



Third Parties (Rights against Insurers) Act 2010

2010 CHAPTER 10

Transfer of rights to third parties

1 Rights against insurer of insolvent person etc

- (1) This section applies if—
 - (a) a relevant person incurs a liability against which that person is insured under a contract of insurance, or
 - (b) a person who is subject to such a liability becomes a relevant person.
- (2) The rights of the relevant person under the contract against the insurer in respect of the liability are transferred to and vest in the person to whom the liability is or was incurred (the “third party”).
- (3) The third party may bring proceedings to enforce the rights against the insurer without having established the relevant person’s liability; but the third party may not enforce those rights without having established that liability.
- (4) For the purposes of this Act, a liability is established only if its existence and amount are established; and, for that purpose, “establish” means establish—
 - (a) by virtue of a declaration under section 2 or a declarator under section 3,
 - (b) by a judgment or decree,
 - (c) by an award in arbitral proceedings or by an arbitration, or
 - (d) by an enforceable agreement.
- (5) In this Act—
 - (a) references to an “insured” are to a person who incurs or who is subject to a liability to a third party against which that person is insured under a contract of insurance;
 - (b) references to a “relevant person” are to a person within sections 4 to 7;
 - (c) references to a “third party” are to be construed in accordance with subsection (2);

- (d) references to “transferred rights” are to rights under a contract of insurance which are transferred under this section.

2 Establishing liability in England and Wales and Northern Ireland

- (1) This section applies where a person (P)—
 - (a) claims to have rights under a contract of insurance by virtue of a transfer under section 1, but
 - (b) has not yet established the insured’s liability which is insured under that contract.
- (2) P may bring proceedings against the insurer for either or both of the following—
 - (a) a declaration as to the insured’s liability to P;
 - (b) a declaration as to the insurer’s potential liability to P.
- (3) In such proceedings P is entitled, subject to any defence on which the insurer may rely, to a declaration under subsection (2)(a) or (b) on proof of the insured’s liability to P or (as the case may be) the insurer’s potential liability to P.
- (4) Where proceedings are brought under subsection (2)(a) the insurer may rely on any defence on which the insured could rely if those proceedings were proceedings brought against the insured in respect of the insured’s liability to P.
- (5) Subsection (4) is subject to section 12(1).
- (6) Where the court makes a declaration under this section, the effect of which is that the insurer is liable to P, the court may give the appropriate judgment against the insurer.
- (7) Where a person applying for a declaration under subsection (2)(b) is entitled or required, by virtue of the contract of insurance, to do so in arbitral proceedings, that person may also apply in the same proceedings for a declaration under subsection (2)(a).
- (8) In the application of this section to arbitral proceedings, subsection (6) is to be read as if “tribunal” were substituted for “court” and “make the appropriate award” for “give the appropriate judgment”.
- (9) When bringing proceedings under subsection (2)(a), P may also make the insured a defendant to those proceedings.
- (10) If (but only if) the insured is a defendant to proceedings under this section (whether by virtue of subsection (9) or otherwise), a declaration under subsection (2) binds the insured as well as the insurer.
- (11) In this section, references to the insurer’s potential liability to P are references to the insurer’s liability in respect of the insured’s liability to P, if established.

3 Establishing liability in Scotland

- (1) This section applies where a person (P)—
 - (a) claims to have rights under a contract of insurance by virtue of a transfer under section 1, but
 - (b) has not yet established the insured’s liability which is insured under that contract.

- (2) P may bring proceedings against the insurer for either or both of the following—
 - (a) a declarator as to the insured’s liability to P;
 - (b) a declarator as to the insurer’s potential liability to P.
- (3) Where proceedings are brought under subsection (2)(a) the insurer may rely on any defence on which the insured could rely if those proceedings were proceedings brought against the insured in respect of the insured’s liability to P.
- (4) Subsection (3) is subject to section 12(1).
- (5) Where the court grants a declarator under this section, the effect of which is that the insurer is liable to P, the court may grant the appropriate decree against the insurer.
- (6) Where a person applying for a declarator under subsection (2)(b) is entitled or required, by virtue of the contract of insurance, to do so in an arbitration, that person may also apply in the same arbitration for a declarator under subsection (2)(a).
- (7) In the application of this section to an arbitration, subsection (5) is to be read as if “tribunal” were substituted for “court” and “make the appropriate award” for “grant the appropriate decree”.
- (8) When bringing proceedings under subsection (2)(a), P may also make the insured a defender to those proceedings.
- (9) If (but only if) the insured is a defender to proceedings under this section (whether by virtue of subsection (8) or otherwise), a declarator under subsection (2) binds the insured as well as the insurer.
- (10) In this section, the reference to the insurer’s potential liability to P is a reference to the insurer’s liability in respect of the insured’s liability to P, if established.