

**THE LAW COMMISSION
AND
THE SCOTTISH LAW COMMISSION**

**PRIVATE INTERNATIONAL LAW REPORT ON
THE CHOICE OF LAW RULES IN THE EEC
DRAFT NON-LIFE INSURANCE SERVICES**

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PRIVATE INTERNATIONAL LAW

REPORT ON

THE CHOICE OF LAW RULES IN THE E.E.C.

DRAFT NON-LIFE INSURANCE SERVICES

DIRECTIVE

BY

A JOINT WORKING GROUP OF THE TWO
LAW COMMISSIONS

PRESS RELEASE

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If you take out insurance in England or Scotland to cover a cottage in France, it will have to be decided whether the contract and any claim are governed by English or Scots law (as the case may be) or by French law. The problem of deciding which is the appropriate system of law to apply arises in all insurance contracts, indeed, in all contracts containing an international element. This question of the choice of the law to be applied is being considered by the E.E.C. both in the specialised field of insurance contracts and generally. In a Report published today a Joint Working Group of the Law Commission and the Scottish Law Commission examines a draft E.E.C. directive which deals with some of these choice of law problems in the field of insurance law. This draft directive, the Non-Life Insurance Services Directive, is still in the throes of detailed negotiation. Its general effect, if implemented in its present form, would be to enable United Kingdom insurers to sell insurance, other than life insurance, anywhere in the E.E.C. direct from this country without having to establish offices in the other countries of the E.E.C. The draft directive contains detailed rules for deciding, in cases like the one of the French holiday cottage, which law is to be applied to insurance contracts.

The Joint Working Group has also been working on another E.E.C. document, namely, the preliminary draft E.E.C. Convention on the Law Applicable to Contractual Obligations. Unlike the directive, which is limited to some types of insurance contracts, the draft Convention lays down choice of law rules for contracts generally. It is against the background of this draft Convention that the Report examines the draft directive. The choice of law rules in the draft Convention are similar to our present law; either the contract is governed by the legal system chosen by the parties or, in the absence of choice, the law of the country with which the contract is most closely connected applies. Special provision is made for certain consumer contracts.

The Report, which has been produced after consultation with the insurance industry and other professional and commercial interests, makes a number of major criticisms of the detailed rules of the draft directive and of their inter-relation with the draft Convention:

- (1) The directive removes from the scope of the general rules of the Obligations Convention certain non-life insurance contracts relating to insurance risks situated within the E.E.C.

The Group believes that the Community should have a single set of choice of law rules, not only for all insurance contracts, but for all kinds of contracts. Contracts of insurance are so often ancillary to ordinary commercial contracts that it is highly desirable that the rules determining the law applicable to both types of contract should be the same. To have different sets of rules for different kinds of contracts can only lead to unnecessary complexity and confusion.

- (2) Our law has always permitted the parties to an insurance contract to choose the system of law which is to govern their contract and the same is true of the rules of the draft Obligations Convention. The Group believes that the parties should retain this freedom of choice and is critical of the significant limitations on freedom of choice which the draft directive seeks to introduce.
- (3) The scheme of the draft directive is such that the determination of the law which is to govern the contract depends upon the type of risk covered by the contract. The Report makes two major criticisms of this aspect of the draft directive. First, it criticises the rules which define the classes themselves as being complex, confusing and commercially unrealistic. Secondly, a major factor in determining the applicable law is the place where the risk is situated. The Group makes detailed criticisms both of the definition of this concept in the draft directive and of its suitability as a criterion by which to determine the law to be applied. The Group prefers the approach of the Obligations Convention, which is to apply the law of the country with which the contract is most closely connected.
- (4) A number of technical criticisms of the drafting of the directive are made in the Report; one of the most serious being that in the view of the Group the intended scope of the draft directive is far from clear, i.e., exactly which contracts of insurance, made by what kinds of insurers, are intended to be subject to the rules in the directive.

The Report's overall conclusion is that the rules in the draft directive for determining the law to govern those contracts of insurance which fall within its scope are thoroughly unsatisfactory. They are complicated in themselves and, in conjunction with the rules in the Convention, can lead only to confusion. The Report suggests that choice of law in all insurance contracts should be governed by the rules laid down in the Obligations Convention.

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