

This guidance is tailored specifically for official receivers. It is discretionary and not designed for use by third parties. This version was the most up to date guidance available to official receivers as at 11 March 2020

61. Third Parties (Rights Against Insurers) Act 2010

61.1 Introduction

The Third Parties (Rights Against Insurers) Act 2010 (the Act) modernises and simplifies the Third Parties (Rights against Insurers) Act 1930 and the Third Parties (Rights against Insurers) Act (Northern Ireland) 1930. The Act extends to the whole of the UK and has been amended, particularly in relation to companies, by the Insurance Act 2015 and the Third Parties (Rights against Insurers) Regulations 2016.

As with the 1930 Act, the Act provides for the rights of third parties against insurers of insolvents against whom the third party has a claim which is covered by the insurance contract. The Act has been updated to reflect changes in insolvency laws and makes it easier for third parties to bring a claim directly against the insurer.

It continues to prevent the injustice of an insolvency office-holder being able to claim under an insurance policy for the estate, while leaving the injured party as an unsecured creditor with no special interest in the insurance money.

61.2 Scope

The 2010 Act applies in the case of an individual¹ when:

- a bankruptcy order or insolvency administration order is made
- a composition or arrangement is entered into with creditors.
- A debt relief order is made (however see following paragraph)

In the case of a company¹ (or unincorporated body) it applies when:

- a winding-up order is made,
- the company enters administration,
- a resolution for voluntary winding up is passed,
- a receiver or manager of the company's business or undertaking is appointed,
- the holder of a debenture secured by a floating charge either personally takes possession of property subject to that charge or appoints an administrative receiver to do so
- where a voluntary arrangement is approved.

The Act covers third party liabilities which are incurred by the 'relevant person'¹ as outlined above, both before and after the insolvency event. Such a liability could occur, for example, where a vehicle belonging to the insolvent was involved in an accident and an insurance claim arising from the accident was unresolved at the date of the bankruptcy or winding-up order. The Act however does not apply to re-insurance contracts.

61.3 Commencement and application

The Act came into force on 1 August 2016 and will apply where on, or after, 1 August 2016:

- a company or individual had incurred a liability against which they were insured **and/or**
- had entered a state of insolvency and become a 'relevant person'¹

The Act is not retrospective and there are no transitional provisions². If **both** the date of insolvency and the date that the liability was incurred were before 1 August 2016 then the 1930 Act will apply. Where the 1930 Act applies then a dissolved company would need to be restored before any claim against the insurers could be pursued.

Where an individual is subject to a debt relief order, rights against the insurer will only transfer to the third party where the debt relief order was made **after** the liability was incurred³.

The same rules apply where instead of entering a state of insolvency a company is dissolved under section 1000, 1001 or 1003 of the Companies Act 2006.

1. Third Parties (Rights Against Insurers) Act 2010 sections 4 to 7

2. Redman v Zurich Insurance Plc [2017] EWHC 1919 (QB)

3. Third Parties (Rights Against Insurers) Act 2010 section 4(1)(d), section 4(4) and section 1(1)(b)

61.4 Third party action against the insurer

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 expensive and time-consuming legal proceedings. The Act removes the need for multiple sets of proceedings by allowing the third party to issue proceedings directly against the insurer and resolves all issues (including the insured's liability) within those proceedings. Under the Act the third party has the choice of using either the new method of single proceedings established by the Act, or the existing method of first establishing the liability of the insured before initiating proceedings against the insurer.

61.5 Provision of information to third parties – 1930 Act

The Act imposes a duty on the bankrupt, debtor, the insolvent's personal representative (for a deceased debtor) or the company and, as the case may be on the trustee, liquidator or other insolvency office-holder to provide such information as the third party may reasonably require for the purposes of ascertaining whether any rights have been transferred to and vested in him by the Act and for enforcing any such rights. This includes a duty to allow all contracts of insurance, receipts for premiums and other relevant documents in the possession or power of the person on whom the duty is imposed to be inspected and copies of them to be taken.

In a Court of Appeal decision¹, the court held that a third party claimant needs to know whether the person against whom they are making a claim is insured and in what terms (including whether they hold limited or no insurance), and that this statutory disclosure requirement² under applies even before the third party has established liability. This means that the official receiver is required to disclose (if requested) the existence/non-existence of insurance cover, with appropriate details of the cover where applicable, in every case.

Where the official receiver has been asked to disclose details of the insurance cover under the terms of the 1930 Act they should notify the insurer of the request. Should the official receiver be approached to provide information after the appointment of an insolvency practitioner as office-holder, they should inform the third party that the information should be requested from the insolvency practitioner.

1. Re: OT Computers Limited (In Administration) [2004] All ER (D) 361 (May)

2. Third Parties (Rights Against Insurers) Act 1930 section 2

61.6 Provision of information to third parties – 2010 Act

The disclosure provisions are similar to those required in OT Computers Ltd (above) but are referred to in Schedule 1 of the Act and apply to the official receiver as trustee or liquidator, or to any subsequent office holder.

61.7 Notifying insurer of proceedings

Where the official receiver becomes aware of legal proceedings being brought by a third party to establish a claim against the insolvent, they should check the terms of the insurance policy. It is extremely likely that it is a condition of cover that the insurer is notified promptly of any circumstances which might give rise to a claim. Notification of the proceedings will give the insurer the opportunity to become a party to the defence and of disclosing the existence of the policy to the claimant. Failure to notify the insurer of the proceedings could invalidate the insurance cover and leave the official receiver liable in respect of damages.

61.8 Road Traffic Act 1988

There is a legal obligation¹ on persons involved in a road accident to exchange insurance details. Where a motor insurance policy is in the official receiver's possession, they should make it available to the insolvent to enable them to comply with any obligation under the Road Traffic Act. It should be noted that whilst the official receiver is not legally obliged to do so, where the request for information is directed to the official receiver they may provide the insurance details directly to a third party involved in a road accident subject to obtaining the insolvent's consent.

1. Road Traffic Act section 154

61.9 Information generated/obtained by the official receiver

In the event, however, that the official receiver receives a request to disclose correspondence or documents which have been generated by or obtained from the insolvent's insurers in the course of the proceedings, reference should be made to chapter 22.

61.10 Company officers' and bankrupts' duty to co-operate

Company officers and bankrupts have a statutory duty to co-operate¹ with the official receiver following the making of a winding-up or bankruptcy order. It is envisaged that any information, insurance documents etc needed to enable the official receiver to comply with any request received from a third party in accordance with the Act, will be requested under the provisions of these sections if not otherwise held by the official receiver.

1. Sections 235 or 291

61.11 Enforcement of duty to co-operate

Legal advice has been obtained that that it would not be a proper use of the private examination provisions¹ of the Insolvency Act to compel a bankrupt or company officer to produce information, documents, etc simply for the purpose of assisting a third party. Accordingly the official receiver should not generally apply for a private examination to assist a third party in progressing a potential insurance claim unless doing so is likely to result in some benefit to the estate. Such benefit would occur where there were assets to distribute and the dividend payable to the other creditors could be increased by removing a large claim which would be borne by the insurers (the insurer would not subrogate to the claim after payment of it). The official receiver should obtain the agreement of the Senior Official Receiver by contacting ORS Advice if they consider that the circumstances of a particular case merit a private examination. Any such application should be brought by the official receiver in their capacity as liquidator or trustee (or other relevant office-holder), because it is in that capacity that the duties to third parties under the Act arise. The official receiver should not apply for a public examination to obtain information for a third party, because the public examination provisions are there to assist official receivers with their statutory duties as official receiver, not to enable them to fulfil a duty to a third party in the capacity of liquidator or trustee.

1. Sections 236 or 366