Im Bereich der Ziviljustiz kommt für vor dem Ablauf des Übergangszeitraums eingeleitete und noch anhängige Verfahren weiterhin EU-Recht zur Anwendung. Die Informationen über das Vereinigte Königreich werden im gegenseitigen Einvernehmen bis Ende 2024 über das Europäische Justizportal verfügbar bleiben.

Which country's law applies?

Nordirland

1 Sources of the rules in force

1.1 National rules

The conflict of laws rules in Northern Ireland regarding applicable law are mainly derived from directly applicable EU Regulations. In relation to civil and commercial matters these are:

• 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); and

• 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).

The Contracts (Applicable Law) Act 1990 (which implemented the Rome Convention 1980) remains relevant in relation to contracts entered into before 17 December 2009 (the Rome I Regulation applies to contracts entered into on or after that date).

The Private International Law (Miscellaneous Provisions) Act 1995 is relevant only in relation to situations not covered by the Rome II Regulation (the Regulation applies to cases in which damage occurred after 11 January 2009).

The traditional common law rules remain applicable to the tort of defamation and in relation to succession and property law.

In family matters, it is generally the common law that is the source of rules on applicable law, with some exceptions. Northern Irish law is generally applied in family matters, subject to limited exceptions in common law (e.g. in relation to nullity of marriage) or in statute (e.g. in relation to maintenance under the Maintenance Orders (Facilities for Enforcement) Act 1920 and the Maintenance Orders (Reciprocal Enforcement) Act 1972). In parental responsibility and child protection matters covered by EU Regulation 2201/2003 and the Hague Convention of 19 October 1996, it is the Parental Responsibility and Measures for the Protection of Children (International Obligations (England and Wales and Northern Ireland) Regulations 2010, and Article 15 of the 1996 Convention that contain the applicable law rules respectively i.e. that the law in Northern Ireland applies subject to limited exceptions.

1.2 Multilateral international conventions

• Hague Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions 1961

• Rome Convention on the Law Applicable to Contractual Obligations 1980 (as mentioned above, the Rome I Regulation applies to contracts entered into on or after 17 December 2009)

• Hague Convention on the Law Applicable to Trusts and on their Recognition 1985

1.3 Principal bilateral conventions

We are unaware of any bilateral Conventions containing choice of law provisions to which the UK is a party.

It should be noted that, although the Conventions listed at 1.2 above permit a State to apply some other choice of law regime to its own “territorial units”, the UK has chosen not to do so. Accordingly, the Conventions listed at 1.2 apply to conflicts between the constituent jurisdictions of the UK, as well as international conflicts and Northern Ireland is regarded as being a foreign jurisdiction from England, Wales and Scotland.

2 Implementation of conflict of law rules

2.1 Obligation of the judge to apply conflict of law rules on his own initiative

Ordinarily the conflict of laws rules will only be applied if at least one of the parties has argued that they should be applied. If this has not been argued, or if there is no satisfactory evidence of the content of foreign law, the judge will normally apply the law of Northern Ireland to the issue. This rule is one relating to evidence and procedure, and hence is unaffected by the EU Regulations.

2.2 Renvoi

The EU Regulations exclude the application of the doctrine of renvoi in cases regulated by EU choice of law rules and this was also the prevailing view under the Private International Law (Miscellaneous Provisions) Act 1995 and Contracts Applicable Law Act 1990. Hence, if the choice of law rule in Northern Ireland points to, for example, French law, French domestic law will be applied, even if a French court would have applied some other country’s law. One justification put forward for the rejection of renvoi in these spheres seems to be that the complex rules established by the statutes would be upset if renvoi were applied.

The role of renvoi in remaining areas of law is now somewhat limited, and in some cases not entirely clear. In can be said that renvoi will apply in the case of land situate abroad, to which the lex situs is applied by Northern Ireland law. In such cases, there is a pragmatic desire to apply the same law of the court in whose jurisdiction the property is located, to increase the chance that any decision concerning the property will be effective. The balance of first instance court decisions as regards tangible movable property situate abroad is that a reference to the lex situs will not include renvoi. It should be noted, however, that in many cases the proof of the content of foreign choice of law rules is expensive and parties frequently choose not to argue for their application (see 2.1 above).

2.3 Change of connecting factor

This problem is dealt with by specifying in each choice of law rule the relevant time at which the connecting factor is identified. For example, in the case of transfers of movables, the relevant applicable law is that applicable at the location of movable in question at the time of the transfer.

2.4 Exceptions to the normal application of conflict rules

Under the traditional rules, the courts in Northern Ireland can refuse to apply the law of any country or territory which is contrary to public policy. Public policy is influenced by the UK’s international obligations, in particular the European Convention on Human Rights.

In addition, the Rome 1 and Rome II Regulations both now provide for the application of the overriding mandatory rules of the forum *irrespective of the law otherwise applicable to the contract*. Such rules are generally to be found in the consumer and employment spheres or in legislation supplementing an international Convention.

2.5 Proof of foreign law

The content of the law of any country or territory outside Northern Ireland is proved by the parties as if it were a fact. However, it is for the judge to determine the effect of the evidence given with respect to that law.

In proceedings before a court in Northern Ireland a person who is suitably qualified to do so on account of his knowledge or experience is competent to give expert evidence as to the law of any country or territory outside Northern Ireland, irrespective of whether he has acted, or is entitled to act, as a legal practioner in that country or territory.

In certain circumstances a court in Northern Ireland can take account of an earlier decision or finding of an English court with regard to the law of any country or territory outside Northern Ireland. Written notice that a party intends to rely on the earlier decision must be served on each of the other parties or their solicitors.

3 Conflict of law rules

3.1 Contractual obligations and legal acts

In all cases concerning contractual obligations and involving a choice of law, the Rome 1 Regulation is directly applicable. The choice of law rules in the Rome Regulation may also apply to cases that the law in Northern Ireland would not recognise as being contractual (e.g. where the agreement is not supported with consideration e.g. contracts of gift).

Matters of procedure are determined by the lex fori. Hence, the assessment of the level of damages (but not the heads of damage) and means of proof are regulated by the law of the forum. Limitation periods are substantive, and hence in the case of contractual obligations are determined by the law applicable under the Regulation.

In cases where the parties have made an express choice of law, or one that is demonstrable by reasonable certainty, this law applies. A choice is likely to be demonstrated with reasonable certainty where the contract is in a standard form that is known to be governed by a particular law or in light of previous dealings between the parties. Where there is a choice of court agreement, this is often enough to infer that the law of that court was intended to be chosen, but this is not always the case. In the case of an arbitration agreement, if the selection criteria for the arbitrators is specified, this will more readily permit an inference of a choice of law, but if arbitrators are identified by reference to some international body, then it is much less likely that the choice will have been found to have been demonstrated with reasonable certainty.

Freedom of choice is circumscribed in several respects. First, in consumer, and employment contracts, the choice of law cannot deprive the consumer or employee of the protection of mandatory rules that exist under the law that would have applied to the case if there had not been an express choice of law. Secondly, where all the elements of the situation are connected with one country, a choice of a different law cannot deprive the mandatory rules of that country of effect. There are also protective rules for consumers in relation to insurance contracts. It might also be noted that, where there is disagreement in respect of the effectiveness of choice – for example, an allegation of duress – the question as to whether such a choice was effective is determined by the putative applicable law (i.e. the law that would govern the contract if the choice were valid), unless this would be “unreasonable” (in which case, the law of the habitual residence of the party claiming not to have consented may be applied).

In cases where there is no express choice of law, or one that is not demonstrable with reasonable certainty, the Rome 1 Regulation provides specific rules, depending on the type of contract. However, where these rules are inconclusive, the law will generally be the law of the habitual residence of the characteristic performer. The characteristic performer is not always easy to identify, but is usually the party who is not providing payment for the goods or service (e.g. the characteristic performer is the vendor of a product, the lender in a banking transaction, the guarantor in a contract of guarantee). This presumption may be rebutted in favour of a country with which the contract is more closely connected.

3.2 Non-contractual obligations

In respect of non-contractual obligations the Rome II Regulation will apply in most cases. The Private International Law (Miscellaneous Provisions) Act 1995 will only apply to issues relating to tort that do not fall under the Regulation, so defamation remains governed by the common law (see below).

Limitation periods are also determined by the applicable law.

Under the Rome II Regulation the general rule is to apply the law of the place where the damage occurs. Special rules determine the applicable law for certain types of non-contractual obligation, including product liability, unfair competition, environmental torts and torts relating to intellectual property rights. The Regulation also allows the parties to choose the applicable law in certain circumstances, but this provision cannot be used to avoid mandatory rules of EU or domestic law. It should be noted that the assessment of damages is a matter for the applicable law.

As stated above, defamation (which includes slander of title, slander of goods, malicious falsehood and any foreign law claim “corresponding to or otherwise in the nature of [such] a claim”) remains governed by the common law. In such cases, the “double actionability rule” applies: a tort is only actionable in Northern Ireland if it is civilly actionable under the foreign law of the jurisdiction in which the act occurred (usually publication) *and* would be civilly actionable under the law of Northern Ireland if the act had occurred in Northern Ireland. However, this rule is subject to an exception: where another country has a more significant relationship with the occurrence and the parties, the law of that jurisdiction will apply instead. It should be noted that this area is particularly uncertain.

In respect of the administration of trusts, the applicable law is governed by the Recognition of Trusts Act 1987 which implements the Hague Convention on the law applicable to trusts. This provides that the applicable law is that chosen by the settlor, or, in the absence of such choice, by the law with which the trust is most closely connected. This law determines the validity of the trust, its construction, effects and the administration of the trust.

3.3 The personal status, its aspects relating to the civil status (name, domicile, capacity)

At birth, a person’s domicile (the domicile of origin) is the same as that of his or her father at the time of his or her birth, if the child is legitimate. If the child is illegitimate, or the father is dead at the time of birth, the child’s domicile is the same as his or her mother. This rule continues to apply until the child is 16 (i.e. the child’s domicile changes with that of the father or mother respectively).

For persons over 16 years of age, the domicile of origin continues to apply unless they adopt a domicile of choice. To adopt a domicile of choice, they must actually reside in the relevant jurisdiction and intend to reside there indefinitely or permanently. If either of these elements ceases to exist, the domicile of choice no longer applies and the domicile of origin applies.

The domicile of a wife is no longer determined by reference to that of her husband: it is assessed independently.

Capacity to undertake particular obligations (e.g. to contract, to make a will, to marry) is determined by rules specific to that area, and are discussed in the relevant sections.

3.4 Establishment of parent-child relationship, including adoption

The responsibilities of a parent to a minor (under 18 years of age) are determined by the law of Northern Ireland in cases where the courts in Northern Ireland have jurisdiction, even if the child is residing abroad and is a foreign national. However, the court in Northern Ireland will only have jurisdiction – pursuant to EU Regulation 2201/2003 – when the child is resident in Northern Ireland or if the child is in another Member State and if at least one spouse has parental responsibility and jurisdiction has been accepted by the spouse.

A child will be legitimate if born in lawful wedlock wherever the child was born, or if the child was legitimate by the law of the domicile of each of the parents at the time of the child's birth.
A court in Northern Ireland will apply the law of Northern Ireland to establish an individual as a guardian of a child, if it has jurisdiction (which it will have whenever the applicant is a UK national or is ordinarily resident or present in Northern Ireland).
A court in Northern Ireland will apply the law in Northern Ireland in adoption cases wherever it has jurisdiction (which it will have whenever the applicant is domiciled in Northern Ireland at the time of the application, but the court will also consider the likelihood of any order being recognised abroad where this is relevant to the exercise of its jurisdiction). The effect of such an order is to transfer all responsibilities away from the existing parents and to the adoptive parents.

3.5 Marriage, unmarried/cohabiting couples, partnerships, divorce, judicial separation, maintenance obligations

The formal validity of a marriage is governed by the law of the place of celebration of the marriage. This law governs the validity of the ceremony and its components e.g. whether any particular words must be used, whether a particular building must be used, whether parental consent is required and whether a marriage can be conducted by proxy. There are some limited exceptions to this rule: in particular, if it is impossible to use the local form of marriage. Also, particular rules apply to members of the armed forces who are serving in a foreign, non-Commonwealth country.
The capacity of persons to marry is determined by the domicile of the relevant person at the time immediately before the marriage. This law governs issues such as whether the parties consented, age requirements and which persons within one's extended family one may not marry. In the special case of age, no marriage will be valid if either of the participants was under 16 at the time, if they are domiciled in Northern Ireland.
The law in Northern Ireland does not provide for same sex marriages. However, same sex unions from other countries may, in certain circumstances, be treated as civil partnerships under the law of Northern Ireland.
In respect of a divorce, a court in Northern Ireland will only have jurisdiction to entertain divorce proceedings pursuant to Council Regulation 2201/2003. If one of the following requirments is satisfied: the spouses are habitually resident or domiciled in Northern Ireland, the spouses were habitually resident in Northern Ireland and one of them is still resident there now, the respondent is habitually resident in Northern Ireland, the applicant was resident in Northern Ireland for at least one year before the date of the application (or six months if the applicant is a national of a Member State). If none of these is satisfied and no other Member State has jurisdiction, domestic law confers jurisdiction on the courts of Northern Ireland if at least one of the parties was domiciled in Northern Ireland at the time of the commmencement of the divorce proceedings. If a court in Northern Ireland has jurisdiction it will apply the law in Northern Ireland to the divorce proceedings. In proceedings for a decree of nullity, the laws referred to above (law of place of celebration or law of party's domicile) will apply depending on the ground of nullity. A foreign divorce will be recognised if one of the parties was habitually resident, domiciled, or a national of that country at the time of the foreign proceedings.
In respect of maintenance obligations, the UK is bound by Council Regulation (EC) 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations. A court in Northern Ireland will have jurisdiction if it has jurisdiction over the divorce or, if the divorce was obtained in foreign proceedings, where one of the parties is domiciled in Northern Ireland at the time of the foreign divorce or had been habitually resident in Northern Ireland for a year up to that date, or if one party has a beneficial interest in a former matrimonial home located in Northern Ireland. The law of Northern Ireland will be applied to such cases.

3.6 Matrimonial property regimes

In the absence of a contract or marriage settlement, the rights of the husband and wife in each other's movable property (whether acquired before or during the marriage) is determined by the law of the matrimonial domicile at the time of marriage. Where the domiciles of husband and wife coincide, this will be the matrimonial domicile. Where they do not, it will be the law with which the parties and the marriage have their closest connection. The intentions of the parties at the time of marriage are only relevant if they indicate an implied choice of law. The same rule is likely to apply in respect of immovable property.
If there is a marriage contract or settlement, the law of the contract will apply: this is the law of the matrimonial domicile if there are no other indications as to the applicable law.

3.7 Wills and successions

In cases of intestate succession (i.e. where there is no will), the law of the domicile of the testator at the time of death applies to the succession to movable property; the law of the jurisdiction in which the property is located (lex situs) applies to succession to immovable property.
In cases involving wills (testamentary succession), the capacity of the testator to make a will of movable property is determined by the law of the testators' domicile on the date of the will. A legatee will have capacity to receive movables if he has capacity under either the law of his own domicile or under the law of the domicile of the testator. There is no specific authority on the position regarding immovable property, but the lex situs would be the most likely outcome, and probably also determines a legatee's capacity to take a bequest of immovable property.
Pursuant to the Wills Act 1963, and where the testator died on or after the 1st January 1964, a will is formally valid (e.g. correct number of witnesses) if it complies with any of the following laws: the law of the place where the will was executed (i.e. usually where it is signed and witnessed) at the time it was executed; the law of the domicile, habitual residence or nationality of the testator at the time the will was executed; the law of the domicile, habitual residence or nationality of the testator at the time of death. A will will also be formally valid to pass immovable property if it complies with the internal law of the jurisdiction in which the property is situated (thus excluding the application of renvoi despite this concerning immovables).
A will of movable property is materially valid (e.g. limitations on the amount one can leave under a will) if it complies with the law of the domicile of the testator at the time of death; a will of immovable property is materially valid if it complies with the law of the jurisdiction in which the property is located, i.e. whatever system of domestic law the lex situs would apply.
A will is interpreted by the law intended by the testator, which is presumed to be the law of his domicile at the date of the will. This presumption is a prima facie rule which can be displaced by evidence that the testator manifestly contemplated and intended that his will should be contstrued under another system of law. In relation to immovable property, there may be an additional limitation, whereby if the interest that arises from such construction is not permitted or not recognised by the lex situs, the latter law prevails.
The validity of an alleged revocation of a will is determined by the law of the domicile of the testator at the time of the alleged revocation (it should be noted that under English domestic law, if that applies, marriage revokes a will unless it is shown that the will was expressly made in contemplation of marriage). However, where the revocation is alleged to have been achieved by a later will (as opposed to, for example, tearing up the will), whether this second will revokes the earlier one is determined by the laws applicable to the formal validity of the second will. If it is unclear whether a second will revokes an earlier will, the question of construction will be determined by the law intended by the testator, which is presumed to be the law of his domicile at the date of the second will.

3.8 Real property

Property cases are divided into movable and immovable property; whether property is movable or immovable is for the law of the place in which the property is situated.

In the case of immovable property, the applicable law is the law of the place in which the property is situated, and renvoi applies. This applies to all questions regarding the transaction, including capacity, formalities and material validity. It should be noted that there is of course a distinction between the transfer of land or other immovables, and the contract which governs the rights and liabilities of the parties to that transfer – the latter is governed by distinct applicable law rules (in particular, under the Rome I Regulation).

In the case of proprietary (note, as opposed to contractual) questions concerning the transfer of tangible movable property, in general the applicable law is the law of the place in which the property was situated at the time of the event that was alleged to have affected title to it. It is unclear whether renvoi applies in this situation and the overall effect of first instance decisions of the English courts suggest it does not. A title to tangible property acquired in accordance with this general rule will be recognised as valid in England if the movable is then removed from the country in which it was situated at the time of the acquisition of title, unless and until that title is displaced by a new title acquired in accordance with the law of the country to which the property has been moved. A particular exception to the general rule on tangible movable property relates to where the tangible is in transit and its situs is not known to the parties, or temporary, a transfer which is valid under the applicable law of the transfer will be effective in England.

In the case of the assignment of intangible movable property, where the relationship between assignor and assignee is contractual (as in the case of most debts) and the issue relates only to the validity and effect of the assignment itself, the Rome I Regulation applies.

It should be noted that the choice of law rules on assignment and transfer of intangible property are difficult to summarise and no single choice of law rule covers them, mainly because the category of intangibles covers a very wide range of rights, not all of which are contractual in origin. It is suggested that specialist advice should be sought in the case of intangible movable property.

3.9 Insolvency

The UK is a party to Council Regulation 1346/2000 on insolvency proceedings, which sets out the relevant rules in proceedings involving the complete or partial divestment of the debtor and appointment of a liquidator where the debtor’s main interests are in an EU Member State (other than Denmark). If the Northern Ireland High Court has jurisdiction (which will be the case if the debtor’s main interests were centred in Northern Ireland, presumed to be the place of the registered office), Northern Irish law will be applied.

In cases falling outside of Regulation 1346/2000, the law of Northern Ireland will be applied if the Court in Northern Ireland has jurisdiction (which will be the case if the company is registered in Northern Ireland or if there are persons in Northern Ireland who would benefit from the winding up and there are no good reasons to decline jurisdiction).

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