

# Legal framework

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Despite making important and often time-critical decisions, police officers are still accountable through the law for their actions. Respect for an individual's human rights should be the central focus throughout the entire policing process.

All officers have an individual responsibility for ensuring that they are aware of relevant legislation, and are informed about the extent of their legal powers and the context within which those powers can be properly exercised. Police forces should continually identify any relevant legislation for the continued professional development of firearms commanders and authorised firearms officers (AFOs).

When police are required to use force to achieve a lawful objective, such as making a lawful arrest, acting in self-defence or protecting others, all force used must be reasonable in the circumstances. Use of force by police officers can result in judicial proceedings in both the criminal and civil courts. In cases where death has resulted, a public inquest or other inquiry will be held by the coroner or other officer. Every effort should be made to resolve a situation without resorting to the use of force or firearms, however, the overriding consideration should be a human rights-based approach to public and officer safety.

## European Convention on Human Rights

The state has a positive obligation to ensure that the rights and freedoms guaranteed by the [European Convention on Human Rights \(ECHR\)](#) are protected. The relevant texts of the articles can be found in the ECHR and in [Schedule 1 of the Human Rights Act \(HRA\) 1998](#). Their application to policing and other activities by public authorities is made clear by an examination of section 6 of the HRA and related case law.

The following ECHR rights and freedoms are most relevant to policing.

<p>ECHR rights and freedoms that may be most relevant to policing</p>	<p>Articles engaged when:</p> <ul style="list-style-type: none"> <li>• managing conflict</li> <li>• arresting offenders</li> <li>• responding to potentially dangerous situations</li> </ul>	
<p>Article 2 – the right to life</p>	<p>yes</p>	<p>yes</p>
<p>Article 3 – prohibition of torture, inhuman or degrading treatment or punishment</p>	<p>yes</p>	<p>yes</p>
<p>Article 5 – the right to liberty and security of the person</p>		<p>yes</p>
<p>Article 6 – the right to a fair trial</p>		
<p>Article 7 – no punishment without law</p>		
<p>Article 8 – the right to respect for private and family life</p>	<p>yes</p>	<p>yes</p>
<p>Article 9 – freedom of thought, conscience and religion</p>		

ECHR rights and freedoms that may be most relevant to policing	<b>Articles engaged when:</b> <ul style="list-style-type: none"> <li>• managing conflict</li> <li>• arresting offenders</li> <li>• responding to potentially dangerous situations</li> </ul>	
Article 10 – freedom of expression		yes
Article 11 – freedom of assembly and association		yes
Article 14 – prohibition of discrimination		yes

## Article 2 – right to life

Article 2 of the ECHR states:

*Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.*

Article 2 imposes on EU states an obligation to safeguard life. This consists of the following main duties.

- An obligation to protect the right to life.
- Prohibition on the taking of life.
- Procedural obligation to investigate deaths resulting from the state’s use of force or from the state’s failure to protect the right to life.

Article 2 can also require, in certain well-defined circumstances, a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual. Certain well-defined circumstances were defined in [Osman v United Kingdom \(1998\) 29 EHRR 245](#):

*It must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk.*

## Deaths resulting from state's use of force

ECHR Article 2 imposes a requirement of strict proportionality between:

- the objective
- the force used to achieve it

Deprivation of life shall not be regarded as inflicted in contravention of Article 2 when it results from the use of force which is no more than **absolutely necessary** to achieve one of the following permitted objectives:

- in defence of any person from unlawful violence
- in order to effect a lawful arrest or to prevent the escape of a person lawfully detained
- in action lawfully taken for the purpose of quelling a riot or insurrection

The European Court of Human Rights has made a distinction 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 of Human Rights 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

- the use of force which results in the death of a person and which could have been reasonably foreseen to have that consequence
- the use of force which results in serious injury to a person, where death could have occurred

### **Absolutely necessary**

The question of whether a use of force was absolutely necessary in the circumstances is one that depends to a large degree on the facts of the individual case.

In *Bennett v HM Coroner for Inner South London* (2006) EWHC 196 (Admin), the Administrative Court held that the reasonableness test does not differ from the Article 2 test of absolute necessity – they are one and the same.

Collins J. held at paragraph 25 that:

*In truth, if any officer reasonably decides that he must use lethal force, it will inevitably be because it is absolutely necessary to do so. To kill when it is not absolutely necessary to do so is surely to act unreasonably. Thus, the reasonableness test does not in truth differ from the Article 2 test as applied in McCann.*

At paragraph 27, the court also rejected the submission that the Convention requires that a different test be applied in the case of state agents such as police officers to that applicable in general to the issue of self-defence.

Key issues to consider include the following.

- The nature of the aim pursued – is it the protection of a person from unlawful violence which poses a real and immediate risk to life?
- Is the use of firearms or force which has the potential to result in death absolutely necessary in the circumstances, bearing in mind the dangers to the lives of all persons involved?
- What are the risks to others, including the subject of the force and all others in the vicinity?
- What other options were considered before resorting to the use of force?
- What weapons or equipment were available at the time?
- Why were these options discounted?
- Have all relevant decisions been recorded and reported?

The European Court of Human Rights has held in [McCann v United Kingdom \(1995\) 21 EHRR 97](#) (paragraph 150) that:

*In keeping with the importance of this provision [the right to life] in a democratic society the court must, in making its assessment, subject deprivation of life to the most careful scrutiny taking into consideration not only the actions of the agents of the State who actually administer the force but also all the surrounding circumstances including such matters as the planning and control of the actions under examination.*

The police also have a duty of care to take reasonable steps to prevent a person self-harming or threatening to self-harm or carrying out acts intended to result in suicide. The force used would then have to be proportionate to the harm anticipated and designed to minimise the risk to the subject.

## Article 3 – prohibition of torture

Article 3 of the ECHR prohibits:

- torture – deliberate inhuman treatment causing very serious and cruel suffering
- inhuman treatment – treatment that causes intense physical and mental suffering
- degrading treatment – treatment that arouses in the victim a feeling of fear, anguish and inferiority capable of humiliating and debasing the victim and possibly breaking their physical or moral resistance
- punishment

Everyone is entitled to the protection of Article 3, irrespective of their conduct (Chahal v UK, 1997, 23 EHRR 413). This is an absolute right from which there can be no derogation, even in times of war or other public emergency (Article 15 ECHR), ie, there can be no justification for engaging in behaviour prohibited by Article 3.

Article 3 of the ECHR is particularly relevant to any excessive or inappropriate use of force by the police.

## Ribitsch v Austria

Firearms, less lethal weapons and arrest and restraint procedures must not be used by police officers with the sole intention of inflicting severe pain or suffering on another in the performance or purported performance of official duties, see [Ribitsch v Austria \(1996\) 21 EHRR 573](#). Any such action may result in criminal charges. It is a violation of human rights provisions and is contrary to section 134 of the Criminal Justice Act 1988 and section 3 of the Criminal Law Act 1967.

In this case the court held that:

*In respect of a person deprived of his liberty, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention.*

Further information about issues in respect of restraint and handcuffing are covered in the [national Personal Safety Manual](#) (available via College Learn, you will need to log in).

## Article 8 – respect for private and family life

Article 8 states:

*(1) Everyone has the right to respect for his private and family life, his home and his correspondence.*

*(2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*

Paragraph 232 of the [Joint Committee on Human Rights \(2004\) Deaths in Custody, Third Report](#) states:

*Article 8, which protects the right to physical integrity, requires that action that interferes with physical integrity should be in accordance with established law and guidelines, that it should be for a legitimate purpose, and that it should be necessary for and proportionate to that purpose. For a physical intervention to be considered proportionate, it must be the least intrusive measure possible in the circumstances.*

Proportionality, therefore, requires that both any form of restraint should be a last resort only; and where there must be recourse to restraint it is the minimum necessary, and applied for the shortest time necessary, to ensure safety.

## Article 14 – prohibition of discrimination

Article 14 requires that there must be no discrimination in the enjoyment of Convention rights. It makes the principle of equality central to the obligations to protect life and physical integrity under Articles 2, 3 and 8 and is relevant to the use of force by police officers, including the use of restraint against detained persons.

Where any of these rights are engaged, a difference in treatment which cannot be objectively and reasonably justified in the circumstances will breach Article 14, which states:

*The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.*

## Acts relevant to armed policing

The HRA incorporated most of the ECHR Articles into UK domestic law. Section 3(1) of the HRA states:

*So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.*

The law and regulations relating to the use of force are contained in:

- the **Human Rights Act 1998** (which gives further effect to the rights and freedoms guaranteed under the European Convention on Human Rights)
- **section 3(1) Criminal Law Act 1967** and **Section 3(1) Criminal Law Act (Northern Ireland) 1967**
- **section 117 Police and Criminal Evidence Act (PACE) 1984** and **Article 88 Police and Criminal Evidence (PACE) (Northern Ireland) Order 1989**
- **Corporate Manslaughter and Corporate Homicide Act**

- Common Law (provisions in respect of self-defence)
- section 76 of the Criminal Justice and Immigration Act 2008 (which was not intended to change the law relevant to armed policing but to restate the common law principles of self-defence)
- police regulations relevant to the use of force and firearms (the [Police \(Conduct\) Regulations 2020](#), the Police Standards of Professional Behaviour, the Police Service of Northern Ireland's (PSNI) Code of Ethics and the [Police Service of Scotland \(Conduct\) Regulations 2014](#))

## Human Rights Act considerations

The following considerations will assist in ensuring that the principles of accountability, legality, necessity and proportionality are addressed in respect of any action being considered.

- What is my objective?
- Is what I am doing proportionate?
- Do I have a lawful power?
- Is there a legal basis to my action?
- Is the proposed action relevant and necessary?
- Is there a reasonable relationship between the aim to be achieved and the means used?
- Is there a less intrusive alternative?
- Can the objective be achieved with less impact on the rights of the subject and any other(s) likely to be affected by the action?
- Is the operation being planned to minimise, to the greatest extent possible, recourse to the use of lethal force? ([McCann v United Kingdom, 1995, 21 EHRR 97](#)).

## Criminal Law Act

Section 3(1) of the Criminal Law Act 1967 and s 3(1) of the Criminal Law Act (Northern Ireland) 1967 states:

*A person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large.*

## Police and Criminal Evidence Act

**Section 117** of the Police and Criminal Evidence Act (PACE) and **Article 88** of the Police and Criminal Evidence (Northern Ireland) Order 1989 apply where any provision of this Act or Order:

- confers a power on a constable, and
- does not provide that the power may only be exercised with the consent of some person, other than a police officer,

the officer may use reasonable force, if necessary, in the exercise of the power.

## Corporate Manslaughter and Corporate Homicide Act

The Corporate Manslaughter and Corporate Homicide Act (CMCHA) 2007 received Royal Assent on 26 July 2007. In England, Wales and Northern Ireland, the new offence is called corporate manslaughter, and in Scotland it is called corporate homicide.

Under section 1(1) of the CMCHA, an organisation is guilty of an offence if the way in which its activities are managed or organised:

- causes a person's death, and
- amounts to a gross breach of a relevant duty of care owed by the organisation to the deceased

An organisation is guilty of an offence only if the way in which its activities are managed or organised by its senior management is a substantial element in the breach referred to in CMCHA 2007 subs 1.

For further information see [Crown Prosecution Service \(CPS\) \(2007\) Guidance on the CMCHA.](#)

## Health and safety legislation

Health and safety legislation places an onus on the employer to carry out risk assessments and develop safe systems of work as part of an overall process to manage health and safety, both for the staff and members of the public, where a duty of care is owed.

All police activities are subject to health and safety at work legislation. This legislation forms part of criminal law, and a breach of the legislation can result in criminal prosecution by the Health and Safety Executive (HSE), which is the enforcing authority.

It is essential, therefore, that officers and police staff are appropriately trained, equipped and that they use work-related equipment and personal protective equipment (PPE) in accordance with guidance provided to and by the police service.

## **Health and Safety at Work etc. Act**

**Section 33(1)(a)** of the Health and Safety at Work etc. Act 1974 creates a single offence of failing to discharge the duties imposed by subsections 2 to 7. The relevant duties in this situation are provided by the following sections.

Section 2 states:

*It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees.*

Without prejudice to the generality of an employer's duty under the preceding subsection, the matters to which that duty extends – which is of particular relevance to armed policing – is:

*The provision of such information, instruction, training and supervision as is necessary to ensure, so far as is reasonably practicable, the health and safety at work of his employees.*

Section 3(1), which states:

*...it shall be the duty of every employer to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in his employment who may be affected thereby are not thereby exposed to risks to their health and safety.*

Section 7(a), which states that it shall be the duty of every employee while at work:

*...to take reasonable care for the health and safety of himself and of other persons who may be affected by his acts or omissions at work.*

## **Other relevant health and safety legislation**

This is a list of the other main pieces of health and safety legislation relevant to firearms, less lethal weapons, munitions and the deployment of AFOs. This list is not exhaustive.

- [The Health and Safety \(First-Aid\) Regulations 1981 \(as amended 2013\)](#)
- [The Electricity at Work Regulations 1989](#)
- [The Manual Handling Operations Regulations 1992 \(as amended 2002\)](#)
- [The Personal Protective Equipment at Work Regulations 1992 \(as amended 2002\)](#)
- [The Workplace \(Health, Safety and Welfare\) Regulations 1992 \(as amended 2002\)](#)
- [The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations \(RIDDOR\) 1995](#)
- [The Police \(Health and Safety\) Act 1997](#)
- [The Provision and Use of Work Equipment Regulations 1998](#)
- [The Management of Health and Safety at Work Regulations 1999 \(as amended 2006\)](#)
- [The Police \(Health and Safety\) Regulations 1999](#)
- [The Pressure Systems Safety Regulations 2000](#)
- [The Control of Substances Hazardous to Health Regulations \(COSHH\) 2002 \(as amended 2006\)](#)
- [The Dangerous Substances and Explosive Atmospheres Regulations 2002 \(as amended 2015\)](#)
- [The Work at Height Regulations 2005 \(as amended 2007\)](#)
- [The Control of Noise at Work Regulations 2005](#)
- [The Manufacture and Storage of Explosives Regulations 2005](#)

Injuries, accidents and incidents referred to within Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) as 'dangerous occurrences' (near misses) should be reported in accordance with force operational practice.

## Common law

### Self-defence

The right of self-defence is recognised in common law. This includes the right for a person to use **reasonable force** to protect themselves or another where necessary.

The law does not require persons (including police officers) to wait until there has been an assault before they take action, as confirmed by Lord Griffiths in *Beckford v The Queen* (1988) AC 130:

*A person about to be attacked does not have to wait for his assailant to strike the first blow, or fire the first shot, circumstances may justify a pre-emptive strike.*

Police officers, therefore, have the right to defend themselves from unlawful physical violence.

They also have a duty to protect others from harm. If police officers do not take appropriate and proportionate action to protect others from harm, they may be violating the human rights of those involved. Therefore, it is important that police officers give high regard to the rights of individuals, in how they exercise their discretion.

## Reasonable force

**The basic principles of self-defence are set out in *Palmer v The Queen*:**

‘It is both good law and good sense that a man who is attacked may defend himself. It is both good law and good sense that he may do, but only do, what is reasonably necessary.’

In line with leading case law on the common law principles of self-defence ([R v Williams 78 Cr App Rep 276](#) and *Palmer v The Queen*, 1971, AC 814) an individual has the power to use reasonable force to defend themselves.

The meaning of ‘reasonable force’ when either self-defence, [section 3\(1\) of the Criminal Law Act](#) or section [3\(1\) of the Criminal Law Act \(Northern Ireland\)](#) applies and is defined by the common law as restated by section 76 of the Criminal Justice and Immigration Act 2008.

There is a subjective element to this defence – the question of whether the degree of force used by a person was reasonable in the circumstances is to be decided by reference to those circumstances as that person genuinely and honestly believed them to be.

This is so even if their belief is mistaken. Whether the degree of force used in the circumstances (as the person believed them to be) was actually reasonable will, however, be assessed objectively by the courts.

The degree of force used by a person will not be regarded as having been reasonable if it was disproportionate in the circumstances.

For information and legal case studies related to the use of force see [National Personal Safety Manual](#) (available via College Learn, you will need to log in).

## Scotland

Under the common law of Scotland there are three conditions which have to be met before the defence of self-defence or defence of another is available. These requirements, coming from the case of *HM Advocate v Doherty* 1954 JC 1 at 4-5, are:

- There must be imminent danger to the life or limb of the accused.
- The force used in the face of this danger must be necessary for the safety of the accused – by this it is meant that the force must be both necessary in the circumstances and should be proportional to the threat which is being combated.
- If the person assaulted has means of escape or retreat, they are bound to use them.

In Scottish law the concept of ‘reasonable belief’ is outlined in the following guidance to officers, which has been circulated by the crown agent:

*A police officer is not entitled to discharge a firearm against a person unless the officer has reasonable grounds for believing that the person is committing, or about to commit, an action likely to endanger the life or cause serious injury to the officer or any other person, and there is no other way to prevent the danger.*

The Scottish common law principles are complemented by the ECHR and HRA.

## Misconduct in public office

This is a common law offence. The elements of misconduct in public office are:

- a public officer acting as such; and
- wilfully neglects to perform his duty and/or wilfully misconducts himself; and
- to such a degree as to amount to an abuse of the public’s trust in the office holder; and
- without reasonable excuse or justification

## Police conduct regulations

### Use of force and firearms

The Standards of Professional Behaviour set out in the [Police \(Conduct\) Regulations 2020](#) include the use of force and abuse of authority.

## **Honesty and integrity**

Police officers are honest, act with integrity and do not compromise or abuse their position.

## **Authority, respect and courtesy**

Police officers act with self-control and tolerance, treating members of the public and colleagues with respect and courtesy.

Police officers do not abuse their powers or authority and respect the rights of all individuals.

## **Equality and diversity**

Police officers act with fairness and impartiality. They do not discriminate unlawfully or unfairly.

## **Use of force**

Police officers only use force to the extent that it is necessary, proportionate and reasonable in all the circumstances.

## **Orders and instructions**

Police officers only give and carry out lawful orders and instructions.

Police officers abide by police regulations, force policies and lawful orders.

## **Duties and responsibilities**

Police officers are diligent in the exercise of their duties and responsibilities.

Police officers have a responsibility to give appropriate cooperation during investigations, inquiries and formal proceedings, participating openly and professionally in line with the expectations of a police officer when identified as a witness.

## **Confidentiality**

Police officers treat information with respect and access or disclose it only in the proper course of police duties.

## **Fitness for duty**

Police officers when on duty or presenting themselves for duty are fit to carry out their responsibilities.

## **Discreditable conduct**

Police officers behave in a manner which does not discredit the police service or undermine public confidence in it, whether on or off duty.

Police officers report any action taken against them for a criminal offence, any conditions imposed on them by a court or the receipt of any penalty notice.

## **Challenging and reporting improper conduct**

Police officers report, challenge or take action against the conduct of colleagues which has fallen below the Standards of Professional Behaviour.

Officers in the Police Service of Northern Ireland (PSNI) are under a duty to act in accordance with the **PSNI Police Code of Ethics**. Article 4 of the Code of Ethics deals specifically with the use of force, and includes the responsibilities of those in command.

In Scotland officers must comply with the **Police Service of Scotland (Conduct) Regulations 2014**.

## **Lawful orders**

The standards of professional behaviour set out in the **Police (Conduct) Regulations 2020** address the responsibility of police officers to abide by all lawful orders. The police service is a disciplined body. Unless there is good and sufficient cause to do otherwise, officers must obey all lawful orders. Officers must support their colleagues in the execution of their legal duties, and oppose any improper behaviour, reporting it where appropriate.

Unless an authorisation to use force or firearms is manifestly illegal or beyond the tactical capability of the AFOs concerned, the AFO has a duty to respond in a professional and active manner to such instructions.

However, officers shall continuously analyse and assess the situation, respond appropriately to any immediate change in that situation, and act in a measured and appropriate way. Their actions must take account of all circumstances of the dynamic situation and all information immediately available

to them.

Obedience to the orders of a commander or supervisor is no defence in law. If an AFO knows that the order to use force was unlawful and they have a reasonable opportunity to refuse to obey that order, they have a professional and legal responsibility to do so.

## **Improper and unlawful force**

Any police officer who has reason to believe that improper force has been used or is about to be used by another police officer shall, to the best of their capability, prevent and rigorously oppose any such use of force.

An officer shall, at the earliest opportunity, report the matter to their commander or supervisor and, where necessary, to other appropriate authorities vested with responsibility for investigating such matters.

Commanders and supervisory officers will be held responsible if they know, or should have known, through the proper discharge of their duties, that officers under their command are resorting, or have resorted, to the unlawful use of force, and they did not take all reasonable measures to prevent or report such use.

## **Tags**

Armed policing