
STATUTORY INSTRUMENTS

2008 No. 2986

PRIVATE INTERNATIONAL LAW

**The Law Applicable to Non-Contractual Obligations
(England and Wales and Northern Ireland) Regulations 2008**

Made - - - - *12th November 2008*
Laid before Parliament *18th November 2008*
Coming into force - - *11th January 2009*

The Secretary of State has been designated for the purposes of section 2(2) of the European Communities Act 1972(1) in relation to private international law (2).

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972.

The Secretary of State makes these Regulations under the powers conferred by section 2(2) of the European Communities Act 1972(3).

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Law Applicable to Non-Contractual Obligations (England and Wales and Northern Ireland) Regulations 2008, and shall come into force on 11th January 2009.

(2) Regulation 4 extends to England and Wales only.

(3) Regulation 5 extends to Northern Ireland only.

(4) Otherwise, these Regulations extend to England and Wales and Northern Ireland.

Restriction on the application of existing choice of law rules in tort cases

2. After section 15 of the Private International Law (Miscellaneous Provisions) Act 1995(4) insert—

(1) 1972 c.68. Under section 57(1) of the Scotland Act 1998 (c. 46), despite the transfer to Scottish Ministers of functions in relation to implementing obligations under Community law in relation to devolved matters, the function of the Secretary of State in relation to implementing those obligations continues to be exercisable by him as regards Scotland.

(2) The European Communities (Designation) (No.2) Order 2008 (S.I. 2008/1792).

(3) 1972 c. 68.

(4) 1995 c.42.

“Disapplication of Part III where the rules in the Rome II Regulation apply.

15A.—(1) Nothing in this Part applies to affect the determination of issues relating to tort which fall to be determined under the Rome II Regulation.

(2) In subsection (1) the “Rome II Regulation” means Regulation (EC) No. 864/2007 of the European Parliament and of the Council on the law applicable to non-contractual obligations (5), including that Regulation as applied by regulation 6 of the Law Applicable to Non-Contractual Obligations (England and Wales and Northern Ireland) Regulations 2008 (conflicts solely between the laws of different parts of the United Kingdom or between one or more parts of the United Kingdom and Gibraltar).

(3) This section extends to England and Wales and Northern Ireland only.”.

3. The following shall be inserted at the beginning of section 18(3) of the Private International Law (Miscellaneous Provisions) Act 1995—

“Except where otherwise provided,”.

4. After section 7 of the Foreign Limitation Periods Act 1984 (6) insert—

“Disapplication of sections 1, 2 and 4 where the rules in the Rome II Regulation apply

8.—(1) Where in proceedings in England and Wales the law of a country other than England and Wales falls to be taken into account by virtue of any choice of law rule contained in the Rome II Regulation, sections 1, 2 and 4 above shall not apply in respect of that matter.

(2) In subsection (1) the “Rome II Regulation” means Regulation (EC) No. 864/2007 of the European Parliament and of the Council on the law applicable to non-contractual obligations, including that Regulation as applied by regulation 6 of the Law Applicable to Non-Contractual Obligations (England and Wales and Northern Ireland) Regulations 2008 (conflicts solely between the laws of different parts of the United Kingdom or between one or more parts of the United Kingdom and Gibraltar).”.

5. After Article 8 of the Foreign Limitation Periods (Northern Ireland) Order 1985 (7) insert—

“Disapplication where the rules in the Rome II Regulation apply

9.—(1) Where in proceedings in Northern Ireland the law of a country other than Northern Ireland falls to be taken into account in the determination of any matter by virtue of any choice of law rule contained in the Rome II Regulation, Article 2 (3), (4) and (5) and Articles 3 and 4 above shall not apply in respect of that matter.

(2) In paragraph (1) the “Rome II Regulation” means Regulation (EC) No. 864/2007 of the European Parliament and of the Council on the law applicable to non-contractual obligations, including that Regulation as applied by regulation 6 of the Law Applicable to Non-Contractual Obligations (England and Wales and Northern Ireland) Regulations 2008 (conflicts solely between the laws of different parts of the United Kingdom or between one or more parts of the United Kingdom and Gibraltar).”.

(5) OJ No. L 199, 31.7.2007, at p.40.

(6) 1984 c. 16.

(7) SI 1985/754 (N.I. 5).

Application of the Regulation (EC) No. 864/2007: conflicts falling within Article 25(2)

6. Notwithstanding Article 25(2) of Regulation (EC) No. 864/2007 of the European Parliament and of the Council on the law applicable to non-contractual obligations (“Rome II”), that Regulation shall apply in the case of conflicts between—

- (a) the laws of different parts of the United Kingdom, or
- (b) between the laws of one or more parts of the United Kingdom and Gibraltar,

as it applies in the case of conflicts between the laws of other countries.

Signed by authority of the Secretary of State

12th November 2008

Bach
Parliamentary Under Secretary of State
Ministry of Justice

EXPLANATORY NOTE

(This note is not part of the Regulations)

These regulations concern Regulation (EC) No. 864/2007 of the European Parliament and of the Council on the law applicable to non-contractual obligations (“Rome II”). This instrument establishes uniform choice of law rules in the field of non-contractual obligations, that is principally in the context of proceedings in tort, but also proceedings for unjust enrichment and some other non-contractual obligations. These rules enable courts throughout the EU to select the national laws appropriate for the determination of these proceedings where the case has a cross-border dimension, for example a case where the parties live in different countries and the tort takes place in a third country. The aim of these uniform rules of Community law is that, in relation to a case falling within the Regulation’s scope of application, the same national law will generally be applied by courts in all the Member States.

The purpose of these regulations is two-fold. The first is to modify the relevant current inconsistent national law in England and Wales and Northern Ireland. Regulations 2 and 3 restrict the application of the general statutory choice of law rules in this area. These are contained in Part III of the Private International Law (Miscellaneous Provisions) Act 1995. Regulation 4 restricts the application of certain provisions in the Foreign Limitation Periods Act 1984 and regulation 5 restricts the application of analogous provisions in the Foreign Limitation Periods (Northern Ireland) Order 1985.

The second purpose involves extending the application of the Regulation to certain cases that would otherwise not be regulated by it. These are cases where in principle the choice of applicable law is confined to the law of one of the United Kingdom’s three jurisdictions, that is England and Wales, Scotland and Northern Ireland, and to the law of Gibraltar. These cases therefore lack the international dimension which is otherwise characteristic of cases falling under the Regulation. Under Article 25(2) of the Regulation Member States are not obliged to apply the Regulation to such cases. To maximise consistency between the rules that apply to determine the law applicable to non-contractual obligations, regulation 6 of these regulations extends, in relation to England and Wales and Northern Ireland, the scope of the Regulation to conflicts solely between the laws of England and Wales, Scotland, Northern Ireland and Gibraltar.