

CIVIL LIABILITY BILL [HL]

EXPLANATORY NOTES ON COMMONS AMENDMENTS

What these notes do

1. These Explanatory Notes relate to the Commons Amendments to the Civil Liability Bill [HL] as brought from the House of Commons on 24 October 2018.
2. These Explanatory Notes have been prepared by the Ministry of Justice in order to assist the reader of the Bill and the Commons Amendments, and to help inform debate on the Commons Amendments. They do not form part of the Bill and have not been endorsed by Parliament.
3. These Explanatory Notes, like the Commons Amendments themselves, refer to Bill 240, the Bill as brought from the Lords and first printed for the Commons.
4. These Explanatory Notes need to be read in conjunction with the Commons Amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the Commons Amendments.

Commentary on Commons Amendments

Part 1: Whiplash

Commons Amendments 1 and 2

5. Clause 3 (*damages for whiplash injuries*) enables the Lord Chancellor to specify in regulations, in the form of a tariff, the damages that a court may award for pain, suffering and loss of amenity (“PSLA”) for whiplash injuries sustained in road traffic accidents, as specified in Clause 1, in those cases where the duration of the injury does not exceed or is not likely to exceed two years. The Lord Chancellor may also include within, or in addition to, the specified sums, an additional sum for minor psychological injuries (often referred to as ‘travel anxiety’) arising from the same accident. Regulations made under this section would be subject to the affirmative resolution procedure.
6. **Commons Amendment 1**, by inserting a new subsection after subsection (10), would require the Lord Chancellor to consult the Lord Chief Justice before making regulations under this Clause.
7. Clause 5 (*uplift in exceptional circumstances*) enables the Lord Chancellor to provide in regulations that the court may increase the amount awarded under the tariff in exceptional circumstances. The regulations must specify, by reference to a percentage of the prescribed sum, the maximum increase that may be applied.

8. **Commons Amendment 2** corrects an earlier omission, by adding the words “or injuries” to Clause 5(7)(a) to reflect that the amount of compensation specified in the tariff can relate to a single injury, or to two or more injuries. The amendment is consistent with the language used elsewhere in the Bill and makes no material change to its provisions.

Part 3: Miscellaneous and General

Commons Amendment 3

9. **Commons Amendment 3** inserts a new Clause before Clause 11 entitled “*Report on effect of Parts 1 and 2*”. Subsections (1) to (6) of this new Clause enable the Treasury to specify in regulations that insurers must provide information to the Financial Conduct Authority (FCA) about the effects of Parts 1 and 2 of the Bill on individual customers in England and Wales who have purchased insurance policies which include cover for personal injury. The regulations may specify the level and type of information to be provided, the period of time for which the requirement will apply and that the information may be subject to audit. Subsection (7) requires the Treasury to prepare and lay a report before Parliament which summarises the information provided, and which gives a view on whether and how policy holders have benefitted from reductions in costs to insurers arising from these reforms. Subsection (10) makes consequential amendments to the Financial Services and Markets Act 2000 to enable the FCA to use its existing powers to ensure firms under its supervision comply with the requirement. Regulations made under this section would be subject to the affirmative resolution procedure.
10. **Commons Amendments 4 and 5** are consequential, and provide that the reporting requirements contained in Commons Amendment 3 extend to insurers who provide to customers who are ordinarily resident in England and Wales.
11. **Commons Amendment 6** leaves out the privilege amendment inserted by the House of Lords.

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