

# Legal application

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Whichever stop and search power is being used, it must be exercised in a way that is compatible with the enabling legislation, the applicable code of practice (**Code A** in most cases) and with human rights law. This includes ensuring that the extent of the search is limited to what is necessary and proportionate in the circumstances to achieve a legitimate aim.

Although Code A does not give express guidance on proportionality of police action, [paragraph 1.1](#) requires stop and search powers to be used fairly, responsibly, with respect for the people being searched and without unlawful discrimination. This cannot be achieved without an inherent requirement of proportionality.

## Human rights check – II

- Actions by public authorities, including the police, which restrict individual rights must be necessary in a democratic society.
- Necessary means necessary to achieve one of the aims specified in the relevant Convention article.
- Assessing if a restriction is necessary means asking two questions:
  - Is the restriction for a legitimate aim?
  - Is the means proportionate to the aim?
- For stop and search this means ensuring that:
  - a stop and search encounter is being carried out for a legitimate purpose (as set out in the relevant legislation)
  - a stop and search is the most proportionate tool available to achieve the aim in the particular circumstances

- the extent of the search is tailored to the particular circumstances and object of the search, keeping the degree of intrusion to the minimum required to achieve the aim.

Principles extracted from European Court of Human Rights case-law.

## Most proportionate: decision to search

The decision to search must be objectively proportionate to the circumstances.

Where an officer has a legal power to search a particular person – meaning that they have objectively reasonable grounds to suspect that an identified individual is in possession of a prohibited item, or the preconditions apply for one of the 'no suspicion' powers – the decision to search is likely to be proportionate, with proportionality considerations being more applicable to the extent of the search.

Where the officer has information or intelligence that relates to a wider group, proportionality comes into play when deciding how widely the officer can search. A search for a single item of spray paint, for example, may not justify searching a very large group of demonstrators, but such a search may be justified where an unidentified individual is reasonably suspected of carrying a firearm.

Code A guidance note 9A sets out that the decision must be judged on a case-by-case basis according to the circumstances applicable at the time of the proposed searches. Regard must be had to the:

- number of items suspected of being carried
- nature of those items and the risk they pose and
- number of individuals to be searched

A group search is only justified if it is necessary and proportionate to conduct one, based on the facts and having regard to the nature of the suspicion.

The case of Howarth v Commissioner of Police of the Metropolis [2011] EWHC 2818 (Admin) concerned the searches of a number of demonstrators on a train suspected of carrying molasses to cause criminal damage, as the group had done on previous occasions. The question asked was whether the searches went beyond the reasonable responses of a police officer to the intelligence received.

Key considerations included that:

- intelligence and past experience gave a reasonable anticipation of significant damage
- the group, while not small, was confined to a number of passengers on a train
- steps were taken to identify those searched as protestors
- the searches were of the type commonly used in public places and on entrance to entertainment and travel venues
- the organisers of the demonstration had not liaised with the police in advance, which justified an enhanced concern

The court concluded, based on these factors, that the searches were not excessive in character having regard to the nature of the suspicion held.

## Most proportionate: detention for the purpose of search

Code A ([paragraph 3.2](#)) says:

*Reasonable force is a last resort and should be used only if necessary to conduct the search or to detain for that purpose.*

All persons stopped and searched must be informed at the outset that they are 'being detained for the purposes of a search' so as to activate the power to use reasonable force under [section 117](#) of the Police and Criminal Evidence Act 1984 (PACE). The physical act of searching a person is a use of force, even if it does not involve any element of restraint or physical compulsion, and the issue when assessing reasonableness is the degree of force used.

Although [section 117](#) of PACE allows officers to use reasonable force to carry out a stop and search if necessary, their starting point should always be to seek cooperation from the person. Officers should only consider it necessary to escalate to a forcible search where the person resists or makes it clear they are unwilling to cooperate.

Reasonable force should be as set out in [section 3](#) of the Criminal Law Act 1967 (reasonable in the circumstances to prevent crime – for example, to prevent the officer from being assaulted – or to effect a lawful arrest). Officers should not routinely handcuff people in order to carry out a stop and

search. They must judge each case on its merits in line with conflict management principles and be able to justify any use of force, including the use of handcuffs. Any force used should be proportionate to the aim of preventing crime.

## Use of force during stop and search

### Managing conflict during stop and search

Paragraph 3.2 of the Police and Criminal Evidence Act (PACE) 1984 Code A states that an officer must seek the cooperation of the person who is to be searched in every case, even if that person objects initially to being searched.

A person is more likely to be cooperative if they feel that the officer has provided a good reason for the search, is acting impartially based on the facts and has treated them with respect.

Where possible, officers should use their non-physical **conflict management skills** (verbal and non-verbal communication, negotiation, active listening) to de-escalate situations and secure the cooperation of the person who is to be searched, without using force. Officers should also be mindful of the impact that their actions could have on the person, wider community and police legitimacy.

### Using force during stop and search

Officers may however use force during stop and search in specific situations. PACE Code A (paragraph 3.2) states that an officer can use reasonable force to detain a person or vehicle for a search and/or to carry out a search, but only as a last resort. An officer may also carry out a forcible search when they have established that the person resists or is unwilling to cooperate.

In addition, section 3 of the Criminal Law Act 1967 permits an officer to use reasonable force when it is necessary to prevent crime, such as protecting themselves and others from assault, and section 117 of PACE when necessary to execute any powers that do not require consent.

If the use of force is necessary, officers should act in accordance with the Human Rights Act 1998. Articles 2, 3 and 8 impose that if possible, non-violent means should be used to resolve an incident before force is used. Any use of force must be reasonable in the circumstances. Therefore, the use of force must be absolutely necessary for purposes permitted by law and the amount of force must

be reasonable and proportionate (the degree of which must be the minimum required in the circumstances to achieve the lawful objective).

## Using handcuffs during stop and search

**Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS)** has raised specific concerns about the use of handcuffs during stop and search.

Like any type of force, officers must only use handcuffs when it is lawful, necessary and proportionate for them to do so. It would be unlawful for an officer to handcuff a person during a stop and search simply as a matter of routine. Whenever handcuffs are used, officers must only use them for as long as their use remains lawful, necessary and proportionate. After this time period, the handcuffs must be removed.

Officers should have an objective basis for using handcuffs during stop and search. Officers will be better placed to communicate why their use of handcuffs is lawful, necessary and proportionate when their decisions are based on the facts, information and/or intelligence.

Where practicable, the officer should explain to the person they are stopping and searching why it is necessary for them to be handcuffed. Specific reasons should be given, as generic phrases are unlikely to provide sufficient justification for using handcuffs.

## Setting policy and recording uses of force during stop and search

Senior police leaders should ensure that force policies are explicit on the use of force (including handcuffs) during stop and search. Force policies should also clarify how officers are to record any uses of force during stop and search.

Any use of force during stop and search (including handcuffs) should be **recorded** and officers should be aware that they may be required to justify uses of force – for example, to supervisors and scrutiny panels. Forces should also have systems in place so that officers are able to record uses of force during stop and search. Where feasible, these systems should make it possible for stop and search and the use of force to be monitored and scrutinised in tandem.

The following examples act as a guide to support the use of the national decision model (NDM) in relation to the use of handcuffs during stop and search.

## Assessing immediate threat and risk

- Have you taken the mental health and physical condition of the person into account?
- Have you gathered information to determine whether the individual may be at risk from the use of handcuffs?
- Has the person used or threatened to use, or are they likely to use, violence against you or other people?
- Is the person likely to attempt an escape?
- Is there a reasonable belief (based on the objective grounds and taking into account the specific circumstances) that the person is likely to frustrate the purpose of the search – for example, by concealing or disposing of drugs, or by obstructing you?

## Considerations

- Have you taken into account factors such as age, gender, respective size, and apparent strength and fitness?
- Do previous situations suggest that the person is more likely to use, or threaten to use, physical force against you or other people?
- You should continue to assess the threat and risk throughout the encounter. For example, has the subject's manner or demeanour changed?
- The person may be committing an offence under section 23(4) of the Misuse of Drugs Act if they are concealing drugs or obstructing you.

## Outcome

- If you believe that the person is likely to use violence or attempt to escape, then you may take action based on what the person says or does without waiting for a physical act of violence from them. This sets a reasonable ground to handcuff with justification.
- To facilitate a safer search, if you think it is necessary and justifiable, then the person may be put in handcuffs to prevent resistance, escape or violence.
- The use of handcuffs under section 3 of the Criminal Law Act may be permitted to prevent crime.

## Consider powers and policy

- Is it lawful, necessary and proportionate to apply handcuffs based on the specific circumstances you are faced with?
- What is your force policy on using force, including handcuffs, during a stop and search?

#### Considerations

- Be clear on the legal basis for the force you are using.
- Ensure you are up to date with current policy. Make sure you are familiar with how any changes to force policy will be communicated.

#### Outcome

- By demonstrating a clear understanding of your powers and incorporating this into your decision making, it is more likely that your application of handcuffs will be considered lawful.
- Compliance with force policy is more likely to support the lawful application of handcuffs.

### Identify options

- After assessing the specific circumstances and the powers and policy, you will be able to identify options and decide whether it is lawful, necessary and proportionate to use force by applying handcuffs.

#### Considerations

- The use of handcuffs should never be viewed as routine. Going through an assessment using the NDM will ensure that the decision to use force is specific to the incident, level of threat and risk.

#### Outcome

- Identifying and assessing options will enable you to further assess whether the use of handcuffs is appropriate.

### Take action

- Ensure that your **body-worn video (BWV)** is turned on throughout the encounter. Clearly articulating your reasons will help to ensure that the subject, as well as any spectators to the search, understand your actions.

- Explain your rationale for using handcuffs as part of your compliance with **GOWISELY**.
- Have you conducted the stop and search procedure in line with your personal safety training?
- Any use of handcuffs should only be for as long as necessary to carry out an effective search and must be continually assessed to ensure their use remains lawful, necessary and proportionate.
- You must be able to account for why it was reasonable to search the person, to use force and to use the method of force employed (such as handcuffs). Use of force forms must be completed, stating the legal basis for the use of force.

#### Considerations

- When handcuffs are used, the practical application should be in line with your personal safety training and the tactics and techniques contained in the national personal safety manual.
- Appropriate recording, both in terms of the search record and use of force reporting, is an essential element of the process.

#### Outcome

- It is more likely for your actions to be seen as legitimate if you clearly articulate your reasons. Use of BWV will comply with policy and allow future scrutiny of your actions.
- Act proportionately, informed by defensible decision making that is in line with your training.
- It is more likely for your actions to be seen as legitimate if you clearly articulate your reasons. Use of BWV will comply with policy and allow future scrutiny of your actions.

## Further information

- Module 8, page 4 of the national personal safety manual contains sections from the Association of Chief Police Officers (ACPO) guidance on the use of handcuffs.
- All information regarding searching and handcuffing is contained in the national personal safety manual, module 12, pages 6 and 12.
- See also APP on **national decision model**.

## Most proportionate: the search

## Stop and search: Three levels of intrusiveness

## Table key:

- Jacket outer coat and gloves (JOG) – a search involving no removal of clothing other than an outer coat, jacket or gloves. (**PACE Code A, paragraph 3.5.**)
- More thorough search (MTS) – a search involving the removal of more than JOG but not revealing intimate parts of the body. (**PACE Code A, paragraph 3.6.**)
- Search exposing intimate parts of the body (EIP) – a search involving the removal of more than JOG that exposes intimate parts of the body. (**PACE Code A, paragraph 3.7.**)

	On the street	Out of public view (for example, a police van)	Out of public view (in a nearby police station or other nearby location, but not in a police vehicle)
JOG	<p><b>? Yes</b></p> <p>Police officer of any sex can search.</p> <p>Police community support officer (PCSO) of any sex who is designated under the PRA can search for alcohol and/or tobacco.</p>	<p><b>? Yes</b></p> <p>Police officer of any sex can search.</p>	<p><b>? Yes</b></p> <p>Police officer of any sex can search.</p>

	<b>On the street</b>	<b>Out of public view (for example, a police van)</b>	<b>Out of public view(in a nearby police station or other nearby location, but not in a police vehicle)</b>
<b>MTS</b>	<b>? No</b>	<b>? Yes</b>  Police officer must be of same sex as person being searched, unless only headgear or footwear is removed.	<b>? Yes</b>  Police officer must be of same sex as person being searched, unless only headgear or footwear is removed.

	On the street	Out of public view (for example, a police van)	Out of public view(in a nearby police station or other nearby location, but not in a police vehicle)
EIP	? No	? No	<p><b>? Yes</b></p> <p>Consultation with a supervisor required prior to searching (APP requirement). It is recommended the supervisor is an officer of at least inspector rank.</p> <p>Police officer must be of same sex as person being searched.</p> <p>Must be conducted in accordance with <u>PACE Code C, Annex A, paragraph 11.</u></p>

## General principles

Code A specifies a number of general principles that are relevant to proportionality and minimising intrusion on liberty.

- Officers should complete the search as soon as possible and take no longer than is reasonable. What is reasonable depends on the circumstances – for example, it could include the time it takes for an appropriate adult to attend prior to searching a child.
- Officers must detain and search the person at or within a reasonable travelling distance of the place where they are stopped. What is reasonable depends on the mode of transport used for travelling to the alternative location.
- The extent and thoroughness of the search must not be excessive. If the search power being used requires the officer to have reasonable grounds, the extent of the search must depend on the nature of those grounds and the object of the search. For example, if they are based on information that the person has hidden a stolen item in their pocket, the search should be limited to the pocket, unless there are additional grounds or the person has had an opportunity to move the item. The officer may need to search more extensively where the item is small and may be concealed anywhere.
- If the officer is using a '**no suspicion**' search power, there is no specific restriction on the nature of the search but it must be reasonable bearing in mind the items being looked for – for example, a large weapon is unlikely to be hidden in an inner breast pocket.

While conducting the search, officers should at all times be mindful of the particular practical and communication needs of children and vulnerable people.

Code A does not specify a location for conducting searches of children or vulnerable adults. In either case, however, if the officer considers that an appropriate adult needs to be present for the search and no such adult is available at the scene, they should make arrangements for an appropriate adult to attend as soon as possible or consider taking the person to another location where one will be available, such as their home or a police station.

**Guidance note 1BA** indicates that whenever a child under 10 is suspected of carrying unlawful items for someone else, or is found in circumstances that suggest their welfare and safety may be at risk, force safeguarding procedures should be initiated. Children under 10 should only be stopped and searched in exceptional circumstances. Where it is necessary to do so, regardless of the extent of search, every effort should be made for the search to be conducted in a child-friendly location in the presence of an appropriate adult. This could mean taking the child to their home to be searched in the presence of their parent or guardian. Where this is not operationally possible, the search should as a minimum take place in a safe and controlled area, a police station being

preferable to the street or in a police vehicle. All searches of children under 10 should be referred to the safeguarding team as a priority.

## No more than JOG in public

There is no power for an officer to require the person being searched to remove any clothing in public apart from their jacket, outer coat and gloves (JOG), although the officer may ask the person to do so voluntarily (Code A, [guidance note 7](#)). If the officer does ask the person to voluntarily remove more than JOG in public, they should make it clear that the person is not obliged to comply.

The only exception is where an item is believed to be worn to deliberately conceal identity, when removal can be required under [section 60AA](#) of the Criminal Justice and Public Order Act 1994 (CJPOA), Code A, [paragraph 3.5](#). If an officer requires the removal of headgear, a face covering or other disguise under section 60AA and the person refuses to comply, the officer cannot forcibly remove the item but the person is committing an imprisonable offence and can be arrested.

If it is reasonably necessary in the circumstances, bearing in mind the object being looked for – for example, not a large package of drugs or other bulky item – under Code A, [paragraph 3.5](#) the officer may, as part of a JOG search:

- place their hand in the inside pocket of outer clothing
- feel around the inside of collars, socks and shoes
- search hair, as long as there are no restrictions on the removal of headgear, such as for religious reasons

If there are religious sensitivities to asking the person to remove headgear, either to enable the officer to search hair as part of a JOG search as mentioned above, or when requiring removal under [section 60AA](#), the officer should allow it to be removed out of public view. Where practicable, the removal should be carried out in the presence of an officer of the same sex as the person and out of sight of the opposite sex (Code A, [Guidance Note 4](#)).

Under [paragraph 7, Schedule 4 of the Police Reform Act 2002](#), designated PCSOs may only search to the extent **reasonably required** to find the object of the search and cannot require the removal of more than JOG in public.

## More thorough search out of public view

**Code A** distinguishes between a more thorough search (MTS) (Code A, [paragraph 3.6](#)) and a search exposing intimate parts of the body (EIP search) (Code A, [paragraph 3.7](#)), so these are addressed separately.

An MTS is any search involving the removal of more than JOG but not exposing intimate parts of the body (in other words, removal of any item of clothing that is not covering an intimate part of the body). Revealing any intimate part of the body escalates the search from MTS to EIP, which is subject to additional restrictions as set out below. An MTS can be conducted if **necessary** on reasonable grounds. It must be conducted out of public view, in a police van or at a police station. An empty street is still a public place.

Unless only headgear or footwear is removed, the MTS should be conducted:

- by an officer of the same sex
- not in the presence of the opposite sex unless specifically requested by the person

## Search involving exposure of intimate parts of the body

An EIP search, also referred to as strip search, is the most intrusive form of search permitted under stop and search powers. It should not be a routine extension of the initial search if nothing is found. As with searches involving a lesser degree of intrusion, it must only be used where it is **necessary** and **reasonable**, bearing in mind the object of the search.

### APP requirement

Officers identifying a need for an EIP search must consult a supervisor prior to carrying out the search, to explore the reasons why it is necessary and proportionate in the circumstances. The supervisor's role in this context is to support and encourage good decision making by providing suitable challenge. It is recommended the supervisor is an officer of at least inspector rank and this interaction is [recorded](#) for transparency and accountability purposes.

The officer who identifies the need for the EIP search – and not the supervisor – is responsible for the decision to proceed with the EIP search (having taken due regard of the advice given by the supervisor), unless the supervisor gives a lawful order instructing the officer not to carry out the search. This supervisory guidance and support beforehand, rather than after the fact, aims to protect officers from complaints, ensure the appropriate use of police powers, and reassure the

public about the oversight of intrusive searches.

If an officer cannot contact a supervisor within a reasonable timeframe, the officer must balance the need to have the ethical discussion with a supervisor against the need to conduct the EIP search within a reasonable timeframe (one that does not antagonise the person being searched or delay the search for an unreasonable time).

If an officer decides to proceed with an EIP search following consultation with their supervisor, the officer should include the reasons for extending the search as part of the search record, as well as confirming that supervisory consultation took place, with whom and when. If they were unable to contact a supervisor, they should still record their reasons for extending the search, as well as the steps taken to contact a supervisor.

Searches exposing intimate parts of the body must be conducted at a nearby police station or other location out of public view, **not in a police vehicle**.

If a body-worn video camera is available, officers should record the encounter in accordance with force policy, but should cover the camera (or direct it away from the person) whenever intimate body parts are exposed. Audio recording should remain activated.

Code A specifies that searches involving exposure of intimate parts of the body must be conducted in accordance with paragraph 11 of Annex A of Code C.

- The officer carrying out the search must be of the same sex as the detainee.
- The search must be conducted where the person cannot be seen by:
  - anyone who does not need to be present
  - any member of the opposite sex apart from an appropriate adult specifically requested by the person being searched
- Unless there is a risk of serious harm to the person or to someone else, there **must** be a minimum of two persons present in addition to the person being searched. One of those **must** be the appropriate adult if the person is a child or vulnerable adult unless, in the case of a child, the child and appropriate adult both agree that the adult should not be present during the search.
- Proper regard shall be given to the sensitivity and vulnerability of the person, and every reasonable effort should be made to secure the person's cooperation and minimise

embarrassment. They should not normally be required to remove all their clothes at the same time. For example, a person should be allowed to remove clothing above the waist and redress before being required to remove further clothing, subject to necessity in the circumstances.

- If **necessary to assist the search**, the person may be asked to facilitate a visual examination of the genital and anal area but no physical contact may be made with any body orifice.
- The strip search should be conducted as quickly as possible and the person should be allowed to dress as soon as it is completed.

#### Children

Consideration should be given to the safety and welfare of any child stopped, in accordance with [\*\*section 11 of the Children Act 2004\*\*](#).

See also the APP on [\*\*Stop and search\*\*](#).

Paragraph 11 is clear that, unless there is a risk of serious harm to the person or someone else, an appropriate adult **must** be present for an EIP search of a child or vulnerable person. Unless an appropriate adult is available at another safe and controlled location out of public view and not a police vehicle – for example, the child's home – such a search may, in practice, need to be conducted at a police station.

If an item that the officer is searching for can be seen in a body orifice other than the mouth as a result of an EIP search, it cannot be seized, as that would constitute an intimate search. Intimate searches are not permitted **under any circumstance** under stop and search powers.

## Intimate search – only post-arrest

An intimate search may only be carried out on a person after they have been arrested and is governed by the provisions of [\*\*Code C\*\*](#).

## Tags

Stop and search