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RIOT COMPENSATION BILL

I am writing following Second Reading of the Riot Compensation Bill on 26 February to explain the Government's position on the key issues you raised during the debate.

The Second Reading debate was very positive. I greatly appreciate the expertise and thoughtfulness of your contribution and those of other Peers. I believe that the debate reflected the important principle that current riot compensation arrangements do need to be improved and modernised, maintaining a safety net for the most vulnerable members of society.

I am grateful to you for your observation that this is a welcome reform of a very odd area of English law. You did though go on to raise concerns that this Bill may perpetuate an anomaly in relation to the police being held strictly liable for riots and there being no other comparable compensation schemes for events such as flooding or an epidemic.

After the 2011 riots, the Government concluded that a thorough, independent review of this area of law was needed. I am grateful to the independent reviewer, Neil Kinghan, for his excellent work. He considered the rationale for retaining the Act and spoke to a wide range of stakeholders including insurers, businesses, local authorities and the police. He looked at the issue of there being no comparable schemes for flooding or other types of crime. He concluded that the underlying principle behind the Riot (Damages) Act 1886 ('the 1886 Act') - namely that the police are responsible for maintaining law and order and should be held to account if this breaks down resulting in a riot - remains just as valid today.

The independent reviewer also considered the social and economic impacts of abolishing the 1886 Act and putting nothing in its place. The Government agrees with the conclusion of the independent reviewer that had the Act not been in place in 2011 hundreds of people would have found it much more

difficult to recover from the impacts of the riot, for example not being able to replace possessions or afford new stock. The Government therefore believes there is a strong case for retaining this safety net, while improving the legislation to ensure that there is a modern system which does not place an unlimited liability on the public purse. I very much welcome the broad cross-party support in both Houses for this approach during the passage of the Bill thus far.

You also mentioned that the Bill retains the right of insurance companies to claim compensation for sums they have paid out for riot damage, despite them charging premiums to cover that risk. Again this was a point considered carefully by the independent reviewer who found that withdrawing the right to subrogate claims would risk small businesses not being able to secure insurance at affordable rates in the most affected areas.

You also asked whether there is hard evidence of people being unable to obtain insurance against riot damages. I replied in my closing speech that people have been able to obtain insurance. However in the aftermath of August 2011, as referenced in the independent review, we are aware that in certain areas, such as Tottenham, premiums did increase.

The Government believes there is a difficult balance to be struck on the issue of allowing subrogated claims. Overall, we agree with the view of the independent reviewer to retain this provision, to avoid making insurance less available and affordable for small businesses and individuals, while capping the level that can be claimed in order to limit liability on the public purse.

You raised a point about why we are not extending the Bill to cover loss of or damage to property on a highway (such as theft of a computer from an individual), which the Act 1886 does not cover either. Our starting point is that providing compensation for riot damage is a safety net rather than a replacement for insurance cover, which should be affordable. The Bill proposes only very limited additions to the cover provided by the current Act in respect of losses incurred on public land by allowing for claims in relation to vehicles where the owner has only third party insurance. During Committee in the House of Commons, and in a subsequent letter from the Policing Minister to the Chair, we also undertook to cover mobile businesses (i.e. tools in a vehicle) through amending regulations and will be giving further consideration to whether this should also extend to personal property within vehicles.

I believe that it is reasonable for the Bill to set out sensible restrictions on the scope of riot compensation, notably not allowing most elements of consequential loss and capping payments. Further, this is balanced by generous provisions in relation to 'new for old' and our intention to make it clear in regulations that multiple claims (of up to £1m each) may be made by a single person in certain circumstances (for instance to recover both the costs of external damage to a building as well as the loss of goods inside).

You further referred to clause 8(3) and suggested that more detail around considerations and factors to be taken into account when deciding a claim could be set out in primary legislation. It is possible that you were referring to the Bill as introduced in the House of Commons, and to relevant provisions that are now set out in clause 8(4). However, I do believe that such detail is best left to regulations as this ensures a suitable level of flexibility. For instance, clause 8(4)(a) refers to the basis for compensation. The Government has made clear in the response to the consultation and during debate in the House of Commons that the Bill will allow for claims to be made on a new-for-old basis. However, regulations will set out areas where this will not be the case, for example on cars where depreciative value will be paid. The intention here is to provide flexibility to ensure the Bill does not provide a more generous approach than insurance.

You also asked why the Bill provides for a route of appeal, beyond the possibility of judicial review. Our intention is to create an external administrative right of appeal rather than to the court directly, as under Section 4(1) of the 1886 Act. Although some cases arising from August 2011 were taken to court, the ability to take this action is beyond the financial reach of many individuals. The Government believes it is reasonable to enable the householders and small businesses who may particularly benefit from this safety net to have access to a right of appeal via the First Tier Tribunal, which they are more likely to be able to take advantage of than the judicial review process.

I hope this letter provides the reassurance and clarification you were seeking. I am copying this letter to other Peers who spoke during Second Reading and will place a copy in the House Library.

With best wishes,
M
Bates

Rt Hon Lord Bates