



**The Civil Liability Bill – Analysis on the application of Standing Order No. 83L of the Standing Orders of the House of Commons relating to Public Business in respect of Government amendments tabled for Report stage**

**Commons Report stage amendments**

1. The following is the Department’s assessment of the Bill and a government amendment to the Bill for consideration at Commons Report stage.

**Summary**

2. The Bill relates to civil personal injury claims under the law of tort and related damages of England and Wales. Part 1 concerns the claims process for those suffering from whiplash injuries. Part 2 makes provision regarding the personal injury discount rate. Part 3 contains general provisions that apply to the Bill.
3. Subject to certain minor and consequential exceptions (as detailed in Annex A to the explanatory notes and below), the provisions of the Bill extend and apply to England and Wales only as all the provisions of the Bill fall within the legislative competence of the Scottish Parliament and the Northern Ireland Assembly.
4. The one Government amendment tabled to the Bill neither alters the extent nor the territorial application of the Bill or the analysis at Annex A to the Explanatory Notes.<sup>1</sup>

The above assessment is presented in tabular form below.

<b>Provision</b>	<b>Extends to E &amp; W and applies to England?</b>	<b>Extends to E &amp; W and applies to Wales?</b>	<b>Extends and applies to Scotland?</b>	<b>Extends and applies to Northern Ireland?</b>	<b>Would corresponding provision be within the competence of the National Assembly for Wales?</b>	<b>Would corresponding provision be within the competence of the Scottish Parliament?</b>	<b>Would corresponding provision be within the competence of the Northern Ireland Assembly?</b>	<b>Legislative Consent Motion needed?</b>
<b>Part 1: Whiplash – Whiplash injuries</b>								

<sup>1</sup>Under Standing Order No. 83L the Speaker may have to re-certify each clause or schedule of the Bill and the Bill, and also to separately certify amendments that have the effect of changing the certification of a previously certified clause, Schedule or Bill. The summary paragraph and commentary should therefore consider the relevant amendments, as well as considering the latest version of the clauses, Schedules and Bill.

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Clauses 1-2	Yes	Yes	No	No	No	Yes	Yes	No
Part 1: Whiplash – Damages								
Clause 3-7	Yes	Yes	No	No	No	Yes	Yes	No
Part 1: Whiplash – Settlement of whiplash claims								
Clause 8	Yes	Yes	No	No	No	Yes	Yes	No
Part 1: Whiplash - Interpretation								
Clause 9	Yes	Yes	No	No	No	Yes	Yes	No
Part 2: Personal Injury Discount Rate								
Clause 10	Yes	Yes	No <sup>2</sup>	No <sup>3</sup>	No	Yes	Yes	No
Part 3: Final Provisions <sup>4</sup>								
Clause 11	Yes	Yes	No	No	No	No	No	No
Clause 12	Yes	Yes	No	No	No	Yes	Yes	No
Clause 13	Yes	Yes	No	No	No	Yes	Yes	No
Clause 14	Yes	Yes	No	No	No	Yes	Yes	No
Clause 15	Yes	Yes	No	No	No	Yes	Yes	No

<sup>2</sup> Other than certain minor consequential amendments made by clause 10(4)(b) and (c).

<sup>3</sup> Other than certain minor consequential amendments made by clause 10(4)(b) to (e).

<sup>4</sup> Part 3 extends to Scotland and to Northern Ireland, but only in consequence of the minor consequential amendments made by clause 10(4)(b) to (e).

## **Territorial Application**

5. Part 1 of the Bill concerns the claims process for those suffering from whiplash injuries under the law of England and Wales. Part 1:
  - (a) provides a definition of a whiplash injury along with a power to amend;
  - (b) provides a power to subject damages for pain, suffering and loss of amenity ("PSLA") for whiplash injuries to a tariff, to be set in regulations, subject to consultation with the Lord Chief Justice, which will be subject to triennial review;
  - (c) provides for a power to permit the courts to apply, in exceptional circumstances, an uplift to the damages specified in the tariff, and to prescribe, as a percentage of the tariff damages, the maximum amount of any uplift, the latter being subject to consultation with the Lord Chief Justice; and
  - (d) requires medical evidence to be obtained before whiplash claims are settled.
6. Clause 5 of the Bill provides for the power to permit the courts to apply an uplift to the damages specified in the tariff (set in regulations under clause 3). A minor drafting amendment, tabled to clause 5(7)(a), corrects an earlier omission by inserting the words "or injuries" to reflect the fact that the amount specified in the tariff may relate to two or more injuries, as well as a single injury.
7. Part 2 makes provision regarding the personal injury discount rate applicable to damages awarded in England and Wales for future economic loss. It introduces a requirement for regular reviews of the rate and specifies whom the Lord Chancellor, who sets the rate, must consult in conducting a review. It also changes, for the purpose of setting the rate, the level of risk that an investor of damages is assumed to be willing to take in investing his or her lump sum award of damages for future financial loss from "very low" to "low".
8. Part 3 contains general provisions that apply to the Bill: it makes the necessary legal provision for the short title of the Bill, the extent, orders, regulations and parliamentary procedures, and powers to make consequential, incidental etc provision.
9. A Government amendment made at Committee stage (clause 11) introduces powers for the Financial Conduct Authority to require insurers of customers domiciled in England and Wales to provide information concerning the impact of the Bill's provisions on insurance premiums in England and Wales and a requirement for HM Treasury, with the assistance of the Financial Conduct Authority ("FCA"), to lay before Parliament a report concerning the information provided.
10. With the exception of minor consequential amendments made by clause 10(4)(b) to (e) and clause 11(10), the Bill extends and applies only to England and Wales. The Government amendment tabled at Report does not alter this assessment.

## **Minor or consequential effects**

11. Clause 10(4)(b) to (e) makes minor consequential amendments to the Damages Act 1996. The amendments amend the Damages Act 1996 by renaming "the Schedule" as "Schedule

1". This change extends to the whole of the United Kingdom, save where the provision in the 1996 Act being amended does not extend to Scotland (Clause 12 (2)).

12. Clause 11(10) makes a consequential amendment to the Financial Services and Markets Act 2000 to enable the FCA to use its powers under that Act to compel the provision of specified information from insurers. The Financial Services and Markets Act 2000 extends to the whole of the United Kingdom, although the requirement to provide information only attaches to those policies sold to customers domiciled in England and Wales.

13. Part 3 extends to Scotland and Northern Ireland only because those minor consequential amendments so extend, and its effect is limited to those amendments, so that it is itself only of minor or consequential effect.

### **Legislative Competence**

14. The Bill's provisions concern the law of tort in England and Wales and awards of damages in such claims. In relation to Wales, this is reserved to the UK Government under paragraph 8 of Schedule 7A to the Government of Wales Act 2006 (as amended by the Wales Act 2017). In relation to Scotland, this is not reserved to the UK Government under the Scotland Act 1998 (Schedule 5) and therefore falls within the legislative competence of the Scottish Parliament. In relation to Northern Ireland, this is not a reserved or excepted matter under the Northern Ireland Act 1998 (Schedules 2 and 3) and therefore falls within the legislative competence of the Northern Ireland Assembly.