

Crime and Courts Bill
Fact Sheet: Use of force in self-defence

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.
2. When such cases do occur, they can give rise to a public perception that the law is balanced in favour of the offender. 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'.
3. The Government is seeking to fulfil this commitment in a number of ways: with provisions in section 148 of the Legal Aid, Sentencing and Punishment of Offenders Act which clarified aspects of the law on the use of force in self defence; with the current amendments to the Crime and Courts Bill which will give greater protection to householders who defend themselves from burglars; and through an updated Code of Arrest for the police published on the 12 November 2012 (Police & Criminal Evidence Act 1984, Code G).

The current law on the use of force in self defence

4. The current law permits people to defend themselves or others, to prevent crime or to protect property using force that was reasonable in the circumstances as they believed them to be. What constitutes 'reasonable force' will depend upon the circumstances of each case and is a matter for the courts to decide. The courts have held that if a person uses only such force as he or she honestly and instinctively believed was necessary in self defence, then that would be strong evidence that only reasonable defensive action had been taken.
5. The law in this area has been debated by Parliament twice in recent years. The law was initially clarified by section 76 of the Criminal Justice and Immigration Act 2008 and the Coalition Government clarified further aspects in section 148 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012. In particular, the provisions in the 2012 Act made it clear that:
 - The clarifications of the law on the use of reasonable force in section 76 apply as much to cases in which persons use reasonable force to defend property as they do to defending themselves, defending other people or preventing crime.

- A person is not under a duty to retreat from an offender when acting in self defence, defence of others, defence of property or to prevent crime. If they had a chance to retreat, however, the court will take that into account when considering whether the force used was reasonable in the circumstances as that person believed them to be.
6. If the current proposals in the Crime and Courts Bill are passed, the Government plans to bring them into force at the same time as the provisions in section 148 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

Rationale for material changes to the law

7. As mentioned above, the current law permits people to protect themselves or others using force that was reasonable in the circumstances as they saw them. The use of disproportionate force in those circumstances would not be reasonable, however, and the householder could be arrested and prosecuted.
8. The Government believes that householders confronted by a burglar in their home and acting in fear for their safety in the heat of the moment cannot always be expected to weigh up exactly how much force might be required. It might be that the level of force they used in the heat of the moment was reasonable in the circumstances as they saw them, but was actually disproportionate when viewed in the cold light of day. The Government wants to ensure that householders who find themselves in this situation are not treated as criminals.

How do the provisions change the law on the use of force in self defence?

9. The proposals in the Crime and Courts Bill will amend section 76 of the Criminal Justice and Immigration Act 2008 so that the use of disproportionate force can be regarded as reasonable when householders are acting to protect themselves or others from burglars in their homes. The use of grossly disproportionate force would still not be permitted.
10. The proposals are focussed on cases of householder defence because the Government believes it is these which give rise to the greatest public concern. The provisions also extend to shopkeepers who live and work in the same premises and armed forces personnel who may live and work in buildings such as barracks for periods of time.
11. The provisions will not cover other scenarios where the use of force might be required, for example when people are defending themselves from attack on the street, preventing crime or protecting property, but the current law on the use of reasonable force will continue to apply in these situations.