

*These notes refer to the Third Parties (Rights against Insurers) Bill [HL]
as introduced in the House of Lords on 23rd November 2009 [HL Bill 17]*

THIRD PARTIES (RIGHTS AGAINST INSURERS) BILL [HL]

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Third Parties (Rights against Insurers) Bill [HL] as introduced in the House of Lords on 23rd November 2009. They have been provided by the Ministry of Justice in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.

2. The Notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. Where a clause or part of a clause does not seem to require any explanation or comment, none is given.

BACKGROUND

3. The Bill will give effect, with minor modifications, to the recommendations set out in the Law Commission and the Scottish Law Commission's 2001 joint report "Third Parties – Rights against Insurers" (Law Com No. 272; Scot Law Com No. 184), which was accepted by the Government in 2002.

Review of Current Position

4. A party ("an insured party") that incurs a liability to another party (the "third party") may have purchased an insurance policy to protect itself against the cost of that liability. If so, usually the insured party will make a claim under such a policy. Provided the insurer is satisfied that the claim is valid, the insurer will pay out the insurance proceeds. However, if the insured becomes insolvent before the third party is paid, then under general legal principles the insurance money will become an asset in the insolvent estate of the insured party. The third party would at best receive only part of the payment he or she would otherwise have been due, and the insurance money would be used to increase the amount paid to other creditors.

5. The Third Parties (Rights against Insurers) Act 1930 and the Third Parties (Rights against Insurers) Act (Northern Ireland) 1930 deal with this problem by transferring the insured party's rights against the insurer to the third party.

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6. However, the 1930 Acts do not work as well as they should, and insolvency law has changed considerably since 1930. The 1930 Acts can be expensive and time-consuming to use. Details of the deficiencies in the operation of the 1930 Acts are set out in the Law Commissions' Report.

SUMMARY OF REFORMS

Rights of Action for the Third Party

7. *Multiple proceedings:* Under the 1930 Acts, 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 Bill removes the need for multiple sets of proceedings by allowing the third party to issue proceedings directly against the insurer and resolving all issues (including the insured's liability) within those proceedings. Under the Bill the third party has the choice of using either the new method of single proceedings established by the Bill, or the existing method of first establishing the liability of the insured before initiating proceedings against the insurer.

8. *Defunct bodies:* Under the 1930 Acts, if the insured is a defunct body 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.

9. *Information rights:* 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 or her in order to enable an informed decision to be taken about whether or not to commence or continue litigation.

Insurer's Defences

10. The Bill retains the general approach of the 1930 Acts that the rights transferred to the third party will be subject to the defences which the insurer could use against the insured. However, it introduces three exceptions which are designed to ensure that a third party is not prevented from enforcing his or her rights.

Scope

11. The Bill updates the law to reflect changes in insolvency law since the 1930s. This includes providing for rights to be transferred to a third party where an insured is facing financial difficulties and enters into certain alternatives to insolvency such as voluntary procedures between the insured and the insured's creditors.

12. The Bill applies to voluntarily-incurred liabilities such as liabilities covered by legal expenses insurance, health insurance and car repair insurance. There was some doubt as to

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whether the 1930 Acts applied to such liabilities. The Bill also addresses the issue of its application in cases with a cross-border element.

TERRITORIAL EXTENT AND APPLICATION

13. This Bill extends to the United Kingdom, apart from clause 2 and paragraphs 3 and 4 of Schedule 1 which do not extend to Scotland and clause 3 which extends to Scotland only.

14. The subject matter of this Bill is reserved to the United Kingdom Parliament in relation to Scotland and Northern Ireland. In relation to Wales the matter is not devolved.

15. This Bill does not contain any provisions falling within the terms of the Sewel Convention. Because the Sewel Convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament, if there are amendments relating to such matters which trigger the Convention, the consent of the Scottish Parliament will be sought for them.

16. With regard to Northern Ireland, the Bill does not contain any provisions that are specifically for a transferred purpose. A Legislative Consent Motion will not be necessary unless the Bill is amended to include matters that are devolved to Northern Ireland.

17. The Bill does not contain provisions which fall within the legislative competence of the National Assembly for Wales and so a Legislative Consent Motion will not be necessary; neither does it affect the competence of the Welsh Ministers.

COMMENTARY ON CLAUSES

Clause 1: Rights against insurer of insolvent person etc

18. Clause 1 sets out when a statutory transfer of rights occurs and specifies when the third party may enforce those rights.

19. *Subsections (1) and (2)* effect a transfer of rights of an insured under an insurance contract to a third party. Subsection (1)(a) effects a transfer where the insured, who is already subject to one of the procedures listed in clause 4, 6 or 7, incurs a liability towards the third party. Subsection (1)(b) effects a transfer where an insured, who is already subject to a liability to the third party, subsequently becomes subject to one of the procedures listed in clauses 4 to 7.

20. *Subsection (3)* provides that the third party may initiate proceedings against the insurer without having first established the liability of the insured. This is a change from the 1930 Acts. However, subsection (3) also states that before the third party can *enforce* rights

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transferred under clause 1 against the insurer, he or she must establish the liability of the insured. The liability of the insured and the insurer may be established in one set of proceedings.

21. *Subsection (4)* sets out how a liability can be established.

Clause 2: Establishing liability in England and Wales and Northern Ireland

22. This clause introduces, for England and Wales and Northern Ireland, a new mechanism to enable a third party to bring proceedings against an insurer without first establishing the fact and amount of the insured's liability.

23. *Subsections (1) and (2)* entitle a third party who has received a transfer of rights, but who has not yet established that the insured is liable, or has proved that the insured is liable, but has not proved the amount of that liability, to bring proceedings against the insurer.

24. *Subsection (2)* enables a third party to seek declarations (one or both of which can be asked for by the third party) from the court in proceedings against the insurer. The first declaration (provided for in subsection (2)(a)) will contain the court's decision on the third party's allegation that the insured is liable to him. The second declaration (provided for in subsection (2)(b)) will contain the court's decision as to whether the insurance policy covers the liability incurred by the insured against the third party.

25. *Subsection (3)* provides that the third party is entitled to the declaration(s) requested where he or she has proven his or her case. In the absence of this provision, a decision on whether to grant the declarations applied for would be within the discretion of the court.

26. *Subsection (4)* enables an insurer facing a claim from a third party using the mechanism in this clause and claiming a declaration as to the insured's liability (under subsection (2)(a)) to rely on any defence which would have been available to the insured had proceedings been taken against the insured (for example, estoppel, contributory negligence etc.).

27. *Subsection (5)* adjusts the operation of subsection (4) in the specific circumstances set out in clause 12(1).

28. *Subsection (6)* empowers a court to give "the appropriate judgment" where the court has made a declaration the effect of which is that the insurer is liable to the third party. In many cases, this will be a judgment for a particular sum of money. However, if argument on the amount of the liability has been postponed, either to a later court hearing or to arbitration, the court might grant judgment for damages to be assessed.

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29. *Subsections (7) and (8)* extend the benefit of the new mechanism to third parties who are entitled or obliged, by a provision in the insurance contract, to resolve the issue of the insurer's liability in arbitration proceedings.

30. *Subsection (9)* provides that a third party who uses the new mechanism and applies for a declaration under subsection (2)(a) may join the insured as a defendant to the action at the outset. It will be possible to join the insured later in the proceedings in accordance with rules of court.

31. However, if a third party chooses not to join the insured as a defendant, the court may be required to make a declaration under subsection (2)(a) concerning the insured's obligations, in the absence of the insured. It would be inappropriate if a declaration made in such circumstances bound the insured. Accordingly, the effect of *subsection (10)* is that an insured is only bound if he or she is a defendant to the third party's claim.

32. In addition, it is intended that amended rules of court will require a third party to inform the insured of his or her action against the insurer, which will give the insured the option of applying to be joined as a defendant.

Clause 3: Establishing liability in Scotland

33. This clause introduces a new mechanism for establishing liability in Scotland. The subsections mirror those of clause 2, except that there is no equivalent to clause 2(3). This is because a declarator is not a discretionary remedy.

Clause 4: Individuals

34. *Subsections (1), (2) and (3)* list the circumstances in which an individual is a "relevant person" for the purposes of the Bill in England and Wales, Scotland and Northern Ireland respectively.

35. *Subsection (4)* provides that a person in respect of whom a debt relief order made under Part 7 of the Insolvency Act 1986 is in force is only a relevant person if the liability is incurred before he or she becomes subject to the order. This is because a debt relief order has no effect on liabilities incurred after the order is made.

36. After the recall or reduction of a sequestration award made against an insured under Scots law, the insured will no longer be subject to one of the events capable of triggering a statutory transfer. Accordingly *subsection (5)* provides that the rights that were transferred under clause 1 are re-transferred to the insured.

37. *Subsection (6)* states that where an insured is discharged under Scots law, but the discharge order is subsequently recalled or reduced, then the order shall be treated as never having been made and thus will have no effect on the rights of a third party under the Bill.

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Clause 5: Individuals who die insolvent

38. *Subsection (1)* provides that a statutory transfer from a deceased insured takes place only where the debtor dies insolvent subject to a liability against which he or she is insured (a transfer under clause 1(1)(b)). As an insured individual cannot incur liability after death there is no need to allow for the possibility of a transfer in these circumstances (a transfer under clause 1(1)(a)). *Subsection (2)* lists the events that must occur after an insured's death for him or her to be regarded as having died insolvent.

Clause 6: Corporate bodies etc

39. *Subsections (1) to (4)* list the circumstances in which a body corporate or an unincorporated body is a "relevant person" for the purposes of the Bill. The Bill brings about a statutory transfer whether the insured is a limited company, a partnership, a limited liability partnership or some other entity subject to the procedures listed in this clause.

40. *Subsections (5) and (6)* limit the circumstances in which a transfer is effected in the case of some of the procedures listed in the previous subsections. These restrictions prevent transfers from occurring in cases in which the third party's position is unaffected by the procedure to which the insured is subject.

41. After the recall or reduction of a sequestration award made against an insured under Scots law, the insured will no longer be subject to one of the events capable of triggering a statutory transfer. Accordingly *subsection (7)* provides that the rights that were transferred under clause 1 are re-transferred to the insured.

42. *Subsection (8)* states that where an insured is discharged under Scots law, but the discharge order is subsequently recalled or reduced, then the order is to be deemed as never having been made and thus will have no effect on the rights of a third party under the Bill.

Clause 7: Scottish trusts

43. In Scotland, the trust estate itself can be subject to sequestration, a protected trust deed or a judicial composition. These procedures are provided for in clause 7.

Clause 8: Limit on rights transferred

44. This clause ensures that a third party does not receive a right to recover from the insurer any amounts in excess of the insured's liability. The rights of the insured against the insurer are preserved in respect of any amount that is due under the insurance policy but not payable to the third party. An example is where the insurer is obliged by the policy not only to indemnify the insured in full but also to reimburse the insured for costs incurred in mounting a defence to a third party's claim or in seeking advice on whether a third party's claim is likely to be successful. These costs would, by virtue of clause 8, be payable under the policy but not recoverable by the third party (the insured would retain the right to claim them).

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Clause 9: Conditions affecting transferred rights

45. The rights transferred to the third party are subject to all of the defences which the insurer could use against the insured, but for three exceptions in this clause. These prevent an insurer from defeating a third party's claim by relying on certain technical defences, based on conditions in the insurance contract.

46. *Subsection (2)* relates to conditions in the insurance contract that require the insured to do something. Where such a condition exists and the third party, rather than the insured, has done the thing required by the condition, subsection (2) deems that the thing required has been done for the purposes of the condition. For example, where the insured has not given notice of the claim but the third party has personally informed the insurer of the claim within the period prescribed in the insurance contract, the requirement to give notice is deemed to have been fulfilled and the insurer will not be able to rely on non-fulfilment of the condition as a defence.

47. *Subsection (3)* relates to any condition in the insurance contract that requires the insured to provide continuing information and assistance to the insurer once notice has been given of the claim. Where the insured is incapable of fulfilling such a condition because it is no longer in existence (because it is a company that has been dissolved or an individual who has died), subsection (3) provides that the transferred rights are not subject to that condition.

48. *Subsection (4)* provides, however, that a condition requiring information and assistance does not include a condition requiring the insured to give notice of a claim to the insurer. But as explained above, if a third party complies with such notice requirements, it will be treated as having been done by the insured.

49. *Subsections (5) and (6)* concern "pay-first" clauses, namely provisions in an insurance contract requiring the insured to pay sums due to the third party before any right to indemnity can arise. The House of Lords held in *The Fanti and the Padre Island* [1991] 2 AC 1 that a third party's claim under rights transferred by the 1930 Acts is worthless if the insurance contract contains such a clause. Subsection (5) abrogates this rule, ensuring that a pay-first clause will not apply to rights transferred under the Bill. Subsection (6) limits the effect of subsection (5), preserving the rule in *The Fanti and the Padre Island* in cases of marine insurance (except in relation to death or personal injury claims).

Clause 10: Insurer's right of set off

50. This clause preserves the insurer's rights to deduct money owed to it by the insured from the monies payable to the third party. For example, this ensures that if the insured has not paid all the premiums for the insurance policy, the insurer can deduct those unpaid premiums when paying the third party's claim, to the extent to which it would have been entitled to do so had the claim been brought by the insured.

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Clause 11: Information and disclosure for third parties and Schedule 1

51. This clause introduces Schedule 1, which confers on the third party rights to obtain information about the insurance policy.

Schedule 1: Information and disclosure for third parties

52. It was arguable that the right to information under the 1930 Acts was restricted because it did not arise until the liability of the insured had been established. The Court of Appeal held in *Re OT Computers Ltd (In Administration)* [2004] EWCA Civ 653 that a third party may make a request for information under section 2 of the 1930 Acts before the insured's liability has been established. The Bill allows third parties to obtain information about the rights transferred to them in order to enable an informed decision to be taken on whether or not to commence or continue litigation.

Paragraph 1: Notices requesting information

53. Paragraph 1 sets out the right to request information. The information which may be requested is listed at sub-paragraph (3). Sub-paragraphs (1) and (2) distinguish between requesting information from the party liable (the insured or potentially insured) and requesting information from other persons. Sub-paragraph (2) enables a third party to request information from *any* person that he or she reasonably believes could provide the information. This will include (amongst others) insurers, brokers and other persons authorised to hold policy information. The distinction between the person liable and others is intended to strike the correct balance between allowing third parties to obtain relevant information and minimising speculative requests for information to persons other than the party liable.

54. *Sub-paragraph (1)* provides that a person (A) may request information by notice in writing from a person who A reasonably believes has incurred liability to A and who A reasonably believes is a relevant person as defined in clauses 4 to 7.

55. *Sub-paragraph (2)* provides that a person (A) may request information by notice in writing from any other person if A reasonably believes that: a liability has been incurred to A, the person who incurred the liability is insured against it under a contract of insurance, rights of that person have been transferred to A under clause 1 and the other person is able to provide such information falling within sub-paragraph (3) as the notice specifies.

56. *Sub-paragraph (6)* requires a person to explain the basis on which he or she is entitled to request information in the notice.

Paragraph 2: Provision of information where notice given under paragraph 1

57. Paragraph 2 outlines what a person receiving a notice requesting information under paragraph 1 must do. *Sub-paragraph (1)* provides that the person must, within 28 days of receiving the notice, provide the person who requested the information with that information or, if he or she is unable to provide the information, notify the person who has requested the information why he or she cannot provide it.

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58. *Sub-paragraph (2)* applies where a document is no longer in the control of the person who received the notice, but at one time the document was under his or her control, and the person knows or believes it is under another person's control. The sub-paragraph requires the person to provide whatever particulars he or she can as to the nature of the information and the identity of the person who now has the document to the person requesting information. Again this is to be done within 28 days of receipt of the notice.

59. *Sub-paragraph (3)* provides for the duty to disclose to be enforceable by court order in the event of non-compliance. The court in question in any given case will be determined in accordance with rules of court.

60. *Sub-paragraph (4)* exempts from the duty to provide information as outlined in this paragraph information to which legal professional privilege, or in Scotland, confidentiality as between client and professional legal adviser, could be claimed and maintained.

Paragraph 3: Notices requiring disclosure: defunct bodies

61. Paragraphs 3 and 4 provide a mechanism similar to that under paragraphs 1 and 2 in relation to defunct bodies. One of the purposes of the Bill is to remove the need for third parties to restore a defunct body to the register of companies in order to initiate proceedings against it. Allowing the third party to bring proceedings directly against the insurer removes one of the reasons for restoring a body to the register. The other reason third parties may need to restore a defunct body to the register is in order to obtain information from that body which cannot be obtained from the insurer. The mechanism under paragraphs 3 and 4 removes the need for this by allowing the third party to request information directly from persons related to the defunct body.

62. These persons are described at paragraph 3(2). They are those who were employees or officers of the body immediately before the transfer of rights under clause 1, insolvency practitioners in relation to the defunct body or a person acting as the official receiver in relation to the winding up of the body.

63. Paragraph 3(3) requires a notice requesting information to be accompanied by particulars of claim in relation to the proceedings. This is required even where in the case of arbitration proceedings no particulars of claim are required to be served. The person requesting information has, therefore, the same rights whether he is involved in court proceedings or arbitration proceedings.

64. Paragraphs 3(4) and (5) explain when a body is defunct for the purposes of this paragraph.

Paragraph 4: Disclosure and inspection where notice given under paragraph 3

65. Paragraph 4 imposes the same duties on persons receiving a notice given under paragraph 3 as would have been imposed by the court had the defunct body been restored to

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the register and orders for standard disclosure obtained. *Sub-paragraphs (1) and (2)* do this by applying the corresponding duties under the rules of court of the relevant jurisdiction, subject to the provisions of this paragraph and any other necessary modifications.

66. Paragraph 4(3) provides for a 28 day period for service of a list of documents if this is required under sub-paragraphs (1) and (2). The duty to serve a list of documents is enforceable under the rules of court.

67. Paragraph 4(4) provides that the duty of disclosure on those who have served a list of documents under this paragraph is not ongoing. There is no duty to disclose a document that the person did not have at the time the list was served.

Paragraph 5: Avoidance

68. This paragraph prevents the insurance contract from being drafted so as to nullify the effect of Schedule 1.

Paragraph 6: Other rights to information etc

69. This paragraph ensures that the rights to information outlined in paragraphs 1 or 3 are in addition to any other such rights to information, for example rights under the Civil Procedure Rules.

Paragraph 7: Interpretation

70. This paragraph explains when a person is to be considered able to provide information, and when a document is to be considered to be in a person's control, for the purposes of Schedule 1.

Clause 12: Limitation and prescription

71. This clause sets out rules governing when an action to enforce rights transferred by the Bill will be time-barred.

72. *Subsections (1) to (3)* govern the situation where a third party is already involved in proceedings against the insured and the limitation period or period of prescription governing those proceedings has expired. These subsections ensure that if the third party has issued proceedings against the insured in time, the third party will not be time-barred from issuing fresh proceedings against the insurer for a declaration under clause 2(2)(a) (or declarator under clause 3(2)(a)).

73. In the absence of these subsections, fresh proceedings against the insurer using the new mechanism in clause 2 or 3 would in these circumstances be time-barred. This would not matter if the third party could join the insurer to the existing proceedings against the insured. However, it is likely that this will not be possible under procedural rules which comply with section 35 of the Limitation Act 1980. These subsections therefore ensure that the new mechanism provided by the Bill is available to third parties in these circumstances.

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74. *Subsection (4)* applies where the insured's liability has already been established (see clause 1(4)). It ensures that the Bill does not alter the date on which the relevant limitation period or period of prescription for proceedings against the insurer starts.

Clause 13: Jurisdiction within the United Kingdom

75. This clause sets out what is to happen in cases in which the third party is domiciled in one part of the United Kingdom, and the insurer is domiciled in another. It provides the third party with the choice to issue proceedings either in his or her own place of domicile or in that of the insurer, regardless of any contrary provisions in the insurance contract. In the absence of this provision, proceedings brought by a third party under the Bill against an insurer domiciled within the United Kingdom would be within the scope of Council Regulation (EC) 44/2001 and would therefore be governed by Schedule 4 to the Civil Jurisdiction and Judgments Act 1982 and any relevant clause in the insurance contract. The result might in these circumstances be that the third party is prevented from suing the insurer in the courts of his or her own place of domicile.

Clause 14: Effect of transfer on insured's liability

76. This clause sets out the effect of the statutory transfer on the third party's rights against the insured. The clause seeks to remove the uncertainty under the 1930 Acts about whether a third party can recover from the insured any of his or her debt which he or she is entitled to recover from the insurer under transferred rights. The Bill provides that the third party is not entitled to do so.

77. *Subsection (1)* provides that a third party may not seek to enforce his or her rights against the insured to the extent that there is valid insurance in place covering the liability. This is because the insured's rights against the insurer under the insurance policy have been transferred to the third party. The third party will only be able to seek payment from the insured to the extent that the insurance policy is ineffective – that is, where there is a gap between what is covered by the insurance policy (referred to as the “amount recoverable from the insurer”) and the full amount of the liability.

78. *Subsections (2) and (3)* cater for the situation where an insured has become a relevant person as a result of a voluntary procedure. These provisions preserve the ability of the third party to recover from the insured the amount by which the liability exceeds the amount recoverable from the insurer. However, the voluntary procedure will apply to the amount of liability which the third party could seek to recover from the insured, so it may affect the amount which is actually recoverable.

79. *Subsections (4) and (5)* play a similar role to subsections (2) and (3) in respect of a liability subject to a composition approved in accordance with Schedule 4 to the Bankruptcy (Scotland) Act 1985. They remove, either partially or completely, the third party from the scope of this voluntary procedure.

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80. *Subsection (6)* defines the term “amount recoverable from the insurer”, used in subsections (1), (3) and (5). Subsection (6) provides that in calculating the “amount recoverable from the insurer”, that amount does not include any money which cannot be recovered, because:

- a) the insurer itself has also become a “relevant person”, and is therefore unable to pay the debt, or
- b) the contract of insurance provides for a limit on funds available to meet claims which fall in the same category as the third party’s claim.

81. The effect of subsection (6) is therefore to protect a third party where he or she is unable to recover from the insurer, due to either of the circumstances outlined above. Any amount that the third party is unable to recover for these reasons will not be treated as part of the “amount recoverable from the insurer” for the purposes of subsections (1) to (5), and so the third party will be entitled to recover that amount from the insured instead.

82. *Subsection (7)* relates to the Financial Services Compensation Scheme established by virtue of Part 15 of the Financial Services and Markets Act 2000. A third party may be eligible to make a claim under the scheme in respect an amount which he or she cannot recover from the insurer because of the insurer’s own financial difficulties. If a third party is eligible but does not make such a claim, this may reduce the amount he or she will be able to claim from the insured.

Clause 15: Reinsurance

83. Clause 15 provides that the Bill does not apply where the liability incurred referred to in clause 1(1) is itself a liability incurred by an insurer under a contract of insurance. The effect of this clause is that the Bill does not apply to reinsurance.

Clause 16: Voluntarily-incurred liabilities

84. *Tarbuck v Avon Plc* [2001] 2 All ER 503 held that the Third Parties (Rights against Insurers) Act 1930 did not apply to claims for legal expenses insurance. The Law Commissions indicated that the same reasoning would apply to insurance for other voluntarily-incurred expenses, such as health or car repair insurance. The decision in *Tarbuck* was distinguished by the Court of Appeal in *Re OT Computers Ltd (In Administration)* [2004] EWCA Civ 653. The Bill therefore provides that a third party will be able to make a direct claim against the insurer even if the insurance covered liabilities voluntarily-incurred by the insured.

Clause 17: Avoidance

85. This clause prevents the insurance contract from being drafted so as to nullify the effect of the Bill. Any provision in an insurance contract that purports to avoid the effect of the Bill will have no effect.

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Clause 18: Cases with a foreign element

86. Clause 18 provides the Bill will apply irrespective of whether the case has any foreign elements (for example, if the insurer is based overseas).

Clause 19: Power to amend Act

87. Clause 19 gives the Secretary of State a power by order to amend clause 4, 5 or 6 to take account of Northern Ireland legislation. The Secretary of State may update references to Northern Ireland legislation or add a reference to Northern Ireland legislation where in the opinion of the Secretary of State it corresponds with a provision of the law of England and Wales or the law of Scotland which is referred to in the clause being amended.

88. *Subsection (4)* provides for the order to be subject to the affirmative resolution procedure, which means that the order cannot be made until it is approved by a resolution of each House of Parliament.

Clause 20: Amendments, transitionals, repeals, etc and Schedules 2 and 3

89. *Subsection (1)* gives effect to Schedule 2 which replaces references to the 1930 Acts in other legislation with references to the Bill.

90. *Subsection (2)* gives effect to Schedule 3 which sets out the provisions governing the transition from the 1930 Acts to the Bill. 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 Bill 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 Bill will apply. The “commencement day” is the day the Act resulting from the Bill is brought into force.

Clause 21: Short title, commencement and extent

91. *Subsection (2)* provides that the Act will come into force on a day specified by the Secretary of State by order.

92. *Subsections (3) to (6)* specify the territorial extent of the Bill. Please see the section on Territorial Extent and Application above.

FINANCIAL EFFECTS

93. Implementation of the provisions of the Bill would impose no additional burden on the Consolidated Fund or the National Loans Fund. Nor would the Bill have an effect on public expenditure.

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PUBLIC SECTOR MANPOWER

94. No significant change in the workload of any Government department or agency is anticipated on the implementation of this Bill.

SUMMARY OF THE IMPACT ASSESSMENT

95. An Impact Assessment of the Bill's provisions has been published alongside the Bill. It concludes that the costs of the Bill would be insignificant, and the benefits moderate but real. The Impact Assessment sets out the impact of the Bill on small business, carbon emissions, and equality (race, disability and gender). A small firms impact test was carried out and found that the impact of the Bill would likely be neutral or of benefit to small businesses. In the areas of carbon emissions and equality the Bill would be neutral in effect. The Impact Assessment is available for Peers from the Printed Paper Office in the House of Lords, and for Members of the House of Commons from the Vote Office.

COMPATIBILITY WITH THE EUROPEAN CONVENTION ON HUMAN RIGHTS

96. The Bill is considered to be compatible with the Convention rights. By removing the need for the third party to sue the insured the Bill potentially engages the insured's Article 6(1) rights (right to a fair trial), but clauses 2(9) and 3(8) have the effect that the insured will not be bound if not a party to the proceedings.

97. The insurer's Article 1, First Protocol rights (protection of property) taken together with its Article 6(1) rights are also potentially engaged since a third party will be able to sue the insurer directly (as opposed to *having* to establish the insured's liability first). This results in the diversion of money from one party to another in that the proceeds of the insurance policy will be paid to the third party not the insured, but it is very unlikely that there will be any adverse impact on present expectations or interests (amounting to "possessions" for the purposes of the Article); and given the balancing of the interests involved the Bill is considered to comply with the Convention rights.

98. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the provisions of the Bill with the Convention rights (as defined by section 1 of that Act). Lord Bach has made a statement in the following form –

“In my view the provisions of the Third Parties (Rights against Insurers) Bill [HL] are compatible with the Convention rights.”

*These notes refer to the Third Parties (Rights against Insurers) Bill [HL]
as introduced in the House of Lords on 23rd November 2009 [HL Bill 17]*

COMMENCEMENT

99. The Bill will come into force on such day as the Secretary of State may specify by order (clause 20(2)).

THIRD PARTIES
(RIGHTS AGAINST INSURERS) BILL [HL]

EXPLANATORY NOTES

*These notes refer to the Third Parties (Rights against Insurers) Bill [HL]
as introduced in the House of Lords on 23rd November 2009
[HL Bill 17]*

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