

Civil Liability Bill [HL]

[AS AMENDED IN PUBLIC BILL COMMITTEE]

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[AS AMENDED IN PUBLIC BILL COMMITTEE]

TO

Make provision about whiplash claims and the personal injury discount rate.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

WHIPLASH

Whiplash injuries

1 “Whiplash injury” etc

- (1) In this Part “whiplash injury” means an injury of soft tissue in the neck, back or shoulder that is of a description falling within subsection (2), but not including an injury excepted by subsection (3). 5
- (2) An injury falls within this subsection if it is—
- (a) a sprain, strain, tear, rupture or lesser damage of a muscle, tendon or ligament in the neck, back or shoulder, or 10
 - (b) an injury of soft tissue associated with a muscle, tendon or ligament in the neck, back or shoulder.
- (3) An injury is excepted by this subsection if—
- (a) it is an injury of soft tissue which is a part of or connected to another injury, and 15
 - (b) the other injury is not an injury of soft tissue in the neck, back or shoulder of a description falling within subsection (2).
- (4) For the purposes of this Part a person suffers a whiplash injury because of driver negligence if—
- (a) when the person suffers the injury, the person— 20

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- (i) is using a motor vehicle other than a motor cycle on a road or other public place in England or Wales, or
 - (ii) is being carried in or on a motor vehicle other than a motor cycle while another uses the vehicle on a road or other public place in England or Wales, 5
 - (b) the injury is caused –
 - (i) by the negligence of one or more other persons, or
 - (ii) partly by the negligence of one or more other persons and partly by the negligence of the person who suffers the injury, and
 - (c) the negligence of the other person or persons consists in an act or acts done by the person or persons while using a motor vehicle on a road or other public place in England or Wales. 10
- (5) The fact that the act or acts constituting the negligence of the other person or persons is or are also sufficient to establish another cause of action does not prevent subsection (4)(b) being satisfied. 15
- (6) For the purposes of this section references to a person being carried in or on a vehicle include references to a person entering or getting on to, or alighting from, the vehicle.
- (7) In this section –
- “act” includes omission; 20
 - “motor cycle” has the meaning given by section 185(1) of the Road Traffic Act 1988;
 - “motor vehicle” means a mechanically propelled vehicle intended or adapted for use on roads;
 - “road” means a highway or other road to which the public has access, and includes bridges over which a road passes. 25

2 Power to amend section 1

- (1) The Lord Chancellor may by regulations amend the definition of “whiplash injury” in section 1, but not so as to include an injury of soft tissue other than soft tissue in the neck, back or shoulder. 30
- (2) Before making regulations under subsection (1), the Lord Chancellor must –
- (a) review the definition of “whiplash injury” in section 1,
 - (b) as part of the review, consider whether to amend section 1,
 - (c) prepare and publish a report of the review, including a decision whether or not to amend section 1 and the reasons for the decision, and 35
 - (d) lay a copy of the report before Parliament.
- (3) After laying the copy of the report before Parliament and before making regulations under subsection (1), the Lord Chancellor must consult –
- (a) the Lord Chief Justice;
 - (b) the General Council of the Bar; 40
 - (c) the Law Society;
 - (d) the Chief Medical Officer of the Department of Health and Social Care;
 - (e) the member of staff of the Welsh Government designated by the Welsh Ministers as the Chief Medical Officer for Wales;
 - (f) such other persons or bodies as the Lord Chancellor considers 45 appropriate.

- (4) The Lord Chancellor may not carry out the first review under subsection (2) before the end of the period of three years beginning with the day on which section 1 comes into force.
- (5) After the first review, the Lord Chancellor may not carry out a review under subsection (2) before the end of the period of three years beginning with—
 - (a) if regulations under subsection (1) were made following the previous review, the day on which those regulations came into force, or
 - (b) if no regulations under subsection (1) were made following the previous review, the day on which a copy of the report of the previous review was laid before Parliament.
- (6) A statutory instrument containing regulations under this section is subject to affirmative resolution procedure.

Damages

3 Damages for whiplash injuries

- (1) This section applies in relation to the determination by a court of damages for pain, suffering and loss of amenity in a case where—
 - (a) a person (“the claimant”) suffers a whiplash injury because of driver negligence, and
 - (b) the duration of the whiplash injury or any of the whiplash injuries suffered on that occasion—
 - (i) does not exceed, or is not likely to exceed, two years, or
 - (ii) would not have exceeded, or would not be likely to exceed, two years but for the claimant’s failure to take reasonable steps to mitigate its effect.
- (2) The amount of damages for pain, suffering and loss of amenity payable in respect of the whiplash injury or injuries, taken together, is to be an amount specified in regulations made by the Lord Chancellor.
- (3) If the claimant suffers one or more minor psychological injuries on the same occasion as the whiplash injury or injuries, the amount of damages for pain, suffering and loss of amenity payable in respect of the minor psychological injury or the minor psychological injuries, taken together, is to be an amount specified in regulations made by the Lord Chancellor.
- (4) If regulations made by the Lord Chancellor so provide, the amount of damages for pain, suffering and loss of amenity payable in respect of—
 - (a) the whiplash injury or injuries, and
 - (b) a minor psychological injury or injuries suffered by the claimant on the same occasion as the whiplash injury or injuries,taken together, is to be an amount specified in regulations made by the Lord Chancellor (notwithstanding subsections (2) and (3)).
- (5) Regulations under this section may in particular—
 - (a) specify different amounts in respect of different durations of injury;
 - (b) specify amounts in respect of minor psychological injuries by reference to the duration of the related whiplash injury or injuries.

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- (6) Regulations under this section may provide for a person to be treated as if the person had taken reasonable steps to mitigate the effect of the person’s whiplash injury or minor psychological injury.
- (7) Regulations under this section amending or replacing earlier regulations may increase or reduce amounts payable in respect of injuries. 5
- (8) Nothing in this section prevents a court, in a case where a person suffers an injury or injuries in addition to an injury or injuries to which regulations under this section apply, awarding an amount of damages for pain, suffering and loss of amenity that reflects the combined effect of the person’s injuries (subject to the limits imposed by regulations under this section). 10
- (9) Nothing in this section prevents the amount of damages payable being reduced by virtue of section 1 of the Law Reform (Contributory Negligence) Act 1945.
- (10) This section does not apply in relation to damages payable by a person because of the person’s breach of the duty under section 143(1)(b) of the Road Traffic Act 1988 (duty not to cause or permit any other person to drive without insurance or security in respect of third party risks). 15
- (11) The Lord Chancellor must consult the Lord Chief Justice before making regulations under this section.
- (12) A statutory instrument containing regulations under this section is subject to affirmative resolution procedure. 20
- 4 Review of regulations under section 3**
- (1) The Lord Chancellor must carry out reviews of regulations made under section 3.
- (2) The first review must be completed before the end of the period of three years beginning with the day on which the first regulations under section 3 come into force. 25
- (3) Subsequent reviews must be completed before the end of the period of three years beginning with the day on which the previous review was completed.
- (4) The Lord Chancellor must prepare and publish a report of each review. 30
- (5) The Lord Chancellor must lay a copy of each report before Parliament.
- 5 Uplift in exceptional circumstances**
- (1) Regulations made by the Lord Chancellor may provide for a court—
- (a) to determine that the amount of damages payable for pain, suffering and loss of amenity in respect of one or more whiplash injuries is an amount greater than the tariff amount relating to that injury or those injuries; 35
- (b) to determine that the amount of damages payable for pain, suffering and loss of amenity in respect of one or more whiplash injuries and one or more minor psychological injuries, taken together, is an amount greater than the tariff amount relating to those injuries; 40
- (c) in a case where the court considers the combined effect of—

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- (i) an injury or injuries in respect of which a tariff amount is specified by regulations under section 3(2) or (4), and
- (ii) one or more other injuries,
- to determine that an amount greater than the tariff amount is to be taken into account when deciding the amount of damages payable for pain, suffering and loss of amenity in respect of the injuries mentioned in sub-paragraphs (i) and (ii). 5
- (2) The regulations may require a court to be satisfied, before making the determination mentioned in subsection (1)(a), (b) or (c), that –
- (a) the degree of pain, suffering or loss of amenity caused by the whiplash injury or injuries in question makes it appropriate to use the greater amount, and 10
- (b) it is the case that –
- (i) the whiplash injury is, or one or more of the whiplash injuries are, exceptionally severe, or 15
- (ii) where the person’s circumstances increase the pain, suffering or loss of amenity caused by the injury or injuries, those circumstances are exceptional.
- (3) The regulations must specify the maximum percentage by which the greater amount mentioned in subsection (1)(a), (b) or (c) may exceed the relevant tariff amount. 20
- (4) Regulations under this section amending or replacing earlier regulations may increase or reduce the maximum percentage.
- (5) The Lord Chancellor must consult the Lord Chief Justice before making regulations under this section. 25
- (6) A statutory instrument containing regulations under this section is subject to affirmative resolution procedure.
- (7) In this section “tariff amount” means –
- (a) in relation to one or more whiplash injuries, the amount specified in respect of the injury by regulations under section 3(2); 30
- (b) in relation to one or more whiplash injuries and one or more minor psychological injuries, the amount specified in respect of the injuries by regulations under section 3(4).
- 6 Rules against settlement before medical report**
- (1) A regulated person is in breach of this section if – 35
- (a) the regulated person knows or has reason to suspect that a whiplash claim is being made,
- (b) the regulated person does, or arranges or advises the doing of, an act mentioned in subsection (2), without first seeing appropriate evidence of the whiplash injury or injuries, and 40
- (c) the regulated person is acting as such when the regulated person does, or arranges or advises the doing of, that act.
- (2) The acts referred to in subsection (1) are –
- (a) inviting a person to offer a payment in settlement of the claim;
- (b) offering a payment in settlement of the claim; 45
- (c) making a payment in settlement of the claim;

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- (d) accepting a payment in settlement of the claim.
- (3) The Lord Chancellor may by regulations make provision about what constitutes appropriate evidence of an injury for the purposes of this section.
- (4) The regulations may in particular –
- (a) specify the form of any evidence of an injury; 5
 - (b) specify the descriptions of persons who may provide evidence of an injury;
 - (c) require persons to be accredited for the purpose of providing evidence of an injury;
 - (d) make provision about accrediting persons, including provision for a person to be accredited by a body specified in the regulations. 10
- (5) A statutory instrument containing regulations under this section is subject to affirmative resolution procedure.
- (6) In this section “whiplash claim” means a claim that consists only of, or so much of a claim as consists of, a claim for damages for pain, suffering and loss of amenity caused by –
- (a) one or more whiplash injuries suffered by a person on a particular occasion because of driver negligence and in relation to which section 3 applies, or
 - (b) a whiplash injury or injuries within paragraph (a) suffered by a person on a particular occasion and one or more minor psychological injuries suffered by the person on the same occasion as the whiplash injury or injuries. 15 20
- 7 Effect of rules against settlement before medical report**
- (1) The relevant regulator must ensure that it has appropriate arrangements for monitoring and enforcing compliance with the restrictions imposed on regulated persons by section 6. 25
- (2) The relevant regulator may make rules for the purposes of subsection (1).
- (3) The rules may in particular provide that, in relation to anything done in breach of section 6, the relevant regulator may exercise any powers that the regulator would have in relation to anything done by the regulated person in breach of another restriction (subject to subsections (5) and (6)). 30
- (4) Where the relevant regulator is the Financial Conduct Authority, section 8 applies instead of subsections (1) to (3).
- (5) A breach of section 6 – 35
- (a) does not make a person guilty of an offence, and
 - (b) does not give rise to a right of action for breach of statutory duty.
- (6) A breach of section 6 does not make an agreement to settle the whiplash claim in question void or unenforceable.

Settlement of whiplash claims

8 Regulation by the Financial Conduct Authority

- (1) The Treasury may make regulations to enable the Financial Conduct Authority, where it is the relevant regulator, to take action for monitoring and enforcing compliance with the restrictions imposed on regulated persons by section 6. 5
- (2) The regulations may apply, or make provision corresponding to, any of the provisions of the Financial Services and Markets Act 2000 with or without modification.
- (3) Those provisions include in particular – 10
- (a) provisions as to investigations, including powers of entry and search and criminal offences;
 - (b) provisions for the grant of an injunction in relation to a contravention or anticipated contravention;
 - (c) provisions giving Ministers or the Financial Conduct Authority powers to make subordinate legislation; 15
 - (d) provisions for the Financial Conduct Authority to charge fees.
- (4) The power to make regulations under this section may not be used to make provision inconsistent with section 7(5) and (6).
- (5) A statutory instrument containing regulations under this section is subject to affirmative resolution procedure. 20

Interpretation

9 Interpretation

- (1) For the purposes of this Part, in relation to an act mentioned in section 6(2), a regulator listed in the first column is the relevant regulator in relation to the regulated person listed in the corresponding entry in the second column. 25

<i>Regulator</i>	<i>Regulated person</i>	
The Financial Conduct Authority	An authorised person (within the meaning of the Financial Services and Markets Act 2000) of a description specified in regulations made by the Treasury	30
The Claims Management Regulator	A person authorised by the Regulator under section 5(1)(a) of the Compensation Act 2006 to provide regulated claims management services	35
The General Council of the Bar	A person authorised by the Council to carry on a reserved legal activity within the meaning of the Legal Services Act 2007	40

<i>Regulator</i>	<i>Regulated person</i>	
The Law Society	A person authorised by the Society to carry on a reserved legal activity within the meaning of the Legal Services Act 2007	5
The Chartered Institute of Legal Executives	A person authorised by the Institute to carry on a reserved legal activity within the meaning of the Legal Services Act 2007	
A licensing authority for the purposes of Part 5 of the Legal Services Act 2007 (alternative business structures)	A person who is— (a) licensed by the authority to carry on a reserved legal activity within the meaning of the Legal Services Act 2007, and (b) of a description specified in regulations made by the Lord Chancellor	10 15
A regulatory body specified for the purposes of this subsection in regulations made by the Lord Chancellor	A person of a description specified in the regulations in relation to the body	20
(2) A statutory instrument containing regulations under subsection (1) is subject to negative resolution procedure.		
(3) In this Part— (a) a reference to making a claim against a person includes a reference to notifying a person of the basis of a claim; (b) a reference to making a payment to a person includes a reference to conferring a benefit on a person or a third party.		25
(4) In this Part— “benefit” means— (a) any benefit, whether or not in money or other property and whether temporary or permanent, and (b) any opportunity to obtain a benefit; “claim” includes counter-claim; “whiplash claim” has the meaning given by section 6(6).		30 35

PART 2

PERSONAL INJURY DISCOUNT RATE

10 Assumed rate of return on investment of damages

- (1) Before section 1 of the Damages Act 1996 (assumed rate of return on 40

investment of damages) insert –

“A1 Assumed rate of return on investment of damages: England and Wales

- (1) In determining the return to be expected from the investment of a sum awarded as damages for future pecuniary loss in an action for personal injury the court must, subject to and in accordance with rules of court made for the purposes of this section, take into account such rate of return (if any) as may from time to time be prescribed by an order made by the Lord Chancellor. 5
 - (2) Subsection (1) does not however prevent the court taking a different rate of return into account if any party to the proceedings shows that it is more appropriate in the case in question. 10
 - (3) An order under subsection (1) may prescribe different rates of return for different classes of case.
 - (4) An order under subsection (1) may in particular distinguish between classes of case by reference to – 15
 - (a) the description of future pecuniary loss involved;
 - (b) the length of the period during which future pecuniary loss is expected to occur;
 - (c) the time when future pecuniary loss is expected to occur.
 - (5) Schedule A1 (which makes provision about determining the rate of return to be prescribed by an order under subsection (1)) has effect. 20
 - (6) An order under this section is to be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.”
- (2) Before the Schedule to the Damages Act 1996 insert – 25

“SCHEDULE A1

ASSUMED RATE OF RETURN ON INVESTMENT OF DAMAGES: ENGLAND AND WALES

Periodic reviews of the rate of return

- 1 (1) The Lord Chancellor must review the rate of return periodically in accordance with this paragraph. 30
 - (2) The first review of the rate of return must be started within the 90 day period following commencement.
 - (3) Each subsequent review of the rate of return must be started within the 5 year period following the last review.
 - (4) It is for the Lord Chancellor to decide – 35
 - (a) when, within the 90 day period following commencement, a review under sub-paragraph (2) is to be started;
 - (b) when, within the 5 year period following the last review, a review under sub-paragraph (3) is to be started.
 - (5) In this paragraph – 40

“90 day period following commencement” means the period of 90 days beginning with the day on which this paragraph comes into force;

“5 year period following the last review” means the period of five years beginning with the day on which the last review under this paragraph (whether under sub-paragraph (2) or (3)) is concluded.

- (6) For the purposes of this paragraph a review is concluded on the day when the Lord Chancellor makes a determination under paragraph 2 or 3 (as the case may be) as a result of the review.

Conducting the first review

- 2 (1) This paragraph applies when the Lord Chancellor is required by paragraph 1(2) to conduct a review of the rate of return.
- (2) The Lord Chancellor must review the rate of return and determine whether it should be—
- (a) changed to a different rate, or
 - (b) kept unchanged.
- (3) The Lord Chancellor must conduct that review and make that determination within the 140 day review period.
- (4) In conducting the review, the Lord Chancellor must consult—
- (a) the Government Actuary, and
 - (b) the Treasury.
- (5) The consultation of the Government Actuary must start within the period of 20 days beginning with the day on which the 140 day review period starts.
- (6) The Government Actuary must respond to the consultation within the period of 80 days beginning with the day on which the Government Actuary’s response to the consultation is requested.
- (7) The exercise of the power of the Lord Chancellor under this paragraph to determine whether the rate of return should be changed or kept unchanged is subject to paragraph 4.
- (8) When deciding what response to give to the Lord Chancellor under this paragraph, the Government Actuary and the Treasury must take into account the duties imposed on the Lord Chancellor by paragraph 4.
- (9) During any period when the office of Government Actuary is vacant, a reference in this paragraph to the Government Actuary is to be read as a reference to the Deputy Government Actuary.
- (10) In this paragraph “140 day review period” means the period of 140 days beginning with the day which the Lord Chancellor decides (under paragraph 1) should be the day on which the review is to start.

Conducting later reviews

- 3 (1) This paragraph applies whenever the Lord Chancellor is required by paragraph 1(3) to conduct a review of the rate of return.
- (2) The Lord Chancellor must review the rate of return and determine whether it should be – 5
- (a) changed to a different rate, or
- (b) kept unchanged.
- (3) The Lord Chancellor must conduct that review and make that determination within the 180 day review period.
- (4) In conducting the review, the Lord Chancellor must consult – 10
- (a) the expert panel established for the review, and
- (b) the Treasury.
- (5) The expert panel must respond to the consultation within the period of 90 days beginning with the day on which its response to the consultation is requested. 15
- (6) The exercise of the power of the Lord Chancellor under this paragraph to determine whether the rate of return should be changed or kept unchanged is subject to paragraph 4.
- (7) When deciding what response to give to the Lord Chancellor under this paragraph, the expert panel and the Treasury must take into account the duties imposed on the Lord Chancellor by paragraph 4. 20
- (8) In this paragraph “180 day review period” means the period of 180 days beginning with the day which the Lord Chancellor decides (under paragraph 1) should be the day on which the review is to start. 25

Determining the rate of return

- 4 (1) The Lord Chancellor must comply with this paragraph when determining under paragraph 2 or 3 whether the rate of return should be changed or kept unchanged (“the rate determination”).
- (2) The Lord Chancellor must make the rate determination on the basis that the rate of return should be the rate that, in the opinion of the Lord Chancellor, a recipient of relevant damages could reasonably be expected to achieve if the recipient invested the relevant damages for the purpose of securing that – 30
- (a) the relevant damages would meet the losses and costs for which they are awarded; 35
- (b) the relevant damages would meet those losses and costs at the time or times when they fall to be met by the relevant damages; and
- (c) the relevant damages would be exhausted at the end of the period for which they are awarded. 40
- (3) In making the rate determination as required by sub-paragraph (2), the Lord Chancellor must make the following assumptions –

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- (a) the assumption that the relevant damages are payable in a lump sum (rather than under an order for periodical payments);
- (b) the assumption that the recipient of the relevant damages is properly advised on the investment of the relevant damages; 5
- (c) the assumption that the recipient of the relevant damages invests the relevant damages in a diversified portfolio of investments;
- (d) the assumption that the relevant damages are invested using an approach that involves – 10
- (i) more risk than a very low level of risk, but
- (ii) less risk than would ordinarily be accepted by a prudent and properly advised individual investor who has different financial aims.
- (4) That does not limit the assumptions which the Lord Chancellor may make. 15
- (5) In making the rate determination as required by sub-paragraph (2), the Lord Chancellor must –
- (a) have regard to the actual returns that are available to investors; 20
- (b) have regard to the actual investments made by investors of relevant damages; and
- (c) make such allowances for taxation, inflation and investment management costs as the Lord Chancellor thinks appropriate. 25
- (6) That does not limit the factors which may inform the Lord Chancellor when making the rate determination.
- (7) In this paragraph “relevant damages” means a sum awarded as damages for future pecuniary loss in an action for personal injury.
- Determination* 30
- 5 When the Lord Chancellor makes a rate determination, the Lord Chancellor must –
- (a) give reasons for the rate determination made, and
- (b) publish such information as the Lord Chancellor thinks appropriate about – 35
- (i) the response of the expert panel established for the review, or
- (ii) in the case of a review required by paragraph 1(2), the response of the Government Actuary or the Deputy Government Actuary (as the case may be). 40
- Expert panel*
- 6 (1) For each review of a rate of return required by paragraph 1(3), the Lord Chancellor is to establish a panel (referred to in this Schedule as an “expert panel”) consisting of –
- (a) the Government Actuary, who is to chair the panel; and 45
- (b) four other members appointed by the Lord Chancellor.

- (2) The Lord Chancellor must exercise the power to appoint the appointed members to secure that—
 - (a) one appointed member has experience as an actuary;
 - (b) one appointed member has experience of managing investments; 5
 - (c) one appointed member has experience as an economist;
 - (d) one appointed member has experience in consumer matters as relating to investments.
- (3) An expert panel established for a review of a rate of return ceases to exist once it has responded to the consultation relating to the review. 10
- (4) A person may be a member of more than one expert panel at any one time.
- (5) A person may not become an appointed member if the person is ineligible for membership.
- (6) A person who is an appointed member ceases to be a member if the person becomes ineligible for membership. 15
- (7) The Lord Chancellor may end an appointed member’s membership of the panel if the Lord Chancellor is satisfied that—
 - (a) the person is unable or unwilling to take part in the panel’s activities on a review conducted under paragraph 1; 20
 - (b) it is no longer appropriate for the person to be a member of the panel because of gross misconduct or impropriety;
 - (c) the person has become bankrupt, a debt relief order (under Part 7A of the Insolvency Act 1986) has been made in respect of the person, the person’s estate has been sequestrated or the person has made an arrangement with or granted a trust deed for creditors. 25
- (8) During any period when the office of Government Actuary is vacant the Deputy Government Actuary is to be a member of the panel and is to chair it. 30
- (9) A person is “ineligible for membership” of an expert panel if the person is—
 - (a) a Minister of the Crown, or
 - (b) a person serving in a government department in employment in respect of which remuneration is payable out of money provided by Parliament. 35
- (10) In this paragraph “appointed member” means a person appointed by the Lord Chancellor to be a member of an expert panel.

Proceedings, powers and funding of an expert panel

- 7 (1) The quorum of an expert panel is four members, one of whom must be the Government Actuary (or the Deputy Government Actuary when the office of Government Actuary is vacant). 40
- (2) In the event of a tied vote on any decision, the person chairing the panel is to have a second casting vote.
- (3) The panel may— 45

- (a) invite other persons to attend, or to attend and speak at, any meeting of the panel;
 - (b) when exercising any function, take into account information submitted by, or obtained from, any other person (whether or not the production of the information has been commissioned by the panel). 5
- (4) The Lord Chancellor must make arrangements for an expert panel to be provided with the resources which the Lord Chancellor considers to be appropriate for the panel to exercise its functions.
- (5) The Government Actuary’s Department, or any other government department, may enter into arrangements made by the Lord Chancellor under sub-paragraph (4). 10
- (6) The Lord Chancellor must make arrangements for the appointed members of an expert panel to be paid any remuneration and expenses which the Lord Chancellor considers to be appropriate. 15

Application of this Schedule where there are several rates of return

- 8 (1) This paragraph applies if two or more rates of return are prescribed under section A1.
- (2) The requirements –
- (a) under paragraph 1 for a review to be conducted, and 20
 - (b) under paragraph 2 or 3 relating to how a review is conducted, apply separately in relation to each rate of return.
- (3) As respects a review relating to a particular rate of return, a reference in this Schedule to the last review conducted under a particular provision is to be read as a reference to the last review relating to that rate of return. 25

Interpretation

- 9 (1) In this Schedule –
- “expert panel” means a panel established in accordance with paragraph 6; 30
 - “rate determination” has the meaning given by paragraph 4;
 - “rate of return” means a rate of return for the purposes of section A1.
- (2) A provision of this Schedule that refers to the rate of return being changed is to be read as also referring to – 35
- (a) the existing rate of return being replaced with no rate;
 - (b) a rate of return being introduced where there is no existing rate;
 - (c) the existing rate of return for a particular class of case being replaced with no rate; 40
 - (d) a rate of return being introduced for a particular class of case for which there is no existing rate.
- (3) A provision of this Schedule that refers to the rate of return being kept unchanged is to be read as also referring to –

- (a) the position that there is no rate of return being kept unchanged;
 - (b) the position that there is no rate of return for a particular class of case being kept unchanged.
- (4) A provision of this Schedule that refers to a review of the rate of return is to be read as also referring to –
 - (a) a review of the position that no rate of return is prescribed;
 - (b) a review of the position that no rate of return is prescribed for a particular class of case.”
- (3) Any order made by the Lord Chancellor under section 1(1) of the Damages Act 1996 which relates to England and Wales and is in force immediately before the time when subsection (1) comes into force is to be treated after that time as if made by the Lord Chancellor under section A1(1) of that Act.
- (4) In consequence of the amendments made by subsections (1) and (2), the Damages Act 1996 is amended as follows –
 - (a) section 1 is omitted;
 - (b) in section 2(4)(a), for “the Schedule” substitute “Schedule 1”;
 - (c) in section 2(7)(b), for “the Schedule” substitute “Schedule 1”;
 - (d) in section 6(9), for “The Schedule” substitute “Schedule 1”;
 - (e) the existing Schedule becomes Schedule 1 (and, accordingly, for the heading “Schedule” substitute the heading “Schedule 1”).

PART 3

MISCELLANEOUS AND GENERAL

11 Report on effect of Parts 1 and 2

- (1) Regulations made by the Treasury may require an insurer to provide information to the FCA about the effect of Parts 1 and 2 of this Act on individuals who hold policies of insurance with the insurer.
- (2) The regulations may provide that an insurer is required to provide information only if it has issued third party personal injury policies of insurance on or after 1 April 2020 to individuals domiciled in England and Wales.
- (3) The regulations may –
 - (a) specify the information or descriptions of information to be provided;
 - (b) specify how information is to be provided;
 - (c) specify when information is to be provided;
 - (d) require that information or specified descriptions of information be audited by a qualified auditor before being provided;
 - (e) make provision about the audit;
 - (f) require that details of the auditor be provided to the FCA.
- (4) Regulations under subsection (3)(a) may in particular require an insurer to provide information, by reference to each of the report years, about –
 - (a) the amount paid by the insurer during the report period under its relevant third party personal injury policies of insurance in respect of personal injuries sustained by third parties, where the amount of damages for the injury is governed by the law of England and Wales;

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- (b) the amount that the insurer might reasonably have been expected to pay in respect of those injuries if this Act had not been passed;
- (c) the mean of the amounts paid during the report period under those policies in respect of those injuries;
- (d) what might reasonably have been expected to be the mean of the amounts paid in respect of those injuries if this Act had not been passed; 5
- (e) the amounts described in paragraphs (a) to (d), determined by reference only to cases where –
- (i) the amount paid by an insurer under a policy, or 10
- (ii) the amount that an insurer might reasonably have been expected to pay under a policy, falls within one of the bands specified in the regulations;
- (f) the amount charged by the insurer by way of premiums for relevant third party personal injury policies of insurance where the cover starts in the report period; 15
- (g) the amount that the insurer might reasonably have been expected to charge by way of premiums for those policies if this Act had not been passed;
- (h) the mean of the premiums charged for those policies; 20
- (i) what might reasonably have been expected to be the mean of the premiums charged for those policies if this Act had not been passed;
- (j) the amounts described in paragraphs (f) to (i), determined as if the references to a premium charged for a relevant third party personal injury policy of insurance were references to so much of the premium as is charged in order to cover the risk of causing a third party to sustain personal injury; 25
- (k) if any reduction in the amounts referred to in paragraph (a) has been used to confer benefits other than reduced premiums on individuals, information about those benefits. 30
- (5) The regulations may make provision about the methods to be used in determining the amounts described in subsection (4)(b), (d), (g) and (i), including provision about factors to be taken into account.
- (6) The regulations may provide for exceptions, including but not limited to –
- (a) exceptions relating to policies of insurance obtained wholly or partly for purposes relating to a business, trade or profession; 35
- (b) exceptions relating to policies of insurance of a specified description,
- (c) exceptions for cases where the value or number of policies of insurance issued by an insurer is below a level specified by or determined in accordance with the regulations, and 40
- (d) exceptions relating to insurers who, during the report period, issue policies of insurance only within a period that does not exceed a specified duration.
- (7) Before the end of a period of one year beginning with 1 April 2024, the Treasury must prepare and lay before Parliament a report that –
- (a) summarises the information provided about the effect of Parts 1 and 2 of this Act, and
- (b) gives a view on whether and how individuals who are policy holders have benefited from any reductions in costs for insurers. 45

- (8) If insurers provide additional information to the FCA about the effect of Parts 1 and 2 of this Act, the report may relate also to that information.
- (9) The FCA must assist the Treasury in the preparation of the report.
- (10) In the Financial Services and Markets Act 2000 –
- (a) in section 1A (functions of the Financial Conduct Authority), in subsection (6), after paragraph (cza) insert –
“(czb) the Civil Liability Act 2018;” 5
 - (b) in section 204A (meaning of “relevant requirement” and “appropriate regulator”) –
 - (i) in subsection (2), after paragraph (a) insert –
“(aa) by regulations under section 11 of the Civil Liability Act 2018;” 10
 - (ii) in subsection (6), after paragraph (a) insert –
“(aa) by regulations under section 11 of the Civil Liability Act 2018;” 15
- (11) A statutory instrument containing regulations under this section is subject to affirmative resolution procedure.
- (12) In this section –
- “the FCA” means the Financial Conduct Authority;
 - “insurer” means an institution which is authorised under the Financial Services and Markets Act 2000 to carry on the regulated activity of –
 - (a) effecting or carrying out contracts of insurance as principal, or
 - (b) managing the underwriting capacity of a Lloyd’s syndicate as a managing agent at Lloyd’s; 20
 - “qualified auditor” means a person who is eligible for appointment as a statutory auditor under Part 42 of the Companies Act 2006; 25
 - “relevant third party personal injury policy of insurance” means a third party personal injury policy of insurance issued by an insurer to an individual domiciled in England and Wales;
 - “report period” means the period of three years beginning with 1 April 2020; 30
 - “report year” means a year beginning with 1 April 2020, 2021 or 2022;
 - “third party personal injury policy of insurance” means a policy of insurance issued by an insurer which provides cover against the risk, or risks that include the risk, of causing a third party to sustain personal injury. 35

12 Regulations

- (1) Regulations under this Act are to be made by statutory instrument.
- (2) Where regulations under this Act are subject to “negative resolution procedure” the statutory instrument containing the regulations is subject to annulment in pursuance of a resolution of either House of Parliament. 40
- (3) Where regulations under this Act are subject to “affirmative resolution procedure” the regulations must not be made unless a draft of the statutory instrument containing them has been laid before Parliament and approved by a resolution of each House of Parliament. 45
- (4) Regulations under this Act may –

- (a) make different provision for different purposes;
- (b) make consequential, supplementary or incidental provision;
- (c) make transitional, transitory or saving provision.

(5) Subsection (4) does not apply to regulations under section 14.

13 Extent 5

- (1) This Act extends to England and Wales only, subject to the following subsections.
- (2) Section 10(4)(b) and (c) extend to England and Wales and Northern Ireland.
- (3) Section 10(4)(d) and (e) extend to England and Wales, Scotland and Northern Ireland. 10
- (4) Sections 11(10) and 12 to 15 extend to England and Wales, Scotland and Northern Ireland.

14 Commencement

- (1) This Act comes into force on such day as the Secretary of State may by regulations appoint, subject to subsection (2). 15
- (2) Part 2 and this Part come into force on the day on which this Act is passed.
- (3) Regulations under this section may –
 - (a) appoint different days for different purposes;
 - (b) make transitional, transitory or saving provision.

15 Short title 20

This Act may be cited as the Civil Liability Act 2018.

Civil Liability Bill [HL]

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B I L L

[AS AMENDED IN PUBLIC BILL COMMITTEE]

To make provision about whiplash claims and the personal injury discount rate.

Brought from the Lords, 28 June 2018.

*Ordered, by The House of Commons, to
be Printed, 11 September 2018*

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