

E.R.

C3

PLASTIC BATON ROUNDS

Line to take (Defensive)

No difference between Northern Ireland and England and Wales in the definitions of force that may be used lawfully whether or not it causes death.

2. Law on the use of force is determined in Section 3 of the Criminal Law Act (Northern Ireland) 1967, ie 'A person may use such force as is reasonable in the circumstances in the prevention of crime or in effecting or assisting in the lawful arrest of, offenders or suspected offenders or of persons unlawfully at large'.

3. Every firing of a PBR in Northern Ireland, as in the rest of the UK, is judged on this criterion.

4. Both sets of guidelines are classified and are therefore not available to the public at Large.

E.R.

Background Note

The Irish side of the Secretariat (Mr Lillis) raised the issue of Home Office guidelines on the use of Plastic Baton Rounds, alleging that they are for more restrictive than the equivalent guidelines used by the RUC.

There is of course absolutely no difference between Northern Ireland and England and Wales in the definitions of force that may be used lawfully whether or not it causes death; it is prescribed by law. All force has the potential to be "lethal force" only the probability of lethality differs. The difference Mr Lillis was referring to lies in the description of the circumstances in which the guidelines say PBRs can be used. Notwithstanding what the guidelines say, only the courts could decide in a particular instance whether the discharge of a PBR was lawful. Because of the variety of circumstances in Northern Ireland in which a policeman might have recourse to the use of PBRs, the stress on the 'minimum and reasonable amount of force necessary' is a much more appropriate guideline to the policeman as to his position under the law than trying to list various detailed scenarios in which his use of a PBR would be likely to be judged lawful.

It is unlikely that there would be public criticism of the detailed differences between the RUC and Home Office guidelines because they are both 'Confidential'. The Secretariat have a summary (copy

E.R.

attached) of an exhaustive analysis of the two codes carried out by Belfast officials, comparisons would therefore only be drawn if the Irish quite improperly made our memorandum public.

Our full analysis revealed no differences in stating the basic principle under the law in the United Kingdom that for any use of force by the police to be lawful it must only be the minimum and reasonable force necessary. The few differences there were recognised the very different threat posed to policemen in Northern Ireland compared with England and Wales.

E.R.

MEMORANDUM ON THE GUIDELINES ON THE USE OF PLASTIC BATON ROUNDS BY THE ROYAL ULSTER CONSTABULARY IN NORTHERN IRELAND COMPARED WITH THE NEW HOME OFFICE GUIDELINES FOR POLICE FORCES IN ENGLAND AND WALES, HANDED TO THE IRISH SIDE OF THE SECRETARIAT

Background

- 1 Guidelines, instructions, rules of engagement and the like are only informed interpretations of the law on the use of force as contained in Section 3 of the Criminal Law Act 1967 and Section 3 of the Criminal Law Act (Northern Ireland) 1967. Legal responsibility for the consequences of firing a plastic baton round (PBR) has always lain and will continue to lie with the person who discharges the PBR and no-one else.

The Differences

- 2 The situation in England and Wales is manifestly very different from that in Northern Ireland. In England and Wales, the Home Office guidelines make clear that the use of PBRs would only be contemplated as a last resort in a "set-piece" riot, which would have taken some time to develop. Consequently, it is envisaged that there would always be time to involve the Chief Officer or his Deputy, and to deploy an Assistant Chief Constable or Chief Superintendent to the scene. On the other hand, in Northern Ireland operational experience has demonstrated that serious public disorder can develop with frightening speed. Time and again Police (and Army) patrols have been set upon by mobs armed with a horrifying array of weapons and, as an alternative to using lethal firearms, have used PBRs to extricate themselves. The RUC instructions take

Continued 2

account of the need for such contingency use of the weapon. Thus the lowest level of authority for use in England and Wales is a Chief Superintendent and in Northern Ireland a Constable.

- 3 It most other respects there is no difference in principle between the way in which it is envisaged that PBRs should be used in England and Wales and in Northern Ireland. But one important difference concerns the description of the occasions where PBRs may be used: in England and Wales it is only when there is the risk of loss of life or serious injury and where their use is judged to be likely to reduce the risk; in Northern Ireland, in every case they must be used in accordance with the principle of the minimum and reasonable amount of force necessary in the protection of life and property, the preservation of the peace, and the prevention and detection of crime.

- 4 The final difference of substance is the requirement in England and Wales to give a warning before firing in every case. In Northern Ireland the RUC are required to give a warning when circumstances permit; a reflection once again of the very different situations in which the Police may have resort to PBRs in Northern Ireland.