



Circular No. 2013/02

TITLE

Use of force in self defence at place of residence

From:

Criminal Law and Legal Policy Unit

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Broad Subject

Criminal Law

Sub Category

Use of force in self defence at place of residence

**This circular is
addressed to**

Lord Chief Justice, Justices of the Supreme Court, President of the Queen's Bench Division, Senior Presiding Judge for England and Wales, Lords Justices of Appeal, High Court Judges, Crown Court Judges, District Judges (Magistrates' Courts), Chairmen of the Justices, Clerks to the Justices, Chief Officers of Police, Director of Public Prosecutions, Chief Crown Prosecutors, Head of Division Revenue and Customs Prosecution Office, Coroners Society of England and Wales.

Copies are being sent to

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Use of force in self defence at place of residence

Introduction

1. It is rare for householders to be confronted by intruders in their homes and even rarer for them to be arrested, prosecuted and convicted as a result of any force they used to protect themselves. When such cases do occur, the Government believes they can give rise to a public perception that the law is balanced in favour of the intruder. In response to these concerns the Coalition Agreement committed 'to ensure that people have the protection that they need when they defend themselves against intruders'.
2. The Government is seeking to fulfil this commitment through section 148 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ('the 2012 Act'); section 43 of the Crime and Courts Act 2013; and through revisions to Police & Criminal Evidence Act 1984, Code G (Arrest) which came into force on 12 November 2012.
3. This circular describes the intended purpose of the legislative changes in the 2012 Act and the Crime and Courts Act 2013 and outlines the arrangements for their commencement. It is for guidance only and should not be regarded as providing legal advice. Separate guidance for prosecutors will be made available on the CPS website. The CPS is responsible for advising police for the purposes of criminal proceedings. For other operational advice, police should refer to information on the changes from ACPO or seek advice from their own force legal advisors.

The current law

4. As it stands the law provides that a person may use such force as is reasonable in the circumstances as he or she genuinely believed them to be for the purposes of self-defence, defence of another, defence of property, prevention of crime or lawful arrest.
5. Section 76 of the Criminal Justice and Immigration Act 2008 ('the 2008 Act') put part of the common law on self-defence (including defence of others) on a statutory footing.
6. Section 76(3) says that a person may use such force as is reasonable in the circumstances as they genuinely believed them to be. The reasonableness or otherwise of the claimed belief as to the existence of any circumstances is relevant to the question whether the defendant genuinely held the belief (section 76(4)). If, however, it is determined that a defendant genuinely held a belief they can rely on it whether or not the belief was mistaken or, if it was mistaken, whether or not the mistake was reasonable (section 76(4)). But a defendant cannot rely on a mistaken belief attributable to voluntarily induced intoxication (section 76(5)).

Section 148 of the Legal Aid Sentencing and Punishment of Offenders Act 2012

7. Section 148 of the 2012 Act amends section 76 of the 2008 Act. It adds a new subsection (6A) to section 76 of the 2008 Act to make clear the existing common law legal position that a person is not under a duty to retreat when acting for a legitimate purpose. But the possibility that a person could have retreated is to be considered as a relevant factor in deciding whether the degree of force was reasonable in the circumstances as they saw them.

Section 43 of the Crime and Courts Act 2013 (use of force in place of residence)

8. The provisions in section 43 of the Crime and Courts Act also amend section 76 of the 2008 Act. These changes go further than clarifying existing law; they strengthen the law in relation to householders who are defending themselves from intruders in their homes.
9. Section 43 adds new subsection (5A) to section 76 of the 2008 Act. The effect of subsection (5A) is that householders who use a disproportionate level of force to protect themselves or others in their homes will not automatically be regarded as having acted unlawfully and treated as criminals. The use of grossly disproportionate force will continue to be unlawful however.
10. The provision does **not** give householders free rein to use disproportionate force in every case they are confronted by an intruder. The new provision must be read in conjunction with the other elements of section 76 of the 2008 Act. The level of force used must still be reasonable in the circumstances as the householder believed them to be (section 76(3)). Section 76(7) says if people only do what they honestly and instinctively thought was necessary for a legitimate purpose, this will be strong evidence that only reasonable action was taken for that purpose.
11. The key change introduced by section 43 is that if householders act honestly and instinctively to protect themselves or their loved ones from intruders using force that was reasonable in the circumstances as they saw them, they will not be guilty of an offence if the level of force turns out to have been disproportionate in those circumstances. The provision is designed to give householders greater latitude in terrifying or extreme situations where they may not be thinking clearly about the precise level of force that is necessary to deal with the threat faced.
12. The court will need to consider the individual facts of each case, including the personal circumstances of the householder and the threat (real or perceived) posed by the offender. There are no hard and fast rules about what types of force might be regarded as 'disproportionate' and 'grossly disproportionate'. The following example is included for illustrative purposes only and prosecutors and the court would need to come to its own view, taking into account all of the evidence available and individual circumstances of the cases.

“A householder is woken during the night by the sound of breaking glass downstairs. His wife and children have also woken up and are very frightened. The householder goes downstairs to investigate and meets an intruder armed with a knife in the hallway. The intruder had broken a glass panel in the front door to enter the property. A scuffle ensues and the householder wrestles the knife from the intruder’s hand and it drops to the floor. Having dropped his weapon and with the mother and children screaming upstairs, the intruder realises he has met his match and turns to

flee through the open door. With adrenaline pumping and heart pounding, the householder instinctively punches the intruder on the back of the head as he leaves. He falls awkwardly and is knocked unconscious.”

13. In this case, the householder arguably did not need to strike the intruder again; he had already dropped the knife and was turning to make his escape. The level of force used in that split second was on one view disproportionate to the threat posed by the intruder in that instant. Section 43 of the Crime and Courts Act means that the householder would not be guilty of an offence in these circumstances, providing the court were satisfied that the use of force was reasonable in the circumstances as he saw them.
14. It is important to note, however, that new subsection (5A) adds that the use of grossly disproportionate force will never be lawful. This is to ensure, for example, that violent and/or calculated acts of revenge or retribution do not go unpunished. In the example given above, had the householder kicked and punched the intruder repeatedly or picked up the knife that had been dropped and stabbed him with it knowing full well that he was already unconscious, such an action is more likely to be considered as grossly disproportionate.

The definition of a ‘householder case’

15. The heightened protection described above is only available in ‘householder cases’. Section 43(4) adds new subsection (8A) to section 76 of the 2008 to explain the meaning of a ‘householder case’.
16. Householders are only permitted to rely on the heightened defence for householders if:
 - They are using force to defend themselves or others (see (8A)(a)). They cannot seek to rely on the defence if they were acting for another purpose, such as protecting their property, although the current law on the use of reasonable force will continue to apply in these circumstances;
 - They are in or partly in a building or part of a building (e.g. a flat) that is a dwelling (i.e. a place of residence) or is forces accommodation (see (8A)(b)). For these purposes, the definition of a ‘building’ includes vehicles or vessels (see (8F)), so that people who live in caravans or houseboats can benefit from the heightened protection. The reference to ‘forces accommodation’ acknowledges the fact that military personnel may spend lengthy periods away from home in service living accommodation such as barracks. The term ‘in or partly in a building’ is used to protect householders who might be confronted by an intruder on the threshold of their home, climbing in through a window perhaps. But householders cannot rely on the heightened defence if the confrontation occurred wholly outside the building, for example in the garden. The Government considered that the immediacy of threat posed by an intruder is greatest when he is entering or has entered somebody’s home and the heightened defence is only available to householders in those cases.
 - They are not in the building as a trespasser. ((8A)(c)) Squatters, for example, could not seek to rely on the heightened defence. The fact that a person has gained permission to occupy the building from another trespasser, does not stop them being considered as a trespasser for these purposes (see (8E))
 - They genuinely believed (rightly or wrongly) that the person in respect of whom they used force, was in or entering the building as a trespasser ((8A)(d)).

17. New subsection (8B) ensures that the definition of a householder is wide enough to cover people who live in buildings which serve a dual purpose as a place of residence and a place of work (for example, a shopkeeper and his or her family who live above the shop). In these circumstances, the 'householders' could rely on the heightened defence regardless of which part of the building they were in when they were confronted by an intruder. The only condition is that there is internal means of access between the two parts of the building. The Government's rationale for this is that a shopkeeper who happens to be confronted by an intruder on the shop floor is likely to have the same feelings of panic or terror as any other householder knowing that his family in an adjoining room are at risk. The defence would not, however, extend to customers or acquaintances of the shop keeper who were in the shop when the intruder entered, unless they were also residents in the dwelling.
18. New subsection (8C) makes similar provision for the armed forces whose living or sleeping accommodation may be in the same building as that in which they work and where there is internal access between the two parts. The definition of 'forces accommodation' is set out in new subsection (8F).

Commencement

19. The provisions in section 43 of the Crime and Courts Act came into force on the day the Bill received Royal Assent on 25 April 2013. Commencement of section 148 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 will follow in May 2013.
20. A keeling version of section 76 of the 2008 Act, showing the changes introduced by section 148 of the 2012 Act and section 43 of the Crime and Courts Act 2013 is below.

Useful links

Crime and Courts Act 2013: www.legislation.gov.uk/ukpga/2013/22/contents/enacted

Legal Aid, Sentencing and Punishment of Offenders Act 2012, Section 148
www.legislation.gov.uk/ukpga/2012/10/section/148

Explanatory notes on Legal Aid, Sentencing and Punishment of Offenders Act 2012, Section 148 www.legislation.gov.uk/ukpga/2012/10/notes/division/5/5/13/7

Criminal Justice and Immigration Act 2008, Section 76
www.legislation.gov.uk/ukpga/2008/4/section/76

Explanatory notes on Criminal Justice and Immigration Act 2008, Section 76
www.legislation.gov.uk/ukpga/2008/4/notes/division/5/1/8/1

Police and Criminal Evidence Act 1984, Code G (Arrest) November 2012:
www.homeoffice.gov.uk/publications/police/operational-policing/pace-codes/pace-code-g-2012

Keeling schedule showing amendments to section 76 of the Criminal Justice and Immigration Act 2008

Key

Text in blue shows the amendments made by section 148 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012

Text in red shows amendments made by section 43 of Crime and Courts Act 2013

Self-defence etc

76 Reasonable force for purposes of self-defence etc

(1) This section applies where in proceedings for an offence--

- (a) an issue arises as to whether a person charged with the offence ("D") is entitled to rely on a defence within subsection (2), and
- (b) the question arises whether the degree of force used by D against a person ("V") was reasonable in the circumstances.

(2) The defences are -

- (a) the common law defence of self-defence; ~~and~~
(aa) the common law defence of defence of property; and
- (b) the defences provided by section 3(1) of the Criminal Law Act 1967 (c 58) or section 3(1) of the Criminal Law Act (Northern Ireland) 1967 (c 18 (NI)) (use of force in prevention of crime or making arrest).

(3) The question whether the degree of force used by D was reasonable in the circumstances is to be decided by reference to the circumstances as D believed them to be, and subsections (4) to (8) also apply in connection with deciding that question.

(4) If D claims to have held a particular belief as regards the existence of any circumstances--

- (a) the reasonableness or otherwise of that belief is relevant to the question whether D genuinely held it; but
- (b) if it is determined that D did genuinely hold it, D is entitled to rely on it for the purposes of subsection (3), whether or not--
 - (i) it was mistaken, or
 - (ii) (if it was mistaken) the mistake was a reasonable one to have made.

(5) But subsection (4)(b) does not enable D to rely on any mistaken belief attributable to intoxication that was voluntarily induced.

(5A) In a householder case, the degree of force used by D is not to be regarded as having been reasonable in the circumstances as D believed them to be if it was grossly disproportionate in those circumstances.

(6) In a case other than a householder case, the degree of force used by D is not to be regarded as having been reasonable in the circumstances as D believed them to be if it was disproportionate in those circumstances.

(6A) In deciding the question mentioned in subsection (3), a possibility that D could have retreated is to be considered (so far as relevant) as a factor to be taken into account, rather than as giving rise to a duty to retreat.

(7) In deciding the question mentioned in subsection (3) the following considerations are to be taken into account (so far as relevant in the circumstances of the case)--

(a) that a person acting for a legitimate purpose may not be able to weigh to a nicety the exact measure of any necessary action; and

(b) that evidence of a person's having only done what the person honestly and instinctively thought was necessary for a legitimate purpose constitutes strong evidence that only reasonable action was taken by that person for that purpose.

(8) ~~Subsection (7) is~~ [Subsections (6A) and (7) are] not to be read as preventing other matters from being taken into account where they are relevant to deciding the question mentioned in subsection (3).

(8A) For the purposes of this section "a householder case" is a case where -

- (a) the defence concerned is the common law defence of self defence,
- (b) the force concerned is force used by D while in or partly in a building, or part of a building, that is a dwelling or is forces accommodation (or is both),
- (c) D is not a trespasser at the time the force is used, and
- (d) at that time D believed V to be in, or entering, the building or part as a trespasser.

(8B) Where -

- (a) a part of a building is a dwelling where D dwells,
- (b) another part of the building is a place of work for D or another person who dwells in the first part, and
- (c) that other part is internally accessible from the first part, that other part, and any internal means of access between the two parts, are each treated for the purposes of subsection (8A) as a part of a building that is a dwelling.

(8C) Where -

- (a) a part of a building is forces accommodation that is living or sleeping accommodation for D,
- (b) another part of the building is a place of work for D or another person for whom the first part is living or sleeping accommodation, and
- (c) that other part is internally accessible from the first part, that other part, and any internal means of access between the two parts, are each treated for the purposes of subsection (8A) as a part of a building that is forces accommodation.

(8D) Subsections (4) and (5) apply for the purposes of subsection (8A)(d) as they apply for the purposes of subsection (3).

(8E) The fact that a person derives title from a trespasser, or has the permission of a trespasser, does not prevent the person from being a trespasser for the purposes of subsection (8A).

(8F) In subsections (8A) to (8C) "building" includes a vehicle or vessel, and "forces accommodation" means service living accommodation for the purposes of Part 3 of the Armed Forces Act 2006 by virtue of section 96(1)(a) or (b) of that Act.

(9) This section, except so far as making different provision for householder cases, is intended to clarify the operation of the existing defences mentioned in subsection (2).

(10) In this section--

(a) "legitimate purpose" means--

(i) the purpose of self-defence under the common law, ~~or~~

[(ia) the purpose of defence of property under the common law, or]

(ii) the prevention of crime or effecting or assisting in the lawful arrest of persons mentioned in the provisions referred to in subsection (2)(b);

(b) references to self-defence include acting in defence of another person; and

(c) references to the degree of force used are to the type and amount of force used.