

Module 1

Use of Force

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| Section 1: | Introduction |
| Section 2: | Use of Force |
| Section 3: | Human Rights Act 1998 |

Aims:

Describe the theories and principles of use of force in relation to operational safety.

Learning Outcomes:

Officers/Staff will be able to:

- Describe Police Scotland's criteria for use of force and relevant policies
- State the relevant use of force legislation in relation to operational safety
- State the responsibilities of Police Scotland in relation to the European Court of Human Rights (ECHR) 1998 Act and its relevance to Operational Safety Training (OST)

Section 1: Introduction

The nature of policing is such that conflict is sometimes inevitable. As in all police/public interactions officers/staff have a duty to act professionally and only use force that is proportionate, legal, accountable, necessary and ethical. Officers/staff must remember that they may be subsequently called to defend and justify their actions and to prove the force utilised was reasonable and justifiable.

This module has been designed to assist officers/staff in understanding the theories, policies and procedures which form the background to operational safety. It will provide greater confidence in applying skills operationally and assist in report writing.

Section 2: Use of Force

The Police Service of Scotland Policy

The Police Service of Scotland (thereafter referred to as Police Scotland) recognises that an individual's right to life and the maintenance of public order are paramount considerations when contemplating the use of force.

Use of force is defined as strength, power, energy, and includes influence and anything that tends to produce an effect on the mind or will.

Any force used must be proportionate, legal, accountable, necessary and ethical in the circumstances and the minimum amount necessary to accomplish the lawful objective concerned.

Action must be proportionate in relation to the competing rights of a subject and any force used should be no more than is absolutely necessary. In this regard, individual officers/staff must be prepared to account for their decisions and to show that they were justified. It is recognised as good practice for Officers/staff to record details of all instances involving the use of force and the reasons why force was necessary.

An arrest should be made as unobtrusively as possible. In no circumstances must a subject be harshly treated or have greater force used towards that person than is absolutely necessary to restrain them.

The decision to use any defensive technique or equipment in a confrontational situation is for each individual to assess based on the circumstances involved.

Indiscriminate or unnecessary use of force is unacceptable and individuals will be personally accountable for such improper use.

Police Scotland Criteria for use of Force

An officer's/staff member's use of force must be reasonable. It is possible to demonstrate that the force used was reasonable by applying the following;

The approach that should be taken can be summarised with the simple mnemonic PLANE:

Proportionate

Action taken must be proportionate to the threat in all circumstances. An option is unlikely to be regarded as proportionate where a less injurious, but equally effective alternative exists. The amount of force used must be the minimum required to achieve the lawful objective.

Legality

There must be a legal basis for taking the action. This can derive from either Common or Statute Law.

Accountable

Officers/Staff should record their decision, and must be able to account for why they chose a particular course of action and, in some cases, what other options may have been available and why these were not chosen.

Justification

The level of force must be appropriate to the degree of resistance exhibited by the subject.

Preclusion

Other force options must have either been attempted or failed, or have been considered and found to be inappropriate under the circumstances.

Necessary

The action taken by the officer/staff must have been necessary to carry out their lawful duty.

Ethical

Officers/staff actions should be in accordance with the principles of conduct that are considered correct, and appropriate for the conduct becoming of an officer/staff.

The ECHR is a living instrument and seeks to take account of changes in society and the prevalent values recognised within it. Police Scotland's Code of Ethics guidelines should be referred to.

Conflict is an unavoidable aspect of operational policing and as can be seen from the definition of force, officers will utilise some degree of force on a daily basis.

Use of Force Legislation

The basic principle in law is that the use of force is unlawful unless it is justified.

Therefore, in order to make an appropriate decision regarding a tactical option for dealing with conflict, a sound knowledge and understanding of the law in relation to use of force is essential.

In Scots law, officers/staff are justified in using force for self-defence. Self-defence extends to the defence of others and effectively the protection of life.

Police and Fire Reform (Scotland) Act, 2013 Section 20 - Constables: general duties

1. It is the duty of a constable:

(a) To prevent and detect crime

(b) To maintain order

(c) To protect life and property

(d) To take such lawful measures, and make such reports to the appropriate prosecutor, as may be needed to bring offenders with all due speed to justice

(e) Where required, to serve and execute a warrant, citation or deliverance issued or process duly endorsed, by a Lord Commissioner of Justiciary, Sheriff Justice of the Peace or Stipendiary Magistrate in relation to criminal proceedings

(f) To attend court to give evidence

2. When taking lawful measures in pursuance of subsection (1) (d), a constable must take every precaution to ensure that a person charged with an offence is not unreasonably or unnecessarily detained in custody.

Officers/staff use force to establish control of people and situations for the following reasons:

- Self defence/defence of others
- To effect a lawful arrest
- To prevent the escape of a prisoner
- To prevent a crime being committed
- To preserve order

Whatever the use of force, the officer/staff will require to answer: “could the officer/staff have achieved the same lawful objective by using a lower force option?” Two officers/staff confronted with the same set of circumstances may react differently. They may select different force options, each of which they perceive to be appropriate and reasonable for them. It is for each officer/staff to justify their individual course of action. The Police Scotland National Decision Model should be considered at all times.

The overriding principle is that any force used by officers/staff must never be excessive. Any force used must be reasonable based on the individual person’s perception of the threat that they are immediately facing.

Section 3: Human Rights Act

The Human Rights Act, 1998, confers a number of rights. The main concerns for officers/staff, who may require to use some degree of force in the execution of their duty, are articles 2, 3 and 5.

Article 2

Confers; a right to life.

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

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary; Of any subject from unlawful violence;

- In order to effect a lawful arrest or to prevent the escape of a subject lawfully detained;
- In action lawfully taken for the purpose of quelling a riot or insurrection.

The European court has held 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' (McCann v United kingdom (1995)) 21 EHRR 97.

Article 3

Confers an absolute right not to be tortured or subjected to inhumane or degrading treatment. If any action is found to have amounted to torture etc, a breach of this right will have occurred. Where extreme and excessive force is applied, or where the application of force is maintained for longer than is necessary, to achieve a lawful aim that may amount to torture etc. In relation to all the above articles, the use of force must be based on an honestly held belief that it is absolutely necessary; which is perceived for good reasons to be valid at the time.

Article 5

Confers; a right to liberty and security of person. In deciding whether the action was 'necessary in a democratic society' it will be necessary to consider whether the action:

- Fulfilled a pressing social need
- Pursued a legitimate aim
- Demonstrated a reasonable relationship of proportionality between the means employed and the aim pursued

This means that the action was designed to:

- Impair as little as possible the right or freedom in question
- Meet the objectives of the domestic law in question
- Not be arbitrary, unfair or based on irrational considerations, and be balanced against the severity of the effect that the action has on the subject or subjects. The more severe the effect, the more important the objective must be for the action to be considered legitimate

Use of Force and Human Rights

When making a determination as to whether the level of force used was lawful in any particular instance the courts will take cognisance of the articles under the ECHR 1998 Act.