

# Chapter 9:

## **Police Use of Firearms**

# Chapter 9

## Police Use of Firearms

### Policy

- 9.1 This Chapter represents the Chief Constable's Policy in respect of the use of firearms by police officers. It complies with the principles of the Human Rights Act 1998 and other international human rights instruments.
- 9.2 In recognition of the special circumstances prevailing in Northern Ireland, the Chief Constable has given standing authority for all officers, subject to successful training, to be issued with a personal issue handgun which may be carried when officers are both on and off duty. In addition, the standing authority addresses situations in which officers may be issued with other firearms and less lethal weapons when they are on duty. This standing authority will be kept under regular review in accordance with Recommendation 65 of the Independent Commission on Policing in Northern Ireland.
- 9.3 Policy in relation to the issue of firearms to Armed Response Units (ARUs), Specialist Operations Branch (SOB) and Specialist Operations Branch Support Unit (SOBSU) for use in policing operations is outlined at paragraphs 9.160 – 9.161 post.
- 9.4 It is the aim of the Police Service of Northern Ireland (PSNI) to uphold and protect the human rights of all the people in Northern Ireland by providing a high quality, effective policing service in partnership with the community and in co-operation with other agencies. In carrying out their duties, police officers shall, as far as possible, apply non-violent means before resorting to the use of force or firearms. Police officers must only resort to the use of force or firearms if other means remain ineffective or there is no realistic prospect of achieving the lawful objective without exposing police officers, or anyone whom it is their duty to protect, to a real risk of harm or injury. Officers must ensure that they make a record of the event in the prescribed manner and comply with this chapter, the Association of Chief Police Officers (ACPO) Authorised Professional Practice – Armed Policing, and the PSNI Code of Ethics.
- 9.5 Whenever officers resort to the lawful use of force or firearms they shall:
- Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved.
  - Minimise damage and injury; and respect and preserve human life.
  - Ensure that assistance and medical aid are secured to any injured person at the earliest possible opportunity. (also refer to Appendix I - Provision of First Aid During Planned Events, Anticipated Public Disorder Incidents and Spontaneous Incidents).

- Ensure that relatives or close friends of the injured or affected person are notified at the earliest opportunity.
- Where force or firearms are used, report the incident promptly to their supervisors.
- Comply with Police Service policy, procedure and guidance.

(Code of Ethics for the PSNI Article 4.3).

- 9.6 A police officer shall discharge a firearm only where the officer honestly believes it is absolutely necessary to do so in order to save life or prevent serious injury, unless the discharge is for training purposes or the destruction of animals.  
(Code of Ethics for the PSNI Article 4.4).
- 9.7 It should be noted that any breach of the Code of Ethics is a potential disciplinary offence.

## **Definitions**

### **Authorised Firearms Officer (AFO)**

- 9.8 An Authorised Firearms Officer (AFO) is a police officer attached to SOBSU or ARU who has been selected and trained in the use of firearms in policing operations. The officer will have reached the required level of competency in weapon handling, tactical knowledge, shooting skills and judgement as required by the Chief Constable, commensurate with their role in the organization.

### **Specialist Firearms Officers**

- 9.9 A Specialist Firearms Officer (SFO) is an AFO attached to Specialist Operations Branch who has received additional training in the use of firearms in pre planned policing operations, counter terrorism (CTSFO) and specialist entry and search techniques.
- 9.10 Details of the skills and tactics applicable to certain groups of officers and units can be found at Appendix 'F'.

### **Armed Response Vehicle (ARV)**

- 9.11 An Armed Response Vehicle (ARV) is a patrol car normally crewed by 3 officers which contains all equipment necessary to enable the firearms trained crew to respond to an initial firearms incident. Ideally, at least 2 of the officers should be qualified to drive the vehicle.

## **Deployment**

- 9.12 AFOs are considered as being 'deployed' when they are required to conduct a specific task during which their possession of a firearm, with appropriate

authorisation, is a required element. This includes when they self-deploy as provided for under the guidance set out in this chapter and the ACPO APP – Armed Policing.

### **Less Lethal Options**

9.13 The term ‘less lethal options’ refers to weapons, devices and tactics, developed and used to minimise the need for recourse to conventional firearms. In addition to less lethal weapons, the term less lethal options includes:

- Negotiation.
- Police dogs.
- Barriers to restrict or impede movement.
- Vehicle stopping devices.
- Tactics and devices designed to minimise the risks to a subject.
- The range of tactical options set out in the ACPO Personal Safety Manual and ACPO APP – Public Order.

9.14 Less lethal options should be considered in all police responses, including counter-terrorist.

### **Emotionally or Mentally Distressed**

9.15 The term ‘emotionally or mentally distressed’ is used to describe individuals who may behave in an unexpected, extreme or challenging manner as a result of mental health issues or emotional distress.

### **Principal Officers**

9.16 ‘Principal Officers’ is a term used to identify members of staff directly involved and directly affected by a firearms incident.

### **Introduction**

9.17 The purpose of this Chapter is:

- To promote an understanding and to provide practical guidance concerning the legal implications surrounding the carriage and use of firearms by police officers.
- To set out Service Policy concerning the deployment and training of police officers issued with firearms, and to support and inform operational performance, decision-making and planning in policing situations where the possession of a firearm is a required element.

- 9.18 It is intended to follow the guidance contained in ACPO APP – Armed Policing.
- 9.19 The ACPO APP – Armed Policing places the management, command and deployment of armed officers into the context of general policing and provides:
- Guidance on the appropriate issue and use of firearms and related less lethal options within the Police Service.
  - A basis for the training of all relevant police staff in matters relating to the operational use of firearms. This includes command issues at strategic, tactical and operational levels.
  - Guidance on command structures, tactical options and operational issues associated with the deployment of AFOs.
- 9.20 The ACPO APP – Armed Policing guidance is a ‘living’ document. It is kept under constant review and updated on a regular basis in order to ensure that good practice is incorporated and to take account of emerging legislation. The purpose of ‘APP – Armed Policing’ is to act as a central reference document and to provide guidance on matters relating to the deployment of police officers to situations that may require the intervention of armed police.
- 9.21 APP – Armed Policing has and will continue to inform relevant policies, practices and procedures within policing in Northern Ireland. It provides advice and guidance for officers of all ranks and disciplines.
- 9.22 APP – Armed Policing will be of particular relevance to those officers who are involved in the planning or command and control of firearms related operations/ incidents. It will also be applicable to operational officers who are deployed to an operation or incident that requires an armed police response.
- 9.23 APP – Armed Policing does not seek to be prescriptive in terms of its content, however, where the term ‘must’ appears, it is to be interpreted as follows:
- ‘A police force or an individual officer is under a positive obligation in law, or that given the gravity of the issue, the inclusion of the term ‘must’ has been approved by ACPO Chief Constables’ Council, thereby endorsing the need for this action to be completed. If a chief officer determines it necessary to issue separate instructions, due to the operational context or legal provisions appertaining in a specific jurisdiction, they should produce a documented audit trail explaining their rationale for doing so and this should be included within their force’s Strategic Firearms Threat and Risk Assessment’.
- 9.24 ACPO recognises that situations involving the deployment of armed officers by their very nature, often involve a set of circumstances which are constantly evolving. Nothing in APP – Armed Policing is intended to restrict police officers from taking innovative action to effectively resolve incidents in ways which are not included in the guidance.

- 9.25 To ensure interoperability, consistency of practice and compliance in relation to the management, command and deployment of AFOs, the guidance contained in ACPO APP – Armed Policing will be regarded as the overarching authoritative document in relation to all other aspects of associated ACPO and Service procedures on firearms. However, it must be read in conjunction with established PSNI policies and procedures. It would be the intention that PSNI Firearms Policy will fully reflect the ACPO guidance, however it is recognised that there may still be some areas where PSNI policy and procedure will be at variance to guidance provided in the APP – Armed Policing. Where this is the case, PSNI policy and procedure (as contained in this manual) will take precedence. Where any difficulties arise the matter should be referred to the Assistant Chief Constable (ACC), Operational Support Department (OSD) for further action where necessary.
- 9.26 The guidance contained in ACPO APP – Armed Policing will continue to be formally reviewed by ACPO. The PSNI representative on the ACPO Armed Policing Working Group and other relevant sub groups will ensure that future updates to APP continue to reflect the policing environment in Northern Ireland.
- 9.27 ACPO APP – Armed Policing outlines the circumstances under which the Chief Constable may grant standing authority to allow the PSNI to maintain an armed capability. This standing authority will be kept under regular review in accordance with Recommendation 65 of the Independent Commission on Policing in Northern Ireland.
- 9.28 Police officers are issued with handguns on a personal basis. A range of other firearms, including the Heckler and Koch weapon system, are also available for issue to officers trained in their use and where a threat assessment indicates that their carriage is appropriate.
- 9.29 Incidents involving the use of firearms are, quite properly, of particular interest to the media and the general public. Public confidence in the police is of the utmost importance. It is important for public confidence, that in their bearing and conduct, police officers are seen to be well-trained and disciplined in handling weapons.
- 9.30 The use of drugs in medical treatment or consumption of alcohol can reduce an officer's alertness and performance. Article 9 of the PSNI Code of Ethics addresses the importance of officers' fitness for duty and issues associated with consumption of alcohol, illegal drugs and prescription drugs. These standards are particularly important in respect of officers undertaking firearms duties. An officer who is receiving a course of drug treatment must seek the advice of their own doctor or Occupational Health and Well-being (OHW) if they are concerned about side effects of the drugs. Any other relevant concerns or medical advice given to an officer must be brought to the attention of their immediate supervisor or OHW, who should take appropriate action. The following documents are also worthy of note - Policy Directive No 10/08 – Alcohol Misuse, and Service Procedure No 21/11 – Substance Misuse.
- 9.31 AFOs, Commanders and Tactical Advisers, without prejudice to the role they undertake, can request to be temporarily stood down from such duties. This is

particularly relevant where there are medical, emotional or other life stresses which may interfere with the discharge of critical decision making or their overall effectiveness. This process should also apply to those involved in key support roles.

- 9.32 All officers have a personal responsibility to inform the issuing officer or a supervisor of any circumstances where they believe that they may be unfit to carry out their duties. The issuing officer or supervisor is responsible for deciding whether that officer should be issued with a firearm and record their decision and the rationale for it. Officers and supervisors have an equal responsibility in relation to personal issue handguns. See also Chapter 8 – Access to Firearms and Ammunition.

## Legal Basis

### Introduction

- 9.33 This section is designed to provide a summary of the legal rules governing the use of force. It is designed to provide practical guidance to officers, so that they are aware of their rights and responsibilities when using, or considering the use of force. It will set out the main legal (including human rights) provisions, and give some practical examples, referring to relevant legislation, leading cases and other sources of law, as necessary. Article 4 of the PSNI Code of Ethics sets out the standards expected of officers, and serves as a useful aide memoire of the key principles. It is not feasible to cover all of the issues in this document, and officers may have questions that are not answered here. If further guidance is required, an officer should contact their supervising officer. If questions still remain, the PSNI Human Rights Legal Adviser can be contacted.

### Context

- 9.34 Police, by virtue of their position in society, are subject to onerous responsibilities concerning the use of force. The Council of Europe (An international organisation established in 1949, to, amongst other things, defend human rights and promote the rule of law - The European Convention on Human Rights is a Council of Europe Treaty) has recognised this, stating “police play a vital role ... they are frequently called upon to intervene in conditions which are dangerous for their members, and (...) their duties are made yet more difficult if the rules of conduct of their members are not sufficiently precisely defined ....” (Resolution 690 (1979) of the Parliamentary Assembly of the Council of Europe on the Declaration on the Police). Abuse by police of their powers can have extremely serious consequences for the rights of the individual and for society as a whole. For these reasons, clear rules governing the use of force by police officers, coupled with robust oversight mechanisms, are key.
- 9.35 Police officers may use force in order to defend themselves or another, effect an arrest, carry out a lawful power, secure and preserve evidence or uphold the peace, provided such force is lawful, proportionate and reasonable in the circumstances. The carriage of firearms by a police officer or the presence of an armed officer does not, in itself, constitute a use of force. When a police officer makes use of

a firearm or less lethal weapon, for example, by pointing it or by discharging the weapon that will constitute a use of force for which the officer is both legally and organisationally accountable.

## **Terminology**

- 9.36 For the purpose of this guidance, a police officer will be deemed to have used a firearm or less lethal weapon when it is:
- Pointed or aimed at another person.
  - Fired at another person.
  - Discharged in any other operational circumstances, including an unintentional discharge.

(See also paragraph 9.56 – 9.57).

## **Police (Northern Ireland) Act 2000**

- 9.37 Section 32 of the Police (NI) Act 2000 states:

“It shall be the general duty of police officers:

- To protect life and property.
- To preserve order.
- To prevent the commission of offences.
- Where an offence has been committed, to take measures to bring the offender to justice.”

It is clear that, in the execution of their duties, police officers may be required to use force in certain circumstances. A clear distinction can be made between lethal force and non-lethal force.

## **Lethal Force**

- 9.38 Lethal force includes:
- 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.

9.39 United Kingdom law, interpreted in the light of Article 2 of the European Convention on Human Rights (ECHR), imposes upon States an obligation to safeguard life. This consists of 3 main duties:

- Not to deprive a person of his or her life unless absolutely necessary for a specified aim (which is, in effect, the protection of the life or lives of others).
- Investigate suspicious deaths; and
- To take steps to protect life (often referred to as the “positive obligation”).

9.40 *Absolute necessity*

- Lethal force may be used only where it is absolutely necessary to do so, in pursuit of a specified aim. Article 2 of the ECHR makes reference to 3 specified aims. However, in United Kingdom law, a deprivation of life may only be justified if it is absolutely necessary for the protection of the lives of others. The other aims (to quell a riot or insurrection or to prevent the escape of a detainee) may not, of themselves, be used as a justification for the use of lethal force.
- There is a requirement of strict proportionality between (a) the objective and (b) the force used to achieve it. The person using the force must honestly believe that it is absolutely necessary to use lethal or potentially lethal force to avert a real and immediate risk to the lives of themselves, and/or others. An honestly held belief may subsequently be shown to have been mistaken, but this will not of itself render the deprivation of life in violation of Article 2 of the ECHR.
- The question of whether a use of force was ‘absolutely necessary’ in the circumstances is one that depends to a very 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 lethal/potentially lethal force 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?

9.41 The method of applying force must be in accordance with PSNI instructions and training. Officers must report any defects, etc. in their equipment, and ensure that they undergo training in accordance with Service instructions.

9.42 The ECHR closely examines the planning and control of operations. A key issue is whether the operation was “planned and controlled by the authorities so as to minimise, to the greatest extent possible, recourse to lethal force.” (McCann and others v United Kingdom (1996) 21 EHRR 97). This standard is reflected in the PSNI Code of Ethics, at Article 4.2. All decisions should be subjected to a process of constant critical analysis.

### *Investigations*

9.43 If death (or injury) occurs as a result of the use of force or other involvement of a PSNI officer, an independent investigation is required. In practice, this will be carried out by the Police Ombudsman’s Office. All PSNI officers and staff must comply with any investigation (see Policy Directive 03/06 – Post Incident Procedure, Deployment of Post Incident Managers – Discharge of Firearms). In addition, all suspicious deaths (whether involving the police or not) must be the subject of an effective official investigation, and police officers must facilitate such investigations as appropriate.

### *Positive obligation*

9.44 A full discussion of this issue is outside the scope of this Chapter. In brief, there are situations where the police are required to take all reasonable steps to avert a real and immediate risk to life from the criminal acts of others, of which they are aware or should have been aware. Where lethal force is necessary to protect the lives of others, including those attempting to self-harm, paragraph 9.38 above will apply.

## **Non-lethal Force**

9.45 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) the legal bases are to be found in:

- Common law.
- Section 3 Criminal Law Act (NI) 1967.
- Article 88 Police and Criminal Evidence (NI) Order 1989 (PACE).

9.46 All force used must be ‘reasonable in the circumstances’. More specific guidance on the usage of a particular method of force can be found, post paragraph 9.147 of this Chapter. Factors which may assist in establishing whether or not the use of force was reasonable in the circumstances are:

- Was the use of force lawful? – E.g. is the aim one of those outlined in Section 3 Criminal Law Act, PACE or Common Law?
- Was the degree of force used proportionate in the circumstances?

- What other options were considered? If so, what were they? Why were those options discounted? Has an adequate record of all relevant decisions been made?
- Was the method of applying force in accordance with Service instructions and training?

9.47 Any force used must not be greater than was reasonable in the circumstances. If force used is not reasonable it may leave the officer open to criminal or misconduct proceedings. In addition, it may constitute a violation of the human rights of the person against whom the force was used.

9.48 Article 3 of the ECHR prohibits torture or inhuman or degrading treatment, or punishment. Excessive use of force by the police can engage Article 3. In *Timurtas v. Turkey* [(2001) 33 EHRR 121] the European Court of Human Rights stated: "... where an individual is taken into custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which an issue arises under Article 3 of the Convention." In *Ribitsch v. Austria* [(1996) 21 EHRR 573] 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."

## Investigations

9.49 In the event of the use of force by a PSNI officer, an effective investigation may be required. If so, this will be carried out by the Police Ombudsman's Office. [See also Policy Directive 04/09 – Policies and Procedures Relating to the Police Ombudsman for Northern Ireland (PONI)]. All PSNI officers and staff must comply with any such investigation. (See Policy Directive 03/06 – Post Incident Procedure, Deployment of Post Incident Managers – Discharge of Firearms).

## Children and Members of other Vulnerable Groups

9.50 Special consideration should be given to the heightened vulnerabilities of children and members of other vulnerable groups in relation to the use of force. Although not incorporated into domestic legislation, officers should take cognizance of the United Nations Convention on the Rights of the Child (UNCRC). Article 3 of the Convention requires the best interests of children to be a primary consideration in all actions concerning children. See also paragraphs 9.382 – 9.407 (Considerations when dealing with people).

## Other relevant legal provisions

### *Corporate Manslaughter*

9.51 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.

- 9.52 Under Section 1 of the CMCHA 2007, 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.
- 9.53 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 subsection (1).

#### *Misconduct in Public Office*

- 9.54 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.

#### *Health and Safety at Work (Northern Ireland) Order 1978*

- 9.55 Section 31 (1)(a) of The Health and Safety at Work (Northern Ireland) Order 1978 creates a single offence of failing to discharge the duties imposed by Articles 4 to 8. The relevant duty in this situation is provided by Article 5(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".

### **Authority and discretion to use force and firearms**

- 9.56 In exercising the duties of the office of Constable, officers have a personal accountability and responsibility for the protection of life and carrying out duties associated with that office.
- 9.57 In most situations it is the individual officer who must assess the immediacy and proximity of the threat and make an operational decision as to whether it is absolutely necessary to discharge a firearm or take other decisive action. Any discharge of a weapon other than in training, whether intentional or otherwise,

must be reported by the officer concerned in accordance with current Service Policy and, subject to any individual legal or medical advice, recorded in the officer's official notebook or journal. The recording of all relevant information, in as much detail as feasible and as soon as possible after the event, will be of great assistance in justifying actions taken during any subsequent administrative or legal proceedings.

## Accountability for use of force decisions

- 9.58 Each officer is individually responsible and accountable for their decisions and actions, and nothing can absolve them from such responsibility and accountability. This includes decisions to refrain from using force as well as any decisive action taken, including the use of force or a firearm.
- 9.59 Police officers are answerable, ultimately, to the law in the courts, and must be in a position to justify their decisions and actions based on their honestly held belief as to the circumstances that existed at the time, and their professional and legal responsibilities.
- 9.60 An officers appreciation of the critical nature of the situation may be informed by a combination of the following factors:
- Their observation and assessment of the situation.
  - Their perception of any imminent threat.
  - Their understanding of the wider police operation.
  - Information or intelligence that has been communicated to them.
  - Any direction given to them.

## Command decisions

- 9.61 Commanders and AFOs are trained to analyse and determine appropriate courses of action in the course of armed deployments. (See Introduction - National Decision Model). To mitigate the risk of unclear orders or confusion, commanders should be mindful that under UK law and policing practice, police officers do not require any authorisation to use force. This section covers situations where command decisions may affect the AFO's own individual discretion and self authorisation regarding a use of force.
- 9.62 Commanders and those involved with the assessment of intelligence, provision of tactical advice, and relaying of communications will be legally and professionally responsible for decisions that they make, and advice or directions that they give. Any advice or directions and subsequent action must be 'reasonable in the circumstances' and where appropriate the test of 'absolute necessity' as required by Article 2 ECHR must be met.

- 9.63 Where a commander, on the basis of information and intelligence available to them, considers it necessary to constrain or direct officers in respect of their use of force, firearms or any less lethal option, it is important that these decisions and relevant directions are communicated with clarity and in a timely fashion.
- 9.64 The context within which command decisions are made, and any directions given to AFOs may include:
- The information available.
  - The consequence and scale of the threat being addressed.
  - The immediacy of the threat including the assessment of capability and intent of the subject(s).
  - The command structures that are in place.
  - The speed at which the situation is developing.
  - The tactical options and contingencies available.
- 9.65 In some situations a commander may have access to decisive information relevant to an imminent threat to life, of which an AFO who is operationally deployed would not be aware. It is essential that it is understood that a commander may be legally prevented from passing information to AFOs/SFOs, or the danger may be so imminent that there is insufficient time for a commander to fully brief the AFO on all available details. In these circumstances, it may be necessary for a commander who has access to the whole of the decisive information (the 'bigger picture'), to constrain or direct an AFO in their use of force in order to minimise the risk to life of those involved.
- 9.66 In such a situation, the commander may wish to constrain the AFO from discharging a firearm or from taking other significant action, which otherwise the AFO might have done in exercising the AFO's own independent discretion. The constraint may prevent loss of life or serious harm to others such as hostages or other persons at risk.
- 9.67 Conversely, a direction from a commander to an AFO to discharge a firearm or take other decisive action may be necessary where a failure to take such action would result in a loss of life. This is only likely to be necessary in the most extreme of circumstances where, for example:
- The AFO has limited knowledge of the immediate threat to life.
  - The commander is aware of the immediate threat to life; and
  - The commander is either unable to pass the detail and the quality and reliability of that information to the AFO for the reasons given at 9.65 and 9.66 above or

if able, any delay caused by attempting to fully brief the AFO may place life at immediate risk.

- 9.68 Where command decisions are made to constrain or direct the action of an AFO, the communication from the commander will form an essential part of an AFO's decision making.
- 9.69 Any direction from a commander to an AFO in these circumstances must be communicated with absolute clarity as to what is being directed and the action required, including any time imperative.
- 9.70 If a commander decides that as a last resort a critical shot is absolutely necessary in self-defence, which includes the defence of another, a commander will communicate that decision to an AFO with the words, 'critical shot directed', and an AFO will be entitled to rely on them subject to whatever other information is available, principally that from the scene. (See 9.85 post)
- 9.71 It will be for the commander who directs a critical shot to later justify the direction, and for the AFO to explain their individual response and any action taken. Post-incident accountability rests with the commander for giving the direction, and the AFO for their response. For the use of force to be justified and lawful it must be in self-defence, or in defence of another (see Article 2 ECHR, Section 3(1) Criminal Law Act 1967, Section 76 Criminal Justice and Immigration Act 2008 and Common Law).

## Obedience to lawful orders

- 9.72 The PSNI Code of Ethics addresses 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.
- 9.73 Unless manifestly illegal or beyond the tactical capability of the officers concerned, the officer 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.
- 9.74 Obedience to the orders of a commander or supervisor is no defence in law. If a police officer 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.
- 9.75 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.

- 9.76 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.

### **Circumstances when firearms may be discharged**

- 9.77 Firearms may be discharged by police officers only when absolutely necessary. An officer, in discharging a firearm, must honestly believe that, given the immediacy and proximity of the threat, the immediate discharge of a firearm is absolutely necessary in the circumstances. See Absolute Necessity (paragraphs 9.40 – 9.42 above).

### **Challenging and communicating with subjects**

- 9.78 Where circumstances permit, officers should identify themselves as armed and give a clear direction to the subject, giving sufficient time for the directions to be observed unless to do so would unduly place any person at risk, or would be clearly inappropriate or pointless in the circumstances of the incident. Oral or visual warnings should make the subject aware of the nature of the armed police intervention, these should serve as a clear warning to them and make it clear that force and/or firearms may be used.
- 9.79 All AFOs should receive training in communicating with subjects. On first verbal contact, officers should normally:
- Identify themselves as police officers and state that they are armed.
  - Clarify who it is they are seeking to communicate with.
  - Communicate in a clear and appropriate manner.
- 9.80 Where weapons are fitted with torches or laser sights, officers should consider the effects of their use during any confrontation. For further information see paragraphs 9.388 – 9.397 Environmental and Behavioural Influencers.

### **Discharge of firearms**

- 9.81 The primary intention of the police is to prevent an immediate threat to life by shooting to stop the subject from carrying out their intended or threatened course of action. In most circumstances this is achieved by aiming to strike the central body mass (i.e. the torso).

- 9.82 Research indicates that the accuracy of shots fired under training conditions is generally greater than in operational circumstances. Police officers are normally trained to discharge conventional firearms at the largest part of the subject they can see, which in most cases will be the central body mass.
- 9.83 The physical response of a person to having been shot is unpredictable; there are a range of physical and psychological moderators which can contribute to the nature and extent of any response. Only shots striking the central nervous system (which is largely located in the brain and spinal cord) and the major organs, which are contained in the upper body, are likely to result in rapid incapacitation.
- 9.84 There will be circumstances when aiming directly for the head will be necessary, as aiming to strike another part of the body would:
- Be impractical in the circumstances.
  - Present increased risk to life.
  - Be unlikely to achieve immediate incapacitation.
- 9.85 A 'critical shot' is a shot or shots intended to immediately incapacitate the subject. A critical shot should only be fired when absolutely necessary in defence of a person when there is an imminent and extreme risk to life from unlawful violence. A critical shot is a shot or shots to the head, if possible, or otherwise to the central nervous system or major organs.
- 9.86 Alternative points of aim will be appropriate for approved less lethal weapons in accordance with weapon-specific guidelines. Where alternative points of aim and intended points of impact are referenced in the guidelines, the purpose is normally to minimise the risk of unintentional effects or potentially lethal injuries, and to maximise the effectiveness of the weapon system.
- 9.87 When it is considered necessary to discharge a firearm at a subject, police officers need to shoot to stop an imminent threat to life. The imminence of any threat should be judged, in respect to the potential for loss of life, with due regard paid to legislation and consideration of necessity, reasonableness and proportionality.
- 9.88 When an officer decides to discharge a firearm, the number and sequencing of rounds fired will depend on the circumstances that exist at the time. Officers must constantly assess the threat posed by the subject and the continuance of the threat. Officers must be able to demonstrate that the degree of force used was absolutely necessary and relative to the threat posed. The use of excessive force is strictly prohibited.
- 9.89 The discharge of firearms by police may not necessarily result in the death of a subject, therefore, every effort must be taken by police to provide medical assistance.

## Accountability for all rounds fired

- 9.90 Officers are accountable for all rounds they discharge, and they should be aimed so as to minimise risk (either directly or by ricochet) to any person other than the subject. Where in exceptional circumstances a round is discharged in a direction where it is not intended to strike a person or defined area, officers must take account of potential unintentional harm being caused as a consequence. This could also include death or serious injury of a person not in the immediate proximity.
- 9.91 Officers should be aware that any discharge of a firearm may lead a subject or other officer to believe that they are under fire.

## Suspects in vehicles

- 9.92 Police officers should not, in normal circumstances, fire at or from moving vehicles. There may be situations where life is at risk and the only course of action available is to engage a subject in, or from, a moving vehicle. Firearms should not be discharged at a moving vehicle simply because it has failed to stop when directed, or to immobilise the vehicle, unless there is intelligence to support such action. It may be appropriate to use firearms to immobilise a moving vehicle if warranted by the threat. In these circumstances only appropriately trained officers using authorised equipment and ammunition may undertake this activity. If such a course of action is deemed absolutely necessary, officers must be aware of the potential consequences and their responsibilities to the public. The following matters must be borne in mind:
- The construction of modern vehicles means that shots are unlikely to be effective in immobilising the vehicle and there may be real danger of ricochet.
  - Rounds may over penetrate the vehicle causing danger to innocent persons.
  - If the driver is killed or injured, there is a high risk of the vehicle going out of control.
  - The difficulty of maintaining accuracy when firing from a moving vehicle.
  - When bullets, especially those from high-velocity weapons, strike the windows or bodywork of a motor vehicle, a flash is produced which may resemble the muzzle flash of a weapon, thereby potentially causing officers to believe that they are being fired at. The same effect could be produced when a high-velocity bullet strikes the window of a building or other solid matter. See also Vehicle Stopping and Immobilisation at paragraphs 9.519 – 9.521 post.

## Destruction of Animals

- 9.93 The destruction of an animal is a duty which may fall to the Police Service if the animal represents a danger to lives or property, or if it is in such a condition that it must be destroyed to avoid unnecessary suffering, and no veterinary surgeon or licensed slaughterer is available to perform the task or they are otherwise

unable to do so. Where time permits, a Firearms Tactical Adviser (FTA) should be contacted as outlined at paragraph 9.518 post.

- 9.94 Instructions in relation to dangerous wild animals are outlined in Service Procedure No 06/2012 Animal/Wildlife Offences/Welfare. If it is considered that a dangerous wild animal is a real threat and may require destruction, appropriately trained and equipped AFOs will be deployed.
- 9.95 If prior to the arrival of AFOs it is considered that an animal is a real threat and requires immediate destruction, other police may cause this to be carried out on their behalf (if an individual with a suitable means of destruction is available) or they may carry it out themselves. Suitable calibre weapons should be used and great care must be exercised to prevent injury to any other animal or members of the public. Animals suspected of being rabid must not be shot in the head as the biological tests required on the carcass after its death involve the brain. Shots aimed at vital organs such as the heart (on best expert advice at the time) will often miss the intended target but may well incapacitate the animal allowing the marksman to approach the animal to finalise the kill.
- 9.96 A comprehensive document entitled, 'The Humane Destruction of Animals by Police', prepared by the Home Office Scientific Development Branch (HOSDB) and the Firearms Training and Advisory Group (FTAG) addresses the destruction of domestic and non-domestic animals and should be referred to in conjunction with current training modules.

## Firearms Incident Investigation

- 9.97 Post incident investigation will be commenced in all situations where there has been a discharge of a weapon by the police (including those involving a conventional firearm or less lethal weapon), whether intentional or unintentional which has, or may have.
- Resulted in death or serious injury.
  - Revealed failings in command.
  - Caused danger to officers or the public.
- 9.98 Where the above criteria are met or where it is in the public interest, the Chief Constable has directed that the Ombudsman's office be informed immediately. It will be the responsibility of the senior officer on duty to contact the on-call Ombudsman's Senior Investigating Officer (SIO). The emergency call-out procedure for contacting the Ombudsman must be followed.
- 9.99 If the above criteria are not met, the matter will be referred to Professional Standards Department. (See paragraphs 9.118 – 9.122 Records and Reports). Referral to Professional Standards will not be required if the weapon was discharged during training or for the destruction of animals.

- 9.100 The scope of the PONI investigation will be thorough and wide ranging. It will not only include the circumstances of any injury to, or death of any person who may have been shot, but also the circumstances leading up to the discharge of firearms and all the surrounding issues such as the management of the incident and planning of the operation. Police officers responsible for the planning and control of operations where the use of force is a possibility shall so far as possible plan and control them to minimize recourse to force in particular, potentially lethal force (PSNI Code of Ethics 4.2).
- 9.101 The Police Ombudsman will appoint a SIO to commence a formal investigation in accordance with the Police (NI) Act 1998. Pending arrival of the Ombudsman SIO, the Tactical Firearms Commander or the senior officer on duty will ensure the preservation of the scene, the security of physical evidence, provision of medical assistance where required and account for all potential witnesses. No substantive steps in relation to the investigation can be taken pending the arrival of the Ombudsman SIO.
- 9.102 There will inevitably be a transition from the operation itself to the investigation. Guidance relating to joint scenes can be found on the Professional Standards Department (PSD) website on PoliceNet. Where joint scenes are involved, Police and Police Ombudsman's Investigators will investigate within their respective areas of responsibility. For example, where an armed robbery has taken place and the police have discharged firearms to effect arrest, there is an onus on both the police and the Ombudsman's office to carry out an investigation. However, the agency with the most serious crime allegation will generally take the lead in respect of forensic support, crime scene management and access to witnesses and suspects. In this transitional phase, close liaison is essential between the Tactical Firearms Commander, PSNI SIO and Ombudsman's SIO having due regard to the PSNI Post Incident Managers Policy. Primacy will be determined on a case specific basis. In accordance with the agreed protocol, the on-call Ombudsman's SIO will inform police of the intended action of the PONI investigators.
- 9.103 It is in the interests of the public, the individual officer, the Police Service, and everyone involved in an incident where firearms have been discharged by police officers, that subsequent procedures should be open, transparent and that the integrity of all action is maintained. The manner in which the Police Service responds to such incidents and the professional standards applied are naturally of great interest to the public.  
(See also Policy Directive 03/06, Post Incident Procedure Deployment of Post Incident Managers – Discharge of Firearms).

## Planning

- 9.104 All officers involved in policing operations must ensure that their actions are compatible with the rights of individuals under the ECHR. In *McCann -v- UK (1995)* the Court held that the state must provide appropriate training, instructions and briefing to those who are placed in situations where lethal force may be used. Officers are reminded of the content of Article 4 of the Code of Ethics.

- 9.105 Planned operations where firearms are used will be subjected to a higher level of scrutiny than an incident, which has been reported or comes to the attention of the police and an immediate operational deployment of AFOs is considered appropriate. Special considerations need to be taken into account when, in pre-planned operations, it is intended to intercept subjects journeying to, from or engaged in the commission of an offence which may require the deployment of AFOs. In such occasions, specific authorisation should be obtained from the Strategic Firearms Commander.
- 9.106 The plan should be continuously developed in order to provide the safest possible resolution of the incident. Planners must consider all tactical options, e.g. the choice of weapon or equipment used, may be important to establish that a lesser degree of force was intended. Further detail on this and other relevant issues is set out at paragraphs 9.33 – 9.55 Legal Basis.
- 9.107 All plans should be recorded. This will include the considerations of the options rejected or progressed together with the reasons why such conclusions were drawn, and by whom.
- 9.108 An incident, which comes to the attention of the police without any prior warning or notification will, by necessity, require an initial response and the development of immediate plans. Information may be limited, therefore, the immediate action plan should, where possible, be one of increasing the level of intelligence available whilst being in a position to contain the threat. See paragraphs 9.258 – 9.260 Initial command of incidents.
- 9.109 In Northern Ireland, police officers carry personal issue firearms as a matter of routine. Firearms may not be specifically required for an operation and may, in certain circumstances, be inappropriate. It is important therefore, that in any operation the appropriateness of the availability of firearms is considered and officers connected with the operation are briefed accordingly. (See also paragraphs 9.169 – 9.183 Carriage of firearms in situations of serious public disorder).
- 9.110 Command structures for the policing of incidents or events where the deployment of firearms is a consideration are set out in the Strategic/Tactical/Operational command structures, which are clearly explained, in the associated procedures and guidelines at paragraphs 9.231 – 9.284 Command.
- 9.111 The use of FTAs is covered at paragraphs 9.504 – 9.518, and assists officers to comply with Article 4 of the PSNI Code of Ethics, particularly Article 4.2.
- 9.112 In the event that Tactical Support Group (TSG) officers are to be utilized in support of a pre planned firearms operation, the advice of a FTA should be sought with regard to the numbers of officers required and how they are to be deployed and equipped.
- 9.113 If an operation raises issues of compliance with human rights law and principles, the PSNI Legal Adviser on Human Rights may be contacted for advice.

## Carriage of Firearms Outside Northern Ireland, but within United Kingdom

- 9.114 Firearms and ammunition will not be carried outside Northern Ireland (i.e. in other parts of the United Kingdom) unless the approval is first obtained from the ACC, Operational Support Department and a Firearms Certificate issued to each officer.
- 9.115 The officer in charge of the party will have all the weapons to be transported, including their own personal issue firearm, included on a Firearms Certificate. All other officers will have individual Firearms Certificates authorising possession of their personal issue firearm.
- 9.116 Each UK Constabulary area through which the officers will pass will be informed by secure means of the dates, times, vehicle details etc as outlined in the ACPO APP – Armed Policing.

## Records and Reports

- 9.118 Police officers will verbally report any use of a firearm, including when a weapon is drawn, to their immediate supervisor as soon as practicable. A written report will, subject to any legal and or medical advice, be furnished in accordance with current policy through the appropriate channels. (Article 1.9 Code of Ethics). With the exception of a negligent/accidental discharge, an Electronic Use of Force monitoring form will be used.
- 9.119 In the case of a negligent/accidental discharge the officer will report the incident on Police Report Form 51/1 and unless paragraph 9.99 above applies the matter will be referred to the PONI. If referral to PONI is not required, the matter will be reported via normal channels to Professional Standards Department. In any event, a copy of the report will be forwarded to the Chief Firearms Instructor and arrangements made, subject to medical advice, for the officer to attend refresher firearms training.
- 9.120 Supervisors will ensure that a notebook entry has been completed by the officer(s) involved and that each notebook entry is inspected and signed by that supervisory officer.
- 9.121 Police officers must fully document the circumstances in which they found themselves, the reasons for their actions and the details of the supervisor to whom they subsequently reported. For more information on recording events, see Recording events - Legal and/or Medical Advice at paragraphs 9.487 – 9.503.
- 9.122 Supervisors should ensure that relatives or close friends of the injured or affected person are notified at the earliest opportunity. This should be done, where possible, with the agreement of that injured or affected person. PSNI Code of Ethics, Article 4 refers.

## Firearms Training

### General

- 9.123 The Police Service, as an employer, has a statutory obligation to provide, amongst other things, appropriate training and equipment. Individual officers also have a legal obligation to co-operate with their employer in this regard. For this reason, non-compliance with this Policy may constitute a criminal as well as a disciplinary offence.
- 9.124 Firearms training is obligatory for all officers who are issued with a personal issue handgun. All firearms related training will follow national guidelines set out in the ACPO National Police Firearms Training Curriculum (NPFTC).
- 9.125 In order to meet the HMIC recommendation to implement a system of certification and re-certification of officers engaged in the Police Use of Firearms, the Chief Firearms Instructor shall ensure a system for the maintenance of records for individual officers. This includes accreditation and re-accreditation of Firearms Commanders.
- 9.126 Each officer is provided with booklet A24(a) which details which firearm(s) the officer is classified in and a record of their attendance at Firearms Training. Persons responsible for issuing firearms must ensure that the officer's A24(a) is current for the classification of firearm being issued.
- 9.127 To ensure Firearms Training can satisfy themselves the attendees are classified in a particular firearm, it is of the utmost importance that officers are in possession of booklet A24(a) when attending Firearms Training. In addition, if booklet A24(a) has not been endorsed as current, officers will not be permitted to remove that particular classification of firearm from the armoury.
- 9.128 Paragraphs 9.129 – 9.145 below provide specific detail on when officers will attend re-qualification training. The following table provides detail on the classification timeline for **all firearms** including the L104A2 launcher.

Timeline (Months)	Classification Status	Training Requirements
0 - 12	Remains classified and is authorised to carry the firearm	Retains classified status by successfully completing refresher course within this time period
12 - 24	De-classified and cannot carry the firearm	Can re-classify by successfully completing refresher course within this time period
+ 24	Untrained	Must undergo initial training

*\*In relation to an officer's personal issue handgun, it may be the case that an initial training course is not the most suitable method to be adopted for an officer to re-classify. The Local Training Co-ordinator, or the officers HR Manager, will forward a report to the Chief Firearms Instructor who will arrange a suitable evaluation of the officer's capability and determine the course of training required to meet the officer's individual needs.*

- 9.129 Chief Officers, District Commanders/Heads of Branch (HOB) are responsible for ensuring that police officers under their command attend regular training in appropriate aspects of conflict resolution, first aid and human rights, to the extent that such training is available. In addition to the re-qualification criteria set out in this chapter, officers will, as appropriate to their role, attend tactical firearms related courses as provided by Combined Operational/SOB Training.
- 9.130 Police officers are reminded of their personal responsibility to identify their training needs and to bring these to the attention of their immediate supervisor, together with making a record of having done so. Police officers are also required to maintain a high level of knowledge in relation to Service Policy and current legislation.

### Personal Issue Handguns

- 9.131 The following paragraphs do not refer to officers attached to Specialist Operations Branch, Armed Response Units and Close Protection Unit, who will receive firearms training in line with their respective Core Skills Profiles.
- 9.132 All other officers have been divided into two distinct groups defined as 'Operational' and 'Non-Operational'. Operational Officers (Group 1) will attend handgun re-qualification training twice per year. Non-Operational Officers (Group 2) will attend handgun re-qualification training once per year.
- 9.133 District Commanders/HOB will ensure that all officers for whom they have responsibility attend handgun re-qualification training in line with their group identification as outlined below.
- 9.134 **Group 1.** Officers whose primary duties include at least one of the following policing activities.
- **Provide an initial response to incidents:** Respond promptly and take control of the incident by correctly identifying the nature of incident, and take appropriate action to ensure that it is dealt with and recorded correctly.
  - **Conduct patrol:** Conduct patrol responding to calls and requests for assistance, countering criminal activity and public disorder and minimising risks to public safety.
  - **Respond to road related incidents, hazards, offences and collisions:** Contribute to maintaining road safety by identifying and responding to hazards regulating traffic, dealing with traffic offences, and attending collision scenes in accordance with legislation and organisational policy.

- 9.135 Handgun re qualification training for officers from Group 1 is based on distinct modules which run from April – September and October – March. Officers will attend handgun re-qualification training once per module. In addition, the Chief Firearms Instructor will manage a system to refresh officers’ tactical skills in line with their Core Skills Profile over a 24 month period.
- 9.136 **Group 2.** Officers whose **primary duties** *do not include* any of the activities attributed to Group 1.
- 9.137 Officers from Group 2 will attend 8 hours firearms re-qualification training once per year. The 8 hour session will include both firearms and judgemental training.

	April - Sept	Oct - March
Group 1	4 hours firearms 4 hours tactical (Combined 1 x 8 hr session)	4 hours firearms 4 hours tactical (Combined 1 x 8 hr session)
Group 2	4 hours firearms 4 house judgemental (Combined 2 x 8 hr session)	

- 9.138 Where an officer does not successfully complete refresher training, they will attend an additional training course as devised by Combined Operational Training (COT) (Firearms) in order to achieve the required standard. Where necessary, an officer will be provided with ‘one-to-one’ tuition at the earliest possible opportunity. If an officer continues to be unable to achieve the required standard the matter will be referred to the Director of Human Resources (HR).
- 9.139 In all cases where an officer does not qualify in the refresher training programme, the senior firearms instructor on duty will inform that officer’s District Commander/HOB. The District Commander/HOB will then make an assessment as to the duties that that officer will be required to perform pending any necessary further training. In such cases the District Commander/HOB will make a decision based on both the officer’s role within the district and a relevant risk assessment.
- 9.140 An officer whose period of qualification has expired whilst on secondment to another Police Service or other Agency, sick leave, career break, suspension from duty, maternity leave or due to pregnancy, and who is unable to attend firearms training must show good cause for retaining their personal issue firearm. The officer should forward a written report to their respective District Commander/HOB who should decide whether or not it is necessary for the officer to retain the firearm. The District Commander/HOB will make arrangements for the officer to attend firearms training for re-qualification at the earliest opportunity. Where possible, officers on secondment should take the opportunity to attend refresher training during a period in Northern Ireland.

- 9.141 In the case where an officer has been dismissed/required to resign and subsequently reinstated, the following procedure will apply:
- If the officer remains within their period of qualification, the District Commander/HOB will make arrangements for the officer to be issued with a personal issue firearm at the earliest opportunity; or
  - If the officer's period of qualification has expired, the District Commander/HOB will make arrangements for the officer to attend firearms training for re-qualification at the earliest opportunity and issued with a personal issue firearm as at bullet point above. If the officer fails the qualification shoot, paragraph 9.138 above refers.

### **Heckler and Koch Weapons**

- 9.142 District Commanders/HOB will ensure that an appropriate number of officers are trained in order to meet locally identified needs, based upon an evaluation of the current threat and risk assessment. Commanders will be required to maintain an adequate level of officers trained in Heckler and Koch weapons appropriate to the local need.
- 9.143 District Commanders/HOB will ensure that all personnel trained in the use of Heckler and Koch weapons attend refresher training twice per year, once during the period April – September and again between October – March.
- 9.144 District Commanders/HOB will bring these instructions to the attention of all officers under their command, including those personnel who are currently seconded to other Police Services, sick, career break, suspended from duty or on maternity leave.
- 9.145 Training for AFOs will be provided in compliance with ACPO guidance and relevant training manuals.

### **Risks**

- 9.146 Any tactical option that involves the use of firearms brings with it associated risks to the general public, the subject of the use of force, police and other members of the security forces, hence the need to ensure that deployment and use of firearms is guided by the ACPO APP – Armed Policing and current PSNI training procedures. Where possible, all anticipated risks should be the subject of a properly conducted Health and Safety risk assessment.