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# Victorian legislation in a modern riotous world

**Damages** Charles Gordon reviews the proposed reforms to the Riot (Damages) Act 1886 and explains why change is needed to protect the property industry

We all remember the lurid scenes of damage and destruction during the August 2011 riots, and the impact they had on commercial properties in London and the rest of the UK. What not everyone may realise is that these riots brought an arcane piece of Victorian legislation to the fore: the Riot (Damages) Act 1886 ("1886 Act").

Following the riots, the government commissioned an independent inquiry under Neil Kinghan to review the 1886 Act and to recommend changes – particularly to modernise the legislation. Kinghan reported in November 2013 and the government is now consulting on proposed reforms. The consultation period closes on 1 August 2014 and the government is particularly keen to hear from the insurance industry, businesses, and any interested members of the public.

## The need for reform

Home Office minister Damian Green has said that the government's aim is to enact "modern affordable legislation that

provides a safety net for individuals and businesses with the most to lose, but the least capacity to afford insurance premiums".

However, many interested parties will be disappointed by the proposals, which seek to modernise the law but to limit the scope for large scale liability falling on the public purse in the event of future riots.

The government is also concerned to ensure that claims are assessed and resolved quickly. Many small businesses and individuals suffered unnecessary additional hardship through the delays and uncertainties arising from the claims process that was put in place to deal with the 2011 riots.

The consultation is largely based on the Kinghan report and seeks stakeholders' opinions on the proposed changes. The main proposals are outlined below.

## A cap

Peculiarly, the existing law predominantly benefits the insurance industry. A projected final sum of £100m in damages is to be reimbursed by the police in lieu of the 2011 riots, 90% of which is to be paid to

insurance companies. The Kinghan report questioned whether this arrangement was justifiable, given that the insurance companies had already received the benefit of people's premiums when taking on the



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liability to pay out policyholders. A cap has been recommended on the amounts that insurers can reclaim, suggesting a system based on annual turnover.

Kinghan suggested applying a simple monetary annual turnover threshold of £2m so that insurance companies would only be able to make a claim for reimbursement by proving that the business they had insured prior to the riot had an annual turnover of less than £2m per year. The government is minded to accept this proposal to protect small businesses, subject to the outcome of the consultation.

#### **Business losses**

The Kinghan report concluded that any reformed legislation should not provide for compensation in respect of consequential loss-business interruption claims.

However, *Mitsui Sumitomo Insurance Co (Europe) Ltd v Mayor's Office For Policing And Crime* [2014] EWCA Civ 682 found against the government in this respect, thus opening up the possibility of substantially increased claims in relation to the 2011 riots, even if new legislation excludes such claims for the future.

#### **The claims process**

On the all-important question of the claims process, the government favours a two-tier system: an initial claim would be put in within 42 days, followed by a fully completed claim within 90 days. It also proposes that claimants who have insurance claims repudiated would have a period of time after that repudiation to lodge their claim. The government appears neutral on the question as to whether interim payments should be made in

respect of claims, but it is consulting on that issue.

#### **A bureau**

The government is considering establishing a Riot Claims Bureau to be made up of loss adjusters to handle claims. Here it might also be sensible to consider establishing a mediation scheme as part of any Riot Claims Bureau providing third-party neutral involvement in the negotiation and settlement of the large numbers of claims that usually arise from city riots.

#### **And more...**

The consultation seeks modernisation of the definition of a "riot" to bring it in line with the definition in the Public Order Act 1986 ("1986 Act"). The existing definition in the 1886 Act is archaic and, when combined with the definition in the 1986 Act, is considered confusing.

Also proposed is that damage to motor vehicles should be covered (it is not at present) providing the claimant is the keeper of the vehicle and that they had, as a minimum, third-party insurance or complied with the rules with regard to off-road vehicles.

By way of clarification but clearly with a view to capping claims and minimising liability, the government is proposing that all compensation under the new law should remain on an indemnity basis and not be replaced by a "new-for-old" requirement. This may prolong the recovery time of businesses in possession of old or obsolete equipment.

#### **Time for a change**

The existing legislation is more than 125



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years old and, as evidenced by the 2011 riots, is clearly not fit for purpose today. It

“persons riotously and tumultuously assembled together” (section 2(1) of the 1886 Act

is understandable that the government would wish to limit public liability, but genuine and significant hardship is suffered by individuals’ small businesses following riots and insurance cover is often inadequate. This legislation should be seen as providing a safety net, particularly for those undergoing genuine hardship where insurance is unavailable or large excesses apply to insurance claims. It should not aim to provide cover equivalent to insurance cover where this is available.

Stakeholders should seriously consider responding to this consultation given that it represents a significant reduction in public liability in respect of riots, particularly in light of *Mitsui* clarifying that the present law does cover some claims for consequential loss.

*The consultation is available at [www.gov.uk/government/consultations/reform-of-the-riot-damages-act--2](http://www.gov.uk/government/consultations/reform-of-the-riot-damages-act--2)*

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