

<b>Title:</b> The Law Applicable to Contractual Obligations and Non-Contractual Obligations (Amendment) (EU Exit) Regulations 2019  <b>IA No:</b> MoJ 29/2019  <b>RPC Reference No:</b>  <b>Lead department or agency:</b> Ministry of Justice <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>
	<b>Date:</b> 09/03/2019
	<b>Stage:</b> Final
	<b>Source of intervention:</b> EU Exit
	<b>Type of measure:</b> Secondary Legislation
	<b>Contact for enquiries:</b> Andrew.Thompson@justice.gov.uk

<b>Summary: Intervention and Options</b>	<b>RPC Opinion:</b> N/A
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Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB in 2014 prices)	One-In, Three-Out?	Business Impact Target Status
£n/a	£n/a	£n/a		Out of Scope

<b>What is the problem under consideration? Why is government intervention necessary?</b> <p>Regulation EC 593/2008 on the law applicable to contractual obligations ("Rome I") establishes the rules applicable to EU Member States (except Denmark) that determine which country's laws apply to contractual obligations raising cross-border issues. Rome I replaced the rules in the 1980 Rome Convention (the Rome Convention) on the law applicable to contractual obligations, with effect from 17 December 2009, although the 1980 Rome Convention continues to apply to certain contracts entered into before Rome I entered into force. Regulation EC 864/2007 on the law applicable to non-contractual obligations (Rome II) establishes the rules applicable to EU Member States (except Denmark) that determine the law applicable to non-contractual obligations raising cross-border issues.</p> <p>Upon the UK's exit from the EU, Rome I and Rome II, and the domestic legislation that gave effect to these EU Regulations, will be retained under the European Union (Withdrawal) Act 2018. The UK will also cease to participate in the Rome Convention, meaning the Convention's rules will no longer apply to the UK as a matter of international law. Government intervention is necessary to address EU exit-related deficiencies that will render Rome I and Rome II partially unworkable and to ensure the Rome Convention rules continue to apply to pre-Rome I contacts post-exit.</p>
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<b>What are the policy objectives and the intended effects?</b> <p>The policy objective is to ensure that the Rome I and Rome II rules (and, to the extent they are still applicable, the Rome Convention rules) continue to apply as functioning UK domestic law post EU exit. This will ensure continuity of the (current, pre-Exit) rules that determine applicable law for contractual and non-contractual obligations in the UK post EU exit, thereby promoting legal and businesses certainty.</p>
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<b>What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)</b> <ul style="list-style-type: none"> <li><b>Option 0.1: Static Acquis</b> – The pre-EU exit application of Rome I, Rome II and the Rome Convention in UK law.</li> <li><b>Option 0.2: Do Nothing</b> - Make no amendments to Rome I, Rome II, the Rome Convention rules or domestic legislation to account for the effects of the UK leaving the EU.</li> <li><b>Option 1</b> - Amend Rome I, Rome II and relevant domestic legislation to ensure the deficiencies in retained EU law are corrected so that Rome I, Rome II and the Rome Convention rules can operate effectively post EU exit as domestic law.</li> </ul> <p>The Government's preferred option is option 1 as this best meets the policy objectives.</p>
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<b>Will the policy be reviewed?</b> There are no current plans to review the policy. <b>If applicable, set review date:</b> n/a
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Does implementation go beyond minimum EU requirements?	N/A			
Are any of these organisations in scope?	<b>Micro</b> Yes	<b>Small</b> Yes	<b>Medium</b> Yes	<b>Large</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	<b>Traded:</b>		<b>Non-traded:</b>	

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister: \_\_\_\_\_ Lucy Frazer \_\_\_\_\_ Date: \_\_\_\_\_ 09/03/2019 \_\_\_\_\_

# Summary: Analysis & Evidence

## Policy Option 1

**Description:** Retain Rome I and II and the Rome Convention Rules in domestic legislation and address the deficiencies to ensure their functionality.

### FULL ECONOMIC ASSESSMENT

Price Base Year n/a	PV Base Year n/a	Time Period Years n/a	Net Benefit (Present Value (PV)) (£m)		
			Low: n/a	High: n/a	Best Estimate: n/a

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	n/a	n/a	n/a	n/a
High	n/a		n/a	n/a
Best Estimate	n/a		n/a	n/a

#### Description and scale of key monetised costs by 'main affected groups'

None

#### Other key non-monetised costs by 'main affected groups'

Baseline: Option 0.1 Static acquis:

None

Baseline: Option 0.2 Do nothing:

None

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	n/a	n/a	n/a	n/a
High	n/a		n/a	n/a
Best Estimate	n/a		n/a	n/a

#### Description and scale of key monetised benefits by 'main affected groups'

None

#### Other key non-monetised benefits by 'main affected groups'

Baseline: Option 0.1 Static acquis:

UK courts are final arbiter of interpretation of Rome I, Rome II and Rome Convention Rules and better placed to take account of UK specific factors.

Baseline: Option 0.2 Do nothing:

Compared with Option 0.2, the preferred Option 1 ensures the rules are more effective and relevant in their application to the UK, this provides greater legal certainty and reduced chance of litigation by fixing aspects of the retained law that would otherwise not make sense. However, it is unlikely that the differences between the two options would significantly affect levels of commercial activity between the UK and EU MS overall, as they are unlikely ultimately to be a determining factor in most cases.

#### Key assumptions/sensitivities/risks

Discount rate (%) N/A

None

### BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m
Costs:	Benefits:	Net:	

# Evidence Base (for summary sheets)

## A. Background

1. Rome I (the 1980 Rome Convention) establishes the rules applicable to EU Member States (except Denmark) that determine which country's laws apply to contractual obligations raising cross-border issues. Rome I replaced the rules in the 1980 Rome Convention on the law applicable to contractual obligations, with effect from 17 December 2009, although the 1980 Rome Convention continues to apply to certain contracts entered into before Rome I entered into force. Rome II establishes the rules applicable to EU Member States (except Denmark) that determine the law applicable to non-contractual obligations raising cross-border issues.
2. Upon the UK's exit from the EU, Rome I and Rome II, and the domestic legislation that gave effect to them, will be retained under the EU (Withdrawal Act) 2018 (the "Withdrawal Act"). The UK will also cease to participate in the 1980 Rome Convention, meaning the Convention's rules will no longer apply to the UK as a matter of international law.
3. Government intervention is necessary because, as retained, Rome I and Rome II contain deficiencies that will render them partly unworkable post exit. As a result, some of the rules that determine applicable law for contractual and non-contractual obligations will become unclear (for example, in terms of whether and how they relate to the UK), creating legal uncertainty.
4. Government intervention is also necessary because amendments are needed to the Contracts (Applicable Law) Act 1990, which incorporated the 1980 Rome Convention into domestic law. Whilst the UK will no longer be bound by the Convention as a matter of international law, the Government is preserving (and correcting deficiencies in) the substantive rules of the Convention so that they will continue to apply to existing contracts entered into between 1 April 1991 (the date on which the Rome Convention came into force) and 16 December 2009 (after which Rome I replaced the Convention in the relevant EU Member States).
5. Finally, government intervention is also needed to remove provisions relevant to CJEU jurisdiction that conflict with the provisions of the Withdrawal Act.

## B. Policy Rationale and Objectives

6. The conventional economic rationales for government intervention are based on efficiency and equity arguments. The government may consider intervening if there are failures in the way markets operate (e.g., monopolies overcharging consumers) or where there are failures with existing government interventions (e.g., waste generated by misdirected rules). The proposed new interventions should avoid creating a further set of disproportionate costs and distortions. The government may also intervene for equity (fairness) and re-distributional reasons (e.g., to reallocate goods and services to the more disadvantaged groups in society).
7. The rationale for intervention is efficiency: to reduce legal uncertainty about which country's law applies in a cross-border situation involving contractual or non-contractual obligations that relate to the UK and whether choice of law clauses are effective. This will support wider economic interaction between the UK and EU and sustain the reputation of UK law.
8. The associated policy objectives are, after the UK leaves the EU, to maintain an environment that facilitates cross-border economic activity, that supports British businesses in their international interactions and that sustains Britain's strong international reputation as a centre of legal excellence.

## C. Affected Stakeholder Groups, Organisations and Sectors

9. The groups most likely to be affected by the options in this Impact Assessment (IA) are as follows:

- UK businesses and individuals engaged in cross-border contractual and non-contractual matters (the latter includes, for example, personal injury litigation)
- The providers of legal services
- UK courts

## D. Description of Options Considered

10. In order to meet the policy objectives, the following options are assessed in this IA:

- **Option 0.1 Baseline: static acquis** - The Pre-EU exit application of Rome I, Rome II and the Rome Convention in UK legislation.
- **Option 0.2 Baseline: do nothing** - Rome I and II are brought into domestic legislation unchanged (without exit-related deficiencies being addressed) and the Rome Convention rules on applicable law are retained to apply to pre-Rome I contracts;
- **Option 1:** Amend Rome I, Rome II and associated domestic legislation (including the Contracts (Applicable Law) Act 1990 and Private International Law (Miscellaneous Provisions) Act 1995) to ensure the deficiencies in retained EU law are corrected so that Rome I, Rome II and the Rome Convention rules can operate effectively post EU exit as domestic law.

11. The Government's preferred option is option 1 as this best meets the policy objectives.

### Option 0.1 Baseline: Static acquis

12. This option reflects how, pre-EU exit, the Rome I, Rome II and the Rome Convention rules operate in the UK.

### Option 0.2 Baseline: Do nothing

13. This option would result in the retained Rome I and Rome II regulations being incorporated into UK domestic law without any EU-Exit deficiencies being addressed, rendering the Rome I and Rome II Regulations partially inoperable. The Rome Convention rules which apply to pre-Rome I contracts, would also be partially inoperable vis a vis the UK. This would create uncertainty in certain areas as to whether and how the applicable law rules would apply to cross-border contractual and non-contractual matters concerning the UK (which will no longer fall within references to "Member State"), and create uncertainty as to the role of the CJEU in interpreting the Rome Convention.

### Option 1: Amend Rome I, Rome II and the Contracts (Applicable Law) Act 1990 and associated domestic legislation

14. As the Rome I and Rome II rules do not generally operate on a reciprocal basis or on a basis which assumes membership of the EU, the two Regulations and the Rome Convention rules would be incorporated into domestic UK law and EU Exit-related deficiencies fixed using the correcting power.

## **E. Cost and Benefit Analysis**

15. This IA follows the procedures and criteria set out in the IA Guidance and is consistent with the HM Treasury Green Book.
16. Where possible, this IA identifies both monetised and non-monetised impacts on individuals, groups and businesses in the United Kingdom with the aim of understanding what the overall impact on society might be from the proposals under consideration. IAs place a strong focus on the monetisation of costs and benefits. There are often, however, important impacts that cannot sensibly be monetised. These might be impacts on certain groups of society or some data privacy impacts, positive or negative. Impacts in this IA are therefore interpreted broadly, to include both monetisable and non-monetisable costs and benefits, with due weight given to those that are non-monetisable.
17. However, in this case, there is no measure of legal certainty or way to quantify the impact of legal certainty on economic interaction so all costs and benefits are non-monetisable in nature.
18. This cost benefit analysis section will first compare the preferred option against the Option 0.1/Static Acquis baseline, before comparing it against Option 0.2/do nothing baseline.

### **Cost and benefit analysis, comparison to Option 0.1/Static acquis:**

#### **Option 1: Amend Rome I, Rome II and relevant domestic legislation**

##### ***Costs of Option 1***

*UK businesses, The providers of legal services, UK courts*

19. No significant costs are associated with this option.

##### ***Benefits of Option 1***

20. Under the preferred option 1, as compared with the static acquis, there is some benefit in the UK courts becoming the final arbiter of interpretation of Rome I, Rome II and Rome Convention Rules as they are better placed to take account of UK specific factors.

### **Cost and benefit analysis, comparison to Option 0.2/Do nothing:**

#### **Option 1: Amend Rome I, Rome II and relevant domestic legislation**

##### ***Costs of Option 1***

21. No significant costs are associated with this option.

##### ***Benefits of Option 1***

*UK businesses*

22. This option would provide a higher level of legal certainty as to whether and how the rules continue to apply in the UK.

*The providers of legal services*

23. This option would ensure as much continuity as possible of the Rome rules and a higher level of legal certainty and clarity on how the rules apply in the UK.

*UK courts*

24. Amending Rome I and II and the rules incorporating the 1980 Rome Convention rules into domestic law (the Contracts (Applicable Law) Act 1990) would ensure the Rome I, Rome II and the Rome Convention rules continue to operate effectively as domestic law post EU Exit. This should ensure as much continuity of application of the previous EU rules as possible, which will minimise adverse impacts on the UK courts.

## **F. Wider Impacts**

25. This instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.

26. This Act does not extend to Northern Ireland, but as the Law Applicable to Contractual Obligations and Non-Contractual Obligations (Amendment etc.) (EU Exit) Regulations 2018 extend to Northern Ireland, the equivalent due regard to the need to eliminate discrimination, harassment and victimisation in relation to Northern Ireland has been given.

## **G. Enforcement and Implementation**

27. These are rules which are applied directly by the courts.

## **H. Monitoring and Evaluation**

28. As this instrument is made under the EU (Withdrawal) Act 2018, no review is required.

## **I. Business Impact Target**

29. This measure is out of scope of the Business Impact Target.

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1. <https://www.ons.gov.uk/economy/nationalaccounts/balanceofpayments/datasets/publicationtablesuktrade>

2. <https://www.ons.gov.uk/businessindustryandtrade/business/businessservices/datasets/uknonfinancialbusinesseseconomyannualbusinesssurveysectionsas>

3. <https://www.ons.gov.uk/businessindustryandtrade/internationaltrade/datasets/internationaltradeinservicesreferencetables>