

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.

An assessment of the impact of this instrument has been carried out. Copies of the impact assessment may be obtained by writing to Ministry of Justice, 102 Petty France, London, SW1H 9AJ. The impact assessment is also available alongside this instrument and the Explanatory Memorandum on www.legislation.gov.uk.