

Summary: Intervention & Options

Department /Agency: Ministry of Justice	Title: Impact Assessment of Third Parties (Rights Against Insurers) Bill	
Stage: Final Proposal	Version: Final	Date: 14 October 2009
Related Publications: Law Commission "Third Parties - Rights Against Insurers" (LC272) (2001)		

Available to view or download at:

[http://www.lawcom.gov.uk/docs/lc272\(1\).pdf](http://www.lawcom.gov.uk/docs/lc272(1).pdf)

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What is the problem under consideration? Why is government intervention necessary?

Where a defendant to a claim is insolvent, legislation enables claimants to recover their losses directly from the defendant's insurers. However, this law is out of date, produces time consuming and costly litigation, and in practice frequently does not assist claimants. Primary legislation is required to resolve these problems.

What are the policy objectives and the intended effects?

The objective of the reform is to reduce the cost and the time taken to bring proceedings for losses or injuries suffered where the wrongdoer is insolvent but insured. Claimants will be able to obtain insurance policy information faster in order to establish the likelihood of success and having done so will be able to sue the insurer directly thereby cutting out unnecessary court procedures. This will benefit claimants and insurers without harming insolvent persons.

What policy options have been considered? Please justify any preferred option.

The options available are to either do nothing, or to reform the law by streamlining the existing procedures and extending their application to cover new and modern insolvency procedures.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

Five years after the legislation is enacted.

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister:

..... Date:

Summary: Analysis & Evidence

Policy Option: 2

Description: Reform the Law

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' There are no one-off costs for claimants, insurers and insolvents other than familiarisation with the new law. There may be a slight increase in claims payments for insurers and some additional costs on persons newly subject to the information obligation, such as brokers.	
	One-off (Transition)	Yrs		
	£ Insignificant			
	Average Annual Cost (excluding one-off)			
	£ Insignificant		Total Cost (PV)	£ Insignificant
Other key non-monetised costs by 'main affected groups' None				

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' Claimants will benefit from simplified procedures reducing costs (between £7.3 million and £16.8 million over ten years). Insurers will also reduce costs as futile claims should be abandoned earlier and activity should be more often concentrated in one set of proceedings.	
	One-off	Yrs		
	£ None			
	Average Annual Benefit (excluding one-off)			
	£ Moderate		Total Benefit (PV)	£ Moderate
Other key non-monetised benefits by 'main affected groups' Claimants will be better able to assess the strength of their claim earlier in the process and will benefit from quicker recovery of their losses.				

Key Assumptions/Sensitivities/Risks Any Increase in the number of valid claims brought against insurers will be minimal.

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
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What is the geographic coverage of the policy/option?		United Kingdom			
On what date will the policy be implemented?		To be Confirmed			
Which organisation(s) will enforce the policy?		Courts			
What is the total annual cost of enforcement for these organisations?		£ N/a			
Does enforcement comply with Hampton principles?		Yes			
Will implementation go beyond minimum EU requirements?		N/A			
What is the value of the proposed offsetting measure per year?		£ N/a			
What is the value of changes in greenhouse gas emissions?		£ N/a			
Will the proposal have a significant impact on competition?		No			
Annual cost (£-£) per organisation (excluding one-off)		Micro N/a	Small N/a	Medium N/a	Large N/a
Are any of these organisations exempt?		No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)			
Increase of	£ N/a	Decrease of	£ N/a	Net Impact	£ N/a

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

INTRODUCTION

1. The Third Parties (Rights Against Insurers) Act 1930 and the Third Parties (Rights Against Insurers) Act (Northern Ireland) 1930 do not work as well as they should. This impact assessment assesses the costs and benefits of solutions to this problem. A third party for these purposes is anyone who has a claim for compensation against a person who is insolvent but insured.

BACKGROUND

2. The 1930 Acts give third parties rights against insurers in the event of an insured becoming insolvent. They allow third parties who have suffered loss as a result of the actions of an insolvent party to claim directly against the insolvent party's insurer.

A typical example of the 1930 Acts in practice:

Mr R has been diagnosed with mesothelioma cancer as a result of exposure to asbestos at work 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 did have insurance to cover its liabilities to employees. However, the employer has since become insolvent and gone out of business. Mr R sues the employer and if he is successful, obtains a statutory transfer of the rights the employer has against its insurer. Mr R can then bring proceedings against the insurer to try to recover the insurance monies that would have been paid to the employer in respect of Mr R's claim.

3. Before the 1930 Acts, the proceeds of any insurance policy covering a liability which an insolvent insured person had incurred to a third party would form part of the insured's assets and under the insolvency rules were distributed to the general creditors. The third party whose loss triggered the claim against the insurer was likely only to recover a small portion of his or her loss as one of those creditors.
4. Claims under the 1930 Acts arise in many different circumstances. Statistics from the Association of British Insurers ("ABI") show that a large proportion of users of the 1930 Acts in Britain (30%) have claims that fall under employers' liability insurance. Another large proportion of users of the Acts (40%) have claims that fall under public liability insurance. An example from a recent case is a man who suffered brain damage after being hit by a doorman at a club. Other users (12%) have claims that fall under professional indemnity insurance and which involve the insurance of, for example, insolvent architects, solicitors and surveyors.

CONSULTATION

Law Commissions' consultation

5. In 1998, the Law Commission and the Scottish Law Commission published their joint consultation paper on the Third Parties (Rights against Insurers) Act 1930. There were 55 responses to this consultation paper from insurers, reinsurers, brokers, lawyers, consumers and businesses. Twenty-two of the responses came from representative bodies (for example, the ABI and the Association of Personal Injury Lawyers ("APIL")). Respondents to that paper confirmed that the burdens imposed by the 1930 Acts on third parties caused real hardship and urged reform. The Law Commissions then considered the replies and published their final report and draft Bill in 2001.

Lord Chancellor's Department consultation

6. In November 2001, the then Lord Chancellor's Department sought information on the impact of the Law Commissions' proposals from a number of Government departments and agencies whose policy is affected by the recommendations. Those consulted were: HM Treasury, Department for Trade and Industry, Financial Services Authority, Financial Services Compensation Scheme, Insolvency Service, Office of Fair Trading, the Official Receiver, Small Business Service, Scottish Executive, the National Assembly for Wales and the Northern Ireland Assembly. The responses supported the proposed reforms.

Regulatory Reform Order consultation

7. In September 2002, a public consultation exercise was carried out by the then Department for Constitutional Affairs about implementing the Law Commissions' proposals through a Regulatory Reform Order (RRO). Those consulted included members of the judiciary, the legal profession, representative organisations, insurers, trade unions and academics. The majority of consultees (95%) were of the view that reform of the current legislation was necessary, and most (79%) were in favour of all of the Law Commissions' recommendations. In the event it was decided that the reforms were not suitable for implementation in this way.

2008/9 Consultation

8. In December 2008, the Ministry of Justice consulted the 35 major stakeholders to assess whether they remained supportive of the proposals and whether they agreed with their implementation by means of a new House of Lords procedure for Law Commission Bills. Those consulted included insurers, reinsurers, the judiciary, the Insolvency Service, lawyers, consumer protection organisations and businesses and Government departments. 23 were organisations representing large numbers of insurers, lawyers, consumers and businesses. All responses were positive and none of the consultees disagreed with the proposed implementation of the proposals. Some consultees suggested minor improvements to the wording of the then draft Bill which have since been considered and taken into account where necessary.

THE PROBLEMS WITH THE CURRENT LAW

9. Third parties are often not assisted by the law at all or are unnecessarily required to expend substantial time and money enforcing their rights. These problems are fully explained in the Law Commissions' 2001 report, but the principal problems with the current law are described below.

A. The requirement to restore companies to the Register

10. If the insured is a dissolved company that has been struck off the register of companies, then under the 1930 Acts, the third party will first have to restore it to the register of companies. This is because the third party cannot claim under the insured's insurance policy unless it has first established the liability of the insured and a company that has been dissolved cannot be sued. Restoring a company is a purely technical and procedural matter. It does, however, take 2 to 3 months and each application made by a third party will cost that third party in the region of £1500.

B. Multiple proceedings

11. As the third party cannot issue proceedings against the insurer under the 1930 Act without first establishing the existence and amount of the insured's liability, this leads to the third party having to undertake two separate sets of proceedings. The first against the insured and the second against the insurer. The third party may also have to apply for an order allowing proceedings to begin or continue against the insolvent person, or both. The insurer may be concerned that if separate proceedings are brought against the insured, facts on liability are not properly scrutinised. This is because the insolvent defendant frequently does not present a proper defence.
12. Additionally, in cases with a foreign element, it can be unclear whether the Acts apply or whether a court has jurisdiction to hear the third party's claim. This can lead to additional and unnecessary legal argument.

C. Difficulty in obtaining information about an insurance policy

13. In order for a third party to decide whether it is worth going to the time and expense of proving that an insolvent person or organisation owes it money, the third party needs information about whether that insolvent person or organisation is insured. However, the third party does not have a right to information from the insurer about the policy until the liability of the insured has been established.
14. The 1930 Acts give the third party a right to information against a limited number of persons and does not impose a time limit within which the information must be supplied. This means valuable information may not be available. Insurance brokers, for example, fall outside the scope of the Acts.
15. For the third party claimant the absence of the insurer in the early stages of the claim may mean that limitations on the extent of the insurance cover are not properly appreciated until

considerable time and effort has been expended. This is exacerbated at present because of the difficulty of tracing old insurance policies which cover a period in the past. This is most obviously the case for employers' liability insurance but is likely to affect all types of policy. In response to this, insurers have signed up to a Code of Practice for tracing employers' liability policies. The Code's tracing service is run by the Association of British Insurers and can be found on its website. Third parties use it to find out who their employer's insurer was at the relevant time and it is especially useful if their employer has gone out of business or does not hold records.

16. The Department for Work and Pensions (DWP) keeps the Code under review. In its review for 2006/2007, the DWP reported that there are 6,000 cases a year where the tracing service is unable to find an insurance policy. This means that the success rate for the tracing service is just 35%. Even for policies signed after 1999, when signatories to the Code agreed to safeguard and store current and future records in an accessible format for 60 years, the success rate is only 41%. This means a huge number of potential claimants cannot find out whether their employer had insurance or who the relevant insurer is. Without this information it is impossible for third parties to make use of the 1930 Acts to recover their losses.
17. The tracing service is only available for employers' liability insurance. It is likely that those trying to trace public liability insurance policies or professional indemnity insurance policies will therefore have even more severe difficulties.

D. Insurer's defences

18. Insurance policies define the obligation of the insurer to indemnify the insured. The terms of the policies can sometimes make it difficult for third parties to use the 1930 Acts to claim under them, because, for example, they contain conditions that can only be performed by the insured or require the insured to pay out before a claim can be made. If the insurer does not waive these requirements, the claim will fail.

E. Scope of the 1930 Acts

19. The 1930 Acts do not apply in various types of insolvency or similar situations, including:
 - a. Where the insured has been struck off the register of companies under section 652 or section 652A of the Companies Act 1985;
 - b. Where an order has been made against an insolvent partnership under the Insolvent Partnerships Order 1994; and
 - c. In relation to some voluntary procedures with creditors.

SECTORS AND GROUPS AFFECTED

20. The reforms will affect anyone seeking to claim against an insolvent party with insurance.
21. The first group affected will be those in the insurance industry, such as insurance underwriters, insurance brokers and other insurance intermediaries. The number of claims

they will be asked to indemnify and the number of requests for information they will receive are expected to increase moderately.

22. The second group will be insolvent persons who are covered by an insurance policy. As third parties will be able to claim directly from the insurer, the insolvent insured will have to deal with fewer claims.
23. The third group will be third parties. This group could include any individual or business, charity, public sector body or voluntary organisation that has suffered a loss by a person who is insolvent and is covered by an insurance policy. A third party could also be a company or individual who provided services to an insured client who became insolvent and failed to pay for the service.
24. The reforms will also have an impact on Companies House, insolvency practitioners, the Official Receiver and the courts, as they will in all likelihood lead to a small increase in the number of claims against insurers, and thus possibly in court cases. However, this increase should be counter-balanced by improvements in claimants' rights to information, and the removal of the need to issue multiple proceedings which are likely to lead to a decrease in futile claims and increase the likelihood of settlement.

Social impacts

25. It is often the case that third parties who rely on the 1930 Acts are vulnerable members of society such as former employees of defunct companies or ordinary consumers. For these parties, the simplification of the process of claiming is particularly important, as they may lack the funds to bring the extra claims required under the 1930 Acts. In addition, the complication of the procedure or the limited prospect of recovery under current law deters many from pursuing an otherwise valid claim. The reforms will improve the position of these vulnerable third parties by making it easier and less costly to bring proceedings.

Economic impacts

26. The reforms are likely to lead to a small increase in the number of claims made against insurers due to the simplified procedure and better information. Whether this translates into a greater number of cases brought before the courts will depend on circumstances. Given the scale of present litigation, the effect on the size of court business overall is likely to be limited. An increase in successful claims may have an impact on premiums generally.

SCALE OF THE ISSUE

27. There are no official figures showing the use made of the Third Parties (Rights Against Insurers) Act 1930. The Association of British Insurers (ABI) thought that numbers were low: no more than 100 in the last 75 years; but we think this underestimates the significance of the 1930 Acts, particularly the scope of their application outside the courts.
28. The British Insurance Law Association (BILA) pointed out that there is a crucial difference between disputes about the 1930 Acts, and cases where the 1930 Acts are simply used.

Most claims using the Acts will not raise interesting points of law that warrant them becoming reported cases. Instead the 1930 Acts provide a mechanism for establishing the third parties' rights to claim against insurers where there is an insolvency and a relevant insurance policy. A better idea of the likely scale of the operation of the 1930s Acts may be gained by considering the number of insolvencies and the likelihood of insolvent persons having insurance policies.

Number of insolvencies

29. There were 23,089 corporate insolvencies and 114,340 individual insolvencies in 2008.

- In England and Wales, 21,811 companies went into liquidation or became insolvent including:
 - 15,535 compulsory liquidations and creditors' voluntary liquidations of companies; these comprised 5,494 compulsory liquidations and 10,041 creditors' voluntary liquidations. This equates to 0.7% of the active register (or approximately 1 in every 150 active companies).
 - 6,276 other corporate insolvencies, comprising 867 receiverships, 4,822 administrations and 587 company voluntary arrangements.
- During the same period, there were 106,544 individual insolvencies, equating to approximately 1 in every 400 adults (or 0.25%). These comprised 39,116 Individual Voluntary Arrangements and 67,428 bankruptcies.
- In 2008 in Scotland there were 1,069 receiverships and liquidations and 6,158 individual sequestrations.
- In 2008 in Northern Ireland, there were 209 corporate insolvencies and 1,638 individual insolvencies.

Number of policies

30. We think that many companies going into liquidation will carry insurance against third party liabilities. All employers, for example, are compelled to take out employers' liability insurance. Depending on the type of business, public liability insurance and professional liability insurance is also recommended and highly likely to be taken out.

31. Even at a conservative estimate that only 25% of the insolvent companies had employees and therefore employers' liability insurance or any other form of insurance, then for 2008 there would be 5,722 policies under which a third party may need to use the 1930 Acts to claim. Over a ten-year period this would reach nearly 60,000 policies.

32. Similarly, the number of individuals becoming insolvent will include individual partners or sole traders. Many may have employers' liability insurance or other forms of liability insurance. Others may be individuals who may have insurance, perhaps as an extra on their household insurance policy. If we take a conservative estimate of 5% of these individuals having insurance then this would mean that for 2008 there were 5,717 policies

under which a third party may need to use the 1930 Acts to claim. Over a ten-year period this would again reach nearly 60,000. These figures suggest that the potential reach of the 1930s Acts may be very wide.

33. Even on a very conservative basis we estimate that over a ten-year period 120,000 insurance policies would be held by entities that became insolvent. It is impossible to predict how many claims would be made against those policies, but it is likely to be significant.

THE RATIONALE FOR GOVERNMENT INTERVENTION, POLICY OBJECTIVES AND INTENDED EFFECTS

34. The problems with the existing law outlined at paragraphs 10 to 12 impose unnecessary procedural burdens and increased costs for all parties involved with claims under the 1930 Acts. In addition, the existing law relating to the provision of information and insurer's defences (see paragraphs 13 to 18 above) hinders third parties.
35. The objective of the reform is to provide new mechanisms that allow all parties to resolve the issue of whether a third party is entitled to compensation under an insurance policy as quickly, efficiently and fairly as possible. This can only be achieved by legislation.

OPTIONS FOR REFORM

36. Two options have been considered for dealing with the issues:
37. Option 1: To do nothing and continue to accept the limitations of the 1930 Acts.
38. Option 2: To reform the law. This would provide the opportunity to deal with all the deficiencies of the 1930 Acts. The reforms would remove procedural burdens and create new rights. In outline the reforms will:
 - Remove the need to restore a dissolved company to the register simply for the purposes of establishing liability against it.
 - Change the procedure so that the two crucial issues (whether the insured is liable to the third party and whether the insurance policy covers that liability) can be resolved simultaneously in a single set of legal proceedings against the insurer.
 - Clarify when the law will apply in cases with a foreign element.
 - Empower third parties to make enquiries of anyone that they reasonably believe has relevant information about an insurance policy before issuing any proceedings and require the person asked to respond in a specified period.

- Remove insurers' rights to rely on personal notification clauses and "pay to be paid" clauses (save in marine insurance policies where the claim does not involve personal injury or death).

- Apply the procedures to new types of insolvency.

COSTS AND BENEFITS OF OPTIONS

OPTION 1: DO NOTHING

39. This option will not create any additional costs but it will not provide any benefits. There will be no impact on any of the affected parties who will remain in the same position as under current law. As shown above, these limitations can be serious and can mean that third parties are deprived of compensation. In addition, all parties involved (insurers, third parties, insolvent bodies, Companies House and the Treasury Solicitor) will have to bear the continued costs of the present situation.

OPTION 2: REFORM OF THE LAW

1. The requirement to restore dissolved companies to the register

Costs

40. The abolition will not add any costs.

Benefits

41. Currently third parties are incurring significant costs in restoring dissolved companies to the register because their liability had to be established before the statutory transfer of rights of the third party can take place. As we described above, this process is merely a formality.

42. A guide from the Treasury Solicitor shows that the process of restoring a company to the register has 14 different stages and involves the preparation of witness statements and filling out claim forms. The third party must also meet the costs of the Treasury Solicitor. The costs of making each application may be in the region of £1,500. This is broken down as follows:

Legal fees (5 hours work)	£1,000
Treasury solicitors' fees	£300
Court fees	£130
Consent order fee	£40
Search fees	£50
TOTAL	£1,520

43. All of these costs are borne by the third party. These figures come from solicitors who estimate that they have to restore a company to the register around 100 times a year. In the context of 2,000 cases this means that their clients alone are paying in excess of £150,000 for this process. It should also be said that these solicitors are carrying out the process regularly and their fees (5 hours work) reflect that. Other solicitors who are not as familiar with the process may take longer and charge more.
44. Data from Companies House shows that in England and Wales in 2007/8, 1800 companies were restored to the register. In Scotland, 113 companies were restored to the register between April 2008 and April 2009.
45. In 1996/1997 the Law Commissions analysed 1,200 applications to restore companies to the register and found that 13% (167) of these were clearly for the purposes of the 1930 Acts. However, it is not necessary for an application to mention the 1930 Acts. Given that one firm of solicitors alone is handling 100 cases a year; 167 cases is almost certainly an underestimate.
46. If 13% of the 1800 applications to restore in 2007/8 were for the purposes of the 1930 Acts then this means at least 248 applications were made. However, we think the true number is more likely to be between 250 and 750. With costs at £1,500 per application, this represents up to £1,125,000 a year, or £11.25 million over 10 years.
47. There is also a benefit in terms of time saved. The firm of solicitors with whom we spoke said that it took on average 2 to 3 months to restore a company to the register. Removing this delay would be of considerable benefit to seriously injured or terminally ill third parties.
48. In conclusion this reform will benefit third parties by making their claims less expensive and quicker. It will benefit the taxpayer by ensuring that less administration is necessary at court and at Companies House. It will benefit the Treasury Solicitor by removing some of the cases on dissolved companies that it is required to handle. The reform will be cost neutral for insurers.

Conclusion

49. We estimate that the removal of the need to restore companies to the register of companies will save between £3.75 million and £11 million over ten years.

2. Multiple Proceedings

Costs

50. Under the reforms, the third party will be able to bring proceedings against the insurer to establish the liability of the insured and the insurer. This will be one of the several procedural routes open to the third party but there is no reason why it should add to the overall cost of recovering damages for the loss or injury in question. The improvement in

the procedure may make it more likely that a third party will be successful in obtaining money from the insurer more quickly than the case would be under the present law. We do not think that the cost to the insurer of earlier settlement is likely to be significant.

51. Currently, it is possible for a third party to spend time and money establishing a claim against, for example, an insolvent employer, only to find that the insurer does not accept that the employer's policy covers that particular claim. The reforms will allow both of these issues to be resolved in the same legal proceedings.

Benefits

52. All parties will benefit from the procedural improvement of being able to resolve all issues in the same proceedings. Each case is different so it is impossible to quantify accurately the benefit. However, for a typical industrial injury claim it is estimated that issuing a claim against an insolvent entity and then making an application for default judgment when that claim is undefended could cost as much as £3,000. This is broken down as follows:

Legal fees (6 hours work)	£1,200
Court fees	£630-1,170
TOTAL	£1,830-2,900

53. If the insurer later applies to set aside the default judgment and the same issues have to be litigated as part of the claim under the insurance policy then these costs will have been wasted. If the new Bill saved these costs in 200 cases a year (likely to be an underestimate given the number of potential policies) then this would be an annual saving for third parties of between £366,000 and £580,000 per annum in legal costs alone. There would also be significant benefits in time saved by dealing with both sets of proceedings at once.

Clarifying the procedure where the case has a foreign element

54. The 1930 Acts are silent as to their applicability when one of the parties is domiciled abroad, or the insured event occurred abroad or the insurance policy is governed by foreign law. The reforms will provide certainty on these matters.

Costs

55. It is difficult to envisage costs which would be incurred by any party as a result of the reform removing this procedural uncertainty.

Benefits

56. Removing procedural uncertainty has benefits for both insurers and third parties. We do not know how many cases are currently affected by uncertainty over foreign elements. However, for each case with a foreign jurisdiction point to resolve, a solicitor for the third party and a solicitor for the insurer could spend at least 2 to 3 hours each researching the

position and possibly consulting a barrister. At a charge-out rate of £200 per hour this would cost between £800 and £1,200 per case. Assuming say 10 cases per year, removing the uncertainty would save between £8,000 and £12,000.

57. This figure could be greatly increased if after the initial research has been done the parties do not agree on the conclusions. In that case a much larger sum may be spent on further correspondence and making applications to the court to resolve the issue. These kinds of disputes are not in the interest of any party. They simply prolong the time and expense taken to resolve a claim. There will be a benefit in terms of time saved and freedom from unnecessary disputes.

Conclusion

58. We estimate that even on this cautious basis, the removal of the need to bring multiple legal proceedings and the clarification of the law relating to cases with a foreign element could save between £3.6 million and £5.8 million over a ten year period.

3. Difficulties in obtaining information

Costs

59. Extending the categories of people who must supply information about insurance policies will mean that there is likely to be an increase in administration costs for those individuals. However, these individuals will typically be those who have a direct knowledge about who the insolvent's insurer is likely to be (e.g. insurance brokers).

Benefits

60. The reforms will not completely solve the problem of missing insurance records. However, they will enable third party claimants under any type of insurance policy to contact brokers or anyone else who might have relevant information on these policies. The addressee will then be under a duty to disclose the relevant information and must do so within specified time limits. This should make the task of finding out relevant information easier, quicker and more certain.
61. Greater access to information from the outset means that third parties will be able to make an informed decision about the chances of success of a claim. It is anticipated that this will lead to a reduction in futile claims, saving legal and administrative costs for insurers, third parties and the courts alike. The extent of the actual savings is difficult to predict.

Conclusion

62. We estimate that the reforms to the provision of information will provide some savings but have not been able to quantify them.

4. Insurer's Defences

Costs

63. The reforms will prevent insurers relying on personal performance of conditions and "pay to be paid" defences. It is therefore possible that the number of successful claims against insurers will rise. This in turn could result in the increase of insurance premiums. However, this is not expected to be a significant increase. The ABI has advised that it is already best practice for insurers not to rely on such defences. On this basis, the additional costs of these reforms should be negligible.

Benefits

64. Given that the first element of the reform (i.e. not relying on "pay to be paid" clauses) has already been pre-empted by case law (see *The Fanti* and the *Padre Island* [1991] 2 AC 1), the benefit will be limited to ensuring that the new Act contains the most up to date statement of the current law.

65. The two elements of the reform will benefit some third parties by preventing their claims from failing. Additionally, legal proceedings will be limited as the defences cannot be raised. This should contribute a reduction in costs. If the third party's claim relates to personal injury and the monies received enable the third party to avoid having to claim, for example, disability allowance, then the taxpayer will also benefit.

Conclusion

66. We have not been able to quantify the costs or benefits of removing these defences but we doubt that the costs will outweigh the benefits.

5. Scope of 1930 Acts

Costs

67. The 1930 Acts only apply in certain circumstances. Where they do not apply insurers do not have to contest proceedings although they may wish to be involved as a claim may be made under the insurance contract in due course by the insured. The reforms will expose insurers to legal proceedings in new circumstances, which result from changes in insolvency law.

68. In the context of partnerships, a statutory transfer is only triggered under the 1930 Acts if at least one of the partners is declared bankrupt. The 1930 Acts do not provide for cases where an Insolvent Partnership Order is made in respect of the partnership. In such a case, a statutory transfer will not occur unless one of the partners has also been declared bankrupt. The reforms will extend the coverage of the 1930 Acts to insolvency proceedings that may be brought against the partnership removing the need to bankrupt the partners.

69. The proposals also give the third parties rights in the event of company voluntary arrangements (“CVAs”). In 2008, there were 587 CVAs. At present, where this happens, the third party may be forced to put the company into liquidation to secure the benefit of the 1930 Acts. Under the reforms this is no longer necessary.
70. We anticipate that there will be a small overall increase in costs for insurers. This is because a third party no longer needs to create a circumstance in which the 1930 Acts apply (e.g. by putting a company in administration). However, the third party will still be able to recover his or her loss under the new law. This will be at the cost of proceedings under the new law. The cost for the third party will be reduced as one set of proceedings are removed and the insurer will have a new cost (i.e. the new proceedings under the new law) however these are relatively few in number. The cost of these proceedings for the third party will be more than outweighed by the benefit of the claim.

Benefits

71. Where a third party cannot now rely on the 1930s Acts the ability to do so under the reform opens the door to recovery of compensation without having to incur the additional cost of insolvency proceedings that do qualify under the 1930 Acts. If the changes saved £2,000 in say, 20 cases a year, this would produce savings of £400,000 over a ten-year period.

Conclusion

72. We have not been able to quantify the costs and benefits of extending the scope of the reforms to new kinds of insolvency procedures. However, it seems likely that the costs will not be outweighed by the benefits.

SUMMARY AND RECOMENDATION

73. In our view, the proposed reforms (outlined in option 2), taken as a whole, strike a fair balance between the rights of insured persons, creditors, insurers and those of third parties. It is desirable, and consistent with the policy of the 1930 Acts, that injured third parties should be able to recover insurance proceeds in full, rather than general creditors benefiting from the results of specific insurance; and that third parties should be able to pursue valid claims, rather than insurers escaping them simply because the debtor has become insolvent. Simplifying the legal procedures involved should reduce legal costs and make negotiated settlements more likely.
74. The reforms will give third parties a better and fairer route in claims against an insurer of the insolvent person.
75. As confirmed by extensive consultation, the costs and benefits expected to derive from the reforms are sometimes incapable of accurate quantification. However, the opinions of the insurance industry and personal injury representatives alike are that expected costs would be insignificant and the benefits moderate but real. We calculate that over a ten-year period the reforms to the rules relating to restoration of companies and multiple proceedings could save between £7.3 million and £16.8 million. We have not been able to quantify the cost

and benefit of the reforms relating to information, insurers' defences and including new insolvency procedures, but we consider that there should at least be a moderate net benefit.

ENFORCEMENT, SANCTIONS AND MONITORING

76. There will be no criminal sanctions imposed for non-compliance. Instead, on the application of a wronged party, the court can make orders against parties who do not, for example, comply with the obligation to provide information about insurance policies.
77. A reduction in the average length of proceedings and in the costs of resolving the issues of whether the insured is liable to the third party and whether the insurance covers that liability would be an indication of the success of this policy. Further criteria proposed for monitoring the effectiveness of the reforms would be a reduction in the number of companies being restored to the register.
78. This department anticipates conducting a survey with the assistance of representative bodies to determine the effectiveness of these reforms five years after the new legislation is enacted.

SPECIFIC IMPACT ASSESSMENTS

Small Firms Impact Test

79. In common with other businesses, small businesses may be affected by the proposals in a number of ways. If a small business is a claimant, it would benefit from the reduction of burdens in pursuing actions. If it is an insolvent defendant, it would benefit from not having to be a party to proceedings brought by third parties who could proceed directly against the insurer without, in some cases, having to restore the company to the register. If it is a creditor of the insolvent company, it may receive less money as a result of the successful exercise of the third party's rights. However, in this case it could benefit indirectly from the fact that the insured would not have to deal with proceedings brought by third parties as a preliminary step for establishing rights against an insurer, which may result in more money being available for the creditors at large. Overall the effect is likely to be beneficial, and it is unlikely that small businesses would be affected by any other costs.
80. A Small Firms Impact test has been carried out. A total of 42 consultees provided comments. None of them have been involved in a claim under the 1930 Acts. Around 75% of the respondents believed that the reforms would either not have an impact or that any changes would benefit small businesses, as they would make it easier for them to claim in cases of insolvent clients. Less than 25% were concerned that any increase in the number of claims brought could result in the increase of insurance premiums.

Competition Assessment

81. The sectors most substantially affected will be the insurance sector, the legal advice sector, and to a lesser extent insolvency practitioners. Although there may be an increase in successful claims by third parties as a result of implementation, any increase is not

considered likely to favour or have a disproportionate effect on particular firms (within the insurance market). It is therefore not anticipated that implementation would give rise to any competition concerns.

Legal Aid

82. We do not consider that the proposals will have any impact on legal aid expenditure.

Sustainable Development

83. Having read and followed the guidance, including the screening against the five principles of sustainable development, the Ministry of Justice is satisfied that there will be no impact on the environment.

Carbon Assessment

84. Having assessed this proposal against the DEFRA guidance on carbon assessment, the Ministry of Justice does not consider that the implementation of the Third Parties (Rights against Insurers) Bill will have any effect on emissions of greenhouse gases. We have not, therefore, conducted a full carbon impact assessment.

Other Environment

85. This proposal has been screened against the DEFRA guidance on environmental impact and the questions on greenhouse gas emissions, climate change, waste management, air quality, landscape change, water pollution, habitat or wildlife and noise. The Ministry of Justice is satisfied that there are no significant impacts.

Health Impact Assessment

86. The Ministry of Justice has concluded that a health impact assessment is not necessary. The proposal will not have a significant effect on human health or have an effect on the wider determinants of health. In addition, it will not impact on the lifestyle-related variables provided in the guidance or on health or social care services.

Race/Disability/Gender Equality Assessment

87. On carrying out a screening exercise for race, disability and gender there was no evidence to suggest that the implementation of the Third Parties (Rights Against Insurers) Bill would have any specific race, disability, gender or equality effects. Consequently, the Ministry of Justice has decided that a full equality impact assessment is not required.

Human Rights

88. Having regard to the guidance on this specific impact test from the Cabinet Office, the Ministry of Justice considers this proposal to be human rights compliant and that it will not result in any restriction of these rights.

Rural Proofing

89. Having screened this proposal against the rural proofing guidance, the Ministry of Justice considers that the implementation of the Third Parties (Rights Against Insurers) Bill will have no significant or different impact on rural areas.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	No
Small Firms Impact Test	No	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	No	No
Rural Proofing	No	No

Annexes

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