

Use of Force - General Procedure

The subject of the Use of Force is also covered in Authorised Professional Practice (APP) which should be read in conjunction with this procedure.

INDIVIDUAL RESPONSIBILITY

The responsibility for the Use of Force is an individual decision, which may have to be justified in legal/misconduct proceedings.

Three core questions to ask oneself as to when force may be used, and to what extent.

1. Would the Use of Force have a lawful objective (e.g., the prevention of injury to yourself and others or damage to property, or the effecting of a lawful arrest) and, if so, how immediate and grave is the threat posed?
2. Are there any means, short of the Use of Force, capable of attaining the lawful objective identified?
3. Having regarded 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?

Asking each of these three questions, and acting according to the answers, will be likely to identify the correct considerations governing the use of force, and therefore to be acting lawfully.

Your decision to use force will depend on:

- Your assessment of the situation
- Your own ability to deal with the incident
- The threat posed
- And be in line with the National Decision-Making Model

LEGISLATION

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 (Article 2 - The right to life, Article 3 – Prohibition of torture and Article 8 – The right to respect for private and family life) impose is that, if possible, non-violent means should be used to resolve an incident before force is used.

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 their 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.

The Criminal Law Act 1967

The above applies to all Use 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 (i.e. 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.

Common Law (R v Griffiths 1988)

Common Law recognises that there may be circumstances in which one person may inflict violence on another, without committing a crime. It recognises as one of these circumstances, the right of a person to protect himself/herself from attack and to act in defence of others and if necessary to inflict violence on another in doing so. If no more force is used than is reasonable to repel the attack, such force is not unlawful. If you have an honestly held belief that you or another, are in imminent danger, then you may use such force as is reasonable and necessary to avert that danger.

Police and Criminal Evidence Act 1984

Section 117 provides the authority for the Use of Force, when executing the powers found in the act.

The Criminal Justice and Immigration Act 2008

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.

Section 76 is intended to clarify the operation of the existing defences above e.g., it reaffirms that a person who uses force is to be judged on the basis of the circumstances, as he/she perceived them.

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.