

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. Key issues to consider include:

- 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?

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](#)
- Common Law (provisions in respect of self-defence)
- Police Regulations Relevant to the Use of Force and Firearms (the [Police \(Conduct\) Regulations 2012](#), the Police Standards of Professional Behaviour, PSNI's Code of Ethics and the [Police Service of Scotland \(Conduct\) Regulations 2013](#))

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 state:

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 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

Further information

[CPS \(2007\) Guidance on the CMCHA](#)

The Corporate Manslaughter and Corporate Homicide Act 2007 (CMCHA) 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 s 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).

Health and safety legislation