**Insurance Bill [HL]**

**Memorandum by HM Treasury**

**for the House of Lords**

**Delegated Powers and Regulatory Reform Committee**

**Introduction**

1. This memorandum describes the purpose and content of the Insurance Bill(“the Bill”), which amends the Third Parties (Rights against Insurers) Act 2010 (“the 2010 Act”) and addresses three broad aspects of insurance contract law.
2. The memorandum: identifies the general content of the Bill and every provision for delegated legislation in the Bill, with appropriate background information; explains the purpose of the delegated power proposed; describes why the matter is to be dealt with in delegated legislation; and explains the nature and justification for any parliamentary procedures which apply.
3. This is a HM Treasury memorandum, as the Bill is being sponsored by HM Treasury, but has been drafted by the Ministry of Justice as the department responsible for the 2010 Act.

**General Content and Background of the Bill**

1. The main provisions of the Bill relate to insurance contract law, in respect of which there are no delegated powers. The Bill also amends the 2010 Act, which has not yet been brought into force. These provisions contain delegated powers and this memorandum therefore focuses exclusively on the provisions relating to the 2010 Act.
2. The 2010 Act was intended to implement, with minor modifications, recommendations of the Law Commission and the Scottish Law Commission (“the Law Commissions”) in their 2001 Report *Third Parties – Rights against Insurers* (Law Com No 272; Scot Law Com No 184). These recommendations were intended to simplify and modernise the existing law and procedure by which victims can obtain compensation for wrongs done to them by insolvent wrongdoers under the Third Parties (Rights against Insurers) Act 1930 and Third Parties (Rights against Insurers) Act 1930 (Northern Ireland) (“the 1930 Acts”).
3. The policy of the 2010 Act – like that of the 1930 Acts, which it will repeal – is to enable payments of compensation by insurers of insolvent wrongdoers to go to the victim rather than the general creditors of the wrongdoer. The working of the 1930 Acts and the 2010 Act is illustrated by the following example:
4. *Mr R has been diagnosed with mesothelioma as a result of exposure to asbestos at work many years earlier and has been told he has a life expectancy of one year. He would like to claim compensation from his employer for loss of earnings and loss of pension. His employer had insurance to cover its liabilities to employees. However, the employer has since become insolvent and gone out of business.*

 ***Under the 1930 Acts:*** *Mr R sues the employer and, if he is successful, obtains a statutory transfer of the rights the employer has against the insurer. Mr R can then recover the insurance monies that would have been paid to the employer in respect of Mr R’s claim. Since it is necessary for Mr R to successfully sue the employer before rights are transferred, this may require Mr R to restore to existence an employer that has ceased to exist; for example, by restoring a dissolved company to the register of companies.*

 ***Under the 2010 Act:*** *Mr R obtains a statutory transfer of the rights the employer has against the insurer, without needing to first sue the employer. Mr R can therefore bring proceedings against the insurer to recover the insurance monies that would have been paid to the employer in respect of Mr R’s claim straightaway. Under the 2010 Act it will be unnecessary to restore to existence an employer that has ceased to exist.*

1. The insurer is only required to pay the victim if it would have been required to pay the insured, and the defences which the insurer could use against the insured also apply against the victim. In this sense, it does not create any additional liabilities on the insurer. However, the effect of both the 1930 Acts and the 2010 Act is that the insurance monies are owed to the victim rather than forming part of the assets available to general creditors of the insured. Further information about the 2010 Act is contained in the memorandum submitted to the Committee in 2009, which is reproduced at Annex A for ease of reference.
2. The 1930 Acts and the 2010 Act only apply in the circumstances specified in the legislation; the 2010 Act collectively describes these circumstances as the insured becoming a “relevant person”. These include all the principal forms of insolvency and some other situations that may be, but are not always, related to insolvency. For example, a body corporate or unincorporated body which has been dissolved under specified provisions in the Companies Act 2006 is a relevant person – so the 2010 Act will apply.[[1]](#footnote-1) Such dissolutions may or may not follow an insolvency.
3. There is no single term that can completely describe the circumstances in which a person will become a relevant person for the purposes of the 1930 Acts and the 2010 Act but the Law Commissions, in their joint 2001 Report, broadly endorsed the view of Bingham LJ that:

“The legislative intention was, I think, that ... the provisions of the 1930 Act should apply upon an insured losing the effective power to enforce its own rights and dispose of its own assets.”[[2]](#footnote-2)

1. The purpose of the 2010 Act is described in the memorandum to the Committee in respect of the Bill that became the 2010 Act:

**“Purpose and Effect of the Bill in relation to the law relating to Third Party Rights against Insurers**

The Bill clarifies the scope of the rules governing this area of the law. In particular:

* It caters properly for voluntary procedures between the insured and his creditors and ensures that a third party with rights against an insurer will not be bound by a voluntary procedure to the extent of those rights;
* It confirms the application of the principles to include claims for liabilities voluntarily incurred by the third party;
* It clarifies the operation of the rules in cases with cross-border elements;
* It addresses omissions from the 1930 Act, in particular providing for the wide variety of insolvency type procedures to which individuals, companies and other bodies may now be subject and which may adversely affect a third party.”
1. The 2010 Act was, among other things, intended to address omissions from the 1930 Acts, in particular by providing for the wide variety of insolvency type procedures to which individuals, companies and other bodies may now be subject and which may adversely affect a third party. The intention was therefore that the 2010 Act should have a wider coverage than the 1930 Acts. However, whereas the 1930 Acts cover all forms of administration under the Insolvency Act 1986 and its Northern Ireland equivalent, the 2010 Act only covers administration pursuant to a court order. Additionally, the 2010 Act has not kept up to date with other developments in the field of insolvency, even though some of the new procedures fall within the 1930 Acts.[[3]](#footnote-3) Further, whilst the 1930 Acts did not cover dissolution, the 2010 Act, while its scope is wider in this respect, still only covers a limited number of the possible forms of dissolution of bodies corporate and unincorporated bodies.[[4]](#footnote-4)
2. Other than in relation to Northern Ireland legislation[[5]](#footnote-5) the 2010 Act does not contain any means of altering the circumstances in which it applies in response to the discovery of further omissions or future developments in the law. Yet since 2010, several new sectoral administration and insolvency procedures have been introduced (such as postal administration orders, energy supply company administration orders, and health special administration orders). There have also been new ways to dissolve co-operative and community benefit societies and charitable incorporated organisations. It has become all too clear that it is in practice very difficult to maintain an up-to-date list of all the events that ought to be included in the 2010 Act if they can only be added by primary legislation.
3. The purpose of the provisions in the Bill relating to the 2010 Act is to remedy these deficiencies.
4. More information about the purpose and effect of the Bill and the background to the proposals can be found in the Explanatory Notes published with the Bill.
5. The Bill has been introduced into Parliament under the House of Lords procedure for uncontroversial Law Commission Bills. The Bill that became the 2010 Act was introduced under the same procedure.

**Delegated Powers**

1. The Bill contains one delegated power. Clause 17 provides that the Secretary of State may by regulations change the circumstances in which a person is a relevant person for the purposes of the 2010 Act.

**Clause 17: Power to change the circumstances in which a person is a relevant person**

*Background*

1. The 2010 Act provides that the rights of a relevant person under an insurance contract are transferred to and vest in the person to whom the relevant person is liable (“the third party”).[[6]](#footnote-6) This transfer occurs if a relevant person incurs a liability against which he or she is insured, or if a person who has incurred such a liability becomes a relevant person.[[7]](#footnote-7) This statutory transfer lies at the heart of the 2010 Act. The proposed power is, however, concerned with identifying the circumstances in which a person is a relevant person rather than the transfer as such.
2. The circumstances in which a person will become a relevant person for the purposes of the 2010 Act are set out in sections 4 to 7. These sections list the principal forms of insolvency as well as other specified circumstances, including some forms of dissolution, in which the insured has lost effective control over their rights and assets. The full text of these sections is set out at Annex B. Section 19 of the 2010 Act presently enables the Secretary of State, by order, to amend sections 4 to 6 to substitute a reference to provisions in Northern Ireland legislation with a reference to other provisions in such legislation, and to add a reference to Northern Ireland legislation that corresponds with provisions under the law of England and Wales, or the law of Scotland, referred to in the section being amended.

*The delegated power*

1. Clause 17 substitutes a new section 19 for the existing section 19 in the 2010 Act.
2. *General* – The new section 19 enables the Secretary of State to make regulations to change the circumstances in which a person is a relevant person for the purposes of the 2010 Act, provided that the Secretary of State considers the proposed circumstances to involve dissolution, insolvency or other financial difficulty, or to be similar to those for the time being prescribed in sections 4 to 7 of the 2010 Act.[[8]](#footnote-8) The regulations must be made by statutory instrument subject to an affirmative resolution procedure.[[9]](#footnote-9)
3. *Scope* – The regulations may amend: any Act; any Act or Measure of the National Assembly for Wales; any Act of the Scottish Parliament; and Northern Irish legislation.[[10]](#footnote-10) The regulations: may include consequential and other provisions – including transitional, incidental, supplementary, transitory and savings provisions; may make different provisions for different purposes; and may make provisions by reference to an enactment as amended, extended or applied from time to time.[[11]](#footnote-11)
4. *Consequential effects under the 2010 Act* – The regulations may make provision about: the third party and the extent to which rights are transferred in particular circumstances; the re-transfer of rights where circumstances change; and the effect of the transfer on the liability of the insured in particular circumstances.[[12]](#footnote-12)
5. *Application of the regulations* - Regulations that add circumstances may provide that the transfer of rights under section 1 occurs whether either or both of:
6. the liability to the third party being incurred; and
7. the insured first satisfying the new circumstance introduced by the regulations

happened before those regulations came into force, as well as when both happened afterwards.[[13]](#footnote-13)

1. However, where a person both i) incurred liability to a third party and ii) satisfied the new circumstance before the regulations came into force, the regulations must specify that the person in question is to be treated as not having become a relevant person until the day on which the regulations came into force.[[14]](#footnote-14) Where regulations remove circumstances, new section 19(7) provides that the regulations can apply where either those circumstances or the liability under the insurance contract arose before the day on which the regulations come into force, but not where both arose before that day.

*The reason for the power*

1. *General* – The power is necessary to ensure that existing and future omissions from the circumstances specified in sections 4 to 7 can be remedied in a timely fashion without recourse to primary legislation, so that third parties do not lose out.
2. The inclusion of a general power of this kind was recommended by the Law Commissions in their 2001 Report *Third Parties – Rights against Insurers* (Law Com No 272; Scot Law Com No 184). This was because the rapid development of insolvency law made it likely that new circumstances would arise in which the 2010 Act should apply. There was therefore a risk that the list of circumstances in the 2010 Act would not be kept up to date by primary legislation alone.[[15]](#footnote-15)
3. However, when the Bill that became the 2010 Act was being drafted it was decided that such a power was unnecessary; as a result, the 2010 Act only contains a power to amend Northern Ireland legislation.[[16]](#footnote-16) It is clear with hindsight that this was an unduly narrow approach and that the original approach of the Law Commissions is to be preferred. This is in part a result of the precise formulation of circumstances in sections 4 to 7, which was intended to minimise any doubt as to whether the 2010 Act applied (one of the criticisms of the 1930 Acts being that it was not clear when they applied). However, more precise definitions increase the risk that specific circumstances may be inadvertently omitted – as has happened. The proposed power provides the means to remedy any such omissions.
4. As already mentioned, the intention that the 2010 Act would have a wider coverage than the 1930 legislation was not achieved; for example, administrations other than those ordered by the court are not covered by the 2010 Act but were covered by the 1930 Acts.
5. Further, as mentioned in paragraphs 12 and 13 above, the department has identified a number of other situations in which the 2010 Act should apply, or which require consideration as to whether or not they should be brought within the 2010 Act. An example is Debt Relief Orders in Northern Ireland which are very similar to Debt Relief Orders in England and Wales but were only created after the 2010 Act was enacted.[[17]](#footnote-17) Further changes are likely to be necessary as insolvency law develops for the reasons identified by the Law Commissions.
6. The consequences of omitting an insolvency situation could be serious. For example, the purpose of compulsory employers’ liability insurance is to protect injured employees in the event of the employer’s insolvency. Yet if an employer were to become insolvent under an obscure provision which was not listed within the Act, the result would be that any compensation payments would be due to the employer’s creditors (including the employee) and shared among them in proportion to their claims rather than to the employee alone.

1. The power is therefore necessary to ensure that the 2010 Act will apply in relation to the wide variety of insolvency type procedures to which individuals, companies and other bodies may now (or in the future) be subject and which may adversely affect a third party.[[18]](#footnote-18)
2. The power is, however, not unlimited. Additional circumstances are restricted to circumstances that the Secretary of State considers involve actual or anticipated dissolution, insolvency or financial difficulty or are similar to those already in those sections when the regulations are being made.[[19]](#footnote-19) In making his or her decision as to whether the circumstances are similar the Secretary of State must, as a matter of public law, act reasonably.
3. *Scope* – The power will enable circumstances in sections 4 to 7 of the 2010 Act to be added or removed. Amendments to other legislation, including devolved legislation, may be necessary as a result of these changes. An example might be procedural provisions in other legislation which referred to the 2010 Act. If changes were made to 2010 Act, consequential or incidental changes may be needed to these provisions. In relation to devolved legislation it is appropriate that the consequential or incidental amendments should be made by the regulations because the subject matter of the 2010 Act is reserved or excepted.[[20]](#footnote-20)
4. Transitional, transitory and savings provisions may be necessary as the regulations may change the circumstances specified in sections 4 to 7 by reference to provisions that are already in force.[[21]](#footnote-21) Decisions may then have to be made as to whether persons already in those circumstances or subject to a liability should be brought within the 2010 Act.
5. *Consequential effects under the 2010 Act* – The 2010 Act qualifies the effect of the transfer under section 1 in certain situations. Similar provision or departures from it may need to be made in relation to circumstances being changed by means of the regulations made under the power in the new section 19.[[22]](#footnote-22)
6. For example, subsection (3)(a) of the new section 19 is included so that regulations can make provision similar to section 6(6) of the 2010 Act. Section 6(6) deals with scenarios in which the insured is a relevant person by virtue of a compromise or arrangement – which the third party may or may not be bound by. Subsection (3)(b) of the new section 19 is included so that regulations can include provision equivalent to sections 4(5), 6(7) and 7(2), which are about the recall or reduction of awards of sequestration under the Bankruptcy (Scotland) Act 1985. Subsection (3)(c) of the new section 19 is included in order to enable regulations to make provision equivalent to sections 14(2) to (5), which deal with the effect of the transfer under section 1 on the insured’s liability. The regulations can provide that, in particular circumstances, a person is a relevant person only for the purpose of section 1(1)(a) or 1(1)(b) – as in, for example, sections 4(4)[[23]](#footnote-23) and 5(1)[[24]](#footnote-24).
7. *Application of regulations* – The 2010 Act applies where one or both of the two events that are needed to trigger a transfer – i) incurring a liability to a third party, covered by an insurance contract and ii) becoming a relevant person – happen on or after the commencement day for that Act (see paragraph 1 of Schedule 3). Where both events happen before that day, and the circumstances would trigger the 1930 Acts, the 1930 Acts apply (see paragraphs 3 and 4 of Schedule 3); otherwise, neither the 1930 Acts nor the 2010 Act apply.
8. Similar provision may have to be made in relation to changes to sections 4 to 7 made by regulations, albeit in relation to the date of commencement of the change. This is necessary because the regulations may specify circumstances under legislation that predates the regulations and possibly the 2010 Act, and the liability in question may have been incurred before or after those dates. It is not intended that the regulations should be able to provide that the 1930 Acts should apply.[[25]](#footnote-25)
9. Those things, and the change to the regulations, could happen in different orders:
	* 1. relevant event > liability arises > change in regulations
		2. relevant event > change in regulations > liability arises
		3. liability arises > relevant event > change in regulations
		4. liability arises > change in regulations > relevant event
		5. change in regulations > relevant event > liability arises
		6. change in regulations > liability arises > relevant event
10. The power needs to be sufficiently flexible to deal with these eventualities effectively and will therefore need to be capable of having some retrospective effect. However, as proposed, the power does not involve formal retrospection – that is to say, it does not enable something to be changed with effect from a point in the past. The intention is that the regulations should not be able to require anything done before they come into force to be undone.[[26]](#footnote-26)

1. Where regulations remove circumstances, new section 19(7) provides that they can apply where either those circumstances or the liability under the insurance contract arose before the day on which the regulations come into force, but not where both arose before that day. It prevents regulations from undoing transfers under section 1 that have already occurred
2. Where regulations add circumstances, new section 19(5) provides that they can apply where those circumstances or the liability under the insurance contract arose before the day on which the regulations come into force or where both of those events occurred before that day.  New section 19(6) provides that, if the regulations are to apply where both of those events occurred before that day, they must provide that the person is to be treated as not having become a relevant person until that day. As a result, the transfer of rights will take place at this time, and not when the two events were first satisfied. The effect is that nothing done before the regulations come into force will be undone.

*Procedure*

1. Regulations to be made under the new section 19 will amend primary legislation.[[27]](#footnote-27) The new section 19 will therefore create a “Henry VIII” power.
2. The department acknowledges the Committee’s recommendation that “in respect of Henry VIII powers to make incidental, consequential and similar provision, there should be a presumption in favour of the affirmative procedure for orders made under this form of Henry VIII power; and if the Government propose such powers subject to anything other than the affirmative procedure, the reasons should be set out in the explanatory notes to the bill as well as in the delegated powers memorandum.”[[28]](#footnote-28)
3. The Bill therefore specifies that regulations to be made by statutory instrument under the new section 19 cannot be made unless a draft of the proposed regulations has been laid before and approved by a resolution of each House of Parliament.[[29]](#footnote-29)

**Territorial Extent**

1. Clause 17 applies to the whole of the United Kingdom. The subject matter of these provisions is reserved to the United Kingdom Parliament in relation to Scotland and Northern Ireland. In relation to Wales the matter is not devolved and does not deal with provisions within the legislative competence of the National Assembly for Wales and does not affect the functions of Welsh Government Ministers.

HM Treasury

July 2014

**ANNEX A**

**Third Parties (Rights against Insurers) Bill [HL]**

**Memorandum by the Ministry of Justice**

**for the House of Lords**

**Delegated Powers and Regulatory Reform Committee**

**Introduction**

1. This memorandum describes the purpose and content of the Third Parties (Rights against Insurers) Bill (“the Bill”). It explains the purpose of the delegated power proposed; the reason why the matter is to be dealt with in delegated legislation; and the nature and justification for the applicable parliamentary procedures.

**Background of the Bill**

1. The Bill will, subject to the necessary updating and a small number of minor modifications, give effect to the Law Commissions’ 2001 recommendations on the law governing a third party’s ability to claim directly against the insurer of an insolvent defendant (Law Com Report No 272 and Scot Law Com No 184 respectively). It will also extend the legislation to Northern Ireland.
2. The Bill has been put forward as a second bill for introduction to Parliament under a new House of Lords procedure for uncontroversial Law Commission Bills, recommended by the House of Lords Procedure Committee, in its 1st Report of the Session 2007-08.[[30]](#footnote-30) More detailed information about the purpose and effect of the Bill and the background to the proposals can be found in the Explanatory Notes published with the Bill.

**The Current Law Relating to Third Party Rights against Insurers**

1. The scheme of the Third Parties (Rights against Insurers) Act 1930 and the Third Parties (Rights against Insurers) Act (Northern Ireland) 1930 (“the 1930 Acts”) is to give a person who is owed money for an established liability a direct claim against the insurer of the debt. The person who is owed money is referred to as the “third party”, the person who owes the money is the “insured” and the insurer of the debt is the “insurer”. The 1930 Acts do this by effecting a statutory transfer of certain of the insured’s rights under the contract of insurance to the third party.
2. The 1930 Acts only effect a statutory transfer if the insured is declared insolvent or suffers an insolvency type event.
3. In the absence of this statutory intervention, the third party would be able to recover at most a proportion of the insurance proceeds (notwithstanding that the insurance was taken out specifically to cover the particular type of loss suffered), as these would be treated as an asset of the insured and thus distributed pro rata among his creditors in the insolvency.
4. Nevertheless, the 1930 Act does not work well in practice. Its processes can be unnecessarily expensive and time-consuming to use, both for litigants and the courts; and in many cases it is of no assistance at all to third parties. Extensive consultation with a diverse range of internal and external stakeholders has confirmed that the deficiencies of the 1930 Act cause real hardship for claimants. The deficiencies of the current law and the reforms in the Bill designed to address these deficiencies are summarised in paragraphs 8 to 11 below.

**Multiple proceedings**

1. Under the 1930 Act, a third party cannot issue proceedings against an insurer without first establishing the existence and amount of the insured’s liability. This may involve taking legal proceedings, which may be expensive and time-consuming. The Bill removes the need for multiple sets of proceedings by allowing the third party to issue proceedings directly against the insurer.

**Dissolved companies**

1. Under the 1930 Act, if the insured is a dissolved company which has been struck off the register of companies, the third party may first have to take proceedings to restore it to the register in order to be able to sue it. In removing the need for the third party to sue the insured, the Bill also removes the need for such restoration.

**Information rights**

1. The Bill improves the third party’s rights to information about the insurance policy, allowing the third party to obtain information at an early stage about the rights transferred to him in order to enable an informed decision to be taken on whether or not to commence or continue litigation.

**Insurers’ technical defences**

1. The Bill retains the general approach of the 1930 Act, namely that in general the rights transferred to the third party will be subject to the defences which the insurer could use against the insured. However, it introduces a limited set of exceptions designed to prevent particular injustices which would otherwise result for the third party if the insurer were entitled to rely as a defence on non-fulfilment of certain policy conditions.

**Purpose and Effect of the Bill in relation to the law relating to Third Party Rights against Insurers**

1. The Bill clarifies the scope of the rules governing this area of the law. In particular:
	1. It caters properly for voluntary procedures between the insured and his creditors and ensures that a third party with rights against an insurer will not be bound by a voluntary procedure to the extent of those rights;
	2. It confirms the application of the principles to include claims for liabilities voluntarily incurred by the third party;
	3. It clarifies the operation of the rules in cases with cross-border elements;
	4. It addresses omissions from the 1930 Act, in particular providing for the wide variety of insolvency type procedures to which individuals, companies and other bodies may now be subject and which may adversely affect a third party.

**Delegated Powers**

1. The Bill contains only two powers to make orders or regulations. The first relates to Northern Ireland (clause 19) and the second enables the Secretary of State to bring the Act into force by commencement order (Clause 20).

**Clause 19 [j022] (Power to amend Act)**

1. Clause 19 is included in this Bill to facilitate it being amended so as to –
	* 1. substitute a reference to a provision of Northern Ireland legislation with a reference to a different provision of Northern Ireland legislation, or
		2. add a reference to a provision of a description within subsection (2) of clause 19. A provision will be within that subsection if -

(a) it is made by or under NI legislation , and

(b) in the opinion of the SOS, it corresponds with a provision under the law of England and Wales or the law of Scotland that is referred to in the section being amended.

1. It is preferred that this clause is included in the Bill rather than making an Order in Council under section 84(2)(a) of the Northern Ireland Act 1998 to maintain parity with the rest of the UK in this area and although such an Order could be made with UK effect that would involve quite a lengthy process and could delay the introduction of this trigger in relation to an individual being a relevant person in respect of Northern Ireland.
2. The need for clause 19 is illustrated by the proposals to introduce debt relief orders into Northern Ireland. Clause 4 of the Bill provides that an individual is a relevant person if, as per subparagraph (d) a debt relief order made under Part 7A of the Insolvency Act is in force in respect of that individual in England and Wales. Northern Ireland does not have a debt relief scheme. A Debt Relief Bill is currently being drafted to provide for such a debt relief scheme but it will not be introduced into the Northern Ireland Assembly until at least June 2010 and it is anticipated that the scheme will come into operation by December 2011. It is intended that making a debt relief Order under the Debt Relief Act to be made in Northern Ireland should constitute a trigger whereby an individual would become a “relevant person” for the purposes of the Bill. An order under clause 19 will be able to achieve this.
3. As an order under this clause will amend primary legislation it will be subject to an affirmative resolution procedure.

**Clause 20 [j021] – Commencement**

1. Clause 20(2) [j021] enables the Secretary of State to bring all the provisions of the Act into force on a day appointed by order. No power to make consequential, transitory, transitional or savings provisions is required. The clause 20(2) power is a standard commencement power exercisable by statutory instrument and is not subject to any parliamentary procedure.

**Territorial Extent**

1. The Bill generally extends to the England, Wales Scotland and Northern Ireland. The Bill does not affect any of the functions of the National Assembly for Wales or the devolved administrations in either Scotland or Northern Ireland. The new legislation will come into force across the whole of the United Kingdom at the same time.
2. Like the 1930 Act, the Law Commissions’ proposals extended to Great Britain only. In Northern Ireland a scheme equivalent to the 1930 Act is provided by the Third Parties (Rights against Insurers) Act (Northern Ireland) 1930. The Law Commissions anticipated that in due course legislation in similar terms to that of their draft Bill would be introduced for Northern Ireland, given the 1930 Acts’ parallel terms.
3. However, following two targeted consultation exercises in December 2006 and in December 2008, the Northern Ireland Department of Enterprise, Trade and Investment expressed a preference to have the Bill extend to Northern Ireland as part of a single, comprehensive package of measures ensuring parity across the United Kingdom.

**Ministry of Justice**

**15 October 2009**

**ANNEX B**

**Third Parties (Rights against Insurers) Act 2010 sections 4 to 7 (inclusive)**

*Relevant persons*

**4 Individuals**

(1) An individual is a relevant person if any of the following is in force in respect of that individual in England and Wales—

(a) a deed of arrangement registered in accordance with the Deeds of Arrangement Act 1914,

(b) an administration order made under Part 6 of the County Courts Act 1984,

(c) an enforcement restriction order made under Part 6A of that Act,

(d) subject to subsection (4), a debt relief order made under Part 7A of the Insolvency Act 1986,

(e) a voluntary arrangement approved in accordance with Part 8 of that Act, or

(f) a bankruptcy order made under Part 9 of that Act.

(2) An individual is a relevant person if any of the following is in force in respect of that individual (or, in the case of paragraph (a) or (b), that individual's estate) in Scotland—

(a) an award of sequestration made under section 5 of the Bankruptcy (Scotland) Act 1985,

(b) a protected trust deed within the meaning of that Act, or

(c) a composition approved in accordance with Schedule 4 to that Act.

(3) An individual is a relevant person if any of the following is in force in respect of that individual in Northern Ireland—

(a) an administration order made under Part 6 of the Judgments Enforcement (Northern Ireland) Order 1981 (S.I. 1981/226 (N.I. 6)),

(b) a deed of arrangement registered in accordance with Chapter 1 of Part 8 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)),

(c) a voluntary arrangement approved under Chapter 2 of Part 8 of that Order, or

(d) a bankruptcy order made under Part 9 of that Order.

(4) If an individual is a relevant person by virtue of subsection (1)(d), that person is a relevant person for the purposes of section 1(1)(b) only.

(5) 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.

(6) 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.

**5 Individuals who die insolvent**

(1) An individual who dies insolvent is a relevant person for the purposes of section 1(1)(b) only.

(2) For the purposes of this section an individual (D) is to be regarded as having died insolvent if, following D's death—

(a) D's 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 (S.I. 1989/2405 (N. I. 19)),

(b) an award of sequestration is made under section 5 of the Bankruptcy (Scotland) Act 1985 in respect of D's estate and the award is not recalled or reduced, or

(c) a judicial factor is appointed under section 11A of the Judicial Factors (Scotland) Act 1889 in respect of D's estate and the judicial factor certifies that the estate is absolutely insolvent within the meaning of the Bankruptcy (Scotland) Act 1985.

(3) 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.

**6 Corporate bodies etc**

(1) A body corporate or an unincorporated body is a relevant person if—

(a) 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

(b) the body has been dissolved under section 1000, 1001 or 1003 of that Act, and the body has not been—

(i) restored to the register by virtue of section 1025 of that Act, or

(ii) ordered to be restored to the register by virtue of section 1031 of that Act.

(2) A body corporate or an unincorporated body is a relevant person if, in England and Wales or Scotland—

(a) a voluntary arrangement approved in accordance with Part 1 of the Insolvency Act 1986 is in force in respect of it,

(b) an administration order made under Part 2 of that Act is in force in respect of it,

(c) 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),

(d) the body is, or is being, wound up voluntarily in accordance with Chapter 2 of Part 4 of that Act,

(e) there is a person appointed under section 135 of that Act 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

(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 4 of that Act or Part 5 of that Act.

(3) A body corporate or an unincorporated body is a relevant person if, in Scotland—

(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,

(b) the body has been dissolved and an award of sequestration has been made under that section in respect of its estate,

(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

(d) a composition approved in accordance with Schedule 4 to that Act is in force in respect of the body.

(4) A body corporate or an unincorporated body is a relevant person if, in Northern Ireland—

(a) a voluntary arrangement approved in accordance with Part 2 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N. I. 19)) is in force in respect of the body,

(b) an administration order made under Part 3 of that Order is in force in respect of the body,

(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),

(d) the body is, or is being, wound up voluntarily in accordance with Chapter 2 of Part 5 of that Order,

(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

(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.

(5) 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 arrangement.

(6) 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.

(7) 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.

(8) 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.

(9) In this section—

(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;

(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;

(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;

(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.

**7 Scottish trusts**

(1) 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—

(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,

(b) a protected trust deed within the meaning of that Act is in force in respect of the trust estate, or

(c) a composition approved in accordance with Schedule 4 to that Act is in force in respect of the trust estate.

(2) 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.

(3) 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.

(4) In this section “Scottish trust” means a trust the estate of which may be sequestrated under section 6 of the Bankruptcy (Scotland) Act 1985.

**ANNEX C**

**Extracts from Law Commission report Law Com 272**

**Developments in company and insolvency law reflected**

1.16 There are a number of surprising omissions from the list of circumstances in which the 1930 Act effects a statutory transfer. For example, no transfer is effected if the insured is struck off the register of companies under section 652 or section 652A of the Companies Act 1985 (“CA 1985”) and no mention is made of the orders which may be made against an insolvent partnership.

1.17 The draft Bill takes account of the wide variety of procedures to which individuals, companies and other bodies may now be subjected and which might adversely affect a third party. It also contains a power of amendment which would enable the Secretary of State to ensure that a new Act could be updated without the need for fresh primary legislation.

**Power to amend new Act by secondary legislation**

2.36 It may be that in the future it will be thought desirable to effect a statutory transfer in additional circumstances which meet Bingham LJ’s test. The chance of this is increased by the rapid development of insolvency law which produces a large amount of case law, is often amended by statute, and is the subject of continuing review by the Government.

2.37 It might be hoped that relevant primary legislation would, in the future, update a new Act where appropriate. Past experience, however, does not make us confident that this would always occur. It is also possible that future developments might come about by way of secondary legislation (for example by amendments to the Insolvency Rules). In order to prevent a new Act from failing to keep pace with the law in this way, the draft Bill contains a power of amendment, exercisable by the Secretary of State, so that new developments can easily be accommodated.

1. 2010 Act, s 6(1)(b). See Annex B. [↑](#footnote-ref-1)
2. *The Fanti and The Padre Island* [1989] 1 Lloyd’s Rep 239 at p 247 in a passage approved on appeal by Lord Goff of Chievely [1991] 2 AC 1 at p 38: Law Com 272 para 1.3. [↑](#footnote-ref-2)
3. See, for example, energy administration orders (Energy Act 2004, ss154-171) and railway administration orders (Railways Act 1993, schedule 6, para 20). [↑](#footnote-ref-3)
4. Companies Act 2006, ss 1000, 1001 and 1003. [↑](#footnote-ref-4)
5. 2010 Act, s 19. [↑](#footnote-ref-5)
6. 2010 Act, s 1(2). [↑](#footnote-ref-6)
7. 2010 Act, s 1(1). [↑](#footnote-ref-7)
8. New section 19(1) and (2). [↑](#footnote-ref-8)
9. New section 19(10) and (11). [↑](#footnote-ref-9)
10. New section 19(9) and see Schedule 2 para 6 (new section 19A(2)). [↑](#footnote-ref-10)
11. New section 19(8). [↑](#footnote-ref-11)
12. New section 19(3). [↑](#footnote-ref-12)
13. New section 19(5). [↑](#footnote-ref-13)
14. New section 19(6). [↑](#footnote-ref-14)
15. See Law Com 272 paras 1.16-17 and 2.36 and 2.37 (reproduced at Annex C for ease of reference). [↑](#footnote-ref-15)
16. 2010 Act, s 19 (see also Annex A paragraphs 15 – 18 (inclusive)). [↑](#footnote-ref-16)
17. Clause 18 and Schedule 2 para 2. Debt Relief Orders in Northern Ireland were introduced in 2011 pursuant to the Debt Relief Act (Northern Ireland) 2010, which was enacted on 15 December 2010. Debt Relief Orders in England and Wales are included in the 2010 Act (section 4(1)(d)). [↑](#footnote-ref-17)
18. See paragraph 10 above. [↑](#footnote-ref-18)
19. New section 19(2). [↑](#footnote-ref-19)
20. Cabinet Office Devolution Guidance Note 8 – see summary p 1. [↑](#footnote-ref-20)
21. New section 19(8). [↑](#footnote-ref-21)
22. New section 19(3). [↑](#footnote-ref-22)
23. If an individual is a relevant person by virtue of subsection (1)(d), that person is a relevant person for the purposes of section 1(1)(b) only. [↑](#footnote-ref-23)
24. An individual who dies insolvent is a relevant person for the purposes of section 1(1)(b) only. [↑](#footnote-ref-24)
25. See 2010 Act, Schedule 3 paragraph 3. [↑](#footnote-ref-25)
26. New section 19(5)-(7). [↑](#footnote-ref-26)
27. New section 19(9) and clause 18 and Schedule 2 para 6 introducing new section 21A. [↑](#footnote-ref-27)
28. Guide to Making Legislation para 15.5. [↑](#footnote-ref-28)
29. New section 19(10) and (11). [↑](#footnote-ref-29)
30. <http://www.publications.parliament.uk/pa/ld200708/ldselect/ldprohse/63/63.pdf> [↑](#footnote-ref-30)