Title: Third Parties (rights against insurers) Act 2010- correction and commencement **IA No:** MoJ110 **Lead department or agency:** Ministry of Justice **Other departments or agencies:** Scotland Office; Scottish Government; Department of Enterprise, Trade and Investment;	**Impact Assessment (IA)** **Date:** 13/7/2014 **Stage:** Final **Source of intervention:** Domestic **Type of measure:** Primary Legislation **Contact for enquiries:** general.queries@justice.gsi.gov.uk Admin.justice@justice.gsi.gov.uk

Summary: Intervention and Options

RPC Opinion: Green

Cost of Preferred (or more likely) Option				
Total Net Present Value	**Business Net Present Value**	**Net cost to business per year** (EANCB on 2009 prices)	**In scope of One-In, Two-Out?**	**Measure qualifies as**
N/A	N/A	N/A	Yes	zero net cost

What is the problem under consideration? Why is government intervention necessary?

The Third Parties (Rights against Insurers) Act 1930 and the Third Parties (Rights against Insurers) Act (Northern Ireland) 1930 give victims of wrongdoing, the right to claim against the insurers of insolvent defendants, without the insurance monies ending up as part of the general assets of the insolvent. These Acts have worked well but are limited in scope and cumbersome. This causes avoidable delay and expense to everyone involved across the UK. The Third Parties (Rights against Insurers) Act 2010 will remedy these defects. The question is whether it should be commenced at all, in its present form or amended to include all types of administration and, in Northern Ireland, debt relief orders. This can only be achieved by Government intervention.

What are the policy objectives and the intended effects?

To simplify legal procedures for resolving claims against insolvent insured persons under the 1930 Acts so as to remove unnecessary delay and cost for insurers and others: principally, by removing the need to resurrect dissolved companies and by enabling claimants to deal directly with insurers.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

The options available, apart from the 'do nothing' option are to:
Option 1: Amend the 2010 Act to include all forms of administration and, in Northern Ireland, debt relief orders, and then commence, taking power to make further amendments by regulation as necessary.
Option 2: Commence the 2010 Act as enacted.

Option 1 is preferred as it will reduce unnecessary costs to insurers and claimants. Option 2 would leave some claimants worse off than under the 1930 Acts.

Will the policy be reviewed? It will not be reviewed.

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	**Micro** Yes	**< 20** Yes	**Small** Yes	**Medium** Yes	**Large** Yes
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** NA	**Non-traded:** NA	

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister: Edward Faulks Date: 21/07/2014

Summary: Analysis & Evidence

Policy Option 1

Description: Amend the 2010 Act to include all forms of administration, and then commence

FULL ECONOMIC ASSESSMENT

Price Base Year N/A	PV Base Year N/A	Time Period Years N/A	Net Benefit (Present Value (PV)) (£m)		
			Low:	**High:**	**Best Estimate:** NQ

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low				
High				
Best Estimate	NQ		NQ	**NQ**

Description and scale of key monetised costs by 'main affected groups'

No quantified costs. As only a small number of cases will be affected aggregate costs are expected to be negligible.

Other key non-monetised costs by 'main affected groups'

Minor familiarisation costs for all parties.

There could be some ongoing costs to insurers from an increased speed of insurance payouts. Given the small volume of cases involved this impact is expected to be negligible.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low				
High				
Best Estimate	NQ		NQ	**NQ**

Description and scale of key monetised benefits by 'main affected groups'

This option would save the unnecessary bureaucracy involved in restoring companies to the register. Anecdotal evidence from the Association of British Insurers suggests that this could save insurers and third parties between £0.2m and £0.6 m per year. There is considerable uncertainty around these illustrative figures and so they are not included in the summary boxes above.

Other key non-monetised benefits by 'main affected groups'

Claimants would also benefit from a reduction in delays for resolving third party claims of between 6 weeks and 2 months.

Key assumptions/sensitivities/risks **Discount rate (%)** 3.5

It is assumed that simpler court procedures would not lead to a significant increase in claims. This assumption is based on discussions with affected groups including the Association of British Insurers and the Association of Personal Injury Lawyers.

It is assumed that there would be no significant impacts on HMCTS and lawyers.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: n/a	**Benefits:** n/a	**Net:** n/a	Yes	Zero net cost

Summary: Analysis & Evidence

Policy Option 2

Description: Commence the 2010 Act as enacted

FULL ECONOMIC ASSESSMENT

Price Base Year N/A	PV Base Year N/A	Time Period Years N/A	Net Benefit (Present Value (PV)) (£m)		
			Low:	**High:**	**Best Estimate:** NQ

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low				
High				
Best Estimate	NQ		NQ	**NQ**

Description and scale of key monetised costs by 'main affected groups'

No quantified costs. As option 2 affects only a small number of cases that are outside option 1 any aggregate costs are expected to small.

Other key non-monetised costs by 'main affected groups'

Option 2 largely replicates Option 1 but would remove the protection of the 1930 Acts from third parties caught up in non-court order based administrations without replacement and deny third parties in Northern Ireland the benefit of the 2010 Act where a defendant has a debt relief order.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low				
High				
Best Estimate	NQ		NQ	**NQ**

Description and scale of key monetised benefits by 'main affected groups'

As for option 1 save in relation to those excluded.

Other key non-monetised benefits by 'main affected groups'

General creditors of the insolvent insured in the excluded cases would benefit from any insurance monies actually paid out

Key assumptions/sensitivities/risks **Discount rate (%)** 3.5

- Same assumptions/sensitivities/risks as Option 1

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: n/a	**Benefits:** n/a	**Net:** n/a	No	Zero net cost

Evidence Base

1. Introduction

1. This impact assessment presents the evidence used to assess the potential impact of the Third Parties (Rights against Insurers) Act 2010 ("the 2010 Act"). Once enacted, the 2010 Act will apply to the whole of the United Kingdom and will replace the Third Parties (Rights against Insurers) Act 1930 and the Third Parties (Rights against Insurers) Act (Northern Ireland) 1930 (together referred to as "the 1930 Acts").
2. The purpose of the 1930 Acts and the 2010 Act is to ensure that people and businesses injured by an insolvent but insured person or business can recover all their losses (so far as insured) from the insurer. The insurance claim and proceeds are therefore dealt with outside the insolvency. The overall effect of the 2010 Act is to modernise and simplify the procedures used under the 1930 Acts, reducing cost, mainly by removing the need to restore a dissolved company to the register of companies. The worked example (below) outlines the difference between the 1930 Acts and the 2010 Act.
3. The reforms derive from recommendations of the Law Commission. They will simplify the law and should benefit everyone involved in claims under the 1930 Acts. They are strongly supported by major stakeholders representing the interests of claimants and defendants: the Association of Personal Injury Lawyers (APIL) and the Association of British Insurers (ABI). The British Insurance Brokers Association (BIBA) has also confirmed its support.
4. The reforms will improve the legal process by giving claimants another way to bring their claims against insurers. This will simplify the process. Neither APIL nor ABI expect the reforms to increase the number of claims, but if they do, ABI expect any increased costs to be offset by other cost savings. Nor are the reforms expected to make a major difference in many cases because present practice has to some extent anticipated them and with the exception of the new duty to provide information, they will not positively require anyone to do anything. We consider that the proposals will be a Zero Net Cost impact for the purposes of One In Two Out assessment. The Regulatory Policy Committee carried out its validation of the One-in, Two-out Status and the Net Direct Impact on Business of the proposals on 22 October 2013. It concluded that as the policy is a regulatory measure that is net beneficial to business it should be classified as Zero Net Cost.
5. Despite extensive consultation, including recent discussions with ABI and APIL, and Parliamentary consideration of the proposals, we have only been able to estimate the costs and benefits of removing the requirement to resurrect dissolved companies to restore them to the register of companies, but even this estimate is indicative only as we do not know how many such restorations are related to the 1930 Acts. Quantified estimates of other impacts would have been speculative and unreliable. No better information has been provided to us than we have been able to include in this impact assessment and no one has challenged the assessments we have made.

A typical example of a third party claim:

Mr R has been diagnosed with mesothelioma cancer as a result of exposure to asbestos at work and has been told he has a life expectancy of one year. He would like to claim compensation from his employer for loss of earnings and loss of pension. His employer had insurance to cover its liabilities to employees. However, the employer has since become insolvent and gone out of business.

Under the 1930 Acts: *Mr R sues the employer and, if he is successful, obtains a statutory transfer of the rights the employer has against the insurer. Mr R can then recover the insurance monies that would have been paid to the employer in respect of Mr R's claim.*

Under the 2010 Act*: Mr R has a statutory transfer of the rights the employer has against the insurer and can claim against the insurer to recover the insurance monies that would have been paid to the employer in respect of Mr R's claim, without suing the employer.*

BACKGROUND

6. The 1930s Acts give claimants rights against defendants' insurers in the event of an insured becoming insolvent. As the insurance policy is a contract between the insurer and the insured, the claimant is referred to as the third party. Normally only a party to a contract can sue on it. The 1930 Acts allow third parties who have suffered loss as a result of the actions of an insolvent party to claim directly against the insolvent party's insurer. A third party for these purposes is anyone who has a claim for compensation against a person who is insolvent but insured in respect of the claim.

7. Before the 1930 Acts, the proceeds of any insurance policy covering a liability which the insured had incurred to a third party would form part of the insured's assets and under the insolvency rules would be distributed to the general creditors. The third party whose loss triggered the claim against the insurer was likely only to recover a small portion of his or her loss as one of those creditors.

8. Claims to which the 1930 Acts apply arise in many different circumstances. Statistics obtained by the Law Commission from the ABI in the late 1990s and the Law Commission's own examination of 1,000 applications to restore dissolved companies to the register[1] indicated that most users of the 1930 Acts in Britain have claims under employers' liability and public liability insurance. The majority of the remaining claims were under motor, product liability and professional indemnity insurance.

9. The underlying policy of the 1930 Acts is uncontroversial and is continued by the 2010 Act, which will simplify the process for bringing and settling claims, removing unnecessary costs.

CURRENT SITUATION

10. There have been calls to reform the 1930 Acts for many years. Six separate consultations since 1998 have shown almost unanimous support for reform. However, the 1930 Acts are still in force and will remain so until they are repealed by the 2010 Act. This will occur if the 2010 Act is brought into force by the Secretary of State under the power contained in the 2010 Act. No date has yet been set because, following the 2010 General Election, the Government decided to review the need for all pending legislation not in force.

11. In the course of this review, it was established that the 2010 Act applies to court order based administrations but does not apply to non-court order based administrations, which form the overwhelming majority of administrations and are covered by the 1930s Acts. To ensure the potentially numerous claimants caught up in administrations continue to be protected, the 2010 Act must be amended before it is brought into force. This can only be done by primary legislation, which will also provide the opportunity to add debt relief orders (DROs) in Northern Ireland to the categories of insolvency within the scope of the 2010 Act (DROs in England and Wales are already included). Since the review various other circumstances in which the 2010 Act should apply have been identified, legislation will be necessary to bring them into the scope of the 2010 Act. It is possible that there are further circumstances under the present law that ought to be within this scope but are not; and that future changes in the law that ought to be reflected in the 2010 Act but which, for one reason or another, are not.

PREVIOUS CONSULTATIONS

Law Commissions' consultation

12. In 1998, the Law Commission and the Scottish Law Commission published their joint consultation paper on the Third Parties (Rights against Insurers) Act 1930.[2] There were 55 responses to this consultation paper from insurers, reinsurers, brokers, lawyers, consumers and businesses. Twenty-two of the responses came from representative bodies (for example, the ABI and the Association of Personal Injury Lawyers ("APIL")). Respondents to that paper confirmed that the burdens imposed

[1] Third Parties (Rights Against Insurers) Act 1930: A joint consultation paper, Law Commission Consultation Paper No 152 and Scottish Law Commission Discussion Paper No 104, Appendix C, page 204

[2] Third Parties (Rights Against Insurers) Act 1930: A joint consultation paper, Law Commission Consultation Paper No 152 and Scottish Law Commission Discussion Paper No 104,

by the 1930 Act on third parties caused real hardship and urged reform. The Law Commissions then considered the replies and published their final report and draft Bill in 2001.

Lord Chancellor's Department consultation

13. In November 2001, the then Lord Chancellor's Department sought information on the impact of the Law Commissions' proposals from a number of Government departments and agencies whose policy is affected by the recommendations. Those consulted were: HM Treasury, Department for Trade and Industry, Financial Services Authority, Financial Services Compensation Scheme, Insolvency Service, Office of Fair Trading, the Official Receiver, Small Business Service, Scottish Executive, the National Assembly for Wales and the Northern Ireland Assembly. The responses supported the proposed reforms.

Regulatory Reform Order consultation

14. In September 2002, a public consultation exercise was carried out by the then Department for Constitutional Affairs about implementing the Law Commissions' proposals through a Regulatory Reform Order (RRO).[3] Those consulted included members of the judiciary, legal profession, representative organisations, insurers, trade unions and academics. The majority of responses (95%) were of the view that reform of the current legislation was necessary, and most (79%) were in favour of all of the Law Commissions' recommendations.[4] In the event it was decided that the reforms were not suitable for implementation in this way.

Consultation on use of House of Lords procedure

15. In December 2008, the Ministry of Justice consulted the 35 major stakeholders to assess whether they remained supportive of the proposals and whether they agreed with their implementation by means of a new House of Lords procedure for Law Commission Bills. Those consulted included insurers, reinsurers, the judiciary, the Insolvency Service, lawyers, consumers and businesses and Government departments. 23 were organisations representing large numbers of insurers, lawyers, consumers and businesses. All responses were positive and none of the responses disagreed with the proposed implementation of the draft Bill. Some consultees suggested minor improvements to the wording of the draft Bill which have since been considered and taken into account where necessary.

Scrutiny by Special Public Bill Committee

16. During the 2009-2010 session of Parliament the Special Public Bill Committee that considered the Bill in the House of Lords invited evidence from experts and others and examined the Bill.[5] It reported the Bill to the House without amendment. The Bill passed through both Houses of Parliament without an amendment being proposed.

Recent consultation

17. As part of the review of pending legislation[6] we have sought the views of the three major representative bodies with an interest in the reform of the 1930 Acts by the 2010 Act: APIL, which represents the interests of personal injury claimants; ABI, which represents insurers, and the BIBA, which represents insurance brokers.

18. APIL said that "It would be entirely wrong to think that the Act would increase the number of claims brought. The current system, laborious as it is, does not actually put people off claiming compensation – it simply wastes time and money" and urged us to do everything possible to expedite implementation. ABI told us that it "believes the Act will make the claims process simpler and quicker for claimants and defendants, and will reduce legal and administration costs for all parties." It also confirmed to us in 2011 that it would be in favour of an early commencement of this Act, which will help to remove obstacles for mesothelioma and other long-tail disease claims. The

[3] Third Parties - Rights Against Insurers: a consultation paper on the implementation of the joint Law Commission and Scottish Law Commission report, 'Third Parties - Rights Against Insurers' by way of a Regulatory Reform Order. http://webarchive.nationalarchives.gov.uk/+/http://www.dca.gov.uk/consult/rro/tparties.htm

[4] Response paper: http://webarchive.nationalarchives.gov.uk/+/http://www.dca.gov.uk/consult/rro/tprairesp.htm

[5] HOUSE OF LORDS Special Public Bill Committee: Third Parties (Rights against Insurers) Bill [HL] http://www.publications.parliament.uk/pa/ld200910/ldpublic/third/58/58.pdf

[6] See paragraph 10 above.

British Insurance Brokers Association (BIBA) has also indicated to us its support for the commencement of the 2010 Act though it doubted it would make much difference to its members in practice.

19. In addition we continue to receive a small but regular stream of enquiries (around five to ten per month), usually from law firms, as to when the Act will be commenced.

PROBLEM UNDER CONSIDERATION

Current Law

1. There are two main problems. First, preserving the 1930 Acts imposes unnecessary procedural hurdles, which causes delay and expense. Secondly, the 2010 Act requires amendment to operate as it was intended.

A. The requirement to restore companies to the Register

2. Our recent consultation confirmed that the main practical problem for users of the 1930 Acts seems to be that dissolved companies have to be restored to the Register of Companies. This wholly artificial and relatively expensive process is only necessary because, under the 1930 Acts, the third party cannot claim under the insured's insurance policy unless the liability of the insured has been admitted (in practice by the insurer) or established by legal proceedings and a company that has been dissolved cannot be sued.

3. Fortunately, as ABI informed us, insurers do not require restoration as a matter of course. However, where it is necessary or the claimant's advisers consider it advisable, restoring a company to the register is a purely technical and procedural matter. Where it is undertaken the process is expensive and time consuming[7] but has no real bearing on the merits of the case.

4. ABI told us: "Simplifying the system would greatly benefit claimants. The current requirement of restoring the company to the register does not stop the claims process. However, it does add time and cost to the process. Restoration can take anything up to two months, which is a significant time period for a claimant, especially one suffering from a disease like mesothelioma." ABI also noted that the restoration requires the claimant to apply to the Companies Court in the Chancery Division, separately from the personal injury case, which is inconvenient for all the parties, and to obtain the consent of the Crown. As discussed below, the ABI estimate the average cost of each restoration to be £1250 to £2000.[8]

B. Multiple proceedings

5. The third party cannot issue proceedings against the insurer under the 1930 Acts without first establishing the existence and amount of the insured's liability. This means that unless (as often happens according to ABI) the parties agree otherwise, the third party has to undertake two separate sets of proceedings: the first against the insured and the second against the insurer. As mentioned the third party may have to apply for an order restoring the insured to the register of companies or for an order allowing proceedings to begin or continue against the insolvent person, or both. For the insurer, the requirement of proceedings against the insured may mean that facts on liability are not properly scrutinised as the insolvent defendant frequently will not or does not present a proper defence.

6. Currently, it is possible for a third party to spend time and money establishing a claim against, for example, an insolvent employer, only to find that the insurer does not accept that the employer's policy covers that particular claim.

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[7] Treasury Solicitor's Guide to Company Restoration and Dissolution Void Applications, October 2008, p10 shows that the process of restoring a company to the register has 14 different stages and involves the preparation of witness statements and filling out claim forms.

[8] Para 70 below.

C. Cases with a foreign element

7. Additionally, in cases with a foreign element, it can be unclear whether the Acts apply or whether a court has jurisdiction to hear the third party's claim. This can lead to additional and unnecessary legal argument.

D. Difficulty in obtaining information about an insurance policy

8. In order for a third party to decide whether it is worth going to the time and expense of proving that an insolvent person or organisation owes it money, the third party needs information about whether that insolvent person or organisation is insured. However, at present, the third party does not have a right to information from the insurer about the policy until the liability of the insured has been established.

9. The 1930 Acts give the third party a right to information against a limited number of persons and do not impose a time limit within which the information must be supplied. Insurance brokers, for example, fall outside the scope of the 1930 Acts.

10. We understand from BIBA that in practice requests for information about insurance policies are routinely answered. The new Act entrenches this good practice into law.

11. The new rights to information would supplement the voluntary efforts already made by the insurance industry to make it easier for a claimant to trace old insurance policies This difficulty is most acute for employers' liability insurance. In response to this, insurers have signed up to a Code of Practice for tracing employers' liability policies. The Code's tracing service is run by the Association of British Insurers (ABI) and can be found on its website. Third parties use it to find out who their employer's insurer was at the relevant time and it is especially useful if their employer has gone out of business or does not hold records.

12. The Department for Work and Pensions (DWP) keeps the Code under review[9]. In its Review Statement – Code of Practice for Tracing Employers' Liability Insurance Policies for 2009 there were 15,503 enquiries of which 6,995 (45%) were successful. In 2008 there were 13,098 enquiries of which 5,878 were successful, also giving a success rate of 45%. In 2006/2007, the DWP reported that there were 6,000 cases a year where the tracing service was unable to find an insurance policy with a success rate of 35%. Even for policies signed after 1999, when signatories to the Code agreed to safeguard and store current and future records in an accessible format for 60 years, the success rate was 48% in 2009 and 50% in 2008 (the equivalent figure for 2006/2007 41%). The 2010 Act cannot solve the practical difficulties involved in tracing policies but it ensures that where brokers are aware of an insurer they cannot refuse to provide the information.

E. Insurer's defences

13. In general an insurer is only liable to pay the third party if the insurer would have been liable to the insured. The 2010 Act preserves this general principle.

14. The 2010 Act does, however, prevent the insurer from relying on two types of clause to refuse payment to the third party. These are:

    a. Clauses which state that an insurer need only pay a claim if the insured has already paid it;

    b. Clauses which state that the insured must personally notify the insurer of the circumstances of the claim. Clearly, defunct companies cannot do this.

15. We understand from ABI that these defences are not usually relied on. Again, the Act entrenches this good practice into law.

F. Scope of the 1930's Acts

16. The 1930 Acts only apply in the circumstances, such as bankruptcy and liquidation, specified in the 1930 Acts. The 1930 Acts do not apply in various types of insolvency or similar situations, including:

[9] DWP Review Statements and The Code of Practice for Tracing Employers' Liability Compulsory Insurance (ELCI) Policies are available at: http://www.dwp.gov.uk/publications/policy-publications/tracing-elci-policies.shtml

a. Where the insured has been struck off the register of companies as defunct or as a result of an application by a private company.[10] The 2010 Act will apply where the equivalent provisions of the 2006 Act, which has replaced the 1985 Act, apply.

b. Where an order has been made against an insolvent partnership under the Insolvent Partnerships Order 1994. In the context of partnerships, a statutory transfer is only triggered under the 1930 Acts if at least one of the partners is declared bankrupt.

c. In relation to some voluntary procedures with creditors. In 2008, there were 587 CVA's, with 726 and 765 respectively in the subsequent two years.

d. Where in England, Wales or Northern Ireland an insured individual has incurred a liability and then obtains a debt relief order (DRO). In general terms, the DRO will protect the individual from enforcement action by the creditors included in the application unless the court has given permission to the creditor to take action. The individual is expected to repay the creditors if his or her financial circumstances improve. DROs are granted by the Insolvency Service and normally last for twelve months. When the order expires the debtor will be free of the listed debts. DROs do not exist in Scotland.

17. In theory, where the 1930 Acts do not apply a third party will have to sue the insured to recover his or her loss, obtaining leave of court where necessary to do so,[11] but assuming the insurer pays up, the insurance monies will belong to the insured and will form part of the general assets available to the creditors (of whom the third party will be one).

18. In practice, however, the main effect of these limitations is to require the third party to put the company into liquidation to secure the benefit of the 1930 Acts. The 2010 Act will remove the need to put the company or partnership into liquidation.

Scope of the 2010 Act

19. The 2010 Act is defective in that it does not cover all forms of administration orders. It also fails to cover debt relief orders in Northern Ireland. The 2010 Act therefore requires amendment before it is commenced – otherwise third parties caught up in non-court order based administrations would lose the protection of the 1930s Acts and be reduced to general creditors in the insolvency. The amendments necessary take two forms: the addition of specific statutory grounds and the creation of a power to alter the grounds in the 2010 Act by regulations in due course. This will enable other omissions to be corrected and the legislation to be kept up to date.

20. Administration is one of the most common forms of insolvency. The purposes of administration are (in order of priority): rescuing the company as a going concern; achieving a better result for the company's creditors as a whole than would be likely if the company were wound up (without first being in administration); and realising property in order to make a distribution to one or more secured or preferential creditors.

21. An administrator may be appointed in three ways: by the court; by the holder of a floating charge; and by the company or its directors. The 1930 Acts apply to all three types of administration. However, the 2010 Act only refers to court order based administrations. Administrations created by the other two routes would not be caught by the 2010 Act as enacted. This is contrary to the intention of the 2010 Act, which was intended to reflect changes in insolvency law since the 1930s, including where an insured is facing financial difficulties and enters into certain alternatives to insolvency such as voluntary procedures between the insured and the insured's creditors.[12]

22. DROs were introduced in England and Wales in April 2009.[13] These orders are already included within the scope of the 2010 Act where a person who has incurred a liability is granted a DRO. The 2010 Act does not apply where a person subject to a DRO incurs a liability. DROs were introduced by very similar legislation in Northern Ireland in June 2011.[14] These Northern Ireland DROs are not

[10] See sections 652 and 652A of the Companies Act 1985, replaced by sections 1000, 1001 and 1003 of the Companies Act 2006.
[11] E.g. where there is a DRO in force and the liability to the third party is listed.
[12] Third Parties (Rights against Insurers) Act 2010 explanatory notes paragraph 11 (http://www.legislation.gov.uk/ukpga/2010/10/notes/division/3/3)
[13] Tribunals Courts and Enforcement Act 2007, s 108.
[14] Debt Relief Act (Northern Ireland) 2010, which was enacted on 15 December 2010.

included in the 2010 Act, but it is intended that they should be brought within its scope, so that the third party can take action against the insurer direct and recover the insurance monies free of the claims of the general creditors. If the 2010 Act is amended to include Northern Ireland DROs, third parties will benefit from being able to sue the insurer direct there when the insured is subject to such an order as well as in England and Wales when the 2010 Act is commenced.

POLICY OBJECTIVE

23. The objective of the reform is to provide a new mechanism that allows all parties to resolve the issue of whether a third party is entitled to compensation under an insolvent person's insurance policy as quickly, efficiently and fairly as possible.

24. The reform should reduce costs for insurers and third parties and remove unnecessary delay.

SECTORS AND GROUPS AFFECTED

25. The following groups/sectors are likely to be affected by the proposals:

    - Third parties. This group could include any individual or business, charity, public sector body or voluntary organisation that has suffered a loss caused by a person who is insolvent and is covered by an insurance policy. A third party could also be a company or individual who provided services to an insured client who became insolvent and failed to pay for the service.
    - Insurance industry, such as insurance underwriters, insurance brokers and other insurance intermediaries.
    - Insolvent persons who are covered by an insurance policy.
    - Insurance policyholders generally
    - Legal and other professionals
    - General Creditors
    - Judiciary
    - Other organisations. This may include Companies House, Treasury Solicitor's Department and Her Majesty's Court and Tribunals Service (HMCTS).

SCALE OF THE ISSUE

26. There are no official figures showing the use made of the 1930 Acts. There are relatively few disputes about the 1930 Acts, as in most cases the Acts are simply used as a mechanism for establishing the third parties' rights to claim against insurers where there is an insolvency and a relevant insurance policy.

27. It is clear, however, that many companies, partnerships and individuals become insolvent each year – and that many of those insolvent entitles will have been insured. Figures from the Insolvency Service indicate that there are significant numbers of insolvencies in the United Kingdom each year.

Table 1: UK Insolvency Statistics 2010-2013[15]

England and Wales			
	2011	**2012**	**2013**
Compulsory Liquidations and Creditors' voluntary liquidations	16,886	16,156	14,982
Company voluntary arrangements	767	839	577
Receiverships	1,397	1,222	917
Administrations	2,808	2,532	2,365
Total corporate insolvencies	***21,858***	***20,749***	***18,841***
Individual Voluntary Arrangements	49,056	46,694	48,967
Bankruptcies	41,876	31,787	24,536
Debt Relief Orders	29,009	31,179	27,546
Total individual insolvencies	***119,941***	***109,660***	***101,049***
Total	***141,799***	***130,409***	***119,890***
Scotland			
	2011	**2012**	**2013**
Compulsory Liquidations and Creditors' voluntary liquidations	1,237	1,199	732
Administrations	236	193	151
Individual insolvencies	11,128	9,630	7,170
Total	**12,601**	**11,022**	**8,053**
Northern Ireland			
	2011	**2012**	**2013**
Corporate Insolvencies	344	410	299
Individual insolvencies	2,839	3,189	3,373
Total	**3,183**	**3,599**	**3,672**

28. We expect that many companies going into liquidation will carry insurance against third party liabilities. All employers, for example, are compelled to take out employers' liability insurance. Depending on the type of business, public liability insurance and professional liability insurance is also recommended and highly likely.

29. Even at a conservative estimate that only 25% of the insolvent companies had employees[16] and therefore employers' liability insurance or any other form of insurance, then the average for the

[15] The figures in Table 1 are compiled from the Insolvency Service's Insolvency Statistics, available at: http://www.insolvencydirect.bis.gov.uk/otherinformation/statistics/historicdata/HDmenu.htm;

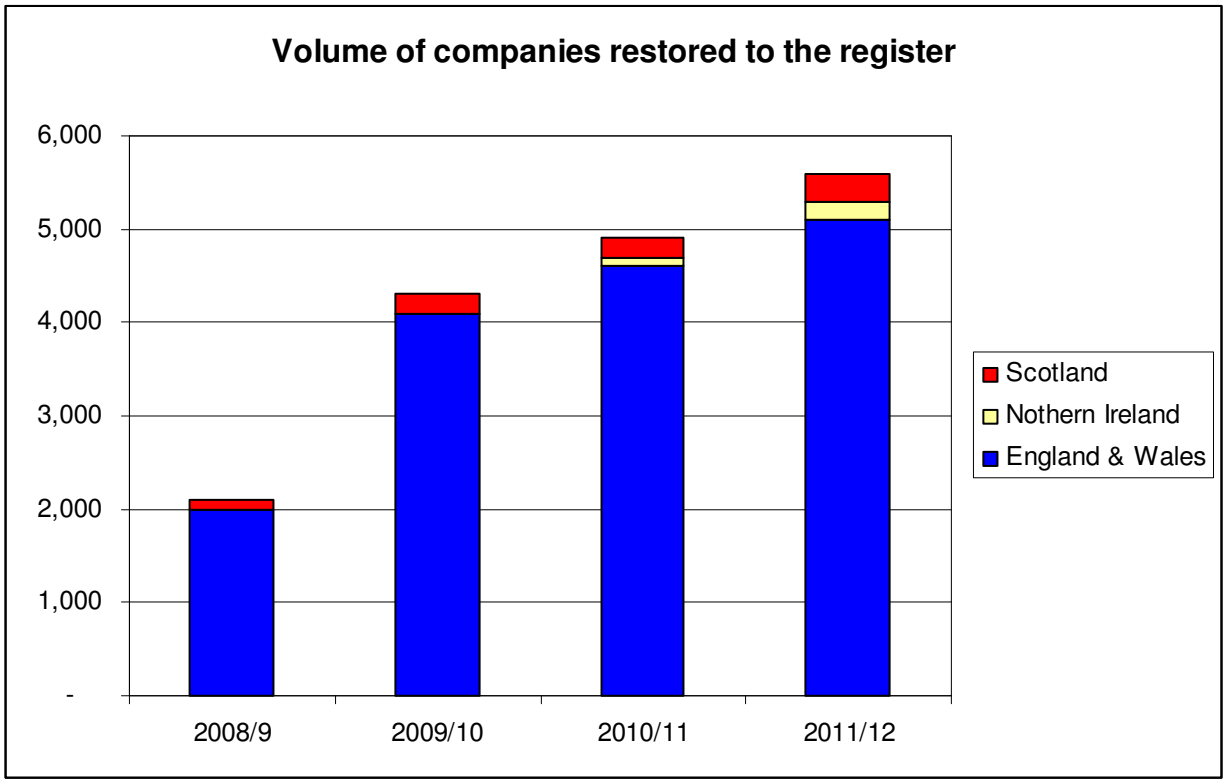
[16] The estimate of 25% is based on the enterprises that have more than 0-4 employees as a percentage of the total, using statistics from UK Business: Activity, Size and Location – 2010, September 2010 (found at http://www.statistics.gov.uk/downloads/theme_commerce/PA1003_2010/ukbusiness2010.pdf). This is likely to be an underestimate of those companies that have employees, as the band 0-4 employees will include the whole range, not just those with 0 employees.

period 2011-2013 would be around 5,470 policies under which a third party may need to use the 1930 Acts to claim. Over a ten-year period this would reach over 54,000. Similarly, many individual partners or sole traders will carry insurance. One cannot predict how many claims would be made against those policies, but it is unlikely to be negligible.

Number of company restorations

30. The main impact of this proposal is that third parties would no longer need to restore a company to the register prior to claiming against an insolvent defendant's insurer.

31. The following chart prepared from Companies House data indicates the numbers of companies were restored to the register:



32. Not all these restorations would be for the purposes of making a claim against an insolvent insurer. No data is collected by the Companies House on the purposes of restorations. However, some illustrative estimates are available which indicate that the relevant number of restorations is relatively small. Anecdotal evidence from the ABI suggests that around 150 to 300 restoration actions are brought each year in third party claims against insurers.

33. In 1996/1997, as part of the project that led to its report, the Law Commission analysed 1,200 applications to restore companies to the register and found that just over 150 (13%) of these were clearly for the purposes of the 1930 Acts. The Law Commission thought that this was an underestimate, as in many cases no reason for restoration was given. Since 1996/97 the volume of company restorations has increased substantially and it is not known if the proportion of restorations for the purposes of the 1930 Acts has remained constant at 13%. If it has, this would suggest about 630 restoration actions annually. If, however, little of the increase in restorations since 2006/07 has been for the purposes of third party claims, the overall volumes of cases benefiting from no longer needing to restore companies to a register would be closer to the ABI estimate.

Number of administrations

34. According to Insolvency Service statistics there were 2,808 administrations in England and Wales in 2011; 2,532 in 2010 and 2,365 in 2013 under the administration provisions introduced into the Insolvency Act 1986 by the Enterprise Act 2002. There are no official statistics that distinguish between administrators appointed by the court and other administrators. However, a survey of 500

administrations by OFT during its 2010 market study into the market for corporate insolvency practitioners found that only 7% (35) of the administrators were appointed by court order.

35. Table 2 below outlines the estimated number of court and non-court administrations per annum using these figures.

Table 2: Administrations

Year	Administrations	Estimate of Court Based	Estimate of Non-Court Based
2011	2,808	197	2,611
2012	2,532	177	2,355
2013	2,365	166	2,199
3 Year Average	2,568	180	2,388

36. This is corroborated by using data from HMCTS Business Management System (BMS) to estimate the number of court order administrations. This provides workloads (and time taken) for court tasks.[17] This indicates that court order administrations are roughly 10% of the number of administrations. Despite all the limitations of the underlying data, this estimate is consistent with the view widely held by stakeholders that court order administrations are a small proportion of administrations. This shows the number of non-court based administrations is sufficiently significant to justify amending the 2010 Act.

Number of debt relief orders

37. A consideration of the number of court order and non-court order administrations and DROs in Northern Ireland may give an idea of the likely scale of the benefit of amending the 2010 Act before it is commenced.

38. There were over 28,000 DROs in England and Wales in 2011[18]. DROs were only introduced in Northern Ireland in June 2011. 112 were made in 2011 and 24 were made in the first half of 2012.[19] It is not known what proportion of these debt relief orders would affect claims to which the 2010 Act could apply, but there may be some.

ECONOMIC RATIONALE

39. The conventional economic approach to government intervention to resolve a problem is based on efficiency or equity arguments. The Government may consider intervening if there are strong enough failures in the way markets operate (e.g. monopolies overcharging consumers) or if there are strong enough failures in existing government interventions (e.g. waste generated by misdirected rules). In both cases the proposed new intervention itself should avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity

[17] In terms of insolvency tasks there are two relevant tasks for our purposes. The first refers to petitions for an administration order, and the second to orders made in relation to a petition for an administration order. The numbers of orders for an administration order are typically higher than the numbers of petitions, as the former includes orders for hearings and the orders counted are not all final orders. There is no source of information for final orders. As such, we have used the number of petitions for an administration order as an upper bound for the number of court order administrations. This estimate will overestimate the actual number of orders, as not all petitions will result in an order. However, there are factors that will provide a downwards bias. Firstly, the BMS data only covers county courts. Some insolvency work is also carried out in the High Court (Chancery Division) and this is not included in the BMS statistics. Judicial Statistics for Chancery Division do not break down between administration and other types of insolvency. There were, however, 6,604 winding up petitions and 15,341 other applications in 2009. Secondly, the BMS data has missing observations. The extent of the missing data varies over the years. Due to data limitations, we are only able to provide an estimate for court order administrations for the financial year 2010/2011 - this is 253.

[18] http://www.insolvencydirect.bis.gov.uk/otherinformation/statistics/regionalstats2012/DROs_regional_2010and2011.xls

[19] http://www.detini.gov.uk/detni-insolvency-index/insolvency-statistics.htm

(fairness) and redistributional reasons (e.g. to reallocate goods and services to the more needy groups in society).

40. In this case the Government is mainly intervening for efficiency reasons. The 2010 Act allows third parties to sue the insurer directly. This will reduce the time and cost of obtaining compensation and therefore improve efficiency of the compensation system for insurers and third parties.

POLICY OPTIONS

41. Two options have been considered for dealing with the issues apart from the option of doing nothing (Option 0).

    - Option 1: To amend and then commence the 2010 Act so that it includes all administrations and, in Northern Ireland, DROs; as well as a power to amend the 2010 Act by regulation in the future.
    - Option 2: To commence to 2010 Act as enacted. This option differs from option 1 in that it does not extend to all administrations. Only court order based administrations are included within the scope of option 2.

42. We conclude that implementing the 2010 Act as amended (Option 1) is the best option. On the basis of the assumptions we have made and the information that we have been able to obtain, we consider that this option will bring net benefits for everyone engaged in third party actions under the 2010 Act (as amended).

COSTS AND BENEFITS

43. This Impact Assessment identifies both monetised and non-monetised impacts on individuals, groups and businesses in the UK, with the aim of understanding what the overall impact to society might be from implementing these options. The costs and benefits of each option are compared to the do nothing option. Impact Assessments place a strong emphasis on valuing the costs and benefits in monetary terms (including estimating the value of goods and services that are not traded). However there are important aspects that cannot sensibly be monetised. These might include how the proposal impacts differently on particular groups of society or changes in equity and fairness, either positive or negative.

44. In this case a qualitative assessment is provided for the majority of the costs and benefits. We have provided an indicative quantitative assessment of the benefit to third parties and insurers of no longer needing to restore companies to the register. This is expected to be the main impact of the policy change. There is considerable uncertainty around this estimate, largely because it is not certain how many companies are restored to the register for the purpose of the 1930 Acts.

45. We have discussed the possibility of monetising the remaining costs and benefits with the affected groups. This would require significant further research, including time and effort on the part of insurers and lawyers. Even then, the resulting estimates would be very speculative and unreliable. Given this, the small number of affected cases and the support for the policy across all affected groups we have therefore not sought to monetise these costs and benefits. This approach is consistent with the Impact Assessment Guidance. [20]

46. The quantification provided is therefore the best estimate that we are able to reach. No better information has been provided to us by interested parties and the impact assessment accompanying the Bill has not been subjected to any significant criticism in Parliament or since. The costs and benefits of any future exercise of the proposed power to amend the 2010 Act by regulations will be assessed on a case by case basis in relation to the circumstances intended to be included in the relevant proposed regulations. Such costs and benefits are therefore excluded from this assessment.

[20] See HM Government, Impact Assessment Toolkit, August 2011, pp8-10. "…where new research would need to be commissioned to gather the required data, this should only be undertaken where this is cost-effective".

OPTION 0: DO NOTHING

47. This option will not create any additional costs but it will not provide any benefits. The affected parties will remain in the same position as under current law, i.e. the 1930 Acts. Third parties will continue to find it difficult to obtain compensation and all parties involved will continue to bear the unnecessary costs of the current system. Third parties claiming in England and Wales who are owed a liability by a person who incurs the liability when subject to a DRO will continue not to have the benefit of the 1930 Acts. Third parties claiming in Northern Ireland where DROs are not in scope of the existing legislation will continue not to have the benefit of the 1930 Acts procedures. The proceeds of their claims if successful will form part of the general assets of the person who obtained the DRO.

48. Because the do-nothing option is compared against itself its costs and benefits are necessarily zero, as is its Net Present Value (NPV).[21]

OPTION 1: AMEND THE 2010 ACT AND COMMENCE AS AMENDED

Description

49. This option allows the commencement of the 2010 Act as amended to include non-court order based administrations and DROs made in Northern Ireland. The 2010 Act will replace the 1930 Acts and remedy their defects. This option will in particular remove the need to restore companies to the register. It will also enable claimants (third parties) to recover their losses directly from an insured but insolvent defendant's insurer, which was not possible under the 1930 Acts, other than by agreement.

50. This option will deliver most of the benefits of the 2010 Act that were first identified in the IA that accompanied the introduction of the Bill[22] and are set out below. They have been updated to include any new information. The 2010 Act would be given effect by making a commencement order under section 21 of the 2010 Act. The power to amend the 2010 Act could then be exercised. As stated above the costs and benefits of exercising the power will be assessed on a case by case basis and are not included in this assessment. This power will enable analogous benefits to those described in this assessment to be obtained in the circumstances specified in the relevant regulations, which would otherwise remain subject to general insurance and insolvency law.

51. The main impact of this proposal is that third parties would no longer need to restore a company to the register prior to claiming against an insolvent defendant's insurer. Restoring a company is a complex and relatively expensive process. It has 14 different stages, requiring witness statements and the involvement of the Treasury Solicitor. The ABI have estimated an average cost of £1250 - £2000 per restoration case. This is in line with an estimate of £1,500 provided by a leading firm of solicitors in England and Wales. As we discuss below, it is difficult to pinpoint exactly who bears the cost, but it is likely that a significant proportion of the costs are ultimately borne by the insurance industry.

52. As we have mentioned,[23] anecdotal evidence from the ABI suggests that there are around 150 to 300 restoration actions brought each year in third party claims against insurers. These figures suggest benefits in the range of £0.2 – 0.6 million annually. These figures are, however, only indicative due to the uncertainty surrounding the stated assumptions.

53. It is not possible to identify precisely where the costs of restoring a company to the register fall. It appears, however, that most of the cost is ultimately borne by insurers, though some of the cost falls on claimants' solicitors and claimants, with some of the disbursement costs ultimately paid by after-the-event insurers. All parties have an interest in removing the need to restore defunct companies to the register, and thus removing this unnecessary cost.

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[21] The Net Present Value (NPV) shows the total net value of a project over a specific time period. The value of the costs and benefits in an NPV are adjusted to account for inflation and the fact that we generally value benefits that are provided now more than we value the same benefits provided in the future.

[22] http://webarchive.nationalarchives.gov.uk/+/http://www.justice.gov.uk/publications/third-parties-rights-against-insurers-bill.htm

[23] Paragraph 51 above.

54. It is also difficult to estimate the savings to be achieved from removing the need to bring separate initial proceedings to obtain judgment against the insured before bringing proceedings against the insurer. Multiple proceedings may, for example, be unnecessary where the insurer is willing to proceed by negotiation with the third party, which ABI considers is routinely the case.

55. Nonetheless, for a typical industrial injury claim a leading firm of solicitors in England and Wales informed the Law Commission that it estimates that issuing a claim against an insolvent entity and then making an application for default judgment when that claim is undefended could cost as much as £3,000. This is broken down as follows:

Table 3: Estimated Cost of Issuing a Claim against an Insolvent Entity

Legal fees (6 hours work)	£1,200
Court fees	£35-1,670[24]
TOTAL	£1,235-2,870

56. Discussions with APIL and insurers suggest that a lot of this benefit will probably end up accruing to insurers. Our consultation with the ABI also suggested that the time and effort to come up with a robust estimate of the proportion of this benefit that would accrue to insurers would be disproportionate. The resulting estimate would also be very speculative and unreliable.

57. This option would also address the other problems described in paragraphs 26 to 34. The effect of these changes is harder to quantify but some of the effect of the change in the law may have been anticipated by present practice.

58. New rights to information may not make a significant difference in practice as BIBA informs us that requests for information about insurance policies are already routinely answered (paras 27-31).

59. Coverage of the new types of insolvency, such as orders made under the Insolvent Partnerships Order 1994 and Company Voluntary Agreements (CVAs), will remove the need to invoke other procedures, such as putting a company subject to a CVA into liquidation to secure the benefit of the 1930 Acts, but ABI consider told that in practice insurers would not generally require this (see para 35c).

60. ABI has also told us that the restrictions on defences also confirm existing practice as insurers do not invoke these defences in dealing with third parties. Whilst the clarification of the law relating to cases with a foreign element will avoid legal argument, such cases are thought to be relatively rare. (paras 26 and 34).

Costs

61. There may be some one-off adjustment costs on affected groups. These are not expected to be significant.

Insurance Industry

62. The more streamlined process under the 2010 Act might possibly lead to insurance companies paying out on claims earlier than under the 1930 Acts. This may largely be a short-run impact. It is expected to be negligible because of the small number of cases involved and the extent to which the reforms have been anticipated by practice under the 1930 Acts.

63. As mentioned, extending the types of people who must supply information about insurance policies (where this can be done without undue difficulty) will mean that there could be an increase in administration costs for those insurance brokers from these requests. However, BIBA has indicated

[24] The range of court fees reflects the fact that court fees increase with the size of the claim. If, under the 1930 Act, the insurer later successfully applies to set aside the judgment obtained against the insolvent person and the same issues have to be litigated as part of the claim against the insurance policy then these fees and costs will have been wasted. The total loss in fee income is uncertain due to the unknown number of cases whereby this occurs, however the cost per case is estimated to range from £1,235 to £2,870.

to us that the vast majority of brokers already do this, so the extension may not make much difference in practice.

Lawyers

64. A more streamlined process would lead to a possible reduction in the required amount of legal resource needed per insolvency case related to the 2010 Act. Any costs to legal service providers from reduced levels of demand would be associated with gains to third parties and insurers who pay for the legal advice. Lawyers might respond to any reduction in business by finding other types of work.

Companies House

65. Companies House may experience a reduction in the number of requests to restore dissolved companies to the register as this is no longer required under the 2010 Act. This is likely to lead to a reduction in fee income from this activity of £100 per case.[25.] As the Companies House operates on a cost recovery basis, any reduction in fee income would be offset by a reduction in costs.

Benefits

Third Parties

66. Third parties would benefit from a potential reduction in the cost of their case from a more streamlined process for claims against insurers. They would no longer need to restore companies to the Register. As discussed above, in many cases insurers end up meeting the costs of restoring companies to the Register (see para 72).

67. A broad indication of the potential benefit to third parties and insurers from no longer needing to restore companies to the register is provided in paragraphs 70-72. It is not possible to separate out how much of this benefit would accrue to third parties.

68. The third party might also receive their compensation more quickly due to a more streamlined process. An application to restore a company to the register typically takes between six weeks and two months.

Insurance Industry

69. Insurance companies would also benefit from a simpler and easier to understand process for resolving third party claims against insurers. This would be likely to save on administrative costs for them.

70. In many of the affected cases, insurers would also benefit from no longer having to meet the costs of restoring companies to the Register (see paras 72-74). Because of the way settlements are negotiated, insurance companies do not hold information on how much they payout to third parties to cover the costs of restoration.

Insolvent persons who are covered by an insurance policy

71. The insolvent person is removed from the process of a third party claiming against the insurer therefore, under the 2010 Act, they will save time and cost from not having to participate in this process.

Companies House

72. Companies House will see reduced costs as a result of fewer applications to restore registers. See paragraph 84 above.

[25] http://www.companieshouse.gov.uk/toolsToHelp/proposedChanges.shtml

Society

73. It is often the case that third parties who rely on the 1930 Acts are vulnerable members of society, such as former employees of defunct companies suffering from long term industrial illness or ordinary consumers trying to recover loss from a defunct supplier. Accordingly there may be equity benefits to society from streamlining the process for bringing a claim against third parties.

OPTION 2: COMMENCE THE 2010 ACT IN ITS PRESENT FORM

Description

74. This option is to commence the 2010 Act as enacted. The impacts in this option will therefore be the same as for option 1 except that claims by third parties against persons subject to non-court order based administrations or DROs in Northern Ireland will be outside the scope of the legislation. Such third parties will be general creditors in the administration in question. These claims will be subject to neither the 1930 Acts nor the 2010 Act. They will in effect be subject to the same law as applied before the 1930 Acts came into force.

75. Similarly, where a DRO is granted in Northern Ireland to a person owing a liability to the third party, the third party will not have the benefit of the 2010 Act or the 1930 Acts. They would be a general creditor of the person with the DRO.

76. Non-court order based administrations and DROs in Northern Ireland form a relatively small part of all the insolvency-type situations to which the legislation applies (see paras 53-57). However, for third parties caught up in them the effect would be significant.

Costs

Third Parties

77. The proceeds of any insurance policy covering a liability which the insured had incurred to a third party will form part of the insured's assets and under the insolvency rules will be distributed to the general creditors. The third party whose loss triggered the claim against the insurer is likely to only recover a small portion of his or her loss as one of those creditors as opposed to all compensation under the 1930 Acts. The prospect of only partial recovery may therefore deter third parties from making claims.

General Creditors

78. The proceeds from any claim against the insurer will now go into the pool of money available to general creditors. The size of the proceeds set against the numbers of creditors and the liabilities of the company will determine whether the general creditor is materially better off. This is unknown and therefore the potential costs or benefits have not been calculated.

Benefits

Insurance Industry

79. Insurance companies may have fewer cases to deal with if the 2010 Act is not amended. However, third parties may still sue the insured and the insured may call on the insurance policy. The benefit (if any) is therefore difficult to estimate.

SUMMARY AND RECOMMENDATION

80. In our view the effect of amending and commencing the 2010 Act (option 1) will provide the greatest net benefits.

81. Option 0 does not provide any net benefits. Option 1 provides all the advantages of Option 2 without the disadvantage of excluding non-court order based administration and not covering DROs made in Northern Ireland.

82. Despite extensive consultation over a period of years and discussions with ABI and APIL in 2012 we have not been able to quantify the value of the net benefits that the 2010 Act as amended will produce. However, interested parties have not challenged the general tenor of our conclusions or provided better information on specific issues. They have, nonetheless, confirmed their support for the proposed reforms. The opinions of the insurance industry and personal injury representatives alike are that expected costs would be insignificant and the benefits moderate but real.

83. ABI, BIBA and APIL have all confirmed their ongoing support for the implementation of the reforms.

ASSUMPTIONS AND RISKS APPLICABLE TO OPTIONS 1 AND 2

Volumes of third party claims against insurers

84. Whilst we acknowledge that making the procedure quicker and cheaper may intuitively seem likely to encourage claimants to proceed with court actions, we do not think this will affect the number of claims for the reasons below. We have therefore assumed that there will be no increase in the volume of third party claims against insurers as a result of the reforms.

85. First, several of the changes made by the 2010 Act codify existing good practice, and would not lead to substantially more claims (paras 77-79).

86. Secondly, we have consulted the major stakeholders for their views.

87. APIL said that personal injury claimants are not discouraged from making claims by the present law and that the costs of successful claimants are generally met by insurers. In particular, APIL believes that the delay currently caused by the requirement to restore a company to the register would not encourage the victims of disease to abandon their claims. Instead, the action would be continued for the benefit of the estate, even after the claimant's death. In this context ABI noted that insurers already work closely with claimants' solicitors to do all they can reduce delays in mesothelioma claims, where death can follow quickly on from diagnosis.

88. ABI told us that it does not believe any increase in successful claims cases will be significant and that any increase in costs as a result "would likely be offset by cost savings in all claims processing through the compensation system quicker."

89. Our assumption is therefore that if the risk of an increase materialises there will only be a small cost to insurers, which is likely to be offset by cost savings to insurers from a more streamlined process.

Other assumptions and risks

90. We have assumed that giving claimants wider rights to request information about whether an insurance policy is in place will not result in any significant increase in costs to insurance brokers. BIBA has indicated that in practice requests for information about insurance policies are routinely answered so this proposal is not expected to lead to any change in existing practice.

91. It is assumed that clarifying that third party rights against insurers apply in cases with a foreign element would not have much effect in practice. It is not known how many third party cases might have a foreign element. To the extent that some cases are affected, there would be benefits to third parties and insurers from the removal of unnecessary legal argument.

92. We have assumed that there will not be any significant impact on lawyers from a more streamlined legal process.

93. It is assumed that that court administration is operated on a cost recovery basis in civil cases.

94. It is assumed that there will be a reduction in the number of company restorations. This is expected to have a neutral effect on Companies House as it operates on a cost recovery basis.

One-in-two-out assessment for option 1

1. Anecdotal evidence from the ABI suggests that only a small number of cases (150-300) are likely to be materially affected by these reforms (see para 71). As a result of the all impacts of the reforms are expected to be minor in aggregate.
2. The proposal (option 1) is a simplification of the current system of third party claims against insolvent defendants' insurers. Insurers and insurance brokers support the proposal. The ABI has stated that it would support a swift introduction of the Act.[26]
3. Insurers would benefit from lower administration costs associated with a simpler and easier to understand process for resolving third party claims against insurers.
4. Insurers and others would also benefit from no longer needing to meet the costs of restoring companies to the Register. Anecdotal evidence from the ABI suggests that annual benefits to insurers and third parties might be in the region of £0.2 million to £0.6 million per year. This estimate is based on anecdotal evidence and so is subject to significant uncertainty. Discussions with APIL and insurers suggest that a lot of this benefit would be likely to end up accruing to insurers. Our discussions with the ABI suggested that the time and effort required to come up with an estimate of the proportion of this benefit accruing to insurers would be disproportionate and any estimate produced would be very speculative and unreliable.
5. A more streamlined process could lead to insurance companies paying out on claims earlier than under the current 1930 Acts. This may largely be a short-run impact, which is expected to be negligible because of the small number of cases involved.
6. There is also a risk that a more streamlined process for resolving third party claims against insurers could lead to an increase in the volume of claims against insurers. However, discussions with stakeholders including the ABI suggest that this is not a concern. In evidence provided to the MoJ in May 2012 the ABI stated that any increase in the volume of claims is not likely to be significant. The ABI went on to state that "[a]ny increase in costs as a result of increased successful claims would likely be offset by cost savings in all claims processing through the compensation system quicker" (paras 72 and 85).
7. A more streamlined process would lead to a possible reduction in the amount of legal resource needed to resolve some third party claims. Any costs to legal service providers from reduced levels of demand would be associated with gains to third parties and insurers who pay for the legal advice. Lawyers might respond to any reduction in business by finding other types of work.
8. Overall, the reforms are expected to result in a small net benefit to insurers and others. This net benefit has not been quantified as no information or estimates are available on the proportion of restoration costs that insurers tend to meet, the reduced administration cost to insurers from a simpler process and what the costs to insurers of faster claims might be.
9. The overall One-In Two-Out impact has therefore been assessed as ZERO NET COST. This has been confirmed by the Regulatory Policy Committee (para 5). Changes proposed under regulations to be made pursuant to the new power will be assessed on a case by case basis.

IMPLEMENTATION PLAN

10. The 2010 Act will need to be amended by primary legislation to correct the omission of non-court order based administrations and to add DROs in Northern Ireland. Once these changes have been made, the Act can be brought into force by commencement order made by the Secretary of State under section 21 of the 2010 Act. The timing of any exercise of the proposed power to amend the circumstances in which the 2010 Act applies will be determined on a case by case basis. It may be

[26] See e.g. http://www.publications.parliament.uk/pa/ld200910/ldpublic/third/memos/ucm1002.htm

that regulations are made before the 2010 Act comes into force. Such regulations will have been subject to individual impact assessments, including the specific impact tests below (paras 128-136).

11. It is expected that some changes to rules of court will be necessary in Scotland and in Northern Ireland to commence the 2010 Act as amended effectively and smoothly.

12. In relation to England and Wales, the explanatory notes to the 2010 Act state that it is intended to amend rules of court to require a third party to inform the insured of his or her action against the insurer as recommended by the Law Commissions in their 2001 report. We will refer this proposal to the Civil Procedure Rule Committee. It may be that the Committee will not consider that the amendment is essential. In many cases the insured will no longer exist being dead or dissolved. If the insured is still in existence, it seems likely that the insurer will have an interest in informing the insured of the third party's proceedings against it. Occasions where the insured may be prejudiced by the third party's action seem likely to be very rare. We do not consider that the amendment is essential to commence the 2010 Act.

ENFORCEMENT AND SANCTIONS

13. There will be no criminal or administrative sanctions imposed for non-compliance. This is because the 2010 Act is largely facilitative and does not require compliance. Where there is a duty, for example, to comply with the 2010 Act's provisions on providing information about insurance policies, the court is able to make an order on the application of the wronged party.