

Overview of the Third Parties (Rights against Insurers) Act 2010

What the 1930 Act does

The 1930 Act applies where a person or company takes out liability insurance. If the insured became liable to another person (a “third party”), ordinarily the third party would be able to sue the insured, and that liability would be covered by the insurer. However, at common law if the insured became insolvent, the third party would not be able to proceed against the insured, and would simply have to join the group of general creditors in the hope of recovering their losses. The 1930 Act transfers the insured’s rights under the insurance policy to the third party and enables them to proceed directly against the insurer.

Example

Take the example of a person (“the third party”) who has been hit by a car. The car belongs to an insured company (“the insured”) – the company has a contract of insurance with an insurer, which covers the insured for damage caused to third parties as a result of motor accidents. However, after the third party has been injured in the accident, the insured company becomes insolvent. Under the 1930 Act, the insured’s rights against the insurer are transferred to the third party.

Problems with the 1930 Act

The Law Commissions’ report identified a number of problems with the 1930 Act. In particular:

- The third party is required to establish the existence and amount of the insured’s liability before it can issue proceedings against the insurer. This is time consuming and involves unnecessary costs.
- The third party is required to proceed against both the insured and the insurer. This is unnecessary in many cases (such as when the insured no longer exists). In some cases it also requires additional related proceedings, for example to restore the insured to the register of companies so that it may be sued. The 1930 Act has failed to keep pace with developments in company and insolvency law. It does not cover a case in which the insured is anything other than an individual or a company, omitting, for example, partnerships.
- The 1930 Act does not cover certain types of voluntarily-incurred liabilities, such as legal expenses. The Commissions viewed this as objectionable due to the important role insurance plays in funding litigation, and further, it results in a windfall to the insured’s general creditors which is not justifiable.
- The rules regarding disclosure of information to the third party are inadequate.
 - The right to information does not arise until the liability of the insured is established. This results in the third party conducting litigation in ignorance of whether there is in fact an insurer against whom the third party may be able to proceed
 - The third party is only able to exercise the right to information against a limited number of people excluding those who might have relevant information such as insurance brokers
 - It is unclear what information should be provided under the Act.
- Rights transferred to the third party are subject to any defences which the insurer could have used against the insured. This means that insurers can

rely on technical defences to defeat third party claims, such as that the insured failed to notify the insurer of the claim, even if the third party has given this notification instead.

- In cases with a foreign element, it is unclear whether the 1930 Act applies. It may also be uncertain whether a court in Great Britain has jurisdiction to hear the third party's claim. The Commissions' view is that this is an increasingly serious problem given the growth of cross-border insurance activity.

The Third Parties (Rights against Insurers) Act 2010

The key changes made by the [Third Parties \(Rights against Insurers\) Act](#) are:

- A new court procedure is available to third parties. The third party has a right to seek declarations as to the insured's liability to them and as to the insurer's potential liability under the insurance contract in one set of proceedings. If the court or tribunal makes such declarations, it will be able to make an appropriate judgment which is likely to be a money judgment. This mechanism is optional; the third party may alternatively bring proceedings against the insured before commencing proceedings against the insurer (as at present).
- The third party will no longer be obliged to join the insured in proceedings against the insurer; but if this is not done where a declaration is made regarding the insured's liability to the third party, it will not bind the insured.
- The legislation reflects developments in insolvency and company law.
- Voluntarily incurred liabilities such as legal and health insurance are expressly provided for.
- The regime governing a third party's ability to seek information is clarified. In particular:
 - There is a list of disclosable information set out in the statute.
 - The third party will be able to seek information from certain persons on the basis of a reasonable belief that they have received a transfer of rights under the legislation.
 - The duty to disclose will arise only on the third party's request, and there is no continuing duty on the disclosing party to monitor information relevant to the third party's claim. Further, the disclosing party will only be required to disclose specified information but will not be required to provide specific documents.
- The rights transferred to the third party will be subject to the same defences that the insurer could have used against the insured (continuing the approach taken in the 1930 Act). However, a small number of enhancements to the third party's rights are introduced. In particular:
 - A third party will be able to fulfil the insured's contractual duties (conditions) such as to provide notice of matters such as a claim; this will be treated as if done by the insured.
 - Any condition requiring the insured to provide ongoing information or assistance to the insurer will have no effect if the insured was a body corporate that has been dissolved.
 - Pay-first clauses will be of no effect after a statutory transfer of rights but that will not be extended to contracts of marine insurance save in cases of death or personal injury.
- The position in cases with a foreign element is clarified. Where one of the insolvency-type events listed in the Act occurs within England, Wales or Scotland, the Act will apply. The third party will be able to bring proceedings in whichever part of Great Britain he or she resides or in the part where the insured is based.