

Whiplash Tariff Increase – Parliamentary Process and Impact on SCT limit

On 20 March 2025 the Government laid the Whiplash Injury (Amendment) Regulations 2025 in Parliament, to implement the recommendations made by the Lord Chancellor in her report of the statutory review of the Whiplash Injury Regulations 2021, which will result in the Whiplash Tariff figures increasing by around 15% for all injuries occurring on or after 31 May 2025. In this alert we consider the parliamentary process for the statutory instrument (SI) procedure to approve the regulations in more detail, as well as a reminder of the Lord Chancellor's decision and impact on the tariff.

Process and timings

The Lord Chancellor has completed their consultation with the Lady Chief Justice and the government have laid the Whiplash Injury (Amendment) Regulations 2025 in Parliament on 20 March by way of affirmative SI procedure. About 20% of SIs are laid under the affirmative procedure. This means the SI will be debated in both Houses before it becomes law. If either House votes against the motion to approve the SI, the changes will not proceed.

Affirmative procedure

Draft affirmative SIs laid in Parliament need to be approved by Parliament before they can be made (signed into law) and brought into effect as law.

Most SIs subject to this procedure must be debated and approved by both Houses. Some SIs dealing with tax or financial matters only need approval from the House of Commons. They are considered by the Joint Committee on Statutory Instruments (JCSI). The role of this committee is to scrutinise the SI to ensure it is legal and does not go beyond the powers specified in the parent act.

Next, the SI will be automatically referred to a Delegated Legislation Committee (DLC). These committees have 16-18 members. Any MP can attend and speak but only members of the DLC can vote. A DLC considers an SI but does not have the power to stop it. In some rare cases the SI is not referred to a committee but is debated in the Commons Chamber if it is of particular interest.

Once the SI has been debated by a committee, it needs final approval by the Commons before being 'made' and becoming law.

Draft affirmative SIs can be stopped if either House votes against or rejects the government's motion calling for the SI to be approved. In the House of Lords, members may propose an amendment to the government's motion, formally stating that the House declines to approve the instrument.

For example, the House of Lords debated an amendment to the government's motion seeking approval of the draft Legal Aid, Sentencing and Punishment of Offenders Act 2012 (amendment of Schedule 1) Order 2012. The House of Lords declined to approve the instrument and gave reasons for the disagreement. As the House of Lords had not approved the instrument, it could not then become law.

That said the expectation is that the tariff SI will pass through both Houses without much debate, particularly given the completion of the consultation between the Lord Chancellor and Lady Chief Justice recently.

The average timeframe for the passing of an affirmative SI is six-seven weeks.

When will the new tariff apply?

The revised Regulations will apply to injuries which occur on or after the commencement date of the Regulations which is set to be 31 May 2025. The current tariff will continue to apply to injuries occurring before 31 May.

When will the next review take place?

The Civil Liability Act 2018 sets out that the Lord Chancellor must complete a review of the Whiplash Tariff ‘before the end of the period of three years beginning with the day on which the previous review was completed’ and with the most recent review having been completed on 21 November 2024, the next review must therefore be completed by **21 November 2027**. As we have seen with the recent reviews, there is no obligation to implement recommendations from reviews at all (as seen with the Conservative government review) and the date for implementation of recommendations may follow the review itself.

Lord Chancellor’s Report findings:

On 21 November, the government published its [response](#) to the Whiplash Tariff Review, along with a [summary of responses](#) to the call for evidence published on 6 February 2024. This call for evidence preceded a review and report from the Conservative government, which was never published due to the general election.

The Lord Chancellor’s report found that there is no specific evidence suggesting that a change to the tariff structure is necessary. As such, the current tariff banding will remain in place. However, it was noted that there are challenges in agreeing on settlement prognosis periods, which are often influenced by the clarity and quality of medical reports. In response to this, the Ministry of Justice (MoJ) will collaborate with MedCo to improve the process.

The key findings of the report include the following:

- **Tariff structure:** The current tariff banding remains unchanged, and the split between “whiplash only” and “whiplash plus minor psychological injury” will also continue.
- **Minor psychological injury definition:** The Lord Chancellor will explore ways to provide further guidance on defining minor psychological injuries, addressing a topic that has seen mixed responses from stakeholders.
- **Inflationary adjustment:** The Lord Chancellor has decided that an inflationary increase to the tariff is appropriate, using the Consumer Price Index (CPI) as the measure. As a result, the tariff will increase by 14-15% in each band, to account for inflation since 31 May 2021, and to continue to allow for an inflationary buffer for the next 3 years.
- **Exceptionality uplift:** The maximum uplift of up to 20% for ‘exceptionality’ will remain unchanged.
- **Medical reporting:** No amendments will be made to the medical reporting definitions outlined in the regulations.

What is the proposed new tariff?

Injury duration – months	Whiplash only	Whiplash plus minor psych	Whiplash only (new tariff)	Whiplash plus minor psych (new tariff)
<= 3	£240	£260	£275	£300
4-6	£495	£520	£565	£595
7-9	£840	£895	£965	£1,025
10-12	£1,320	£1,390	£1,510	£1,595
13-15	£2,040	£2,125	£2,335	£2,435
16-18	£3,005	£3,100	£3,445	£3,550
19-24	£4,215	£4,345	£4,830	£4,975

What might this mean for the Small Claims Track (SCT) limit?

The MoJ has previously indicated that there may be a review of the SCT limit (and indeed all track limits) in connection with the broader Civil Liability Act (CLA) review, expected to commence in the second half of 2025. Some have speculated that with the new tariff nearing the £5,000 SCT limit, this review may not be a top priority for Ministers. However, the impact of the *Robot v Briggs* case and increased damages inflation, particularly following the new Judicial College Guidelines, could prompt further discussions on the SCT limit.

In addition, it is worth noting that government is required to lay a statement in Parliament before 1 April 2025, outlining insurers' commitment to pass on any savings resulting from the reforms in the Civil Liability Act 2018. This statement follows information regarding any cost savings reported to the FCA covering the period from 1 April 2020 to 31 March 2023. This may provide further context for ongoing discussions around the tariff and its implications on the broader insurance landscape.

Conclusion

The revised Whiplash Tariff represents a not insignificant change for insurers, with an inflationary increase of around 15%, retention of the current banding structure, and a future focus on improving medical report quality. Furthermore, the potential review of the SCT limit and the broader implications of the Civil Liability Act review in 2025 suggest that the landscape for whiplash claims may continue to evolve. As such, insurers must remain vigilant and prepared for future legislative developments that could further shape the claims environment.

We will continue to keep you informed on this topic.

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