EXPLANATORY MEMORANDUM TO

THE WHIPLASH INJURY (AMENDMENT) REGULATIONS 2025

2025 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Sarah Sackman KC MP, Minister of State for Courts and Legal Services at the Ministry of Justice confirms that this Explanatory Memorandum meets the required standard.

2.2 Steven Jarman, Deputy Director for Civil Justice and Law Policy at the Ministry of Justice confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Scott Tubbritt at the Ministry of Justice (Telephone: 07870985226 or email: whiplash-reform-team@justice.gov.uk) can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This Statutory Instrument amends the Whiplash Injury Regulations 2021 (the '2021 Regulations') made under the Civil Liability Act 2018 (the 'Act') which—

i. specify, by way of a tariff, the amount of damages payable for pain, suffering and loss of amenity (PSLA) for any road traffic accident (RTA) related whiplash injury or injuries as defined by the Act lasting up to 2 years, and any whiplash injury or injuries and any minor psychological injuries suffered on the same occasion as any whiplash injury;

ii. allows the court to apply a discretionary uplift (up to 20%) to the appropriate tariff figure in exceptional circumstances;

iii. specifies what constitutes appropriate medical evidence for the purpose of settling a personal injury claim which includes a whiplash injury (and which, under Section 6 of the Act must be obtained before the claim may be settled) as well as specifying those experts who may provide such evidence.

4.2 The tariff, which the Act empowers the Lord Chancellor to set, was set out in a table in the 2021 Regulations. This instrument will implement a new table with increased amounts of damages payable for injuries which occur on or after 31 May 2025. All other considerations, including the discretionary uplift, definition of medical evidence, and the whiplash tariff values for injuries occurring between 31 May 2021 and 30 May 2025, remain unchanged from the 2021 Regulations.

Where does the legislation extend to, and apply?

4.3 The extent of this instrument (that is, the jurisdiction which the instrument forms part of the law of) is England and Wales.

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales.

5. Policy Context

What is being done and why?

5.1 Section 4 of the Act requires the Lord Chancellor to review regulations made under Section 3 of the Act within 3 years of them coming into force. The 2021 Regulations came into force on 31 May 2021. In line with the statutory obligation, a review of the 2021 Regulations was completed on 22 May 2024. Following delays due to the prorogation and dissolution of Parliament before the 2024 General Election and the subsequent change of government, the Lord Chancellor published her report on this review on 21 November 2024.[1] The report concluded that the existing structure and components of the whiplash tariff, made under Section 3 of the Act, were sufficient but that the tariff values should be updated to account for inflation since the 2021 Regulations were laid.

5.2 The review also considered two other aspects of the 2021 Regulations:

i. the discretionary uplift of up to 20% that the court can apply to the whiplash tariff values in exceptional circumstances; and

ii. the definitions related to the requirement for compulsory medical reports when settling whiplash claims.

5.3 The Lord Chancellor's report concluded that these provisions were sufficient and did not require amending.

5.4 This instrument implements the Lord Chancellor's decisions by amending the tariff values for the amount of damages payable for PSLA in relation to whiplash injuries, as defined under Section 1 of the Act, and for any minor psychological injuries that are incurred by the claimant at the same time as the whiplash injuries. They are being uprated to account for inflation, as measured by the Consumer Prices Index (CPI), since the introduction of the 2021 Regulations.

5.5 The uprated tariff will apply only to injuries resulting from accidents which occur on or after the commencement of this instrument on 31 May 2025. The whiplash tariff introduced by the 2021 Regulations will continue to apply to injuries resulting from accidents that occurred between 31 May 2021 and 30 May 2025.

5.6 In line with the Lord Chancellor's decisions, no other aspects of the 2021 Regulations are being amended.

What was the previous policy, how is this different?

5.7 On 31 May 2021, the previous government implemented the whiplash reform programme as part of a key commitment to tackle the high number and costs of whiplash claims and address the high cost of motor insurance premiums. Primary legislative measures were introduced by Parliament through Part 1 of the Civil Liability Act 2018, which provided a statutory definition of 'whiplash injuries',

[1] https://assets.publishing.service.gov.uk/media/673dbcb97e8a3c98a090ff1f/statutory-review-whiplash-injury-regulations-2021.pdf

introduced a regulatory ban on settlement of related claims without appropriate medical evidence, and provided the Lord Chancellor with several powers to make further regulations. The Civil Liability Act 2018 (Commencement No. 1 and Transitional Provision) Regulations 2021 (S.I. 2021/195) set the start date for the whiplash reforms to come into force as 31 May 2021, the same day as the 2021 Regulations which contain provisions as summarised above at paragraph 4.1.[2]

5.8 This instrument retains all the provisions of the 2021 Regulations, but introduces a new uprated whiplash tariff for injuries which occur on or after 31 May 2025. The tariff levels are being increased to account for CPI inflation since their implementation in 2021. The 2021 tariff figures included a 3-year 'buffer' to account for projected inflation up to the first review in 2024. However, for several reasons the actual levels of inflation during this period were higher than anticipated. Therefore, the tariff has been uprated by actual inflation during this period with an additional 3-year buffer added to account for expected inflation up to the next review, which must be completed by 22 May 2027. The buffer ensures that claimants can continue to receive appropriate compensation for whiplash injuries that occur before the next review.

5.9 This instrument does not alter the general structure of the tariff, which is split into two sets of figures: one for whiplash injuries only and one for whiplash injuries and any minor psychological injuries, such as low level travel anxiety, suffered on the same occasion. For both 'whiplash only' and 'whiplash with minor psychological injury' parts of the tariff, the value of the claim is based on the duration of the whiplash injury.

5.10 As noted above at paragraph 5.3, the instrument also does not alter the definition of what constitutes medical evidence and, as set out by both Pre-Action Protocols relating to Personal Injury Claims for Road Traffic Accidents, "It is expected that only one medical report will be required" to settle a soft tissue injury claim.[3] Therefore, this initial report should be sufficient as evidence for whiplash injuries and any concurrently occurring minor psychological injury.

6. Legislative and Legal Context

How has the law changed?

6.1 The legal framework has not changed. The only change provided by this instrument is that whiplash injuries resulting from RTAs that occur on or after 31 May 2025 are subject to an uprated tariff, as set out in Table 2 of this instrument. Whiplash injuries that occur before 31 May 2025 remain subject to tariff values brought in by the 2021 Regulations and are found in Table 1 of this instrument.

6.2 The Lord Chancellor completed a statutory review of the 2021 regulations on 22 May 2024 and published a report on 21 November 2024. This fulfilled the obligation, set

[2] Regulation 2 of the of the Civil Liability Act 2018 (Commencement No. 1 and Transitional Provision) Regulations 2021 (S.I. 2021/195) brought into force on 25th February 2021 sections 3, 5, 6, 8 and 9 of the Civil Liability Act 2018 for the purpose only of exercising any power to make regulations under those sections. Regulation 3 brought into force, on 31st May 2021, sections 3, 5, 6, 8 and 9 (in so far as they were not already in force) and sections 1, 2, 4 and 7. Regulation 4 provided that the sections of the 2018 Act which came into force under these Regulations could apply only to causes of action which accrued on or on 31st May 2021.

[3] [https://www.justice.gov.uk/courts/procedure-rules/civil/protocol/pre-action-protocol-for-personal-injury-claims-below-the-small-claims-limit-in-road-traffic-accidents-the-rta-small-claims-protocol], Paragraph 7.4(4), and [https://www.justice.gov.uk/courts/procedure-rules/civil/protocol/pre-action-protocol-for-low-value-personal-injury-claims-in-road-traffic-accidents-31-july-2013], Paragraph 7.8B

out in Section 4 of the Act, to review the provisions of the 2021 Regulations within 3 years of their implementation.

6.3 Following the review, the Lord Chancellor decided to—

i. maintain the existing structure and component parts of the whiplash tariff;

ii. increase the tariff amounts to account for CPI inflation between 2021 and 2024; and

iii. build in a 3-year buffer to account for expected CPI inflation between 2024 and 2027.

6.4 As a result, there will be a 14-15% increase in each band of the whiplash tariff table – Table 2 of this instrument (after rounding to the nearest £5).

7. Consultation

Summary of consultation outcome and methodology

7.1 A public call for evidence on the statutory review of the whiplash tariff was held between 6 February and 2 April 2024.[4] The review considered issues including the component parts of the tariff; the level of judicial uplift which may be applied in exceptional circumstances; and definitions of what constitutes medical evidence.

7.2 The call for evidence received 32 responses. Respondents include representatives from legal practitioners, insurers, and the medical sector. Responses were generally supportive of the whiplash tariff structure, describing the tariff as easy to understand and apply. However, most respondents noted the impact of inflation on claimants' damages since the tariff was implemented in 2021. The majority of respondents agreed that CPI remains an appropriate inflationary measure to use for uplifting the whiplash tariff but views differed on the effectiveness of a 3-year inflationary buffer built into the whiplash tariff. The government's response to the call for evidence was published on 21 November 2024.[5]

7.3 The statutory review was completed on 22 May 2024 and the Lord Chancellor's report, which addressed stakeholder views in response to the call for evidence in full, was published on 21 November 2024. Publication of the report was delayed by the 2024 General Election and subsequent prorogation of Parliament.

7.4 Section 3 of the CLA 2018 requires the government to also consult the Lady Chief Justice before making regulations under those sections. A formal consultation letter from the Lord Chancellor was issued to the Lady Chief Justice on 19 December 2024. The Master of the Rolls, on behalf of the Lady Chief Justice, responded to the Lord Chancellor on 4 February 2025 endorsing the proposals to uprate the whiplash tariff.

8. Applicable Guidance

8.1 Guidance on the whiplash reform programme can be found on a dedicated GOV.UK page.[6]

8.2 There are no plans to issue specific statutory guidance for this instrument.

[4] https://www.gov.uk/government/calls-for-evidence/statutory-review-of-the-whiplash-tariff/statutory-review-of-the-whiplash-tariff-call-for-evidence

[5] https://www.gov.uk/government/calls-for-evidence/statutory-review-of-the-whiplash-tariff/outcome/call-for-evidence-on-the-statutory-review-of-the-whiplash-tariff-government-response

[6] https://www.gov.uk/government/publications/whiplash-reform-programme-information-and-faq

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this Statutory Instrument because the instrument is deregulatory, rather than burdensome.

9.2 An Impact Assessment of the whiplash reform components of the Act was published in December 2018.[7] It was determined that defendant insurers would save roughly £1.3bn (gross), of which £1.1bn would be passed onto consumers in the form of lower premiums. Reduced premiums would give an insurance premium tax benefit to motor premium holders of around £110m, giving a net benefit of around £1.2bn.

9.3 The impact of the Act, in terms of cost to consumers, was examined by the Treasury under Section 11(4) of the Act. By 1 April 2025, the Treasury will lay before Parliament a report that gives a view on whether policy holders have benefited from any reductions in costs for insurers.

9.4 No major new impacts are expected as the structure of the tariff is remaining the same. Data provided by the Official Injury Claim portal, HMCTS and MedCo in response to the 2024 call for evidence indicate that the existing structure works effectively. Further, as the uplift was calculated by use of CPI (a measure of inflation) the purchasing power of the compensation values in the original whiplash tariff table is equivalent to the values in the uprated whiplash tariff table. This results in no change to the tariff amounts in real terms.

Impact on businesses, charities and voluntary bodies

9.5 There is no, or no significant, impact on business, charities or voluntary bodies.

9.6 The legislation does impact small or micro businesses, including claimant law firms. Given the purpose of the reforms, it would be inappropriate to apply an exemption from this legislation to these firms. Therefore, no specific action is proposed to minimise the regulatory burden on small businesses.

9.7 There is no, or no significant, impact on the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 This legislation will be monitored via statutory review clauses included in Section 4 of the Act.

10.2 Section 4 of the Act requires the Lord Chancellor to carry out reviews of the tariff figures at intervals not exceeding 3 years in duration. The Lord Chancellor must prepare and publish a report of each review and lay a copy of each report before Parliament.

10.3 The next review must be completed before 22 May 2027, which is 3 years after the conclusion of the previous review.

10.4 A post implementation review of the whiplash reform programme will be undertaken during 2025/26 which may include consideration of these regulations.

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7 https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fassets.publishing.service.gov.uk%2Fmedia%2F5c62d19e40f0b676df6e470f%2FWhiplash-impact-assessment.doc&wdOrigin=BROWSELINK

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 Minister Sackman has made the following statement regarding Human Rights:

"In my view the provisions of The Whiplash Injury (Amendment) Regulations 2025 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").