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| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Title: Civil Liability Act 2018: Overarching Impact Assessment  IA No: MoJ012/2017  RPC Reference No: RPC-3432(3) MoJ (Whiplash)  Lead department or agency: Ministry of Justice  Other departments or agencies: | |  | | --- | | Impact Assessment (IA) | | Date: December 2018 | | Stage: Royal Assent | | Source of intervention: | | Type of measure: | | Contact for enquiries: Andrew Meads, Ministry of Justice – tel: 0793 729200; email: [Andrew.Meads@justice.gsi.gov.uk](mailto:Andrew.Meads@justice.gsi.gov.uk) | |  | |  | |  | |  | |  | |  | |
| Summary: Intervention and Options | **RPC Opinion:** Fit for purpose (Whiplash) |
|  | |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Cost of Preferred (or more likely) Option | | | | |
| Total Net Present Value | Business Net Present Value | Net cost to business per year (EANDCB in 2014 prices) | One-In,  Three-Out? | Business Impact Target Status |
| £1.1bn | £6.1bn | -£640m | N/A | QRP (Whiplash)  Out of scope (PIDR) |
| What is the problem under consideration? Why is government intervention necessary?  The Civil Liability Act 2018 underpins vital reforms to the justice system in two key areas: road traffic accident related whiplash claims and the setting of the Personal Injury Discount Rate (PIDR) used to calculate lump sum payments in personal injury cases. Individual impact assessments (IA) have been prepared for both reforms which provide greater detail on the nature of each of the problems considered, why intervention was necessary and the impact of each provision. A summary of the main impacts associated with each of these legislative measures has been included in this overarching IA. | | | | |

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| --- |
| What are the policy objectives and the intended effects?  The whiplash measures will tackle the high number and cost of minor and unmeritorious claims so reducing the cost of premiums to motor insurance policy holders and help to counteract the wider ‘claims culture’ associated with such claims. The reforms to the legal framework for setting the PIDR will reduce the levels of over-compensation that unlawfully injured victims currently receive and better balance the interests of claimants, defendants and wider society. By specifying the principles by which the PIDR is to be set in legislation, it will be it easier to understand the review process and to anticipate the size of any prospective changes while regular reviews will provide greater certainty to both claimants and defendants. Requiring the Lord Chancellor to give reasons and publish information will ensure that a clear, transparent and objective approach is adopted which provides certainty and predictability for those involved in litigation. |

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| --- |
| What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)  The following options are assessed in this Impact Assessment:   * Option 0 – Do nothing. Retain the current legislative position concerning the setting of the PIDR, the payment of compensation for road traffic accident (RTA) related whiplash injuries and the current Small Claims Track (SCT) limits for both RTA related personal injury (PI) claims and non-RTA PI claims. * Option 1 – Introduce the legislative measures included in the Civil Liability Bill along with the supporting reforms to increase the small claims track limit for personal injury claims.   Option 1 is the preferred option as it best meets the policy objectives. |

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| --- |
| Will the policy be reviewed? Please refer to the individual Impact Assessments for details. |

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| --- | --- | --- | --- | --- | --- |
| Does implementation go beyond minimum EU requirements? | | N/A | | | |
| Are any of these organisations in scope? | **Micro**  Yes | **Small**  Yes | **Medium**Yes | | **Large**  Yes |
| What is the CO2 equivalent change in greenhouse gas emissions?  (Million tonnes CO2 equivalent) | | Traded:  N/A | | Non-traded:  N/A | |

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

|  |  |  |  |
| --- | --- | --- | --- |
| **Signed by the responsible Minister:** |  | **Date:** |  |

**Summary: Analysis & Evidence** Policy Option 1

Description: Introduce the legislative measures included in the Civil Liability Bill.

**FULL ECONOMIC ASSESSMENT**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Price Base Year** 2014 | **PV Base Year** 2019 | **Time Period Years** 10 | **Net Benefit (Present Value (PV)) (£m)** | | |
| **Low: Optional** | **High: Optional** | **Best Estimate: £1.1bn** |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **COSTS (£m)** | **Total Transition** (Constant Price)Years | | **Average Annual** (excl. Transition) (Constant Price) | **Total Cost**  (Present Value) | |
| **Low** |  |  |  |  | |
| **High** |  |  |  | |
| **Best Estimate** | **N/A** | **£1.3bn** | **£10.6bn** | |
| **Description and scale of key monetised costs by ‘main affected groups’**  The monetised costs are detailed in the individual IAs for each legislative measure. Other than those associated with establishing and supporting the independent expert panel and with future reviews of the PIDR, there are no quantified costs for the new legal framework for setting the PIDR as these can only be determined when the rate is next set. The Whiplash reforms will have monetised costs for claimants as a result of them receiving reduced damages payments and from having to pay their own legal costs. Motor insurance policy holders may incur costs due to increases in Before the Event (BTE) Insurance Premiums and from increased premiums due to defendant insurers passing on the increased costs of the requirement for all claims to have medical reports. | | | | | |
| **Other key non-monetised costs by ‘main affected groups’**  There are no non-monetised costs associated with changing the legal framework for setting the PIDR although it is likely that the rate under the new legal framework will be higher than it would otherwise be. This will reduce lump sum payments to claimants who will also need to assume a higher level of investment risk. | | | | | |
| **BENEFITS (£m)** | **Total Transition** (Constant Price)Years | | **Average Annual** (excl. Transition) (Constant Price) | **Total Benefit**  (Present Value) | |
| **Low** |  |  |  |  | |
| **High** |  |  |  | |
| **Best Estimate** | **N/A** | **£1.4bn** | **£11.6bn** | |
| **Description and scale of key monetised benefits by ‘main affected groups’**  Full details of the key monetised benefits are detailed in individual IAs for each legislative measure. There are no quantified benefits for the reforms to the legal framework for setting the PIDR as these can only be determined when the rate is next set. The Whiplash reforms will create benefits for defendants from reductions in damages payments, the costs of claims with medical reports and non-recoverable legal costs. It has been assumed that 85 per cent of these savings will be passed to insurance policy holders in the form of reduced premiums. Policy holders will also benefit from lower Insurance Premium Tax. The net benefit to motor insurance premium holders is expected to be around £1.2bn per annum, inclusive of the reduction in Insurance Premium Tax. | | | | | |
| **Other key non-monetised benefits by ‘main affected groups’**  Non-monetised benefits by the main affected groups are detailed in the individual IAs for each legislative measure and summarised in this IA. The reforms to the legal framework for setting the PIDR will give claimants and defendants greater certainty concerning future changes in the rate and benefit society through the greater fairness of the new system and the additional expertise available to the Lord Chancellor from the expert panel when it is consulted on setting the rate. Raising the SCT limit, as part of the Whiplash reforms, should reduce the cost to insurers of recoverable legal expenses in PI claims. The Whiplash reforms will also contribute to action to tackle the wider ‘claims culture’ which surrounds such claims at present. | | | | | |
| **Key assumptions/sensitivities/risks**  **Discount rate (%)** | | | | | **3.5** |
| The monetised and non-monetised costs and benefits are based on the key assumptions outlined in the individual IAs which also contain a breakdown of the costs and benefits of each measure in further detail. The NPV each measure, where estimated, is presented in Tables 1and 2 below. Each of these estimates are subject to risks and uncertainties which are described and, where possible, quantified in the individual IAs. | | | | | |

**BUSINESS ASSESSMENT (Option 1)**

|  |  |  |  |
| --- | --- | --- | --- |
| **Direct impact on business (Equivalent Annual) £m:** | | | **Score for Business Impact Target (qualifying provisions only) £m:** -£640m |
| **Costs:** £110m | **Benefits:** £760m | **Net:** £640m |
|  |

Overarching Impact Assessment

*Civil Liability Act 2018*

December 2018

## Ministry of Justice

**A.** **Summary**

**Introduction**

1. The Civil Liability Act 2018 underpins vital reforms to the justice system in two key areas: whiplash related road traffic accident (RTA) claims, alongside wider reforms to the small claims track (SCT) limit for personal injury (PI) claims; and the setting of the Personal Injury Discount Rate used to calculate lump sum payments in PI cases.
2. The Act delivers key priorities for the Ministry of Justice and for the Government and enables delivery of key manifesto commitments. It formed the centrepiece of the Queen’s Speech in 2017. The Civil Liability Bill was introduced into the House of Lords on 20 March 2018, moved to the House of Commons on 28 June 2018 and received Royal Assent on [20 December] 2018.
3. The Act will deliver savings for people who hold insurance policies, with the whiplash measures expected to reduce motorists’ insurance premiums by £1.1bn in total or an average of about £35 a year per policy. The changes to the legal framework for setting the Personal Injury Discount Rate will ensure that the process is fairer to both claimants and defendants and, by so doing, further reduce pressure to increase motor insurance premiums while delivering savings to the taxpayer.
4. The reforms to RTA related whiplash claims and raising the SCT limits for PI claims to £5,000 for RTA related PI claims and to £2,000 for all other PI claims will also make a substantial contribution to meeting the Government’s target of reducing the regulatory burden on business.
5. The rest of this overarching Impact Assessment (IA) explains the policy rationale and objectives which underpin each specific legislative measure and describes the key stakeholders who would be affected. It then provides an overview of the impact of each of the legislative measures on society, focusing on the monetised and non-monetised impacts. Further detailed discussion of each measure is set out in the individual IAs.

**B. Background**

**Whiplash Reform Programme**

1. The Government consulted on measures to tackle the continuing high number and cost of minor RTA whiplash related claims, between 17 November 2016 and 6 January 2017.
2. Following consideration of the responses received the Government confirmed it would legislate to:

* Set a fixed tariff of compensation for ‘pain, suffering and loss of amenity’ (PSLA) for claims with an injury duration of up to 2 years.
* Ban the practice of seeking or offering to settle whiplash claims without first seeking medical evidence.

1. The whiplash reform programme also includes secondary legislative measures to the Civil Procedure Rues to raise the SCT limit to £5,000 (from £1,000) for RTA related PI claims and to £2,000 (from £1,000) for all other PI claims.

**Personal Injury Discount Rate**

1. Following the change in the Personal Injury Discount Rate from 2.5 per cent to -0.75 per cent in March 2017, the Ministry of Justice consulted on how, when and by whom the discount rate should be set in future. This consultation closed on the 11 May 2017.
2. Following a consideration of the responses received, the Government decided to legislate to:

* Change the methodology governing how the discount rate was set to provide for the assumed claimant investment risk profile to be low risk rather than very low risk as at present. This will establish a sound legal basis for setting the rate in future which will better reflect actual claimant investment behaviour and create a system which balances the interests of claimants, defendants and wider society more fairly;
* Provide for the rate to be reviewed on a regular basis (at least every five years). This will provide greater predictability and certainty and, also, reduce the extent of the impact of any future change in the rate; and
* Other than at the first review of the rate, establish an independent expert panel to advise the Lord Chancellor on the issues to consider when setting the rate. This will ensure that a clear, transparent and objective approach is adopted which provides certainty for those involved in litigation.

1. Draft legislation to implement these proposals was published for pre-legislative scrutiny by the Justice Select Committee (“JSC”) in September 2017. The Government’s response to the JSC’s report was published alongside the introduction of the Civil Liability Bill into the House of Lords on 20 March 2018.
2. In the Lords the personal injury discount rate provisions in the Bill were amended to require: the first review of the rate to be begun and completed more quickly and as part of this aim the PIDR provisions in the legislation came into force on Royal Assent and the legislation requires the first review is to be begun within 90 days of Royal Assent and completed within 140 days rather than 180 days of starting; that the Lord Chancellor is to consult the Government Actuary rather than the expert panel on the first review; and the PIDR to be reviewed at least every five years (as opposed to three as was initially proposed).
3. The provisions of the Bill relating to the setting of the PIDR were not amended in the Commons, but provisions were added in the Commons and approved by the Lords under which the Treasury will make regulations holding insurers to account against their public commitments to pass on savings from the legislation and these provisions extend to savings resulting from the setting of the PIDR.

**C. Overall Policy Rationale and Objectives**

1. The conventional economic approaches to Government intervention rest on efficiency or equity arguments. Governments may consider intervening if there are strong enough failures in the way markets operate (e.g. monopolies overcharging consumers) or similar failures in existing Government interventions (e.g. waste generated by misdirected rules) where the proposed new interventions avoid creating further disproportionate costs and distortions. The Government may also intervene for equity (fairness) and distributional reasons (e.g. to reallocate goods and services to more needy groups in society).

*Whiplash Reform Programme*

1. The rationale for the reforms to RTA related whiplash claims and the process for all PI claims is efficiency. The continuing high number and cost of minor RTA related whiplash claims (described in detail in the individual IA for this legislative measure) is due to various interrelated market failures and the current levels of compensation, which the Government believes is out of all proportion to the level of injury suffered. These factors, when combined, create incentives to make unmeritorious claims and for defendants to settle them for financial reasons, sometimes without the appropriate medical evidence or any other form of challenge.
2. The Government also believes that this has created a wider ‘claims culture’ in which it has become acceptable to make such claims. This culture imposes wider costs on the insurance sector and the holders of motor insurance policies as the costs of such claims are passed to all policy holders in the form of higher premiums.
3. The associated policy objective is to create a new simplified system which will ensure that where PSLA compensation is paid following an RTA resulting in a whiplash related injury claim the amount paid to the claimant is proportionate to the injury suffered and only for genuine injuries, supported by good quality medical evidence from a properly accredited medical expert. The more specific policy objectives are:

* To create a balanced, predictable and proportionate system for the payment of compensation for PSLA for whiplash related claims.
* To reduce the incentives to bring forward minor, exaggerated and fraudulent whiplash related claims and therefore reduce the overall cost to motorists through lower motor insurance premiums.

1. The reforms to whiplash related claims and the associated measure to raise the SCT limits will make a substantial contribution to the Government’s target of reducing the regulatory burden on business.

*Personal Injury Discount Rate*

1. In serious personal injury cases, claimants, including children, with serious injuries caused by the fault or negligence of others require compensation to meet their on-going financial needs, often over long periods of time and sometimes the rest of their lives. These financial needs can relate to the costs of obtaining personal care and to any loss of income resulting from the injury. Personal injury damages are intended to compensate the claimant for all such losses, past and future, caused by the injury (“the 100% rule”). Future financial loss (e.g. those associated with loss of income and on-going costs of care) can be paid by a lump sum or a stream of future payments under a Periodical Payments Order (PPO). Typically, large awards will include both.
2. The calculation of a lump sum includes applying a discount rate which represents the rate of return that claimants are expected to earn when investing it. This Personal Injury Discount Rate is intended to ensure that the opportunity to invest does not result in either over or under-compensation. The Damages Act 1996 gave the Lord Chancellor power to set a Personal Injury Discount Rate (or rates) for the courts to apply.
3. Because of their dependence on their award, claimants in serious personal injury cases differ from other investors in that they have less choice as to whether and how to invest. Under the current legal framework, the rate is calculated on the basis that the claimant is a very risk averse investor (as per the House of Lords ruling in the 1998 case of *Wells v Wells*). The rate has therefore been set by reference to yields on Index Linked Gilts (ILGS) since 1998. 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.
4. Applying the current law, the then Lord Chancellor set the rate at 2.5% real in June 2001 and at minus 0.75% in March 2017. Following the change in March 2017 (the first review for 16 years) the cost to insurers was estimated at around £2bn a year with an increase of £50-£75 on an average comprehensive motor insurance policy; whilst the Government has set aside £1.2bn a year to meet the expected additional costs to the public sector.
5. The Ministry of Justice subsequently consulted on how, when and by whom the rate should be set in future. The consultation evidence suggested PI claimants are advised and do invest in a range of portfolios including those of low risk and medium risk (none invested in ILGS alone). By investing in portfolios of low or medium risk, claimants expose themselves to higher levels of investment risk than assumed under the current legal framework but are, on average, likely to achieve returns considerably higher than the current discount rate; that is, they are likely to be over-compensated, on average.
6. In summary, the primary rationale for intervention to reform the legal framework for the setting the Personal Injury Discount Rate is equity (fairness). While continuing to recognise and respect the circumstances in which they find themselves, the Government has concluded that the present law requires the Personal Injury Discount Rate to be set by reference to unrealistic assumptions about the way that claimants invest their awards. This leads to systemic over-compensation of claimants who chose to take their damages for future financial loss as a lump sum rather than a stream of future payments. The Government’s preferred option also includes legislative measures to increase the levels of transparency and predictability in setting the Personal Injury Discount Rate in future.
7. The associated policy objective is, by setting the Personal Injury Discount Rate with reference to a low risk investment portfolio rather than a very low risk one, to reduce the overall level of over-compensation This over-compensation is paid by the taxpayer, for example in funding the compensation payments made by the NHS, and consumers, both business and individual, who have to pay more for insurance policies.
8. The Civil Liability Bill as introduced aimed to achieve these policy objectives. During its passage through the House of Lords the discount rate provisions in the Bill were amended to achieve the completion of the first review of the rate under the new legislation more quickly. In particular, the requirement to consult the expert panel was replaced with a requirement to consult the Government Actuary for the first review; the maximum interval between reviews was increased from three to five years; the first review is to begin within 90 days of Royal Assent; and the maximum period for the completion of the first review was reduced from 180 days to 140 days.
9. The Government’s revised approach to these issues is explained in section E and in the updated individual IA for this measure.

**D. Affected Stakeholder Groups, Organisations and Sectors**

1. A list of the main groups and stakeholders who will be affected by the proposals described in this IA is shown below:

* Claimants in PI and RTA related whiplash cases and, in some cases, their personal representatives.
* Defendants in PI and RTA related whiplash cases, including public sector bodies, such NHS Resolution, other businesses, and insurers.
* Experts, including medical experts in RTA related whiplash cases and the members of an expert panel appointed to advice the Lord Chancellor on setting the Personal Injury Discount Rate.
* Legal services providers, Claims Management Companies, financial advisers, wealth managers and professional deputies.
* Providers of Before the Event insurance.
* Her Majesty’s Courts and Tribunals Service (HMCTS) and the judiciary.
* Government departments, including the Ministry of Justice (MoJ) and HM Revenue and Customs (HMRC), and other public bodies.
* The Financial Conduct Authority (FCA), who will be provided with information by insurers about the effects of the Act on relevant insurance policies and who will assist HM Treasury in producing a report assessing whether benefits have been passed on to consumers.
* Third sector organisations who provide advice to claimants in PI cases;
* Providers of rehabilitation services to claimants in RTA related whiplash claims;
* Other organisations involved in RTA related whiplash claims such as Medco and the Claims Portal Ltd;
  + - * Taxpayers, who ultimately meet the costs of the NHS; and
* Wider society, either as those with views concerning equity and fairness, and as individuals (both in their roles as those currently paying insurance premiums and taxation but also as potential claimants in future RTA related whiplash and PI cases).

**E.** **Description of Legislative Measures**

**Base Case**

1. In accordance with Impact Assessment guidance, the policy and legislative proposals have been assessed against a defined ‘base case’. These are set out below.

*Whiplash Reform*

* The current arrangements for compensating whiplash/soft tissue injuries and the current SCT limits would remain in place.

*Personal Injury Discount Rate*

* The current legal framework for setting the Personal Injury Discount Rate would remain unchanged.

*Additional obligations on insurers*

* There are no additional obligations relating to the reforms.

**Legislative proposals**

Claims for whiplash related injuries

1. To tackle the issues related to such minor claims the Act will introduce a tariff of predictable damages for all RTA related whiplash PSLA claims with an injury duration of up to 24 months. The tariff will provide a single figure setting out the value of the claim, based on injury duration. Claimants will be able to identify the amount of compensation due based on the prognosis period data contained within their medical report.
2. Medical reports will continue to be sourced through MedCo, to ensure the reports are provided by accredited, independent experts and meet minimum quality standards. In addition, in exceptional circumstances and upon application by the claimant, the judiciary will be able to apply a discretionary uplift of up to 20% to the amount set out in the tariff.
3. The Act will introduce a prohibition on the ability to offer, solicit or accept offers to settle RTA related soft tissue injury claims without medical evidence. The Act also provides for enforcement of this ban through the relevant regulators.

The small claims track limits for all PI claims

1. The SCT limit will be raised to £5,000 (from £1,000) for RTA related PI claims and to £2,000 (from £1,000) for all other PI claims.

Personal Injury Discount Rate

1. The Act focuses on changing the methodology governing how the Personal Injury Discount Rate is set to provide for a less risk averse investment risk profile to apply, so as to better reflect actual claimant investment behaviour and to create a system which balances the interests of claimants, defendants and wider society more fairly. The principles on which the rate is to be set are specified in the legislation. This clarity will make it easier for persons affected to understand the review process and to anticipate the size of any prospective change in the rate.
2. The first review of the Personal Injury Discount Rate under the new methodology will commence soon after the new legislation comes into force (within 90 days of Royal Assent). For this review, the Lord Chancellor will consult the Government Actuary and HM Treasury.
3. Provision is also made for regular reviews to reduce the extent of the impact of any future change in the rate and to increase the predictability of when future reviews will occur. The Act provides for reviews at least every five years. An independent expert panel to advise the Lord Chancellor on the factors to consider when setting the rate in these subsequent reviews will also be established at each review.
4. Taken together, the Government believes that these reforms will ensure that the Personal Injury Discount Rate is set using a clear, transparent and objective approach, which better protects the interests of claimants and defendants, while providing greater certainty and predictability for those involved in litigation.

Additional obligations on insurers

1. The Act provides for secondary regulations to be made that will require insurers to provide information to the Financial Conduct Authority (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. These 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. The Treasury will then 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.
2. The Treasury will develop the regulations working closely with the FCA, and will run a consultation exercise on draft regulations in early 2019. An impact assessment will accompany the secondary legislation to provide more detail of the costs of this measure.

**F.** **Cost and Benefit Summary**

1. This overarching IA summarises the main monetised and non-monetised impacts of the above legislative measures on individuals and groups in the England and Wales. The costs and benefits of each legislative measure are compared to the “do nothing” option. IAs place a strong emphasis on valuing costs and benefits in monetary terms. However, there are often important aspects of a policy that cannot readily be monetised – e.g. the effects on particular groups in society or changes in equity and fairness.
2. More detailed analysis of the costs and benefits for the whiplash and the Personal Injury Discount Rate measures, as well as the more specific policy objectives, can be found in the individual IA for each legislative measure. These are based on our modelling, analysis conducted on behalf of the Ministry of Justice by the Government Actuary’s Department, data from the Claims Management Regulator and HMCTS and responses received to the consultations referred to above. The expected impacts of these measures are summarised in tables 1 and 2 below.
3. These impacts have been assessed using HM Treasury guidance. To make our estimates for each measure comparable, we have adopted the following conventions:

* Monetised costs and benefits are stated in 2014-15 prices;
* The Net Present Value (NPV) of each measure has been calculated for a ten-year period from the expected implementation date using a 3.5 per cent discount rate; the implementation date assumed for whiplash reforms in the Royal Assent IA is 2020;
* Where appropriate, optimism bias has been applied. The rationale for the chosen levels can be found in the IAs for the individual measures; and
* Unless otherwise stated, the annualised costs or savings are those which would be achieved in ‘steady state’ (i.e. when the measure is fully in operation).

1. Our assessment of the impacts of reforming the setting the Personal Injury Discount Rate are largely qualitative at this stage. This is because the new legislative provisions only change the legal framework in which the Lord Chancellor will make this decision and do not, of themselves, lead to a determinate level for the rate. Having said this, it is likely that under the new legal framework, the discount rate will be higher than it would have been under the previous legal framework.
2. Likewise, it is standard practice in IAs to ignore transfers of income between different groups in society and only assess the impact of changes in real resource use. In the case of the Personal Injury Discount Rate all of the main impacts of the proposed reforms are likely to arise as a result of changes in such transfers. However, given the scale of these transfers and the likely interest in our proposals for reform, we have nonetheless included an assessment of these impacts in the IA for this measure.
3. An IA which quantifies the impacts any subsequent change in the Personal Injury Discount Rate will be produced when the Lord Chancellor makes a decision on this under the new legal framework contained in the Act.

**Net Impact: Whiplash Reform**

1. Table 1 summarises the net impact of the legislative measures concerning whiplash related claims and the process for all PI claims.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Table 1 : Summary of Main Impacts, Best Estimates, Whiplash Reform** | | | | |
|  | | **Costs** | **Benefits** | **NPV** |
| **Whiplash Reform** | *Monetised* | * + - Claimants will lose around £990m per annum in reduced damages and from having to pay their own legal costs, including VAT.     - The need to pay for additional medical reports for claimants assumed to proceed that do not currently have them, and an expected increase in damages costs for some of these claimants, will cost defendant insurers around £19m per annum. It is assumed these costs will be passed to policy holders.     - Motor insurance premium holders will face increased premiums worth around £120m per annum for before the event insurance.     - HMRC will face decreased insurance premium tax revenue and reduced legal fee and medical report VAT revenue for claims assumed to no longer proceed, worth around £140m per annum. | * Defendant insurers will save approximately £1.3bn (gross) per annum from reduced damage payments, reductions in the costs associated with claims with medical reports, and reductions in unrecoverable legal costs. * It has been assumed that 85 per cent of these benefits will be passed to policy holders in lower premiums giving a net benefit to insurers of around £190m per annum. * Motor policy holders will gain a net benefit of around £1.2bn per annum, including a benefit of £110m due to reductions in the amount of Insurance Premium Tax paid. | £1.1bn |
| *Non-Monetised* | * There may be a reduction in the number of PI claims due to the rise in the small claims track limits, that are pursued leading to a reduction in damages paid to claimants. | * If there is a reduction in PI claims, defendants will save as they will no longer have to pay out recoverable legal fees. | N/A |
| **Net Impact** | *Monetised* | **£1.3bn** | **£1.4bn** | **£1.1bn** |

**Net Impact: Personal Injury Discount Rate**

1. Table 2 summarises the net impact of the legislative measures concerning the Personal Injury Discount Rate.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Table 2 : Summary of Main Impacts, Best Estimates, Personal Injury Discount Rate** | | | | |
|  | | **Costs** | **Benefits** | **NPV** |
| **Set the PIDR with reference to a ‘low risk’ mixed portfolio** | *Monetised* | * + - None | * None | N/A |
| *Non-Monetised* | Assuming the PIDR is set at a higher level than it is at present.   * Setting the PIDR with reference to a low risk mixed portfolio will result in reduced lump sum settlements for claimants in personal injury cases. * Some claimants will be required to take increased investment risk on their portfolios. * Where lump sums are exhausted before their expected term, any remaining costs of care will fall on the NHS and local authorities. * An increase in the use of PPOs will impose costs on insurers due to the need to meet the requirements of Solvency II. * Society may suffer a reduction in equity if reduced lump sum settlements are seen to be unfair to claimants. | Assuming the PIDR is set at a higher level than it is at present.     * Setting the PIDR with reference to a low risk mixed portfolio will result in reduced settlements paid by businesses and public sector bodies (compared to the settlements that would have been paid had the present law continued) so reducing any over-compensation. * A reduction in the value of lump sum settlements will lead to a reduction in insurance premiums for policy holders. * A reduction in the value of lump sum settlements will make PPOs more attractive to claimants so reducing investment and mortality risk. * Society may benefit from greater equity if the current framework is perceived to lead to a rate set on unrealistic assumptions thereby leading to compensation levels that are not fair to defendants. | N/A |
| **Review the PIDR at least once every five years** | *Monetised* | * The research and analysis in relation to the factors which might be considered when setting the rate are estimated at between £286k-£355k per review | * None | c. £286k-£355k per review |
| *Non-Monetised* | * None. | * Claimants and defendants will benefit from greater certainty concerning the timing of reviews to the PIDR. * Depending on the frequency of any reviews, both claimants and defendants will benefit from the PIDR being set with closer reference to the yields on the specified portfolio in the long run. | N/A |
| **Establish an Expert Panel to advise on the issues involved in setting the PIDR** | *Monetised* | * The costs of recruiting and supporting the expert panel are estimated to be between £76k-£86k per review. | * None | c. £76k-£86k per review with the expert panel |
| *Non-Monetised* | * None. | * Society will benefit from the additional expertise available to set the PIDR | N/A |
| **Net Impact** | *Monetised* | **c.£362k-£441k per review with an expert panel** | **N/A** | **c£362k-£4441k per review with an expert panel** |

**Net Impact: Requirement for insurers to report on savings passed to consumers**

1. Table 3 summarises the net impact of the legislative measures concerning the requirement for insurers to report to the FCA about the effects of the Bill on customers.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Table 3: Summary of Main Impacts, Best Estimates, Insurer Reporting** | | | | |
|  | | **Costs** | **Benefits** | **NPV** |
| **Requiring insurers to report to the FCA on impact of the Bill** | *Non-monetised* | * + - There will be costs to firms for complying. These costs cannot be monetised at this stage as exact requirements are yet to be determined by secondary legislation.     - Firms may incur additional costs for auditing, as required by secondary legislation. A full estimate of these costs will be included in a further impact assessment associated with secondary legislation. | * Legislative reporting requirements will strengthen incentive for insurers to pass on benefits to policy holders. This may result in a reduction in premium costs for policy holders. | N/A |

1. **Assumptions and Risks**
2. All of the above estimates are based on assumptions and are therefore subject to an element of risk. The individual IAs for each legislative measure provide further information on these for each specific issue.
3. Many of our proposals rely on positive engagement with key partners across the justice system, wider Government and industry. These include the judiciary, the legal profession and the insurance sector. We have engagement strategies in place but, in some areas the MoJ is nevertheless dependent on the co-operation of others.
4. **Wider Impacts**
5. The Equality Statements have been prepared for each of the measures described in this document consider the wider impact of the proposals in light of the MoJ’s duty to pay due regard to the Public Sector Equality Duty. The following paragraphs provide our overall conclusions.

**Equalities**

1. In line with our Public Sector Equality Duty (“PSED”) responsibilities under section 149 of the Equality Act 2010, we have paid due regard to the need to:

(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

1. We have discharged our duty through early and ongoing consideration of the equality impacts of the policy development and final proposals contained in the Act. We have used the best available data and evidence in proportionately undertaking the Equality Statements that accompany the Act to assess the likely impacts on defendants and claimants with protected characteristics for whiplash claims and the setting of the Personal Injury Discount Rate.
2. The Equality Statements can be found with the Act documents.
3. Our overall assessment of the equalities impacts based on the limited available data and evidence is as follows.

*Direct discrimination*

1. We hold the view that none of the Act measures are likely to be directly discriminatory within the meaning of the Equality Act 2010 as they apply equally to all claimants and defendants in personal injury cases, including whiplash; we do not consider that the proposals would result in people being treated less favourably on account of any protected characteristic.

*Indirect discrimination*

1. Overall, as indicated in the accompanying equality statements, we recognise that among personal injury claimants, those with some protected characteristics are likely to be over-represented when compared to the general population. We do not, however, consider that the reforms will amount to indirect discrimination within the meaning of the Act, since the resulting changes are unlikely to result in anyone sharing a protected characteristic being put at a particular disadvantage. To the extent that the reforms could be considered to result in a particular disadvantage, our assessment is that such impacts would be justified as a proportionate means of achieving the legitimate aims of these reforms (as given in the policy objectives summary above).

*Discrimination arising from disability and duty to make reasonable adjustments*

1. We recognise that it remains important to continue to make reasonable adjustments for claimants, defendants, court staff, the judiciary, and other courts and tribunals users with disabilities to help ensure that appropriate support is given to enable fair access to justice.

*Advancing equality of opportunity*

1. We have considered this limb of the duty and our overall assessment is that there will be some measures within the Act that are likely to advance equality of opportunity for claimants with protected characteristics.

*Fostering good relations*

1. We consider it unlikely that there will be any implications on fostering good relations from these legislative measures.

**Welsh language**

1. We have considered the implications for Welsh language in the development of the Act and will publish a summary of the content of the Act.
2. **Implementation**
3. The IAs for each of the legislative measures described in this document provide more information about how the they will be implemented.
4. **Monitoring & Evaluation**
5. The IAs for each of the legislative described in this document provide more information about how they will be monitored and evaluated.