

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Third Delegated Legislation Committee

DRAFT THIRD PARTIES (RIGHTS AGAINST
INSURERS) ACT 2010 (CONSEQUENTIAL
AMENDMENT OF COMPANIES ACT 2006)
REGULATIONS 2018

Thursday 11 October 2018

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The Committee consisted of the following Members:

Chair: SIOBHAIN McDONAGH

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| Coffey, Ann (<i>Stockport</i>) (Lab) | † Penrose, John (<i>Weston-super-Mare</i>) (Con) |
| Cryer, John (<i>Leyton and Wanstead</i>) (Lab) | † Pursglove, Tom (<i>Corby</i>) (Con) |
| † Frazer, Lucy (<i>Parliamentary Under-Secretary of State for Justice</i>) | † Qureshi, Yasmin (<i>Bolton South East</i>) (Lab) |
| † Green, Chris (<i>Bolton West</i>) (Con) | † Robinson, Mary (<i>Cheadle</i>) (Con) |
| † Heaton-Jones, Peter (<i>North Devon</i>) (Con) | † Rowley, Lee (<i>North East Derbyshire</i>) (Con) |
| Hoey, Kate (<i>Vauxhall</i>) (Lab) | Russell-Moyle, Lloyd (<i>Brighton, Kemptown</i>) (Lab/Co-op) |
| Lammy, Mr David (<i>Tottenham</i>) (Lab) | † Trevelyan, Mrs Anne-Marie (<i>Berwick-upon-Tweed</i>) (Con) |
| † Milling, Amanda (<i>Cannock Chase</i>) (Con) | Jack Dent, <i>Committee Clerk</i> |
| † Newlands, Gavin (<i>Paisley and Renfrewshire North</i>) (SNP) | † attended the Committee |
| † Onasanya, Fiona (<i>Peterborough</i>) (Lab) | |

Third Delegated Legislation Committee

Thursday 11 October 2018

[SIOBHAIN McDONAGH *in the Chair*]

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

11.30 am

The Parliamentary Under-Secretary of State for Justice (Lucy Frazer): I beg to move,

That the Committee has considered the draft Third Parties (Rights Against Insurers) Act 2010 (Consequential Amendment of Companies Act 2006) Regulations 2018.

It is a pleasure to serve under your chairmanship, Ms McDonagh.

The draft statutory instrument will ensure that when an insurer has paid out on a personal injury claim on behalf of a dissolved company, it can make a claim for reimbursement. Such claims are typically made against a dissolved company's insurer and do not affect the rights of the personal injury claimants.

I will explain why the draft statutory instrument is needed. The Third Parties (Rights Against Insurers) Act 2010 simplified and modernised the previous law on the procedure by which victims could obtain compensation for wrongs done to them by insolvent wrongdoers. Most importantly, the 2010 Act allowed claimants to take legal proceedings directly against the insurer of the insolvent wrongdoer, rather than having to establish the wrongdoer's liability in separate proceedings first. Wrongdoers that are dissolved companies were brought into scope of the 2010 Act by the addition of a new section 6A under the Third Parties (Rights Against Insurers) Regulations 2016, which also meant that claimants no longer had to spend time and money restoring the company to the register of companies simply for the purpose of suing it, establishing its liability and thereby gaining access to its insurer.

The creation of that direct remedy against the insurer affects the insurer's rights of subrogation in respect of its ability to recover contributions from other wrongdoers and their insurers, potentially liable for the same loss. Subrogation is a common law concept that allows a person who pays out a claim to stand in the shoes of the payee as regards other rights of action the payee had in relation to the claim. An insurer who pays damages to the claimant is therefore subrogated to the rights of the insured in relation to the claim.

In that context, as a result of the 2010 Act, claimants no longer had to restore companies to the register. As a result, the six-year time limit imposed on the restoration of dissolved companies, other than in relation to personal injury claims, bites on insurers that are directly sued under the 2010 Act. That is because a claim for subrogation is not a personal injury claim. The effect is particularly acute in personal injury claims for exposure to asbestos,

where section 3 of the Compensation Act 2006 makes any defendant liable for the whole of the loss to the claimant, irrespective of whether others might also have caused the injury, but preserves the payer's right to recover contributions by subrogation. A right to subrogation can, however, be exercised only if the company to be sued exists. A dissolved company does not exist, and a company that has been dissolved for more than six years cannot be restored to existence.

The changes to the law introduced by the 2010 Act, which removed the need for a claimant to restore a company, have therefore had the indirect consequence in personal injury cases that the insurer has to restore the dissolved company to be able to exercise rights of subrogation, but cannot do so if the six-year limit has been exceeded. A right to subrogation against such a company has therefore been made inoperable, with the consequence that one insurer has to bear the whole of the loss. That was certainly not the intention of the 2010 Act.

What is the solution? The draft regulations cure the problem by allowing an application to restore a company under section 1030(1) of the Companies Act 2006 outside the six-year time limit for the purpose of an insurer bringing proceedings against a third party, typically another insurer, in the name of that company in respect of that company's liability for damages for personal injury. The change ensures that the same subrogation result is produced for direct claims against insurers under the new section 6A of the 2010 Act as is already produced for indirect claims where the person who suffered the loss claims against the insured wrongdoer and the insurer pays for the loss. The solution restores insurers' rights of subrogation without prejudicing any third party. It is a fair and sensible way to resolve the problem inadvertently caused by the 2016 regulations and I commend the draft regulations to the Committee.

11.34 am

Yasmin Qureshi (Bolton South East) (Lab): It is a pleasure to serve under your chairmanship, Ms McDonagh.

I will just inform all my honourable colleagues that this particular amendment is a statutory regulation and makes perfect sense, and I have nothing further to add.

11.35 am

Gavin Newlands (Paisley and Renfrewshire North) (SNP): It is a pleasure to serve under you, Ms McDonagh.

For the avoidance of doubt and so as not to hold Members up, the Scottish National party and the Scottish Government also stand behind this legislation.

11.35 am

Lucy Frazer: Well, it is a pleasure to serve on this Committee—[*Laughter.*] I suggest that the draft regulations are necessary and I recommend them to the Committee.

The Chair: Who says politicians cannot be brief?

Question put and agreed to.

11.36 am

Committee rose.