

SIAA

Draft Code of Practice on the Exercise by Constables in Scotland of Searches for Cash and Listed Assets

December 2017

1. The draft Code will affect how constables in Scotland exercise their search powers under sections 289 and 303C of POCA. Do you have any comments to make in relation to the practical guidance contained within the Code?

Although the Code has been drafted to provide constables with a framework under which to abide by when exercising their powers, it is also important that there is a concise and accessible version which can be referred to by a person searched under sections 289 and 303C. The person searched may be unaware that the Code of Practice it is available to constables in the first place. The Code of Practice should therefore either include an additional Annex document which young people and children, vulnerable adults, and any other person affected through the exercise of powers section 289 and 303C of POCA can refer to, or an additional supplementary document is created. In either case, the documents should be written in plain-English and an accessible form for the persons affected.

There must be an Equality Impact Assessment concerning the Code of Practice undertaken by the Scottish Government. Although the Anex documents specifically highlight how children and young people, vulnerable adults and trans gender persons are treated by constables, it is vital that the Scottish Government use an Equality Impact Assessment to assess how the aforementioned groups, and other marginalised groups, could be affected by the Code.

2. Do you think the draft Code could have an adverse impact on you or your organisation?

Yes

If so, please specify.

The Code will have an impact on how vulnerable adults, including those with learning disabilities and mental health conditions, are treated in situations when they are searched by constables. The Code will also affect how children and young people are treated. The Scottish Independent Advocacy Alliance ensures that our member organisations are able to provide independent advocacy for these groups, and we represent organisations who act as Third Party Reporting Centres.

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3. Do you think that the draft Code provides adequate guidance to constables on how to discharge their functions?

Don't know

4. Is there anything missing from the draft Code that should be added?

Yes

If so, please specify.

The Annex documents should highlight that individuals covered under the Mental Health (Care and Treatment) (Scotland) Act 2003 are entitled to independent advocacy. This will be particularly important in cases where a person searched wishes to later make a complaint against a particular constable, but also in knowing their rights and understanding their situation.

In Section 6.16, it should be highlighted that the person who was searched can access the Code of Practice within the receipt. This will ensure that should they wish to make a complaint, they are able to refer back to the Code and make a judgement over whether the actions of the constable involved deviated from the guidance. It is important that persons searched are aware of their rights, and that the exclusive provision of highly technical guidance for constables does not reinforce the power imbalance that exists between a constable and a person searched. The Code of Practice should also include a section that highlights to constables how important it is that persons searched are made aware of the Code itself.

In Section A.22, relating to the complaints procedure following the search of a child or young person, there should be more information provided about how the parent or carer of a child or young person is able to make a complaint, and hold a constable accountable for their actions. As Annex A rightfully highlights, a child or young person may act unreasonably, particularly as they may be in a state of confusion, stress or fear. In this state, it may be highly unlikely that a child or young person feels empowered to later make a complaint if at the time they felt particularly alarmed. It would be appropriate for constables to ensure that receipts were provided to parents and carers where logistically possible, and that the process is made clear to responsible adults. Making the complaints procedure clear, both to the child or young person, as well as to their responsible adult, will make it more likely that a child or young person has the appropriate resources and confidence to make a complaint should they wish to do so.

In Section B.10, it is important to include that vulnerable adults may act in a very different way than were they not under duress. Although this section highlights several contextual factors that constables should consider before and when they speak to, or search vulnerable adults, it would be very useful for specific case studies to be provided about these situations.

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The Code ultimately needs to adopt a human rights based approach to the searching of persons. Although the Code does appropriately consider the impact of searching a young person or child who may have been abused in the past, the Code of Practice should also acknowledge that person of all ages may have been physically or sexually abused in the past. The impact of a person's previous trauma may be manifested during or after a search.

The complaints procedure should be transparent and accessible.

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SIAA is a Scottish Charitable Incorporated Organisation Charity number SC033576
Mansfield Traquair Centre, 15 Mansfield Place, Edinburgh, EH3 6BB 0131 524 1975 | enquiry@siaa.org.uk www.siaa.org.uk