

**EXPLANATORY MEMORANDUM TO
THE FINANCIAL SERVICES AND MARKETS ACT 2000 (LAW APPLICABLE TO
CONTRACTS OF INSURANCE) REGULATIONS 2009**

2009 No. 3075

1. This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

2.1 The purpose of this instrument is to implement within the United Kingdom provisions relating to the law applicable to contracts of insurance. 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) (“the Rome 1 Regulation”) enters into force on 17th December 2009. These Regulations preserve existing law for certain contracts of insurance entered into before 17th December 2009, and, for contracts made on or after that date make provision necessary for the effective application of Article 7 to contracts of insurance with a connection to the United Kingdom.

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

3.1 None.

4. **Legislative Context**

4.1 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) (“the Rome 1 Regulation”) enters into force on 17th December 2009 and applies to contracts entered into on and after that date.

4.2 The Rome 1 Regulation replaces the Rome Convention and, in relation to contracts of insurance, Article 32 of Directive 2002/83/EC (the Life Insurance Directive) and Article 7 of Directive 1988/357/EEC (the Second Non-Life Insurance Directive). These were implemented in the United Kingdom through the Financial Services and Markets Act 2000 (Law Applicable to Contracts of Insurance) Regulations 2001 (S.I. 2001/2635).

4.3 Although recital 45 of the Rome 1 Regulation stipulates that the United Kingdom is not taking part in its adoption and is not subject to its application, the United Kingdom requested to opt in July 2008. The Commission’s agreement was given in December 2008.

4.4 The House of Commons Select Committee on European Scrutiny reported on the draft EC Regulation (doc. 29650) in reports 21 (2005-06), para 5 (8 March 2006) 37 (2005-06), para 2 (11 October 2006), 16 (2006-07), para 7 (28 March 2007), 19 (2007-08), para 12 (23 April 2008), 23 (2007-08), para 9 (4 June 2008) and 30 (2007-08), para 24 (16 July 2008), clearing it after Ministerial correspondence. The House of Lords Select Committee on the European Union cleared it from scrutiny on 18 June 2008.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The 1980 Rome Convention established uniform choice of law rules for contracts within the European Union. It was largely implemented in the UK through the Contracts (Applicable Law) Act 1990 ("the 1990 Act"). The Convention is to be replaced with an EU Regulation ("Rome I"), which will come into force on 17th December 2009 and replace the Rome Convention for contracts concluded after this date.

7.2 The uniform choice of law rules laid down in Rome I will apply directly within the United Kingdom in the field of contractual obligations. These uniform rules are designed to enable national courts in the European Union to select the national laws that are suitable for the determination of proceedings where disputes arise that have a cross-border dimension. The objective of the rules is to increase legal certainty within the European Union by ensuring that national courts within the European Union generally apply the same national law in this field to cross-border cases.

7.3 The Ministry of Justice is responsible for the overall implementation of Rome I, and will therefore be laying a separate SI before Parliament.

7.4 HM Treasury is responsible for the application of Rome I to insurance contracts. Insurance contracts were excluded from the Rome Convention but provision was made for these in Article 32 of the Life Insurance Directive (2002/83/EC) and Article 7 of the Second Non-Life Insurance Directive (88/357/EEC). The relevant provisions of these directives are implemented in the United Kingdom through the Financial Services and Markets Act 2000 (Law Applicable to Contracts of Insurance) Regulations 2001 (S.I. 2001/2635).

7.5 Unlike the Rome Convention, Rome I applies to and makes special provision for the law applicable to contracts of insurance (but not reinsurance) in Article 7.

7.6 HM Treasury is therefore laying these Regulations before Parliament to limit the current law to contracts entered into before 17th December 2009. This is done in regulation 2.

7.7 The other changes are largely technical. The substance of the law under Rome I as it applies to contracts of insurance does not differ substantially to the position under the 2001 Regulations as regards insurance contracts. An area that has changed slightly is that parties will, after 17th December 2009, have a greater freedom of choice regarding the law applicable to certain contracts of insurance of risks other than large risks. This change is effected by regulation 4. This is a positive change, and no party will be worse off as a result of it.

8. Consultation outcome

8.1 No consultation was carried out on this instrument. It does not change the substance of the law regarding insurance contracts, but is a technicality that is required to repeal the current law in the United Kingdom for contracts entered into after 17th December 2009, because it would be inconsistent with Rome I.

8.2 A full consultation on the European Commission's Rome I proposal was held between January 2006 to November 2007.

9. Guidance

9.1 The Rome I Regulation was published in the Official Journal of the European Union on 4 July 2008. Various articles about this instrument have also been published in specialised law journals and websites (particularly the Conflict of Laws.Net).

10. Impact

10.1 These Regulations have no impact on business, charities or voluntary bodies or on the public sector save to the extent that these bodies may avail themselves of the greater freedom of choice of law applicable to contracts of insurance granted under the Rome I Regulation and these Regulations.

10.2 An impact assessment has therefore not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring and review

12.1 The European Commission, by no later than 17 June 2013, is to submit to the European Parliament, the Council and the European Economic and Social Committee a report on the application of the Rome I Regulation.

12.2 By the same date, the European Commission are also required to carry out a study on the law applicable to insurance contracts and an assessment of the impact of the provisions to be introduced, if any.

13. Contact

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