



Northern
Ireland
Office

**CODE OF PRACTICE (NORTHERN
IRELAND) FOR THE AUTHORISATION
AND EXERCISE OF STOP AND SEARCH
POWERS IN THE JUSTICE AND SECURITY
(NORTHERN IRELAND) ACT 2007**

Summary of Responses to Public Consultation

June 2013

Introduction

In December 2012, the Northern Ireland Office launched a public consultation seeking views on the Northern Ireland draft Code of Practice on the exercise of the powers under the Justice and Security (Northern Ireland) Act 2007 (2007 Act) as amended by the Protection of Freedoms Act 2012. The consultation closed on 6 March 2013.

The Government has considered the responses and has concluded that the Code of Practice should be implemented with some minor changes. The revised Code will come into force once approved by Parliament and may be found at: www.official-documents.gov.uk.

This document sets out a summary of the responses and, where appropriate, a Government response. It is available on the NIO Website: www.nio.gov.uk under *Public Consultation*. You may make additional copies of the summary without seeking permission; it can also be made available on request in different formats for individuals with particular needs.

If you require any additional copies of the summary, or have any concerns or complaints about the consultation process you should contact the consultation co-ordinator, in writing, by email or telephone as follows:

Consultation Co-ordinator
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Room 112
Stormont House Annexe
BELFAST
BT4 3SH

Email: the.secretary@nio.x.gsi.gov.uk

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Assessment of Responses

On launching the consultation the Secretary of State said:

“The Justice and Security (Northern Ireland) Act 2007 provides the PSNI with important powers that help protect the public. The police take very seriously their obligation to use these powers in a legal, fair and reasonable way. The consultation launched today asks for comment on the Code of Practice that should apply to the exercise of these powers.

The core principles are that these powers must be exercised in a proportionate way and only deployed in cases of necessity. I believe that the Code should strengthen public confidence in the police, as well as giving officers the guidance they need to ensure these powers are used only in appropriate cases.”

The changes will ensure that the Justice and Security (Northern Ireland) Act 2007 (2007 Act) powers are used proportionately, where necessary and in accordance with the law. The aim of the Code is to promote the fundamental principles to be observed by the Police Service of Northern Ireland (PSNI) and to preserve the effectiveness of, and public confidence in, the use of stop and question, stop and search and other powers.

The Code sets out how the powers at sections 21, 23, 24/Schedule 3 and 26 of the 2007 Act should be exercised by the PSNI. The purpose of Annex C is to set out the general principles for the use of the powers at sections 21-28 and 30 of the 2007 Act by the armed forces, in the exceptional circumstances in which they may be exercised.

A total of 4 formal responses were received from:

- The Police Superintendents Association Northern Ireland
- Committee for the Administration of Justice
- Northern Ireland Human Rights Commission
- Northern Ireland Policing Board

All 4 respondents broadly welcomed the introduction of the Code of Practice for the Justice and Security (Northern Ireland) Act 2007 making the following comments.

The Police Superintendents Association of Northern Ireland (PSANI):

“The Superintendents’ Association of Northern Ireland has no issues to raise about the general content and thrust of the document”.

The Committee for the Administration of Justice (CAJ):

“CAJ’s recent publication, ‘Still Part of Life Here? A Report on the use and misuse of stop and search/question powers in Northern Ireland’, called for immediate provision of a Code of Practice for the Justice and Security Act, given that it has been five years since the legislation was passed. CAJ therefore welcomes this draft Code in anticipation of a final Code of Practice which will reflect a human rights based approach to policing”.

Northern Ireland Human Rights Commission (NIHRC):

“Terrorism undermines the right to life, freedom from torture and the right to liberty and security, as well as having secondary impact on a range of socio-economic and cultural rights. In developing this Code the Commission recognises and acknowledges the importance of striking an appropriate balance between the rights of those who may be subject to the powers of the police and the need to protect the public. Furthermore the Commission acknowledges that there is a clear intention to embed the powers within a human rights framework, in particular demonstrated by references to the need to ensure that the powers are exercised only where proportionate and necessary”.

The Human Rights and Policing Standards (HRPS) Committee of the Northern Ireland Policing Board (NIPB):

“The Committee welcomes the draft Code which sets out clearly the law and the general principles relevant to the use of the Justice and Security (Northern Ireland) Act 2007 powers.....The general principles governing the exercise of the police powers in the draft Code are set out in a clear and accessible manner. For example, the draft Code emphasises the requirement that each use of a power

must be lawful, necessary and proportionate and must be exercised in such a way as to ensure the least possible interference with individual rights. It reminds officers that where reasons are set out in legislation for the use of a particular power the PSNI must not rely on any other rationale for its use. It further reinforces the requirement that all uses of powers must be exercised courteously and with minimum inconvenience to the public. The draft Code provides a helpful summary of the law and an aide memoire for police officers exercising the powers”.

The NIPB also positively welcomed the range of specific safeguards that have been included in the code.

Some comments in each response required detailed consideration resulting in amendments to the draft. Those comments and the Northern Ireland Office responses are set out in pages 5-15. This document does not consider comments made on the legislative changes to the Justice and Security (Northern Ireland) Act 2007.

We would like to thank all those who responded to the consultation.

The Police Superintendents Association of Northern Ireland

1. View expressed

“With the existence of mutual aid in the United Kingdom, it is not impossible that colleagues from Great Britain could be called upon to use the powers in a Northern Ireland context. It may therefore be prudent to include such a consideration in the document”.

Response

The code has been amended at paragraph 5.15 with an additional footnote to reflect the potential for mutual aid arrangements to be instigated.

The Committee for the Administration of Justice

2. View expressed

“CAJ recommends that paragraph 4.6 should include making the code available in police stations in various formats such as Braille and audio formats in line with disability accessibility provisions”.

Response

Should a different format be required a request should be made by contacting the Northern Ireland Office in writing or by email at the.secretary@nio.x.gsi.gov.uk.

3. View expressed

“CAJ also recommends that the word ‘mentally disordered’ be removed from footnote 3 in relation to the provision of appropriate adults, and instead replace it with ‘mental illness and learning or behavioural disability’ which is more in line with international human rights disability provisions and also anticipated new capacity based legislation in Northern Ireland”.

Response

Footnote 3 of paragraph 4.6 has been amended as follows:

'If a Custody Sergeant suspects that a person may have a mental illness, a learning or behavioural disability or otherwise appear mentally vulnerable he is obliged under PACE to seek the services of an 'appropriate adult' to represent the person's best interests. This also applies if the person is a juvenile. Their role is to support, advise and assist the detainee, and to ensure that the individual understands the processes and their rights during detention in police custody'.

4. View expressed

"CAJ is aware of Tactical Support Groups (TSG's) being used in stop, search and question situations, and over the past year incidences of heavy handedness in stop and search have been reported to CAJ and largely relate to actions of TSG units. Given the concerns raised CAJ recommends explicit provision is made within the code to ensure adequate training of TSG units in exercising the powers".

Response

All PSNI officers receive training in the exercise of the powers in the 2007 Act. The PSNI is subject to oversight and scrutiny by the Policing Board, a structure which is unique to Northern Ireland. The powers of the 2007 Act and their use are also examined by the Independent Reviewer appointed under section 40 of the 2007 Act. In addition, anyone wishing to make a complaint about the exercise of the powers can contact the Northern Ireland Police Ombudsman who will investigate.

5. View expressed

"In the draft Code paragraph 6.5, states that 'Officers may ask any question necessary to ascertain their identity' CAJ recommends removal of the use of word 'any', as it allows interpretation of the legislation to be far too broad and subject to abuse".

Response

Paragraph 6.5 has now been amended as follows:

'Officers may ask a person necessary questions to ascertain their identity'.

6. View expressed

“Para. 6.11 outlines what may happen under s21(5) which provides that the power to stop a person includes the power to stop a vehicle. The code also states that “[I]f a person is stopped officers may question the occupant or occupants separately or jointly to establish their identity and movements. CAJ is concerned about separating occupants of a vehicle for questioning and adverse affects this may have on persons beings stopped, particularly where this may involve separating parents from children. CAJ recommends removal of this provision. However, if this is not possible, then at a minimum we recommend that it included states that where occupants of the vehicle are children they must be allowed to remain with an adult being questioned”.

Response

Paragraph 6.11 does say officers ‘may question the occupant or occupants separately or jointly’ and the decision on this will be influenced by the operational circumstances. It would therefore not be helpful to remove the PSNI’s flexibility of response by specifying what action they should take. PSNI officers are fully trained in the use of the powers and the detailed information contained in PSNI Policy Directive 13/06 "Policing with Children and Young People" provides guidance on how to determine the most appropriate response. We have referenced this in a footnote to paragraph 6.11.

7. View expressed

“As the requirement for JSA authorizations is relatively recent, use of authorisation powers have yet to be fully considered by the Independent Reviewer or the Policing Board, or to feature in a court judgment.

Reflecting the provisions in the legislation Para 8.30 states, “[A]n authorization ceases to have effect at the end of 48 hours unless it is confirmed by the Secretary of State before the end of that period.” Consequently this provision allows any of the stop, search and question JSA provisions triggered in that 48 period to stand irrespective of whether the Secretary of State subsequently regards the authorization as having met the criteria in the Act. Notwithstanding the practical requirements of an authorisation system, if the authorization is in

fact a safeguard there is a risk 48 hour authorizations could escape its provisions, CAJ recommends provision in the code to monitor and remedy practices which lead to refused authorizations”.

Response

The new authorisation regime has been in place since 10 July 2012. To date all authorisations from the PSNI are notified to the Secretary of State and forwarded as soon as the authorising Assistant Chief Constable signs them. They are received and examined by the Secretary of State or Minister of State (with delegated authority) to consider and either confirmed or cancelled within 48 hours. Should the Secretary of State decide to cancel an authorisation it is with immediate effect and the PSNI would be advised of the reasons for the cancellation.

To clarify, the legislation itself states that an authorisation ceases to have effect after 48 hours if it is not confirmed by the Secretary of State, but if it does cease to have effect in that way that does not affect the lawfulness of anything done in reliance on it before the end of the period (see Schedule 3, paragraph 4D (2) and (3)). However, if the Secretary of State were to refuse an authorisation, he or she would follow up on their concerns and the reasons why the authorisation was refused with the PSNI in order to remedy the situation. It is not possible to predict in advance what those concerns might be, and therefore we do not believe that the Code of Practice could sensibly deal with that.

The Independent Reviewer has fully considered the authorisation processes and extensively covered them in his Fifth Report¹ reporting on the new regime. Mr Whalley made the following comments:

“I have analysed the new authorisation process in some detail, because it establishes the ground rules which those involved will be following throughout the present year. It also seems to me important that something

¹ The Independent Reviewer’s Fifth Report can be accessed here: <https://www.gov.uk/government/publications/fifth-report-under-the-justice-and-security-northern-ireland-act-2007>

as significant as this should be clearly described in a report such as mine, for the benefit of a wide readership, so as to give transparency to a major new piece of the machinery”.

“I am however satisfied that the new process is exhaustive and comprehensive, that it fully reflects the requirements in the JSA as amended by the Protection of Freedoms Act, and the draft Code of Practice under section 34, and that the authorising officers have exercised their function scrupulously and in full recognition of the magnitude of the decisions they are taking.”

These processes will continue to be kept under regular review.

8. View expressed

“Para 8.71 states that “If a person to be searched does not appear to understand what is being said the officer must take reasonable steps to bring the information regarding the person’s rights to his or her attention. If the person is deaf or cannot understand English and is accompanied by someone, then the officer must try to establish whether that person can interpret or otherwise help the officer to give the required information.” ...CAJ recommends amendment of this provision to remove the explicit requirement to try to use acquaintances as interpreters, and to cross reference provisions relating to appropriate adults”.

Response

Police officers have access to a translation service through their Blackberrys which can be utilised in the instance of language difficulties. To make it a requirement to use formal telephone interpreting would cause a disproportionate delay to a procedure where someone is not under arrest. We have provided more detail in paragraph 8.71 regarding access to translation services and changed the word 'must' to 'may' so that it now reads “the officer may try to establish” whether the accompanying person can interpret or otherwise help.

9. View expressed

“Non-discrimination measures are first referenced in section 5, ‘General Principles of governing the exercise of police powers under sections 21, 23, 24/schedule 3 and 26 of the 2007 Act’ of this draft Code of Practice. Specifically, paragraph 5.4 states, “[W]henver the powers are used it must be without discrimination on the grounds of religious belief or political opinion, racial group, age, marital status, sexual orientation, gender, disability or whether or not a person has dependents.” Whilst this is welcome, in contrast to codes in Great Britain, the record keeping requirements of the Code then do not go on to require ethnic monitoring, which in Northern Ireland would be inclusive of ‘community background’....

CAJ therefore urges the NIO to bring this Code of Practice in line with the recommendations competent international treaty bodies and require the collection and publication of monitoring of stop and search/question powers on grounds inclusive of (Protestant/ Catholic etc) community background. This could be added to para 8.75 in line with recording provisions in the other Codes of Practice”.

Response

The PSNI provide reports to the NIPB on a quarterly basis which analyse the use of all the powers in the 2007 Act according to geographic area, gender, ethnicity, power used and subsequent arrest. The Independent Reviewer also has access to these statistics for the purpose of drafting his reports. The Secretary of State has access to the statistics relating to the stop and search power (paragraph 4a/schedule3) each time an authorisation is presented to her. To strengthen the Code on this issue, two additional sections have been added at paragraphs 5.6 to 5.11, titled ‘Avoiding Discrimination’ and ‘Monitoring and supervising the use of stop and search powers’

10. View expressed

“In so far as there is information available, the use of both the JSA and TACT powers by the PSNI seems ineffective with arrest rates well under 1%. It is not clear if the arrests actually relate to ‘terrorist’ (scheduled) offences or other

matters, including resisting the stop and search. The PSNI also does not collect figures relating to any subsequent charges or convictions, indicating that the police themselves do not actually evaluate how effective the powers are in relation to the results they produce. CAJ recommends that a recording provision capturing arrest powers is included in the draft code, which would require the PSNI to gather and publish such data. This may also allay fears that the JSA provisions are being targeted at suspect communities”.

Response

The statistics on the PSNI use of the powers in the 2007 Act (including subsequent arrest) are already supplied to the Northern Ireland Policing Board on a quarterly basis. In addition they meet with the Independent Reviewer on a regular basis and supply him with statistics on use. Data is available in the regular bulletins on the PSNI website under the heading ‘Statistics’. The PSNI does not collect figures relating to any subsequent charges or convictions as charges are determined by the Public Prosecution Service (PPS). Based on the police investigation the PPS then makes the decision on whether to refer the matter to court. While the police do not publish figures relating to subsequent charges or convictions as these are within the gift of other parts of the criminal justice system they do regularly review the effectiveness of the powers through their governance systems.

11. View expressed

“Age based monitoring has also been of some concern to CAJ. Statistics provided to the Policing Board indicate over half the persons stopped and searched are under 25, and 14% of those subjected to the powers are children. It is not clear if these stops largely relate to powers under the ordinary law (PACE) or the JSA/TACT powers. CAJ urges that these statistics are broken down by power to further examine the reasons for and impact of the level of usage of stop and search/question against children and young people and whether JSA powers are being used in the manner in which they are intended. CAJ recommends including provision within the code to in para 8.75 require the capturing and publication of such desegregated data on grounds of age”.

Response

Statistics on the PSNI use of the powers in the 2007 Act are already supplied to the Northern Ireland Policing Board on a quarterly basis, which includes a breakdown by age groups and by power. In addition they meet with the Independent Reviewer on a regular basis and supply him with statistics on use. It is the role of the Independent Reviewer to report on whether the powers are being used in the manner which they are intended. In his Fifth Report Mr Whalley comments on statistics and record keeping. Mr Whalley has not reported any difficulties in gaining access to records or statistics nor has he identified any problems on their use.

Northern Ireland Human Rights Commission

12. View expressed

“The Commission advises that Government consider how the language of human rights can further be integrated within the Code...”

Response

The reference in paragraph 5.4 to sections 75 and 76 of the NI Act 1998 makes it clear that there is a duty to promote equality of opportunity and good relations, and that discrimination on a prohibited ground is unlawful. There are references, where appropriate, to the European Convention on Human Rights throughout the Code of Practice. In addition, paragraphs 5.1 to 5.4 of the Code on General principles refer expressly to human rights obligations in a number of places. We do not believe further references are necessary.

13. View expressed

To ensure full and open transparency around the exercise of the powers the Commission advises that a requirement to record the basis upon which an individual is stopped, searched or questioned should be provided for within the Code.

Response

The requirements for the PSNI to have a basis for the exercise of the 2007 Act powers are set out in paragraph 8.61. In addition the PSNI have developed their record keeping and use Blackberrys to electronically record the details of a stop and search. The sequencing of actions when completing the form on the drop down menu will not allow the officer to proceed through it without noting the power used and giving an explanation of the reason for it. A footnote has been added to paragraph 8.75 of the Code explaining this.

14. View expressed

“The Commission advises that the Code should make specific reference to the identification of a disability where an officer exercises powers of stop, search and question and that it place an obligation the responsible officer to ensure that all reasonable efforts are made to ensure the individual fully understands his or her rights”.

Response

Paragraph 8.71 of the Code addresses this scenario in relation to stop and search, and paragraph 5.4 deals with discrimination more generally.

15. View expressed

“The Commission advises that the Code expressly state that stop, search and question powers may never be exercised on the basis of racial profiling”.

Response

Two additional sections have been added at paragraphs 5.6 to 5.11, titled ‘Avoiding Discrimination’ and ‘Monitoring and supervising the use of stop and search powers’.

16. View expressed

“The Commission notes that a stop and search information card for young people who are stopped, searched and/or questioned has been produced by the PSNI. The Commission advises that the Code provide that where a child is the subject

of stop, search and question powers that he or she is provided with a card setting out the powers of the PSNI and his or her rights”.

Response

A line has been added to paragraph 6.11 to advise that the PSNI carry information cards which they may give to children or young people who are stopped and searched.

17. View expressed

“The Commission notes that an individual who is the subject of a stop, search and question powers may be accompanied by a child. Furthermore a child may be present in a building or vehicle that is the subject of a search. The Commission advises that the Code provide that where a child is the subject of stop, search and question powers that the responsible officer is required to give sufficient regard to the best interests of the child”.

Response

Paragraph 6.11 of the Code states that officers ‘may question the occupant or occupants separately or jointly’ and the decision on this will be influenced by the operational circumstances. PSNI officers are fully trained in the use of the powers and the detailed guidance contained in PSNI Policy Directive 13/06 "Policing with Children and Young People" provides guidance on how to determine the most appropriate response. We have added a reference to this in the footnote to paragraph 6.11 of the Code of Practice.

The Human Rights and Policing Standards Committee of the Northern Ireland Policing Board

18. View expressed

“Despite the JSA having been in force for over 5 years, there has not to date been a Code of Practice issued under section 34. The amendments made by the Protection of Freedoms Act to JSA and TACT came into force on 10 July 2012 and a revised Code of Practice for stop and search under TACT was issued by

the NIO shortly thereafter. However, there appears to have been a delay in issuing the JSA Code of Practice”.

Response

The Secretary of State was legally required to make a Code of Practice for the Terrorism Act 2000 before the new authorisation regime as introduced by the amendments made by the Protection of Freedoms Act 2012 was commenced. There is however no statutory requirement to make Codes of Practice under section 34 of the Justice and Security (Northern Ireland) Act 2007. In his Fourth Report the Independent Reviewer of the Justice and Security Act recommended a Code of Practice be made about the exercise of the powers and the Secretary of State decided to make a Code under section 34(1)(a) and 34(2).

19. View expressed

“The JSA contains powers to seize and retain munitions or wireless apparatus discovered during a search but the draft Code contains no guidance in those respects. Guidance should be provided”.

Response

It was not considered necessary to make a Code to provide guidance on seizure or retention of property as the PSNI already follow procedures regarding this contained under paragraph 7 of PACE Code B.

20. View expressed

“There is no requirement that the community impact of the use of such powers should be assessed and no guidance as to the community engagement process. This is despite the ‘authorisation form’ containing such a section”.

Response

Engagement is a matter for the PSNI who engage with local communities and where they have conducted Community Impact Assessments these assessments will be reviewed as required by the PSNI. District Commanders also engage with their Policing and Community Safety Partnerships and Independent Advisory Groups (IAGs) as appropriate. In addition, at a local level, accountability

structures require senior officers to attend meetings of the Police and Community Safety Partnerships where specific concerns about police actions can be raised. Community engagement is covered in paragraph 5.2 of the Code.

21. View expressed

“There is no reference in the draft Code to the monitoring by the police of the use of the various powers, for example, as per section 75 of the Northern Ireland Act”.

Response

The PSNI will continue to fulfil their obligations under sections 75² and 76³ of the Northern Ireland Act 1998 in regard to the 2007 Act. This is provided for in PSNI's Equality, Diversity and Good Relations Strategy⁴. The statistics on the use of the powers in the 2007 Act are already supplied to the Northern Ireland Policing Board on a quarterly basis. In addition they meet with the Independent Reviewer on a regular basis and supply him with statistics on use.

Summary

Amendments were made at paragraphs 4.6, 5.2, 5.15, 6.5, 6.11, 8.71, 8.75, 8.78, 9.1, 9.6 and Annex A/Section 23. Additional sections were also added to cover the topics of ‘Avoiding Discrimination’ and ‘Monitoring and supervising the use of stop and search powers’ at paragraphs 5.6 to 5.11. The Government considers that the Code, subject to these amendments will ensure that the Justice and Security (Northern Ireland) Act 2007 stop and question, stop and search and other powers are used proportionately, where necessary and in accordance with the law.

² Section 75(2) - Without prejudice to its obligations under subsection (1), a public authority shall in carrying out its functions relating to Northern Ireland have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.

³ Section 76(1) - It shall be unlawful for a public authority carrying out functions relating to Northern Ireland to discriminate, or to aid or incite another person to discriminate, against a person or class of person on the ground of religious belief or political opinion.

⁴ The PSNI's Equality, Diversity and Good Relations Strategy is available at the following link: http://www.psnipolice.uk/equality_diversity_good_relations_strategy.pdf

This Code was laid before parliament on 15 May 2013 under the urgency procedure provided in section 36(2), and is subject to parliamentary approval.

Northern Ireland Office

June 2013