

2001 No. 2635

FINANCIAL SERVICES AND MARKETS

**The Financial Services and Markets Act 2000 (Law
Applicable to Contracts of Insurance) Regulations 2001**

Made - - - - - 19th July 2001

Laid before Parliament 20th July 2001

Coming into force in accordance with regulation 1

The Treasury, in exercise of the powers conferred on them by sections 424(3), 417(1)(a) and 428(3) of the Financial Services and Markets Act 2000(b), hereby make the following Regulations:

PART I

General

Citation and commencement

1. These Regulations may be cited as the Financial Services and Markets Act 2000 (Law Applicable to Contracts of Insurance) Regulations 2001 and come into force on the day on which section 19 of the Act comes into force.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Financial Services and Markets Act 2000;

“the 1990 Act” means the Contracts (Applicable Law) Act 1990(c);

“applicable law”, in relation to a contract of insurance, means the law that is applicable to that contract;

“contract of general insurance” and “contract of long-term insurance” have the meanings given by the Regulated Activities Order;

“EEA State of the commitment” means, in relation to a contract of long-term insurance entered into on a date—

(a) if the policyholder is an individual, the EEA State in which he resides on that date; or

(b) otherwise, the EEA State in which the establishment of the policyholder to which the contract relates is situated on that date;

“establishment”, in relation to a person (“A”), means—

(a) A’s head office;

(b) any of A’s agencies;

(c) any of A’s branches; or

(a) See the definition of “prescribed”.

(b) 2000 c. 8.

(c) 1990 c. 36.

- (d) any permanent presence of A in an EEA State, which need not take the form of a branch or agency and which may consist of an office managed by A's staff or by a person who is independent of A but has permanent authority to act for A as if he were an agency;

“large risk” has the meaning given by Article 5(d) of the first non-life insurance directive and includes risks specified by paragraph (iii) of that definition insured by professional associations, joint ventures or temporary groups;

“mandatory rules” means the rules from which the law allows no derogation by way of contract;

“the Regulated Activities Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(a).

(2) References to the EEA State where the risk covered by a contract of insurance is situated are to—

- (a) if the contract relates to buildings or to buildings and their contents (in so far as the contents are covered by the same contract of insurance), the EEA State in which the property is situated;
- (b) if the contract relates to vehicles of any type, the EEA State of registration;
- (c) if the contract covers travel or holidays risks and has a duration of four months or less, the EEA State in which the policyholder entered into the contract;
- (d) in any other case—
 - (i) if the policyholder is an individual, the EEA State in which he resides on the date the contract is entered into;
 - (ii) otherwise, the EEA State in which the establishment of the policyholder to which the contract relates is situated on that date.

(3) References to the country in which a person resides are to—

- (a) if he is an individual, the country in which he has his habitual residence;
- (b) in any other case, the country in which he has his central administration.

(4) Where an EEA State (including the United Kingdom) includes several territorial units, each of which has its own laws concerning contractual obligations, each unit is to be considered as a separate state for the purposes of identifying the applicable law under these Regulations.

Scope of these Regulations

3.—(1) These Regulations do not apply to contracts of reinsurance.

(2) These Regulations apply to contracts of insurance which are entered into by friendly societies as follows—

- (a) Part II applies to a contract of insurance entered into by a friendly society to which section 37(3) of the Friendly Societies Act 1992(b) applies;
- (b) Part III applies to a contract of insurance entered into by a friendly society to which section 37(2) of that Act applies; and
- (c) Part II applies to any other contract of insurance entered into by a friendly society which covers a risk situated in an EEA State with the following modifications—
 - (i) paragraph (1) of regulation 4 does not apply;
 - (ii) regulation 4 applies only where the policyholder is an individual; and
 - (iii) regulation 7 applies as if for the words “the 1990 Act is deemed to apply” in each case there were substituted the words “the general rules of private international law of that part of the United Kingdom concerning contractual obligations apply”.

(a) S.I. 2001/544.

(b) 1992 c. 40.

PART II

Contracts of General Insurance

Applicable law

4.—(1) This Part applies to a contract of general insurance which covers risks situated in an EEA State.

(2) If the policyholder resides in the EEA State in which the risk is situated, the applicable law is the law of that EEA State unless, if such a choice is permitted under the law of that EEA State, the parties to the contract choose the law of another country.

(3) If the policyholder does not reside in the EEA State in which the risk is situated, the parties to the contract may choose as the applicable law either—

- (a) the law of the EEA State in which the risk is situated; or
- (b) the law of the country in which the policyholder resides.

(4) If the policyholder carries on a business (including a trade or profession) and the contract covers two or more risks relating to that business which are situated in different EEA States, the freedom of the parties to choose the applicable law conferred by this regulation extends to the law of any of those EEA States and of the country in which the policyholder resides.

(5) If any of the EEA States referred to in paragraph (3) or (4) grant greater freedom of choice of the applicable law, the parties to the contract may take advantage of that freedom.

(6) Notwithstanding paragraphs (2) to (4), if the risks covered by the contract are limited to events occurring in one EEA State other than the EEA State in which the risk is situated, the parties may choose the law of the former EEA State as the applicable law.

(7) Notwithstanding paragraphs (2) to (4), if the risk covered by the contract is a large risk the parties may choose any law as the applicable law.

(8) Where the foregoing provisions of this regulation allow the parties to the contract to choose the applicable law and if no choice has been made, or no choice has been made which satisfies the requirement set out in regulation 6(1), the applicable law is the law of the country, from amongst those considered in the relevant paragraph (“the relevant countries”), which is most closely connected with the contract; however, where a severable part of the contract has a closer connection with another relevant country, the law applicable to that part is, by way of exception, the law of that relevant country.

(9) For the purposes of paragraph (8), the contract is rebuttably presumed to be most closely connected with the EEA State in which the risk is situated.

Mandatory rules

5.—(1) Nothing in regulation 4 restricts the application of the mandatory rules of any part of the United Kingdom, irrespective of the applicable law of the contract.

(2) If the parties to the contract choose the applicable law under regulation 4 and if all the other elements relevant to the situation at the time when the parties make their choice are connected with one EEA State only, the application of the mandatory rules of that EEA State is not prejudiced.

Choice of law

6.—(1) Any choice made by the parties under regulation 4 must be expressed or demonstrated with reasonable certainty by the terms of the contract or the circumstances of the case.

(2) Where the parties to the contract may choose the applicable law under regulation 4, and where the risk to which the contract relates is covered by Community co-insurance (within the meaning of Council Directive 78/473/EEC on the coordination of laws, regulations and administrative provisions relating to Community co-insurance)(a), co-insurers other than the leading insurer (within the meaning of that Directive) are not to be treated as parties to the contract.

(a) OJ L 151, 7.6.78, p.25.

The 1990 Act

7.—(1) Subject to the preceding provisions of this Part, the 1990 Act is to be treated as applying to the contract for the purposes of determining the applicable law.

(2) In determining whether the mandatory rules of another EEA State should be applied in accordance with regulation 5(2) where the parties have chosen the law of a part of the United Kingdom as the applicable law, the 1990 Act is to be treated as applying to the contract.

(3) In determining what freedom of choice the parties have under the law of a part of the United Kingdom, the 1990 Act is to be treated as applying to the contract.

PART III

Contracts of Long-Term Insurance

Applicable law

8.—(1) This Part applies to a contract of long-term insurance if—

- (a) where the policyholder is an individual, he resides in an EEA State;
- (b) otherwise, the establishment of the policyholder to which the contract relates is situated in an EEA State.

(2) The applicable law is the law of the EEA State of the commitment unless, if such a choice is permitted under the law of that EEA State, the parties choose the law of another country.

(3) If the policyholder is an individual and resides in one EEA State but is a national or citizen of another, the parties to the contract may choose the law of the EEA State of which he is a national or citizen as the applicable law.

Mandatory rules

9. Nothing in regulation 8 affects the application of the mandatory rules of any part of the United Kingdom, irrespective of the applicable law of the contract.

The 1990 Act

10.—(1) Subject to the preceding provisions of this Part, the 1990 Act is to be treated as applying to the contract for the purposes of determining the applicable law.

(2) In determining what freedom of choice the parties have under the law of a part of the United Kingdom, the 1990 Act is to be treated as applying to the contract.

19th July 2001

Tony McNulty
Graham Stringer
Two of the Lords Commissioners
of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations specify the law that applies to contracts of insurance, the effecting or carrying out of which constitutes a regulated activity within the meaning of the Financial Services and Markets Act 2000 (“the Act”).

Regulation 3 specifies the scope of the Regulations and makes certain modifications to the application of the Regulations to friendly societies which are not covered by the insurance directives (within the meaning of Schedule 3 to the Act).

Regulation 4 specifies the applicable law for contracts of general insurance (as defined by the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (“the Regulated Activities Order”) (S.I. 2001/544)) which cover risks in an EEA State.

Regulation 6 makes provision as to how the parties’ choice of law must be expressed and specifies that where the risk is covered by Community co-insurance, as defined by Council Directive 78/473/EEC on the coordination of laws, regulations and administrative provisions relating to Community co-insurance (OJ L 151, 7.6.78, p.25) the leading insurer is to be treated as the only insurer.

Regulation 8 specifies the applicable law for contracts of long-term insurance (as defined by the Regulated Activities Order) where the policyholder has his habitual residence in an EEA State or the establishment of the policyholder to which the contract relates is in an EEA State. The applicable law is the law of that EEA State unless the law of that State or these Regulations permits the parties to choose a different law.

In circumstances specified by regulations 5 and 8, mandatory rules apply to a contract of insurance regardless of the applicable law.

Where these Regulations apply and regulation 4 or 8 does not specify the applicable law, the Contracts (Applicable Law) Act 1990 is to be treated as applying for the purpose of determining the applicable law. That Act is also to be treated as applying for the purpose of determining what freedom of choice the parties have under the law of a part of the United Kingdom and, in the case of contracts of general insurance, what mandatory rules of other EEA States apply.

2001 No. 2635

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Law
Applicable to Contracts of Insurance) Regulations 2001

£2.00

© Crown copyright 2001

Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of
Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.
E1497 8/2001 649894 19585

ISBN 0-11-029891-8



9 780110 298917