

How Police Can Act Unlawfully Even Under Emergency Legislation

Emergency legislation does not give the police a free pass to do anything they want.

Even in a national crisis, police powers remain tightly restricted by six legal boundaries:

1. Emergency Law Must Still Be Enforced Lawfully

The existence of a law does not legalise unlawful enforcement.

Police must still comply with:

the Police and Criminal Evidence Act 1984 (PACE)

the Criminal Procedure and Investigations Act 1996 (CPIA)

the Human Rights Act 1998

common law duties

administrative law (no fettering of discretion, no improper purpose)

proportionality

proper record-keeping

If the police breach any of these obligations, their actions are unlawful, even if emergency regulations exist.

Example:

If an officer arrests someone using a Covid regulation that had not yet come into force, that arrest is illegal even if the regulation came into force the next day.

2. Police Cannot Enforce Policies or Directives That Go Beyond the Law

Emergency legislation only authorised specific measures.

Police cannot enforce:

guidance

policy

ministerial preference

expectations

internal briefings that create rules not passed by Parliament

Yet the Statements submitted to the Covid Inquiry by Owen Wetherill show that police:

planned enforcement strategies before laws were enacted

operated based on government messaging

were instructed to influence public behaviour

Police enforcing anything that is not actually in law, is unlawful.

3. Police Cannot Be Directed by Government or Multi-Agency Bodies

Even under emergency powers, police forces must remain operationally independent.

They are forbidden by statute and constitutional convention from:

taking orders from ministers

acting under political direction

merging operational control with government departments

The Wetherill documents (and the Speirs Directive) show:

joint Gold/Silver structures

combined government–police strategy setting

NPCC-driven national coordination

participation in centrally dictated enforcement plans

If police act under central direction rather than independent judgment, their actions are unlawful.

4. Police Cannot Pre-empt the Law

Emergency legislation is only enforceable from the moment it is legally in force and only for what it actually says.

If police:

prepare enforcement before the law exists,

treat guidance as law,

enforce future restrictions prematurely,

interpret the law more broadly than Parliament intended,

they are acting ultra vires (beyond their powers), which is unlawful.

The Wetherill documents are full of evidence of pre-legislative enforcement planning.

5. Police Must Still Comply With the CPIA - Even During Emergencies

The CPIA 1996 s.23(1) and Code of Practice require:

retention of material

recording of relevant information

unbiased investigation

fair and impartial evidence-handling

The Speirs Directive prevented officers from:

accepting allegations

recording material

collecting evidence

This alone is a statutory breach.

Emergency regulations do not override the CPIA.

6. Police Cannot Ignore Human Rights Protections

Even in a pandemic, the state must comply with:

Article 5 (liberty)

Article 8 (private life)

Article 10 (expression)

Article 11 (assembly)

Article 14 (non-discrimination)

Article 6 (fair trial)

If police enforce emergency law in a way that:

is disproportionate,

is discriminatory,

exceeds necessity,

interferes with rights beyond the legislation's scope,

their actions are unlawful.

Emergency regulations cannot authorise breaches of the ECHR.

The Key Point

Emergency laws authorise some extra powers, but they do NOT authorise ignoring existing ones.

Police must always:

act proportionately

act independently

act only within the exact wording of the law

record and retain evidence

avoid political influence

avoid enforcing guidance

maintain impartiality

If these duties are breached, the conduct is unlawful, no matter how strong or sweeping the emergency legislation is.

In One Sentence

Emergency legislation cannot legalise unlawful policing - it only adds additional powers, not exemptions from existing legal duties.

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