

E U Succession Regulation: A Guide For Clients

Which country's law will govern your estate when you die?

If you own a property in the EU or have other connections there, then the answer to that question may have changed on 17 August 2015 when the EU Succession Regulation (also known as Brussels IV) came into force. It is important to review your will and estate planning in the light of this major change in succession law.

What does the Regulation do?

If you have connections with more than one country, you need to know which country's law will govern who inherits your estate when you die. This is important because the laws of many countries in continental Europe (and some further afield) provide that certain shares in your estate are reserved for close family members. This is known as forced heirship.

For example, under English law, you can usually leave your property to whoever you want in your will, but under French law, forced heirship provisions may apply: if you leave both a surviving spouse and children, there are restrictions on how much of your estate you are allowed to leave to your spouse. If a person dies with connections to both England and France, to which assets will English or French law apply? Each country has its own rules to decide which law applies (known as conflict of law rules), but the interaction of these rules is often complicated and unclear, making it uncertain who will inherit your estate.

The Regulation aims to reduce this uncertainty by introducing common conflict of laws rules for the EU member states to which it applies.

Does the Regulation affect me?

The UK has in fact opted out of the Regulation, but the Regulation still affects the way that UK conflict of laws rules interact with the rules of EU member states where it does apply.

In summary, the Regulation affects you if both of the following apply:

- (1) You have connections with more than one country (for example, you have a property abroad or you are a national of one country but live in another), and
- (2) At least one of the countries concerned is an EU member state where the Regulation applies; that is, any member state except the UK, Ireland or Denmark.

The Regulation applies when someone dies on or after 17 August 2015, but may change the effect of wills or other estate planning put in place before that date.

Which country's law applies to my Estate under the Regulation?

Because the UK has opted out of the Regulation, the default position for UK nationals is that the existing conflict of laws rules still apply. This may not have the effect you want. Under English conflict of law rules, for example, succession to land ("immovable property") abroad is governed by

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the law of the country where it is located, and the succession to any other assets is governed by the law of the country where the deceased was domiciled at his death.

The default position under the Regulation (in its application to any UK national) is that their property situated in any EU Regulation State, i.e. outside the UK, Ireland and Denmark, will pass in accordance with the law of the EU state in which they are habitually resident. But of course if they are resident in England, the law here says that the succession to land is governed by the country where it is situated. It is to avoid such problems that the Regulation allows people who own property in any Regulation State to elect in their will that the law of their nationality should apply to the succession to all of their relevant EU property.

For example, a person with UK residence and nationality who owns holiday homes in France and Italy (which also has forced heirship rules) can elect in their will for UK law to apply to the entirety of their estate. Such an election then overrides any provision to the contrary under either French or Italian law.

Do I need to change my will?

If the Regulation affects you, we strongly recommend that you review your will (or make a will if you don't have one) to ensure that your estate will pass to your chosen beneficiaries in the most tax-efficient way and to minimise the risk of costly disputes.

It is particularly important to be aware that your existing will may be treated as making a choice of law, even if it does not mention this. This may mean that your will does not have the effect that you expected.

We can advise on wills and other estate planning tailored to your specific circumstances, taking into account your residence, domicile and nationality status as well as any changes that you expect in the future. For more details, please contact Tessa Manisty or any member of our private client team - our e-mail addresses are in the section "our people" or call 0207 925 2244 (if calling from abroad, +44 207 925 2244).

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