Draft Regulations laid before Parliament under section 19(11) of the Third Parties (Rights against Insurers) Act 2010, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2016 No. XXXX

INSURANCE

The Third Parties (Rights against Insurers) Regulations 2016

Made - - - - ***

Coming into force in accordance with regulation 1

The Secretary of State makes these Regulations in exercise of the powers conferred by section 19(1), (4), (8)(a) and (c) and (9) of the Third Parties (Rights against Insurers) Act 2010(**a**).

In accordance with section 19(2) of that Act, the Secretary of State considers that the circumstances added by these Regulations in which a person is a relevant person for the purposes of the Act involve the insolvency, administration or dissolution of a body corporate or unincorporated body.

In accordance with section 19(11) of that Act, a draft of these Regulations has been laid before and approved by resolution of each House of Parliament.

Commencement and citation

1.—(1) These Regulations come into force on the day appointed under section 21(2) of the 2010 Act for the coming into force of that Act, immediately after that Act and section 20 of, and Schedule 2 to, the Insurance Act 2015(**b**) come into force.

(2) They may be cited as the Third Parties (Rights against Insurers) Regulations 2016.

Interpretation

2. In these Regulations, "the 2010 Act" means the Third Parties (Rights against Insurers) Act 2010.

Relevant persons: bodies in insolvency or administration under sectoral legislation

3.—(1) In section 6 of the 2010 Act (relevant persons: corporate bodies etc), after subsection (4) insert—

(**a**) 2010 c. 10. The Third Parties (Rights against Insurers) Act 2010 was amended by sections 19 and 20 of, and Schedule 2 to, the Insurance Act 2015 (c. 4).
(**b**) 2015 c. 4.

"(4A) A body corporate or unincorporated body is a relevant person if it is in insolvency under Part 2 of the Banking Act 2009(**a**).

(4B) A body corporate or unincorporated body is a relevant person if it is in administration under relevant sectoral legislation as defined in Schedule A1."

(2) Before Schedule 1 to that Act insert—

"SCHEDULE A1

Section 6(4B)

Administration under relevant sectoral legislation

For the purposes of section 6(4B)—

(a) a body is in administration under relevant sectoral legislation if the appointment of an administrator of the body under an enactment listed below has effect, and

(b) the body does not cease to be in administration merely because an administrator vacates office (by reason of resignation, death or otherwise) or is removed from office.

List of Enactments

Aviation

Chapter 1 of Part 1 of the Transport Act 2000(**b**)

Energy

Chapter 3 of Part 3 of the Energy Act 2004(**c**)

Chapter 5 of Part 2 of the Energy Act 2011(**d**)

Part 2 of the Energy Act (Northern Ireland) 2011 (c.6 (N.I.))

Financial Services

Part 2 of the Insolvency Act 1986(**e**) (as it has effect by virtue of section 249 of the Enterprise Act 2002(**f**)), as applied by Schedule 15A to the Building Societies Act 1986(**g**)

Part 3 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I.19)) (as it has effect by virtue of article 4 of the Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I.10))), as applied by Schedule 15A to the Building Societies Act 1986

Part 3 of the Banking Act 2009(**h**)

Investment Bank Special Administration Regulations 2011 (S.I. 2011/245)

(**a**) 2009 c. 1. Part 2 is applied with modifications to building societies by section 90 C of the Building Societies Act 1986 (c.53), with further modifications by Article 3 and Part 1 of Schedule 1 to the Building Societies (Insolvency and Special Administration) Order 2009 (S.I. 2009/805)

(**b**) 2000 c.38

(**c**) 2004 c.20. By virtue of section 96 of the Energy Act 2011 (c.16), sections 156 to 167, 171 and 196 of and Schedules 20 and 21 to the Energy Act 2004 apply in relation to an esc (energy supply company) administration order within the meaning of section 94 of the 2011 Act with the modifications provided in section 96(2) to (5) of that Act.

(**d**) 2011 c.16

(**e**) 1986 c.45

(**f**) 2002 c.40

(**g**) 1986 c.53. Schedule 15A was inserted by section 39 of, and Schedule 6 to, the Building Societies Act 1997 (c.32). Paragraphs 1 and 2 of Schedule 15A are applied, with modifications, to relevant building societies by Article 11(1) to (3) of the Building Societies (Financial Assistance) Order 2010 (S.I. 2010/1188)

(**h**) Part 3 is applied with modifications in respect of banks in temporary public ownership by regulations 2 to 4 of and the Schedule to the Banking Act 2009 (Bank Administration) (Modification for Application to Banks in Temporary Public Ownership) Regulations 2009 (S.I. 2009/312), and in respect of building societies by Article 3 of and Part 1 of Schedule 1 to the Building Societies (Insolvency and Special Administration) Order 2009 (S.I. 2009/805).

Part 6 of the Financial Services (Banking Reform) Act 2013(**a**)

Postal Services

Part 4 of the Postal Services Act 2011(**b**)

Railways

Part 1 of the Railways Act 1993(**c**)

Chapter 7 of Part 4 of the Greater London Authority Act 1999(**d**)

Water and sewerage

Chapter 2 of Part 2 of the Water Industry Act 1991(**e**)

Chapter 2 of Part 3 of the Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21))"

Relevant persons: bodies that have been dissolved

4. After section 6 of the 2010 Act insert—

"**6A Corporate bodies etc that are dissolved**

(1) A body corporate or unincorporated body is a relevant person if the body has been dissolved, subject to the exceptions in subsections (2) and (3).

(2) The body is not a relevant person by virtue of subsection (1) if, since it was dissolved (or, if it has been dissolved more than once, since it was last dissolved), something has happened which has the effect that the body is treated as not having been dissolved or as no longer being dissolved.

(3) Subsection (1) applies to a partnership only if it is a body corporate.

(4) For the purposes of this section, "dissolved" means dissolved under the law of England and Wales, Scotland or Northern Ireland (whether or not by a process referred to as dissolution)."

Conditions affecting transferred rights

5.—(1) Section 9 of the 2010 Act (conditions affecting transferred rights) is amended as follows.

(2) In subsection (3)—

(a) omit "or" at the end of paragraph (a), and

(b) after paragraph (b) insert—

", or

(c) an unincorporated body, other than a partnership, that has been dissolved."

(3) In subsection (7) omit the definition of "dissolved".

(4) After that subsection insert—

(**a**) 2013 c.33

(**b**) 2011 c.5

(**c**) 1993 c.43. The provisions about administration in Part 1 of the Railways Act 1993 were amended by section 252 of, and Schedule 27 to, the Transport Act 2000 (c.38), sections 1, 49, 50, 54 and 59 of, and Schedules 1 and 13 to, the Railways Act 2005 (c.14), the Railways (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050) and the Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941).

(**d**) 1999 c.29

(**e**) 1991 c.56. The provisions about administration in the Water Industry Act 1991 were amended by sections 36 and 101 of, and Schedule 8 to, the Water Act 2003 (c.37), by sections 34, 35 and 49 of, and Schedule 5 to, the Flood and Water Management Act 2010 (c.29), and by sections 5 and 56 of, and Schedules 5 and 7 to, the Water Act 2014 (c.21). Sections 23 to 26 of the 1991 Act are applied with modifications for the purpose of regulation of specified infrastructure projects by regulation 3 of, and Schedule 1 to, the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013 S.I. 2013/1582.

"(8) For the purposes of this section—

(a) "dissolved" means dissolved under the law of England and Wales, Scotland or Northern Ireland (whether or not by a process referred to as dissolution), and

(b) a body has been dissolved even if, since it was dissolved, something has happened which has the effect that (but for this paragraph) the body is treated as not having been dissolved or as no longer being dissolved."

Notices requiring disclosure

6.—(1) Paragraph 3 of Schedule 1 to the 2010 Act (notices requiring disclosure: defunct bodies) is amended as follows.

(2) In sub-paragraph (1)—

(a) in paragraph (a), omit "that P claims has been incurred to P by a body corporate, and", and

(b) for paragraph (b) substitute—

"(b) P claims the liability has been incurred to P by—

(i) a body corporate, or

(ii) an unincorporated body other than a partnership, and

(c) the body has been dissolved,".

(3) In sub-paragraph (2)(b), for "became defunct" substitute "was dissolved (or, if it has been dissolved more than once, immediately before it was last dissolved)".

(4) Omit sub-paragraphs (4) and (5).

(5) At the end insert—

"(6) For the purposes of this paragraph—

(a) "dissolved" means dissolved under the law of England and Wales, Scotland or Northern Ireland (whether or not by a process referred to as dissolution), and

(b) a body has been dissolved even if, since it was dissolved, something has happened which has the effect that (but for this paragraph) the body is treated as not having been dissolved or as no longer being dissolved."

(6) In the heading of the paragraph, for "defunct bodies" substitute "bodies that have been dissolved".

Consequential amendments

7.—(1) In section 6 of the 2010 Act (relevant persons: corporate bodies etc)—

(a) for subsection (1) substitute—

"(1) A body corporate or unincorporated body is a relevant person if a compromise or arrangement between the body and its creditors (or a class of them) is in force, having been sanctioned in accordance with section 899 of the Companies Act 2006(**a**).", and

(b) in subsections (5) and (6), for "subsection (1)(a)" substitute "subsection (1)".

(2) In section 14(2)(b) of that Act (effect of transfer on insured's liability), for "6(1)(a)" substitute "6(1)".

(3) In section 19A(1) of that Act (interpretation)—

(**a**) 2006 c.46. Section 899 applies with modifications in relation to bank insolvency or administration under the Banking Act 2009 Parts 2 and 3 by virtue of Article 3 of and the Schedule to the Banking Act 2009 (Parts 2 and 3 Consequential Amendments) Order 2009, S.I. 2009/317; to limited liability partnerships by virtue of regulation 45 of the Limited Liability Partnerships (Application of the Companies Act 2006) Regulations 2009 S.I. 2009/1804; and to authorised banks by virtue of regulation 29 of and Part 1, paragraph 3 of Schedule 1 to the Scottish and Northern Ireland Banknote Regulations 2009 (S.I. 2009/3056)

(a) omit ", 9(7)", and

(b) for "and paragraph 3(2)(b), (4) and (5)" substitute ", Schedule A1 and paragraph 3(2)(b)".

Name
Minister of State

Ministry of Justice
Date

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Third Parties (Rights against Insurers) Act 2010 ("the 2010 Act") applies where an insured person incurs a liability to another and is or becomes a "relevant person" (by falling within the insolvency and similar circumstances listed in sections 4 to 7 of the 2010 Act). In such circumstances, the 2010 Act transfers the rights of the relevant person under the insurance contract to the person to whom the liability is incurred, thus enabling the latter to enforce those rights directly against the insurer, rather than the proceeds of the insurance policy being treated as the assets of the insured for distribution to creditors in the insolvency. The Third Parties (Rights against Insurers) Regulations 2015 ("the Regulations") amend the 2010 Act to add further circumstances by which a corporate or unincorporated body may become a relevant person and make some related minor amendments to the 2010 Act.

Regulation 3 expands the categories of "relevant person" identified in section 6 of the 2010 Act (corporate and unincorporated bodies) to include insolvency under Part 2 of the Banking Act 2009 and administration under the sector specific administration provisions listed in the new Schedule A1.

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).

Section 9(3) of the 2010 Act relieves the third party of the need to comply with a condition in the policy to provide information or assistance to the insurer if that condition cannot be satisfied because the insured no longer exists. Paragraph 3 of Schedule 1 to the 2010 Act provides that in the context of legal proceedings in relation to claims against defunct bodies a third party can require their former employees or officers, insolvency practitioner or official receiver to provide documents relevant to the insured's liability. Both provisions currently apply only to bodies corporate. Unlike section 9(3), paragraph 3 does not apply if a body is restored or otherwise treated as existing.

Following the changes made by regulation 4, regulations 5 and 6 extend the scope of section 9(3) and paragraph 3 of Schedule 1 to include dissolved unincorporated bodies (except partnerships). In light of the generally short lived duration of restorations, and to help third parties, regulations 5 and 6 align the definition of dissolved in these two cases so that they both apply even if a formerly defunct body is subsequently treated as not having been dissolved, or no longer being dissolved.

Regulation 7 amends the 2010 Act consequentially upon the above changes.

A full regulatory impact assessment has not been produced for this instrument because the amounts involved fall below the threshold at which an assessment has to be prepared.

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