisional supervisory monitoring of stop search is complete. Indications of improved assurance and increases in recorded stop and search activity suggests positive results are being achieved through effective tasking and supervision of officers.

Quality Assurance will be undertaken at a local level as part of a wider self-assessment conducted by divisions or at a national level by NSSU if required.

Database Quality Checks have replaced the 100% review of records by the NSSU. This process tests the local assurance model and provides confidence levels for the organisation on compliance with business rules and overall compliance with the Code of Practice.

Divisional assurance updates have now been embedded in line with quarterly reporting to the SPA and with the agreed assurance process. This should encourage continuous improvement in supervision and recording practice which will continue to be monitored. As a result, the introduction of the new national assurance processes have been implemented on 1st June 2019.

This proposed plan also supports future transition through the Digitally Enabled Policing Project and Core Operating Systems. Discussions with the mobility project and development of an app for officers to access the database from new handsets are progressing with the expectation that mobile devices will reduce the time taken for officers to record searches.

Under the new Police Scotland portfolio of Partnership, Prevention and Community Wellbeing, work is being progressed to develop the Public Health Principles for Policing, understanding that preventative approaches lie at the heart of crime and harm reduction for individuals and within communities. This approach has been successfully used by the Violence Reduction Unit and consideration will be given to identifying the opportunities for applying public health principles to stop and search encounters where appropriate, understanding that a large proportion of searches relate to drugs possession.

## 2.10 **Conclusions**

The IAGSS report suggests that the introduction of the Code for stop and search was successful in terms of achieving a higher level of positive outcomes and a greater degree of proportionality in terms of searches by sex, age group and ethnic identity. The evidence suggests that searching in Scotland is now being conducted more effectively and with a greater standard of evidence in terms of reasonable suspicion.

There remain some areas which require continued scrutiny, such as the greater use of strip searches for women and lower positive outcomes for searches involving young people. These matters will continue to be monitored, reported and scrutinised in line with the new assurance approach and current governance structures.

Academia have played a significant role in Police Scotland's Stop and Search improvement journey. This has only been possible through partnership working and the sharing of data to better understand what needed to change and who could assist the organisation to deliver improvements and address scrutiny body recommendations.

May 2018 saw Superintendent Ian Thomson invited to join the management group of a European consortium to network and exchange knowledge in relation to stop and search. Academics from Napier, Edinburgh and Dundee Universities who have supported and advised Police Scotland during the stop and search improvement journey, were responsible for the successful application for funding, recognising the value of Police Scotland's involvement.

This 4 year study (2018-2022) aims to exchange and deepen knowledge and understanding of police stops across Europe. The study programme is putting the improvement journey of Police Scotland at the forefront of educating the wider policing family across Europe of the impacts and outcomes stop and search can have, sharing the learning of our own journey and that of others.

More recently in May 2019, Police Scotland have been described as 'a leader' and 'the leading nation in Europe' when it comes to stop and search.

Published articles by Dr Megan O'Neill of Dundee University and Dr Liz Aston of Napier University speak of the importance of working in partnership with academia and the transformational effect this has had on stop and search in Scotland.

## 3.    FINANCIAL IMPLICATIONS

3.1    There are no identified financial implications as a result of this report.

3.2    The Police Scotland 12 month review and work carried out to establish and implement a future assurance model have resulted in the redeployment of NSSIDT resources which is an organisational objective.

## 4.    PERSONNEL IMPLICATIONS

4.1    There are no personnel implications. The additional staff brought in to support Stop and Search improvements have been released and any assurance and continuous improvement required will be undertaken by the core staff within the NSSU. Ongoing training of officers has been embedded as part of annual refresher training.

## 5.    LEGAL IMPLICATIONS

5.1    The IAGSS have recognised the gap in powers to effectively deal with incidents involving people in moments of crisis, where officers have to act, but have no specific power of search. Section 65 CJSA 2016 is clear in that no search should take place out with a statutory power. However currently officers taking action to protect life, which may involve having to search a person, is justified under section 20 & 32 of the Police Fire and Reform Act 2012, which is not technically a power to search.

5.2    Any decision to legislate will be for the Scottish Government to consider based on the IAGSS recommendation and evidence provided by Police Scotland of incidents and scenarios that see officers taking action to protect life that falls out with the requirements of Section 65 CJSA 2016.

## 6.    REPUTATIONAL IMPLICATIONS

6.1    There are reputational implications associated with the paper. The IAGSS recommendation not to seek a power to search children and young people for alcohol could negatively impact on communities who may experience challenging behaviour displayed by young people who have consumed alcohol.

6.2     The lack of such a power may be viewed as hampering the operational effectiveness of officers in dealing with children and young people in possession of alcohol. However the information gathered through quantitative and qualitative analysis does not provide a sufficiency of evidence to support the introduction of legislation at this time.

## 7.     SOCIAL IMPLICATIONS

7.1     The IAGSS Report could have social implications in how the public perceive the use of stop and search. It is recognised the Code provides a legal framework around which stop and search is used across Scotland.

7.2     A requirement of the Code is the public reporting of stop search data which is key to providing the opportunity for public scrutiny and to allow communities to see activity that can impact on local policing priorities. This information is made available on a quarterly basis and is provided in formats accessible to the public and academics.

## 8.     COMMUNITY IMPACT

8.1     This report has highlighted the positive impact brought about by the Introduction of the Code through improved governance, transparency, reporting of stop search data and better use of reasonable grounds ensuring the use of the tactic is justified, necessary, accountable and proportionate.

8.2     The context provided in the IAGSS and Police Scotland reports combined with action already taken to address any issues identified, seek to mitigate any negative perceptions and any potential associated risk.

## 9.     EQUALITIES IMPLICATIONS

9.1     The NSSU completed an EQHRIA for the introduction of the Code, which continues to be reviewed and updated in line with changes in policy and procedures. This ongoing review will continue in line with future relevant changes.

## 10.    ENVIRONMENT IMPLICATIONS

10.1    *There are no environmental implications associated with this paper.*

**RECOMMENDATIONS**

Members are invited to discuss the content of this paper.

# Twelve month review of the Code of Practice for Stop and Search in Scotland by the Independent Advisory Group on Stop and Search

**June 2019**

Scottish Government
Riaghaltas na h-Alba
gov.scot

Humza Yousaf Esquire MSP
Cabinet Secretary for Justice
St Andrew's House
Regent Road
Edinburgh
EH1 3DG

21 May 2019


Dear Cabinet Secretary,

**INDEPENDENT ADVISORY GROUP ON STOP AND SEARCH (IAGSS) – TWELVE MONTH REVIEW OF OPERATION OF CODE OF PRACTICE**

As discussed in my letter of 21 December 2018, I now enclose the twelve month (and final) report of the IAGSS.

As you are aware, following the IAGSS report in September 2015 and subsequent Parliamentary procedure, the Code of Practice for Stop and Search in Scotland ("the Code") came into force on 11 May 2017. At the request of the then Cabinet Secretary for Justice, Michael Matheson MSP, the IAGSS developed detailed proposals for a review of the operation of the Code once it had been in force for 12 months, with an interim report looking at the evidence from the first six months. The Review was to be informed primarily by data and evidence gathered by the police during the first twelve months of operation of the Code, in addition to, as agreed at a later stage, qualitative research commissioned by the Scottish Government.


REMIT OF THE REVIEW

The primary purpose of the Review was to examine the use of stop and search in Scotland following implementation of Section 65 of the Criminal Justice (Scotland) Act 2016 and introduction of the Code. Specifically, the Review was to consider four main issues which had been identified during our earlier work and associated public consultations:

i.    any potential gaps in the new or existing legislation around young people and alcohol;

ii.    any lack of clarity in the Code or possible gaps in legal powers to search in specific circumstances where intervention is necessary to promote individual safety and wellbeing or preserve life, especially in situations involving vulnerable individuals;

iii.    any increase in the use of alternative powers, such as Section 60 of the Criminal Justice and Public Order Act 1994 ("section 60"), to conduct searches; and

iv.    any concerns about the use of stop and search with regards to individuals with protected characteristics.

Our proposals for review were accepted by Mr Matheson and supported by the Police Service of Scotland ("Police Scotland") who agreed that the various changes, most of which had been implemented ahead of 11 May 2017, should be the subject of early evaluation in light of emerging evidence. In relation to the Review, we continued to liaise with the Scottish Police Authority ("SPA") who, of course, retain primary responsibility for oversight of Police Scotland. The SPA has been represented throughout on the IAGSS. This has been in addition to other liaison with the SPA on issues relating to stop and search.

SIX MONTH REVIEW

Professor McVie prepared the IAGSS's report containing the interim review of the Code. This looked at data produced in the first six months of its operation. This was submitted to Mr Matheson on 5 February 2018.

TWELVE MONTH REVIEW

As you know, it was agreed that the IAGSS should take a little longer to complete the twelve month review in order that full account could be taken of all relevant material, including some which has been finalised only in 2019. Associated with this final IAGSS report containing the twelve month review, you will receive the following three reports which informed our final conclusions and recommendations:

1.      Twelve Month Review of the Code of Practice for Stop and Search in Scotland: Qualitative Report, Ciaran Mulholland and Carolyn Black, Ipsos MORI Scotland, with Professor Ben Bradford, University College London, February 2019.
2.      Twelve Month Review of the Code of Practice for Stop and Search in Scotland: Quantitative Report by Professor Susan McVie, February 2019
3.      Report by Police Scotland on their internal evaluation of the impact of the Code of Practice

These detailed reports should be read together with this IAGSS report to provide a more complete picture. As a result, it is necessary in this final IAGSS report only to tie together the key areas which we agreed would be addressed at this stage, primarily on the basis of evidence which has emerged.

The Ipsos MORI report, commissioned following Professor McVie's detailed six-month report on the Code, focusses on the following areas:

• identifying any potential gaps in the legislation around young people and alcohol
• identifying any other potential gaps in the legislation or lack of clarity in the Code
• searches of individuals with protected characteristics.

Professor McVie's report, which provides an update of the six-month interim report, addresses the following specific areas:

• changes following implementation of the Code
• identifying legislative gaps around young people and alcohol
• other potential gaps in the legislation
• change in the use of Section 60 authorisations
• searches and seizures for people with protected characteristics
• predicting positive search outcomes.

The Police Scotland report addresses the key matters mentioned above, as well as providing an overview of the changes from a policing perspective.

Together, the reports offer a reasonably consistent picture of the new landscape around stop and search, albeit it should be noted that things are still at a relatively early stage considering the degree of change required to transform police policy, culture and practice.

Further developments in this area should continue to be considered within Police Scotland and by the SPA, but will also be capable of scrutiny by academics and others on the basis of the much improved data and information which is now publicly available.

OVERVIEW OF STOP AND SEARCH

When stop and search was highlighted as an issue in 2014, data on the extent of the practice of non-statutory or so-called "consensual" stop and search caused considerable public, media and political concern. More detailed consideration of the data led to questions regarding its reliability and, therefore, the true scale of the practice, which became a matter of additional concern. However, even allowing for issues with reliability of the data, it appeared reasonably clear that this one police tactic was being used excessively, driven at least in part by police performance targets, and often with little relative success in terms of discovering illicit items. Various concerns were raised by Her Majesty's Inspectorate of Constabulary in Scotland and the SPA, as well as academics and the media. Performance targets had been the subject of criticism for a longer period, including by those within policing, for example, the Scottish Police Federation.

These various concerns were addressed in the work of the IAGSS, Scottish Government, Police Scotland, HMICS and the SPA, and led to the legislative and other changes which have been the subject of ongoing review.

As a result of the changes in recent years, we now have a much more reliable and accurate system of recording stop and search which allows for greater confidence in the data and more robust independent scrutiny. The number of relevant searches has reduced significantly and remains much lower than the point in time when there was concern about overuse of the tactic. It should be observed that the reduction in use of stop and search started before the introduction of the Code but continued thereafter. Evidence from the review of the first twelve months suggests this has settled down to a reasonably consistent pattern, perhaps giving us the beginnings of a better understanding of the true scale of necessary and appropriate use of stop and search. We recognise, of course, that the number of searches will vary over time and from place to place, but the information now available should assist in understanding the reasons behind any change in numbers and any such geographical variations.

Importantly, despite the considerable drop in the number of searches, there has been a statistically significant increase in the percentage of search encounters that resulted in a positive outcome, i.e. the finding of an illicit item. An increase in the recovery of illicit items is only one measure of success of police searches but it is an important one as it has wider implications for the effectiveness and perceptions of the fairness of use of the tactic. It also suggests that, supported and encouraged by specific training and the change in culture around stop and search, police officers are more discerning in their use of stop and search. In turn, this can help to promote public confidence in the legitimacy of current use of the tactic, allowing it to be seen as more proportionate and effective as well as carrying less risk of causing tension or even friction with individuals and within communities.

As a group, the IAGSS remains of the view that matters continue to progress well, with stop and search now being considered as just one of a number of appropriate tactics which may be used within everyday policing. Nevertheless, it continues to be an important tactic that should be used in appropriate circumstances and informed by evidence and intelligence that point towards 'right time, right place, right person'.

Rather than over-reliance on excessive and often counter-productive use of stop and search as happened in the past, officers are now encouraged and trained to make increased use of their skills of engagement with the public. Engagement was emphasised in the Code as a better means of securing cooperation from the public in the first instance. In addition, it is often a more effective approach in identifying whether there are reasonable grounds for suspicion.

Data around the increase in positive searches also suggests that the tactic now involves more effective use of police officer time and resource.

Turning to the four areas identified as requiring consideration in the Review, I will say a little about each.

i. POTENTIAL GAPS AROUND YOUNG PEOPLE AND ALCOHOL

A key issue considered at each stage of the review relates to searching young people for alcohol. This was one of the more controversial aspects of stop and search and a subject on which we were unable within the IAGSS to reach unanimity at the time of our initial report

in 2015. It was the subject of specific public consultation in which Government made impressive efforts to engage with young people, resulting in a powerful body of opinion against the introduction of such a power. On the other hand, it was clear that concerns remained within Police Scotland about the vulnerability of young people in situations involving alcohol, notwithstanding their power to request the surrender of alcohol by young people which remained in place. Consequently, it was agreed to examine all evidence from the first twelve months of the Code to see if the absence of a specific power to search young people for alcohol resulted in any real difficulties suggestive of a gap in police powers.

Although this was an area in which we were unable to reach a unanimous conclusion in our original report in 2015, matters were somewhat simpler for the purposes of this review as we were guided by the provision of further evidence, including detailed analysis of alcohol related police incident and hospital admissions data from the quantitative research and interviews with both police officers and young people in the qualitative research.

There was a strong opinion expressed by some frontline police officers about the need for a power of search. I quote from the Police Scotland evaluation report:

"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."

On this possibility of a resort to arrest, in her February 2019 report, Professor McVie says:

"Unfortunately, it was impossible to determine whether there had been an increase in the use of arrests to deal with young people who refused to hand over alcohol as Police Scotland could not provide these data."

The Ipsos MORI Scotland report of February 2019 stated:

"When speaking hypothetically about a situation where a young person might refuse to hand over suspected alcohol, police officers were emphatic that they would not arrest an under-age person for refusing to hand over the alcohol – even though they knew that they have the power to do so. There was a feeling that this would be contrary to the wider drive to decriminalise young people and encourage police officers to put the welfare of young people at the centre of their interactions. Instead, police said that they would either let the young people go, or take them home to their parents. Only in situations where other crimes had been committed, such as criminal damage or anti-social behaviour, would they consider arresting the young person an appropriate action to take."

This is consistent with the anecdotal evidence from Police Scotland.

Considering the three reports and other information gathered within the first twelve months of operation of the Code, the short answer for review purposes is that there is insufficient evidence to justify the introduction of a power to search young people for alcohol. The arguments for and against such a power remain, but, informed by the evidence, **we recommend that no such general power be introduced.**

We offer one qualification to this recommendation, informed by the now seemingly annual Troon beach gathering of young people on sunny bank holidays, which was raised by Police Scotland as an infrequent but typical exemplar. The Troon beach events involve a large-scale but relatively spontaneous or at least quickly planned assembly of young people, many of whom bring alcohol with them concealed in bags. While there is insufficient evidence to justify the creation of a general power to search young people for alcohol, **we recommend that work be done to explore the possibility of specific legislative provision for a power of search related to gatherings such as those at Troon beach. As before, the views of young people and those working with young people should be sought during consultation on any such power.** Such a power would require to be exercised on an intelligence-led and risk-assessed basis, not simply any time there was a gathering of young people. A power of search for alcohol in such circumstances would need to be available for exercise at short notice, but would be needed only for a specified time-limited period and geographical area. It occurred to us that the Section 60 model might be considered as a starting-point, albeit it may require modification to ensure that it captured this type of particular situation and nothing beyond that.

ii. POSSIBLE LEGISLATIVE GAP REGARDING PRESERVATION OF LIFE

As highlighted previously, a gap has been identified in relation to searches that are considered necessary in order to preserve life, but for which there is no specific legislative provision for a power of search. The Code makes clear that police officers must take all steps necessary to protect life (paragraph 3.4). This is in line with the overarching duty of officers to protect life and property and the principle that the main purpose of policing is to improve the safety and well-being of persons, localities and communities in Scotland (as set out respectively in sections 20 and 32 of the Police and Fire Reform (Scotland) Act 2012). Only a small number (76) of such searches are recorded as having occurred between the 11th of May 2017 and the 31st of December 2018 (of which, 34 were during the review period) however, it is an important issue to which we said we would return in our final report. It is also a matter of concern raised by officers in the qualitative research by Ipsos MORI as requiring clarification. As anticipated in our interim report on the six month stage of review, **we recommend that there should be specific legislative provision to cover situations involving protection or preservation of life**.

While it is not for the IAGSS to frame the specific legislative provision, we are aware that drafting such a provision to enable police officers to search individuals in their own home or another private place, in circumstances where the officers may have no reason to suspect

that a crime is being committed, will need very careful attention to detail, and in particular will need to balance the respective needs and rights, so that what would undoubtedly be an interference with an individual's rights can properly be said to be justified.

In addition, while it is a matter for Government to identify a suitable legislative vehicle, we consider it necessary to reflect on the purpose of the power which is to seek to ensure the protection and preservation of life, rather than as a type of criminal power or sanction. These situations often involve mental health implications, with individuals in moments of deep crisis. It may be that suitable legislation could be found away from the field of criminal justice and within a more general public health approach, perhaps aligned to general welfare, mental health or the like.

iii. SECTION 60, CRIMINAL JUSTICE AND PUBLIC ORDER ACT 1994

This area was mentioned for consideration in the Review as we wanted to monitor any possible displacement of stop and search occurring without reasonable grounds to suspect possession of an illicit item. As it transpired, this power was authorised only on 3 occasions and, even then, was used only once, involving only 2 searches. This offered reassurance that there was no displacement. We have no recommendations in this area.

iv. PROTECTED CHARACTERISTICS

On the evidence, particularly Professor McVie's report, the relevant characteristics to which attention is drawn relate to age, sex and ethnicity.

An issue of particular concern prior to the introduction of the Code was the highly disproportionate use of stop and search, coupled with extremely low rates of positive detection, amongst children and young people. The quantitative research shows that the rate of search continued to fall across all age groups following the introduction of the Code and the degree of disproportionate searching amongst young people reduced significantly. Nevertheless, people in their mid to late teens continue to be most likely to be searched and positive detection rates are still lower for this age group, which suggests that the threshold of reasonable suspicion may be applied more stringently amongst adults than young people.

The vast majority of searches carried out in Scotland involve males and this has not changed. However, the research found that search rates declined more for males than for females, and searches of males were more likely to detect items than those involving females, following the introduction of the Code. There also appears to be some equivalent disparity in the use of strip searches by sex. These differences may partly be explained by the introduction of recording for searches under warrant (as this had a disproportionately greater impact on rates of search for women than men), but it is possible that other factors are at play.

It was difficult to draw robust conclusions about any ethnic disparity in the use of stop and search due to small numbers and constraints in the availability of reliable population data.

However, the overall ethnic profile of searches largely matches the population profile for Scotland and rates of search had declined, while detection rates had increased, across all ethnic groups.

Overall, we conclude that the introduction of the Code resulted in improvements for all groups with protected characteristics.

**While we make no specific recommendation in this area, it appears to us that there would be value in Police Scotland and the SPA continuing to monitor certain groups with protected characteristics and taking steps to address issues where the data present evidence of unfairness or inequality.**

OTHER MATTERS

SEIZURES

There has been a significant drop in the number of recorded seizures of alcohol, especially in the West of Scotland. This was discussed with officers in the NSSU as it ran contrary to our expectations. It appears that the drop may relate more to issues around recording as opposed to any significant changes in practice. The stop and search database was not designed to capture information relating to seizures, but was altered to allow officers to record such information in support of the work of the IAGSS. However, it became apparent that officers were also recording seizures on systems that were outcome focused and could provide more appropriate levels of support for those involved. Subsequent discussions involving Police Scotland internal governance, the Scottish Government and Scottish Institute Policing Research (SIPR) have resulted in a decision to stop recording seizures on the stop and search database.

We have been assured that, to the extent that it would be required, details of relevant individuals are recorded on the Vulnerable Persons Database (VPD) and Criminal Justice Systems, which, rather than simply quantifying seizures, consider outcomes. This seems to us to be more appropriate for recording purposes when it comes to seizures. Consequently, we make no recommendation on this matter.

CRIME RATES

Professor McVie has done some further independent work on the relationship between stop and search and crime rates. The preliminary findings show that there was very little relationship between the two,

either before or after the introduction of the Code. This is consistent with the bulk of international literature on the subject. Where there was a relationship, the effect was tiny. The most plausible explanation is that crime rates are driven by a vast range of factors and the impact of stop and search is likely to be very small in this wider context. This may be an area which merits further research.

TRAINING

Training has been key to much of the success of the changes to stop and search. As with all other aspects of the changes, the necessary work started well before the introduction of the Code. We are aware of the considerable work that went into preparing and delivering training to all officers throughout Police Scotland which was obviously a major undertaking. Prior to the introduction of the Code, the IAGSS visited the Police College for a presentation on training, which included seeing aspects of the training for officers; and several members of the group had the opportunity to attend live training sessions for officers. A particularly striking aspect of the training programme was the work that had been done around officer awareness of some of the issues related to stop and search for Looked After Children and Young People.

The Ipsos MORI report suggests a number of areas for further or refresher training. The abolition of non-statutory searches has brought into sharp focus the area of officer discretion and the need for a sound understanding of the basis for reasonable grounds to justify a search. While the evidence around positive searches and recoveries suggests that this has been achieved effectively, feedback in the qualitative research suggested that officers would welcome further assistance by way of training. Similarly, when it comes to engagement with young people, the qualitative research suggests that young people continue to have some concerns about aspects of engagement.

These matters, along with others highlighted in the review process, have been picked up by Police Scotland in their planning for ongoing and future training. Based on some of the evidence produced by the review, and the continued extent of the use of stop and search amongst young people, we would encourage the continued involvement of young people in preparing and, where possible, delivering officer training. Importantly, we understand that Police Scotland is implementing a Trauma Informed Approach especially when dealing with children and young people, including by way of stop and search, to better understand individual's needs and the most appropriate levels of support. A key to

improved understanding is positive engagement. Planned activity with children and young people utilising dedicated resources in partnership with service providers to ensure a broad spectrum of participants will help shape future policy, guidance and training, where required.

Police Scotland has also introduced additional levels of training since the 12 month review period. This began with a review of probationer training, including stop and search inputs, by Sergeant Andy Wilson and Constable Christopher McLeish of the Operational Training Development Unit at the Scottish Police College. The NSSU have also introduced enhanced stop and search guidance for Tutor Constables given their responsibility for supervising probationary officers at Divisions. This guidance is provided as supporting documents for Tutor Constable's courses. Scenario based knowledge checks of search powers now form part of the annual Officer Safety Training courses which all officers are required to attend (the only compulsory face-to-face training for officers in the course of any year). Furthermore, the introduction of a national supervisory process where local divisional supervisors can review and monitor officers stop and search submissions to the national stop and search database is a significant step in the effective management of stop search activity.

Early indications are that this has led to improved recording practice and effective monitoring of stop and search activity. The additional training contributes to ensuring officers' stop and search activity and monitoring is carried out in line with Police Scotland's values and in compliance with the Code.

As we moved towards concluding our work, the NSSU arranged a further opportunity for the IAGSS to be updated on Probationer training on stop and search. This took place at the Police College on 17 April 2019. This was an opportune time for such a presentation, given the review of Probationer training.

Stop and search is one aspect of the initial 11 weeks of Probationer training at the Police College, featuring in week 2 (the first week involves training around human rights and the Code of Ethics). While impressed with the quality of the training, we were struck by the challenge of trying to address the policy, legislative and cultural issues involved in stop and search in such a tight timescale. It may be that, as Probationer training is reviewed, consideration might be given to expanding the time available for training on this important area as it seemed to us to be a useful example of the operation in practice of some of the key concepts from

human rights and the Code of Ethics, for example, proportionality and fairness.

As before, we were extremely impressed on our visit by the content and quality of the training, as well as the obvious commitment of the officers involved in providing it. We are grateful to Sergeant Andy Wilson and Constable Chris McLeish for their time in giving us the presentation.

PYROTECHNICS

One other matter mentioned by Police Scotland as a possible gap relates to pyrotechnics and flares, especially in relation to fans travelling to football matches. Although distinct, the potentially related issue of fireworks has been the subject of specific consultation by Scottish Government (which closed on 13 May 2019) and it may be that the issues of pyrotechnics and flares can be considered as part of that process. This area is not one on which we were able to form any views, in light of the absence of relevant evidence in our work.

CONCLUSIONS

For such a major change in police powers and culture throughout Police Scotland, the transition to exclusively statutory stop and search seems to have been remarkably effective. We acknowledge that significant change in practice within Police Scotland started before the Code came into force. Nevertheless, the evidence from the first twelve months of operation makes it clear that the introduction of the Code has itself had a further significant effect on increasing positive search results. This progress has been greatly assisted by the dedicated National Stop and Search Unit within Police Scotland which has continued to provide detailed and effective internal scrutiny. We have liaised with them on a regular basis and their assistance has been invaluable in our work as part of ongoing external scrutiny. It appears to us that implementation of such significant change would have been impossible without the commitment demonstrated by Police Scotland in the allocation of experienced, dedicated and able officers to a unit specifically tasked with the role. The NSSU is now being wound down to allow stop and search to be mainstreamed as a police tactic and supervised at divisional level. We are extremely grateful to them for all their work, cooperation and assistance over the last 4 years. We wish to make special mention of Superintendent Ian Thomson, Chief Inspector Lyn Ross, Inspector Kenny Ramsay and Inspector John McSorland. Sergeants Andy MacDonald and Alex Lavery were also very helpful, especially in relation

to working with Professor McVie around data and the development of tools to monitor stop and search effectively within Police Scotland.

HMICS have played a crucial part in confirming the problems and issues with stop and search, going back to their report in March 2015. We have benefitted greatly throughout our work from the involvement on the IAGSS of the HM Chief Inspector of Constabulary in Scotland, firstly Derek Penman and, thereafter, Gill Imery.

The SPA has continued to contribute to our work also, with two SPA representatives in attendance at our last IAGSS meeting. Given their overarching role in oversight, this has been particularly important.

I am happy to meet to discuss all four reports.

Kind regards


John Scott QC Solicitor Advocate

JOHN SCOTT QC
SOLICITOR ADVOCATE

SSC Library
Parliament House
Edinburgh
EH1 1RF
07779-328656
admin@johnscottqc.co.uk

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# Twelve Month Review of the Code of Practice for Stop and Search in Scotland

## Quantitative Report

**June 2019**

Twelve Month Review of the Code of Practice for Stop and Search in Scotland: Quantitative Report

Professor Susan McVie
University of Edinburgh

February 2019

# Table of Contents

## Acknowledgements

## Executive Summary

## Section 1: Introduction

- In 2015, the Scottish Cabinet Secretary for Justice established an Independent Advisory Group on Stop and Search (IAGSS) to review of the police use of the tactic in Scotland.
- The IAGSS made several recommendations to the Cabinet Secretary about reforming stop and search and introducing a Code of Practice, which were accepted in full.
- New legislation governing the use of stop and search was introduced in Section 65 of the Criminal Justice (Scotland) Act 2016 and a Code of Practice (CoP) for Stop and Search came into force on 11th May 2017.
- The Cabinet Secretary requested that research be carried out into Police Scotland's use of stop and search after the CoP had been in place for twelve months.
- This report presents the findings of a quantitative study which evaluates change in the use of police searches and alcohol seizures in the twelve months before and after the introduction of the CoP.
- As recommended by the Independent Advisory Group, this report aimed to examine general changes in the use of searches and seizures and to focus on four specific aspects of the new legislation and the CoP:
  - o potential gaps in the legislation around young people and alcohol;
  - o other potential gaps in the legislation;
  - o any increase in the use of Section 60 Criminal Justice and Public Order Act 1994;
  - o use of search involving individuals with protected characteristics.
- A qualitative study was also carried out, by Ipsos Mori Scotland, to examine the views and experiences of police officers, young people and practitioner groups after the CoP had been in place for twelve months.

## Section 2: Changes following implementation of the Code

- There was a significant reduction in the number of searches and seizures conducted in Scotland in the twelve months after the

introduction of the Stop and Search CoP in May 2017, although this reduction continued a longer term falling trend in encounters that started in 2015 following a critical report by Her Majesty's Inspector of Constabulary in Scotland (HMICS).

- There was a far greater proportionate reduction in police use of seizures (for alcohol) than searches over the two years studied in this report, which is surprising given the concerns expressed by policing representatives during the public consultation about the lack of a legal power to search for alcohol.
- The decline in searches following the introduction of the CoP coincided with an increase in positive outcomes, which suggests that they are being used more effectively and with a greater standard of evidence in terms of reasonable suspicion.
- Positive search outcomes increased across all search types, although they continue to be lowest for searches conducted on suspicion of possession of an offensive weapon.
- The number of searches and seizures was highest in the West Command Area during the twelve months before and after the introduction of the CoP, but there was a greater proportionate decline in both types of encounter within the West compared to the East and North Command Areas.
- The number of searches in the West Command Area was lower in the twelve months following the introduction of the CoP, while the number was higher in the North and the East Command Areas.
- Patterns over time revealed substantial geographical variation in changing use and success of stop and search, suggesting that the new legislation and policy around stop and search may have been interpreted and adopted differently across Divisions.
- Around one in twenty searches involved a strip search (almost always for drugs), and these had a higher than average detection rate.
- Women were more likely than men to be subject to a strip search, but detection rates were significantly lower for women who were strip searched.
- In the majority of searches a receipt was issued by officers; the most common reason for non-issue of a receipt was that the individual being searched either refused to accept it or left the locus before the receipt could be issued.

- There was a small reduction over time in the issuance of receipts, but some evidence of an increase in receipts being issued retrospectively.
- Although individuals have the right to obtain a copy of the record of their search encounter within 6 months, there were only 11 such requests in the twelve months following the introduction of the CoP.

Section 3: Identifying legislative gaps around young people and alcohol

- The police have a power to ask a young person who is carrying or holding alcohol to surrender it; however, there is no specific legislative power to search a person for alcohol, even if officers suspect them of concealing it.
- Around two thirds of alcohol seizures were conducted using Local Authority alcohol byelaws and a quarter were conducted under powers of surrender, but very few involved officers confiscating alcohol from adults suspected of supplying minors.
- Evidence suggests that alcohol consumption amongst young people in Scotland has been on a long-term decline and, in line with this, there was a slight fall in alcohol-related incidents involving young people in the twelve months after the CoP was introduced, based on indicative police incident and NHS hospital admissions data.
- Trends in police recorded alcohol-related incidents involving young people varied across Divisions, but most showed either no change or a decreasing trend during the post-CoP period.
- Alcohol seizures declined for all age groups, including young people aged under 18, although they declined least amongst this age group.
- The largest reductions in alcohol seizures occurred in the West of Scotland – especially Greater Glasgow - where there is a long history of alcohol related problems amongst young people.
- The extent of the decline in seizures across Scotland was not consistent with the much shallower decline in alcohol-related incidents recorded by the police, so it is not fully explained by a change in policing demand.
- The findings were not conclusive in terms of identifying whether a statutory power to search for alcohol is required in Scotland; however, there is no indication that existing powers are being used to indirectly search for alcohol.

## Section 4: Other potential gaps in the legislation

- There was very little difference in the relative distribution of statutes used to conduct searches during the twelve months before and after introduction of the Code of Practice.
- Officers used the 2016 Criminal Justice (Scotland) Act to search 139 people during removal or transportation to another place; and they conducted 34 searches as part of an intervention under Sections 20 and 32 of the Police and Fire Reform (Scotland) Act 2012 to protect life.
- It was not possible from the analysis conducted in this report to say whether further legislation is required; however, the use of Sections 20 and/or 32 of the 2012 Act to justify searches does create a slight ambiguity in terms of the wording of Section 65 of the 2016 Act.

## Section 5: Change in the use of Section 60 authorisations

- Prior to the introduction of the CoP, concern was expressed that phasing out consensual search may result in an increase in the use of so-called 'no suspicion' searches by Police Scotland under Section 60 of the Criminal Justice and Public Order Act 1994.
- There have been only three authorisations under Section 60 since the CoP was introduced, all for football matches, and only one resulted in any searches being undertaken.
- The limited use of Section 60 authorisations in Scotland demonstrates that, unlike in England and Wales, it has not been used to widen the scope for police use of search.

## Section 6: Searches and seizures for people with protected characteristics

- Rates of search reduced across all ages and, while young people in their mid to late teens continued to be the most likely group to experience a search, the degree of disproportionality in terms of targeting these groups significantly declined in the twelve months following the introduction of the CoP.
- Rates of seizure (mainly involving alcohol) also declined significantly across all age groups; however, seizure rates declined less for young people under the age of 18 than for older people.
- Search rates declined for males (across all age groups) and females (across some age groups) in the twelve months following the introduction of the CoP, although search rates for females were

more affected by the introduction of recording for searches under warrant than males.

- Reductions in seizure rates were very similar for males and females across all age groups, suggesting that changes in practice affected both sexes fairly evenly.
- Searches and seizures predominantly involved White people both before and after the introduction of the CoP, and the overall profile of searches largely matched the population profile for Scotland.
- Non-recording of ethnic group during searches increased in the period following the introduction of the CoP, although there was evidence that Police Scotland had taken steps to rectify the situation following publication of the six month review.
- The rate of searches declined within all ethnic groups, but the reductions were greater for encounters involving people who self-defined as Non-White than White.
- There was a significant increase in positive detection rates for all age groups after the introduction of the CoP, although these continued to be lowest for those aged under 18 which suggests that the threshold of reasonable suspicion is applied more stringently amongst adults than young people.
- Positive detection rates increased for both sexes, but searches of males were more likely to result in a positive outcome than those involving females in the year after the CoP was introduced.
- Detection rates also improved amongst all ethnic groups, especially those from Mixed or Other ethnic groups, although numbers in these groups were small.
- Overall, the introduction of the CoP coincided with an increase in positive outcomes for groups with protected characteristics, although there continues to be inequality between some groups in terms of who is searched and how successful those searches are.

## Section 7: Predicting positive search outcomes

- Regression analysis was used to examine the impact of three different aspects of searches on the odds of a positive outcome: the protected characteristics of the person who was searched; the factors relating to the search itself; and the time period of the search.
- The results showed that, even when a range of other factors were taken into account, the likelihood of a positive outcome was higher

for men than women and lower for people aged under 18 than adults, but there was little difference according to ethnic group.

- The success of searches was also influenced by the time of day and the day of the week when they were conducted, with evidence that searches conducted during busy periods of activity were more likely to be productive than those conducted during less demanding periods.
- Successful detection was greater for searches conducted for stolen property than for drugs, while searches conducted for offensive weapons or other reasons were far less likely to be successful.
- Even taking account of other factors, there were considerable differences in the likelihood of a successful outcome based on the Division in which the search took place, with least successful outcomes in Greater Glasgow, the North East and Dumfries & Galloway.
- There was compelling evidence that the introduction of the CoP resulted in an improvement in positive outcomes, as searches conducted in the twelve months following the introduction of the Code of Practice had greater odds of resulting in a positive detection than those in the previous year.

## Section 8: Conclusions
- Overall, the introduction of the 2016 Act and the CoP has been successful in terms of improving the effectiveness and proportionality of stop and search in Scotland.
- Searching in Scotland is now being conducted with a greater standard of evidence in terms of reasonable suspicion.
- There is no strong evidence to support the introduction of a power to search young people for alcohol; although, powers to deal with large, spontaneous gatherings of young people where alcohol use causes concern for public safety could be considered.
- Some further legislative amendments to reassure officers of their powers to search where there is a concern for protection of life may also be necessary.
- There remain some issues about the use of stop and search that should be subject to ongoing monitoring conducted through normal scrutiny channels.

# 1.    Introduction

## 1.1   Background to the Code of Practice

Despite controversy over the use of police stop and search in many jurisdictions, including England, there was very little consideration given to the use of the tactic in Scotland until relatively recently.  Concerns about the use of stop and search in Scotland were first raised by a doctoral study carried out by Dr Kath Murray from the University of Edinburgh.  She identified a number of worrying aspects including: few guidelines and very little transparency or accountability over the use of search as a tactic; exceptionally high search rates compared to other jurisdictions; and highly disproportionate rates of search amongst children and young people (Murray 2014). Murray's research also raised legal and ethical issues about the extensive use of 'non-statutory' searches being conducted in Scotland which were based on 'consent' rather than any legislative powers.

Following a period of significant media and political debate on the topic of stop and search, Her Majesty's Inspectorate of Constabulary in Scotland conducted an audit which concluded that a widespread review of stop and search was necessary and recommended that a police Code of Practice be introduced (HMICS 2015).  In response, the then Cabinet Secretary for Justice, Michael Matheson MSP, established an Independent Advisory Group on Stop and Search (IAGSS) to determine what legislative and governance changes were necessary to ensure that stop and search was conducted in a fair, effective and proportionate manner.  He also asked the IAGSS to consider the need for a Code of Practice.

Taking into account a public consultation exercise and an extensive review of the evidence, the IAGSS reported its findings to the Cabinet Secretary in August 2015.  It recommended that the abolition of non-statutory search and the introduction of a statutory Code of Practice to provide guidance on the use of stop and search.  The IAGSS also recommended that data on stop and search should be published on a regular basis by Police Scotland and that all of the changes to stop and search should be subject to a detailed implementation and training plan. The IAGSS were unable to make recommendations on the introduction of new legislation to cover searching of young people for alcohol (for

which there is currently no statutory power) and recommended that further consultation be conducted on this subject.

All of the IAGSS recommendations were accepted by the Cabinet Secretary and new legislative provisions governing the use of stop and search were introduced in Section 65 of the Criminal Justice (Scotland) Act 2016.  The Act included provision for a Code of Practice for Stop and Search in Scotland, which came into force on 11th May 2017.

## 1.2    Reviewing the Code of Practice

The Cabinet Secretary for Justice requested that the implementation of the Code of Practice be reviewed after twelve months, as it was felt that this length of time would allow the Code to become embedded in policing practice and achieve the level of change within Police Scotland that was expected.  However, an interim review was also requested for the six month stage to provide an early indication of whether the Code of Practice was achieving its aims and if there were any issues with the practical implementation of the Code, such as gaps in legislative provision around searches and seizures that needed further consideration.  The six month review was also viewed as an opportunity to identify specific issues that could be examined within the wider scope of the twelve month review.  A six month interim report was published in February 2018.  Covering the period from 1st June to 30th November 2017, it set out preliminary findings based primarily on analysis of statistical data from the Police Scotland stop and search database as well as some more narrative evidence from a police 'call for evidence' (see McVie 2018).

The six month review found that the introduction of the Code had not made a tremendous impact on policing practice, as organisational change had already started long before May 2017.  Nevertheless, there had been a substantial reduction in encounters during the first six months of implementation, most especially in the West of Scotland where searches and seizures were highest.  As a result, the rate of positive search outcomes had increased, which indicated that searches were being applied more effectively and with a greater degree of reasonable suspicion.  Police had not resorted to using other legislative powers as a means to continue searching suspect populations and, while there was still some disproportionality in the use of search amongst some groups (e.g. young people), this had greatly reduced.  Alcohol seizures had reduced much more than expected, especially in the West

of Scotland, which was surprising given calls by the police and other groups that a power of search for alcohol should be introduced. The six month review set out 11 recommendations for further investigation in the twelve month review.

The twelve month review was separated into two research studies. The first was an update of the six month review, focusing on the available statistical data; while the second was a qualitative study involving interviews and focus groups with police officers, young people and a range of other practitioners. The IAGSS determined that this mixed methods research exercise would provide all the evidence necessary to make any further recommendations to the Cabinet Secretary for Justice about the legislative powers of search and the CoP in Scotland.

This report sets out the findings from the quantitative research. The findings from the qualitative study is published in a separate report (Ipsos Mori Scotland 2019). In addition, Police Scotland has published its own review into the operationalisation of the CoP which sets out findings from the NSSU database and feedback from officers (Police Scotland 2019). To fully understand the impact of the implementation of the new Code of Practice, the findings of this report should be read in conjunction with the qualitative study and the Police Scotland report.

## 1.3   Evidence used in the review

Like the six month review, the quantitative research conducted for the twelve month review was mainly based on analysis of statistical data provided by Police Scotland from the NSSU Stop and Search Database which holds a record of all searches and seizures conducted in Scotland. In order to provide some wider context around alcohol-related problems that may have had an impact on the number of seizures in Scotland, data was also provided by Police Scotland from the Storm Unity Database on the recording of alcohol-related incidents and detections; and from the Information Services Division (ISD) of NHS National Services Scotland on the number of hospital admissions involving young people. All analyses were subject to statistical testing and, unless otherwise stated, any differences reported in this review are significant at the 95% confidence level.

The twelve month review covered the period from 1st June 2016 to 31st May 2018 i.e. a full twelve months before and after the implementation of the Code of Practice so that comparisons can be made between the two periods. In addition, for the sake of understanding patterns of

continuous change, monthly analysis for the year prior to the introduction of the Code and the year after is provided, where appropriate.

## 1.4 Scope of the twelve month review and report structure

This report begins by setting out some of the key changes that occurred as a result of the introduction of the Code of Practice. This includes changes in the number and rate of stop and searches and the use of seizures to recover alcohol and other illicit substances, changes in the positive detection rate for searches, and variation over time in the use of searches across different geographical areas (including police Command Areas and Divisions). It also provides a descriptive analysis of some new data that have been collected since the introduction of the code on strip searches and the issue of receipts following searches.

The remainder of the report focuses on four key areas of concern about the Code of Practice and associated legislation that were raised during the IAGSS consultation phase by police representatives and other stakeholder groups. Some stakeholders questioned whether the new legislative provisions and the Code of Practice adequately ensured that policing practice would not be unduly restricted in its efforts to keep people safe in Scotland. There were concerns that, in the absence of non-statutory search, police officers might start to increase their reliance on other forms of legislation. In particular, concerns were also raised about the lack of a specific power of search for alcohol and the impact this may have on criminalising young people for alcohol possession. And, having observed significant disproportionality in the use of stop and search, especially against young white males (Murray 2014), stakeholders also expressed a need to ensure that the tactic was not used unfairly against those with protected characteristics. Taking account of these concerns, the scope of the twelve month review covers four main areas, as detailed below.

### i. *Identify potential gaps in the legislation around young people and alcohol*

The lack of a police power to search young people for alcohol was one of the most contentious issues in the public consultation on Stop and Search conducted in 2015. In particular, policing representatives were concerned that the abolition of consensual searching would leave them powerless to search young people in the event that they were suspected of carrying concealed alcohol, thus placing the young person or others at risk. They argued that existing powers to seize alcohol from young

people under Section 61 of the Crime and Punishment (Scotland) Act 1997 were insufficient to deal with the extent of the problem in Scotland. Others, however, argued that there was no strong evidence to suggest that an additional power to search young people for alcohol was necessary and that such a power may result in disproportionately high search rates amongst young people, which could damage relationships between young people and the police (see Murray and McVie 2016). It was also noted that the power to search for alcohol is not available for officers in England and Wales (although it is available to PCSOs).

The IAGSS report stated that there was insufficient evidence to support the creation of a new legislative power to search children for alcohol at that time, but recommended that the situation be reviewed after the Code of Practice had been in place for a period of time. The six month interim review found that the number of seizures of alcohol had declined substantially, across all age groups, especially in the West of Scotland where alcohol related problems were perceived to be most acute. It was not possible to determine the reason for this, so a recommendation was made that this be investigated in more detail during the twelve month review. Section 3 of this report provides information on the number and nature of incidents dealt with by police that involve young people and alcohol and further considers whether there is any evidence to suggest that the lack of a power to search for alcohol is problematic. The review also looks at the wider context of alcohol related concerns, including trends in alcohol use and hospital admissions for young people under the influence of alcohol.

ii.     *Identify other potential gaps in the legislation or lack of clarity in the Code of Practice*

The wording of Section 65 of the Criminal Justice (Scotland) Act 2016 states that officers may only search a person who is not in custody "*in accordance with a power of search conferred in express terms by an enactment, or under the authority of a warrant expressly conferring a power of search*". In response to the IAGSS consultation, some police officers expressed concern that there was no explicit power of search in situations where police officers believed intervention was necessary to preserve life. As a result, paragraph 3.4 of the Code was added to make it clear that officers must take all steps necessary to protect life. The six month review found that only a small number of searches were conducted on the basis of protecting life, and recommended that this be

examined in more detail by the qualitative study in the twelve month review.

Section 4 of this report examines whether the legislation has left any significant gaps or ambiguities in the powers of police officers to stop and search. In particular, it looks again at the number of searches that were considered justifiable by police officers but which were not explicitly covered by Section 65 of the Criminal Justice (Scotland) Act 2016. This includes interventions carried out on the basis of Sections 20 and 32 of the Police and Fire Reform (Scotland) Act 2012 to protect life. Lack of clarity in the Code of Practice is considered within the qualitative research.

### iii.    Identify any increase in the use of Section 60 Criminal Justice and Public Order Act 1994

Some stakeholders expressed concern that the phasing out of non-statutory searches may lead to increased use of so-called 'no suspicion' searches by Police Scotland under Section 60 of the Criminal Justice and Public Order Act 1994. The six month review found that there had been no increase in the use of Section 60; however, the twelve month review examined again whether there was any increase in the number of authorisations for, or change in the profile of, searches conducted under Section 60. This is reported in Section 5 of the report.

### iv.    Examine use of search involving individuals with protected characteristics

Concern was expressed during the public consultation on stop and search about the disproportionate searching of children and young people, and on the mechanisms of policing engagement which can have a negative effect on young people and their attitudes towards the police. Section 7 of the new CoP specifically addressed the issue of searches involving children and young people, and Police Scotland provided training for all officers aimed at improving methods of engagement with young people. The training also examined the issue of unconscious bias when dealing with any individuals with protected characteristics. The six month review found that there was still some disproportionate searching of young people, and that positive outcomes were lower amongst this group; however, it found no particular disproportionality in terms of search or seizure by sex or ethnic group.

Section 6 of the twelve month review provides an update on the impact of the CoP by examining any changes in the profile of searches and

whether rates of search appeared to be disproportionately high and detection rates disproportionately low in respect of any group with protected characteristics, especially children and young people. In addition, Section 7 offers a more detailed analysis of whether certain protected characteristics – and other factors relating to the nature of the search itself - were significantly associated with a positive search, and whether the introduction of the CoP made any additional difference to improving search outcomes in Scotland.

Section 8 of this report draws the key conclusions from the review findings and offers some points for consideration by the IAGSS in drawing up its final report to the Cabinet Secretary for Justice.

## 2 Changes following implementation of the Code

### 2.1 Change in police use of search and seizure

During the twelve month period following the introduction of the new Code of Practice (CoP) on Stop and Search (June 2017 to May 2018), there were 32,307 encounters involving either a search or a seizure in Scotland. This compares to 44,249 during the equivalent twelve month period of the previous year and represents a 27% reduction in the use of these police tactics. The number of searches and seizures did not drop as a direct consequence of the introduction of the Code of Practice on 11th May 2017. Rather, this reduction reflects an ongoing steady decline which can be traced back to the publication of a critical HMICS report in March 2015. Figure 2.1 shows the decline in recorded searches and seizures between June 2016 and May 2018, and highlights the year before the introduction of the CoP and the year after. From the start to the end of this two year period, the number of encounters decreased by 36%; however, the difference between its highest level (in June 2016) and lowest level (in February 2018) represents a reduction of 52%.

**Figure 2.1: Number of searches and seizures carried out in Scotland, June 2016 to May 2018**
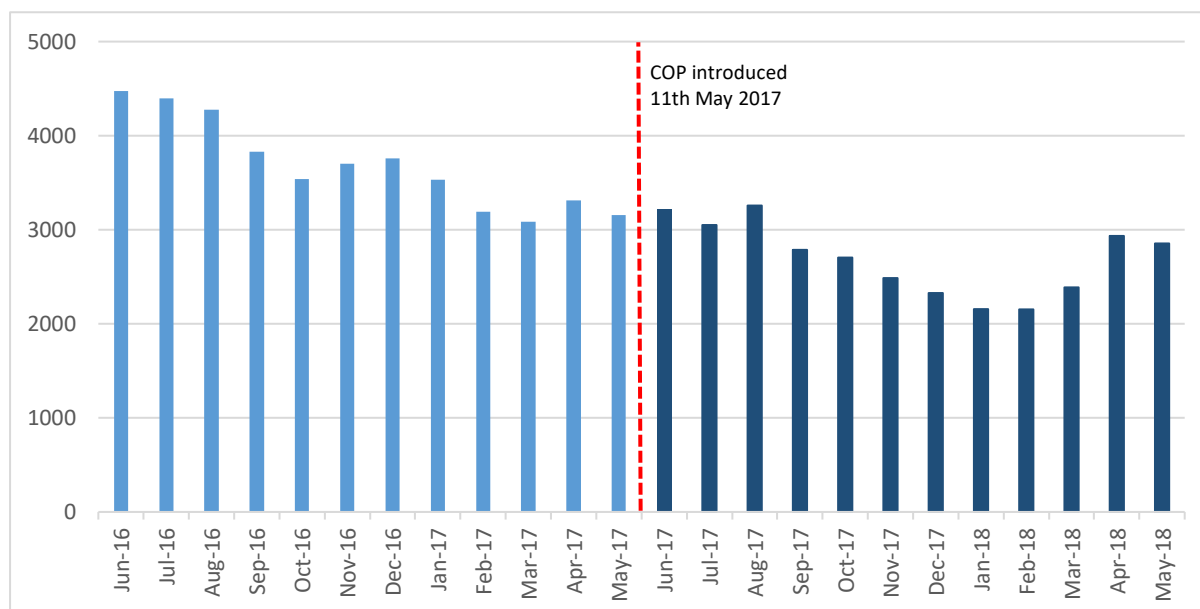


The number of searches and seizures conducted during the twelve months following the introduction of the CoP is clearly smaller in comparison to the equivalent twelve months of the previous year. In addition, there are distinctively different trends, with a more ongoing

decline after the introduction of the COP than is evident in the 12 months before.   There is some evidence of a seasonal trend in both periods, with higher numbers in the spring and summer months, although there was no similarity in seasonal trend over the winter months.   Interestingly, however, the sharp rise in encounters during April and May 2018 brought them back in line with the number in April and May 2017, which may be an early indicator that usage of these tactics is starting to 'level out'.

There was a distinct reduction in all types of searches and seizures following implementation of the CoP.  Table 2.1 shows the breakdown of policing encounters by number and percentage in the twelve months after the CoP came into force compared with the equivalent twelve months of the previous year.  Statutory searches reduced by 19% overall, although they increased in terms of the relative share of all encounters by 9%.  This is partly due to the phasing out of consensual searches following the introduction of the CoP (although the number of consensual searches had already diminished to tiny numbers during the year prior to the CoP).  However, it is mainly due to a 63% decline in seizures, which fell as a proportion of all encounters from 16% to 8%.  As the analysis compares the same time period in each year, this difference is not accounted for by any seasonal variation and, instead, suggests that police use of seizure reduced at a far greater rate than the use of stop and search.

**Table 2.1: Number of searches and seizures pre and post-implementation of the CoP**

|  | June 2016 to May 2017 | | June 2017 to May 2018 | | % Change in N | Difference in % share |
|---|---|---|---|---|---|---|
|  | N | % hare | N | % share |  |  |
| Statutory searches | 36,627 | 3% | 9,773 | '% | -19% | +9% |
| Consensual searches | 707 | % |  |  | -100% | -2% |
| Seizures | 6,915 | 6% | ,534 | ⸝ | -63% | -8% |

Note: Column percentages may not total 100% due to rounding.

This differential change in the use of search and seizure is confirmed by the indexed trends in Figure 2.2.  This chart shows that the percentage

change in seizures declined far more steeply than that for searches during the year prior to the introduction of the CoP and, despite an initial increase in seizures immediately prior to the CoP introduction (which is most likely a seasonal effect) they continued to decline more steeply afterwards.  Indeed, the number of seizures declined by 90% between June 2016 and its lowest point in December 2017, although it showed signs of increasing again in the early months of 2018 (which could, again, be a seasonal effect).  This compares with a 38% drop in searches between June 2016 and its lowest point in February 2018, although there are also signs of some increase in subsequent months.

**Figure 2.2: Indexed trends in police use of search and seizure, June 2016 to May 2018**
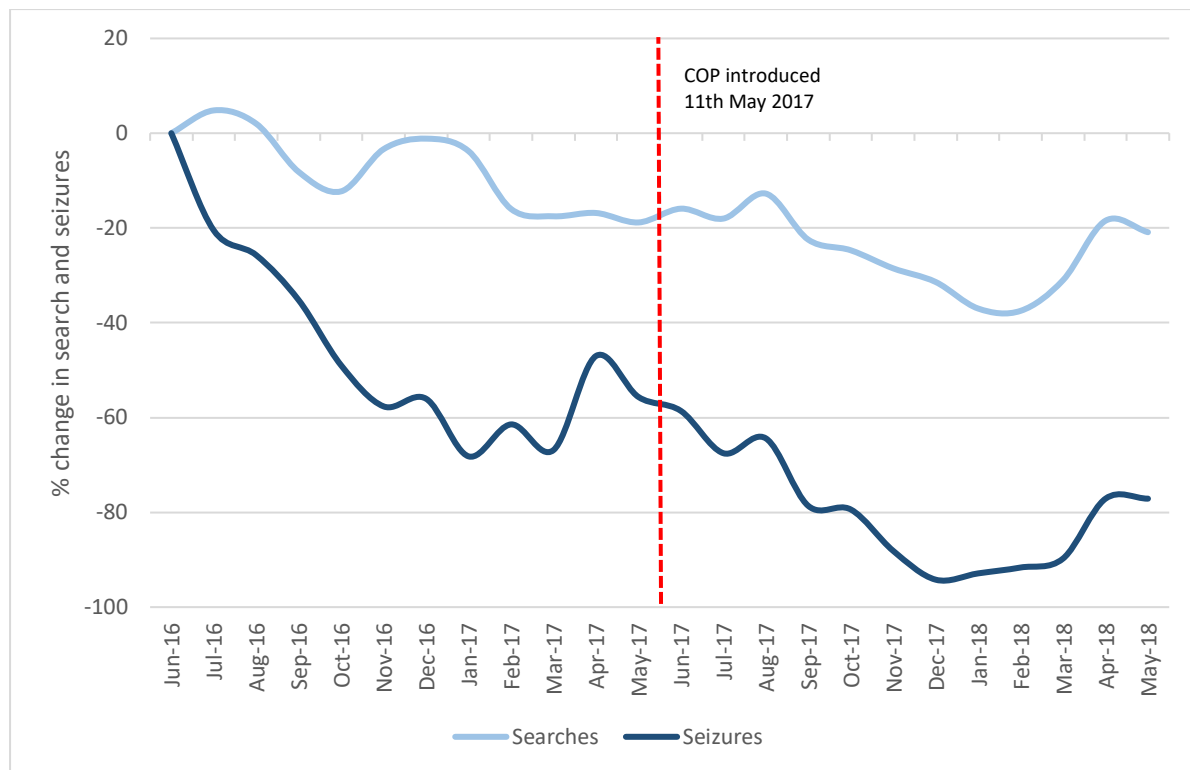


The trend in seizures will be discussed further in section 3 in relation to the use of search and seizure as a policing tactic for dealing with underage drinking; however, it is clear from Figure 2.2 that the police use of search and seizure changed before and after implementation of the CoP but it did not change consistently for both tactics.

## 2.2 Change in positive detection rate for stop and search

Despite the decline in the overall number of searches, the success rate in terms of positive detection increased in the year following the introduction of the CoP. Table 2.2 shows that in the 12 months prior to the introduction of the CoP there were 37,325 searches, of which 11,689 (31%) were positive. In the year after the CoP was introduced, there were 29,768 searches, of which 11,236 (38%) were positive. This represents a statistically significant increase of 7% in positive outcomes following the introduction of the CoP, which suggests that officers were applying a higher threshold of reasonable suspicion when using stop and search. However, given the very large reduction in the total number of searches, it is important to examine the absolute change in the number of positive searches. Taking statutory and voluntary searches together, Table 2.1 shows that there were 7,561 fewer searches (a decline of 20%) following the introduction of the CoP, but Table 2.2 shows that

there were only 453 fewer positive searches (a decline of only 4%). This indicates a net reduction in searches resulting in the recovery of an illegal or dangerous item.

There was an increase in the positive search rate across all search types, as shown in Table 2.2. Searches for stolen property saw the largest increase in positive detection rate (9%). There was a shallower increase in the rate of positive searches for drugs (6%) and, especially, for offensive weapons (4%). Indeed, the rate of positive searches remained lowest for weapon searches, with only 26% of such searches resulting in an item being recovered. A new category for recording searches of people carried out in accordance with a warrant was added to the Police Scotland database following the introduction of the CoP, and these had a higher than average positive rate.

**Table 2.2: Number and percentage of positive police searches pre and post-implementation of the CoP**

|  | June 2016 to May 2017 | | June 2017 to May 2018 | | Difference in % of positive searches |
|---|---|---|---|---|---|
|  | N | % of all searches | N | % of all searches | |
| All searches | 11,689 | 31% | 1,236 | 38% | +7% |
| *Searches by type:* | | | | | |
| Drugs | 10,252 | 32% | ,293 | 38% | +6% |
| Stolen property | 895 | 35% | ,011 | 44% | +9% |
| Offensive weapons | 422 | 22% | 30 | 26% | +4% |
| Warrant | 13 | 28% | 56 | 41% | +13% |
| Other reason | 107 | 21% | 6 | 28% | +7% |

Note: There were seven searches on the Stop and Search Database relating to terrorism for which no outcome was published.

## 2.3 Geographical change in the use of search and seizure
### 2.3.1 Overall change by Command Area

Prior research (Murray 2014; McVie and Murray, 2017) demonstrated that the use of search and seizure in Scotland varied significantly by geographic area, and this was also found in the six month review of the CoP (McVie 2018). Police Scotland consists of three large Command Areas: East, North and West. Table 2.3 shows the change in the number of searches and seizures during the twelve months before and after the implementation of the CoP within these three Command Areas. It also shows the percentage change in the total number of searches and seizures, and the shift in the relative share of all encounters within each of the three areas. Table 2.3 shows that the very large reduction in searches and seizures at a national level was predominantly driven by falling numbers in the West Command Area, which is evident in terms of change in absolute numbers and relative share of all encounters.

It is clear from Table 2.3 that the majority of all searches took place in the West Command Area. However, there was a 41% decline in searches in the West during the twelve months after the introduction of the CoP. This contrasts sharply with an 8% increase in searches in the North and a 23% rise in the East. As a consequence, the relative share of all searches in Scotland shifted away from a predominance in the West, although almost half (45%) of all searches still occurred in this Command Area following the introduction of the CoP.

The number of seizures conducted in the West Command area declined significantly, by 68%, in the year following the introduction of the CoP. There were also reductions in the use of seizures in the North (-12%) and the East (-26%) Command Areas, albeit to a far lesser extent. Again there was a shift in the relative share of all seizures, with a net loss in the West Command Area and net gains in the North and East. Nevertheless, unlike searches, the vast majority (79%) of all seizures continued to take place in the West.

**Table 2.3: Number of searches and seizures pre and post-implementation of the CoP by Command Area**

| | June 2016 to May 2017 | | June 2017 to May 2018 | | % Change in N | Difference in % share |
|---|---|---|---|---|---|---|
| | N | % hare | N | % share | | |
| *Searches* | | | | | | |
| North | 8,488 | 3% | , 201 | 31% | +8% | +8% |
| East | 5,727 | 5% | , 032 | 24% | +23% | +9% |
| West | 23,119 | 2% | 3,540 | 45% | -41% | -17% |
| *Seizures* | | | | | | |
| North | 221 | % | 94 | 8% | -12% | +5% |
| East | 467 | % | 45 | 14% | -26% | +7% |
| West | 6,227 | 0% | ,995 | 79% | -68% | -11% |

Note: Column percentages within searches and seizures may not total 100% due to rounding.

## 2.3.2 Monthly change by Command Area

The overall figures tell only a partial story and do not account for change over time.  Figures 2.3 and 2.4 show how the number of searches and seizures changed on a month by month basis prior to and after the introduction of the CoP in each of the three Command Areas.  These figures are presented as indexed trends, fixed at zero in June 2016, so they show the percentage change in overall encounters from this time point onwards.

Figure 2.3 shows that there was a steady and consistent fall in the number of searches in the West Command Area from around August 2016 to December 2017, although in the early months of 2018 numbers started to rise again (the trend line suggests more of a gradual increase than a seasonal effect).  Clearly, therefore, the decline in the number of encounters in the West Command Area started well before the introduction of the CoP.  In the North and East Command Areas, the indexed trends showed far greater month to month fluctuation (which is partly a result of smaller absolute numbers of searches).  The trend in searches in the North Command Area varied from month to month, but it showed no consistent rise or fall over time.  Whereas, in the East Command Area there was a slight upward trend in searches between October 2016 and January 2017, but no consistent pattern beyond that.  Therefore, Figure 2.3 does not suggest that the higher number of encounters in the North and East in the twelve month period following

the introduction of the CoP was due to a marked upward trend from May 2017.  Furthermore, it does not show any distinct seasonal trend in numbers of searches in any of the three Command Areas.

**Figure 2.3: Indexed trends in searches by Command Area, June 2016 to May 2018**
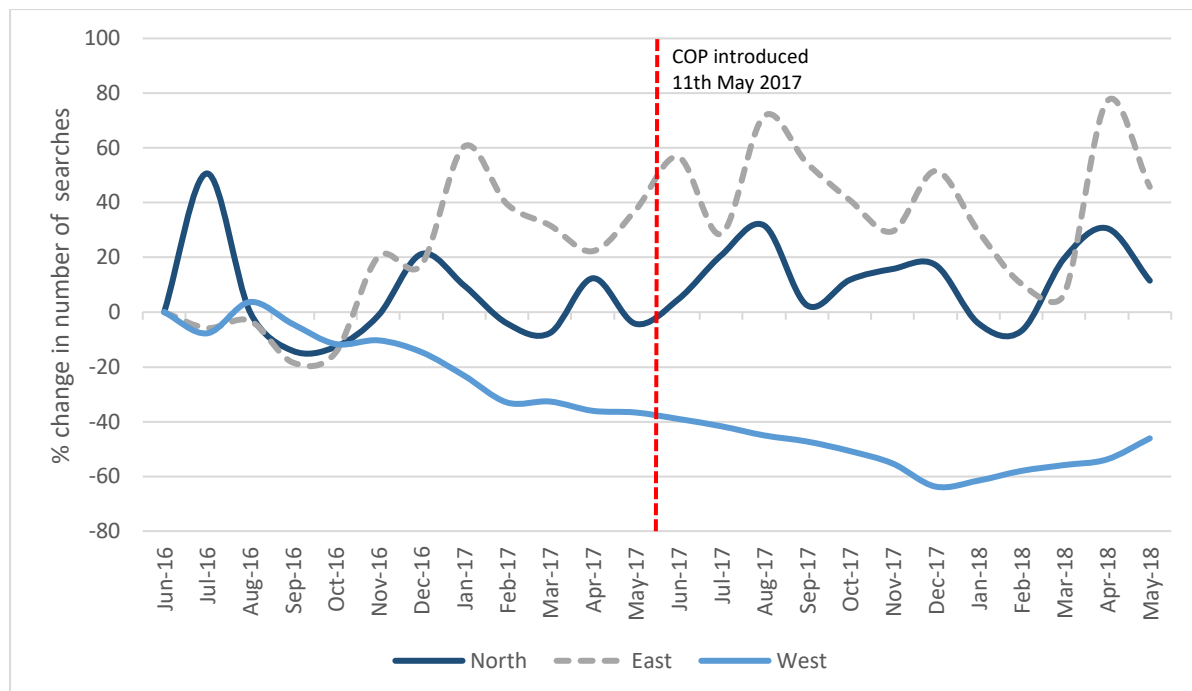


The trend in seizures is shown in Figure 2.4. The number of seizures was much smaller, so the trends are subject to an even greater degree of fluctuation than for searches. Nevertheless, Figure 2.4 shows a gradual decline in seizures that started well before the introduction of the CoP within all three Areas. Between June 2016 and March 2017, seizures fell by between 63% and 85% across the Command Areas. There appeared to be a slight increase in the number of seizures just prior to the introduction of the CoP, which may well have been a seasonal effect; however, there was another distinct period of decline in numbers across all three Command Areas after the CoP was introduced. There does appear to have been some increase in seizures in the early months of 2018, with a very large spike in the East in April 2018. However, the overall pattern of decline in the number of seizures over the two years is starkly different to the changing pattern of searches, shown in Figure 2.3.

**Figure 2.4: Indexed trends in seizures by Command Area, June 2016 to May 2018**
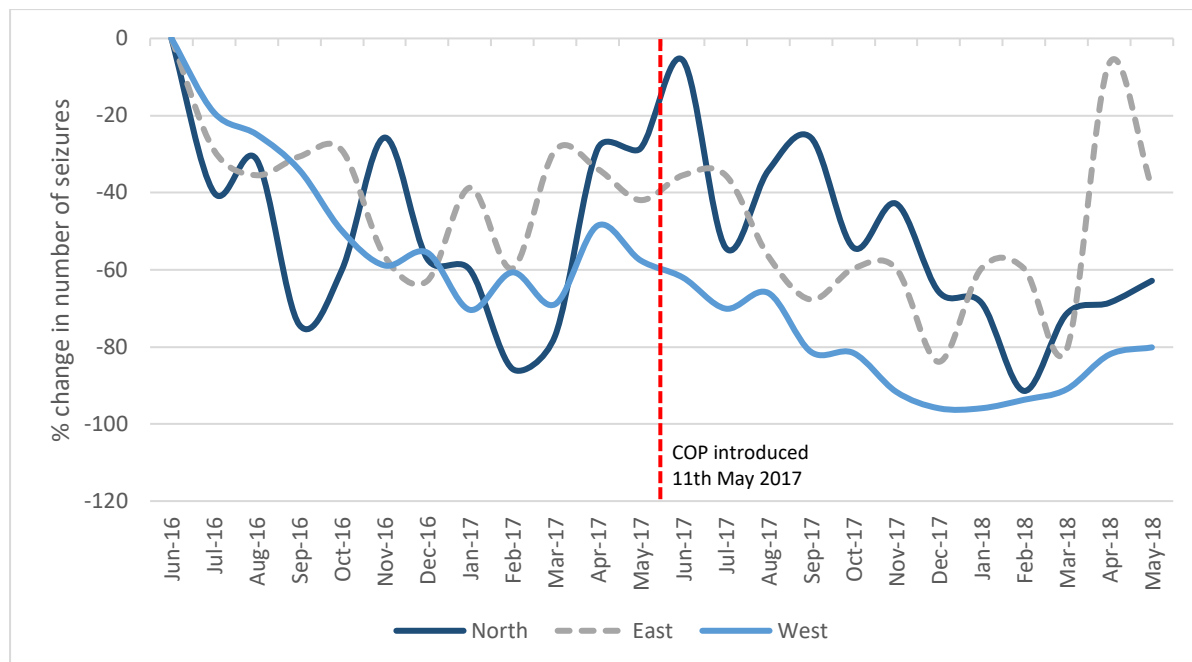


Looking at the total number of searches and seizures in each Command Area makes an assumption that the level of demand for policing is similar in each area; however, this is unlikely to be the case. There are many factors that can impact on the level of demand for policing, but one of the most common factors is the population size which varies from area to area. In order to compare Command Areas on a like-for-like basis, the rate per capita of search and seizure was calculated using mid-year population estimates from the National Records of Scotland. The rates were calculated per 10,000 people aged 12 to 59, since the vast majority (over 97%) of all searches and seizures involved people within this age range.

Figure 2.5 shows the difference between the search and seizure rates in each Command Area in the twelve months prior to the introduction of the CoP and the equivalent period after the CoP was introduced. Overall, search rates per capita were far higher than seizure rates across all three Command Areas. Prior to the introduction of the CoP, the West Command Area had a far higher rate of search and, especially, seizure than the North and East. Following implementation of the CoP, the seizure rate in the West Command Area reduced dramatically from 40.9 to 13.1 per 10,000 people aged 12-59, although it continued to be four times higher than that in the East (3.2) and five times higher than in the

North (2.4). Seizure rates declined only marginally in the East and North.

The rate of search in the West Command Area also declined substantially, from 152.0 to 89.1 per 10,000 people aged 12 to 59; whereas it increased from 54.2 to 66.2 in the East and from 105.1 to 114.7 in the North. Taking population size into account, therefore, the rate of search actually became smaller in the West than the North Command Area following the introduction of the CoP.

**Figure 2.5: Rates of search and seizure per capita pre and post-implementation of the CoP by Command Area**
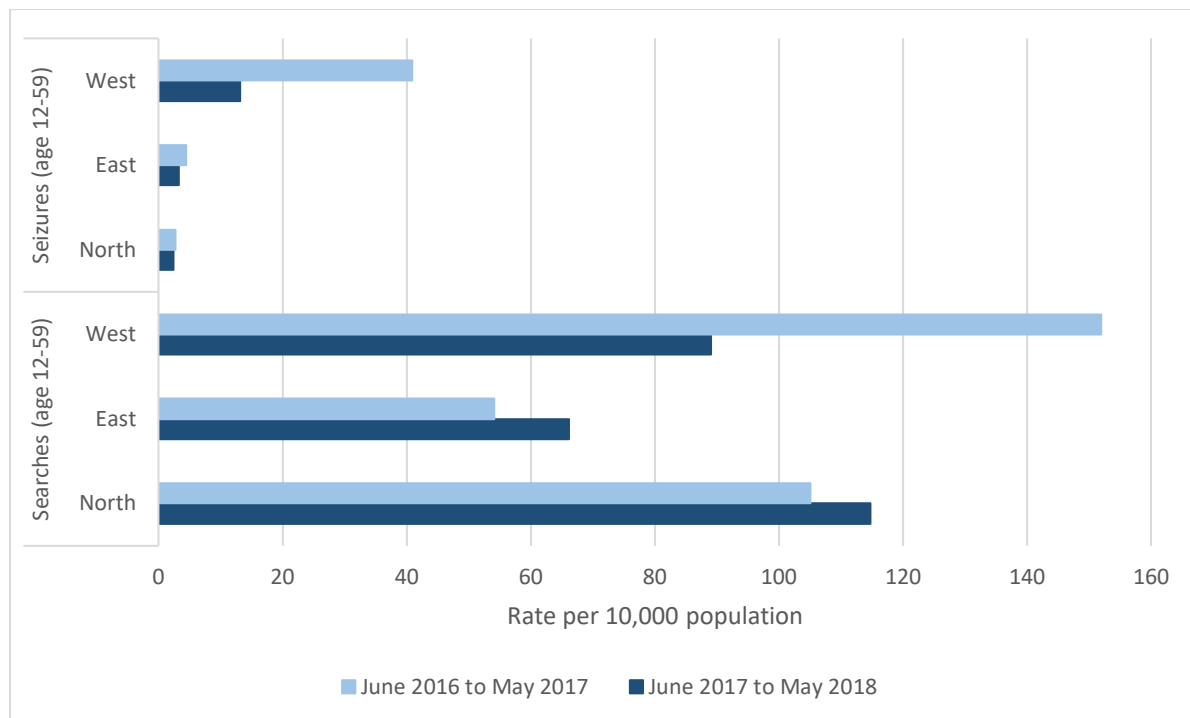


*Note: Rates per capita based on Mid Year Population Estimates for 2016 (June 2016 to May 2017) and 2017 (June 2017 to May 2018) for people age 12-59.*

### 2.3.3 Overall change by Division

Within the three Command Areas there are a 13 Police Divisions. Table 2.4 shows the change in number of searches by Division. There was substantial change at a Divisional level, but no clear pattern of change within Command Areas which suggests that change in the use of search as a tactic was influenced predominantly by factors at a local level.

The Division with the largest number of searches during both periods was Greater Glasgow. Nevertheless, there was a 59% reduction in searches in this Division in the twelve months following the introduction of the CoP compared with the previous year. The relative share of all searches attributable to Greater Glasgow reduced from 39% to 20%, which represented the greatest overall change. There were fairly sizable reductions in the number of searches in each of the other West Divisions, with the exception of Dumfries & Galloway which increased by 69% over this period. Nevertheless, the relative share of the other West Divisions did not change substantially.

In the North Command Area, there was a 19% increase in searches within the North East (increasing its relative share of all searches by 6%) and a 7% increase in the Highlands and Islands, but a 7% decline in Tayside.  Whereas, in the East Command Areas there were large increases in Edinburgh (32%) and the Lothians & Scottish Borders (62%) but only a minimal increase in Fife (6%), and a small decline in the Forth Valley (-5%).  Overall, the relative share of all Northern and Eastern Divisions increased over this period, largely due to the large reduction in searches in Greater Glasgow.

**Table 2.4: Number of searches pre and post-implementation of the CoP by Police Division**

| | June 2016 to May 2017 | | June 2017 to May 2018 | | Change in N | Difference in % share |
|---|---|---|---|---|---|---|
| | N | % share | N | share | | |
| *West Command Area:* | | | | | | |
| Greater Glasgow | 14,606 | 9% | ,919 | 20% | 9% | -21% |
| Renfrewshire & Inverclyde | 2,219 | % | ,630 | 6% | 7% | 0% |
| Argyll & West Dunbartonshire | 1,593 | % | ,364 | 5% | 4% | +1% |
| Lanarkshire | 2,283 | % | ,750 | 6% | 3% | -1% |
| Ayrshire | 1,613 | % | ,520 | 5% | 5% | +1% |
| Dumfries & Galloway | 805 | % | ,357 | 5% | 69% | +2% |
| *North Command Area:* | | | | | | |
| North East | 3,852 | 0% | ,567 | 15% | 19% | +6% |
| Tayside | 2,268 | 6% | ,112 | 7% | % | +1% |
| Highlands & Islands | 2,368 | 6% | ,522 | 9% | 7% | +2% |
| *East Command Area:* | | | | | | |
| Edinburgh | 1,854 | % | ,445 | 8% | 32% | +3% |
| Forth Valley | 1,546 | % | ,466 | 5% | 5% | +1% |

| Lothians & Scottish Borders | 1,169 | % | 896 | 6% | 62% | +3% |
| Fife | 1,158 | % | 225 | 4% | 5% | +1% |

Note: Column percentages and % change may not total 100% due to rounding.

Turning to seizures, Table 2.5 shows that the numbers were much smaller but the percentage changes were much larger. The North East Division was the only one to see an increase in the number of seizures in the twelve months after the introduction of the CoP, rising by 39%. Seizures in all of the other Divisions fell, ranging from a 15% drop in the Lothians & Scottish Borders to a substantial 76% drop in Greater Glasgow, which resulted in a 21% fall in relative share of all seizures. The most substantial declines occurred in the Divisions of the West Command Area, but it is clear that this was a pattern that was replicated across the country.

**Table 2.5: Number of seizures pre and post-implementation of the CoP by Police Division**

| | June 2016 to May 2017 | | June 2017 to May 2018 | | Change in N | Difference in % share |
|---|---|---|---|---|---|---|
| | N | % share | N | share | | |
| *West Command Area:* | | | | | | |
| Greater Glasgow | 4,217 | 1% | ,019 | 40% | '6% | -21% |
| Renfrewshire & Inverclyde | 438 | % | 28 | 9% | 8% | 0% |
| Argyll & West Dunbartonshire | 174 | % | 08 | 4% | 8% | +1% |
| Lanarkshire | 859 | 2% | 08 | 12% | 4% | -1% |
| Ayrshire | 498 | % | 10 | 12% | 8% | +1% |
| Dumfries & Galloway | 41 | % | 2 | 1% | 6% | +2% |
| *North Command Area:* | | | | | | |
| North East | 77 | % | 07 | 4% | 39% | +6% |
| Tayside | 48 | % | 3 | 1% | 2% | +1% |
| Highlands & Islands | 96 | % | 9 | 2% | 39% | +2% |
| *East Command Area:* | | | | | | |
| Edinburgh | 88 | % | 3 | 3% | 8% | +3% |
| Forth Valley | 93 | % | 3 | 2% | 4% | +1% |
| Lothians & Scottish Borders | 185 | % | 58 | 6% | 5% | +3% |
| Fife | 101 | % | 1 | 3% | 0% | +1% |

Note: Column percentages and % change may not total 100% due to rounding.

## *2.3.4 Monthly change by Division*

It is not possible to look in detail at change in the number of seizures by Division on a month by month basis as the numbers are too small. However, focusing on the number of searches there is evidence of considerable geographical variation in shifting police practice as a result of the implementation of the CoP. Looking at indexed trends from June 2016, three Divisions recorded a lower number of searches in the twelve months prior to the CoP being introduced than in the twelve months after. Figure 2.6, below, shows that in the months following the introduction of the CoP (represented by the dotted vertical line), the

number of searches and seizures in the North East, Lothians & Scottish Borders, and Dumfries & Galloway were consistently higher in the period following the introduction of the CoP than in the previous year. It is worth noting that the change seems to have been precipitated in the month or so immediately prior to the implementation of the CoP and to have been sustained in the period afterwards.

On the contrary, five Divisions – all in the West Command Area - displayed a large and significant decline in the number of searches, which started well before the implementation of the CoP and continued after it. Figure 2.7 shows that the number of searches in Greater Glasgow, Ayrshire, Lanarkshire, Argyll & West Dunbartonshire, and Renfrewshire & Inverclyde all declined significantly during the twelve months preceding the introduction of the CoP, albeit at different rates and times, and with a certain degree of month to month fluctuation.

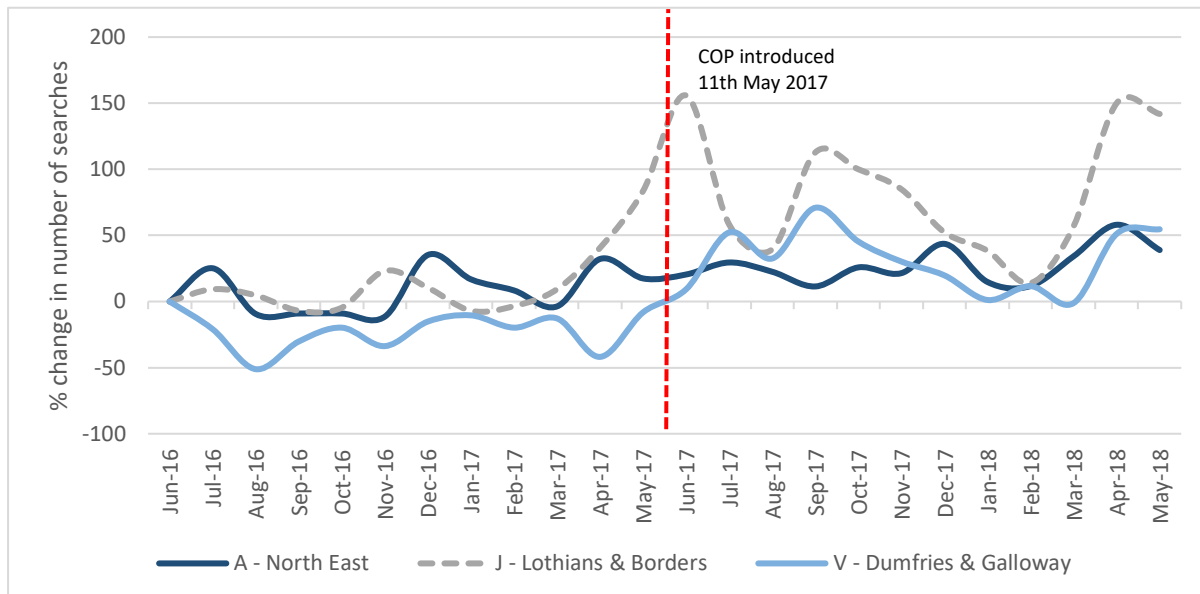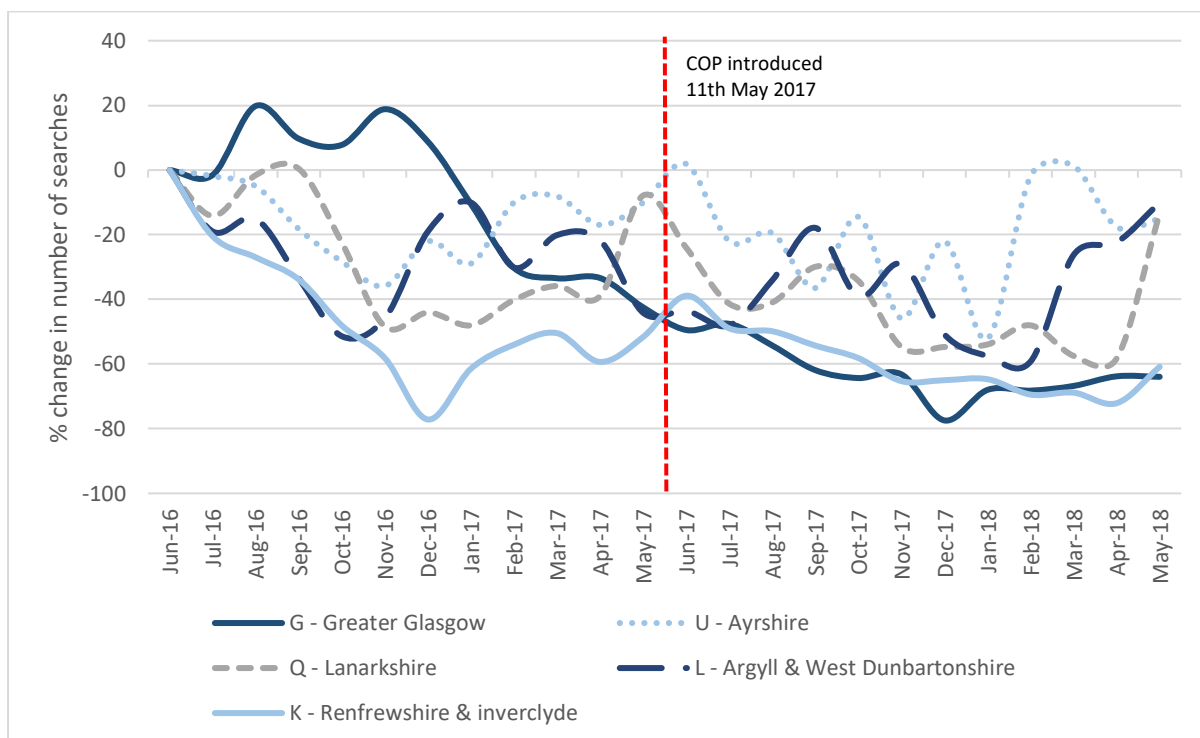**Figure 2.6: Divisions showing an increase in search following implementation of the CoP**



**Figure 2.7: Divisions showing on ongoing decline in searches pre- and post-implementation of the CoP**



Renfrewshire & Inverclyde showed the greatest decline in encounters during the pre-CoP period, falling by 77%, although this was closely followed by Lanarkshire and Argyll & West Dunbartonshire which fell by

48% and 46%, respectively. The number of searches in Ayrshire fell by around a third.  In all four of these Divisions, the number of searches and seizures did increase again in the months immediately prior to the introduction of the CoP.  This is consistent with anecdotal reports of an increase in confidence in using stop and search following the roll out of the national training programme by Police Scotland.  Following the introduction of the CoP in May 2017, there was a further reduction in the number of encounters in all four Divisions until the end of 2017.  In three of the four Divisions, the number of encounters increased again in the early months of 2018.  It is difficult to say whether this is indicative of greater confidence in using stop and search or just an emerging seasonal trend.

In Greater Glasgow, the number of searches remained fairly consistent between June and November 2016, but declined significantly afterwards and continued to do so until reaching its lowest point in December 2017, representing a 77% fall in searches since June 2016.  If there was an increase in confidence amongst officers in the West that was attributable to the Police Scotland training programme, it did not appear to be evident amongst those working in Greater Glasgow.  Like some other West Divisions, there was a slight increase in encounters in the early months of 2018; however, the rate of change was far slower than in Ayrshire, Argyll & West Dunbartonshire, and Lanarkshire.

**Figure 2.8: Divisions showing a stable pattern in searches pre and post-implementation of the CoP**
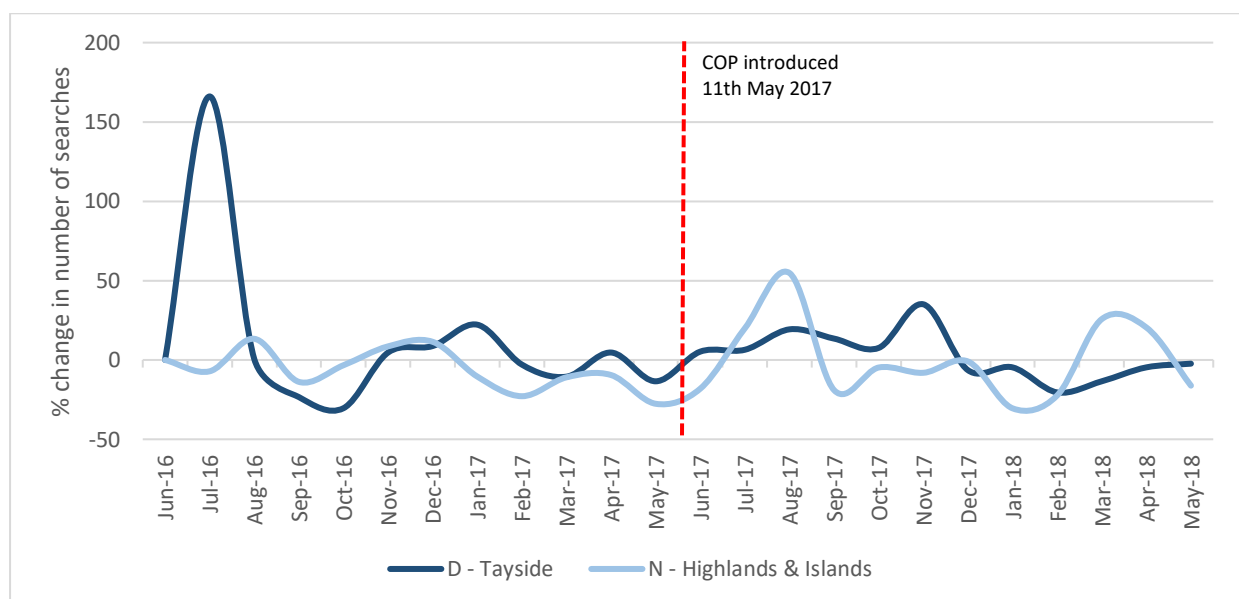
Within the other Police Scotland Divisions, it was more difficult to identify distinctive trends in the number of searches conducted in the period before and after the introduction of the CoP.  Figure 2.8 shows that in Tayside and the Highlands and Islands (both Northern Divisions) the trend in encounters was fairly stable over time with relatively small fluctuations in activity.  The two exceptions to this were a large spike in July 2016 in Tayside which is explained by an increase in searches during the T in the Park music festival in Kinross, and a spike in the Highlands and Islands in August 2017 which coincides with the Groove Loch Ness concert in Inverness.  However, there is no clear evidence of a direct effect of the introduction of the CoP in these two Divisions.

In the remaining three East Divisions - Fife, Forth Valley and Edinburgh - there was no clear observable pattern of change before or after the introduction of the CoP.  Figure 2.9 suggests that each of the three Divisions had a fairly stable pattern of searches and seizures which was interspersed with some large peaks in activity.  There is no consistent seasonal trend evident, which suggests that the peaks are probably attributable to local initiatives or activities.  For example, the large spike in Edinburgh in August 2017 is almost certainly attributable to the Edinburgh International Festival during which there is a high policing presence.  It is notable that there was not such a large spike during the equivalent period of the previous year, however.   As with Figure 2.8, there is no obvious evidence that the introduction of the CoP had any direct effect on policing practice in these three Divisions.  Or at least any impact of the new legislation was most likely to have been set in motion well before the actual implementation period.

**Figure 2.9: Divisions showing no consistent trend in searches pre or post-implementation of the CoP**
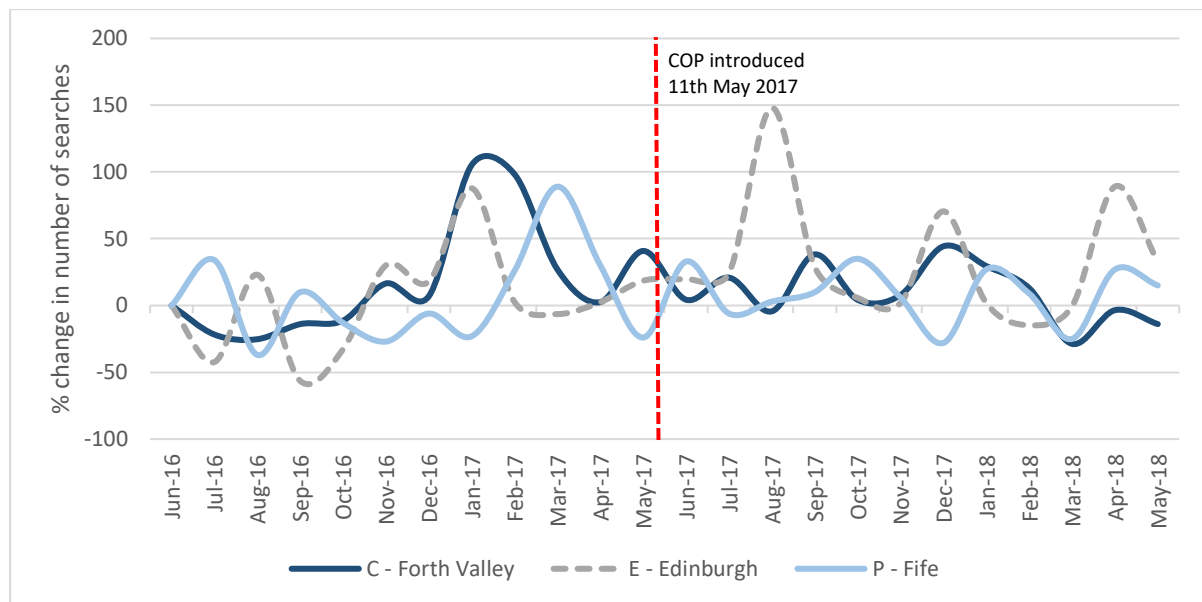


### 2.3.5 Change in positive detection by Division

Section 2.2 noted that the overall reduction in the number of police searches in the period following the implementation of the CoP coincided with an increase in the positive detection rate (regardless of the reason for the search) compared to the equivalent twelve month period of the previous year. Given that there was such a large degree of change and variation in use of search at a Divisional level, it is helpful to examine how the likelihood of a positive outcome changed within Police Divisions. Figure 2.10 shows the percentage of searches which resulted in a positive outcome for each Division, and for Scotland as a whole, in the pre- and post-CoP periods.

There was fairly wide variation in successful outcomes across Divisions both before and after the CoP was introduced; although it is notable that the degree of variation reduced in the post-CoP period. For example, the gap between the Divisions with the largest and smallest detection rates declined from 27% in the pre-CoP period to 22% in the post-CoP period. Some Divisions showed little or no change in positive outcome between the two periods; for example, Lanarkshire, Lothian & Borders, Tayside, Dumfries & Galloway and North East saw very minor changes in outcome (2% or less). Whereas others had experienced a large increase in positive search outcomes, such as Greater Glasgow, Edinburgh, Fife and the Highlands and Islands. Only two Divisions -

Tayside and Forth Valley - had experienced a decline in the positive search rate.

**Figure 2.10: Percentage of positive police searches pre- and post-implementation of the CoP, by Division**
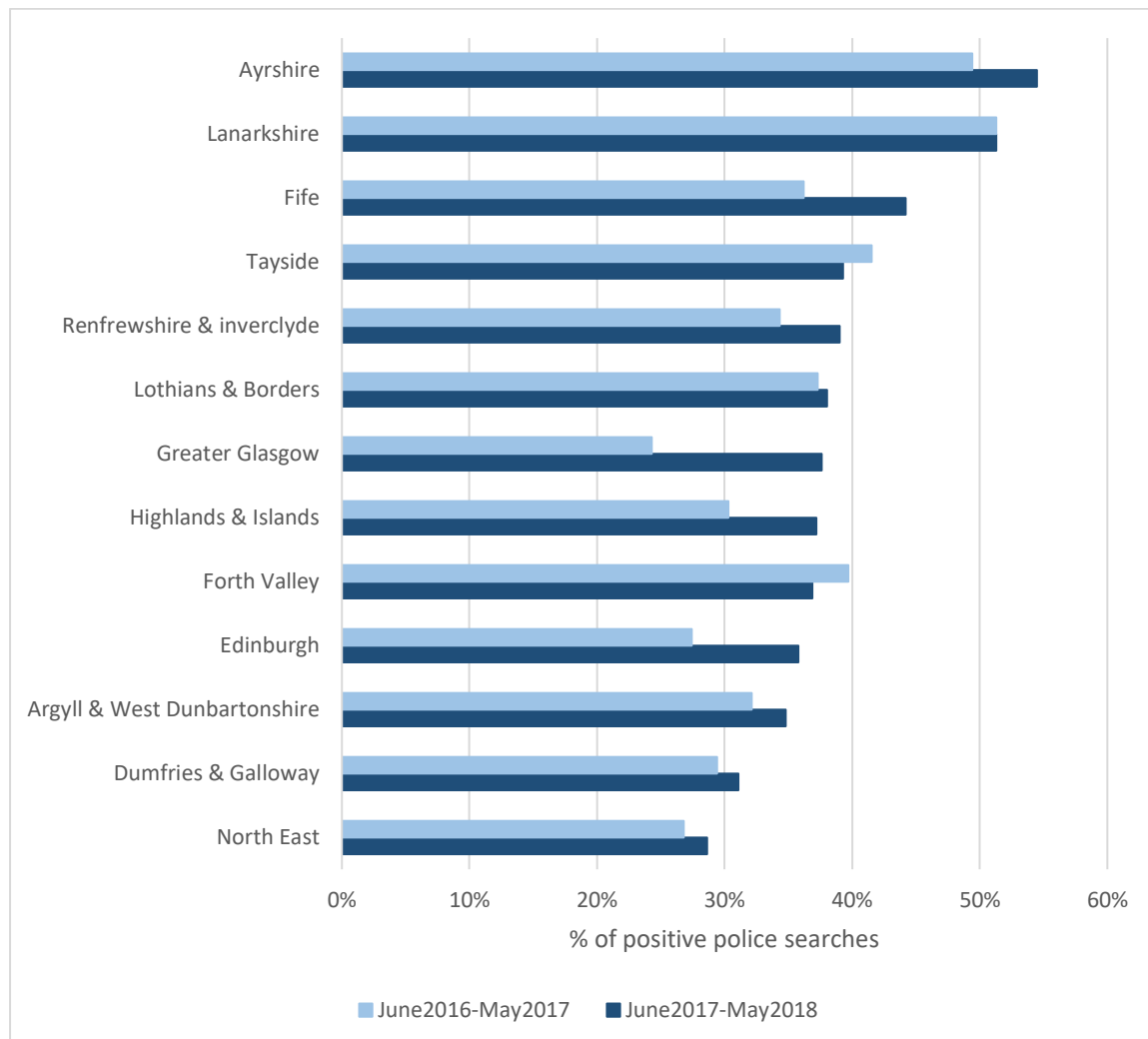


There appeared to be no consistent relationship between trends in searches and change in positive detection rates across Divisions. Four of the Divisions that had a large reduction in search rates (Greater Glasgow, Ayrshire, Argyll & West Dunbartonshire, and Renfrewshire & Inverclyde) all witnessed a significant increase in positive search rates. However, Lanarkshire, which also had a large decline in searches, saw no change in the rate of positive detections (although this Division did have the highest detection rate overall in the pre-CoP period). The three Divisions that experienced an increase in search rates after the introduction of the CoP (North East, Lothians & Scottish Borders, and Dumfries & Galloway) witnessed little or no change in the positive detection rate. Meanwhile, amongst those Divisions that had no change

in the use of search pre or post-CoP, one (Tayside) saw a slight decline in positive detection rates and the other (Highlands and Islands) increased its positive search rates.  Equally, amongst those Divisions with no consistent trend in searches before or after the CoP, two (Edinburgh and Fife) had a large increase in detection rates, while the other (Forth Valley) had a slight decline.

Based on these results, it is likely that whatever influenced the pattern of stability or change in the rate of positive outcomes for searches across different Scottish Divisions, it cannot simply be explained by changes in the number of searches carried out.  It is likely that other factors, including proportionate use of stop and search and the application of reasonable suspicion, played a key role in the changing pattern of successful searches.

## 2.4    New information on stop and search

### 2.4.1 Strip and intimate searches

Since the introduction of the CoP, information about the use of strip searches and intimate searches has been recorded on the NSSU Stop and Search Database.  According to Annex C of the CoP: "*A strip search is a search involving the removal of more than outer coat, jacket, gloves, headgear or footwear*".  It is permitted only in circumstances where the officer has reasonable suspicion that a person has concealed an article (such as drugs or a weapon) under their clothing, and it should be conducted in a relatively private place so that the person detained cannot be seen by others.  Annex C further states: "*An intimate search consists of the physical examination of a detainee's body orifices other than the mouth*".  Intimate searches are clearly much more intrusive than a strip search.  They can be conducted only on issue of a warrant by a Sheriff and must be carried out by an authorised health care professional.  The use of strip and intimate searches was not recorded by Police Scotland prior to the introduction of the CoP, so activity can only be reported for the period from June 2017 to May 2018.

There were 1,537 strip searches conducted across Scotland during the twelve months following the introduction of the CoP (an average of 128 per month).[1]  This represents 5% of all searches carried out during the twelve months following the introduction of the CoP.  Of these, 66% were conducted inside a police station and 34% were conducted out of public

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[1] Note that the NSSU Stop and Search Database does not include the number of strip or intimate searches carried out following arrest which is considerably higher.

view somewhere other than a police station. The vast majority of strip searches (69%) were conducted for drugs, while 30% were conducted during the execution of a Warrant (very few were carried out for other reasons). Almost half (49%) of all strip searches resulted in an item being found compared with 37% of non-strip searches.

Looking at protected characteristics, the majority of strip searches involved a person aged 18 or over, with only 4% (54 in total) involving a young person under the age of 18. The positive search rate for strip searches of young people (49%) was not significantly different to that for adults (48%). There was no significant difference between ethnic groups in terms of whether a strip search was carried out or not.

There were some sex differences in relation to strip searches. Searches involving women were significantly more likely to involve a strip search than those involving men (8% of all searches versus 5%, respectively). In terms of the location of the search, males were most likely to be searched inside a police station (70%), while females were almost equally likely to be searched somewhere other than a police station (52%) or in a police station (48%). The vast majority of strip searches for both men and women were conducted in relation to drugs; however, females were more likely to be strip searched under Warrant (44% compared to 26% for males). Since drug searches under Warrant are typically conducted at the locus, this largely explains why women were less likely to be searched at a police station.

Notably, 42% of strip searches amongst women resulted in a positive detection, which was significantly lower than the positive detection rate for men (50%). Standard drug searches involving men were also more likely to be positive than those involving women, although the extent of the difference was lower (35% versus 37%, respectively).

There were no intimate searches recorded on the NSSU Stop and Search Database during this twelve month period.

### 2.4.2 Issue of receipts

The NSSU database also records whether receipts were issued by police officers following a search. In section 6 of the CoP, it is stipulated that:

"*The person who has been searched should be given a receipt (see Note 12). The receipt should include the following information:-*

- *police powers of stop and search;*

- *the right of a person searched to obtain a copy of the record of the search;*
- *the right of a person searched to complain, including how to go about making a complaint*".

While officers are obliged to offer a receipt following a search, which includes placing it with the detainee's property in the event that the individual is subsequently taken into custody, the individual may refuse to accept the receipt. In these circumstances, the advice offered during stop and search training is that the officer should record in their notebook that the receipt has been offered and refused. The CoP also makes it clear that where the officer conducting the search is called to an urgent incident, it may be impracticable to provide a receipt. In this event, the individual should be informed that they can obtain a copy of their search record by calling at any police station (although, only if they have provided their details). Receipts are not issued for seizures.

In the twelve months following the introduction of the CoP, 25,444 receipts were issued following a search. This represents 86% of all statutory searches conducted during this period. In the remaining 4,329 encounters (14%), no receipt was issued. In the vast majority of these encounters (98%) the individual being searched either refused to accept the receipt or left the locus before the receipt could be issued. It was rare for an officer to either forget or fail to issue a receipt (this occurred in only 58 encounters, which represents only 1% of those involving non-issue of a receipt). There was a slight drop in the proportion of searches where a receipt was issued over time, from 87% in June 2017 to 82% in May 2018, which suggests some decline in tolerance for accepting a receipt amongst those being searched. However, there was an increase in the number of receipts that were issued retrospectively towards the end of the review period which suggests that Police Scotland were making efforts to rectify this situation.

There was some variation in the likelihood of a receipt being issued by time of the day (this was slightly less likely between midnight and 6am compared to other times of the day); and by day of the week (they were slightly less likely to be issued on a Friday or Saturday compared to other days of the week). Searches conducted under Warrant or for other reasons were more likely to result in a receipt being issued than for searches involving drugs, stolen property or weapons. Negative searches were more likely to result in non-issuance of a receipt than

positive searches.  Searches involving men were less likely to result in a receipt being issued, as were searches involving young people under age 18.  There was no significant ethnic disparity in the issuance of receipts, however.

Looking at geographical variation, searches in the East Command Area were more likely to result in a receipt being issued (91%) than in the North and West Command Areas (both 84%).  There was also considerable variation across Divisions.  As shown in Figure 2.11, at least 90% of searches resulted in a receipt being issued in Forth Valley, Fife, Lothians & Scottish Borders, Ayrshire, Highlands and Islands, Dumfries & Galloway, Renfrewshire & Inverclyde, and Tayside; whereas less than 80% of searches in Lanarkshire, Greater Glasgow and the North East resulted in a receipt being issued.

Looking at the reason for non-issue of receipts by Police Division, there was very little geographical variation.  As noted above, the overwhelming reason for non-issue of a receipt was that the individual either refused to accept it or left the scene before it could be issued.  This explained 97-100% of non-issuance of receipts across most of the Police Divisions.  The figure was lowest in the Lothians & Scottish Borders (93%) and Fife (89%), although the number of encounters where a receipt was not issued in these Divisions was very small so these differences could be an artefact due to tiny numbers.

**Figure 2.11: Percentage of searches resulting in a receipt being issued by police Division, post-implementation of the CoP**
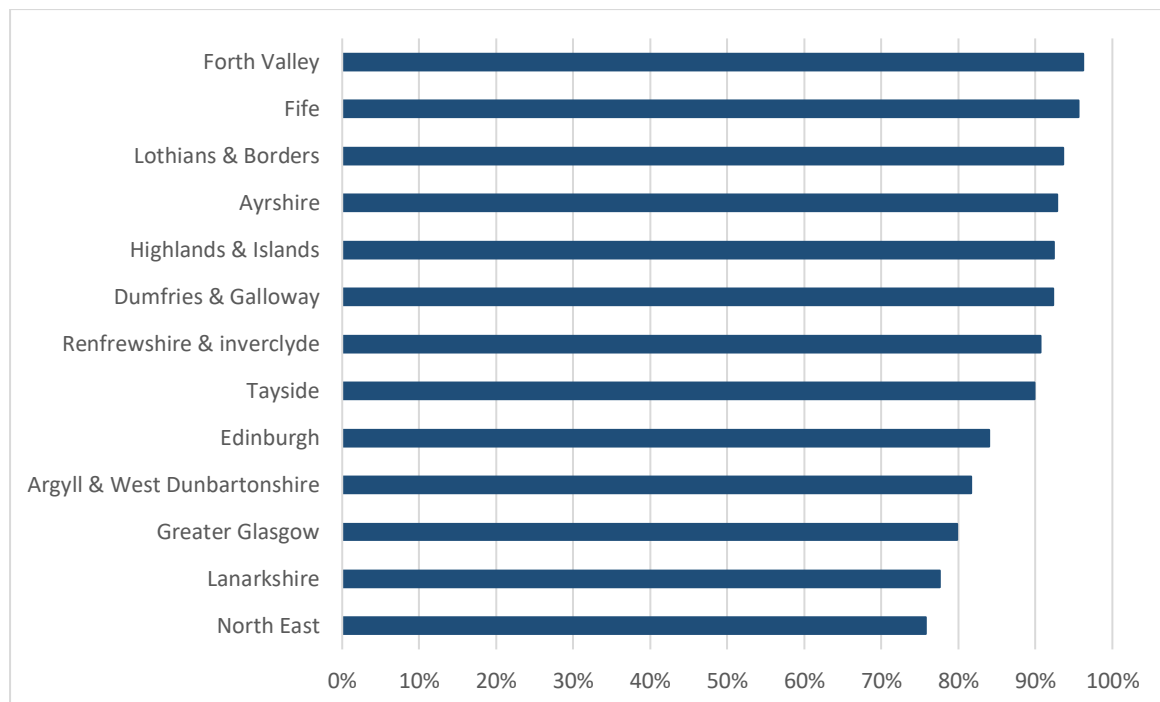


It is expected that officers explain to any person being searched that they are entitled to obtain a copy of the record of the encounter within 6 months of the date of the search, although this only applies if the individual has chosen to give their name, address and date of birth, which they are not obliged to do if the search is negative. Information on the number of people who choose to obtain a copy of their record is not published on the Stop and Search Database; however, data provided by the NSSU showed that there were only 11 such requests in the twelve months following the introduction of the CoP. This included ten individual requests and one request made by a solicitor on behalf of their client. Individuals making requests included both men and women across a range of ages (from 20 to 70) and from across a variety of Police Divisions.

## 2.5   Summary of Section 2

There was a significant reduction in the number of searches and seizures conducted within Scotland following the introduction of the Stop and Search Code of Practice (CoP) in May 2017. However, trend data shows that this reduction was part of an ongoing decline in encounters that started well before the introduction of CoP and continued afterwards until early 2018, at which point numbers started to increase again. The data suggests, therefore, that the impact of the CoP on policing practice

began long before its actual implementation and also continued afterwards.  It is almost certain that the criticism targeted at Police Scotland about the over-use of stop and search as a tactic by HMICS and the media in 2015, followed by an intense period of political and public scrutiny and the decision to abolish consensual searching and introduce a CoP, influenced the large scale reduction in encounters well before the CoP finally came into force.

There was a far greater proportionate reduction in police use of seizures compared to searches over the two years studied in this report.  The number of seizures of alcohol and tobacco products fell by around two thirds in the twelve months following the introduction of the CoP compared to the preceding year.  This was around three times larger than the percentage reduction in statutory searches, although the absolute number of searches continued to be far greater.  The period of decline was very similar for both searches and seizures, however; and both started to rise again from around March 2018.  The large decline in seizures was surprising, especially given the concerns expressed by policing representatives and other organisations in the public consultation period about the lack of a legal power to search for alcohol.

The decline in searches coincided with an increase in the relative productivity of search encounters, which suggests that they are being used more effectively and with a greater standard of evidence in terms of reasonable suspicion.  In the twelve months following implementation of the CoP, the success rate was 38% compared with 31% in the equivalent period of the preceding year.  Positive detections had increased across all search types, although it was proportionately greater for searches conducted as part of the issuance of a warrant and for stolen property, and lowest for searches to find offensive weapons.  Despite a 20% decline in the overall number of searches, the number of encounters in which an item was recovered had fallen by only 4%.

There was considerable geographical variation in the changing use of search and seizure across Scotland.  The number of searches and seizures was highest in the West Command Area during the twelve months prior to the introduction of the CoP, and this continued to be the case in the twelve months after.  However, there was a far higher proportionate decline in both searches and, especially, seizures in the West compared to the East and North Command Areas.  There was greater geographical similarity in the changing use of seizures, which

declined across all three Command Areas and within all but one of the thirteen Police Scotland Divisions (albeit to different extents).

Trends in the use of stop and search were considerably different, however.  Overall, the number of searches in the West Command Area declined in the twelve months following the introduction of the CoP, while the number increased in the North and the East Command Areas.  Searches within all Divisions in the West had declined with the exception of Dumfries & Galloway which showed a substantial increase.  Similarly, in the North and East, most Divisions had increased the number of searches but two (Tayside and Forth Valley) had reduced.  Patterns over time revealed substantial variation between Divisions in changing use and success of stop and search.   This suggests that the new legislation and policy around stop and search may have been interpreted and adopted differently across Divisions; however, there was little evidence that the introduction of the CoP in May 2017 had a direct effect on policing practice.

New information provided on the Stop and Search Database about strip searches revealed an average of 128 per month, representing around one in twenty searches overall.  Strip searches had a higher detection rate than average, at 49%, which suggests that a higher threshold of reasonable suspicion is used when deciding to conduct a strip search.  The vast majority of these involved people aged 18 or older, and there was no difference in positive detection rate between those under 18 and those aged 18 or over.  There was also no significant difference in the use of strip search by ethnic group.  Strip searches for both men and women were overwhelmingly for drugs; although, there were some sex differences.  Women were more likely to be strip searched than men, especially through the execution of a Warrant, but detection rates were lower for women.  No intimate searches were recorded in Scotland in the twelve months after the introduction of the CoP.

Receipts were issued after 86% of recorded searches.  By far the most common reason given for non-issue of a receipt was that the individual being searched either refused to accept the receipt or left the locus before the receipt could be issued.  It was rare for an officer to forget or fail to issue a receipt.  Whether a receipt was issued or not varied according to a range of factors, including time of the day, day of the week, reason for the search and the characteristics of the individual being searched.  There was also some Divisional variation in the

likelihood of a receipt being issued, although very little overall difference in the reasons for non-issue of receipts.  There was a small reduction over time in the issuance of receipts, and some evidence of an increase in receipts being issued retrospectively.  Finally, although individuals have the right to obtain a copy of the record of their search encounter within 6 months, there were only 11 such requests in the twelve months following the introduction of the CoP.

# 3 Identifying legislative gaps around young people and alcohol

## 3.1 Introduction

This section of the report examines existing evidence around policing young people and alcohol related incidents. Existing police powers in respect of alcohol and young people fall under two pieces of legislation. Under sections 201-203 of the Local Government (Scotland) Act 1973, local authorities in Scotland can prohibit the consumption of alcohol in designated public places, which means that police officers can confiscate alcohol from anyone (of any age) seen to breaching the specific conditions of the byelaws. Furthermore, under Section 61 of the Crime and Punishment (Scotland) Act 1997, police officers have a power of seizure with regards to alcohol (as well as tobacco products and other substances such as gas or butane). This allows officers to ask children and young people to hand over any alcohol where it is known or suspected that they are in possession of it in a public place. The 1997 Act also gives police officers the power to confiscate alcohol from those aged 18 or over who are suspected of supplying it to minors. However, the police have no specific legislative power to search a young person for alcohol, even if officers suspect them of concealing it and they have refused to surrender the alcohol. The only exception to this is at designated sporting events where the police have a search power in accordance with Section 21 of the Criminal Law (Consolidation) (Scotland) Act 1995, which enables officers to search any person suspected of committing or attempting to commit an offence (which would include possessing alcohol within the relevant area of a sporting venue).

Prior to the abolition of consensual search in May 2017, it was common for officers to use this type of search to identify and remove alcohol from those aged under 18. The expectation amongst members of the IAGSS was that seizure would be increasingly used to deal with alcohol related incidents following the introduction of the CoP. However, many policing representatives were concerned that this would be insufficient to deal with alcohol related problems involving children and young people, especially in certain parts of the West of Scotland where this has historically been a significant problem leading to violence and disorder. Of particular concern was the possibility that there may be an increase in the use of arrests to deal with young people who refused to hand over their alcohol to officers.

During the twelve month review period, seizures predominantly involved the confiscation of alcohol (95%), with far fewer encounters involving the confiscation of tobacco products (4%) or other substances, such as gas or butane (2%). Prior to the introduction of the CoP, the legislative basis for seizure of items was not routinely recorded. Looking at the data for the twelve months following the CoP, only 25% were conducted under Section 61(1) of the Crime and Punishment (Scotland) Act 1997 which enables officers to confiscate alcohol from young people under the age of 18. A further 2% of seizures were conducted under Section 61(2) of the 1997 Act, which enables officers to confiscate alcohol from those aged 18 or over who are suspected of supplying minors with alcohol. However, the majority (67%) of seizures were conducted using Local Authority alcohol byelaws. This section will focus only on those seizures that involved the recovery of alcohol.

## 3.2    Evidence about the problem of young people and alcohol

Before examining the use of alcohol seizures in Scotland pre- and post-introduction of the CoP, it is important to consider whether there are any possible underlying reasons why there might have been a change in police practice. For example, if alcohol seizures in Scotland have increased or decreased significantly, this may be due to an underlying increase or decrease in problems caused by young people's drinking behaviour. For this reason, some contextual data was collected about problematic alcohol use amongst young people before and after the implementation of the CoP. It is important to note that the information presented here cannot be used to provide evidence of any causal association between these trends and police use of seizures; however, it provides valuable context within which to consider the findings of the review.

Alcohol consumption amongst young people has been monitored by the Scottish Schools Adolescent Lifestyle and Substance Use Survey (SALSUS) since 1990. The survey, which is completed in Scottish schools amongst young people aged 13 and 15, shows that the proportion of pupils who report ever having an alcoholic drink has been steadily decreasing since 2004 (Scottish Government 2016). Findings from the most recent survey, conducted in 2015, show that prevalence of alcohol consumption was at its lowest level since the survey began. The percentage of teenagers who reported drinking in the last week fell substantially between 2010 and 2013, and then remained stable in 2015. Overall, SALSUS suggests that problematic drinking amongst young

people in Scotland has been on a long-term decline in Scotland. However, there are no SALSUS data available for the periods immediately before and after the introduction of the CoP.

Two sources of additional information were examined to identify whether there were indications that patterns of problematic alcohol consumption may have changed since the implementation of the CoP. These were hospital admissions data and police incident data. Where possible, data were analysed for young people aged under 18 and for people of all ages, in order to ascertain whether any trends noted for young people were typical of the population as a whole. Both data sources have limitations and caution must be used when interpreting the findings (as explained below); however, they were the only relevant sources available for this twelve month review period.

### 3.2.1 Alcohol-related hospital admissions for young people
Data on hospital admissions as a result of excessive alcohol consumption were provided by Information Services Division (ISD), which is part of NHS National Services Scotland. These data include general acute inpatient and day case stays for people with an alcohol-related diagnosis across the whole of Scotland, but excludes people presenting to Accident and Emergency who were not admitted as an alcohol-related inpatient or day case.[2] Data were provided for the same two year period as the stop and search data (i.e. June 2016 to May 2018), although the data from April 2017 to May 2018 were only 99% complete at the time of data collection as not all hospital admissions data had been submitted to ISD. Therefore caution is needed when drawing inference from these data as they could increase slightly when the final figures are complete.

Data were provided for young people aged under 18 and for people of all ages (reported below). Given the nature of these data, it might reasonably be concluded that they would have represented serious incidents involving young people's use of alcohol and were, therefore,

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[2] The data provided by ISD were derived from data collected on discharges from non-obstetric and non-psychiatric hospitals (SMR01) in Scotland. A hospital stay (also described as a continuous inpatient stay or CIS), is defined as an unbroken period of time that a patient spends as an inpatient or day-case. During a stay a patient may have numerous episodes as they change consultant, significant facility, speciality and/or hospital. Stays are counted at the point of discharge, when all diagnostic information regarding the full stay is available. However, the demographic information (NHS Board) is taken from the first episode of the stay, thus most closely corresponding to the circumstances of the patient at the point of entering the hospital.

incidents that could (in certain circumstances) have drawn the young person to the attention of the police.

In total, there were 531 alcohol-related hospital admissions for young people recorded in the twelve months after the introduction of the CoP, which was down from 571 recorded in the previous year. This represents a 7% reduction in such cases, although this was not statistically significant. Bearing in mind that the figure for the post-CoP period may be an underestimate of the actual number of incidents, it is not possible to identify any substantial change in general acute inpatient and day case stays for young people with an alcohol-related diagnosis.

Figure 3.1 shows the number of cases recorded month by month for the pre- and post-implementation periods. There were some slight differences between equivalent months but, due to the small numbers in each month, none of these differences were was statistically significant. Moreover, both years showed similar patterns in terms of seasonal variation (especially around the summer and winter months).

**Figure 3.1: Alcohol-related hospital stays for young people aged under 18 in Scotland**
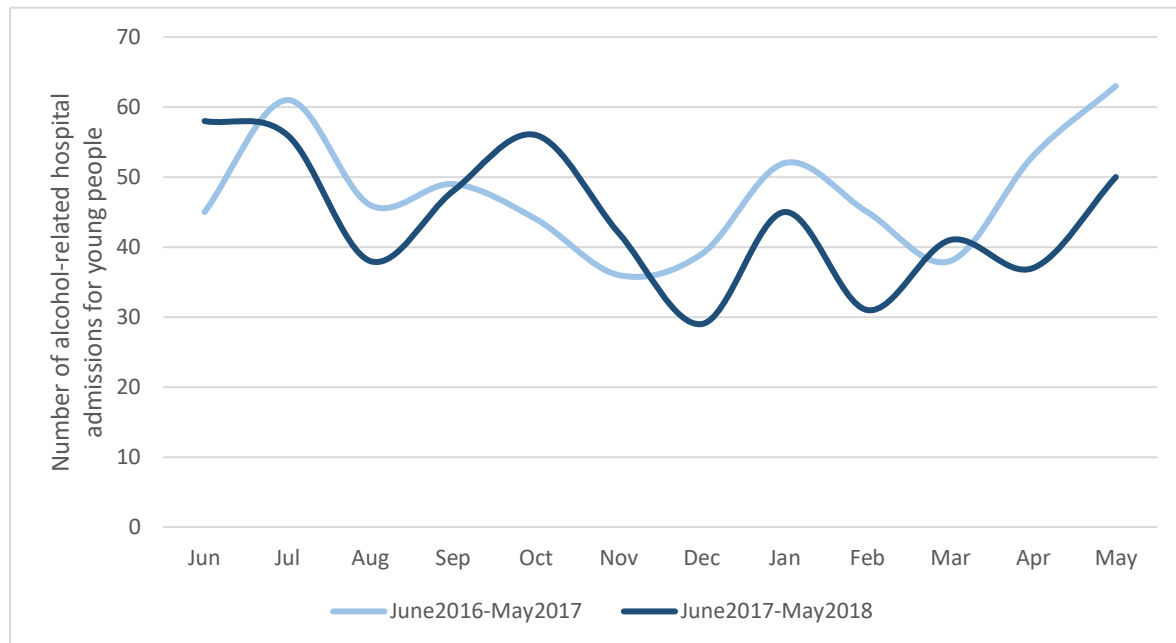


### 3.2.2 Alcohol-related hospital admissions for all ages

The analysis described in section 3.2.1 was repeated for people of all ages (note that the same qualifications regarding the data apply). Overall, the number of alcohol-related admissions declined by 2% in the twelve months following the introduction of the CoP. Although this figure is lower than the figure of 7% for young people, it was statistically significant. Moreover, the proportion of all hospital stays that was accounted for by young people remained totally stable at just over 1%. The monthly trends show a much clearer seasonal pattern (mainly due to the much larger numbers), with higher numbers in the spring and summer months and lower in the winter months, as shown in Figure 3.2.

For most months, there were no significant differences in the number of alcohol-related hospital admissions between the two periods. Alcohol admissions were significantly higher in the post-CoP period in June, and significantly lower in December and January; however, Figure 3.2 shows no systematic difference. These data suggest that the small reduction in alcohol-related hospital admissions amongst young people was broadly in line with (or only slightly greater than) the general trend for the population as a whole.

**Figure 3.2: Alcohol-related hospital stays for people of all ages in Scotland**
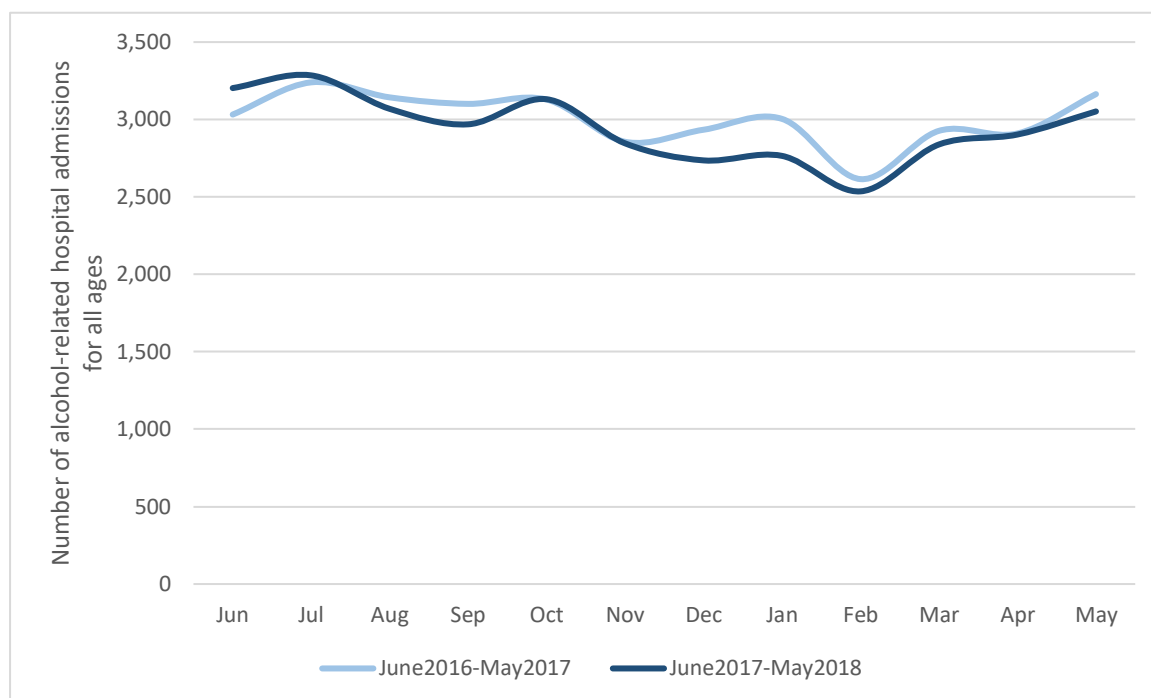


### 3.2.3 Police recorded incidents involving alcohol and young people

Data were provided by Police Scotland from STORM Unity, the command and control system used for recording incidents reported to the police. On this system, recorded incidents involving alcohol can be identified using a qualifier code, thus providing useful information about the level of policing demand that is driven by alcohol related issues. A further qualifier code can be used to identify whether one or more young person under the age of 18 was involved in the incident. In combination, these two codes were used to identify the number of police recorded incidents involving alcohol and young people.

Before presenting the results of the analysis, there are two important qualifications that must be borne in mind when using these data. First, the recording of the alcohol qualifier code is not mandatory and it is not always possible at the time of the initial call for the police to be certain that the incident involves alcohol. Therefore, these data are treated by Police Scotland as management information and are only indicative of the number of policing incidents that are alcohol related. Second, data were not available for the full CoP Review period for all 13 Police Scotland divisions. Data for the North East Division were not available on STORM Unity until March 2017 and so there is partial missing information for the pre-CoP period. Similarly, data for the Highlands &

Islands Division did not become available on STORM Unity until February 2018 so there is no information for the pre-CoP period and only partial information for the post-CoP period.  For this reason, the data for North East and Highlands & Islands Divisions are not included in the analysis in this section of the report.  In addition, Tayside Division only started using Storm Unity in mid-June 2016, so there is some partial missing information; however, this was considered minimal enough to include Tayside in the analysis.

During the twelve months prior to the CoP, there were 2,329 alcohol-related incidents involving young people recorded across 11 Divisions.  In the twelve months following the introduction of the CoP this fell to 2,206 (a reduction of 123).  This represents a 5% fall in alcohol-related incidents recorded by the police, although this was not statistically significant.[3]  The data were not provided on a month by month basis, so it is not possible to examine similarity in seasonal trends; however, they were provided by Division.  Figure 3.3 shows that the highest number of alcohol-related incidents involving young people was recorded in Greater Glasgow.  Ayrshire and Lanarkshire also had a high number of incidents, although other West Divisions (such as Renfrewshire & Inverclyde, and Argyll & West Dunbartonshire) were much lower, and Dumfries & Galloway was by far the smallest.  Even so, Divisions in the West Command Area accounted for around two-thirds of all police recorded incidents of alcohol-related problems involving young people.

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[3] The p value for this difference was 0.068, which is just above the threshold for a 95% confidence interval.

**Figure 3.3: Number of alcohol-related incidents involving young people, pre- and post-implementation of the CoP**
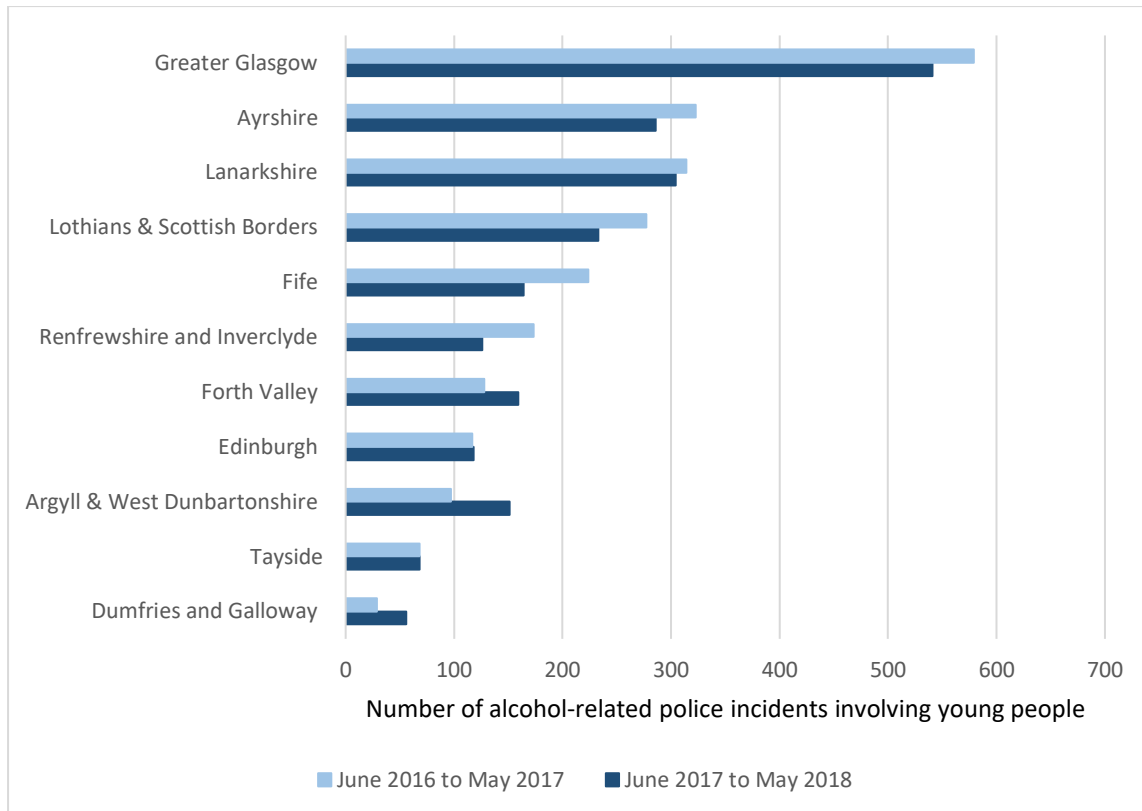


Over the review period, two Divisions recorded a significant fall in alcohol-related incidents involving young people: Fife and Renfrewshire & Inverclyde both fell by 27%. A further two Divisions recorded a significant rise in alcohol-related youth incidents: Argyll & West Dunbartonshire rose by 56% and Dumfries & Galloway rose by 93%; however, these reflected very small numbers in absolute terms (as shown in Figure 3.3). Looking at all the other Divisions, there was no significant change in numbers following the introduction of the CoP.

*3.2.4 Police recorded incidents involving alcohol and people of all ages*
Looking at the same data from the STORM Unity System without the youth qualifier, a total of 31,403 alcohol-related incidents were recorded in twelve months following the introduction of the CoP across the 11 Police Scotland Divisions. This compares to 33,177 in the equivalent period of the previous year, representing a decrease in alcohol-related incidents of 5% - identical to that for young people, although it was statistically significant due to the much larger numbers. As a relative share of all recorded incidents involving alcohol, the percentage that involved a young person was exactly 7% over both time periods. This is lower than expected given the proportion of those aged under 18 in the

general population (19%); although it is broadly in line with the proportion of the population aged 12 to 17 (6%) who might be considered the most 'problematic' group with regards to drinking alcohol.

Similar to the pattern for young people, there was considerable variation *between* Divisions in the overall number of alcohol related incidents. Figure 3.4 shows that there were around 10 times more alcohol-related incidents recorded in Greater Glasgow than in Dumfries & Galloway during both time periods. However, there was a high degree of consistency *within* Divisions in terms of the number of alcohol-related incidents recorded and in the relative ordering of Divisions at each time period. Interestingly, the ordering of Divisions (in the 12 months following the CoP) was not quite the same for the youth sub-sample as for the total dataset. Divisions in the West of Scotland featured more prominently for young people than they did for the population as a whole.

Two Divisions had a small (but non-significant) increase in the number of alcohol-related incidents between the pre-CoP and the post-CoP periods: Argyll & West Dunbartonshire Division increased by 5% and Edinburgh Division increased by 4%. A further three Divisions (Forth Valley, Ayrshire and Dumfries & Galloway) had a small (but non-significant) reduction in alcohol-related incidents. The remaining six Divisions all had a significant reduction in recorded alcohol-related incidents. This included Fife, which had a 16% reduction in alcohol-related incidents, and Lanarkshire, which had a 10% reduction. Greater Glasgow had a smaller, but still significant, 6% reduction in recorded alcohol-related incidents.

**Figure 3.4: Total number of alcohol-related incidents recorded by Police Scotland, pre- and post-implementation of the CoP**
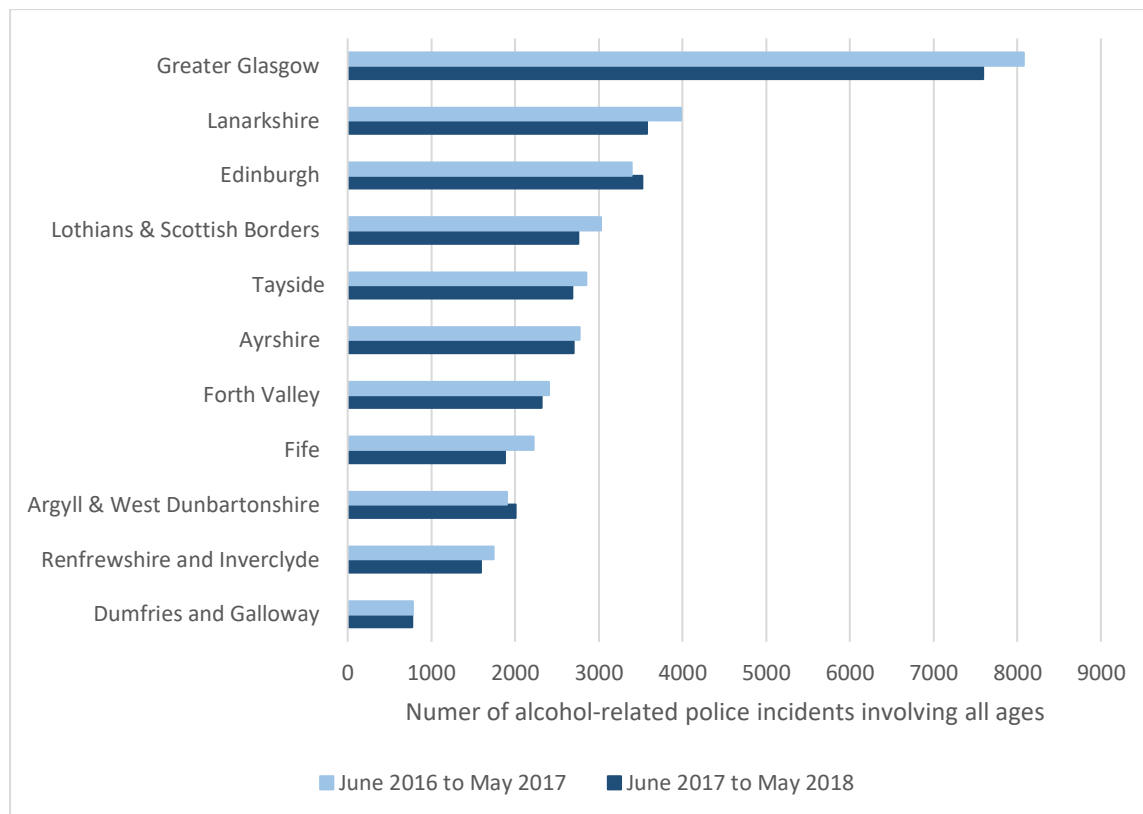


Police Scotland was able to provide data for the same 11 Divisions on the number of incidents involving drinking alcohol in a public place that were recorded by the Contact, Command and Control Division.[4] These incidents included a mixture of cases reported by members of the public and those detected through police proactivity. There were far fewer public drinking incidents compared to alcohol-related incidents in general; however, there was a greater proportionate decline in the former during the twelve months following the introduction of the CoP.

Overall, the number of public drinking incidents fell from 2,772 in the pre-CoP period to 1,903 in the post-CoP period, a significant reduction of 31%. Like alcohol-related incidents generally, there was a large degree of variation across Divisions in recorded incidents of public drinking. For example, during the pre-CoP period, there were 1,098 incidents recorded in Greater Glasgow compared with only 21 in Dumfries & Galloway. In terms of change over time, the number of public drinking incidents declined in all but two Divisions (Edinburgh and Dumfries & Galloway had a small, but non-significant, increase). Four Divisions

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[4] These figures were provided by Police Scotland and should be treated as management information only.

(Forth Valley, Lothians & Scottish Borders, Fife and Argyll & West Dunbartonshire) had a small, but non-significant, decrease; and the remaining five Divisions had a significant decrease in recorded drinking in public incidents.  Certain Divisions in the West showed the largest reduction in public drinking.  For example, there were larger than average reductions in Renfrewshire & Inverclyde (-44%), Greater Glasgow (-43%) and Lanarkshire (-34%).

Data were also provided for the 11 Divisions on the number of public drinking incidents that were classified as 'detected'.[5]  This includes incidents where a Fixed Penalty Notice was issued for drinking in a public place under a local government byelaw or alcohol-related incidents in which a crime was recorded and a suspect was identified.  There were 11,988 incidents detected in the pre-CoP period compared with 5,850 in the post-CoP period. Again, this represented a large and significant 51% fall in the number of detected public drinking incidents in the period following the introduction of the CoP.  The largest proportionate reduction was in Tayside (-83%), although this represented a very small number of incidents overall.  The largest absolute reduction was in Greater Glasgow (-65%), which represented around 60% of all drinking in public detections during the pre-CoP period but only 43% in the post-CoP period.  There were also large and significant reductions in public drinking detections in Argyll & West Dunbartonshire (-44%), Lanarkshire (-35%), Renfrewshire & Inverclyde (-26%) and Ayrshire (-15%).  However, there was no significant change in any of the other Divisions.

### 3.2.5 Underlying behavioural explanation for a change in alcohol seizures?

Looking at these contextual data altogether, there is evidence of a very small (although non-statistically significant) decline in alcohol-related problems involving people under the age of 18, both in terms of hospital admissions and incidents recorded by the police, in the twelve month period following the introduction of the CoP.  These trends appeared to be broadly in line with the trends for the population as a whole, and followed similar seasonal patterns, which suggests that there was no unusual shift in the behaviours of young people over this period.  So, based on these data, there does not appear to be any underlying

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[5] These figures were provided by Police Scotland and should be treated as management information only.

behavioural explanation for a change in the police use of alcohol seizures amongst young people.

At the level of police Divisions, the picture was more mixed in relation to police recorded alcohol-related incidents. Two areas showed a significant increase in incidents, while two showed a significant decrease, but the majority saw no significant change between periods. Unfortunately, the number of hospital admissions was too small to release the data at sub-national level, so it is unclear whether the same mixed picture is present. Therefore, it is difficult to say with any certainty whether there are underlying changes at a sub-Divisional level that may have influenced changing practice in relation to police use of seizure. In addition, Police Scotland was unable provide data on arrests of young people, which could have highlighted whether this had increased in the wake of the CoP as a result of the loss of consensual search. The relationship between the trends presented in this section and the Divisional use of seizures will be examined in more detail below.

Police Scotland did highlight very large reductions in public drinking incidents and detected public drinking incidents over the period; however, it was unable to provide the data by age category, so it is impossible to tell if there was any significant change in young people's involvement in these activities. Moreover, it is possible that these large changes may have occurred as a result of changes in policing practice rather than behavioural change.

## 3.3 Change in the use of seizure by age
### 3.3.1 Overall change by age
In the twelve months following the introduction of the CoP, there were 2,401 alcohol seizures in Scotland. This represents a 63% decrease from the previous year, during which there were 6,559 alcohol seizures. Table 3.1 shows that police seizures were not used exclusively for young people. In fact, in the twelve months before the introduction of the CoP, only a quarter (26%) of all seizures involved people under the age of 18. Indeed, more than half of all alcohol confiscations involved people aged 25 or over. During the twelve months following the introduction of the CoP, there was a large reduction in the number of seizures amongst all age groups; however, the scale of the reduction was not equal across age groups. Seizures involving young people under the age of 18 fell by 49%; however, there were far greater percentage reductions in the number of seizures for people in all other age groups (ranging from 66%

to 81%).  As a result, in the year following implementation of the CoP, the relative share of all seizures for young people aged under 18 increased to more than a third, making it 10% higher than the previous year, while the relative share of all other groups declined.

**Table 3.1: Number of alcohol seizures pre and post-implementation of the CoP by age band**

|  | June 2016 to May 2017 | | June 2017 to May 2018 | | % Change in N | Difference in % share |
|---|---|---|---|---|---|---|
|  | N | % hare | N | % share |  |  |
| Under 18 | 1,688 | 6% | 58 | % | -49% | +10% |
| 18-24 | 1,178 | 8% | 74 | % | -68% | -2% |
| 25-39 | 1,899 | 9% | 38 | % | -66% | -2% |
| 40-59 | 1,627 | 5% | 96 | % | -70% | -4% |
| 60 or over | 161 | % | 1 | % | -81% | -2% |

Note: Column percentages may not total 100% due to rounding.

Information on the powers used to seize alcohol was not collected in the pre-CoP period; however, it was possible to examine this after the introduction of the CoP.  The majority (68%) of those aged under 18 were subject to Section 61(1) confiscation powers, with only 25% being subject to Local Authority byelaws that prohibit drinking in specified areas.  Amongst those aged 18 or over, 96% had alcohol confiscated under Local Authority byelaws, while the remaining 4% had alcohol removed under Section 61(2) on suspicion of supplying alcohol to minors.

The raw number of searches by age band does not take into account differences in population size; therefore, it is important to examine rate of seizure per capita to determine who is most likely to experience this tactic.  Table 3.2 shows the rate of seizure per 10,000 population for each of the five age bands.  These figures show how much greater the use of seizure was for people under the age of 18 compared to all other age groups.  Young people were at least twice as likely to have alcohol confiscated from them than people in the next nearest age band in the year prior to the introduction of the CoP, and this increased to more than three times after the CoP was implemented.  Even though the rate of alcohol seizure amongst young people halved in the year following the

implementation of the CoP, it was a far lower percentage decline than for all other age bands.

**Table 3.2: Rate per capita of alcohol seizures pre and post-implementation of the CoP by age band**

| Age group | June 2016 to May 2017 Rate per 10,000 | June 2017 to May 2018 Rate per 10,000 | % change in Rate |
|---|---|---|---|
| Under 18 | 50.7 | 25.6 | -49% |
| 18-24 | 24.0 | 7.5 | -69% |
| 25-39 | 18.0 | 6.0 | -67% |
| 40-59 | 10.8 | 3.3 | -70% |
| 60 or over | 1.5 | 0.3 | -80% |

Note: Rates per capita are based on mid-year population estimates for 2016 (pre-CoP) and 2017 (post-CoP).

So how does the changing age profile of those who were subject to alcohol seizures fit with the data presented in sections 3.2.2 and 3.2.3 on the overall trend in alcohol-related policing demand?  The police data indicated that there was a modest but significant decrease in all alcohol-related incidents of around 5%.  The percentage decline in alcohol related-incidents involving young people was also around 5%; however, this was not found to be statistically significant.  Therefore, the extent of the reduction in alcohol related seizures would appear to be far greater than the overall fall in policing demand; and the extent of the reduction in seizures amongst those aged under 18 appears to be disproportionately small given that the overall change in incidents involving people of this age group was no different to that for older people.

### 3.3.2 Monthly change by age

To get the full picture, it is important to examine the data in more detail, including change in the use of seizures over time for people of different ages and by different areas of geography.  Figure 3.5 shows the percentage change in alcohol seizures within each age band on a month by month basis.  This reveals a significant decline in the use of seizures for all age groups during the year prior to the introduction of the CoP; however, the decline for those aged under 18 was less steep than that for other age groups and there was a sharp spike in use during April 2017 which was not evident for other age groups.  On further investigation, this spike reflects a large increase in the use of seizures within several Divisions in the West Command Area, including Greater

Glasgow, North and South Lanarkshire, North Ayrshire and East Renfrewshire (as confirmed in Figure 3.6). Data from the Met Office for that period indicates that it was a warm, sunny April with lower than average rainfall across the UK.[6] These conditions are often associated with an increase in public drinking by young people, especially when they coincide with a public holiday (such as Easter), which may well explain this deviation from the downward trend. Evidence for such a seasonal trend is supported by the fact that there was a similar, albeit smaller, spike in seizures amongst those aged under 18 in April 2018.

Following the introduction of the CoP in May 2017, the number of alcohol seizures continued to decline for all age groups, but the decline was steepest for those under the age of 18. Indeed by December 2017, the scale of the decline in alcohol seizures was so large that it had diminished to tiny numbers within all five age bands, and was only slightly higher amongst the under 18s than the other four age bands. Interestingly, however, the rate of alcohol seizures did start to increase again in early 2018, most especially amongst young people, over and above the possible Easter seasonal effect.

**Figure 3.5: Percentage change in alcohol seizures, June 2016 to May 2018**

[6] https://www.metoffice.gov.uk/news/releases/2017/statistics-for-april-2017
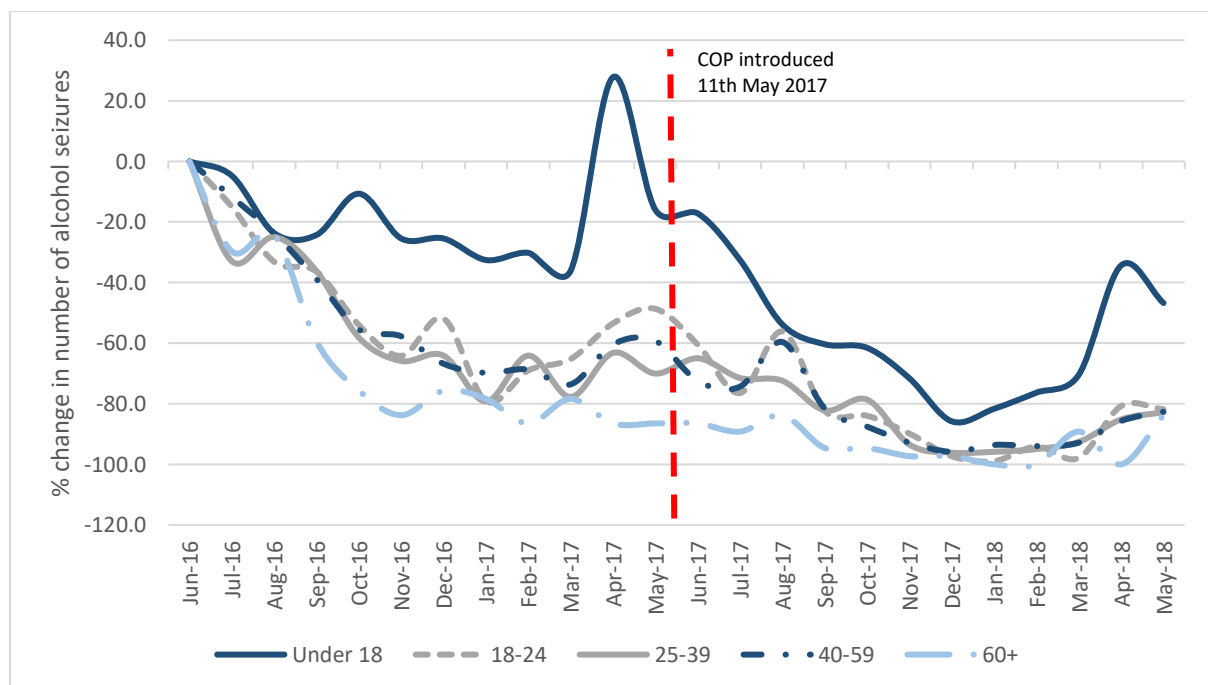
Unfortunately, it was not possible to analyse change in the monthly number of alcohol seizures involving young people by Division due to the small numbers. However, when they were clustered into Command Areas, Figure 3.6 clearly shows that the striking decline in alcohol seizures amongst young people was almost entirely due to a change in policing activity in the West of Scotland. In fact, there was an astonishing 97% reduction in the use of seizures in the Greater Glasgow Division, from 495 in June 2016 to only 17 in January 2018, before it started to increase again.

The data presented here suggests that the trend in alcohol seizures for young people in the West Command Area – especially Greater Glasgow – reduced dramatically following the introduction of the CoP. This trend in seizures bears little or no relation to the data presented in section 3.2.3 which showed that alcohol-related incidents involving young people were highest in the West of Scotland, especially in Greater Glasgow, Ayrshire and Lanarkshire. Moreover, in the twelve month period following the introduction of the CoP, only one West Division recorded a significant fall in alcohol-related incidents involving young people (Renfrewshire & Inverclyde, which already had relatively low numbers compared to other Divisions). In all the other Divisions in the West Command Area – including Greater Glasgow - there was either no significant change or an increase in alcohol-related problems involving young people.

The dramatic reduction in alcohol seizures amongst people under the age of 18 contrasts sharply with this overarching picture of high and consistent alcohol-related demand for policing in the West of Scotland. So, either the findings here on the decline in seizures of alcohol amongst young people in the West of Scotland – especially Greater Glasgow - is indicative of a real and sustained decline in the use of the tactic for this age group that cannot be explained by seasonal trends or it reflects a reduction in the recording of seizure activity.

**Figure 3.6: Change in the number of alcohol seizures amongst people aged under 18, by Command Area**
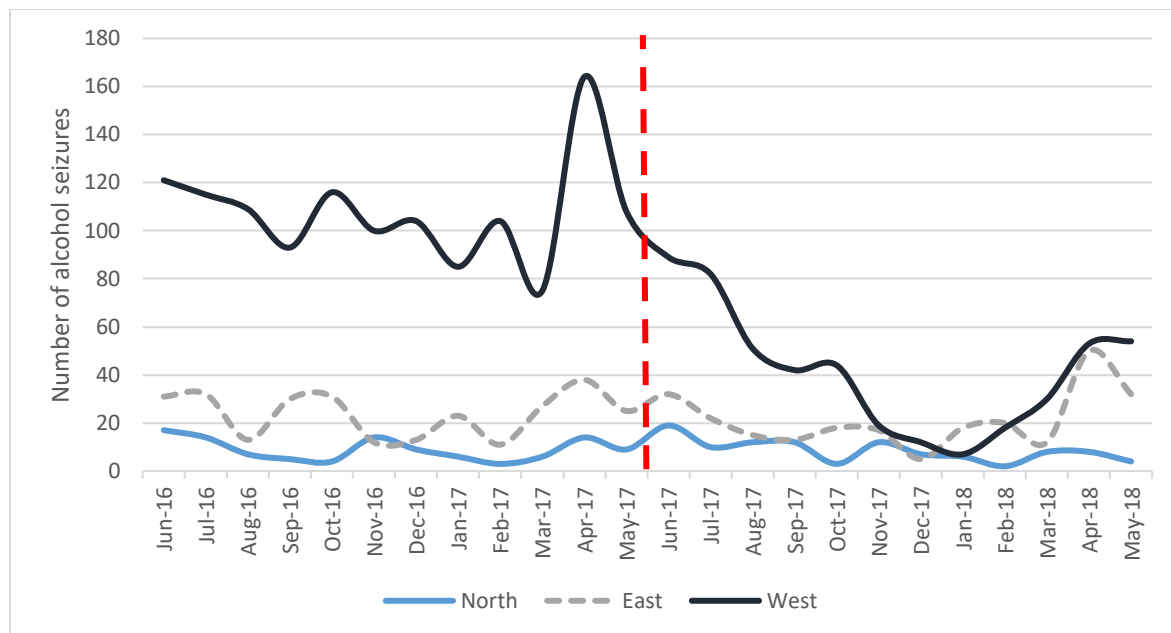


## 3.4    Change in the recovery of alcohol through statutory search

Consensual searches were commonly used by police officers in the past to remove alcohol from individuals; however, following the controversy around the use of consensual searches (which had no statutory power) and criticism by HMICS (2015), the number of consensual searches declined significantly.  During the twelve months from June 2016 to May 2017 (prior to the introduction of the CoP) there were only 707 consensual searches, of which only 51 (7%) resulted in the recovery of alcohol.  During the same period, there were 36,627 statutory searches of which only 205 (0.6%) involved the recovery of alcohol.

Following implementation of the CoP in May 2017 consensual searches were abolished; however, there is no indication of a change in the efficacy of statutory searches to recover alcohol.  Of the 29,773 searches conducted in the year following the CoP, only 138 (0.5%) resulted in the recovery of alcohol.   These findings are not conclusive in terms of identifying whether a statutory power to search for alcohol is required in Scotland; however, there is certainly no indication that statutory searching is being used as a mechanism to indirectly search for alcohol.

## 3.6   Summary of section 3

The police have no legislative power to search a young person for alcohol in a public place. Officers can ask children and young people to hand over alcohol where it is known or suspected that they are in possession of it in a public place; however, if they refuse to do so the only legal option available to an officer is to use the power of arrest, which is not usually considered in the young person's best interests. With the abolition of consensual searches, it was expected that there would be an increase in seizures to deal with alcohol related incidents. This section of the report explored the emerging trends.  There was also some concern that there may be an increase in the use of arrests to deal with young people who refused to hand over alcohol.  It was not possible to determine if this was the case.

Background data was examined to see if there had been any alcohol-related behavioural changes amongst young people that might explain emergent trends in the use of alcohol seizures by Police Scotland.  The Scottish Schools Adolescent Lifestyle and Substance Use Survey shows a long-term reduction in teenage drinking since 2004.  Looking just at the period before and after the introduction of the CoP, alcohol-related hospital admissions for young people fell by 7% and police recorded alcohol-related incidents involving young people fell by 5%.  These small proportionate reductions in public service demand were not statistically significant and both were in line with wider population trends. Therefore, there did not appear to be any underlying behavioural explanation for a dramatic change in the police use of alcohol seizures amongst young people.  Police Scotland also reported a 31% reduction in the number of public drinking incidents and a 51% fall in the number of detected public drinking incidents; however, these data could not be broken down by age.  There was considerable variation by Division, with most alcohol-related incidents involving young people taking place in the West, especially compared to the wider population.

These apparently small behavioural changes contrasted sharply with the 49% reduction in police use of alcohol seizures from young people during the twelve months after the introduction of the CoP.  There were even greater reductions in alcohol seizures amongst older age groups, even though the contextual data suggested that trends in alcohol related problems amongst young people were in line with the wider population. Taking population size into account, young people were at least twice as likely to have alcohol confiscated from them than people in the next

nearest age band prior to the introduction of the CoP, but this increased to three times more likely in the twelve months afterwards. Around two thirds of alcohol seizures amongst young people involved use of Section 61 confiscation powers; whereas, almost all of the older people had alcohol confiscated under Local Authority alcohol byelaws.

Looking at the change in alcohol seizures on a monthly basis, there was a significant decline for all age groups during the year prior to the introduction of the CoP; however, the decline for those aged under 18 was less steep than that for other age groups. A sharp spike in seizures during April 2017 in several Divisions in the West Command Area appeared to be due to a particularly warm spell of weather coinciding with the Easter holidays, which shows how affected such data can be due to seasonality. Following the introduction of the CoP, the number of alcohol seizures continued to decline for all age groups, but the decline was steepest for those under the age of 18. This striking post-CoP decline in alcohol seizures amongst young people was almost entirely due to a change in policing activity in the West of Scotland. In particular, there was an astonishing 97% reduction in the use of seizures in the Greater Glasgow Division, which cannot be explained by behavioural change or seasonal trends. Possible explanations for these changes include a real and sustained decline in the seizure of alcohol from young people in Greater Glasgow (which seems unlikely) or a change in the recording of such seizure activity.

Despite the abolition of consensual searches, there was no indication of a change in the efficacy of statutory searches to recover alcohol (which remained low). The findings in this report are not conclusive in terms of identifying whether a statutory power to search for alcohol is required in Scotland; however, there is certainly no indication that statutory searching is being used as a mechanism to indirectly search for alcohol.

# 4 Other potential gaps in the legislation

## 4.1 Introduction

This section of the report examines the possibility that the introduction of the new legislation resulted in gaps around stop and search. Section 65 of the Criminal Justice (Scotland) Act 2016 provides that it is unlawful for a constable to search a person who is not in police custody unless they are doing so in accordance with either a power of search conferred in express terms by a statute or under a search warrant. Legislation was introduced through the 2016 Act allowing officers to search individuals on grounds that were not based on an offence having been committed. For example, under section 66 of the Act, a person who is not in police custody, but who is being transported by the police under warrant or court order, or where officers believe it is necessary to do so for their care and protection, may be searched. In addition, Section 67 of the Act enables officers to search an individual entering an organised event as a condition of entry in order to ensure the health, safety and security of people at that event.

Police officers have expressed concern that the new legislation does not go far enough as it does not give officers specific power to search during situations in which action may be considered necessary to preserve life. As a result, paragraph 3.4 of the CoP was added to make it clear that officers must take all steps necessary to protect life, as legislated for under Sections 20 and 32 of the Police and Fire Reform (Scotland) Act 2012. In order to assess whether the current legislation has left any significant gaps or ambiguities in the power of police officers to stop and search, the review examined the statutes under which searches were conducted and looked at the number that were considered justifiable by police officers but which were not explicitly covered by statues expressly conferring power of search. This review also considered other issues specifically raised by officers when recording a search about gaps in legislative provision.

## 4.2 Legal statutes used for stop and search

Section 65 of the Criminal Justice (Scotland) Act 2016 provides that it is unlawful for a constable to search a person who is not in police custody unless they are doing so in accordance with either a power of search conferred in express terms by a statute or under a search warrant. Table 4.1 shows the legal statutes under which all statutory searches were conducted during the twelve months prior to and after introduction

of the CoP.  Although there was a fall in the number of searches overall, there was very little change in the relative distribution of searches according to statute.  During both periods, the vast majority of searches were conducted under the Misuse of Drugs Act 1971.  Although the number of searches conducted under the 1971 Act was 20% lower in the post-CoP period, the relative share of all searches fell by only 2%. Section 60(1) of the Civic Government (Scotland) Act 1982, used to search for stolen property, accounted for less than 10% of all searches in both periods. Only 5% of all searches involved use of the Criminal Law (Consolidation) Act 1995 to find offensive or bladed weapons.  The remaining statutes were used very infrequently, although there was a 64% increase in the use of Section 47(1) of the Firearms Act 1968 to search for firearms in the post-CoP period.

Following implementation of the CoP, two new codes were added to the national Stop and Search Database.  The first records searches conducted under Section 66 of the Criminal Justice (Scotland) Act 2016 where a person was being removed or transported but not in police custody.  A total of 139 searches were conducted under this legislation following the implementation of the CoP, as shown in Table 4.1.   The second new code records encounters where police officers intervened on the basis of Sections 20 and/or 32 of the Police and Fire Reform (Scotland) Act 2012 to protect life, and undertook a search as part of this intervention.  There were only 34 recorded searches in which officers intervened to protect life on the basis of Sections 20 and/or 32 of the 2012 Act during the twelve months after the CoP was introduced.  While these numbers are small, they do reflect some of the most serious and distressing incidents dealt with by officers in the line of duty.

**Table 4.1: Number of searches by legal statute used to justify search**

| Statute | June 2016 to May 2017 | | June 2017 to May 2018 | |
|---|---|---|---|---|
| | N | % of all searches | N | % of all searches |
| Sec 23(2), 23(3) or 23A Misuse of Drugs Act 1971 | 32,070 | 88% | 25,622 | 86% |
| Sec 60(1) Civic Govt (Scotland) Act 1982 (Stolen property) | 2,508 | 7% | 2,297 | 8% |
| Sec 48(1), 49B or 50 Criminal Law (Consolidation) Act 1995 (Offensive or bladed weapons) | 1,841 | 5% | 1,470 | 5% |
| Sec 11A Fireworks Act 2003 | 106 | 0.3% | 56 | 0.2% |
| Sec 47(1) Firearms Act 1968 | 64 | 0.2% | 105 | 0.4% |
| Sec 66 Criminal Justice (Scotland) Act 2016 (Removal of person) | - | - | 139 | 0.5% |
| Sec 20 & 32 Police and Fire Reform (Scotland) Act 2012 (Protection of life) | - | - | 34 | 0.1% |
| Other statute | 36 | 0.1% | 50 | 0.2% |

Note: Column percentages may not total 100% due to rounding.

## 4.4  Summary of section 4

Section 65 of the Criminal Justice (Scotland) Act 2016 specified that officers may only conduct searches "*in accordance with a power of search conferred in express terms by an enactment, or under the authority of a warrant expressly conferring a power of search*".  Policing representatives were concerned that the current legislation may have left gaps or ambiguities, such as in situations where a search may be considered necessary to preserve life.  An examination of the statutes recorded for searches found very little difference in the relative distribution of statutes used to search during the twelve months before and after introduction of the Code of Practice.  There was a relatively large increase in the use of Firearms Act 1968 to search for firearms (although numbers were small).  In addition, officers had used the 2016 Criminal Justice (Scotland) Act to search 139 people during removal or transportation to another place; and they had conducted 34 searches as part of an intervention on the basis of Sections 20 and/or 32 of the Police and Fire Reform (Scotland) Act 2012 to protect life.

# 5    Change in the use of Section 60 authorisations

During the deliberations of the IAGSS as it developed the CoP, concern was expressed that after phasing out consensual search there may be an increase in the use of so-called 'no suspicion' searches by Police Scotland under Section 60 of the Criminal Justice and Public Order Act 1994.  This concern was mainly founded on the basis of extensive use of Section 60 authorisations in England and Wales, resulting in Home Office criticism and intervention (HMIC 2016).

Data provided by the National Stop and Search Unit showed there were three authorisations under Section 60 since the implementation of the CoP.  The first was for the Scotland versus England World Cup qualification football match at Hampden Park in Glasgow on 10th June 2017; although, no section 60 searches were recorded for this event. Two further Section 60 authorisations were made in relation to Scottish Premier Football League matches in Edinburgh involving Hearts FC v Hibernian FC on 9th May 2018 and Hibernian FC v Rangers FC on 13th May 2018. No searches were recorded during the Hearts v Hibernian match, while two searches were conducted at the Hibernian v Rangers game.  The searches involved young people under the age of 18 and were conducted on grounds of public order, but neither resulted in a positive detection.

The limited use of Section 60 authorisations provides strong evidence that there has been no increase in the use of this power as a way of creating wider opportunities for search under the CoP.  This contrasts substantially with evidence about policing practice in England and Wales (HMIC 2016).

# 6    Searches and seizures for people with protected characteristics

## 6.1    Introduction

In recent years, a series of reports (Murray 2014, 2015; Murray and McVie 2016; McVie and Murray 2017) have highlighted a high degree of disproportionality in the use of stop and search amongst children and young people in Scotland.  These reports also found that rates of stop and search were higher amongst men than women, and there were some ethnic disparities (although the lack of accurate population data on minority ethnic groups means that no definitive conclusions can be drawn about ethnic bias in the use of searches).  During the public consultation on stop and search, there was significant concern about the approach to searching children and young people and how this might impact on their attitudes to, and cooperation with, the police.  As a result, Section 7 of the CoP specifically addressed the issue of searches involving children and young people, and Police Scotland provided training for all officers aimed at improving methods of engagement with young people.  The training also examined the issue of unconscious bias when dealing with any individuals with other protected characteristics.

This section of the report examines any change in the profile of searches in the twelve months following the introduction of the CoP and whether rates of search appear to be disproportionately higher and detection rates disproportionately lower in respect of any group with protected characteristics, but most especially children and young people.  One limitation of the data presented in this section of the report should be noted.  It is known that some people are subject to multiple searches; however, the data provided by Police Scotland did not provide an indicator of multiple searches.  Therefore, some individuals will be counted more than once in the analysis presented in this section.  Provided numbers of people who are searched on multiple occasions are small, this should have a relatively small effect on the analysis presented here.  However, it is highly possible that there is a bias in terms of the types of people likely to experience multiple searches and that this is based, in part, on their protected characteristics.  This means that some of the differences between groups presented in this section may appear larger than they actually are (this is discussed specifically in relation to the analysis by ethnic group).

## 6.2   Change in search and seizure rates by age, sex and ethnicity

### 6.2.1 Age

Rates per capita were calculated using the number of searches and seizures across different age groups in order to determine differences in the extent to which these tactics are applied taking account of population size.  Figure 6.1 compares the rate of search per 10,000 people for different age groups in the twelve months before and after the CoP was introduced.  During both time points, those aged between 16 and 19 were most likely within the population to be searched.  In the year after the CoP was introduced, the rate of search fell for all age groups, with the largest reduction being in the youngest age groups.  The search rate fell by 31% for those aged under 16 and by 36% for 16-17 year olds, compared to a 15-22% fall across all other age groups.  The extent of the decline in searches amongst 16-17 year olds was such that it was surpassed by the 18-19 year olds as the most searched age group.   So, while there was still a disproportionate use of search amongst younger people after the introduction of the CoP, the evidence suggests that the extent of this had reduced significantly.

**Figure 6.1: Search rate per capita by age group pre- and post-implementation of the CoP**
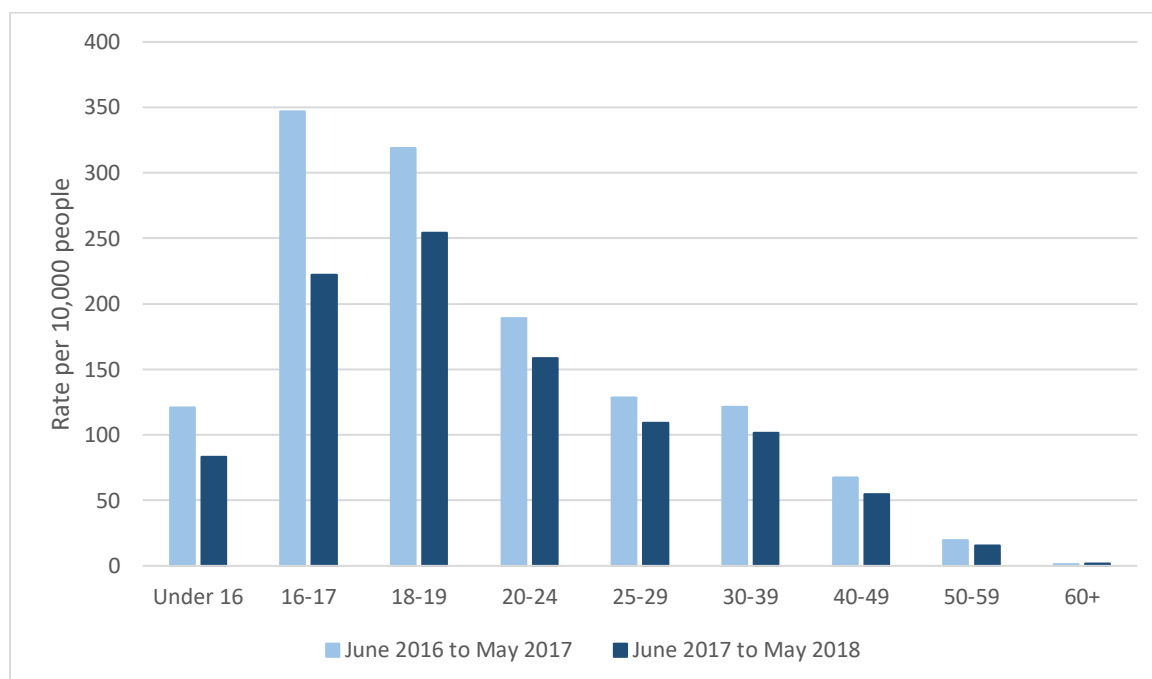


Figure 6.2 compares the seizure rates by age group pre- and post-implementation of the CoP.  Rates of seizure were much lower than search rates overall, and they declined to a much greater extent after the

72

introduction of the CoP (as noted in Section 2).  Unlike the search rates, however, the decline in the rate of seizures was proportionately much greater for people in the older age groups than it was for younger people (as discussed in relation to alcohol seizures in section 3.3).  Seizure rates fell by 38% for young people under 16 and by 53% for those aged 16-17.  This compared with a decline in seizure rates of between 62-81% for all other age groups.  The lower rate of decline in seizure rates amongst younger people is most likely explained by the degree of importance placed by Police Scotland on reducing harm caused by under-age drinking.  However, as noted in Section 4, the overall reduction in alcohol-related incidents involving people under the age of 18 was no greater than that for older people.  Nevertheless, it is clear from Figure 6.2 that the overall age profile of seizure rates did not change substantially.

**Figure 6.2: Rate of seizure by age group before and after implementation of the CoP[7]**
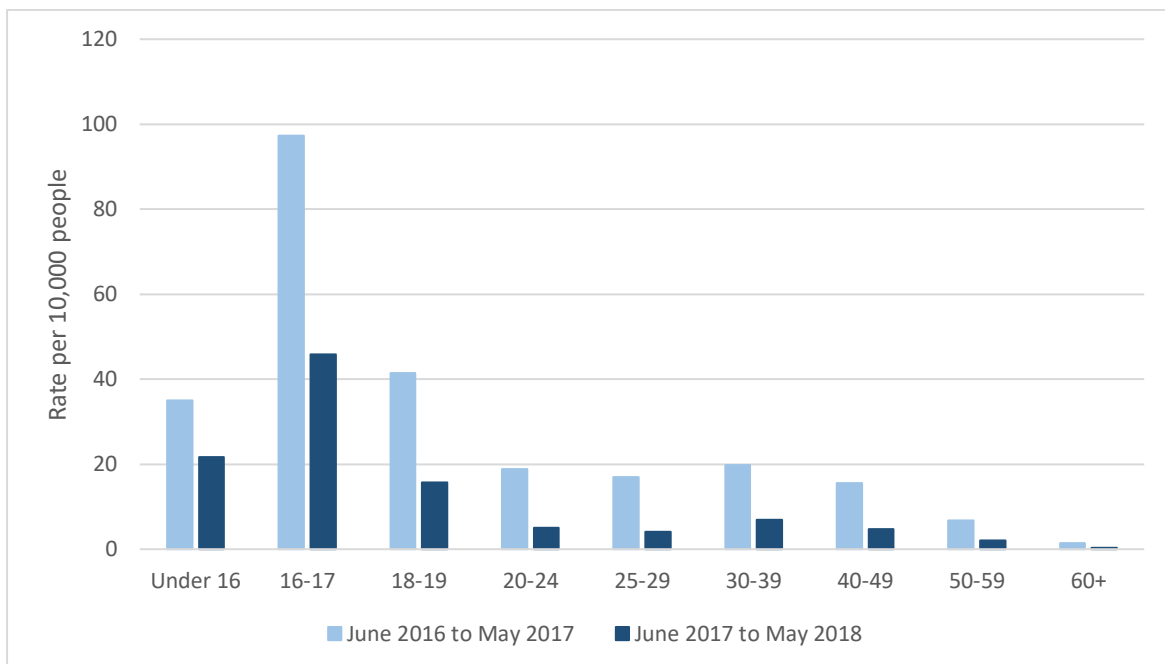


## 6.2.2 Sex

The number of searches and seizures amongst males in the population has always been significantly higher than that for females and this

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[7] It is not possible to determine how much of the change in rate of seizure for young people is due to a reduction in the use of Section 61 as opposed to a reduction in the use of Local Authority Byelaws as that information was not recorded on the Stop and Search Database prior to the introduction of the CoP.

picture did not change markedly following the introduction of the CoP. In the twelve months before the CoP was introduced, males accounted for 89% of all searches and 82% of all seizures; whereas, after the introduction of the CoP the equivalent figures were 87% of all searches and 78% of all seizures. There was a greater proportionate decline in the number of both searches and seizures amongst males than females in the year after the introduction of the CoP. The rate of search per 10,000 men (aged 12 or over) in Scotland fell from 162 to 124, while the equivalent figures for women fell from 18 to 16. This represented a 24% fall in the rate of search for men but only 10% for women. Similarly, the rate of seizure per 10,000 men fell from 28 to 9 after the CoP was introduced, while it fell for women from 5 to 2 per 10,000 women. This represented a 66% decline in the seizure rate for men and a 56% reduction for women.

The age patterns of search and seizure rates for males and females were broadly similar to those observed in Figures 6.1 and 6.2. To identify where there were key differences, Figure 6.3 shows the percentage difference in search rate per capita for the twelve months before and after the introduction of the CoP, by sex and for different age groups. It is clear that the rate of search declined far more for men than for women across most age groups. The main differences were a greater decline in search rates amongst boys under the age of 16 compared to girls, and larger declines amongst men aged 30 or over compared to women. In some age groups, especially age 20-24 and age 30 or over, the rate of search for women declined very little. The largest fall in search rates for both men and women was in the 16-17 age category, and the level of decline within this age group was very similar.

The main factor explaining the lower level of decline amongst women was the inclusion on the NSSU database of searches conducted as part of a warrant (introduced by the 2016 Act). Including these searches in the overall numbers had the biggest impact on searches amongst women aged 30 or over, mainly because the number of searches amongst this group was already very small. Whereas, the introduction of searches under warrant for men did not have the same effect because the overall number of searches for men was so much larger.

**Figure 6.3: Percentage difference in rate of statutory search by age and sex pre- and post-implementation of the CoP**
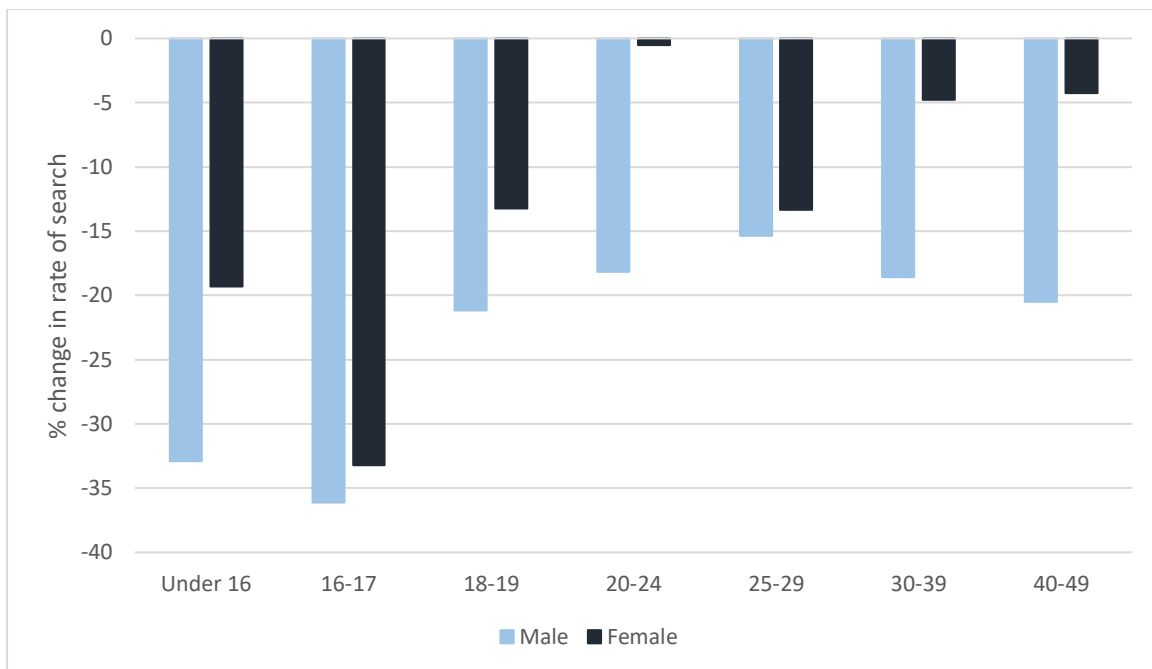


Note: Rates for age 50 and above are excluded due to small numbers.

The percentage difference in seizure rates before and after the introduction of the CoP is shown for males and females by age group in Figure 6.4. Again, caution should be taken in interpreting the figures as some of the numbers are very small (especially for women); however, this chart shows that the rate of seizure declined fairly consistently for both men and women across all age groups. There is some variation in terms of the extent of the difference by age but, overall, Figure 6.4 suggests that the reduction in seizures affected both sexes more or less equally.
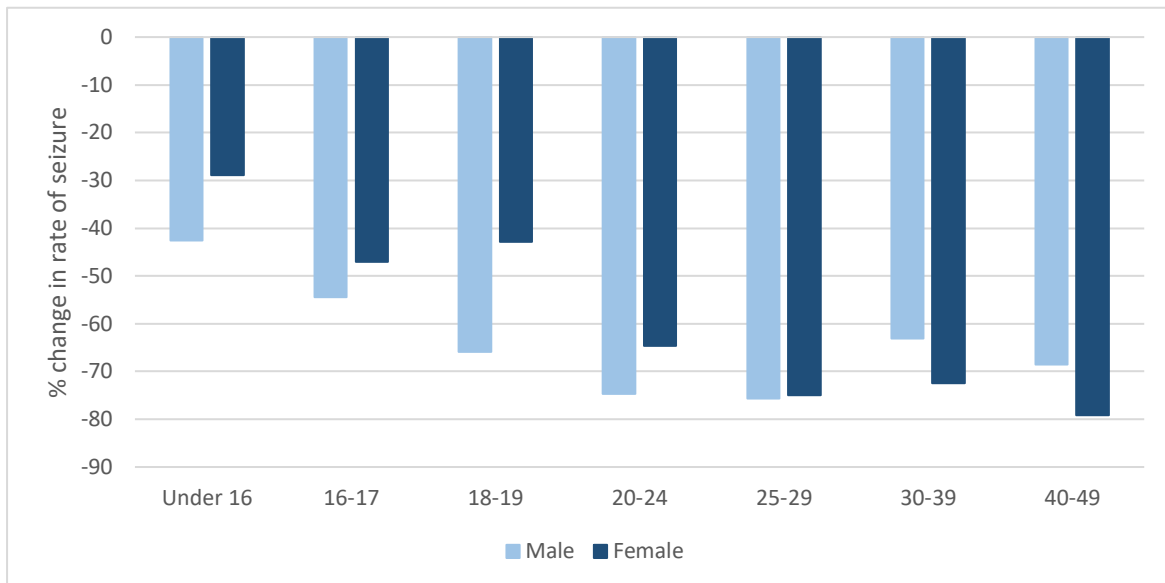
**Figure 6.4: Percentage difference in rate of seizures by age and sex pre- and post-implementation of the CoP**



Note: Rates for age 50 and above are excluded due to small numbers.

## 6.2.3 Ethnicity

As noted in previous research (Murray 2014; McVie and Murray 2017), the vast majority of searches and seizures in Scotland involve people who self-define as belonging to a White ethnic group.  The analysis conducted for this report confirmed that this continued to be the case, as shown in Table 6.1.  In the year prior to the introduction of the CoP, 92% of all encounters involved people self-defining as White, of which the majority (84% overall) described themselves as White Scottish.  There was a small reduction in this proportion in the twelve months after the introduction of the CoP, with 88% of all encounters involving White people (78% being White Scottish).  The most common other self-defined White ethnicities in the year following the introduction of the CoP were White English (3%) and White British (4%).  The non-White ethnic groups shown in Table 6.1 made up a small proportion of all encounters in both periods, and there was little change over time.

**Table 6.1: Number of encounters by ethnic group, pre and post-implementation of the CoP**

| Self-defined ethnic group | June 2016 to May 2017 | | June 2017 to May 2018 | | Difference in % share |
|---|---|---|---|---|---|
| | N | % share | N | % share | |
| White Scottish | 37,022 | 84% | 5,160 | 78% | -6% |
| White British | 1,060 | 2% | ,168 | 4% | +2% |
| White English | 907 | 2% | 87 | 3% | +1% |
| White Polish | 544 | 1% | 74 | 2% | +1% |
| White Other | 927 | 2% | 32 | 2% | 0% |
| Asian (Pakistani/Bangladeshi /Chinese/Indian) | 1,032 | 2% | 41 | 2% | 0% |
| African/Caribbean/Black | 639 | 1% | 74 | 1% | 0% |
| Mixed or Other ethnic group | 1,065 | 2% | 98 | 1% | -1% |
| Ethnicity unknown | 1,053 | 2% | ,473 | 8% | +6% |

Note: Column percentages may not total 100% due to rounding.

In the year following the introduction of the CoP there was a large increase in the proportion of encounters for whom the person's ethnic status was recorded as 'unknown' (from 2% of all searches and seizures prior to the CoP to 8% afterwards).  This was also identified during the six month review (see McVie 2018) and discussions with Police Scotland at that time indicated that this was mainly due to a change in policing policy requiring police officers not to 'guess' the ethnicity of some individuals when the information had not been specifically requested.  According to the NSSU, this was most commonly the case with individuals whom officers believed to be 'White Scottish'.  There was no evidence that individuals had become more likely to refuse this information.  It is notable that in the period since the publication of the six month review report, the proportion of encounters with an ethnicity defined as unknown has reduced considerably (from 7% in January 2018 to 3% in May 2018), suggesting that recording practice has been improved in light of the six month review.

When encounters in which the ethnicity of the individual is unknown are excluded from the analysis, the relative share of all searches and seizures across ethnic groups (as shown in Table 6.1) is broadly in line with the profile of the Scottish population as measured by the 2011 Census (National Records of Scotland 2013). Encounters involving people from a White ethnic group increased slightly from 94% in the year preceding the introduction of the CoP to 95% in the year after, which is broadly in line with the Census estimate of 96% of the Scottish population. The breakdown of non-White ethnic groups is also broadly in line with Census estimates. This is not suggestive of ethnic bias in the use of search and seizure at a national level (the numbers, especially for seizures, are too small to reliably report at sub-national level). However, this statement only holds true if the overall ethnic profile of the Scottish population has not changed over time (more up to date population estimates are not available) and if the profile of those encounters where ethnicity was unknown was broadly similar to those that were known (it is not possible to establish this).

Examining the total number of searches across ethnic groups is useful in terms of determining the overarching profile of encounters across the population, but rates per capita provide a better indication of whether there is disparity in the use of the tactic between ethnic groups. Rates per capita were calculated using population data from the 2011 Census; however, **caution is required in calculating and interpreting population-based rates for ethnic groups for three key reasons** (see McVie and Murray 2017, McVie 2018a and 2018b). Firstly, the absolute number of searches involving non-White people is far smaller than that for White people and so the degree of error around rates for non-White people is likely to be greater (which means they could appear to be over-inflated). Secondly, the 2011 Census is the only source of national population data for ethnicity but this is highly rounded and may be significantly out of date, which is also a potential source of error. And thirdly, the stop and search database does not identify whether individuals were subject to multiple searches and, therefore, rates may appear greater than they actually are. This is likely to be especially problematic if multiple searches are more common amongst non-White than White people, as suggested by other UK research evidence (for example, see Medina Ariza 2014).

Bearing in mind the caveats set out above, Figure 6.5 shows the rates of search and seizure per 10,000 people for those who self-defined as

White or non-White only (as figures are not considered reliable for specific ethnic groups).  Note that this chart can most reliably be used to show the change in search rates *within* ethnic groups across the two periods studied, but no reliable conclusions can be drawn about differences in rates *between* ethnic groups.  The rates of seizure were far smaller than the rates of search, for both White and non-White people, although the data appears to show that seizures were greater amongst White people across both time periods.  The rates of search for non-White people appeared to be almost twice that of those for White people in the period prior to the introduction of the CoP; however, the gap closed considerably in the twelve months after the CoP was introduced.  The far larger proportionate decline in searches amongst non-White people could be due to a reduction in the total number of searches or a reduction in the number of multiple searches of specific individuals.

**Figure 6.5: Difference in rate per capita of search and seizure pre- and post-implementation of the CoP, by ethnic group**
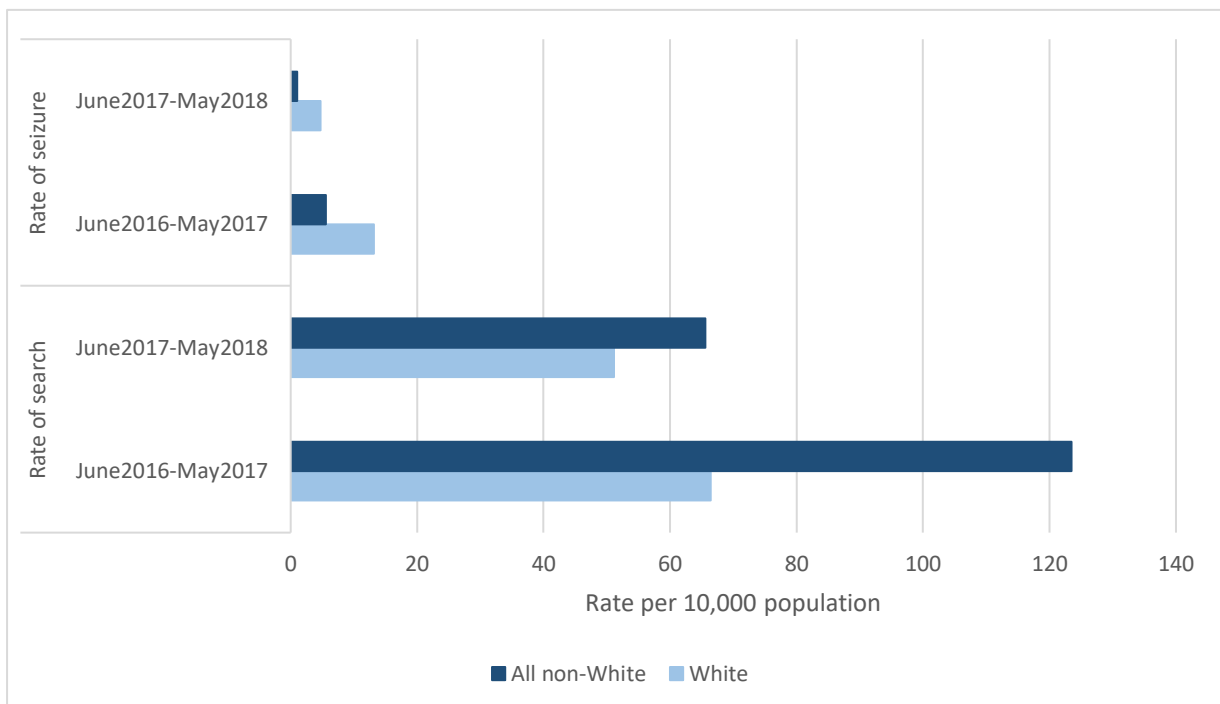


Rates per capita can be more reliably used to compare change *within* specific ethnic groups.   Figure 6.6 shows the percentage change in the rate of search and seizure in the twelve months before and after the introduction of the CoP for the four main ethnic groups included in the Scottish Census (African has been grouped together with Caribbean and Black due to small numbers).   It shows large percentage declines in

seizure rates across all ethnic groups, but especially amongst the non-White groups.  Note, however, that the total number of seizures amongst non-White groups was far smaller than for White people (i.e. less than 2% of all seizures in the year before the introduction of the CoP involved non-White people, and this fell to less than 1% in the year after).

There were also large percentage declines in search rates across all ethnic groups, but again especially amongst non-White groups.  Figure 6.6 shows that rates of search amongst White people fell by 23%, whereas search rates fell by 36% amongst those self-defining as Asian and by 39% for those self-defining as Black, Caribbean or African.  The largest proportionate decline in search rates was amongst Mixed or Other ethnic groups, which fell by 62%.   Like seizures, the number of searches involving non-White people were far smaller than for White people (i.e. 7% of all searches in the year before the introduction of the CoP involved non-White people, falling to 5% in the year after).

Overall, these findings indicate a greater than expected reduction in both searches and seizures involving those from non-White backgrounds.  This suggests that the changes implemented by Police Scotland in the year following the introduction of the CoP have had a greater positive impact on non-White people compared to White people.  As noted above, this may be in terms of a reduction in the total number of searches or it could be due to a reduction in multiple searches of specific individuals.  The numbers involved are very small, however, so it is worth reiterating that caution is needed in interpreting these figures.

**Figure 6.6: Percentage change in rate of search and seizure pre- and post-implementation of the CoP, by ethnic group**
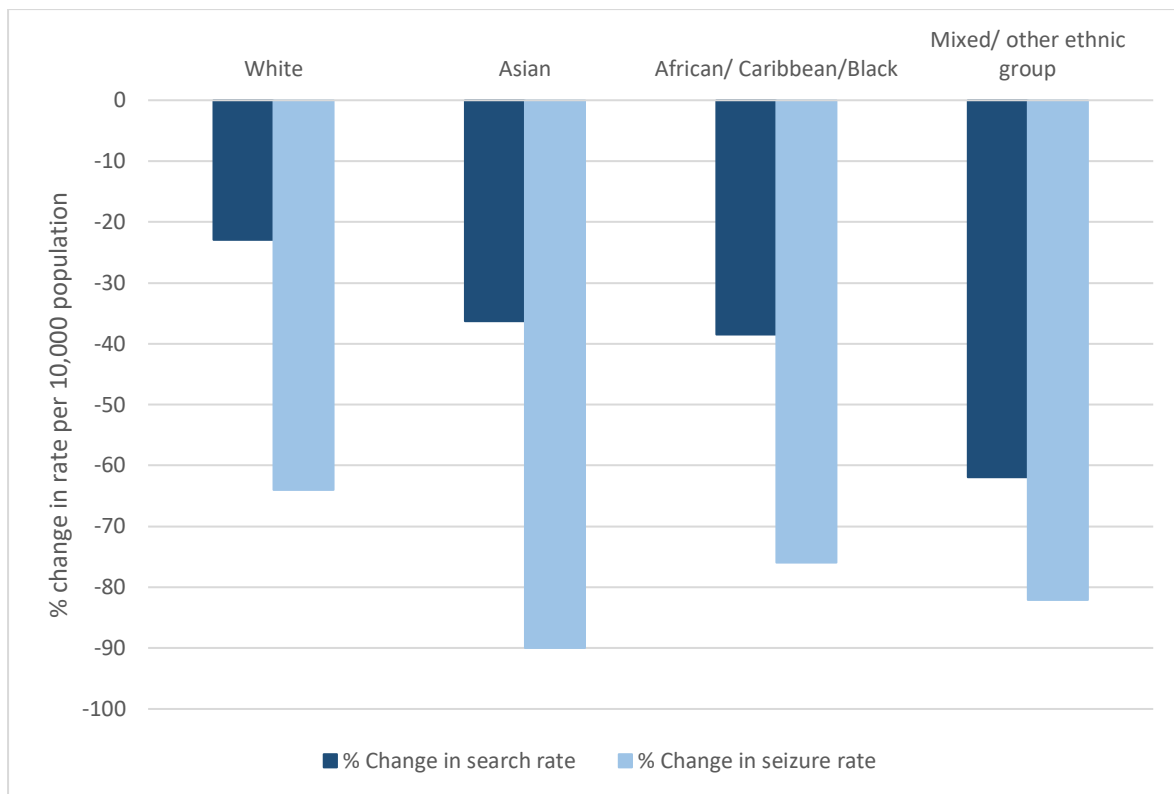
## 6.3 Change in positive detections by age, sex and ethnicity

The rates per capita, as set out in the previous section, provide valuable information about the extent to which search and seizure are used for different groups of the population. However, it is difficult to establish anything about disproportionality and fairness without having underlying information about the level of demand on policing caused by different groups. An equally important factor is to examine the extent to which searches result in a positive detection in order to identify whether certain groups are being searched on the basis of lower levels of suspicion compared to others. As noted in Section 2.2, the overall detection rate in the twelve month period after the CoP was introduced was 38%, an increase of 7% from the equivalent period of the previous year. This section of the report examines whether there was any significant change in the detection rate by age, sex and ethnicity following the introduction of the CoP

### 6.3.1 Age

The change in the detection rate by age group is presented in Figure 6.7, which shows a higher positive detection rate for all age groups following the introduction of the CoP. Overall, there was a 21% increase in detection rates; however, there was a greater proportionate increase for some age groups than others. The lowest percentage increase in detection rates was amongst those aged 18-19 (19%), 20-29 (16%) and 30-39 (14%), while the highest percentage increase was for those aged 16-17 (39%) and 50-59 (32%). There was also a slightly larger than average increase in positive searches amongst young people under the age of 16 of 23%.

**Figure 6.7: Percentage of searches resulting in a positive outcome pre- and post-implementation of the CoP, by age group**
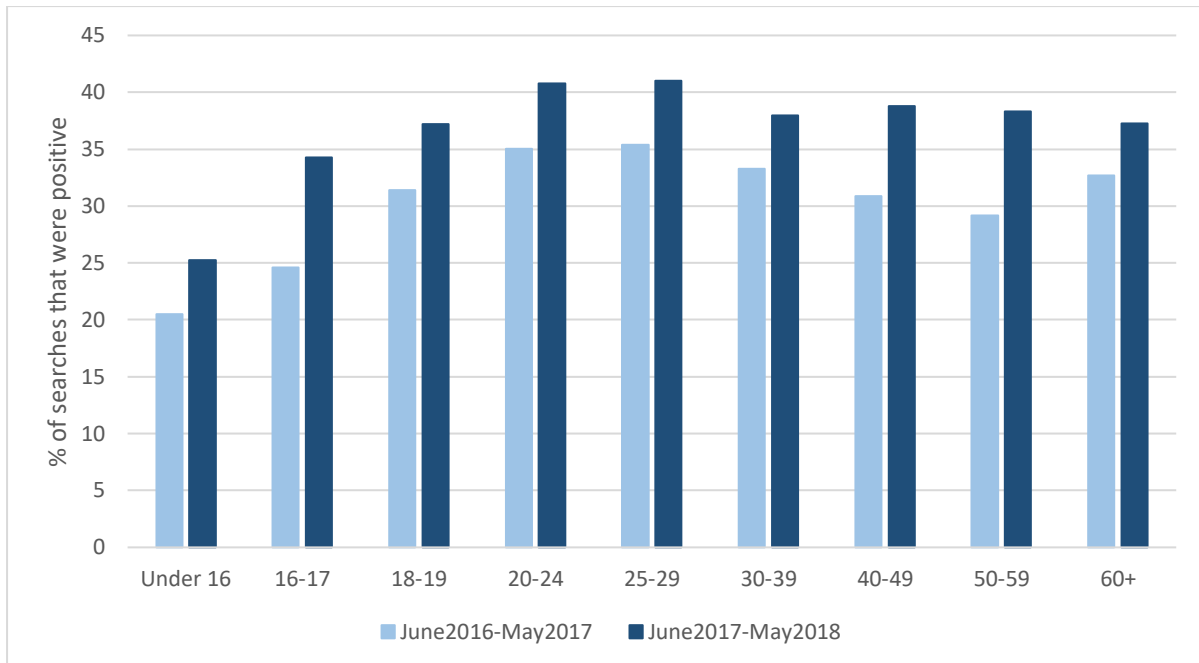


Figure 6.7 suggests that the overall reduction in number of searches since the introduction of the CoP has resulted in more positive outcomes across all age groups.  Moreover, there has been a sizeable improvement in positive outcomes amongst those in the youngest age groups, especially in the 16-17 year old age group.   For those aged 18 or over, there is far greater equality in the rate of positive search, which is above 35% for all ages.  This suggests that the requirement for reasonable suspicion is being applied more stringently and evenly amongst adults.  However, the positive search rate for those aged under 18 remains lowest overall, most especially for those aged under 16 which is still noticeably lower than for all other age groups (i.e. 13% below the average positive rate).  This suggests that the threshold of suspicion used when searching children and young people continues to be lower than that applied to adults, so there is still room for improvement in increasing the positive search rate amongst this age group.

*6.3.2 Sex*

As noted in Section 6.2.2, there was a larger proportionate fall in the rate of search for men than for women in the year following the introduction of the CoP.  Overall, searches involving women went from 11% of all encounters in the previous year to 13% in the year after the CoP was introduced.  Figure 6.8 also shows that there was a bigger increase in

the percentage of positive searches amongst men compared to women. The percentage of positive searches for men increased from 31% to 38%; while, the percentage for women increased from 31% to 36%. While this does not represent a very large difference between men and women in percentage terms, it is statistically significant.  In other words, in the year following the introduction of the CoP searches involving men were significantly more likely to result in a positive detection than those involving women.

Looking at search results by reason, drug searches involving men were significantly more likely to be positive than those involving women during both time periods.  Searches conducted under Warrant (which were predominantly for drugs) were also more likely to be positive for men than women.  Whereas, searches for stolen property were significantly more likely to be positive for women than men.  There was no sex difference in the outcome of weapon searches, which were least likely to be positive overall. The effect of sex on positive search rates will be discussed further in Section 7.3.

**Figure 6.8: Percentage of searches resulting in a positive outcome pre- and post-implementation of the CoP, by sex**
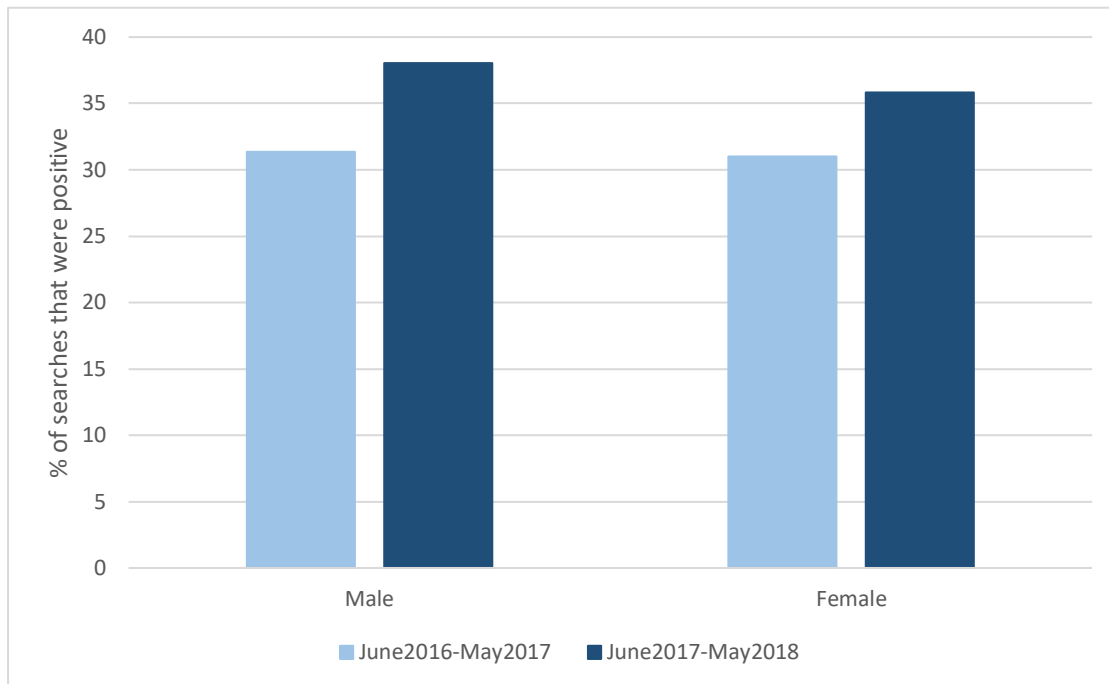


### 6.3.3 Ethnicity

The percentage of searches resulting in a positive outcome also increased across all ethnic groups, as illustrated in Figure 6.9. In the twelve months before the CoP was introduced, the positive detection rate was highest amongst those who self-defined as White (32%) and lowest for those self-defining as belonging to a Mixed or Other ethnic group (20%). In the year after the CoP was implemented, the positive detection rate continued to be highest for those who self-defined as White (39%); however, the gap in success rates between searches of those from a White ethnic group and those from people in any Other ethnic group was much reduced. For example, 35% of searches involving people who self-defined as belonging to any of the Asian or African/Caribbean/Black ethnic groups resulted in a positive detection, and the figure for those from Mixed/Other ethnic groups was slightly higher at 36%. Recall from Figure 6.6 that searches involving people from a Mixed/Other ethnic group saw the largest overall reduction across these two time periods, which suggests that police officers were using a far higher threshold of reasonable suspicion when searching people from these ethnic backgrounds after the CoP came into being (although bear in mind that numbers were small). There was a lower increase in detection rate amongst those for whom ethnicity was not known.
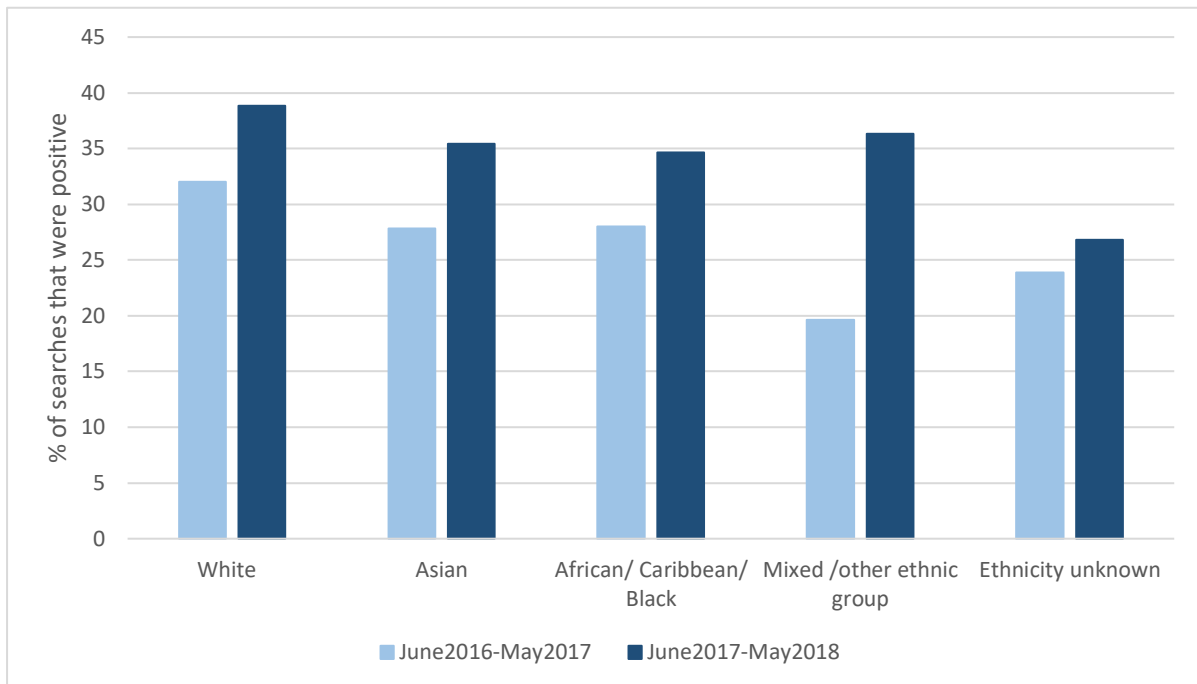
**Figure 6.9: Percentage of searches resulting in a positive outcome pre- and post-implementation of the CoP, by ethnic group**



## 6.5   Summary of section 6

A series of research reports have highlighted that stop and search in Scotland was being used disproportionately amongst certain groups, especially children and young people.  This review examined whether the introduction of the CoP had resulted in any change in terms of the use of search for those of certain ages or other groups with protected characteristics.  Only three variables were available for analysis in the Stop and Search Database: age, sex and ethnicity.

The analysis found that levels of search had reduced across all ages and, while young people in their mid to late teens continued to be the most likely group to experience a search, the degree of disproportionality in terms of targeting these groups had significantly declined in  the twelve months following the introduction of the CoP.  Rates of seizure (mainly involving alcohol) had also declined significantly across all age groups; however, seizure rates had declined less for young people under the age of 18 than for older people.  This is most likely due to continued concern within Police Scotland about the danger of alcohol-related harm amongst young people in Scotland.

The total number of searches and seizures had declined for both males and females in the twelve months following the introduction of the CoP, although proportionately more so for males than females.  Search rates

had declined across all age groups for males, and for some age groups for females. The difference appears to explained largely by the inclusion in the database, following the introduction of the CoP, of searches conducted under Warrant. This had a greater impact on the profile of female searches as it inflated already small numbers. Reductions in seizure rates were very similar for males and females across all age groups, suggesting that changes in practice affected both sexes more or less equally.

In terms of ethnicity, searches and seizures predominantly involved White people both before and after the introduction of the CoP, although the overall profile of searches more or less matched the population profile for Scotland. Non-recording of ethnic group during searches increased in the period following the introduction of the CoP. This was also identified in the six month review report, but there was evidence that Police Scotland had taken steps to rectify the situation. The rate per capita of searches had declined within all ethnic groups, and the reductions were greater for encounters involving people who self-defined as non-White than White. Overall search rates per capita appeared to be higher for non-White ethnic groups than for White people, although there are strong health warnings about drawing any conclusions from differences between ethnic groups due to the problems of using 2011 Census data to calculate comparable rates.

Differences in absolute levels of search are not necessarily problematic if the detection rates do not indicate biased decision making practices. In the twelve month review, there was a significant increase in the positive detection rates for all age groups after the introduction of the CoP, particularly for 16-17 year olds and those aged 50-59. Since the introduction of the CoP, there is far greater equity in the rate of positive search amongst those aged 18 or over; however, positive detection rates continue to be lowest for those aged under 18. This suggests that the threshold of reasonable suspicion is being applied more stringently and evenly amongst adults than young people, so there remains room for improvement in conducting searches amongst young people.

There was a significant increase in positive detection rates for both men and women; however, searches of males were more likely to result in a positive outcome than those involving females in the year following the introduction of the CoP (there was no sex difference in the previous year). This sex difference was mainly explained by searches for drugs

(including under Warrant) which were significantly more likely to be positive for men.  Detection rates also improved amongst all ethnic groups, especially those from Mixed or Other ethnic groups, although numbers in these groups were small.

Overall, these findings indicate that the reduction in the number of searches following the introduction of the CoP has coincided with an increase in positive outcomes, and this is true across all groups with protected characteristics.  Nevertheless, there continue to be signs of inequality between some groups in terms of who is searched and how successful those searches are.  It is impossible from the analysis conducted here to say whether there are good explanations for these inequalities.

# 7 Predicting positive search outcomes

## 7.1 Introduction

The analysis conducted so far has involved a simple descriptive examination of change in the relationship between positive outcome and protected characteristics (age, sex and ethnicity) since the introduction of the CoP. However, there are a range of other contextual factors that might have impacted on the success of searches, including when, where and why it took place. Therefore, it is important to examine what had the biggest influence on positive detection rates. This was done using regression analysis – a technique that enables the influence of multiple factors on an outcome (in this case a positive search) to be tested simultaneously. A specific aim of this analysis was to establish whether the introduction of the CoP had an effect on the positive detection rate which was over and above that of the other factors that are known to influence detection. The results of this analysis are presented below.

## 7.2 Factors included in the regression model

A set of potential 'explanatory variables' that were likely to have an influence on the outcome of the search were identified. Within the stop and search database there is a limited number of variables available and it is likely that certain factors influenced detection rates that cannot be accounted for here (this is a limitation of all regression models, and is certainly the case here). Nevertheless, three sets of factors were considered, as detailed below:[8]

1. The protected characteristics of the person who was searched:
   - Sex (reference category: Female)
   - Age group (reference category: 18-19 years)
   - Ethnic group (reference category: White)

2. Factors relating to the nature of the search itself:
   - Day of the week (reference category: Saturday)
   - Time of day (reference category: 6pm-midnight)
   - Reason for search (reference category: Drugs)
   - Division (reference category: Greater Glasgow)

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[8] Note that when regression analysis is conducted, it is essential to have a reference category against whom the other groups are compared (these are noted for each variable in the model). The choice of reference category does not skew the results of the analysis although it has implications for how the data should be interpreted.

3. The time period of the search:
   - Before or after the CoP was introduced (reference category: Before the CoP)

The results of a regression model are expressed in terms of odds ratios. An odds ratio greater than one suggests that there are increased odds of a positive search due to the presence of a particular variable, while a value less than one suggests that there are decreased odds of a positive search in the presence of a particular variable. A value of one would suggest that the particular variable has no effect on whether or not the search would result in a positive outcome. As all variables are tested simultaneously, the odds for any one factor are interpreted as being true when all the other variables in the model are held constant at their reference values. Confidence intervals at the 95% level are included in the models to determine significant differences between the odds ratios for all categories compared to their reference category (e.g. differences between each of the age groups with those aged 18-19). In the figures below, odds ratios are represented as a red square and their 95% confidence intervals are represented by vertical black lines. Where differences have been tested across different reference categories (e.g. using an age group other than 18-19), the results will be noted, although the additional data are not presented here.

## 7.3   Results of the regression model

We start this section by looking at the effect of the protected characteristics on the odds of a successful search, when holding all other factors in the model constant. The results of the full regression model are reported in the Appendix.

### 7.3.1 Effect of sex

In the six month review of the CoP (McVie 2018), the regression model indicated that the odds of a positive search were not influenced by sex when all other factors were taken into account. However, as noted in sections 6.2.2 and 6.3.2 of this report, the rate of search declined to a greater extent for males than it did for females in the twelve months following the introduction of the CoP, and the percentage change in the likelihood of a positive search increased more for males than females over this period. The net effect of these changes is that the odds of a positive search is now greater for encounters involving men than those involving women. This is illustrated in Figure 7.1. The effect size, although significant, is small (Odds Ratio=1.08) and means that the odds

of a positive search were on average 8% higher for men than they were for women.

**Figure 7.1: Regression model predicting a positive search by sex, controlling for other factors**
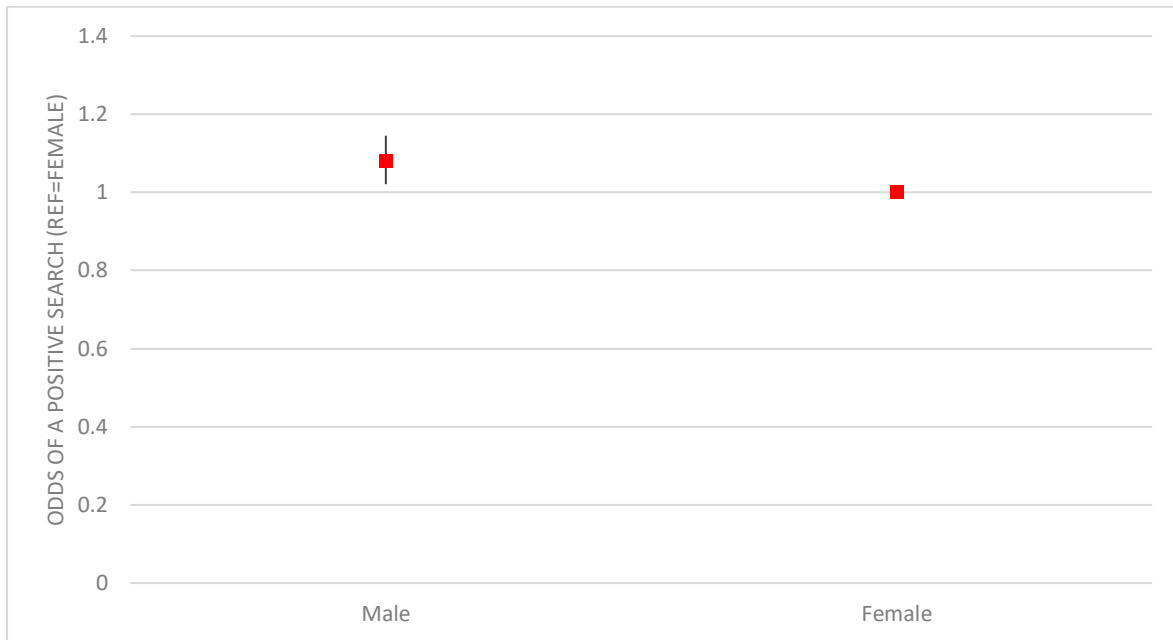


## 7.3.2 Effect of age

As part of the six month review, it was reported that searches involving younger people were significantly less likely to be positive than those of older age groups.  In section 6.2.1 of this report, it was shown that even though the number of searches involving young people declined significantly following the introduction of the CoP, the rates of search for people aged 16 to 19 continued to be higher than for any other age group.  Furthermore, it was noted in section 6.3.1 that, while positive search rates had increased for all age groups, they were still substantially lower for young people under the age of 18.

Even when controlling for a range of other factors about the search, Figure 7.2 shows that there is a strong and persistent age effect in terms of whether or not a search is successful.  Searches involving people aged under 16 had by far the lowest odds of resulting in a positive outcome than those of all other age groups.  Indeed, the odds of positive search involving a person under the age of 16 were on average 42% lower than they were for that of a person aged 18-19. Searches of young people aged 16-17 also had a lower odds of being successful that most other age groups, and were on average 24% less likely to be successful than that of a search involving an 18-19 year old.  Those aged 20-29

were by far the most likely to have a positive search result compared to other age groups, while searches involving people aged 30 or over were no more likely to be successful than those for 18-19 year olds.

These findings suggest that, even though the number of searches has declined markedly for younger people and success rates have increased, the decision to search younger people (especially those aged under 18) may still apply a lower threshold of reasonable suspicion than for those who are older. It is impossible from the available data, however, to say whether there were other factors about these young people that made them appear to be more 'risky' than people of older ages.

**Figure 7.2: Regression model predicting a positive search by age, controlling for other factors**
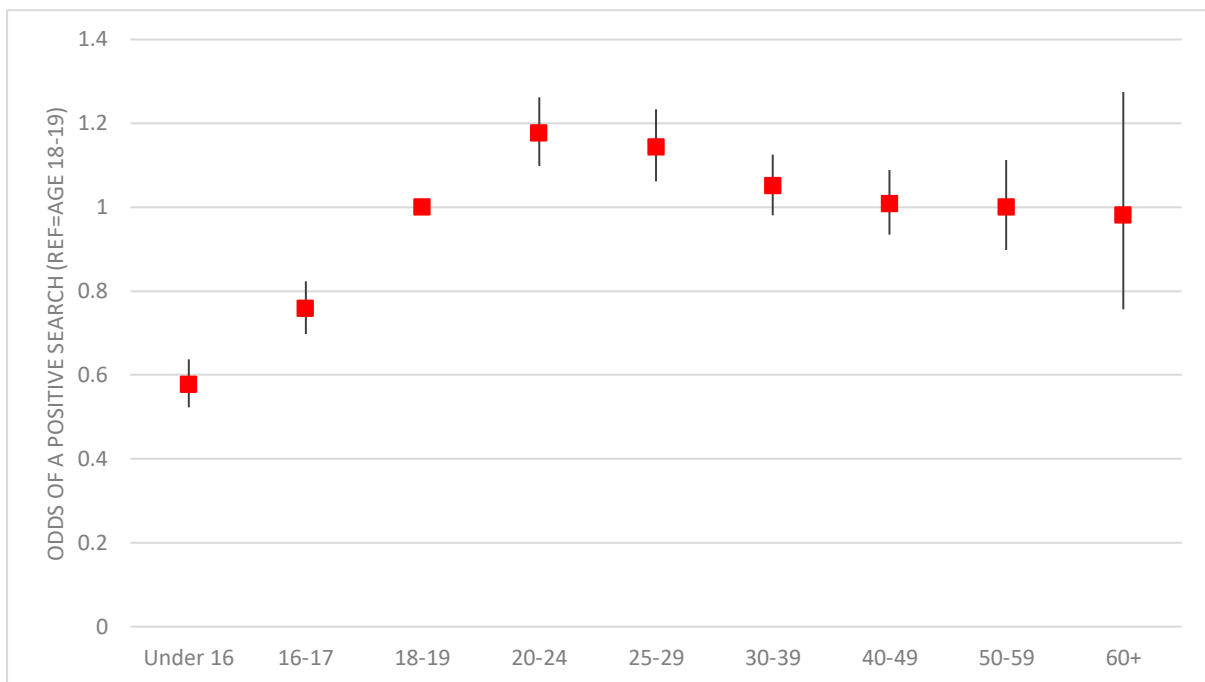


### 7.3.3 Effect of ethnicity

The six month review found that searches involving people from Other ethnic groups were less likely to result in a positive outcome than those of White people. Section 6.2.3 of this report found that searches had declined to a greater extent and positive detection rates had increased far more amongst all non-White ethnic groups compared to people who self-defined as White, although White people were still far more likely to be searched overall. Looking at the data for the twelve month review, Figure 7.3 shows that there was no significant difference in the odds of a positive detection between searches involving White people and those

from Asian backgrounds or from Black, African or Caribbean backgrounds (which represented the largest number of non-White searches overall).

Searches involving people from Mixed or Other ethnic backgrounds did have lower odds of being successful, although it is worth noting that they represented only 2% of all searches. Figure 7.3 suggests that the odds of a search involving someone self-defining as belonging to a Mixed or Other ethnic background was on average 25% less likely to result in a positive outcome than one involving a White person, when taking all other factors into account. It is not possible from the available data to say whether there were other factors involved in these searches that reduced the threshold of suspicion or whether there was some other explanation for this difference.

**Figure 7.3: Regression model predicting a positive search by ethnicity, controlling for other factors**
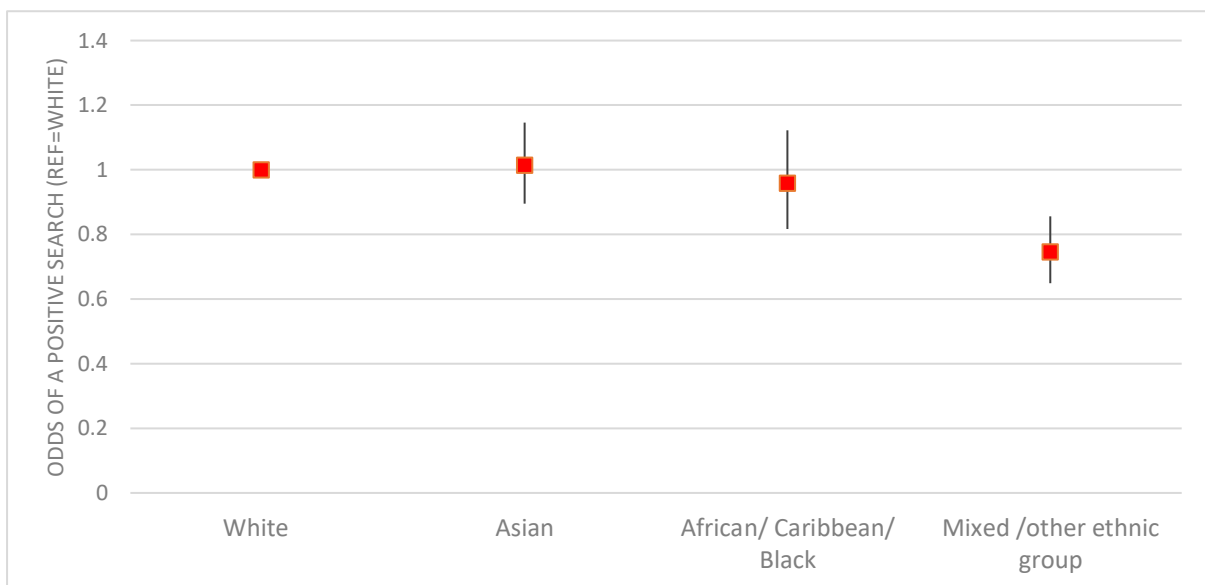


### 7.3.4 Effect of day of the week and time of day

Turning now to factors relating to the search itself, the six month review report noted that there was some difference in the likelihood of a search being positive based on day of the week and time of the day in which it occurred. This was also true of the analysis of the twelve month data, although the findings were slightly different. Figure 7.4 shows that searches conducted on a Monday to Thursday had lower odds of resulting in a positive outcome than those that occurred on Friday to Sunday, although the differences were not extensive.

**Figure 7.4: Regression model predicting a positive search by day of the week, controlling for other factors**
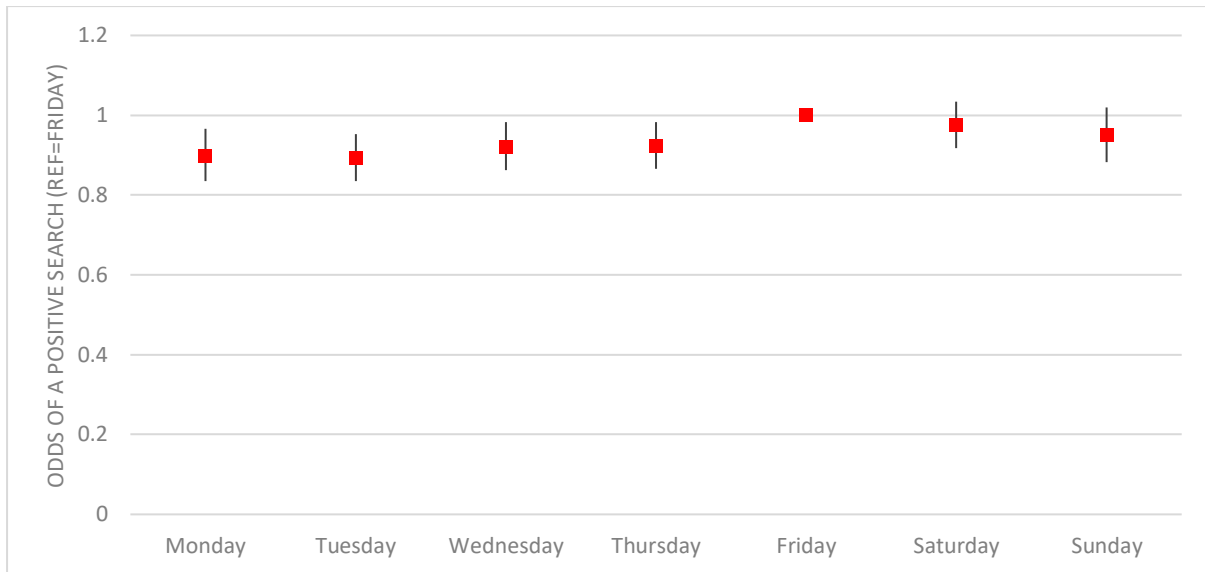


Furthermore, searches that happened in the afternoon (12-6pm) and evening (6pm to midnight) had greater odds of resulting in a detection than those that occurred in the twelve hours between midnight and midday. This is illustrated in Figure 7.5.

**Figure 7.5: Regression model predicting a positive search by time of day, controlling for other factors**
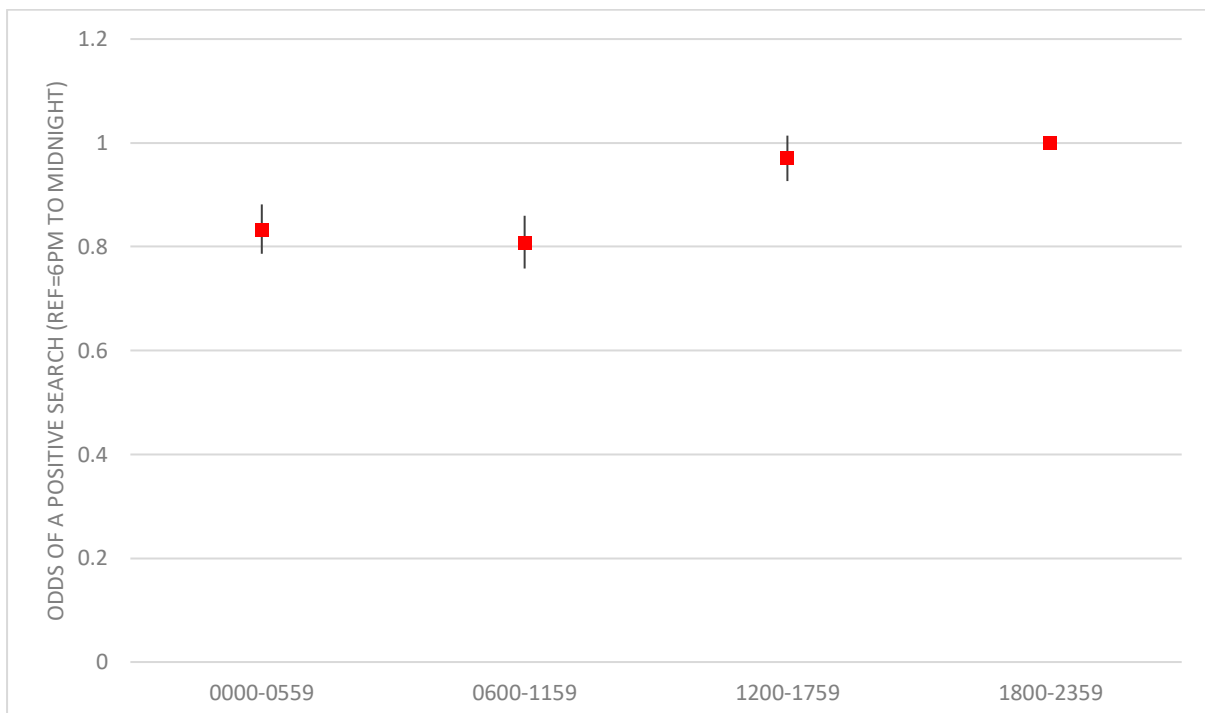
Since the vast majority of searches occur between midday and midnight, and at the weekends from Friday to Sunday, these findings suggest that officers are most successful in detecting items during periods that would typically be associated with more demanding periods during which criminal activity or anti-social behaviour may be greater. Whereas at 'quieter' times of the day or on 'less busy' days of the week searches are generally less successful. It is possible that different thresholds of suspicion are applied depending on the capacity of officers to deal with situations based on levels of demand and this may have a resultant impact on productivity (as measured by positive detection).

## 7.3.5 Effect of reason for search

Compared to searches involving drugs (which represented the highest volume overall), searches for stolen property had higher odds of resulting in a positive detection, as shown in Figure 7.6. Searches conducted under a Warrant (which were also mainly drug searches) as just as likely to be successful as standard drugs searches. However, searches conducted on suspicion of possession of an offensive weapon or for some other reason had far lower odds of resulting in a positive outcome compared to searches for drugs, stolen property or under warrant, even when taking account of other factors that determine success. This suggests that a lower threshold of suspicion may be applied for weapon searches and for searches for other reasons, although it is not possible to know this for certain without having further contextual information about the nature of these searches.

**Figure 7.6: Regression model predicting a positive search by reason for search, controlling for other factors**
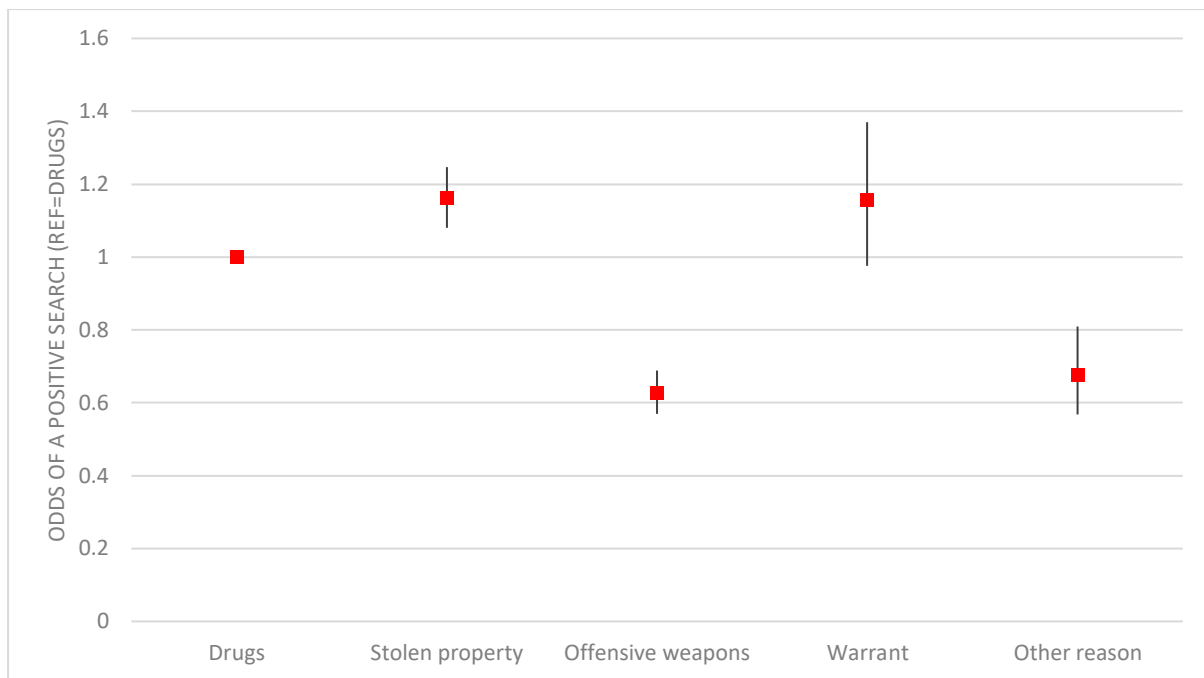


## 7.3.5 Effect of Police Division

Sections 2.3.2 and 2.3.3 of this report showed that there were considerable differences in search rates and positive detections across the thirteen Police Divisions.  In the six month review, it was noted that there were also significant differences in terms of the success rates when controlling for a range of other factors.  Replicating this analysis, Figure 7.7 shows the odds of a positive detection were considerably different depending on the Division in which they took place, all other factors considered.

As in the six month review, searches in Lanarkshire and Ayrshire Divisions had by far the greatest odds of a positive outcome compared to all other Divisions.  Whereas, Greater Glasgow, the North East and Dumfries & Galloway had the lowest odds of success.  The odds of a positive outcome were lower in Greater Glasgow than all other Divisions, except for the North East and Dumfries & Galloway.  There was no clear pattern according to Command Areas, which suggests that the reasons for these continued differences in success rate are more likely to be influenced by localised factors (i.e. within Division) relating to policing practice, performance or demand, or to contextual differences in the nature of crime-related problems for which there are no variables in the data.

**Figure 7.7: Regression model predicting a positive search by police Division, controlling for other factors**
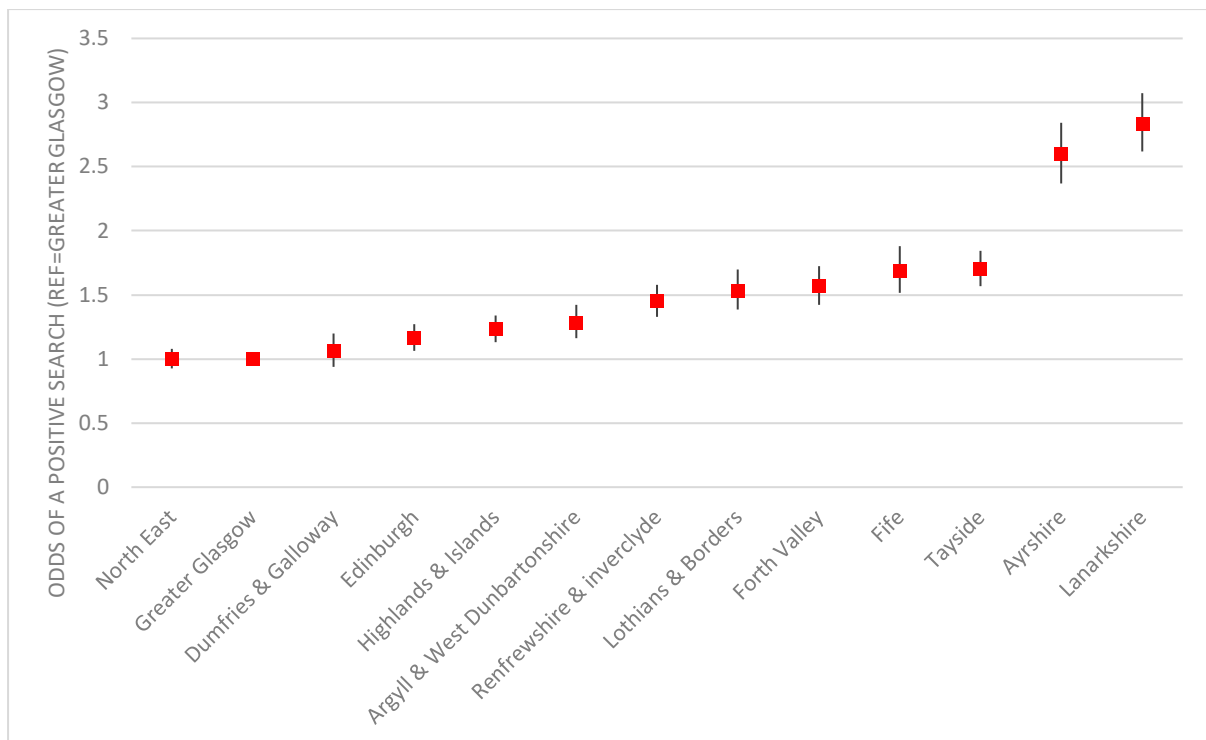


Finally, Figure 7.8 reveals that searches conducted in the twelve month period following the introduction of the Code of Practice had significantly greater odds of resulting in a positive detection than those conducted in the previous year. Indeed, the odds of a positive detection were 27% higher on average after the CoP came into operation. This finding was highly significant, even when controlling for all the other factors that were found to impact on detection rate. In other words, it appears that the introduction of the CoP did have an impact on improving detection rates. The reasons for this could include greater application of the rules of suspicion or more careful use of engagement with individuals prior to proceeding to search (which was a strong focus of the training introduced by Police Scotland prior to the introduction of the CoP).

**Figure 7.8: Regression model predicting a positive search by time period, controlling for other factors**
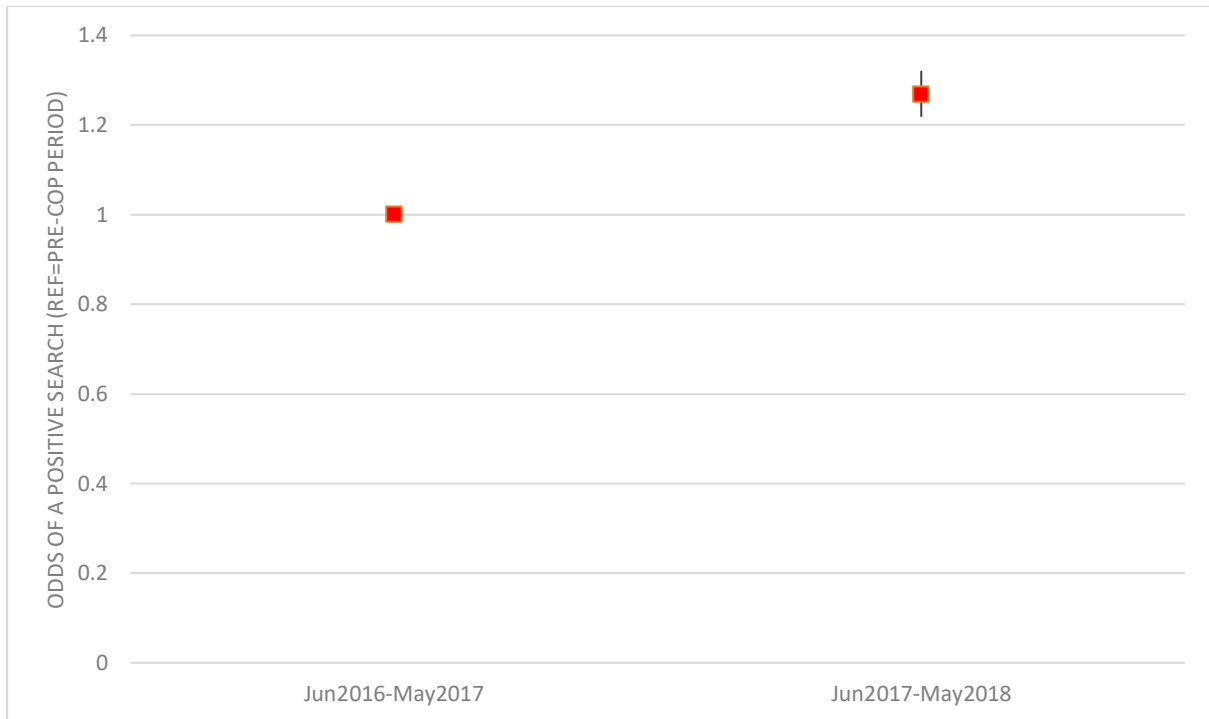


## 7.4   Summary of section 7

Regression analysis was used to examine the impact of three different aspects of searches on the odds of a positive outcome: the protected characteristics of the person who was searched; the factors relating to the search itself; and the time period of the search.  A key aim of this analysis was to establish whether the introduction of the CoP had an effect on positive outcomes which was over and above that of other factors that influence detection.  The results showed that positive outcomes varied significantly by age, sex and, to some extent, ethnicity even when other factors were taken into account.

The success of searches was also influenced to some extent by the time of day and day of the week when they were conducted, with evidence that searches conducted during busy periods of activity were more likely to be productive than those conducted during less demanding periods. Successful detection was found to be greater in the case of searches conducted for stolen property than for drugs, but searches conducted for offensive weapons or other reasons were far less likely to be successful. Even taking account of these other factors, there were considerable differences in the likelihood of a successful outcome based on the

Division in which the search took place.  Ayrshire and Lanarkshire stood out as especially successful, with the odds of a search being more than twice as high as those conducted in the least successful Divisions, which were Greater Glasgow, the North East and Dumfries & Galloway.  These continued geographical differences are most likely to be due to locally specific factors which may relate to operational policing and/or the nature of the problems faced by the police in these areas.

Finally, searches that were conducted in the twelve months following the introduction of the Code of Practice had on average 27% greater odds of resulting in a positive detection than those in the previous year.  This is despite the fact that a range of other factors influencing a positive detection were taken into account.  Therefore, there is strong evidence of a real, measurable improvement in the likelihood of a positive search during the period following the introduction of the CoP.  However, it cannot be determined from the data available within the NSSU database what specific factors may have led to this improvement.

## 8.    Conclusions

Following a period of significant consultation and scrutiny by an Independent Advisory Group on Stop and Search (IAGSS), a new Code of Practice (CoP) for Stop and Search in Scotland was introduced on the 11th of May 2017.  The then Cabinet Secretary for Justice, Michael Matheson MSP, commissioned a twelve month review of the CoP to examine any practical issues with its implementation and to identify remaining gaps in legislative provision.  The review was carried out through two research projects: a qualitative study undertaken by Ipsos Mori Scotland; and a quantitative study which is the focus of this report.

Overall, this report concluded that there was a significant reduction in the number of searches and seizures conducted within Scotland following the introduction of the Stop and Search Code of Practice (CoP). However, this reduction was part of an ongoing decline in encounters that started well before the introduction of CoP. It is almost certain that the criticism targeted at Police Scotland about the over-use of stop and search as a tactic by HMICS and the media in 2015, followed by an intense period of political and public scrutiny and the decision by the Cabinet Secretary for Justice to abolish consensual searching and introduce a CoP for stop and search, influenced the large scale reduction in encounters well before the CoP finally came into force.

This report also found a far greater proportionate reduction in police seizures of alcohol and tobacco products than searches over the two years studied in this review.  The reduction in the number of seizures was around three times larger than the reduction in statutory searches, although the absolute number of searches continued to be far greater. The large decline in seizures mainly occurred in Divisions in the West of Scotland, especially Greater Glasgow.  This is surprising given the historic problems of alcohol consumption and violence in western regions of Scotland, together with concerns expressed by policing representatives and other organisations in the public consultation period about the lack of a legal power to search for alcohol. This decline in the police use of seizures could not be explained by the analysis conducted for this report.

The decline in searches coincided with a significant increase in the success of search encounters.  Analysis showed that this was at least partly a direct effect of the introduction of the CoP, which suggests that they are being used more effectively and with a greater standard of

evidence in terms of reasonable suspicion. Positive detections increased across all search types, although searches for offensive weapons continue to be the least successful overall. Despite a large decline in the overall number of searches, the number of encounters in which an item was recovered had fallen by only a small amount, which is a further measure of the success of the CoP.

Analysis revealed considerable geographical variation in the use of search and seizure across Scotland. The number of searches and seizures was highest in the West Command Area during the twelve months prior to the introduction of the CoP, and this continued to be the case in the twelve months after. However, there was a far higher proportionate decline in both searches and, especially, seizures in the West compared to the East and North Command Areas. Patterns over time revealed substantial variation between Divisions in changing use and success of stop and search. This suggests that the new legislation and policy around stop and search may have been interpreted and adopted differently across Divisions.

The CoP introduced a requirement for police officers to issue a receipt following a search, and there was evidence that officers do this in the vast majority of cases. The most common reason for non-issue of a receipt was because the individual being searched refused to accept it or left the locus before the receipt could be issued. There was some Divisional variation in the likelihood of a receipt being issued, although very little overall difference in the reasons for non-issue of receipts. During the twelve months following the introduction of the CoP it was clear that officers had taken increasing steps to issue receipts retrospectively when they were not issued at the time. Although individuals have the right to obtain a copy of the record of their search encounter within 6 months, there were only 11 such requests in the twelve months following the introduction of the CoP.

The primary focus of this review was to consider four main concerns that were identified by the Independent Advisory Group on Stop and Search during their consultation phase. The main conclusions of the quantitative study against each of these concerns is set out below:

*i. Identify potential gaps in the legislation around young people and alcohol*

The police in Scotland can request that a young person surrenders alcohol to them; however, they do not have a specific legislative power to search young people for alcohol. During public consultation, this was raised as a concern amongst policing representatives who believed the abolition of consensual searching would leave them powerless to search young people in the event that they were suspected of carrying concealed alcohol, thus placing the young person, or others, at risk. They argued that existing powers to seize alcohol from young people under Section 61 of the Crime and Punishment (Scotland) Act 1997, and other alcohol byelaws, were insufficient to deal with the extent of the problem in Scotland. There was also some concern that there may be an increase in the use of arrests to deal with young people who refused to hand over alcohol, thus criminalising many young people. Others, however, argued that there was no strong evidence to suggest that an additional power to search young people for alcohol was necessary and that such a power may result in disproportionately high search rates amongst young people, which could damage relationships between young people and the police (see Murray and McVie 2016).

Section 3 of this report noted a longstanding decline in alcohol use amongst young people in Scotland, according to the Scottish Schools Adolescent Lifestyle and Substance Use Survey (Scottish Government 2016). During the twelve months following the introduction of the CoP, indicative data from the Information Services Division of the NHS showed that alcohol-related hospital admissions for all ages fell by a small, but significant, 2%. The decline for young people aged under 18 was greater, at 7%, although this was not statistically significant due to the small numbers involved. This represents a falling average of 48 to 44 admissions per month nationally. Similarly, Police Scotland management data showed that the number of alcohol-related incidents they recorded fell significantly, by 5%. The decline for young people aged under 18 was also 5%; although, again, this was insignificant due to small numbers. This represents a falling average of 194 to 184 per month nationally.

These indicative contextual data suggest that there was a small reduction in public service demand in relation to alcohol-related problems in Scotland in the twelve months following the introduction of the CoP, and that the trends amongst young people were broadly in line

with wider population trends.  These trends do not appear to provide any underlying behavioural explanation for a dramatic change in the police use of alcohol seizures amongst young people.  Nevertheless, police use of alcohol seizures during the twelve months after the introduction of the CoP declined by 63% overall, and by 49% for incidents involving young people.  The very large reduction in the use of seizures appears to be out of proportion to the much smaller reduction in alcohol-related police recorded incidents and hospital admissions, although other police incident data did suggest larger reductions in alcohol-related problems (albeit data were not available by age).  In addition, the smaller proportionate reduction in seizures amongst young people does not reflect the wider trends, in which alcohol-related problems had reduced by a similar amount to, if not more than, the population as a whole.  This may, however, reflect greater perceived risk of alcohol possession amongst young people on the part of the police.

The striking post-CoP decline in alcohol seizures amongst young people was almost entirely due to a change in policing activity in the West of Scotland. In particular, there was an astonishing 97% reduction in the use of seizures in the Greater Glasgow Division – an area in which youth alcohol consumption has been recognised as an issue of significant concern.  Given that the number of alcohol-related incidents involving young people recorded by the police in the Greater Glasgow Division fell by only 7% following the introduction of the CoP, this large reduction in seizures cannot be explained by behavioural change or seasonal trends and suggests either a real change in policing activity that was not directly due to the introduction of the CoP or a reduction in the recording of alcohol seizures which started prior to the introduction of the CoP.  It would be difficult to justify the introduction of a power of search for alcohol on the basis of these data.

It is clear that the use of alcohol seizures has a particular degree of seasonality, with sharp spikes of activity during warmer months, especially influenced by large events or social gatherings of young people.  Evidence provided by Police Scotland suggests that the use and recording of alcohol seizures is manageable during routine street-based policing activities; however, it becomes more problematic during these large events both in terms of applying seizure legislation and recording activity.  It is during these types of situation that a legislative power of search may be most beneficial to police officers.  One option would be to create a power similar to that of Section 60 of the Criminal Justice and

Public Order Act 1994, in which the power of search for alcohol would be context specific and require prior authorisation.

Arguments made prior to the introduction of the CoP that existing powers to seize alcohol from young people under Section 61 of the Crime and Punishment (Scotland) Act 1997, and other alcohol byelaws, would be insufficient to deal with the extent of the problem in Scotland appear to be largely unfounded. Unfortunately, it was impossible to determine whether there had been an increase in the use of arrests to deal with young people who refused to hand over alcohol as Police Scotland could not provide these data. It was clear, however, that statutory searching was not being used as a mechanism to indirectly search for alcohol.

ii.   *Identify other potential gaps in the legislation or lack of clarity in the Code of Practice*

Section 65 of the Criminal Justice (Scotland) Act 2016 provides that officers may only search a person where there is an express power to do so. During the consultation period, concern was expressed about the lack of an explicit power of search in situations where no express power existed but police officers believed that a search intervention was necessary to preserve life. It is important to understand that the concern relates mainly to incidents which occur in a private place, and in circumstances where officers have no suspicion that an offence has been or will be committed. In an attempt to clarify the position, paragraph 3.4 of the Code stated that officers must take all steps necessary to protect life as stipulated under Sections 20 and 32 of the Police and Fire Reform (Scotland) Act 2012. However, some policing representatives felt that this reflected an ambiguity within the current legislation. In particular, there was concern that officers should have full reassurance to conduct searches in such extreme situations.

Section 4 of this report found that there was very little overall change in the relative distribution of statutes used to search during the twelve months before and after introduction of the CoP. A total of 34 searches were recorded as part of an intervention under Sections 20 and 32 of the Police and Fire Reform (Scotland) Act 2012 to protect life. Albeit a small number, these do represent extremely serious cases, and so this does reflect a potential issue that may need to be addressed through some further legislative change. It was not possible from this quantitative review to identify any other legislative gaps or lack of clarity in the Code of Practice (although some issues were raised in the qualitative study).

## iii. Identify any increase in the use of Section 60 Criminal Justice and Public Order Act 1994

There was some concern that the abolition of non-statutory searches in Scotland could lead to an increase in the number of searches conducted under Section 60 of the Criminal Justice and Public Order Act 1994. Often known as 'no suspicion' or 'discriminatory' searches, police forces in England and Wales have come under significant criticism for conducting searches under Section 60 as it is seen as a way of widening the scope for searching while reducing the need for reasonable suspicion. Section 5 of this report found that there had been no increase in the number of Section 60 authorisations following the introduction of the CoP. There is, therefore, no evidence of attempts by Police Scotland to circumvent the CoP by creating wider opportunities for stop and search.

## iv. Examine use of search involving individuals with protected characteristics

Finally, research conducted on stop and search in Scotland highlighted the disproportionate use of the tactic for dealing with children and young people (Murray 2014). This caused concern during the consultation period amongst young people themselves and amongst practitioner groups who work with young people because it is well known that negative forms of policing engagement can have a deleterious effect on young people's attitudes to and relationships with the police. In an effort to reduce unnecessary use of stop and search for children and young people, Section 7 of the new CoP provide specific guidance on the issue of searches involving children and young people, and Police Scotland rolled out a programme of face-to-face training for all officers (at Inspector level or below) aimed at improving methods of engagement with young people. The Police Scotland training also examined the issue of unconscious bias when dealing with any individuals with protected characteristics. A key aim of the quantitative review was to examine whether there were any issues relating to age, sex or ethnicity that may require further training or guidance for police officers.

Section 6 of this review provides strong evidence that the introduction of the CoP helped to reduce areas of disproportionality, and improve success rates, in terms of searches and protected characteristics. Levels of search had reduced across all age groups, all ethnic groups and for both men and women. Young people continued to be most likely to be searched, although the degree of disproportionality in terms of

targeting this group declined significantly in the twelve months following the introduction of the CoP. Men continued to be more likely to be searched than women, although there was a larger rate of decline amongst men across all age groups. This was largely explained by the introduction of recording for searches conducted under Warrant, which made a greater impact on female searches as it inflated already small numbers.

Searches predominantly involved White people both before and after the introduction of the CoP, with the overall profile of searches more or less matching the population profile for Scotland. The number of searches had reduced across all ethnic groups, but the largest reductions involved people who self-defined as non-White than White. There was an increase in non-recording of ethnic group during searches following the introduction of the CoP, which was identified in the six month review report, but there was evidence that Police Scotland had taken steps to rectify the situation by issuing further guidance to officers.

There was a significant increase in positive detection rates for all age groups after the introduction of the CoP. For those aged 18 or over, the positive detection rate was virtually identical; however, positive detection rates continue to be lowest for those aged under 18. This indicates that the threshold of reasonable suspicion is still being applied less stringently and evenly amongst young people, so there remains room for improvement in conducting searches amongst this group. Searches involving females were significantly less likely to result in a positive outcome than those involving males – this was especially true for drug-related searches (including those conducted under Warrant). Strip searches (where were overwhelmingly conducted for drugs) were also significantly less positive amongst women compared to men. Detection rates had improved across all ethnic groups, especially those from Mixed or Other ethnic groups, although numbers in these groups were small.

Overall, the reduction in the number of searches following the introduction of the CoP coincided with an increase in positive outcomes across all groups with protected characteristics. Nevertheless, there continue to be signs of inequality between some groups in terms of who is searched and how successful those searches are, which could benefit from some further guidance or training.

## Concluding thoughts

Overall, this report suggests that the introduction of a CoP for stop and search was successful in terms of achieving a higher level of positive outcomes and a greater degree of proportionality in terms of searches by sex, age group and ethnic identity. The evidence suggests that searching in Scotland is now being conducted more effectively and with a greater standard of evidence in terms of reasonable suspicion. There remain some areas of concern, however, such as the greater use of strip searches for women and the significantly lower positive outcomes for searches involving young people. The apparent decline in alcohol seizures amongst young people in the West of Scotland – especially Greater Glasgow – may also be an issue of concern, unless it reflects a change in recording practice. In terms of recommendations for legislative change, this report found no strong evidence to support the introduction of a power to search young people for alcohol; although, there may be a case for giving Police Scotland powers to deal with large and spontaneous gatherings of young people where alcohol use causes concern for public safety. There may also be a need for some further legislative amendments to reassure officers of their powers to search where there is a concern for protection of life. It seems unlikely, however, that there is a need for a further widespread review of the use of stop and search in Scotland and that any ongoing monitoring should be conducted through normal scrutiny channels.

## Appendix: Results of regression model

| Variables entered into model | Logit coefficient | Standard Error | Wald | P value | Odds Ratio | Lower 95% CI | Upper 95% CI |
|---|---|---|---|---|---|---|---|
| **Male (Reference=Female)** | 0.078 | 0.029 | 7.101 | 0.008 | 1.081 | 1.021 | 1.145 |
| **Under 16** | -0.55 | 0.05 | 120.368 | 0 | 0.577 | 0.523 | 0.637 |
| **16-17** | -0.276 | 0.042 | 42.431 | 0 | 0.759 | 0.698 | 0.824 |
| **18-19 (Reference)** | | | 346.182 | 0 | | | |
| **20-24** | 0.163 | 0.036 | 21.023 | 0 | 1.177 | 1.098 | 1.262 |
| **25-29** | 0.135 | 0.038 | 12.402 | 0 | 1.144 | 1.062 | 1.233 |
| **30-39** | 0.05 | 0.035 | 2.015 | 0.156 | 1.051 | 0.981 | 1.126 |
| **40-49** | 0.009 | 0.039 | 0.049 | 0.825 | 1.009 | 0.934 | 1.089 |
| **50-59** | 0 | 0.055 | 0 | 0.998 | 1 | 0.898 | 1.113 |
| **60+** | -0.018 | 0.133 | 0.019 | 0.891 | 0.982 | 0.756 | 1.275 |
| **White (Reference)** | | | 101.644 | 0 | | | |
| **Asian** | 0.014 | 0.063 | 0.047 | 0.829 | 1.014 | 0.896 | 1.146 |
| **African/Caribbean/Black** | -0.043 | 0.081 | 0.278 | 0.598 | 0.958 | 0.817 | 1.123 |
| **Mixed/Other ethnic group** | -0.293 | 0.071 | 17.236 | 0 | 0.746 | 0.649 | 0.856 |
| **Ethnicity unknown** | -0.447 | 0.048 | 85.561 | 0 | 0.639 | 0.581 | 0.703 |
| **Monday** | -0.107 | 0.037 | 8.256 | 0.004 | 0.898 | 0.835 | 0.966 |

| | B | SE | Wald | p | Exp(B) | Lower | Upper |
|---|---|---|---|---|---|---|---|
| **Tuesday** | -0.115 | 0.034 | 11.545 | 0.001 | 0.892 | 0.835 | 0.953 |
| **Wednesday** | -0.083 | 0.033 | 6.331 | 0.012 | 0.92 | 0.863 | 0.982 |
| **Thursday** | -0.08 | 0.032 | 6.173 | 0.013 | 0.923 | 0.866 | 0.983 |
| **Friday (Reference)** | | | 18.03 | 0.006 | | | |
| **Saturday** | -0.027 | 0.031 | 0.766 | 0.381 | 0.974 | 0.917 | 1.034 |
| **Sunday** | -0.053 | 0.037 | 2.014 | 0.156 | 0.949 | 0.882 | 1.02 |
| **0000-0559** | -0.183 | 0.029 | 40.177 | 0 | 0.833 | 0.787 | 0.881 |
| **0600-1159** | -0.214 | 0.032 | 44.009 | 0 | 0.807 | 0.758 | 0.86 |
| **1200-1759** | -0.031 | 0.023 | 1.804 | 0.179 | 0.97 | 0.927 | 1.014 |
| **1800-2359 (Reference)** | | | 75.412 | 0 | | | |
| **Drugs (Reference)** | | | 137.54 | 0 | | | |
| **Stolen Property** | 0.149 | 0.036 | 16.971 | 0 | 1.161 | 1.081 | 1.247 |
| **Offensive Weapons** | -0.468 | 0.048 | 95.182 | 0 | 0.627 | 0.57 | 0.688 |
| **Warrant** | 0.145 | 0.087 | 2.805 | 0.094 | 1.156 | 0.976 | 1.37 |
| **Other Reason** | -0.388 | 0.09 | 18.49 | 0 | 0.678 | 0.568 | 0.81 |
| **North East** | -0.001 | 0.034 | 0.001 | 0.976 | 0.999 | 0.934 | 1.069 |
| **Tayside** | 0.531 | 0.04 | 180.455 | 0 | 1.701 | 1.574 | 1.838 |
| **Highlands & Islands** | 0.208 | 0.04 | 27.518 | 0 | 1.232 | 1.139 | 1.331 |
| **Forth Valley** | 0.45 | 0.047 | 93.486 | 0 | 1.568 | 1.431 | 1.718 |

| | B | S.E. | Wald | Sig. | Exp(B) | Lower | Upper |
|---|---|---|---|---|---|---|---|
| **Edinburgh** | 0.15 | 0.043 | 12.384 | 0 | 1.162 | 1.069 | 1.263 |
| **Lothians & Borders** | 0.428 | 0.049 | 77.804 | 0 | 1.535 | 1.395 | 1.688 |
| **Fife** | 0.524 | 0.052 | 101.507 | 0 | 1.689 | 1.525 | 1.87 |
| **Greater Glasgow (Reference)** | | | 1206.221 | 0 | | | |
| **Ayrshire** | 0.953 | 0.045 | 445.044 | 0 | 2.595 | 2.375 | 2.835 |
| **Lanarkshire** | 1.042 | 0.04 | 691.363 | 0 | 2.836 | 2.624 | 3.065 |
| **Argyll & West Dunbartonshire** | 0.251 | 0.048 | 27.11 | 0 | 1.285 | 1.169 | 1.413 |
| **Renfrewshire & Inverclyde** | 0.371 | 0.041 | 81.545 | 0 | 1.449 | 1.337 | 1.57 |
| **Dumfries & Galloway** | 0.061 | 0.059 | 1.061 | 0.303 | 1.063 | 0.947 | 1.193 |
| **Jun2017-May2018 (Reference=Jun2016-May2017)** | 0.238 | 0.021 | 131.511 | 0 | 1.268 | 1.218 | 1.321 |
| **Constant** | -0.953 | 0.047 | 407.482 | 0 | 0.386 | | |

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# Twelve Month Review of the Code of Practice for Stop and Search in Scotland

## Qualitative Report

Twelve Month Review of the Code of Practice for Stop and Search in Scotland: Qualitative Report

**Ciaran Mulholland and Carolyn Black**
**Ipsos MORI Scotland**
with
**Professor Ben Bradford**
**University College London**

**Table of Contents**

Page

**Acknowledgements**

## Executive Summary

### Aims of the 12-month review

The statutory Code of Practice (CoP) governing police use of stop and search was enacted in Part 2 of the Criminal Justice (Scotland) Act 2016, and came into operation in May 2017. Following a six-month interim review of the CoP, conducted by Professor Susan McVie, it was recommended that the 12-month review should examine evidence on how effectively the CoP was operating, with a particular focus on the following areas:

- identifying any potential gaps in the legislation around young people and alcohol
- identifying any other potential gaps in the legislation or lack of clarity in the CoP
- searches of individuals with protected characteristics.

### Methodology

The review was carried out using a qualitative approach, with five groups of participants: police officers, police supervisors, representatives from the Police Scotland National Stop and Search Unit (NSSU), young people aged 16-19 who had witnessed or experienced a stop and search since the CoP was introduced, and practitioners working with young people or other vulnerable groups that were more likely than average to have experienced a stop search.

To allow for a focussed, in-depth exploration of experiences and perceptions of stop and search, a targeted case study approach was taken. Participants were selected from three areas across Scotland, specifically chosen due to the high rates of stop and search in the area. The chosen case study areas were: Peterhead and Fraserburgh; Falkirk; and Southside Central (the Govanhill area) in Glasgow.

This review was carried out using a qualitative approach. Qualitative samples are generally small, and are designed to ensure a range of different views and experiences are captured. It is not appropriate given the number of interviews conducted to draw conclusions from qualitative data about the prevalence of particular views or experiences nor is it appropriate to extrapolate these views to all police officers, across all divisions within Scotland.

## Key findings

### The stop and search procedure

- Feedback from police participants indicated that the key stages of the stop and search procedure had remained largely unchanged since the introduction of the CoP. The main exceptions to this were the issuing of receipts and entering details into the stop and search database, with police raising few concerns about these changes.

- Police stressed that one of the key stages of the procedure was the establishment of reasonable grounds for suspicion. While all officers were conscious of the requirement to establish reasonable grounds for suspicion, some felt this restricted their ability to search individuals in certain circumstances, particularly since the cessation of non-statutory consensual searches.

- Generally, officers felt that guidance on reasonable grounds was clear and they felt confident using their judgement on how to apply the test in practice. However, there was a sense that the test for reasonable grounds was primarily based on the individual judgement of each officer, and that the CoP could not be prescriptive about what those grounds were.

- Young people, for their part, were generally negative about their experience of being stopped and searched, particularly three key elements of the procedure: the way police spoke to them; the public nature of the search which caused them to feel embarrassed; and the justification for the search itself which they tended to say was unfair and unwarranted. Such views tended to be framed within negative overall opinions of the police, either as a result of past personal experiences or more deep-rooted attitudes towards police in general.

### Volume of use and outcomes from stop and search

- Among the NSSU and other police participants, it was widely perceived that there had been a reduction in the number of overall stop searches in Scotland over time. It was noted that this change in approach had been observed in advance of the implementation of the CoP, and particularly since the cessation of the non-statutory consensual searches. The impact of this cessation, and associated reduction in stop searches, had been more clearly felt in the West than in the North or East.

- In terms of police views on the extent to which stop and search was used, opinions varied between those who felt it was used as much as it should be, to those who felt it was under-used.  Among those who felt it was not used enough, there was a perception that the requirement for all searches

to be statutory-based could create a degree of caution around using the power. This caution could be compounded by a fear about future ramifications for the officers in question if their justification for the search might later be viewed as unfounded.

- In terms of young people's views, several felt that stop and search was over-used, and perceived it to be targeted towards people of their age group. This view was supported by practitioners working with young people.

- Two of the key aims of stop and search are to help prevent and detect crime; police gave mixed views on the effectiveness of stop and search in achieving these aims. Where searches had resulted in the recovery of an item, this had the direct impact of detecting and solving the relevant crime and increasing public safety by removing the prohibited item from the individual. However, police found it more difficult to say whether or not stop and search had deterred individuals from carrying out criminal behaviour.

**Searches of individuals with protected characteristics**

- From a police perspective, there was no discernible difference in the rate of searches of children and young people since the introduction of the CoP. However, in the West it was noted that the rate of these searches had decreased since the cessation of non-statutory searches.

- Police largely felt confident in their approach to searching children and young people, though stressed the importance of communicating in an appropriate way and managing the situation in order to minimise any potential conflict or distress for the young person.

- In terms of the guidance available about searches of children and young people, police had mixed views, with some feeling that it did not go far enough in providing specific advice on how to engage with individuals of this age group.

- Young people were generally negative about their experience of being stopped and searched, with some feeling they were "picked on" and targeted by the police, a sentiment that was supported by practitioners.

**Young people and alcohol**

- Searching of young people for alcohol did not emerge as a particular issue in the current review. This was true both of police and young people who participated in the research.

- Police were largely aware that young people and alcohol did not fall within the remit of a stop and search procedure, and that they did not actually have a power to search young people that they suspected of having alcohol. Rather than feeling conflicted or unclear of their grounds when encountering young people with alcohol, they instead relied on their discretion and their policing skills to manage the situation. Invariably, this resulted in the young person surrendering the alcohol, therefore removing the need for an arrest to be made.

- Young people, for their part, found dealing with the police when they had alcohol in their possession much less problematic than being stopped and searched. They also cited examples of situations where they were seen drinking on the street and were simply asked to hand over the alcohol in their possession, as opposed to being searched.

- The dominant view from police participants was that the guidelines on dealing with young people and alcohol were clear and this was in line with the experiences they described. That said, there was a sense, albeit not a particular emphatic one, that the power to search for alcohol would help to close the potential "loophole" that young people could be arrested if they refuse to hand over alcohol.

**Other gaps in the legislation**

- The research explored whether or not the current legislation had left significant gaps in the police's powers to stop and search, and whether this had resulted in searches being carried out that were considered justifiable by officer, but not covered by legislative powers. Potential concern over these gaps were not, however, borne out in this research.

- No examples were given of searches having been carried out outside of Section 65 of the Criminal Justice (Scotland) Act 2016, or in breach of the CoP. Where potential gaps in legislation were noted, these were in relation to powers to carry out a search of someone in private property when there was a need to protect life and to search for pyrotechnics; though actual experience of these scenarios was limited.

- While there was concern that, prior to the addition of paragraph 3.4 of the Code of Practice, police may have been restricted from searching an individual in private premises where someone was at risk of hurting themselves or someone else, officers were aware they now had the power to carry out a search for the purpose of protecting life (under the Police and Fire Reform (Scotland) Act 2012) and felt that this would take precedence, allowing them to intervene in these situations as needed. With respect to pyrotechnics, experience of this was again limited, though

it was noted that police were without a power to search individuals for these items and that power to do so could prevent potential harm being caused.

- In relation to dealing with vulnerable individuals, police felt satisfied with the guidance available on how to manage these situations, and did not identify any particular gaps in the legislation in this regard. It was suggested, however, that the approach taken to these searches was based more on experience and general policing skills, rather than specifically being attributed to the CoP.

# 1. Introduction and background

## 1.1 Introduction

The police power to stop and search people in public places was, until recently, relatively uncontroversial in Scotland. In stark contrast to the situation in England and Wales, and in relation to 'stop and frisk' powers in the United States, police in Scotland enjoyed relatively uncontested formal and informal powers to stop, question and seize goods in encounters legally and substantively different to those of arrest. This changed in 2014, when ground-breaking work by Kath Murray at the University of Edinburgh (Murray 2014) revealed the extent of police use of stop and search powers by Police Scotland and its legacy forces. Levels of stop and search in Scotland were in some cases remarkable: per capita rates in some areas exceeded those of London and New York, with young men particularly prone to being stopped (ibid.). Yet there was relatively little public debate about, or even awareness of, this mode of police activity; unlike the situation in England and Wales. For example, police data on stop and search was not made publicly available on any regular basis.

Since 2014, there has been an on-going programme of academic research and policy development around stop and search in Scotland, which has revolved most importantly around three issues: the sheer level the use of stop and search powers had reached; the use of non-statutory 'consent-based' searches; and a disproportionate focus on young people, particularly young men. A central component of this process was the establishment by the Cabinet Secretary for Justice of the Independent Advisory Group on Stop and Search (IAG) in 2015. The IAG recommended the abolition of non-statutory 'consent-based' searches, the regular publication of stop and search data by Police Scotland, and a statutory Code of Practice (CoP) governing use of the power. These changes were enacted in the Criminal Justice (Scotland) Act 2016, and the CoP came into operation in May 2017. It is thus within a much altered, and still fluid, political and regulatory climate that the project described below is located.

The CoP was subject to a six-month interim review, conducted by Professor Susan McVie and published in 2018. The review concluded that: police use of stop and search did not alter substantially after the publication of the CoP, largely because use had fallen substantially before that time; the proportion of positive outcomes had increased as use fell; that young people continued to be disproportionately more likely to be stopped; and that there was significant geographic variation in use of the power across the country. It is worth noting at the outset that within the UK none of these three developments is unique to Scotland – indeed, all apply equally well to the situation in England and Wales, although Northern Ireland remains an outlier (Topping and Bradford 2018).

## 1.2 Aims of the 12 Month Review

The six-month interim review made a series of recommendations about areas the 12-month review should explore further. The purpose of the 12-month review was to examine evidence on how effectively the CoP was operating, with a focus on four key areas:

- identifying any potential gaps in the legislation around young people and alcohol;
- identifying any other potential gaps in the legislation or lack of clarity in the CoP;
- whether there has been any increase in the use of Section 60 of the Criminal Justice and Public Order Act 1994;
- searches of individuals with protected characteristics.

On commencement of the study, and in discussion with the IAG, it was agreed that there were so few examples of Section 60 searches in practice that this area was no longer a requirement for this strand of the research[1]. The remaining three areas were therefore the focus of this review.

The 12-month review was carried out in three separate strands; a quantitative strand of the review was carried out by Professor Susan McVie, exploring the volume, trends, and patterns of stop and searches in Scotland; an internal review of stop and searches by Police Scotland; and this qualitative strand carried out by Ipsos MORI Scotland in partnership with Professor Ben Bradford. The aims of the qualitative research were three-fold:

a) to gather information on the experiences and views of police officers who have been involved in conducting, supervising or authorising searches during the first year of implementation of the CoP;
b) to gather information about the experiences, perceptions and views of young people who have experienced or witnessed stop and search taking place during the first year of implementation of the CoP; and
c) to gather information from other stakeholder groups, including practitioners who work with children and young people, to ascertain their views and perceptions about any changes that have occurred since the introduction of the CoP.

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[1] As noted in the quantitative 12 month review, data provided by the National Stop and Search Unit showed there had been only three authorisations under Section 60 since the implementation of the CoP, providing evidence that there has been no increase in the use of Section 60 authorisations as a way of creating wider opportunities for search under the CoP.

## 1.3   Methodology

The review was carried out using a qualitative approach, with five distinct groups of participants: police officers, police supervisors, representatives from the Police Scotland National Stop and Search Unit (NSSU), young people aged 16-19 who had witnessed or experienced a stop and search since the Code of Practice was introduced, and practitioners working with young people or other vulnerable groups that were more likely than average to have experienced a search.

To allow for a focussed, in-depth exploration of experiences and perceptions of stop and search, a targeted case study approach was taken. Participants were selected from three areas across Scotland, specifically chosen due to the high rate of stop and search in the area, based on data available in the National Stop and Search Database (as at June 2018). A high prevalence of stop and search allowed a greater chance of identifying and recruiting young people who had experienced stop and search, and correspondingly police officers who had recently used the power. Data used to identify the case study areas is summarised below, based on the number recorded seizures and searches among those aged 18 and under.[2]

**Table 1.1 – Number of recorded searches and seizures of those aged 18 by command area (March 2017 – April 2018)**

| Area | Number of cases (top 5 highest shown for each Command Area) |
| --- | --- |
| **North Command Area** | |
| Inverurie and District | 178 |
| George St/Harbour (Aberdeen) | 109 |
| Peterhead (North and South combined) | 100 |
| Inverness Central | 81 |
| Fraserburgh and District | 76 |
| **East Command Area** | |
| Falkirk (North and South combined) | 77 |
| Edinburgh City Centre | 72 |

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[2] Data sourced at the National Stop and Search Database (period, March 2017- April 2018). Available at http://www.scotland.police.uk/about-us/police-scotland/stop-and-search/stop-and-search-data-publication/

| | |
|---|---|
| Almond (Edinburgh) | 67 |
| Bathgate | 54 |
| Galashiels and District | 53 |
| **West Command Area** | |
| Southside Central (Glasgow) | 195 |
| Anderston/City/Yorkhill (Glasgow) | 148 |
| Clarkston, Netherlee and Williamwood (East Renfrewshire) | 115 |
| Giffnock and Thornliebank (East Renfrewshire) | 111 |
| Pollokshields (Glasgow) | 89 |

In addition to the prevalence of searches, other practical factors were considered in the choosing of case study areas, including: achieving a mix of large and small urban areas; likelihood of a high footfall of young people that could be recruited to take part in an interview over the course of a day; and their proximity to Police Scotland stations where fieldwork with police would be carried out. Taking this range of considerations on board, and to allow for a spread across the three Police Scotland Command Areas, the chosen case study areas were:

- North: Peterhead and Fraserburgh[3]

- East: Falkirk

- West: Southside Central Glasgow (the Govanhill area).

### 1.3.1 Sampling

While qualitative research does not aim to provide findings that are in any way representative, some steps were taken to ensure a range of different perspectives were represented. Beyond the use of a case study approach to account for regional variation, the recruitment aimed to achieve a mix of:

- police officers from different units, including both community based officers and those from response units, and both those working in uniform and in plain clothes

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[3] Young people were interviewed in Peterhead, but police were interviewed in Fraserburgh (with representative from officers that also covered the Peterhead area).

- both female and male young people who had witnessed or experienced a stop and search, including those from different ethnic backgrounds

- practitioners working with a range of different potentially vulnerable groups, including young people, homeless individuals and those with substance use problems.

### 1.3.2 Recruitment

A range of techniques was used in recruiting participants for the research, tailored to the different audiences.

- Police Scotland representatives were recruited with the assistance of the NSSU and via lead contacts within each of the three case study areas. Police officers and supervisors were asked to attend the relevant police station on a specific day, allowing the research team to conduct focus groups and interviews over the course of that day. Although research was carried out within police stations located in the case study areas, officers and supervisors that participated in each area included representatives from a range of divisions, to allow for representation from a wider geographical area.

- Young people were recruited through a 'hall-testing' on-street approach. The research team based themselves in a central venue in each study area, with recruiters stationed in the immediate vicinity. Recruiters approached young people and invited them to participate, using a specially designed questionnaire which screened for those who had experienced, or had witnessed, stop and search within the last 12 months. Where a participant had experienced multiple incidences of stop and search, they were asked to describe the most recent. Each young person that participated in an interview was offered a £20 voucher as a 'thank you' for their time.

- Practitioners were recruited primarily through direct email and telephone contact, from a compiled list of professionals working with young people and other potentially vulnerable groups such as homeless adults, adults with substance use issues, and BME individuals in the three areas, identified through desk-based research. A supplementary snowball approach was also used, capitalising on participants' networks and specialist knowledge. While efforts were made to ensure interviewees were based as close as possible to the selected case study areas, in order to speak to as many relevant stakeholders as possible and to capture a variety of different perspectives, we allowed for a degree of flexibility in the locations of practitioner interviews, including some practitioners based in Edinburgh to inform the Falkirk case study, and some working more broadly across Aberdeenshire to inform the Peterhead/Fraserburgh case study.

### 1.3.3 Fieldwork

Fieldwork was conducted in September and early October 2018. Two days were spent in each of the case study areas, with additional fieldwork carried out by telephone with participants who were unable to attend on fieldwork days. In total, the fieldwork comprised:

- 3 mini groups and 10 in-depth interviews with police

- 3 mini groups and 2 in-depth interviews with police supervisors

- 54 semi-structured interviews with young people, across the three case study areas

- 9 in-depth interviews with practitioners working with young people and other potentially vulnerable groups, across the three areas

- and 3 in-depth interviews with representatives from the NSSU.

All the interviews with young people were conducted face-to-face, and all interviews with practitioners and NSSU staff were conducted by telephone at a time of their convenience, minimising any burden on participants; interviews with police officers and supervisors were conducted in both modes, for the convenience of the participant and therefore to maximise participation rates. The Discussion Guides used in interviews are listed in the Appendix.

Young people who participated were given an information sheet about the research and asked to sign a consent form prior to their interview, as well as contact details of organisations offering support and advice on completion of the interview.

### 1.3.4 Analysis

All interviews and focus groups were audio-recorded with the consent of participants, and detailed notes were made by the researchers. All police interviews were transcribed for analysis purposes.

Interview and focus group notes, transcriptions and recordings were then systematically analysed to identify key themes emerging in relation to each question in the discussion guide, along with the key points relating to the overall aims of the review.

### 1.4   Reporting conventions and structure

### 1.4.1 Reporting conventions

As noted above, this review was carried out using a qualitative approach. Qualitative samples are generally small, and are designed to ensure a range of different views and experiences are captured. It is not appropriate given the number of interviews conducted to draw conclusions from qualitative data about the prevalence of particular views or experiences. As such, quantifying

language, such as '*all*', '*most*' or '*a few*' is avoided as far as possible when discussing qualitative findings, though where an opinion has been made by just one participant, this is made clear.

In order to protect anonymity, participants are identified using anonymous titles only, and quotes from police are not attributed to specific case study areas (given the small numbers of participants in each area, a job title in combination with the location could easily be identifying).

In this report, reference to 'police' and 'the NSSU' means the representatives that participated in the review, rather than the views of Police Scotland or the NSSU as a whole. Similarly, references to 'young people' relates to those who participated in the research, and does not claim to represent the wider views of young people in the case study areas or beyond.

### 1.4.2 Report structure

The remainder of this report is structured as follows:

- Chapter 2 describes **the current stop and search procedure**, noting any changes in the process since the CoP, details of the current oversight of the process, and training provided to officers

- Chapter 3 outlines perceptions on **level of use and impact of stop and search,** specifically the volume of use, how that has changed over time, and the perceived effectiveness of the power

- Chapter 4 considers the research question relating to **searches of individuals with protected characteristics**

- Chapter 5 considers views on searches of **young people for alcohol** drawing on the experiences of both police and young people

- Chapter 6 includes views on any **other perceived gaps in the legislation or lack of clarity in the CoP**, including around interaction with vulnerable individuals.

- Chapter 7 discusses the **conclusions** from the review, by revisiting the three key research questions.


## 2. The stop and search procedure

### 2.1   Introduction

This chapter describes how the stop and search procedure currently works, and the extent to which it has been carried out in line with the CoP. It then outlines the current structure in place to oversee use of the procedure, and views about the training provided to officers carrying out stop and search.

## 2.2 The current procedure

Feedback from police and the NSSU suggested that stop and search was generally being carried out in line with the CoP, though this was not always supported by the accounts of young people. Views on each stage of the procedure are explored in more detail in the sections below.

### 2.2.1 Summary of key stages in the procedure

Based on feedback from both police and young people, stop and search was primarily carried out where the individual was suspected of carrying drugs, an offensive weapon, or stolen property. Police noted that drugs were the most common reason for searches overall (supporting findings from quantitative analysis), though this varied depending on the area and the unit in question (e.g. officers from violent crime teams said they were more likely to be searching for offensive weapons than drugs).

The key stages in the stop and search procedure, as described by police representatives, are summarised in Figure 2.1 below and reflect the broad stages of the process outlined in the CoP.  The key stages of the procedure shown have remained largely unchanged since the introduction of the CoP. The main exceptions to this were in the latter stages, specifically the issuing of receipts, which was new to the process and expanding the amount of detail entered into the stop and search database.

The key stages of the process are explored in more detail below, based on feedback from both police and young people who had experienced stop and search.

**Figure 2.1: Key stages in the stop and search procedure**
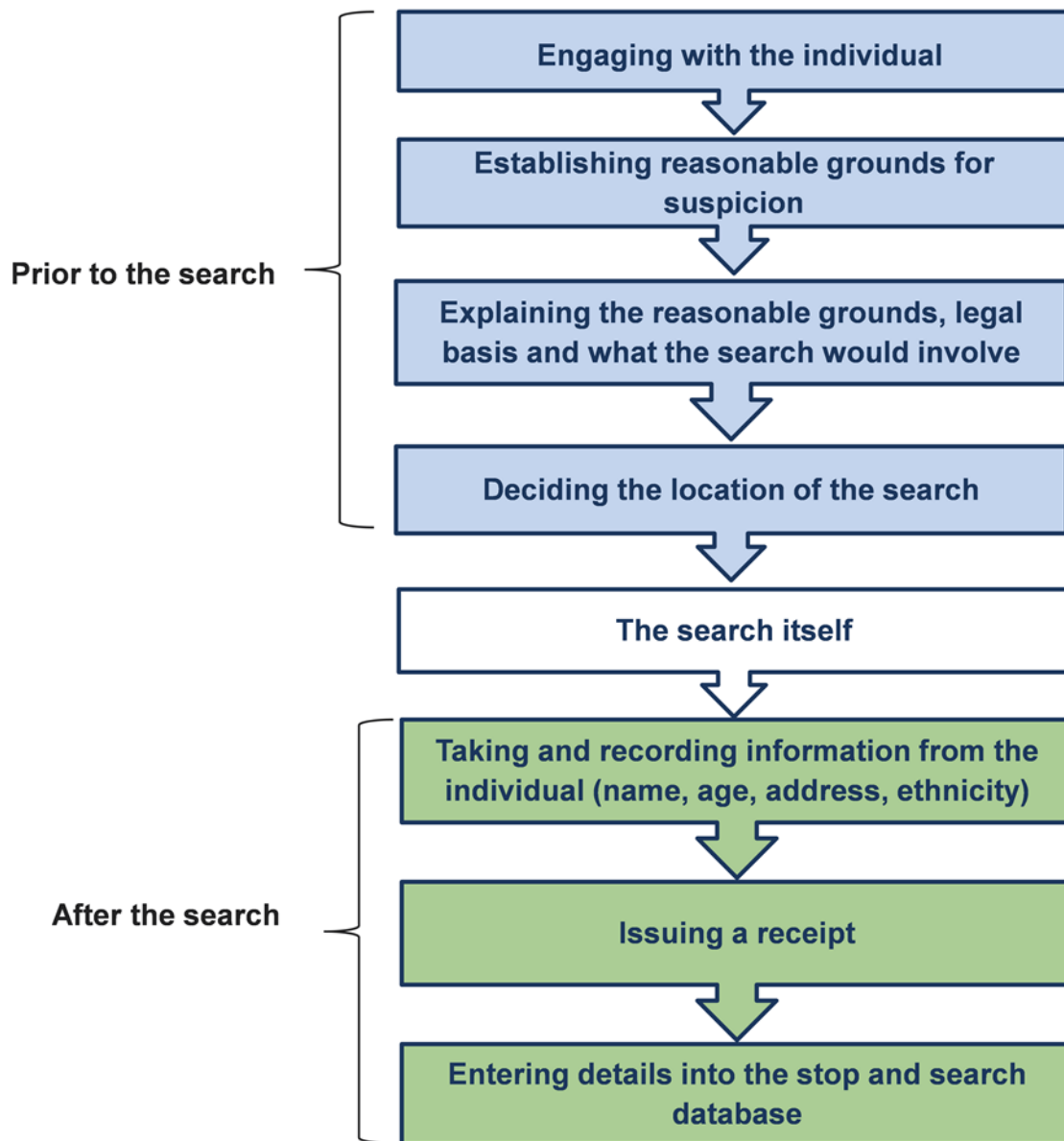


### 2.2.2 Engagement with the individual

The CoP states that "before detention and carrying out a search, the constable should try to engage with the individual and ask questions about the person's behaviour or presence which gave rise to the constable's suspicion" (s4.10).

Police said that in almost all cases they would engage with individuals first before a stop and search was carried out. The only exceptions would be if they knew the individual was carrying a knife and had the potential to use it, in which case they may restrain the person first before beginning to ask questions.

Police highlighted the importance of engagement with individuals as part of the process. Partly, this was as a means of establishing the reasonable

grounds for suspicion (see 2.2.3 below) before deciding whether or not to carry out a search. However, it was also seen as a crucial aspect in the overall process, as it helped to build rapport with the individual and make them as comfortable as possible. Police officers would also alter their communication style as necessary depending on the individual in question. This ability to adapt was seen as particularly important when engaging with vulnerable people, including those with mental health conditions, and young people. Police officers also adapted their language to ensure that the individual understood what was happening. Observations of behaviour during the initial engagement were also seen as important in establishing whether there was any potential risk of the individual trying to run away or becoming violent, with police officers again adapting their approaches accordingly.

> "[You use your] social skills. There's not really one hard and fast way how you're approaching someone about a stop search."

(Police officer)

> "Basically, it's your normal mechanics of speaking to people. If I think that person is a threat, then my elbow is going to go to the 90 degrees, so you're able to react, defend yourself or intervene if they try to get away. Then you are talking as best you can, calm, clear, concise, and then you immediately explain what you're going to do and the reason why."

(Police officer)

Feedback from young people suggested that in almost all cases police had engaged with them in advance of the search taking place. When describing their experience, young people typically said that the police had initially approached them (either on foot, or having exited a police vehicle), spoke with them, and asked questions of them (such as what they were doing, where they were going, and where they had been) before telling them that they had suspicion to search them.

In terms of the nature of the engagement from police, young people expressed mainly negative views. While some participants noted that police had spoken to them in a calm and pleasant manner, it was more common for them to take exception to the way in which police had interacted with them, describing their tone as "rude" and at times "aggressive", both at this initial stage and throughout the process. Indeed, the communication style used by police was often highlighted as one of the factors which contributed to them having a negative view of their experience overall. It is worth noting that such views tended to be framed within negative opinions of the police, either because of past personal experiences or more deep-rooted attitudes towards the police in general. Within the context of these wider perceptions, communication and engagement style was one of the main areas that young people felt should be addressed as a means of improving their views of, and relationship with, the police.

### 2.2.3 Establishing reasonable grounds for suspicion

While police took a range of factors into consideration in deciding whether or not to search an individual, the fundamental basis on which they did so was the legal test of "reasonable grounds for suspicion". As stated in s4 of the CoP: *"Reasonable grounds for suspicion is the legal test that a constable must satisfy before they can stop and detain a person to carry out a search under almost all statutory provisions. The usual requirement is a reasonable suspicion that the person has committed, or is committing, or is about to commit, a particular crime or is in possession of a prohibited article."*

It was common for police officers to say that they would not carry out a search if they did not feel confident that they had reasonable grounds for suspicion. In particular, they were conscious of the prospect that unreasonable grounds could potentially be challenged in court at a later date, and they therefore had to be confident that this legal test had been satisfied.

A range of factors were taken into consideration in establishing reasonable grounds, drawing on a combination of intelligence about individuals and officers' own observations of behaviour while engaging with members of the public. Intelligence about an individual could include: reports from members of the public such as witnessing theft of property; and intelligence that had been gathered by the police over a period of time. Police also used a more reactive approach when they observed people behaving in a way that led them to suspect they may be carrying an item. Factors taken into consideration included behaviour that would suggest drug use, such as smelling of cannabis, slurred speech, and dilated pupils, or other unusual behaviour such as running away when police approached. However, the overall sense was that reasonable grounds was multi-faceted and was down to the police using their judgement on a case-by-case basis.

> *"It could be a smell, it could be an observation, it could be nervousness or looking like they're trying to hide something, or it could be a variety of things. It's a tough one to explain... it is a build-up of all those different factors rather than any one factor."*

(Police officer)

> *"'Reasonable' is subjective. So, what's reasonable in one set of circumstances might not be reasonable in the next and it's impossible to say."*

(Police officer)

While all officers were conscious of the requirement to establish reasonable grounds for suspicion, some felt this restricted their ability to search individuals in certain circumstances. Specifically, it was noted that police were often aware that an individual had been searched multiple times in the past, each time with the positive recovery of an item, and that searching the same individual again would be likely to result in the same outcome.

However, in the absence of any other information that would establish reasonable grounds, they knew they would be unable to carry out that search. This had become more apparent since the cessation of non-statutory consensual search, and officers who had carried out such searches in the past felt they were now using the power less.

> *"If I stopped [someone] with drugs on them yesterday, there is a good chance they might have drugs on them today… but because you've got no grounds, you can't stop them."*

(Police officer)

In terms of guidance on reasonable grounds within the CoP, there were mixed views. Generally, officers felt that guidance on reasonable grounds was clear and they felt confident in using their judgement on how to apply the test in practice. However, even among those who felt the guidance in the CoP was clear, there was a sense that the test for reasonable grounds was primarily based on the individual judgement of each officer, and that the CoP could not be prescriptive about what those grounds were. The onus on individual officers to apply their own judgement was seen as one of the challenges of the process, particularly for less experienced officers that had encountered fewer 'real life' incidents that they could draw on to aid their judgement.

Though not a common view, some officers also felt that this subjective approach to reasonable grounds created inconsistency in its interpretation, and therefore felt that the guidance within the CoP lacked clarity and sufficient detail about what constituted reasonable grounds.

> *"It all comes down to personal experience and just learning on the job …having a Code of Practice doesn't necessarily change those reasonable grounds and it can't be prescriptive about them."*

(Police officer)

> *"There is not enough in-depth information and that confuses cops, they just don't know what is right ... each circumstance is different, it's never the same and trying to relate what you've read to what you're dealing with at the time is really difficult."*

(Police officer)

### 2.2.4 Explanation of reasonable grounds, the legal basis and what the search would involve.

When describing the key stages of the stop and search process, police noted that they would, as standard, explain the reason for the search, provide the legal basis for the search, and provide a description of what the search would involve before proceeding. These steps were followed with the aim of ensuring the individual understood each of these elements, reflecting the requirement that *"constables must ensure, so far as is reasonably practicable, that the person understands why they are to be searched and what the search will involve"* (s6.10).

Based on the accounts of young people, it appeared that the grounds for suspicion and details of what the search would involve had usually been explained to them. However, while there were a number of young people who specifically remembered explanation of the legal basis, including those who could recall the specific legislation cited (e.g. the Misuse of Drugs Act), this was not commonplace.

Whether or not the reasonable grounds for suspicion, or the legal basis, had been explained, there was repeated suggestion by young people that police had "no reason" for searching them. This was coupled with a sense they were they were "picked on" by police, or searched because of who they were, how they looked ("they just think I look dodgy"), or who they associated with. This speculation suggests that, if police had explained their reasons for searching these young people, those reasons had either been forgotten or had not been believed. Again, such views should be interpreted in the context of wider negative opinions held about the police by young people.

### 2.2.5 Location of the search

In relation to the location of the search, the CoP states that "the search must be carried out at or near the place where the person was first detained" (s6.4), and that "where on reasonable grounds it is considered necessary to conduct a more thorough search (e.g. by requiring a person to take off more than an outer coat, jacket, gloves, headgear or footwear), then this should, where possible, be done out of public view" (s6.7).

Police described either carrying out the search at the place where the person had been stopped, or moving them to a more private, discreet location such as a doorway or a side street. Officers said the reason for moving them would be to avoid embarrassment for the individual, particularly as they would be removing items of clothing, and to avoid attracting undue attention from members of the public. If a strip search was being carried out, for example if the officer had reason to believe that the individual had concealed items within their body, the individual would be taken to the station and the appropriate authorisation for the search would be sought.

*"Most of the time you would try and [search] discretely, so you would perhaps go into a close, or round a corner, you would hope not to do it in the full glare of the public... So, you always do your best to minimise any embarrassment or to create a scene or to even attract others."*

(Police officer)

Young people gave mixed accounts about the location of the search; some recalled being asked if they would like to be moved elsewhere, while others did not. Among those that had been asked, they usually said they were happy to be searched there and then to get it "over and done with". However, for those who did not recall being asked, the location of the search was one of their main issues with the process. If carried out in a public place, young people felt embarrassed and uncomfortable. Indeed, when asked what they felt the police could do differently if carrying out a stop and search in future, one of the most common suggestions was doing so in a more private location away from passers-by.

## 2.2.6 The search itself

The actual search was described in similar terms by both police and young people, and usually involved the removal of the persons' jackets, hats and shoes, turning out all pockets, and patting them down. Young people did not raise concerns about the way in which the physical search was carried out.

The main challenge noted by police was the need to manage any hostile, negative feedback from the person while the search was taking place, which in extreme cases could include physical violence. Where there was violence, or the threat of it, police used communication tactics to attempt to calm the situation, or restrained the person using handcuffs where necessary. However, this was seen as "part and parcel" of an officer's role and one that they felt equipped to manage.

## 2.2.7 Taking and recording of details

Police and young people both described the information that was typically collected during the search, which consisted of names, dates of birth, addresses, and contact phone numbers. No particular issues were raised by police or young people in relation to the recording of these details.

Police were asked in more detail about a specific query raised in the six-month review, which noted that there had been an increase in the proportion of cases for which ethnicity was recorded as "unknown/not provided". With a view to explaining this increase, participants were asked about the extent to which they recorded ethnicity and whether or not they faced any difficulties when doing so. Police said they asked and recorded ethnicity in "most" cases, and did not spontaneously raise any challenges in doing so. However, when asked about the large number of "unknown/not provided" cases, it was suggested that police officers may not have asked about ethnicity in these

cases because they felt it would have been uncomfortable or insensitive to do so. It was noted that the stop and search process is already a sensitive one, which requires careful management of the interaction between officer and individual, and that asking for ethnicity details could risk upsetting or offending the person being searched. As was a common theme throughout police views on the procedure, the importance of communication skills and the ability to judge the most appropriate approach to each situation was again emphasised.

> *"If you've stopped an Asian person in Glasgow and say, 'What ethnicity are you?' [and they answer] 'I'm from Glasgow'…you don't really want to start asking any further questions, because I'd probably find that quite insulting... you don't want to press the issue and cause a potential offence."*

(Police supervisor)

### 2.2.7 Issuing of receipts

Issuing of receipts was noted by police as one of the main changes that came into place with the introduction of the CoP. Officers said they issued receipts for most searches they carried out. In cases where receipts were not issued, this was usually because the individual had run away before it had been prepared, or because they had declined the receipt. However, where this was the case the details of the search would still be recorded on the database. Though not common, there were also instances of officers carrying out a stop and search without their receipt book, for example if they were in plain clothes and not carrying their usual range of equipment and materials. In these cases, the receipt would be issued retrospectively.

> *"A receipt is written out [every time] and if they refuse it we generally keep them and then obviously it is logged on the system with the number and the fact they refused it."*

(Police officer)

Police supervisors and the NSSU noted that monitoring of receipts was in place, and that the data indicated that receipts were being issued in most cases. Where there was a record of a receipt not being issued, this would be followed up with the officers in question and an explanation would be sought.

> *"We constantly monitor if a receipt has been issued or not. So, if the database records that no receipt has been issued, we are able to then look and find out why. It allows us to maintain that record of…whether or not receipts have been issued and if not, what is the reason? Is the reason a legitimate reason?"*

(NSSU representative)

In contrast to police views, feedback from young people suggested that receipts were not issued in all cases. Indeed, most of the young people we spoke to did not recall having received a receipt the last time they had been searched, including those that had been searched multiple times in the past and were therefore aware of the need for receipts to be offered. Where a receipt had been issued, they had tended to accept it because they wanted a record of the search for themselves or to show to their parents. Those that refused the receipt had done so because they "were not bothered" and did not see the benefit of having a record of the experience.

Overall, police officers were broadly positive about the use of receipts, though pros and cons were discussed. The perceived benefits of receipts were that they provided a formal and transparent record of the search that would both provide the person being searched with reassurance of the legitimacy of the procedure, and stand up to potential future scrutiny if the procedure was challenged in the future. Supervisors also noted that the introduction of receipts had led some officers to think carefully about their grounds for suspicion, as the receipt would involve details of the search being provided to the person, along with the opportunity to request more information and potentially complain if they felt justified in doing so.

> *"There is a wee bit more scrutiny towards it, because you are giving people receipts saying, 'feel free to make a complaint.' Everything has to be 100 per cent in your notebook, 100 per cent in your stop search form. So, that way it has improved just because of the importance of the information you've got to put in to cover yourself."*
>
> (Police supervisor)

> *"I am a fan of the receipts, because I think it encourages...more transparency in officers, because they have to hand it out, so I think it probably makes them think about their grounds a bit more because they are going to be issuing somebody with a ticket."*
>
> (Police supervisor)

The drawback of receipts, though relatively minor, were that they were somewhat of "a pain" to complete as they required more time and placed an additional level of administrative burden on the police.

## 2.2.8 Recording details on the Stop and search database

Based on feedback from police officers, details of all searches were recorded on to the stop and search database once the officer was back at their station. Generally, the database was considered straightforward and easy to use. A small number of officers, however, had faced difficulties providing the level of detail required within the database, which has increased as a result of the CoP. This included providing the postcodes for the search, which officers did

not always know the exact details of, and the amount of information required to explain their grounds for the search, which some struggled to articulate in sufficient detail. A more common view, even among those who found the database straightforward to use, was that it was time-consuming and difficult to fit around their other day to day tasks, which at times resulted in a backlog in records not being entered into the database.

## 2.3 Oversight and training

### 2.3.1 Oversight of the process

Officers carrying out stop and search are overseen by their supervisors (of sergeant rank), whose role includes: answering any queries officers might have about any aspect of the process; offering advice and guidance on any areas of uncertainty, including reasonable grounds for suspicion; reviewing officers' notebooks and ensuring that each stop and search is recorded as it should be.

Oversight of stop and search is also provided at a national level by the NSSU. Their role includes reviewing and maintaining standard operating procedures, and giving advice to police divisions about the CoP and the stop and search process. They also collate and monitor data recorded on the national stop and search database, including reporting on the number of incidences by area and identifying any trends over time. As part of their work, the NSSU also identify any cases where officers have not followed standard stop and search procedure, in which case they follow up with the officers in question for more details.

No concerns were expressed about the current oversight of the process. The NSSU did note, however, that their oversight of the process may ultimately be transferred to individual divisions and that appropriate preparation for this should be put in place.

### 2.3.1 Training

Prior to the CoP being introduced, a national training programme was delivered to help prepare officers for changes introduced by the code. This multi-faceted and extensive training programme consisted of online modular learning (via 'Moodle', the Police Scotland online learning platform) and face-to-face classroom based training for every officer up to and including the rank of Inspector in Scotland. The face-to-face training included topics such as:

- how to engage with individuals when carrying out a stop search

- the role of unconscious bias in decision making

- powers relating to children and young people, including how to handle seizure of alcohol

- how to establish reasonable grounds and articulate reasons for a stop search (including use of scenarios)

- how to record reasonable grounds using the stop and search database.

Feedback from officers and supervisors primarily related to the online training, with only a minority giving feedback on the face-to-face training.

It is important to note that while the police officers were fairly critical of the training received, this did tend to be related to the online training platform rather than the training itself. It was felt that use of the online platform made it difficult for officers to fit the training around their other daily tasks, which invariably resulted in them rushing to complete it before the deadline or completing it outside of their standard working hours. That said, there was at least some negative feedback on the language used within the online training was also criticised, seen as overly-formal and complicated, and too reliant on "jargon" that was difficult to understand.

> *"It was just a Moodle but for me it doesn't work, because you are given a time limit for when you need to be done by and you're either doing it on a night shift about five o'clock in the morning when you're absolutely shattered and you're not taking anything in or you're doing it when you're rushing and you're not taking anything in"*

(Police officer)

While the initial training programme included both online and face-to-face training, it was suggested that in any future training a face-to-face approach would be preferable to online, both because this would give officers a specific day and time that they had to attend, and because it would foster an environment of learning from shared experience. It was also suggested that any future training should focus as much as possible on practical, real-life examples, particularly in relation to examples of reasonable grounds of suspicion.

> *"It's not always ideal to maybe sit a group down and have an input, but that's what it needs, everybody needs to be able to share experiences"*

(Police officer)

## 3. Volume of use and outcomes from stop and search

This chapter describes police views on the frequency and volume of stop and search, and on the outcomes achieved from stop and search. It is worth re-iterating that this research did not seek to quantify the number of stop and searches, that being the remit of the quantitative strand of the 12-month review. The qualitative research, rather, explored views on the reasons for any patterns in the number of stop and searches, and whether or not the power had been used enough.

### 3.1   Frequency and patterns of use

Police generally found it difficult to quantify the number of stop and searches they carried out, and said that it varied depending on the circumstances they encountered or the nature of intelligence they were working with at any one time. However, broadly speaking, community policing teams had carried out stop and searches as often as daily, while other units (response units, CID) tended to carry them out less often.

Observed patterns of activity by time and place, again, varied. However, police generally reported that the volume of stop and searches was usually higher on Friday and Saturday nights, particularly in relation to drug searches, and at times of year when people were more likely to be socialising, such as Christmas and bank holidays. Incidents were also more common around large events, such as concerts, festivals and football matches.

There were no particular types of people who police felt were more or less likely to be stopped and searched, but there were some observed patterns in terms of age group. Again, broadly speaking, those searched for recreational use "party drugs" at weekends were more likely to be aged 18 to 30, whereas those who were searched for drug dealing were more likely to be "career criminals" and therefore older. Overall, however, police stressed that the technique was used on a range of people and based on intelligence and/or observed behaviour rather than on the characteristics of the individual.

> *"It is completely mixed in terms of demographics and age - here you can have local people, people from England, all races, religions… I don't think [there are] stereotypes here, it is just [carried out] on the basis of the information we have."*

(Police officer)

Among the NSSU and other police participants, it was widely perceived that there had been a reduction in the number of overall stop and searches in Scotland over time, reflecting the trend noted in the quantitative 12-month

review (McVie, 2019)[4]. The reduction in the number of stop and searches was attributed to changes in the way the technique was carried out, specifically the cessation of non-statutory (consensual) searches. It was noted that this change in approach had been observed in advance of the CoP, as a result of the various pieces of preparatory work including the review of stop and search by Police Scotland, the independent review by HM Inspectorate of Constabulary (HMICS, 2015), and the Stop and Search Improvement Plan in 2015. This, again, mirrors findings from the quantitative review, which found that the decline in the number of seizures and searches since the introduction of the CoP reflected an ongoing, steady decline which can be traced back to 2015 (McVie, 2019).[5] Police views were that the CoP had formalised a change that was already beginning to take place as a result of this preparatory work.

> *"A lot of work was done in preparation for the code coming in, so when it came in it cemented the improvements that we were already making…the development of the code of practice was equally as important as the code [itself]."*

(NSSU representative)

In terms of the case study areas, police in the West felt that that they were carrying out fewer stop and searches than they had been before the CoP was introduced. In the other two case study areas, however, police felt that consensual searches had so rarely been used that the cessation of this approach had not had a significant impact on their volume of searches. In these areas, police said that before the CoP came into place they had always carried out stop and search based on having reasonable grounds for suspicion. They therefore felt that the CoP had formalised an approach that they were already using, rather than introducing significant changes.

> *"I don't think anything ultimately really changed in the way I do things, other than formally issuing receipts and logging searches on the system…It hasn't particularly affected the way we go about a stop and search on a day to day basis – the same reasonable grounds still exist and the same process has got to be followed."*

(Police officer)

However, as noted above, the impact of the cessation of non-statutory searches had been more clearly felt in the West. In this area, police spoke

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[4] McVie notes that during the twelve month period following the introduction of the CoP (June 2017 to May 2018), there were 32,307 encounters involving either a search or a seizure in Scotland, compared to 44,249 during the equivalent twelve month period of the previous year; a 27% reduction in the use of these police tactics.

[5] The quantitative report by McVie (2019) notes that this trend can be traced back to the publication of the audit and review of stop and search carried out by HMICS in 2015.

about having previously used consensual searches and noted that the ending of this approach had resulted in fewer stop searches being carried out, attributing this to the additional onus placed on establishing reasonable grounds for suspicion.

> *"Five years ago it was multiple, daily searches…you could be doing two or three a day. [In the last] seven months I've probably done about ten… to justify a stop and search now is very, very, difficult."*

(Police officer)

## 3.2 Perspectives on volume of use

In terms of police views on the extent to which stop and search was used, opinions varied between those who felt it was used as much as it should be, to those who felt it was under-used.

Among those who felt it was not used enough, there was a perception that the requirement for all searches to be statutory-based had created a degree of caution around using the power, particularly among less experienced officers who may not be confident in justifying reasonable grounds for suspicion. It was thought that this level of caution could cause some officers to hold back on using stop and search if they were not confident that they had reasonable grounds to do so. This caution could be compounded by a fear about future ramifications for the officers in question if their justification for the search might later be viewed as unfounded.

> *"It's not used enough… a lot of [officers], especially younger people in service, are maybe a bit more scared because of all the changes that have come in. They're scared they're going to get in trouble, they are scared they don't have enough grounds."*

(Police officer)

> *"Officers now are thinking twice before stopping people…because of that extra scrutiny. And I do believe it's important that there is scrutiny, however I think …rightly or wrongly, it has put some officers off. There's probably a large amount of officers not doing as many stop searches."*

> (Police supervisor)

Aside from the legislative remit within which they could use the power, police noted further practical restrictions on the extent to which stop and search was used due to limited opportunities to engage with members of the public. Some police officers, particularly those in units covering a large geographic area, felt they did not always have enough time or capacity to stop and search as many people as they otherwise would. Similarly, those in response units who were dealing with a range of incidents, noted that they could carry

out more stop and searches if they had more opportunities to "be out an about" and engage with individuals in the community on a regular basis.

> *"There are times when it could be used a lot more, but because of the area we're in, there is not enough time to do it... you're going from job to job to job, because there is only one unit."*

(Police officer)

In terms of young people specifically, it was difficult to gauge their perceptions on the volume of use of stop and search, as each participant tended to discuss their own personal experience rather than making observations about the overall volume or trends in use. However, several young people felt that stop and search was over-used, and perceived it to be targeted towards people of their age group. Such assertions are difficult to support or discredit within the remit of this research, based as they are on participants' personal perspectives about use of the power and framed within their wider attitudes towards the police. However, they are worthy of further reflection, as they illustrate the nature of the perceptions held by these young people and the challenges this presents in terms of their ongoing relationship with the police.

Practitioners, for their part, also tended to feel that stop and search was used too much. Based on their experiences of working with young people who had been subject to stop and search, practitioners felt that the tool was being repeatedly used among the same groups of young people and in extreme cases was causing them to feel treated and labelled as criminals. One practitioner felt that young people were being searched repeatedly as they were "easy targets" for the police.

> *"I think they do it too much, and they have to be careful and very understanding when stopping young person, [because] you have to understand how you affect that young person."*

(Practitioner)

### 3.3   Outcomes from stop and search

In terms of the proportion of positive outcomes (i.e. recovery of an item) to negative outcomes (i.e. no items found), a range of views were put forward by police, ranging from those who felt a positive outcome was achieved "most of the time" to those who said this only happened in the minority of cases. This range in perspectives reflected the overall sense that outcomes were dependent on a range of factors, including whether there was intelligence in advance of the stop and search, the quality of that intelligence, and the type of item that was being searched for. It was felt that searches where police had intelligence were more likely to lead to a positive outcome, in comparison with searches that are solely based on reacting to an individual's behaviour.

While for several participants it was difficult to quantify any changes in outcomes over time, it was felt that the proportion of positive outcomes had increased since the implementation of the CoP. As noted above, the volume of searches had reduced since the cessation of consensual searches, and there was a sense that the approach was now based on "quality not quantity". Specifically, it was felt that the CoP had placed an emphasis on having reasonable grounds for suspicion, and that officers therefore felt they needed to be confident they could justify those grounds before conducting a search. As a result of having reasonable grounds in place for every search, it was suggested that there was now a greater chance of achieving a positive outcome. This was compared with the period when consensual searches were being carried out, when there was such a high volume of searches that the proportion of positive outcomes was "diluted" by the sheer number of searches.

> "Before [the Code of Practice] they were just impromptu searches on the off chance you might get something, possibly…which then meant your good results were diluted, massively diluted."

(Police supervisor)

## 3.4  Effectiveness of stop and search as a police power

As stated in the CoP, one of the primary aims of stop and search is to help prevent and detect crime; police gave mixed views on the effectiveness of stop and search in achieving this aim.

In terms of *detecting and solving* crime, one of the key benefits of stop and search was that it involved direct engagement with individuals and therefore created the opportunity to "strike while the iron is hot" and recover any prohibited items on their person. Where searches had resulted in the recovery of an item, this was noted to have had the direct impact of detecting and solving the relevant crime and increasing public safety by removing the prohibited item from the individual.

> "For detecting [crime], I would say it's useful…[With] weapons, it's a big public safety thing, it gives us the power to go and do something; if a member of the public tells us this person has got a weapon, it means that we can go and deal with it, detect it and solve their problem and hopefully protect somebody from getting hurt."

(Police officer)

Police had also experienced indirect impacts of stop and searches, as a result of information becoming available through talking with individuals while they were being searched, which provided intelligence that could help solve crimes at a future date. This additional intelligence was even seen in cases where the search itself resulted in a negative outcome.

*"I don't think there is any stop and search that isn't beneficial. [Even] though it is negative in terms of the search for drugs, you are probably going to end up getting some intelligence from that."*

(Police supervisor)

Views on stop and search as a crime *deterrent* were mixed. On the one hand, some police suggested that use of the tactic may have deterred individuals from carrying prohibited items due to fear of being stopped and searched, though it was difficult for police to be certain of this. On the other hand, others felt that it was difficult for stop and search to act as a deterrent because of the nature of individuals involved, who were often likely to reoffend even if they had been caught with items in the past. It was also suggested that stop and search had become less of a deterrent since the introduction of the CoP, as members of the public were now more likely to be aware that consensual searches could no longer be used, and may therefore simply be more careful about how the behaved rather than actually ceasing criminal activity.

These views notwithstanding, the NSSU stressed that stop and search should not be viewed in isolation, but rather as one tactic that forms part of a wider strategy of violent crime reduction. When examining the longer term impact of tactics such as stop and search, they highlighted the importance of also looking at other elements that have an impact on offending behaviour, including education, health, and social care. This was a view echoed by practitioners, who noted the need for a holistic approach to addressing the needs of young people who have had contact with the police, in recognition of their vulnerable, chaotic lifestyles.

*"I think a mistake we have made in the past is that we felt stop and search was an answer to all of society's ills and was going to keep people safe, when actually we have learnt to understand that it is one tactic that needs to be done appropriately, but there is a host of other things that actually work towards a positive outcome."*

(NSSU representative)

## 4. Searches of individuals with protected characteristics

### 4.1   Introduction

In the six-month review, concern was expressed about the disproportionate use of stop and search among children and young people. These concerns had first been raised in 2014 after research suggested there was a higher rate of searching in Scotland compared to other countries and that children and young people were disproportionately subject to police searches (Murray 2014).

The CoP specifically covers searches of children and young people (in s7), and the training introduced by Police Scotland prior to the introduction of the CoP included elements aimed at improving methods of engagement with young people. The CoP also places restrictions on the extent to which any protected characteristics can be used as reasonable grounds for suspicion stating:

"The following cannot be used alone as the reason for stopping and searching any individual: a person's physical appearance with regard to the relevant protected characteristics set out in the Equality Act 2010, section 149, i.e. age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation."

With this background in mind, one of the specific areas for consideration in the 12-month review was the use of stop and search among people from protected characteristic groups, particularly young people.

## 4.2 Searches of children and young people

### 4.2.1 Experience of the police

As with observed patterns of stop and searches generally, police had mixed experiences of searching children and young people, ranging from those who had done so very rarely to those who did so regularly. This range in volume and frequency somewhat reflected differences in police roles, with community police encountering young people more often than other units.

In the North and East, there was no discernible difference in the rate of searches of children and young people since the introduction of the CoP. However, in the West it was noted that the rate of these searches had decreased since the cessation of non-statutory searches, echoing the view on the overall rate of stop and searches in that area. Aside from frequency of searches, there was a sense that, since the introduction of the CoP, young people had become more aware of the stages involved in a statutory stop and search, and had become more likely to ask questions about the process and request receipts – although this did not necessarily tie in with the experiences of the young people included in the research who had little interest in receiving receipts.

Police largely felt confident in their approach to searching children and young people, though it was not without its challenges. One such challenge was linked to negative views that this age group often had about police, demonstrated through argumentative and confrontational reactions when approached and engaged with by an officer. As a result, officers stressed the importance of drawing on their communication and inter-personal skills to help make the interaction as calm as possible.

As well as the requirement to involve a parent or guardian where necessary, engagement with children and young people involved similar considerations as those of other vulnerable individuals, specifically the need to take extra

care in ensuring that the individual understood what was happening, and altering the communication style accordingly. It was also noted that there was need to be aware of any potential stress or anxiety that an encounter with the police might have on a young person, placing further emphasis on the importance of careful communication and management of the situation.

> *"When you're dealing with a younger person… you've got a wider consideration of how a young person could be impacted by having a police person detaining them and searching them."*

(Police officer)

In terms of the guidelines provided on searching children and young people with the CoP, opinion was once again mixed. On the one hand, it was felt that the information on children and young people was clear and helpful, while on the other hand it was suggested that it did not go far enough in providing specific advice on how to engage with individuals of this age group. For those who felt there was a lack of clarity, this had contributed to a sense of uncertainty about how they should engage with young people, and in extreme cases had caused them to feel apprehensive about carrying out searches among this age group.

> *"I'm very confident with the legislation. Whether somebody is 15 or 50 it's the same power, [but] how you actually deal with young people is different…I don't know how clear that is in the Code of Practice."*

(Police officer)

> *"I think I would feel a bit apprehensive about like stopping and searching a young person… maybe just to do with uncertainty in the legislation."*

(Police officer)

### 4.2.2 Young people's perspectives

Of the young people who participated in the research, few had been found with an item in their possession. Perhaps reflecting this, almost all were negative about their experience of having been stopped and searched. When describing their experience, it was common for participants to say they felt the process had left them feeling "intimidated", "picked on" and that they were "treated like a criminal". These views were expressed in relation to the overall process, but specific aspects were highlighted as leaving a particularly negative impression; as noted earlier this included the way police spoke to young people, the location of the search, and the justification for the search having been carried out.

These negative views included a sense that young people were targeted because of their age. When asked why they had been stopped and searched, responses included speculation that it had been because they were "hanging

around with nothing to do" in the centre of town, which young people felt unduly arose police suspicion.

It should be noted that this point of view was also acknowledged among police participants, who were aware that young people often attributed being stopped and searched to being targeted by the police (though police stressed that this was not the case). It was suggested that young people were more likely than other age groups to share stories about their encounters with police, which would mean that negative perceptions about the procedure, and about the police in general, would easily be spread to others.

> *"They'll talk about it to their pals and they'll share stories…. [which has] a very damaging negative effect, beyond that individual. I think that's when the police become something which [young people] feel automatically negative towards."*

(Police officer)

### 4.2.3 Practitioners' perspectives

Practitioners largely echoed the views of young people, though they saw both positive and negative impacts of stop and search. From a positive perspective, it was felt that stop and search could be an effective tool in encouraging and facilitating public safety, by removing weapons from young peoples' possession and potentially deterring them from using drugs. Use of stop and search was also seen as sending a positive message to young people, making them aware that they should not be in possession of illegal items and that if they did so they were likely to be caught.

However, these views were outweighed by more negative perceptions among practitioners. There was a general impression that stop and search was having an adverse impact on relationships between young people and the police. As noted above, practitioners felt that young people were being stopped and searched too regularly, leading to perceptions of targeting by the police. These were not seen to have abated since the introduction of the CoP, as they did not feel there was a discernible change in the frequency or manner in which the power was used. Reflecting on these concerns, practitioners stressed the importance of police being aware of the potentially stressful and traumatic impacts that a stop and search can have on a young person, and the need for police to manage the approach accordingly.

> *"[Young people] congregate in groups and hang about in parks and closes, wherever they can. Young people that are seen congregating… the stereotypical view [of the police] is "what's happening here? There's going to be trouble". And some of the [young people] know that if they get together, [they will be] pulled by the police whether they're up to anything or not."*

(Practitioner

*"The police started targeting young people, and I did see that first hand. And it's quite traumatising for a young person who's never been in trouble with the police to get searched and sometimes ...it takes time to get over that."*

(Practitioner)

## 4.3    Searches of other protected characteristic groups

Discussion around searches of individuals with protected characteristics largely focussed on children and young people. The only other protected characteristic that was discussed was ethnicity, though this too was limited.

In terms of ethnicity, the quantitative 12-month review notes that the vast majority of searches and seizures in Scotland involve people who self-define as belonging to a white ethnic group (McVie, 2019). This finding is echoed by the views of police participants, who noted that the profile of individuals they engaged with tended to be pre-dominantly white, including those they stopped and searched. Police therefore raised few concerns about using the power among non-white individuals. The only exception was the aforementioned caution around asking an individual to describe their ethnicity, due to the potentially sensitive nature of the question (see 2.2.6).

Reflecting views of police, there were few issues relating to ethnicity raised by young people or practitioners. Indeed, non-white participants mentioned, unprompted, that they did not feel their ethnicity had been a reason for having been stopped and searched.

## 4.4    Perceived gaps in legislation

No gaps were noted in relation to the legislation surrounding searches of protected characteristic groups; police felt comfortable that there was sufficient clarity in their powers to stop and search in this respect. Where amendments were suggested, these were in relation to powers outside of stop and search, specifically searches of young people and alcohol, which are explored in the following chapter.

## 5.  Young people and alcohol

## 5.1    Introduction

One of the key areas the research sought to address was to identify any potential gaps in the legislation around young people and alcohol. The lack of police powers to search young people for alcohol was one of the most contentious issues in the public consultation on stop and search. Following detailed consideration, the IAG recommended that there was insufficient evidence for the creation of new powers, but that this should be re-assessed after the CoP had been implemented.

This chapter addresses the findings from the research in relation to young people and alcohol in the context of stop and search.

## 5.2   Current approach to young people and alcohol

Under Section 61 of the Crime and Punishment (Scotland) Act 1997, the police have a power to seize alcohol. This allows officers to ask children and young people to hand over any alcohol where it is known or suspected that they are in possession of it in a public place. The police have no specific legislative power to search a person for alcohol, even if officers suspect them of concealing it and they have refused to surrender the alcohol. The only exception to this is at designated sporting events where the police have an alcohol search power in accordance with Section 21 of the Criminal Law (Consolidation) (Scotland) Act 1995, which enables officers to check bags and clothing as people enter the venue.

When asked about their experience of encountering young people with alcohol, police participants did not raise this as a problematic part of their duties – even though it was a relatively common one.

It appeared that police participants were following the correct protocol when it came to young people and alcohol. A number explicitly referenced the fact that they had no power to search young people for alcohol. But it was much more common for them to indirectly relay this through references to approaching young people because they were engaging in 'public' or 'visible' drinking.

> *"Generally, it is quite obvious – we can see them carrying it. We will ask them what it is, they will tell us and hand it over."*

(Police officer)

This was also borne out through the experiences of practitioners and the young people themselves. Practitioners described the procedure much in the same way as the police, highlighting that the police were not able to search young people for alcohol and noting that this usually did not happen.

Young people, for their part, found dealing with the police when they had alcohol in their possession much less problematic than being stopped and searched. They also cited examples of situations where they were seen drinking on the street and were simply asked to hand over the alcohol in their possession, as opposed to being searched. This was seen as "no big deal" and the officers encountered were polite – although some did express disappointment that the alcohol was seized.

One officer distinguished between the different legislation at play when dealing with a young person with alcohol, as opposed to that involved when conducting stop and search. However, they also stated that the actual procedure was "just the same" as stop and search and that the young people could be searched if there were reasonable grounds. This could suggest that

among at least some officers there is still confusion over whether or not they can search for alcohol. This finding was borne out to at least some extent from the findings from young people. Although less common, some did say that they had been asked to 'open their bags' when suspected of being in possession of alcohol – although their person was not searched.

The approach police took to interactions with young people they suspected were in possession of alcohol varied, and was based on the discretion of the officer and their policing skills. As with more general interactions with young people (discussed in section 5), it was the communication skills used that were thought to be key to a successful resolution of the encounter.

For the most part, interactions with young people with alcohol were thought to be straightforward by police officers and were dealt with as such. The police officer would approach the young person and ask for the alcohol to be handed over and in most scenarios the young people simply did so.

> *"Up here on a Friday or Saturday night, obviously you get a lot of young people going about the town with alcohol and stuff, and you hear the bottles clicking or you see the bottle through the bag. 'Right, is that alcohol?' 'Right, we're seizing it' basically - it's about communication."*

(Police officer)

It was also common to highlight that in certain situations, for example if the young person was visibly drunk, it was more appropriate to approach the situation from a welfare perspective. If this approach was taken, in addition to seizing the alcohol, actions taken included getting the young person medical assistance, taking them home to their parents and completing an entry on the vulnerable persons database.

When speaking hypothetically about a situation where a young person might refuse to hand over suspected alcohol, police officers were emphatic that they would not arrest an under-age person for refusing to hand over the alcohol – even though they knew that they have the power to do so. There was a feeling that this would be contrary to the wider drive to decriminalise young people and encourage police officers to put the welfare of young people at the centre of their interactions. Instead, police said that they would either let the young people go, or take them home to their parents. Only in situations where other crimes had been committed, such as criminal damage or anti-social behaviour, would they consider arresting the young person an appropriate action to take.

## 5.3    Perceived gaps in legislation

The dominant view from police participants was that the guidelines on dealing with young people and alcohol were clear and this was in line with the experiences they described.

It was uncommon for police to say that they thought the guidelines could be clearer, although this view did emerge. However, when those who found the guidelines unclear were asked, they could not elaborate on what aspects needed clarity. This could suggest that this could be an issue of familiarity with the guidelines rather than a problem with the content.

There were mixed views on whether the police should have a power to search for alcohol. While there was no real objection to introducing a power to search for alcohol, there was a feeling that it was not necessarily required as the current procedure was working and it was rare for officers to encounter problematic situations. Nonetheless, it was also suggested the introduction of a power to search would help to close the 'loophole' that young people could be arrested if they refuse to hand over the alcohol they have in their possession – although it appears that this does not happen in practice. However, as the legislation stands this is a possible scenario and participants were keen that in order not to criminalise young people this did not happen.

While the young people in the research were largely not conscious that the police cannot search them for alcohol, there was feedback from practitioners that some of their clients were becoming aware that this was the case. It was thought that this knowledge, in combination with young people's more combative behaviour when they had been drinking, may lead to a greater chance of arrest and the criminalisation of young people. For this reason, practitioners also supported a specific police power to search for alcohol.

While not something encountered by police participants on a day to day basis, the issue of large scale, spontaneous events such as the event on Troon Beach was raised (see McVie, 2018 p. 69 for more detail on the incident). In these situations, thousands of young people can congregate together and a large proportion of those will be in possession of alcohol. Police are not able to search the young people and if they choose not to give up their alcohol when asked, it could in theory lead to the arrest of hundreds – something that is not logistically possible or an appropriate response to the situation.

 Other gaps in the legislation

## 6.1    Introduction

Under Section 65 of the Criminal Justice (Scotland) Act 2016, officers may only conduct searches in circumstances where they have explicit legal powers. The review therefore explored whether or not the current legislation had left significant gaps in the police's powers to stop and search, and whether this had resulted in searches that were considered justifiable by

police officer but which were not covered by Section 65. This included searches to protect life, under the Police and Fire Reform (Scotland) Act 2012.

This chapter presents views on any such gaps in the legislation, or lack of clarity in the CoP, and specifically explored any gaps in relation to searches of vulnerable individuals.

## 6.2   Clarity and remit of current legislation

Police generally felt clear on the remit of the current legislation surrounding stop and search, and which situations fell within the remit of other pieces of legislation. That said, it was acknowledged that officers needed to have knowledge of several pieces of legislation and that any means of helping them to recall the legislation easily, such as an aide-memoire, would be welcomed[6].

> *"There are so many pieces of legislation out there. The one thing that used to be handy would be an aide-memoire at the start of our book, showing exactly what [they] were."*

(Police officer)

Police officers and supervisors had not personally been involved in searches outside of Section 65, or in breach of the CoP. They therefore did not have direct experience of any conflicts between the legislation and their own justification for a search. It was noted that there had been a period where police had lacked the power to search individuals before they entered a police vehicle, but that the power to stop and search had recently been extended to include this; this was welcomed by officers who felt it was for the benefit of their safety and that of the individual.

While they had not personally been involved in searches not covered by the legislation, police and the NSSU did suggest areas where there may be, or may have been in the past, potential confusion surrounding the extent of police powers to search; these fell under two main areas.

Firstly, incidents where it may be necessary to carry out a search in order to protect life. The example was given of police being called to an incident involving an individual within a private residence who is at risk of suicide and may be concealing a weapon. The NSSU noted that this may create potential confusion around whether or not a search of that individual involves a breach of police powers. It was acknowledged, however, that the inclusion of section 3.4 of the CoP, stating "*a constable must take all steps necessary to protect life*" (as stipulated in Sections 20 or 32 of the Police and Fire Reform

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[6] It should be noted that the Stop and Search receipt books that are issued to police officers do contain information on the different powers of search despite this feedback.

(Scotland) Act 2012), had helped to clarify that police did have the power to intervene in these types of situation.

> *"An officer going into that person's pockets [would have been] carrying out an unlawful act. But the Code of Practice picked that up and said nothing the code would stop an officer acting in a way for the purpose of protecting somebody's life."*
>
> (NSSU representative)

While supervisors and officers had limited experience of these situations, they also generally felt their duty to protect life took precedence over other aspects of the legislation. Where there was some uncertainty, however, was in cases where the individual may be in possession of pills or other harmful consumable substances; these would not fall under legislation relating to offensive weapons, but could still be used to inflict harm.

> *"I would be comfortable doing it knowing that it might not be defined in the law, but the reason for doing it was for good intention and to protect life, which is ultimately one of our main aims."*
>
> (Police supervisor)

> *"You maybe get someone that's suicidal and…you don't really have reasonable cause to suspect they've got a knife, but maybe they've got something else, or pills in their pocket… a bit more clarification [would be useful], because so many calls are to do with mental health."*

(Police officer)

The second potential area for confusion was around the power to search for pyrotechnics. There was, again, limited direct experience of these types of searches among officers or supervisors. They felt this power would mainly be required at sports matches and that the power to search may be part of the condition of entry to the sports premises. However, it was again raised by the NSSU as a potential gap in the legislation, as officers did not have grounds to search for pyrotechnics and flares under the stop and search CoP which restricted their ability to intervene even though these items potentially posed risk of harm.

> *"Pyrotechnics within groups of people can cause a real threat or risk…we don't have the power to search for them, whereas if we did we could intervene early and move the potential risk of these things."*

(NSSU representative)

It was noted in the six-month review that there may be potential gaps in the legislation relating to police powers to search a vehicle for offensive weapons, as this fell outside of the stop and search powers. However, this did not emerge as an issue in this research, as officers had rarely faced any lack of clarity or conflict surrounding their power in relation to vehicle. Officers said they would usually have intelligence supporting their grounds to search a vehicle, and where necessary a warrant, and that they would be justified in searching a vehicle if it was clear that there was an immediate risk of crime.

In terms of monitoring of any incidents outside of the CoP, the NSSU noted that any incidents of searches that were carried out in breach of the code, were noted within the stop and search database. Through the NSSU's monitoring of the database they can identify any searches that may not have complied with the legislation, and follow up on them accordingly. This review process involves a member of the NSSU contacting the officer who carried out the search, speaking to them to understand their rationale for carrying out a search, and then providing any guidance or advice as necessary to help address any lack of clarity about the legislative remit of the power. The NSSU report any findings from the review to the Scottish Police Authority and Scottish Government.

## 6.3 Searches of vulnerable individuals

Section 8 of the CoP provides additional guidance relating to searches of vulnerable adults. It states that vulnerability is most likely to be encountered in situations where a person has mental illness, personality disorder, autism or a learning disability, and outlines steps that should be taken to mitigate any potential stress for the individual.

Police officers said they often encountered people who were in vulnerable situations, including those with mental illness, substance and alcohol addiction issues and other characteristics associated with chaotic lifestyles. In terms of their approach to a stop and search among these individuals, it was stressed that reasonable grounds for suspicion would not necessarily be different when dealing with a vulnerable person. However, the overarching view was that it was essential to take each person's needs into consideration, be sensitive to any vulnerabilities, and respond accordingly. Communication was once again highlighted as an important element of the process, with officers saying they would alter the language and style of communication accordingly, or ensure that an appropriate adult was present who was capable of understanding what was happening.

> *"I think when it comes to mental health issues or persons with learning difficulties, yes it's a different kettle of fish, but you can't ignore the fact there are grounds there. You just have to be a bit more sensitive about it and make sure there is somebody there who does understand before you do anything."*
>
> *(Police officer)*

*"Safety comes first if somebody is vulnerable. If you're speaking to somebody ...maybe just doesn't understand or they don't have the capacity to understand then there has got to be consideration given how to best go about responding to that."*

(Police officer)

Echoing their views on searches among young people, practitioners stressed the importance of police taking a sensitive approach to searches of vulnerable individuals, both in terms of ensuring their understanding but also taking steps to minimise any distress caused to the individual during or after the encounter.

Though it was rare for police to specifically make reference to the CoP, they tended to feel comfortable with the guidance provided on how best to approach searches with vulnerable individuals. They therefore did not identify any particular gaps in the legislation in this regard. It was suggested, however, that the approach taken to these searches was based more on experience and general policing skills, rather than specifically being attributed to the CoP.

## 7. Conclusion

This concluding chapter revisits the three key areas for focus for the 12 month review, and reflects on the key findings with respect to each, as well as noting other areas for further consideration that emerged from the research.

### 7.1   Identifying potential gaps in the legislation around young people and alcohol

Though raised as one of the most contentious issues in the public consultation around stop and search, and highlighted in the six month review (McVie, 2018) as one of the key areas for further consideration, searching of young people for alcohol did not emerge as a particular issue in the current review. This was true both of police and young people who participated in the research.

In terms of the existing legislation governing their powers, police were largely aware that young people and alcohol did not fall within the remit of a stop and search procedure, and that they did not actually have a power to search young people that they suspected of having alcohol. While ostensibly this would suggest a gap in the current legislation, in reality police had not encountered difficulties when faced with these situations. Rather than feeling conflicted or unclear of their grounds when encountering young people with

alcohol, they instead relied on their discretion and their broader policing skills to manage the situation. Invariably, this resulted in the young person surrendering the alcohol, therefore removing the need for an arrest to be made.

That said, there was a sense, albeit not a particular emphatic one, that the power to search for alcohol would help to close the potential "loophole" that young people could be arrested if they refuse to hand over alcohol. This could help to clarify police response to large scale spontaneous events, such as the incident on Troon Beach. Though discussed in hypothetical terms, this type of event would leave officers without the power to search for alcohol, potentially resulting in large scale arrests being made. The desire not to criminalise young people in these types of situation was seen as a potential argument for introducing a power to search for alcohol.

## 7.2 Identifying any other potential gaps in the legislation or lack of clarity in the Code of Practice (especially around dealing with vulnerable individuals)

The research explored whether or not the current legislation had left significant gaps in the police's powers to stop and search, and whether this had resulted in searches being carried out that were considered justifiable by officers, but not covered by legislative powers. Potential concern over these gaps were not, however, borne out in this research. Police were generally cognisant of the legislation, and the CoP, and were largely aware of the remit of the stop and search power. No examples were given of searches having been carried out outside of Section 65 of the Criminal Justice (Scotland) Act 2016, or in breach of the CoP.

Where potential gaps were noted, these were in relation to powers to carry out a search of someone in private property for weapons when there was a need to protect life and to search for pyrotechnics; though actual experience of these scenarios was limited. While there was concern that, prior to the addition of paragraph 3.4 of the Code of Practice, police may have been restricted from searching an individual in private premises where someone was at risk of hurting themselves or someone else, officers were aware they now had the power to carry out a search for the purpose of protecting life (under the Police and Fire Reform (Scotland) Act 2012 and felt that this would take precedence, allowing them to intervene in these situations as needed. With respect to pyrotechnics, experience of this was again limited, though it was noted that police were normally without a power to search individuals or groups for these items and that power to do so could prevent potential harm being caused.

A similar picture emerged in relation to dealing with vulnerable individuals – police felt satisfied with the guidance available on how to manage these situations. It is worth noting, however, that actual reference to the guidance

within the CoP was rare, suggesting that police may benefit from a reminder of the information contained within the code on this subject.

## 7.3    Searches of individuals with protected characteristics

Consideration of individuals with protected characteristics primarily related to searches involving children and young people. Views of police were balanced with those of young people and practitioners, to identify any potential issues with the procedure, any changes in use of stop and search among this age group, and any gaps in the current legislation.

Police largely felt confident in their approach to searching children and young people, though stressed the importance of communicating in an appropriate way and managing the situation in order to minimise any potential conflict or distress for the young person. In terms of the guidance available about searches of children and young people, police had mixed views, with some feeling uncertain about their powers of searching this age group. As with guidance relating to vulnerable individuals, it may be beneficial to encourage officers to revisit the information contained in the CoP relating to searches of children and young people, and for feedback to be sought on any outstanding areas requiring further clarity.

Young people were generally negative about their experience of being stopped and searched, and put this down to a number of factors: the manner in which police spoke to them; the public nature of the search which caused them to feel embarrassed; and the justification for the search itself which they tended to say was unfair and unwarranted. Some went further, saying that young people were "picked on" and targeted by the police, a sentiment that was supported by practitioners. As noted in early sections of this report, these views were framed within, and potentially tainted by, negative overall opinions of the police; though this makes them no less valid in terms of illustrating the challenge faced in managing the relationship between police and young people.

## 7.4    Other issues raised by the review

Overall, the findings from the review suggest that stop and search was being carried out in line with the CoP and that the CoP had made a positive impact on the police's approach to the power. However, the review did raise a number of issues (outside of the three research questions outlined above) with regards to training needs that warrant further reflection:

- The online aspect of training provided to police officers and supervisors on the CoP was criticised, both in terms of the nature of delivery (though an online learning tool) and its content, while very few mentioned the face-to-face training that they received. It was suggested any future training should be delivered face-to-face rather than through online tools, and should focus on practical application of the power, including the opportunity to share experience with other colleagues.

- Repeated reference was made to the importance of the communication style used by police officers when conducting a stop and search, and the ability to read a situation and adapt their approach accordingly. Often these were seen as key skills that were developed and honed over years of experience and that, ultimately, all officers should have. It is worth exploring the extent to which officers, particularly the less experienced, would continue to benefit from specific guidance on how best to manage their communication skills in the context of a stop and search, particularly through the use of real-life, practical examples.

- While officers and supervisors generally felt comfortable with the legislative basis for conducting a stop and search, and the guidance available for how to do so, feedback suggested that officers were not always familiar with all of the guidance contained with the CoP. This included guidance on conducting searches with children and young people and vulnerable adults, as noted above, but may also extend to other content within the CoP. Encouraging officers to revisit all the content within the CoP may help to identify whether or not any further clarity is required.

**Appendix – Discussion guides**

**Police officers' discussion guide**

## 1. INTRODUCTION

- Thanks for taking part
- Introduce self and Ipsos MORI
- Introduce the research (on behalf of Scottish Government, role of the Independent Advisory Group (IAG), work to date by the IAG, the 12 month review of the stop and search guidelines, including quantitative review, qualitative portion comprises interviews with officers, supervisors, NSSU and young people, analysis and reporting winter 2018)
- Explain to officers why they have been asked to discuss stop and search –exploring perceptions of how the Code is working in practice, identifying if there any areas for improvement and if further support is required to use of stop and search effectively
- Duration of interview/group
- Confidentiality – won't use any names in reports or refer to location if quote professionals directly
- Recording – for Ipsos MORI use only, will be securely stored and deleted after project. <u>Check consent to record?</u>
- Ground rules – one at a time for recorder; moderator role – ensure cover everything and everyone gets chance to have a say.
- Any questions?

*Could we just start with a quick introduction – if we go around the group and everyone just says their name and how long they've been a police officer?*

## 2. VIEWS AND EXPERIENCES OF STOP AND SEARCH

*Thanks. We will get into the specifics of the procedure a little later on, but first I'd like to ask you a bit about your experiences of conducting stop and search more generally. Unless otherwise specified, please answer in relation to period since the introduction of the Code of Practice.*

**Overall, what are your views of stop and search as a tool to prevent and deter crime?**

**Overall, what are your views of stop and search as a tool to detect and solve crime?**

**And have your views on this changed at all since the introduction of the Code of Practice?  In what way?**
- If not mentioned: as a tool to prevent crime
- As a tool to detect crime?

**How often would you say you conduct stop and search?**
- Patterns by time of year/events
- Patterns in age/demographics of those stopped
- Any change since introduction of the Code of Practice?
- If so, was the change due to the Code of Practice or other factors? What other factors?
- Do they think it is used enough / not enough / too much?

**In which situations/circumstances would you normally use stop and search?**
- Has this changed since the introduction of the Code of Practice?
- In which situations/circumstances is it most effective?
- In which situations/circumstances is it less effective?

**What are the main challenges in carrying out stop and search?**
- Has this changed since the introduction of the Code of Practice?

**Has the way you use stop and search changed in any other way since the introduction of the Code of Practice? In what way?**

**Are you aware of any differences between the way officers in your division and other divisions use stop and search?**

**What are your views on the training you have received in the use of the new Code of Practice?**
- Formal/informal?
- Helpful/unhelpful?
- Any other guidance provided?

**What further training, if any, do you think is required?**

## 3.  THE STOP AND SEARCH PROCEDURE

*We're now going to talk about the actual procedure of stop and search in a little more detail. Again, please think about those conducted in the last 12 months.*

**How do you decide whether to approach an individual for stop and search?**

- What factors do you take into account?
- Has this changed in any way since the introduction of the guidelines?
- IF NOT MENTIONED: The legal test for most stop and search is that a constable has 'reasonable grounds for suspicion' that the person has committed, or is committing, or is about to commit, a particular crime or is in possession of a prohibited article. What, in your view, constitutes reasonable grounds for suspicion? Can you give me an example?
- How clear is the Code of Practice on what are 'reasonable' grounds for suspicion?

**How do you initially approach individuals?**
- Do you always engage with individuals prior to deciding to search? How do you find this (e.g. challenging, unnecessary, easy)?
- What do you say to them?
- How does this differ between different groups (e.g. young people, vulnerable groups)?
- Has this changed in any way since the introduction of the Code of Practice?
- What are the challenges?

**Once you have determined that there are grounds for a search, what happens next? Could you talk me through the key stages?**
- What information is provided to the individual?
- Where does the search take place?
- In which situations would a strip search be necessary? How is this authorised?

PROBE FOR ALL: Has this changed? What are the challenges? Is the Code of Practice clear?

**What information is collected from the individual?**
- How do you go about recording ethnicity? Have you ever recorded it as not provided/unknown? In what circumstances might you do that?
- Has this changed?
- What are the challenges?
- Is the Code of Practice clear?

**How often do you make a record of a stop and search?**
- What sort of situations if any, is this not possible?

**And how often do you issue a receipt after a stop and search?**
- Does this vary according to the circumstances of the search?
- Are there any situations where it is not possible to issue a receipt?

- How often do people take the receipt and listen to the explanation about their right to examine their record?

**Do you always record searches on the stop and search database?**
- How easy and convenient do you find it to use the database?
- Are there any problems with recording searches and using the database?

**How do you feel about carrying out stop and search among vulnerable individuals?** *(If necessary, vulnerable groups include those with alcohol and substance addition problems, mental health conditions, learning difficulties etc.)*
- How often does this happen?
- Are there any differences when it comes to carrying out stop and search with different groups?
- What are the challenges?
- Do you feel the guidelines are clear on this? Are there any areas at all you feel are unclear?

**Have you ever encountered any situations which the Code of Practice did not cover?**
- What do you do when faced with these situations?
- What guidance is provided on what to do in these situations?
- Where else would you look for guidance if required?
- Who could you ask for guidance if required?

**Have you ever carried out a search that fell outside of the Code of Practice?**
- Can you talk me through what happened?
- How did you reach the decision to carry out that search?
- How did you feel about the course of action that you took?
- If faced with the same situation again, is there anything you would do differently?
- Do you feel the guidance on what to do in these situations is clear?

**What, if anything, have you changed about what you do during the procedure since the Code of Practice was introduced?**
PROBE: What has changed? Has anything about the procedure improved? Got worse?

## 4. OUTCOMES

**In your experience, how often does stop and search lead to a positive outcome - in other words the recovery of an item?**
- Has this changed since the introduction of the Code of Practice?
- In what way has it changed?
- What do you think are the reasons for this?

**What is your experience of dealing with negative outcomes** (if required: non-detection of an item)?
- Does this present any particular challenges?
- Can a "negative" search result in any other outcomes? Can anything good come out of these searches?

**Thinking more widely about the longer-term impacts of carrying out stop and searches, would you say it affects your relationship with individuals/communities?**
- In what way(s)?
- Has this changed at all since the introduction of the Code of Practice?

## 5. YOUNG PEOPLE

*Now I'd like to talk a little bit about the use of Stop and Search among young people (under 18) specifically.*

**How often do you tend to engage with young people?** [IF COVERED EARLIER REFER BACK]
- Would you say this has changed at all since the introduction of the CoP?

**What issues, if any, do you face when engaging with young people?**

**How do you feel about carrying out searches of young people?**
- In what situations would result in a search of the young person?
- Any particular/specific challenges?
- Are there any factors in your decision-making that differ from searches with adults?

**In your experience, how often would you say positive searches of young people are made? Is it higher or lower than for searches generally or about the same?**

**Has the rate of positive outcomes changed since the Code of Practice was introduced?**
- What do you think are the reasons for this?

**Do you feel the guidelines in the Code of Practice on engaging with young people are clear? Is there anything at all that is not clear?**

**What happens when you suspect a young person of having alcohol? Can you talk me the process you tend to follow?**
- What factors do you take into account in deciding what approach to take?
- In what circumstances would alcohol be seized?
- If a seizure is not made, are any other courses of action taken?
- In what circumstances would an arrest be made?
- Do you feel the current guidance on young people and alcohol is clear?
- Is there anything that is not clear?

**In what ways, if any, would you like to see powers relating to stopping and searching young people changed?** IF YES: How? For what reasons do you say that?

## 6. POTENTIAL GAPS IN LEGISLATION

**Are there any situations/circumstances where you feel you should be able to conduct a stop and search but you are currently not able to?**

**Are there any situations when it is unclear which legislation should be used?**

IF NOT SPONTANEOUSLY RAISED

**What about the need to conduct a stop and search in order to protect life?**

**What about searching for weapons in a non-public location, such as a flat or vehicle?**

**What about searching for pyrotechnics and flares?**

PROBE FOR EACH ISSUE THAT IS RAISED: Have you ever been in that situation? What are the challenges in that situation? Do you think a specific legislative power is required? What would be the advantages/disadvantages?

## 7.  CLOSE

Thanks.

That's all the questions I wanted to ask you today. Before we finish off, is there anything else you would like to say or ask that we haven't covered?

THANK AND CLOSE

**Police supervisors' discussion guide**

## 1. INTRODUCTION

- Thanks for taking part
- Introduce self and Ipsos MORI
- Introduce the research (on behalf of Scottish Government, role of the Independent Advisory Group (IAG), work to date by the IAG, the 12 month review of the new legislation around stop and search and the Code of Practice, including quantitative review, qual comprises interviews with officers, supervisors, NSSU, practitioners and young people, analysis and reporting winter 2018)
- Duration of interview/group
- Confidentiality – won't use any names in reports or refer to location if quote professionals directly
- Recording – for Ipsos MORI use only, will be securely stored and deleted after project. Check consent to record?
- Ground rules – one at a time for recorder; moderator role – ensure cover everything and everyone gets chance to have a say.
- Any questions?

*Could we just start with a quick introduction – if we go around the group and everyone just says their name and how long they've been a supervisor?*

## 2. ROLE OF SUPERVISORS

*Thanks. First I'd like to ask you a bit about your current role, both generally and specifically in relation to Stop and Search.*

**Can you describe what the role of a police supervisor is?**
- What are your main duties and responsibilities?
- How is the role of supervisor distinct from that of an officer?
- How many people do you supervise?
- What areas do you cover?

**In relation to stop and search specifically, what does your role involve?**
- What are your main duties and responsibilities in relation to stop and search?

### 3. GENERAL VIEWS OF STOP AND SEARCH

*Moving on, I'd like to ask you a bit about your general views about stop and search. Unless otherwise specified, please answer in relation to the last 12 months.*

**Overall, what are your views of stop and search as a tool to prevent and deter crime?**

**Overall, what are your views of stop and search as a tool to detect and solve crime?**

**And have your views on this changed at all since the introduction of the Code of Practice?  In what way?**
- **If not mentioned: as a tool to prevent crime**
- **As a tool to detect crime?**

**What feedback, if any, have you had from your team about stop and search in general?**
- What has changed for the better since the introduction of the Code?
- What difficulties have they faced?
- Has there been any complaints from your team?

**How often would you say stop and search is carried out in your area?**
- Patterns by time of year/events
- Patterns in age/demographics of those stopped
- Do you think it is used enough / not enough / too much?
- Any change since introduction of the Code of Practice?
- If so, was the change due to the Code of Practice or other factors? What other factors?

**In which situations/circumstances would you expect stop and search to be used?**
- Has this changed since the introduction of the Code of Practice?
- In which situations/circumstances is it most effective?
- In which situations/circumstances is it less effective?

**What are the main challenges in carrying out stop and search?**
- Has this changed since the introduction of the Code of Practice?

**Have you seen any other difference in the way stop and search is used since the introduction of the Code of Practice? What happened before? What happens now?**

**Are you aware of any current differences between the way your division and other divisions use stop and search?**

**What are your views on the training you have received in the use of the new Code of Practice?**
- Formal/informal?
- Helpful/unhelpful?
- Any other guidance provided?

**What feedback, if any, have you received from your team about the stop and search training?**

**What further training, if any, do you think is required?**

## 4. THE STOP AND SEARCH PROCEDURE

*We're now going to talk about the actual procedure of stop and search in a little more detail any changes you may have seen over the last 12 months.*

**What, if anything, has changed about the stop and search procedure following the introduction of the Code of Practice?**

**What, if anything, has improved?**
- What impact has this had?
- On officers?
- On those stopped and searched?
- On the public?

**What issues, if any, remain?**
- Decision to stop and decision to conduct a search?
- Definition of reasonable suspicion?
- Grounds for search and the loss of non-statutory search?
- Engagement with the individual? – especially young people
- Information provided in advance of the search?
- The search itself?
- Collection of information about the individual?
- Recording stop and searches
- Issuing of receipts?
- Recording the search and using the S&S database?
- Seizing alcohol from young people?

IF NOT COVERED **There appears to be a high level of not provided/unknown responses to ethnic status in the data than you would expect, what are your impressions of why this is the case?**

**And thinking specifically about search with vulnerable individuals, how well do you feel the procedure works?** *(If necessary, vulnerable groups include those with alcohol and substance addition problems, mental health conditions, learning difficulties etc.)*
- How often does this happen?
- Are there any differences in procedure when it comes to carrying out stop and search with different groups?
- What are the challenges?
- Do you feel the guidelines are clear on this? Are there any areas at all you feel are unclear?

**Have you or your team encountered any situations which the Code of Practice did not cover?**
- What tends to happen in these situations?
- What guidance is provided to officers on what to do in these situations?
- Where else would you look for guidance if required?
- Who could you ask for guidance if required?

**What has been your experience of stop and searches that did not comply with the Code of Practice?**
- What happened?
- How were the searches justified?
- What was learnt from that experience?
- Is guidance on what to do in these situations clear?
- What is the impact of feedback from NSSU on officers?
- What policies and practices are in place for situations where officers are using stop and search incorrectly?
- How often have you had to talk to someone in your team about using this power in an inappropriate manner?

## 5. OUTCOMES

**In your experience, how often does stop and search lead to a positive outcome - in other words the recovery of an item?**
- Has this changed since the introduction of the Code of Practice?
- In what way has it changed?
- What do you think are the reasons for this?

**What is your experience of dealing with negative outcomes (if necessary: non-detection of items)?**
- Does this present any particular challenges?

- Can a "negative" search result in any other outcomes? Can anything good come out of these searches?

**Thinking more widely about the longer-term impacts of carrying out Stop and Searches, would you say it affects relationships with individuals/communities?**
- In what way(s)?
- Has this changed at all since the introduction of the Code of Practice?

## 6. YOUNG PEOPLE

*Now I'd like to talk a little bit about the use of Stop and Search among young people (under 18) specifically.*

**How often does your team tend to engage with young people?** [IF COVERED EARLIER REFER BACK]
- Would you say this has changed at all since the introduction of the CoP?

**What, if any, issues do they face when engaging with young people?**

**What feedback have you received from your team about carrying out searches of young people?**
- In what situations would result in a search of the young person?
- Any particular/specific challenges?
- Are there any factors in your decision-making that differ from searches with adults?

**In your experience, how often would you say positive searches of young people are made? Is it higher or lower than for searches generally or about the same?**

**Has the rate of positive outcomes changed since the Code of Practice was introduced?**
- What do you think are the reasons for this?

**Do you feel the guidelines in the Code of Practice on engaging young people are clear? Is there anything at all that is not clear?**

**What happens when an officer suspects a young person has alcohol? What process would you expect them to follow?**
- What factors are taken into account in deciding what approach to take?
- In what circumstances would alcohol be seized?

- In what circumstances would an arrest be made?
- If neither a seizure nor an arrest is made, are any other courses of action taken?
- Do you feel the current guidance on young people and alcohol is clear?
- Is there anything that is not clear?

**In what ways, if any, would you like to see powers relating to stopping and searching young people changed?** IF YES: How? For what reasons do you say that?

## 7. POTENTIAL GAPS IN LEGISLATION

**Are there any situations/circumstances where you feel your officers should be able to conduct a stop and search but you are currently not able to?**

**Are there any situations when it is unclear which legislation should be used?**

IF NOT SPONTANEOUSLY RAISED

**What about the need to conduct a stop and search in order to protect life?**

**What about searching for weapons in a non-public location, such as a flat or vehicle?**

**What about searching for pyrotechnics and flares?**

PROBE FOR EACH ISSUE THAT IS RAISED: Has someone in your team been in that situation? What are the challenges in that situation? Do you think a specific legislative power is required? What would be the advantages/disadvantages?

## 8. CLOSE

Thanks.

That's all the questions I wanted to ask you today. Before we finish off, is there anything else you would like to say or ask that we haven't covered?

THANK AND CLOSE

**NSSU discussion guide**

## 1. INTRODUCTION

- Thanks for taking part
- Introduce self and Ipsos MORI
- Introduce the research (on behalf of Scottish Government, role of the Independent Advisory Group (IAG), work to date by the IAG, the 12 month review of the new legislation around stop and search and the Code of Practice, including quantitative review, qualitative comprises interviews with officers, supervisors, NSSU, practitioners and young people, analysis and reporting winter 2018)
- Duration of interview/group
- Confidentiality – won't use any names in reports or refer to location if quote professionals directly. Quotes will be only be attributed to an NSSU representative. However, given the size of the unit it may be difficult to ensure complete anonymity. If there is anything you do not want us to include in the report please let us know.
- Recording – for Ipsos MORI use only, will be securely stored and deleted after project. <u>Check consent to record?</u>
- Ground rules – one at a time for recorder; moderator role – ensure cover everything and everyone gets chance to have a say.
- Any questions?

*Could we just start with a quick introduction – if we go around the group and everyone just says their name, rank and how long they've been with the NSSU?*

## 2. VIEWS OF STOP AND SEARCH

**What is the role of the NSSU?**

**How has this changed since the introduction of the Code of Practice?**

**Overall, what are your views on stop and search as a tool to prevent and deter crime?**
- Is it used enough / not enough / too much?

**Overall, what are your views on stop and search as a tool to detect and solve crime?**
- Is it used enough / not enough / too much?

**And have your views on this changed at all since the introduction of the Code of Practice?  In what way?**

- If not mentioned: as a tool to prevent crime
- As a tool to detect crime?

**In your experience, to what extent have attitudes changed among police officers conducting stop and search?**
- Differences by command area/division?

**What feedback, if any, have you had from officers about stop and search in general?**
- What has changed for the better since the introduction of the Code?
- What difficulties have they faced?
- Has there been any complaints from officers?

**In which situations/circumstances would you expect stop and search to be used?**
- Has this changed since the introduction of the Code of Practice?
- In which situations/circumstances is it most effective?
- In which situations circumstances is it less effective?

**What have been the main challenges in implementing the stop and search Code of Practice?**

**Have you seen any other differences in the way stop and search is used since the introduction of the Code of Practice? In what way?**

**Are you aware of any differences in the way different Command Areas or divisions use stop and search?**

**What training has been provided in the use of the new Code of Practice?**

**How was it delivered?**

**What was the aim of the training provided?**

**What impact do you think that training had?**

**What feedback, if any, have you received from officers about the stop and search training?**

**What further training, if any, do you think is required?**

**How, if at all, has the introduction of the Code of Practice changed the relationship between officers and the NSSU?**

### 3. STOP AND SEARCH PROCEDURE

**What, if anything, has changed about the stop and search procedure following the introduction of the Code of Practice?**

**What, if anything, has improved?**
- What impact has this had?

**What issues, if any, remain?**

- Decision to stop and decision to conduct a search?
- Definition of reasonable suspicion?
- Grounds for search and the loss of non-statutory search?
- Engagement with the individual? – especially young people
- Information provided in advance of the search?
- The search itself?
- Collection of information about the individual?
- Recording stop and searches
- Issuing of receipts?
- Recording the search and using the S&S database?
- Seizing alcohol from young people?

IF NOT COVERED **There appears to be a high level of 'unknown' responses to ethnic status in the data than you would expect, what are your impressions of why this is the case?**

**Have you encountered any situations which the Code of Practice or the legislation did not cover?**
- What tends to happen in these situations?

**What has been your experience of stop and searches that did not comply with the Code of Practice?**
- What happened?
- How were the searches justified?
- What was learnt from that experience?
- Is guidance on what to do in these situations clear?
- What policies and practices are in place for situations where officers are using stop and search incorrectly?

**What challenges have been posed by monitoring and auditing the stop and search database**

**What have been the challenges in providing feedback to officers?**

- Impact of positive /negative feedback to officers?

## 4. OUTCOMES

**Thinking more widely about the longer-term impacts of carrying out Stop and Searches, would you say it affects relationships with individuals/communities?**
- In what way(s)?
- Has this changed at all since the introduction of the Code of Practice?

## 5. POTENTIAL GAPS IN LEGISLATION

**Are there any situations/circumstances where you feel the use of stop and search would be appropriate but there is not currently a legislative basis?**

**Are there any situations when it is unclear which legislation should be used?**

IF NOT SPONTANEOUSLY RAISED

**What about searching young people for alcohol?**

**What about the need to conduct a Stop and Search in order to protect life?**

**What about searching for weapons in a non-public location, such as a flat or vehicle?**

**What about searching for pyrotechnics and flares?**

PROBE FOR EACH ISSUE THAT IS RAISED: What are the challenges in that situation? Do you think a specific legislative power is required? What would be the advantages/disadvantages?

**What is the role of the NSSU moving forward?**

## 6. CLOSE

Thanks.

That's all the questions I wanted to ask you today. Before we finish off, is there anything else you would like to say or ask that we haven't covered?

Just as a reminder, is there anything we have discussed that you do not want us to quote or include in the final report?

THANK AND CLOSE

**Young people's discussion guide**

## 1. INTRODUCTION

- Introduce self and Ipsos MORI

- Introduce the research: *The Scottish Government has asked us to carry out research about how the police in Scotland carry out stop and searches. A stop and search is when a police officer carries out a search on a member of the public because they may suspect them of having an illegal or potentially harmful item (e.g. drugs, weapons)*

  *We are asking people like yourself to take part in the research to find out your views and experiences of police stop and searches. Your views are really important because they will allow us to let the Scottish Government know about what people in Scotland think about stop and searches, and how they could be improved in the future.*

- Explain that the interview will last around 20 minutes and at the end we will give participant £20 as a thank you for taking part.

- Provide reassurances of anonymity, confidentiality and participation: *Ipsos MORI is a member of the Market Research Society and we follow their code of conduct. That means that everything you say to me today is confidential and anonymous. Any information that would allow someone to identify you as an individual will NOT be passed on to anyone outside of the Ipsos MORI research team. This means that you cannot be identified in any reports we produce.*

  *And just to confirm, taking part today is completely voluntary. I will be asking you questions about your experiences of dealing with the police but if at any time there is something you would prefer we did not talk about, just let me know any we'll move on to the next question. And if at any time you decide that you do not want to take part in the research any more let me know and we can end the interview.*

- Request permission to record interview and confirm the all identifying information will be held securely, accessible only by the research team, and will be deleted one year after completion of the project.

- Any questions?

- Ask participant to read and sign consent form.

## 2. EXPERIENCE OF STOP AND SEARCH

**Can I just check, have you been stopped and searched by the police personally, or have you seen it happen to someone that you know? Or have you experienced both?**

**How many times have you been/seen someone you know stopped and searched?**
- IF MORE THAN ONCE: When was the last time this happened?

*I'd like you to talk me through your last experience of being (or seeing one of your friends be) stopped and searched by a police officer. Just tell me what happened in your own words. Try to tell me as much detail as you remember but don't worry if you forget something - I will be asking some questions as we go along to jog your memory and make sure we've covered everything.*

**So, thinking about [when/the last time] you [were stopped and searched/witnessed a stop and search], can you tell me what happened – starting from what you were doing before the police approached you?**
- PROBE AS NECESSARY ON EACH STAGE OF THE STOP AND SEARCH

## 3. CIRCUMSTANCES OF STOP AND SEARCH

**When and where did it happen? What time of day?**

**Who were you with at the time it happened? What doing?**

**Why do you think the police stopped you/[the person searched]?**

**How did the police approach you/[the person searched]? Were they in uniform or plain clothes?**

**How did it make you feel to be approached by the police? How did you react?**
- PROBE: Annoyed/angry; scared; embarrassed; safe/threatened?

## 4. BEFORE THE SEARCH

**What did the police say when they stopped you/[person searched]?**
- Did they have a conversation with you/person being searched and ask you/them questions before conducting the search?
- Did they clearly   tell you/[person searched] that they were going to carry out a stop and search before they did it?
- Did they say why they were going to carry out the search? Did they say what they were searching for and why they thought you/[person searched] had it on you?

**Did they provide any information before they carried out the search – their name, number, name of police station?**

**Did they say how they were going to carry out the search?**

**Did they explain why they were legally allowed to search you?**

**Did they ask for any information about you/[person searched] or say anything about this? What did they say?**
- Do you remember if you/[they] gave any personal information to the police? What did you/[they] say?

**Did you understand the information and reasons the police gave for stopping and searching you/[person searched]? Did they ask you if you understood?**

**Did you/[they] ask any questions before they started the search? What did you/[they] say/ask?**


## 5. DURING THE SEARCH

**Where did the police officer carry out the search? Did they ask if you/[person searched] were happy for the search to be carried out there? Could other people see them carry out the search?**

**Was the police officer male or female?**

**How did the police office carry out the search on you/[person searched]?**
- What did they do? Where did they search/look?

- Did they explain to you/[person searched] what they were doing while carrying out the search?
- Did they ask you/[person searched] to remove any items of clothing (e.g. jacket, hat, shoes/trainers)?

**How long did the search take?**

**How did it make you feel?**

**How did you feel about the way the police spoke and behaved when carrying out the stop and search? (e.g. how they spoke - tone, politeness, language; physical behaviour; respectful)**

## 6. AFTER THE SEARCH

**What happened once they had searched you - did they find anything and take anything from you/[person searched]?**

**What did they police do/say? Did you understand what they told you?**

**Did they inform your parents/guardians about the search?**

**How did you feel after the search?**
- PROBE: Annoyed/angry; scared; embarrassed; safe/threatened?

**Did the police record any details of the search on their tablet / notepad? Did they give you/[person searched] a receipt, which included basic details about the search? Did you/they take the receipt? (if not, why not?)**

**Did they explain to you that you could ask for a copy of the record of the search if you wanted?**
- IF OFFERED: Did you/[they] ask for a copy of the record of the search? Why/why not?

**Did the police officer say anything else after they had finished the search?**

**Before we move on is there anything that happened during the search that we have not talked about and that you'd like to mention?**

**Overall, how do you feel about how the way in which the police carried out the stop and search?**
- Positives and negatives? Was it justified/fair? Any concerns?

**Did your views of the police change after experiencing the stop and search?**
- o IF YES: How did it change your views (more positive/negative)? Why?

**Is there anything that the police could do differently when carrying out a stop and search?** IF YES: What could they do instead?

- Changes to who gets stopped?
- Changes to reasons for stopping?
- Changes to why stopped (e.g. alcohol, drugs etc)?
- Police manner/behaviour?
- Information police provide?


## 7. ALCOHOL

[IF NOT COVERED] **Have the police ever asked you if you have alcohol on you and asked you to hand it over to them?**
- When/where did this happen?
- Why do you think you were approached?
- Did you have any alcohol on you?
- If yes, did you hand over the alcohol to the police?
- What did the Police do?

**Was the procedure the same or different than you've already described? What was different?**

**Have you had any other contact with the police?**
IF YES: Can you tell me a bit more about what happened?
How did it make you feel?

That's all the questions I wanted to ask you today. Before we finish off, is there anything else you would like to say or ask that we haven't covered?

THANK AND CLOSE

**Practitioners' discussion guide**

## 1. INTRODUCTION

- Thanks for taking part
- Introduce self and Ipsos MORI
- Introduce the research (on behalf of Scottish Government, role of the Independent Advisory Group (IAG), work to date by the IAG, the 12 month review of the stop and search guidelines, including quantitative review, qualitative portion comprises interviews with police, young people, and practitioners working with young people. Analysis and reporting winter 2018)
- Duration of interview
- Confidentiality – won't use any names in reports or refer to location if quote professionals directly.
- Recording – for Ipsos MORI use only, will be securely stored and deleted after project. <u>Check consent to record?</u>
- Any questions?

## 2. BACKGROUND AND OVERVIEW OF ROLE

*To begin with it would be useful for me to understand a bit more about your organisation, your own role, and the types of people you work with.*

**Could you tell me a bit about the role of [organisation]?**

**And what do you do in your current role?**
- How long have you worked here?
- What location/areas do you cover?

**What types of people/young people do you typically work with?**
PROBE ON:
- Those with alcohol or substance use?
- Those in other vulnerable situations, or considered at risk?
- Those from ethnic minority backgrounds?

**Of those you work with, what sort of contact do they tend to have with the police?**
PROBE:
- What do they tell you about it?
- What has the nature of that contact been (e.g. arrests, stops, enquires/questioning, anything else?)

- Particular types of young people that are more likely to have been involved with the police?

## 3. AWARENESS AND PERCEPTIONS OF STOP AND SEARCH

*As I mentioned when we were arranging this interview, the research is looking at the stop and search procedure. I will ask your views on some specific aspects of the procedures, but first I am interested in how much you know about it and your general views of it.*

**How much do you know about stop and search?**
PROBE:
- How did you become aware of it?
- What do you know about it?
- In your own words, could you describe what stop and search aims to do?

**Generally, what are your views about stop and search?**
PROBE FULLY FOR POSITIVES, NEGATIVES AND REASONS WHY

**Based on what you know about it, in what situations/circumstances do you think stop and search works well? Why do you say that?**

**And in what situations/circumstances do you think stop and search does not work well? Why do you say that?**

**Based on your experience, do you think the police carry out too much, the right amount or too little stop and search??**
PROBE: Why do you say that?

**Do you feel the procedure is used in a consistent way?**
PROBE:
- Are there any types of people that are more likely to be searched than others?
- Or less likely to be searched?
- Why do you say that?

**How much do you know about the procedure police follow if they suspect a young people has alcohol in their possession when they encounter them**?
PROBE:
- Is this the same procedure as that used for stop and search?

- Is it different in any way?

**How well do you think the current procedure for young people and alcohol works?**
PROBE FULLY FOR POSITIVES, NEGATIVES AND REASONS WHY
- What should police officers' main motivation be when they approach young people with alcohol in their possession (e.g. reducing anti-social behaviour, preventing harm)?

## 4. EXPERIENCE OF STOP AND SEARCH

[THESE QUESTIONS/PROBES MAY HAVE BEEN COVERED IN THE SECTION ABOVE, SO TAILOR THIS IN RESPONSE TO PRECEEDING DISCUSSION]

*I know want to focus on any direct experiences you may have heard about from the people you work with*

**Have any of the individuals you work with experienced stop and search?**
PROBE:
- What sorts of people (e.g. age, ethnicity)?
- Did they experience this directly, or witness it happening to other people?

**Have they discussed the experience with you at all?**
PROBE:
- What did they tell you about it?
- What were they circumstances/why were they stopped and searched?
- Do you know what the outcome was?

**Did they raise any concerns about the procedure?**
PROBE FOR DETAILS

**And have any of the individuals you work with been caught with alcohol, or had alcohol seized from them by the police?**
PROBE:
- What sorts of people (e.g. age, ethnicity)?
- What did they tell you about what happened?
- In what ways was this different from stop and search?
- Were they told they would be arrested if they did not give the police their alcohol?

- Do you know what the outcome was?
- Did they raise any concerns about what happened?

**How would you describe the relationship between the individuals you work with and the police more generally?**
- What other contact do they have?
- How does stop and search impact on this relationship?

[TAILOR AS NECESSARY DEPENDING ON WHO THEY WORK WITH, AND WHAT HAS ALREADY BEEN COVERED ABOVE]:
**Thinking about the young people you work with who are in particularly vulnerable situations, have their experiences of stop and search been different to those of others in any way?**
PROBE:
- In what way are these experiences different to those of others?
- What have they told you about it?
- What particular issues have these individuals faced?

**Thinking about the young people you work with from minority ethnic backgrounds, have their experiences of stop and search been different in any way?**
PROBE:
- In what way are these experiences different to those of others?
- What have they told you about it?
- What particular issues have these individuals faced?

**Would you say there has been any change in attitudes towards the police regarding stop and search amongst young people in the last year?**

## 5. CODE OF PRACTICE

*I now want to ask about the guidelines used by police for stop and search, and any views you may have on that.*

**What do you know about the guidelines that are used for stop and search?**

**Were you aware that the police have Code of Practice that sets out the procedure they should follow for stop search?**

[IF NOT AWARE AT ALL EXPLAIN: *The Code of Practice was introduced in May 20I7, and sets out the principles under which stop and search is undertaken and explains why, when and how stop and search is used*]

71

**How important is it for a Code of Practice to be in place?**

**Based on what you know about it, what are your views generally on the Code of Practice? Generally positive/negative?**

**How, if at all, do you feel the use of Stop and Search has changed since the code of practice was introduced in May 2017?**

PROBE: Any changes to:
- The number of stop and searches
- The way the procedure is carried out?
- Individual's experiences and attitudes towards the procedure?
- Outcomes from the procedure?

**Are there any aspects areas which seem to be missing or that you would like to see more clarity on?**

## 6. FINAL THOUGHTS

**Finally, reflecting on everything we have discussed so far, is there anything that you think could be done better in future?**

**Are there any gaps that should be addressed?**

**Is there more information needed on any particular aspect?**

**Is there anything you would like to see clarified?**

## 7. CLOSE

Thank you for your time. That's all the questions I wanted to ask you today.

Before we finish off, is there anything else you would like to say or ask that we haven't covered?

THANK AND CLOSE

# References

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Police Scotland (2015) Stop and Search Improvement Plan 2015-16 http://www.scotland.police.uk/assets/pdf/138327/306184/stop-and-search-impovement-plan-2015-16

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# 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 level[1].

## 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 25.6[2].  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 2015[2].
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

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[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.

4

# CONTENTS

# 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 Search[3] (IAGSS), appointed by the Scottish Government, conducted a 6 month review of the Code[4] 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.

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[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 alcohol[5] and tobacco[6] 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).

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[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 2018[7]**
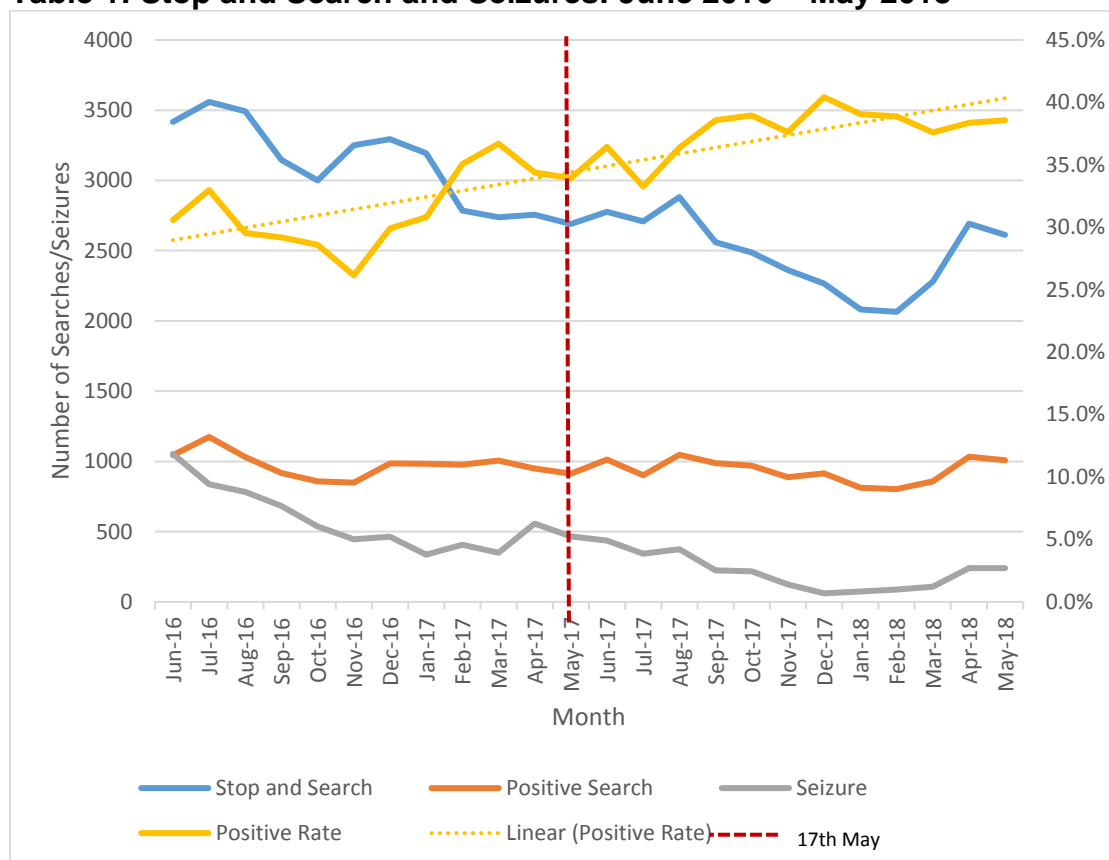


The number of police seizures in the year after the introduction of the Code was 2,534 compared with 6,915 the previous year, a reduction of 63%.

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.

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[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 2018[8]**

| 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 Categories[9] | 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.

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[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 month[10]. 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%.

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[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-May18[11]**
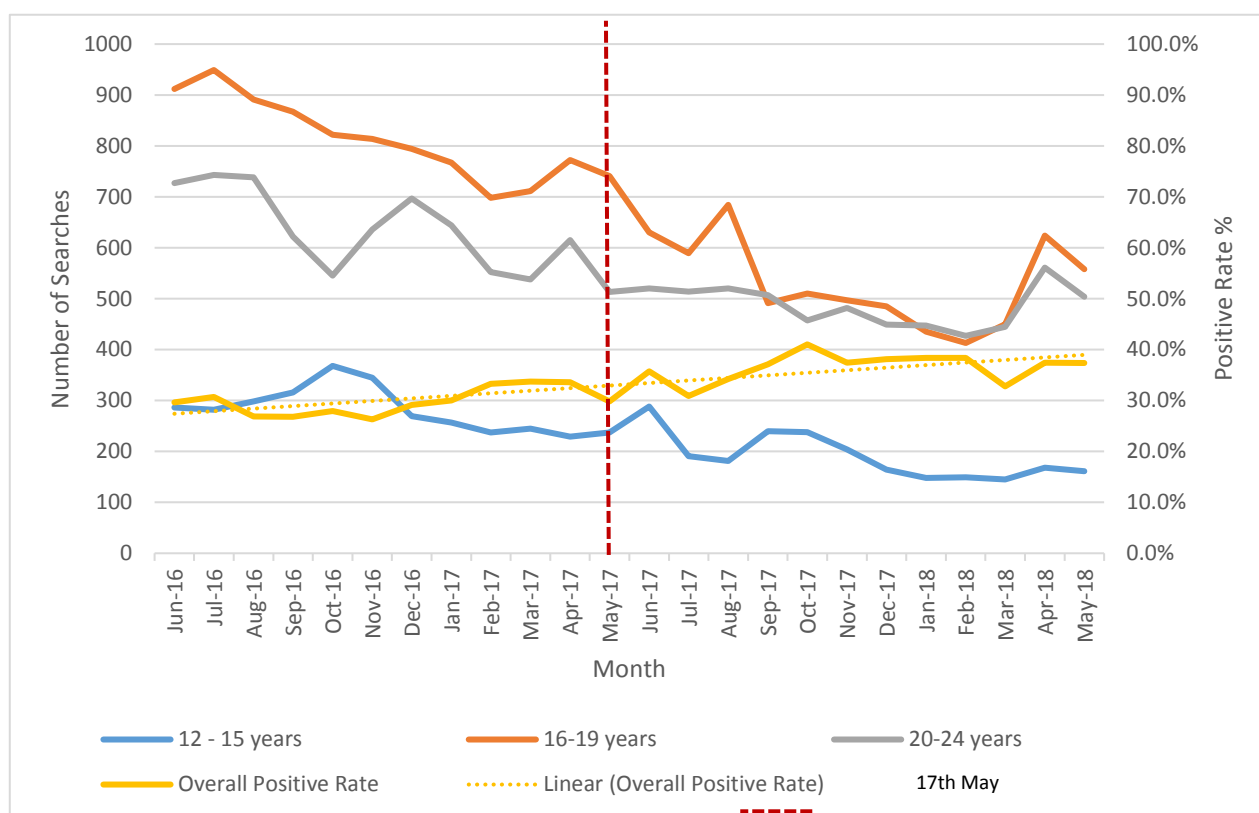


A recommendation contained within the Police Scotland Improvement Plan was to ensure all engagement with children and young people is delivered in a positive manner, centred on building trust and positive outcomes.

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.

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[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 finding 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 confiscated[12].

**Table 4: Seizures of Alcohol: Jun 2016 – May 2018[13]**
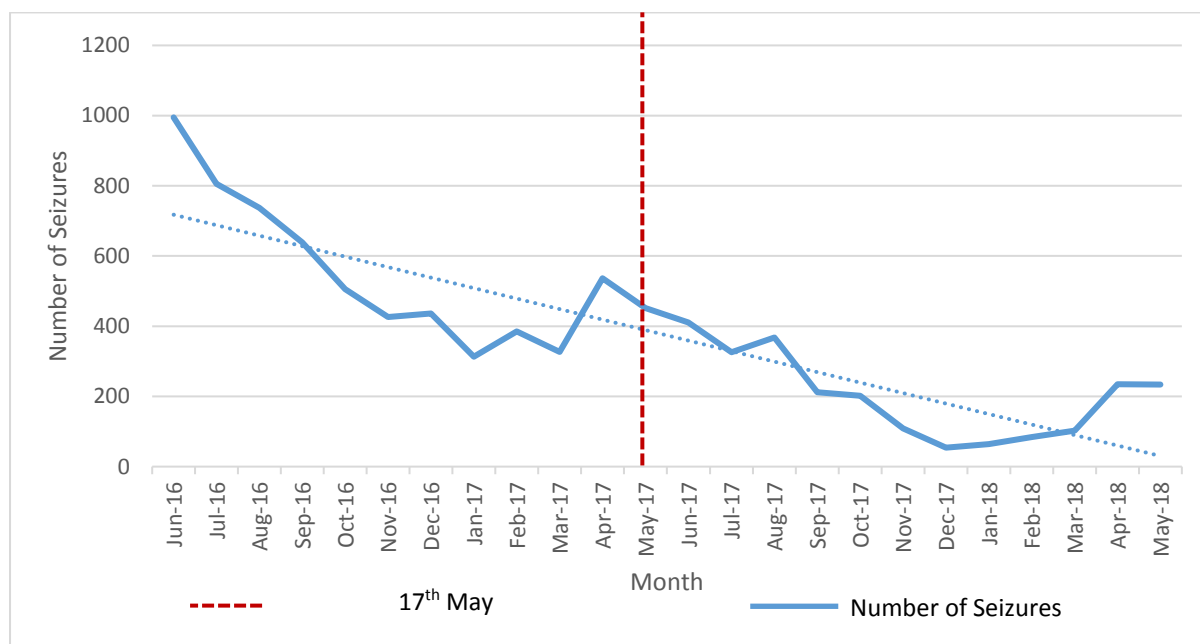


The level of incidents reported to the police about 'drinking in public', the level of street drinking offences detected by the police, and the level of incidents involving young people and alcohol all provide context when considering the reduction in alcohol seizures and when considering the need for 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% reduction[14]. And finally, the Scottish Schools Adolescent Lifestyle and Substance Use Survey (SALSUS) highlights a long-term decline in problematic drinking among young people[2].

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.

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[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.

17

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.

19

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.

21

OFFICIAL

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 Committee[15]. 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

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[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 locally[17].

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 Code[18].

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.

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[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.

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## 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