

2018 No. 0000

EXITING THE EUROPEAN UNION

PRIVATE INTERNATIONAL LAW

**The Law Applicable to Contractual Obligations and Non-
Contractual Obligations (Amendment etc.) (EU Exit)
Regulations 2018**

Sift requirements satisfied *xx date 2018*

Made - - - - *xx date 2018*

Laid before Parliament *xx date 2018*

Coming into force in accordance with regulation 1

The Secretary of State makes these Regulations in exercise of the powers conferred by section 8(1) of, and paragraph 21(b) of Schedule 7 to, the European Union (Withdrawal) Act 2018(a).

The requirements of paragraph 3(2) of Schedule 7 to that Act (relating to the appropriate Parliamentary procedure for these Regulations) have been satisfied.

PART 1

Introductory

Citation and commencement

1. These Regulations may be cited as the Law Applicable to Contractual Obligations and Non-Contractual Obligations (Amendment etc.) (EU Exit) Regulations 2018 and come into force on exit day.

PART 2

Amendment of primary legislation

Amendment of the Prescription and Limitation (Scotland) Act 1973

2. In section 23A(5) of the Prescription and Limitation (Scotland) Act 1973(a) (application of the Rome I and II Regulations)—

- (a) in paragraph (a) for “conflicts falling within Article 22(2)” substitute “application”;
- (b) in paragraph (b) for “conflicts falling within Article 25(2)” substitute “application”.

Amendment of the Contracts (Applicable Law) Act 1990

3.—(1) The Contracts (Applicable Law) Act 1990(b) is amended as follows.

(2) For section 1 (meaning of “the Conventions”)(c) substitute—

“Meaning of “the Rome Convention”

1. In this Act, a reference to the Rome Convention is a reference to the provisions contained in Schedule 1 (which is derived from the Convention on the law applicable to contractual obligations opened for signature in Rome on 19th June 1980).”.

(3) In section 2 (Conventions to have force of law)(d)—

- (a) for the heading substitute “Application of the Rome Convention”;
- (b) for subsection (1) substitute—

“(1) The Rome Convention applies to contracts made on or after 1st April 1991.”;
- (c) omit subsections (1A), (2) and (4);
- (d) in subsection (3), for the words from “Notwithstanding” to “Conventions” substitute “The Rome Convention”.

(4) In section 3 (interpretation of Conventions)—

- (a) in the heading, for “Conventions” substitute “the Rome Convention”;
- (b) for subsection (1) substitute—

“(1) Any question as to the meaning or effect of any provision of the Rome Convention is to be decided in accordance with section 6 of the European Union (Withdrawal) Act 2018 (interpretation of retained EU law).”;
- (c) omit subsection (2);
- (d) in subsection (3)(a)—
 - (i) for “Rome Convention” substitute “Convention on the law applicable to contractual obligations”(e); and
 - (ii) for “that Convention” substitute “the Rome Convention”;
- (e) omit subsection (3)(b) and the “and” before it.

(5) Omit section 4 (revision of Conventions).

(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 and 2009/410.

(b) 1990 c. 36.

(c) Section 1 was amended by S.I. 1994/1900 and 2000/1825.

(d) Section 2 was amended by S.I. 2000/1825 and 2001/3649.

(e) OJ No C282, 31.10.80, p.1.

(6) In section 4A(2) (disapplication where the rules in the Rome I Regulation apply: England and Wales and Northern Ireland)(a), for “conflicts falling within Article 22(2)” substitute “application”.

(7) In section 4B(2) (disapplication where the rules in the Rome I Regulation apply: Scotland)(b), for “conflicts falling within Article 22(2)” substitute “application”.

(8) Omit section 8(2) and (3) (power to extend or modify the Act in relation to territories).

(9) In Schedule 1 (the Rome Convention)—

(a) in the words before Article 1 (statement as to the establishment of the Convention), omit the words from “The High Contracting Parties” to “Have agreed as follows:”;

(b) in Article 1(3) (Convention to not apply to contracts of insurance covering risks in Member States)—

(i) for “Member States” substitute “United Kingdom or any Member State”;

(ii) omit the words from “In order” to the end;

(c) in Article 2 (application of law of non-contracting states)—

(i) for the heading substitute “Application of law of a country outside of the United Kingdom”;

(ii) for “a Contracting State” substitute “the United Kingdom or a part of the United Kingdom”;

(d) omit Article 7(1) (application of mandatory rules of the law of another country);

(e) omit Article 10(1)(e) (applicable law shall govern the consequences of nullity of the contract);

(f) omit Article 17 (no retrospective effect);

(g) omit Article 19(2) (states with more than one legal system not bound to apply convention to internal disputes);

(h) in Article 20 (precedence of Community law)—

(i) in the heading, for “Community” substitute “retained EU”;

(ii) for the words from “or will be contained” to the end substitute “contained in retained EU law”;

(i) in Article 21 (relationship with other conventions), for “a Contracting State” substitute “the United Kingdom”;

(j) omit from Article 22 to the end.

(10) Omit Schedules 2 to 3B (the Luxembourg Convention, the Brussels Protocol, the Funchal Convention and the Accession Convention).

Amendment of the Private International Law (Miscellaneous Provisions) Act 1995

4. In section 15B(2) of the Private International Law (Miscellaneous Provisions) Act 1995(c) (disapplication of Part III where the rules in Rome II Regulation apply: Scotland) for “conflicts falling within Article 25(2)” substitute “application”.

(a) Section 4A was inserted by S.I. 2009/3064.

(b) Section 4B was inserted by S.S.I. 2009/410.

(c) 1995 c. 42. Section 15B was inserted by S.S.I. 2008/404.

PART 3

Amendment of secondary legislation

Amendment of the Law Applicable to Non-Contractual Obligations (England and Wales and Northern Ireland) Regulations 2008

5. In regulation 6 of the Law Applicable to Non-Contractual Obligations (England and Wales and Northern Ireland) Regulations 2008(a)—

- (a) in the heading omit “conflicts falling within Article 25(2)”;
- (b) omit “Notwithstanding Article 25(2) of”; and
- (c) omit “that Regulation”.

Amendment of the Law Applicable to Contractual Obligations (England and Wales and Northern Ireland) Regulations 2009

6. In regulation 5(1) of the Law Applicable to Contractual Obligations (England and Wales and Northern Ireland) Regulations 2009(b)—

- (a) in the heading omit “conflicts falling within Article 22(2)”;
- (b) omit “Notwithstanding Article 22(2) of”; and
- (c) omit “that Regulation”.

Amendment of the Financial Services and Markets Act 2000 (Law Applicable to Contracts of Insurance) Regulations 2009

7. In regulation 3 of the Financial Services and Markets Act 2000 (Law Applicable to Contracts on Insurance) Regulations 2009(c)—

- (a) in the heading, for “falling within Article 22(2)” substitute “between different parts of the United Kingdom”;
- (b) for “Notwithstanding Article 22(2) of the Rome I Regulation, Article 7 of that Regulation” substitute “Article 7 of the Rome I Regulation”.

Amendment of the Law Applicable to Non-Contractual Obligations (Scotland) Regulations 2008

8. In regulation 4 of the Law Applicable to Non-Contractual Obligations (Scotland) Regulations 2008(d)—

- (a) for the heading substitute “Application of Regulation (EC) No 864/2007”;
- (b) omit “Notwithstanding Article 25(2) of”; and
- (c) omit “that Regulation”.

Amendment of the Law Applicable to Contractual Obligations (Scotland) Regulations 2009

9. In regulation 4 of the Law Applicable to Contractual Obligations (Scotland) Regulations 2009(e)—

- (a) for the heading substitute “Application of Regulation (EC) No 593/2008”;
- (b) omit “Notwithstanding Article 22(2) of”; and

(a) S.I. 2008/2986.
(b) S.I. 2009/3064.
(c) S.I. 2009/3075.
(d) S.S.I. 2008/404.
(e) S.S.I. 2009/410.

- (c) omit “that Regulation”.

PART 4

Amendment of retained EU law

Amendment of the Rome I Regulation

10.—(1) Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) is amended as follows.

(2) In Article 1 (material scope)—

- (a) in paragraph 2(j), for the words beginning with “Article 2” and ending with “assurance” substitute “Article 2(1) of Directive 2009/138/EU(a) which carry on life assurance under Article 2(3) of that Directive”;
- (b) for paragraph 4, substitute—

“4. In this Regulation, “relevant state” means the United Kingdom and—

- (a) in Article 3(4) and Article 7, all the Member States;
- (b) in all other Articles, the Member States to which Regulation (EC) No. 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), as it has effect in EU law and as amended from time to time, applies(b).”.

(3) In Article 2 (universal application), for “a Member State”, substitute “the United Kingdom or a part of the United Kingdom”.

(4) In Article 3(4) (parties’ choice of applicable law shall not prejudice application of community law under certain circumstances)—

- (a) for “Member States” substitute “relevant states”;
- (b) for “Member State”, in the first place it appears, substitute “relevant state”;
- (c) for “Community law, where appropriate as implemented in the Member State of the forum,”, substitute “retained EU law”.

(5) In Article 4(1)(h) (applicable law in the absence of choice), for “by Article 4(1), point (17) of Directive 2004/39/EC” substitute “in Part 1 of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(c)”.

(6) In Article 6(4) (consumer contracts: general rules not to apply in certain circumstances)—

- (a) in point (b), for the words from “Council” to the end substitute “Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements(d)”;
- (b) in point (c), for “Directive 94/47/EC” substitute “Directive 2008/122/EC(e)”.

(7) In Article 7 (insurance contracts)—

- (a) in paragraph 1—
- (i) for “Member State” substitute “relevant state”;
- (ii) for “Member States” substitute “relevant states”;
- (b) in paragraph 2, for the words from “Article 5(d)” to “life assurance” substitute “Article 13(27) of Directive 2009/138/EU”;

(a) OJ L 335, 17.12.2009, p.1.

(b) OJ L 177, 4.7.2008, p.6.

(c) S.I. 2001/544. Schedule 2 was substituted by S.I. 2006/3384. The substituted Schedule 2 was amended by S.I. 2017/488.

(d) OJ L 326, 11.2.2015, p.1.

(e) OJ L 33, 3.2.2009, p.10.

- (c) in paragraph 3—
 - (i) for “Member State” in each place it appears substitute “relevant state”;
 - (ii) for “Member States” in each place it appears substitute “relevant states”;
 - (d) in paragraph 4—
 - (i) in the words before point (a) for “rules” substitute “rule”;
 - (ii) for “Member State” in each place it appears substitute “relevant state”;
 - (iii) omit point (b);
 - (e) in paragraph 5, for “Member State” in both places it appears substitute “relevant state”;
 - (f) in paragraph 6—
 - (i) for the words from “Article 2(d)” to “services” substitute “Article 13(13) of Directive 2009/138/EU”;
 - (ii) for “Article 1(1)(g) of Directive 2002/83/EC” substitute “Article 13(14) of Directive 2009/138/EU”.
- (8) Omit Article 22(2) (Member States comprising territorial units with different rules of law not required to apply the Regulation).
- (9) In Article 23 (relationship with other provisions of Community law), and in the heading to that Article, for “Community law”, substitute “retained EU law”.
- (10) In Article 24 (relationship with Rome Convention)—
- (a) for paragraph 1 substitute—

“1. This Regulation replaces the provision made by section 2 of, and Schedule 1 to, the Contracts (Applicable Law) Act 1990.”
 - (b) in paragraph 2 for “provisions of the Rome Convention” substitute “provision made by section 2 of, and Schedule 1 to, the Contracts (Applicable Law) Act 1990” and for “that” substitute “the Rome”.
- (11) In Article 25 (relationship with existing international conventions)—
- (a) in paragraph 1—
 - (i) for “one or more Member States are parties”, substitute “the United Kingdom was a party”;
 - (ii) for “is adopted” substitute “was adopted”;
 - (b) in paragraph 2, for “Member States” substitute “relevant states”.
- (12) Omit Articles 26 and 27 (list of conventions and review clause).
- (13) Omit from Article 29 (entry into force and application) to the end.

Amendment of the Rome II Regulation

11.—(1) Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) is amended as follows.

(2) In Article 1(4) (scope), for “‘Member State’ shall mean”, substitute “‘relevant state’ means the United Kingdom or”.

(3) In Article 3 (universal application), for “a Member State”, substitute “the United Kingdom or a part of the United Kingdom”.

(4) In Article 6(3)(b) (unfair competition and acts restricting free competition: claimant may choose court seised under certain circumstances)—

- (a) for “the court of the domicile of the defendant” substitute “a court in a part of the United Kingdom”;
- (b) for “that Member State”, substitute “the United Kingdom”;
- (c) for “Member State of that court”, substitute “United Kingdom”.

- (5) In Article 8 (Infringement of intellectual property rights)—
- (a) in paragraph 2—
 - (i) after “infringement” in the first place it appears, insert “which occurred before exit day”;
 - (ii) after “law applicable” insert “in any proceedings of which a court was seised before exit day and which are not concluded before exit day”;
 - (iii) for “the relevant Community instrument” substitute “retained EU law”;
 - (b) after paragraph 2 insert—

“2A. In paragraph 2, “unitary Community intellectual property right” refers to that right as it had effect immediately before exit day.”.
- (6) In Article 14(3) (parties’ choice of applicable law shall not prejudice application of Community law under certain circumstances)—
- (a) for “the Member States” substitute “relevant states”;
 - (b) for “Member State”, in the first place it appears, substitute “relevant state”;
 - (c) for “provisions of Community law, where appropriate as implemented in the Member State of the forum,”, substitute “retained EU law”.
- (7) Omit Article 25(2) (Member States containing territorial units with different rules of law not required to apply the Regulation).
- (8) In Article 27 (relationship with other provisions of Community law), and in the heading to that Article, for “Community law”, substitute “retained EU law”.
- (9) In Article 28 (relationship with existing international conventions)—
- (a) in paragraph 1—
 - (i) for “one or more Member States are parties”, substitute “the United Kingdom was a party”;
 - (ii) for “is adopted” substitute “was adopted”;
 - (b) in paragraph 2, for “Member States” substitute “relevant states”.
- (10) Omit Articles 29 and 30 (list of conventions and review clause).
- (11) In Article 31 (application in time) for “its entry into force” substitute “on or after 11 January 2009”.
- (12) Omit from Article 32 (date of application) to the end.

Revocation of Regulation EC No 662/2009

12. Regulation EC No 662/2009 of the European Parliament and of the Council of 13 July 2009 establishing a procedure for the negotiation and conclusion of agreements between Member States and third countries on particular matters concerning the law applicable to contractual and non-contractual obligations is revoked.

Signed by authority of the Secretary of State

Date

Name
Parliamentary Under Secretary of State
Ministry of Justice

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by section 8(1) of the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate

effectively and other deficiencies (in particular under section 8(2)(a), (b), (c) and (g) of that Act) arising from the withdrawal of the UK from the European Union.

These Regulations make amendments to legislation in the field of private international law and, in particular, amend legislation determining the law applicable to contractual and non-contractual obligations in the case of conflict of laws.

Part 2 amends primary legislation. Regulation 3 amends the Contracts (Applicable Law) Act 1990 (c. 36), which implemented the 1980 Rome Convention on the law applicable to contractual obligations, to which the United Kingdom will no longer be a contracting party after exit day. The amendments convert the rules in that Convention into domestic law. These rules continue to apply, in particular, to contracts entered into between 1st April 1991 and 16th December 2009. Regulations 2 and 4 make amendments to the Prescription and Limitation (Scotland) Act 1973 (c. 52) and the Private International Law (Miscellaneous Provisions) Act 1995 (c. 42), which are consequential on the amendments being made to retained EU law by Part 4 of these Regulations.

Part 3 amends various secondary legislation which give effect in England and Wales, Northern Ireland and Scotland to Regulation (EC) No 593/2008 on the law applicable to contractual obligations (“Rome I Regulation”) and Regulation (EC) No 864/2007 on the law applicable to non-contractual obligations (“Rome II Regulation”). These amendments are consequential on the amendments being made to retained EU law by Part 4 of these Regulations.

Part 4 amends retained EU law consisting of the Rome I Regulation and Rome II Regulation, and revokes Regulation EC No 662/2009 which establishes a procedure for the negotiation and conclusion of agreements between EU Member States and third countries on the law applicable to contractual and non-contractual obligations.

A full impact assessment has not been published for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.