

**Consultation on Police Powers to Search Children and Young People for Alcohol****Report by Eibhlin McHugh, Director, Health & Social Care****1 Purpose of Report**

The purpose of this report is to bring to the Board's attention the attached consultation.

**2 Background**

The attached consultation closes on 15<sup>th</sup> July and the Police and Fire & Rescue Board are asked to consider whether they would like to submit a response.

**3 Report Implications****3.1 Resource**

This report has no resource implications

**3.2 Single Midlothian Plan and Business Transformation**

Themes addressed in this report:

- ☒ Community safety
- ☐ Adult health, care and housing
- ☐ Getting it right for every Midlothian child
- ☐ Improving opportunities in Midlothian
- ☐ Sustainable growth
- ☐ Business transformation and Best Value
- ☐ None of the above

**3.3 Key Priorities within the Single Midlothian Plan**

Ensuring Midlothian is a safe place to live, work and visit

**3.4 Adopting a Preventative Approach**

The attached consultation covers powers that may assist with preventing child and youth consumption of alcohol.

**3.8 Ensuring Equalities**

This report has no equalities implications

**4 Recommendations**

The Police and Fire & Rescue Board is asked to consider whether they would like to submit a response to the attached consultation on Police Powers to Search Children and Young People for Alcohol.

**17<sup>th</sup> May 2016**

**Report Contact:**

**Name:** Rosie Kendall

**Tel No:** 0131 2716654

**Email:** Rosie.Kendall@midlothian.gov.uk

**Background Papers:** Consultation on Police Powers to Search Children and Young People for Alcohol

# **Consultation on Police Powers to Search Children and Young People for Alcohol**



In March last year, I asked John Scott QC, Solicitor Advocate, to chair an independent Advisory Group on Stop and Search.

The Advisory Group recommended that non-statutory (or consensual) Stop and Search should end when a new Stop and Search Code of Practice comes into force next year. From that point on the police will be able to search a person only where they have a specific legal power to do so.

In their report, the Advisory Group highlighted a potential legislative gap once consensual search ends, as the police do not currently have a specific legal power to search children and young people for alcohol. However, the Group's members were unable to reach a concluded view on whether a new search power was desirable or necessary. They therefore recommended that the Scottish Government should carry out this public consultation.

I would like to thank John Scott and the Advisory Group members for their considerable efforts in producing such a comprehensive and balanced report. The Scottish Government accepted the Group's recommendations in full. We have included the section of the Advisory Group Report on Children and Alcohol as an Annex to this consultation paper and I encourage you to read it.

This is a complex issue and it is vitally important that we get the balance right. We must ensure that the police have the powers that they need to safeguard and protect the safety and wellbeing of children and young people, while at the same time we must ensure that we are protecting the rights of the individual.

I am keen to build consensus on this important issue and I encourage you to respond to this consultation. We will be particularly keen to hear the views of children and young people.

A handwritten signature in black ink, which appears to read 'Michael Matheson'. The signature is fluid and cursive, written on a light-colored background.

**Michael Matheson**

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# **CONSULTATION ON POLICE POWERS TO SEARCH CHILDREN AND YOUNG PEOPLE FOR ALCOHOL**

## **1. Introduction**

### **Purpose of this consultation**

This consultation asks for views on whether the police should be given the following new search powers:

- The power to search a child or young person under the age of 18 for alcohol, where a constable has reasonable grounds to suspect that the person is under the age of 18 and has alcohol in a public place.
- The power to search a person where a constable has reasonable grounds to suspect that the person has alcohol in a public place, and that the person has supplied or intends to supply the alcohol to a person under the age of 18 for consumption in a public place.

The questions in this consultation paper are deliberately framed in a way that allows for open discussion of these issues and how they are best addressed. The Government is not, at this stage, taking a position on whether the powers are needed and will only make a decision on this once it has considered all of the responses to the consultation.

### **Consultation Questions**

1. Do you think that a new power for the police to search a child or young person for alcohol as outlined in Part 1 of this consultation paper is an appropriate way to reduce risks to safety and wellbeing caused by possessing and consuming alcohol in public?
2. Do you think that any negative effects could result from a new power to search a child or young person for alcohol as outlined in Part 1 of this consultation paper?
3. Do you think that a new power for the police to search a person suspected of supplying a child with alcohol as outlined in Part 1 of this consultation paper is an appropriate method to reduce risk to safety and wellbeing caused by possessing and consuming alcohol in public?

## **2. Responding to this consultation paper**

Responses should reach us by **15 July 2016**. We would welcome earlier responses.

Please complete your response using the online system at

<https://consult.scotland.gov.uk/organised-crime-and-police-powers-unit/under18search>

or send your response with the completed Respondent Information Form included at the end of this paper (see 'Handling your response' below) to:

[alcoholsearchconsultation@gov.scot](mailto:alcoholsearchconsultation@gov.scot)

or:

Police Powers Team  
Scottish Government  
Area 1WR  
Saint Andrew's House  
Edinburgh  
EH1 3DG

If you have any questions please phone Catherine Lobban on 0131 244 2160

This consultation, and all other Scottish Government consultation exercises, can be viewed online on the consultation pages of the Scottish Government website at

<https://consult.scotland.gov.uk/>

The Scottish Government has an email alert system for consultations

<http://register.scotland.gov.uk/Subscribe/Step1>. This system allows stakeholders, individuals and organisations to register and receive a weekly email containing details of all new consultations.

### **Handling your response**

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete the consultation online at <https://consult.scotland.gov.uk/organised-crime-and-police-powers-unit/under18search>

or complete and return the Respondent Information Form (included at the end of this paper) as this will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

### **The consultation process**

As well as publishing this consultation paper, the Scottish Government will be discussing these issues with a range of organisations, including organisations that represent children's interests.

We are especially keen to hear the views and experiences of young people and we encourage young people to respond to this consultation. To help with this we have included an easy access summary as Part 9 of this consultation paper. We will also create an Ebook version of this consultation paper that people can read and respond to on mobile phone or tablet.

We may also hold workshops and group discussions with young people. If you would like someone from the Scottish Government to come to speak to your group or organisation to hear your views please email us at [alcoholsearchconsultation@gov.scot](mailto:alcoholsearchconsultation@gov.scot) or phone Catherine Lobban on 0131 244 2160.

### **Next steps in the process**

Where respondents have given permission for their response to be made public and after we have checked that they contain no potentially defamatory material, responses will be made available to the public in the Scottish Government Library and on the Scottish Government consultation web pages by 15 September 2016. You can make arrangements to view responses by contacting the SG Library on 0131 244 4552. Responses can be copied and sent to you, but a charge may be made for this service.

### **What happens after the consultation?**

We will analyse responses to the consultation and information gathered from any workshops, group discussions and meetings carried out during the consultation period.

Scottish Ministers will then decide whether or not to lay regulations before the Scottish Parliament that would give police the new powers to search people for alcohol as outlined in Part 1 of this consultation paper. If Scottish Ministers decide to lay regulations then at that stage the Scottish Government will carry out another public consultation on more detailed proposals to change the law to create a new search power.

The new regulations would only come into force if the Scottish Parliament voted to approve them<sup>1</sup>.

### **Comments and complaints**

If you have any comments about how this consultation exercise has been conducted, please send them to the contact details above.

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<sup>1</sup> See section 70 of the Criminal Justice (Scotland) Act 2016

### **3. Stop and Search**

Various laws give the police the power to detain and search a person who has not been arrested, where there is reasonable suspicion that the police might find evidence of an offence or something that could be used to commit a crime. The police also have the power in some limited circumstances to search a person to protect the health and wellbeing of that person or others, where there is no suspicion that any offence has been committed<sup>2</sup>. The term 'Stop and Search' is used to describe this process of detaining and searching a person who has not been arrested.

Being stopped and searched does not necessarily mean that a person has done anything wrong or that they will now have a criminal record.

At the moment, there are two different types of Stop and Search in Scotland.

#### **Statutory Stop and Search**

This can happen where there is a specific law that gives police the power to search someone (for example, if an officer has reasonable grounds to suspect someone is in possession of controlled drugs, section 23 of the Misuse of Drugs Act 1971 gives the police the power to search that person).

#### **Non-statutory (or consensual) Stop and Search**

This can happen where there isn't any specific law that would give police power to search a person. If, however, a person agrees to being searched, the person can be searched with their consent.

The Independent Advisory Group on Stop and Search recommended that non-statutory (or consensual) Stop and Search should end when a new Stop and Search Code of Practice comes into force next year. From that point on the police will be able to search a person only where they have a specific legal power to do so.

#### **Independent Advisory Group on Stop and Search**

In March 2015 the Scottish Government's Justice Secretary, Michael Matheson asked John Scott QC, Solicitor Advocate, to chair an independent Advisory Group on police use of Stop and Search. The Group was made up of experts in policing, law enforcement, children's rights and academics.

In their report<sup>3</sup>, the Advisory Group highlighted a potential legislative gap once consensual search ends, as the police do not currently have a specific legal power to search children and young people for alcohol. However, the Group's members were unable to reach a concluded view on whether a new search power was desirable or

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<sup>2</sup> See for example section 66 of the Criminal Justice (Scotland) Act 2016

<sup>3</sup> <http://www.gov.scot/Resource/0048/00484527.pdf>



necessary. They therefore recommended that the Scottish Government should carry out this public consultation on whether the police should be given the new search powers described in Part 1 of this consultation paper. These new search powers would be in addition to the powers that the police already have to require people to surrender alcohol (as outlined in Part 5 of this consultation paper).

The section of the Advisory Group's report on children and alcohol is included as Annex A to this paper - we encourage you to take a few minutes to read that Annex before you respond to this consultation.

## **Stop and Search Code of Practice**

Codes of Practice are increasingly common in the work of public bodies. They can allow for greater certainty on the part of the public and the public servants involved.

The Criminal Justice (Scotland) Act 2016 provides that there should be a Code of Practice to underpin how Stop and Search is used, and that, before it is brought into force, there should first be a consultation on a draft Code of Practice. The Code of Practice will set out rules and guidance on when and how Stop and Search is used, how the search should be carried out and the type of information that should be recorded. The Act also says that when the Code of Practice comes into effect, the police will no longer be able to use non-statutory (consensual) Stop and Search – from then on all searches must be statutory.

The Scottish Government is currently carrying out a public consultation on what should be included in the Code of Practice. You can access the consultation on the Code of Practice at <https://consult.scotland.gov.uk/organised-crime-and-police-powers-unit/stop-and-search>

## **4. Harm that alcohol can cause for children and young people**

A 2009 report by William McKinlay and others on Alcohol and Violence among Young Male Offenders in Scotland (1979 – 2009)<sup>4</sup> brought together the findings of four research studies carried out over the past 30 years. It found that many offenders associate their criminality with alcohol misuse, particularly young offenders and those who have committed a violent offence. Self-reported data suggested that 50% of all male offenders in Scotland were under the influence of alcohol at the time of their offence, rising to 77% among young offenders aged 16-21.

The report found that:

- 40.1% of young offenders in 2007 said they got drunk daily.
- 79.6% considered that alcohol had contributed to their previous offending.

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[http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUK Ewif4KG42vnKAhWF\\_Q4KHbCZAEAQFggIIMAA&url=http%3A%2F%2Fwww.sps.gov.uk%2Fnmrsrunti me%2Fsaveasdialog.aspx%3FfileName%3DTheMcKinlayReportAlcoholViolenceAmongYoungMaleOf fenders2678\\_1428.pdf&usq=AFQjCNFQB6MtMYMCLdbGRsFpHjxn2JLc4A&sig2=fpu-bl3aV\\_KBbinjugXXw](http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUK Ewif4KG42vnKAhWF_Q4KHbCZAEAQFggIIMAA&url=http%3A%2F%2Fwww.sps.gov.uk%2Fnmrsrunti me%2Fsaveasdialog.aspx%3FfileName%3DTheMcKinlayReportAlcoholViolenceAmongYoungMaleOf fenders2678_1428.pdf&usq=AFQjCNFQB6MtMYMCLdbGRsFpHjxn2JLc4A&sig2=fpu-bl3aV_KBbinjugXXw)

- 56.8% blamed their current offence on drinking.
- All interviewees linked alcohol to their offending, in some cases to every one of their previous offences.

The Scottish Prison Survey in 2013 stated that just under half (45%) of prisoners in Scotland reported being drunk at the time of their offence.

The Crime and Justice Survey in 2012-13 found that in 59% of incidents of violent crime the victim said the offender was under the influence of alcohol.

Of the 77 persons accused in homicide cases in 2014-15, 27 (35%) were under the influence of alcohol.

An audit of Scottish emergency departments (NHS Quality Improvement Scotland, 2006) found that at least 70% of assaults presenting to emergency departments may be alcohol-related. On this basis it is estimated that a minimum of 77 alcohol-related assaults present to Scottish emergency departments every day<sup>5</sup>

## **The Scottish Government's Alcohol Framework**

The Scottish Government's Alcohol Framework contains over 40 measures aimed at reducing consumption, supporting families and communities, encouraging more positive attitudes and positive choices and improving treatment and support services.

Children and young people who are involved in offending often present with associated issues such as alcohol misuse. The Scottish Government's priority is to improve life chances for children and young people involved in, or at risk of being involved in offending. As part of a preventative approach there is a particular focus on health issues, including addressing alcohol misuse and any wellbeing concerns.

Young people's bodies are more vulnerable than adults' to the effects of alcohol. Drinking can cause short and long term harm to health, as well as put young people in risky situations when drunk. Research shows that the earlier a young person begins to drink alcohol, the more likely they are to drink in ways that can be risky later in life.

## **5. Current police powers to require people to surrender alcohol<sup>6</sup>.**

### **Children and young people under 18**

It is not an offence for a child or young person under 18 to be in possession of alcohol in a public place (although in many places in Scotland it is an offence to drink alcohol in public or be in possession of an open container of alcohol, under local authority bye-laws).

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[http://www.healthcareimprovementscotland.org/programmes/mental\\_health/programme\\_resources/harmful\\_drinking\\_2\\_alcohol\\_an.aspx](http://www.healthcareimprovementscotland.org/programmes/mental_health/programme_resources/harmful_drinking_2_alcohol_an.aspx).

<sup>6</sup> Section 61 of the Crime and Punishment (Scotland) Act 1997

If the police have reasonable grounds to suspect that a person is under the age of 18 and that they have alcohol in a public place the police have the power to require the person to surrender the alcohol. Once surrendered, the officer can dispose of the alcohol and require the person to supply their name and address. Police Scotland records alcohol recovered in this way as 'seizures'.

Refusing to surrender alcohol when required to do so is an offence and the officer has the power to arrest the person<sup>7</sup>.

Before requiring the surrender of the alcohol the officer must tell the person of their suspicion and that failure to comply is an offence.

There is no specific law that gives police the power to search a child or young person under 18 who has not been arrested for alcohol (unless in certain particular circumstances such as at entry to football matches).

### **People suspected of supplying a child or young person with alcohol**

If the police have reasonable grounds to suspect that a person has alcohol in a public place, and that the person has supplied or intends to supply the alcohol to a person under the age of 18 for consumption in a public place, the police have the power to require the person to surrender the alcohol. Once surrendered, the officer can dispose of the alcohol and require the person to supply their name and address.

Refusing to surrender alcohol when required to do so is an offence and the officer has the power to arrest the person<sup>8</sup>. Before requiring the surrender of the alcohol the officer must tell the person of their suspicion and that failure to comply is an offence.

There is no specific law that gives police the power to search a person who has not been arrested for alcohol (unless in certain particular circumstances such as at entry to football matches).

## **6. Evidence about what powers the police used to recover alcohol<sup>9</sup>**

### **Alcohol surrendered where police did NOT search the person for alcohol**

From 1 June 2015 to 31 December 2015 there were **2551** occasions where a child or young person under 18 surrendered alcohol to a police officer where the officer did not search that young person for alcohol. There were also **8440** occasions where

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<sup>7</sup> The Criminal Justice Act 2016 will change the law on arrests but officers will still have the power to arrest someone who refuses to surrender alcohol when required to do so.

<sup>8</sup> The Criminal Justice Act 2016 will change the law on arrests but officers will still have the power to arrest someone who refuses to surrender alcohol when required to do so.

<sup>9</sup> The information in this table was provided by Police Scotland and is taken from the June to December Stop and Search management information at <http://www.scotland.police.uk/assets/pdf/138327/306184/national-stop-and-search-database-management-information-report-1st-june-31st-december>

alcohol was surrendered by a person aged 18 or over where the officer did not search that person for alcohol.

**Alcohol surrendered where police searched the person for alcohol (these searches were non-statutory [or consensual]<sup>10</sup>)**

From 1 June 2015 to 31 December 2015 there were **158** occasions when a child or young person under 18 surrendered alcohol after an officer carried out a non-statutory (consensual) search of that young person for alcohol. There were **262** occasions where a person aged over 18 surrendered alcohol after a non-statutory (consensual) search for alcohol. More detail about these searches is set out below:

**Non-statutory (or consensual) searches for alcohol:**  
**1 June to 31 December 2015**

	Number of searches for alcohol	Number of people who refused to consent to the search	searches where alcohol found	% of searches where alcohol found
<b>Searches of under 18s</b>	<b>1629</b>	<b>9</b>	<b>158</b>	<b>9.7%</b>
<b>Searches of people aged 18 and over</b>	<b>1605</b>	<b>23</b>	<b>262</b>	<b>16.3%</b>

**Commentary:**

- In over 9 out of 10 (94%) cases where children and young people under 18 surrendered alcohol to the police between June and December 2015 the police did not search the young person for alcohol (2551 cases where alcohol was surrendered without a search for alcohol and 158 occasions where alcohol was surrendered after a non-statutory [consensual] search for alcohol).
- The Scottish Government is not aware of any evidence that any child or young person who was not searched refused to surrender alcohol to an officer or that an officer needed to consider arresting a child or young person for refusing to surrender alcohol.
- In 9 out of 10 (90%) of the non-statutory (or consensual) searches for alcohol of children and young people, the police did not find any alcohol.

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<sup>10</sup> See Part 3 of this paper for a definition of non-statutory (consensual) searches

- Only 0.5% of children and young people who were asked refused to give their consent to be searched for alcohol from June to December - 158 children and young people under 18 who were in possession of alcohol gave their consent to be searched.

## 7. Arguments for and against new powers to search children and young people aged under 18

The independent Advisory Group members were unable to reach a concluded view on whether new search powers for alcohol were needed. Some of the main arguments for and against new search powers are set out in this section.

<b>FOR – The police should be given new powers to search children and young people for alcohol</b>	<b>AGAINST – The police should not be given new powers to search children and young people for alcohol</b>
<p><b>Not having a search power could put children and young people at risk of harm.</b> There were 158 non-statutory (or consensual) searches for alcohol of children and young people aged under 18 between 1 June 2015 and 31 December 2015 where alcohol was found. If police weren't able to search for alcohol, they might not have been able to recover this alcohol.</p> <p><b>Having a search power could help the police to find alcohol that a child or young person under 18 had concealed.</b> If a child or young person under 18 told an officer that they didn't have any alcohol, but they did and they had concealed it, then a power to search would allow the officer to look for it and confirm the officer's reasonable suspicion.</p> <p><b>Having a power to search someone could avoid the need to arrest them.</b> If the police aren't given a legal power that lets them search a child or young person who they think has alcohol, the only way the police could search that person would be if they had grounds to arrest them. Being able to search a child or young person for alcohol may allow</p>	<p><b>The police already have enough powers to require children and young people to surrender alcohol.</b> In over 9 out of 10 cases (94%) where alcohol was surrendered by a child or young person aged under 18 from June to December 2015, the police did not need to search that young person (2,551 cases where alcohol was surrendered without a search for alcohol and 158 occasions where alcohol was surrendered after a search for alcohol).</p> <p>The Scottish Government is not aware of any evidence that any young person who was not searched refused to surrender alcohol to an officer or that an officer needed to consider arresting anyone for refusing to surrender alcohol.</p> <p><b>There are no circumstances in which a new power to search could be used where the police cannot already use their existing powers to require a young person to surrender alcohol.</b> The police would only be able to use a search power where they had reasonable grounds to suspect that a young person had alcohol. But if they have reasonable grounds to suspect possession then they can use their existing powers to require a young person to surrender the alcohol. We</p>

the police to act early and effectively to prevent any harm without resorting to arrest.

**In many places in Scotland drinking in the street and possessing an open container of alcohol in public is an offence under local by-laws.**

A new power to search for alcohol would support earlier intervention in the interest of wellbeing and safeguarding children and young people by preventing offences occurring.

**In England and Wales, Police Community Support Officers (PCSOs) have the power to search a person for alcohol in certain circumstances.**

Police constables in England and Wales don't have a power to search people for alcohol. But a PCSO can search a person, if that person has refused to surrender alcohol after having been requested to do so by a PCSO<sup>11</sup>.

**A new power to search would be tightly controlled – it could be used only where there were reasonable grounds to suspect that the person had alcohol, and it would be covered by the Stop and Search Code of Practice.**

Reasonable grounds for suspicion is the legal test that an officer would need to satisfy. An officer would need to be able to explain and justify the basis for their suspicion by reference to intelligence or information about, or some specific behaviour by, the person concerned. The Stop and Search Code of Practice would be used to add any extra rules and guidance about how the search power was used. Also, in deciding whether or not to search a child for alcohol, a police officer would, by law, have to treat the need to safeguard and promote the

have not seen evidence that any young person has ever refused to surrender alcohol where the police have been able to demonstrate reasonable suspicion of possession and when asked to do so.

**A new search power would not give the police any new powers to take alcohol away from a young person.**

The police already have the power to require a young person to surrender alcohol. Failure to surrender the alcohol would be an offence and the officer would have the power to arrest the person – as outlined in Part 5 of this paper. Giving the police a new search power would not change that – it would not give the police any new power to take alcohol from a young person.

**There should not be a power to search for something that is legal.**

Possession of alcohol is legal (although public consumption may be illegal where local by-laws are in place). The police should not have the power to search for something that it is legal to have.

**There is no need for police officers in Scotland to have a search power that police officers in England and Wales don't have.**

Police officers in England and Wales don't have a power to search young people for alcohol<sup>13</sup>. Scotland is a similar society with similar laws.

**A new search power could lead to more searches of children and young people.**

At the moment, in over 9 out of 10 cases where a child or young person under 18 surrenders alcohol to the police, the young person does not need to be searched (2551 people under 18 surrendered alcohol without a search

<sup>11</sup> We do not have PCSOs in Scotland – they help deal with anti-social behaviour. They are civilian members of police support staff but they wear a uniform and have some of the powers that police officers have - see Police Reform Act 2002

<p>wellbeing of the child as a primary consideration<sup>12</sup>.</p>	<p>from June to December 2015).</p> <p>The police can use their existing powers to require a person to surrender alcohol only where they have reasonable grounds to suspect that a person has alcohol. If a new search power is created, it will be subject to exactly the same ‘reasonable grounds’ test.</p> <p>This would mean that, if a new search power is created, on every occasion where an officer has the power to require a child to surrender alcohol under their existing powers, the officer would also have the new power to search that child.</p> <p><b>A new search power could risk harming relationships between children and the police.</b></p> <p>From June to December 2015, 9 out of 10 searches of children and young people for alcohol found no alcohol (there were 1629 non-statutory [consensual] searches of children and young people for alcohol – alcohol was found in only 158 searches).</p> <p>The Scottish Government is not aware of any research into whether these searches affected people’s relationships with the police. However, concerns have been raised by a range of bodies about the potential impact a power to search for alcohol might have on relationships between children and the police. For example, when the UK Parliament was debating the 1997 Act that gave the police their existing powers to require people to surrender alcohol, the absence of a power of search was mooted as ‘one of the great strengths’ of the law as it was feared that searches might create</p>
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<sup>13</sup> In England and Wales, Police officers do not have power to search for alcohol. Police Community Support Officers (PCSOs) have the power to search a person for alcohol if that person has refused to surrender alcohol after having been requested to do so by a PCSO – see Police Reform Act 2002.

<sup>12</sup> Section 68 of the Criminal Justice (Scotland) Act 2016

	tension and conflict between the police and young people <sup>14</sup> .
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## 8. Consultation Questions

The previous sections set out a range of relevant information and arguments in relation to powers to search children for alcohol. The Scottish Government would welcome the view of respondents in relation to the following questions which arise from this analysis:

- 1. Do you think that a new power for the police to search a child or young person for alcohol as outlined in Part 1 of this consultation paper is an appropriate way to reduce risks to safety and wellbeing caused by possessing and consuming alcohol in public?**

**YES**

**NO**

**DON'T KNOW**

- 2. Do you think that any negative effects could result from a new power to search a child or young person for alcohol as outlined in Part 1 of this consultation paper?**

**YES (please specify below)**

**NO**

**DON'T KNOW**

- 3. Do you think that a new power for the police to search a person suspected of supplying a child with alcohol as outlined in Part 1 of this consultation paper is an appropriate method to reduce risk to safety and wellbeing caused by possessing and consuming alcohol in public?**

<sup>14</sup> Dr Robert Spink, HC Deb 24 January 1997 vol 288 cc1165-206, Confiscation of Alcohol (Young Persons) Bill, as cited in the report by the independent Advisory Group on Stop and Search – see Annex D



**YES (please specify below)**

**NO**

**DON'T KNOW**

The Scottish Government would also welcome any wider evidence, information or views that are relevant to the purpose of this consultation that respondents would wish to bring to our attention in our further consideration of this issue.

## 9. Easy access summary of this consultation paper

The Scottish Government is particularly keen to get the views of children and young people. To help with this, we have included this easy access summary.

### EASY ACCESS SUMMARY

The Scottish Government wants to know what you think about these two questions:

1. Should the police be able to **search a young person aged under 18 for alcohol**, if police believe the young person has alcohol in a public place?
2. Should the police be able to **search a person if they believe the person intends giving alcohol to a young person** aged under 18 to drink in public?

The police want to be able to do this because they believe it will help them **protect young people and others and keep them safe from the harm** that alcohol could cause to them or others.

At the moment the police can search someone for alcohol if the person agrees to be searched. The police **don't have a specific legal search power to do this**. But the law has changed and from next year the police won't be able to search people for alcohol, even if a person agrees to be searched. That is why **the police want to be given a specific legal search power** to do this.

A Group with members from different organisations was set up to advise the Government. That Group looked at this problem but couldn't decide whether the police needed a legal power to search children and young people for alcohol. They recommended that the Government should ask the public what they think. **The Scottish Government wants to use this consultation paper to find out what you think about giving police a specific legal power to search children and young people for alcohol** in public places

The Scottish Government hasn't yet decided whether the police should be given a legal power to search children and young people for alcohol. It is going to listen to what the public think, gather more evidence about this and then it will decide.

There are arguments for and against giving the police this power:

#### ARGUMENTS FOR

**Not being able to search children and young people for alcohol could put children and young people at risk of harm.**

There were 158 searches for alcohol of children and young people aged under 18 from June to December 2015 where police found alcohol. The police might not have recovered this alcohol if they weren't able

#### ARGUMENTS AGAINST

**The police don't need to be able to search children and young people for alcohol as they already have powers to require them to surrender alcohol.**

In over 9 out of 10 cases (94%) where alcohol was given up by a young person aged under 18 to the police from June to December 2015, the police did not need to search that young person for alcohol

to search for it.

**Having a search power could help the police to find alcohol that a child or young person under 18 had hidden**

If a child or young person under 18 told an officer that they didn't have any alcohol, but they did and they had hidden it out of sight, then a power to search would allow the officer to look for it.

**Having a power to search someone could avoid the need to arrest them.**

If the police aren't given a legal power that lets them search a child or young person who they think has alcohol, the only way the police could search that person would be if they had grounds to arrest them. Being able to search a child or young person for alcohol may allow the police to act early and effectively to prevent any harm without resorting to arrest.

**In many places in Scotland drinking in the street and possessing an open container of alcohol in public is an offence under local by-laws.**

A new power to search for alcohol would support earlier intervention in the interest of wellbeing and safeguarding children and young people by preventing offences occurring.

**In England and Wales, Police Community Support Officers (PCSOs) have the power to search a person for alcohol in certain circumstances**

Police constables in England and Wales can't search people for alcohol. But a PCSO can search a person, if that person has refused to give up their alcohol. (We don't have PCSOs in Scotland – they help deal with anti-social behaviour – they are civilian members of police support staff but they wear a uniform and have some of the powers that police officers have).

(there were 2,551 times where alcohol was surrendered without a search for alcohol and only 158 times where alcohol was surrendered after a search for alcohol).

If a police officer thinks that a person is under 18 and that they have alcohol in public, the officer has the power to ask the person to give them any alcohol they've got. The officer can then throw it away. It would be an offence to refuse to give the alcohol to the police when asked and there is no evidence that any child or young person has ever refused.

**In all cases where the police have reasonable grounds to suspect that a person has alcohol, they can use the powers they already have to ask the person to give their alcohol to the police.**

If a police officer thinks a child or young person has alcohol they can ask the person to give it to them. It would be an offence to refuse to give alcohol to the police, when asked and there is no evidence that this has ever happened. So there is no need for the police to be able to search that person for alcohol.

**The police should not be able to search children and young people for something that is legal.**

It is legal for a person to have alcohol in public, no matter what age they are (but it might be against the law to drink it in public if local by-laws are in place). The police should not have the power to search for something that it is legal to have.

**Police Officers in England and Wales can't search people for alcohol, so there is no need for police in Scotland to do it.**

Police officers in England and Wales can't search people for alcohol. Scotland is a similar society with similar laws.

**Any searches for alcohol would be tightly controlled – the police could only search someone where they had reasonable grounds to suspect that the person had alcohol, and all searches would be covered by a new Stop and Search Code of Practice that will be introduced in early 2017.**

The police would only be able to search someone where they had reasonable grounds to suspect they had alcohol. This means that an officer would need to be able to explain why they think the person has alcohol – this might include things like information that the officer has received about the person, or things that the officer has seen, such as the way that the person has been acting.

The new Stop and Search Code of Practice could include extra rules and guidance about how the police search people (especially children and young people) for alcohol.

**A new search power could lead to more searches of children and young people.**

At the moment, over 9 out of 10 cases where alcohol is taken from children and young people under 18 are dealt with using the powers the police already have to ask the person to surrender the alcohol.

If the law is changed so that the police have the power to search people they think may have alcohol, it could lead to many more searches of children and young people for alcohol.

**A new search power could risk harming relationships between children and the police.**

From June to December 2015, 9 out of 10 searches of children and young people for alcohol did not find any alcohol.

We haven't seen any research on whether these searches affect young people's relationships with the police. But a lot of different organisations are concerned that being able to search young people for alcohol could harm relationships between children and young people and the police.

There is more information about these arguments in the rest of this consultation paper. Please read the rest of the paper if you would like to learn more.

### **What do you think?**

Should the police be able to search a young person aged under 18 if the police think that person has alcohol in public?

Do you think there could be any negative impact, if the police are able to search young people aged under 18 for alcohol?

Should the police be able to search a person if the police think the person is going to give alcohol to a young person aged under 18 to drink in public?

Tell us what you think at

<https://consult.scotland.gov.uk/organised-crime-and-police-powers-unit/under18search>

or email us at [alcoholsearchconsultation@gov.scot](mailto:alcoholsearchconsultation@gov.scot)

If you have any questions please phone Catherine Lobban on 0131 244 2160.

If you would like someone from the Scottish Government to come to speak to your group or organisation to hear your views please email us at [alcoholsearchconsultation@gov.scot](mailto:alcoholsearchconsultation@gov.scot) or phone Catherine Lobban on 0131 244 2160.

Closing date for comments is **15 July 2016**

# Consultation on police powers to search children and young people for alcohol



## RESPONDENT INFORMATION FORM

**Please Note** this form **must** be returned with your response.

Are you responding as an individual or an organisation?

☐ Individual

☐ Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

☐ Publish response with name

☐ Publish response only (anonymous)

☐ Do not publish response

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

☐ Yes

☐ No

## EXTRACT FROM THE STOP AND SEARCH ADVISORY GROUP REPORT<sup>15</sup>

### ALCOHOL

#### Recommendation 6

**That the Scottish Government should hold an early consultation on whether to legislate to create a specific power for police officers to search children under 18 for alcohol in circumstances where they have reasonable grounds to suspect that they have alcohol in their possession. Such a power might also extend to searching those suspected of supplying alcohol to those under 18. The Government should ensure that the consultation process engages effectively with children and young people. In introducing any such power care should be taken to ensure that there is no consequent increase in criminalisation of children and young people.**

1. The possession of alcohol by children and young people has been offered repeatedly as a major aspect of the use of, and need for, the tactic of non-statutory Stop and Search. On the face of it there was some justification for taking a closer look at this area. Non-statutory searches of children and young people for alcohol seemed to make up a significant number of such searches.
2. However, creation of the new National Stop and Search Database, which has provided much better recording of police activity in this area, revealed that the bulk of incidents involving alcohol were recorded as seizures (previously consensual searches for alcohol and seizures had been collapsed together). Nevertheless, it is clear that searches have continued to be undertaken for alcohol, including some inappropriate use of statutory grounds which reveals both confusion over, and reliance on, its use. The sheer scale of the activity around alcohol underlines Police Scotland's view that this continues to be an area of concern and the inability to use search powers to remove alcohol from young people is a potential problem.
3. In his report Her Majesty's Inspector of Constabulary in Scotland wondered if an implied power of search for alcohol might be read into the power of seizure of alcohol. Subsequent legal advice has confirmed that there is no implied power of search within the current legislation. In part this advice was based on the fact that the United Kingdom Parliament had specifically decided in 1997 not to give the police such a power. The absence of such a power was mooted as "one of the great strengths" of the legislation as it was feared that the exercise of such a power might create tension and conflict between the police and young people<sup>16</sup>. This is something the Scottish Government and Scottish

<sup>15</sup> <http://www.gov.scot/Resource/0048/00484527.pdf>

<sup>16</sup> Dr Robert Spink, HC Deb 24 January 1997 vol 288 cc1165-206, Confiscation of Alcohol (Young Persons) Bill

Parliament ought to keep in mind when exploring the merits of a new power to search for alcohol. Meaningful consultation with children and young people will be important in this regard.

4. The issue of whether this area represents a gap is complicated by the fact that the statistics for non-statutory Stop and Search seem to include what were in fact seizures. Such seizures were entirely lawful in terms of the legislation. On most occasions these seem to have happened without any further action or intervention, or the involvement of Child Protection partners. For the avoidance of doubt, we do not suggest that further intervention was necessary or appropriate in those cases.

5. Conversely, it has been suggested to us that, in the absence of non-statutory Stop and Search there could be circumstances where vulnerable young people could be at greater risk if the police had to rely solely on the power of seizure. It has been suggested that use of the tactic of non-statutory Stop and Search may have masked any such risk.

6. In relation to alcohol in the possession of children, one possibility would be the introduction of a power to search similar to the one recently made available in parts of England to Police Community Support Officers if reasonable grounds to suspect such possession exist. In Scotland, such a power to search could be added to section 61 of the Crime and Punishment (Scotland) Act 1997 which allows officers to seize alcohol. It would therefore adopt the existing statutory framework, providing the same test of reasonable grounds to suspect possession of alcohol by someone under 18 or by someone over 18 suspected of supplying alcohol to those under 18.

7. Such a power, with the requirement of reasonable suspicion, would be an improvement on the current situation, especially if supported by the recommended Code of Practice, but thought must be given to wider implications and alternatives. It has been suggested to us that complementary methods exist to address underage drinking, with more possible on the licensing front and monitoring of licensed premises.

8. Child welfare and protection has been given as a major justification for much that has happened through non-statutory Stop and Search, with emphasis on this justification especially prominent in relation to alcohol. We deal separately with more general aspects of child and adult protection, particularly necessity and proportionality. In relation to alcohol, the presence of a welfare/protection aspect is seen in the fact that the tactic has been used very frequently to remove alcohol from children and young people in circumstances where they may be placed at risk of becoming involved in crime or anti-social behaviour, or at risk of harm to themselves.

9. Our experts on children and young people were not entirely persuaded by this justification. If child welfare and protection was a justification, they asked whether there was evidence of further intervention and partnership working to deal with the issues thrown up by the possession of alcohol by children.



10. Specific child welfare and protection powers are available, and are used, which place welfare more obviously at their heart<sup>17</sup> (See Appendix 9 for Extract from National Guidance for Child Protection in Scotland 2014).

11. A power to search for alcohol would not be entirely uncontroversial<sup>18</sup>. Alcohol is not a prohibited substance. Possession of alcohol is not prohibited. The offences related to alcohol strike primarily at its sale or supply to children, for example, an adult buying alcohol for a child.

12. There was general agreement that the introduction of any additional power should not lead to unnecessary criminalisation, but, if required, should instead lead to a wider multi-agency preventative intervention, in which the police should play their part but which also requires the efforts of other public agencies, and indeed families, where appropriate. This could easily be facilitated in appropriate cases within the context of the current youth justice practices in Scotland, including the Whole System Approach<sup>19</sup>.

13. As a new power of search for alcohol would be used most often on children and young people, care would be needed to ensure that any deployment of the power was necessary and proportionate. This should be understood and accepted when it is realised that the involvement of the law is intended primarily to protect children, and to deal sensitively with their specific vulnerabilities.

14. Such a power would see continued police focus on children and young people. As the basis of the power is that an officer has reasonable grounds to suspect possession of alcohol, we would expect that it would be used less indiscriminately than has been the position. The hope is that, even following a positive search for alcohol, most such young people would remain outwith the youth or criminal justice system.

15. If it is seen as no more than an extension of the power of seizure, the same sensible, common-sense approach should follow, with any further steps taken being commensurate to the circumstances and following an assessment of the specific risks, and involving the least intrusive measures available and appropriate.

16. We have been told such a power is necessary. Several serving and retired police officers have said that, in the absence of non-statutory Stop and Search, they would be satisfied that they can still perform their duties effectively, but only if given such a power in relation to alcohol.

17. A power of arrest already exists that could be exercised on the same basis as we propose for a power of search. Although we have been told that it would be unlikely to happen, we do not want to push police officers towards a new practice of arresting children suspected of possessing alcohol and potentially criminalising them unnecessarily. Police

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<sup>17</sup> Anne Houston, OBE., FRSA., The Impact of Consensual Stop and Search on Children and Young People including issues around informed consent and child protection.

<sup>18</sup> See, especially, John Carnochan, OBE., QPM., Alcohol - Stop Search – Consensual or otherwise, 11 August 2015

<sup>19</sup> Murray, K., McGuinness, P., Burman, M. and McVie, S. (2015) 'Evaluation of the Whole System Approach to Young People Who Offend in Scotland'. SCCJR Research Report 7/2015. Edinburgh: SCCJR

officers have stressed that they do not want this outcome either. It may be that some such situations can continue to be dealt with, in effect, by simply seizing and disposing of the alcohol.

18. For the sake of completeness it is worth pointing out that there is an existing criminal offence where children refuse to hand over alcohol. If a new power of search for alcohol were to be given, it may be appropriate to consider removing that offence for those under 18. This would be on the basis that a power of search on reasonable suspicion will recover the alcohol – which it is not, in itself, an offence to possess – and will potentially provide grounds for welfare concerns that should result in a proportionate (where necessary, multi-agency) intervention.

19. For our part, on balance, we have not been able to form a concluded view on this question on the evidence produced thus far. Accordingly, we recommend that there should be a further consultation on whether a specific power of search for alcohol is necessary and appropriate. The possibility of consultation on this issue has been welcomed<sup>20</sup>. Any consultation should have the benefit of greater reliable data on the relevant practices, both search and seizure, and a fuller opportunity to consult relevant stakeholders including children and young people themselves and those who work with them.

20. If such a power were to be introduced thought should be given to ensuring appropriate recording, monitoring and reporting processes are in place from the outset to guard against any inappropriate drift in use or unintended consequences.

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<sup>20</sup> See, for example, the response to the Call for Evidence from Barnardo's Scotland



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Any enquiries regarding this publication should be sent to us at  
The Scottish Government  
St Andrew's House  
Edinburgh  
EH1 3DG

First published by The Scottish Government, March 2016  
ISBN: 978-1-78652-181-1 (web only)

E-book in EPUB format first published by The Scottish Government, MONTH 2016  
ISBN: 978-1-78652-182 (EPUB)

E-book in MOBI format first published by The Scottish Government, MONTH 2016  
ISBN: 978-1-78652-183-5 (MOBI)

Published by The Scottish Government, March 2016

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA  
PPDAS67233 (03/16)