



DEVON & CORNWALL CONSTABULARY

Force Policy & Procedure Guideline	STOP AND SEARCH POLICY
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DEVON AND CORNWALL CONSTABULARY POLICY & PROCEDURE D351 STOP AND SEARCH

Version Dated 18/04/2005

1. POLICY AND AUDIT IDENTIFICATION

- 1.1 This policy has been drafted and audited in accordance with the principles of Human Rights Legislation, Race Relations (Amendment) Act 2000, Disability Discrimination Act 1995, the Policing Bureaucracy Gateway and Freedom of Information Act 2000. Under the Freedom of Information Act 2000, the document is classified as 'OPEN'.

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2. POLICY STATEMENT

- 2.1 The Devon and Cornwall Constabulary aims, by working in partnership with other agencies, to bring about safer communities, reduce disorder, crime and the fear of crime and to contribute to the delivery of justice in a way which secures and maintains public confidence. The police of Devon, Cornwall and the Isles of Scilly will focus on bringing the Police and Community together in the fight against crime.
- 2.2 As part of this aim the Force is committed to the prevention and detection of crime, the protection of vulnerable communities and preserving the rights of individuals. In pursuit of this the Force is committed to promoting and carrying out lawful and ethical searches, in order to secure a safe and just society in which the rights and responsibilities of individuals, families and communities are properly balanced.
- 2.3 The policy reflects the ethos of neighbourhood policing and community engagement and our desire to develop a partnership culture, increase confidence in our service and demonstrate our commitment to valuing our communities and showing performance we can be proud of.
- 2.4 This document establishes the issues which must be considered for use of stop and search powers, action to be taken, responsibilities of operational officers, supervisors and the Force, including the details that must be recorded.

3. INTRODUCTION

- 3.1 The aim of the policy is to prevent crime and disorder, promote public safety and to protect the rights and freedom of others in accordance with Articles 2,3,5,8,14 and Article 1 of Protocol 1 of the European Convention on Human Rights as provided by the Human Rights Act 1998.
- 3.2 In appropriate circumstances, statutory powers available to police officers to stop and search persons and vehicles are an important aid in the prevention and detection of crime. Experience has shown that if used arbitrarily or clumsily, the potential exists to alienate public support. When used fairly, reasonably and professionally, these powers are a powerful and effective tool and make a valuable contribution to effective operational policing in support of our commitment to reduce criminal activity, violence, anti-social behaviour and terrorism in Devon, Cornwall and the Isles of Scilly, whilst making the greatest positive contribution to public confidence.
- 3.3 Stop and search is a high-profile and contentious area of police activity. It can be a major cause of tension between black and minority ethnic communities and the police service, and it may have wider effect on community relations. It is therefore vital for the police service to aim to increase the confidence that

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the black and minority ethnic community have in the way the police use this power.

3.4 The following documents provide detailed guidance and should be read in conjunction with this guideline:-

- (a) Home Office (SSAT) Manual of Guidance on Stop and Search
- (b) Police and Criminal Evidence Act 1984 Code A
- (c) Home Office Recording of Stops Implementation Guide
- (d) Home Officer Circular 02/2005 - Implementing of the Recording of Stops

3.5 Separate guidelines relating to the execution of search warrants and searching of premises are set out in force guideline D109 (Searching of Premises).

4. LEGAL BASIS

4.1 The legal basis for this policy comes from:-

- * Sections 1 to 3, Police and Criminal Evidence Act, 1984 and Code A of the Codes of Practice
- * S.60 Criminal Justice and Public Order Act 1994
- * Stop and Account-Recommendation 61, Stephen Lawrence Inquiry Report
- * S.44 Terrorism Act 2000
- * Race Relations (Amendment) Act, 2000
- * Human Rights Act 1998
- * S.163 Road Traffic Act 1988
- * S.47 Firearms Act 1968
- * S.23 Misuse of Drugs Act 1971
- * S.27 (1) Aviation Security Act 1982
- * S.7 Sporting Events (control of alcohol) Act 1985
- * S.4 Crossbows Act 1987

4.2 In addition to the above legislation Recommendation 61 of the Stephen Lawrence Inquiry Report states:

“That the Home Secretary, in consultation with Police Services, should ensure that a record is made by police officers of all 'stops' and 'stop and searches' made under any legislative provision (not just the Police and Criminal Evidence Act). Non-statutory or so-called 'voluntary' stops must also be recorded. The record to include the reason for the stop, the outcome, and the self-defined ethnic identity of the person stopped. A copy of the record shall be given to the person stopped.”

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4.3 Devon and Cornwall Constabulary, under Section 6, Human Rights Act 1998 is a public authority. As such the organisation is required to act in a manner, which is compatible with the rights enshrined in the European Convention of Human Rights. Stopping and searching persons and vehicles has the potential to engage the human rights of individuals involved in the process and officers will adhere to the legislation and Codes of Practice.

5. PROCEDURE

5.1 Human Rights Principles

5.1.1 It is recognised that the mere presence of a police officer is a form of compulsion in itself. Police officers should only carry out searches when they have a statutory power to do so. When exercising such powers the human rights principles should be applied to all decision-making in relation to stop and search as follows:-

- * **Proportionality:** Whatever action taken it must be proportional to the act or the problem that it is sought to stop/prevent/mitigate.
- * **Legality:** Actions must be based on clear and publicly available legal authority. Action includes a failure to act.
- * **Accountability:** Show the reason behind the action. To show it one must know it and be able to explain it.
- * **Necessity:** Actions must be necessary in a democratic society.
- * **Best information:** Make any decision upon the best information reasonably available at you at the time.
- * **Legitimate aim:** The action must pursue a legitimate aim.

5.1.2 Chief Officers are vicariously liable for the actions of their officers, and powers to stop and search must be used fairly, responsibly, with respect for people being searched and without unlawful discrimination. The Race Relations (Amendment) Act 2000 makes it unlawful for police officers to discriminate on the grounds of race, colour, ethnic origin, nationality or national origins when using their powers. An intelligence led approach must be adopted at all times.

5.2 Conduct of Stop and Search

5.2.1 The Police and Criminal Evidence Act (PACE) Code 'A' forms the statutory framework for the use of stop and search. When exercising the power to stop and search a person, under PACE or any other statute, officers must fully comply with the requirements of Code 'A'.

5.2.1 A copy of Code 'A' is available on the Force Realsearch system within the OC.CRIME.GENERAL folder of the OC.CRIME.POLICY.TEXT drawer

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(document FH119 refers). The latter is also linked to this guideline and may be accessed using the (L)ink facility.

5.3 Recording requirement for Stop and Search – Form 251

- 5.3.1 An officer who has carried out a search in the exercise of any power to which Code 'A' applies, must make a record of it at the time, unless there are exceptional circumstances which would make this wholly impracticable (e.g. in situations involving public disorder or when the officer's presence is urgently required elsewhere). Form 251 will be used for this purpose. If a record is not made at the time, it must be made as soon as practicable afterwards.
- 5.3.2 A copy of Form 251 must be given immediately to the person who has been searched. The officer must ask for name, address and date of birth of the person searched, but there is no obligation on a person to provide these details and no power of detention if the person is unwilling to do so.
- 5.3.3 Form 251 must be fully completed by the officer conducting the search. The form will contain those details as required under Code 'A' paragraph 4.3, which are set out on the form. Particular attention should be made to recording of the ethnicity of the person stopped and searched.
- 5.3.4 A copy of Form 251 will be sent to the relevant Crime Standards Unit whereupon details of the 'stop' or 'stop and search' will be recorded on a database.
- 5.3.5 The Detective Sergeant of each Crime Standards Unit will be responsible for ensuring that each month the details are forwarded electronically to the Data Services Unit, Strategic Development Department, Force Headquarters, Middlemoor.
- 5.3.6 Subsequent searches of premises, including vehicles, after arrest (Code 'B') will require the completion of a more detailed Form 253, which will be dealt with in accordance with force guideline D109 (Searching of Premises).

5.4 Recording requirement for encounters not governed by Statutory Powers

- 5.4.1 Stop and Account is an obligation on the police to record all encounters with the public, which come within paragraphs 4.11 - 4.20 of the Police and Criminal Evidence Act Code of Practice 'A'. Stop and Account can be a valuable tool in the detection and prevention of crime.
- 5.4.2 When an officer requests a person in a public place to account for themselves, i.e. their actions, behaviour, presence in an area or possession of anything, a record of the encounter must be completed at the time and a copy given to the

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person who has been questioned. The record must identify the name of the officer who has made the stop and conducted the encounter.

5.4.3 Form 251 will be used to record such encounters, however, only the following information will need to be recorded on the form 251:-

- (a) the date, time and place of the encounter;
- (b) if the person is in a vehicle, the registration number;
- (c) the reason why the officer questioned that person
- (d) a note of the person's self-defined ethnic background;
- (e) the outcome of the encounter.

5.4.4 This requirement does not apply to general conversations such as when giving directions to a place, or when seeking witnesses. It also does not include occasions on which an officer is seeking general information or questioning people to establish background to incidents that have required officers to intervene to keep the peace or resolve a dispute.

5.4.4 When stopping a person in a vehicle, a separate record need not be completed when an HORT/1 form, a Vehicle Defect Rectification Scheme Notice, or an Endorsable Fixed Penalty ticket is issued. It also does not apply when a specimen of breath is required under Section 6 of the Road Traffic Act 1988.

5.4.5 Where a Form 251 is completed under paragraph 5.4.3 above the officer must inform the person of their entitlement to a copy or a record of the encounter.

5.4.6 All references to officers within sections 4.11 – 4.20 of Code 'A' include police staff designated as Community Support Officers under section 38 of the Police Reform Act 2002.

5.5 Complaints

5.5.1 Under the Police Reform Act 2002-, there are procedures for handling complaints against the police. These will include complaints about the behaviour of police officers and police staff that are involved in stop and search. In most cases, the police will deal with these complaints through the internal professional-standards processes.

5.5.2 If a member of the public wishes to make a complaint against the conduct of an officer, they can make a complaint against police and should be advised courteously and professionally how to do so.

6. RESPONSIBILITIES

6.1 Operational Officers Exercising Powers

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6.1.1 The manner in which an officer conducts a stop search, consistent with Code 'A', has an important and direct impact on community relations. Each officer has the responsibility to conduct such searches in a professional manner, even in the most challenging of circumstances. Officers conducting stop and search must:-

- (a) Have sound knowledge of powers and procedures, and use them objectively. It is important that before the search the person has clearly understood the explanation and reasons for exercising the power. If not in uniform the officer must show his/her warrant card.
- (b) Understand and comply with legislation which impacts upon stop and search e.g. Human Rights Act and the Race Relations (Amendment) Act.
- (c) Recognise that when exercising the power, not everyone stopped has to be searched. The grounds for search can cease at any time and communication skills must be used to bring the interaction to an immediate close whilst retaining mutual respect.
- (d) Remember that a lack of an arrest does not indicate that the stop and search was unlawful, inappropriate or valueless. Both negative and positive searches can yield valuable intelligence.
- (e) Know the area, its crime and its offenders, together with the latest intelligence or information, but remember that past offending can never in itself provide grounds to stop and search an individual.
- (f) Be mindful of forensic considerations when carrying out stop and search.
- (g) Be aware that each officer is liable not only for his/her own actions but also for the actions of their colleagues. All police officers have an individual responsibility to challenge inappropriate behaviour.
- (h) Remember that Road Traffic Act powers of stop such as Section 163 do carry a power to search, but are also intrusive and should only be carried out with good reason.
- (i) Recognise that as a general rule any member of the public should be allowed to observe officers carrying out a stop and search as long as the person being searched does not object. The dignity and privacy of the individual being searched is of paramount importance and must always be considered

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- (j) Always be aware of personal safety and that of others when conducting a stop and search.
- (k) Make every effort to ensure that any action(s) leaves a positive image of the police service. The whole encounter must be conducted with courtesy, consideration, respect for dignity and appropriate language. Serious breaches of professional conduct and failures to comply with legislative requirements bring discredit on the service.

6.2 Supervisors

6.2.1 The role of Supervisor is central to ensuring that officers follow stop and search procedure to a successful conclusion. Supervisors must set standards, support individuals and teams in achieving these standards, monitor how staff attain them and give constructive feedback. Supervisors have a responsibility to ensure that:-

- (a) The most effective use is made of stop and search in support of the local policing needs of Devon, Cornwall and the Isles of Scilly.
- (b) Officers are equipped with the best, focused and objective intelligence available. This is necessary if they are to engage in proportionate stop and search.
- (c) Staff receive intelligence led briefings, are actively supervised, led, supported and encouraged to promote effective use of stop and search. Checking Form 251 is important but no substitute for 'hands on' supervision to ensure that the power is being used lawfully and fairly.
- (d) All stops and searches are properly recorded. Forms are scrutinised to ensure that they are legal and not based on negative stereotypes and weak generalisations.
- (e) The intelligence value of stop and search is promoted and developed continually.
- (f) Poor quality work and unfair practices are challenged and remedied, taking disciplinary action where appropriate. Good work must also be praised and highlighted.
- (g) Officers are provided with constructive feedback on the quality of their interactions.
- (h) Officers fully understand that the number of searches conducted is not a personal performance indicator.

6.3 BCU/Department

6.3.1 It is essential that as the head of a BCU or department where officers exercise powers for stop and search, senior officers must be able to demonstrate that this is done effectively and in a non-discriminatory way. It must be ensure that:-

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- (a) The use of the tactic is managed in accordance with this policy document.
- (b) Systems are in place which provide officers with the best intelligence available to inform decisions whether to stop and search.
- (c) The appropriate use of stop and search is promoted internally and that the value of the tactic is understood.
- (d) Clear indications are given of what is and is not an appropriate use of the power and positive support is given to officers who act lawfully and proportionately and line supervisors who challenge inappropriate behaviour.
- (e) Officers have a thorough knowledge of the powers that do not require reasonable grounds
- (f) Systems are in place to ensure searches are recorded and monitored which provide information as to good results and disproportionality for further investigation.

6.4 Force Responsibilities

6.4.1 The Chief Constable is liable for the lawful use of stop and search powers by the Force. The Chief Constable will ensure that:-

- (a) Appropriate directives are set and reviewed in accordance with this document and in consultation the community and police authority.
- (b) Statutory requirements are met for the submission of stop and search data to the Home Office and management information systems are in place which can be interrogated to provide information on significant trends or disproportionality.
- (c) There is training provision for staff, at all levels, in relation to stop and search and that Chief Officers know their responsibilities both as authorising officers under the Criminal Justice and Public Order Act 1984 and as identified within the Race Relations (Amendment) Act 2000.
- (d) Whilst acknowledging that the sole legal objective is detection, its secondary intelligence value is recognised throughout the Force.

6. REVIEW

6.1 The annual review of this guideline is the responsibility of Commander Crime Department (OC).