

Clarification of the law on self defence – Equality Impact Assessment

Introduction

This Equality Impact Assessment (EIA) relates to amendments to the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Bill for the clarification of the law on self defence, which are to be tabled at Commons Report Stage.

Equality duties

Under the Equality Act 2010 section 149, when exercising its functions, Ministers and the Department are under a legal duty to have ‘due regard’ to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct under the Equality Act 2010;
- Advance equality of opportunity between different groups (those who share a protected characteristic and those who do not); and
- Foster good relations between different groups.

Paying ‘due regard’ needs to be considered against the nine “protected characteristics” under the Equality Act – namely race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity.

MoJ has a legal duty to investigate how policy proposals are likely to impact on the protected characteristics and where a potential disadvantageous effect is identified how that is either mitigated or justified by reference to the objectives of the policy . MoJ records its fulfilment of its duties by completing an Equality Impact Assessment (EIA).

Summary

There is a public perception that the existing law does not give people sufficient protection when defending themselves or their properties from intruders. The government believes that further clarification of the law would give members of the public greater confidence that the law is on their side.

We have considered the impact of the proposals against the statutory obligations under the Equality Act 2010. These are outlined below.

Direct discrimination

The new clause which clarifies the law in relation to the use of reasonable force in self defence, defence of others, defence of property, and prevention of crime will apply equally to anyone who relies on these defences. There is therefore no direct discrimination within the meaning of the 2010 Act.

Indirect discrimination

There is no evidence of indirect discrimination and there is the potential for positive impact for those who may be required to act in self defence, defence of others, defence of property or prevention of crime in clarifying the law.

Harassment and victimisation

We do not consider there to be a risk of harassment or victimisation within the meaning of the Equality Act as a result of these proposals.

Advancing equality of opportunity

We have considered this objective but do not think it is of particular relevance to the proposals.

Fostering good relations

We have considered this objective but do not think it is of particular relevance to the proposals.

Having paid due regard to the potential differential impacts identified in the 'analysis' section below, the government is satisfied that it is right to clarify the law of self defence.

Aims and outcomes for the policy

The aim is to clarify the existing law to give the public greater certainty about their rights when acting in self defence, to prevent crime or to protect property. The law will be clarified by importing existing common law principles into statute. The new provisions, which will be added to section 76 of the Criminal Justice and Immigration Act 2008, will:

- broaden the scope of section 76 so that as well as applying to self defence, defence of others and the prevention of crime, it also applies to defence of property;
- include provisions confirming that a person is under no duty to retreat when acting in self defence, defence of others, prevention of crime and defence of property. The fact that someone could have retreated is just one factor that can be taken into account when deciding whether the degree of force used was reasonable.

Methodology and evidence sources

In analysing the potential equalities impacts of these proposals, we have considered:

- The impact on victims by considering the ways in which victims might benefit from the proposals. To do this we have used data on the risk of becoming a victim of violent or acquisitive crime by demographic characteristics, from the British Crime Survey (BCS);
- The impact on offenders (for violence against the person, robbery, burglary or theft and handling), by comparing the characteristics of those sentenced with the characteristics of the general population of England and Wales. Where certain groups are over-represented in those sentenced we have noted that the evidence we have available suggests the potential for a differential impact.

Data on the risk of becoming a victim of crime by demographic characteristics is from the British Crime Survey (BCS). The BCS includes data on race, disability, gender,

age and marital status for victims of crime. There is limited information on religion and sexual orientation. The BCS does not include data on the following: gender reassignment, civil partnership or pregnancy and maternity. As such we do not have data relating to these characteristics for victims of crime.

Data on those sentenced for violence against the person, robbery, burglary or theft and handling are from the Court Proceedings Database. This holds information on defendants proceeded against, found guilty and sentenced for criminal offences in England and Wales. It includes information on the age of the defendant, their gender, ethnicity, the police force area and court where proceedings took place as well as the offence and statute for the offence. Information on gender reassignment, disability, pregnancy and maternity, sexual orientation, religion or belief or marriage and civil partnership for criminal offences may be held by the courts on individual case files. However it has not been possible to collate these data for this Equality Impact Assessment because of practical difficulties.

The following assessment only explores equality impacts arising from the policy proposals in relation to the groups affected by the proposals. It is not intended to provide an assessment of the wider factors at play which may explain observed differentials in the distribution of protected characteristics at each stage of the criminal justice system. Such an analysis would consider the extent to which factors other than equality characteristics (such as offence type and offending history) might contribute to the over- or under-representation of particular groups. Two MoJ statistics publications provide this analysis: "Statistics on Race and the Criminal Justice System" and "Statistics on Women and the Criminal Justice System".

Analysis

The potential impacts of the clarification of the law to give the public greater certainty about their rights when acting in self defence, to prevent crime or to protect property, are provided below.

Impact on victims

The proposals are designed to have a positive impact on anyone who may need to defend themselves, other people or their properties, from crime by giving them greater confidence in the law. This could include homeowners or small shopkeepers who are confronted by intruders, but the law on self defence is not limited to people protecting themselves in those situations. It can also apply to people defending themselves or other people from crime on the street or in any other place. Consequently the impact is assessed on the basis of the likelihood of individuals with particular protected characteristics being victims of theft from the person, robbery¹, violent crime and burglary. Many demographic characteristics will be closely associated (for example marital status and age) so caution is needed in the interpretation of the effects of these different characteristics when viewed in isolation.

¹ The number of robbery incidents picked up in the BCS is very small so the estimates themselves should be treated with caution. In addition, some of the differences reported for robbery are quite small and are unlikely to be statistically significant differences.

Potential Age Impacts

Table 1 (Annex A) shows that where the household reference person (i.e. the person who responded on behalf of the household) was aged 16 to 24 the proportion of burglaries was the highest (7.0 per cent), and over three times the proportion for all households (2.2 per cent)

Table 2 (Annex A) shows younger people were at greatest risk of being a victim of violent crime. Adults aged 16 to 24 had a higher risk of being a victim of violent crime (this includes wounding, assault with minor injury, assault without injury and robbery) than older age groups. The risk for adults aged 65 and over being a victim of violent crime were less than one per cent. Table 2 (Annex A) also shows younger people were at greatest risk of being a victim of robbery. Adults aged 16 to 24 had a higher risk of being a victim of robbery than older age groups (aged over 45).

Table 3 (Annex A) shows that it was also younger adults who were at greater risk of theft from the person. The risk was lowest for adults aged between 35 and 64 and was slightly higher for those aged 65 and over.

These data suggest that there is the potential for the clarification of the position on self-defence to have a differential impact in relation to age, in that it might benefit more those in certain age categories who are more likely to be a victim of these sorts of crimes and, as such, may need to rely on these defences.

Potential Disability Impacts

Information is not available on the risk of being a victim of burglary by whether the victim was disabled or not.

Table 2 (Annex A) shows that there was little difference in the risk of being a victim of violent crime by whether the victim was disabled or not. Likewise Table 2 (Annex A) shows that there was no difference in the risk of being a victim of robbery by whether the victim was disabled or not.

Table 3 (Annex) shows that there was little difference in the risk of being a victim of theft from the person by whether the victim was disabled or not

Potential Gender Reassignment Impacts

Due to limitations in the available evidence we are unable to rule out the potential for any differential impact.

Potential Marriage and Civil Partnership Impacts

Table 1 (Annex A) shows that where a household consists of a single adult with child(ren) the proportion of households that were victims of burglary is higher than for all households (5.9 per cent compared to 2.2 per cent).

Table 2 shows that single people had the highest risk of being a victim of violence by marital status (7.2 per cent). This is likely to reflect the younger age profile of this group. Single adults also had the highest risk of being a victim of robbery.

Table 3 shows that single adults had the highest risk of being a victim of theft from the person compared to other adults (2.0 per cent compared to 0.7 per cent for married adults and 1.2 per cent for divorced).

Potential Pregnancy and Maternity Impacts

Due to limitations in the available evidence we are unable to rule out the potential for any differential impact.

Potential Race Impacts

Information is not available on the risk of being a victim of burglary by ethnicity of the victim.

Table 2 (Annex A) shows that there were differences by ethnic group in the risk of being a victim of violent crime, with 3.6 per cent of the Mixed ethnic group victims of violence, compared to 3.1 per cent of White people and 2.1 per cent of Asian people. Table 2 (Annex A) also shows that there were differences by ethnic group in the risk of being a victim of robbery, with 0.5 per cent of White people victims of robbery, compared to 1.0 per cent of the Mixed ethnic group, 1.0 per cent of Asian and Asian British, 1.0 per cent of Black and Black British and 0.8 per cent of Chinese or Other.

Table 3 (Annex A) shows that there were differences by ethnic group in the proportion of adults who were victims of theft from the person, with 3.7 per cent of Black or Black British victims, compared to 1.0 per cent of White people, 2.6 per cent of Chinese or Other, 2.1 per cent of the Mixed ethnic group and 1.0 per cent of Asian and Asian British.

These data suggest that there is the potential for the clarification of the position on self-defence to have a differential impact in relation to race, as the clarification is likely to have greatest benefit for those groups which are most likely to be a victim of violent crime.

Potential Religion or Belief Impacts

Due to limitations in the available evidence we are unable to rule out the potential for any differential impact.

Potential Sex Impacts

Table 1 (Annex A) shows that of households where women were the reference person (i.e. the person who responded on behalf of the household), 2.6 per cent were burgled compared to 2.0 per cent of households where men were the household reference person.

Table 2 (Annex A) shows that overall, men were more than twice as likely as women (4.2 per cent compared with 1.8 per cent) to have experienced one or more violent crimes. Similarly, Table 2 (Annex A) shows that men were more than twice as likely to be victims of robbery (0.8 per cent compared to 0.3 per cent).

However Table 3 (Annex A) shows a different pattern for victims of theft from the person with 1.4 per cent of women victims compared to 0.8 per cent of men.

These data suggest that there is the potential for a differential impact in relation to gender in the clarification of the position on self-defence. Those who are more likely to become a victim of crime may benefit more from the clarification than those that are less likely to be a victim.

Impact on offenders

The proposals would potentially give people greater confidence to use reasonable force to defend themselves or other, protect property or prevent crime, which could have a potential impact on offenders committing the offences in question. This may result in an increase in the chances of an offender being challenged or apprehended. Offenders responsible for crimes against the person come from diverse backgrounds and the offence committed could be motivated by various reasons. Consequently the impact on offenders is assessed on the basis of the characteristics of those sentenced for violence against the person, robbery, burglary or theft and handling.

Potential Age Impacts

Table 4 (Annex A) shows that those offenders are more likely to be aged under 40 compared to the general population.

These data suggest that there is the potential for the clarification of the position on self-defence to have a differential impact in relation to age, as younger people are more likely to commit these offences.

Potential Disability Impacts

Due to limitations in the available evidence we are unable to rule out the potential for any differential impact.

Potential Gender Reassignment Impacts

Due to limitations in the available evidence we are unable to rule out the potential for any differential impact.

Potential Marriage and Civil Partnership Impacts

Due to limitations in the available evidence we are unable to rule out the potential for any differential impact.

Potential Pregnancy and Maternity Impacts

Due to limitations in the available evidence we are unable to rule out the potential for any differential impact.

Potential Race Impacts

Table 4 (Annex A) shows that those offenders are more likely to be from the Black ethnic group compared to the general population.

These data suggest that there is the potential for the clarification of the position on self-defence to have a differential impact in relation to ethnicity.

Potential Religion or Belief Impacts

Due to limitations in the available evidence we are unable to rule out the potential for any differential impact.

Potential Sex Impacts

Table 4 (Annex A) shows that those offenders are more likely to be male compared to the general population.

These data suggest that there is the potential for the clarification of the position on self-defence to have a differential impact in relation to sex.

Potential Sexual Orientation Impacts

Due to limitations in the available evidence we are unable to rule out the potential for any differential impact.

Mitigation and Justification

Taking into consideration the available evidence, and recognising that there are a number of gaps in data, we consider that the potential impacts are justified on the basis that clarification is a proportionate means of achieving a legitimate aim of providing the public with a greater level of certainty about their rights when acting in self defence, to prevent crime or to protect property.

We will publicising the changes through press releases, and we will work with the enforcement authorities to publish new guidance for the public on what the use of reasonable force means in practice.

Monitoring

We anticipate that the earliest these changes will be implemented is towards the end of 2012. Subject to passage of the Bill through Parliament and commencement, we would anticipate a review commencing in Spring 2014.

Annex A – Evidence

Table 1 Proportion of households that were victims of burglary by household and area characteristics

Percentages	England and Wales, 2009/10 BCS			
	Burglary	Burglary with entry	Attempted burglary	Unweighted base
ALL HOUSEHOLDS	2.2	1.4	0.9	44,610
Sex of household reference person				
Male	2.0	1.3	0.8	27,154
Female	2.6	1.7	1.0	17,456
Age of household reference person				
16-24	7.0	5.5	1.8	1,492
25-34	3.0	1.7	1.4	5,354
35-44	2.7	1.7	1.1	8,488
45-54	2.3	1.4	1.0	8,585
55-64	1.7	0.9	0.8	8,145
65-74	0.9	0.6	0.4	6,543
75+	0.9	0.7	0.2	5,896
Structure of household				
Single adult & child(ren)	5.9	3.8	2.4	2,254
Adults & child(ren)	2.3	1.5	0.9	9,694
Adult(s) & no children	2.0	1.2	0.8	32,662

Source
Crime in England and Wales 2009/10

Table 2: Proportion of adults who were victims of violence by offence type and personal characteristics

Percentages						
	All violence ¹	Wounding	Assault with minor injury	Assault without injury	Robbery	Unweighted base
<i>% victims once or more</i>						
ALL ADULTS	3.0	0.8	0.7	1.2	0.6	44,559
16-24	8.9	2.5	2.3	3.1	1.9	3,666
25-34	4.0	0.8	0.9	1.8	0.7	5,998
35-44	2.5	0.7	0.6	0.9	0.4	8,007
45-54	1.9	0.5	0.4	0.9	0.2	7,312
55-64	1.3	0.2	0.2	0.7	0.2	7,627
65-74	0.6	0.1	0.1	0.3	0.2	6,321
75+	0.2	0.0	0.0	0.0	0.1	5,628
Men	4.2	1.1	0.9	1.8	0.8	20,079
16-24	13.3	3.7	3.2	4.8	3.2	1,708
25-34	5.6	1.2	1.1	2.8	0.8	2,572
35-44	2.9	1.0	0.6	1.1	0.5	3,539
45-54	2.2	0.4	0.4	1.1	0.3	3,468
55-64	1.7	0.4	0.3	0.9	0.2	3,654
65-74	0.7	0.0	0.1	0.3	0.2	2,921
75+	0.2	0.0	0.0	0.1	0.2	2,217
Women	1.8	0.4	0.5	0.6	0.3	24,480
16-24	4.3	1.3	1.4	1.3	0.7	1,958
25-34	2.3	0.4	0.7	0.7	0.6	3,426
35-44	2.0	0.4	0.6	0.8	0.4	4,468
45-54	1.5	0.5	0.3	0.7	0.2	3,844
55-64	0.9	0.1	0.1	0.6	0.2	3,973
65-74	0.6	0.1	0.1	0.2	0.2	3,400
75+	0.1	0.0	0.0	0.0	0.1	3,411
Ethnic group						
White	3.1	0.8	0.7	1.3	0.5	41,226
Non-White	2.4	0.4	0.4	0.7	1.0	3,255
Mixed	3.6	0.4	0.4	1.7	1.0	316
Asian or Asian British	2.1	0.4	0.4	0.5	1.0	1,482
Black or Black British	2.5	0.7	0.2	0.5	1.0	877
Chinese or other	2.6	0.3	0.5	1.3	0.8	580
Marital status						
Married	1.3	0.3	0.3	0.6	0.2	20,956
Cohabiting	3.0	0.8	0.7	1.3	0.5	3,957
Single	7.2	1.9	1.7	2.6	1.5	9,072
Separated	4.7	1.6	1.3	1.9	0.3	1,415
Divorced	2.9	0.8	0.8	1.1	0.5	4,061
Widowed	0.7	0.1	0.2	0.3	0.2	5,087
Long-standing illness or disability						
Long-standing illness or disability	2.8	0.7	0.6	1.1	0.6	12,715
Limits activities	2.6	0.7	0.5	1.1	0.6	9,052
Does not limit activities	3.0	0.8	0.7	1.3	0.5	3,657
No long-standing illness or disability	3.1	0.8	0.7	1.2	0.6	31,761

1. 'All violence' includes wounding, assault with minor injury, assault without injury and robbery. See Section 5.1 of User Guide for more information.

Source

Crime in England and Wales 2009/10

Table 3 Proportion of adults who were victims of theft from the person by personal characteristics

Percentages	England and Wales, 2009/10 BCS	
	Theft from person	Unweighted base
ALL ADULTS	1.1	44,559
Age		
16-24	1.9	3,666
25-34	1.4	5,998
35-44	0.9	8,007
45-54	0.8	7,312
55-64	0.6	7,627
65-74	1.0	6,321
75+	1.0	5,628
Men	0.8	20,079
16-24	1.4	1,708
25-34	1.1	2,572
35-44	0.7	3,539
45-54	0.8	3,468
55-64	0.5	3,654
65-74	0.5	2,921
75+	0.1	2,217
Women	1.4	24,480
16-24	2.5	1,958
25-34	1.8	3,426
35-44	1.2	4,468
45-54	0.7	3,844
55-64	0.7	3,973
65-74	1.5	3,400
75+	1.6	3,411
Ethnic group		
White	1.0	41,226
Non-White	2.0	3,255
<i>Mixed</i>	2.1	316
<i>Asian or Asian British</i>	1.0	1,482
<i>Black or Black British</i>	3.7	877
<i>Chinese or other</i>	2.6	580
Marital status		
Married	0.7	20,956
Cohabiting	0.8	3,957
Single	2.0	9,072
Separated	1.2	1,415
Divorced	1.2	4,061
Widowed	1.4	5,087
Long-standing illness or disability		
Long-standing illness or disability	1.2	12,715
<i>Limits activities</i>	1.2	9,052
<i>Does not limit activities</i>	1.1	3,657
No long-standing illness or disability	1.1	31,761

Source

Crime in England and Wales 2009/10

Table 4: Offenders sentenced for Violence Against the Person, Burglary, Robbery or Theft and Handling; England and Wales, 2010

	Offenders sentenced	General population, E&W (aged 10+)
<u>Sex</u>		
Female	17%	51%
Male	83%	49%
Not stated	0%	n/a
Total	100%	100%
<u>Age group</u>		
Under 18	14%	11%
18-20	13%	5%
21-24	15%	6%
25-29	17%	8%
30-39	24%	15%
40-49	12%	17%
50-59	3%	14%
60+	1%	26%
Total	100%	100%
<u>Ethnicity⁽¹⁾</u>		
White	80%	89%
Mixed	n/a	1%
Black	8%	3%
Asian	4%	6%
Other	1%	2%
Unknown	7%	n/a
Total	100%	100%

(1) Officer observed ethnicity

Source:

Further analysis of Criminal Justice Statistics 2010.

General population figures are 2010 mid-year population estimates (age and gender), and 2009 mid-year population estimates (ethnicity), Office for National Statistics.