



TIME FOR CHANGE

THIRD PARTIES
(RIGHTS AGAINST INSURERS)
ACT 2010

Third Parties (Rights Against Insurers) Act 2010

The Third Party (Rights Against Insurers) Act 2010 came into force on 1 August 2016. It replaces the Third Parties (Rights Against Insurers) Act 1930 (the “1930 Act”) and aims to extend the rights of third party claimants, both in pursuing insurers directly, and obtaining information about available insurance cover.

The purpose of the 1930 Act was to allow third parties to whom an insolvent insured was liable, to pursue the liability insurer directly. This prevented the sums paid to the insolvent insured under the liability policy becoming part of the wider assets used to satisfy creditors. That often meant the third party would not receive the compensation.

Under the 1930 Act a claimant had to: (1) obtain judgment against an insured, (2) then commence separate proceedings against the insurer; (3) do so without any knowledge of the extent of any cover or indemnity defences available and (4) restore a dissolved company to the register of companies to allow proceedings to be started.

2010 Act – summary of main changes

- Once an insured becomes insolvent, a third party that believes the insured is liable to it, is entitled to request details of the insurance cover. They no longer have to embark on any proceedings prior to knowing that there will likely be cover to meet any damages.
- Only one set of proceedings required – now a claimant can issue against the insolvent insured to seek declarations as to its liability and at the same time against the liability insurer for a declaration as to its liability under the policy. A claimant can choose to issue against the insurer alone to obtain a declaration in respect of both matters (but in these circumstances the declaration is not binding on the insured).
- The insurer is able to rely on any policy defences it had against the insolvent insured, but is not able to rely on the insured’s failure to notify if the third party has met that obligation. It follows that issues such as material non-disclosure or misrepresentation, breach of a warranty or a condition precedent in the policy, may be relied on in the proceedings by the third party.
- “Insolvent” has been widened and includes companies subject to voluntary arrangements or schemes of arrangement. Section 4 of the Act sets out the full definition though a short outline is given below (see relevant person). It is important to know if it captures an insured’s status not just to know if proceedings can be brought under the Act but also to establish if the Act obliges information to be given about policy cover (though it is open to an insure to give that information voluntarily if it wishes).
- It is no longer necessary to restore a completely dissolved company to the register of companies prior to commencement of proceedings.

When rights transfer - a relevant person

The insured's rights under the policy transfer to the third party if or when a liable insured becomes a "relevant person".

- For individuals this includes: a debt relief order, an administration order, an individual voluntary arrangement or a bankruptcy order.
- For a limited company or an unincorporated organisation: a voluntary arrangement or administration order is in force, a receiver, manager or a provisional liquidator has been appointed, the body is (or is being) wound up voluntarily or by order of the court, the company has been dissolved or a scheme of arrangement has been sanctioned.

Policy defences between insurer and insured – impact on the third party

As under the 1930 Act, the transfer of rights under the 2010 Act will not put the third party into any better position than the insured, either in respect of its legal liability or cover under a policy with an insurer.

The insurer can,

- rely on any liability defence the insured would have had against the third party in an action against the insured, such as limitation or contributory negligence.
- in respect of the third parties claim against the insurer, rely on any policy defences, or limits on cover it would have had in a claim brought by the insured.

It follows that, if the insured made a material non-disclosure or misrepresentation when taking out the cover, or there has been a breach of warranty or condition precedent, the insurer may have a defence to the third party's claim under the Act. However, the Act specifically allows a third party to meet, in the place of the insured, certain conditions particularly in relation to claims notification conditions (distinct from notification of circumstances requirements in claims made policies), co-operation and information provision. If the third party meets these, the insurer cannot rely on the insured's failure to do so.

Requests for information about cover

The third party can make a written request to the insured or any person who is able to provide information about available cover. That would include insurers, brokers and anyone else authorised to hold policy documents or information. If a person has information in a document and can provide it then he must do so.

The third party has to reasonably believe there is a liability and that the insured is a relevant person. Checking the status of an insured before acceding to a request will be important, though, as before, an insurer may choose to release information voluntarily if it would forestall further action.

Specific examples of information the third party is entitled to request are set out in the Act:

- whether there was a policy in place that might cover the supposed liability;
- the identity of the insurer;
- the policy terms;
- whether the insurer has denied liability;

- whether any proceedings have been issued (and if so, relevant details);
- whether there is an aggregate limit of indemnity and, if so, how much (if anything) has been paid out on other claims; and
- whether there are any fixed charges which would apply to any sums paid out.

Analysis of the Act

This is a brief summary of the provisions of the Third Parties (Rights against Insurers) Act 2010.

The Act came into force on 1 August 2016. The Act only applies from 1 August 2016 onwards. In matters which occur before 1 August 2016 the previous Third Parties (Rights against Insurers) Act 1930 continues to apply.

The thrust of the Act sets out when an insurer can be sued for the liabilities of its insured.

Title of section	What the section says	What this section does
<p>1. Rights against insurer of insolvent person etc.</p>	<p><i>This section applies if—</i></p> <p><i>(a) a relevant person* incurs a liability against which that person is insured under a contract of insurance, or (b) a person who is subject to such a liability becomes a relevant person.</i></p> <p><i>The rights of the relevant person under the contract against the insurer in respect of the liability are transferred to and vest in the person to whom the liability is or was incurred (the "Third Party").</i></p> <p><i>The Third Party may bring proceedings to enforce the rights against the insurer without having established the relevant person's liability; but the third party may not enforce those rights without having established that liability.</i></p> <p><i>For the purposes of this Act, a liability is established only if its existence and amount are established; and, for that purpose, "establish" means establish—</i></p> <p><i>(a) by virtue of a declaration under section 2 or a declarator under section 3,</i></p> <p><i>(b) by a judgment or decree, B 2 Third Parties (Rights against Insurers) Act 2010 (c. 10)</i></p> <p><i>(c) by an award in arbitral proceedings or by an arbitration, or</i></p> <p><i>(d) by an enforceable agreement.</i></p> <p><i>In this Act—</i></p> <p><i>(a) references to an "insured" are to a person who</i></p>	<p>This section of the Act makes it possible for the liability of an insured to transfer to an insurer, if the insured is a "relevant person"*. If this transfer happens the insurer will be responsible for dealing with claims against the insured.</p> <p>Where a transfer has happened an insurer will be made party to proceedings. Although the insurer will not have to pay the claim until liability is 'established' i.e. through a judgment or, a declaration against their insured.</p> <p>The term 'a declaration' is used throughout the Act. It is mostly used to mean a decision of a court or an arbitrator.</p> <p>*Be aware, a lot of the Act is focused on setting out when an insured becomes a 'relevant person' which will determine whether an insurer</p>

	<p><i>incurs or who is subject to a liability to a third party against which that person is insured under a contract of insurance;</i></p> <p><i>(b) references to a “relevant person” are to a person within sections 4 to 7;</i></p> <p><i>(c) references to a “third party” are to be construed in accordance with subsection (2);</i></p> <p><i>(d) references to “transferred rights” are to rights under a contract of insurance which are transferred under this section.</i></p>	<p><i>inherits the relevant person’s liabilities.</i></p>
<p>2. Establishing liability in England & Wales and Northern Ireland</p>	<p><i>This section applies where a person (P)—</i></p> <p><i>(a) claims to have rights under a contract of insurance by virtue of a transfer under section 1, but</i></p> <p><i>(b) has not yet established the insured’s liability which is insured under that contract.</i></p> <p><i>P may bring proceedings against the insurer for either or both of the following—</i></p> <p><i>(a) a declaration as to the insured’s liability to P;</i></p> <p><i>(b) a declaration as to the insurer’s potential liability to P.</i></p> <p><i>In such proceedings P is entitled, subject to any defence on which the insurer may rely, to a declaration under subsection (2)(a) or (b) on proof of the insured’s liability to P or (as the case may be) the insurer’s potential liability to P.</i></p> <p><i>Where proceedings are brought under subsection (2)(a) the insurer may rely on any defence on which the insured could rely if those proceedings were proceedings brought against the insured in respect of the insured’s liability to P.</i></p> <p><i>Subsection (4) is subject to section 12(1).</i></p> <p><i>Where the court makes a declaration under this section, the effect of which is that the insurer is liable to P, the court may give the appropriate judgment against the insurer.</i></p> <p><i>Where a person applying for a declaration under subsection (2)(b) is entitled or required, by virtue of the</i></p>	<p>This section sets out that a claimant is entitled to sue an insurer as if it was the insured-defendant.</p> <p>A claimant does not have to include the insured, but can if they want to declaration to bind the insured as well.</p> <p>An insurer is entitled to all defences which an insured would have been entitled to.</p> <p>To do this, a claimant must issue proceedings which include a request for a declaration.</p> <p>The declaration is a statement from the court, which will do two things: first, confirm that the insured is liable to the claimant and secondly, confirm that the insurer is liable to the clamant.</p>

	<p><i>contract of insurance, to do so in arbitral proceedings, that person may also apply in the same proceedings for a declaration under subsection (2)(a).</i></p> <p><i>In the application of this section to arbitral proceedings, subsection (6) is to be read as if “tribunal” were substituted for “court” and “make the appropriate award” for “give the appropriate judgment”.</i></p> <p><i>When bringing proceedings under subsection (2)(a), P may also make the insured a defendant to those proceedings.</i></p> <p><i>If (but only if) the insured is a defendant to proceedings under this section (whether by virtue of subsection (9) or otherwise), a declaration under subsection (2) binds the insured as well as the insurer.</i></p> <p><i>In this section, references to the insurer’s potential liability to P are references to the insurer’s liability in respect of the insured’s liability to P, if established.</i></p>	
<p>3. Establishing liability in Scotland</p>	<p><i>(1) This section applies where a person (P)—</i> <i>(a) claims to have rights under a contract of insurance by virtue of a transfer under section 1, but</i> <i>(b) has not yet established the insured’s liability which is insured under that contract.</i></p> <p><i>(2) P may bring proceedings against the insurer for either or both of the following—</i> <i>(a) a declarator as to the insured’s liability to P;</i> <i>(b) a declarator as to the insurer’s potential liability to P.</i></p> <p><i>(3) Where proceedings are brought under subsection (2)(a) the insurer may rely on any defence on which the insured could rely if those proceedings were proceedings brought against the insured in respect of the insured’s liability to P.</i></p> <p><i>(4) Subsection (3) is subject to section 12(1).</i></p> <p><i>(5) Where the court grants a declarator under this</i></p>	<p>Confirms the above applies in Scotland</p>

	<p><i>section, the effect of which is that the insurer is liable to P, the court may grant the appropriate decree against the insurer.</i></p> <p><i>(6) Where a person applying for a declarator under subsection (2)(b) is entitled or required, by virtue of the contract of insurance, to do so in an arbitration, that person may also apply in the same arbitration for a declarator under subsection (2)(a).</i></p> <p><i>(7) In the application of this section to an arbitration, subsection (5) is to be read as if "tribunal" were substituted for "court" and "make the appropriate award" for "grant the appropriate decree".</i></p> <p><i>(8) When bringing proceedings under subsection (2)(a), P may also make the insured a defender to those proceedings.</i></p> <p><i>(9) If (but only if) the insured is a defender to proceedings under this section (whether by virtue of subsection (8) or otherwise), a declarator under subsection (2) binds the insured as well as the insurer.</i></p> <p><i>(10) In this section, the reference to the insurer's potential liability to P is a reference to the insurer's liability in respect of the insured's liability to P, if established.</i></p>	
<p>4. Individuals 4.1 England & Wales</p>	<p><i>An individual is a 'relevant person' if any of the following is in force in respect of that individual in England and Wales—</i></p> <ul style="list-style-type: none"> <i>i. an administration order made under Part 6 of the County Courts Act 1984;</i> <i>ii. an enforcement restriction order made under Part 6A of that Act;</i> <i>iii. a debt relief order made under the Insolvency Act 1986;</i> <i>iv. an approved voluntary arrangement;</i> <i>v. a bankruptcy order .</i> 	<p>This part of the Act that gives one of the sets of definitions of a 'relevant person' for the purpose of the act, in England and Wales.</p> <p>This relates to individuals, the definition essentially amounts to any person who is bankrupt or insolvent. Companies are dealt with below.</p>
<p>4. Individuals 4.2 Scotland</p>	<p><i>An individual is a 'relevant person' if any of the following is in force in respect of that individual or that</i></p>	<p>Again, defines a 'relevant person' for the purpose of the</p>

	<p><i>individual's estate) in Scotland—</i></p> <ul style="list-style-type: none"> <i>i. an award of sequestration made under section 5 of the Bankruptcy (Scotland) Act 1985,</i> <i>ii. a protected trust deed within the meaning of that Act; or</i> <i>iii. an approved composition.</i> <p><i>Where an award of sequestration made under section 5 of the Bankruptcy (Scotland) Act 1985 is recalled or reduced, any rights which were transferred under section 1 as a result of that award are re-transferred to and vest in the person who became a relevant person as a result of the award.</i></p> <p><i>Where an order discharging an individual from an award of sequestration made under section 5 of the Bankruptcy (Scotland) Act 1985 is recalled or reduced under paragraph 17 or 18 of Schedule 4 to that Act, the order is to be treated for the purposes of this section as never having been made.</i></p>	<p>Act in Scotland.</p> <p>This amounts to a person who is bankrupt or insolvent.</p>
<p>4. Individuals 4.3 Northern Ireland</p>	<p><i>An individual is a 'relevant person' if any of the following is in force in respect of that individual in Northern Ireland—</i></p> <ul style="list-style-type: none"> <i>i. an administration order made under Part 6 of the Judgments Enforcement (Northern Ireland) Order 1981;</i> <i>ii. a deed of arrangement registered in accordance with Chapter 1 of Part 8 of the Insolvency (Northern Ireland) Order 1989</i> <i>iii. an approved voluntary arrangement under Chapter 2 of Part 8 of that Order, or</i> <i>iv. a bankruptcy order.</i> 	<p>Again, defines a 'relevant person' for the purpose of the Act in Northern Ireland.</p> <p>This amounts to a person who is bankrupt or insolvent.</p>
<p>5. Individuals who die insolvent</p>	<p><i>An individual is to be regarded as having died insolvent if, following their death—</i></p> <ul style="list-style-type: none"> <i>(a) their estate falls to be administered in accordance with an order under section 421 of the Insolvency Act 1986 or Article 365 of the Insolvency (Northern Ireland) Order 1989</i> <i>(b) an award of sequestration is made under section 5 of the Bankruptcy (Scotland) Act 1985 in respect of their estate and the award is not</i> 	<p>Those who have died can be a 'relevant person' but the transfer of the liabilities does not happen automatically from an insured to their insurer.</p> <p>Where the insured has died and either:</p> <ul style="list-style-type: none"> <i>i. the estate is in</i>

	<p><i>recalled or reduced, or</i></p> <p>(c) <i>a judicial factor is appointed under section 11A of the Judicial Factors (Scotland) Act 1889 in respect of their estate and the judicial factor certifies that the estate is absolutely insolvent within the meaning of the Bankruptcy (Scotland) Act 1985.</i></p> <p><i>Where a transfer of rights under section 1 takes place as a result of an insured person being a relevant person by virtue of this section, references in this Act to an insured are, where the context so requires, to be read as references to the insured's estate.</i></p>	<p>administration in England or Wales;</p> <p>ii. the estate is in administration in Scotland;</p> <p>iii. In Scotland a person appointed by the court certifies the estate is insolvent;</p> <p>The deceased will be a 'relevant person' and the liability will transfer to their insurer.</p>
<p>6. Corporate bodies etc.</p> <p>In England</p>	<p><i>A body corporate or an unincorporated body is a relevant person if—</i></p> <p>(a) <i>a compromise or arrangement between the body and its creditors (or a class of them) is in force, having been sanctioned in accordance with section 899 of the Companies Act 2006, or</i></p> <p>(b) <i>the body has been dissolved under section 1000, 1001 or 1003 of that Act, and the body has not been—</i></p> <p>(i) <i>restored to the register by virtue of section 1025 of that Act, or</i></p> <p>(ii) <i>ordered to be restored to the register by virtue of section 1031 of that Act.</i></p> <p><i>A body corporate or an unincorporated body is a relevant person if, in England and Wales or Scotland—</i></p> <p>(a) <i>a voluntary arrangement approved in accordance with Part 1 of the Insolvency Act 1986 is in force in respect of it,</i></p> <p>(b) <i>an administration order made under Part 2 of that Act is in force in respect of it,</i></p> <p>(c) <i>there is a person appointed in accordance with Part 3 of that Act who is acting as receiver or manager of the body's property (or there would be such a person so acting but for a temporary vacancy),</i></p> <p>(d) <i>the body is, or is being, wound up voluntarily in accordance with Chapter 2 of Part 4 of that Act,</i></p> <p>(e) <i>there is a person appointed under section 135 of that Act as provisional liquidator in respect of the body (or there would be such a person so</i></p>	<p>Companies can be a "relevant person" for the purposes of the Act. So too can unincorporated organisations like clubs or societies.</p> <p>For a company to be a relevant person and it's liabilities to transfer to its insurer, the company must fit into one of the scenarios described: essentially the test is when that company no longer is solvent or controls its own assets.</p> <p>This also includes voluntary arrangement with creditors.</p> <p><i>[Interesting point: This avoids the need for the costly step of restoration of any dissolved companies as the liabilities of dissolved companies which are classed as a relevant person transfer without the need for restoration.]</i></p>

	<p><i>acting but for a temporary vacancy), or</i></p> <p><i>(f) the body is, or is being, wound up by the court following a winding-up order under Part 4 or Part 5 of that Act.</i></p>	
<p>6. Corporate bodies etc.</p> <p>6.3 Scotland</p>	<p><i>A body corporate or an unincorporated body is a relevant person if, in Scotland—</i></p> <p><i>(a) an award of sequestration has been made under section 6 of the Bankruptcy (Scotland) Act 1985 in respect of the body's estate, and the body has not been discharged under that Act,</i></p> <p><i>(b) the body has been dissolved and an award of sequestration has been made under that section in respect of its estate,</i></p> <p><i>(c) a protected trust deed within the meaning of the Bankruptcy (Scotland) Act 1985 is in force in respect of the body's estate, or</i></p> <p><i>(d) a composition approved in accordance with Schedule 4 to that Act is in force in respect of the body.</i></p>	<p>These are the circumstances under Scottish law which make a company or an unincorporated association a 'relevant person' and as a result transfer liabilities to the company's insurer. They amount to the same as section 5 above.</p>
<p>6. Corporate bodies etc.</p> <p>6.4 Northern Ireland</p>	<p><i>A body corporate or an unincorporated body is a relevant person if, in Northern Ireland—</i></p> <p><i>(a) a voluntary arrangement approved in accordance with Part 2 of the Insolvency (Northern Ireland) Order 1989 is in force in respect of the body,</i></p> <p><i>(b) an administration order made under Part 3 of that Order is in force in respect of the body,</i></p> <p><i>(c) there is a person appointed in accordance with Part 4 of that Order who is acting as receiver or manager of the body's property (or there would be such a person so acting but for a temporary vacancy),</i></p> <p><i>(d) the body is, or is being, wound up voluntarily in accordance with Chapter 2 of Part 5 of that Order,</i></p> <p><i>(e) there is a person appointed under Article 115 of that Order who is acting as provisional liquidator in respect of the body (or there would be such a person so acting but for a temporary vacancy), or</i></p> <p><i>(f) the body is, or is being, wound up by the court following the making of a winding-up order under Chapter 6 of Part 5 of that Order or Part 6 of that Order.</i></p>	<p>These are the circumstances under Northern Irish law which make a company or an unincorporated association a 'relevant person' and as a result transfer liabilities to the company's insurer. They amount to the same as section 5 above.</p>
6.5	<p><i>A body within subsection (1)(a) is not a relevant person in relation to a liability that is transferred to another body by the order sanctioning the compromise or</i></p>	<p>Where there has been a compromise agreement with creditors which has been</p>

	<i>arrangement.</i>	sanctioned by the court and that compromise transfers a liability to another company, that second company is not a relevant person and cannot be treated the same way as the initial company.
6.6	<i>Where a body is a relevant person by virtue of subsection (1)(a), section 1 has effect to transfer rights only to a person on whom the compromise or arrangement is binding.</i>	Where there has been a compromise agreement with creditors, the Act only transfers liabilities to a person who is bound by the compromise agreement.
6.7	<i>Where an award of sequestration made under section 6 of the Bankruptcy (Scotland) Act 1985 is recalled or reduced, any rights which were transferred under section 1 as a result of that award are re-transferred to and vest in the person who became a relevant person as a result of the award.</i>	When a bankruptcy order is recalled or reduced that person's liabilities can be transferred to whomever is the subject of the assignment order.
6.8	<i>Where an order discharging a body from an award of sequestration made under section 6 of the Bankruptcy (Scotland) Act 1985 is recalled or reduced under paragraph 17 or 18 of Schedule 4 to that Act, the order is to be treated for the purposes of this section as never having been made.</i>	When a bankrupt is discharged the order of transfer is treated as though it was never made.
6.9	<p><i>(a) a reference to a person appointed in accordance with Part 3 of the Insolvency Act 1986 includes a reference to a person appointed under section 101 of the Law of Property Act 1925;</i></p> <p><i>(b) a reference to a receiver or manager of a body's property includes a reference to a receiver or manager of part only of the property and to a receiver only of the income arising from the property or from part of it;</i></p> <p><i>(c) for the purposes of subsection (3) "body corporate or unincorporated body" includes any entity, other than a trust, the estate of which may be sequestrated under section 6 of the Bankruptcy (Scotland) Act 1985;</i></p>	In section 6.2 (c) a body is treated as a relevant person where someone is appointed to act as receiver or manager of property due to insolvency. The same is true where someone is appointed in the same capacity for failure to pay a mortgage under the Law of Property Act 1925.

	<p><i>(d) a reference to a person appointed in accordance with Part 4 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N. I. 19)) includes a reference to a person appointed under section 19 of the Conveyancing Act 1881.</i></p>	
7. Scottish trusts	<p><i>A trustee of a Scottish trust is, in respect of a liability of that trustee that falls to be met out of the trust estate, a relevant person if—</i></p> <ul style="list-style-type: none"> <i>(a) an award of sequestration has been made under section 6 of the Bankruptcy (Scotland) Act 1985 in respect of the trust estate, and the trust has not been discharged under that Act,</i> <i>(b) a protected trust deed within the meaning of that Act is in force in respect of the trust estate, or</i> <i>(c) a composition approved in accordance with Schedule 4 to that Act is in force in respect of the trust estate.</i> <p><i>Where an award of sequestration made under section 6 of the Bankruptcy (Scotland) Act 1985 is recalled or reduced any rights which were transferred under section 1 as a result of that award are re-transferred to and vest in the person who became a relevant person as a result of the award.</i></p> <p><i>Where an order discharging an individual, body or trust from an award of sequestration made under section 6 of the Bankruptcy (Scotland) Act 1985 is recalled or reduced under paragraph 17 or 18 of Schedule 4 to that Act, the order is to be treated for the purposes of this section as never having been made.</i></p> <p><i>In this section “Scottish trust” means a trust the estate of which may be sequestrated under section 6 of the Bankruptcy (Scotland) Act 1985.</i></p>	<p>A trustee of a trust-estate in Scotland is a relevant person if the estate is subject to a Bankruptcy order or if a protected trust deed is in place.</p>
8 Limit on rights transferred	<p><i>Where the liability of an insured to a third party is less than the liability of the insurer to the insured (ignoring the effect of section 1), no rights are transferred under that section in respect of the difference.</i></p>	<p>An insurer will not be responsible for meeting a claimant’s claim if the insured owes more money to an insurer than their liability to the</p>

		claimant.
<p>9 Conditions affecting transferred rights</p>	<p><i>This section applies where transferred rights are subject to a condition (whether under the contract of insurance from which the transferred rights are derived or otherwise) that the insured has to fulfil.</i></p> <p><i>Anything done by the third party which, if done by the insured, would have amounted to or contributed to fulfilment of the condition is to be treated as if done by the insured.</i></p> <p><i>The transferred rights are not subject to a condition requiring the insured to provide information or assistance to the insurer if that condition cannot be fulfilled because the insured is—</i></p> <ul style="list-style-type: none"> <i>(a) an individual who has died, or</i> <i>(b) a body corporate that has been dissolved.</i> <p><i>A condition requiring the insured to provide information or assistance to the insurer does not include a condition requiring the insured to notify the insurer of the existence of a claim under the contract of insurance.</i></p> <p><i>The transferred rights are not subject to a condition requiring the prior discharge by the insured of the insured's liability to the third party.</i></p> <p><i>In the case of a contract of marine insurance, subsection (5) applies only to the extent that the liability of the insured is a liability in respect of death or personal injury.</i></p> <p><i>In this section—</i></p> <p><i>"contract of marine insurance" has the meaning given by section 1 of the Marine Insurance Act 1906;</i></p> <p><i>"dissolved" means dissolved under—</i></p> <ul style="list-style-type: none"> <i>(a) Chapter 9 of Part 4 of the Insolvency Act 1986,</i> <i>(b) section 1000, 1001 or 1003 of the Companies Act 2006, or</i> <i>(c) Chapter 9 of Part 5 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N. I. 19)); "personal injury"</i> 	<p>Where the policy/contract of insurance contains a requirement (such as notification) the claimant can take the step to fulfil that requirement in the place of the insured.</p> <p>The requirement to provide information does not apply if the insured is dead or dissolved.</p> <p>The requirement to provide information is not the same as the requirement to notify the insurer.</p> <p>An insured does not need to pay a claim before the liabilities transfer to the insurer.</p>

	<p><i>includes any disease and any impairment of a person's physical or mental condition.</i></p>	
10 Insurer's right of set off	<p><i>This section applies if—</i></p> <ul style="list-style-type: none"> <i>(a) rights of an insured under a contract of insurance have been transferred to a third party under section 1,</i> <i>(b) the insured is under a liability to the insurer under the contract ("the insured's liability"), and</i> <i>(c) if there had been no transfer, the insurer would have been entitled to set off the amount of the insured's liability against the amount of the insurer's own liability to the insured.</i> <p><i>The insurer is entitled to set off the amount of the insured's liability against the amount of the insurer's own liability to the third party in relation to the transferred rights.</i></p>	<p>An insurer can set off any liabilities which the insured owes it. The set off comes out of any payment the insurer makes to the claimant.</p> <p>Presumably this means that the claimant would need to seek the amount which was set off against the insured.</p>
11 Information and disclosure for third parties & Schedule 1	<p><i>Schedule 1 (information and disclosure for third parties) has effect.</i></p> <p>---</p> <p><i>Notices requesting information</i></p> <p><i>(1) If a person (A) reasonably believes that—</i></p> <ul style="list-style-type: none"> <i>(a) another person (B) has incurred a liability to A, and</i> <i>(b) B is a relevant person, A may, by notice in writing, request from B such information falling within sub-paragraph (3) as the notice specifies.</i> <p><i>(2) If a person (A) reasonably believes that—</i></p> <ul style="list-style-type: none"> <i>(a) a liability has been incurred to A,</i> <i>(b) the person who incurred the liability is insured against it under a contract of insurance,</i> <i>(c) rights of that person under the contract have been transferred to A under section 1, and</i> <i>(d) there is a person (C) who is able to provide information falling within sub-paragraph (3), A may, by notice in writing, request from C such information falling within that sub-paragraph as the notice specifies.</i> 	<p>This section gives effect to the schedule.</p> <p>The schedule details the information insurers are obliged to give to any person who believes they have a claim against the insurer. The duty to provide disclosure is subject to legal professional privilege. The test for providing disclosure and inspection under the Act is the same as standard disclosure under the Civil Procedure Rules.</p> <p>The information to be disclosed and provided is:</p> <ul style="list-style-type: none"> (a) If there is or may be a contract which insurers the potential liability; (b) if there is a contract: <ul style="list-style-type: none"> i. who the insurer is;

<p>(3) <i>The following is the information that falls within this sub-paragraph—</i></p> <p>(a) <i>whether there is a contract of insurance that covers the supposed liability or might reasonably be regarded as covering it;</i></p> <p>(b) <i>if there is such a contract—</i></p> <p>(i) <i>who the insurer is;</i></p> <p>(ii) <i>what the terms of the contract are;</i></p> <p>(iii) <i>whether the insured has been informed that the insurer has claimed not to be liable under the contract in respect of the supposed liability;</i></p> <p>(iv) <i>whether there are or have been any proceedings between the insurer and the insured in respect of the supposed liability and, if so, relevant details of those proceedings;</i></p> <p>(v) <i>in a case where the contract sets a limit on the fund available to meet claims in respect of the supposed liability and other liabilities, how much of it (if any) has been paid out in respect of other liabilities;</i></p> <p>(vi) <i>whether there is a fixed charge to which any sums paid out under the contract in respect of the supposed liability would be subject.</i></p> <p>(4) <i>For the purpose of sub-paragraph (3)(b)(iv), relevant details of proceedings are—</i></p> <p>(a) <i>in the case of court proceedings—</i></p> <p>(i) <i>the name of the court;</i></p> <p>(ii) <i>the case number;</i></p> <p>(iii) <i>the contents of all documents served in the proceedings in accordance with rules of court or orders made in the proceedings, and the contents of any such orders;</i></p> <p>(b) <i>in the case of arbitral proceedings or, in Scotland, an arbitration—</i></p> <p>(i) <i>the name of the arbitrator;</i></p> <p>(ii) <i>information corresponding with that mentioned in paragraph (a)(iii).</i></p> <p>(5) <i>In sub-paragraph (3)(b)(vi), in its application to Scotland, “fixed charge” means a fixed security within the meaning given by section 47(1) of the Bankruptcy and Diligence etc (Scotland) Act 2007 (asp 3).</i></p> <p>(6) <i>A notice given by a person under this paragraph</i></p>	<p>ii. what the contract covers;</p> <p>iii. whether the insurer is denying liability under the contract;</p> <p>iv. the details of any claims between the insurer and the insured regarding the liability (including name of the court, the case number, the contents of all served pleadings and orders (the same applies to arbitration);</p> <p>v. any fixed charges under the contract.</p> <p>On receipt of the request the insurer has 28 days from the date of receipt to provide any information requested which it has and to provide an explanation of why they insurer does not have the information it is not able to provide.</p> <p>If an insurer used to have information which is now in the possession of another the insurer must confirm that it knows or believes someone else has the information, with information about who has the information.</p> <p>If the insurer does not reply within the 28 days, the person making the request is entitled to apply to the court for an order compelling the insurer to respond.</p> <p>Where a claimant has started</p>
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	<p><i>must include particulars of the facts on which that person relies as entitlement to give the notice.</i></p> <p><i>Provision of information where notice given under paragraph 1</i></p> <p><i>2 (1) A person (R) who receives a notice under paragraph 1 must, within the period of 28 days beginning with the day of receipt of the notice—</i></p> <ul style="list-style-type: none"> <i>(a) provide to the person who gave the notice any information specified in it that R is able to provide;</i> <i>(b) in relation to any such information that R is not able to provide, notify that person why R is not able to provide it.</i> <p><i>(2) Where—</i></p> <ul style="list-style-type: none"> <i>(a) a person (R) receives a notice under paragraph 1,</i> <i>(b) there is information specified in the notice that R is not able to provide because it is contained in a document that is not in R's control,</i> <i>(c) the document was at one time in R's control, and</i> <i>(d) R knows or believes that it is now in another person's control, R must, within the period of 28 days beginning with the day of receipt of the notice, provide the person who gave the notice with whatever particulars R can as to the nature of the information and the identity of that other person.</i> <p><i>(3) If R fails to comply with a duty imposed on R by this paragraph, the person who gave R the notice may apply to court for an order requiring R to comply with the duty.</i></p> <p><i>(4) No duty arises by virtue of this paragraph in respect of information as to which a claim to legal professional privilege or, in Scotland, to confidentiality as between client and professional legal adviser could be maintained in legal proceedings.</i></p> <p><i>Notices requiring disclosure: defunct bodies</i></p> <p><i>3 (1) If—</i></p> <ul style="list-style-type: none"> <i>(a) a person (P) has started proceedings under this Act against an insurer in respect of a</i> 	<p>proceeding under the Act, they are entitled to request from the insurer, in writing any documents the insurer has regarding an insolvent or dissolved company. The request must be accompanied by a copy of the Particulars of Claim. The same request can also been by an official receiver for the insolvent/dissolved company.</p> <p>Clauses in insurance contracts which seek to end the contract in the event information is provided to a potential claimant have no effect, nor do any clauses which seek to restrict the provision of information.</p> <p>An insurer is only expected to provide information if to do so would not be 'unduly difficult' from a document in their possession or control.</p>
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	<p><i>liability that P claims has been incurred to P by a body corporate, and</i></p> <p><i>(b) the body is defunct, P may by notice in writing require a person to whom sub-paragraph (2) applies to disclose to P any documents that are relevant to that liability.</i></p> <p><i>(2) This sub-paragraph applies to a person if—</i></p> <p><i>(a) immediately before the time of the alleged transfer under section 1, that person was an officer or employee of the body, or</i></p> <p><i>(b) immediately before the body became defunct, that person was—</i></p> <p><i>(i) acting as an insolvency practitioner in relation to the body (within the meaning given by section 388(1) of the Insolvency Act 1986 or Article 3 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 N.I. 19)), or</i></p> <p><i>(ii) acting as the official receiver in relation to the winding up of the body.</i></p> <p><i>(3) A notice under this paragraph must be accompanied by—</i></p> <p><i>(a) a copy of the particulars of claim required to be served in connection with the proceedings mentioned in sub-paragraph (1), or</i></p> <p><i>(b) where those proceedings are arbitral proceedings, the particulars of claim that would be required to be so served if they were court proceedings.</i></p> <p><i>(4) For the purposes of this paragraph a body corporate is defunct if, subject to sub-paragraph (5), it has been dissolved under—</i></p> <p><i>(a) Chapter 9 of Part 4 of the Insolvency Act 1986,</i></p> <p><i>(b) Chapter 9 of Part 5 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 N.I. 19)), or</i></p> <p><i>(c) section 1000, 1001 or 1003 of the Companies Act 2006.</i></p> <p><i>(5) But a body corporate is not defunct for the purposes of this paragraph if the body has been—</i></p> <p><i>(a) restored to the register by virtue of section 1025 of the Companies Act 2006, or</i></p> <p><i>(b) ordered to be restored to the register by virtue of section 1031 of that Act.</i></p>	
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Disclosure and inspection where notice given under paragraph 3

4 (1) Subject to the provisions of this paragraph and to any necessary modifications—

- (a) the duties of disclosure of a person who receives a notice under paragraph 3, and*
- (b) the rights of inspection of the person giving the notice, are the same as the corresponding duties and rights under Civil Procedure Rules of parties to court proceedings in which an order for standard disclosure has been made.*

(2) In sub-paragraph (1), in its application to Northern Ireland—

- (a) the reference to Civil Procedure Rules is—*
 - (i) in the case of proceedings in the High Court, to be read as a reference to the Rules of the Court of Judicature (Northern Ireland) 1980 (S.R. 1980 No. 346), and*
 - (ii) in the case of proceedings in the county court, to be read as a reference to the County Court Rules (Northern Ireland) 1981 (S.R. 1981 No. 225), and (b) the reference to an order for standard disclosure is to be read as a reference to an order for discovery.*

(3) A person who by virtue of sub-paragraph (1) or (2) has to serve a list of documents must do so within the period of 28 days beginning with the day of receipt of the notice.

(4) A person who has received a notice under paragraph 3 and has served a list of documents in response to it is not under a duty of disclosure by reason of that notice in relation to documents that the person did not have when the list was served.

Avoidance

5 A contract of insurance is of no effect in so far as it purports, whether directly or indirectly—

- (a) to avoid or terminate the contract or alter the rights of the parties under it in the event of a person providing information, or giving*

	<p><i>disclosure, that the person is required to provide or give by virtue of a notice under paragraph 1 or 3, or</i></p> <p><i>(b) otherwise to prohibit, prevent or restrict a person from providing such information or giving such disclosure.</i></p> <p><i>Other rights to information etc</i></p> <p><i>6 Rights to information, or to inspection of documents, that a person has by virtue of paragraph 1 or 3 are in addition to any such rights as the person has apart from that paragraph.</i></p> <p><i>Interpretation</i></p> <p><i>7 For the purposes of this Schedule—</i></p> <p><i>(a) a person is able to provide information only if—</i></p> <p><i>(i) that person can obtain it without undue difficulty from a document that is in that person’s control, or</i></p> <p><i>(ii) where that person is an individual, the information is within that person’s knowledge;</i></p> <p><i>(b) a document is in a person’s control if it is in that person’s possession or if that person has a right to possession of it or to inspect or take copies of it</i></p>	
<p>12 Limitation and prescription</p>	<p><i>(1) Subsection (2) applies where a person brings proceedings for a declaration under section 2(2)(a), or for a declarator under section 3(2)(a), and the proceedings are started or, in Scotland, commenced—</i></p> <p><i>(a) after the expiry of a period of limitation applicable to an action against the insured to enforce the insured’s liability, or of a period of prescription applicable to that liability, but</i></p> <p><i>(b) while such an action is in progress.</i></p> <p><i>(2) The insurer may not rely on the expiry of that period as a defence unless the insured is able to rely on it in the action against the insured.</i></p> <p><i>(3) For the purposes of subsection (1), an action is to be</i></p>	<p>When a claimant starts proceedings (either in England or in Scotland) after the expiry of primary limitation, the insurer can only rely on a limitation defence which an insured would have been entitled to rely on.</p> <p>The section is designed to deal with a specific and limited scenario.</p> <ul style="list-style-type: none"> • 1.1.13-TP injured by D • 1.12.15-TP issues against D

	<p><i>treated as no longer in progress if it has been concluded by a judgment or decree, or by an award, even if there is an appeal or a right of appeal.</i></p> <p><i>(4) Where a person who has already established an insured's liability to that person brings proceedings under this Act against the insurer, nothing in this Act is to be read as meaning—</i></p> <p><i>(a) that, for the purposes of the law of limitation in England and Wales, that person's cause of action against the insurer arose otherwise than at the time when that person established the liability of the insured,</i></p> <p><i>(b) that, for the purposes of the law of prescription in Scotland, the obligation in respect of which the proceedings are brought became enforceable against the insurer otherwise than at that time, or</i></p> <p><i>(c) that, for the purposes of the law of limitation in Northern Ireland, that person's cause of action against the insurer arose otherwise than at the time when that person established the liability of the insured.</i></p>	<ul style="list-style-type: none"> • 2.1.16–Limitation • 3.1.16–D insolvent • 4.1.16–TP issues against D's insurer for declaration under TP Act. <p>S12(2) states that insurer may not argue the TP Act claim is time barred where the original proceedings were (a) issued within time and (b) remain live.</p> <p>Finally the section states that where a declaration has been made, the cause of action arose when liability was established against the insured.</p>
<p>13 Jurisdiction within the United Kingdom</p>	<p><i>Where a person domiciled in a part of the United Kingdom is entitled to bring proceedings under this Act against an insurer domiciled in another part, that person may do so in the part where they are domiciled or in the part where the insurer is domiciled (whatever the contract of insurance may stipulate as to where proceedings are to be brought).</i></p> <p><i>The following provisions of the Civil Jurisdiction and Judgments Act 1982 (relating to determination of domicile) apply for the purposes of subsection (1)— (a) section 41(2), (3), (5) and (6) (individuals); (b) section 42(1), (3), (4) and (8) (corporations and associations); (c) section 45(2) and (3) (trusts); (d) section 46(1), (3) and (7) (the Crown). (3) In Schedule 5 to that Act (proceedings excluded from general provisions as to allocation of jurisdiction within the United Kingdom) at the end add— "Proceedings by third parties against insurers 11 Proceedings under the Third Parties (Rights against Insurers) Act 2010." Enforcement of insured's liability</i></p>	<p>Regardless of which part of the UK a claimant or an insurer are based in, a claimant can bring a claim in the country they live in, no matter what the insurance contract states.</p>

<p>14 Effect of transfer on insured's liability</p>	<p><i>Where rights in respect of an insured's liability to a third party are transferred under section 1, the third party may enforce that liability against the insured only to the extent (if any) that it exceeds the amount recoverable from the insurer by virtue of the transfer.</i></p> <p><i>Subsection (3) applies if a transfer of rights under section 1 occurs because the insured person is a relevant person by virtue of— (a) section 4(1)(a) or (e), (2)(b) or (3)(b) or (c), (b) section 6(1)(a), (2)(a), (3)(c) or (4)(a), or (c) section 7(1)(b).</i></p> <p><i>If the liability is subject to the arrangement, trust deed or compromise by virtue of which the insured is a relevant person, the liability is to be treated as subject to that arrangement, trust deed or compromise only to the extent that the liability exceeds the amount recoverable from the insurer by virtue of the transfer.</i></p> <p><i>Subsection (5) applies if a transfer of rights under section 1 occurs in respect of a liability which, after the transfer, becomes one that is subject to a composition approved in accordance with Schedule 4 to the Bankruptcy (Scotland) Act 1985.</i></p> <p><i>The liability is to be treated as subject to the composition only to the extent that the liability exceeds the amount recoverable from the insurer by virtue of the transfer.</i></p> <p><i>For the purposes of this section the amount recoverable from the insurer does not include any amount that the third party is unable to recover as a result of— (a) a shortage of assets on the insurer's part, in a case where the insurer is a relevant person, or (b) a limit set by the contract of insurance on the fund available to meet claims in respect of a particular description of liability of the insured.</i></p> <p><i>Where a third party is eligible to make a claim in respect of the insurer's liability under or by virtue of rules made</i></p>	<p>Where a claimant's right to bring a claim transfers from an insured to an insurer, if there is a shortfall in the insurance coverage as a result of the transfer, the claimant is entitled to seek the remainder from the insured.</p>
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	<p><i>under Part 15 of the Financial Services and Markets Act 2000 (the Financial Services Compensation Scheme)—</i></p> <p><i>(a) subsection (6)(a) applies only if the third party has made such a claim, and (b) the third party is to be treated as being able to recover from the insurer any amount paid to, or due to, the third party as a result of the claim</i></p>	
15 Reinsurance	<p><i>This Act does not apply to a case where the liability referred to in section 1(1) is itself a liability incurred by an insurer under a contract of insurance.</i></p>	The Act does not transfer liabilities under a contract of re-insurance.
16 Voluntarily-incurred liabilities	<p><i>It is irrelevant for the purposes of section 1 whether or not the liability of the insured is or was incurred voluntarily.</i></p>	
17 Avoidance	<p><i>A contract of insurance to which this section applies is of no effect in so far as it purports, whether directly or indirectly, to avoid or terminate the contract or alter the rights of the parties under it in the event of the insured—</i></p> <p><i>(a) becoming a relevant person, or</i></p> <p><i>(b) dying insolvent (within the meaning given by section 5(2)).</i></p> <p><i>A contract of insurance is one to which this section applies if the insured's rights under it are capable of being transferred under section 1.</i></p>	This section prevents parties from contracting out of the effects of the Act.
18 Cases with a foreign element	<p><i>Except as expressly provided, the application of this Act does not depend on whether there is a connection with a part of the United Kingdom; and in particular it does not depend on—</i></p> <p><i>(a) whether or not the liability (or the alleged liability) of the insured to the third party was incurred in, or under the law of, England and Wales, Scotland or Northern Ireland;</i></p> <p><i>(b) the place of residence or domicile of any of the parties;</i></p> <p><i>(c) whether or not the contract of insurance (or a part of it) is governed by the law of England and Wales, Scotland or Northern Ireland;</i></p> <p><i>(d) the place where sums due under the contract of insurance are payable.</i></p>	Whether the liability is incurred and where the parties are based (subject to being in the UK) have no impact on the effect of the Act.
19 Power to amend Act		Enables the secretary of state to amend the act by order or statutory instrument.

<p>20 Amendments transitionals, repeals, etc</p>	<p><i>(1) Schedule 2 (amendments) has effect.</i> <i>(2) Schedule 3 (transitory, transitional and saving provisions) has effect.</i> <i>(3) Schedule 4 (repeals and revocations) has effect.</i></p>	<p>Subsection (2) gives effect to Schedule 3 which sets out the provisions governing the transition from the 1930 Acts to the Act. They provide that if the insured incurs liability to the third party after the commencement day, or if the insured becomes a relevant person after the commencement day, then the Act will apply to the claim. If both of these occur before commencement day, the 1930 Acts will continue to apply. In the case of a transfer caused by the death of an insolvent insured, the 1930 Acts will apply to cases where the insured died before the commencement day, but otherwise the Act will apply. The “commencement day” is the day the Act is brought into force.</p>
<p>21 Short title, commencement and extent</p>	<p><i>(1) This Act may be cited as the Third Parties (Rights against Insurers) Act 2010.</i> <i>(2) This Act comes into force on such day as the Secretary of State may by order made by statutory instrument appoint.</i> <i>(3) This Act extends to England and Wales, Scotland and Northern Ireland, subject as follows.</i> <i>(4) Section 2 and paragraphs 3 and 4 of Schedule 1 do not extend to Scotland.</i> <i>(5) Section 3 extends to Scotland only.</i> <i>(6) Any amendment, repeal or revocation made by this Act has the same extent as the provision to which it relates.</i></p>	



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