



# Criminal Justice and Immigration Act 2008

## 2008 CHAPTER 4

### PART 5

#### CRIMINAL LAW

##### *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; [<sup>F1</sup>and]
  - [<sup>F2</sup>(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 (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

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- (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.
- [<sup>F3</sup>(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) [<sup>F4</sup>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.
- [<sup>F5</sup>(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) [<sup>F6</sup>Subsection (7) is][<sup>F6</sup>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).
- [<sup>F7</sup>(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

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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 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 [<sup>F8</sup>, 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, [<sup>F9</sup>or]  
[<sup>F10</sup>(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.

#### Textual Amendments

- F1** Word in s. 76(2)(a) omitted (E.W. and in relation to service offences) (14.5.2013) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), [ss. 148\(2\)](#), [151\(1\)](#) (with [ss. 148\(6\)](#), [152\(6\)\(7\)](#)); [S.I. 2013/1127](#), [art. 2](#)
- F2** S. 76(2)(aa) inserted (E.W. and in relation to service offences) (14.5.2013) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), [ss. 148\(2\)](#), [151\(1\)](#) (with [ss. 148\(6\)](#), [152\(6\)\(7\)](#)); [S.I. 2013/1127](#), [art. 2](#)
- F3** S. 76(5A) inserted (E.W. and in relation to service offences) (25.4.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), [ss. 43\(2\)](#), [61\(11\)\(b\)\(15\)\(16\)](#) (with [s. 43\(6\)](#))
- F4** Words in s. 76(6) inserted (E.W. and in relation to service offences) (25.4.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), [ss. 43\(3\)](#), [61\(11\)\(b\)\(15\)\(16\)](#) (with [s. 43\(6\)](#))
- F5** S. 76(6A) inserted (E.W. and in relation to service offences) (14.5.2013) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), [ss. 148\(3\)](#), [151\(1\)](#) (with [ss. 148\(6\)](#), [152\(6\)\(7\)](#)); [S.I. 2013/1127](#), [art. 2](#)
- F6** Words in s. 76(8) substituted (E.W. and in relation to service offences) (14.5.2013) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), [ss. 148\(4\)](#), [151\(1\)](#) (with [ss. 148\(6\)](#), [152\(6\)\(7\)](#)); [S.I. 2013/1127](#), [art. 2](#)
- F7** S. 76(8A)-(8F) inserted (E.W. and in relation to service offences) (25.4.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), [ss. 43\(4\)](#), [61\(11\)\(b\)\(15\)\(16\)](#) (with [s. 43\(6\)](#))
- F8** Words in s. 76(9) inserted (E.W. and in relation to service offences) (25.4.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), [ss. 43\(5\)](#), [61\(11\)\(b\)\(15\)\(16\)](#) (with [s. 43\(6\)](#))

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**F9** Word in s. 76(10)(a) omitted (E.W. and in relation to service offences) (14.5.2013) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), **ss. 148(5)**, 151(1) (with [ss. 148\(6\)](#), 152(6)(7)); [S.I. 2013/1127](#), art. 2

**F10** S. 76(10)(a)(ia) inserted (E.W. and in relation to service offences) (14.5.2013) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), **ss. 148(5)**, 151(1) (with [ss. 148\(6\)](#), 152(6)(7)); [S.I. 2013/1127](#), art. 2

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**Modifications etc. (not altering text)**

**C1** S. 76(8B)-(8F) applied (with modifications) by [Dangerous Dogs Act 1991 \(c. 65\)](#), s. 3(1B) (as inserted (E.W.) (13.5.2014) by [Anti-social Behaviour, Crime and Policing Act 2014 \(c. 12\)](#), **ss. 106(2)(b)**, 185(1); [S.I. 2014/949](#), art. 3, Sch. para. 6)

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**Commencement Information**

**II** S. 76 in force at 14.7.2008 by [S.I. 2008/1586](#), art. 2(1), **Sch. 1 para. 36**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 7 para. 5A and cross-heading inserted by [2008 c. 25 Sch. 1 para. 90\(3\)](#)