



Criminal Justice (Scotland) Act 2016

2016 asp 1

PART 2

SEARCH BY POLICE

CHAPTER 2

CODE OF PRACTICE

Making and status of code

73 Contents of code of practice

- (1) The Scottish Ministers must make a code of practice about the carrying out of a search of a person who is not in police custody.
- (2) A code of practice must set out (in particular)—
 - (a) the circumstances in which a search of such a person may be carried out,
 - (b) the procedure to be followed in carrying out such a search,
 - (c) in relation to such a search—
 - (i) the record to be kept,
 - (ii) the right of someone to receive a copy of the record.
- (3) A code of practice is to apply to the functions exercisable by a constable.
- (4) In this section—

“constable” has the meaning given by section 99(1) of the Police and Fire Reform (Scotland) Act 2012,

“police custody” has the same meaning as given for the purposes of Part 1 (see section 64).
- (5) In this Chapter, a reference to a code of practice means one required by subsection (1) (but see also section 74(5)).

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74 Review of code of practice

- (1) The Scottish Ministers may revise a code of practice in light of a review conducted under subsection (2).
- (2) The Scottish Ministers must conduct a review of a code of practice as follows—
 - (a) a review is to begin no later than 2 years after the code comes into effect,
 - (b) subsequently, a review is to begin no later than 4 years after—
 - (i) if the code is revised in light of the previous review under this subsection, the coming into effect of the revised code, or
 - (ii) otherwise, the completion of the previous review under this subsection.
- (3) So far as practicable, a review conducted under subsection (2) must be completed within 6 months of the day on which the review begins.
- (4) In deciding when to conduct a review in accordance with subsection (2), the Scottish Ministers must have regard to representations put to them on the matter by—
 - (a) the Scottish Police Authority,
 - (b) the chief constable of the Police Service of Scotland, ^{F1}...
 - (c) Her Majesty's Inspectors of Constabulary in Scotland.
 - [^{F2}(d) the British Transport Police Authority,
 - (e) the chief constable of the British Transport Police Force,
 - (f) the Civil Nuclear Police Authority,
 - (g) the chief constable of the Civil Nuclear Constabulary,
 - (h) the chief constable of the Ministry of Defence Police, or
 - (i) the Secretary of State.]
- (5) For the purposes of—
 - (a) section 73(3) and this section (except subsection (2)(a)), and
 - (b) sections 75, 76 (except subsection (3)) and 77 (except subsection (3)),
 a reference to a code of practice includes a revised code as allowed by subsection (1).

Textual Amendments

- F1** Word in s. 74(4)(b) omitted (17.1.2018) by virtue of [The Criminal Justice \(Scotland\) Act 2016 \(Consequential Provisions\) Order 2018 \(S.I. 2018/46\)](#), arts. 2(1)(b), **11(2)(a)**
- F2** S. 74(4)(d)-(i) inserted (17.1.2018) by [The Criminal Justice \(Scotland\) Act 2016 \(Consequential Provisions\) Order 2018 \(S.I. 2018/46\)](#), arts. 2(1)(b), **11(2)(b)**

75 Legal status of code of practice

- (1) A court or tribunal in civil or criminal proceedings must take a code of practice into account when determining any question arising in the proceedings to which the code is relevant.
- (2) Breach of a code of practice does not of itself give rise to grounds for any legal claim whatsoever.

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Procedure applying to code

76 Consultation on code of practice

- (1) Prior to making a code of practice, the Scottish Ministers must consult publicly on a draft of the code.
- (2) When preparing a draft of a code of practice for public consultation, the Scottish Ministers must consult—
 - (a) the Lord Justice General,
 - (b) the Faculty of Advocates,
 - (c) the Law Society of Scotland,
 - (d) the Scottish Police Authority,
 - (e) the chief constable of the Police Service of Scotland,
 - [^{F3}(ea) the British Transport Police Authority,
 - (eb) the chief constable of the British Transport Police Force,
 - (ec) the Civil Nuclear Police Authority,
 - (ed) the chief constable of the Civil Nuclear Constabulary,
 - (ee) the chief constable of the Ministry of Defence Police,
 - (ef) the Commissioners for Her Majesty’s Revenue and Customs,
 - (eg) the Director of Border Revenue,
 - (eh) the National Crime Agency,
 - (ei) for each of the persons mentioned in paragraphs (ea) to (eh), the Secretary of State.]
 - (f) the Police Investigations and Review Commissioner,
 - (g) the Scottish Human Rights Commission,
 - (h) the Commissioner for Children and Young People in Scotland, and
 - (i) such other persons as the Scottish Ministers consider appropriate.
- (3) Subsection (1) or (2) is complied with in relation to a code of practice having (or to have) effect for the first time even if the consultation has been initiated before the day on which this section comes into force.

Textual Amendments

- F3** S. 76(2)(ea)-(ei) inserted (17.1.2018) by [The Criminal Justice \(Scotland\) Act 2016 \(Consequential Provisions\) Order 2018 \(S.I. 2018/46\)](#), arts. 2(1)(b), **11(3)**

77 Bringing code of practice into effect

- (1) A code of practice has no effect until the day appointed for the code by regulations made by the Scottish Ministers.
- (2) When laying before the Scottish Parliament a draft of an instrument containing regulations bringing a code of practice into effect, the Scottish Ministers must also so lay a copy of the code.
- (3) No later than at the end of the 12 months beginning with the day on which this section comes into force, there must be so laid a draft of an instrument containing regulations bringing a code of practice into effect.

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(4) Regulations under this section are subject to the affirmative procedure.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Act expiry of affecting provision 2022 asp 8, sch. para. 15 by [S.S.I. 2023/360 reg. 2\(a\)](#)