

CHAPTER 6

POLICE USE OF FORCE IN PUBLIC ORDER POLICING

Introduction

6.1 In public order policing in Hong Kong, the legal basis for use of force by the Police is, apart from common law, mainly found in the Police Force Ordinance (PFO) and Public Order Ordinance (POO). These statutory provisions are incorporated into the Police operational guidelines, particularly the Police General Orders (PGO) and the Force Procedures Manual (FPM). The purpose of such guidelines is to set out fundamental principles for public order policing and provide practical guidance to ensure force applied by every police officer is always within the ambit allowed by the law.

6.2 In the series of Public Order Events (POEs) since 9 June 2019, the Police used various levels of force in handling numerous incidents where protesters had breached the peace, blocked roads and resorted to increasing degrees of violence with substantial destruction to both public and private property. In many cases, protesters attacked those people taking different views or thought to have come from the Mainland, thus threatening the personal safety of those people (as to this, please see the Overview (Chapter 4)). In the wake of the POEs, there have been 303 Reportable Complaints and 417 Notifiable Complaints against the Police concerning use of force.¹

6.3 Among various types of use of force, the public has been particularly concerned about the extensive use of tear gas by the Police. According to the Police, between 12 June 2019 and 29 February 2020, a total of 16 191 rounds of tear gas have been used in handling the series of POEs. There is general public concern that tear gas may linger in the air for a time after use and would have adverse effect on the health of those exposed to it, especially when the tear gas is used in busy streets or densely populated areas surrounded by buildings (including residential blocks and schools). For instance, on 12 November 2019, the Police fired 2 330 canisters of tear gas at The Chinese University of Hong Kong (CUHK) and on 18 November 2019, 3 293 canisters at The Hong Kong Polytechnic University (PolyU).² The two universities subsequently published reports by independent accredited laboratories that the

¹ Figures as of 29 February 2020.

² RTHK (2019-12-09). 警方過去半年反修例示威中共用 29863 發彈藥. Retrieved from https://news.rthk.hk/rthk/ch/component/k2/1496800-20191209.htm?archive_date=2019-12-09

residual effect of tear gas was within internationally accepted levels.^{3 4} In the light of the public concern, the effect on health from tear gas is discussed in this Chapter.

6.4 The purpose of this Chapter is firstly, to set out the principles of law and police practices governing the use of force in public order policing, so as to inform the IPCC in its on-going work to consider the results of investigations by the CAPO of Reportable Complaints under section 8(1)(a) of the IPCC Ordinance. Secondly, the opportunity is taken to make certain observations as the basis for recommendations to the Commissioner of Police (Commissioner) and the Chief Executive, pursuant to the IPCC's statutory remit under section 8(1)(c) of the IPCC Ordinance. Thirdly, it is hoped that the information in this Chapter, would assist the public in understanding the principles governing the use of force by the Police in performing their duties where violent protests have occurred in the streets of Hong Kong.

Statutory Provisions on Use of Force

Duties Conferred on the Police

6.5 The first seven items in section 10 of the PFO sets out the following duties of the Police Force:

- (a) Preserving the public peace;
- (b) Preventing and detecting crimes and offences;
- (c) Preventing injury to life and property;
- (d) Apprehending all persons whom it is lawful to apprehend and for whose apprehension sufficient grounds exists;
- (e) Regulating processions and assemblies in public places and places of public resort;
- (f) Controlling traffic upon public thoroughfares and removing obstructions therefrom;
- (g) Preserving order in public places and places of public resort, at public meetings and in assemblies for public amusements, for which purpose any police officer on duty shall have free admission to all such places and meetings and assemblies while open to any of the public.

³ CUHK. Sampling and Testing Results of Harmful Chemicals on Campus. Retrieved from <http://www.cuhk.edu.hk/english/whats-on/focus/campus-env-result.html>

CUHK. Soil samples (#1 – #12) taken on 15/11/2019. Retrieved from http://www.cuhk.edu.hk/english/images/whats_on/inner/cuhk-env-samples/documents/soil_p_dioxins.pdf

CUHK. Soil samples (S1 – S9) taken on 19/11/2019. Retrieved from http://www.cuhk.edu.hk/english/images/whats_on/inner/cuhk-env-samples/documents/soil_dioxins.pdf

⁴ POLYU. Appendix II First Batch of Test Results for Environmental Contamination on Campus. Retrieved from https://www.polyu.edu.hk/web/cpa/notice/Appendix_II_Eng.pdf

POLYU. Appendix II: Test Results on Air Samples Collected on PolyU Campus. Retrieved from https://www.polyu.edu.hk/web/filemanager/common/mediarelease/20200103/Appendix_II_20200103_En.pdf

6.6 In this connection, the ordinance confers on the Police certain powers to discharge these duties, including the use of force. All powers are, however, only exercisable within the limits defined by the laws. Police officers may only use force when the circumstances so warrants. In the POEs since June 2019, the Police has had to resort to the use of force to maintain law and order in the event of breach of the peace, rioting, destruction of property, attack of police officers with weapons. When persons under arrest resisted violently, police officers have had to use force as circumscribed by law.

6.7 In addition to the above powers to use force, any police officer has the right to defend himself, his colleagues and others from harm. This power of self-defence also applies to the protection of property from harm.

6.8 These powers on the use of force will be further explained in the paragraphs below.

Powers of Arrest - Use of Force in Effecting Arrest

6.9 Section 50(1) of the PFO prescribes the powers of arrest. In particular, section 50(2) provides that if any person who may lawfully be apprehended forcibly resists the endeavour to arrest him or attempts to evade the arrest, a police officer “may use all means necessary to effect the arrest”. This includes the use of reasonable force in the apprehension of the offender.

Powers in Relation to Preserving Public Order and Use of Force

6.10 Section 17(3) of the POO empowers a police officer to apply reasonably necessary force to prevent the holding of, stop or disperse any public meeting, procession or gathering if he or she reasonably believes that the gathering is likely to cause or lead to a breach of the peace. Section 45 states that any police officer may use such force as may be necessary to prevent crime, arrest suspects and overcome resistance of lawful execution of the powers under the Ordinance.⁵ However, section 46(1) limits the degree of force to be not greater than is reasonably necessary for the intended purpose. Section 46(3) further confers immunity on members of the Police Force in the lawful use of force within the limits set out in sections 45 and 46(1). Thus, the legal provisions circumscribing the use of force in effecting arrest and management of public order events are legion.

⁵ Section 45 of the POO provides that:
Without prejudice to any other powers conferred by this Ordinance, any police officer may use such force as may be necessary—

- (a) to prevent the commission or continuance of any offence under this Ordinance;
- (b) to arrest any person committing or reasonably suspected of being about to commit or of having committed any offence under this Ordinance; or
- (c) to overcome any resistance to the exercise of any of the powers conferred by this Ordinance.

General Principles for These Provisions

6.11 Whenever force is used by the Police, the following general principles are clear from the above statutory provisions:

- (a) The use of force must be in the course of performance of a police duty – in other words, the objective must be the lawful discharge of police duty; and
- (b) The use of force must not be more than reasonably necessary in achieving that lawful objective and should cease when that objective is achieved.

6.12 Furthermore, underpinning the law is the principle of personal accountability. If any police officer exceeds the bounds of the limit of the law in the application of force, he is personally accountable. A recent case can be found in the decision of the Court of Final Appeal: *HKSAR v Chu Frankly* [2019] HKCFA 5 (FAMC No. 56 of 2018) where the Court upheld the finding that a superintendent’s use of force was unjustified and therefore the conviction against him should stand. Paragraph 15 of the judgement summarised the relevant statutory provisions as follows:

“... section 45 of the Public Order Ordinance⁶ authorizes police officers to use “such force as may be necessary” to prevent the commission or continuance of an offence under the Ordinance; to arrest someone committing or reasonably suspected of being about to commit, etc., such offence; or to overcome any resistance to the exercise of the powers conferred by the Ordinance. Section 46(3) exempts persons who use “such force as may be necessary for any purpose, in accordance with the provisions of” the Ordinance from liability for causing injury or death or damage to property. And section 46(1) limits the force which may be lawfully used:

“Whenever in this Ordinance it is provided that such force as may be necessary may be used for any purpose, the degree of force which may be so used shall not be greater than is reasonably necessary for that purpose.”

Doctrine of ‘Self Defence’ of Person and Property under Common Law

6.13 Apart from using force for effecting arrest and restoring public order, an officer, like any other person in a critical situation, would be entitled to use reasonable force for the

⁶ Cap. 245 of POO

protection of himself or others. It is a defence under common law to a complaint of assault that the officer was in fact acting in self-defence⁷ or the defence of another person⁸ or property⁹ provided no more was done than was necessary for such defence. Anyone under attack, whether or not a police officer, may be entitled to do more than merely ward off blows and may, depending on the circumstances, even strike first to defend himself.¹⁰ Of course, the defensive response must be proportional to the attack and there must be an imminent threat of harm.¹¹

6.14 The test of whether or not an officer acted justifiably in self-defence is partly objective and partly subjective - whether the officer actually and honestly believed that he was compelled to act as he did in order to defend himself, and whether, in all the circumstances, his response was reasonable.¹² The officer is entitled to use such force as is reasonable in the circumstances as he genuinely believes them to be.¹³ The essence of the defence is the honestly held belief of the officer as to the facts.¹⁴ Account is taken of the state of mind of the officer and whether the officer actually believed that he was in danger and compelled to act in the manner that he did, and whether in all the circumstances that was reasonable.¹⁵ Controversial cases would be subject to public scrutiny as to whether or not the amount of force used was reasonable in the circumstances in which the officer believed himself to be in.¹⁶ If self-defence is raised as a defence, it is for the prosecution to prove the accused was not so acting.¹⁷

6.15 The common law defence of self-defence is a straightforward concept that can readily be understood involving no complex legal thought.¹⁸ Common sense will judge what is reasonably necessary. Of course, the merits of each case will depend upon the particular facts and circumstances.

⁷ R v Deana (1909) 73 JP 255, 2 Cr App Rep 75 (CCA)

⁸ Kwaku Mensah v R [1946] AC 83 (PC); Cachay v Nemeth (1972) 28 DLR (3d) 603

⁹ Hall v Gerard (1626) Lat 20, 82 ER 254; Jones v Tresilian (1670) 1 Mod Rep 35, 86 ER 713; Oakes v Wood (1837) 2 M & W 791, 150 ER 1995; R v Hussey (1924) 89 JP 28, 18 Cr App Rep 160 (CCA). Right to retake goods: Blades v Higgs (1861) 10 CBNS 713, 142 ER 634

¹⁰ R v Deana (1909) 73 JP 255, 2 Cr App Rep 75 (CCA)

¹¹ Para 20-45, Archbold Hong Kong Criminal Law Pleading Evidence & Practice, 2020

¹² Ibid

¹³ R v Man Wai-keung [1992] 1 HKCLR 89; Palmer v R [1971] AC 814, PC

¹⁴ Para 20-44A, Archbold Hong Kong Criminal Law Pleading Evidence & Practice, 2020

¹⁵ Palmer v R [1971] AC 814, [1971] 1 All ER 1077 (PC); R v Chan Ming [1975] HKLR 666, [1975] HKCU 62 (CA); R v Shannon (1980) 71 Cr App Rep 192 (CA, Eng); R v Whyte [1987] 3 All ER 416, 85 Cr App Rep 283 (CA, Eng); Beckford v R [1988] AC 130, [1987] 3 All ER 425 (PC); R v Man Wai-keung [1992] 1 HKCLR 89, [1992] HKCU 387 (CA); R v Leung Yuet-man [1991] 1 HKLR 300, [1991] HKCU 351 (CA); R v Cheung Kwok-wai [1997] HKCU 689 (unreported, No 271/1996, 18 April 1997) (CA); Comr of Police v Coroner of Hong Kong [1997] 1 HKLRD 509, [1997] HKCU 1100 (HC)

¹⁶ R v Martin (2001) Times, 1 November (CA, Eng)

¹⁷ HKSAR v Osunwoke, MA no. 369 OF 2017, [2018] HKCFI 672

¹⁸ Palmer v R [1971] AC 814, PC, Lord Morris stated at 831

HKPF Guidelines

6.16 For operational purposes, the Police has a set of guidelines for the use of force based on the relevant legal principles. The guidelines are set out in the PGO and the FPM. These guidelines seek to encapsulate the legal principles set out above.

General Principles

6.17 The PGO are made by the Commissioner under section 46(1) of the PFO. The PGO applies to all police officers. They are mandatory and any non-compliance would render an officer liable to disciplinary action. Similarly, the FPM contains information, advice and guidelines on police procedures. They are practice manuals based on the PGO.

6.18 Chapter 29 of the PGO and the FPM concern the use of force. In the reply of the S for S to a LegCo Question on 19 June 2019, the use of force pursuant to Chapter 29 of PGO was mentioned as follows:

“[t]he Police have established guidelines on the use of force. Police officers may use minimum force as appropriate only when such an action is absolutely necessary and there are no other means to accomplish the lawful duty. Police officers shall give verbal warning prior to the use of force as far as circumstances permit, while the person(s) involved shall be given every opportunity, where practicable, to obey police orders before force is used.”¹⁹

6.19 In gist, officers may use only minimum force necessary to achieve the purpose and once that purpose has been achieved, they should cease using force. Force used must also be reasonable in the circumstances. To illustrate the corresponding levels of control to be adopted in response to the different levels of resistance put up by a subject, the Police Force provides guidance to their officers by way of a set of principles set out in what it calls the Use of Force Continuum (Force Continuum) in Chapter 29 of the FPM.

Force Continuum

6.20 The Force Continuum provides guidance on a series of closely linked escalating or de-escalating options of force to be considered by a police officer, ranging from the mere presence of the officer to the use of firearms in response to six levels of resistance, i.e. from psychological intimidation to deadly force assault. The Force Continuum is incorporated into the training of

¹⁹ Government Press Releases (2019-06-19): LC Urgent Question 1: Use of force by police officers in demonstrations. Retrieved from <https://www.info.gov.hk/gia/general/201906/19/P2019061900469.htm>

all police officers from the beginning of their foundation training and continues throughout their career. It is also revised from time to time to cope with changing circumstances in the community.

6.21 The principle behind the Force Continuum is to enable a police officer to respond to different levels of aggression (defined as “level of resistance”) encountered in the course of law enforcement by use of the minimum level of force necessary to achieve the law enforcement objective. The Force Continuum defines six levels of resistance, by increasing levels of severity. For each level of resistance, the Force Continuum tabulates definitions, levels of control and options available.

6.22 In the latest version of the Force Continuum revised on 2 October 2019, the terminology, definitions, levels of control and options available at the fourth and fifth levels are all amended. For instance, in the fourth level of control in the revised Force Continuum, a number of irritant agent devices are added as options available to police officers. Less lethal weapons like super sock round, react round and more irritant agent devices than those stated in the fourth level are added to the fifth level in the revised Force Continuum. Besides, for the severest level, i.e. the sixth level of control, under which the use of firearms is available, the definition of “deadly force assault” is amended from “assaults intended to cause death or serious bodily injury” to “assaults to cause or likely to cause death or serious bodily injury”. In other words, under the revised Force Continuum, when an officer is under “assaults to cause or likely to cause death or serious bodily injury”, use of firearm might be one of the options available provided that the general principles of use of force are followed.

6.23 The Police believes that the revised definitions would enable officers to make assessments more easily and objectively in response to aggression encountered in the course of law enforcement.

6.24 The underpinning principle of the Force Continuum is the concept of personal accountability, contained in the remark that police officers “*should exercise their own discretion to determine what level of force is justified in a given situation.....*” The appropriate level of force to be adopted depends on the level of resistance of the subject, as judged by the officer in his/her perception of the threat and the circumstances at the time. The Force Continuum recognises that an officer would be justified to use a level of force greater than that of the subject in order to apprehend the subject or control the situation. The overall underlying principle is to use the minimum force necessary to achieve the lawful purpose. Meanwhile, the fundamental principle of personal accountability is that officers on the ground should exercise their own judgement to determine what level of force is justified in a given situation and the officers would be accountable for their own actions.

6.25 In relation to the use of firearms at the sixth level, there is a specified review procedure under PGO 29-05 – “Police Open Fire – Reporting and Investigation” which stipulates the submission of reports from different levels of commands at different prescribed periods. Such reports are eventually submitted to the Director of Operations for consideration.

Use of Force from 9 June 2019 to 29 February 2020

6.26 As can be seen from the POEs to date, the Police, faced with the aggressive violence accompanying the protests, have used force up to the sixth level as circumstances required. The use of force is to be in response to aggression encountered when the Police is called upon to maintain law and order, such as breach of the peace, rioting, destruction of property, arson, and in self-defence when police officers were attacked with weapons. Readers are referred to the Overview (Chapter 4) and chapters on individual incidents (Chapters 7 - 12) for an understanding of the scale and depth of the violence accompanying the protests.

6.27 Regarding the use of firearms in the sixth level, as at 29 February 2020, 19 live rounds were fired in 12 incidents involving 13 officers.²⁰ Live shots were fired only when officers in the course of operations became isolated into a single officer or a small group of officers and were attacked by aggressive protesters with potentially lethal weapons or when they perceived that the attackers attempted to snatch their service pistols. Majority of the shots were warning shots, while three of the attackers were actually shot, one in the left chest, one in the left thigh and the other in the upper abdomen.²¹ Details of the firearms used on each occasion as reported by the Police are in Annex 1 to this Chapter.

6.28 With regard to police firing of warning shots, the United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement²² on the specific risks of use of Kinetic Impact Projectiles states that *“the firing of kinetic projectiles from the air or from an elevated position, such as could occur during an assembly, is likely to increase their risk of striking protesters in the head. Targeting the torso may cause damage to the vital organs and there may be penetration of the body, especially, when projectiles are fired at close range. The calibre and velocity of the projectiles, as well as the material of their construction, will also affect the likelihood and seriousness of injury.”* Similarly, the guidelines of Amnesty International²³ state that the decision on whether or not to fire a warning shot has to be weighed

²⁰ Information provided by HKPF.

²¹ Ibid. One officer fired one shot in Tai Ho Road on 1 October 2019. One officer fired one shot in Tai Tong Road Yuen Long on 4 October 2019. One officer fired 3 shots in Sai Wan Ho, Shau Kei Wan on 11 November 2019

²² Paragraphs 7.5.3 and 7.5.4 United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement. Retrieved from https://www.ohchr.org/Documents/HRBodies/CCPR/LLW_Guidance.pdf

²³ Use of Force, Guidelines for Implementation of the UN Basic Principles on the use of force and firearms by

against “*the protection of third persons : when firing a warning shot in the air, the bullet will come down with a potentially lethal velocity at quite a distance from the place of firing. Its trajectory cannot be controlled so there is no way of knowing whether it will accidentally hit somebody. When warning shots are fired onto the ground or horizontally in any direction there is a high risk of potentially lethal ricochets, especially where the ground or walls consist of solid materials such as brick or concrete....*”.

6.29 The Police also stipulates in the FPM to remind police officer to take careful evaluation when opening fire in a crowded area that may put bystanders at risk. According to the abovementioned guidelines, firing of warning shots is not advisable, especially in a crowded area.

6.30 Regarding the Police’s use of live rounds, it is governed by PGO 29 which stipulates that under life threatening situation, police officers may discharge a firearm to protect themselves or any other persons. In addition, police officers may discharge a firearm to quell a riot or insurrection, provided that no lesser degree of force can achieve the purpose.

6.31 Over the past months throughout the POEs, it has not been uncommon to see extreme violent scenes in the streets with police officers being attacked, for instance, violent protesters throwing petrol bombs at police officers and police vehicles from a close distance²⁴ or from height²⁵. Under such critical situation, the police officers were indeed under life threatening situation and would be justified to discharge their firearms to save their own lives and that of other colleagues, and to quell the riot and insurrection according to the aforementioned use of force guidelines and the common law principle of self-defence as discussed in paragraphs 6.13-15. Nevertheless, it is observed that police officers had exercised restraint in the use of firearms throughout the POEs.

6.32 The table and chart below show the monthly and accumulative use of different types of ammunition by the Police from June 2019 to February 2020.²⁶ Readers may refer to Chart 4-1 of the Overview (Chapter 4) for a composite view to these figures in connection with the major POEs happened since June 2019.

law enforcement officials, Amnesty International. Retrieved from https://www.amnestyusa.org/files/amnesty_international_guidelines_on_use_of_force-2.pdf

²⁴ YouTube (2019-09-15). 【915 行街】示威者向灣仔站內投擲汽油彈. Retrieved from <https://www.youtube.com/watch?v=xfI0beeKE54>

²⁵ HK01 (2019-08-25). 【825 荃葵青遊行】有人從高處向警員投擲汽油彈 腳邊閃爆險中招. Retrieved from https://www.hk01.com/政情/367821/825_荃葵青遊行-有人從高處向警員投擲汽油彈-腳邊閃爆險中招

²⁶ Information provided by HKPF.

Date	Types of ammunition				
	Tear gas	Rubber round	Super Sock round	React round	Live round
June 2019	240	19	3	33	0
July 2019	608	134	3	114	0
August 2019	2 187	405	43	130	3
September 2019	492	348	139	132	1
October 2019	2 848	1 625	386	350	7
November 2019	9 597	7 479	1 425	1 104	8
December 2019	166	66	27	10	0
January 2020	24	9	6	7	0
February 2020	29	15	1	0	0
Total	16 191	10 100	2 033	1 880	19

Table 6-1: The monthly use of different types of ammunition by the Police between June 2019 and February 2020 (Source: HKPF)

Accumulative Figures of Police Use of Ammunition

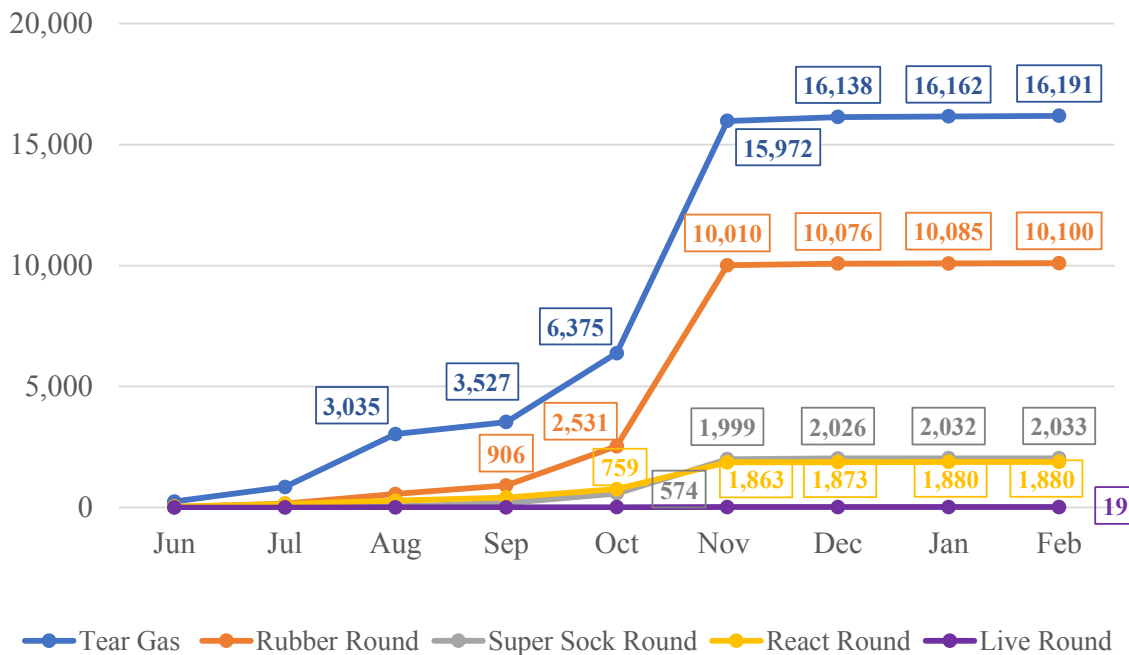


Chart 6-1: Accumulative figures of Police use of different types of ammunition (June 2019 to February 2020)

Injuries Sustained in POEs from 9 June 2019 to 29 February 2020

6.33 According to the Hospital Authority as at 25 November 2019, a total of 2 615 casualties were related to the series of POEs since 9 June 2019. Among this number, over 590 police officers²⁷ have been injured and a number of persons who were attacked by protesters. The three protesters who were shot by police officers have all been discharged from hospital. According to the best information collected under this Study, the only fatality caused by the violence in the POEs was that a 70-year old man who was fatally hit in the head by a brick hurled at him in the midst of a confrontation between the violent protesters and a group of local residents.

Arrests Made from 9 June 2019 to 29 February 2020

6.34 As at 29 February 2020, a total of 7 613 persons have been arrested with 1 206 charged. Among those charged, 559 persons have been charged in Court with “Riot” (section 19 of POO) while 143 with “Unlawful Assembly” (section 18 of POO)

Management of the Use of Force

6.35 The use of force is, however, only one facet in policing operation. All police operations require prior planning duly informed by intelligence, and executed with a command structure deemed appropriate to the circumstances. The general objective of each police operation is to prevent crime or ensure that crime observed does desist, and attention is also given to ensure officers and public and private property are protected from harm. In addition to blockage of roads and disablement of transport infrastructure, aggressive attacks against police officers and destruction of public and private property took place during the POEs since June 2019, with the most aggressive actions taking place in October and November 2019. To maintain law and order, protect property and prevent harm to officers and others, force sometimes has to be used within the limits of the law.

6.36 It is the Police policy to review the use of force after each operation. In this context, a count of the weapons used is always made after each operation. Officers at all levels have to account personally for the use of force, when a complaint is made or where their actions in operations are observed by supervisors to require investigation. Supervisors at all levels are duty-bound to manage their subordinates in accordance with Force regulations and are held accountable for their supervisory duties.

²⁷ Information provided by HKPF

Use of Force in Comparable Jurisdictions

6.37 The IPCC believes that the study of the use of force by the Hong Kong Police would not be complete without at least a cursory study of the “Use of Force Principles” in comparable international jurisdictions, so that the Police guidelines may be compared. Comparable jurisdictions include the United Kingdom (UK), the United States (US), Australia and Canada, where the common law forms the backbone of their legal systems. They are all developed countries and their legal standard is substantially identical with that of Hong Kong. All four jurisdictions are signatories to the International Covenant on Civil and Political Rights (ICCPR)²⁸ and are bound by the same human rights instrument. They are committed to taking all necessary measures to give effect to the rights recognised in the ICCPR. Any disproportionate or unnecessary use of force may constitute a violation of ICCPR in these jurisdictions as it is in Hong Kong.²⁹

6.38 In these jurisdictions, their local laws basically prescribe the principles on the use of force. In general, use of force should be reasonable, necessary and/or proportionate with due regard to the particular circumstances. The principles in these jurisdictions are summarised below:

²⁸ ICCPR is a multilateral treaty adopted by the United Nations General Assembly. Parties to the covenant commit to respect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of speech, freedom of assembly, etc. The ICCPR is incorporated into the Hong Kong Law through the Hong Kong Bill of Rights.

²⁹ Article 6 – right to life and Article 7 – prohibits torture and cruel, inhuman or degrading punishment.

Jurisdiction	Use of Force Principles
UK	<p><u>Law</u></p> <p>Reasonable force if necessary <i>(section 117 of Police and Criminal Evidence Act 1984)</i></p> <p><u>Manual / Guidelines</u></p> <p>Reasonable and proportionate <i>(College of Policing - Authorised professional practice³⁰)</i></p>
New York, US	<p><u>Law</u></p> <p>Objectively reasonable <i>(Graham v. Connor 490 U.S. 386 (1989))</i></p> <p><u>Manual / Guidelines</u></p> <p>Reasonable under the circumstances <i>(NYPD Use of Force Policy³¹)</i></p>
Melbourne, Australia	<p><u>Law</u></p> <p>Reasonable, necessary and proportionate to the circumstances <i>(section 462A, Crimes Act 1958)</i></p> <p><u>Manual / Guidelines</u></p> <p>Minimum amount reasonably necessary <i>(Victoria Police Manual³²)</i></p>
Toronto, Canada	<p><u>Law</u></p> <p>Proportionate, and reasonably necessary, in the circumstances. <i>(sections 26 & 27 of Criminal Code)</i></p> <p><u>Manual / Guidelines</u></p> <p>Proportionate and reasonably necessary in the</p>

³⁰ College of Policing. Authorised Professional Practice. Retrieved from <https://www.app.college.police.uk/app-content/public-order/core-principles-and-legislation/police-use-of-force/>

³¹ New York City Police Department (2016). Annual Use of Force Report 2016. Retrieved from <https://www1.nyc.gov/assets/nypd/downloads/pdf/use-of-force/use-of-force-2016.pdf>

³² Victoria Police. Victoria Police Manual.

Jurisdiction	Use of Force Principles
	<p>circumstances <i>(Ontario Use of Force Model & Toronto Police Service Procedures 15-01³³)</i></p>

United Kingdom

6.39 We look at not only the law of the abovementioned jurisdictions but also their assurance of compliance with their legal standards in practice. In terms of practical guidelines in the UK, “Authorised Professional Practice” (APP) developed by the College of Policing is an official source of professional practice on policing. The general principle for police use of force is reasonableness and proportionality. In the case of conduct contrary to the principle, the officers would be open to criminal or misconduct proceedings. In order to identify the proper considerations governing the use of force and to guide actions according to the law, the advice from a Queen’s Counsel given to Her Majesty’s Inspectorate of Constabulary (HMIC)³⁴ has been incorporated in the APP. This obliges officers to ask themselves **three core questions** and to act according to their answers:

- (a) Would the use of force have a lawful objective and, if so, how immediate the grave is the threat posed?
- (b) Are there any means, short of the use of force, capable of attaining the lawful objective identified?
- (c) Having regard to the nature and gravity of the threat, and the potential for adverse consequences to arise from the use of force, what is the minimum level of force required to attain the objective identified, and would the use of that level of force be proportionate or excessive?

6.40 As for accountability, there is a clear public order command structure in the APP.³⁵

³³ Toronto Police Service (2014). Police encounters with people in crisis. Retrieved from https://www.torontopolice.on.ca/publications/files/reports/police_encounters_with_people_in_crisis_2014.pdf

³⁴ Her Majesty's Inspectorate of Constabulary (HMIC) was replaced by Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) in summer 2017.

³⁵ College of Policing. Authorised Professional Practice. Retrieved from <https://www.app.college.police.uk/app-content/public-order/command/>

The role and responsibilities of gold commander³⁶ (strategic), silver commander³⁷ (tactical) and bronze commander³⁸ (operational) are clearly stated. The command structure is role specific.³⁹ In general, the **gold commander** provides leadership and strategic oversight and is responsible for determining the strategic objectives. The **silver commander** on the other hand should develop, command and coordinate the overall tactical response of an operation, in accordance with the strategic objectives set by the gold commander. The **bronze commander** should implement the silver commander's plan and develop a deployment plan ensuring that staff understand their roles, responsibilities and limits.

6.41 According to the APP, the presumption in favour of peaceful assembly is a starting point for policing POEs. Peaceful intentions should be presumed unless there is compelling evidence that those organising or participating in a particular event will themselves use, advocate or incite violence. Police action should, therefore, target only those persons responsible for the breach of the peace. An action taken which is not directed at the person committing the breach will generally be unlawful.⁴⁰ Where and only where there is a reasonable belief that there is no other means whatsoever to prevent a breach of the peace, the lawful exercise by innocent third parties of their rights may be restricted by the Police. This is a test of necessity, which can only be justified in truly extreme and exceptional circumstances.⁴¹

6.42 Before the Police can take any steps which in any way restrict the lawful exercise of rights by innocent third parties, they must take all other possible steps (including making proper and advance preparations) to ensure that the breach, or imminent breach, is prevented and the rights of third parties are protected.⁴²

³⁶ The **gold commander** assumes and retains overall command for the operation or incident. They have overall responsibility and authority for the gold strategy and any tactical parameters that silver or bronze commanders should follow. The gold commander, however, should not make tactical decisions. They are responsible for ensuring that any tactics deployed are proportionate to the risks identified, meet the objectives of the strategy and are legally compliant.

³⁷ The **silver commander** commands and coordinates the overall tactical response in compliance with the strategy, and is the tactical commander of the incident. Generally, there should be one tactical commander, but it may not be practical or desirable in large-scale incidents or operations to have a single silver commander. The gold commander (when appointed or in a position to assume command) decides how many silver commanders are appointed and their individual span of command

³⁸ The **bronze commander** is responsible for the command of a group of resources, and carrying out functional or geographical responsibilities related to the tactical plan.

³⁹ College of Policing. Authorised Professional Practice. Retrieved from <https://www.app.college.police.uk/app-content/operations/command-and-control/command-structures/>

⁴⁰ College of Policing. Authorised Professional Practice. Retrieved from <https://www.app.college.police.uk/app-content/public-order/core-principles-and-legislation/?highlight=breach%20of%20the%20peace?s=breach+of+the+peace#police-action>

⁴¹ Ibid

⁴² Ibid

New York, US

6.43 The US Supreme Court has set the basic US legal standard for determining legality of any use of force by a law enforcement official as being whether his or her actions were “objectively reasonable”.⁴³ This assessment must be made from the perspective of a reasonable officer on the scene, including what the officer knew at the time.

6.44 Within the New York Police Department (NYPD), its latest use of force policy was implemented in 2016.⁴⁴ It stipulates that in all circumstances, any application or use of force must be reasonable under the circumstances. To determine whether the use of force is reasonable, there is a list of considerations NYPD members should consider, including the nature and severity of the crime / circumstances, actions taken by the subject, immediacy of the perceived threat or harm to the subject or others.⁴⁵ These considerations are all under the header of objective reasonableness as required by law.

Melbourne, Australia

6.45 Under the Crimes Act 1958, force may be used to prevent the commission of an indictable offence.⁴⁶ In order for the use of force to be legal, force must always be reasonable, necessary and proportionate to the circumstances.

6.46 For practical operation, the Victoria Police Manual on Crowd Control states that violent confrontation and the use of force should be avoided. When using force, only the minimum amount reasonably necessary may be deployed. In the context of POEs and crowd control, the police needs to consider the rights of the members of the public to exercise free speech, peaceful assembly, protest and industrial action. However, the police has an obligation to take action, using the minimum amount of force necessary, when “the action of those taking part in such activities either become unlawful or infringe upon the rights of others.” More importantly, force may not be used against non-violent refusal to cooperate.

⁴³ *Graham v Connor* 490 US 386 (1989)

⁴⁴ NYPD (28 December 2017). NYPD releases 2016 Use of Force Report. Retrieved from <https://www1.nyc.gov/site/nypd/news/p1228b/nypd-releases-2016-use-of-force-report>

⁴⁵ (a) The nature and severity of the crime/ circumstances (b) Actions taken by the subject (c) Duration of the action (d) Immediacy of the perceived threat or harm to the subject, members of the service, and/ or bystander (e) Whether the subject is actively resisting custody (f) Whether the subject is attempting to evade arrest by flight (g) Number of subjects in comparison to the number of members of service (h) Size, age, and condition of the subject in comparison to the members of service (i) Subject’s violent history, if known (j) Presence of hostile crowd or agitators (k) Subject apparently under the influence of a stimulant/ narcotic which would affect pain tolerance or increase the likelihood of violence.

⁴⁶ Section 462A, Crimes Act 1958

Toronto, Canada

6.47 The Criminal Code limits the acceptable level of force used by police officers acting under legal authority. Police officers may, acting on reasonable grounds, use force to prevent the commission of offences which, if committed, the person may be arrested without warrant and likely to cause immediate and serious injury to the person or property of anyone,⁴⁷ to prevent a breach of the peace,⁴⁸ to suppress a riot,⁴⁹ and to do anything in the administration or enforcement of the law.⁵⁰ The use of force must be proportionate, or reasonably necessary, in the circumstances.⁵¹ The Supreme Court of Canada has explained that police action should not be judged against a standard of perfection, but in the light of the exigent circumstances of dangerous and demanding work and the obligation to react quickly to emergencies.⁵²

Hong Kong Police

6.48 In sum, it is observed that the use of force principles in the HKPF is in line with comparable jurisdictions.

Effect on Health from Use of Tear Gas

6.49 As mentioned in paragraph 6.3 above, the Police has fired a total of 16 191 tear gas canisters between 12 June 2019 and 29 February 2020. There has been public concern on the use of tear gas, particularly those containing 2-chlorobenzalmalononitrile, commonly known as CS, whether inhaling the gas would have any adverse health effect. A submission in mid-January 2020 prepared by the Hong Kong Human Rights Monitor, Public Health Research Collaborative, and Civil Rights Observer regarding an “Urgent Appeal to the Special Rapporteur on Toxics – on the toxicity of tear gas and other chemical weapons used by the Police during the recent civil rights movement in Hong Kong”⁵³, has highlighted, among other things, the health risk associated with tear gas, or chemical irritant.⁵⁴

⁴⁷ Section 27, Criminal Code

⁴⁸ Sections 30-31, Criminal Code

⁴⁹ Sections 32-33, Criminal Code

⁵⁰ Section 25, Criminal Code

⁵¹ Sections 26-27, Criminal Code

⁵² R v Nasogaluak, 2010 SCC 6 at paragraph 35. Retrieved from <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7845/index.do>

⁵³ Hong Kong Human Rights Monitor, Public Health Research Collaborative, and Civil Rights Observer (January 2020) Urgent Appeal to the Special Rapporteur on Toxics – on the toxicity of tear gas and other chemical weapons used by the HK Police Force during the recent civil rights movement in Hong Kong. Retrieved from https://drive.google.com/file/d/1p-pQ2WxSIDHRUi4DnmqvsCBe0_9SeqP1/view

⁵⁴ Ibid

6.50 In a study conducted by the Committees on Toxicity, Mutagenicity and Carcinogenicity of Chemicals in Food, Consumer Products and the Environment (COT, COM, and COC) on referral from the Department of Health, and with the support of Home Office in the UK,⁵⁵ the Committees have expressed concern for certain population groupings which might be susceptible to the exposure of tear gas including individuals with bronchial asthma or chronic obstructive airways disease, individuals suffering from hypertension or other cardiovascular disease etc. In actual situation, the police is unlikely to know the medical status of the susceptible groups when the tear gas is used. As such, adherence to the operational guidelines for the prudent use of tear gas is of particular importance.

6.51 As to the effect of tear gas in Hong Kong's environment, the Secretary for Food and Health has explained its effect in response to a Legislative Council (LegCo) Question on 13 November 2019 that *“health effects of tear gas depend on a number of factors such as the specific chemical composition of the tear gas, duration and dose of exposure, exposure route, health conditions of the individuals and the physical environment during exposure”*.⁵⁶ Moreover, the Department of Health has uploaded health information on tear gas to the website of the Centre for Health Protection (CHP) giving general advice to the public when faced with tear gas.⁵⁷

6.52 The Research Office of the LegCo Secretariat also released a report on 2 January 2020 stating the health impacts of tear gas on individuals which depends on various factors similar to those mentioned in paragraph 6.51. The report also highlighted the use of tear gas should take note as follows :

*“police guidelines from selected places specify that (a) tear gas should not be directly fired at individuals; (b) tear gas should not be used in enclosed spaces; and (c) the enforcement officers need to give sufficient warning and provide evacuate route prior to usage.”*⁵⁸

⁵⁵ Committees on Toxicity, Mutagenicity and Carcinogenicity of Chemicals in Food, Consumer Products and the Environment (COT, COM, and COC) (September 2019) COT/COM/COC statement on 2-chlorobenzylidene malononitrile and CS spray. Retrieved from <https://cot.food.gov.uk/cotstatements/cotstatementsyrs/cotstatements1999/maloncsspray>

⁵⁶ LCQ 16 Question raised by Professor the Hon Joseph Lee and a written reply by the Secretary for Food and Health, Professor Sophia Chan, in the Legislative Council on 13 November 2019. Retrieved from <https://www.info.gov.hk/gia/general/201911/20/P2019112000559.htm>

⁵⁷ Centre of Health Protection (2019-11-07) Health Information on Tear Gas. Retrieved from <https://www.chp.gov.hk/en/healthtopics/content/460/102308.html>

⁵⁸ Research Office, Legislative Council Secretariat (2 January 2020) Guideline on the use of less-lethal police weapons in selected places. Retrieved from <https://www.legco.gov.hk/research-publications/english/1920rt04-guidelines-on-the-use-of-less-lethal-police-weapons-in-selected-places-20200102-e.pdf>

6.53 As to the health effect of chemical irritants such as tear gas and OC spray, information from United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement on the circumstances of potentially lawful use and specific risk is extracted in Annex 2.

6.54 After the Police had fired over a thousand canisters of tear gas at both CUHK and PolyU in November 2019⁵⁹, both universities addressed the general public's concern about the potential hazards of tear gas residue remaining on their campuses and appointed independent accredited laboratories to collect environmental samples, namely air, and soil samples at various locations on campus for testing. According to the published reports, the results of the tests met the internationally accepted health and safety levels and both campuses could resume operation.^{60,61,62}

6.55 While the public has a grave concern on health effect from tear gas, the public health physicians are equally concerned about the lack of decontamination instructions for public reference and compliance.⁶³ This issue is addressed in paragraph 6.74.

IPCC Observations

6.56 It is evident that police counterparts elsewhere apply much the same principles for the use of force – reasonable, proportionate and minimum necessary force against subject individuals after considering the risk posed by their actions and behaviour. The use of force principle adopted by the Police, i.e. “*only minimum force necessary to achieve the purpose may be used and once that purpose has been achieved, the use of force shall cease*”, is in line with their international counterparts. Determining whether a level of force applied by the Police is appropriate would be situational, depending on the actual circumstances faced by a particular police officer.

⁵⁹ RTHK (2019-11-12) 警方過去半年反修例示威中共用29863發彈藥. Retrieved from https://news.rthk.hk/rthk/ch/component/k2/1496800-20191209.htm?archive_date=2019-12-09

⁶⁰ HKFP (2019-12-06) Campus soil and water samples show negligible health hazards from tear gas, says Chinese University of Hong Kong. Retrieved from <https://www.hongkongfp.com/2019/12/06/campus-soil-water-samples-show-negligible-health-hazards-tear-gas-says-chinese-university-hong-kong/>
CUHK Announcement (2019-12-06) CUHK Releases First Batch of Test Results on Campus Environment. Retrieved from https://www.cpr.cuhk.edu.hk/en/announcements_detail.php?1=1&1=1&id=37

⁶¹ POLYU Media Releases (2019-12-28) PolyU Announces the Test Results on Campus Environment Assessment. Retrieved from https://www.polyu.edu.hk/web/en/media/media_releases/index_id_6723.html
POLYU First Batch of Test Results for Environmental Contamination on Campus. Retrieved from https://www.polyu.edu.hk/web/cpa/notice/Appendix_II_Eng.pdf

⁶² POLYU Media Releases (2020-01-03) PolyU Releases the Remaining Test Results for Air Samples Collected on Campus. Retrieved from https://www.polyu.edu.hk/web/en/media/media_releases/index_id_6724.html

⁶³ Chan EYY, Hung KKC, Hung HHY, Graham CA (2019-10-26) Use of tear gas for crowd control in Hong Kong. Retrieved from [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(19\)32326-8/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(19)32326-8/fulltext)

6.57 In communicating with the IPCC, the Commissioner has expressed his view that the Police has always endeavoured to comply with the law through application of its own policies and procedures in responding to actions; the response of the Police in the face of violent protesters in the past months is no exception. The Commissioner, however, acknowledges that each officer is accountable for the use of force, that any complaints and any alleged or observable instances of excessive use of force should be fully and fairly investigated.

6.58 The Police provides practical guidance to frontline officers by way of the Force Continuum but these guidelines are principle-based. As there is personal accountability under the law, each officer has to account subsequently for his or her conduct. More specific guidance might be fairer to the officer and easier for CAPO and the IPCC to work on when a complaint is made against an officer. More specific guidance would also enable the public to better understand the need for use of force in the law enforcement circumstances faced by the officer.

6.59 Specific scenario-based guidance, as suggested by HMIC in “The Rules of Engagement – A review of the August 2011 disorders” would be good reference for the Police. Based on the advice from a Queen’s Counsel,⁶⁴ ten key principles⁶⁵ are distilled from three core questions.⁶⁶ The ten key principles are to assist officers to consider their use of force. They include that force shall be exercised with restraint and shall be the minimum honestly and reasonably judged to be necessary to attain the lawful objective; individual officers are accountable and responsible for any use of force, and must be able to justify their actions in law. These are the elaboration of the three core questions reminding officers that the use of force should be minimum, necessary and reasonable and that they are held accountable for their actions. Based on them, HMIC has identified a series of specific scenarios to illustrate the problems encountered by police officers in the 2011 disturbances in the UK.

6.60 Some of the identified scenarios are similar to those that happened in the protests in Hong Kong, such as “*flash burglary rioting*”, “*barricades across road*”, “*petrol bombs*”

⁶⁴ Timony Otty, QC, Blackstone Chambers (2011-11-24) Annex C “Advice on the use of force by police in the context of civil unrest and riot” in “The Rules of Engagement – A review of the August 2011 disorders”. Retrieved from <https://www.justiceinspectorates.gov.uk/hmicfrs/media/a-review-of-the-august-2011-disorders-20111220.pdf>

⁶⁵ HMIC (2011) The Rules of Engagement: A review of the August 2011 disorder. Retrieved from <https://www.justiceinspectorates.gov.uk/hmicfrs/media/a-review-of-the-august-2011-disorders-20111220.pdf>

⁶⁶ The three questions are: (i) Would the use of force have a lawful objective and, if so, how immediate the grave is the threat posed? (ii) Are there any means, short of the use of force, capable of attaining the lawful objective identified? (iii) Have regard to the nature and gravity of the threat, and the potential for adverse consequences to arise from the use of force, what is the minimum level of force required to attain the objective identified, and would the use of that level of force be proportionate or excessive?

thrown”, etc.⁶⁷ The scenario-based guidance also contains corresponding tactical considerations for the police officer to act in every identified scenario.

6.61 Compared to the Force Continuum of the Police, the guidelines of HMIC detail more options for police officers and in some cases, the level of force envisaged (on Counsel’s advice) based on the scenario under consideration appears to be higher than that envisaged in the Force Continuum. For instance, in cases of arson attacks on a building, an officer can give warning or possibly use firearms if justified based on actual circumstances encountered. Meanwhile, most of the scenarios described in the HMIC list are very similar to events in Hong Kong in the past months, when the Police have had to enforce the law when faced with road blocking, arson and damage to property, attack by violent protesters with weapons, all of which constituted unlawful activity the Police is duty-bound to prevent or to arrest those in breach, and to bring them to justice.⁶⁸ Against this background, police officers have had to resort to use of force.

6.62 While appreciating that scenario-based guidelines would provide more certainty in terms of how frontline officers should react to a particular scenario, the IPCC also understands that in adopting such guidelines, the Police has to be cautious to avoid setting unduly rigid rules that may confuse or distract frontline officers from the use of force principles. Hence, a right balance needs to be struck between ensuring fundamental principles are followed and providing operational certainty to frontline officers.

6.63 The APP published by the College of Policing in the UK consists of many different aspects of policing. Among them, there is a specific section on “Public Order” policing, aimed at those officers who are involved in planning and commanding operations⁶⁹. It provides a framework for managing operations and deploying resources at a national, regional or local level. In that section of “Public Order” policing, there is a part on “commander considerations regarding the use of force”⁷⁰ with many useful examples like collective use of force, e.g., line of officers with batons drawn dispersing a crowd as a result of command decisions. Furthermore, there are special considerations which the commanders should take into account in planning and controlling the operations, for instance, the potential response (e.g., alienation/increase in tension), crowd dynamics (e.g. exit routes) and public perception when deploying officers.

⁶⁷ HMIC (2011) *The Rules of Engagement: A review of the August 2011 disorder*. Retrieved from <https://www.justiceinspectors.gov.uk/hmicfrs/media/a-review-of-the-august-2011-disorders-20111220.pdf>

⁶⁸ Ibid

⁶⁹ College of Policing (23 October 2013). *Public Order*. Retrieved from <https://www.app.college.police.uk/app-content/public-order/?s=>

⁷⁰ College of Policing (23 October 2013). *Police Use of Force*. Retrieved from <https://www.app.college.police.uk/app-content/public-order/core-principles-and-legislation/police-use-of-force/#commander-considerations-regarding-use-of-force>

6.64 In addition to the supplementation of specific guidelines to principle-based guidelines, the UK has formalised command structures for public order policing and put in place accreditation training for commanders and rank and file. Officers need to be re-accredited on a regular basis to keep up with the latest developments in POE tactics and policing techniques.

6.65 Following the 2011 Review, HMIC issued a further report in 2014 after inspecting how police forces in England and Wales deal with threats to public order. The report concluded that, among other things, training to the curriculum standard for Police Support Units (a public order-trained police team)⁷¹, and improved command training for gold, silver and bronze commanders in the use of public order situation related tactics⁷², have brought about an improved public order command capability compared with that which was in place at the time of the disorder in August 2011.⁷³

Tear Gas

6.66 Whether the use of tear gas has impact on human health hinges on different factors including specific chemical composition of the tear gas and whether they are properly used under different situations. From the perspective of human health, tear gas composition is the most direct element that would cause an impact and such information provided by the manufacturers is essential. It is advisable to have expert reviews in this regard to ensure that the chemicals contained in the tear gas used by the Police is acceptable.

6.67 In terms of practical operation, many factors such as duration and dosage of exposure, exposure route, health conditions of the individuals and physical environment during exposure have to be taken into account. Clear and systematic practical guidelines on these considerations would facilitate police officers to make more appropriate assessment of particular situations they may face when deciding to use tear gas.

⁷¹ Police Support Unit is a formation of resources for public order policing; the composition of a PSU is standardised across all of the 43 police forces in England and Wales and consists of: one inspector; three sergeants; eighteen constables; and three drivers; all trained and equipped to national standards with three suitably equipped personnel carrier vehicles.

HMIC (2014). Strategic Policing Requirement: An inspection of how police forces in England and Wales deal with threats to public order. Retrieved from <https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/strategic-policing-requirement-public-order-2014-06.pdf>

⁷² The “*go-forward*” tactics: tactics used by the police in public order situations that go beyond the containment of disorder; they allow the police to take positive action to end incidents of disorder before they escalate; tactics include advancing to disperse crowds, making arrests and working in situations where attenuating energy projectiles (AEPs) are used.

HMIC (2014). Strategic Policing Requirement: An inspection of how police forces in England and Wales deal with threats to public order. Retrieved from <https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/strategic-policing-requirement-public-order-2014-06.pdf>

⁷³ Ibid.

Recommendations of the IPCC under Section 8(1)(c) of the IPCC Ordinance**Use of Force Principles and Guidelines**

6.68 The IPCC acknowledges that the Police has in place policies and procedures regarding the use of force which are well in line with international guidelines. However, the current guidelines tend to be principle-based and the IPCC recommends that the Commissioner should review the current use of force policies and procedures and consider the feasibility of taking the following action:

- (a) Scenario-based guidelines should be developed, with support by legal advice, similar in concept to those recommended by the HMIC as indicated above, to supplement the use of force guidelines now in existence in the PGO and FPM. While the existing guidelines provide principles and the Force Continuum focuses on the “level of resistance” of the subject, they could be improved by adding practical scenarios as examples for each level of resistance. In other words, there will still be one set of guidelines but with examples for illustration. These guidelines should be based on local conditions and the POE experience of the past months, and validated by legal advice from local Counsel. Furthermore, the Police should consider develop a separate set of comprehensive guidelines similar to the Public Order APP as mentioned in Paragraph 6.63. Such guideline should be distinct from the general use of force guidelines which are applicable in normal daily community policing. On this note, during a Joint Meeting with the Police in June 2018 to review a complaint case arising from 2016 Mong Kok riot, IPCC had recommended the Police to review and develop a separate set of use of force guidelines on policing riot situations and to strengthen professional training on handling riot or chaotic situations;
- (b) Upon development of these supplemental guidelines, they should be included in all training. Consideration should be given to whether operational command structure in POEs needs to be further formalised, and whether there should be an accreditation system to ensure that officers are up to date on POE policing techniques;
- (c) Allied with the review of guidelines and operational command structure, consideration should be given to ensuring that clear guidelines are given to commanders at all levels of their accountability to ensure that those under their command do adhere to Force guidelines in the operational circumstances faced by them;

- (d) To ensure that the public understands the law on the use of force and how it is applied by the Police, the IPCC believes that the results of this review should be published and that the Police policies and procedures on the use of force, be part of continuing public education on the role played by the Police in maintaining law and order.

6.69 The IPCC believes that if the foregoing recommendations are implemented, the work of CAPO and the IPCC will be greatly facilitated, because complaints can be looked at in a more informed manner and officers have better guidelines to conduct themselves. This might result in the reduction of complaints.

A Dedicated Legal Advisor's Office within the Police Force

6.70 One of the difficulties of the Police, which the IPCC has observed in the course of this Study, is that Police management has to seek frequent legal advice from the Department of Justice. For the Police to produce internal scenario-based guidelines with legal advice as recommended in paragraph 6.68, it would materially assist to have their own legal capability, either departmentally or by full-time secondment from the Civil Division of the Department of Justice. The Police is Hong Kong's most important and diverse law enforcement department in maintaining law and order. Endowing them with their own legal department is an investment in ensuring that the law is applied in an informed manner. Their own legal department may deal with non-prosecutorial activities including contracting, civil actions and formulation of policies and procedures for policing while prosecutorial activities and disciplinary cases for defaulting police officers would remain the jurisdiction of the Department of Justice.

Use of Tear Gas

6.71 As tear gas is the most widely used policing instrumentality in the past few months, the IPCC believes that the Commissioner is fully aware of the public opprobrium of the Police that such use has caused. The IPCC suggests that the Commissioner considers addressing the issue through policies and procedures which seek to comply with the aspects in the United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement. Relevant extract is in Annex 2.

6.72 To address the public concern over the safety issues or health effects of tear gas, the IPCC recommends that the Commissioner appoint an expert committee comprising medical and scientific experts to advise the Police Force that current and future stocks of tear gas come within acceptable toxicological limits for use in Hong Kong streets. In defining these limits,

the expert committee may refer to information provided by the manufacturers and toxicological tests conducted by them and any information available in the medical and police literature on the effects of their use in developed jurisdictions. However, if it proves impossible to come to a definition of “Acceptable toxicological limits” for use in Hong Kong streets and/or if the appointment of an expert committee proves unfeasible, the Police may alternatively release information concerning the manufacturer, the model and any developed jurisdictions using the same model.

6.73 The IPCC recommends that the Commissioner reviews current practices and procedures for the use of tear gas in public order situations, specifying situations in which it should **not** be used (for example in enclosed space) and if used, the conditions under which it may be used, taking care to ensure affected persons can leave the vicinity quickly and to minimise any unavoidable effects.

6.74 The IPCC appreciates that tear gas may have to be used, but the public still does not fully understand why it is used and how its effects could be mitigated. This is a matter of continuing public education and on-going public relations work by the Police, the Health Department and other community relations departments of the Government.

6.75 Subject to individual accountability, it was observed that the Police guidelines have generally been applied to the circumstances the Police have had to face. Meanwhile, the use of force by the Police has been widely criticised in the media and by a wide cross-section of the public, resulting in a large number of complaints. The IPCC believes that the experience gained by the Police Force in the past months would facilitate the Commissioner conducting a review of the policies and practices to address these criticisms. Elsewhere in this Report, the IPCC has suggested specific areas for focus. These include consideration of higher transparency and better communications on police policies and practices, closer co-operation with the media, incorporation of relevant elements in the training of officers and clearer command structure.