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STATUTORY INSTRUMENTS

2020 No. 1574

**EXITING THE EUROPEAN UNION
FAMILY LAW
MEDIATION, NORTHERN IRELAND
PRIVATE INTERNATIONAL LAW**

**The Jurisdiction, Judgments and Applicable
Law (Amendment) (EU Exit) Regulations 2020**

Made - - - - *16th December 2020*

Coming into force - - *17th December 2020*

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

In accordance with paragraphs 1(3) and 8D(1) of Schedule 7 to that Act, a draft of this instrument has been laid before and approved by a resolution of each House of Parliament.

Citation and commencement

1. These Regulations may be cited as the Jurisdiction, Judgments and Applicable Law (Amendment) (EU Exit) Regulations 2020 and come into force on the day after the day on which they are made.

Amendment of the Cross-Border Mediation (EU Directive) (EU Exit) Regulations 2019

2.—(1) Paragraph 14 of Schedule 1 to the Cross-Border Mediation (EU Directive) (EU Exit) Regulations 2019⁽²⁾ (amendment of the Fair Employment and Treatment (Northern Ireland) Order 1998) is amended as follows.

(2) For sub-paragraph (2)(a) substitute—

(1) 2018 c. 16. Section 8B and paragraph 8D of Schedule 7 were inserted by section 18 of the European Union (Withdrawal Agreement) Act 2020 (c. 1).
(2) S.I. 2019/469.

- “(a) in paragraph (1), for “Articles 46A and” substitute “Article”;
- (3) After sub-paragraph (3) insert—
- “(4) In Article 46B(1) (extension of time limit to allow conciliation), omit the second sentence.”

Amendment of the Civil Jurisdiction and Judgments (Amendment) (EU Exit) Regulations 2019

- 3.** In regulation 26 of the Civil Jurisdiction and Judgments (Amendment) (EU Exit) Regulations 2019(3), in the new section 15C(2)(c) to be inserted into the Civil Jurisdiction and Judgments Act 1982(4) (jurisdiction in relation to individual contracts of employment)—
- (a) after “any one part of the United Kingdom” insert “or any one overseas country”;
- (b) after “employee is” insert “or was”.

Amendment of the Family Procedure Rules 2010 and Court of Protection Rules 2017 (Amendment) (EU Exit) Regulations 2019

- 4.—(1)** The Family Procedure Rules 2010 and Court of Protection Rules 2017 (Amendment) (EU Exit) Regulations 2019(5) are amended as follows.
- (2) In regulation 27 (transitional and saving provision – Part 34), in paragraph (2), after “2019” insert “or, as the case may be, regulation 92 of the Civil Jurisdiction and Judgments (Amendment) (EU Exit) Regulations 2019”.
- (3) In regulation 30 (amendment of Part 6)—
- (a) for paragraph (3) substitute—
- “(3) In rule 6.11, in paragraph (2), omit—
- (a) the definition of “Member State”;
- (b) in the definition of “Service Convention country”, the words “, not being a Member State,”;
- (c) the definition of “the Service Regulation”.”;
- (b) in paragraph (5), for “(3)(a)(ii)” substitute “(3)(a)(i)”.

Amendment of the Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019

- 5.—(1)** The Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019(6) are amended as follows.
- (2) For regulation 8 (saving and transitional provisions) substitute—

“Saving and transitional provisions

- 8.—(1)** Nothing in these Regulations affects the application of paragraphs 1, 2(b) and (c) and 3(a) and (b) of Article 67 of the withdrawal agreement and legislation amended or revoked by these Regulations continues to have effect for the purposes of those paragraphs as if the amendments and revocations had not been made.

(3) S.I. 2019/479.
 (4) 1982 c. 27.
 (5) S.I. 2019/517.
 (6) S.I. 2019/519.

- (2) The amendments and revocations made by these Regulations do not apply in relation to—
- (a) proceedings before a court seised before IP completion day in reliance upon the provisions of Schedule 6 (allocation within the United Kingdom of jurisdiction relating to maintenance matters) to the Civil Jurisdiction and Judgments (Maintenance) Regulations 2011(7); or
 - (b) proceedings before a court seised, whether before or after IP completion day, in reliance upon a choice of court agreement concluded before IP completion day in accordance with Article 4 of Council Regulation No. 4/2009 or that Article as applied by paragraph 5 of Schedule 6 to the Civil Jurisdiction and Judgments (Maintenance) Regulations 2011.
- (3) For the purposes of this regulation, a court is seised—
- (a) at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the applicant has not subsequently failed to take the steps the applicant was required to take to have service effected on the respondent; or
 - (b) if the document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service, provided that the applicant has not subsequently failed to take the steps the applicant was required to take to have the document lodged with the court.”.
- (3) In the Schedule—
- (a) in paragraph 5 (amendment of the Maintenance Orders (Reciprocal Enforcement) Act 1972), in sub-paragraph (2)(b), omit the words “for adherence and aliment or”;
 - (b) in paragraph 6 (amendment of the Matrimonial Causes Act 1973), for sub-paragraph (2) substitute—
 - “(2) In section 27 (financial provision orders in cases of neglect to maintain), for subsection (2) substitute—
 - “(2) The court may not entertain an application under this section unless—
 - (a) the applicant or the respondent is domiciled in England and Wales on the date of the application;
 - (b) the applicant has been habitually resident there throughout the period of one year ending with that date; or
 - (c) the respondent is resident there on that date.
 - (2A) If the application or part of it relates to a matter in relation to which Article 18 of the 2007 Hague Convention applies, the court may not entertain that application or part of it except where permitted by Article 18.
 - (2B) In subsection (2A), “the 2007 Hague Convention” means the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance concluded on 23 November 2007 at The Hague.”.”;
 - (c) in paragraph 8 (amendment of the Matrimonial Causes (Northern Ireland) Order 1978), for sub-paragraphs (4)(d) and (e), substitute—
 - “(d) for paragraph (5)(8) substitute—

(7) [S.I. 2011/1484](#), amended by [Crime and Courts Act 2013 \(c. 22\)](#), Schedule 10, paragraph 99 and Schedule 11, paragraph 210; and by [S.I. 2012/2814](#), [2014/879](#), [2015/1489](#) and [2019/519](#) and [S.R. 2016/317](#).

(8) [S.I. 1978/1045 N.I. 15](#)). Paragraph (5) of Article 49 was substituted by [S.I. 2011/1484](#).

“(5) The court has jurisdiction to entertain an application for financial provision under Article 29 if (and only if)—

- (a) the applicant or the respondent is domiciled in Northern Ireland on the date of the application;
- (b) the applicant has been habitually resident there throughout the period of one year ending with that date; or
- (c) the respondent is resident there on that date.

(5A) If the application or part of it relates to a matter in relation to which Article 18 of the 2007 Hague Convention applies, the court may not entertain that application or part of it except where permitted by Article 18.”;

- (e) in paragraph (7)(9), omit “Subject to Article 19(1) of the Council Regulation,”;
- (f) for paragraph (8)(10) substitute—

“(8) In this Article “the 2007 Hague Convention” means the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance concluded on 23 November 2007 at The Hague.””

- (d) in paragraph 12 (amendment of the Civil Jurisdiction and Judgments Act 1982), after sub-paragraph (13) insert—

“(14) In Schedule 8(11) (rules as to jurisdiction in Scotland), in paragraph 2, after sub-paragraph (d) insert—

- “(e) in matters relating to maintenance, in the courts for the place where the maintenance creditor is domiciled or habitually resident or, if the matter is ancillary to proceedings concerning the status of a person, in the court which has jurisdiction to entertain those proceedings, provided that an action of affiliation and aliment shall be treated as a matter relating to maintenance which is not ancillary to proceedings concerning the status of a person;”.”;

- (e) in paragraph 13 (amendment of the Matrimonial and Family Proceedings Act 1984)—

- (i) for sub-paragraph (2) substitute—

“(2) In section 15(12) (jurisdiction of the court)—

- (a) in subsection (1), for “subsections (1A) and (2)” substitute “subsection (1A)”;
- (b) in subsection (1A), for the words from “where” to “the end substitute “in relation to which Article 18 of the 2007 Hague Convention applies, the court may not entertain the application or that part of it except where permitted by Article 18”;
- (c) in subsection (3), for the words from ““the Maintenance Regulation”” to the end substitute ““the 2007 Hague Convention” means the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance concluded on 23 November 2007 at The Hague”.”;

- (ii) for sub-paragraph (4) substitute—

“(4) In section 28(13) (circumstances in which a Scottish court may entertain application for financial provision)—

(9) Paragraph (7) was amended by [S.I. 2005/265](#).

(10) Paragraph (8) was inserted by [S.I. 2001/660](#), and amended by [S.I. 2005/265](#).

(11) [1982 c. 27](#). Sub-paragraph (e) of paragraph 2 was repealed by [S.I. 2011/1484](#).

(12) [1984 c. 42](#). Subsection (1) was amended, and subsections (1A) and (3) inserted, by [S.I. 2011/1484](#).

(13) Subsection (1) was amended, and subsections (3A) and (5) inserted, by [S.I. 2011/1484](#).

- (a) in subsection (1), for “subsections (3A) and (4)” substitute “subsection (3A)”;
- (b) in subsection (3A), for the words from “where” to the end substitute “in relation to which Article 18 of the 2007 Hague Convention applies, the court may not entertain the application or that part of it except where permitted by Article 18”;
- (c) for subsection (5) substitute—
 - “(5) “The 2007 Hague Convention” means the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance concluded on 23 November 2007 at The Hague.”
- (f) in paragraph 15 (amendment of the Family Law Act 1986)—
 - (i) in sub-paragraph (3)(d) for the words from “omit” to the end substitute “for “Council Regulation” substitute “Hague Convention””;
 - (ii) in sub-paragraph (5)(c), for the words from “omit” to the end substitute “for “Council Regulation” substitute “Hague Convention””;
- (g) in paragraph 17 (amendment of the Children Act 1989), for sub-paragraph (2) substitute—
 - “(2) In paragraph 10(14) (alteration of maintenance agreements)—
 - (a) in sub-paragraph (2A), for the words from “where” to the end substitute “in relation to which Article 18 of the 2007 Hague Convention applies, the court may not entertain the application or that part of it except where permitted by Article 18”;
 - (b) in sub-paragraph (2B), for the words from ““the Maintenance Regulation”” to the end substitute ““the 2007 Hague Convention” means the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance concluded on 23 November 2007 at The Hague”.”;
- (h) in paragraph 18 (amendment of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989), for sub-paragraph (2) substitute—
 - “(2) In Article 19(15) (jurisdiction of the court)—
 - (a) in paragraph (1), for “paragraphs (1A) and (2)” substitute “paragraph (1A)”;
 - (b) in paragraph (1A), for the words from “where” to the end substitute “in relation to which Article 18 of the 2007 Hague Convention applies, the court may not entertain the application or that part of it except where permitted by Article 18”;
 - (c) in paragraph (3), for the words from ““The Maintenance Regulation”” to the end substitute ““The 2007 Hague Convention” means the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance concluded on 23 November 2007 at The Hague”.”;
- (i) in paragraph 23 (amendment of the Children (Northern Ireland) Order 1995), for sub-paragraph (2) substitute—
 - “(2) In paragraph 12(16) (alteration of maintenance agreements)—
 - (a) in sub-paragraph (2A), for the words from “where” to the end substitute “in relation to which Article 18 of the 2007 Hague Convention applies, the court

(14) 1989 c. 41. Paragraphs (2A) and (2B) were inserted by S.I. 2011/1484.

(15) S.I. 1984/677 (N.I. 4). Paragraph (1) of Article 19 was amended, and paragraphs (1A) and (3) of that Article inserted, by S.I. 2011/1484.

(16) S.I. 1995/755 (N.I. 2). Sub-paragraphs (2A) and (2B) of paragraph 12 of Schedule 1 were inserted by S.I. 2011/1484.

may not entertain the application or that part of it except where permitted by Article 18”;

- (b) in sub-paragraph (2B), for ““the Maintenance Regulation”” to the end substitute ““the 2007 Hague Convention” means the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance concluded on 23 November 2007 at The Hague”.”;
- (j) in paragraph 25 (amendment of the Civil Partnership Act 2004)—
 - (i) in sub-paragraph (2)—
 - (aa) in paragraph (a), at the end insert “and at the end insert “This subsection is subject to subsection (3B)(17).”.”;
 - (bb) for paragraphs (b) and (c) substitute—
 - “(b) in subsection (3B), for the words from “where” to the end substitute “in relation to which Article 18 of the 2007 Hague Convention applies, the court may not entertain the application or that part it except where permitted by Article18”;
 - (c) in subsection (6), for the words from ““the Maintenance Regulation”” to the end substitute ““the 2007 Hague Convention” means the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance concluded on 23 November 2007 at The Hague”.”;
 - (ii) in sub-paragraph (3), for paragraph (b) substitute—
 - “(b) after sub-paragraph (2) insert—
 - “(2A) If the application or part of it relates to a matter to which Article 18 of the 2007 Hague Convention applies, the court must not entertain the application or that part of it except where permitted by Article 18.”;
 - (c) in sub-paragraph (5)(18), for the words from ““the Maintenance Regulation”” to the end substitute ““the 2007 Hague Convention” means the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance concluded on 23 November 2007 at The Hague”.”;
 - (iii) in sub-paragraph (6), for paragraph (a) substitute—
 - “(a) in paragraph 7(19) (jurisdiction of the court)—
 - (i) in sub-paragraph (6), for the words from “where jurisdiction falls” to the end substitute “in relation to which Article 18 of the 2007 Hague Convention applies, the court may not entertain that application or part of it except where permitted by Article 18”;
 - (ii) in sub-paragraph (7), for the words from ““the Maintenance Regulation”” to the end substitute ““the 2007 Hague Convention” means the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance concluded on 23 November 2007 at The Hague”.”;
 - (iv) in sub-paragraph (7), for paragraphs (a) to (c) substitute—

(17) 2004 c. 33. Subsection (3) of section 227 was amended by [S.I. 2011/1484](#) and by [S.S.I. 2019/104](#). Subsections (3A), (3B) and (6) were inserted by [S.I. 2011/1484](#), and subsection (3A) repealed by [S.S.I. 2019/104](#).

(18) Sub-paragraph (5) of paragraph 39 of Schedule 5 was inserted by [S.I. 2011/1484](#).

(19) Sub-paragraphs (6) and (7) of paragraph 7 of Schedule 7 were inserted (and sub-paragraph (1) amended in consequence) by [S.I. 2011/1484](#).

- (a) in sub-paragraph (1)(20), for “sub-paragraphs (3A) and (4)” substitute “sub-paragraph (3A)”;
 - (b) in sub-paragraph (3A), for the words from “where” to the end substitute “in relation to which Article 18 of the 2007 Hague Convention applies, the court may not entertain the application or that part of it except where permitted by Article 18”;
 - (c) in sub-paragraph (5), for the words from “the Maintenance Regulation” to the end substitute “the 2007 Hague Convention” means the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance concluded on 23 November 2007 at The Hague”;
- (v) in sub-paragraph (8), for paragraph (a)(ii) substitute—
- (ii) after sub-paragraph (2) insert—
 - “(2A) If the application or part of it relates to a matter to which Article 18 of the 2007 Hague Convention applies, the court must not entertain the application or that part of it except where permitted by Article 18.”;
 - (iii) in sub-paragraph (5)(21), for the words from “the Maintenance Regulation” to the end substitute “the 2007 Hague Convention” means the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance concluded on 23 November 2007 at The Hague”;
- (vi) in sub-paragraph (9), for paragraph (a) substitute—
- (a) in paragraph 7(22)—
 - (i) in sub-paragraph (6), for the words from “where jurisdiction falls” to the end substitute “to which Article 18 of the 2007 Hague Convention applies, the court may not entertain the application or that part of it except where permitted by Article 18”;
 - (ii) in sub-paragraph (7), for the words from “the Maintenance Regulation” to the end substitute “the 2007 Hague Convention” means the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance concluded on 23 November 2007 at The Hague”;

Amendments to the Law Applicable to Contractual Obligations and Non-Contractual Obligations (Amendment etc.) (EU Exit) Regulations 2019

6.—(1) The Law Applicable to Contractual Obligations and Non-Contractual Obligations (Amendment etc.) (EU Exit) Regulations 2019(23) are amended as follows.

(2) For regulation 2 (amendment of the Prescription and Limitation (Scotland) Act 1973) substitute—

“2. For section 23A(5) of the Prescription and Limitation (Scotland) Act 1973(24) (application of the Rome I and II Regulations) substitute—

(20) Sub-paragraphs (3A) and (5) of paragraph 2 of Schedule 11 were inserted, and sub-paragraph (1) amended, by [S.I. 2011/1484](#).

(21) Sub-paragraph (5) of paragraph 34 of Schedule 15 was inserted by [S.I. 2011/1484](#).

(22) Sub-paragraphs (6) and (7) of paragraph 7 of Schedule 17 were inserted (and sub-paragraph (1) amended in consequence) by [S.I. 2011/1484](#).

(23) [S.I. 2019/834](#).

(24) Section 23A was inserted by section 4 of the Prescription and Limitation (Scotland) Act 1984 (c. 45). Relevant amendments were made by [S.S.I 2008/404](#) and [2009/410](#).

“(5) In subsection (4)—

- (a) “the Rome I Regulation” means Regulation (EC) No. 593/2008 of the European Parliament and of the Council on the law applicable to contractual obligations (Rome I) as that Regulation has effect as retained direct EU legislation (including that Regulation as applied by regulation 4 of the Law Applicable to Contractual Obligations (Scotland) Regulations 2009), unless the proceedings are ones in respect of which Regulation (EC) No. 593/2008 has effect by virtue of Article 66 of the EU withdrawal agreement, in which case it means that Regulation as it has effect by virtue of that Article; and
- (b) “the Rome II Regulation” means Regulation (EC) No. 864/2007 of the European Parliament and of the Council on the law applicable to non-contractual obligations (Rome II) as that Regulation has effect as retained direct EU legislation (including that Regulation as applied by regulation 4 of the Law Applicable to Non-Contractual Obligations (Scotland) Regulations 2008), unless the proceedings are ones in respect of which Regulation (EC) No. 864/2007 has effect by virtue of Article 66 of the EU withdrawal agreement, in which case it means that Regulation as it has effect by virtue of that Article.”..”

(3) After regulation 2 insert—

“Amendment of the Foreign Limitation Periods Act 1984

2A.—(1) In section 8 of the Foreign Limitation Periods Act 1984⁽²⁵⁾ (disapplication of sections 1, 2 and 4 where the law applicable to limitation is determined by other instruments), for subsections (1A) and (2) substitute—

“(1A) In subsection (1) the “Rome I Regulation” means Regulation (EC) No. 593/2008 of the European Parliament and of the Council on the law applicable to contractual obligations as that Regulation has effect as retained direct EU legislation (including that Regulation as applied by regulation 5 of the Law Applicable to Contractual Obligations (England and Wales and Northern Ireland) Regulations 2009), unless the proceedings are ones in respect of which Regulation (EC) No. 593/2008 has effect by virtue of Article 66 of the EU withdrawal agreement, in which case it means that Regulation as it has effect by virtue of that Article.

(2) In subsection (1) the “Rome II Regulation” means Regulation (EC) No. 864/2007 of the European Parliament and of the Council on the law applicable to non-contractual obligations as that Regulation has effect as retained direct EU legislation (including that Regulation as applied by regulation 6 of the Law Applicable to Non-Contractual Obligations (England and Wales and Northern Ireland) Regulations 2008), unless the proceedings are ones in respect of which Regulation (EC) No. 864/2007 has effect by virtue of Article 66 of the EU withdrawal agreement, in which case it means that Regulation as it has effect by virtue of that Article.”..”

(4) In regulation 3 (amendment of the Contracts (Applicable Law) Act 1990⁽²⁶⁾)—

(a) for paragraph (6) substitute—

“(6) In section 4A (disapplication where the rules in the Rome I Regulation apply: England and Wales and Northern Ireland), for subsection (2) substitute—

“(2) In this section “the Rome I Regulation” means Regulation (EC) No. 593/2008 of the European Parliament and of the Council on the law applicable to contractual obligations as that Regulation has effect as retained direct EU legislation (including that Regulation as applied by regulation 5 of the Law

⁽²⁵⁾ 1984 c. 16. Section 8 was substituted by S.I. 2008/2986 and amended by S.I. 2009/3064.

⁽²⁶⁾ 1990 c. 36. Section 4A was added by S.I. 2009/3064, section 4B was added by S.S.I. 2009/410.

Applicable to Contractual Obligations (England and Wales and Northern Ireland) Regulations 2009), unless the issues are ones in respect of which Regulation (EC) No. 593/2008 has effect by virtue of Article 66 of the EU withdrawal agreement, in which case it means that Regulation as it has effect by virtue of that Article.””

(b) for paragraph (7) substitute—

“(7) In section 4B (disapplication where the rules in the Rome I Regulation apply: Scotland), for subsection (2) substitute—

“(2) In this section—

“the Rome I Regulation” means Regulation (EC) No. 593/2008 of the European Parliament and of the Council on the law applicable to contractual obligations as that Regulation has effect as retained direct EU legislation (including that Regulation as applied by regulation 4 of the Law Applicable to Contractual Obligations (Scotland) Regulations 2009), unless the issues are ones in respect of which Regulation (EC) No. 593/2008 has effect by virtue of Article 66 of the EU withdrawal agreement, in which case it means that Regulation as it has effect by virtue of that Article.””

(5) For regulation 4 (amendment of the Private International Law (Miscellaneous Provisions) Act 1995(27)) substitute—

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

4.—(1) The Private International (Miscellaneous Provisions) Act 1995 is amended as follows.

(2) In section 15A (disapplication of Part III where the rules in the Rome II Regulation apply)(28), for subsection (2) substitute—

“(2) In this section “the Rome II Regulation” means Regulation (EC) No. 864/2007 of the European Parliament and of the Council on the law applicable to non-contractual obligations as that Regulation has effect as retained direct EU legislation (including that Regulation as applied by regulation 6 of the Law Applicable to Non-Contractual Obligations (England and Wales and Northern Ireland) Regulations 2008), unless the issues are ones in respect of which Regulation (EC) No. 864/2007 has effect by virtue of Article 66 of the EU withdrawal agreement, in which case it means that Regulation as it has effect by virtue of that Article.””

(3) In section 15B (disapplication of Part III where the rules in the Rome II Regulation apply: Scotland)(29), for subsection (2) substitute—

“(2) In this section “the Rome II Regulation” means Regulation (EC) No. 864/2007 of the European Parliament and of the Council on the law applicable to non-contractual obligations as that Regulation has effect as retained direct EU legislation (including that Regulation as applied by regulation 4 of the Law Applicable to Non-Contractual Obligations (Scotland) Regulations 2008), unless the issues are ones in respect of which Regulation (EC) No. 864/2007 has effect by virtue of Article 66 of the EU withdrawal agreement, in which case it means that Regulation as it has effect by virtue of that Article.””

(6) After regulation 4 insert—

“Amendment of the Consumer Rights Act 2015

4A.—(1) The Consumer Rights Act 2015(30) is amended as follows.

(27) 1995 c. 42.

(28) Section 15A was inserted by S.I. 2008/2986.

(29) Section 15B was inserted by S.S.I. 2008/404.

(30) 2015 c. 15. Relevant amendments are made by S.I. 2018/1326.

(2) In section 32 (contracts applying law of non-EEA State) at the end of subsection (3) insert “as that Regulation has effect as retained direct EU legislation (including that Regulation as applied by regulation 5 of the Law Applicable to Contractual Obligations (England and Wales and Northern Ireland) Regulations 2009 and regulation 4 of the Law Applicable to Contractual Obligations (Scotland) Regulations 2009), unless the case is one in respect of which Regulation (EC) No. 593/2008 has effect by virtue of Article 66 of the EU withdrawal agreement, in which case see that Regulation as it has effect by virtue of that Article.”.

(3) In section 74 (contracts applying law of non-EEA State) at the end of subsection (2) insert “as that Regulation has effect as retained direct EU legislation (including that Regulation as applied by regulation 5 of the Law Applicable to Contractual Obligations (England and Wales and Northern Ireland) Regulations 2009 and regulation 4 of the Law Applicable to Contractual Obligations (Scotland) Regulations 2009), unless the case is one in respect of which Regulation (EC) No. 593/2008 has effect by virtue of Article 66 of the EU withdrawal agreement, in which case see that Regulation as it has effect by virtue of that Article.

Amendment of the Foreign Limitation Periods (Northern Ireland) Order 1985

4B. In Article 9 of the Foreign Limitation Periods (Northern Ireland) Order 1985(31) (disapplication where the law applicable to limitation is determined by other instruments), for paragraphs (1A) and (2) substitute—

“(1A) In paragraph (1) the “Rome I Regulation” means Regulation (EC) No. 593/2008 of the European Parliament and of the Council on the law applicable to contractual obligations as that Regulation has effect as retained direct EU legislation (including that Regulation as applied by regulation 5 of the Law Applicable to Contractual Obligations (England and Wales and Northern Ireland) Regulations 2009), unless the proceedings are ones in respect of which Regulation (EC) No. 593/2008 has effect by virtue of Article 66 of the EU withdrawal agreement, in which case it means that Regulation as it has effect by virtue of that Article.

(2) In paragraph (1) the “Rome II Regulation” means Regulation (EC) No. 864/2007 of the European Parliament and of the Council on the law applicable to non-contractual obligations as that Regulation has effect as retained direct EU legislation (including that Regulation as applied by regulation 6 of the Law Applicable to Non-Contractual Obligations (England and Wales and Northern Ireland) Regulations 2008), unless the proceedings are ones in respect of which Regulation (EC) No. 864/2007 has effect by virtue of Article 66 of the EU withdrawal agreement, in which case it means that Regulation as it has effect by virtue of that Article.”.

(7) In regulation 5 (amendment of the Law Applicable to Non-Contractual Obligations (England and Wales and Northern Ireland) Regulations 2008) for paragraph (c) substitute—

“(c) for “, that Regulation” substitute “, as that Regulation has effect as retained direct EU legislation,”.”.

(8) In regulation 6 (amendment of the Law Applicable to Contractual Obligations (England and Wales and Northern Ireland) Regulations 2009) for paragraph (c) substitute—

“(c) for “, that Regulation” substitute “, as that Regulation has effect as retained direct EU legislation,”.”.

(9) For regulation 7 (amendment of the Financial Services and Markets Act 2000 (Law Applicable to Contracts of Insurance) Regulations 2009) substitute—

(31) 1985 No 754 (N.I. 5). Article 9 was substituted by S.I. 2008/2986 and amended by S.I. 2009/3064.

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

7.—(1) The Financial Services and Markets Act 2000 (Law Applicable to Contracts of Insurance) Regulations 2009(32) are amended as follows.

(2) In regulation 1(2) (citation, commencement and interpretation), at the end of the definition of “the Rome I Regulation” insert “, as that Regulation has effect as retained direct EU legislation, unless the contractual obligations are ones in respect of which Regulation (EC) No. 593/2008 has effect by virtue of Article 66 of the EU withdrawal agreement, in which case it means that Regulation as it has effect by virtue of that Article.”.

(3) In regulation 3 (application of the Rome I Regulation: conflicts falling within Article 22(2))—

- (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, as that Regulation has effect as retained direct EU legislation,”.

(10) In regulation 8 (amendment of the Law Applicable to Non-Contractual Obligations (Scotland) Regulations 2008) for paragraph (c) substitute—

“(c) for “, that Regulation” substitute “as that Regulation has effect as retained direct EU legislation,”.

(11) In regulation 9 (amendment of the Law Applicable to Contractual Obligations (Scotland) Regulations 2009) for paragraph (c) substitute—

“(c) for “, that Regulation” substitute “as that Regulation has effect as retained direct EU legislation,”.

(12) In regulation 10 (amendment of the Rome I Regulation), after paragraph (12) insert—
“(12A) For Article 28 (application in time) substitute—

“Article 28

Application in time

1. Subject to paragraph 2, this Regulation shall apply to contracts concluded on or after IP completion day.

2. In the case of conflicts between the laws of—

- (a) different parts of the United Kingdom, or
- (b) one or more parts of the United Kingdom and Gibraltar,

this Regulation shall apply to contracts concluded on or after 17 December 2009.”.

(13) In regulation 11 (amendment of the Rome II Regulation)—

(a) for paragraph (5) substitute—

“(5) In Article 8 (infringement of intellectual property rights), omit paragraph 2.”;

(b) for paragraph (11) substitute—

“(11) For Article 31 (application in time) substitute—

“Article 31

Application in time

1. Subject to paragraph 2, this Regulation shall apply to events giving rise to damage which occur on or after IP completion day.

2. In the case of conflicts between the laws of—

(a) different parts of the United Kingdom, or

(b) one or more parts of the United Kingdom and Gibraltar,

this Regulation shall apply to events giving rise to damage which occur on or after 11 January 2009.””

16th December 2020

Alex Chalk
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) and 8B(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 (c. 16) in order (a) to address failures of retained EU law to operate effectively and other deficiencies in retained EU law (under section 8(2)(c) of that Act) arising from the withdrawal of the UK from the European Union; and (b) to make provision in relation to the withdrawal agreement.

Regulation 1 makes provision for the title of the Regulations and the date on which they come into force.

Regulation 2 amends the Cross-Border Mediation (EU Directive) (EU Exit) Regulations 2019 (“the mediation SI”) before the mediation SI comes into force. It updates the mediation SI to take account of an amendment, made after the mediation SI was made, to a Northern Ireland instrument amended by the mediation SI.

Regulation 3 amends the Civil Jurisdiction and Judgments (Amendment) (EU Exit) Regulations 2019 (“the civil SI”) before the civil SI comes into force. It corrects an error in the civil SI to ensure that the new section 15C(2)(c) in the Civil Jurisdiction and Judgments Act 1982 (c. 27) reflects the policy intention to replicate, as closely as possible, the special rule for jurisdiction in relation to individual contracts of employment contained in Article 21(1)(b)(ii) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters.

Regulation 4 amends the Family Procedure Rules 2010 and Court of Protection Rules 2017 (Amendment) (EU Exit) Regulations 2019 (“the Rules SI”) before the Rules SI comes into force. It addresses a gap in the transitional provisions of the Rules SI in relation to amendments made by the Rules SI to Part 34 of the Family Procedure Rules concerning reciprocal enforcement of maintenance, ensuring that those transitional provisions operate by reference not only to the transitional provisions of the family SI, but also, where relevant, to those of the civil SI (which will be relevant for ongoing maintenance matters under the Lugano Convention). It also amends the provisions of the Rules SI which amend the Court of Protection Rules 2017 in relation to service of documents outside the jurisdiction, to omit a reference to “Member State” which had been missed, and to correct a cross-reference which mistakenly refers to an omitted provision, so that it refers to the correct provision.

Regulation 5 amends the Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019 (“the family SI”) before the family SI comes into force. It replaces regulation 8 (transitional and savings provisions) of the family SI with provision which makes it clear that (a) nothing in the family SI affects the application of the relevant paragraphs of Article 67 of the withdrawal agreement, so that for the purposes of those paragraphs, the various changes made by the family SI do not have effect (and so the relevant EU instruments will continue to apply as provided by those paragraphs for jurisdiction, recognition and enforcement and co-operation between authorities); (b) where proceedings are commenced, applications and requests for assistance have been received, or maintenance is due to be paid, before IP completion day relying on the intra-UK provisions of Schedule 6 to the Civil Jurisdiction and Judgments (Maintenance) Regulations 2011 those provisions will continue to apply after IP completion day; and (c) choice of court agreements made before IP completion day (including those made pursuant to paragraph 5 of Schedule 6 to the Civil Jurisdiction and Judgments (Maintenance) Regulations 2011) will continue to be valid after IP completion day. It also corrects an error in the family SI to retain a special

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rule for jurisdiction in relation to maintenance in Scotland. Finally, it makes clear that relevant jurisdictional rules are subject to the limit on proceedings contained in Article 18 of Convention on the International Recovery of Child Support and Other Forms of Family Maintenance concluded on 23 November 2007 at The Hague.

Regulation 6 amends the Law Applicable to Contractual Obligations and Non-Contractual Obligations (Amendment etc.) (EU Exit) Regulations 2019 ('Rome SI') before the Rome SI comes into force. It amends definitions of "the Rome Regulation" (Regulation (EC) No. 593/2008) and "the Rome II Regulation" (Regulation (EC) No. 864/2007) in various primary and secondary legislation, and makes amendments to the Rome I Regulation and Rome II Regulation, as they form part of domestic law. The amendments clarify whether references to the Rome I Regulation or Rome II Regulation in domestic law should be understood as references to the versions of those Regulations which form part of retained direct EU legislation, or references to those Regulations as required to be applied by Article 66 of the EU withdrawal agreement, in order to give full effect to that Article of the EU withdrawal agreement.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen. Full impact assessments of the effect that the civil SI and the family SI will have on the costs of business, the voluntary sector and the public sector are available from the Ministry of Justice, 102 Petty France, London SW1H 9AJ and are published with Explanatory Memoranda alongside those instruments on <https://legislation.gov.uk>.