PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

First Delegated Legislation Committee

DRAFT THIRD PARTIES (RIGHTS AGAINST INSURERS) REGULATIONS 2016

Tuesday 12 April 2016

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Saturday 16 April 2016

The Committee consisted of the following Members:

Chair: Geraint Davies

† Anderson, Mr David *(Blaydon)* (Lab)
† Clifton-Brown, Geoffrey *(The Cotswolds)* (Con)
Clwyd, Ann *(Cynon Valley)* (Lab)
† Davies, Dr James *(Vale of Clwyd)* (Con)
† Doyle-Price, Jackie *(Thurrock)* (Con)
† Heappey, James *(Wells)* (Con)
† Huddleston, Nigel *(Mid Worcestershire)* (Con)
† Jenrick, Robert *(Newark)* (Con)
† McGovern, Alison *(Wirral South)* (Lab)
† Mactaggart, Fiona *(Slough)* (Lab)
† Mann, Scott *(North Cornwall)* (Con)
† Paterson, Steven *(Stirling)* (SNP)
† Pickles, Sir Eric *(Brentwood and Ongar)* (Con)
† Quince, Will *(Colchester)* (Con)
† Raab, Mr Dominic *(Parliamentary Under-Secretary of State for Justice)*
† Rees, Christina *(Neath)* (Lab)
† Reynolds, Jonathan *(Stalybridge and Hyde)* (Lab/Co-op)

Joanna Welham, Helen Finlayson, *Committee Clerks*

† attended the Committee

First Delegated Legislation Committee

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[Geraint Davies *in the Chair*]

Draft Third Parties (Rights against Insurers) Regulations 2016

2.30 pm

The Parliamentary Under-Secretary of State for Justice (Mr Dominic Raab): I beg to move,

That the Committee has considered the draft Third Parties (Rights against Insurers) Regulations 2016.

It is a great pleasure, Mr Davies, to serve under your chairmanship for what I think is the first time.

The draft regulations are to be made by the Secretary of State under the power in section 19 of the Third Parties (Rights against Insurers) Act 2010, as amended by the Insurance Act 2015. They can be made only if they have first been approved by both Houses of Parliament. They were considered and approved by the other place on 22 March. The purpose of the power in section 19 is to make provision adding or removing circumstances in which a person is potentially within the scope of the 2010 Act.

The draft regulations will add to the list of circumstances in which the 2010 Act may apply to corporate and other bodies that are subject to certain sectoral insolvency regimes or, with limited exceptions, have been dissolved. When the changes have been made, the 2010 Act will be able to be brought into force without adversely affecting people who are within the scope of the 1930 third parties legislation that is to be replaced by the 2010 Act, but are not within the scope of the 2010 Act. The reforms to be introduced by the 2010 Act are supported by insurers and claimants alike. The benefits of the legislation apply to insurance of all kinds and will be particularly beneficial in cases of long-tail industrial diseases, such as mesothelioma. To set the draft regulations in context, let me explain briefly the principles underlying the third parties legislation.

Third parties legislation has existed since the 1930s. It is so called because the claimant is a third party in relation to the contract between the insurer and the insured. The current legislation is the Third Parties (Rights against Insurers) Act 1930, which applies to England, Wales and Scotland, and the Third Parties (Rights against Insurers) Act (Northern Ireland) 1930, which applies to Northern Ireland. The purpose of the 1930 Acts and indeed the 2010 Act is to protect the interests of claimants against insured persons who have a liability to the claimant, but who no longer have effective control of their assets. Typically, this occurs if the insured person is insolvent.

The basic effect of the third parties legislation is to transfer to a third party to whom an insured has incurred a liability the contractual rights of the insured against the insurer as regards that liability. This has the effect that the proceeds of the insurance policy are paid to the claimant not the general creditors of the insolvent insured, which is particularly important when insurance is compulsory otherwise the purpose of having compulsory insurance would be negated. To put it crudely, the aim of the legislation is to prevent creditors from trumping victims. That is the basic point: a dry technical detail that is difficult to get one's head around.

To trigger the application of the 2010 Act, an insured must both incur a liability to a third party against which it is insured and undergo an insolvency or analogous event specified in the 2010 Act. Unfortunately, following enactment of the 2010 Act, it was found, at least in some respects, to have a narrower scope than the 1930 legislation. This was partly a result of the terms used in the drafting of the 2010 Act and partly because of developments in insolvency law following the financial crisis of 2008.

The operative provisions of the 2010 Act have therefore not yet been brought into force and will not be until these defects have been remedied. It is this remedial process that is so essential to realising the benefits of the 2010 Act, which is intended to extend and improve the protection conferred by the 1930 legislation. That is the point of the regulations. Part of the remedial process was effected by amendments to the 2010 Act made by the Insurance Act 2015 and the draft regulations will complete the process.

Let me now describe the working of the amendments to be effected by the draft regulations. First, they extend the list of circumstances where the 2010 Act may apply by adding the sectoral insolvency or administration procedures listed or referred to in the provisions to be inserted in the 2010 Act by regulation 3 of the draft regulations.

Those additions cover the possibility of insolvency or administration under special legislative regimes that generally follow, but are distinct from, procedures under the Insolvency Act 1986 in a wide range of important business sectors where company failure has the potential to damage the public interest or cause market contagion, for example, the kind of things that might follow the collapse of a financial services, postal or energy utility company.

Secondly, regulation 4 extends the scope of the 2010 Act in relation to dissolved bodies, which do not have effective control over their rights and assets. The 2010 Act currently applies to dissolutions under sections 1001, 1002 or 1003 of the Companies Act 2006, but not to other types of dissolution. Regulation 4 broadens the scope of the application of the 2010 Act to include those other kinds of dissolutions, to ensure they are all covered.

The proposed coverage of dissolutions generally will, however, not extend to the dissolution of unincorporated partnerships. Our view is that that exception is sensible, as technically at least a partnership dissolves each time a new partner leaves or is added.

Geoffrey Clifton-Brown (The Cotswolds) (Con): I am sure that in relation to regulation 4 my hon. Friend was coming on to explain the point made in paragraph 7.9 of the explanatory memorandum.

"Unincorporated partnerships are excluded from the dissolution provisions in regulation 4 and the provisions of regulations 5 and 6 because they dissolve whenever there is a change in membership (for example the retirement of one partner)."

The provisions are supposed to cover dissolutions in the sense of bankruptcy. The question I put to my hon. Friend is: what happens if an unincorporated partnership goes bankrupt? He will probably tell me that partnerships are jointly and severally liable, which they are, but what happens in the event that the partners themselves go bankrupt?

The explanatory note says:

"Regulation 4 inserts new section 6A in the 2010 Act, extending its coverage to all dissolved corporate and unincorporated bodies except when the body in question is an unincorporated partnership or is treated as not having been dissolved as a result of subsequent events (the latter may still be "relevant persons" by virtue of another provision)."

That last part is what makes the situation unclear. What is the position with unincorporated partnerships?

The Chair: I call the Minister, after that very long intervention.

Mr Raab: That was almost worthy of a separate speech, and perhaps my hon. Friend might wish to give one.

Geoffrey Clifton-Brown: Do not encourage me.

The Chair: No. That was quite enough.

Mr Raab: The primary objective in relation to partners, as my hon. Friend mentioned, is that the insured would be required to proceed against the individual partners. I will take advice on the consequential effects of that in relation to the specific technical points he raised and perhaps deal with those in my closing speech. The principal answer to his question is that someone would have to proceed against the individual partners, and therefore the usual caveats that apply to partnerships also apply here.

The other qualification that I should mention is that bodies that have been dissolved but are no longer being treated as if they were dissolved, perhaps because they are companies that have been restored to the register, are not included within the scope of the new provision for so long as they are no longer treated as being dissolved. That qualification follows the treatment of dissolutions already in the 2010 Act.

The remainder of the draft regulations deal with ancillary matters and I will touch on them briefly. Regulations 5 and 6 amend section 9 of the 2010 Act and paragraph 3 of schedule 1 to the 2010 Act respectively. Section 9 of the 2010 Act provides that a third-party claimant to whom the 2010 Act applies does not have to satisfy a condition of the insurance policy regarding provision of information or assistance to the insurer by the insured, if the condition cannot be fulfilled because the insured has died or is a body corporate that has been dissolved.

Paragraph 3 of schedule 1 to the 2010 Act gives a claimant a right to request information from officers, employees, insolvency practitioners or official receivers of a defunct body corporate. The draft regulations extend section 9 of the 2010 Act and paragraph 3 of schedule 1 to the 2010 Act to all dissolutions, other than those of unincorporated partnerships, irrespective of whether subsequent events result in the body in question being treated as if it is no longer dissolved, or as if it had never been dissolved.

The reason for the wider application of these provisions is that most situations of this nature involve reversing a dissolution—for example, restoration to the register of companies—and they are therefore temporary and unlikely to result in there being a person who is responsible and able, on behalf of the body in question, to assist the claimant by being able to fulfil the condition or to supply the information in relation to the liability.

Before concluding, may I express my Department's thanks to all those who have contributed to the preparation of the draft regulations, including the Insolvency Service, the Accountant in Bankruptcy in Scotland, the Department of Enterprise, Trade and Investment in Northern Ireland and, in particular, the commercial and common law team at the Law Commission, who have worked very hard on a lot of the fine detailed points that have gone into the regulations? Finally, I want to thank the Law Commission and the Scottish Law Commission more generally for their continuing support for the reform of third parties legislation.

As the draft regulations have not yet been approved by both Houses the date for commencement of the 2010 Act has not yet been set, but the Government's intention is to bring the 2010 Act, as amended by the Insurance Act 2015, and these regulations into force as soon as reasonably practicable, subject to allowing no less than three months from the making of the regulations to allow those affected to prepare for the coming into force of the new legislation.

2.41 pm

Christina Rees (Neath) (Lab): It is a pleasure to serve under your chairmanship, Mr Davies.

The Chair: The pleasure is all mine.

Christina Rees: I thank the Minister for his explanation of the statutory instrument and I confirm that it is not controversial. In fact, I have a letter from the Association of Personal Injury Lawyers stating that this is a rare situation where both the Association of British Insurers and APIL are in agreement.

We are happy to support the provisions, as we supported, of course, the 2010 Bill as it went through Parliament. As the Minister will know, at the current time we have many criticisms of much of what the Ministry of Justice does. However, in this instance we praise the work being done. I have some questions and comments for the Minister's consideration, but they are brief.

My first point is in relation to those that this Act will help, and highlights the need for it to be enacted swiftly. Although it will improve the situation for a whole range of people with insurance claims, it will particularly benefit mesothelioma victims because their life expectancy is typically quite short after diagnosis, so a quick resolution is of great importance. As it stands, the law dictates that the claimant must sue his employer, despite it usually being the employer's insurer that pays the compensation.

In many mesothelioma claims, however, the culpable employer has gone out of business due to the amount of time that has passed. That means that the employer has to be resurrected and restored to the register of companies, which costs time and money, and even then, in some

[Christina Rees]

cases, the company will disappear again. That is a stressful procedure for those who may not have long to live due to their illness. The Third Parties (Rights against Insurers) Act 2010 would make this costly and time-consuming procedure unnecessary. It will ensure that more people are able to claim, as well as speed up the process, and reduce the costs of bringing a claim, something I am sure Members on both sides can agree with. To ensure that that happens soon the Third Parties (Rights against Insurers) Act 2010, as amended by the Insurance Act 2015 and the regulations, should be brought in swiftly.

I wish to refer to the point made in the other place in March about paragraph 10 of the explanatory memorandum, which is about the impact of the measure. Paragraph 10.3 states:

> "An Impact Assessment has not been prepared for the Regulations because the amounts involved fall below the threshold at which an assessment has to be prepared."

Will the Minister please tell the Committee what that threshold is? Paragraph 8.3 states that charities have been consulted and are content with the proposal. I am pleased that that is the case, as charities can often be at a disadvantage, due to not having the same resources as Government when changes to law come into place.

I would be grateful if the Minister could deal with the points I have raised. I end by welcoming this statutory instrument, by pressing for it to be enacted as soon as possible, and by thanking the Minister and his team for presenting it so clearly to the Committee this afternoon.

2.45 pm

Mr Raab: I thank the hon. Lady for her support and my hon. Friend the Member for The Cotswolds for his intervention. I will touch briefly on one or two of the points that have been raised.

My hon. Friend asked how an unincorporated partnership could be sued. I understand his concern about partnerships. It is possible for third parties to bring claims against partnerships, for example, partnerships that are wound up under part 5 of the Insolvency Act 1986 are a "relevant person" for that purpose. In addition, a third party could bring a claim against a single partner and rely on the principles of joint and several liability, to the extent that they apply.

The hon. Member for Neath was supportive of the regulations, which we welcome. I agree with her that it is rare and welcome to get support from insurers, the legal profession and the claimants. There is cross-party support for the idea that we can fix some of these problems in that collegiate manner.

The hon. Lady raised a particular point about the impact assessment. We would normally expect the impact of regulations to cross a threshold of £1 million for that provision to be invoked, and we estimate that these regulations will fall substantially below that.

I think that deals with the two substantive points that were raised. To sum up, the draft regulations will extend the scope of the Third Parties (Rights against Insurers) Act 2010, to include the specific sectoral insolvency and administration regimes, and most dissolutions of corporate and non-corporate bodies.

Of course, that sounds dry legal stuff, but the regulations will allow the benefits of the 2010 Act, which will implement and realise the recommendations of both the Law Commission and the Scottish Law Commission, without removing some of the categories of claimants who are currently protected by third parties legislation and who would otherwise miss out. On that note, I commend the draft regulations to the Committee.

Question put and agreed to.

2.47 pm

Committee rose.