Householders and the criminal law of self defence

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A householder who confronts and kills an intruder may be liable to a charge of murder or manslaughter. If the intruder is only injured, the householder could face charges such as assault, wounding or even attempted murder. However, the householder has a complete defence (and will therefore be acquitted) if the force he used was reasonable and was exercised either in defence of himself or another, or in the prevention of crime.

Over the last ten years there have been repeated calls from a number of Conservative backbenchers for the current test of "reasonable force" to be replaced with a test under which householders would not be prosecuted unless their actions were "grossly disproportionate". Critics have argued that a change to "grossly disproportionate" could encourage vigilantism and would effectively sanction extrajudicial punishment.

The Government is now proposing to legislate (via the *Crime and Courts Bill*) to introduce a new "grossly disproportionate" test in relation to cases involving householder who use force to defend themselves or others against intruders. Justice minister Lord McNally said that "householders should be given the benefit of any doubt" and that so long as householders did "only what they believed was reasonable in the circumstances, it should not matter if those actions were disproportionate when viewed with the benefit of hindsight". Shadow justice minister Lord Beecham, however, argued that the change would only introduce uncertainty into the existing law, as the distinction between "disproportionate" and "grossly disproportionate" was unclear.

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1 Criminal liability and defences

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The use of force in self defence is governed by the common law, while the use of force in the prevention of crime is governed by section 3 of the *Criminal Law Act 1967*.[1] In each case, the test to be applied is whether force was **necessary** and, if so, whether the degree of force actually used was **reasonable in the circumstances**. The question of whether the force used in any particular case was "reasonable" will be answered on the basis of the circumstances and the danger as the householder believed them to be. This is so even if the householder's belief was a mistaken one honestly held, unless the mistake was due to his or her self-induced intoxication.[2] The court may also take account of the householder's physical characteristics in deciding whether the force used was reasonable[3] but not – save in exceptional circumstances – any psychiatric conditions that may have made the householder perceive the circumstances as more dangerous than a reasonable person would have done.[4]

The householder is not expected to undertake a detailed risk analysis before deciding whether to use force:

> If there has been attack so that defence is reasonably necessary it will be recognised that a person defending himself cannot weigh to a nicety the exact measure of his

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1 There will inevitably be a degree of overlap between the common law defence and the statutory one, as a householder who uses force against an intruder will often be doing so both in self defence and to prevent crime. However, to date the courts have interpreted the two defences in the same way: see *Archbold Criminal Pleading, Evidence and Practice*, 2012, para 19-39c

2 *R v O'Grady* [1987] QB 995, *R v Hatton* [2005] EWCA Crim 2951

3 "Circumstances which would not be seen as threatening by a robust young man may appear so to a frail elderly woman": Smith and Hogan, *Criminal Law*, 11th edition, 2005, p331

4 *R v Martin* [2001] EWCA Crim 2245

> necessary defensive action. If a jury thought that in a moment of unexpected anguish a person attacked had only done what he honestly and instinctively thought was necessary that would be most potent evidence that only reasonable defensive action had been taken.[5]

Section 76 of the *Criminal Justice and Immigration Act 2008* established a statutory framework (based on existing case law) for assessing reasonableness. It was aimed at "clarifying" the operation of the common law and section 3 defences, rather than amending them. The explanatory notes to the Act provide further information:

> 533. 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.[6]

Section 148 of the *Legal Aid, Sentencing and Punishment of Offenders Act 2012* will amend section 76 of the 2008 Act by making clear that it applies to the common law defence of defence of property, and by making clear the existing common law position that a person is not under a duty to retreat (although the possibility that they could have retreated is an element to be considered when deciding whether the degree of force used was reasonable). Section 148 has not yet been commenced.

2 CPS guidance

The Crown Prosecution Service (CPS) has published guidance summarising the position for householders confronted with an intruder:

> **Does the law protect me? What is 'reasonable force'?**
>
> Anyone can use reasonable force to protect themselves or others, or to carry out an arrest or to prevent crime. You are not expected to make fine judgements over the level of force you use in the heat of the moment. So long as you only do what you honestly and instinctively believe is necessary in the heat of the moment, that would be the strongest evidence of you acting lawfully and in self defence. This is still the case if you use something to hand as a weapon.
>
> As a general rule, the more extreme the circumstances and the fear felt, the more force you can lawfully use in self-defence.
>
> **Do I have to wait to be attacked?**
>
> No, not if you are in your own home and in fear for yourself or others. In those circumstances the law does not require you to wait to be attacked before using defensive force yourself.

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5 *Palmer v R*, 1971 AC 814

6 *Criminal Justice and Immigration Act 2008: Explanatory Notes*, para 533. For more detailed information on the background to section 76, please see House of Lords Library Note LLN 2008/001 *Criminal Justice and Immigration Bill* (pp7-9)

What if the intruder dies?

If you have acted in reasonable self-defence, as described above, and the intruder dies you will still have acted lawfully. Indeed, there are several such cases where the householder has not been prosecuted. However, if, for example:

- having knocked someone unconscious, you then decided to further hurt or kill them to punish them; or
- you knew of an intended intruder and set a trap to hurt or to kill them rather than involve the police,

you would be acting with very excessive and gratuitous force and could be prosecuted.

What if I chase them as they run off?

This situation is different as you are no longer acting in self-defence and so the same degree of force may not be reasonable. However, you are still allowed to use reasonable force to recover your property and make a citizen's arrest. You should consider your own safety and, for example, whether the police have been called. A rugby tackle or a single blow would probably be reasonable. Acting out of malice and revenge with the intent of inflicting punishment through injury or death would not.[7]

When deciding whether to prosecute a householder who has used violence against an intruder, CPS legal guidance advises that:

prosecutors should be aware of the balance to be struck [between]:

- the public interest in promoting a responsible contribution on the part of citizens in preserving law and order; and
- in discouraging vigilantism and the use of violence generally.[8]

The CPS must also consider whether any prosecution would be in the public interest:

In many cases in which self-defence is raised, there will be no special public interest factors beyond those that fall to be considered in every case. However, in some cases, there will be public interest factors which arise only in cases involving self-defence or the prevention of crime. These may include:

- The degree of excessive force. If the degree of force used is not very far beyond the threshold of what is reasonable, a prosecution may not be needed in the public interest.
- The final consequences of the action taken. Where the degree of force used in self-defence or in the prevention of crime is assessed as being excessive, and results in death or serious injury, it will be only in very rare circumstances indeed that a prosecution will not be needed in the public interest. Minor or superficial injuries may be a factor weighing against prosecution.
- The way in which the force was applied. This may be an important public interest factor, as well as being relevant to the reasonableness of the force used. If a dangerous weapon, such as firearm, was used by the accused this may tip the balance in favour of prosecution.

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7 CPS website, *Householders and the use of force against intruders* [accessed 10 January 2013]

8 CPS website, *Legal guidance: self-defence and the prevention of crime* [accessed 10 January 2013]

- Premeditated violence. The extent to which the accused found himself unexpectedly confronted by a violent situation, as opposed to having planned and armed himself in the expectation of a violent situation.

Use of Force against Those Committing Crime

The public interest factors set out immediately above will be especially relevant where, as a matter of undisputed fact, the victim was, at the material time, involved in the commission of a separate offence. Common examples are burglary or theft from motor vehicles. In such cases, prosecutors should ensure that all the surrounding circumstances are taken into consideration in determining whether a prosecution is in the public interest.

Prosecutors should have particular regard to:

- the nature of the offence being committed by the victim;
- the degree of excessiveness of the force used by the accused;
- the extent of the injuries, and the loss or damage, sustained by either or both parties to the incident;
- whether the accused was making an honest albeit over zealous attempt to uphold the law rather than taking the law into his own hands for the purposes of revenge or retribution.[9]

3 Police guidance

Guidance to the police on the exercise of their powers of arrest is set out in the *Police and Criminal Evidence Act 1984 (PACE): Code G – Code of Practice for the Statutory Power of Arrest by Police Officers*. This has recently been updated to give the police specific guidance on arresting individuals who claim to have been acting in self defence:

> The changes are driven by the coalition commitment to protect householders and others from unnecessary arrest when they use force in the belief that they are acting in self-defence. The amended Code G sets out that, in order to establish grounds to suspect a person of committing an offence, officers should consider facts and information which tend to indicate the person's innocence as well as their guilt. It also sets out that, if an offence involves the use of force and a person claims to have been acting in self-defence, an officer contemplating an arrest must take account of the circumstances under which the law allows the use of reasonable force.[10]

The updated version of Code G took effect in November 2012. It includes the following guidance to police:

> Facts and information relevant to a person's suspected involvement in an offence should not be confined to those which tend to indicate the person has committed or attempted to commit the offence. Before making a decision to arrest, a constable should take account of any facts and information that are available, including claims of innocence made by the person, that might dispel the suspicion.
>
> Particular examples of facts and information which might point to a person's innocence and may tend to dispel suspicion include those which relate to the statutory defence provided by the Criminal Law Act 1967, section 3(1) which allows the use of

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9 CPS website, *Legal guidance: self-defence and the prevention of crime* [accessed 10 January 2013]

10 Home Office website, *Revisions to PACE codes consultation* [accessed 10 January 2013]

reasonable force in the prevention of crime or making an arrest and the common law of self-defence. This may be relevant when a person appears, or claims, to have been acting reasonably in defence of themselves or others or to prevent their property or the property of others from being stolen, destroyed or damaged, particularly if the offence alleged is based on the use of unlawful force, e.g. a criminal assault.

(...)

An officer who believes that it is necessary to interview the person suspected of committing the offence must then consider whether their arrest is necessary in order to carry out the interview. The officer is not required to interrogate the suspect to determine whether they will attend a police station voluntarily to be interviewed but they must consider whether the suspect's voluntary attendance is a practicable alternative for carrying out the interview. If it is, then arrest would not be necessary.[11]

4 Illustrative cases

An "informal trawl" by the CPS suggested that between 1990 and 2005 there were only 11 prosecutions of people who had used force against intruders into houses, commercial premises or private land. Only seven of those appeared to have resulted from domestic burglaries. Ken Macdonald, the then Director of Public Prosecutions, listed a number of cases where those who used force had and had not been prosecuted:

Householder/other victim not prosecuted

- Robbery at a newsagent's. One of the two robbers died after being stabbed by the newsagent. The CPS did not prosecute the newsagent but prosecuted the surviving robber who was jailed for six years (Greater Manchester);
- A householder returned home to find a burglar in his home. There was a struggle during which the burglar hit his head on the driveway and later died. No prosecution of householder who was clearly acting in self-defence (Derbyshire);
- Armed robbers threatened a pub landlord and barmaid with extreme violence. The barmaid escaped, fetched her employer's shotgun and shot at least one of the intruders. Barmaid not prosecuted (Hertfordshire);
- Two burglars entered a house armed with a knife and threatened a woman. Her husband overcame one of the burglars and stabbed him. The burglar died. There was no prosecution of the householder but the remaining burglar was convicted (Lincolnshire);
- A middle aged female took a baseball bat off a burglar and hit him over the head, fracturing his skull. The burglar made a complaint but the CPS refused to prosecute (Lancashire).

Examples of Prosecutions

- A man laid in wait for a burglar on commercial premises, caught him, tied him up, beat him, threw him into a pit and set fire to him (Cheshire);
- A number of people trespassed on private land to go night-time fishing. They were approached by a man with a shotgun who threatened to shoot them. They ran

[11] Home Office, *Police and Criminal Evidence Act 1984 (PACE): Code G – Code of Practice for the Statutory Power of Arrest by Police Officers*, pp9-10

away but one of the men was shot in the back with a mass of 40 shotgun pellets (South Wales);

- A householder lay in wait for a burglar who tried to burgle his shed. The householder shot him in the back (South Yorkshire).

Mr Macdonald said: "These examples show that prosecutors take great care over their decisions and have done for many years. So long as a householder is not acting in retribution or revenge, the force used in self defence would have to be wholly excessive and out of proportion before a prosecution would be contemplated.[12]

Below are further details of some high profile and recent cases that have involved the use of force by householders.

4.1 Tony Martin

Tony Martin had lived at a remote farmhouse for 20 years. There had been several previous break-ins and he had expressed dissatisfaction with the police response. On the night of 20 August 1999 two intruders, Brendan Fearon and Freddie Barras, broke into the farmhouse. Martin shot at both of them with an unlicensed shotgun, injuring Fearon and killing Barras. In April 2000, Martin was found guilty of murder and wounding with intent, having unsuccessfully pleaded self defence. He received a mandatory life sentence for the murder and a ten year prison sentence for the wounding.

Martin appealed his murder conviction to the Court of Appeal. Fresh psychiatric evidence was admitted that showed Martin was suffering from a long-term personality disorder. The Court ruled that Martin's state of mind was irrelevant for the purposes of self defence. However, it **was** relevant to the partial defence of diminished responsibility;[13] the Court therefore substituted the murder conviction for a conviction of manslaughter on the ground of diminished responsibility.[14] Martin's new sentences were five and three years' imprisonment.

4.2 Munir and Tokeer Hussain

In September 2008, Munir Hussain discovered three intruders in his house when he and his family returned home from the local mosque. Hussain's teenage son managed to escape and alert Munir's brother, Tokeer Hussain. When Tokeer arrived at the house the intruders fled, but the brothers chased and caught one of them: Walid Salem, a man with more than 50 previous convictions. The brothers then beat Salem, striking him with a cricket bat with such force that it broke in three places. Salem was left with a permanent brain injury and the brothers were charged with causing grievous bodily harm.

In December 2009, both Munir and Tokeer Hussain were convicted. Contrary to popular belief, the brothers did not actually raise self defence at their trial. Rather than admitting to the beating and arguing that it constituted reasonable force in self defence, they instead argued (unsuccessfully) that Salem's injuries were not inflicted by them at all but by a group of youths who had come to their aid. Munir Hussain was given a 30 month prison sentence and Tokeer a 39 month sentence (the judge having decided that he had not been subject to as much provocation as his brother). Passing sentence, Judge Reddihough said:

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12 CPS press release, *Homeowners and self defence - DPP issues further details of cases*, 13 January 2005

13 Diminished responsibility is a partial defence in that if successfully pleaded it would only reduce a murder conviction to manslaughter (rather than an acquittal). Self defence is a complete defence as it would reduce a murder conviction to an acquittal.

14 *R v Martin* [2001] EWCA Crim 2245

> "Sadly, I have no doubt that my public duty requires me to impose immediate prison sentences of some length upon you. This is in order to reflect the serious consequences of your violent acts and intent and to make it absolutely clear that, whatever the circumstances, persons cannot take the law into their own hands, or carry out revenge attacks upon a person who has offended them."[15]

The brothers appealed against both conviction and sentence. The Court of Appeal dismissed the appeals against conviction, but allowed those against sentence. Again, the Court emphasised that this case had nothing to do with the law of self defence:

> The combination of events which culminated in the serious injuries sustained by Walid Salem is highly unusual. By the time he was lying defenceless on the ground, none of his assailants was acting in self-defence or in Munir Hussain's case in defence of his wife, of his children, of himself, or of his home. This is not, and should not be seen as, a case about the level of violence which a householder may lawfully and justifiably use on a burglar. It is also clear that the violence to which Walid Salem was subjected was not designed to ensure that he would be detained, pending the arrival of the police, to be handed over to them. The burglary was over. No one was in any danger. The purpose of the appellants' violence was revenge: to teach at least one of the burglars a lesson. It was a sustained attack with weapons. The pleas of the eye-witness to desist were ignored. Such violence is not lawful. No one at trial suggested it was. That is why, after a careful summing-up by the judge, the jury convicted those they were sure had participated in the violence.[16]

Munir's sentence was reduced to a twelve month suspended sentence, and Tokeer's to 24 months' imprisonment (not suspended). The Court of Appeal stressed that the reductions were on account of the brothers' good character and to "address and balance the ancient principles of justice and mercy", and **not** because their conduct had constituted reasonable force in self defence.[17]

4.3 Omari Roberts

In March 2009, Omari Roberts arrived at his mother's house to find two teenage intruders inside. In the ensuing confrontation, both intruders were stabbed: one fatally. The CPS decided that there was sufficient evidence to prosecute Roberts and that it was in the public interest to do so, and he was therefore charged with murder and wounding with intent.[18]

The case proceeded to trial but shortly before the court hearing was due to begin the CPS dropped all charges against Mr Roberts on the basis of new evidence that had emerged:

> The court heard that the decision to drop the charges came after the younger of the two burglars was re-interviewed by detectives two weeks before Easter.
>
> The boy, who is now 15, suffered two stab wounds to his right knee during an initial confrontation with Mr Roberts in the kitchen of the semi-detached house.
>
> He claimed he then fled the house with Mr Roberts in pursuit. Prosecutors said this gave them a realistic chance of gaining a conviction as it meant Mr Roberts would have had time to call police.

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15 "Self defence or malicious revenge? Jail for brothers who beat burglar with bat", *Guardian*, 14 December 2009

16 *R v Hussain and another* [2010] EWCA Crim 94, at para 34

17 Ibid, at paras 43 to 46. See also "Don't read too much into Munir Hussain judgment, say lawyers", *Guardian*, 20 January 2010

18 CPS press release, *CPS decides charges following death of Tyler Juett*, 27 October 2009

> But in the interview last month, the boy admitted he waited for his accomplice outside the house.
>
> This supported the assertion by Mr Roberts that his struggle with Juett, from Aspley, Nottingham, immediately followed a fight with the boy, Gregory Dickinson QC, prosecuting, said.
>
> The teenage accomplice also told a social worker following the burglary that he did have a knife and "would have killed" Mr Roberts, despite telling police he was unarmed.[19]

4.4 Andy and Tracey Ferrie

In September 2012 Andy and Tracey Ferrie were arrested on suspicion of causing grievous bodily harm after firing a legally-held shotgun at intruders during a break-in at their farm, injuring two of them. They were taken into police custody on a Sunday but were released on bail the following Tuesday, as police announced that two men had been charged with the burglary.[20]

Judith Walker, Chief Crown Prosecutor for the East Midlands, announced that they would not face any charges:

> Looking at the evidence, it is clear to me that Mr and Mrs Ferrie did what they believed was necessary to protect themselves, and their home, from intruders.
>
> As Crown Prosecutors, we look at all cases on their merit and according to the evidence in the individual case. I am satisfied that this is a case where householders, faced with intruders in frightening circumstances, acted in reasonable self defence.
>
> The law is clear that anyone who acts in good faith, using reasonable force, doing what they honestly feel is necessary to protect themselves, their families or their property, will not be prosecuted for such action.
>
> We have therefore advised Leicestershire Police that Mr and Mrs Ferrie should be released from their bail as they will not face any charges over what happened.[21]

5 Calls for reform

Writing in the Sunday Telegraph in December 2009, the then shadow Home Secretary Chris Grayling indicated that any future Conservative government would review the law on self defence. He said that "prosecutions and convictions should only happen in cases where courts judge the actions involved to be 'grossly disproportionate'".[22] An ICM poll for the newspaper, which had just launched a "Right to Defend Yourself" campaign to give householders greater rights to defend themselves, suggested that 79 per cent of all voters

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19 "Burglar murder charge against Nottingham man dropped", *BBC News*, 19 April 2010

20 "Welby farm shooting: Couple will not face charges", *BBC News*, 5 September 2012

21 CPS press statement, *CPS statement on Andy and Tracey Ferrie*, 5 September 2012

22 "Chris Grayling: A Tory government would seek to protect the rights of the victim", *Sunday Telegraph*, 20 December 2009. A number of Conservative backbenchers had previously sought (unsuccessfully) to introduce a new "grossly disproportionate" test by way of Private Members' Bills: see for example Patrick Mercer's *Criminal Law (Amendment) (Householder Protection) Bill 2004/05* (background in Library Research Paper 05/10 Criminal Law (Amendment) (Householder Protection) Bill) and Anne McIntosh's *Criminal Law (Amendment) Protection of Property) Bill 2005/06* (background in Library Research Paper 05/83 The Criminal Law (Amendment) (Protection of Property) Bill).

would support changing the legal test from "reasonable force" to "grossly disproportionate" force.[23]

However, during a House of Lords debate in February 2010 both Labour and the Liberal Democrats expressed support for the current law of reasonable force, arguing that it worked well and that adequate protection was provided by the "exercise of prosecutorial discretion and the good sense of the jury".[24]

Others argued that a change to "grossly disproportionate" could encourage vigilantism and would effectively sanction extrajudicial punishment. Paul Mendelle QC, speaking when he was chairman of the Criminal Bar Association, said:

> "The law should always encourage people to be reasonable, not unreasonable; to be proportionate, not disproportionate," he said, adding that the present law worked perfectly well and was well understood by juries.
>
> (...)
>
> "You would have, in effect, sanctioned extrajudicial execution or capital punishment for an offence, burglary, that carries a maximum of 14 years — which is the sentence that Parliament decided was appropriate." He warned that the change could also make householders less safe. "Burglars, knowing that they could be killed, might be more likely to carry weapons and/or use extreme violence. So it would be wholly counterproductive," he said.[25]

Michael Wolkind QC, who has acted as defence counsel in a number of high profile prosecutions involving self defence, said:

> "If I manage to tackle a criminal and get him to the ground, I kick him once and that's reasonable, I kick him twice and that's understandable, three times, forgivable; four times, debatable; five times, disproportionate; six times, it's very disproportionate; seven times, extremely disproportionate — in comes the Tory test — eight times, and it's grossly disproportionate. It is a horrible test. It sounds like state-sponsored revenge. I don't understand why sentencing should take place in the home. Why can't it go through the courts? Why can't the jury, as they always do, decide what is reasonable?"[26]

Keir Starmer, Director of Public Prosecutions, also expressed support for the existing concept of reasonable force, emphasising that there are "many cases, some involving death, where no prosecutions are brought".[27]

The Conservatives' 2010 election manifesto included a pledge to "give householders greater legal protection if they have to defend themselves against intruders in their homes".[28] This pledge survived the coalition negotiations with the Liberal Democrats and the coalition agreement included a commitment to "ensure that people have the protection that they need when they defend themselves against intruders".[29] In June 2010 the then policing and

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23 "Overwhelming support for campaign to protect householders who confront intruders", *Sunday Telegraph*, 20 December 2009

24 HL Deb 25 February 2010 cc1085-1087

25 "Fears of 'licence to kill' as Tories bid to change self-defence law", *Times*, 25 January 2010 [*electronic version available via subscription only*]

26 Ibid

27 "DPP rejects call for change in self-defence law", *BBC News*, 28 December 2009

28 Conservative Party, *Invitation to Join the Government of Britain: the Conservative Manifesto 2010*, p56

29 Cabinet Office, *The Coalition: our programme for government*, May 2010, p13

criminal justice minister Nick Herbert said that the Government was "reviewing the law and its interpretation carefully, and ... will explore all the options before bringing forward proposals".[30]

On 21 June 2011 the *Legal Aid, Sentencing and Punishment of Offenders Bill* had its first reading in the House of Commons. The Prime Minister gave a press conference on sentencing during which he announced reforms to the law on self defence:

> ... the public have rightly been outraged by some prosecutions of home owners defending their property from criminals. So we'll put beyond doubt that home owners and small shop keepers who use reasonable force to defend themselves or their properties will not be prosecuted.[31]

At report stage, the Government added a new clause on reasonable force for the purposes of self-defence to the Bill. The clause sought to "clarify" section 76 of the *Criminal Justice and Immigration Act 2008* (see page 3 of this note) but did not propose any substantive change to the law on reasonable force.

Crispin Blunt, Parliamentary Under-Secretary of State for Justice, said that the new clause was intended to "clarify what 'reasonable force' means in practice" rather than to "sweep away the fundamental premise that somebody can use reasonable force in self-defence".[32]

Sadiq Khan, whilst indicating that the Opposition would not oppose the new clause, also questioned the need for the change to the law, saying:

> It is widely accepted by those at the coal face that the law on self-defence works pretty well and it is unclear in many quarters why the law would need strengthening.[33]

The new clause was added to the bill without a division. It has since been enacted as section 148 of the *Legal Aid, Sentencing and Punishment of Offenders Act 2012*. Section 148 has not yet been brought into force.

In September 2012, a number of Conservative backbenchers were quoted in the *Sunday Telegraph* calling for more fundamental reform of the law on self defence:

> Nick de Bois, a Tory member of the all-party justice select committee, said: "There is a both a political and a judicial reason why we should introduce the concept of 'grossly disproportionate force' into the law to protect householders.
>
> "First, we promised to do just that before the election, and regardless of what Lib Dems may say, we should stick to that pledge. Second, it's time to raise the bar so that victims of crime do not find themselves facing prosecution for defending their own homes."
>
> Patrick Mercer, the Conservative backbencher whose Private Member's Bill on the issue was blocked by the Labour government in 2004, said: "This issue is completely clear. We must bring criminal law into line with civil law by making the key test for the householder was that the action they took was grossly disproportionate rather than simply unreasonable.

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30 HC Deb 15 June 2010 c735. See also "Minister plays down quick change to self-defence law", *BBC News*, 6 June 2010

31 *A transcript of the press conference given by Prime Minister David Cameron on sentencing reforms in London on 21 June 2011*, Number 10 website, 21 June 2011.

32 HC Deb 1 November 2011, c857

33 HC Deb 1 November 2011, c859

> "This is a straightforward piece of legislation which will restore the balance for victims, deter criminals and reassure householders. It is not just popular – it is the right thing to do. There must be no more dithering."
>
> Priti Patel, a Tory MP who campaigns on law-and-order issues, said: "Homeowners must be allowed to use force to defend themselves, their family and property from burglars. It is the burglar who is in the wrong for violating the home of their victim and families need greater legal protection so they can be confident defending themselves.
>
> "It's time the criminal justice system stopped treating criminals like victims and victims like criminals."[34]

On 18 September 2012, the following exchange took place between Conservative backbencher Priti Patel and Justice Secretary Chris Grayling:

> **Priti Patel (Witham) (Con):** What steps he plans to take to ensure that home owners have the right to protect their property from intruders. [121198]
>
> **The Lord Chancellor and Secretary of State for Justice (Chris Grayling):** My hon. Friend knows well that I feel strongly about this issue. The Government and my predecessor have already made changes to the law, and I am now examining whether they go far enough.
>
> **Priti Patel:** I thank my right hon. Friend for that response and welcome him and his ministerial colleagues to their new positions. Will he consider introducing legislative changes to give certainty to home owners on the level of force they can use to protect their families and properties from intruders?
>
> **Chris Grayling:** I absolutely believe that a householder who finds themselves in the unbelievably stressful situation of facing a violent intruder should believe that the law is on their side. I give my hon. Friend an assurance that I will make sure that that happens.

6 The *Crime and Courts Bill*

The *Crime and Courts Bill* was introduced in the House of Lords on 10 May 2012. It did not initially include any provisions relating to self-defence. However, during report stage on 10 December 2012, the Government added a new clause to the Bill to amend the law on self-defence as it relates to householders.[35]

Clause 30 of the Bill would amend section 76 of the *Criminal Justice and Immigration Act 2008* to state that in a "householder case" (where a person defends themselves or others from intruders in their home), the degree of force used by the householder would not be regarded as reasonable if it was "grossly disproportionate" in the circumstances as the householder believed them to be. As the Explanatory Notes to the Bill state, "In other words, it could be reasonable for householders to use disproportionate force to defend themselves from burglars in their homes".

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[34] "Conservative MPs demand greater rights for householders against burglars", *Sunday Telegraph*, 9 September 2012

[35] HL Deb 10 December 2012 c879

The amendment would be limited to householders defending themselves or others in their dwellings.[36] In other circumstances where people might be required to defend themselves, for example if they were attacked on the street or if they were defending property or preventing crime, the current law on reasonable force would continue to apply.

Justice minister Lord McNally said:

> The Government feel strongly that householders, acting in extreme circumstances to protect themselves or others, cannot be expected to weigh up exactly how much force is necessary to repel an intruder. There may be a fine line between actions that are proportionate in the circumstances and those which might be regarded as disproportionate. The Government think householders should be given the benefit of any doubt and that Section 76 of the 2008 Act should be amended accordingly. As long as householders have done only what they believed was reasonable in the circumstances, it should not matter if those actions were disproportionate when viewed with the benefit of hindsight.[37]

Many other Members, however, spoke against the amendment.[38]

Shadow justice minister Lord Beecham suggested that all the Government's proposal would add to the present state of the law was confusion, as the difference between disproportionate force and grossly disproportionate force was unclear. He said that as the new clause had been "spatchcocked into the Bill at virtually the last minute" the opposition would be treating the debate as a second reading debate and so would not be voting.[39]

The amendment was agreed on division by 206 votes to 55. The Bill is currently in the Commons.

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36 People who live in buildings which serve a dual purpose as a place of residence and a place of work (i.e. a shopkeeper who lives above the shop) would be able to rely on the defence regardless of which part of the building they were in when confronted with the intruder, so long as there was some internal access between the two parts

37 HL Deb 10 December 2012 c 881

38 See section 4.4 of Library Research Paper 13/4 *Crime and Courts Bill* for full analysis of the Lords debate

39 HL Deb 10 December 2012 cc882 and 884