

# **Six month review of the Code of Practice for Stop and Search in Scotland**

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## Executive Summary

### Key points

- This report presents the findings of the interim six month review to evaluate the implementation of the new Code of Practice (CoP) on stop and search and consider whether there may be any gaps in legislative provision. It also provides recommendations for areas of research to be considered in a more extensive 12 month review.

### *Change in use of search and seizure*

- The introduction of the CoP on police use of stop and search did not have a dramatic impact on policing practice at the time of its implementation in May 2017 or in the six months afterwards. This was mainly because the use of both search and seizure in Scotland had changed and numbers had declined significantly well before the CoP came into force.
- The decline in the number of searches coincided with a significant increase in positive outcomes following the introduction of the CoP, which suggests that they are now based on a higher threshold of reasonable suspicion and, therefore, used more effectively.
- The use of both search and seizure reduced dramatically in Command Areas in the West of Scotland compared to those in the North (which remained fairly stable) and the East (which slightly increased) following the introduction of the CoP.
- There has been a far greater percentage reduction in seizures than searches, especially in the West Command Areas, which is surprising given the concerns expressed by Police Scotland about the lack of a legal power to search for alcohol.
- Despite the declining numbers, there continues to be enormous geographical variation in the use of search and seizure across Scotland, and it is clear that the introduction of the CoP has had a varied impact on policing practice and positive outcomes across the 13 police Divisions.
- Strip searches are a very low proportion of all searches, but they have a higher than average detection rate which suggests that a high threshold of reasonable suspicion is used when deciding to conduct a strip search.
- Receipts were issued following 87% of all searches, although this varied according to a range of factors, most especially the Division in which the search was conducted.

### *Young people and alcohol*

- Evidence suggests that alcohol consumption amongst young people in Scotland has been on a long-term decline. There was little or no change in alcohol-related incidents involving young people following the introduction of the CoP, based on indicative data from both Police Scotland and NHS hospital admissions.
- Trends in recorded alcohol-related incidents involving young people varied across police Divisions, with some showing an increase, some a decrease,

and others remaining fairly stable. However, the pattern of seizures was not always consistent with these trends.

- Alcohol seizures declined for all age groups including young people aged under 18, especially in the West of Scotland where there is a long history of alcohol related problems amongst young people. It is unclear why this is the case.
- Police officers highlighted that the policing of young people carrying alcohol without an express power of search, especially in large crowds or major unorganised events, had caused some problems.
- Officers have not resorted to arrests to remove alcohol from young people, which has avoided criminalising many. There is also no evidence that statutory searches have been used inappropriately or indirectly to search for alcohol.

#### *Use of Section 60 authorisations*

- The review found no evidence of an increase in the use of Section 60 authorisations (or so-called 'no suspicion' searches) by Police Scotland as a way of creating wider opportunities for search under the CoP. This contrasts strongly with England and Wales, where the power has been used extensively resulting in Home Office criticism and intervention.

#### *Potential legislative gaps*

- In the period following the introduction of the CoP, there was a total of 22 incidents in which officers intervened under Sections 20 and 32 of the Police and Fire Reform (Scotland) Act 2012 to protect life and, as part of that intervention, conducted a search.
- The lack of a legislative power of search to protect life is the most common issue that police officers have highlighted since the implementation of the CoP.
- Other areas raised as potential legislative gaps include the power to search for weapons in a non-public location, including dwellings and vehicles; and the power to search for pyrotechnics and flares.

#### *People with protected characteristics*

- Rates of search reduced across all ages. While young people continued to be the most likely group to experience a search, the degree of disproportionality in terms of targeting younger people significantly declined in the period following the introduction of the CoP.
- Rates of seizure also declined significantly across all age groups; however, the seizure rates had declined less for young people under the age of 18 than for older people.
- There was a significant increase in positive search outcomes for all age groups after the introduction of the CoP, but especially amongst those for whom positive rates were lowest prior to the CoP.
- There continues to be room for improvement with regards to increasing positive outcomes for young people under 18, for whom positive detections are still lowest.

- The overall number of searches and seizures declined for both males and females following the introduction of the CoP, and positive outcomes increased for both.
- Searches and seizures predominantly involved white people both before and after the introduction of the CoP.
- There was a significant reduction in search rates per capita for all non-white ethnic groups.
- Positive rates of search increased across all ethnic groups, but especially the non-white groups.
- There was a large increase in the proportion of cases for which ethnicity was recorded as 'unknown/not provided' which needs to be explained.

#### *Predicting a positive search outcome*

- Taking a range of factors into account, the likelihood of a positive search outcome was predicted strongly by age, but less so by ethnicity and not at all by gender. It was also influenced by the time of day and day of the week that the search was conducted.
- Searches for stolen property were more likely to result in a positive outcome than those for drugs, while searches for offensive weapons were the least successful type of search.
- There were significant differences in the likelihood of a positive outcome based on the Division in which the search took place. The odds of a positive search was three times higher in Ayrshire and Lanarkshire than Greater Glasgow, which had the lowest odds of a positive search.
- Searches were around 33% more likely to result in a positive detection in the six months following the introduction of the CoP than in the equivalent six month period of the previous year.
- These findings indicate that there has been a real, measurable improvement in the likelihood of a positive search during the period following the introduction of the CoP that was not caused by other known factors relating to the nature of the search.

#### *Recommendations for the 12 month review*

1. To examine the reasons for the geographical differences in the changing patterns of search and seizure based on police Division.
2. To examine the reasons for the geographical differences in rates of positive search based on police Division.
3. To examine the reasons for the non-issue of receipts to people who have been subject to search and to consider the geographical differences in issuing receipts between police Divisions.
4. To examine the sharp decline in the use of alcohol seizures within the West of Scotland, and in Greater Glasgow in particular, and to explain this against an apparent backdrop of increasing alcohol-related incidents amongst people aged under 18.

5. To examine the extent to which evidence exists to support the need for a power to search young people for alcohol, especially in relation to large unplanned events.
6. To examine the extent to which evidence exists to support the need for a specific power to search people in circumstances where it is needed to protect life.
7. To examine the extent to which evidence exists to support the extension of powers to search vehicles or people in private dwellings.
8. To examine the extent to which evidence exists to support the need for powers to search for pyrotechnic articles in public places.
9. To examine the disproportionality in the use of stop and search amongst young people under the age of 18 and the lower positive search outcome amongst this group.
10. To examine the reasons for the increase in the recording of ethnic status as 'unknown/not recorded'.
11. To examine generally how practice in relation to search and seizure has changed within police Divisions as a result of the introduction of the Code of Practice and why this has led to an increase in positive search rates.

## 1. Introduction

### 1.1 Background to the Code of Practice

Concerns about the use of police stop and search in Scotland were first raised in 2014 after research suggested there was a higher rate of searching in Scotland compared to other countries and that children and young people were disproportionately subject to police searches (Murray 2014). In particular, Murray's research raised legal and ethical issues about the use of non-statutory searches which were conducted on the basis of consent rather than any legislative powers. In early 2015, an audit review by Her Majesty's Inspectorate of Constabulary in Scotland (HMICS) concluded that a widespread review of stop and search was necessary and recommended that a police Code of Practice be introduced. In response, the Cabinet Secretary for Justice, Michael Matheson MSP, established an Independent Advisory Group on Stop and Search (IAGSS) to determine what legislative and governance changes were necessary to ensure that stop and search was conducted in a fair, effective and proportionate manner and to consider the need for a Code of Practice.

Following an extensive review of the evidence, the IAGSS reported its findings to the Cabinet Secretary in August 2015 and recommended that non-statutory searching should be abolished and that there should be a statutory Code of Practice for stop and search. The IAGSS also recommended that data on stop and search should be published on a regular basis by Police Scotland and that all of the changes to stop and search should be subject to a detailed implementation and training plan. The IAGSS were unable to make recommendations on the introduction of new legislation to cover searching of young people for alcohol (for which there is currently no statutory power) and recommended that further consultation be conducted on this subject. All of the IAGSS recommendations were accepted by the Cabinet Secretary and new legislative provisions governing the use of stop and search were introduced in Section 65 of the Criminal Justice (Scotland) Act 2016. The Act included provision for a Code of Practice for Stop and Search in Scotland, which came into force on 11th May 2017.

In order to evaluate the implementation of the Code of Practice and to consider whether there were any gaps in legislative provision, the IAGSS developed proposals for a review once the Code of Practice had been in force for 12 months, thus allowing it to become embedded in policing practice and to achieve the level of change within Police Scotland that is expected. The Cabinet Secretary for Justice also requested a six month interim review to provide an early indication of whether the Code of Practice had met its aims. This report sets out the findings of the interim review, covering the first full six month period from the implementation of the Code of Practice, from 1st June to 30th November 2017.

### 1.2 Scope of the six month interim review

During the course of deliberations by the IAGSS, police representatives and other stakeholder groups raised specific concerns about the proposed changes to stop and search in Scotland. Some stakeholders questioned whether the new legislative



provisions and the Code of Practice adequately ensured that policing practice would not be unduly restricted in its efforts to keep people safe in Scotland. There were also concerns that, in the absence of non-statutory search, police officers might start to increase their reliance on other forms of legislation. Having observed significant disproportionality in the use of stop and search, especially against young males, stakeholders also expressed a need to ensure that the tactic was not used unfairly against those with protected characteristics. Therefore, the scope of the six month review covers four main areas, as detailed below.

*i. Identify potential gaps in the legislation around young people and alcohol*

The lack of a police power to search young people for alcohol was one of the most contentious issues in the public consultation on Stop and Search conducted in 2015. In particular, policing representatives were concerned that the abolition of consensual searching would leave them powerless to search a young person in the event that they were suspected of carrying concealed alcohol, thus placing the young person or others at risk, and that the existing powers of seizure were insufficient to deal with the extent of the problem in Scotland. Others, however, argued that there was no strong evidence to suggest that a power to search young people for alcohol was necessary and that such a power may result in disproportionately high search rates amongst young people, which might damage relationships between young people and the police (see Murray and McVie 2016). It was also noted that the power to search for alcohol is not available for officers in England and Wales (although it is available to PCSOs).

The IAGSS report stated that there was insufficient evidence to support the creation of a new legislative power to search children for alcohol at that time, but recommended that the situation be reviewed after the Code of Practice had been in place for a period of time. Therefore, the six month interim review provides information on the number and nature of incidents dealt with by police that involve young people and alcohol and considers whether there is any evidence to suggest that the lack of a power to search for alcohol has resulted in an increase in the use of arrest amongst young people for alcohol-related issues. The review also looks at the wider context of alcohol related concerns, including trends in alcohol use and hospital admissions for young people under the influence of alcohol.

*ii. Identify other potential gaps in the legislation or lack of clarity in the Code of Practice*

The wording of Section 65 of the Criminal Justice (Scotland) Act 2016 states that officers may only conduct search a person who is not in custody “in accordance with a power of search conferred in express terms by an enactment, or under the authority of a warrant expressly conferring a power of search”. During the IAGSS consultations, some police officers expressed concern that there was no explicit power to search in situations where police officers believed intervention was necessary to preserve life. In response, Paragraph 3.4 of the CoP was added to make clear that officers must take all steps necessary to protect life. In order to assess whether the current legislation has left any significant gaps or ambiguities in the powers of police officers to stop and search, this review considers evidence on the number of searches that were considered justifiable by police officers but which

were not explicitly covered by Section 65 of the Criminal Justice (Scotland) Act 2016. This includes interventions under Sections 20 and 32 of the Police and Fire Reform (Scotland) Act 2012 to protect life. The review also considers any issues specifically raised by officers when recording a search about the lack of legislative provision.

*iii. Identify any increase in the use of Section 60 Criminal Justice and Public Order Act 1994*

After the phasing out of consensual search, some stakeholders expressed concern that the use of so-called 'no suspicion' searches by Police Scotland under Section 60 of the Criminal Justice and Public Order Act 1994 could increase. The review therefore considers whether there was any increase in the number of authorisations for, or change in the profile of, searches conducted under Section 60.

*iv. Examine use of search involving individuals with protected characteristics*

Concern was expressed during the public consultation on stop and search about the disproportionate searching of children and young people, and on the mechanisms of policing engagement which can have a negative effect on young people and their attitudes towards the police. Section 7 of the new Code of Practice specifically addressed the issue of searches involving children and young people, and Police Scotland provided training for all officers aimed at improving methods of engagement with young people. The training also examined the issue of unconscious bias when dealing with any individuals with protected characteristics. Therefore, the review looks at the impact of the Code of Practice by examining any changes in the profile of searches and whether rates of search appear to be disproportionately high and detection rates disproportionately low in respect of any group with protected characteristics, especially children and young people.

### 1.3 Evidence used in the review

As it is an interim review, it is based mainly on analysis of readily available statistical data or other information held by Police Scotland or from other open source data. This includes data from the Stop and Search Database (search and seizure) and the Storm Unity Database (containing data on reported incidents), provided by Police Scotland. The review also draws on a short report provided by the Police Scotland National Stop and Search Unit (NSSU) (see Appendix 1). The NSSU report summarises information recorded by police officers using the Calls for Feedback facility on the Police Scotland Stop and Search intranet page (which allows officers to share their experiences of using stop and search and highlight any issues they have identified with the legislation or CoP). It also provides data from their 100% review of search records and a sample of daily 'incidents of note'. In total, the Police Scotland report drew on 71 incidents or pieces of feedback and, therefore, provides a valuable source of evidence. The review also draws on data supplied by the Information Services Division (ISD) of NHS National Services Scotland on the number of hospital admissions involving young people. All analyses were subject to statistical testing and, unless otherwise stated, any differences reported in this review are significant at the 95% confidence level.

The review did not involve any qualitative research, such as canvassing the views and experiences of police officers, young people or individuals working with children

and young people; however, qualitative research will be commissioned by Scottish Government and reported as part of the 12 month review. Recommendations on the focus of the qualitative research that should be conducted are included in section 8 of this report.

The interim review period covers the six months from 1<sup>st</sup> June to 30<sup>th</sup> November 2017; however, comparisons are made with the equivalent six months prior to implementation of the Code of Practice (1<sup>st</sup> June to 30<sup>th</sup> November 2016). In addition, for the sake of understanding patterns of continuous change, month by month analysis using data covering the 12 month period prior to the introduction of the Code and the six months after is provided, where appropriate.

#### 1.4 Structure of the report

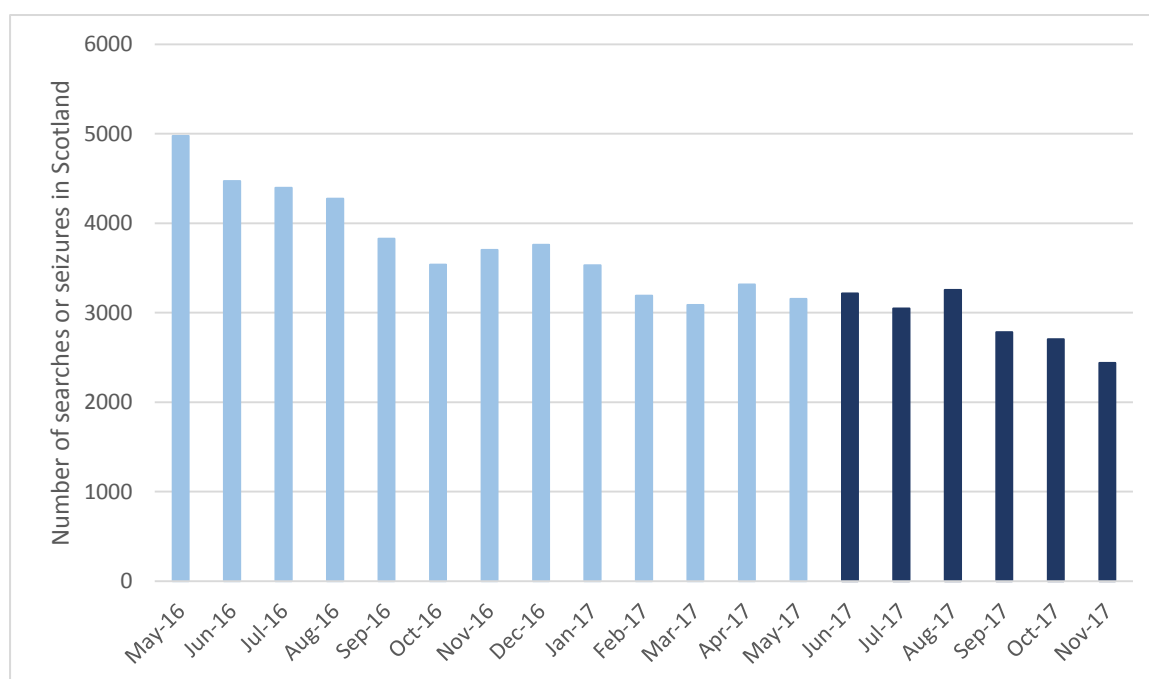
Section two of this report sets out an overview of the changes that occurred in the use of both stop and search and police use of alcohol seizures in the six months following implementation of the Code of Practice compared with the equivalent six month period in the previous year. It also examines the general change in the positive detection rate for searches (including by statutory provision) and identifies changes in the geographical profile of searches across Scotland. Sections three to seven of the report provide the currently available evidence on each of the four areas covered by the scope of the review, as discussed in section 1.2 above. Conclusions and recommendations for the 12 month review are contained in the final section of the report.

## 2 Changes following implementation of the Code

### 2.1 Change in police use of search and seizure

During the first full six month period following the introduction of the new Code of Practice (CoP) on Stop and Search (June to November 2017), there were 17,446 encounters involving either a search or a seizure in Scotland. This compares to 24,210 during the equivalent six month period of the previous year and represents a reduction of 28% in the use of these police tactics. The number of searches and seizures did not drop as a direct consequence of the introduction of the Code of Practice on 11<sup>th</sup> May 2017; rather, this reduction reflects an ongoing steady decline which can be traced back to the critical HMICS report published in March 2015. Figure 1 shows the decline in recorded searches and seizures between May 2016 and November 2017, during which time the number of encounters reduced by 51%. The number of searches and seizures during each of the six months following the introduction of the CoP (highlighted in Figure 1) is clearly smaller in comparison to the equivalent six months of the previous year; however, the actual trend is very similar, with higher numbers in the summer months and fewer in the autumn months, which is indicative of an overall decline in numbers but a consistent seasonal pattern.

**Figure 1: Number of searches and seizures carried out in Scotland since April 2016 (COP 6 month review period highlighted)**



There was a distinct difference in the breakdown of searches and seizures following implementation of the CoP. Table 1 shows the breakdown of policing encounters by number and percentage in the six months after the CoP came into force compared with the equivalent six months of the previous year. It reveals that seizures reduced as a proportion of all encounters from 18% to 10%. As the analysis compares the same time period in each year, this difference is not accounted for by seasonal

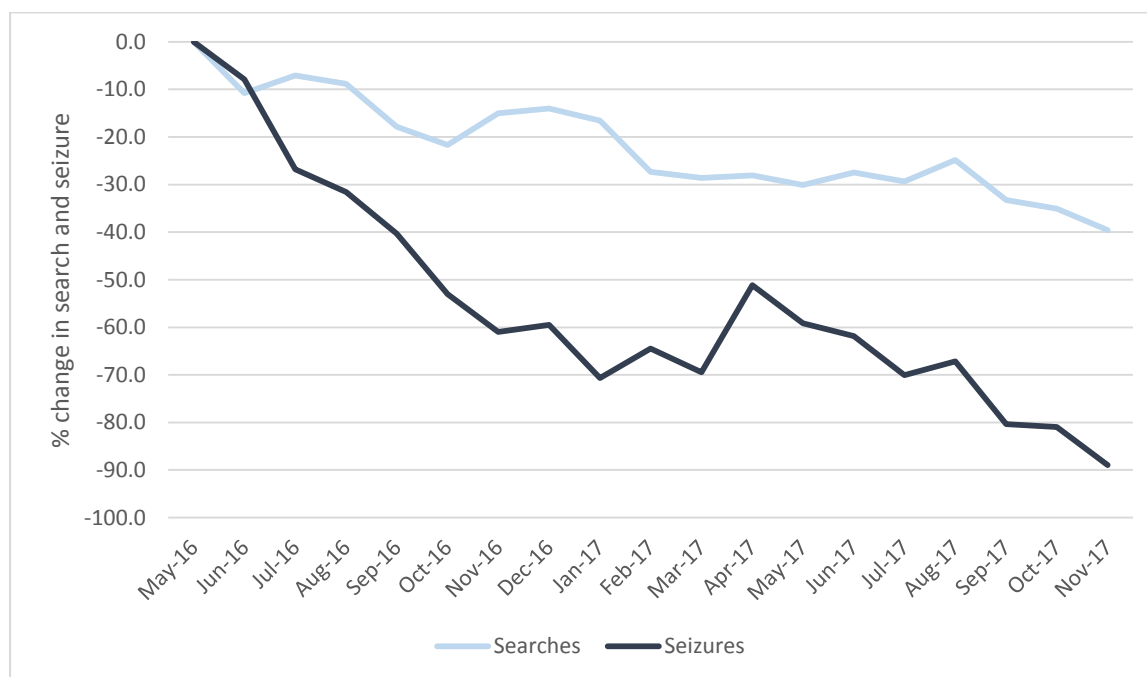
difference and instead suggests that police use of seizure has reduced at a disproportionately greater rate than the use of stop and search. This is confirmed by the indexed trends in Figure 2 which show that the percentage change in number of seizures declined far more than that for searches during the year prior to the introduction of the CoP and, despite an initial increase in seizures immediately prior to the CoP introduction, they continued to decline more steeply afterwards. Indeed, the number of seizures declined by 89% over this period compared with only a 40% drop in the number of searches. This trend will be commented on further in section 3 in relation to the use of search and seizure as a policing tactic for dealing with underage drinking; however, it is clear from these data that the police use of search and seizure changed both before and after implementation of the CoP but it did not change consistently for both tactics.

**Table 1: Number of police searches and seizures pre and post-implementation of the Code of Practice (% of all searches/seizures)**

	June to November 2016	June to November 2017	% Change in relative share
Statutory searches	19,257 (80%)	15,724 (90%)	+10%
Consensual searches	616 (3%)	0 (0%)	-3%
Seizures	4337 (18%)	1722 (10%)	-8%

Note: Column percentages may not total 100% due to rounding.

**Figure 2: Percentage change in police use of search and seizure since May 2016**



## 2.2 Change in positive detection rate for stop and search

Despite the decline in the overall number of searches, the success rate in terms of positive detection increased. Table 2 shows that the percentage of positive searches following implementation of the CoP was 37%, a statistically significant increase of 7% compared to the equivalent six month period the year before. What is more, the positive search rate had increased (to varying levels) regardless of the type of search carried out. For example, the percentage of positive searches increased by 6% for drugs, 10% for stolen property and 12% for fireworks (although these were very small in number). The rate of positive searches for offensive weapons also increased by 7%, although this remained far lower than average at only 25%. It is worth noting that a new category for recording searches of people carried out in accordance with a warrant was added to the Police Scotland database following the introduction of the CoP, and these had a higher than average positive rate.

**Table 2: Number of positive police searches pre and post-implementation of the CoP (% of all searches)**

	June to November 2016	June to November 2017	% change in positive rate
All searches	5,876 (30%)	5,778 (37%)	+7%
Searches by type:			
Drugs	5205 (31%)	4,785 (37%)	+6%
Stolen property	404 (31%)	526 (41%)	+10%
Offensive weapons	188 (18%)	200 (25%)	+7%
Fireworks	11 (11%)	13 (23%)	+12%
Warrant	-	207 (41%)	-
Other reason	68 (25%)	47 (30%)	+5%

## 2.3 Geographical change in the use of search and seizure *Command Area*

Prior research (Murray 2014; McVie and Murray, 2017) demonstrated that the use of search and seizure in Scotland varied significantly by geographic area. Police Scotland is divided into three large Command Areas: East, North and West. Prior to the implementation of the CoP, the majority of searches and seizures were carried out by officers in the West Command Area. Even taking account of differences in population size, there was disproportionate use of these tactics in the legacy Strathclyde police force area. Following implementation of the CoP, the number of searches and seizures in the West Command Area fell by almost 50% and, more importantly, the relative share of all searches and seizures declined from 71% to 51% when comparing the two equivalent time periods, as shown in Table 3. Despite the very large reduction in searches and seizures at a national level, the numbers in the East and North Command Areas both increased in the period following implementation of the CoP, as did their relative share of all encounters.

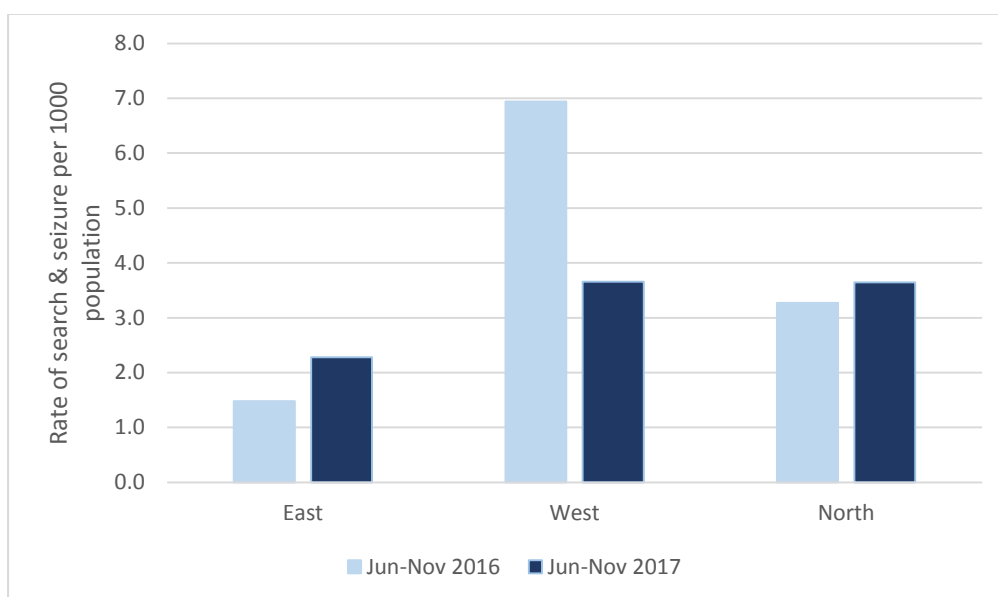
**Table 3: Number of searches and seizures pre and post-implementation of the CoP by Command Area and Division (% of all searches)**

Command Area	June to November 2016	June to November 2017	% change in relative share
East	2,648 (11%)	3,806 (22%)	+11%
North	4,358 (18%)	4,778 (27%)	+9%
West	17,204 (71%)	8,862 (51%)	-20%

Note: Column percentages may not total 100% due to rounding.

Analysing the total number of searches and seizures in each Command Area makes an assumption that the level of demand for policing is likely to be similar in each area; however, this is unlikely to be the case. There are many factors that can impact on the level of demand for policing, but one of the most common factors is the population size which is different in each area. In order to compare Command Areas on a like-for-like basis, the level of search and seizure was calculated as a rate per capita. Figure 3 shows the difference between the search rates in each Command Area in the six months following the introduction of the CoP and the equivalent period of the previous year. Prior to the introduction of the CoP, the West Command area had a far greater rate of search and seizure, at 6.9 per 1,000 of the population, than the North, which had a rate of 3.3 per 1,000, which in turn was greater than the rate of search and seizure in the East of Scotland, at 1.5 per 1,000. In the six month period after the CoP came into being, however, the rate of search and seizure in the West Command Area fell to 3.7 per 1,000 population which was almost identical to the rate in the North, at 3.6 per 1,000. Rates in the East Command Area increased, but remained lower than the other two Areas at 2.3 per 1,000 people.

**Figure 3: Rate of search and seizure per capita by Command Area, pre- and post-CoP**



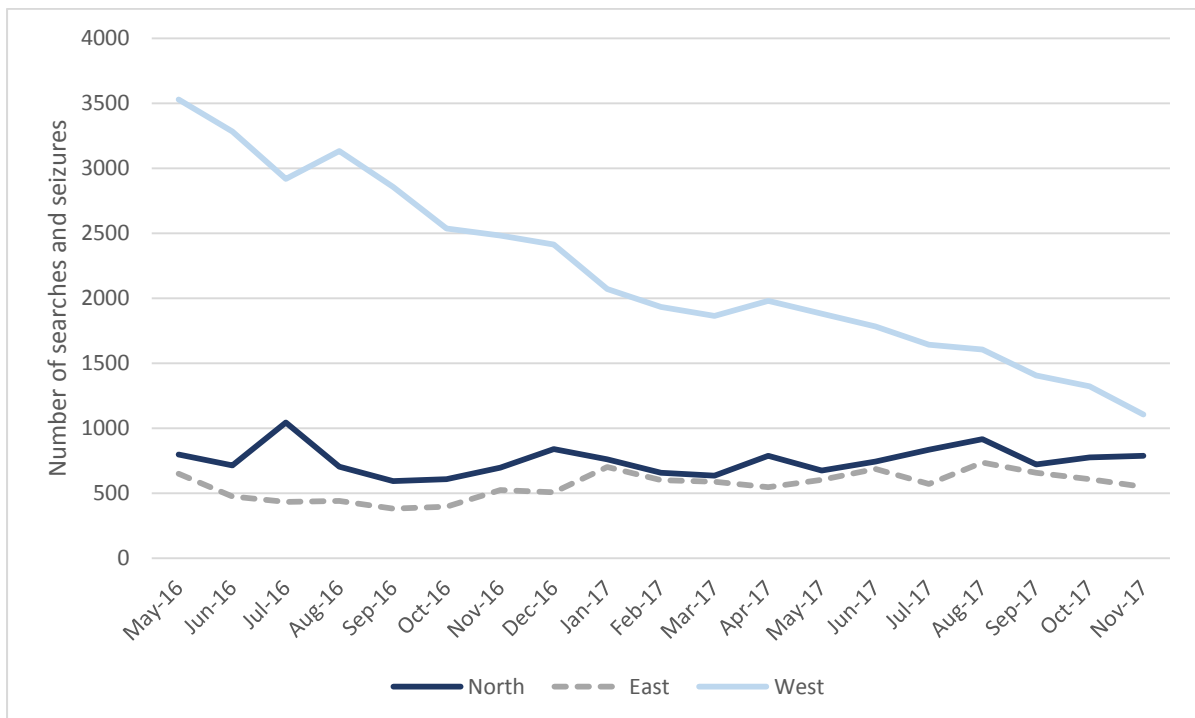
Comparison of the two time periods in Table 3 and Figure 3 suggest that there were significant changes in policing practice as a result of the CoP coming into practice, and that these changes were not consistent across the country. However, analysis of the trends month by month provides a clearer picture of the changing geographical pattern. In the West Command Area, there was a fairly steady decline month on month in the number of searches and seizures, which started well before the implementation of the CoP and continued after it. Indeed, over the period between May 2016 and November 2017, searches and seizures in the West declined by 69%. Meanwhile, the number of searches and seizures in the North and East Command Areas fluctuated month to month but showed no significant upward or downward trend over time.

The increase in numbers between the two time periods shown in Table 3 actually appears to be due to an unusually low number of searches and seizures in the North and East during the June to November 2016 period rather than a significant increase following implementation of the CoP. There is anecdotal evidence of a decline in the use of search and seizure within some areas of Scotland immediately prior to the start of the Police Scotland training programme (and, possibly, in anticipation of the introduction of the CoP), which is consistent with this pattern of activity. Figure 4 clearly shows that the most significant change to practice occurred in the West Command Area and that this reflected a very large and sustained decline in the use of these tactics.

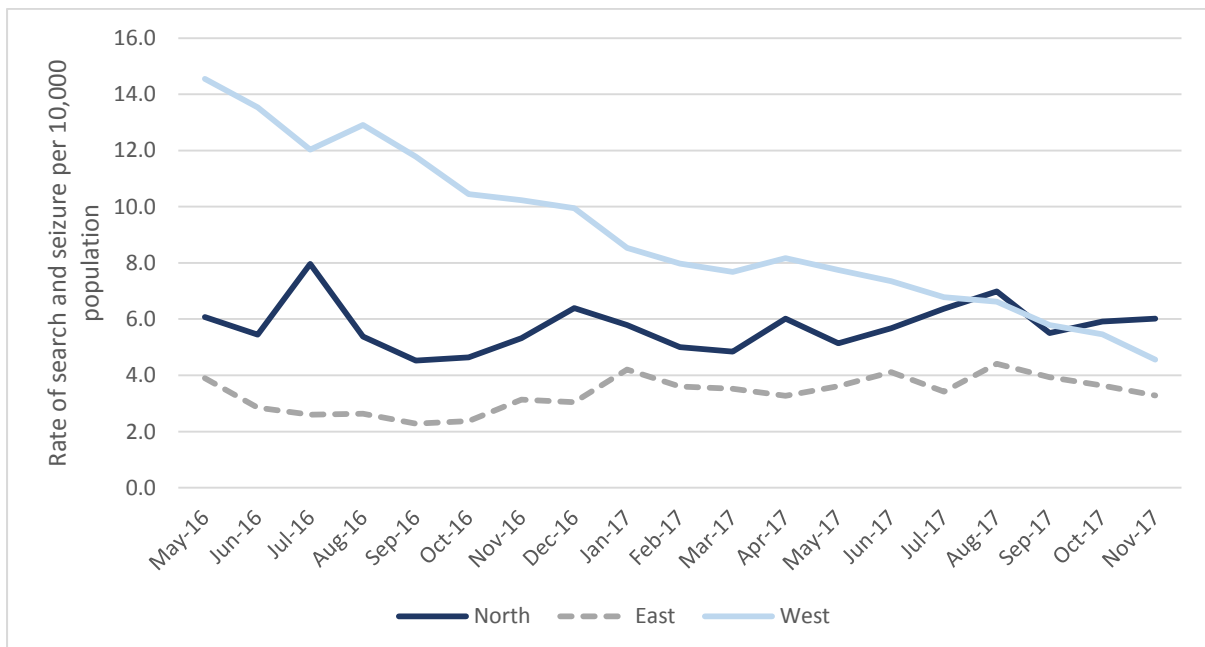
Again, however, analysis of the raw numbers tells only a partial story. If we calculate the rate per capita of search in each of the three Command Areas using population size, we see a slightly different picture. Figure 5 shows that the rate of search in the West Command Area fell from around 14.5 per 10,000 in May 2016 to 4.6 per 10,000 in November 2017, which was actually lower than the rate of search in the North by this final month. These figures suggest that policing practice in the West of Scotland has become far more similar to that in the North of Scotland, when taking account of population size. The rate of search and seizure in the East of Scotland has remained consistently lower than the other two areas of Scotland, however.



**Figure 4: Change in the number of searches and seizures by Command Area since May 2016**



**Figure 5: Change in the rate of search and seizure per capita by Command Area since May 2016**



**Division**

Within the three Command Areas there are a total of 13 Police Scotland Divisions. Looking at the change in use of search and seizure by Division, Table 4 shows that Greater Glasgow Division accounted for the largest share of all encounters in Scotland both before and after implementation of the CoP. Nevertheless, there was

a 63% decline in the number of searches and seizures in Greater Glasgow during the six months following the introduction of the CoP as compared to the equivalent six month period in the previous year. This resulted in a 22% decrease in the percentage share of all searches and seizures that were attributed to Greater Glasgow. There were also large declines in the number of encounters in the other West Divisions, with the exception of Dumfries and Galloway which saw a 78% increase in the use of searches and seizures (although due to small numbers this represented only a 2% increase in the relative share of searches and seizures). There was very little change in the percentage share of encounters for the other West Divisions, however, which suggests that they all declined more or less in line with the average rate of change.

In all of the East and North Divisions, the number of searches and seizures was higher in the period following implementation of the CoP compared to the equivalent period of the previous year. Correspondingly, the percentage share for each of these Divisions increased, with the largest increases occurring in the North East of Scotland and in the City of Edinburgh.

**Table 4: Number of searches and seizures pre and post-implementation of the CoP by Division (% of all searches)**

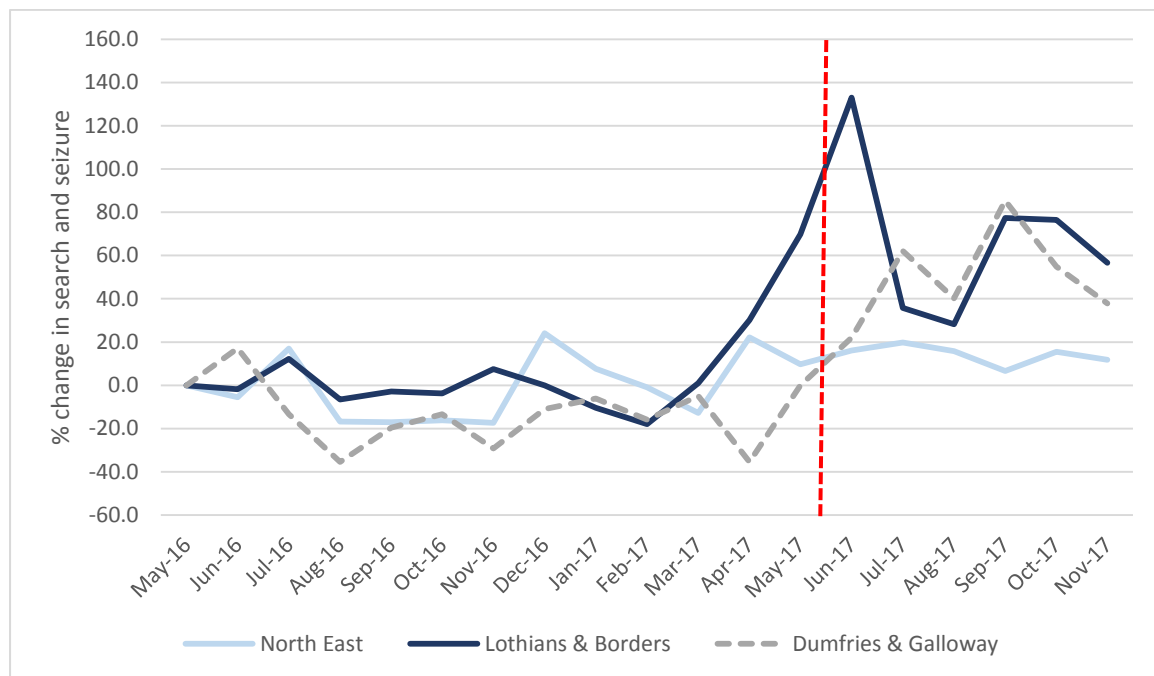
Police Division	June to Nov 2016 N (%)	June to Nov 2017 N (%)	% change in relative share
<b>West Command Area:</b>			
Greater Glasgow (G)	11,194 (46%)	4,105 (24%)	-22%
Renfrewshire & Inverclyde (K)	1,718 (7%)	1,141 (7%)	0%
Argyll & West Dunbartonshire (L)	897 (4%)	757 (4%)	0%
Lanarkshire (Q)	1,865 (8%)	1,185 (7%)	-1%
Ayrshire (U)	1,115 (5%)	934 (5%)	0%
Dumfries & Galloway (V)	415 (2%)	740 (4%)	+2%
<b>North Command Area:</b>			
North East (A)	1,791 (7%)	2,256 (13%)	+6%
Tayside (D)	1,253 (5%)	1,176 (7%)	+2%
Highlands & Islands (N)	1,314 (5%)	1,346 (8%)	+3%
<b>East Command Area:</b>			
Edinburgh (E)	814 (3%)	1,291 (7%)	+4%
Forth Valley (C)	626 (3%)	770 (4%)	+1%
Lothians & Borders (J)	641 (3%)	1,068 (6%)	+3%
Fife (P)	567 (2%)	677 (4%)	+2%

Note: Column percentages may not total 100% due to rounding.

Looking in more detail at change in the number of searches and seizures by Division on a month by month basis, there is some evidence of geographical variation in shifting police practice as a result of the implementation of the CoP. In three Divisions, the number of searches and seizures increased in the six month period

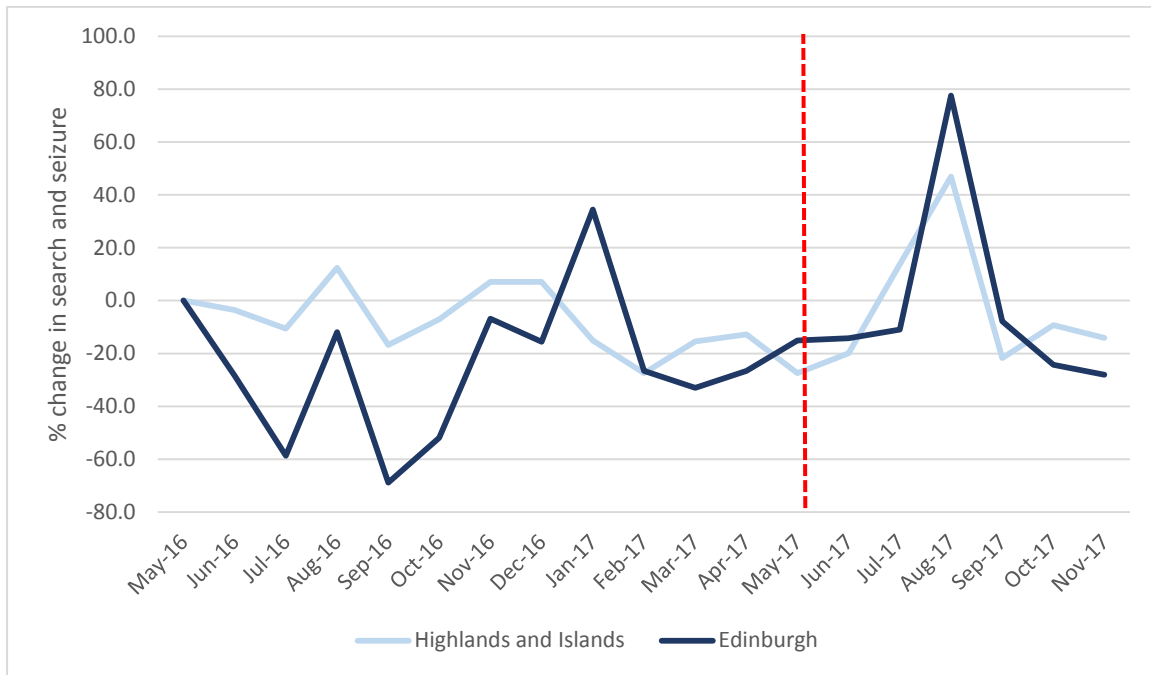
after the CoP was introduced and remained at a level that was higher than previously. Figure 6 shows that in the months following introduction of the CoP (represented by the dotted vertical line), there was a large percentage increase in encounters in the Lothians and Borders and in Dumfries and Galloway which was distinctly different to the trend in the prior year. In the North East Division, there was a much smaller increase in searches after the CoP which then plateaued, but it remained at a level that was higher than before the CoP came into force. It is worth noting that these indexed trends are based on relatively small numbers (especially those for Lothians and Borders and Dumfries and Galloway); however, the change does seem to have been precipitated in the month or so immediately prior to the implementation of the CoP and to have been sustained in the period afterwards.

**Figure 6: Increase in search and seizure following implementation of the CoP, by Division**



Showing a slightly different pattern, Figure 7 shows that in Edinburgh and the Highlands and Islands there were large spikes in activity in August 2017. These spikes coincided with large annual events at which increased levels of policing would be expected, namely the Edinburgh International Festival and the Groove Loch Ness concert in Inverness. Similar but much smaller spikes were also evident in August 2016 during the time of these events. There are a number of possible explanations for the spikes being smaller in the previous year. For example, there may have been a lower level of threat or demand; police manpower during 2016 may have been reduced; levels of recording may have been lower in the previous year; or there could have been an increase in confidence in the use of search and seizure following the Police Scotland training and the implementation of the CoP. All of these theories would benefit from further consideration in the 12 month review.

**Figure 7: Distinctive spikes in search and seizure following implementation of the CoP, by Division**



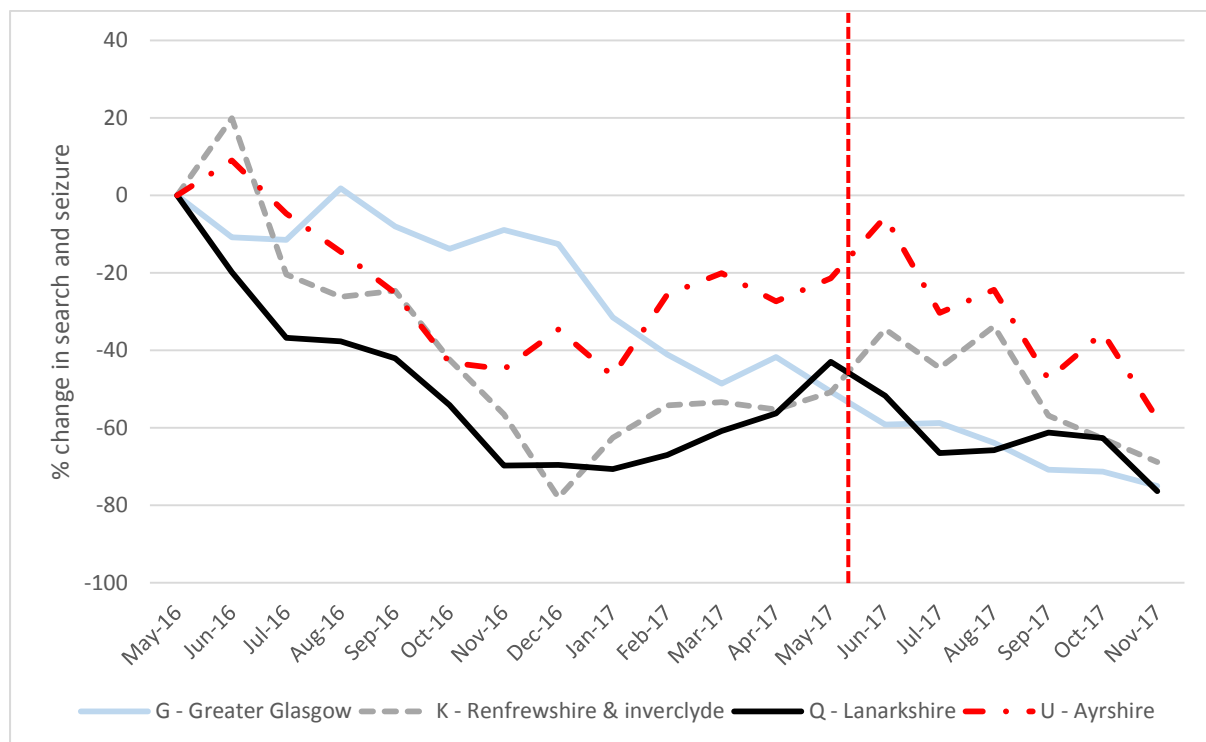
Four Divisions – all from the West of Scotland - displayed an ongoing decline in the number of search and seizures, which started well before the implementation of the CoP and continued after it. Figure 8 shows that the numbers of searches in Greater Glasgow, Renfrewshire & Inverclyde, Ayrshire and Lanarkshire all declined during 2016. Greater Glasgow shows a less steep but more continuous decrease over the period from August 2016 to November 2017 compared to the others. In contrast, Ayrshire, Lanarkshire and Renfrewshire & Inverclyde displayed a far steeper initial decline from May/June 2016, followed by an increase around the beginning of 2017 (which coincides with the Police Scotland training on stop and search). This increase continued for these three Divisions until May/June 2017, which was around the time of the introduction of the CoP. However, all three Divisions saw a further significant reduction in searches and seizures during the six months following the implementation of the CoP.

In the remaining four Divisions (Tayside, Fife, Forth Valley and Argyll & West Dunbartonshire), the trend in searches and seizures remained relatively stable following implementation of the CoP, although all four had shown a decline in numbers during 2016. It seems likely, therefore, that the introduction of the CoP made little difference to policing practice in these Divisions and that any changes as a direct result of the new legislation had already been set in motion well before the actual implementation period.

In those Divisions (shown in Figures 6 and 7) where there was evidence of an increase in the use of search and seizure (whether constant or for specific events) it is possible that this is indicative of an increasing enthusiasm and confidence amongst police officers to use such encounters as determined by the new regulatory framework and supported by the Police Scotland training. Whereas, in those

Divisions (shown in Figure 8) that showed a decline in search and seizure following the implementation of the CoP there may be issues around the understanding of the legislation or reduced confidence around using the tactic. Whatever the case, it will require qualitative research to determine the reasons for these geographical differences and it is recommended that this should form part of the 12 month review.

**Figure 8: Ongoing decline in search and seizure pre- and post-CoP, by Division**



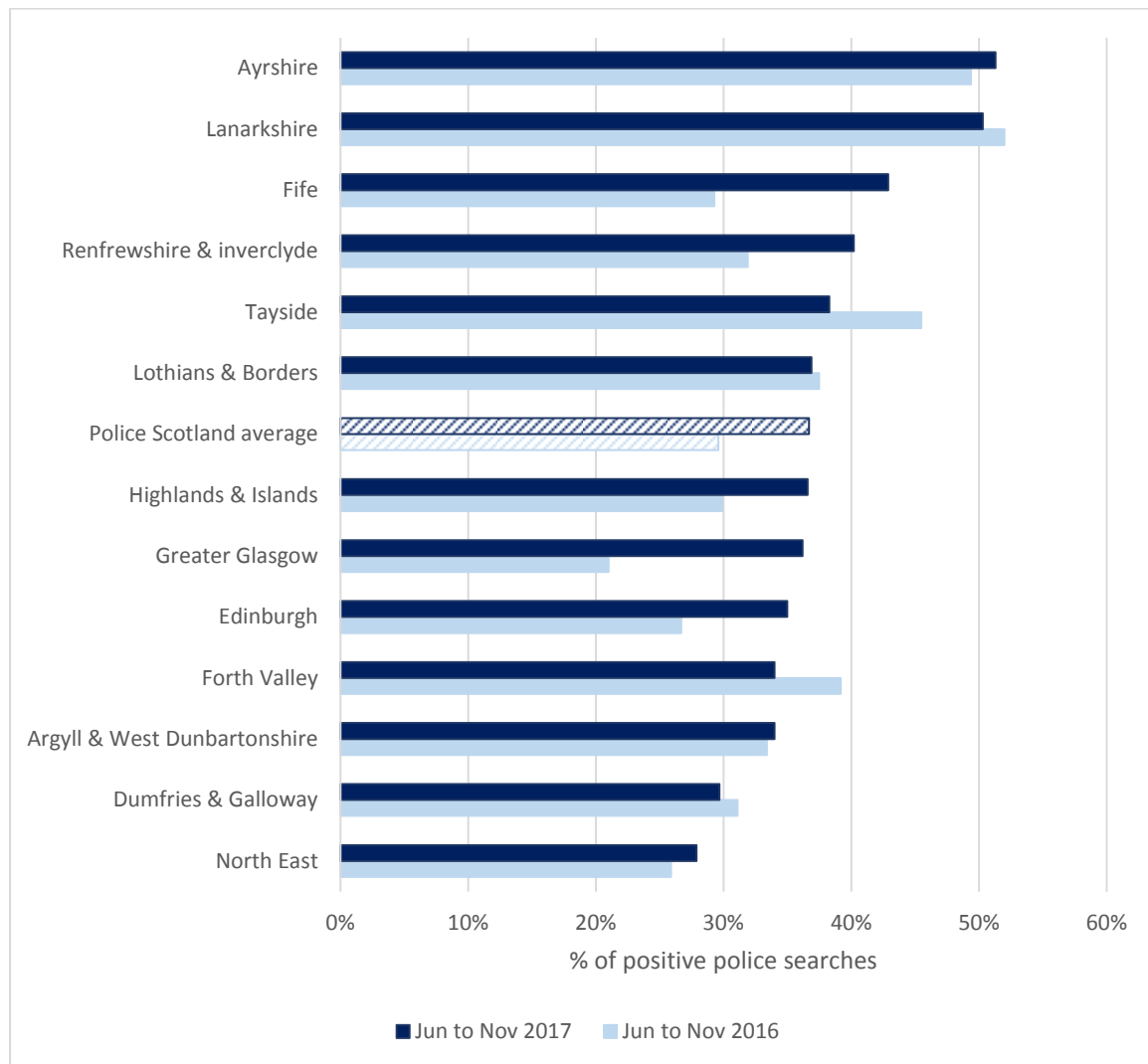
*Change in positive detection by Division*

Section 2.2 noted that the overall reduction in the number of police searches in the period following the implementation of the CoP coincided with an increase in the positive detection rate (regardless of the reason for the search) compared to the equivalent six month period of the previous year. Given that there was such a large degree of change and variation in use of search at a Divisional level, it is helpful to examine whether these changes improved the use of reasonable suspicion and, therefore, increased the likelihood of success. Figure 9 shows the percentage of searches which resulted in a positive outcome for each Division, and for Police Scotland as a whole, in the pre- and post-CoP periods. It is clear that there was wide variation in successful outcomes across Divisions both before and after the CoP was introduced. Some Divisions showed little or no change in positive outcome between the two periods; for example, Ayrshire, Lanarkshire, Lothian & Borders, Argyll & West Dunbartonshire, Dumfries & Galloway and the North East Divisions saw very minor changes in outcome. Others had experienced a large increase in positive search outcomes; such as Fife, Renfrewshire & Inverclyde, Highlands and

Islands, Greater Glasgow and Edinburgh. While two Divisions, Tayside and Forth Valley, saw a decline in the positive search rate.

There is no clear relationship between the change in positive search rates and the trends in the number of searches carried out. For example, the Divisions which showed no change in outcome included Ayrshire and Lanarkshire, both of which had a sustained decrease in search following the introduction of the CoP, and the North East, Lothian & Borders and Dumfries & Galloway Divisions which had an increase in searches over the same period. Similarly, those Divisions which had a significant increase in positive search outcomes included Greater Glasgow and Renfrewshire & Inverclyde, which both saw a sustained reduction in searches following the introduction of the CoP, and Edinburgh and the Highlands & Islands which saw little change in search rates other than distinct spikes coinciding with major events during the same period. It is clear, therefore, that whatever influenced the pattern of stability or change in the rate of positive outcomes for searches across different parts of Scotland cannot simply be explained by trends in the number of searches. Again, this is an issue that would benefit from further examination in the course of the 12 month review.

**Figure 9: Percentage of positive police searches pre- and post-CoP, by Division**



## 2.4 New information on stop and search

### *Strip and intimate searches*

Since the introduction of the CoP, some new information has become available about search and seizure on the NSSU Stop and Search Database. This includes information about the use of strip searches and intimate searches, both of which were covered by Annex C of the new CoP. According to Annex C: “A strip search is a search involving the removal of more than outer coat, jacket, gloves, headgear or footwear”. It is permitted only in circumstances where the officer has reasonable suspicion that a person has concealed an article (such as drugs or a weapon) under their clothing, and it should be conducted in a relatively private place so that the person detained cannot be seen by others. Annex C further states: “An intimate search consists of the physical examination of a detainee’s body orifices other than the mouth”. Intimate searches are clearly much more intrusive they can be

conducted only on issue of a warrant by a Sheriff and must be carried out by an authorised health care professional. The use of strip and intimate searches was not recorded or reported prior to the introduction of the CoP.

In the six months following the introduction of the CoP, there were a total of 786 strip searches across Scotland (an average of 131 per month). Of these, 69% were conducted inside a police station and 31% were conducted out of public view somewhere other than a police station. Almost half (47%) of all strip searches resulted in an item being found. The majority of strip searches involved a person aged 18 or over, with only 4% (33 in total) involving young people under the age of 18. The positive search rate for strip searches of young people (48%) was not significantly different to that for adults. There were no intimate searches conducted during this six month period. While there are no specific issues that require to be examined in relation to strip searches in the 12 month review, it is recommended that these be monitored over time through any new reporting arrangements established by Police Scotland and the SPA.

#### *Issue of receipts*

Data is also available from the NSSU database on the issue of receipts by police officers following a search. In section 6 of the CoP, it is stipulated that:

“The person who has been searched should be given a receipt (see Note 12). The receipt should include the following information:-

- police powers of stop and search;
- the right of a person searched to obtain a copy of the record of the search;
- the right of a person searched to complain, including how to go about making a complaint”.

While officers are obliged to offer a receipt following a search, which includes placing it with the detainee’s property in the event that the individual is taken into custody, the individual may refuse to accept the receipt. In these circumstances, the advice offered during stop and search training is that the officer should record in their notebook that the receipt has been offered and refused. The CoP also makes it clear that where the officer conducting the search is called to an urgent incident, it may be impracticable to provide a receipt. In this event, the individual should be informed that they can obtain a copy of their search record by calling at any police station (although, only if they have provided their details). Receipts are not issued for seizures.

In the six months following the introduction of the CoP, 13,619 receipts were issued following a search. This represents 87% of all statutory searches conducted during this period. In the remaining 2,105 cases (13%), no receipt was issued. There was no evidence that this varied by month (i.e. no indication that the issuing of receipts was lower immediately following the introduction of the CoP and gradually increased over time, which may have suggested a ‘bedding in’ period). In addition, the issuing of receipts did not vary significantly by day of the week (i.e. it was not lower on days when there was a higher volume of searches); or by the reason for the search; or by

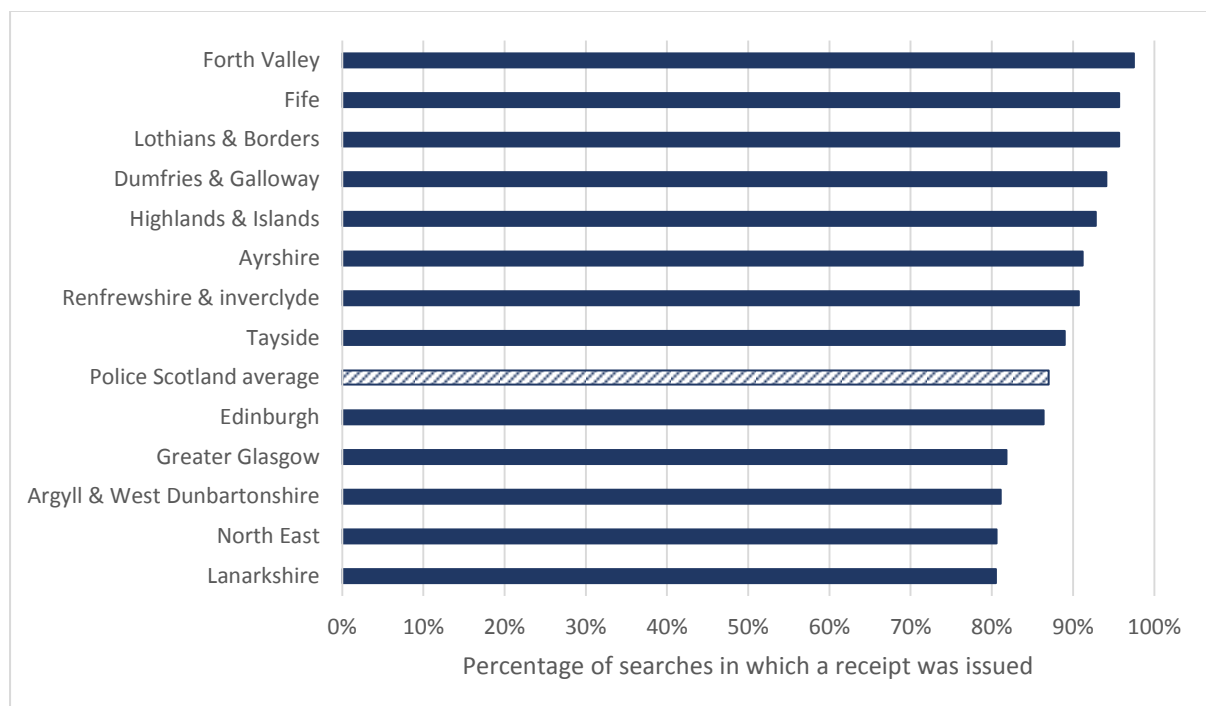


whether or not the search resulted in a positive outcome; or according to the ethnicity of the person being searched.

There were a number of factors that were associated with whether or not a receipt was issued. For example, the likelihood of a receipt being issued varied according to the time of day that the search was carried out; unexpectedly however, receipts were *less* likely to be issued during times of the day when there was a *lower* volume of search (from midnight to midday) than at busier times of the day (from midday to midnight). In addition, receipts were slightly more likely to be issued to children and young people up to the age of 25 than to people in older age groups; and more likely to be issued to women than men.

The biggest difference, however, was geographical. Searches in the East of Scotland were significantly more likely (93%) to result in a receipt being issued compared to those in the North (86%) or West (85%). This is evident when looking at the percentage by police Division, in Figure 6, which shows that three of the four East Divisions were the most likely to issue a receipt. Looking at those Divisions with the lowest issue rate, population size may have some bearing on this pattern, given that the Lanarkshire, North East, Greater Glasgow and Edinburgh Divisions have the largest population sizes in Scotland.

**Figure 6: Percentage of searches resulting in a receipt being issued by police Division, post-CoP**



It was not possible to investigate this further, since there is no information contained in the Stop and Search Database on the number of receipts that were refused, the number that were not issued due to circumstances in which the officer was called to an urgent incident, or the non-issue of receipts for some other reason. It would be

fruitful to include some analysis of this trend in the interviews conducted with police officers as part of the 12 month review.

It is expected that officers explain to any person being searched that they are entitled to obtain a copy of the record of the encounter within 6 months of the date of the search, although this only applies if the individual has chosen to give their name, address and date of birth, which they are not obliged to do if the search is negative. Data on the number of people who choose to obtain a copy of their record are not published on the Stop and Search Database. However, data provided by Police Scotland reveal that there were only five requests for a copy of the search record during the six months after the introduction of the CoP. Of these, one was submitted by a solicitor and four were made by the person searched. They were made across a range of dates and from different police Divisions, and the age spread of those making the request was from 27 to 71. There were no requests by young people under the age of 18.

## 2.5 Summary

Overall, there is no compelling evidence that the introduction of the CoP on police use of stop and search had a dramatic impact on policing at the time of its implementation in May 2017 or in the six months afterwards. Instead, the high level of criticism targeted at the over-use of searching practices in Scotland in the preceding two years, followed by an intense period of scrutiny and the decision to abolish consensual searching and introduce a CoP, undoubtedly all played a part in driving down the number of encounters well before the CoP finally came into force.

It is notable that the decline in the number of searches has coincided with an increase in the relative productivity of search encounters, which provides some evidence that they are being used more effectively and this is to be welcomed. Nevertheless, the data suggests there was a greater proportionate decline in seizures than searches during the last 18 months which was not expected, especially given the concerns expressed by policing representatives and other organisations in the public consultation period about the lack of a legal power to search for alcohol. In addition, the data presented in this report continues to demonstrate the enormous geographical variation in the use of search and seizure. At a general level, these findings highlight a very high proportionate decline in searches and seizures in the West of Scotland compared to the North (which remained fairly stable) and the East (which slightly increased). Within specific Divisions, however, the story is much more complex and it is clear that the introduction of the CoP has had a differential impact on policing practice and positive outcomes across different parts of Scotland.

New information provided on the Stop and Search Database about strip searches revealed that there is an average of 131 per month, of which only 4% involve young people under the age of 18. These have a higher detection rate than average, at 47%, which suggests that a higher threshold of reasonable suspicion is used when deciding to conduct a strip search. No intimate searches were recorded in Scotland since the introduction of the CoP. New information on the issue of receipts following

a search shows that receipts were issued after 87% of recorded searches, although this proportion varied according to a range of factors, including geography. Certain divisions had far higher issue rates than others, which may be related to population size and level of police demand; however, this would benefit from further examination.

*Recommendations for the 12 month review:*

1. To examine the reasons for the geographical differences in the changing patterns of search and seizure based on police Division.
2. To examine the reasons for the geographical differences in rates of positive search based on police Division.
3. To examine the reasons for the non-issue of receipts to people who have been subject to search and to consider the geographical differences in issuing receipts between police Divisions.

## 3 Identifying legislative gaps around young people and alcohol

### 3.1 Introduction

This section of the report examines existing evidence around policing young people and alcohol related incidents. Under Section 61 of the Crime and Punishment (Scotland) Act 1997, the police have a power to require the seizure of alcohol. This allows officers to ask children and young people to hand over any alcohol where it is known or suspected that they are in possession of it in a public place. The police have no specific legislative power to search a person for alcohol, even if officers suspect them of concealing it and they have refused to surrender the alcohol. The only exception to this is at designated sporting events where the police have an alcohol search power in accordance with Section 21 of the Criminal Law (Consolidation) (Scotland) Act 1995, which enables officers to check bags and clothing as people enter the venue.

Prior to the abolition of consensual search in May 2017, when the CoP was introduced, it was common for officers using this type of search to identify and remove alcohol from those aged under 18. The expectation amongst members of the IAGSS was that seizure would be increasingly used to deal with alcohol related incidents following the introduction of the CoP. However, many policing representatives were concerned that this would be insufficient to deal with alcohol related problems involving children and young people, especially in certain parts of the West of Scotland where this has historically been a significant problem leading to violence and disorder.

During the period examined in this report, powers of seizure were mainly used for the surrender of alcohol (95% of encounters), while a small proportion of cases involved other items such as tobacco products (4%) or aerosol cans and gas products (2%). This section will focus only on those seizures that involved the recovery of alcohol.

### 3.2 Evidence about the problem of young people and alcohol

Before examining the use of alcohol seizures in Scotland pre- and post-introduction of the CoP, it is important to consider whether there is any possible underlying reason why there might have been a change in police practice. For example, if alcohol seizures in Scotland have increased or decreased significantly, this may be due to an underlying increase or decrease in problems caused by young people's drinking behaviour. For this reason, some contextual data was collected about problematic alcohol use amongst young people before and after the implementation of the CoP. It is important to note that the information presented here cannot be used to provide evidence of any causal association between these trends and police use of seizures; however, it provides valuable context within which to consider the findings of the review.

Alcohol consumption amongst young people has been monitored by the Scottish Schools Adolescent Lifestyle and Substance Use Survey (SALSUS) since 1990. The survey, which is completed in Scottish schools amongst young people aged 13 and 15, shows that the proportion of pupils who report ever having an alcoholic drink

has been steadily decreasing since 2004 (Scottish Government 2016). In the most recent survey, conducted in 2015, prevalence of alcohol consumption was at its lowest level since the survey began. Looking at those who reported drinking in the last week, there was a large decrease in prevalence between 2010 and 2013, which then remained stable in 2015. Overall, SALSUS suggests that problematic drinking amongst young people has been on a long term decline in Scotland. However, there are no SALSUS data available for the periods immediately before and after the introduction of the CoP.

Two sources of information were examined to identify whether there were indications that alcohol consumption amongst young people may have changed since the implementation of the CoP. These were hospital admissions data and police incident data. Both sources have limitations and caution must be used when interpreting the findings (as detailed below); however, they were the only relevant sources available for this six month review.

#### *Alcohol-related hospital admissions for young people*

Figures on hospital admissions for young people aged under 18 were provided by Information Services Division (ISD), which is part of NHS National Services Scotland. The data includes general acute inpatient and day case stays for young people with an alcohol-related diagnosis across the whole of Scotland, but excludes people presenting to Accident and Emergency who were not admitted as an alcohol-related inpatient or day case.<sup>1</sup> Data were only available for the four month period following implementation of the CoP (i.e June to September 2017), and it is important to note that data for the latter three months (July to September) were only 98% complete at the time of data collection as not all hospital admissions data had been submitted to ISD. It is possible, therefore, that the figures presented here may increase slightly when they are finally complete. Given the nature of these data, it might reasonably be concluded that they represent serious incidents involving young people's use of alcohol and are, therefore, incidents that could (in certain circumstances) have drawn the young person to the attention of the police.

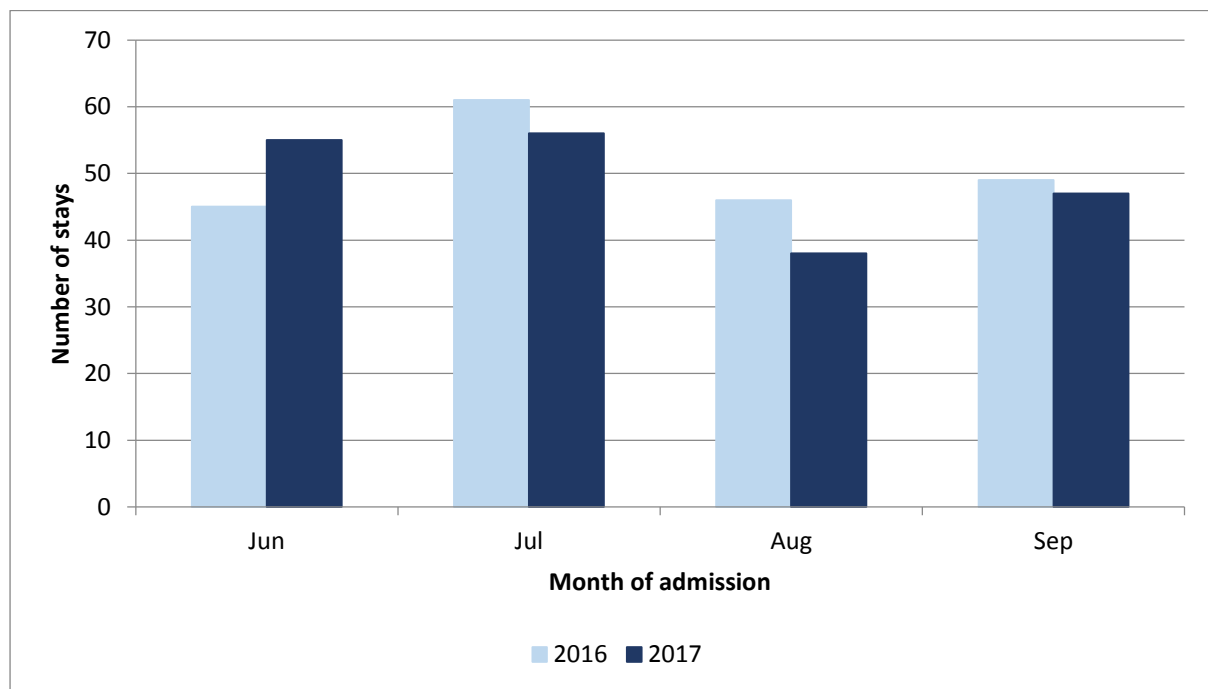
Figure 7 shows the number of alcohol-related stays in hospital recorded for young people aged under 18 in Scotland. In total, there were 201 such hospital stays recorded during the four month period following the implementation of the CoP and 196 in the equivalent four month period of the previous year. It is important to compare the same four month periods between years as these data do show a distinct seasonal trend, with a higher number of admissions in the summer months compared to other periods of the year. The chart shows that the number of hospital admissions was slightly higher in June 2017 and slightly lower in July, August and September 2017 compared to the same months of the previous year. However,

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<sup>1</sup> The statistics provided by ISD were derived from data collected on discharges from non-obstetric and non-psychiatric hospitals (SMR01) in Scotland. A hospital stay (also described as a continuous inpatient stay or CIS), is defined as an unbroken period of time that a patient spends as an inpatient or day-case. During a stay a patient may have numerous episodes as they change consultant, significant facility, speciality and/or hospital. Stays are counted at the point of discharge, when all diagnostic information regarding the full stay is available. However, the demographic information (NHS Board) is taken from the first episode of the stay, thus most closely corresponding to the circumstances of the patient at the point of entering the hospital.

analysis showed that these differences were not statistically significant. Furthermore, when looking at the total number of stays over the two periods (which averaged 50 per month in 2016 and 49 per month in 2017), there was no significant difference. In other words, notwithstanding the limitations of the data noted above, Figure 7 does not indicate any change in serious alcohol-related behaviour resulting in a hospital stay amongst young people following the introduction of the CoP.

**Figure 7: Alcohol-related hospital stays for under 18s in Scotland**



*Police recorded incidents involving young people and alcohol*

Data were provided by Police Scotland from STORM Unity, which is the command and control system used for recording incidents reported to the police. On this system, incidents involving alcohol can be identified using a qualifier code 'Q005 - Alcohol'; however, the recording of this code is not mandatory and it is not always possible at the time of the initial call for the police to be certain that the incident has involved alcohol. Therefore, these data are treated as management information and are indicative only. Furthermore, data are only available for the full period (June 2016 to November 2017) for 11 of the 13 Police Scotland divisions: data for the Highlands & Islands Division were not available as they do not use the STORM Unity system; while data for the North East Division were available for the six months following the introduction of the CoP but not the equivalent six months of 2016. Therefore, the analysis presented here must be treated as partial.

A total of 15,929 alcohol-related incidents (across all age groups) were recorded on the STORM Unity system between June and November 2017 across the 11 police Divisions. This compared to 16,797 in the equivalent period of the previous year, representing a statistically significant decrease in alcohol-related incidents of 5.2%. In addition, there was a 32% reduction in the number of incidents reported to Police Scotland that involved 'drinking in public' and a 50% decline in the issuing of fixed

penalty notices for public drinking between June and November 2016 and the same period in 2017.<sup>2</sup> These data suggest that the CoP was introduced during a period when alcohol-related problems were declining, at least from a policing perspective.

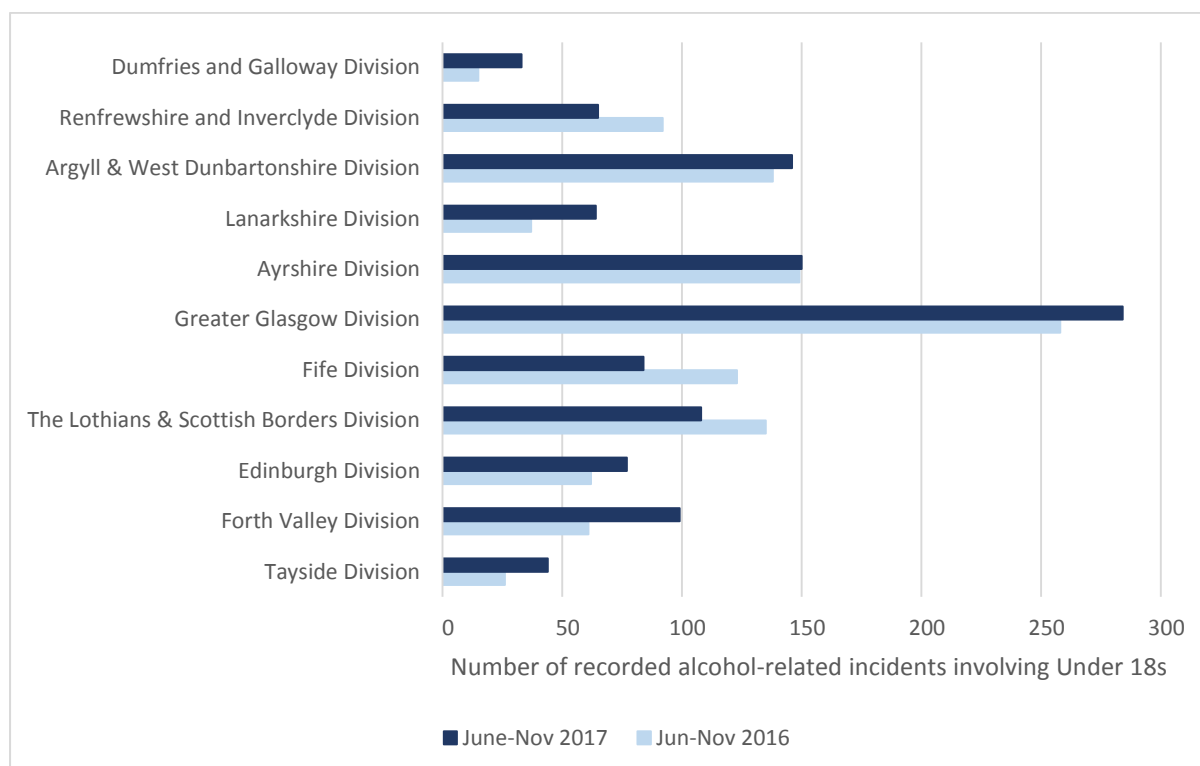
Turning to incidents involving alcohol and young people, further qualifier codes were used on the STORM Unity system to identify whether one or more young person under the age of 18 had been involved in an alcohol-related incident. There were 1,154 such incidents involving young people recorded during the six months after the CoP was introduced compared to 1,096 in the equivalent six months of the previous year, which represents a 5.3% increase. However, this increase was not statistically significant. As a relative share of all incidents involving alcohol, the percentage that involved a young person increased only slightly from 6.5% to 7.2%, a non-significant rise of 0.7%.

Looking across the different police Divisions, there was no consistency in terms of the change in alcohol-related incidents involving young people. Figure 8 shows the difference in the number of such incidents recorded within the 11 police Divisions for which data were available. In two divisions (Fife and Renfrewshire & Inverclyde) there was a significant decrease, while in four (Tayside, Forth Valley, Lanarkshire and Dumfries & Galloway) there was a significant increase. In the remaining five divisions (Edinburgh, Lothians & Scottish Borders, Greater Glasgow, Ayrshire and Argyll & West Dunbartonshire) there were some minor changes but these were not statistically significant. The absolute number of incidents also varied considerably between Division, being highest in Greater Glasgow and lowest in Dumfries and Galloway.

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<sup>2</sup> These figures were provided by Police Scotland and should be treated as management information only.

**Figure 8: Change in number of alcohol-related incidents involving young people, pre- and post-CoP**



At the national level, the data presented here provide no evidence of a significant change in alcohol-related incidents involving people under the age of 18, either in terms of hospital admissions or incidents recorded by the police, in the period following the introduction of the CoP. At the level of police divisions, the picture is more mixed in relation to police recorded incidents, with some areas showing a significant increase, others a significant decrease and the remainder no significant change between periods. Unfortunately, the number of hospital admissions was too small to release the data at sub-national level, so it is unclear whether the same mixed picture is present. Therefore, it is difficult to say with any certainty whether there are underlying changes at a sub-Divisional level that may have influenced changing practice in relation to police use of seizure. The relationship between the trends presented here and the Divisional use of seizures will be examined in more detail below.

### 3.3 Change in the use of seizure by age

In the six months following the introduction of the CoP, there were 1,629 alcohol seizures in Scotland. This represents a 60% decrease from the equivalent period in the previous year, during which there were 4,109 alcohol seizures. Table 5 shows that police seizures were not used exclusively for young people. In fact, in the six month period from June to November 2016 (prior to the introduction of the CoP), only 21% of all seizures involved people under the age of 18. Using these age bands, the most common group to have surrendered alcohol were those aged 26 to 40. During the six months following the introduction of the CoP, there was a reduction in the number of seizures amongst all age groups; however, the age profile



of those who surrendered alcohol changed significantly. The relative share of those subject to seizure who were aged under 18 was 11% higher following the introduction of the CoP compared to the equivalent six months in the previous year, while the relative share of all other groups (especially those aged 41-55) was lower.

So, although the use of seizure declined across all age groups after the Code was introduced, it declined far less for children and young people than it did for those in older age groups. At face value, this suggests that the level of policing demand involving alcohol-related issues may have declined across all ages, but concern about possession of alcohol amongst under 18s became relatively more prominent. This is consistent with the finding that police incident data for alcohol related incidents had declined overall, but the relative percentage of cases involving young people had increased in the period following the introduction of the CoP.

**Table 5: Number of seizures pre and post-implementation of the CoP by age group (% of all searches)**

Age group	June to Nov 2016 N (%)	June to Nov 2017 N (%) <sup>3</sup>	% change in relative share
Under 18	864 (21%)	512 (32%)	+11%
18-25	836 (20%)	299 (18%)	-2%
26-40	1,294 (32%)	482 (30%)	-2%
41-55	928 (23%)	294 (18%)	-5%
Over 55	186 (5%)	40 (3%)	-2%

Note: Column percentages may not total 100% due to rounding.

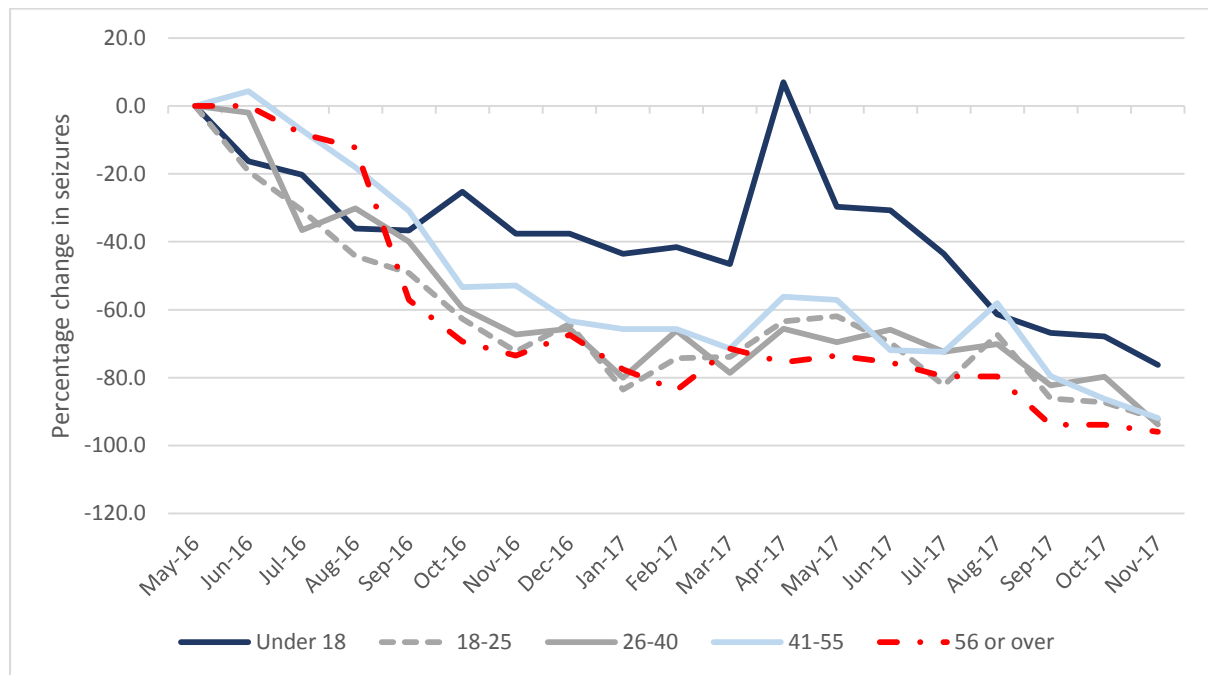
The trends in use of seizure are shown in more detail through a month by month analysis in Figure 9. This confirms that there was a significant decline in the use of seizures for all age groups; however, the decline for those aged under 18 was less steep than that for other age groups, especially in the period preceding the introduction of the CoP. There is a very distinct spike in the use of seizure for under 18s in April 2017, which on further investigation reflects a large increase in the use of seizures within several Divisions in the West, including Greater Glasgow, North and South Lanarkshire, North Ayrshire and East Renfrewshire (as confirmed in Figure 10). Data from the Met Office for that period indicates that it was a warm, sunny April with lower than average rainfall across the UK.<sup>4</sup> These conditions can be associated with an increase in public drinking by young people, especially when they coincide with a public holiday (such as Easter), which may well explain this deviation from the downward trend. Following the introduction of the CoP in May 2017, however, the number of seizures amongst under 18s continued to fall to the extent

<sup>3</sup> Note that in the post-CoP period, 67% of all alcohol seizures involving people under 18 involved Section 61 confiscations, while the remaining 33% involved the use of Local Authority Byelaws. In addition, 10% of alcohol seizures for the 18-25 age group involved the use of Section 61 under suspicion of supplying alcohol to those aged under 18, while the remaining 90% used Local Authority Byelaws. For those aged over 25, 99% of seizures occurred under Local Authority Byelaws and 1% under Section 61 suspicion of supplying under 18s. This information was not recorded prior to the introduction of the CoP.

<sup>4</sup> <https://www.metoffice.gov.uk/news/releases/2017/statistics-for-april-2017>

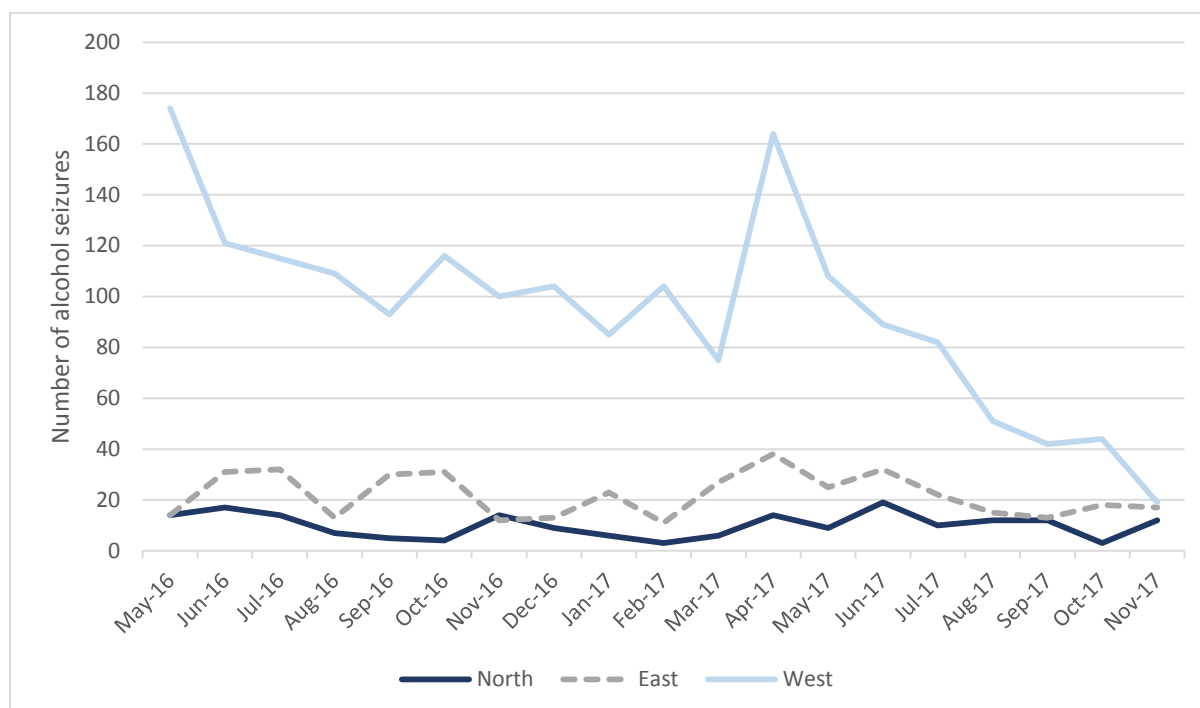
that it had almost reached the same rate of decline as that of the other age groups by November 2017.

**Figure 9: Percentage change in seizures for alcohol since May 2016**



In the previous section, it was clear that the number of alcohol-related incidents involving young people under the age of 18 that were recorded on the STORM Unity system varied significantly by police Division. Unfortunately, it was not possible to analyse change in the monthly number of seizures involving young people by Division due to the small numbers. However, when they were clustered into Command Areas, Figure 10 clearly shows that the striking decline in alcohol seizures amongst young people was almost entirely due to a change in policing activity in the West of Scotland. In fact, this large decline can be primarily attributed to a 90% reduction in the use of seizures in the Greater Glasgow Division. Given that the number of alcohol-related incidents involving young people that were recorded on the STORM Unity system in Greater Glasgow had actually increased by 10% over this period (as illustrated in Figure 8), it is very difficult to explain this apparent contradiction in policing response. This is clearly an area that requires far greater consideration in the 12 month review.

**Figure 10: Change in the number of alcohol seizures amongst people aged under 18, by Command Area**



The trend in alcohol seizures for those under 18 during the six months after the introduction of the CoP was not at all similar to the trend in the equivalent six months of the previous year, which indicates that this is not a seasonal trend. It seems clear, therefore, that there was a real and sustained decline in the use of the tactic for this age group, which is almost entirely explained by a change of behaviour in the Greater Glasgow. Since the police incident data indicated that there was an increase in the recording of alcohol-related incidents involving young people in Greater Glasgow, it seems unlikely that the drop in seizures was due to a significant fall in demand. These findings strongly suggest a deliberate drop in the use of powers to seize alcohol amongst this age group in the West of Scotland, where problems of this nature are typically highest within Scotland (as demonstrated in Figure 8). This raises a serious question about whether seizure is being used to greatest effect or whether there are problems with the use of this tactic that require to be considered further by the Independent Advisory Group. As part of the 12 month review, it is recommended that the qualitative research investigate this issue.

### 3.4 Change in the recovery of alcohol through statutory search

As noted earlier, consensual searches were commonly used in the past to remove alcohol from individuals; however, following the controversy around the use of consensual searches (which had no statutory power), the number of consensual searches declined significantly after the HMICS report was published in 2015. During the six month period June to November 2016 (prior to the introduction of the CoP) there were 616 consensual searches, of which only 43 (7%) resulted in the recovery of alcohol. During the same period, there were 19,257 statutory searches of which only 96 (0.5%) recovered alcohol. Following implementation of the CoP, consensual searches were abolished; however, there is no indication of a change in

the efficacy of statutory searches to recover alcohol since of the 15,724 searches conducted only 68 (0.4%) resulted in the recovery of alcohol. These findings are not conclusive in terms of identifying whether a statutory power to search for alcohol is required in Scotland; however, there is certainly no indication that statutory searching is being used as a mechanism to indirectly search for alcohol.

### 3.5 Evidence from Calls for Feedback

Six examples of evidence were provided to Police Scotland through the Calls for Feedback which highlighted the absence of a police power to search for alcohol (see Appendix 1). All of these examples relate specifically to crowds or large-scale events which were not formally organised (e.g. arranged through social media) and therefore not subject to Section 67 of the Criminal Justice (Scotland) Act 2016. The main concern was that events involving hundreds of youths are impractical to deal with through seizure alone as youths conceal the alcohol in their bags in the knowledge that police have no power to search for it. It is equally impractical, as well as undesirable, to deal with the problem through arrest where young people refuse to surrender alcohol when asked. In fact, there have been only 2 arrests of young people for contravening the requirement to surrender alcohol in accordance with Section 61 of the Crime and Punishment (Scotland) Act 1997 since the introduction of the CoP which indicates a lack of desire amongst officers to criminalise young people in these circumstances (and is in line with the current Whole System Approach to dealing with young people involved in offending).

A specific case study of a beach party in South and North Ayrshire in July 2017 is provided by Police Scotland in Appendix 1. In this event, several thousand people (many under 18) travelled to Ayrshire by train to attend an impromptu party on Troon beach and there was clear evidence of alcohol consumption and possession. The case study notes that social media was used to make a firm policing stance on public drinking and there was a high visible police presence. It is also noted that significant quantities of alcohol were surrendered and seized as people alighted from trains and left the station. An issue with regards to recording seizures in such 'exceptional circumstances' is raised which is important, given the concern of the IAGSS to ensure that such encounters are accurately recorded. However, it seems likely that few if any of these seizures were recorded given that only 32 seizures in total (and only 8 for under 18s) were recorded in the Ayrshire Division in the whole of July 2017 – a figure that was lower than that for other months both before and after the event.

In the absence of accurate data, it is difficult to draw any concrete conclusions about the extent to which the need for a power of search is required. However, it is clear that this issue needs to be thoroughly investigated as part of the 12 month review and that further evidence of the impact of this area of the legislation is required.

### 3.6 Summary

The police in Scotland have a power to request the surrender of alcohol Under Section 61 of the Crime and Punishment (Scotland) Act 1997; however, there is no police power to search a young person for alcohol in a public place even if an officer suspects it to be concealed (for example, in a jacket or bag). Prior to the introduction of the CoP, officers highlighted that policing incidents involving young people and

alcohol could be problematic and could result in an increased use of arrest where individuals were unwilling to surrender alcohol. Evidence was collated about any possible underlying reasons why alcohol seizures may have changed in the period following the introduction of the CoP. The existing evidence suggests that alcohol consumption has been on a long-term decline amongst young people in Scotland and, using indicative information from Police Scotland data on recorded alcohol-related incidents and NHS data on hospital admissions for young people on alcohol-related grounds, there was no indication of a significant change in problematic alcohol use amongst young people before and after the introduction of the CoP at a national level. The picture was not entirely consistent across police Divisions, however, with some showing evidence of an increase or decrease in police recorded incidents involving young people and alcohol, while others were fairly stable. Use of seizures did not always match these trends, however, which raises questions about the extent to which productivity matches demand.

It was expected that there would be an increased use of seizure as consensual searching reduced, and this was certainly true following the publication of the HMICS report in 2015. However, the evidence from this review suggests that there has been an ongoing decline in the use of powers to seize alcohol since May 2016. This was true across all age groups except those under 18, for whom seizures declined at a much slower rate until April 2017. Since the introduction of the CoP there has been a sharp decline in the use of alcohol seizures amongst young people, especially in the West of Scotland where historically alcohol related problems amongst young people have been especially problematic.

There is no evidence that statutory searches are being used inappropriately or indirectly to search for alcohol. However, police officers have continued to express concern about policing young people and alcohol without an express power of search, especially with reference to large crowds or major unorganised events, which cannot be dealt with under Section 67 of the Criminal Justice (Scotland) Act 2016. It is clear that officers have been reluctant to resort to arrests to remove alcohol from young people and risk criminalising them; however, the number of recorded seizures appears to be at odds with the claims that they are used extensively (e.g. in the example of the Ayrshire beach case study). To understand the patterns of search in relation to alcohol related problems within specific Divisions, further evidence on the value of seizure as a tactic and the additional benefit that would be obtained through having the power to search is required.

#### *Recommendations for the 12 month review:*

4. To examine the sharp decline in the use of alcohol seizures within the West of Scotland, and in Greater Glasgow in particular, and to explain this against an apparent backdrop of increasing alcohol-related incidents amongst people aged under 18.
5. To examine the extent to which evidence exists to support the need for a power to search young people for alcohol, especially in relation to large unplanned events.

## 4 Other potential gaps in the legislation

### 4.1 Introduction

This section of the report looks at the potential that the introduction of the new legislation and CoP have resulted in any other gaps around stop and search. Section 65 of the Criminal Justice (Scotland) Act 2016 set out the specific legal powers under which a search could take place. Legislation was introduced through the 2016 Act allowing officers to search individuals on grounds that were not based on an offence having been committed. For example, under section 66 of the Act, a person who is not in police custody may be searched if they are being transported under warrant or court order, or where officers believe it is necessary to do so for their care and protection. In addition, Section 67 of the Act enabled officers to search an individual entering an organised event as a condition of entry in order to ensure the health, safety and security of people at that event. However, police officers expressed concern that these powers did not include situations in which a search may be considered necessary to preserve life. Paragraph 3.4 of the CoP was, therefore, added to make clear that officers must take all steps necessary to protect life, as legislated for under Sections 20 and 32 of the Police and Fire Reform (Scotland) Act 2012. In order to assess whether the current legislation has left any significant gaps or ambiguities in the power of police officers to stop and search, the review examined the statutes under which searches were conducted and looked at the number that were considered justifiable by police officers but which were not explicitly covered by the new legislative provision. This review also considered any other issues specifically raised by officers when recording a search about gaps in legislative provision.

### 4.2 Legal statutes used for stop and search

Section 65 of the Criminal Justice (Scotland) Act 2016 sets out the specific grounds on which a search can be undertaken and these fall within specific statutory provisions. As can be seen from Table 6, there was relatively little change overall in the relative distribution of the statutory provisions used when recording searches when comparing the six month period following the introduction of the CoP with the equivalent six months of the previous year. There was a slight (3%) reduction in the proportion of all searches that were conducted under the Misuse of Drugs Act; however, these remained by far the most commonly used overall. There was a small (2%) increase in the proportion of all searches conducted under Section 60(1) of the Civic Government (Scotland) Act 1982 for stolen property, but this still formed the basis for less than 10% of all searches. Searches for weapons were uncommon in relative terms, accounting for just 5% of all searches during both time periods. The remaining statutes were used even less frequently and changed very little in terms of their relative share.

Following implementation of the CoP, two new codes were added to the national Stop and Search Database which records the statute under which the search took place. The first new code records searches conducted under Section 66 of the Criminal Justice (Scotland) Act 2016 where a person was being removed or transported but not in police custody. A total of 70 searches were conducted under

this legislation following the implementation of the CoP, as shown in Table 6. The second new code records encounters where police officers intervened under Sections 20 or 32 of the Police and Fire Reform (Scotland) Act 2012 to protect life and undertook a search as part of this intervention. Searches conducted under Section 67, at designated events or premises, are not recorded on the NSSU Database as it was considered impractical to do so.

Table 6 shows that there were 22 incidents in which officers intervened to protect life under Sections 20 & 32 of the 2012 Act in which a search was recorded in the six months after the CoP was introduced. While these numbers are relatively small, they are of a similar scale to the number of searches conducted under 'other statutes'; and, arguably, they reflect some of the most serious and distressing incidents dealt with by officers in the line of duty. The use of this legislative provision is discussed further in section 4.3.

**Table 6: Number of searches by legal statute used to justify search (% of all searches)**

Statute	June to Nov 2016 N (%)	June to Nov 2017 N (%)	% change in relative share
Sec 23(2) or 23(3) or 23A of the Misuse of Drugs Act 1971	16,875 (88%)	13,407 (85%)	-3%
Sec 60(1) Civic Government (Scotland) Act 1982 (Stolen Property)	1,216 (6%)	1,288 (8%)	+2%
Sec 48(1) or 49B of the Criminal Law (Consolidation) (Scotland) Act 1995 (Offensive Weapons)	564 (3%)	345 (2%)	-1%
Sec 50 of the Criminal Law (Consolidation) (Scotland) Act 1995 (Bladed Weapons)	456 (2%)	465 (3%)	+1%
Sec 11A of the Fireworks Act 2003	95 (0.5%)	56 (0.4%)	-
Sec 47(1) Firearms Act 1968	36 (0.2%)	44 (0.3%)	-
Sec 66 Criminal Justice (Scotland) Act 2016 (Removal of person)	-	70 (0.4%)	-
Sec 20 & 32 Police and Fire Reform (Scotland) Act 2012 (Protection of Life)	-	22 (0.1%)	-
Other statutes	15 (0.1%)	27 (0.1%)	-

Note: Column percentages may not total 100% due to rounding.

### 4.3 Evidence from Calls for Feedback

The most common area highlighted by officers using the Calls for Feedback related to the use of stop and search for the purpose of protecting life or in circumstances in which the individual was considered to be vulnerable (See Appendix 1). A total of 27 pieces of evidence were gathered. Of key concern was the fact that Section 65 of the Criminal Justice (Scotland) Act 2016 provides that a specific search power must exist when a person is not in custody. Since Sections 20 and 32 of the Police and Fire (Reform) Scotland Act 2012 were not expressly included, this has caused some confusion and ambiguity about whether this statute can be used as a 'power' to justify searches, even though the CoP expressly recognises the duty of officers to protect life. Officers highlighted regularly dealing with vulnerable people and those with significant mental health concerns in circumstances where no offence had been committed but there were genuine concerns about possession of harmful objects. It is, therefore, possible that the number of searches conducted to protect life has been under-recorded. This is an issue that should be considered further as part of the 12 month review.

There were 10 examples of evidence from officers on the issue of conducting searches for weapons in a non-public location (such as a home address or searching a vehicle for a weapon).<sup>5</sup> Examples were given of weapon searches conducted within a private dwelling which were believed by the officers involved to be justified in the circumstances, but it is not entirely clear whether Section 48 of the Criminal Law (Consolidation) (Scotland) Act 1995 would apply as this extends only to searches of people suspected of being in possession of an offensive weapon in a public place. In addition, some officers had conducted weapon searches of a vehicle despite the fact that this is not specifically covered by the current 1995 Act (although the Misuse of Drugs Act 1971 does allow for such a provision). There was concern that such cases may raise issues with regards to proceeding to trial, and that further clarification within the legislation and the CoP is necessary. Again, this is an issue that warrants further investigation as part of the 12 month review.

Officers also raised some issues around searching for evidence that had arisen during the first six months of the CoP. These included examples of searching on the basis of crimes that were aggravated by the use of a weapon, crimes of vandalism, possession of accelerants used in crimes of fire-raising, and the possession of dangerous items when travelling to sporting events. Currently, the Criminal Law (Consolidation) (Scotland) Act 1995 provides powers to search those attempting to enter a designated venue; however, questions were raised over the need for police powers to search those aged 18 or over for flares or fireworks when they were travelling to (but had not yet arrived at) the venue. Police Scotland established a Pyrotechnic Short Life Working Group to consider, among other matters, the possible need for legislative change to help tackle the unsafe use of pyrotechnic articles in public places. Police Scotland is currently evaluating the need for any such legislative change; therefore, it is recommended that this Group is consulted on this issue during the course of the 12 month review.

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<sup>5</sup> The CoP does not apply to searches of vehicles, vessels or premises that do not also involve the search of a person.



#### 4.4 Summary

Section 65 of the Criminal Justice (Scotland) Act 2016 specified that officers may only conduct searches “in accordance with a power of search conferred in express terms by an enactment, or under the authority of a warrant expressly conferring a power of search”. Policing representatives were concerned that the current legislation may have left gaps or ambiguities, such as in situations where a search may be considered necessary to preserve life. An examination of the statutes recorded for searches found very little difference in the six month period following the introduction of the Code of Practice compared to the equivalent period in the previous year. However, officers had conducted 22 searches as part of an intervention under Sections 20 and 32 of the Police and Fire Reform (Scotland) Act 2012 to protect life.

The lack of a specific search power to protect life was the most common issue that police officers highlighted during the initial six months of the implementation of the CoP. Other areas highlighted as potential legislative gaps included the power to search for weapons in a non-public location, including dwellings and vehicles; and the power to search for pyrotechnics and flares when individuals are travelling to major sporting or other events. Given that such statutes were only used in exceptional circumstances but were clearly considered necessary to protect the life and wellbeing of both the individual and others involved, it would seem reasonable to provide greater clarity by ensuring either that these statutes are included under the formal powers of search, that other bespoke search powers are enacted, or that greater clarity is provided in some other way. It is recommended that further evidence be gathered around all of these legislative issues as part of the 12 month review.

#### *Recommendations for the 12 month review:*

6. To examine the extent to which evidence exists to support the need for a specific power to search people in circumstances where it is needed to protect life.
7. To examine the extent to which evidence exists to support the extension of powers to search vehicles or people in private dwellings.
8. To examine the extent to which evidence exists to support the need for powers to search for pyrotechnic articles in public places.

## 5 Change in the use of Section 60 authorisations

During the IAGSS deliberations, concern was expressed that after phasing out consensual search there may be an increase in the use of so-called 'no suspicion' searches by Police Scotland under Section 60 of the Criminal Justice and Public Order Act 1994. Data provided by the National Stop and Search Unit showed there had been only one authorisation under Section 60 since the implementation of the CoP. This was for the Scotland versus England World Cup qualification football match at Hampden Park in Glasgow on 10<sup>th</sup> June 2017. However, no section 60 searches were recorded for this event. This provides strong evidence that there has been no increase in the use of Section 60 authorisations as a way of creating wider opportunities for search under the CoP. This contrasts strongly with England and Wales, where the power has been used extensively resulting in Home Office criticism and intervention.

## 6 Searches and seizures for people with protected characteristics

### 6.1 Introduction

In recent years, a series of research reports (Murray 2014, 2015; Murray and McVie 2016; McVie and Murray 2017) have highlighted the high degree of disproportionality in the use of stop and search amongst children and young people in Scotland. These reports also found that rates of stop and search were higher amongst men than women, and there were some ethnic disparities (although the lack of accurate population data on minority ethnic groups means that no conclusions can be drawn about ethnic bias). During the public consultation on stop and search, there was significant concern about the approach to searching children and young people and how this might impact on their attitudes to, and cooperation with, the police. As a result, Section 7 of the CoP specifically addressed the issue of searches involving children and young people, and Police Scotland provided training for all officers aimed at improving methods of engagement with young people. The training also examined the issue of unconscious bias when dealing with any individuals with other protected characteristics. This section of the report examines whether there have been any changes in the profile of searches following the introduction of the CoP and whether rates of search appear to be disproportionately high and detection rates disproportionately low in respect of any group with protected characteristics, especially children and young people.

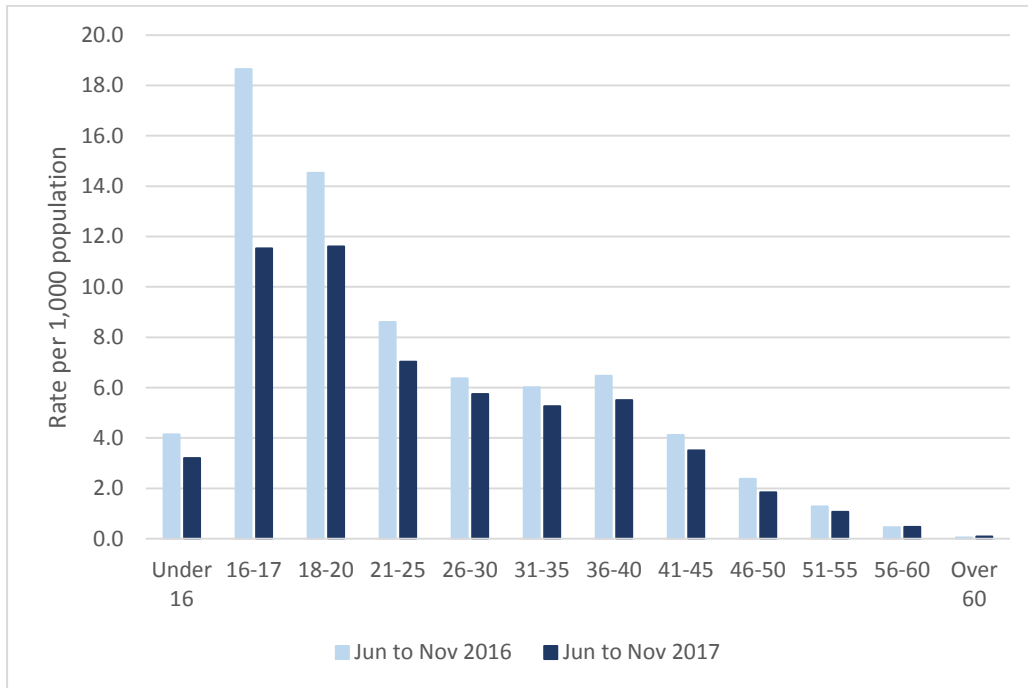
### 6.2 Change in search and seizure rates by age, sex and ethnicity

#### Age

Rates per capita were calculated using the number of searches and seizures across different age groups in order to determine differences in the extent to which these tactics are applied taking account of population size. Figure 11 shows a comparison of search rates by age across a series of different age groups in the six month period after introduction of the CoP and in the equivalent six month period of the previous year. It is clear that during both time points, those aged between 16 and 20 were the most likely within the population to experience a search; however, the rate of search declined markedly within this age group. The search rate amongst 16-17 year olds fell by 38%, which was far greater than any other group and made it on a par with

searches of 18-20 year olds. It is notable, however, that search rates declined for all age groups, which would be expected given the overall decline in numbers of searches. So, while there was still a disproportionate use of search amongst younger people, the evidence suggests that this reduced significantly following the introduction of the CoP.

**Figure 11: Change in rate of statutory search by age group**



**Figure 12: Change in rate of seizure by age group<sup>6</sup>**

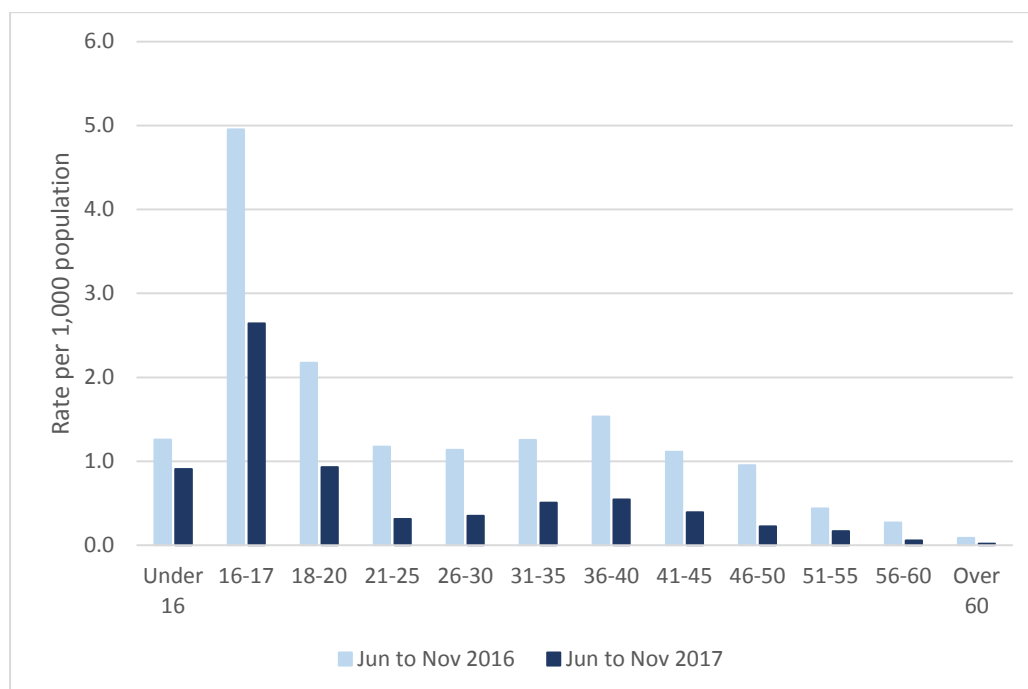


Figure 12 compares the seizure rates by age group during the same two equivalent six-month periods. Seizure rates were much lower than search rates overall; however, the extent of the reduction in numbers after the introduction of the CoP has clearly had an impact across all age groups. There were large percentage declines of 60% or more in seizure rates for all groups over the age of 18. For those under 18, the rate of seizures fell, albeit to a lesser extent. For those aged 16-17 the seizure rate fell by 47% and for those aged under 16 seizure rates declined by only 28%. This is most likely explained by the importance placed by Police Scotland on reducing harm caused by under-age drinking. The fact that the overall change in seizure rates was lower for those aged under 18 than for older age groups in the six months following the introduction of the CoP compared to the equivalent period in the previous year is in line with the findings presented in Table 5, above. Unfortunately, the numbers are too small to examine the change in rates on a month by month basis for so many different age groups.

### Sex

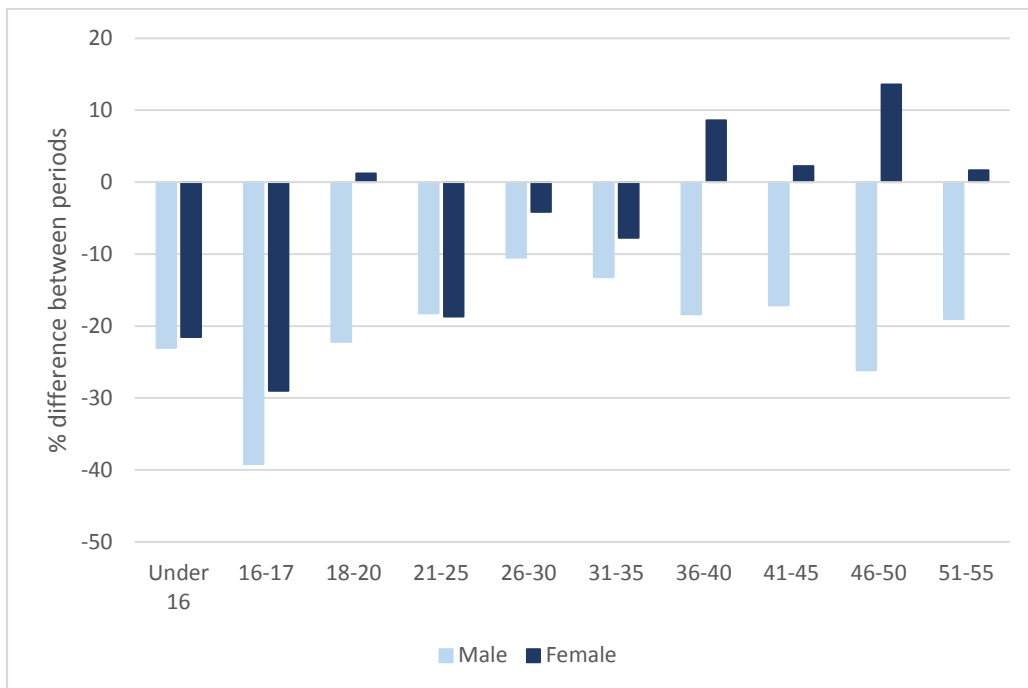
The number of searches and seizures amongst males in the population has always been significantly higher than that for females and this picture did not change following the introduction of the CoP. In the six months since the CoP was introduced, males accounted for 87% of all statutory searches and 79% of all seizures. However, there was a greater decline in the number of both searches and seizures amongst males than females in the six month period following the introduction of the CoP. In fact, the number of statutory searches was 20% lower for

<sup>6</sup> It is not possible to determine how much of the change in rate of seizure for young people is due to a reduction in the use of Section 61 as opposed to a reduction in the use of Local Authority Byelaws as that information was not recorded on the Stop and Search Database prior to the introduction of the CoP.

men but only 5% lower for women in the six month period after the CoP was introduced compared to the equivalent six month period of the previous year; and the number of seizures was 62% lower for men but only 51% lower for women.

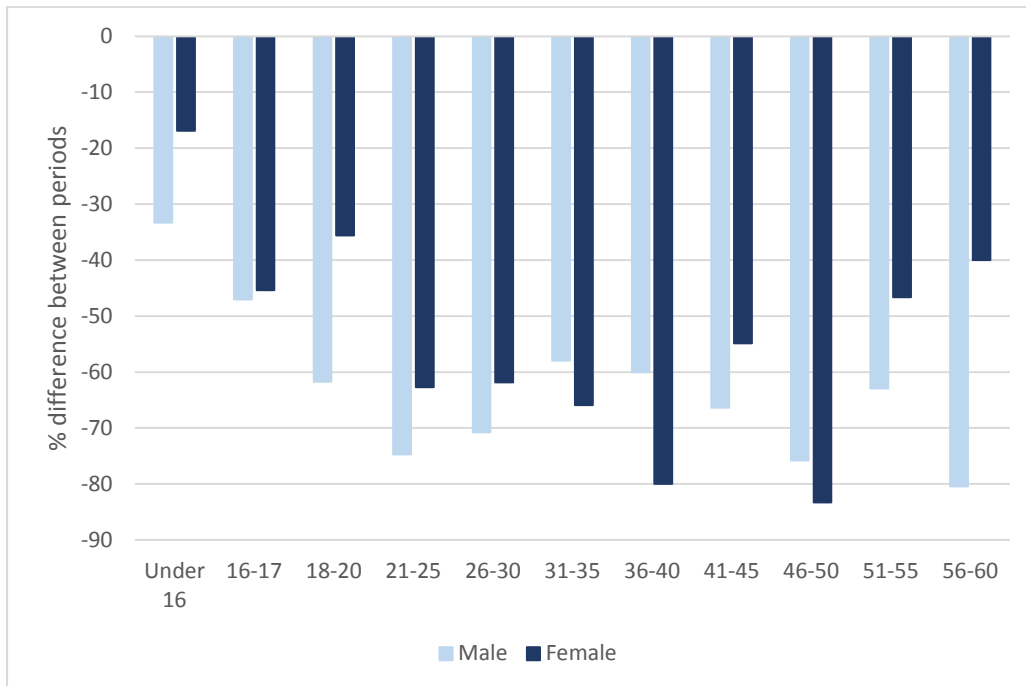
The rates of search and seizure for males and females across the different age groups were broadly similar to those observed in Figures 11 and 12. To identify where there were key differences, Figure 13 shows the percentage difference in the rate of statutory search between June to November 2016 and June to November 2017 by sex and for different age groups. It can clearly be seen that the rate of search declined for men across all age groups, especially amongst those age 16 to 17. The rate of search also declined for women aged under 18 and those aged 20 to 35; however, there were slight increases in the rate of search for other age groups. Further analysis of these figures found that the main reason for the increase amongst women was the introduction of recorded searches under warrant (which was introduced by the 2016 Act). As the number of searches amongst women aged over 35 was very small, the addition of this new category of searches increased the overall total. However, the introduction of searches under warrant for men did not have the same effect because the overall number of searches for men was so much larger.

**Figure 13: Percentage difference in rate of statutory search by age and sex before and after CoP**



The percentage difference in seizures between the two time periods is shown for males and females by age group in Figure 14. Again, caution should be taken in interpreting the figures as some of the numbers are very small (especially for women); however, this chart shows that the rate of seizure declined for both men and women across all age groups. There are some differences in terms of the extent of the difference but, overall, Figure 14 suggests that the changing seizure rate affected both sexes more or less equally.

**Figure 14: Percentage difference in rate of seizures by age and sex before and after CoP**



### *Ethnicity*

As noted in earlier research (Murray 2014; McVie and Murray 2017), the vast majority of searches and seizures in Scotland involve people who self-define as white. This continued to be the case following the introduction of the CoP, with 78% of all searches and seizures involving people who self-defined as white Scottish and a further 9% who stated they were from another white background (e.g. White English or Polish). Overall, 87% of all searches and seizures were recorded as involving a white person in the six months after the CoP came into being, which was a significant reduction in the relative share of all searches from 92% in the equivalent six months prior to the introduction of the CoP. This reduction is mainly accounted for by an increase in the proportion of people for whom the person’s ethnic status was recorded as ‘unknown/not recorded’ (from 2% of all searches and seizures prior to the CoP to 9% afterwards). It is unclear from the analysis presented here why this increase has occurred, so this issue would benefit from further examination in the 12 month review.

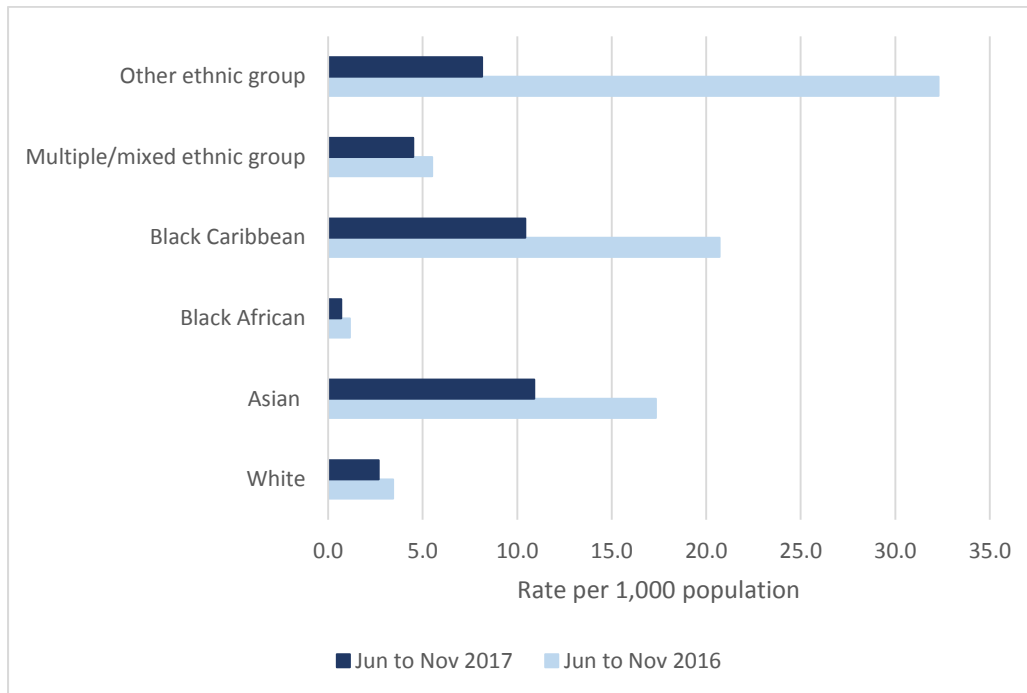
The overall decline in the number of searches and seizures was experienced differentially by those from different ethnic backgrounds. The number of searches and seizures amongst white people declined by 32% from 22,252 to 15,186 between these two time periods. This was a far smaller decline than that for other ethnic groups, however. For example, the number of searches declined by 40% for those defined as Asian, 48% for those defined as Black African and 54% for those defined as Black Caribbean. The proportion of those in the ‘other’ ethnic category declined the greatest amount at 76%, although the numbers were very small. These findings indicate a greater than expected reduction in searches involving those from non-white backgrounds.

When refusals are excluded from the analysis, the relative share of all searches and seizures involving white people actually increased from 94% to 96%. This brings it in line with the estimated proportion of the population from White backgrounds according to the 2011 Census and would suggest that there is no overall ethnic disproportionality at a national level. However, this could only be properly ascertained if more was known about those for whom ethnic identity was not recorded. This issue requires further investigation and should be considered in more detail by the 12 month review.

Looking at the difference in the rate per capita of search by ethnic group in the six month period after the introduction of the CoP compared to the equivalent period in the previous year, Figure 15 reveals the extent of the decline in search rates for the Asian, Black Caribbean and other ethnic group categories. The search rate for all non-white ethnic groups (with the exception of Black African) appears to be higher than that for white people. However, as noted in earlier work (McVie and Murray 2017), caution must be taken in interpreting these rates for three main reasons. Firstly, the actual number of searches involving non-white people is far smaller than that for white people and so rates may be artificially inflated; secondly, the only available national population data for ethnicity is based on data from the 2011 Census which is highly rounded and may be significantly out of date; and thirdly, the stop and search database does not identify individuals who were subject to multiple searches and, therefore, rates may appear greater than they actually are (especially if multiple searches are more common amongst non-white than white people).



**Figure 15: Difference in rate of statutory search by ethnic group before and after the CoP**



### 6.3 Change in positive detections by age, sex and ethnicity

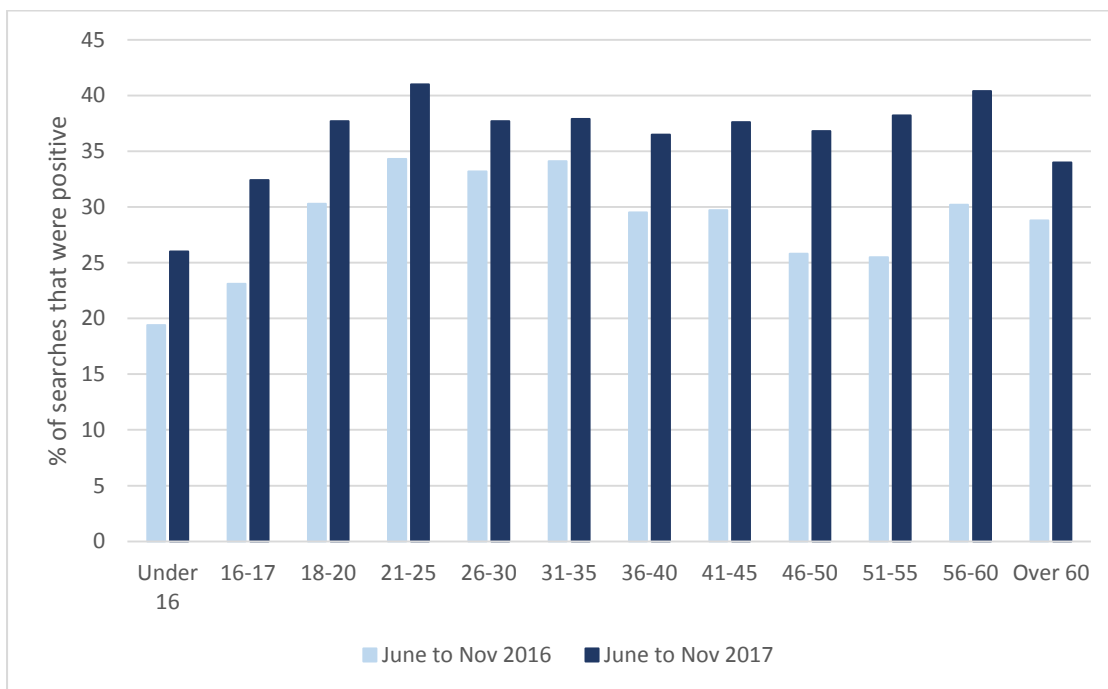
The rates per capita, as set out in the previous section, provide valuable information about the extent to which search and seizure are used for different groups of the population. However, it is difficult to establish anything about disproportionality and fairness without having underlying information about the level of demand on policing caused by different groups. An equally important factor is to examine the extent to which searches result in a positive detection in order to identify whether certain groups may be being searched on the basis of lower levels of suspicion compared to others. As noted in section 2.2, above, the overall detection rate in the six month period after the CoP was introduced was 37%, an increase of 7% on the equivalent period of the previous year. This section of the report examines whether there was any significant change in the detection rate by age, sex and ethnicity following the introduction of the CoP

#### Age

The change in the positive detection rate for statutory searches by age group is shown in Figure 15A. It is evident that the positive detection rate was higher for all age groups following the introduction of the CoP; however, there was a greater proportionate increase for some groups than others. The lowest percentage increase in detection rates was for those aged 26-30 (14%) and 31-35 (11%), while the highest percentage increase was for those aged 46-50 (43%) and 51-55 (50%). There was also a large increase in positive searches amongst young people of 34% for those aged under 16 and 40% for those aged 16-17. These findings suggest that the overall reduction in number of searches since the introduction of the CoP has resulted in more positive outcomes across all age groups. Moreover, the greatest improvement in positive outcomes has occurred amongst those age groups for which

the positive rate was previously lowest, which has resulted in greater equality across age groups – especially for those aged 18 or over. This suggests that the requirement for reasonable suspicion is being applied more evenly amongst adults. Nevertheless, there is still room for improvement in increasing the positive search rate amongst children and young people.

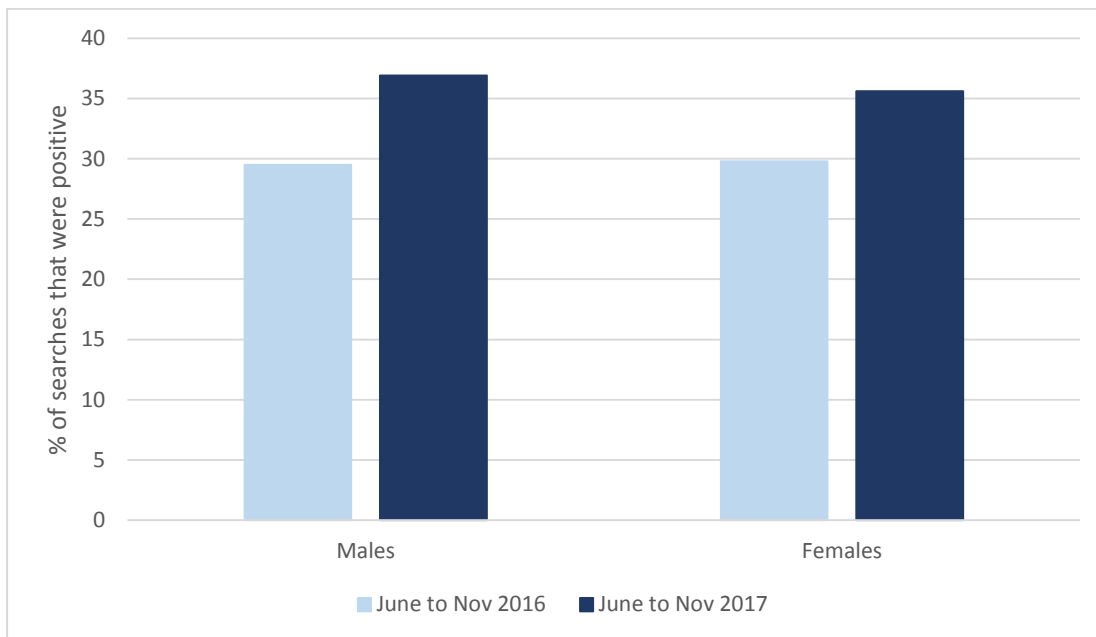
**Figure 15A: Percentage change in positive statutory searches by age group before and after CoP**



### Sex

The proportion of all statutory searches resulting in a positive detection also increased for both males and females. Figure 16 shows that in the six months following the introduction of the CoP the percentage of positive detections increased for both males and females. Overall, there was no significant difference in the positive detection rate between males and females at either of the two time periods. Therefore, although the overall rate of search declined more for males than for females, there is no indication that this resulted in a biased approach to decision making.

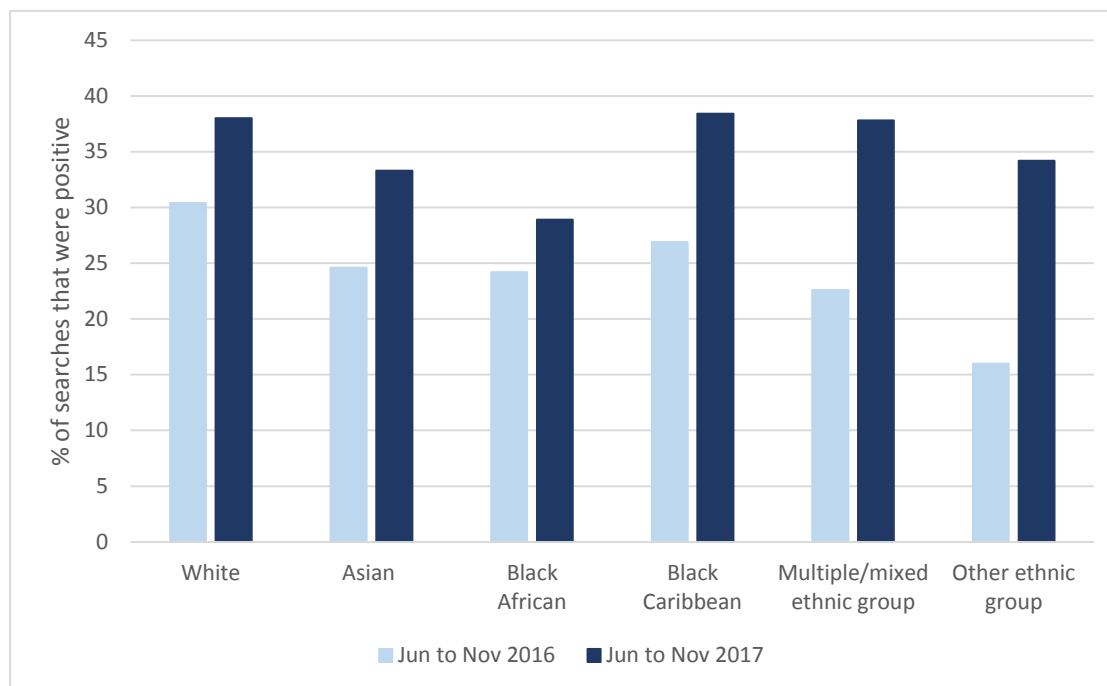
**Figure 16: Percentage change in positive statutory searches by sex before and after CoP**



### *Ethnicity*

There was also an increase in positive detection rates for statutory searches involving all ethnic groups, as shown in Figure 17. The percentage increase in detections following introduction of the CoP was lowest for searches involving Black African (19%) and white (25%) people and highest for multiple/mixed groups (67%) and those from other ethnic minorities (114%), although the numbers in these groups were very small. Again, therefore, the significant reduction in the number of searches amongst ethnic groups coincided with a large increase in the likelihood of a positive detection, which suggests that there were improvements in decision making around reasonable suspicion.

**Figure 17: Percentage change in positive statutory searches by ethnicity before and after CoP**



#### 6.4 Evidence from Calls for Feedback

According to the Police Scotland report (see Appendix 1), there were no specific issues raised by police officers about difficulties in the use of search or seizure as a result of protected characteristics, other than those discussed earlier in this review relating to searching young people for alcohol.

#### 6.5 Summary

A series of research reports have highlighted disproportionality in the use of stop and search amongst children and young people. Therefore, this review examined whether the introduction of the CoP had resulted in any change in terms of the use of search for those of certain ages or other groups with protected characteristics. Only three variables were available for analysis in the Stop and Search Database: age, sex and ethnicity. The analysis found that levels of search had reduced across all ages and, while young people in their mid to late teens continued to be the most likely group to experience a search, the degree of disproportionality in terms of targeting these groups had significantly declined in the period following the introduction of the CoP.

Rates of seizure had also declined significantly across all age groups; however, the seizure rates had declined less for young people under the age of 18 than for older people, most likely due to continued concern about policing alcohol-related harm amongst young people in Scotland. The total number of searches and seizures had also declined for both males and females following the introduction of the CoP. For some older age groups the rate of search had increased for females, although this was mainly due to the introduction of searches under warrant which inflated existing small numbers. In terms of ethnicity, searches and seizures predominantly involved white people both before and after the introduction of the CoP. There was evidence

that the rate of searches for non-white people had declined across all ethnic groups, and that the level of search now broadly matched the population figures. Nevertheless, search rates per capita appeared to be higher for non-white ethnic groups than for white people, although there are strong health warnings around the calculation of population rates using ethnicity data. There was a large increase in the proportion of cases for which ethnicity was recorded as 'unknown/not provided' which is deserving of further consideration in the 12 month review.

Differences in absolute levels of search are not necessarily problematic if the detection rates do not indicate biased decision making practices. In this review, there was a significant increase in the positive detection rates for all age groups after the introduction of the CoP, particularly for the under 18s and those aged over 45 (for whom positive rates had previously been lowest), although there is still room for improvement with regards to young people under 18. There was also a significant increase in positive detection rates for both men and women, with no difference between the sexes. Detection rates also improved amongst all ethnic groups, especially those from multiple/mixed groups and other ethnic minorities, although numbers in these groups were small. Overall, these findings indicate that the reduction in the number of searches following the introduction of the CoP has coincided with an increase in the positive outcome of such encounters, and that this is true across all groups with protected characteristics.

*Recommendations for the 12 month review:*

9. To examine the disproportionality in the use of stop and search amongst young people under the age of 18 and the lower positive search outcome amongst this group.
10. To examine the reasons for the increase in the recording of ethnic status as 'unknown/not recorded'.

## 7 Predicting positive search outcomes

### 7.1 Introduction

The analysis conducted so far has relied on a descriptive examination of change in the relationship between positive outcome and protected characteristics (age, sex and ethnicity) since the introduction of the CoP. However, there are a range of other factors that might have impacted on the success of searches, including when, where and why it took place. In addition, it is impossible to tell whether there may have been other unobserved changes in police approaches to searching that occurred as a result of the introduction of the CoP which had an independent effect on improving the success rates. Therefore, it is important to examine what had the biggest influence on detection rates. This was done using 'regression analysis' – a technique that enables the influence of multiple factors on an outcome (i.e. a positive search) to be tested simultaneously. A specific aim of this analysis was to establish whether the introduction of the CoP had an effect on the positive detection rate which was over and above that of the other factors that are known to influence detection. The results of this analysis are presented below.

### 7.2 Factors included in the regression model

A set of potential 'explanatory variables' that were likely to have an influence on the outcome of the search were identified. Within the stop and search database there is a limited number of variables available and it is likely that certain factors influenced detection rates that cannot be accounted for here. Nevertheless, three sets of factors were considered, as detailed below:<sup>7</sup>

1. The protected characteristics of the person who was searched:
  - Sex (reference category: Female)
  - Age group (reference category: 16-17 years)
  - Ethnic group (reference category: White)
  
2. Factors relating to the nature of the search itself:
  - Day of the week (reference category: Saturday)
  - Time of day (reference category: 6pm-midnight)
  - Reason for search (reference category: Drugs)
  - Division (reference category: Greater Glasgow)
  
3. The time period of the search:
  - Before or after the CoP was introduced (reference category: Before the CoP)

The results of a regression model are expressed in terms of odds. This means that a value greater than one suggests that there are increased odds of a positive search

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<sup>7</sup> Note that when regression analysis is conducted, it is essential to have a reference category against whom the other groups are compared (these are noted below). The choice of reference category does not skew the results of the analysis although it has implications for how the data should be interpreted.

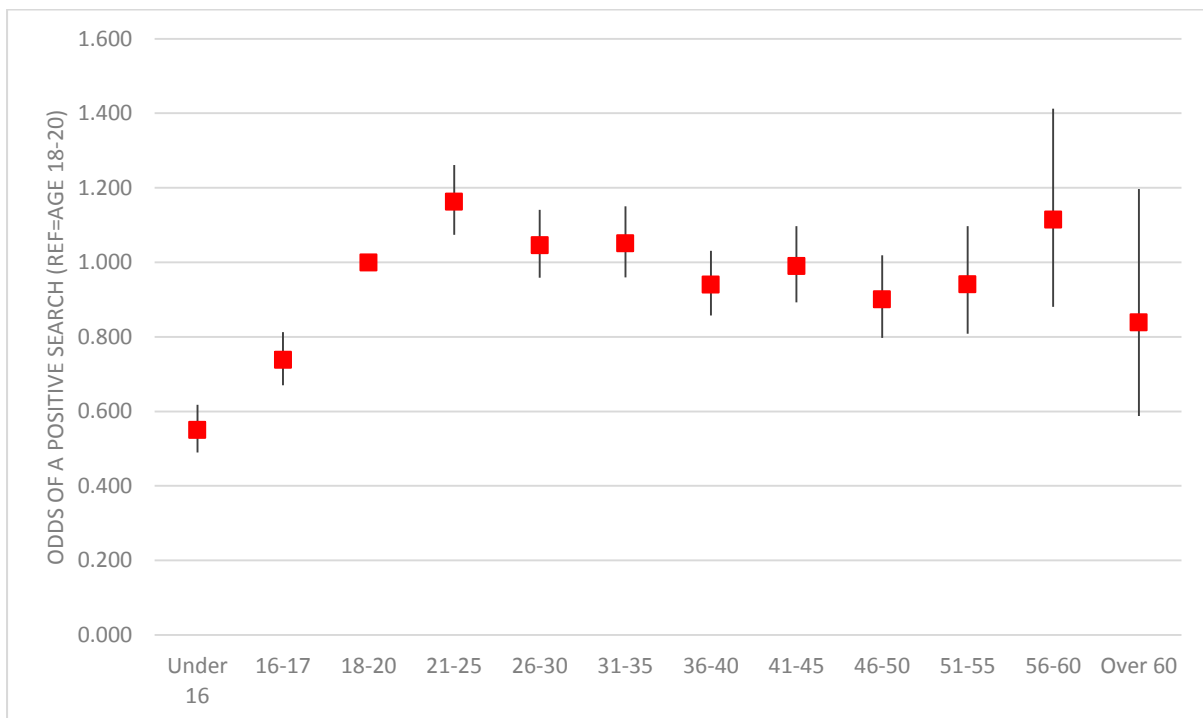
due to the presence of a particular variable, while a value less than one suggests that there are decreased odds of a positive search in the presence of a particular variable. A value of one would suggest that the particular variable has no effect on whether or not the search results in a positive outcome. As all variables are tested simultaneously, the odds for any one factor are interpreted as being true when all the other variables in the model are held constant at their average values. Confidence intervals at the 95% level are included in the models to determine significant differences between the values of any one variable (e.g. differences between age groups).

### 7.3 Results of the regression model

Looking first at the protected characteristics, the regression model found that the odds of a search being positive were not significantly different for males and females when all other factors in the model were taken into account. In other words, the fact that there were more searches of males than females did not appear to result in any inequality in terms of effectiveness.

There was a significant difference in whether or not a search was likely to be positive based on the age of the person being searched. Figure 18 shows that searches of those aged under 18 had lower odds of resulting in a positive outcome than those of older people, even when all the other factors in the model were taken into account. This suggests that, even though the number of searches has declined markedly for this group, it appears that the decision to search younger people may still apply a lower threshold of reasonable suspicion than for those who are older.

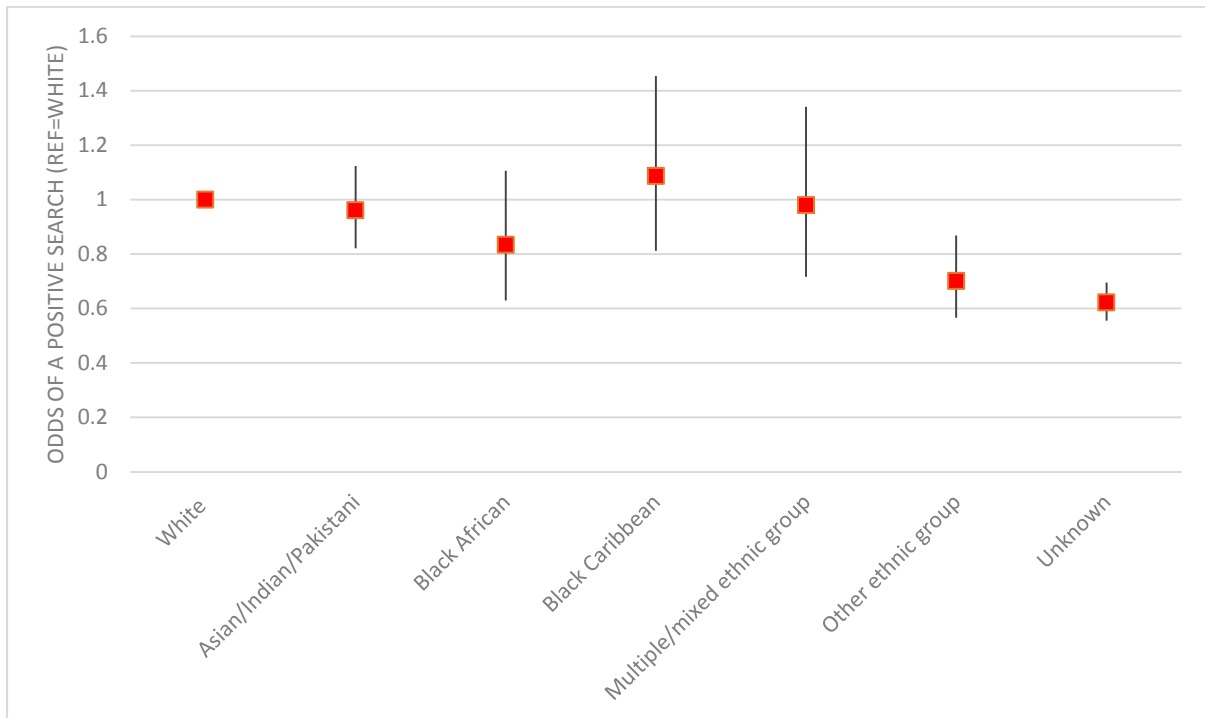
**Figure 18: Regression model predicting a positive search by age, controlling for other factors**



There was no significance difference in the likelihood of a positive detection between searches involving white people and those from Asian, Black African, Black Caribbean or multiple/mixed ethnic backgrounds. Even though they were relatively small numbers, Figure 19 shows that the odds of a positive search was significantly lower for those from other ethnic groups or from those whose ethnicity was unknown compared to white people, even when taking account of many other factors. In other words, there may also be a lower threshold of suspicion used in searching people from these categories. Further work needs to be done to establish the ethnicity of people included in the 'unknown' category.



**Figure 19: Regression model predicting a positive search by ethnicity, controlling for other factors**

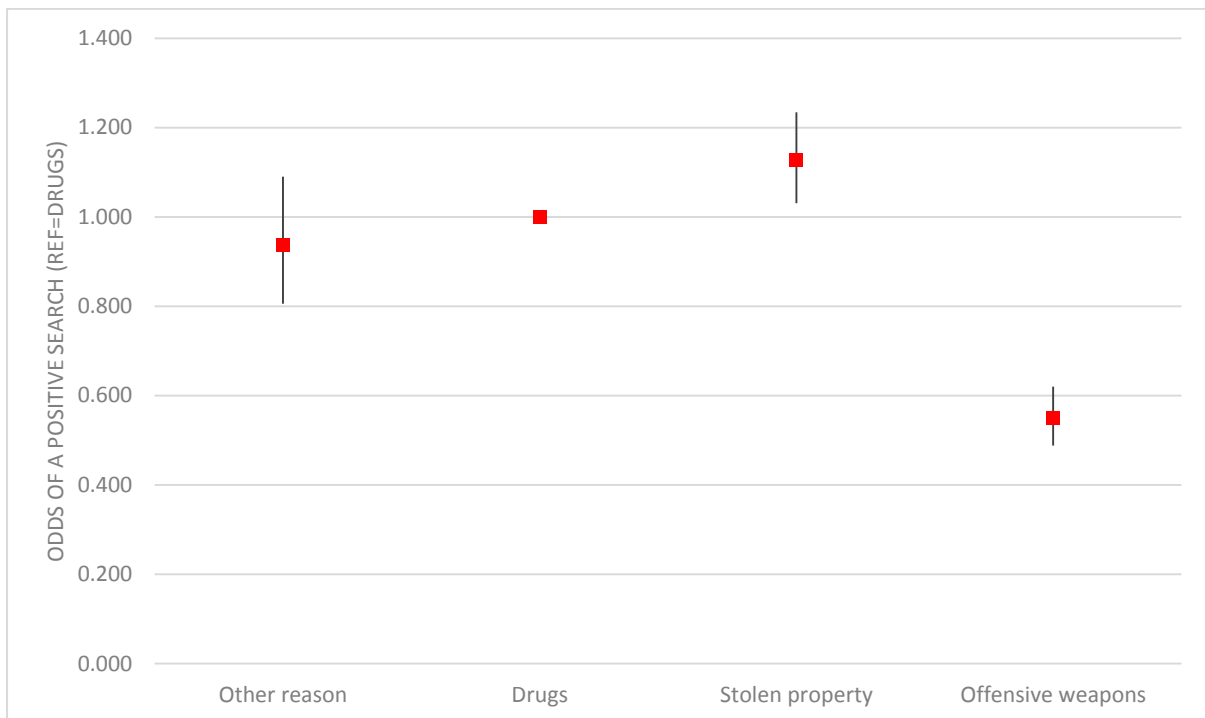


Turning now to the factors relating to the search itself, there was some difference in the likelihood of a positive search based on day of the week and time of the day. Searches conducted on Thursday to Sunday had greater odds of resulting in a positive outcome than those that happened on Monday to Wednesday, although the differences were not extensive.

Furthermore, searches that happened in the evening (6pm to midnight) had greater odds of resulting in a detection than those that occurred in the afternoon (midday to 6pm), which were in turn more likely to result in a detection than those that occurred between midnight and 12pm. These findings suggest that officers are more successful in detecting items during periods that would typically be associated with criminal or anti-social behaviour, whereas at 'quieter' times of the day or on 'less busy' days of the week they may waste time and resources conducting less successful searches.

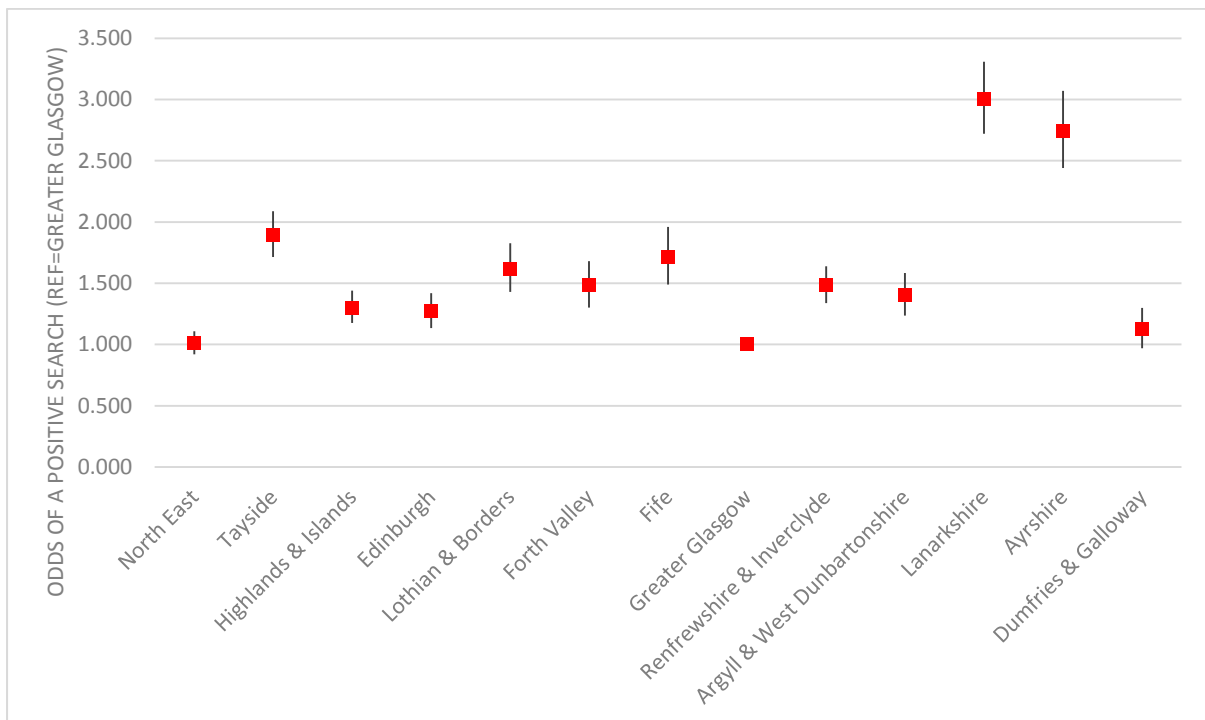
Searches for stolen property had greater odds of resulting in a detection than those for drugs, as shown in Figure 20, even though drug searches made up the vast majority of all searches overall. Whereas searches for offensive weapons were by far the least likely to result in a positive outcome compared to all other search types, even when taking account of other factors that determine success. This suggests that a lower threshold of suspicion is used for weapon searches.

**Figure 20: Regression model predicting a positive search by reason for search, controlling for other factors**



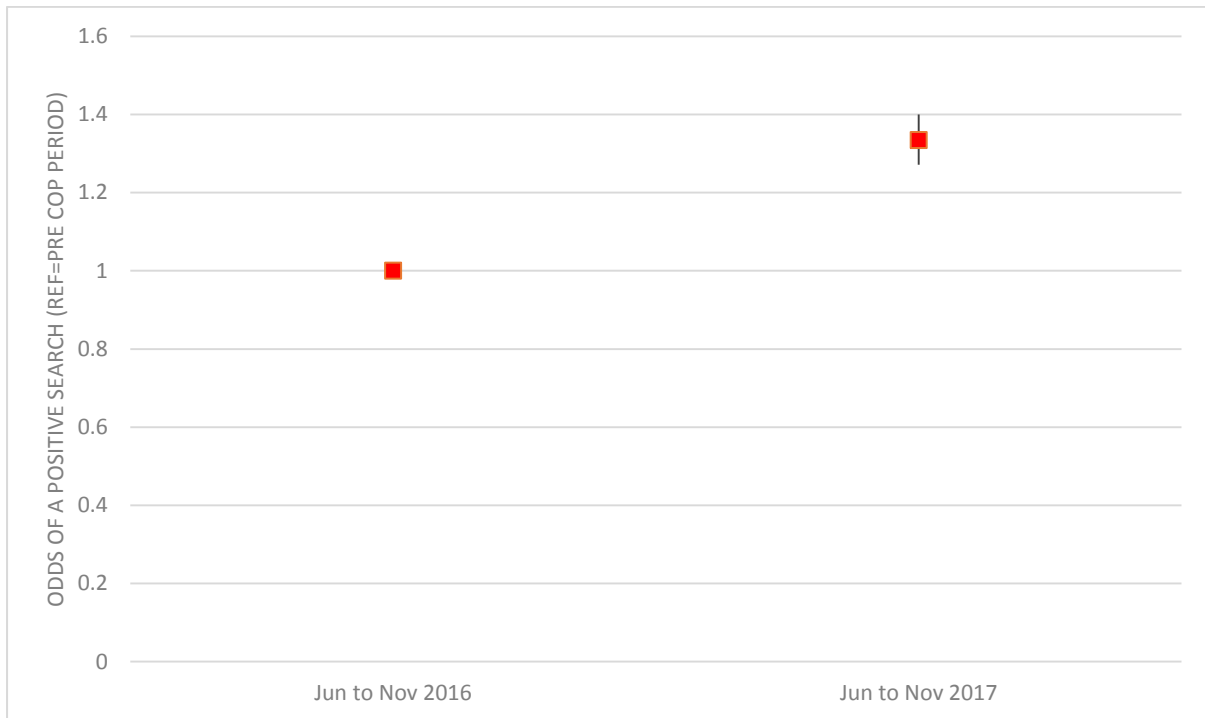
There were some distinct differences in positive detection rates between different police Divisions. Figure 21 shows that, during the period studied, holding all other factors constant, Lanarkshire and Ayrshire Divisions recorded the highest odds of a positive outcome compared with all other Divisions. Greater Glasgow, the North East and Dumfries and Galloway had the lowest odds of positive detection, even when a wide range of other factors had been taken into account. The majority of Divisions had a detection rate greater than that for Greater Glasgow. These findings indicate that, even when controlling for a variety of factors that impact on positive outcome, there are geographical differences that are not explained by the data analysed here. This is deserving of further examination in the 12 month review.

**Figure 21: Regression model predicting a positive search by police Division, controlling for other factors**



Finally, Figure 22 reveals that searches conducted in the six month period following the introduction of the Code of Practice had significantly greater odds of resulting in a positive detection than those in the equivalent six month period of the previous year. Indeed, the odds of a positive detection were increased by around 33% in the period after the CoP came into being compared to the prior year. This finding was highly significant, even when all the other factors that can impact on a positive detection were held constant. In other words, it appears that there were other changes during the period following the introduction of the CoP that impacted on improving detection rates that were not measured by the data used in this model. This could include greater application of the rules of suspicion or more careful use of engagement with individuals prior to proceeding to search. These issues would benefit from further investigation through qualitative research as part of the 12 month review.

**Figure 22: Regression model predicting a positive search by time period, controlling for other factors**



#### 7.4 Summary

Regression analysis was conducted to examine the impact of three different aspects of searches on the odds of a positive outcome: the protected characteristics of the person who was searched; the factors relating to the search itself; and the time period of the search. A key aim of this analysis was to establish whether the introduction of the CoP had an effect on positive outcomes which was over and above that of other factors that influence detection. The results showed that positive outcomes varied significantly by age and, to a lesser extent, ethnicity but not by gender, when other factors were taken into account.

The success of searches was also influenced to some extent by the time of day and day of the week they were conducted in, with evidence that some periods of activity are more productive than others. Successful detection was found to be greater in the case of searches for stolen property than drugs, but searches for offensive weapons were far less successful than any other type of search. Even taking account of these other factors, there were considerable differences in the likelihood of a successful outcome based on the Division in which the search took place. Ayrshire and Lanarkshire stood out as especially successful, with around three times greater odds of a search being positive compared to Greater Glasgow. These continued geographical differences would benefit from further evaluation in the 12 month review.

Finally, searches that were conducted in the six month period following the introduction of the Code of Practice were around 33% more likely in terms of odds to result in a positive detection than those in the equivalent six month period of the

previous year. This is despite the fact that all the other factors influencing a positive detection were taken into account. Therefore, it appears that there has been a real, measurable improvement in the likelihood of a positive search during the period following the introduction of the CoP. It cannot be determined from this interim review what other factors might have led to this improvement; therefore, this would benefit from further investigation through qualitative research as part of the 12 month review.

*Recommendations for the 12 month review:*

11. To examine generally how practice in relation to search and seizure has changed within police Divisions as a result of the introduction of the Code of Practice and why this has led to an increase in positive search rates.

## 8. Conclusions and Recommendations

In early 2015, the Cabinet Secretary for Justice in Scotland, Michael Matheson MSP, established an Independent Advisory Group on Stop and Search (IAGSS) to conduct a detailed review of police use of this tactic in Scotland and consider whether there was need for a Code of Practice (CoP). Following an extensive period of deliberation and a series of recommendations from the IAGSS to the Cabinet Secretary, new legislation was enacted through the Criminal Justice (Scotland) Act 2016 and a CoP came into force on 11<sup>th</sup> May 2017. The Cabinet Secretary requested that a full review be carried out 12 months after the CoP was introduced, with an interim six month review to provide an early evaluation of the new legislation and CoP. This report provides the findings of the interim six month review. It examines changes in the use of stop and search and powers of seizure by Police Scotland from June to November 2017 and makes comparisons to the 12 months preceding the introduction of the CoP. The two main objectives of the review process were to determine the overall success of the CoP and consider whether there were any gaps in legislative provision; and to provide recommendations for areas of research to be considered in the 12 month review. The scope of the six month review covered four main areas:

- i. Identify potential gaps in the legislation around young people and alcohol
- ii. Identify other potential gaps in the legislation or lack of clarity in the Code of Practice
- iii. Identify any increase in the use of Section 60 Criminal Justice and Public Order Act 1994
- iv. Examine use of search involving individuals with protected characteristics

### *Change in use of search and seizure*

The review found that the introduction of the CoP on police use of stop and search did not have a dramatic impact on policing at the time of its implementation in May 2017 or in the six months afterwards. This was mainly because the high level of criticism targeted at the over-use of searching practices in Scotland in the preceding two years, followed by an intense period of scrutiny and the decision to abolish consensual searching and introduce a CoP, had already changed policing practice and driven down the number of encounters well before the CoP came into force.

Importantly, the decline in the number of searches did coincide with a significant increase in positive outcomes, which suggests that they are now based on a higher threshold of reasonable suspicion and, therefore, being used more effectively. However, there was a much greater decline in the use of alcohol seizures than expected, especially in the West of Scotland, which is surprising given the concerns expressed by policing representatives and other organisations in the public consultation period about the lack of a legal power to search for alcohol. In addition, there continues to be enormous geographical variation in the use of search and seizure. There has been a much higher proportionate decline in searches and seizures in the West of Scotland compared to the North (which remained fairly stable) and the East (which slightly increased) following the introduction of the CoP.

The picture with regards to differences across Divisions is complex, however, and it is clear that the introduction of the CoP has had a differential impact on policing practice and positive outcomes between areas of Scotland.

New information published on the Stop and Search Database revealed that there were around 131 strip searches per month, on average, of which only 4% involve people under the age of 18. These had a higher than average detection rate, at 47%, which suggests that a high threshold of reasonable suspicion is used when deciding to conduct a strip search. No intimate searches were used in Scotland since the introduction of the CoP. There is also new information on the use of receipts following a search. This shows that receipts were issued following 87% of all searches, although this varied according to a range of factors, including the Division in which the search was conducted. Certain Divisions were far more likely to issue receipts than others, which may be related to population size and level of police demand.

### *Young people and alcohol*

Although the police in Scotland have a power to request the surrender of alcohol under Section 61 of the Crime and Punishment (Scotland) Act 1997, they do not have the power to search a young person for alcohol in a public place even if an officer suspects it to be concealed (for example, in a jacket or bag). Prior to the introduction of the CoP, Police Scotland highlighted that policing incidents involving young people and alcohol could prove problematic and could result in an increased use of arrest where individuals were unwilling to surrender alcohol. The evidence analysed for this review indicated that alcohol consumption amongst young people has been on a long-term decline and there was little or no suggestion of a significant increase in alcohol-related incidents involving young people following the introduction of the CoP, either from Police Scotland data or NHS data, at a national level. The trends were not consistent across police Divisions, with some showing evidence of an increase or decrease in recorded incidents involving young people and alcohol, while others were fairly stable. However, the use of seizures was not always consistent with these trends, which does raise questions about the extent to which police powers are being used where necessary.

The expected increase in the use of alcohol seizures following the pressure to reduce consensual searching occurred soon after the publication of the HMICS report in 2015. However, this review found that there has been an ongoing decline in the use of powers to seize alcohol since May 2016. This was true across all age groups except those under 18, for whom seizures declined at a much slower rate until April 2017. Since the introduction of the CoP, trends in the use of alcohol seizures amongst young people have continued to decline, especially in the West of Scotland where there is a long history of alcohol related problems amongst young people. It is unclear why this is the case.

There was no evidence that statutory searches were being used inappropriately or indirectly to search for alcohol. However, police officers provided examples of problematic incidents which involved policing young people and alcohol without an express power of search, especially with reference to large crowds or major

unorganised events, which cannot be dealt with under Section 67 of the Criminal Justice (Scotland) Act 2016. Officers have been reluctant to resort to arrests to remove alcohol from young people which has avoided criminalising many; however, the number of recorded seizures is not consistent with the claims that they are used extensively (e.g. in the example of the Ayrshire beach case study). There is a need for further information to understand the patterns of search in relation to alcohol related problems within specific Divisions and to consider the additional benefit that would be obtained through having the power to search.

#### *Use of Section 60 authorisations*

Prior to the introduction of the CoP, there was concern about an increase in searches by Police Scotland under Section 60 of the Criminal Justice and Public Order Act 1994, or so-called 'no suspicion' searches. However, the review found that there had been only one authorisation under Section 60 since the implementation of the CoP. There is, therefore, no evidence that Section 60 authorisations have been used as a way of creating wider opportunities for search under the CoP, which was one of the criticisms of stop and search in England and Wales.

#### *Potential legislative gaps*

Section 65 of the Criminal Justice (Scotland) Act 2016 stipulated that officers must use an explicit power of search. Prior to the introduction of the CoP, policing representatives raised concerns about possible gaps or ambiguities in the legislation, specifically in relation to the lack of a power to search in situations where they needed to intervene to preserve life. There was very little change in the use of the various existing statutes in the six month period following the introduction of the Code of Practice compared to the equivalent period in the previous year. However, between June and November 2017 there were 22 incidents in which officers intervened to protect life under Sections 20 & 32 of the Police and Fire Reform (Scotland) Act 2012 in which a search was recorded. Although small in number, these represent extremely serious and often distressing cases, and the numbers were similar in scale to searches carried out under other legal statutes. The lack of a specific search power to protect life was the most common issue highlighted by police officers during the initial six months of the implementation of the CoP. Other issues raised as potential legislative gaps included the power to search for weapons in a non-public location, including dwellings and vehicles; and the power to search for pyrotechnics and flares when individuals are travelling to major sporting or other events. Following this review, there is clearly a need to collect further evidence around these issues.

#### *People with protected characteristics*

A key aspect of the six month review was to examine changes in the use of search for those with protected characteristics (age, sex and ethnicity). Evidence showed that levels of search had reduced across all ages and, while young people continued to be the most likely group to experience a search, the degree of disproportionality in terms of targeting these groups had significantly declined in the period following the



introduction of the CoP. Rates of seizure had also declined significantly across all age groups; however, the seizure rates had declined less for young people under the age of 18 than for older people, most likely due to continued concern about policing alcohol-related harm amongst young people in Scotland.

The overall number of searches and seizures had declined for both males and females following the introduction of the CoP, although for some older age groups the rate of search had increased for females. This was predominantly due to the introduction of recording for searches under warrant which inflated existing small numbers. In terms of ethnicity, searches and seizures predominantly involved white people both before and after the introduction of the CoP. The rate of searches had declined across all non-white ethnic groups, such that the level of search now broadly matches the population figures. There was a significant reduction in search rates per capita for all ethnic groups, although they were still somewhat higher for non-white ethnic groups than for white people. It should be noted that the population data used to calculate rates per capita are unreliable and no conclusions as to ethnic bias can be drawn from these findings. There was a large increase in the proportion of cases for which ethnicity was recorded as 'unknown/not provided' which is deserving of further consideration.

An important factor in determining the success of the CoP was to examine rates of positive outcome, as this is an indicator for greater effectiveness and a higher threshold of reasonable suspicion. This review found a significant increase in the positive detection rates for all age groups after the introduction of the CoP, particularly amongst those for whom positive rates were lowest prior to the CoP. This included young people aged under 18, although there was still room for improvement with regards to increasing positive outcomes for this group. Positive detection rates also increased for both men and women and amongst all ethnic groups. Overall, this review suggests that the reduction in the number of searches following the introduction of the CoP has coincided with an increase in the positive outcome of such encounters across all groups with protected characteristics.

#### *Predicting a positive search outcome*

Looking in more detail at the likelihood of achieving a positive outcome, this was found to be predicted strongly by age, but less so by ethnicity and not at all by gender. The success of searches was also influenced to some extent by the time of day and day of the week in which they were conducted, with evidence that some periods of police activity are more productive than others. Searches for stolen property were more likely to result in a positive outcome than those for drugs, but searches for offensive weapons were the least successful type of search. Even taking account of these other factors, there were considerable differences in the likelihood of a successful outcome based on the Division in which the search took place. Ayrshire and Lanarkshire were especially successful, with around three times greater odds of a search being positive compared to Greater Glasgow. These continued geographical differences would benefit from further examination.

Finally, looking more specifically at the impact of the Code of Practice, this review found that searches were around 33% more likely to result in a positive detection than those in the equivalent six month period of the previous year. This indicates that there has been a real, measurable improvement in the likelihood of a positive search during the period following the introduction of the CoP. There is a range of possible explanations for this, including increased police confidence, greater targeting of reasonable suspicion and better use of engagement, thus reducing the necessity to search in cases that would be unlikely to be productive. This interim review cannot determine the extent to which these reasons might explain the improvement in success rates, so this would strongly benefit from.

#### Recommendations for the 12 month review

1. To examine the reasons for the geographical differences in the changing patterns of search and seizure based on police Division.
2. To examine the reasons for the geographical differences in rates of positive search based on police Division.
3. To examine the reasons for the non-issue of receipts to people who have been subject to search and to consider the geographical differences in issuing receipts between police Divisions.
4. To examine the sharp decline in the use of alcohol seizures within the West of Scotland, and in Greater Glasgow in particular, and to explain this against an apparent backdrop of increasing alcohol-related incidents amongst people aged under 18.
5. To examine the extent to which evidence exists to support the need for a power to search young people for alcohol, especially in relation to large unplanned events.
6. To examine the extent to which evidence exists to support the need for a specific power to search people in circumstances where it is needed to protect life.
7. To examine the extent to which evidence exists to support the extension of powers to search vehicles or people in private dwellings.
8. To examine the extent to which evidence exists to support the need for powers to search for pyrotechnic articles in public places.
9. To examine the disproportionality in the use of stop and search amongst young people under the age of 18 and the lower positive search outcome amongst this group.
10. To examine the reasons for the increase in the recording of ethnic status as 'unknown/not recorded'.
11. To examine generally how practice in relation to search and seizure has changed within police Divisions as a result of the introduction of the Code of Practice and why this has led to an increase in positive search rates.

## Appendix 1: Police Scotland Report on Calls for Feedback

### Extract from Police Scotland's Stop and Search Code of Practice Review (June – November 2017)

#### POLICE SCOTLAND 'CALL FOR FEEDBACK'

The 'Call for Feedback' allows officers to share their experiences using stop and search, highlight any issues they identify and allows the NSSU to address areas for improvement through discussions with frontline officers or, where required, provide additional guidance or training. In addition the NSSU's 100% review of stop and search records and a sample of daily 'incidents of note' has provided further opportunities for feedback. The ongoing review and call for feedback has generated 71 incidents / pieces of feedback contributing to the review which is explored in more detail below to help demonstrate the impact of the code.

The following table gives an indication of the categories and related quantities of the evidence identified from officers:

<b>Evidence Type</b>	<b>Count</b>
Protecting Life	27
Alcohol	6
Weapons	10
Searching for Evidence	16
Searching at Events	1
The Code of Practice	11
<b>Grand Total</b>	<b>71</b>

#### Protecting Life

The main theme emerging from the 'call for feedback' relates to the use of police powers of search to protect life or in circumstances where a person at that time is vulnerable. In total, 27 pieces of evidence have been gathered in relation to police powers of search for the purpose of protecting life or when it is necessary in the interest of an individual's welfare at the time.

The searching of a person to protect life is considered lawful in accordance with an officer's power to intervene under Section 20 & 32 of the Police and Fire (Reform) (Scotland) Act 2012 to protect life, property or improve the safety and wellbeing of persons. Searching people to protect life or due to an individual's vulnerability has generated the greatest amount of feedback. This is likely down to Section 65 of the Criminal Justice (Scotland) Act 2016, which provides that a search power in express terms by enactment is required for the police search of a person out with custody to be lawful.

In 12 of the 27 incidents officers made arrests of individuals who had committed a crime, who at the same time were vulnerable or became vulnerable after the commission of a crime. Officers have the power to search an arrested person, which might otherwise not have been available solely based on a person's vulnerability.

The remaining 15 occasions involved conveying vulnerable people from one place to another either voluntarily or under the Mental Health (Care and Treatment) (Scotland) Act 2003 and any search was therefore made lawful under Section 66 of the Criminal Justice (Scotland) Act 2016. The purpose of this type of search is to locate items potentially harmful to the individual, the officers or others.

## **Alcohol**

Officers have fed back 6 pieces of evidence collated on stop and search and alcohol relating to whether there should be a police power to search children and young people for alcohol. Two pieces of evidence relate to policing beaches and train stations in Ayrshire on 18 July 2017 (the circumstances of which should be considered along with the related case study below). The first specifically highlights a 17 year old male consuming alcohol in public being arrested for 'obstructing' the police, having refused to surrender the alcohol in his possession. The second from a police constable also on duty that day at the same location who highlights hundreds of youths concealing alcohol in their bags during this time and that many of these youths do this with the knowledge that the police have no power of search. The evidence also highlights that a police power (conditional or otherwise) of search in such circumstances may have helped prevent disorder reaching the level and seriousness it did on the day.

The third piece of evidence compares the circumstances experienced in Ayrshire on 18 July 2017 with other 'planned' events such as sporting events and concerts. The salient point being that the circumstances in all cases can be largely similar, but planned events and concerts benefit from the statutory police power to search people in accordance with Section 67 of the Criminal Justice (Scotland) Act 2016 in the interest of public safety.

The remaining 3 scenarios involved police interaction with crowds (between 10 – 100) young people and acknowledge that, although police powers to require alcohol to be surrendered are available to officers along with a conditional power of arrest (upon refusal to surrender the alcohol), it is not always practicable to do so (arrest) when dealing with such large numbers. Officers also expressed concerns when suspecting young people to be in possession of alcohol in bags, but where those young people deny possession, officers are reluctant to proceed to arrest to confirm their suspicion. (This is closely linked to what does and does not constitute a search and is closely linked to other feedback on whether the Code should define what constitutes a stop and search).

Officers feel the arrest of a young person in such circumstances, even in accordance with Section 61 Crime and Punishment (Scotland) Act 1997, is at odds with current policy on dealing with children and young people. This may go some way to explaining why only 2 young people have been arrested for contravening the requirement to surrender alcohol in accordance with Section 61.

## Case Study – Ayrshire – July 2017

During July 2017 at beaches in South and North Ayrshire, several thousand people, many under the age of 18 travelled to Ayrshire by train with the intention of having a party on the beaches. This was communicated via social media and it was evident many were in possession of and / or drinking alcohol.

Police Scotland used social media to quickly communicate a firm policing stance on public drinking and related legislation with there being a visible policing presence at train stations for arrival of large numbers of people. The officers deployed quickly realised the implications of the volume of people attending and the limitations of legislative powers to seize alcohol from people and the absence of a power of search. Due to the volume of people in possession of alcohol appearing under 18 years of age and levels of intoxication, officers had individuals surrender the alcohol as they alighted from trains and liaised with local off sales premise to limit the sale of alcohol to people arriving in the towns.

In the circumstances taking the personal details of all people involved would have been a risk to safety at the station platform given the significant crowding of the trains. Additionally the time taken to note personal details and provide stop and search receipts, as per the Code, would have created a disproportionate focus on process to the detriment of individual's personal safety and engagement with those travelling by train.

Whilst the Code acknowledges that there may be exceptional circumstances which make it wholly impracticable to provide a receipt or even make a record of the search, this incident has highlighted some important points in relation to police powers of seizure and search. Spontaneous events such as this are problematic to police with the limited powers available in the circumstances outlined. (Reliant on the surrender of alcohol / no power to search for alcohol).

Since the Code came into effect, planned events are afforded powers of search from section 67 of the Criminal Justice (Scotland) Act 2016 and are not recordable for reasons of the volume of persons involved and attending an event. This criteria mirrors aspects of the spontaneous event of which the police officers are limited in how they can effectively manage large crowds in possession of alcohol. Police Scotland has provided information about the recent events in Ayrshire, to help inform the review of the Code and the stop and search legislation supporting this. In particular it might inform considerations to whether or not a police power to search children and young people for alcohol is needed. The Scottish Government consulted publicly on the latter during 2016 and decided that more evidence will be gathered before reviewing whether there is need for a police power to search young people for alcohol.

## **Weapons**

There have been 10 incidents of officer feedback in relation to searching for weapons. Five of these relate to persons in a private place reported to have been in possession of offensive weapons / knives in circumstances amounting to a crime in 2 cases and vulnerability in the remaining 3 cases. Officers have carried out the searches which they believed were justified in the circumstances, however were at odds with the Criminal Law (Consolidation) (Scotland) Act 1995, which extends to searches only in public places. This might also inform any future discussion on considering if the police powers under Section 20 and 32 of the Police and Fire (Reform) (Scotland) Act 2012 are sufficient to justify such police actions.

A further 5 incidents (all post code) relate to officers detaining individuals in public in accordance with the Criminal Law (Consolidation) (Scotland) Act 1995 to search for weapons and the search having extended to related vehicles. This has been raised to highlight that the police search powers under the aforementioned legislation do not expressly and specifically extend to vehicles, (unlike for example the Misuse of Drugs Act 1971) and there is an initial indication that this has had an effect on some cases being brought to trial by the COPFS. Police Scotland are working with COPFS to understand any effect this might be having on cases proceeding to trial.

## **Searching for Evidence**

### ***Crimes aggravated by the use of Weapons***

Eleven examples have been provided involving people suspected of committing crimes involving the use of unlawful weapons and suspected being in possession of those weapons. In all of these cases officers used a power of arrest or detention in accordance with Section 14 of the Criminal Procedure (Scotland) Act 1995 which has afforded the power of search.

### ***Vandalism***

Two examples have been provided where officers (prior to the introduction of the Code) have used non-statutory search in relation to crimes of vandalism. On one occasion this led to the detection of 8 individuals involved in vandalism offences.

### ***Fire-raising***

Three examples in connection with crimes of fire-raising have been identified. One occurred pre-Code, involved a non-statutory search and allowed for the recovery of accelerant from a person. The other 2 (post-Code) resulted in officers suspecting a male to be in possession of evidence in connection with crimes of fire-raising without a specific associated search power. On one occasion a suspect was later detained using other police powers (Section 14 Criminal Procedure (Scotland) Act 1995) and on the other occasion the person's involved made verbal admissions to officers.

## **Searching at Events**

Police Scotland's Football Coordination Unit for Scotland (FoCUS) have provided feedback for consideration on the use of search powers at designated sporting and other events. In particular it relates to the possession of pyrotechnics, flares and fireworks. Specifically, in relation to designated sporting events defined in the Criminal Law Consolidation (Scotland) Act 1995, the search powers provided for under Section 21 allows officers to search an individual they suspect is committing / has committed a related offence (in this case possession of a flare / firework) whilst attempting to enter the relevant area of a designated sports ground. This raises a question about police search powers in situations where a person (over 18 years) is in possession of a flare / firework, and it appears they will be attending the related sporting event, but have not yet 'attempted to enter'.

For example, one incident highlights an officer's encounter with 5 adult males travelling in a vehicle through Glasgow city centre making their way to a football match at Hampden Park (6 miles away) and at that time in possession of a bag containing flares / fireworks. Their intention appears clear, but they had yet to attempt to enter the sporting event. The same would also apply to individuals approaching venues for large events which are not designated sporting events, for example concerts. Police Scotland's Pyrotechnic Short Life Working Group's recent discussions about introducing search powers for the possession of pyrotechnic articles in public along with a 'lawful authority / reasonable excuse' clause have generated a proposal to consider any further evidence in relation to any legislative change.

## **The Code of Practice**

### ***Definition of a Stop and Search***

Four pieces of feedback highlighted that defining a stop and search would be beneficial. For example, clarifying the lawfulness of searching a bag found in a vehicle suspected of containing unlawful items when the occupants of the vehicle take no ownership. And whether the removal of alcohol from a young person's bag, them having refused to surrender it, would constitute the 'search' of a person. Defining the search of a person would provide clearer guidance to officers and members of the public about what constitutes and does not constitute the search of a person.

### ***Content of the Code***

Feedback on the wording of the Code has been received on 7 occasions:

1. There is a slight difference in the wording about reporting requirements between the Code and Section 69 of the Criminal Justice (Scotland) Act 2016. The Code refers to the Chief Constable disclosing stop and search information whilst section 69 refers to the disclosure of searches otherwise than in accordance with a warrant expressly conferring a power of search
2. The Criminal Justice (Scotland) Act 2016 requirement to disclose the number of searches under each statutory power may pose a risk when search levels are low (e.g. Terrorism searches)
3. The first sentence in paragraph 10 of Annex B of the code might better read 'once the gender of the person being searched has been established...'.  
'
4. Section 43 of the Terrorism Act 2000 should be considered as an exception to the code (given its governance by a separate code)
5. The Age for Criminal Responsibility (ACR) Bill, section 7 (considerations when searching children and young people), may impact on the code.
6. Section 3 - Applicability of this Code may benefit from more emphasis on the legal position of the code. For example: The code must be followed at all times unless there is good reason not to do so, in which case the decision not to follow the code should be recorded in writing. The code is admissible in criminal and civil proceedings. A breach of the code itself does not make an individual liable to any such proceedings.



7. The code might acknowledge the use at times of sensitive tactics and intelligence which lead to stop and search and inform grounds for search and exempt the disclosure of such information through record requests.

#### **Conclusion**

- In the context set out in Section 65 of the Criminal Justice (Scotland) Act 2016, clarity is sought about specific police powers to search in cases of protecting life and vulnerability outwith custody and where a person is not being taken from one place to another (where a search would be lawful in accordance with Section 66 of the Criminal Justice (Scotland) Act 2016). Whilst Sections 20 and 32 of the Police and Fire (Reform) (Scotland) Act 2012 offers general police powers, careful consideration should be given to the future absence of a related power of search in express terms (stipulated in Section 65).
- Although the arrest power under Section 61 Crime and Punishment (Scotland) Act 2016 (failing to surrender alcohol upon request) has been used on only 2 occasions, caution should be used that this alone indicates that Section 61 provides sufficient police powers. Officers have highlighted that there are occasions where young people may be carrying alcohol in bags, refuse to surrender the alcohol, and given that putting a hand in a person's bag to remove alcohol in such circumstances may constitute an unlawful search, officers are at that point reluctant to proceed to arrest (to avoid criminalising children). In addition the information from Ayrshire, July 2017, gives further evidence in considering whether there is a need for an alcohol power of search (potentially a conditional power of search in specific circumstances or similar to Section 67 of the Criminal Justice (Scotland) Act 2016).
- The absence of a power of search for weapons in private and items used to commit vandalism and fire-raising have been raised, albeit to a lesser extent than an alcohol search power. Of particular note is that the police powers to search a person for weapons set out in the Criminal Law (Consolidation) (Scotland) Act 1995, do not expressly extend to vehicles being used by a person at the material time, which may be a factor in cases not proceeding to trial. Police Scotland's NSSU are progressing work with the COPFS to understand more of the detail.
- The gap in search powers relating to the possession of pyrotechnics, flares and fireworks at events such as football matches, concerts etc has been highlighted, where a person possesses such items and is attending such an event (but at the time is outwith a designated area defined by the Criminal Law (Consolidation) (Scotland) Act 1995).

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