

Children in Scotland

every child - every childhood

SCOTTISH GOVERNMENT CONSULTATION ON POLICE POWERS TO SEARCH CHILDREN AND YOUNG PEOPLE FOR ALCOHOL

RESPONSE FROM CHILDREN IN SCOTLAND

Introduction

Children in Scotland is the collective voice for children, young people and families in Scotland, and organisations and businesses that have a significant impact on children's lives in Scotland. It is an influencing and membership organisation, comprised of more than 500 representatives from the voluntary, public and private sectors.

We aim to identify and promote the interests of children and their families and to ensure that policies and services are of the best possible quality, capable of meeting the needs of children and young people living in Scotland.

The debate over whether it is necessary or desirable to extend police powers so that a child or young person may be stopped and searched for alcohol is complex and emotive, pitting the responsibility to protect children from harm directly against the duty to safeguard the rights and civil liberties of Scotland's youngest citizens.

As a membership organisation which exists to help ensure that the fundamental rights of children are upheld and to encourage the implementation of policies which are effective in improving the wellbeing of children and young people, we are only too aware of the intricacy of the arguments involved and the diversity of opinion that exists over this issue.

This complexity is reflected both in the consultation document itself and in the findings of the Advisory Group on Stop and Search, which was unable to reach a position on a delicate issue which is likely to draw controversy regardless of whatever direction the Scottish Government decides to take.

As with all aspects of our work, we have taken an evidence-led approach in arriving at our final recommendations and have taken positive steps to engage directly with children and young people themselves in order to inform our response.

In addition to representing our membership at a number of meetings of Scotland's Stop and Search Children and Young Persons Reference Group (SSCYPRG), Children in Scotland also hosted a large-scale consultation event attended by the author of the Advisory Group Report, John Scott QC and including representatives from the Scottish Government, Police Scotland, the City of Edinburgh Council Police and Fire Scrutiny Committee, a broad cross-section of children's charities, organisations

working in the field of underage drinking and over a dozen young people from a variety of backgrounds.

The evidence and testimony that was elicited from this event was pivotal in the formulation of this response. We would like to take this opportunity to thank all of those who attended the event for their participation and to also thank the Scottish Government for the opportunity to add their voice to this important debate.

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

Once the controversial practice of non-statutory stop and search ceases and the new Stop and Search Code of Practice comes into force next year, police will only be permitted to search an individual when there is a specific legal power to do so.

While Section 61 of the Crime and Punishment (Scotland) Act 1997 allows officers to confiscate alcohol from children and young people under the age of 18, independent legal advice has confirmed that there is no specific or implied power to search young people for alcohol as the legislation currently stands in Scotland.

Indeed, the creation of such a power was repeatedly resisted during the passage of the Confiscation of Alcohol (Young Persons) Act 1997. While this Act did not pertain to Scotland, it is worth noting that the absence of specific power to stop and search children for alcohol was considered a 'great strength' of the legislation, as it was feared that the exercise of such a power might create tension and conflict between the police and young people.

Therefore, the creation of a new statutory power to enable police to stop and search young people would be a significant legislative intervention which could give rise to a number of negative and undesirable consequences and must be considered carefully.

The chief justification cited by those who believe that a new power is necessary stems from the wish to protect children and young people from the harm that can result from drinking alcohol, as well as from the desire to reduce the risk of young people becoming involved in the type of criminality and anti-social behaviour that is often associated with underage drinking.

These are laudable aims, and the argument over the necessity of ensuring the police has sufficient tools at their disposal in order to carry out their duties and intervene when necessary to protect children from harm is a persuasive one.

However, there is no escaping the fact that being stopped and searched by the police is an invasive act. It is a power which has the potential to be misused, can discriminate against certain groups and is likely to contribute to the fostering of an adversarial relationship between the police and children and young people.

Therefore, justification for the imposition of a new power to stop and search children and young people for alcohol cannot hinge solely on health and wellbeing concerns – certain other tests must be met if this significant new power is to be warranted.

These tests include:

- a) Whether a new power is required as no other means are available to Police Scotland to protect children from the harm caused by underage drinking
- b) Whether stop and search has a significant role to play in reducing the risks to safety and wellbeing caused by possessing and consuming alcohol in public
- c) Whether the creation of a new power coincides with our national and international obligations regarding the rights of the child.

A) Whether a new power is necessary

At the height of the controversy over the use of stop and search, senior officers within the police expressed concerns over what they believed the result would be if the power of consensual stop and search were to be removed.

It was claimed that the removal of consensual stop and search would result in a 'significant consequence and loss' for the police, and it was highlighted that 'just over a third [of all searches conducted] were for alcohol and about 40 per cent of those were in relation to alcohol and under-18s...' stating that 'this is a big issue for society, not just the police.'

Representatives from Police Scotland who participated in our consultation shared this view, stating their belief that the ability to remove concealed alcohol from a young person under the age of 18 was pivotal to protecting young people from harm as well as serving a means to protect the wider community from the negative consequences of underage drinking.

These concerns are entirely reasonable and there is no reason to doubt the motives of members of the police who wish to retain a means of removing concealed alcohol from young people without having to take what is generally regarded as the disproportionate step of arrest.

This question of whether the removal of consensual stop and search would in fact constitute a 'gap' in police powers was addressed by the Advisory Group. However, the Group was unable to come to a satisfactory conclusion as the issue was 'complicated by the fact that the statistics for non-statutory stop and search seem to include what were in fact seizures'.

Now that disaggregated statistics on the use of stop and search have become available we can begin to build a much clearer and more accurate picture of the use of stop and search. What we see is that in practice, officers conduct very few alcohol searches involving young people and even fewer still that actually discover any alcohol.

In June 2015, official statistics demonstrated that police officers recorded 525 alcohol searches involving young people aged under 18. Between July and

September, that number fell by 79% to 112 searches and then fell again by a further 55% between September and December to a total of just 50 searches, of which only 12 were positive.

In the month of December itself, a total of seven Divisions across Scotland recorded no alcohol searches on under 18s, while officers recorded three or fewer in a further four police Divisions.

Aggregating these figures across Scotland over the entire period between June and December 2015, the number of positive alcohol searches involving young people under the age of 18 equated to less than one a day, while the vast majority of underage alcohol detections resulted from the utilisation of existing powers of seizure, rather than by means of stop and search.

During that period there were 2,551 cases where a young person surrendered alcohol without a search taking place, while there were only 158 occasions where alcohol was surrendered after a search.

While caution is advised when drawing firm conclusions with figures which were compiled in the aftermath of the stop and search controversy, it is difficult to argue on the basis of these figures that there is a legislative shortfall that desperately needs to be addressed as it seems that police are responding effectively to the need to remove alcohol from young people using the existing powers they have at their disposal.

It is also worth remembering that if the police's concern relates to either public disorder or the fear that the level of drunkenness being displayed by the young person gives rise to health and safety concerns then they are empowered to act by other means, over and above the power of seizure.

The Civic Government (Scotland) Act 1982, Section 50 provides that it is an offence to be in a public space and be 'drunk and incapable of taking care' of oneself, while the common law offence of breach of the peace allows the police wide discretion to intervene should they believe that the young person's behaviour is a cause for concern. However, we would also ask the question of whether law enforcement are the most appropriate body to challenge such behaviour in the first place.

The fact remains that it is not an offence for a child or young person under 18 to be in possession of alcohol in a public place. If the police have reasonable grounds to suspect that a person is under the age of 18 and that they have alcohol in a public place, then they have the power to require the person to surrender the alcohol. Refusing to surrender alcohol when required to do so is an offence and the officer involved has the power to arrest the individual concerned.

We stress in the strongest possible terms that we have no desire to see an increase in the amount of children and young people arrested by police on grounds of suspicion of carrying alcohol or for public disorder offences. We must also state that there was unanimous agreement on behalf of the young people who participated in our consultation event that being stopped and searched for alcohol was infinitely preferable to being arrested unnecessarily.

However, on balance, we believe that the creation of a new power of stop and search is a disproportionate response to the desire to avoid arrest as a last resort, and we cannot justify the imposition of a policy that would serve to infringe upon the civil liberties of children and young people throughout Scotland.

B) Whether stop and search has a significant role to play in reducing the risks to safety and wellbeing caused by possessing and consuming alcohol in public

In the previous section, we discovered that it is unlikely that the removal of powers to stop and search young people for alcohol would constitute a legislative gap which would have a significant negative impact on the police's operational effectiveness.

However, that is not to suggest that the problem of underage drinking is not a serious one – we just do not believe that a criminal justice approach is the most appropriate means of addressing this particular health and wellbeing concern.

Children in Scotland believes that there are more effective ways of preventing and reducing alcohol harm and point to the success that has been achieved since the introduction of the Scottish Government's Alcohol Framework as an example.

Containing over 40 specific measures aimed at reducing alcohol consumption, supporting families and communities, encouraging more positive attitudes to drinking and improving treatment and support services, the implementation of the Framework has coincided with the lowest levels of alcohol consumption among school-age children since records began.

The latest MESAS annual report highlights that levels of alcohol consumption among school-age children are at a historically low level¹. The latest SALSUS data shows that the proportion of young people reporting drinking in the street has halved since 2008 and is also at its lowest recorded level².

In 2013, underage drinking among thirteen and fifteen year olds 13 – 15-year-olds was at its lowest level since 1990, while the proportion of 15-year-olds who stated they drank outdoors more than halved between 2008 and 2013, from 43% to 20%.

However, it remains the case that young people in Scotland drink more heavily than their English counterparts. To give just one example; in Scotland the average number of units consumed by 15-year-olds was 18 per week, compared to nine in England.

Almost all of the young people who participated in our consultation event had experience of drinking in a public space and many had experience of drinking to excess. The prevailing mood of the group was that experimentation with alcohol was

¹ NHS Health Scotland Monitoring and Evaluating Scotland's Alcohol Strategy (MESAS) (2016) Final Annual Report http://www.healthscotland.com/uploads/documents/26884-MESAS_Final%20annual%20report.pdf

² Scottish Schools Adolescent Lifestyle and Substance Use Survey (SALSUS) (2013) Alcohol Use among 13 and 15 year olds in Scotland 2013 http://www.isdscotland.org/Health-Topics/Public-Health/Publications/2014-11-25/SALSUS_2013_Alcohol_Report.pdf

a natural part of growing up and that while there were undoubtedly risks attached, young people should not be criminalised for such behaviour.

Therefore, while there have been significant strides towards redressing the prevalence of underage drinking and the attitudes young people in Scotland have towards alcohol, there can be no room for complacency.

There is scant evidence to suggest that a criminal justice approach has a tangible impact on the level of underage drinking or in mitigating or reducing the risk of harm that young people face when drinking alcohol.

However, evidence suggests that in terms of effective alcohol policy that serves to protect and support young people, action to address the World Health Organisation's three 'Best Buys'³ could have a significant impact on improving the health and wellbeing of the whole population, including young people.

These measures include:

- **Action on Price** – specifically minimum unit pricing. This pricing measures targets cheap, strong alcohol and makes this type of alcohol less affordable⁴.
- **Action on Availability** – licensing reform to reduce or stabilise the number of outlets selling alcohol, thereby reducing the availability of alcohol to young people. The objective to protect public health should be of primary consideration in all Licensing Applications.
- **Action on Marketing** – research shows that exposure of children and young people to alcohol marketing leads them to drink at an earlier age and to consume more alcohol than they otherwise would have⁵.

An extension of Police Scotland's test purchasing scheme could also contribute towards reducing the number of outlets where children and young people are able to purchase alcohol.

The Scottish Government should be congratulated for the progress that has been made towards improving Scotland's longstanding problematic culture around alcohol, but greater progress can and should be made in meeting these three WHO objectives.

If the challenge is to alter young people in Scotland's relationship with alcohol then these measures stand a much greater chance of success than focussing the discussion on powers of stop and search, which can only ever hope to treat the symptom and not the cause of underage drinking.

However, we recognise that efforts concerning minimum unit pricing have been frustrated by the on-going legal challenge that threatens the future of this important policy which has the support of Children in Scotland and an overwhelming cross

³ http://www.who.int/nmh/publications/who_bestbuys_to_prevent_ncds.pdf

⁴ <http://www.shaap.org.uk/minimum-pricing-for-alcohol.html>

⁵ World Health Organisation [WHO] Europe (2009), 'Evidence for the effectiveness and cost-effectiveness of interventions to reduce alcohol-related harm' http://www.euro.who.int/en/health-topics/disease-prevention/alcohol-use/publications/2009/evidence-for-the-effectiveness-and-costeffectiveness-of-interventions-to-reduce-alcohol-related-harm-2009#_blank

section of children's charities and public health organisations working around alcohol.

In this regard, we coincide with the view expressed by our members Alcohol Focus Scotland and would compel the Scotch Whisky Association to drop their judicial review of the policy.

C) Whether the creation of a new power coincides with our international obligations regarding the rights of the child.

So far our assessment of whether a new power to stop and search children and young people for alcohol has concentrated on the important considerations of whether the police actually need such a power and whether it would have a meaningful role in protecting children and wider society from the harm caused by underage drinking.

However, we must also consider the question of whether the creation of a new power coincides with our international obligations regarding the rights of the child.

The Scottish Government's ambition is for Scotland to become the best place in the world for a child to grow up. Recognising, respecting and promoting children's rights is essential if this vision is to become a reality, therefore the question of how the powers available to law enforcement interact with the rights of young people must be carefully considered.

Children in Scotland's assessment is that a new power of stop and search as specified in the consultation document is likely to engage a range of rights guaranteed under the United Nations Convention on the Rights of the Child (UNCRC), namely article three (best interests), article four (protection of rights), articles 13 (freedom of expression), article 15 (freedom of association) and article 16 (right to privacy).

Of course, few rights are absolute and rights can be refused or restricted in certain cases, for example, where there is a real and serious danger to public safety or to the individual concerned⁶. According to official guidance published by the Ministry of Justice, interference with limited or qualified rights may be justified when:

- a) There is a clear legal basis for the interference
- b) The action/interference seeks to achieve a legitimate aim
- c) The action or interference must be in response to a 'pressing social need'⁷.

As we have already discovered, possession of alcohol is not prohibited in law, therefore it is difficult to suggest that the first test can be met.

⁶ Ministry of Justice (2006) Making Sense of Human Rights, p. 3

⁷ Ministry of Justice (2006) Making Sense of Human Rights, p. 4

Regarding the question of whether or not a new power of stop and search seeks to achieve a legitimate aim and whether the creation of such a power is in response to a 'pressing social need', Children in Scotland has already argued that there are other more appropriate methods available to the Scottish Government to tackle the problem of underage drinking. Until these measures have been exhausted we cannot regard the imposition of a new power to search young people for alcohol as anything other than disproportionate and in violation of children's fundamental rights.

It may also be worth noting that as recently as June 2016, the UN Committee on the Rights of the Child raised concerns about the use of Stop and Search on children and young people, making the following recommendations;

1. The Committee recommends that the State party:

- (a) Prohibit the use of non-statutory stop-and-search checks against children;
- (b) Ensure that the statutory use of the stop-and-search checks is proportionate, taking into consideration the age and maturity of the child, and non-discriminatory;
- (c) Regularly collect, analyse and publish data relating to the use of stop and search on children, disaggregated by age, sex, disability, geographic location, ethnic origin and socioeconomic background.⁸

Given these concerns, we do not believe that it is possible to coincide the creation of a new power of stop and search with our obligations under international law and the Scottish Government's stated objective to recognise, respect and promote children's rights.

We believe that any attempt to introduce such a power would result in significant and justifiable international criticism, and on this basis, together with the other arguments articulated thus far, we cannot support its implementation.

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

Children in Scotland has very real concerns over the impact that a new power of stop and search could have on the relationship between the police and young people.

A policy directed solely towards children and young people is by definition alone discriminatory, however, we believe that the introduction of a new search power carries with it a significant risk of discriminating against certain groups of young people in particular and could be open to a level of misuse that could have potentially damaging consequences on how an entire generation regard the police for years to come.

As is made clear in the Scottish Centre for Crime and Justice Research (SCCRJ) submission by Dr Murray and Professor McVie, there has been considerable research

⁸ http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/GBR/INT_CRC_IFN_GBR_23958_E.pdf

undertaken in Scotland which points to the adverse impact that stop and search can have on young people's relationship with the police⁹.

In particular they point to a recent survey of secondary school children in Edinburgh and Glasgow, which found that poorly managed interactions between the police and young people were likely to result in a number of negative consequences.

Around half of those who were stopped and searched said they were not given an explanation, while some children felt that they were treated unfairly, or said that the officers were not polite or respectful. It also seemed likely that some children were singled out for police attention, based at least in part, on their age, neighbourhood and factors relating to social class¹⁰.

These findings coincide strongly with the testimony forwarded by the young people who participated in our consultation event. While not every participant had been stopped and searched, each had personal experience of being approached by the police over the suspicion that they were consuming alcohol in a public place.

Several reported feeling victimised as a result of the police's actions, believed that they had been targeted unfairly or felt that they were repeatedly being singled out as a result of being known to the police in some way. This was especially true of the care experienced young people that we spoke to.

We know that young people from the most deprived SIMD quintile were more likely to drink outside, and that young people from the most deprived backgrounds are most likely to have been in trouble with the police on two or more occasions due to underage drinking¹¹. Given that 90% of all stop searches for alcohol are unsuccessful, it is not hard to imagine a situation where a high prevalence of unsuccessful (and perhaps unwarranted) stop searches conducted on young people from poorer communities could give rise to concerns over the discriminatory application of the policy.

A lack of awareness over rights and freedoms as well as with regard to the extent of police powers and what a police officer can legitimately demand of a young person was also a significant concern raised by our young consultation participants.

This power imbalance was thought to be the cause of real tension between the police and young people, and it was perceived that these tensions would be magnified within certain communities of young people – in areas of high socio-economic deprivation, for example.

Though this evidence is anecdotal and is drawn from an exceptionally small sample that may not be truly representative of young people's experience across Scotland, we believe that it goes some way towards corroborating the view that the creation of a new stop and search power could serve to add to the uncertainty that young

⁹ See for example, Anderson et al., 1994; Reid Howie Associates, 2001; Cook, 2015; 8; Blake Stevenson, 2016

¹⁰ Murray, K. (2016) Understanding and Preventing Youth Crime survey Early Findings: Stop and search in Glasgow and Edinburgh, Scottish Police Authority

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https://www.aqmen.ac.uk/sites/default/files/Murray%20and%20McVie_A%20power%20to%20search%20children%20for%20alcohol_Final3.pdf

people have over their rights and could in turn have a negative impact on how young people and the police interact.

The police have made incredible strides in recent years both in terms of how they interact with young people and in the manner young people perceive the police. We would hate to see this commendable progress halted as a result of a policy that would represent a retrograde step in the police's relationship with children and young people and would caution the Scottish Government in this regard.

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

As a children's charity, our primary concern relates to the rights and freedoms of children and young people under the age of 18. This particular power relates only to individuals over that age, so we would not be well placed to comment extensively on this aspect of the consultation.

However, while children's rights would not be directly impacted by the imposition of a new power to stop and search an individual under suspicion of having intent to supply a young person with alcohol, we remain unconvinced by a number of aspects of this proposed legislative reform.

For one, the definition of what constitutes 'reasonable grounds for suspicion' does not seem to be sufficiently articulated, which leaves too much scope for interpretation by individual police officers which could in turn lead to a further stigmatisation and exclusion of marginalised and disadvantaged groups.

While we recognise that proxy purchasing is a major issue that must be addressed, we do not believe that the creation of an additional power in this regard is the most effective means of resolving this problem.