

POLICE POWERS AND PROCUDRES ACT 1998

CODE OF PRACTICE ON THE EXERCISE BY POLICE OFFICERS OF STATUTORY
POWERS UNDER SECTIONS 74 AND 76 OF THE LICENSING ACT 1995

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Part 1 – Introductory provisions

1 General provisions

- (1) This Code of Practice (Code) must be readily available at all police stations for consultation by police officers (officers), detained persons and members of the public.
- (2) The note for guidance included is not a provision of this Code, but as guidance to officers and others about the Code’s application and interpretation.
- (3) This Code governs the exercise by officers of statutory powers to –
 - (a) seize and deliver or dispose of liquor in the possession of minors under section 74 of the Licensing Act 1995; and
 - (b) control drinking in public places under section 76 of the Licensing Act 1995.
- (4) When exercising these powers officers should –
 - (a) at all times remain compliant with the requirements of the Human Rights Act 2001; and
 - (b) act in accordance with the provisions of the Police Powers and Procedures Act 1998 and the associated secondary legislation.

[See note]

- (5) Particular regard should be given to the Code of Practice for the exercise by officers of statutory powers of stop and search [Code A]¹.
- (6) In this Code a reference to a numbered section (without more) is a reference to the section of the Licensing Act 1995 bearing that number.
- (7) For the purposes of this Code —
- “**banned person**” means a person subject to a Court ordered ban from purchasing liquor from a licence holder under sections 33(4)(a) and 75(5)(a);
- “**liquor**” means spirits, wine, beer, cider and any other fermented, distilled or spirituous liquor, but does not include —
- (a) any liquor which is of a strength not exceeding 0.5 per cent;
 - (b) perfumes;
 - (c) flavouring essences recognised by the Treasury as not being intended for consumption as or with dutiable alcoholic liquor;
 - (d) spirits, wine or made-wine so medicated as to be, in the opinion of the Treasury, intended for use as a medicine and not as a beverage; or
 - (e) liquor in confectionary which —
 - (i) does not contain liquor in proportion of 0.2 litres of liquor (containing a quantity of ethyl alcohol amounting to 57 per cent of the volume of the liquor inclusive of the alcohol contained in it at 20°C) per kilogram of confectionary; and
 - (ii) either consists of separate pieces weighing not more than 42.5 grams or is designed to be broken into such pieces for consumption.
- (8) This Code does not apply to private premises.

Note for guidance

It is important to ensure these powers are used responsibly by those who exercise them. An officer should bear in mind that he or she may be required to justify the authorisation or use of the powers to a senior officer and in court, and that misuse of the powers is likely to be harmful to the police effort in the long term and can lead to mistrust of the police by the community.

Regardless of the power exercised, all officers should be careful to ensure that the selection and treatment of any person under this Code is based upon objective factors and not upon personal prejudice. It is also particularly important to courteously and considerately deal with any person under this Code.

Part 2 – Seizure of liquor in possession of minors

2 Seizure of liquor in possession of minors (section 74)

- (1) Under section 74(1), where it appears to an officer that a person is—
- (a) apparently under the age of 18;

¹ SD 586/98 as amended by SD 304/07, SD 477/10 and SD 0322/12

- (b) in a public place; and
 - (c) in possession of liquor;
- then the officer may seize any liquor in the possession of that person.
- (2) On seizing the liquor an officer may —
 - (a) deliver the liquor to —
 - (i) a parent or guardian of the person in question; or
 - (ii) any person aged 18 or over who appears to an officer to be entitled to the liquor; or
 - (b) dispose of the liquor in such manner as the officer considers appropriate.
 - (3) In determining whether or not to deliver or dispose of any seized liquor an officer must give reasonable consideration to —
 - (a) any other duties the officer is performing at the time, or may be required to perform, and how this may affect the feasibility of a desired course of action;
 - (b) the proximity of the parents or guardians of the person apparently under the age of 18;
 - (c) the proximity of any person aged 18 or over who may appear to be entitled to the liquor;
 - (d) the value of the liquor; and
 - (e) the quantity of the liquor.
 - (4) It must be noted the Act does not empower an officer to seize liquor and retain it at a police station for collection. However, delivery or disposal of the liquor need not occur at the time of seizure and actions taken with regard to delivery or disposal of the liquor may be taken within a reasonable time after the liquor has been seized.
 - (5) Means of disposal may include, but are not limited to, placing the liquor in a rubbish bin or draining any receptacle containing liquor into a drain or sewer. Due consideration and care should be given to the security and suitability of any means of disposal. An officer cannot dispose of any seized liquor by giving it, or otherwise making it available, to any person aged 18 or over who would not be entitled to the liquor.
 - (6) When taking action pursuant to section 74 the officer concerned should also be aware of possible offences which may have occurred under sections 73 (consumption of alcohol by minors) and 74A (Agents etc obtaining liquor for minors).
 - (7) Where actions are taken pursuant to section 74 the officer concerned must make a written record in the officer's notebook that includes —
 - (a) the name and apparent age of the minor if known, or the description of the minor;
 - (b) the type and quantity of liquor seized;
 - (c) whether the seized liquor was delivered or disposed of; and
 - (d) the means of such delivery or disposal of the seized liquor.

- (8) Any such written record or any such information received must stop short of an interview and be compliant with the Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers [Code C]².
- (9) For the purposes of this paragraph of the Code a “**public place**” means —
- (a) any highway;
 - (b) any place to which at the material time the public or any section of the public has access, on payment or otherwise, as of right or by virtue of any express or implied permission;
 - (c) a place within the curtilage of any on-licensed premises or club premises; or
 - (d) premises at which the sale of liquor is, or has within the previous 15 minutes, been authorised by virtue of an occasional licence.

Part 3 – Control of drinking in public places

3 Control of drinking in public places in general (section 76)

- (1) The powers and potential offences under section 76 fall into three main areas —
- (a) the offence of consuming liquor after being warned not to do so by a police officer (section 76(1)); and
 - (b) the offence of a banned person drinking in a public place (section 76(3));
 - (c) the power for an officer to request any person carrying an open vessel which contains, or has contained liquor, to deposit the vessel in a litter receptacle or deliver it to the officer (section 76(4)); and
 - (d) the associated offence of a person failing to deliver or deposit the vessel in accordance with the request from the officer in (c) above (section 76(4)).
- (2) The means by which an officer should handle the above powers and offences are detailed in paragraphs 4, 5 and 6 of this Code.
- (3) If a person has committed, or is appearing to commit any of the offences in (1), then a police officer may require that person to leave the public place in question immediately.
- (4) For the purposes of this part of the Code a “**public place**” may include, but is not limited to —
- (a) any highway; or
 - (b) any place to which at the material time the public or any section of the public has access, on payment or otherwise, as of right or by virtue of any express or implied permission,
- not being —
- (i) a place within the curtilage of any on-licensed premises or club premises; or

² SD 586/98 as amended by SD 304/07, SD 477/10 and SD 0322/12

- (ii) premises at which the sale of liquor is, or has within the previous 15 minutes, been authorised by virtue of an occasional licence.

4 Consuming liquor in a public place after being warned not to do so by a police officer

- (1) Under section 76(1), if a person is drinking in a public place and it appears to the officer that the person is –
 - (a) acting in an indecent or disorderly manner;
 - (b) using indecent or obscene language
 - (c) acting in a manner that has resulted, or is likely to result, in any member of the public being intimidated, harassed, alarmed or distressed;
 - (d) acting in a manner that has resulted, or is likely to result, in any member of the public being disturbed in his or her peaceful enjoyment of a public place; or
 - (e) acting in a manner that has resulted, or is likely to result, in nuisance or annoyance to any member of the public;

the officer may warn the person concerned that if they consume liquor in a public place after receiving this warning they will be committing an offence.

- (2) This warning is not limited in effect to the immediate time and location at which the warning was issued. However, the warning is not permanent, nor Island wide, in its effect. In seeking to take action against a person who is drinking in a public place after being warned by an officer not to do so it would be reasonable to take into consideration –
 - (a) the amount of time which has passed since the warning was issued; and
 - (b) the proximity of the person in question to the location where the warning was issued.
- (3) Where a warning is issued by an officer pursuant to section 76(1) the officer must make a written record in the officer's notebook that includes the –
 - (a) name of the person concerned;
 - (b) reason why a warning was issued (as set out in (1) above);
 - (c) time and date the warning was issued; and
 - (d) the approximate location where the warning was issued.
- (4) It is important to note the Department of Home Affairs may, by direction in writing, provide that section 76(1), and thus this paragraph, shall not apply to a public place specified in the direction on such day and for such period (not exceeding 12 hours) as may be specified.

5 Control of drinking in public places with regard to banned persons

- (1) Further to section 76(3), any banned person who drinks in a public place anywhere on the Island is committing an offence.

- (2) If an officer identifies a banned person committing the offence set out in (1) above, an officer may –
 - (a) require the banned person to leave the public place in question immediately (section 76(7));
 - (b) issue a report for summons with regard to the offence.
- (3) If a banned person is carrying an open vessel that an officer reasonably suspects contains (or has contained) liquor, that officer may wish to consider seizing this open vessel in accordance with the paragraph 6 below.
- (4) Information regarding banned persons may be circulated by the Chief Constable subject to the provisions of section 33(4B) of the Licensing Act 1995 or section 25 (Crime and Taxation) of the Data Protection Act 2002 as appropriate. For more information on banned persons contact the Police Central Alcohol Unit (631323).

6 Seizing open vessels in a public place which contain, or have contained, liquor

- (1) Section 76(4) requires a person in a public place carrying any open vessel that an officer reasonably suspects contains (or has contained) liquor, to comply with a request by an officer to either –
 - (a) deposit the vessel in a receptacle for the deposit of litter; or
 - (b) deliver the vessel to the police officer.
- (2) If a person fails to deposit or deliver the vessel as required by an officer then an offence is committed and an officer may seize the vessel and dispose of it as the that officer thinks fit.
- (3) Means of disposal may include, but are not limited to, placing the liquor in a rubbish bin or draining any receptacle containing liquor into a drain or sewer. Due consideration and care should be given to the security and suitability of any means of disposal. An officer must not dispose of any seized liquor by giving it, or otherwise making it available, to any person.
- (4) The reason why an officer may choose to take the above action is at the discretion of the officer and is not limited by the Licensing Act 1995. Reasons may include, but are not limited to, a person –
 - (a) acting in an indecent or disorderly manner;
 - (b) using indecent or obscene language;
 - (c) acting in a manner that has resulted, or is likely to result, in any member of the public being intimidated, harassed, alarmed or distressed;
 - (d) acting in a manner that has resulted, or is likely to result, in any member of the public being disturbed in his or her peaceful enjoyment of a public place; or
 - (e) acting in a manner that has resulted, or is likely to result, in nuisance or annoyance to any member of the public.
- (5) Where actions are taken pursuant to (2) above, the officer concerned must make a written record in the officer's notebook that includes the –

- (a) reason for the action taken;
 - (b) type and quantity of liquor seized;
 - (c) means of disposal; and
 - (d) approximate location that the liquor was disposed.
- (6) Any such written record or any such information received must stop short of an interview and be compliant with the Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers [Code C].
- (7) For the purposes of this paragraph of the Code a vessel includes an open bottle, flask, can, glass, or cup, but does not include —
- (a) a flask designed to hold no more than 0.2 litres of spirits and to be carried on the person; or
 - (b) a chalice or other vessel used in the course of religious service.

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