

**EXPLANATORY MEMORANDUM TO**  
**THE RIOT COMPENSATION REGULATIONS 2017**

**2017 No. 371**

**1. Introduction**

This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 The Riot Compensation Act 2016 (“the Act”) repeals and replaces the Riot (Damages) Act 1886 (“the 1886 Act”). It makes provision about the types of claims, procedures, decision-making and limits on compensation payable under a new compensation regime for property damaged, destroyed or stolen in the course of riots. The Riot Compensation Regulations 2017 (“the Regulations”) are required for the effective implementation of the Act because they set out the procedure and bases for making claims under the Act and for the handling of claims and decision-making by claims authorities.

2.2 The Regulations also amend section 2(3) of the Act to extend provision to allow riot compensation claims to be made for the contents used in connection with a business of qualifying motor vehicles and their trailers and other attachable devices.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

3.1 None.

*Other matters of interest to the House of Commons*

3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

**4. Legislative Context**

4.1 The Regulations are necessary to support the implementation of the main provisions of the Act, notably by setting out the claims procedure. The Act is commenced on 6th April 2017 by the Riot Compensation Act 2016 (Commencement) Regulations 2017 except for sections 11 and 12 (which were commenced on 23rd March 2016, the day on which the Act was passed).

4.2 Although sections 5 and 6 come into force on 6th April 2017 (along with the other provisions of the Act not already in force), separate Regulations will be prepared to provide for the creation of a riot claims bureau under section 6 of the Act. These will be prepared in readiness to be laid before Parliament if necessary in the event of widespread riots necessitating the creation of a riot claims bureau.

4.3 The Regulations also deliver a number of commitments that were made during the passage of the Act. During Second Reading in the House of Commons [Hansard Volume 603 No.82. Column 614], the sponsoring MP Mike Wood stated that

flexibility would be provided in regulations over the time limits for submitting claims and evidence. Mike Wood MP also stated that new-for-old replacements would be offered to allow people in the majority of circumstances to replace their property in full where they have suffered damage which they are able to claim compensation for under the Act.

- 4.4 Accordingly, the Regulations provide flexibility on time limits (regulation 6(3) and (4)) by allowing the ordinary time limits to be disregarded where there are health, personal circumstances, other circumstances beyond a claimant's control or legal considerations that may delay notification of a claim or the submission of details or evidence (or both) relating to the claim.
- 4.5 The policy statement in the House of Commons on new-for-old replacements is implemented by regulations 8 to 12 which allow for replacements to be made for most qualifying property with the exception of motor vehicles, business stock and second-hand stock where either the depreciative value (for motor vehicles) or replacement value (for stock) will be granted. This is to ensure that the Act does not offer more generous settlements than a claimant would normally receive from an insurance policy.
- 4.6 At House of Commons Committee Stage, the then Policing Minister, the Rt Hon Mike Penning MP, made a commitment to include in regulations a provision that charitable payments would not be deducted from riot compensation claims [Hansard PBC (Bill 013) 2015 – 2016]. Regulation 14 therefore only provides that payments provided out of public funds, such as from a local authority, may be deducted. For a payment out of public funds to be deductible, it must be for the same purpose as a claim under the Act (so, for example, payments provided out of other public funds for consequential losses will not be deductible as such losses are not covered by the Act).
- 4.7 At Commons Report, an amendment, introduced by the sponsoring MP Mike Wood, was passed to introduce temporary accommodation payments for householders whose homes are left uninhabitable by a riot. Mike Wood MP committed to providing the detail of this in regulations. Regulation 15 specifies more detailed qualifying criteria including a time limit of 132 days for such payments and that claimants may be paid for the reasonable costs of and directly relating to the provision of alternative accommodation.

## **5. Extent and Territorial Application**

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is England and Wales.

## **6. European Convention on Human Rights**

- 6.1 The Minister for Policing and the Fire Service has made the following statement regarding Human Rights:

‘In my view the provisions of the Riot Compensation Regulations 2017 are compatible with the Convention rights.’

## 7. Policy background

### *What is being done and why*

- 7.1 At the time of the civil disturbances of August 2011, the 1886 Act governed riot compensation arrangements. Around 4,500 claims were made for riot compensation following those civil disturbances with around £110m being paid out from the public purse. The majority of businesses and individuals who suffered losses were covered by insurance policies. Over 500 claims were made under the 1886 Act from those who were uninsured or underinsured. The number of claimants without insurance suggested that there remained a rationale for a riot compensation scheme. However, the experience of the riots of 2011 also demonstrated a number of areas where there was a clear case for reform of the 1886 Act.
- 7.2 The 1886 Act had not been subject to any substantial revision since its introduction. The experience of the 2011 riots and subsequent litigation (alongside a review and consultation) led the Government to conclude that the archaic language and outdated provisions of the 1886 Act contributed to uncertainty around entitlements to compensation both for the public and for the claims authorities who were responsible for determining cases. Examples of this included the lack of clarity over the definition to be applied to a riot with claims authorities having to draw on provisions from both the 1886 Act and section 1 of the Public Order Act 1986, which led to inconsistencies in decision-making. Also, the time limit of 42 days that was provided for claims information to be submitted was recognised to be far too short for most claimants. Further, the lack of clarity over whether consequential losses were included led to expensive litigation with significant costs coming out of the public purse.
- 7.3 A further issue with the 1886 Act is that it placed unlimited liability on the public purse, which led to some multi-million pound claims from insurers being met ultimately through central Government. Following a review and consultation process, the Government concluded that there is a clear need to limit high value claims in future whilst providing better protection for smaller businesses and households, which is achieved through the Act (which caps claims at £1m) and the Regulations (which sets out a policy of providing new-for-old replacements).
- 7.4 The Act repeals the 1886 Act and provides legislation that is more clear, transparent and fit for modern-day needs. The Regulations provide further detailed technical requirements to ensure that claims authorities can properly process cases.
- 7.5 Paragraphs 7.6 to 7.18 below outline how the Regulations support the Act and how they help fulfil the Government's policy intention to provide a legislative framework for riot compensation that is fit for modern times.
- 7.6 Regulations 3 and 4 provide detail on where two or more persons may make separate claims in respect of the same property and the circumstances under which claims should be consolidated. This technical clarity is important as it impacts on how the £1m compensation cap, which the Government committed to in its Response to the Consultation (published in March 2015), is applied when there are multiple individuals or businesses who have an interest in the same property. The Regulations provide detail to support section 3(2) of the Act and allow multiple claims to be made in respect of the same property in the majority of circumstances, providing there is no duplication between claims, which will potentially benefit claimants under the Act.

- 7.7 Regulations 5 to 7 set out further detail on the process for making a claim under section 3, including the time limits for making a claim and submitting evidence. The provisions give effect to the policy intent set out in both the Response to the Consultation and at Second Reading (referred to also at paragraphs 4.4 to 4.5 above) to provide flexibility to submit late applications and evidence in particular circumstances.
- 7.8 Regulation 8 provides the legal mechanism to outsource claims handling or making decisions on claims (or both). This takes forward a suggestion made by several parties at the consultation stage and will allow claims authorities to bring in loss adjusting and claims handling expertise in order to streamline the process.
- 7.9 Regulations 9 to 12 set out the bases of compensation to be given to uninsured claimants and insurance companies (see paragraphs 4.4 and 4.6 above for detail). This fulfils the Government's commitment made in the Response to the Consultation to provide new-for-old replacements in the majority of circumstances (except for motor vehicles, business stock and second-hand stock).
- 7.10 Regulation 13 provides detail giving practical effect to the enabling provision in section 3(3)(e) of the Act which allows claims authorities to consider new details or evidence (or both) put forward in respect of a claim already determined and to make payments or further payments if the Claims Authority considers it appropriate. This point of detail in deciding claims arose since the Response to the Consultation but has been included in order to ensure that the legislation is flexible enough to deal with such a scenario. This was also discussed with police and insurance stakeholders prior to First Reading of the Bill in the Commons.
- 7.11 Regulation 14 provides that payments from public funds (unless they are loans) are deductible from riot compensation payments where an individual or business has sought recompense under the Act for the same purpose. It fulfils a commitment made in the Response to the Consultation and at Commons Committee to ensure that donations from private sources and charities will not be deducted from payments made under the Act (see paragraph 4.7 above for detail).
- 7.12 Regulation 15 makes detailed provision in relation to temporary accommodation payments under section 8(3) and (4)(b) of the Act (see paragraph 4.7 above for detail).
- 7.13 Regulations 16 and 17 deal with the effect of a claimant's conduct and fraud providing further detail to give effect to section 8(6) of the Act. The policy intention is to ensure that there are appropriate safeguards that allow a Claims Authority to refuse or reduce compensation where there is evidence of fraud, complicit behaviour (for example, a claimant deliberately aiding rioters to steal the claimant's property) or indirect contribution to the loss etc of property (for example, where the premises were insecure). This reflects the position under the 1886 Act, whereby the claimant's conduct can be taken into account.
- 7.14 Regulation 18 sets out some further considerations in the provision of compensation permits a Claims Authority to pay a claimant's reasonable costs and expenses where it has requested information from the claimant and to deduct an excess to help cover the costs of administering claims.
- 7.15 Regulations 19 and 20 permit a Claims Authority to make interim payments, payments by instalments or pay repairers directly. These measures are referenced in section 8(7) of the Act, and are intended to help business and individuals replace or

repair property quickly. The intention to make provision for this was covered in the consultation and Response to the Consultation.

- 7.16 Regulation 21 sets out requirements that a Claims Authority must fulfil when notifying a claimant of a decision. It imposes requirements on a Claims Authority to ensure that claimants are informed of the outcome of their case, and are notified appropriately of their rights to a review of and appeal against any decision (except decisions relating only to the timing of payments i.e. decisions to provide for interim payments or payments by instalments).
- 7.17 Regulations 22 to 24 outline the process for applying firstly for a review of relevant decisions and then an appeal to the Upper Tier Tribunal if a claimant remains dissatisfied with the decision on the review of their claim. These regulations fulfil the policy intention set out in section 9 of the Act to provide a right of review and appeal, which was formally referenced by the previous Immigration Minister during Second Reading in the Commons.

### *Consolidation*

- 7.18 The Regulations do not amend any existing instrument.

## **8. Consultation outcome**

- 8.1 The Government developed the policy behind the Act through a two-stage process. First, the Government commissioned an independent review of the arrangements under the 1886 Act<sup>1</sup>. Following the completion of that review, a nine-week public consultation was held between 5 June and 1 August 2014 on the reform of the 1886 Act<sup>2</sup> and the Government provided its response on 12 March 2015<sup>3</sup>. Fifty-three responses were received to the consultation covering a wide range of stakeholders including various police forces, insurers, loss adjusters, brokers and business umbrella groups. The consultation covered all the key policy points raised by the measures in both the Act and the Regulations (with two exceptions explained at paragraph 8.2 below).
- 8.2 The first exception is temporary accommodation payments. Provision for these was introduced into the Act by amendment (see paragraph 4.7 for more detail). The second exception is the commitment made to amend section 2(3) of the Act through regulations to extend provision to allow claims for the contents used in connection with a business of qualifying motor vehicles and their trailers or other attachable devices.
- 8.3 Given the previous public consultation process, the Government's response (which is very closely reflected in the Regulations) and the fact that the Regulations largely set out detailed technical requirements as to how claims are processed, no further public consultation has been carried out.
- 8.4 The Home Office has taken views from two key groups of stakeholders in relation to the Regulations. In December 2016, we consulted with large police forces involved in

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<sup>1</sup> <https://www.gov.uk/government/publications/riot-damages-act-independent-review>

<sup>2</sup>

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/316706/ReformRiotDamagesActConsult.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/316706/ReformRiotDamagesActConsult.pdf)

<sup>3</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/411407/riot-damages-consultation-response.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/411407/riot-damages-consultation-response.pdf)

the 2011 riots and representatives of the National Police Chief's Council. In January 2017, we consulted with the Association of British Insurers and large insurance companies. There were no objections to the points to be covered in the Regulations. However, the discussion with insurance stakeholders did help refine the approach taken in the Regulations in relation to claims in respect of the common parts of a building (regulation 3(2)) and a situation where an insurer might be covering two different parties with an interest in the same property.

## **9. Guidance**

- 9.1 Guidance for authorities who will handle and make decisions on claims has been prepared by the Home Office in collaboration with the insurance industry and copies will be placed in the libraries of both Houses.
- 9.2 Further guidance for the public on rights and entitlements under the Act and the Regulations has also been prepared and copies will be placed in the libraries of both Houses.

## **10. Impact**

- 10.1 The impact on business, charities or voluntary bodies is £32m over a ten year period. However this can be partially offset by benefits of around £12.3m
- 10.2 The impact on the public sector is £12.5m over ten years. However over the same period there is a benefit to the public sector of £32.6m.
- 10.3 The figures in the Impact Assessment are based on there being a major and minor riot within that time and are provided for illustrative purposes. Major civil disturbance often occur far less frequently.
- 10.4 An Impact Assessment is submitted with this memorandum and is published alongside the Explanatory Memorandum on the legislation.gov.uk website. This is based on the Impact Assessment published alongside the Act on the legislation.gov.uk website but has been updated to take account of inflation and an additional negligible additional impact on claims authorities due to the introduction of temporary accommodation payments of £200,000 over 10 years (again only if there is a major civil disturbance).

## **11. Regulating small business**

The legislation does not apply to activities that are undertaken by small businesses (save in so far as it provides for financial assistance to small businesses in the circumstances that they suffer relevant damage or loss in a riot).

**12. Monitoring & review**

13. As the Regulations only make provision in connection with the giving of financial assistance by or on behalf of a public authority, they are exempt under section 28(3)(c) of the Small Business, Enterprise and Employment Act 2015 (c. 26) from the requirement to include a review provision.
14. The Act, in accordance with Cabinet Office guidelines, will be reviewed within five years of its commencement (6 April 2017) and it is anticipated that the Regulations will be considered in the context of that review.

**15. Contact**

Kevin Finch at the Home Office Telephone: 0207 035 3117 or email: kevin.finch@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.