

CONSULTATION RESPONSE

TO	The Home Office
FROM	Independent Office for Police Conduct (IOPC)
REGARDING	Stop and search: extending police powers to cover offences relating to unmanned aircraft (drones), laser pointers and corrosive substances

OUR INTEREST IN THIS MATTER

1. The IOPC oversees the police complaints system in England and Wales and has a statutory duty to secure and maintain public confidence in it. We are independent, and we make our decisions entirely independently of the police, government and interest groups.
2. We investigate the most serious complaints and incidents involving the police and set the standards by which the police should handle the complaints that they investigate. We also oversee the complaints system for other organisations, such as HMICFRS, the National Crime Agency, and the Gangmasters and Labour Abuse Authority. For further information about our role, see Annex A.
3. Where complaints are made about the use of stop and search, they are usually investigated locally by the police force themselves, rather than the IOPC. However, the more serious cases may be referred to us for investigation.
4. We have an interest in this consultation because police powers to stop and search individuals can have a significant impact - positive, where their use is effective, and negative, where it is not - on public confidence in policing.

RESPONSE TO CONSULTATION

5. The consultation relates specifically to the use of stop and search powers to address the criminal misuse of unmanned aircraft (drones), laser pointers and corrosive substances. While these have not featured specifically in our work to-date, we do have recommendations about the use of stop and search that are important to highlight in this context.
6. The primary purpose of stop and search powers is to enable officers to allay or confirm suspicions about individuals carrying unlawful items, where the officer has reasonable grounds for carrying out a search, without exercising their power of arrest. However, the use of stop and search powers is highly intrusive and risks undermining individual and community confidence in policing when they are not seen to be used fairly, responsibly and effectively; without unlawful discrimination and with respect for the people being searched. This is particularly true for 'no suspicion' powers, such as Section 60 of the Criminal Justice and Public Order Act 1994, which do not require an officer to have specific reasonable grounds to stop and search someone.
7. Searches are more likely to be effective, perceived to be legitimate, and secure public confidence, when there are reasonable grounds for suspicion. These grounds must be based upon a range of objective factors, gathered through up-to-date and accurate intelligence or information to ensure they are well-informed about local crime patterns. They must not be based upon personal factors, such as physical appearance, previous convictions, or stereotypical images and assumptions.
8. The IOPC believes that it is not enough for the exercise of stop and search powers to simply be within the law. When they are used by the police to search a person or vehicle, they should be used in a way that is demonstrably fair and effective. That is:
 - the search should be justified, lawful and stand up to public scrutiny;
 - the officer must have genuine and objectively reasonable suspicion that they will find a prohibited article or item for use in crime; in the context of this consultation:
 - a drone and/or any article associated with a drone, which has been used, or is intended to be used, to come into close and unsafe proximity to a manned aircraft; an offence under the Air Navigation Order 2016;
 - a drone and/or any article associated with a drone, which has been used, or is intended to be used, to convey items illegally into prisons in England and Wales; an offence under the Prison Act 1952;

- a laser, which has been used, or is intended to be used, to dazzle or distract a person in control of a vehicle e.g. aircraft, motor vehicle, train or ship; an offence under the Laser Misuse (Vehicles) Act 2018; or
- a corrosive substance (a substance which is capable of burning human skin by corrosion) possessed in a public place; an offence under the Offensive Weapons Bill 2018, if introduced.
- an explanation should be given to the person being stopped and searched so that they understand why it is happening and they feel that they have been treated with respect; and
- the search must be necessary and the most proportionate method the police officer could use to establish whether the person has an unlawful item.

Ensuring that the stop and search is fair and lawful

9. The College of Policing has developed authorised professional practice (APP) for stop and search that reinforces the provisions of PACE Code A, the Best Use of Stop and Search Scheme (BUSSS) and recommendations from various reviews. It is vital that when these new powers are introduced that APP is updated to include the extended stop and search powers relating to unmanned aircraft (drones), laser pointers and corrosive substances. Likewise, all training packages, including e-learning packages, must be updated to include these new powers, ensuring that all relevant guidance is brought together in a single place where it is easily accessible to both police officers and the public.
10. Police forces using stop and search powers must ensure that their staff are competent to use these powers in relation to unmanned aircraft (drones), laser pointers and corrosive substances. This could include making additions to existing training and guidance.
11. These proposals introduce new provisions for the purposes of stop and search. These provisions need to be clearly defined to ensure that both the police and public understand what constitutes illegitimate or unlawful use or possession. Without this clarity, there is a risk that the powers will not be used fairly, effectively and lawfully and, in doing so, public confidence will be eroded.

Monitoring the use and effectiveness of stop and search powers

12. Police must be transparent and accountable when using their stop and search powers. Transparency is crucial to public trust and confidence because it enables people to see how and why stop and search powers are used and, therefore, to assess what impact they might have had.
13. We would like increased use of formal and informal mechanisms to publish and share data relating to the use of stop and search powers nationally and locally.

This information should be consistent and comparable to enable better scrutiny and benchmarking.

14. Community scrutiny/monitoring groups have a significant role to play as they provide local communities with a voice. Through examining data that shows how the new powers are being used, they can challenge forces if there is evidence that they are not being used fairly, effectively or lawfully. They can influence the way that stop and search powers are used by identifying examples of good practice that can be adopted more widely. Their role as a critical friend has the valuable potential to improve public confidence and trust.
15. We recognise that most complaints relating to the use of these extended powers will be dealt with by the relevant police force. However, some complaints that are referred to us may meet the threshold for IOPC investigation. We will use information gathered through our own investigations, together with feedback from our stakeholders, to identify any themes and highlight any concerns or issues to organisations such as the Home Office and HMICFRS.

Independent Office for Police Conduct (IOPC)
22 October 2018

ANNEX A - THE IOPC AND ITS REMIT

1. The Independent Office for Police Conduct (IOPC), formerly the Independent Police Complaints Commission (IPCC), came into existence in January 2018. The IPCC came into existence in April 2004.
2. The IOPC oversees the police complaints system in England and Wales and has a statutory duty to secure and maintain public confidence in it. We are independent and make our decisions entirely independently of the police, government and interest groups.
3. We investigate the most serious complaints and incidents involving the police across England and Wales, as well as considering certain appeals from people who are dissatisfied with the way their complaint has been dealt with. Over time our original remit covering police forces across England and Wales has been extended to include:
 - Police and Crime Commissioners and their deputies
 - the London Mayor's Office for Policing and Crime and his deputy
 - certain specialist police forces (including the British Transport Police and the Ministry of Defence Police)
 - Her Majesty's Revenue and Customs (HMRC)
 - staff who carry out certain border and immigration functions who now work within the UK Border Force and the Home Office
 - the National Crime Agency (NCA)
 - officers carrying out certain functions at the Gangmasters and Labour Abuse Authority (GLAA)
4. Most complaints against the police are dealt with by the relevant police force (or agency) without IOPC involvement. However, certain types of complaints and incidents must be referred by the police to the IOPC. These include where someone has died or been seriously injured following direct or indirect contact with police, as well as allegations of serious corruption, serious assault, and a criminal offence or behaviour liable to lead to misconduct proceedings which in either case is aggravated by discrimination on specified grounds. We then decide whether an investigation is necessary, and, if so, what level of involvement we should have in that investigation. We may choose to conduct our own independent investigation, manage or supervise a police investigation, or decide that the matter can be dealt with locally by the police.
5. We also have a broader role in sharing learning to help the police service and other organisations develop and improve. We use learning from our work to influence changes in policing, ensuring accountability and spreading best practice and high standards of customer service.