



# Third Parties (Rights against Insurers) Act 2010

## 2010 CHAPTER 10

### *Transfer of rights to third parties*

#### **2 Establishing liability in England and Wales and Northern Ireland**

- (1) This section applies where a person (P)—
  - (a) claims to have rights under a contract of insurance by virtue of a transfer under section 1, but
  - (b) has not yet established the insured's liability which is insured under that contract.
- (2) P may bring proceedings against the insurer for either or both of the following—
  - (a) a declaration as to the insured's liability to P;
  - (b) a declaration as to the insurer's potential liability to P.
- (3) In such proceedings P is entitled, subject to any defence on which the insurer may rely, to a declaration under subsection (2)(a) or (b) on proof of the insured's liability to P or (as the case may be) the insurer's potential liability to P.
- (4) Where proceedings are brought under subsection (2)(a) the insurer may rely on any defence on which the insured could rely if those proceedings were proceedings brought against the insured in respect of the insured's liability to P.
- (5) Subsection (4) is subject to section 12(1).
- (6) Where the court makes a declaration under this section, the effect of which is that the insurer is liable to P, the court may give the appropriate judgment against the insurer.
- (7) Where a person applying for a declaration under subsection (2)(b) is entitled or required, by virtue of the contract of insurance, to do so in arbitral proceedings, that person may also apply in the same proceedings for a declaration under subsection (2)(a).

---

*Status: This is the original version (as it was originally enacted).*

---

- (8) In the application of this section to arbitral proceedings, subsection (6) is to be read as if “tribunal” were substituted for “court” and “make the appropriate award” for “give the appropriate judgment”.
- (9) When bringing proceedings under subsection (2)(a), P may also make the insured a defendant to those proceedings.
- (10) If (but only if) the insured is a defendant to proceedings under this section (whether by virtue of subsection (9) or otherwise), a declaration under subsection (2) binds the insured as well as the insurer.
- (11) In this section, references to the insurer’s potential liability to P are references to the insurer’s liability in respect of the insured’s liability to P, if established.