

EXPLANATORY MEMORANDUM TO
THE LAW APPLICABLE TO CONTRACTUAL OBLIGATIONS (ENGLAND
AND WALES AND NORTHERN IRELAND) REGULATIONS 2009

2009 No.3064

1. This Explanatory Memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty. It contains information for the Select Committee on Statutory Instruments.
2. **Purpose of the instrument**
 - Regulation (EC) 593/2008 of the European Parliament and of the Council (the so-called “Rome I Regulation”) comes into operation on 17th December 2009. This instrument lays down uniform choice of law rules in relation to claims in contract. The aim of these uniform rules is that, where a contract falls within the scope of application of Rome I, the same national law of contract will generally be applied by the courts in all the Member States of the EU (except Denmark where Rome I will not apply).
 - The regulations modify the relevant current legislation in England and Wales and Northern Ireland. This includes the Contracts (Applicable Law) Act 1990. That Act was enacted in order to enable the United Kingdom to ratify the 1980 Rome Convention on the Law Applicable to Contractual Obligations (to which the United Kingdom and all the other Member States of the EU are parties). After the commencement of Rome I this Act and this Convention will only apply to contracts concluded before the commencement of Rome I.
 - The regulations also modify the Foreign Limitation Periods Act 1984 and the Foreign Limitation Periods (Northern Ireland) Order 1985 so as to disapply certain provisions in those instruments in relation to cases to which Rome I applies. These modifications are analogous to those made in relation to the Rome II Regulation (EC No. 864/2007) in the Law Applicable to Non-Contractual Obligations (England and Wales and Northern Ireland) Regulations 2008 (SI 2008/2986).
 - The regulations generally extend, in relation to England and Wales and Northern Ireland, the application of Rome I to certain cases that would not otherwise be regulated by it. These are cases where the choice of the law applicable is confined to a choice between the laws of the United Kingdom’s three jurisdiction, in other words England and Wales, Scotland and Northern Ireland, and the law of Gibraltar. The aim of this extension of Rome I to these “intra-UK cases” is to maximise consistency between the rules on applicable law in relation to contractual obligations.
 - There is one exception to the extension of Rome I to these “intra-UK” cases which is implemented by these regulations. This concerns insurance

contracts which are generally provided for under Article 7 of Rome I. To a great extent 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). Although it is intended that these contracts will continue to be dealt with in separate regulations (albeit the 2001 Regulations will not apply to insurance contracts falling under Article 7), the effect of these separate regulations will be to achieve an extension in relation to “intra-UK” situations equivalent to that achieved by the regulations which are the subject of this memorandum.

3. Matters of special interest to the Select Committee on Statutory Instruments

3.1 None

4. Legislative context

4.1 These regulations are being made to implement a European obligation. This is consequential on the commencement of Rome I. Article 249 of the EC Treaty ensures that this Regulation is directly applicable in the United Kingdom. Parallel implementing regulations are being introduced by Ministers in the Scottish Government. Rome I was cleared from scrutiny on 18th June 2008 by the House of Lords Select Committee on the European Union and on 16th July 2008 by the House of Commons European Select Committee.

5. Territorial extent and application

5.1 These regulations apply to England and Wales and Northern Ireland.

6. European Convention on Human rights

6.1 Lord Bach, the Parliamentary Secretary in the Ministry of Justice, has made the following statement regarding human rights:

In my view the provisions of the Law Applicable to Contractual Obligations (England and Wales and Northern Ireland) Regulations 2009 are compatible with the Convention rights.

7. Policy background

7.1 Rome I deals generally with choice of law in contract. Priority is given to the possibility for commercial parties to agree on the application of a particular law (Article 3). There is a scheme of general choice of law rules (Article 4); these are subject to regimes of special choice of law rules to deal with particular types of contract: contracts of carriage (Article 5), consumer contracts (Article 6), insurance contracts (Article 7) and individual employment contracts (Article 8). The overall objective of these special rules is to enhance legal certainty within the EU in relation to cross-border contractual disputes, whilst also protecting the interests of economically weaker parties, such as consumers and employees.

8. Consultation outcome

- 8.1 In April 2008 the Government consulted widely with legal, commercial and other interests as to whether it would be in the national interest for the UK to apply Rome I in the form in which that instrument had been finally adopted by the European Parliament and the Council of Ministers. This issue arose because in 2006 the Government had decided that, in accordance with the UK's Protocol on Title IV measures, it would not be in the UK's interest formally to opt in to the negotiations on the Commission's original proposed Regulation. The UK was not therefore automatically legally bound by the adopted Regulation.
- 8.2 The response on consultation was overwhelmingly in support of the UK opting in to the adopted instrument; it was also overwhelmingly in support of the UK generally extending its scope of application to "intra-UK" cases (see paragraph 2 above), thereby avoiding the unnecessary complexity which would be inherent in applying different choice of law rules in this domestic context. In July 2008 the Government wrote to the Commission seeking the Commission's agreement to the UK participating in Rome I; that agreement was notified in December 2008.

9. Guidance

- 9.1 The minor and technical nature of these regulations makes it inappropriate to publish guidance specifically in relation to them. However the Ministry of Justice intends to publish explanatory material on Rome I to heighten awareness and offer guidance on the application of its main provisions.

10. Impact

- 10.1 The impact of the regulations on (1) business, (2) charities or voluntary bodies, and (3) the public sector is not likely to be significant. In the light of this it is not considered appropriate for an Impact Assessment to be prepared in relation to these regulations.

11. Regulating small business

- 11.1 The regulations are not considered to be likely to have any significant impact in relation to small business.

12. Monitoring and review

- 12.1 The minor and technical nature of the regulations makes it inappropriate to establish a mechanism for their monitoring and review.
- 12.2 Rome I contains a general requirement for the review of its operation. There are also requirements to review certain specific aspects of it, in particular insurance and consumer contracts, and certain issues relating to the assignment of contractual claims.

13. Contact

13.1 The points of contact are:

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