

Strathclyde Taser Pilot – Outstanding Concerns

There are various outstanding concerns over the standards and procedures relating to Taser deployments in Scotland. These concerns must be addressed before any further developments in this area.

1) The Firearms Act and the Need for Political Authorisation

Amnesty International has pointed out that Section 5 of the Firearms Act (1968) includes Tasers amongst a category of “Weapons Under General Prohibition”. These are not available through the usual licensing scheme and require written authorisation from the Scottish Ministers but no such authorisation was obtained for the pilot. The Scottish Government has replied that servants of the Crown (in this case including the police) are only bound by legislation if specifically stated to be so. They claim that as there is no reference to Crown Servants being bound by Section 5 they are therefore exempt. Thus the practice has been to leave decisions on firearms to Chief Constables.

Amnesty commissioned a legal opinion which concluded that this interpretation is “wholly unsupportable in law”¹. There are also various practical implications of the Government position which we can consider:

- “Weapons Under General Prohibition” also includes rockets, grenades and bombs. To say that police are not bound by restrictions on the possession and deployment of Tasers necessarily implies that they are not bound by restrictions on the possession and deployment of these other weapons.
- Other articles of the Firearms Act with no reference to Crown Servants include Section 4 (which makes it illegal to make a sawn-off shotgun), Section 24 (which makes it illegal to supply firearms to children) and Section 25 (which makes it illegal to supply firearms to someone who is either drunk or insane), with the suggestion that these restrictions do not apply to the police.
- Considering an example of the implications for other legislation, the Prohibition of Female Genital Mutilation (Scotland) Act 2005 makes no reference to the Crown, suggesting that servants of the Crown are not bound by the provisions which make FGM an offence.

2. Obligations under Policing Legislation

In England and Wales the Home Office has produced a Code of Practice on the police use of firearms² that is binding on Chief Constables. This includes the direction that Chief Constables must have due regard to the opinion of Ministers when considering new firearms deployments and should only go against the wishes of Ministers after demonstrating sound operational reasons. It is through this Code of Practice that we have seen Home Office Ministers giving approval to new Taser deployments.³

¹ The full opinion is available on request from scotland@amnesty.org.uk

² <http://www.homeoffice.gov.uk/police/police-use-firearms/>

³ See, for example, “I am giving my agreement” in

<http://www.publications.parliament.uk/pa/cm200708/cmhansrd/cm081124/wmstext/81124m0001.htm>

The Code is binding across England and Wales and provides that the Scottish Government may also sign up, although it has yet to do so. Nevertheless the Association of Chief Police Officers Scotland (ACPOS) has signed up to the Code on a voluntary basis⁴, suggesting that whatever the interpretation of the Firearms Act (above) the Chief Constable of Strathclyde should have sought approval from Ministers, as demanded by the Code of Practice and as has happened in England and Wales.

3. Obligations Under Human Rights Legislation

Under Section 6 of the Human Rights Act (1998) the Scottish Ministers and Scottish police forces must not act in a manner inconsistent with the European Convention on Human Rights. Article 2 sets out the right to life and Article 3 provides freedom from cruel, inhuman and degrading treatment. Duties include a positive obligation to take action to avoid rights being infringed, before any actual infringement takes place.

The European Court of Human Rights in Strasbourg had been set up to adjudicate on European Convention matters and has ruled that: "Article 2 implies a primary duty on the State to secure the right to life by putting in place an appropriate legal and administrative framework defining the limited circumstances in which law-enforcement officials may use force and firearms, in the light of the relevant international standards"⁵

Yet in May 2010, with the pilot already underway, Amnesty International submitted a Freedom of Information request including details on "*Which national policy guidance is being used to oversee the pilot?*" The response from Strathclyde Police was that "*Your request for information in this question has now been considered and I can advise you that Strathclyde Police does not hold the information requested by you.*"

The First Minister told the Scottish Parliament Chamber on 20th May that "The police already follow a code of practice on the use of Tasers, which was developed with the National Policing Improvement Agency."⁶

Yet this NPIA guidance⁷ point 1.6 states that "Under the Common Law of Scotland, a policeman is not entitled to discharge a firearms against a person unless the officer has reasonable grounds for believing that the person is committing, or is about to commit, an action which is 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."

This matches closely with the conclusions of a legal review⁸ commissioned by the Northern Ireland Policing Board, which along with the opinions from Amnesty

⁴ <http://library.npia.police.uk/docs/scottish-government/police-use-firearms-Scotland-inspection.pdf>
Appendix A, point 11

⁵ *Makaratzis v. Greece*, ECtHR (GC) 20 December 2004

⁶ <http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-10/sor0520-02.htm#Col26443>

⁷ <http://www.npia.police.uk/en/13618.htm>

⁸ Available at www.nipolicingboard.org.uk/intro_of_taser.pdf

International is the only published legal opinion on the human rights implications of Taser deployment. Point 8 of the Executive Summary stated that

“8. The proper test under Article 2 ECHR [European Convention on Human Rights – Article 2 provides for the right to life and necessary force] and the Human Rights Act 1998 for the use of Taser is that its use will be lawful where it is immediately necessary to prevent or reduce the likelihood of recourse to lethal force (e.g. conventional firearms).”

These set out clear thresholds for operational use of Tasers which are not replicated in the Strathclyde Police paper discussed at the Strathclyde Police Authority meeting on 4th February 2010⁹ which merely referred to extending the use of Taser “to specially trained response officers attending operational incidents involving violence or the threats of violence.”

4. Equalities Monitoring

During the recent Taser trial in England and Wales, 507 Tasered subjects were identified as coming from vulnerable groups from which health risks related to Taser use might be more acute – these included alcohol, drugs, mental illness, existing medical condition and psychological issues. Therefore, in approximately 75% of all the reported cases, Tasers were used on suspects from the populations who would appear to be most at risk from the harmful effects of Taser use.¹⁰

In a detailed (36 pages) Equalities Impact Assessment¹¹ the Police Service of Northern Ireland concluded that proposals to introduce Taser posed a potential risk to various groups including “people from black and minority ethnic groups; children and young people;people with poor mental health; people with heart problems or who wear a pacemaker; people with epilepsy;

Strathclyde Police’s own 2-page Equality Impact Assessment was signed off on 7th April 2010, days before the pilot started. It included no discussion of potential impacts and simply listed a number of equalities groups with the indication for each that there would be no particular impact.

According to Strathclyde Police’s Equality Impact Assessment Guidance, “Equality Impact Assessment is designed to be a quality improvement exercise. An EIA should be done at an early stage, to ensure that there is time to make changes to a standard operating procedure, policy, project or strategy, as identified by the EIA. EIA should not be a last minute check.”¹²

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<http://www.strathclydepoliceauthority.gov.uk/images/stories/CommitteePapers/FullAuthority2009/2010/FA4JAN2010/item%2010%20-%20implementation%20of%20taser%20pilot.pdf>

¹⁰ http://scienceandresearch.homeoffice.gov.uk/hosdb/publications/police-weaponry/85-08_Taser_Trial_Evaluation1.pdf?view=Binary

¹¹ http://www.psnipolice.uk/taser_eqia_november_2008.pdf

¹² Communication received from Scottish Disability Equality Forum