Introduction

The Bill aims to reform the claims process for whiplash claims and to make changes to the way in which the personal injury discount rate is set. The Bill replaces what was the Prisons and Courts Bill, which made provision about whiplash claims and which fell with the snap General Election in 2016. The first reading took place on 20 March 2018.

Background

The purpose of the Bill is to reform the claims process for whiplash claims and to make changes to the way in which the personal injury discount rate is calculated for serious injuries.

Introduced to parliament on 20 March 2018, the whiplash changes are part of the government’s wider programme to tackle disingenuous whiplash claims and save motorists money by lower insurance premiums.

In February 2017 the discount rate was reduced from 2.5% to minus 0.75%, which dramatically increased the size of awards of damages to individuals.

In March 2017 the government issued a consultation paper – ‘The personal injury discount rate: how it should be set in future’. This considered options on how, when and by whom the discount rate should be set. Having reviewed the responses, the government decided there is sufficient evidence to justify a change in the present law on setting the rate.

The Bill is in three parts:

- Part 1 concerns the claims process for those suffering from whiplash injuries when using a motor vehicle and when the duration of the injury does not exceed two years.
- Part 2 makes provision regarding how the personal injury discount rate should be set and investment behaviour. It introduces a requirement for regular reviews of the rate and specifies whom the Lord Chancellor must consult in conducting a review.
- 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.

Key points

Whiplash measures

- Provide for a tariff of compensation for pain, suffering and loss of amenity (PSLA) for whiplash claims as defined in the Bill. The final tariff figures will be set in supporting regulations to be debated via the affirmative procedure by parliament following Royal Assent.
- Provide for an uplift on the amount of the tariff in exceptional circumstances.
- Introduce a regulatory ban on seeking, or offering, to settle whiplash claims without medical evidence.
- Provide for the Judiciary to increase the compensation payable for PSLA by up to a certain amount in exceptional circumstances. The cap for exceptional payments would be set in supporting regulations.
The rise in the small claims limit to £5,000 for road traffic accident claims and £2,000 for all other injury claims is not in the Bill. It will be achieved by a simple change to the Civil Procedure Rules and first amend the limit for motor claims before proceeding to other claim types.

**Personal injury discount rate measures**

- Support the 100% compensation principle.
- Put the process of setting the rate on a clearer statutory footing, with a requirement for the Lord Chancellor to review it at least every three years and confirm his or her determination within the 180 day review period.
- Require the first review of the rate of return to start within 90 days of the Bill being enacted and to be completed within a further 180 days.
- Ensure the rate determination is made on the assumption that the claimant is a prudent and properly advised individual – namely that he or she invests in a diversified portfolio of investments that involves more risk than a ‘very low level of risk’.
- Require the Lord Chancellor to consider the actual returns available to investors.
- Require the Lord Chancellor to consult an expert panel of four members and the Government Actuary.

### Legislative timeline and next steps

The legislation was introduced in the House of Lords at first reading on 20 March 2018.

Its second reading is scheduled for 24 April 2018. Second reading is the first opportunity for Peers in the House of the Lords to debate the key principles and main purpose of the Bill. Peers will raise concerns or specific areas where they think amendments are needed.

At second reading, the government minister, spokesperson or a member of the Lords responsible for the Bill will open the debate.

Any member can speak during second reading – this stage can indicate those members particularly interested in a bill, or a specific aspect of it, and those who are most likely to be involved in suggesting changes at later stages.

After second reading the Bill progresses to committee stage, where detailed line by line examination and discussion of amendments takes place.

It is anticipated the government will seek to introduce the whiplash changes in April 2019 - according to a statement made by the so-called ‘strategic alliance’: Motor Accident Solicitors Society (MASS), the Association of Personal Injury Lawyers (APIL) and the Law Society (online here).

**Royal Assent:** Our indications are that the government will not push to achieve Royal Assent before the Summer Recess (parliament rises for its summer break on 24 July and returns on 4 September). Royal Assent is expected in the Autumn with Regulations to be laid before parliament around one month later.

**Industry reaction**

Steve White, CEO of the British Insurance Brokers’ Association (BIBA): “The bringing forward of this bill covering both whiplash fraud and the way the discount rate is calculated is clear evidence of government listening to the carefully considered concerns from the insurance industry and taking forward recommendations in our Manifesto.”

Huw Evans, Director General of the Association of British Insurers (ABI): “If passed, these proposals would be great news for motorists. People and businesses are paying more for their motor insurance than ever before and we need changes to the law to tackle some of the root causes. This Bill will ensure people in England and Wales receive fair compensation while reducing excess costs in the system. The sensible new framework proposed for the personal injury Discount Rate would also deliver a system that is fair for customers, claimants and taxpayers. It is now important that parliament agrees these proposals swiftly so people across England and Wales can start to see the benefits.”

**Contact**

For further information on this subject, please contact:

Deborah Newberry  
Head of Corporate and Public Affairs  
t +44 20 7667 9508  
deborah.newberry@kennedyslaw.com

For further details and for full team profiles please see our website: kennedyslaw.com