

UK Regulations Implementing Rome II Regulation Adopted

As pointed out by Andrew Dickinson on the BIICL-PRIVATEINTLAW list (the mailing list promoted by the British Institute of International and Comparative Law, devoted to conflict matters), on 18 November 2008 were laid before the UK Parliament the Regulations implementing the EC Rome II Regulation in England, Wales and Northern Ireland (the Scottish Parliament is expected to legislate separately for Scotland).

The Law Applicable to Non-Contractual Obligations (England and Wales and Northern Ireland) Regulations 2008 (S.I., 2008, No. 2986), dated 12 November 2008, were made by the Secretary of State, as designated by the European Communities (Designation) (No.2) Order 2008 no. 1792 to exercise the powers conferred by section 2(2) of the European Communities Act 1972 (c. 68) in relation to private international law (readers who are unfamiliar – as I am – with the implementation of EC Law in the UK by means of statutory instruments may find useful this Wikipedia page and the Explanatory Memorandum to the European Community (Designation) (No. 2) Order 2008).

Here's an excerpt of the Explanatory Note to the implementing Regulations; most notably, **the application of the conflict rules provided by the EC instrument is extended to intra-UK conflicts:**

The purpose of these regulations is two-fold. The first is to modify the relevant current inconsistent national law in England and Wales and Northern Ireland. Regulations 2 and 3 restrict the application of the general statutory choice of law rules in this area. These are contained in Part III of the Private International Law (Miscellaneous Provisions) Act 1995. Regulation 4 restricts the application of certain provisions in the Foreign Limitation Periods Act 1984 and regulation 5 restricts the application of analogous provisions in the Foreign Limitation Periods (Northern Ireland) Order 1985.

The second purpose involves extending the application of the Regulation to certain cases that would otherwise not be regulated by it. These are cases where in principle the choice of applicable law is confined to the law of one of

the United Kingdom's three jurisdictions, that is England and Wales, Scotland and Northern Ireland, and to the law of Gibraltar. These cases therefore lack the international dimension which is otherwise characteristic of cases falling under the Regulation. Under Article 25(2) of the Regulation Member States are not obliged to apply the Regulation to such cases. To maximise consistency between the rules that apply to determine the law applicable to non-contractual obligations, regulation 6 of these regulations extends, in relation to England and Wales and Northern Ireland, the scope of the Regulation to conflicts solely between the laws of England and Wales, Scotland, Northern Ireland and Gibraltar.

The Regulations, subject in the Parliament to the negative resolution procedure, will enter into force on 11 January 2009 (the same date as the Rome II Reg.: see its Art. 32, and the comments to our previous post here). The text is available on the Office of Public Sector Information (OPSI) website.