

# Quick reference guide: legal basis

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Written by College of Policing

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Legal basis – is there a legal power to stop and search this person in these particular circumstances?

## Stop and search powers requiring reasonable grounds for suspicion

Do you have reasonable grounds for suspicion under one of those powers which requires them, such as section 1 of the Police and Criminal Evidence Act 1984 (PACE) or section 23 of the Misuse of Drugs Act 1971 (MDA)?

- Do you genuinely suspect that the person is carrying the item and that you will find it if you search them?
- Would a reasonable person also suspect this if they had the same information you have?

## Specific guidance relating to the smell of cannabis as sole ground for a search under section 23 of the MDA

To help an officer decide if their grounds for a cannabis search are reasonable, they should ask themselves the following questions.

- **Attribution** – can the smell of cannabis be attributed to a specific person?
  - If there is a group of people together – either in an area or vehicle – can I attribute the smell and/or suspicion to particular members of the group?
  - Could the smell have come from somewhere or someone else, such as a previous occupant of the area or vehicle?
- **Likelihood** – how likely is it that I will find the cannabis I can smell on this specific person?

- **Genuine suspicion** – taking everything into account, do I have a genuine suspicion that I will find cannabis on this person and is there an objective basis for that suspicion based on facts, information and/or intelligence?
- **Reasonable person** – how would my grounds sound to a reasonable person? Would they reach the same conclusion as me, as required by PACE Code A?
- **What else** might indicate that the person is or is not currently in possession of cannabis – for example, their behaviour?

For further details, see [guidance for practitioners conducting searches under section 23 MDA](#).

## No-suspicion stop and search powers

Is there a section 60 authorisation in force?

- Is the location within the area specified in the authorisation?
- Is the authorisation current?
- The power allows you to search anyone within the specified area and time period, but you should consider the circumstances generating the authorisation and limit your searches to those likely to be involved.

Remember that only a constable in uniform can stop and search under section 60.

Are you searching premises with the power to search anyone you find there?

- Are you searching school premises with reasonable grounds to suspect that there is a bladed or pointed article or an offensive weapon on the premises? You can search any person on the premises for such an article or weapon (section 139B Criminal Justice Act 1988).
- If you are executing a warrant under section 23(3) of the MDA, you can search any person on the premises, as long as this is specified in the warrant.

## Section 163 of the Road Traffic Act 1988 power to stop

- You can require any vehicle on a road to stop without needing specific grounds.
- You cannot search the vehicle or anyone in it under this power, but you may be able to do so under one of the stop and search powers – for example, your observations during the stop may

provide reasonable grounds for suspicion.

## Police Reform Act 2002 powers to search for and seize alcohol and tobacco

Are you a designated police community support officer under section 38 of the Police Reform Act 2002?

- You have a power to search a person if:
  - you have required the person to surrender alcohol or tobacco
  - that person has failed to comply **and**
  - you reasonably believe them to be in possession of the item
- You must obtain the person's consent before you can search, and must inform them that it is an offence for them to withhold consent without a reasonable excuse.
- If they do not consent, you cannot search them but can require them to give their name and address. If this is also refused, you can detain them for up to 30 minutes for the arrival of a constable.

## Stop and account

Stop and account is not a legal power. It can be used in any circumstance, as long as it is not based on protected characteristics.

However, this means that there is no corresponding power to detain a person to talk to them or ask them to account for themselves. They cannot be arrested for not stopping to talk to the officer or answer their questions.

## Tags

Stop and search