

2009 No. 410

PRIVATE INTERNATIONAL LAW

**The Law Applicable to Contractual Obligations (Scotland)
Regulations 2009**

Made - - - - - *23rd November 2009*

Laid before the Scottish Parliament *24th November 2009*

Coming into force - - - *17th December 2009*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) and all other powers enabling them to do so.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Law Applicable to Contractual Obligations (Scotland) Regulations 2009 and come into force on 17th December 2009.

(2) These Regulations extend to Scotland only.

Restriction on the application of the Contracts (Applicable Law) Act 1990

2. In the Contracts (Applicable Law) Act 1990(b)—

(a) after section 4A(c) insert—

“4B. Disapplication where the rules in the Rome I Regulation apply: Scotland

(1) Nothing in this Act applies to affect the determination of issues relating to contractual obligations which fall to be determined by the Rome I Regulation.

(2) In this section “the Rome I Regulation” means Regulation (EC) No. 593/2008 of the European Parliament and of the Council on the law applicable to contractual obligations (Rome I)(d), including that Regulation as applied by regulation 4 of the Law Applicable to Contractual Obligations (Scotland) Regulations 2009 (conflicts falling within Article 22(2) of Regulation (EC) No. 593/2008).

(3) This section extends to Scotland only.”;

and

(a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46), Schedule 8, paragraph 15(3) and section 27 of the Legislative and Regulatory Reform Act 2006 (c.51). The functions conferred upon the Minister of the Crown under section 2(2) of the 1972 Act, in so far as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

(b) 1990 c.36.

(c) Section 4A (disapplication where the rules in the Rome I Regulation apply) was inserted for England, Wales and Northern Ireland by S.I. 2009/3064.

(d) O.J. No. L 177, 4.7.2008, p.6.

- (b) in section 8(1)(extent), for “This” substitute “Except as provided by virtue of section 4B(3), this”.

Restriction on the application of existing choice of law rules on prescription and limitation

3. In section 23A (private international law application) of the Prescription and Limitation (Scotland) Act 1973(a)—

- (a) in subsection (4), after “contained in” insert “the Rome I Regulation or”; and
(b) in subsection (5) after “subsection 4” insert—

“(a) “the Rome I Regulation” means Regulation (EC) No. 593/2008 of the European Parliament and of the Council on the law applicable to contractual obligations (Rome I), including that Regulation as applied by regulation 4 of the Law Applicable to Contractual Obligations (Scotland) Regulations 2009 (conflicts falling within Article 22(2) of Regulation (EC) No. 593/2008), and (b)”.

Conflicts falling within Article 22(2) of Regulation (EC) No. 593/2008

4. Notwithstanding Article 22(2) of Regulation (EC) No. 593/2008 of the European Parliament and of the Council on the law applicable to contractual obligations (Rome I), that Regulation shall, with the exception of Article 7 (insurance contracts)(b), apply in the case of conflicts between—

- (a) the laws of different parts of the United Kingdom, or
(b) 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.

KENNY MACASKILL
A member of the Scottish Executive

St Andrew’s House,
Edinburgh
23rd November 2009

(a) 1973 c.52. Section 23A was inserted by the Prescription and Limitation (Scotland) Act 1984 (c.45) and amended by S.S.I. 2008/404.
(b) Implementation of Article 7 of Rome I is dealt with in S.I. 2009/3075.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Regulation (EC) No. 593/2008 of the European Parliament and of the Council on the law applicable to contractual obligations (Rome I) (“Rome I”), which establishes uniform choice of law rules in the field of contractual obligations. Rome I enables courts in the European Community to determine the national laws to be applied in cases with a cross-border dimension.

Regulation 2 disapplies the Contracts (Applicable Law) Act 1990 in relation to Scotland so that that Act does not apply to issues which fall to be determined under Rome I. That Act gave effect to the 1980 Rome Convention on the Law Applicable to Contractual Obligations, which is replaced by Rome I in relation to matters which are governed by Rome I.

Regulation 3 amends section 23A (private international law application) of the Prescription and Limitation (Scotland) Act 1973 so it does not apply to cases which fall to be determined by Rome I.

Regulation 4 extends the application of Rome I, with the exception of Article 7 (insurance contracts), to conflicts solely between the laws of Scotland, England and Wales and Northern Ireland and Gibraltar.

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