“Our home is our haven and refuge – a place where we have every right to feel safe”:

Justifying the use of 'grossly disproportionate force' in a place of residence

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The Crime and Courts Act 2013 amends section 76 of the Criminal Justice and Immigration Act 2008 with the effect that the force used in self-defence at a place of residence can be anything up to ‘grossly disproportionate’. In light of the fact only reasonable force can be used in any other area (for example, a public highway), this amendment raises important questions about the basis on which the acceptable degree of force to be used in self-defence might be determined by explicit reference to the place in which such force is used. This paper begins by examining the Government’s justifications for amending the law in respect of force used at a place of residence, arguing that the generalisations seemingly underpinning those justifications are flawed. Drawing upon the theoretical foundations of self-defence, this paper then considers whether the use of anything approaching grossly disproportionate force can be justified provided such force is used in the private sphere only. The paper concludes that this is unlikely to be the case, adding weight to accusations this measure was solely motivated by political expediency and cannot be justified by theoretical groundings or concerns about the practical operation of the ‘reasonable’ force test.