

EXECUTIVE NOTE TO
THE LAW APPLICABLE TO CONTRACTUAL OBLIGATIONS (SCOTLAND)
REGULATIONS 2009

SSI/2009/410

The above instrument is proposed to be made in exercise of the powers conferred by **section 2(2)** of the **European Communities Act 1972 (c.68)**. The instrument is subject to negative resolution procedure.

Policy Objectives

The main intention of these Regulations is to implement in relation to Scotland Regulation (EC) No 593/2008 of the European Parliament and of the Council on the law applicable to contractual obligations (Rome I) of 17 June 2008⁽¹⁾, which comes into operation on 17 December 2009. Rome I provides for uniform choice of law rules in the field of contractual obligations. These rules will enable courts throughout the EU to select the national laws appropriate for the determination of those proceedings where the case has a cross-border dimension, for example a case where parties to a contract live in different countries and the contract is to be performed in a third country. The aim of these uniform Community rules is that where a case falling within the Regulation's scope of application, the same national law will generally be applied by the courts in all Member States.

The purpose of these Regulations is twofold. The first is to amend in relation to Scotland, the Contracts (Applicable Law) Act 1990 which enabled the United Kingdom to ratify the 1980 Rome Convention on the Law applicable to Contractual Obligations. These Regulations disapply the 1990 Act in Scotland so that it does not apply to cases which fall to be determined under Rome I. Rome I will replace the Convention in all the Member States of the European Union, with the exception of Denmark.

The second purpose of these Regulations is to extend the application of Rome I, with the exception of Article 7 (insurance contracts), to disputes within the UK or with Gibraltar, which would otherwise not be regulated by it. These cases lack the international dimension which is otherwise characteristic of cases falling under Rome I and under Article 22(2)I, Member States are not obliged to apply Rome I rules to such cases. However, to maximise consistency between the rules that apply to determine the applicable law in contractual obligations, these Regulations will extend, in relation to Scotland, the scope of Rome I to conflicts solely between the laws of England, Wales, Scotland, Northern Ireland and Gibraltar. The same approach was taken in the Law Applicable to Non-Contractual Obligations (Scotland) Regulations 2008 (SSI 2008/404) when implementing Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II), which came into operation on 11 January 2009.

(1) A copy of the Rome I Regulation can be accessed via the following link:
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:177:0006:0016:EN:PDF>

Consultation

Consultation and stakeholder input into the negotiations on the Rome I proposal was extensive and included Scottish stakeholders (legal profession, judiciary, university academics and other interests). The Scottish Executive participated in formulation of, and endorsed, the UK Government's negotiating position, the key points of which were accommodated in the final outcome of the negotiations in Brussels.

A joint Ministry of Justice, Scottish Government and Northern Ireland Department of Finance and Personnel public consultation was launched in April 2008. The overarching purpose of the public consultation was to consider the issue of whether the United Kingdom should seek to opt in to Rome I on choice of law in contract, which had been agreed between other Member States in December 2007. The consultation closed in June 2008. An analysis of the responses received indicated that there was almost unanimous support for the recommendation that the United Kingdom should seek to opt in to Rome I, along with similar support for the Rome I rules to apply to intra-UK conflicts in relation to contractual obligations. The 2 Scottish stakeholders who responded to the consultation were unanimous in their support for a UK opt-in and the same system for in intra-UK choice of law questions. On 21 July 2008, the United Kingdom Government wrote to the European Commission and the Council formally requesting agreement to the United Kingdom's participation in Rome I. Agreement to this request was given on 22 December 2008.

Financial Effects

The instrument is not expected to have any significant financial effects on the Scottish Government, local government or business.

Scottish Executive
20 November 2009