

Legal - Guidance overview

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Stop and search encounters must be legal in basis and in application.

Why does legal matter?

Police officers must act, and be seen to act, in accordance with the law. This contributes to police legitimacy by encouraging the public to trust that the police do not act arbitrarily and are subject to the same rules as everyone else¹.

Acting in accordance with the law provides protection for officers. If something goes wrong but they can point to having followed the correct processes in their decision making and conduct, they are in a better position to explain their actions.

Acting outside the law can have serious consequences for investigations and prosecutions – if the law is not followed when stopping and searching someone, any evidence obtained from the search may be open to challenge.

In addition, the [European Convention on Human Rights](#) (ECHR) specifies that restrictions on rights must be lawful. The police, as state agents, are therefore under an obligation to act in accordance with the law when exercising powers that may interfere with individual rights under the ECHR. The [Human Rights Act 1998](#), which incorporates the ECHR into UK law, also sets out in section 6(1) that it is unlawful for a public authority to act in a way that is incompatible with a Convention right.

Stop and search has the potential to interfere with several Convention rights, in particular the right to liberty and security under [Article 5](#) and the right to respect for private and family life under [Article 8](#). Incorrect use of stop and search powers, whether deliberate or not, may therefore breach domestic law and place the UK in violation of its obligations under the ECHR.

What does legal mean in the context of stop and search?

Code A ([paragraph 1.5](#)) says:

An officer must not search a person if there is no specific power to do so. This applies even if the person would consent to being searched.

The only exception to this is search on entry to premises where consent to being searched is a condition of entry.

There are two main aspects to the requirement that a stop and search encounter be legal. It must:

- have a [legal basis](#)
- be [lawfully applied](#)

Each stop and search encounter must have a basis in law. The officer carrying out the stop and search must only do so using one of the powers provided for in legislation, and it must be the right power in the particular circumstances.

Where there is a legal power to stop and search, it must also be exercised lawfully. The power must be applied in a way that is compatible with the enabling legislation, with 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.

Tags

Stop and search