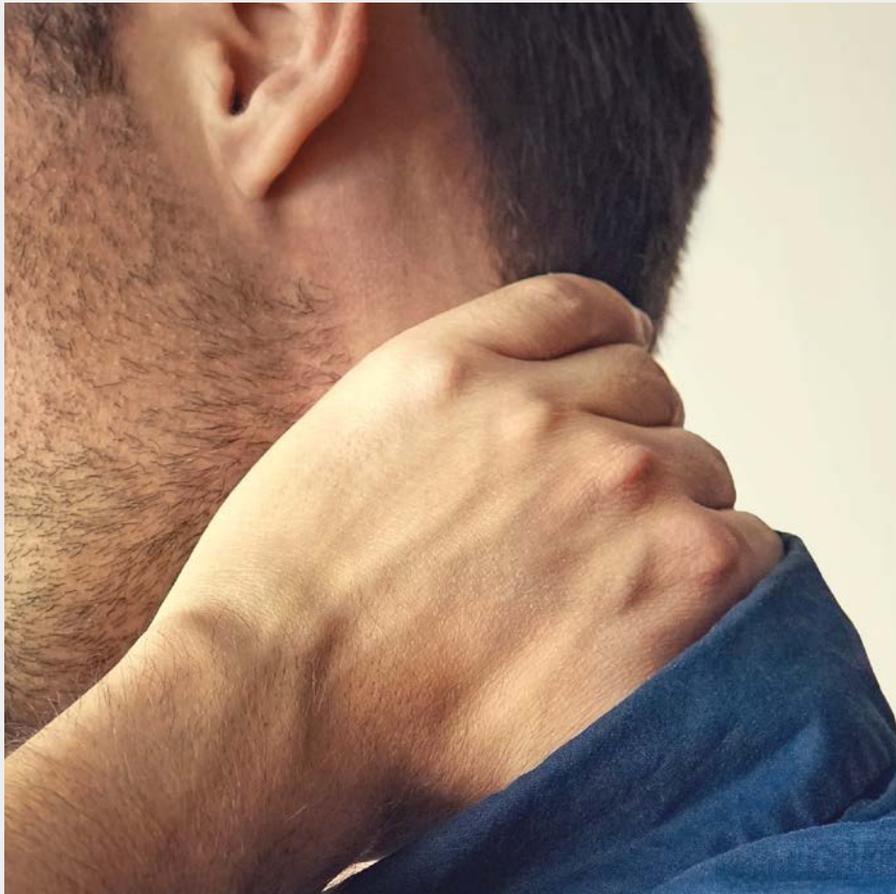




Risk control

Civil Liability Bill: Whiplash Reforms Debated in Parliament



Introduction

The Civil Liability passed through the second reading in the House of Commons this week in an energetic three hour evening debate between the Government and the opposition. The Government backing the defendant insurer market, the opposition championing access to justice and the risk to that if the Bill is introduced in its current form. (*Hansard.parliament.uk, 2018*)

Setting out the Bill

The Government set the Bill out as we know it to date; Part 1 containing the whiplash tariff element and Part 2 setting out the discount rate process. They confirmed, as announced previously that the implementation of the whiplash element will be put back to April 2020 to allow testing of a litigant in person “friendly” claims portal.

They also confirmed their intention to raise the Small Claims Track (SCT) limit to £5,000 for Road Traffic Accident (RTA) personal injury claims and £2,000 for all other personal injury claims and that the discount rate review will take place as soon as the Bill receives Royal Assent.

The Debate

The opposition as expected set out that they vehemently oppose the majority of the content of the Bill - specifically in respect of the whiplash element and stated that, unless dramatically changed by implementing their proposed amendments, they will be looking to vote against it.

The Bill is due to be debated at Committee stage imminently. Since the debate on the 4th September 2018, both the Government and the opposition have made a variety of proposed amendments in preparation for the next debate, there is also now an open public consultation due to close on the 9th October 2018.

The Amendments

The proposed amendments are set out below;

Government proposed amendments;

- Whiplash tariff to be set by the Lord Chancellor after consultation with the Lord Chief Justice
- Face to face medical examinations would be required prior to any offers being made in compensation (if pre-medical offers are made then measures are being considered to enforce financial fines)
- Commitment to review of Periodic Payment Orders (PPO) settlements and how to potentially expand their use
- Vulnerable road users, pedestrians, cyclists etc. will be excluded not only from the whiplash constraints but also the SCT rise
- Committing to regulate the requirement of insurers to report on savings made by the reforms (both whiplash and discount rate elements).

Opposition proposed amendments;

- The whiplash tariff to be scrapped in its entirety
- If there is to be a tariff - the Lord Chief Justice is to be consulted about the levels within it / or for the tariff to be replaced with Judicial College Guideline figures.
- A reduction to the maximum recovery period to be included in the tariff to 1 year from 2 years
- Definition of whiplash to be set by the Chief Medical Office not by the Lord Chancellor
- To exempt vulnerable road users and those injured during the course of their employment from the whiplash reforms, other than the ban on pre-medical offers
- To give Judges greater flexibility to increase tariff levels in particular cases
- To put the requirement from reports from MedCo on the face of the Bill
- To allow recovery of legal costs for advice on quantum and liability (if disputed) in motor claims in the small claims track
- The rise in the SCT should be set in accordance with interest rates to £1,500

- The discount rate to be reviewed by an expert panel at the next review as opposed to this being completed in 5 years' time (currently the proposal is for the Lord Chancellor to set the rate as soon as the Bill receives Royal Assent).

Next Steps

There are written exceptions to report on the savings the reforms will bring for policies obtained wholly or partly for purposes relating to a business, trade or profession and exceptions for insurers where the value or number of policies of insurance issued is below a level specified by or determined in regulation.

The next stage for the Bill on its journey through Parliamentary approval is the Report Stage and Third Reading Stage. A date for this is yet to be announced but the Bill successfully passed through the Committee Stage on the 11th September 2018.

We will provide further updates on this Bill in due course.

Further RMP Resources and Articles

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Get in touch

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