



Northern
Ireland
Office

**CODE OF PRACTICE (NORTHERN
IRELAND) FOR THE AUTHORISATION
AND EXERCISE OF STOP AND SEARCH
POWERS RELATING TO SECTIONS 43,
43A AND 47A OF, AND SCHEDULE 6B TO, THE
TERRORISM ACT
2000**

Summary of Responses to Public Consultation

May 2012

Introduction

In February 2012, the Northern Ireland Office launched a public consultation seeking views on the Northern Ireland draft Code of Practice for counter terrorism stop and search powers at sections 43, 43A and 47A of, and Schedule 6B to the Terrorism Act 2000, as amended by the Protection of Freedoms Bill (now the Protection of Freedoms Act 2012). The consultation closed on 1 April 2012.

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. Printed copies may also be obtained free of charge.

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, Karen Pateman in writing, by email or telephone as follows:

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Assessment of Responses

On launching the consultation the Secretary of State invited views from anyone who wished to comment and noted that the Protection of Freedoms Bill (now the Protection of Freedoms Act) amended stop and search powers contained within the Terrorism Act 2000. The changes will ensure that counter terrorism stop and search 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 PSNI and to preserve the effectiveness of, and public confidence in, the use of counter terrorism stop and search powers.

A total of 6 formal responses were received, categorised as follows:

Policing family	2
Rights/Equality Groups	2
Legal Organisations	1
Members of the public	1

The names of those organisations and groups who responded to the consultation are set out at **Annex A**.

Of the responses, 3 (50%) were in favour of and had no contrary views to the code of practice. The remaining respondents made some comments which we have given consideration to in this response document. This document does not consider comments made on the legislative changes to the Terrorism Act 2000.

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

1. View expressed

The wording of the section dealing with photography should be replaced with the more specific wording relating to photography in the GB code.

Response

The wording in the NI code is tailored to the situation in Northern Ireland. Issues relating to photography in GB, including those considered in the *Gillan and Quinton vs UK* judgment, have not applied in the Northern Ireland context.

2. View expressed

Paragraphs 5.1 and 5.3 should be amended so as to articulate the human rights standards engaged by an exercise of a stop and search power.

Response

The Code recognises that stop and search powers may intrude on the liberty of the person and at paragraph 3.5 makes clear that any intrusion should be as limited as possible. An additional paragraph has been inserted at 3.5 which further emphasises that.

3. View expressed

The Code should build upon the current content of paragraph 4.1 to lay out in greater detail how the concerns of Gillan will be addressed.

Response

Paragraphs 3.2 and 3.3 reflect the more tightly circumscribed conditions in which stop and search powers can be used, reflecting the concerns in the Gillan and Quinton judgment. The Code notes that the threshold for making an authorisation is higher under the new section 47A powers and the need for them to be used only where other powers or measures are insufficient.

4. View expressed

The Code should offer protection for women who may need to keep their heads covered for religious reasons, and should include a preference for an officer of the same sex to remove headgear which is worn for religious purposes.

Response

Paragraph 4 of the Notes for Guidance sets out how officers should deal with head coverings worn for religious reasons. It notes that where practicable, the item should be removed in the presence of an officer of the same sex as the person and out of sight of anyone of the opposite sex.

5. View expressed

The Code could include as an additional safeguard a requirement that the authorising officer demonstrate to the Secretary of State why an alternative police measure which would constitute a lesser interference with the right to privacy is inadequate.

Response

An authorisation can be made only where it is reasonably suspected that an act of terrorism will take place and where an authorisation is necessary to prevent such an Act. This requirement for necessity guards against unwarranted authorisations.

Paragraphs 7.9 and 7.10 provide further detail of what an authorising police officer must consider, including whether other powers would be suitable, and whether the use of the without reasonable suspicion powers is proportionate.

This does not prevent the use of other measures, if justified on their own merits, which may constitute a lesser interference with the right to privacy.

6. View expressed

Paragraph 7.27 should make clear that any extension of an authorisation, whether that be in terms of geography or timeframe, should be treated as though it is a new authorisation.

Response

Extensions are different from new authorisations. There is provision for authorisations to be extended either within the 48 hour period by the police or over the 48 hour period by the Secretary of State (although an authorisation cannot last more than 14 days). There is also provision for a new authorisation if justified by fresh assessment or new or different information.

7. View expressed

To satisfy the Gillan legal certainty test for any interference with the right to privacy, the Code should give guidance on what to do if it is not possible to communicate with the person to be searched.

Response

Separate procedures exist under the PSNI Interpreter and Translation Services to effectively communicate with those who are deaf or are hard of hearing or who cannot read or understand English.

Paragraph 9.18 of the Code says that if the 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. It states that 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.

Different considerations apply if the person who is subject to stop and search chooses not to communicate with and not to co-operate with the searching officer. Paragraph 9.9 of the Code provides guidance in this respect.

8. View expressed

A requirement to record all persons stopped should be added to the Code. There should be a requirement to record the ethnicity and community background for any person either stopped or stopped and searched. The Code should contain a provision which requires the officer to record the basis upon which the decision to stop and search was made in addition to stating the power under which the stop and search was conducted.

Response

The Code does contain a requirement to record all persons stopped, as well as all persons stopped and searched, see paragraphs 10.1 and 10.8. Stop and search is not made on the basis of ethnicity and community background, unless that description

arises from evaluated intelligence. Paragraph 5.1 sets out the general principle of non-discrimination when exercising stop and search powers.

Ethnicity and community background are not recorded under the Code. Numbers by each ethnicity type across each policing area are relatively small and publication could potentially identify someone (contrary to the confidentiality requirements of the Code of Practice for Official Statistics).

In terms of the basis upon which the decision to stop and search was made, officers verbally brief those subject to searches of the basis for the search, see paragraph 9.15. Paragraph 10.4 of the Code requires officers to record the grounds for making the search, or in the case of section 47A searches, to record the nature of the power and of any necessary authorisation. Officers also record the legislation under which searches are conducted.

9. View expressed

The Code should be altered to require the publication of statistics over a quarterly time period. It should require the ethnicity and community background breakdown to be published within the PSNI stop and search statistics.

Response

The Code already requires the police to regularly publish stop and search statistics. This information is published on the PSNI website on a quarterly basis. Statistics are also made available to the independent reviewers of terrorism and security related legislation and to statutory oversight organisations.

10. View expressed

The Code should contain a separate section on the exercise of stop and search powers detailing safeguards that ensure the particular needs of children and vulnerable adults are accounted for.

Response

The PSNI has separate guidance for dealing with Children and Young Persons and Vulnerable Persons in all areas of policing activity.

11. View expressed

A separate code for Northern Ireland entrenches differences in a way that impedes the normalisation desirable for Northern Ireland.

Response

The separate code reflects the different operating environment due to the threat from Northern Ireland Related Terrorism, and also to take account of Northern Ireland specific legislation such as the provisions at sections 75 and 76 of the Northern Ireland Act 1998 (relating to discrimination and equality of opportunity). .

12. View expressed

Guidance on reasonable suspicion at paragraph 6.4 allows too much scope for subjectivity. Similarly guidance for authorising officers at paragraph 7.12 should set out specific criteria for assessing the appropriate duration and geographical extent of the authorisation.

Response

Paragraph 6.4 should be placed in the context of all of the guidance on reasonable suspicion in section 6. The guidance emphasises that there must be an objective basis for suspicion and that this may be based on a number of grounds. It is not possible to provide exhaustive grounds as these may vary depending on circumstances and the particular threat.

In the same way the criteria in paragraph 7.12 are not intended to be exhaustive, and should be placed in the context of all the guidance on authorisations in section 7. Each threat is different and it is important that the authorising officer can take into account any factors that are unique to the particular threat.

13. View expressed

Stop and search powers in the Terrorism Act 2000 reflect those in the Justice and Security (NI) Act 2007. They should therefore be overseen by the independent reviewer of the Justice and Security (NI) Act 2007.

Response

There are different grounds for using stop and search powers under the Terrorism Act 2000 and the Justice and Security (NI) Act 2007. There are also separate independent reviewers for each piece of legislation.

It is for the reviewers to decide how they wish to report on those powers which may have read across into their respective areas.

Summary

The Government considers that the draft Code, subject to the minor amendment of an additional paragraph at 3.5, will help ensure that the stop and search powers contained within the Terrorism Act 2000 are exercised proportionately. This Code is subject to parliamentary approval and will shortly be laid before parliament.

Northern Ireland Office

May 2012

Organisations and groups who responded to the consultation

Police Service of Northern Ireland

Police Federation for Northern Ireland

Northern Ireland Human Rights Commission

British Irish Rights Watch

Legal Services Commission