

2009 No. 3064

PRIVATE INTERNATIONAL LAW

The Law Applicable to Contractual Obligations (England and Wales and Northern Ireland) Regulations 2009

<i>Made</i>	- - - -	<i>15th November 2009</i>
<i>Laid before Parliament</i>		<i>23rd November 2009</i>
<i>Coming into force</i>	- -	<i>17th December 2009</i>

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

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(c).

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Law Applicable to Contractual Obligations (England and Wales and Northern Ireland) Regulations 2009, and shall come into force on 17 December 2009.

(2) Regulation 3 extends to England and Wales only.

(3) Regulation 4 extends to Northern Ireland only.

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

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

2. After section 4 of the Contracts (Applicable Law) Act 1990 (d) insert—

“Disapplication where the rules in the Rome I Regulations apply: England and Wales and Northern Ireland

4A.—(1) Nothing in this Act applies to affect the determination of issues relating to contractual obligations which fall to be determined under the Rome I Regulation.

(a) 1972 c.68.

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

(c) 1972 c. 68.

(d) 1990 c.36.

(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^(a), including that Regulation as applied by regulation 3 of the Law Applicable to Contractual Obligations (England and Wales and Northern Ireland) Regulations 2009 (conflicts falling within Article 22(2) of Regulation (EC) No. 593/2008).

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

Restriction on the application of the Foreign Limitation Periods Act 1984 and related legislation

3.—(1) Section 8 of the Foreign Limitation Periods Act 1984 (disapplication of sections 1, 2 and 4 where the rules in the Rome II Regulation apply) **(b)** is amended as follows.

(2) In the section heading, for “the rules in the Rome II Regulation apply” substitute “the law applicable to limitation is determined by other instruments”.

(3) In subsection (1), before “the Rome II Regulation” insert “the Rome I Regulation or”.

(4) After subsection (1), insert—

“(1A) In subsection (1) 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, including that Regulation as applied by regulation 5 of the Law Applicable to Contractual Obligations (England and Wales and Northern Ireland) Regulations 2009 (conflicts solely between the laws of different parts of the United Kingdom or between one or more parts of the United Kingdom and Gibraltar).”

4.—(1) Article 9 of the Foreign Limitation Periods (Northern Ireland) Order 1985 (disapplication where the rules in the Rome II Regulation apply) **(c)** is amended as follows.

(2) In the article heading, for “the rules in the Rome II Regulation apply” substitute “the law applicable to limitation is determined by other instruments”.

(3) In paragraph (1), before “the Rome II Regulation” insert “the Rome I Regulation”.

(4) After paragraph (1), insert—

“(1A) In paragraph (1) 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, including that Regulation as applied by regulation 5 of the Law Applicable to Contractual Obligations (England and Wales and Northern Ireland) Regulations 2009 (conflicts solely between the laws of different parts of the United Kingdom or between one or more parts of the United Kingdom and Gibraltar).”

Application of the Regulation (EC) No. 593/2008: conflicts falling within Article 22(2)

5.—(1) 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, that Regulation shall 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.

(2) Paragraph (1) shall not apply to contracts falling within Article 7 of Regulation (EC) No. 593/2008 (insurance contracts)^(d).

^(a) OJ No L.177, 4th July 2008, at p. 6.

^(b) 1984 c. 16, as amended by SI 2008/2986.

^(c) SI 1985/754 (N.I. 5), as amended by SI 2008/2986.

^(d) Provisions in relation to these contracts are made pursuant to section 424(3) of the Financial Services and Markets Act 2000 (c.8).

Signed by authority of the Secretary of State

15th November 2009

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. 593/2008 of the European Parliament and of the Council on the law applicable to contractual obligations (“Rome I”). This instrument establishes uniform choice of law rules in the field of contractual obligations. These rules enable courts throughout the EU to select the national laws appropriate for the determination of the law applicable to contractual obligations in situations where the case has a cross-border dimension, for example where the parties to the contract live in different countries and the contract is to be performed in a third country. The aim of these uniform rules of Community law is that, in relation to a case falling within Rome I’s scope of application, the same national law will generally be applied by courts in all the Member States. The rules apply to contracts concluded as from 17th December 2009.

The purpose of these regulations is two-fold. The first is to modify the relevant current national law in England and Wales and Northern Ireland. Regulation 2 disapplies in relation to England and Wales and Northern Ireland the Contracts (Applicable Law) Act 1990 as regards contracts concluded on or after the 17th December 2009. These contracts will be dealt with under Rome I. That Act was enacted in order to enable the United Kingdom to ratify the 1980 Rome Convention on the Law Applicable to Contractual Obligations. After the commencement of Rome I that Convention will only apply to contracts concluded before the commencement of Rome I. Regulation 3 excludes the application of certain provisions in the Foreign Limitation Periods Act 1984 and regulation 4 excludes the application of analogous provisions in the Foreign Limitation Periods (Northern Ireland) Order 1985. These exclusions relate to cases to which Rome I applies.

The second purpose involves extending, with one exception, the application of Rome I 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 Rome I. Under Article 22(2) of Rome I Member States are not obliged to apply that Regulation to such cases. To maximise consistency between the rules that apply to determine the law applicable to contractual obligations, regulation 5 extends, in relation to England and Wales and Northern Ireland, the scope of Rome I to conflicts solely between the laws of England and Wales, Scotland, Northern Ireland and Gibraltar. The one exception to this general extension of Rome I to “intra-UK cases” concerns insurance contracts which are dealt with under Article 7 of that Regulation. Contracts of this kind are currently provided for in the Financial Services and Markets Act 2000 (Law Applicable to Contracts of Insurance) Regulations 2001 (S.I. 2001/2635). They will continue to be dealt with in separate regulations.

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