

This Statutory Instrument has been printed in consequence of a defect in S.I. 2016/570 and is being issued free of charge to all known recipients of that Statutory Instrument.

Draft Regulations laid before Parliament under section 19(11) of the Third Parties (Rights Against Insurers) Act 2010, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2018 No.

INSURANCE

The Third Parties (Rights Against Insurers) Act 2010 (Consequential Amendment of Companies Act 2006) Regulations 2018

Made - - - - - *******

Coming into force in accordance with regulation 1

The Secretary of State, in exercise of the powers conferred by section 19(8)(a) and (9) of the Third Parties (Rights Against Insurers) Act 2010(1), makes the following Regulations:

In accordance with section 19(11) of that Act, a draft of these Regulations has been laid before, and approved by resolution of, each House of Parliament.

Commencement and citation

1. These Regulations may be cited as the Third Parties (Rights Against Insurers) Act 2010 (Consequential Amendment of Companies Act 2006) Regulations 2018, and come into force on the 21st day after the day on which they are made.

Consequential amendment of the Companies Act 2006

2. In section 1030(1) of the Companies Act 2006(2)—

(a) for “purpose of bringing” substitute—

“purpose of—

(a) bringing”;

(b) for “injury.” substitute—

“injury;

(1) 2010 c. 10. Section 19 was substituted by section 19 of the Insurance Act 2015 (c. 4).

(2) 2006 c. 46.

- (b) an insurer (within the meaning of the Third Parties (Rights Against Insurers) Act 2010) bringing proceedings against a third party in the name of that company in respect of that company’s liability for damages for personal injury.”

Date

Name
Parliamentary Under Secretary of State
Ministry of Justice

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Third Parties (Rights Against Insurers) Act 2010 (“the 2010 Act”) applies where an insured person incurs a liability to another (“the third party”) and is or becomes insolvent (or within circumstances similar to insolvency) and therefore a “relevant person” within the meaning of the 2010 Act (see sections 4 to 7 of the 2010 Act). In such circumstances, the 2010 Act transfers the rights of the relevant person under the insurance contract to the third party, so that the third party can enforce those rights directly against the insurer, rather than the proceeds of the insurance policy being treated as the assets of the insured for distribution to creditors in the insolvency.

The Third Parties (Rights Against Insurers) Regulations 2016 (S.I. 2016/570) amended the 2010 Act, inserting a new section 6A which provides that a body corporate is a relevant person if it has been dissolved. The effect of this is to enable a third party injured by an insured company which has been dissolved to recover damages from an insurer of that company without needing to restore the company to the register as a preliminary step (see section 1029 of the Companies Act 2006 (“the 2006 Act”).

These Regulations make an amendment to section 1030(1) of the 2006 Act. Section 1030(1) provides that an application to restore a company to the register may be made at any time for the purposes of bringing proceedings against the company for damages for personal injury. Applications made to restore a company for any other purpose are subject to a time limit of six years from the date of dissolution of the company, after which applications cannot be made (see section 1030(4)).

Because, before the 2010 Act and the amendments made to it by the Third Parties (Rights Against Insurers) Regulations 2016, it was necessary to restore a dissolved company to the register for the purposes of a claim for personal injury, the insurer of the restored company could be subrogated to the rights of the company against others who shared liability for the injury (so that the insurer could, for example, pursue those others for a contribution). Since it is now unnecessary for the claimant to restore the company to the register as a preliminary step to recover damages, an insurer of the company can no longer rely on the claimant having done this and would have to make its own application to restore the company. Where the personal injury was caused as a result of exposure to asbestos in particular, the company will often have been dissolved many years before the claim is made, so an application by the insurer to restore the company to the register will be out of time due to the six year time limit in section 1030(4) of the 2006 Act.

The amendment made by these Regulations addresses this problem by adding a further purpose for which an application to restore a company may be made at any time: namely, for the purpose of an insurer bringing proceedings against a third party in the name of that company in respect of that company’s liability for damages for personal injury.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.