

Status: Law In Force

Criminal Justice and Immigration Act 2008 c. 4

Part 5 CRIMINAL LAW

Self-defence etc.

This version in force from: **May 14, 2013** to **present**

(version 3 of 3)

The text of this provision varies depending on jurisdiction or other application. See parallel texts relating to:

[England and Wales](#) | [Northern Ireland](#)

England and Wales

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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; [...]

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(aa) the common law defence of defence of property; and

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(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 (N.I.)) (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.

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(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.

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(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) [Subsections (6A) and (7) are]

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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 selfdefence,

(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,
 - (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.

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Northern Ireland

76 Reasonable force for purposes of self-defence etc.

- (1) This section applies where in proceedings for an offence—
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 - (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
 - (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 (N.I.)) (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.

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(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.

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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.

(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 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).

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

(a) the defence concerned is the common law defence of selfdefence,

(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 force's 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,

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(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

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[3](#)

(9) This section [[4](#), 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

(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.

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Notes

1. Added by Crime and Courts Act 2013 c. 22 [Pt 2 s.43\(2\)](#) (April 25, 2013)
2. Words inserted by Crime and Courts Act 2013 c. 22 [Pt 2 s.43\(3\)](#) (April 25, 2013)
3. Added by Crime and Courts Act 2013 c. 22 [Pt 2 s.43\(4\)](#) (April 25, 2013)
4. Words inserted by Crime and Courts Act 2013 c. 22 [Pt 2 s.43\(5\)](#) (April 25, 2013)
5. Added by Legal Aid, Sentencing and Punishment of Offenders Act 2012 c. 10 [Pt 3 c.9 s.148\(5\)](#) (May 14, 2013)
6. Added by Legal Aid, Sentencing and Punishment of Offenders Act 2012 c. 10 [Pt 3 c.9 s.148\(2\)](#) (May 14, 2013)
7. Added by Legal Aid, Sentencing and Punishment of Offenders Act 2012 c. 10 [Pt 3 c.9 s.148\(3\)](#) (May 14, 2013)
8. Words substituted by Legal Aid, Sentencing and Punishment of Offenders Act 2012 c. 10 [Pt 3 c.9 s.148\(4\)](#) (May 14, 2013)

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Keywords: Offences; Reasonable force; Self-defence

Annotation

Section 76

Introduction

The Government's Explanatory Notes (see Key Legal Concept: [Explanatory Notes](#)) say:

"Section 76 provides a gloss on the common law of self-defence and the defences provided by [section 3\(1\) of the Criminal Law Act 1967](#) and section 3(1) of the Criminal Law Act (Northern Ireland) 1967, which relate to the use of force in the prevention of crime or making an arrest. It is intended to improve understanding of the practical application of these areas of the law. It uses elements of case law to illustrate how the defence operates. It does not change the current test that allows the use of reasonable force. In line with the case law, notably from the leading case of [Palmer v R \[1971\] A.C. 814](#), the defence will be available to a person if he honestly believed it was necessary to use force and if the degree of force used was not disproportionate in the circumstances as he viewed them. The section reaffirms that a person who uses force is to be judged on the basis of the circumstances as he perceived them, that in the heat of the moment he will not be expected to have judged exactly what action was called for, and that a degree of latitude may be given to a person who only did what he honestly and instinctively thought was necessary. A defendant is entitled to have his actions judged on the basis of his view of the facts as he honestly believed them to be, even if that belief was mistaken. Section 76 retains a single test for self-defence and the prevention of crime (or the making of an arrest) which can be applied in each of these contexts."

Pepper v Hart Note (see Key Legal Concept: [Pepper v Hart](#)): In introducing the Second Reading in the House of Lords of the Bill for this Act on January 22, 2008 the Parliamentary Under-Secretary of State, Ministry of Justice (Lord Hunt of Kings Heath) said as follows:

"Clause 128 provides a valuable clarification of the law on the use of force in self-defence. It will help to reinforce public confidence that the criminal justice system is on their side when they act in self-defence, whether in protection of themselves or their property, or when acting as responsible citizens in seeking to prevent the commission of an offence." ([Hansard HL, Vol.698, col.130 \(January 22, 2008\)](#).)

Pepper v Hart Note (see Key Legal Concept: [Pepper v Hart](#)): In Committee in the House of Lords on the Bill for this Act the Advocate-General for Scotland (Lord Davidson of Glen Clova) said as follows:

"Clause 128 and its handling of the circumstances is, I submit, a faithful reflection of the common law position. Nothing in case law suggests that the reference to 'all the circumstances' in the Martin judgment should be elevated into an element of the established common law principle that the degree of force used must be reasonable in the circumstances as the defendant believed them to be. ... does Clause 128 suggest that the jury must pay no regard whatsoever to the reasonableness of the defendant's mistake? As it stands, the clause allows a defendant to use an objectively reasonable degree of force in the circumstances as he honestly, albeit possibly mistakenly and unreasonably, believed them to be. Although the reasonableness of the defendant's belief is immaterial as long as it is honestly held, the court should still be able to take into account the reasonableness of a professed belief when deciding whether his belief is to be believed in the first place. The defendant has to have held that belief and, if the jury rejects his evidence on that account, he will not enjoy the protection of the defence. Of course, the more fantastical and unbelievable the defendant's account of his belief, the less likely the jury is to give it credence. Common sense would indeed prevail and is, I submit, reflected in Clause 128.

"We are, however, always open to suggestions that might improve the clarity of the legislation and are actively looking to see whether a revision might usefully reflect the noble

Lord's observation. ...

"I am conscious that there is academic argument in this area. As matters stand, the Government are reasonably confident that Clause 128 reflects the common law as it currently stands." ([Hansard HL, Vol.699, cols 1103 – 1111 \(March 5, 2008\).](#))

Martin judgment — see [R. v Martin \(Anthony Edward\) \[2001\] EWCA Crim 2245](#).

Case Note:

"As has been highlighted, s. 76(5A) contains what is described as the householder provision which qualifies the second limb of the common law defence of self-defence. The precise nature of the qualification and the extent to which it affects the common law is disputed between the parties and is said by the DPP to be crucial to determining the principal point in the case, namely the compatibility of the statutory provision with Article 2 of the [European Convention on Human Rights](#), as part of a framework of criminal law that deters offences against the person.

"16.I start, therefore, with the true meaning of s. 76(5A) of the 2008 Act, as amended. ... It is clear from the section that s. 76(3) adopts and preserves the second limb of self-defence at common law. As it has been for many years, the central question (and the standard) remains whether the degree of force that a defendant used was 'reasonable in the circumstances as the defendant believed them to be'. The standard remains that which is reasonable: the other provisions (and, in particular, s. 76(5A) and (6) of the 2008 Act) provide the context in which the question of what is reasonable must be approached. The test in the statute is not whether the force used was proportionate, disproportionate or grossly disproportionate.

"19.The operation of s. 76(5A) automatically excludes a degree of force which is grossly disproportionate from being reasonable in householder cases. If the degree of force was not grossly disproportionate, s. 76(5A) does not prevent that degree of force from being considered reasonable within the meaning of the second self-defence limb. On the other hand, it does not direct that any degree of force less than grossly disproportionate is reasonable. Whether it was or was not reasonable will depend on the particular facts and circumstances of the case.

"20.Thus, s. 76(5A), read together with s. 76(3) and the common law on self-defence, requires two separate questions to be put to the jury in a householder case. Presuming that the defendant genuinely believed that it was necessary to use force to defend himself, these are:

- i) Was the degree of force the defendant used grossly disproportionate in the circumstances as he believed them to be? If the answer is 'yes', he cannot avail himself of self-defence. If 'no', then;
- ii) Was the degree of force the defendant used nevertheless reasonable in the circumstances he believed them to be? If it was reasonable, he has a defence. If it was unreasonable, he does not.

"21.Ms Montgomery submitted that where a defendant has gone completely over the top, such actions would be grossly disproportionate, unless there was some material or reason that pointed against that conclusion. For my part, I consider that such an approach could well be useful for a jury tasked with the responsibility of understanding what is meant by the concept of gross disproportionality.

"22.On the plain words of s. 76, a jury should consider these two questions disjunctively. The

answer to the first question does not provide the answer to the second question. Thus, in the context of this case, in my view, the CPS lawyer reviewing whether to prosecute B erred in interpreting s.76 as meaning that B would be acquitted of any offence of violence unless the prosecution proved that the degree of force used was grossly disproportionate, the use of only disproportionate force being lawful. That was not an appropriate test against which to assess B's restraint of Mr Collins for the purpose of considering whether the facts justified the institution of proceedings in accordance with the test set out in the Code for Crown Prosecutors (namely, whether there is sufficient evidence to provide a realistic prospect of conviction and whether a prosecution is required in the public interest). I repeat that the challenge to that decision initially brought against the CPS was abandoned.

"23.The effect, and no doubt purpose, of s. 76(5A) is to allow for a discretionary area of judgment in householder cases, with a different emphasis to that which applies in other cases. The obvious example concerns the extent to which it is appropriate to take into account the duty to retreat (which, by s. 76(6A) remains a factor to be taken into account). In a householder case, the failure to do so and, thus, the use of force, may be disproportionate but still reasonable although in a non-householder case, that would be unreasonable by virtue of s. 76(6). In that regard, it is important to note that Article 8 of the [European Convention on Human Rights](#) specifically provides for protection of the home and s. 76(5A) may do little more than provide emphasis to this requirement.

"24.What is clear, therefore, is that s. 76(5A) provides emphasis to the full ambit of the Palmer direction now the subject of statutory endorsement in s. 76(7). That is to say, in deciding whether the degree of force was reasonable, it is necessary to take into account the fact that a person acting in self-defence may not be able to weigh to a nicety the exact measure of any necessary action; and that evidence of a person having only done what he honestly and instinctively thought necessary to defend himself constitutes potent evidence that the force was reasonable.

"25.Admittedly, depending on the meaning attached to the word proportionate, in almost all cases if the degree of force is proportionate it will also be reasonable but that cannot be to equate the two. In the same way that s. 76(5A) is drafted in the negative (allowing but not requiring the fact finder to conclude that force which is disproportionate still has to be reasonable) so s. 76(6) permits a finding that force which is proportionate is not reasonable. Both these provisions underline and acknowledge the critical second limb standard of self defence to be that which is reasonable in the circumstances of the case. ... In this context, s. 76(5A) serves to exclude a householder's grossly disproportionate use of force from being reasonable. When read with s. 76(6), which provides that in non-householder cases all disproportionate force is excluded from being reasonable, s. 76(5A) can be seen to offer a discretionary area of judgment to the jury as to whether if the force was disproportionate, it was nevertheless reasonable in the circumstances. The effect of s. 76(5A) is not to give householders carte blanche in the degree of force they use against intruders in self-defence. A jury must ultimately determine whether the householder's action was reasonable in the circumstances as he believed them to be. ... Having regard to the analysis above, I am satisfied that s. 76(5A) of the 2008 Act does not extend the ambit in law of the second limb of self-defence but, properly construed, provides emphasis to the requirement to consider all the circumstances permitting a degree of force to be used on an intruder in householder cases which is reasonable in all the circumstances (whether that degree of force was disproportionate or less than disproportionate). In particular, it does not alter the test to permit, in all circumstances, the use of disproportionate force and, to that extent, the CPS reviewer adopted the wrong test when reconsidering the facts of this case. Neither does the provision offend Article 2 of the [European Convention on Human Rights.](#)" (*Collins, R (on the application of) v The Secretary of State for Justice [2016] EWHC 33 (Admin).*)

Case Note:

"42. This provision was, it is to be apprehended, introduced in the aftermath of cases such as [Martin \(Anthony Edward\) \[2002\] 1 CAR 27](#). Quite what the provision has actually achieved has been the subject of some debate, a debate which does not need prolonging here. But three points may in particular here be noted:

- i) Subsections (3) and (4) require that the assessment of the reasonableness of the force used is to be decided by reference to the circumstances as the defendant believed them to be.
- ii) No reliance may be placed on any mistaken belief attributable to voluntary intoxication. (Nothing is said about insanity.)
- iii) The section is designed to 'clarify' the operation of the specified defences (which include self-defence). ...

"47. The position remains, as we think plain from the provisions of s.76 of the 2008 Act, that the second limb of self-defence does include an objective element by reference to reasonableness, even if there may also be a subjective element: see in particular s.76(6) and see also the decision in [R v Keane & McGrath \[2011\] EWCA Crim 2514](#). An insane person cannot set the standards of reasonableness as to the degree of force used by reference to his own insanity. In truth it makes as little sense to talk of the reasonable lunatic as it did, in the context of cases on provocation, to talk of the reasonable glue-sniffer." ([R. v Oye \(Seun\) \[2013\] EWCA Crim 1725](#).)

Case Note:

"It is unnecessary to read into this judgment the lengthy provisions of section 76 of the Criminal Justice and Immigration Act 2008. It suffices for present purposes to set out the very helpful summary contained in Archbold at paragraph 19–39b:

'... the provisions of this section are not intended to change the law, but to clarify it; and, as the following paragraphs reveal, it does indeed do nothing other than restate the common law principles in particular as to (i) a defendant being entitled to be judged on the facts as he believed them to be even if he made an unreasonable mistake, (ii) the defendant not being entitled to rely on a mistake as to the facts that was induced by his own voluntary intoxication, (iii) the reasonableness or otherwise of any claimed mistake going only to the issue of whether or not the claim was genuine, (iv) the force used having to be proportionate, (v) there being no expectation that in an emergency a person should weigh to a nicety the force required, and (vi) a person doing only what he instinctively and honestly thought was necessary being strong evidence that only reasonable force was used.'" ([R. v Hichens \(Peter Craig\) \[2011\] EWCA Crim 1626](#).)

Subsection (1)

See Key Legal Concept: [Person](#); here only an individual can be intended.

Subsection (2)

See Key Legal Concept: [Common Law Rules](#).

Subsection (3)

Believed — see Key Legal Concept: [Levels of Certainty](#).

