

# CIVIL LIABILITY ACT 2018

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Civil Liability Act 2018 (c. 29) which received Royal Assent on 20 December 2018.

- These Explanatory Notes have been prepared by the Ministry of Justice in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Act will mean in practice; provide background information on the development of policy; and provide additional information on how the Act will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Act. They are not, and are not intended to be, a comprehensive description of the Act.

# Table of Contents

Subject	Page of these Notes
<b>Overview of the Act</b>	<b>4</b>
<b>Policy background</b>	<b>5</b>
Whiplash	5
Personal Injury Discount Rate	5
<b>Legal background</b>	<b>7</b>
Whiplash	8
Personal Injury Discount rate	8
<b>Territorial extent and application</b>	<b>8</b>
<b>Commentary on provisions of Act</b>	<b>9</b>
Part 1: Whiplash	9
Chapter 1: Whiplash injuries	9
Section 1: “Whiplash injury” etc	9
Section 2: Power to amend section 1	9
Chapter 2: Damages	9
Section 3: Damages for whiplash injuries	9
Section 4: Review of regulations under section 3	10
Section 5: Uplift in exceptional circumstances	10
Chapter 3: Settlement of whiplash claims	10
Section 6: Rules against settlement before medical report	10
Section 7: Effect of rules against settlement before medical report	10
Section 8: Regulation by the Financial Conduct Authority	10
Section 9: Interpretation	10
Part 2: Personal Injury Discount Rate	11
Section 10: Assumed rate of return on investment of damages.	11
Section A1	11
Schedule A1	11
Supplementary provisions under Section 10	13
Part 3: Miscellaneous and General	13
Section 11: Report on effect of Parts 1 and 2	13
Section 12: Regulations	13
Section 13: Extent	13
Section 14: Commencement	14
Section 15: Short title	14

*These Explanatory Notes relate to the Civil Liability Act 2018 (c. 29) which received Royal Assent on 20 December 2018*

<b>Commencement</b>	<b>14</b>
<b>Annex A – Territorial extent and application in the United Kingdom</b>	<b>15</b>
<b>Annex B – Hansard References</b>	<b>16</b>
<b>Annex C – Progress of Bill Table</b>	<b>17</b>

## Overview of the Act

- 1 The purpose of the Act is to reform the claims process for road traffic accident related whiplash injuries, and to make changes to the way in which the personal injury discount rate, applied to lump sum awards of damages for future loss, is set.
- 2 The Act is in 3 parts:
  - Part 1 concerns claims for whiplash injuries, where the duration of the injury (or injuries) does not exceed two years. It provides a definition of a “whiplash injury”, which may be amended by regulations, and subjects damages for pain, suffering and loss of amenity arising from such injuries to a tariff. It also requires medical evidence to be obtained before a whiplash injury claim may be settled.
  - Part 2 makes provision regarding the personal injury discount rate. 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”.
  - Part 3 contains general provisions that apply to the Act: it makes provision to enable the Treasury to specify that insurers provide information to the Financial Conduct Authority about the effects of Parts 1 and 2 of the Act on individual customers in England and Wales who have purchased insurance policies which include cover for personal injury. It also makes the necessary legal provision for the short title of the Act, the extent, orders, regulations and parliamentary procedures, and powers to make consequential, incidental etc. provision.

## Policy background

- 3 In June 2017, the Conservative party formed a Government with a manifesto commitment to “reduce insurance costs for ordinary motorists by tackling the continuing high number and cost of whiplash claims”. The Act contains measures that give effect to policies outlined in previous Government consultation responses regarding whiplash injuries arising from road traffic accidents<sup>1</sup> and on the framework through which the personal injury discount rate is set<sup>2</sup>.
- 4 This Act contains provisions outlined in the Queen’s Speech in June 2017 to help reduce motor insurance premiums<sup>3</sup>.

## Whiplash

- 5 The previous Government consulted between November 2016 and January 2017 on a package of measures to tackle the continuing high number and cost of whiplash claims and their impact on motor insurance premiums. The Government published its response on 23 February 2017<sup>4</sup>, and measures were originally taken forward within the Prisons and Courts Bill 2017.
- 6 The Government has set out its concern that the volume of road traffic accident related personal injury claims. There were around 650,000 RTA related personal injury claims made in 2017/18 (nearly 190,000 more than in 2005/06).
- 7 The continuing high number of whiplash claims increases the cost of motor insurance premiums, paid by motorists in England and Wales. The Government has set out its view that the level of compensation paid to claimants for these claims is also out of proportion to the level of injury suffered, and that it intended to introduce measures to reduce the costs of civil litigation whilst ensuring genuinely injured claimants continue to receive a proportionate amount of compensation. These measures disincentivise minor, exaggerated and fraudulent claims. Part 1 of this Act addresses these matters.

## Personal Injury Discount Rate

- 8 Personal injury damages are intended to compensate the claimant for all the losses, past and future, caused by the injury (“the 100% rule”). Damages for future financial loss (e.g. loss of income and costs of care) can be paid by a lump sum or a stream of future payments under a Periodical Payments Order (“PPO”), or a mixture of both.

---

<sup>1</sup> *Reforming the soft tissue injury (whiplash) claims process*, consultation:  
<https://www.gov.uk/government/consultations/reforming-the-soft-tissue-injury-whiplash-claims-process/>

<sup>2</sup> The personal injury discount rate: how it should be set in future, consultation:  
<https://consult.justice.gov.uk/digital-communications/personal-injury-discount-rate/>

<sup>3</sup> <https://www.gov.uk/government/speeches/queens-speech-2017>

<sup>4</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/593431/part-1-response-to-reforming-soft-tissue-injury-claims.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/593431/part-1-response-to-reforming-soft-tissue-injury-claims.pdf)

- 9 The calculation of a lump sum for future financial loss includes applying a discount rate which represents the rate of return that claimants are expected to earn when investing it. The discount rate is intended to ensure that the opportunity to invest does not result in either over or under compensation. At present, following the leading House of Lords case of *Wells v Wells*<sup>5</sup> the rate is calculated on the basis that the claimant is a very risk averse investor. The rate has, in accordance with this principle, been set by reference to yields on Index Linked Gilts (“ILGs”) since 1998.
- 10 A discount rate could, in theory, be individually set on a case-by-case basis. However, to simplify the administration of justice, the practice has been for the court to refer to a single rate unless persuaded in the proceedings that another rate should apply (since 2001 no court is thought to have departed from the standard rate). This rate was originally set by the courts. Section 1 of the Damages Act 1996 (“the 1996 Act”) gives the Lord Chancellor power to set a rate, which the court is to apply unless the court is persuaded another rate is more appropriate for the case before it. The power under section 1 extends to setting different rates for different classes of cases (although only single rates, covering all cases, have been prescribed to date). The power can be exercised from time to time, with no provision for specific intervals between reviews. Before setting the rate, the Lord Chancellor must consult the Government Actuary and HM Treasury. Section 1 does not specify the methodology to be applied in the setting of the rate – this is largely governed by principles set down in case law by the courts (in particular, the decision of the House of Lords in *Wells v Wells*). Even small changes in the rate can make a significant difference to the size of an individual award.
- 11 The Lord Chancellor is under a continuing legal duty to ensure that the rate prescribed is not inappropriate by reference to the requirements of the law. The rate prescribed by the Lord Chancellor applies only to England and Wales (separate provision being made in section 1 for specifying the rate in relation to Scotland<sup>6</sup> and Northern Ireland).
- 12 The Lord Chancellor’s power has only been exercised twice. The rate was set at 2.5% in June 2001 and at minus 0.75% in March 2017. Both rates are “real”, that is to say representing a return over inflation as measured by the Retail Price Index, and a lower discount rate means higher awards .
- 13 In announcing the setting of the rate at minus 0.75% on 27 February 2017 the then Lord Chancellor said:

*“There will clearly be significant implications across the public and private sector. The Government has committed to ensuring that the NHS Litigation Authority has appropriate funding to cover changes to hospitals’ clinical negligence costs. The Department of Health will also work closely with General Practitioners (GPs) and Medical Defence Organisations to ensure that appropriate funding is available to meet additional costs to GPs, recognising the crucial role they play in the delivery of NHS care.”*

---

<sup>5</sup> [1999] 1 AC 345

<sup>6</sup> The Scottish Government introduced the Damages (Investment Returns and Periodical Payments) (Scotland) Bill, which contains provision as to how the personal injury discount rate is to be set in Scotland, into the Scottish Parliament on 14 June 2018 (<http://www.parliament.scot/parliamentarybusiness/Bills/576.aspx>).

She added that:

*“The Government will review the framework under which I have set the rate today to ensure that it remains fit for purpose in the future. I will bring forward a consultation before Easter that will consider options for reform including: whether the rate should in future be set by an independent body; whether more frequent reviews would improve predictability and certainty for all parties; and whether the methodology – which in effect assumes that claimants would invest only in index-linked gilts – is appropriate for the future. Following the consultation, which will consider whether there is a better or fairer framework for claimants and defendants, the Government will bring forward any necessary legislation at an early stage.”*

- 14 Following this commitment, a consultation paper, *“The personal injury discount rate: how it should be set in future”*, was published on 30 March 2017.<sup>7</sup> This considered options on how, when and by whom the discount rate should be set. The consultation closed on 11 May 2017. A summary of the responses to the consultation has been published. In the light of the responses, and the further research undertaken, the Government has decided it is right that the present law on the setting of the discount rate should be changed.
- 15 The principal proposals to be given effect by the Act are that:
  - a. The rate is to be set by reference to “low risk” rather than “very low risk” investments as at present. This will have the effect of increasing the expected rate of return compared to what it would have been under the present law. Lump sum payments of damages for future loss can thus be expected to be lower than they would have been had the law remained unchanged.
  - b. The rate is initially to be reviewed promptly after the legislation comes into force and, thereafter, at least every five years, with that period being re-set when a review is concluded. Reviews will be carried out and completed within specified periods.
  - c. The rate is to be set by the Lord Chancellor who will consult the Government Actuary on the first review and an independent expert panel chaired by the Government Actuary on subsequent reviews. HM Treasury will, as at present, also be a statutory consultee at every review.

## Legal background

- 16 The following paragraphs explain the current legal background.

---

<sup>7</sup> <https://www.gov.uk/government/consultations/personal-injury-discount-rate-how-it-should-be-set-in-future>

## Whiplash

- 17 There are currently no legislative provisions that seek to regulate damages for pain, suffering and loss of amenity for road traffic accident related (“RTA”) whiplash injuries. The assessment and award of such damages is a matter for the court by reference to the facts of the case, including the severity of the injuries and previous awards for similar injuries. Guidance on damages is provided in the Judicial College Guidelines for the Assessment of General Damages in Personal Injury Cases.<sup>8</sup>
- 18 There are currently no legislative provisions which ban inviting and the offer, paying and acceptance of settlements in RTA related whiplash claims by regulated persons prior to the receipt of medical evidence. Sections 6 to 9 of the Act, however, adopt a similar approach to provisions in sections 56 to 60 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, which ban the payment and acceptance of referral fees and sections 57 to 61 of the Criminal Justice and Courts Act 2015 which ban the offer of inducements in respect of personal injury claims. In both cases, the ban is applied to “regulated persons” (for example, solicitors and barristers), and is monitored and enforced by the relevant regulator (for example, the Law Society and Bar Council) who may make provision in regulations for that purpose. The Lord Chancellor may add to the lists of both regulated persons to whom the ban should apply and relevant regulators.

## Personal Injury Discount rate

- 19 The relevant legal background is explained in paragraphs 6-13 of these Notes.

## Territorial extent and application

- 20 Section 13 sets out the extent of the provisions in the Act. The extent of an Act can be different from its application. Application refers to the matter of where an Act produces a practical effect.

### Part 1

- 21 The provisions concerning whiplash injuries and damages extend and apply to England and Wales only.

### Part 2

- 22 The provisions concerning the discount rate extend and apply to England and Wales only. This is with the exception of some very minor consequential amendments to the 1996 Act (see Annex A of these Notes).

### Part 3

- 23 Section 11 in Part 3 of the Act extends and applies to England and Wales only. This is with the exception of some very minor consequential amendments to the Financial Services and Markets Act 2000 in section 11(10) to enable the Financial Conduct Authority to use its existing powers to ensure firms under its supervision comply with the requirements in section 11. Sections 12 to 15 extend to England and Wales, Scotland and Northern Ireland.

---

<sup>8</sup> 14th edition, September 2017; published by the Oxford University Press (ISBN-10: 0198814526 ISBN-13: 978-0198814528)



# Commentary on provisions of Act

## Part 1: Whiplash

24 Part 1 makes changes to the law of England and Wales.

### Chapter 1: Whiplash injuries

#### Section 1: “Whiplash injury” etc

25 This section specifies those road traffic accident (‘RTA’) related whiplash injuries, and the circumstances in which such injuries are incurred, which are subject to the provisions in this Part. Subsection (1) defines “whiplash injury” as an injury of soft tissue in the neck, back or shoulder of a description specified in subsection (2) of this section, but which is not excepted by subsection (3). A minor psychological injury or injuries sustained in addition to the whiplash injury will also be subject to the provisions under this part. Subsection (4) provides that these provisions will apply in those cases where, a person, because of their negligence while using a motor vehicle on a road or other public place in England and Wales, causes another person, whether a driver, or a passenger riding in or on a motor vehicle, to suffer a whiplash injury. The effect of subsection (5) is to include cases where a driver has caused an RTA by their negligence, but the acts constituting the negligence could also be relied on to establish another cause of action, such as a breach of statutory duty, against them or somebody else.

#### Section 2: Power to amend section 1

26 This section allows the Lord Chancellor to amend the definition of ‘whiplash injury’ in section 1 by regulations. Subsection (1) limits any such amendments to soft tissue injuries in the neck, back or shoulder. Subsection (2) requires the Lord Chancellor, before making regulations, to prepare, publish and lay in Parliament a report of each review, to include a decision on whether or not amend the definition. Subsection (3) specifies those whom the Lord Chancellor must consult before making regulations, after laying the report. Subsections (4) and (5) deal with the timeframes for the first and subsequent reviews. Regulations made under this section would be subject to the affirmative resolution procedure.

## Chapter 2: Damages

### Section 3: Damages for whiplash injuries

27 This section 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 specified in section 1. Regulations may specify damages in those cases where the duration of the injury does not exceed or is not expected to exceed, two years, or, but for the failure of the claimant to take reasonable steps to mitigate the effect of the injury, would not have exceeded or be likely to exceed two years. The tariff will provide for an ascending scale of fixed sum payments with the relevant tariff amount for a particular case identified by reference to the duration of the injury. Regulations may specify different sums for different durations of injury: it is intended that the power will enable the Lord Chancellor to (a) specify particular durations of injury in the tariff; and (b) set the amount of the fixed sum payment for each duration of injury specified. The Lord Chancellor may amend the specified durations, and/or the amount of the payments and may increase or decrease the amounts. 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. The Lord Chancellor is required to consult the Lord Chief Justice before making regulations under this section. Regulations made under this section would be subject to the affirmative resolution procedure.

*These Explanatory Notes relate to the Civil Liability Act 2018 (c. 29) which received Royal Assent on 20 December 2018*

## Section 4: Review of regulations under section 3

- 28 This section requires the Lord Chancellor to carry out triennial reviews of regulations made under section 3 which specify the damages that the court may award. Subsections (2) and (3) deal with the timing of the first and subsequent reviews. Subsections (4) and (5) require the Lord Chancellor to prepare, publish and lay in Parliament a report of each review.

## Section 5: Uplift in exceptional circumstances

- 29 This section enables the Lord Chancellor to provide in regulations that the court may, increase the sums prescribed under the tariff, if satisfied both that the degree of pain suffering or loss of amenity makes it appropriate to do so, and either one or more of the whiplash injuries is exceptionally severe, or the injured party's circumstances which increase the pain, suffering or loss of amenity caused by their injuries are exceptional. Regulations must specify, by reference to a percentage of the prescribed sum, the maximum increase that might be applied and may increase or decrease the maximum uplift. Regulations made under this section would be subject to the affirmative resolution procedure.

# Chapter 3: Settlement of whiplash claims

## Section 6: Rules against settlement before medical report

- 30 This section bans regulated persons (as defined in section 9) from making or accepting a payment in settlement of, or inviting, or offering to settle an RTA related whiplash claim without appropriate medical evidence. It also enables the Lord Chancellor to specify in regulations what constitutes appropriate medical evidence and those who may provide it. The ban will apply to any material benefit including (but not limited to) a cash payment. Regulations made under this section would be subject to the affirmative resolution procedure.

## Section 7: Effect of rules against settlement before medical report

- 31 This section requires relevant regulators (as defined in section 9) to have arrangements in place to monitor and enforce the ban on settling or seeking to settle relevant whiplash injury claims when not in receipt of appropriate medical evidence. This section enables the relevant regulators to make new rules to supplement any existing rules for this purpose.

## Section 8: Regulation by the Financial Conduct Authority

- 32 Where the relevant regulator is the Financial Conduct Authority (FCA), this section provides for HM Treasury to make regulations to enable the FCA to monitor and enforce the ban on settling whiplash claims when not in receipt of appropriate medical evidence.

## Section 9: Interpretation

- 33 This section lists both the regulators who are required to monitor and enforce the ban on settling whiplash claims without medical evidence (including the General Council of the Bar, the Law Society and the Chartered Institute of Legal Executives) and those legal service providers to whom the ban would apply ("regulated persons", namely barristers, legal executives, solicitors and alternative business structures). By virtue of provision in the final and penultimate entries in the table in this section, the Lord Chancellor has the power by regulation (subject to the negative procedure for statutory instruments) to extend to other regulators and regulated persons both the ban and the duty to monitor and enforce it through secondary legislation.

## Part 2: Personal Injury Discount Rate

34 Part 2 makes changes to the law of England and Wales.

### Section 10: Assumed rate of return on investment of damages.

35 This section revokes section 1 of the Damages Act 1996 for England and Wales and replaces it for England and Wales with a new provision: section A1. It also inserts a new schedule A1 into the Damages Act 1996, providing the detail about how the Lord Chancellor is to approach the review and setting of the discount rate. The new schedule makes changes to the methodology according to which the discount rate is set; provides for an initial review of the rate to start within 90 days of Royal Assent and to be completed within 140 days of starting and, thereafter, for reviews to take place at least once every five years; and makes provision for the establishment of an independent expert panel that the Lord Chancellor must consult in setting the rate on all reviews following the first review.

### Section A1

36 Subsection (1) inserts the new section A1. The new section sets out the power of the Lord Chancellor to set the rate. It is for the Lord Chancellor to decide whether to set a rate and what that rate should be. He or she may set different rates for different classes of case. If the Lord Chancellor sets a rate the court must have regard to it in deciding the return a claimant is expected to receive from investing damages for future financial loss (the court must consider this when calculating the size of an award of such damages to be paid by way of a lump sum). In fulfilling its obligations, the court must comply with the rules of court made for the purposes of section A1. No such rules of court have been made pursuant to section 1 of the 1996 Act to date and none are presently proposed to be made for the new section A1. Subsection (4) makes clear that the power in subsection (3) to prescribe different rates of return for different classes of case includes the power to set separate rates for different sorts of future loss (for example, one rate for loss of future earnings and another for the cost of future care) or for different durations of award (for example, one rate for damages in respect of costs to be incurred during the first ten years from the making of the award and another rate to damages in respect of costs to be incurred during subsequent years). Subsection (5) of the new section A1 is also new, and provides for the new Schedule A1 (see "Schedule A1" below) to have effect. Subsection (6) of the new section specifies how the statutory instrument setting the discount rate is to be made, and is drafted in the same terms as the equivalent provision in section 1(4) of the Damages Act 1996. In summary, the only substantive differences between section 1(1)-(4) of the Damages Act 1996 and the new section A1(1)-(6) are clarification as to the provision for prescribing different rates of return for different classes of case; the introduction of the new Schedule; and the omission of the requirement to consult the Government Actuary and the Treasury before setting the rate. The new consultation requirements are set out in the new Schedule A1. Regulations made under this section will be subject to the negative procedure.

### Schedule A1

37 Section 10(2) contains the new Schedule A1 which is inserted into the Damages Act 1996.

38 Matters dealt with in the new schedule are as follows: paragraphs 1 and 2 introduce a requirement for the Lord Chancellor to start a review of the discount rate within 90 days beginning with the day on which the Act is passed (see section 14 and related commentary) and thereafter to start a review at least once every five years from the conclusion of the previous review. The objective of every review is to decide whether the rate should be retained or changed (see paragraph 9(2)-(4) of new Schedule A1 and related commentary as to the interpretation of this requirement where there is or will be no rate).

- 39 In conducting the first review and determining the rate of return the Lord Chancellor is required to consult the Government Actuary within 20 days of the start of the review and the Government Actuary must respond within 80 days of being consulted. Paragraph 3 requires the Lord Chancellor for subsequent reviews to obtain the advice of an expert panel, which will be chaired by the Government Actuary. The expert panel must respond within 90 days of the Lord Chancellor's request. The Lord Chancellor must also consult HM Treasury. If the office of Government Actuary is vacant, the Deputy Government Actuary is to act instead.
- 40 The first review must be completed within 140 days of its commencement and subsequent reviews within 180 days (in both cases the date of commencement will be decided by the Lord Chancellor).
- 41 Paragraph 4 contains provisions relating to the core principles and assumptions to be applied by the Lord Chancellor in determining the rate. Paragraph 4(2) provides that the rate to be set is the rate of return that in the Lord Chancellor's opinion could reasonably be expected to be achieved by a claimant investing a lump sum of relevant damages (defined in paragraph 4(7)) with the objective of covering all the expected costs and losses caused by the injury at the right time when they arise; and, with the further objective that when this has been achieved, there is no money left from the lump sum and the income it generated during the period of the award. In forming this opinion, the Lord Chancellor is required to make certain assumptions (and may make others) and to take certain factors into account (which does not rule out taking other factors into account). The specified assumptions are set out in paragraph 4(3). They include that the recipient of the relevant damages receives proper investment advice; invests in a diversified portfolio of investments; and has a low-risk investment profile. This profile means the recipient is assumed to be willing to take more risk than the very cautious investor envisaged under the present law relating to the setting of the discount rate, but less risk than would ordinarily be taken by a prudent and properly advised individual investor who does not have the same investment objectives as the recipient of relevant damages. The intention is that the level of risk assumed in the setting of the discount rate will therefore be higher than is assumed under the present law. The specified factors are set out in paragraph 4(5). This subparagraph requires the Lord Chancellor to have regard to: the actual returns available from such diversified portfolios, the actual investments made by investors of relevant damages; and to make appropriate allowances for taxation, inflation and investment management costs.
- 42 On concluding a review, the Lord Chancellor is required to give reasons for his or her decision on the rate and to publish such information about the response, on the first review, of the Government Actuary, and, on subsequent reviews, of the expert panel established for the relevant review, as he or she thinks appropriate. Paragraphs 6 and 7 contain provisions relating to the establishment of an independent expert panel which the Lord Chancellor is to consult in setting the rate. The paragraphs provide for the panel to be chaired by the Government Actuary, and to contain four other members, namely members with experience respectively as an actuary, as an economist, in managing investments, and in relation to consumer financial investments. The panel is to be appointed for each review; but serving on the panel in relation to one review will not disqualify an appointee from serving on the panel for another review. The panel dissolves when it has responded to the Lord Chancellor's consultation. The cost of the panel will be met by the Lord Chancellor, who may enter into arrangements with other government departments so that they can assist, such as by providing a secretariat to the panel. Meetings of the panel will not be quorate unless there are four members present, including the Government Actuary (or if that post is vacant, the Deputy Government Actuary). As there may be more than one review ongoing at any time (see paragraph 8 of new Schedule A1 and related commentary) provision is made for individuals to be members of more than one panel.

- 43 Paragraph 8 contains provisions as to how the Schedule should apply if two or more discount rates are prescribed as a result of a review. Different rates might, for example, be prescribed for different durations of loss (see paragraph 30 above). The requirements as to when and how a review is conducted will apply separately to each rate. This enables the Lord Chancellor to carry out reviews of different rates separately at different times, but different rates may also be reviewed at the same time (in the latter case one or more members of the panel for the review of one rate might also be members of the panel for another rate).

### **Supplementary provisions under Section 10**

- 44 Section 10(3) provides that the rate in force under the present law when section 10 comes into force (currently, minus 0.75%) will continue in force as if the order setting the rate had been made under the new provisions. This rate will be reviewed in the initial review (see Schedule A1, paragraph 2).
- 45 Section 10 (4) makes consequential amendments to the Damages Act 1996. This includes the omission of section 1 for England and Wales and the insertion of Schedule A1, with consequent renumbering of the present Schedule to the 1996 Act.

## **Part 3: Miscellaneous and General**

### **Section 11: Report on effect of Parts 1 and 2**

- 46 Subsections (1) to (6) of this section enables the Treasury to specify in regulations information that insurers must provide to the FCA about the effects of Parts 1 and 2 of the Act 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 Financial Conduct Authority to use its existing powers to ensure firms under its supervision comply with the requirement. Regulations made under this section are subject to the affirmative resolution procedure.

### **Section 12: Regulations**

- 47 This Section provides that regulations under the Act are to be made by statutory instrument. The section stipulates that where regulations under this Act are subject to the negative resolution procedure, they are subject to annulment in pursuance of a resolution of either House of Parliament, and that where regulations made under this Act are subject to the affirmative resolution procedure, a draft of the regulations must be laid before Parliament and approved by a resolution of each House of Parliament.
- 48 Subsections (4) and (5) provide that where regulations are made under this Act (apart from Commencement regulations), those regulations may make consequential, supplementary, incidental, transitional, transitory or savings provision. Subsection (4)(a) also allows regulations to make different provision for different purposes.

### **Section 13: Extent**

- 49 Section 13 sets out the extent of the Act (see commentary on individual sections, paragraphs 18 to 20 above and Annex A for further information).

## Section 14: Commencement

- 50 Part 2 (Personal Injury Discount Rate) and Part 3 (Final Provisions) of the Act will come into force on the day on which the Act is passed. All other provisions will come into force on such day as the Secretary of State may by regulations appoint.
- 51 Subsection (3) allows for regulations to appoint different days for different purposes and to make transitional, transitory or savings provision.

## Section 15: Short title

- 52 This section confirms the short title of the Act.

## Commencement

- 53 Part 2 (Personal Injury Discount Rate) and Part 3 (Miscellaneous and General)) of the Act will come into force on the day on which the Act is passed.
- 54 The other provisions in the Act will be brought into force by means of regulations made by the Secretary of State.

## Annex A – Territorial extent and application in the United Kingdom

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?
Section 1-2	Yes	Yes	No	No
Section 3-5	Yes	Yes	No	No
Section 6-8	Yes	Yes	No	No
Section 9	Yes	Yes	No	No
Section 10	Yes	Yes	No <sup>9</sup>	No <sup>10</sup>
Section 11	Yes	Yes	No <sup>11</sup>	No <sup>12</sup>
Section 12	Yes	Yes	No	No
Section 13	Yes	Yes	No	No
Section 14	Yes	Yes	No	No

---

<sup>9</sup> Other than certain minor consequential amendments made by section 10(4)(b) and (c).

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

<sup>11</sup> Other than certain minor consequential amendments made by section 11(10)

<sup>12</sup> Other than certain minor consequential amendments made by section 11(10)

## Annex B – Hansard References

55 The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard Reference
<i>House of Lords</i>		
<a href="#">Introduction</a>	20 March 2018	<a href="#">Vol. 790 Col. 184</a>
Second Reading	24 April 2018	<a href="#">Vol. 790 Col. 1479</a>
Grand Committee	10 May 2018	<a href="#">Vol. 791 Col. 256</a>
	15 May 2018	<a href="#">Vol. 791 Col. 610</a>
<a href="#">Report</a>	12 June 2018	<a href="#">Vol. 791 Col. 1589</a>
Third Reading	27 June 2018	<a href="#">Vol. 792 Col. 190</a>
<i>House of Commons</i>		
<a href="#">Introduction</a>	28 June 2018	No debate
Second Reading	04 September 2018	<a href="#">Vol. 646 Col. 77</a>
<a href="#">Public Bill Committee</a>	11 September 2018	<a href="#">Col. 1</a>
Report and Third Reading	23 October 2018	<a href="#">Vol. 648 Col. 150</a>
Lords Consideration of Commons Amendments	20 November 2018	<a href="#">Vol. 794 Col. 123</a>
Royal Assent	20 December 2018	House of Commons <a href="#">Vol. 651 Col. 987</a>
		House of Lords <a href="#">Vol. 794</a>

*These Explanatory Notes relate to the Civil Liability Act 2018 (c. 29) which received Royal Assent on 20 December 2018*



## Annex C – Progress of Bill Table

56 This Annex shows how each section and Schedule of the Act was numbered during the passage of the Bill through Parliament.

<b>Section of the Act</b>	<b>Bill as Introduced in the Lords</b>	<b>Bill as amended in Report in the Lords</b>	<b>Bill as introduced in the Commons</b>	<b>Bill as amended in Committee in the Commons</b>
Section 1	Clause 1	Clause 1	Clause 1	Clause 1
Section 2		Clause 2	Clause 2	Clause 2
Section 3	Clause 2	Clause 3	Clause 3	Clause 3
Section 4		Clause 4	Clause 4	Clause 4
Section 5	Clause 3	Clause 5	Clause 5	Clause 5
Section 6	Clause 4	Clause 6	Clause 6	Clause 6
Section 7	Clause 5	Clause 7	Clause 7	Clause 7
Section 8	Clause 6	Clause 8	Clause 8	Clause 8
Section 9	Clause 7	Clause 9	Clause 9	Clause 9
Section 10	Clause 8	Clause 10	Clause 10	Clause 10
Section 11				Clause 11
Section 12	Clause 9	Clause 11	Clause 11	Clause 12
Section 13	Clause 10	Clause 12	Clause 12	Clause 13
Section 14	Clause 11	Clause 13	Clause 13	Clause 14
Section 15	Clause 12	Clause 14	Clause 14	Clause 15

© Crown copyright 2019

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.







Published by TSO (The Stationery Office), part of Williams Lea Tag, and available from:

**Online**  
[www.tsoshop.co.uk](http://www.tsoshop.co.uk)

**Mail, Telephone, Fax & E-mail**

TSO  
PO Box 29, Norwich, NR3 1GN  
Telephone orders/General enquiries: 0333 202 5070  
Fax orders: 0333 202 5080  
E-mail: [customer.services@tso.co.uk](mailto:customer.services@tso.co.uk)  
Textphone: 0333 202 5077

**TSO@Blackwell and other Accredited Agents**

£6.90

ISBN 978-0-10-560116-6



9 780105 601166