

# Whatever happened to the Third Parties (Rights Against Insurers) Act 2010?

*Alison Padfield contemplates the reason for delayed implementation*



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In July 2001, the Law Commission published a report on 'Third Parties – Rights Against Insurers', which recommended reform of the Third Parties (Rights Against Insurers) Act 1930. The report was accompanied by a draft Bill giving effect to the recommendations, which were accepted by the government in 2002. In the same year, the Enterprise Act amended the Insolvency Act 1986, allowing companies to enter administration without the making of a court order.

Seven years later, the draft Bill became the Third Parties (Rights Against Insurers) Bill and was introduced in Parliament in November 2009. This was the second Bill to proceed through Parliament under a new House of Lords procedure for Law Commission bills, and was given Royal Assent on 25 March 2010.

Unfortunately, no-one noticed that companies entering into administration without a court order were not within the scope of the Bill: like the 1930 Act (as amended in 1985), the 2010 Act applies to companies in respect of which 'an administration order' is in force, but not to companies that enter administration without such an order being made.

The effect of this is that, although the reforms were agreed by the government ten years ago, and modern legislation is now on the statute book, cases continue to

be dealt with under legislation from 1930. In some cases, this will mean claimants incurring the cost of restoring companies to the register instead of using procedures in the 2010 Act, which allow claims to be brought directly against insurers. In other cases, it may mean claimants are unable to recover against insurers in circumstances where, had the 2010 Act been implemented, they might have been able to do so. For example, if the insured is a company that has been dissolved and is unable to provide information or assistance to the insurer, the insurer may, depending on the wording of the policy, have a valid defence to a claim pursued under the 1930 Act; whereas, by virtue of s9(3) of the 2010 Act, the rights transferred to the insured pursuant to the 2010 Act would be subject to no such condition.

In a report on the implementation of Law Commission proposals published in March 2012, the Ministry of Justice said, among other things, that it had provisionally concluded that some rules of court will be necessary to implement the 2010 Act; that the Act required a small amendment to cover all forms of administration; and that it was unlikely that the 2010 Act would be commenced until 2013. At the time of writing, this remains the position, and it appears that the 1930 Act will be with us for some time to come. ■