



Research Office  
Legislative Council Secretariat

## Information Note

# Policy on police use of force in public order events in selected places

IN14/19-20

## 1. Introduction

1.1 The social incidents<sup>1</sup> in 2019 have put the handling of public order events<sup>2</sup> by the Hong Kong Police Force ("the Police") under spotlight, particularly over its use of force in making arrests or dispersing the crowd. While the Police considers its use of force necessary and justified to quell situations that have pressured police officers to react swiftly to restore public order, some members of the public disputed and alleged that the police use of force was excessive and unreasonable to the extent that individual rights and freedoms were seriously infringed. These disagreements have raised concerns over the Police's tactical capability, standards and practice of the use of force. In its recent report on the public order events, the Independent Police Complaints Council ("IPCC") also reviewed the overall use of force during these incidents, and raised suggestions such as providing more specific guidance and enhancing the training standards of police officers.<sup>3</sup>

1.2 At the request of Hon Tanya CHAN, the Research Office has conducted this study to examine the police use of force policy in public order events.<sup>4</sup> Generally speaking, police use of force can occur in various law enforcement contexts from individual encounter with the police to crowds in public order events. Although the same policy and guidelines on use of force

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<sup>1</sup> Since June 2019, Hong Kong has seen a series of protests, as triggered by the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019, which was formally withdrawn by the Government in October 2019.

<sup>2</sup> While the Public Order Ordinance (Cap. 245) does not contain the term public order events, the Police generally uses the term to refer to public meeting and procession as stipulated in the Ordinance.

<sup>3</sup> The study is a fact-finding study with the aim of gaining a broad picture of the incidents, in view of the public concerns about the Police's handling of the public order events with a large number of complaints against the police actions. See Independent Police Complaints Council (2020).

<sup>4</sup> Since police operation can be considered sensitive, publicly available information about the relevant tactics, guidance and training may be limited and fragmented which may constrain the analysis in this information note.

generally apply in both contexts, policing public order events is considered more challenging due to the dynamics of crowds. This study will provide a brief account of the use of force issues during the social incidents, along with a discussion on the relevant legal basis, police policy and guidelines, and the police oversight system in Hong Kong. Two places, England of the United Kingdom ("the UK") and District of Columbia ("DC", also known as Washington DC) in the United States ("the US"), are chosen for closer examination of similar use of force issues.

1.3 The UK is considered as a leader in its policing style founded on the minimization of use of force approach. Its past reviews on policing public disorder may also shed light on issues which may be of some reference to Hong Kong. In the US, DC considers itself a model of policing demonstrations. Following the recent widespread protests, its police use of force policy is being reshaped towards a more restrictive direction. The police oversight system in both places will also be discussed to examine its role in the check and balance in the police use of force.

## **2. Police use of force policy in Hong Kong**

2.1 The rights to freedom of assembly and procession in Hong Kong are protected under the Basic Law, Hong Kong Bill of Rights Ordinance (Cap. 383) and the International Covenant on Civil and Political Rights. Yet, the Police is empowered to impose conditions on public order events for the interests of national security, public safety and public order under the Public Order Ordinance (Cap. 245). When situations "severely threatening" such interests occur, such as road blockage, unlawful assemblies and violent charging of police cordon lines, the Police will take appropriate actions, including necessary force, to restore public order.<sup>5</sup> In these actions, police officers are expected to comply with the policies and guidelines of the Police.

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<sup>5</sup> See Official Record of Proceedings, 30 October 2019, Council Question 8: Use of force against demonstrators.

## Police legal powers to use force

2.2 The legal powers for the Police to use force are set out in the **Police Force Ordinance** (Cap. 232), which empowers police officers to use "all necessary means" to make arrest.<sup>6</sup> In addition, the **Criminal Procedure Ordinance** (Cap. 221) states that a person may use such force as is reasonable in the circumstances to prevent crime or effect or assist in lawful arrests, while the **Public Order Ordinance** (Cap. 245) allows the use of "reasonably necessary" force by police officers to prevent the "holding up, stop or disperse" of public order events to prevent the commission or continuance of any offence under the Ordinance.<sup>7</sup>

2.3 However, neither the term "force" nor "use of force" is defined in laws. The United Nations defines the use of force as the use of physical means that may harm a person or cause damage to property.<sup>8</sup> "Physical means" include the use of hands and body by law enforcement officials, the use of any instruments, weapons or equipment such as batons, chemical irritant like pepper spray, and restraints such as handcuffs and firearms. According to the relevant principles adopted by the United Nations, maintaining a range of means as broad as possible in public order policing is necessary, as it gives the police differentiated responses to situations and avoidance of the use of conventional firearms and ammunitions.<sup>9</sup> In Hong Kong, the weapons in the Police's possession are not publicly disclosed as the information is regarded as operationally sensitive.<sup>10</sup> However, based on information from various sources on the types of force used in the past,<sup>11</sup> apart from those cited above, police weapons also include special crowd control vehicles (i.e. water cannon vehicles), tear gas, and other less lethal weapons like rubber bullets and bean bag rounds. Police officers are bound by the following guidelines when using force to perform their lawful duties.

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<sup>6</sup> See Section 50 of the Ordinance.

<sup>7</sup> See Sections 17(3), 45 and 46 of the Ordinance.

<sup>8</sup> See United Nations (2017).

<sup>9</sup> Ibid.

<sup>10</sup> See Official Record of Proceedings, 18 March 2020. Council Question 18: Use of shock bombs and flash bangs by the Police.

<sup>11</sup> The sources of information include government replies to Members' questions on expenditure estimates presented to the Legislative Council, replies to Council questions raised by Members, and IPCC's recent study report.

## Police guidelines on use of force

2.4 The **Police General Orders ("PGO")** and its related **Force Procedures Manual ("FPM")**<sup>12</sup> contain guidance on the use of force. While PGO are internal guidelines, compliance is mandatory for all police officers. Non-compliance may result in disciplinary action. However, due to the operational sensitivities as claimed by the Police, neither PGO nor its related manuals (including FPM) have been fully made public.<sup>13</sup> Among those not released include both Chapter 29 of PGO and FPM covering the policy and guidelines on **use of force and firearms**. These guidelines are reviewed from time to time, particularly after major incidents.<sup>14</sup>

2.5 Having said that, the Police has explained on various occasions including at the Legislative Council meetings about its use of force policy, while IPCC has also referred to the relevant part of PGOs in its recent report. Based on the revealed information, the use of force guiding principles can be summarized as follows: (a) the force used must be **absolutely necessary** and there are no other means to achieve a lawful purpose; (b) the level of force must be **minimum necessary** and **reasonable in the circumstances**; (c) police officers shall, as far as circumstances permit, give **prior warning of intention to use force**, and **opportunities for the subject to obey officer's order** before force is used, and (d) the officer must use force with **restraint** and the force must **cease after the purpose is met**. In addition to these principles, officers are also expected to arrange treatment for anyone injured at the scene or during arrest.<sup>15</sup> After use of force, officers are also required to document and file a report which may be subject to subsequent reviews or follow-up.<sup>16</sup> The use of force records are not published.

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<sup>12</sup> FPM contains information, advice and guidelines on procedures. An officer not complying with FPM should be given suitable advice or guidance. Recurrent or blatant disregard for FPM renders an officer liable to disciplinary action. See Hong Kong Police Force (2020).

<sup>13</sup> Only 37 out of at least 76 chapters of the PGO are available on the Police website for public viewing.

<sup>14</sup> See Official Record of Proceedings, 17 January 2018. Council Question 6: Use of force by police officers during law enforcement.

<sup>15</sup> See Official Record of Proceedings, 27 May 2020. Council Question 14: Apply neck restraint technique by police officers, and 18 December 2019, Council Question 10: First aid training received by police officers.

<sup>16</sup> Detailed reporting requirements are not open to the public. According to Wong (2012), all use of force incidents involving police officers are subject to internal reporting and review, and a use of force report is filed immediately following each instance.

2.6 The above use of force guiding principles appear literally similar to the international standards, especially the tests of legality, necessity and proportionality as laid down in the United Nations' **Basic Principles on the Use of Force and Firearms by Law Enforcement Officials** and its related supplementary resources, and the **United Nations Human Rights Guidance on Less Lethal Weapons in Law Enforcement**.<sup>17</sup> These documents however also contain elaborated guidance on use of force in public order management such as dealing with pockets of violence, dispersal and tactics of containment. The latter guidance also describes the circumstances in which the use of less lethal weapons may be considered as lawful or unlawful and the associated risks.<sup>18</sup>

### *Continuum of Force*

2.7 The application of the principles outlined above will ultimately depend on individual officers' assessment on the ground and officers' ability. To assist officers, FPM provides a more specific use of force guidance known as **Continuum of Force**.<sup>19</sup> While the guidance is not made open to the public, according to IPCC, it lists an officer's use of force options in response to **six** different levels of escalating aggression or resistance, with the severest level being "deadly force assault" where the use of firearms is available. Generally, the Continuum model recognizes that police officers can apply a level of force greater than the subject's in gaining control of the situation, provided the force is considered minimum necessary. Police officers are advised to "**exercise their own discretion to determine what level of force is justified in a given situation**", and they are "**accountable for their own actions**". Hence, ensuring police officers are adequately-trained is considered vital. There are situations where use of force incidents may involve the Court to rule if the officer has complied with the use of force principles.<sup>20</sup>

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<sup>17</sup> See United Nations (1990), (2017) and (2020).

<sup>18</sup> The guidance mainly covers the appropriate manner and circumstances the less lethal weapons should be applied on individual or crowd. For example, tear gas should not be fired at individual in any event and not be used in a confined space where there is no viable exit or adequate ventilations. Tear gas that contains hazardous level of active agents should not be used too. See United Nations (2020).

<sup>19</sup> According to IPCC, the Continuum of Force was last revised on 2 October 2019 to amend certain definitions including the meaning of "deadly assault". However, the IPCC report did not carry the full details of the new Continuum of Force.

<sup>20</sup> For instance, in *HKSAR v Frankly Chu* case, the Court had to decide if the force used by the police officer was reasonable in the circumstances. See Judiciary (2018).

2.8 In Hong Kong, use of force training for police officers generally comprises three levels from fundamental, decision-making, to tactical training.<sup>21</sup> Police officers are regularly drawn from police regions to be trained as members of the Police Tactical Unit ("PTU") which is a paramilitary force with over 1 000 officers to assist in public order policing, internal security, etc.<sup>22</sup> PTU officers undergo 12-week relevant training such as basic tactical skills and the use of firearms.<sup>23</sup> Eligible officers who have completed assignment to PTU can also become members of Emergency Unit at each of the six police regions, and undergo further required training.<sup>24</sup> The Emergency Unit is mainly deployed to deal with daily emergency situations but they will also assist in public disorder situations when required. During the 2019 social incidents,<sup>25</sup> police officers were assigned with different roles as required by the operation to handle various situations but specific details were not disclosed.<sup>26</sup> In handling these public order events, the Police employed force which appeared to be broader in types and also stronger in intensity when compared to the usage during the 2014 Occupy Movement<sup>27</sup> (see [Appendix I](#) on police use of ammunitions statistics during the 2019 social incidents).

### Issues arising from the social incidents in 2019

2.9 During the police actions against the disorders, over 8 000 people were arrested, and over 2 600 people, including 590 officers, were injured. Some of these injuries were allegedly or reportedly caused by the use of force. An international human rights watchdog also accused the Police of unlawful use of batons and rubber bullets, improper use of pepper spray and tear gas

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<sup>21</sup> Fundamental training equips the officer with the ability of using different levels of force in a safe and effective manner; decision-making training aims to improve the officer's skills through multi-media and interactive technology in deciding whether to use force and what levels should be used when faced with threats; and tactical training is provided in specially designed training venue by means by simulated cases and scenes. See Official Record of Proceedings, 17 January 2018.

<sup>22</sup> There is also a special tactical squad at PTU Headquarters set up in 2014 to deal with the Occupy Movement.

<sup>23</sup> The duration of training is based on 2011 information. The PTU Headquarters provides a wide range of training covering crowd management, internal security and public order policing for frontline officers. See Hong Kong Police Force (2011) and (2017).

<sup>24</sup> See Hong Kong Police Force (2018).

<sup>25</sup> From June 2019 to February 2020, 1 400 public order events took place.

<sup>26</sup> See Official Record of Proceedings, 18 December 2019. Council Question 16: Police work relating to "anti-extradition to China" movement.

<sup>27</sup> During the 2014 Occupy Movement, 87 canisters of tear gas were used to disperse the crowd of protesters.

and a lack of police officer identification. A journalist body has also complained that journalists suffered from "police violence" while covering the protests.<sup>28</sup> In response, the Police maintained that police officers had encountered increasingly violent situations including attacks against the police officers and their use of force had been minimum necessary.

2.10 In its review report on the public order events, IPCC has recommended the Police to consider providing "**specific scenario-based guidance**" to frontline police officers as a supplement to the existing principle-based guidelines. It has suggested that scenario-based guidance might be fairer to the police officers who would be held accountable for their decisions and actions. At the same time, it might make handling of complaints against police officers easier and facilitate public understanding about police use of force. IPCC also called for a **separate set of guidelines specifically for public order policing** and proposed the Police to consider establishing an **accreditation training system** to ensure possession of up-to-date policing techniques.

2.11 According to IPCC, between 9 June 2019 and end February 2020, 542 reportable complaints<sup>29</sup> against the Police in connection with the social incidents were filed by members of the public to the Complaints Against Police Office ("CAPO"), a unit within the Police. Of these complaints, 302 or 55.7% were concerned with police use of force. Under the current system, these complaints are handled by CAPO and IPCC's role is to monitor CAPO's investigations as observers and scrutinize the investigation results.<sup>30</sup> Complainants may request that a review of police investigation be conducted if they are not satisfied with the outcome. Since IPCC does not have the power to investigate complaints and discipline misconduct officers, there have been grave public concerns about its limited role and the independence of the investigations.

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<sup>28</sup> See Hong Kong Journalists Association (2020) and Amnesty International (2019).

<sup>29</sup> Reportable complaints are complaints lodged by members of the public directly affected by the alleged conduct of police officers who are either on duty or have identified themselves as police officers while off duty.

<sup>30</sup> For more details, please see Legislative Council Secretariat (2020b).

### 3. Police use of force policy in England, the UK

3.1 The UK is known for being a role model in policing practice and proud of its traditional approach of "policing by public consent" characterized by unarmed police officers.<sup>31</sup> Police officers in England usually carry just a baton and handcuffs in normal daily policing. The policing model features the exercise of persuasion, advice and warning in the first instance. Armed officers are only deployed as a last resort where there is a serious risk to public or police safety, and other policing means have failed. The powers to exercise reasonable force in exercising their duties are given under the common law and other legislation, including the Criminal Law Act 1967, Police Criminal Evidence Act 1984, and the Human Rights Act 1998<sup>32</sup>.

3.2 In the UK, the rights to freedom of peaceful assembly are provided in the Human Rights Act 1998. Based on the relevant police guidelines, the police should always start with a presumption in favour of peaceful assembly.<sup>33</sup> Yet, police forces in the UK have also been facing growing pressure to handle increasingly unpredictable and fast-moving protest activities.<sup>34</sup> This has posed increasing challenge to the police in striking a fine balance between protecting the freedoms and rights of protestors and possible legal restrictions imposed for public safety, national security, and prevention of crime and disorder. Following the G20 protests in 2009,<sup>35</sup> there had been reviews about police tactics at protests<sup>36</sup>, which resulted in the publication of new guidance on public order policing. This guidance has later been incorporated into the police guidelines.

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<sup>31</sup> See Home Office (2020).

<sup>32</sup> The Act contains provisions from the European Convention on Human Rights relating to use of force.

<sup>33</sup> Under the Public Order Act 1986, an assembly of two persons constitutes a public assembly and the police may impose conditions on it if they consider reasonably necessary to prevent serious public disorders. There is no need to give prior notification to the police for a public assembly. As to a march, the organizer is required to provide notice to the police on the location and routes of the event.

<sup>34</sup> The activities included the G20 summit protests in London in 2009, the London public disorder in August 2011, and a series of energy protests known as XR – Extinction Rebellion in recent years.

<sup>35</sup> During the protests, a newspaper vendor died after his encounter with a police officer on street. The court found the officer not guilty of manslaughter, but the Metropolitan Police Service later found him guilty of gross misconduct and dismissed him. See HMIC (2009a) and (2009b).

<sup>36</sup> The review reports, namely "Adapting to Protest" and "Adapting to Protest: Nurturing the British Model of Policing", were published in 2009.



## Police guidelines on use of force

3.3 The guiding principles of police use of force in England can be found throughout the relevant guidance documents known as **Authorised Professional Practice ("APP")** which are developed and published by the College of Policing as an official source of professional practice on policing.<sup>37</sup> Similar to Hong Kong's, these principles state that any use of force must be **reasonable in the circumstances**, meaning that it is **absolutely necessary for a purpose permitted by law**,<sup>38</sup> and the degree of force used must be **minimum required** in the circumstances to achieve the lawful objective. The primary responsibility for using force also rests with individual officers who are answerable to the law.<sup>39</sup> Police officers are expected to have regard to APP when discharging their duties, and deviation requires sufficient justifications. There are 22 chapters in APP and those chapters containing guidance on police use of force are mainly APP on public order, APP on armed policing, and APP on National Decision Model ("NDC"). These documents are publicly available.

3.4 **APP on public order** provides a management framework on public order policing. This chapter does not provide specific nor detailed guidance on when and what force to use by individual officers when a breach of peace occurs. Instead, it focuses on a clear command structure<sup>40</sup> and the role of commanders who, as the most senior officers at a public order event, must have to be **trained and accredited annually** to prove they are operationally competent in public order policing.<sup>41</sup> The commanders, who can authorise to make available and use certain tactics and weapons, also have a responsibility to **plan to minimise recourse to the use of force** where possible. The guidance has set out three core questions as to when force may be used. The

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<sup>37</sup> APP is consolidated from numerous police manuals and forms the basis for police training too.

<sup>38</sup> These purposes include self-defence, defence of another, defence of property, prevention of crime and lawful arrest. See College of Policing (2020a).

<sup>39</sup> Officers are advised to consider the nature and degree of force used; the seriousness of the offence which is being prevented or in respect of which an arrest is being made; and the nature and degree of any force used against an officer by a person resisting arrest. See Crown Prosecution Service (2018).

<sup>40</sup> The structure comprises three levels, namely gold, silver and bronze level commanders. The gold one is responsible for strategic planning, while silver for tactical planning and bronze for operation. See College of Policing (2020a).

<sup>41</sup> The National Police Public Order Training Curriculum provides modules to train police officers. Accreditation is achieved by successful completion of the Events Module under the Curriculum and demonstration of operational competence in the workplace. Re-accreditation is managed by individual police forces. Commanders are required to produce a portfolio of evidence related to their training and/or operations annually to retain the accreditation. Detailed requirements are however not published in APP.

core questions are boiled down from 10 key principles (see [Appendix II](#)) adopted in the report "**The Rules of Engagement: A review of the August 2011 disorders**"<sup>42</sup> published by the inspectorate on the UK police forces, Her Majesty's Inspectorate of Constabulary ("HMIC"). There are also a number of example considerations regarding use of force set out for commanders to consider. For example, the commanders have to consider possible negative impacts of a disproportionate use of force on crowd behaviour and increased risks of disorder.<sup>43</sup> When use of force is required, commanders are advised to take a **flexible approach** and consider various factors in their choice of tactical options.

**3.5 APP on armed policing** focuses on the principles of the use of firearms and less lethal weapons<sup>44</sup>, circumstances when weapons may be discharged, and the accountability issues of the authorised armed officers.<sup>45</sup> When the use of force is unavoidable, police officers should ensure that medical aid and assistance are rendered to the injured or affected persons at the earliest possible moment. To reduce the reliance on conventional firearms and ammunition, it is the policy of the UK government to develop or acquire less lethal weapons that are acceptable and effective in order to maintain sufficiently wide tactical options. Yet, given the unique risk and societal implications, only less lethal weapons that have been approved by the Secretary of State for the Home Department<sup>46</sup> may be used by the police forces, upon satisfaction of completing the needs analysis, independent technical and medical assessment, and operation performance trials.<sup>47</sup>

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<sup>42</sup> The disorders lasted from 6 to 11 August at multiple places in London, which were sparked by a fatal shot of a man by a police officer in Tottenham. See HMIC (2011b).

<sup>43</sup> Other considerations include setting policing style and dress code, mechanical substitute for direct contact with the crowd, sufficiency of officer training, and clarity of command decisions.

<sup>44</sup> Less lethal weapons are designed to be used against an individual or a group of individuals to achieve a physical effect in order to mitigate a threat, without substantial risk to the subject of permanent or serious injury, or death.

<sup>45</sup> For example, attenuating energy projectiles ("AEP") is an approved tactical option for use during serious public disorder, but since it is not designed for crowd control, it can only be fired against individual aggressors. AEP deployment and use must also be authorised by appropriately trained and accredited public order commanders. See College of Policing (2020b).

<sup>46</sup> In 2015, the Secretary of State for the Home Department rejected to authorise the use of water cannon by police forces in England and Wales, citing its use would potentially cause serious injuries and damage police legitimacy and the principle of policing by consent. See Home Office (2015).

<sup>47</sup> Prior approval applies to all new less lethal weapon system and significant changes to pre-existing system. See College of Policing (2020b).

3.6 **APP on NDC** helps police officers in decision making throughout the police service, including before, during and after any public order operation. Different from the force continuum adopted in Hong Kong, police officers in England are trained to use NDC and account for their actions accordingly. The model comprises six key elements facilitating decision making (see **Appendix III**). This directs the officers to constantly assess threat and risk based on information received, determine a suitable tactical option having regard to statutory powers and policies, and then review and reflect on the actions taken.

#### *Proposed specific scenario-based guidance*

3.7 While police guidelines may help, they may be too broad for police officers to put into practice, especially when their spontaneous decision is often subject to media and public scrutiny. In view of this, in its 2011 review report, HMIC proposed to establish a specific scenario-based guidance – or what it called "rules of engagement" – setting out a range of tactics acceptable to both the public and police for use in specific public disorder scenarios, and that officers should have relevant training. The proposal was made having considered that police officers deployed to the London disorders in 2011 were found "uncertain about the level of force and tactics that can be used lawfully during the disorder" while the public believed the force applied was not enough.<sup>48</sup> As an illustration, HMIC used the 2011 disorders scenarios to set out the scenario-based options (see **Figure 1**), for example, what tactical responses may be considered when petrol bombs are being thrown.

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<sup>48</sup> The report stated that some police officers had erred on the safe side using less forceful tactics. In fact, it was found that nearly half of the public surveyed after the disorder believed the police had not used enough force, while about 60% of the public believed the disorder could have been ended earlier. See HMIC(2011b).

**Figure 1 – Rules of engagement – specific scenario-based guidance**

	Flash burglary rioting	Barricades across road	Groups gathering	Barricades and missiles used	Petrol bombs thrown	Violent attacks on the public in police's presence	Arson attacks on building	Threats to fire and ambulance	Firearms directed at police	Vehicle driven at police
Warning	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Containment	✓		✓	✓	✓				✓	
Dismantle barrier		✓		✓						
Arrest	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Mounted branch			✓							
Vehicle tactics				✓	✓	✓	✓	✓		
Water cannon				✓	✓	✓	✓	✓		
Possibly AEP <sup>(1)</sup>				✓	✓	✓	✓	✓	✓	
Possibly firearms							✓			
Firearms									✓	
Negotiation		✓	✓						✓	
Withdrawal										✓
Road blocks										✓
Vehicle immobilization										✓

Note: (1) AEP refers to attenuating energy projectiles.

Source: HMIC (2011b).

3.8 Nevertheless, a scenario-based framework setting out the available tactical options as above appears not adopted in APP. At present, APP contains a non-exhaustive list of tactical options available to the police at public order events. The decision of which tactics to choose will depend on the circumstances and the overall strategy of the operation. In fact, the Home Affairs Committee of House of Commons, when holding an inquiry into the 2011 disorders, considered that over-reliance on guidance might reduce the flexibility and resilience of the police to respond to any circumstances. It was of the view that individual officers and commanders on the frontline should have the discretion to make their own assessment of the situation and of what tactics to deploy, rather than relying on guidance manual. To raise frontline officers' ability to act spontaneously, the Committee stressed a need to strengthen the necessary public order training, and the importance of identifying commanders who have talent in public order policing and giving them appropriate training.<sup>49</sup>

<sup>49</sup> See House of Commons (2011).

3.9 Police officers in England are trained and equipped with tactics outlined in the **National Police Public Order Training Curriculum** so that they can be deployed to spontaneous or pre-planned public order events. The training consists of three levels but the curriculum is not publicly accessible. According to the Metropolitan Police Service ("MPS") for Greater London, its Level 1 public order officers, also known as Territorial Support Group, receive public order training every five weeks, while Level 2 officers (i.e. those who can be called upon to police public order events) receive such training every 18 weeks. Level 3 officers are all ordinarily trained officers who do not receive specialist public order training or kit, but can assist with policing cordons.<sup>50</sup> According to MPS, as at January 2019, there were about 520 Level 1 officers of all ranks, and about 3 600 Level 2 officers, which together account for almost 14% of the total uniform police officers of MPS.

### Police use of force monitoring and oversight

#### *Regular reports on police use of force*

3.10 All 43 police forces in England and Wales have been required since April 2017 to collect and record the data on "use of force incidents" – defined as when a force tactic is used by a police officer on an individual.<sup>51</sup> The collected data is submitted to the Home Office for annual publication for the purpose of providing the public with greater information on different types of force used, and the context in which the use of force occurs. The categories of force data summarized in the annual report include **types of force used, reason for use, outcome (e.g. arrested, escaped) and injuries**. Apart from the aggregate national statistics released by the Home Office, some local police forces have also voluntarily published their own use of force data on their websites. Take MPS as an example, its use of force data also included public order incidents. The data included the number of persons involved and the type of force presented or used.

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<sup>50</sup> The frequency of training is based on 2011 information. See House of Commons (2011).

<sup>51</sup> The National Police Chiefs' Council introduced the national recording requirement for the use of force, covering the use of firearms, taser, baton, handcuffs, leg restraints, spit-guards, incapacitant spray, and control and restraint techniques. See Home Office (2019).

## *Investigation of complaints relating to use of force*

3.11 Apart from data reporting, when a police officer is complained of misconduct in relation to the use of force, the officer may face internal investigation by the police's professional standards department. For the most **serious and sensitive complaints**, such as those involving death or serious injury, they are required by law to be referred to the **Independent Office for Police Conduct ("IOPC")**<sup>52</sup> for assessment. Unlike Hong Kong's police oversight body, IOPC can decide upon the referral the mode of conducting the investigation, namely: (a) conducted by local police force on its own, (b) conducted by police under IOPC's direction and control (i.e. managed investigation), or (c) conducted by IOPC itself.<sup>53</sup> Since 2017, IOPC's power has been expanded so that it may also initiate its own investigation without any complaint referral. To assist its own investigation, IOPC may also take witness statements, interview police officers, review video footage, and even obtain phone records. The investigation result, if arising from its own or managed investigation, is final and not subject to review. IOPC also has the authority to determine whether an officer should face disciplinary hearing, but it has no power to impose disciplinary action.

3.12 IOPC does not publish regular reports on its investigations relating to police use of force. Yet according to its analysis conducted in 2016 for the five-year period between 2009 and 2014 regarding use of force complaints, of the 191 investigations managed or carried out by the watchdog, 31% (59 cases) required further disciplinary hearing by the police force concerned. While there is no breakdown data on how many of these cases were related to public order events, these cases were mainly related to police officers' poor risk assessment, over-use or incorrect use of force/equipment, and insufficient rationale to use force. Police imposed sanctions on 61 officers, one-third of which being under dismissal and final written warning.<sup>54</sup>

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<sup>52</sup> IOPC replaced the former Independent Police Complaints Commission under the Policing and Crime Act 2017 to improve public trust in the police oversight body following investigations into the deaths of several men in custody.

<sup>53</sup> See Independent Office for Police Conduct (2020).

<sup>54</sup> Eighteen out of 24 cases referred to Crown Prosecution Services resulted in proceedings on criminal offences of the police officer. See Independent Police Complaints Commission (2016).

## 4. Police use of force policy in DC, the US

4.1 Police use of force issue is undeniably very sensitive in the US, as evidenced in the recent protests targeting police forces following an allegation that police officers had killed a suspect with excessive force.<sup>55</sup> Unlike the UK where officers are generally unarmed in daily policing, police officers in the US are not just armed but also considered to be militarized particularly after the 2001 terrorist attack.<sup>56</sup> There have been critics about their heavy handed approach to policing protests. The need to strengthen trust among police officers and the public has been highlighted in the 2015 policing reform report that emphasized the importance of de-escalation training.<sup>57</sup> In DC, the law enforcement agency Metropolitan Police Department ("MPD")<sup>58</sup> was once identified by the US Department of Justice as having a "pattern or practice of excessive use of force" due to insufficient training and poor standards, and thus reforms were carried out after an agreement with the Department of Justice entered in 2001.<sup>59</sup> Nowadays, it regards itself as a role model among police forces in the US.<sup>60</sup>

4.2 Similar to the UK, the US values the protection of the rights and liberties of its people under the First Amendment to the US Constitution. As the national capital of the US, DC is also known to be a hotbed for demonstrations and protests. Its handling of demonstrations is codified in the DC law, First Amendment Rights and Police Standards Act.<sup>61</sup> The Act provides that no general order to disperse an assembly shall be issued by MPD unless "a significant number of percentage of assembly participants" fail to adhere to the restrictions (e.g. time and place), or are engaging in or about to engage in unlawful disorderly conduct or violence towards persons or property.<sup>62</sup>

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<sup>55</sup> See BBC (2020).

<sup>56</sup> See Charles Koch Institute (undated).

<sup>57</sup> See Office of Community Oriented Policing (2015).

<sup>58</sup> Metropolitan Police Department has about 3 800 sworn officers.

<sup>59</sup> See Department of Justice (2001).

<sup>60</sup> See Department of Justice (2017).

<sup>61</sup> The Act was enacted in response to the DC Council's investigation into the anti-war and anti-globalization demonstrations between 2000 and 2003 which faulted MPD for violating the rights of demonstrators. The Act generally requires prior notice of assembly and an approved assembly plan, unless exceptions are satisfied, e.g. the number of participants is expected to be fewer than 50. However, it is not an offence to assemble without having provided for a notice and plan. See DC Law Library (2020).

<sup>62</sup> While no general order to disperse an assembly shall be issued, MPD may disperse, control, or arrest the persons engaging in unlawful disorderly conduct or violence towards persons or property so that the assembly can continue.

4.3 Police use of force is governed by state or local legislation in the US. At federal level, while there is no specific law, the Supreme Court of the US had authoritative rulings on the use of force that set out the fundamental principles underlining many local laws or police force policies on use of force.<sup>63</sup> Generally, police use of force has to meet the legal test of "objective reasonableness" to be judged from "the perspective of a reasonable member on the scene in light of the facts, and circumstances confronting the member". In DC, the Municipal Regulations contain **general rules on the use of firearms and other weapons by MPD**. The city also has legislation since 1984 that bans or restricts certain application of chokeholds (i.e. neck restraints) techniques by police officers.<sup>64</sup> More detailed guidelines on police use of force are provided in the General Orders of MPD **which are also applicable in public order policing**. To ensure MPD is prepared to respond effectively and efficiently in accordance with relevant laws and policies when unlawful conduct occurs during public order events, the DC government has also set out a standard operation procedure for handling demonstrations.

#### [Police guidelines on use of force](#)

4.4 The overall policy on police use of force in DC is set out in one of the MPD's **General Orders**. Defining use of force as "any physical coercion used to effect, influence or persuade an individual to comply with an order from an officer", the policy contains more than a dozen of regulations on when force may be used and how officers should proceed. Generally, in all situations of potential violence or resistance to arrest, it is a requirement for all officers to apply **de-escalation techniques** in an attempt to diffuse use of force situation.<sup>65</sup> The officer using force must be able to articulate the facts, and circumstances surrounding their tactics, decision-making and the extent of force used in any given situation. The officer should also check if the subject is in need of medical care after the use of force and render first aid as soon as the scene is safe.

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<sup>63</sup> See Library of Congress (1989).

<sup>64</sup> Trachea hold was prohibited while carotid artery hold was restricted, prior to the introduction of the emergency legislation. See Code of the District of Columbia (2020).

<sup>65</sup> In a policing context, de-escalation aims to decrease the use of force against civilians by teaching officers techniques to slow things down and use time, space and communication to find an alternative. See Scientific American (2020).



## Use of force framework

4.5 The General Order notably contains a framework on the use of force. This framework is similar to a continuum of force which allows officers to determine which actions are objectively reasonable and proportionate, given a perceived threat (See **Figure 2**). Officers are advised to assess the threats continuously, considering the seriousness of the crime, the level of threat or resistance presented by the suspect, the imminence of danger, the suspect's mental capacity and access to weapons, etc. They may modify their level of force in relation to the amount of resistance encountered. Yet, the guiding principle remains that the response must be objectively reasonable.

**Figure 2 – Use of force framework**

Officer's perception of the threat	Officer's force response
<b>Cooperative</b> – the subject responds in a positive way.	<b>Cooperative controls</b> – include communicative skills; non-verbal acts like gesture, stance, and facial expression.
<b>Passive resister</b> – the subject displays a low level of noncompliant resistance, but offers no physical and mechanical energy.	<b>Contact controls</b> – include tactics that are psychologically manipulative like strong verbal persuasion; or physical manipulative like soft empty hand control, firm grip and escorting.
<b>Active resister</b> – the subject will not comply with officer's requests or comments, exhibiting physical and mechanical defiance.	<b>Compliance techniques</b> – include actions like control holds, joint locks, oleoresin capsicum (OC) spray <sup>(1)</sup> that may induce pain or cause discomfort.
<b>Assaultive</b> – the subject is actively and aggressively resisting the officer's attempt to arrest, demonstrating a lack of concern of the officer's safety.	<b>Defensive tactics</b> – include actions to forcibly render the subject into submission, such as the use of baton strikes, chemical agents, and electronic control devices.
<b>Serious injury or death</b> – the subject poses an immediate danger of death or serious physical injury to the officer or another third party person.	<b>Deadly force</b> – deadly force to neutralize a subject such as the use of firearms.

Note: (1) OC spray is commonly known as pepper spray.

Source: Metropolitan Police Department (2017).

4.6 According to MPD, all 3 800 police officers have received training in appropriate use of force techniques, firearms training, de-escalation and related topics during recruit training. The principles underpinning the policies and tactics are also incorporated into continuing education training. Though the training is not specifically on use of force, relevant issues such as tactics,

de-escalation and related communication techniques are covered. Police officers are also required to be recertified every six months for use of firearms and every two years for extendable batons.<sup>66</sup> There is also a Civil Disturbance Unit ("CDU"), which is under the Special Operation Division of MPD, responsible for dealing with civil disturbance. The members of the 900-strong CDU are drawn from the district police officers who must be certified to use MPD's less lethal weapons and chemical irritants.<sup>67</sup> The trained CDU members account for about 24% of its total police officers.

### *Police use of force during assemblies and mass demonstrations*

4.7 MPD also has a dedicated manual for handling demonstrations and other assemblies, known as "Standard Operation Procedure for Handling First Amendment Assemblies and Mass Demonstrations". While this document mainly deals with how a police commander should manage and deploy resources, it comprises a guideline that broadly outlines the force options (i.e. constructive force<sup>68</sup>, physical force, oleoresin capsicum ("OC") force, and mechanical, chemical and deadly forces) available to CDU. However, it also explicitly states that the use of canines is prohibited for crowd control and also recognizes the rights of people to immediate relief treatment after being hit by OC spray. Officers are also specifically reminded that they would face investigation if they use a riot baton to strike to the head. Whenever feasible, police officers shall attempt to defuse use of force situations with de-escalation techniques. The chief of police has the responsibility to ensure that relevant officers are provided with regular and periodic training on handling public order events.

4.8 Despite these guidelines, adherence to the use of force principles and advice may still be challenging for police officers. For instance, during the mass demonstrations taking place throughout the city of DC during the Presidential Inauguration ceremony in 2017, some police officers were found to have applied less lethal weapons such as OC spray and sting ball grenades "indiscriminately and without adequate warnings in certain circumstances". In some cases, chemical agents were deployed to people posing no immediate threats. These occurred in spite of the fact that officers had been given a

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<sup>66</sup> See Office of Police Complaints (2018).

<sup>67</sup> See Metropolitan Police Department (2016b).

<sup>68</sup> Constructive force involves uniformed police presence without physical contact between the police and demonstrators.

week-long special training on basic policing tactics and the less lethal munitions. An independent consultant commissioned by the Office of Police Complaints reviewing the incident later recommended, among others, that both supervision and training of the police officers should be enhanced.<sup>69</sup>

4.9 Recently, following the widespread protests and confrontations in different cities sparked by the allegedly killing of a man with a "neck restraint tactic" in a police arrest in Minneapolis, the DC Council has unanimously passed an **emergency legislation**<sup>70</sup> on police and justice reform to increase police accountability and transparency. The legislation also temporarily prohibits use of tear gas, pepper spray, riot gear, rubber bullets and stun grenades by MPD during protests, and bans outright the use of chokeholds.<sup>71</sup>

### Police use of force monitoring and oversight

#### *Internal reporting and investigations of police use of force*

4.10 The guidelines on use of force of MPD require each police officer to notify their supervisor and complete a report form "anytime they use force other than handcuffing of a resistant subject". The "force incident report", filed electronically, captures information about the officer, subject, incident location and time, and the type of force, etc.<sup>72</sup> The data will be collated by the police oversight body, Office of Police Complaints ("OPC"), for an annual analysis of police use of force (see para. 4.14).

4.11 Additionally, all serious use of force<sup>73</sup> and discharge of firearm by officers are investigated by Internal Affairs Division ("IAD") of MPD according to established internal procedures. All investigations will then be reviewed

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<sup>69</sup> For example, it also recommended developing appropriate response protocols for unexpected occurrences during large-scale events. See Police Foundation (2017).

<sup>70</sup> Emergency legislation is used to tackle items that are time-sensitive with an urgent need. Such legislation does not require a hearing to be held but must be passed by a "super majority" of members. The emergency legislation will remain for 90 days subject to extension.

<sup>71</sup> The police reform also includes prohibiting officers from reviewing their body-worn camera footage, increasing public access to that footage, and repealing the anti-mask law. See Council of District Columbia (2020).

<sup>72</sup> See Office of Police Complaints (2018).

<sup>73</sup> It mainly refers to the use of force by an MPD member that results in death, broken bone or an injury requiring hospitalization. See Metropolitan Police Department (2016a).

by a dedicated **Use of Force Review Board**<sup>74</sup> ("Review Board") within MPD to determine if the use of force complies with MPD policy, procedures, directives and training, and if the level of force used is appropriate. The Review Board can modify the dispositions as recommended by IAD and make a final determination as to whether the use of force is justified or compliant with the policy. In 2018, among the 232 serious use of force cases reviewed by the Review Board, 11% were determined as not justified or not within MPD policy. Of those cases concerning excessive force allegations, 37% were sustained, with the rest either unfounded or with insufficient fact.<sup>75</sup> The emergency legislation passed by the DC Council following the recent protests also aims to strengthen the monitoring role of the Review Board. It will codify the Review Board's establishment, include civilians to be appointed by the Mayor and the DC Council to the Review Board to enhance its accountability, and make it easier to fire officers violating the use of force rules.

### *Investigation of police complaints relating to use of force*

4.12 Apart from the Review Board, **OPC** will investigate police use of force matters when complaints arise. Completely staffed by civilians including investigators and overseen by the **Police Complaint Board**,<sup>76</sup> OPC is an operationally independent authority to receive and investigate complaints against police misconducts including "unnecessary or excessive force".<sup>77</sup> OPC has a **broad range of investigative powers** such as conducting interviews, issuing subpoenas, compelling police officers and witness to respond to questions and provide evidence. It is also empowered to access to footage recorded by police's body-worn camera.<sup>78</sup>

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<sup>74</sup> The Review Board was established in 1999 under a General Order of MPD which now comprises voting members who are senior officers of MPD. There is also a non-voting member who is the executive director of OPC.

<sup>75</sup> When the Review Board determines that the actions of an officer did violate MPD policy, the case will be referred to the MPD Disciplinary Review Division for recommendation of appropriate discipline. See Office of Police Complaints (2018).

<sup>76</sup> The Board comprises of five members – four nominated by the Mayor and confirmed by the Council, and one from MPD. It gives guidance to OPC's work and reviews determinations of OPC on dismissal of complaints.

<sup>77</sup> Other misconducts include harassment, inappropriate language or conduct, retaliation, discrimination, and failure to identify.

<sup>78</sup> All MPD officers on duty have been equipped with body-worn camera.

4.13 OPC investigation will lead to the following complaint resolutions: (a) dismissal of the complaint, (b) referral to mediation or related resolution mechanisms,<sup>79</sup> and/or additional training, and (c) referral to an independent and legally trained "complaint examiner" for adjudication.<sup>80</sup> However, OPC does not have disciplinary power which is solely exercised by the police chief for complaints found to be sustained. The most common forms of discipline are suspension or reprimand, or referral to training. In 2019, 160 of the 1 515 allegations (811 complaints) received were related to the use of force, which was the third largest complaint categories.<sup>81</sup> However, a study found that only 4% of force allegations received by OPC between 2001 and 2016 were adjudicated and 47% of these adjudicated cases were sustained, which were lower than other types of misconduct allegations but still higher than that of most US jurisdictions. The higher sustain rate in DC than other places is believed to be attributable to a robust adjudication system with professional complaint examiners, greater access to evidence and legal representation for complainants at the hearing process.<sup>82</sup>

4.14 Based on use of force data submitted by MPD, OPC publishes annual reports on the use of force. The report contains an analysis on the use of force incidents, number of uses of force and number of officers using force. While the report does not specifically capture incidents related to public order events, it offers rich information that helps monitor the trends of police use of force and identify areas such as training or reporting requirements for improvement. For example, in 2018, 9% of all 2 873 uses of force reported by the police officers were found to be at a force level higher than prescribed in the use of force framework, while 43% were below the prescribed level.<sup>83</sup>

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<sup>79</sup> These mechanisms include conciliation and rapid resolution.

<sup>80</sup> This happens when there is reasonable cause to believe that misconduct has occurred. The complaint examiner, drawn from a pool of experienced lawyers in various fields, may convene a hearing to determine the merit of the complaint, for which legal representations can be made by the complainant and the complained officer. If the complaint examiner sustains the allegation, the matter will be referred to the chief of police who can then discipline the officer. However, if the chief of police disagrees with the findings of the complaint examiner, the case will be reviewed by a panel of three complaint examiners. If the panel upholds the decision of the original complaint examiner, the chief of police must then impose the appropriate discipline on the accused officer.

<sup>81</sup> The largest two categories are allegations of harassment, and allegations of language & conduct. There is no breakdown as to whether use of force allegations are related to public order events.

<sup>82</sup> The 4% figure is derived from an analysis of 2 788 use of force allegations received by OPC between 2001 and 2016. The rest of the allegations were either dismissed for insufficient evidence, administratively closed or withdrawn. For details of the study, see Green and Aldebron (2019).

<sup>83</sup> See Office of Police Complaints (2018).

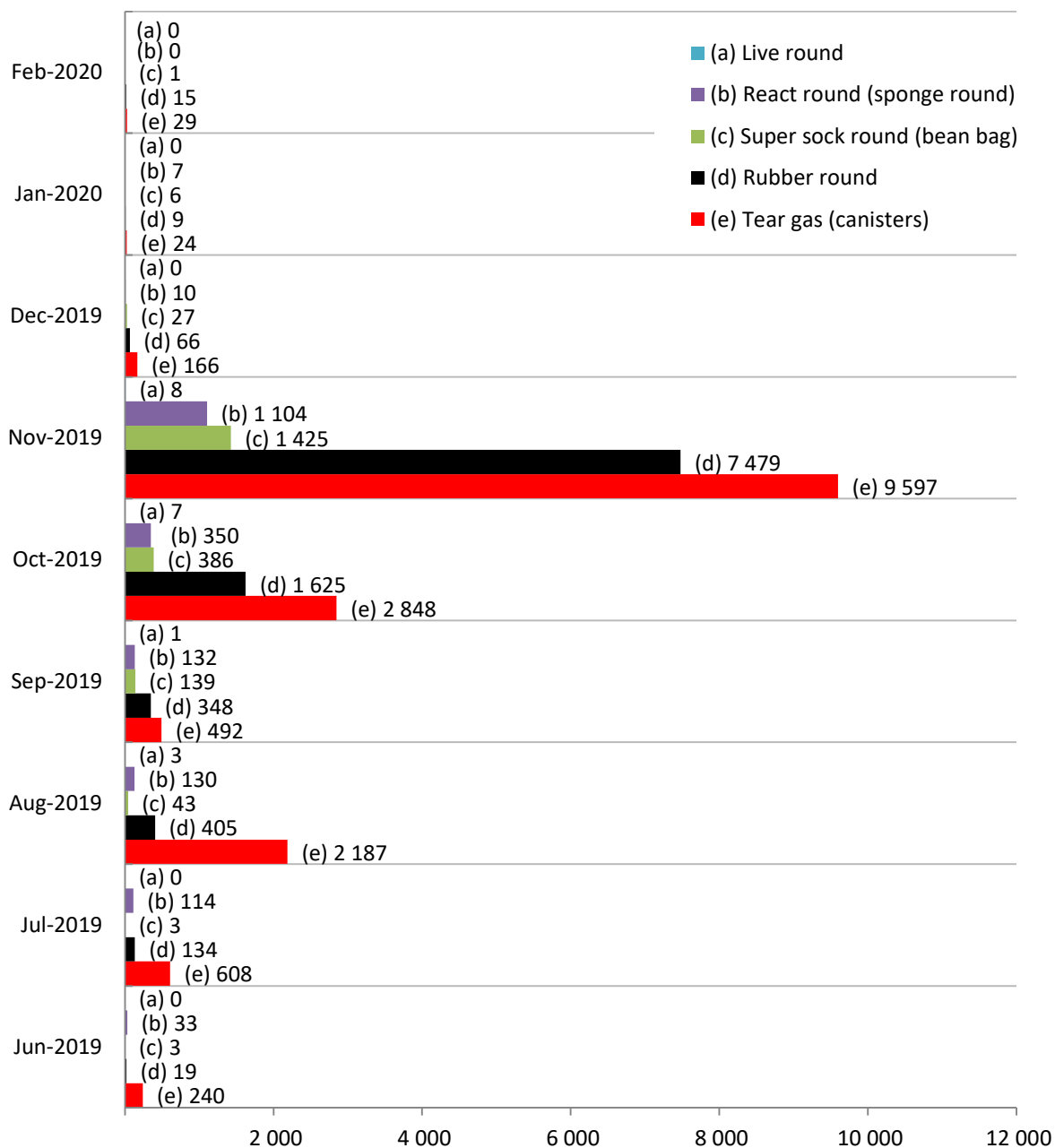
## **5. Concluding remarks**

5.1 Police use of force is a complex issue that encompasses legal, ethical, operation and technical issues, particularly in the public order policing context. In Hong Kong, the Police's use of force is governed by law, and guided by the police internal policy and guidelines. Among the three places examined, the guiding principles are similar that the use of force has to be reasonable in circumstances and minimum necessary. Yet the social incidents over the past one year have sparked concerns over the adequacy of police guidance and training on the use of force in Hong Kong.

5.2 In DC, its guidance contains a general use of force framework that includes force responses to the perceived threats. In addition, there is also a dedicated manual for handling demonstrations, laying down the use of force policy and requirements. In England, following the major public disorders, it has enhanced the principle-based guidance to facilitate commander assessment and judgment in public order events. Moreover, public order commanders are required not just trained but accredited annually to prove they are operationally competent. In DC, building de-escalation techniques is an emphasis in training. Special additional training was also provided prior to policing anticipated demonstrations, though there were occasions of officers not complying with the use of force guidance.

5.3 Different from Hong Kong, both places have put in place a use of force reporting and monitoring system which enables the public to keep track of the overall use of force trend, and at the same time helps improve the use of force policy, guidelines and training. Apart from regular publication of use of force reports, DC also has an internal review board within MPD to review all serious use of force incidents, regardless of whether there are complaints made. Both places also have a relatively independent police oversight system that enjoys certain investigative power to deal with public complaints against police use of force.

### Statistics on police use of ammunitions during the social incidents between June 2019 and February 2020



Source: Independent Police Complaints Council (2020).

### Three core questions and ten key principles governing the use of force by the police forces of England and Wales

#### Three core questions

1. Would the use of force have a lawful objective?
2. Are there any means, short of the use of force, capable of attaining the lawful objective identified?
3. Having regard to the nature and gravity of the threat, and the potential for adverse consequences to arise from the use of force (including the risk of escalation and the exposure of others to harm) 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?

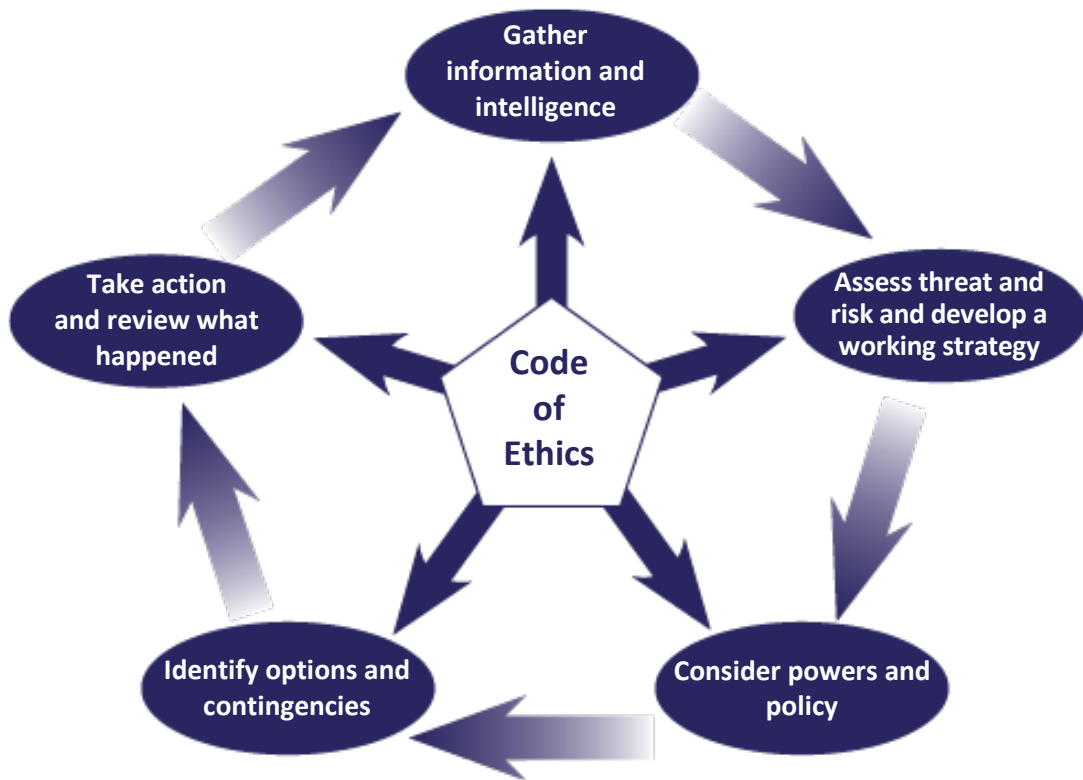
#### Ten key principles

1. Police officers have a general duty to protect the public, prevent crime and investigate crime.
2. Police officers may use force to exercise this duty. They may also use force in self-defence or in the defence of others.
3. Police officers shall, as far as possible, apply non-violent methods before resorting to any use of force.
4. When force is used it should be exercised with restraint. It should be the minimum honestly and reasonably judged to be necessary.
5. Lethal or potentially lethal force should only be used in self-defence or in the defence of others against the threat of death or serious injury.
6. Police officers should consider the implications of using force against children or vulnerable people.
7. Police operations should be planned to minimise the use of force.
8. Individual officers are accountable and responsible for their use of force and must be able to justify their actions in law.
9. The use of force should be reported and recorded as soon as possible.
10. Senior officers should consider the safety of their personnel when deploying them in a context which where force may be used.

Source: House of Commons (2020).



### The National Decision Model in the UK



Source: College of Policing (2020a).

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