



Northern
Ireland
Office

CONSULTATION RESPONSE

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

March 2024

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Introduction

Consultation

1. On 9 October 2023, the Northern Ireland Office launched a 12-week public consultation¹ seeking views on the draft amended Code of Practice (Northern Ireland) for the Authorisation and Exercise of Stop and Search Powers relating to Sections 43, 43A, 43C and Section 47A of, and Schedule 6B to, The Terrorism Act 2000
2. The consultation closed on 2 January 2024. This Consultation Response contains an analysis of the responses received and the subsequent decision that the Secretary of State for Northern Ireland has made on the draft amended Code.

Consultation Principles

3. This consultation process was conducted in line with the Cabinet Office consultation principles published in January 2018. A copy of the principles can be found at:

<https://www.gov.uk/government/publications/consultation-principles-guidance>

Equality

4. It was also conducted in line with the Northern Ireland Office Equality Scheme which can be found at:

<https://www.gov.uk/government/publications/publication-of-the-reviewed-equality-scheme-for-the-northern-ireland-office>

5. In accordance with Section 75 of the Northern Ireland Act 1998, the Northern Ireland Office undertook an Equality Screening exercise² prior to the launch of the consultation to indicate whether or not there were equality of opportunity and/or good relations impacts associated with amending the Code of Practice.

¹ The Northern Ireland Office Consultation Document on Terrorism Act Code of Practice can be found here: <https://www.gov.uk/government/publications/consultation-tact-code-of-practice>

² [Please click here for more information on the Equality Commission's Section 75 guidance](#) or go to <http://www.equalityni.org/S75duties>

6. The outcome of the screening exercise is that the likely impact of updating the Code of Practice is “none” in respect of all of the Section 75 categories. This is because the policy is purely technical in nature and will have no bearing in terms of its likely impact on equality of opportunity or good relations for people within the equality and good relations categories.
7. Following the conclusion of the consultation, the Northern Ireland Office reviewed the screening exercise in light of the consultation responses and have assessed that the initial assessment about the likely impact of the proposals remains accurate.

Accessibility

8. This document is publicly available at www.gov.uk/nio. You may make additional copies of this document without seeking permission. It can also be made available, upon request, in different formats for individuals with particular needs.
9. If you require any additional copies or have any concerns or questions about this consultation process, you can contact:

By email: tactconsultation@nio.gov.uk

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Background

Legislation

10. This Code of Practice is issued by the Secretary of State in accordance with Section 47AA of the Terrorism Act 2000.
11. Under Section 47AC of the Terrorism Act 2000, the Secretary of State is under a duty to update the Code of Practice.
12. This code applies to the Authorisation and Exercise of Stop and Search Powers relating to Sections 43, 43A, 43C AND Section 47A of, and Schedule 6B to, The Terrorism Act 2000 within Northern Ireland.

This consultation applied to the exercising by constables of powers to stop and search persons and vehicles under the Terrorism Act 2000, especially the addition of section 43C of the Terrorism Act 2000 which provides a power for a constable to stop and search a terrorist offender, who has been released on licence (and not recalled) and whose licence includes a search condition. This is providing the constable is satisfied that it is necessary to do so for purposes connected with protecting members of the public from a risk of terrorism.

13. This Code of Practice applies only to Northern Ireland. The Code of Practice for Authorisation and Exercise of Stop and Search Powers for police in England, Wales and Scotland was updated in 2022. The current Code of Practice for Northern Ireland was published in 2003 and last updated in 2012.
14. The proposed updated Code of Practice shadows the England, Wales and Scotland Code but does not exactly replicate it due to differences in legislation between the jurisdictions.

Purpose of Amendments

15. The amendments relate to technical matters and are intended to allow the Police Service of Northern Ireland (PSNI) to use the new power under Section 43C of the Terrorism Act 2000. This will bring Northern Ireland into line with England, Scotland and Wales.

Consultation Responses

Responses Received

16. The consultation received seven responses with one being accepted post the submission deadline. These were from (*in alphabetical order*):

1. Attorney General for Northern Ireland
2. Democratic Unionist Party (DUP)
3. Equality Commission for Northern Ireland (ECNI)
4. Independent Reviewer of Terrorism Legislation
5. Lady Chief Justice for Northern Ireland
6. Northern Ireland Human Rights Commission (NIHRC)
7. Police Service of Northern Ireland (PSNI) - Criminal Justice Branch

17. After analysing the responses, the Northern Ireland Office has assessed that:

- The majority of respondents were in favour of updating the code of practice.
- The Lady Chief Justice in her submission neither supported or opposed the updating of the Code of Practice
- The most common reason provided for approving of the update was that it will bring Northern Ireland into line with the rest of the UK.
- Five respondents made suggestions for minor amendments to the wording of the code. These are outlined in the table below.

Analysis of Responses

18. The table below summarises the suggested amendments and outlines whether these suggestions have been accepted.

| Para | Respondent | Summary of suggestion | Accept | Comment |
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| 4.1 | Attorney General for Northern Ireland | The Attorney General suggests that It might be helpful to include material similar to that at paragraph 3.5.1 in the equivalent Revised Code of Practice (England, Wales and Scotland) to explain the basis upon which an offender in Northern Ireland would be released on licence with the relevant search condition. | Yes | <p>An explanation of the basis upon which an offender will be released on licence, based on 3.5.1 of Revised Code of Practice (England, Wales and Scotland) but including the roles of both the Parole Commission and the Department of Justice, has been added to the Northern Ireland Code of Practice.</p> <p>Also added is an explanation of when the search condition can be added to a licence.</p> <p>These additions have been made at para 4.1 of Code of Practice for Northern Ireland</p> |
| 12.2 | Attorney General for Northern Ireland | Additionally, the Attorney General noted the limited guidance on recording of ethnicity in the Northern Ireland Code. They suggest that the production of this revised code is an opportunity to look again at this matter and the related issue of community background data. | No | <p>Paragraph 12.2 of the Code of Practice states that the PSNI must ensure that in the use of stop and search powers there is no evidence of them being exercised on the basis of stereotyped images or inappropriate generalisations. 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.</p> <p>We do not believe there is a requirement for additional monitoring obligations.</p> |

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| 5.1 | Equality Commission for Northern Ireland | <p>The Commission's response focused 'on areas where the Commission has established key policy positions or advice.' Their response also considers 'some wider issues in relation to TACT powers, and issues of relevance to stop and search powers more generally.</p> <p>The recommendations made by the commission are;</p> <p>The Code should incorporate the requirement placed on the PSNI by Section 75 of the Northern Ireland Act 1998 to monitor the stop and search of TACT and in doing so to adhere to the arrangements set out in its equality scheme.</p> | Yes | <p>Whilst Section 5.1 of the Code of Practice reminds The Police Service of Northern Ireland of their legal obligation under Sections 75 and 76 of the Northern Ireland Act 2000, an additional line has been added to section 5.1 stating "and its duty to monitor and report the use of Stop and Search Powers as set out in its equality scheme" to remind PSNI to monitor and report on stop and search.</p> |
| Whole Code | Equality Commission for Northern Ireland | <p>The Code should commit the PSNI to ensuring that the Section 75 monitoring data and its analysis are available to stakeholders.</p> <p>The Code should commit the NIO to keep the use of these powers under review, informed by PSNI Section 75 monitoring data and using the Section 75 equality assessment (screening/EQIA) tools.</p> | No | <p>PSNI already performs this function and statistics are made available to stakeholders and are published annually.</p> <p>The Secretary of State is already required by 47AA and 47AC of The Terrorism Act 2000, to prepare and to review the Code of Practice, which is issued by virtue of section 47AB.</p> |
| 12.2 | Equality Commission for Northern Ireland | <p>Consideration should be given to any trends by equality group in those subject to stop and search under TACT and the reasons for same. Such consideration should be set within the context of the increase in the use of TACT powers in September 2022 - October 2023, compared with the previous year. Such considerations should inform the development, implementation and rolling review of the policy.</p> | No | <p>Section 12.2 of the Code requires PSNI to examine whether the records reveal any trends or patterns which give cause for concern, and if so take appropriate action to address this.</p> |

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| 11.1 | Equality Commission for Northern Ireland | The Code and PSNI should ensure that individuals are not subject to stop and search solely because of their equality characteristics – for example through racial profiling, with appropriate actions implemented to address any issues identified. | Yes | Wording has been added in this regard at Section 11 of the Code of Practice for Northern Ireland to make clear that Northern Ireland legislation including The Northern Ireland Act 1998 makes it unlawful to discriminate, harass or victimise a person who falls within the 9 protected categories. |
| | Equality Commission for Northern Ireland | They recommend that measures are taken, including through the Code of Practice where appropriate, to implement guidance and training, including for officers carrying out stop and search, on equality and anti-discrimination, awareness of the particular needs of equality groups, and on tackling prejudicial attitudes. | No | This is an operational matter for PSNI and beyond the remit of the Code of Practice |
| | Equality Commission for Northern Ireland | Wider considerations and lessons learnt regarding any equality impacts relating to stop and search more generally should be used to inform the development, delivery and rolling review of specific considerations under TACT (including the Code of Practice), as well as across wider areas of stop and search more generally. | No | This sits outside the remit of the Code of Practice and this consultation. |
| | Equality Commission for Northern Ireland | Data on each area of stop and search provision (TACT and wider areas) should not only be tracked in aggregate but also tracked for the impact on individuals from across each of the equality grounds, and by multiple identities. | No | This sits outside the remit of the Code of Practice and this consultation |
| PARA 8.7 & Section on 43C | Democratic Unionist Party | <p>“The response from the DUP whilst supporting the changes as proposed, also includes a number of observations in relation to the use of the powers within the Terrorism Act 2000. These include their view that;</p> <p>“The DUP believes the fixation with putting in place structures to record and monitor the community background of those subject to stop and search powers has proven to</p> | No | These are outside the remit of the Code of Practice and this consultation. |

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| | | <p>be an unhelpful distraction”.</p> <p>Stating that they believe the time and resource devoted to this objective ‘has been entirely disproportionate’.</p> <p>Furthermore, they comment that officers should not be forced to complete a community background assessment through guess work before utilising powers.</p> <p>Moreover, the submission makes comments that PSNI’s performance when using stop and search powers cannot be aligned to arrests following their use. They state that this misconstrues the purpose and value of the powers. They further comment in the making of comparisons between the use of powers in Northern Ireland as compared to the remainder of GB and subsequent calls for further step changes to PSNI culture and practice in this area are unwarranted.</p> <p>The DUP commented also on improvements which PSNI have made in terms of the increased levels of assurance which have been implemented. With this being the basis for their comment that; ‘further controls would prove to be an unfair and disproportionate check on the operational independence of the Chief Constable and the PSNI as they seek to detect and deter crime and harm across Northern Ireland’</p> <p>.</p> | | |
| 8.7 | Democratic Unionist Party | <p>The submission seeks clarification around the wording of Paragraph 8.7 of the draft Code which states that briefings should make officers aware</p> <p><i>“that if authorised, the powers conferred by section 43C and 47A can be exercised whether or not</i></p> | Yes | Modified as per comment |

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| | | <p><i>there is reasonable suspicion.”</i></p> <p><i>Given that section 43C requires no authority nor reasonable suspicion and is also not linked to searches under 47A (search in specific places.) Clarification is required.</i></p> | | |
| | Democratic Unionist Party | <p>Furthermore, a request to consider the inclusion within the NI Code of wording contained within the revised Code in GB whereby it stipulates that the power under section 43C includes the power to search anything carried by the licenced offender, such as a bag, container or other object.</p> | Yes | <p>Section 43C (7) stipulates: <i>‘The power in subsection (1) to search a terrorist offender includes power to search anything carried by the offender’.</i></p> <p>This would be an operational decision by an officer given the specific circumstance at the time of conducting any search.</p> <p>In order to aid clarity the following has been included at section 9.1:</p> <p><i>‘The powers under section 43 to search a person includes the power to search anything that person is carrying, examples of which may include but are not restricted to a bag, container or other object. Officers should make an operational decision based on the particular circumstances whether a search of such items is to be conducted’</i></p> <p>This mirrors but does not replicate the GB Code</p> |
| Whole Code: | Independent Reviewer of Terrorism Legislation | No comment to make as brings NI into line with GB | Yes | No changes to make in relation to feedback supplied |
| Whole Code: | Lady Chief Justice for NI | No comment to make as this relates to policy matters | Yes | No changes to make in relation to feedback supplied |

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| 10.8 | Northern Ireland Human Rights Commission | <p>The Commission welcomes the limited application of Section 43C.</p> <p>They emphasised that a constable should not interpret this as a power to stop and search individuals in every context.</p> <p>The commission commented on paragraph 10.8 of the Code of Practice that this should include the requirement to record the basis for any use of section 43C and that records are regularly and effectively monitored.</p> | Yes | <p>Paragraph 10.8 has been update to include:</p> <p>‘The officer conducting the search should record these details and any associated basis for the use of Section 43C’</p> |
| | Northern Ireland Human Rights Commission | <p>The commission also commented that there should be a confirmation as to the identity of individuals prior to conducting a stop and search</p> | No | <p>Checks on an individual’s licence must be conducted before any search is carried out. This process will confirm the identity of the individual and no additional checks are necessary.</p> |
| 9.15(b) and 10.4 (ix); | PSNI- Criminal Justice Branch | <p>PSNI has requested that wording within the Code of Practice referring to;</p> <p>‘officers warrant or other identification number’</p> <p>be changed to;</p> <p>‘officers warrant or other police identification number’</p> <p>PSNI have stated that publicly facing ‘police identification numbers’ are now referred to as such. Reflecting the same in this Code would bring consistency with changes accepted by DoJ (subject to final public consultation) to PACE CoP</p> | Yes | <p>All references to ‘officers warrant or other identification number’ in the Code have been replaced with ‘officers warrant or other police identification number’.</p> |

Conclusion

Consultation Responses

19. The Northern Ireland Office has assessed that of the seven respondents six supported the amendments to the draft Code of Practice with one offering no comment due to this being a policy area..
20. Five respondents had suggestions for a total of fifteen minor amendments to the Code of Practice (Northern Ireland) for the Authorisation and Exercise of Stop and Search Powers relating to Sections 43, 43A, 43C and Section 47A of, and Schedule 6B to, The Terrorism Act 2000.
21. As outlined in the table above, the Secretary of State for Northern Ireland accepted seven of these suggestions and the relevant amendments have been made to the Code of Practice.
22. Having reviewed and analysed the responses to the public consultation on the draft revised Code of Practice (Northern Ireland) for the Authorisation and Exercise of Stop and Search Powers relating to Sections 43, 43A, 43C and Section 47A of, and Schedule 6B to, The Terrorism Act 2000, and taken into account the ongoing security situation in Northern Ireland, the Secretary of State for Northern Ireland has decided that:

1. It is necessary to make the amendments as outlined on pages 7-12;
2. It is necessary to seek approval of the amended Code of Practice through both Houses of Parliament

Next Steps

Statutory Instrument

23. An affirmative statutory instrument making provision for the amendment of the Code of Practice for the Authorisation and Exercise of Stop and Search Powers relating to Sections 43, 43A, 43C and Section 47A of, and Schedule 6B to, The Terrorism Act 2000 will be laid in Parliament, which will need to be approved by both Houses of Parliament.

24. Northern Ireland Office Ministers will host debates in both Houses of Parliament seeking approval of the statutory instrument.

25. If both Houses of Parliament approve the amendments, the statutory instrument will update the Code of Practice. Information on Parliamentary debates can be found on the Parliament website: www.parliament.uk.

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