

**Equality Commission**

FOR NORTHERN IRELAND

## **EQUALITY COMMISSION FOR NORTHERN IRELAND**

**Response to the consultation by the Northern Ireland Office:**

### **Update of the Code of Practice (Northern Ireland) for the Authorisation and Exercise of Stop and search Powers relating to Sections, 43, 43A, and 47A of, and Schedule 6B to, the Terrorism Act 2000**

#### **Table of Contents**

<b>1</b>	<b>CONTEXT .....</b>	<b>1</b>
<b>2</b>	<b>THE SECTION 75 DUTIES.....</b>	<b>2</b>
<b>3</b>	<b>EQUALITY CONSIDERATIONS: STOP AND SEARCH UNDER TACT .....</b>	<b>4</b>
	TRENDS IN STOP AND SEARCH UNDER TACT .....	4
	PROFILING IN RELATION TO TACT POWERS.....	5
	GUIDANCE AND TRAINING IN RELATION TO TACT .....	6
<b>4</b>	<b>STOP AND SEARCH IN NORTHERN IRELAND .....</b>	<b>7</b>
<b>5</b>	<b>COLLECTION AND USE OF EQUALITY DATA TO TARGET INTERVENTIONS AND TRACK IMPACTS .....</b>	<b>9</b>

# 1 Summary of Recommendations

- The Code should incorporate the requirement placed on the PSNI by Section 75 of the Northern Ireland Act 1998 to monitor the stop and search of TACT and in doing so to adhere to the arrangements set out in its equality scheme.
- The Code should commit the PSNI to ensuring that the Section 75 monitoring data and its analysis are available to stakeholders.
- The Code should commit the NIO to keep the use of these powers under review, informed by PSNI Section 75 monitoring data and using the Section 75 equality assessment (screening/EQIA) tools.
- Consideration should be given to any trends by equality group in those subject to stop and search under TACT and the reasons for same. Such consideration should be set within the context of the increase in the use of TACT powers in September 2022 - October 2023, compared with the previous year. Such considerations should inform the development, implementation and rolling review of the policy.
- The Code and PSNI should ensure that individuals are not subject to stop and search solely because of their equality characteristics – for example through racial profiling, with appropriate actions implemented to address any issues identified.
- We recommend that measures are taken, including through the Code of Practice where appropriate, to implement guidance and training, including for officers carrying out stop and search, on equality and anti-discrimination, awareness of the particular needs of equality groups, and on tackling prejudicial attitudes.
- Wider considerations and lessons learnt regarding any equality impacts relating to stop and search more generally should be used to inform the development, delivery and rolling review of specific considerations under TACT (including the Code of Practice), as well as across wider areas of stop and search more generally.
- Data on each area of stop and search provision (TACT and wider areas) should not only be tracked in aggregate but

also tracked for the impact on individuals from across each of the equality grounds, and by multiple identities.

## **2 Context**

- 2.1 We note that this consultation relates to updating the current Code of Practice (Northern Ireland) for the Authorisation and Exercise of Stop and search Powers relating to Sections, 43, 43A, and 47A of, and Schedule 6B to, the Terrorism Act 2000 (TACT).
- 2.2 We welcome the opportunity to respond to this consultation from NIO.
- 2.3 We understand that the proposed updates to the Code of Practice in Northern Ireland follow on from the inclusion of a new provision under section 43C of TACT providing a power for a constable to stop and search a terrorist offender who has been released on licence (and not recalled) and whose licence includes a search condition.
- 2.4 The proposed update provides for constables to exercise the power provided they firstly satisfy themselves that it is necessary to do so for purposes connected with protecting members of the public from a risk of terrorism.
- 2.5 Our response to this consultation exercise does not consider all areas of the proposals or wider aspects of stop and search powers, but rather focusses on areas where the Commission has established key policy positions or advice.
- 2.6 In responding we have considered some wider issues in relation to TACT powers, and issues of relevance to stop and search powers more generally.
- 2.7 The Commission remains available to discuss any specific equality issues identified.

## **3 The Section 75 duties**

- 3.1 Section 75 requires that designated public authorities equality assess (screen / EQIA) their policies and monitor the impacts of those policies across the Section 75 grounds.
- 3.2 The exercise of the TACT powers falls to the Police Service for Northern Ireland (PSNI) with the NIO having the important statutory function of issuing guidance and giving direction through this Code

of Practice, a Code that police officers must have regard to when carrying out their stop and search functions under the TACT.

- 3.3 It is expected that the NIO and the PSNI, as designated public authorities, will follow their equality schemes in complying with Section 75 i.e. in paying due regard to the need to promote equality of opportunity and regard to the desirability of promoting good relations.
- 3.4 The Section 75 equality screening of this policy has a very narrow focus i.e. it relates only to the amendments made to the Code in respect of a particular statutory provision, section 43C of the TACT. Given that the Section 75 duties are continuing duties, it would seem appropriate to have extended the review and screening of the Code to include the PSNI's stop and search powers under TACT.
- 3.5 The equality screening does not include comprehensive data across the Section 75 grounds. There is data on race, age and sex but not on any of the other six Section 75 grounds. More comprehensive data would have enabled more robust assessments of impacts.
- 3.6 In addition, the rationale for the screening assessments are not wholly clear, e.g. while the screening notes that of the 91 people who were stopped-and-searched under the TACT powers, men constituted 92% of the total but did not assess that there is an impact on the sex category.
- 3.7 In relation to the Section 75 category of religious belief the screening refers to the guidance in the Code in respect of searching people who wear types of clothing for religious reasons (e.g. head coverings). While this assessment seems wholly appropriate, it would also seem reasonable to consider if there are equality and/or good relations impacts on the religious belief ground in respect of the Roman Catholic and Protestant communities.
- 3.8 In respect of the Section 75 grounds of religious belief and political opinion, the judgment of the Court of Appeal for Northern Ireland in the application for judicial review of *Ramsey (No.2) [2020] NICA 14* seems of relevance to the TACT Code. The case related specifically to the Code of Practice issued by the Secretary of State in respect of the PSNI's stop and search powers under another statute i.e. the Justice and Security (NI) Act 2007 (JSA). The content of both Codes correspond very closely. In the Ramsey case the Court derived from the principles of the JSA Code a duty on the PSNI to devise a methodology for monitoring and supervising its stop and search function in relation to "community background", which in the context

of the case seems to be a reference primarily to the Roman Catholic and Protestant communities in Northern Ireland.

#### RECOMMENDATIONS:

The Code should incorporate the requirement placed on the PSNI by Section 75 of the Northern Ireland Act 1998 to monitor the stop and search of TACT and in doing so to adhere to the arrangements set out in its equality scheme.

The Code should commit the PSNI to ensuring that the Section 75 monitoring data and its analysis are available to stakeholders.

The Code should commit the NIO to keep the use of these powers under review, informed by PSNI Section 75 monitoring data and using the Section 75 equality assessment (screening/EQIA) tools.

## 4 Equality Considerations: Stop and Search under TACT

4.1 We note that the equality screening document<sup>1</sup> outlines that *‘the new search power will apply only to a small number of persons and is unlikely to be used frequently’*.

4.2 In this context we understand<sup>2</sup> that there is nobody currently on licence in Northern Ireland who has the necessary condition in their release licence to allow for a search to be conducted under this section (Section 43C) of the Terrorism Act 2000.

### ***Trends in stop and search under TACT***

4.3 In relation to TACT and the Code of Practice more broadly, a consideration by the Commission of published PSNI / NISRA data indicates that the use of stop and search powers under TACT are lower than under other legislation, such as the JSA, the Police and Criminal Evidence (Northern Ireland) Order 1989, Misuse of Drugs Act 1971<sup>3</sup>.

4.4 However, the same data also indicates that the use in Northern Ireland of TACT stop and search powers has increased substantially

<sup>1</sup> NIO (2023) [Consultation: TACT code of practice: Equality Screening](#), p. 15.

<sup>2</sup> NIO (2023) [Consultation: TACT code of practice: Equality Screening](#), p. 9.

<sup>3</sup> PSNI/ NISRA (2023) [Use of Stop and search Powers by the Police in Northern Ireland 1 October 2022 to 30 September 2023](#), Table 2 and Figure 1. From October 2022 to September 2023, 299 persons were stopped under TACT, compared to 2 728 under PACE, 17 878 under the Misuse of Drugs Act, and 5 361 under JSA.

over the past year<sup>4</sup>. This is the context of an increase in stop and searches under all powers since 2022, and the comparatively lower use of TACT powers.

- 4.5 It is important that the potential equality implications of the proposals are fully considered, and used to inform the development, implementation and review of the policy and code, with a view to identifying potential opportunities to advance equality of opportunity, as well as opportunities to mitigate any negative equality impacts arising from the proposals.
- 4.6 PSNI / NISRA data indicates that the vast majority of those stopped and searched under TACT powers in the last year were male (289 out of 299). The same data also indicates that the average age of those stopped and searched/ questioned under counter terrorism provisions (TACT and the JSA), is comparatively older compared with those stopped and searched/ questioned under other powers<sup>5</sup>.
- 4.7 The consultation exercise would have benefited if the main consultation document more clearly conveyed the groups more frequently subject to stop and search under TACT, including relative to other stop and search powers currently being used, and the predicted use of the new search power. For example, we note that NIO's equality screening<sup>6</sup> indicates that between April 2022 and March 2023, 91 people were stopped under TACT, of which 88 were white and three were Asian. It would be more helpful if the NIO could have included a consideration of this data in their main consultation document, particularly as the publicly available PSNI / NISRA data does not provide data on ethnicity that is specific to TACT<sup>7</sup>.

### ***Profiling in relation to TACT powers***

- 4.8 In relation to TACT and the Code of Practice in general, it is welcome that the Code continues to outline that *'Reasonable suspicion cannot be based on generalisations or stereotypical images of certain groups or categories of people as more likely to be involved in criminal activity'*<sup>8</sup>, and that *'Supervising officers must*

---

<sup>4</sup> PSNI/ NISRA (2023) [Use of Stop and search Powers by the Police in Northern Ireland 1 October 2022 to 30 September 2023](#). The data indicates that the use in Northern Ireland of TACT stop and search powers in the period October 2022- September 2023 nearly quadrupled to 299, from 75 in the previous year, with a lower subsequent arrest rate. This was the highest use of TACT stop and search powers since 2015/16, and substantially higher than any years since 2017/18.

<sup>5</sup> PSNI/ NISRA (2023) [Use of Stop and search Powers by the Police in Northern Ireland 1 October 2022 to 30 September 2023](#), Tables 8-10.

<sup>6</sup> NIO (2023) [Consultation: TACT code of practice: Equality Screening](#), pp. 9-10.

<sup>7</sup> PSNI/ NISRA (2023) [Use of Stop and search Powers by the Police in Northern Ireland 1 October 2022 to 30 September 2023](#)

<sup>8</sup> NIO (2023) [Consultation: TACT Code of Practice](#), para 6.3.

*ensure in the use of stop and search powers that there is no evidence of them being exercised on the basis of stereotyped images or inappropriate generalisations*<sup>9</sup>.

- 4.9 We note that the Code states that ‘Officers should take care to avoid any form of racial or religious profiling when selecting people to search’<sup>10</sup>. It refers specifically to section 47A powers, but there is a lack of rationale as to why only section 47A is referenced here. It should be clear that profiling should not occur under *any* of the powers in TACT, or indeed search powers more widely.

#### **RECOMMENDATION:**

Consideration should be given to any trends by equality group in those subject to stop and search under TACT and the reasons for same. Such consideration should be set within the context of the increase in the use of TACT powers in September 2022 - October 2023, compared with the previous year. Such considerations should inform the development, implementation and rolling review of the policy.

The Code and PSNI should ensure that individuals are not subject to stop and search solely because of their equality characteristics – for example through racial profiling<sup>11</sup>, with appropriate actions implemented to address any issues identified.

### ***Guidance and training in relation to TACT***

- 4.10 With respect to the use of the TACT stop and search powers generally, it is welcome that the Code (at paragraph 5.1) refers to the need to avoid discrimination on various specified grounds. However, we believe that police officers may benefit from more guidance on that. For instance, the relevant text should also note that police officers should also have regard to their obligations not to discriminate unlawfully under any of the anti-discrimination laws, and not merely just under sections 75 and 76 of the Northern Ireland Act 1998 as the text currently notes. It may also be beneficial to draw particular attention to the duties of police officers under the *Disability Discrimination Act 1995* to make reasonable adjustments for disabled people to help them to overcome disadvantages that they may be under compared to other people, a duty that applies to the exercise of functions such as stop and search.

<sup>9</sup> NIO (2023) [Consultation: TACT Code of Practice](#), para 12.1.

<sup>10</sup> NIO (2023) [Consultation: TACT Code of Practice](#), paras 11.1-11.3.

<sup>11</sup> Racial profiling is the act of suspecting or targeting a person on the basis of assumed characteristics or behaviour of a racial or ethnic group, rather than on individual suspicion (definition from HM Inspectorates ‘[Disproportionate use of Police Powers](#)’ February 2021)

- 4.11 We note that the Code of Practice refers to the importance of adhering to fundamental principles in relation to stop and search, and that if these principles are not adhered to, public confidence may be affected.
- 4.12 Guidance should be provided, either through the Code or elsewhere, as appropriate, on how officers can appropriately respond to particular barriers that may affect those being searched, for example in relation to language or disability. Such guidance will also be relevant to other stop and search powers.
- 4.13 It is important that the Code of Practice is supported by appropriate training on equality and anti-discrimination legislation.
- 4.14 This training and guidance should include awareness of the rights of equality groups, as well as the need to address the particular needs of equality groups, including older people, LGB+ and trans people, members of minority ethnic communities, and disabled people. It should also include tackling negative stereotypes and prejudice towards certain equality groups, as well as promoting positive attitudes towards these groups. This will increase awareness and understanding of these issues and the barriers equality groups' experience.
- 4.15 We draw attention to the UNCRPD's Committee Concluding Observations on the UK (2017) which recommended that the UK Government: 'Develop and implement capacity building programmes among the judiciary and law enforcement personnel, including judges, prosecutors, police officers and prison staff, about the rights of persons with disabilities'.

#### **RECOMMENDATION:**

We recommend that measures are taken, including through the Code of Practice where appropriate, to implement guidance and training, including for officers carrying out stop and search, on equality and anti-discrimination, awareness of the particular needs of equality groups, and on tackling prejudicial attitudes.

## **5 Stop and Search in Northern Ireland**

- 5.1 Although the Code of Practice relates to provisions under TACT, we take this opportunity to set out below a number of wider points spanning a range of stop and search provisions.
- 5.2 While the equality characteristics and relative numbers of those stopped under TACT differs from more general trends across all

areas of stop and search, it is the case that research (2023) contracted by the Commission from Pivotal reported that Northern Ireland has very high levels of stop and search in total (across the range of relevant powers), and that these searches were carried out disproportionately on minority ethnic people. The Pivotal research also notes that Amnesty International has criticised the use of stop and search generally in Northern Ireland for ‘disproportionately targeting minority ethnic groups based on alleged police prejudice and racial profiling’.<sup>12</sup>

- 5.3 The Pivotal report further notes that the only areas of the UK (excluding Scotland<sup>13</sup>) where stop and search levels in total were higher than Northern Ireland were the metropolitan areas of London and Liverpool<sup>14</sup>. The Pivotal research reported that in Northern Ireland, Irish Travellers were the ethnic group most likely to be affected by high rates of stop and search across the range of stop and search powers in total, followed by Black and ‘other ethnic’ groups<sup>15</sup>.
- 5.4 Baroness Casey’s 2023 Review<sup>16</sup> addresses issues around the use of stop and search by the Metropolitan Police at pages 316-322 concluding that *‘Stop and search is currently deployed by the Met at the cost of legitimacy, trust and, therefore consent. To date, the Met has been unable to explain clearly enough why its use is justified on the scale it uses it, and in the manner and way it is carried out, particularly on Black Londoners. It has damaged trust. If the Met is unable to explain and justify its disproportionate use and the impacts of these, then it needs a fundamental reset’*.
- 5.5 UNCERD’s most recent concluding observations on the UK (2016) reference stop and search generally at paras 26 and 27, page 7, recommending *‘that the State party ensure that the overrepresentation of black people and people belonging to ethnic minority groups at all stages of the criminal justice system in England, Northern Ireland, Scotland and Wales is thoroughly investigated, and that it take concrete measures to effectively address racial prejudice and bias in the criminal justice system, taking into account the Committee’s general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system.’*

---

<sup>12</sup> Pivotal, *Impact of Brexit on Minority Ethnic and Migrant People in Northern Ireland*. (ECNI, 2023).

<sup>13</sup> Scotland was excluded from the analysis as comparable data was not publicly available,

<sup>14</sup> Pivotal, *Impact of Brexit on Minority Ethnic and Migrant People in Northern Ireland*. (ECNI, 2023), p. 65

<sup>15</sup> *Ibid.*, p.66

<sup>16</sup> Baroness Casey of Blackstock DBE CB (2023). BARONESS CASEY REVIEW: [Final Report: An independent review into the standards of behaviour and internal culture of the Metropolitan Police Service](#)

- 5.6 The Advisory Committee on the Framework Convention on the Protection of National Minorities (FCNM) addressed stop and search in general at paragraphs 141 -145, pages 27-28 of their Fifth Opinion on the UK<sup>17</sup> (2022), recommending that authorities take priority measures to address distrust of persons belonging to minorities in law enforcement and the criminal justice system and to actively remedy shortcomings and disproportionate impacts of policing measures, including “stop and search”, on these persons.

#### **RECOMMENDATION:**

Wider considerations and lessons learnt regarding any equality impacts relating to stop and search more generally should be used to inform the development, delivery and rolling review of specific considerations under TACT (including the Code of Practice), as well as across wider areas of stop and search more generally.

## **6 Collection and Use of Equality Data to Target Interventions and Track Impacts**

- 6.1 In relation to TACT, and stop and search powers more widely, there is a need to collect and share comprehensive equality data to support the targeting of interventions to advance equality, and the tracking of impacts on individuals from across the full range of equality grounds.
- 6.2 We recognise that there are some limitations to meaningful data disaggregation, however where robust to do so, disaggregation by equality category and multiple identity would provide greater information to inform the better targeting of policy interventions.
- 6.3 Analysing and publishing comprehensive equality metrics for all key measures will further assist equality considerations to be a core component of public policy design and delivery.
- 6.4 Datasets should contain comprehensive equality data to facilitate full equality analysis. There is a need to address any gaps in the equality data held within key datasets.

#### **RECOMMENDATION:**

Data on each area of stop and search provision (TACT and wider areas) should not only be tracked in aggregate but also tracked

<sup>17</sup> FCNM Committee (2022). [The Advisory Committee on the Framework Convention on the Protection of National Minorities: Fifth Opinion on the UK.](#)

for the impact on individuals from across each of the equality grounds, and by multiple identities.

**Equality Commission for Northern Ireland  
December 2023**