

Police use of force

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The law recognises that there are situations where police officers may be required to use force. The primary responsibility for using force rests with individual officers, who are answerable to the law.

General principles

Officers should consider three core questions when determining when, and to what extent, force may be used.

The [Criminal Law Act 1967, the Police and Criminal Evidence Act 1984, Common Law and the Criminal Justice and Immigration Act 2008](#) and the rights and freedoms contained within the [European Convention on Human Rights \(ECHR\)](#) govern the police use of force.

The requirement that domestic law and ECHR Articles 2, 3 and 8 impose is that, if possible, non-violent means should be used to resolve an incident before force is used. See the [APP on the Human Rights Act 1998](#).

Torture, inhuman and/or degrading treatment or punishment are all prohibited absolutely by ECHR Article 3, irrespective of the circumstances (including the need to combat terrorism) and the victim's behaviour.

Recourse to physical force against a person which has not been made necessary by his or her own conduct is in principle an infringement of ECHR Article 3.

ECHR Article 8 protects, among other things, the right to physical integrity and is capable of protecting individuals against forms of ill-treatment which do not reach the high threshold of ECHR Article 3.

See also [commander considerations regarding the use of force](#).

For case references see:

- Ireland v UK (1978) 2 EHRR 25
- Rachwalski and Ferenc v Poland App No. 47709/99 (28 July 2009)

Core questions

- Would the use of force have a lawful objective (for example, the prevention of injury to others or damage to property, or the effecting of a lawful arrest) and, if so, how immediate and grave is the threat posed?
- Are there any means, short of the use of force, capable of attaining the lawful objective identified?
- Having regard to the nature and gravity of the threat, and the potential for adverse consequences to arise from the use of force (including the risk of escalation and the exposure of others to harm) what is the minimum level of force required to attain the objective identified, and would the use of that level of force be proportionate or excessive?

It is essential that these core questions are considered in line with [ten key principles](#) governing the use of force by the police service.

See also the [briefing template](#) which provides an overview and reminder to officers on the use of force.

The Criminal Law Act 1967, the Police and Criminal Evidence Act 1984, Common Law and the Criminal Justice and Immigration Act 2008

The [Criminal Law Act 1967](#), the [Police and Criminal Evidence Act 1984](#) and common law apply to all uses of force by the police and require that any use of force should be 'reasonable' in the circumstances. Reasonable in these circumstances means:

- absolutely necessary for a purpose permitted by law
- the amount of force used must also be reasonable and proportionate (that is, the degree of force used must be the minimum required in the circumstances to achieve the lawful objective) otherwise, it is likely that the use of force will be excessive and unlawful

Excessive use of force is unlawful.

Section 76(7) of the Criminal Justice and Immigration Act 2008 sets out two considerations that should be taken into account when deciding whether the force used was reasonable. Both are adopted from existing case law. They are:

- that a person acting for a legitimate purpose may not be able to weigh to a nicety the exact measure of any necessary action
- that evidence of a person's having only done what the person honestly and instinctively thought was necessary for a legitimate purpose constitutes strong evidence that only reasonable action was taken by that person for that purpose

Note: The equivalent legislation in Northern Ireland is the **Criminal Law Act (Northern Ireland) 1967 s 3** and the **Police and Criminal Evidence (Northern Ireland) Order 1989 Article 88**.

European Court of Human Rights

A distinction has been made between the use of force which is intended to be lethal, or as a result of which death occurs, and other uses of force. **Article 2** will be invoked whenever death occurs at the hands of the state (or serious injury in a situation where death could have occurred) irrespective of the police contact or type of force or weapon used.

The European Court has held that this will apply to the use of force which:

- is intended to result in the death of a person and which has that effect
- results in the death of a person and which could have been reasonably foreseen to have that consequence
- results in serious injury to a person, where death could have occurred

In any of the above situations, force can only be used where it is no more than absolutely necessary. Any use of force must be reasonable in the circumstances. This means that:

- the use of force must be absolutely necessary for a purpose permitted by law, such as self-defence, defence of another, to prevent crime, or to effect a lawful arrest – force should be the last resort

- the amount of force used must also be reasonable and proportionate and the degree of force used must be the minimum required in the circumstances to achieve the lawful objective, otherwise, it is likely that the use of force will be excessive and unlawful

For case reference see McCann and Others v United Kingdom (1995) 21 EHRR 97.

Commander considerations regarding use of force

Commanders need to balance the competing rights of individuals and/or groups, and the impact their decision making has on crowd dynamics and public perception.

Commanders responsible for the planning and control of operations where the use of force is a possibility shall, so far as possible, plan to minimise recourse to the use of force.

Note: Police responsible for operations in Northern Ireland where the use of force is a possibility should refer to the Police Service of Northern Ireland (PSNI) Code of Ethics – Article 4 in the first instance.

Example considerations

- Setting the policing style and dress code, for example, Code 1 dress and shield deployment may be a justifiable level of protection, but may also send a message to the crowd that should be reserved for higher levels of threat.
- Any less intrusive **tactical options** (for example, **police liaison team**) that are available before officers are deployed into a scenario that may require them to use force.
- The consequences of placing police into direct contact with the crowd and whether this in itself may increase the need to use force.
- Mechanical substitutes (for example, barriers) that do not require direct contact between the police and the crowd.
- The potential response (for example, alienation/increase in tension), crowd dynamics (for example, exit routes) and public perception when deploying officers.
- Collective use of force, for example, line of officers with batons drawn dispersing a crowd as a result of command decisions.
- Whether staff are sufficiently trained, experienced and competent for specific deployments.

- Any relevant past intelligence relating to the group/event (eg, reaction of the group to police tactics at a past event).
- Clarity of command decisions, including the foreseeable levels of force that officers may use, for example, officers directed to disperse a crowd may individually use force to do so. Although those officers would have to justify their use of force, the commander should also consider whether they foresaw the use of force, whether use of force was necessary and whether any further clarity was required regarding the level of force to be used.

Tags

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