

EU Succession Regulation

The EU Succession Regulation could affect what happens to your estate after you die if you have a connection with any of the EU member states listed at the end of this help guide.

If you have a connection with one of these states, or you expect to have one in future, it is important to be aware of what the EU Succession Regulation could mean for you. If the Regulation does affect you, it may mean making a new Will, or changing your existing Will (including any foreign Wills) to ensure that your intentions are carried out after you are gone.

Does the Regulation affect me?

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).
2. At least one of those countries is an EU member state in which the Regulation applies (that is, any member state except for the UK, Ireland or Denmark).

Will Brexit change this?

Although a lot of uncertainty surrounds Brexit, the information in this help guide is still relevant and will remain so even after the UK leaves the EU. This is because the UK has never been one of the countries in which this Regulation applies - whether it affects you is dependent upon having a connection with one of the relevant EU member states (in addition to a connection with any other country, such as the UK).

Example 1: Who is affected by the Regulation?

Stephen and Mary are British and live in England. They have a holiday cottage in Brittany. They are affected by the Regulation.

David is British and lives in Scotland. He works part of each year in Ireland and the US. David isn't affected by the Regulation.

Pierre is French and lives in France. His employer wants to relocate him to the UK. Pierre isn't affected by the Regulation at the moment, but will be affected when he comes to live in the UK.

Andrei is Russian and lives in France. He also has houses in Moscow and London. He is affected by the Regulation.

What does the Regulation do?

The Regulation concerns which country's laws will govern the question of inheritance when you die. You need to know which laws will take effect in order to properly plan passing your assets on to your loved ones. Different countries' legal systems have different ways of handling succession.

For example, many countries provide that certain shares in your estate are reserved for close family members (this is sometimes called 'forced heirship'). Under English law, however, you can usually leave your property to whoever you want in your Will.

To complicate matters further, different countries have their own rules to decide which legal system applies in case of conflicts (known as conflict of laws rules). The interaction of these rules is often complicated and unclear, making it uncertain who will inherit your estate.

The Regulation operates to reduce this uncertainty by introducing common conflict of laws rules for the EU member states to which it applies. It was introduced in 2015 and applies to deaths on or after 17 August 2015. However, its operation may also change the effect of Wills and other means of estate planning that have been put in place before that date.

Although the Regulation does not directly apply in the UK, it affects the way that conflict of laws rules in England and Wales, Scotland and Northern Ireland interact with the rules of the applicable EU member states.

Which country's law will apply to my estate under the Regulation?

In countries where the Regulation applies, the default position is that the law of the country where you are habitually resident at the time of your death will govern the inheritance of your estate as a whole.

However, this default position is overridden if:

- You were manifestly more closely connected with another country when you died (for example, because you had only just moved out of it).
- You choose to apply the law of your nationality instead. You can make this choice in a Will or codicil. If you have already made a Will in accordance with the law of your nationality, you may be treated as having chosen to apply that law even if your Will doesn't mention this.

The UK has several jurisdictions where different legal systems operate (such as England and Wales, Scotland and Northern Ireland). If you are a UK national, you can choose to apply the law of the jurisdiction within the UK with which you are most closely connected.

The same applies to other countries with more than one legal jurisdiction (such as the US, Canada, Australia, and Switzerland), unless the country concerned has its own rules about this.

Countries where the Regulation does not apply will continue to use their own conflict of laws rules. Under the English rules, succession to a person's immovable property (broadly land and buildings) is governed by the law of the country where it is located.

Succession to a person's movable property (everything else) is governed by the law of the country where they are domiciled when they die. (Domicile is another complicated area of law but, in general, you are domiciled in the country that you consider to be your permanent home, even if you do not live there.)

What are the advantages of making a choice of law in my Will?

For many people, choosing to apply the law of their nationality will ensure that their estate is governed by the law with which they are most familiar.

Making a choice of law in your Will, also reduces uncertainty if any of the following apply to you:

- You are unsure where you are habitually resident or whether you are manifestly more closely connected with another country.
- The Regulation does not apply in the country of your habitual residence, in which case that country's conflict of laws rules may lead to a different law applying.
- It is unclear whether a Will you have already made may be treated as making a choice of law.

The examples of common situations in this briefing note illustrate how making a choice may affect your estate. However, every case is different, and you should obtain advice about the potential consequences of making a choice in your particular circumstances and whether any existing Wills may be treated as making a choice of law.

What other effects does the Regulation have?

The Regulation does not only affect who receives your estate when you die. It may also affect:

Who administers your estate?

In England, the executors named in your Will (or your closest family members, if you don't have a Will) collect in your assets, pay your debts and distribute the balance to your beneficiaries. In most EU countries, the beneficiaries themselves

do this. If English law applies under the Regulation, the English system will be used, but this may cause confusion in countries who are not used to it.

How your estate is taxed.

The Regulation does not change the tax law of any country. However, UK inheritance tax, and similar taxes abroad, largely depend on who inherits your estate. If the Regulation changes who receives your estate, this is likely to have a knock-on effect on how your estate is taxed.

Who can make claims against your estate?

If foreign forced heirship rules apply, the people who benefit under these rules may claim their reserved shares if your Will attempts to override them. Alternatively, if English law applies, claims against your estate by spouses and civil partners (including ex-ones), cohabitants, children and dependants might be possible under the Inheritance (Provision for Family and Dependants) Act 1975. Our separate help guide on ['Excluding Someone From Your Will'](#) has more information on this.

Which court decides any disputes about your estate.

Each country also has rules surrounding the legal disputes its courts can decide. If you die at a time when you were habitually resident in a country where the Regulation applies, the default position is that the courts of that country will decide any disputes concerning your estate. Choosing to apply the law of your nationality can allow the courts of your nation to decide a dispute instead.

It is important to take all these factors into account when making a Will or carrying out other estate planning, such as making gifts or creating trusts during your lifetime.

Examples of common situations:

Example 2: UK national resident in UK

Stephen and Mary are British and live in England. They are domiciled in England and are most closely connected to England in the UK. They want to know how the Regulation affects their holiday cottage in Brittany.

France will apply the rules in the Regulation. If Stephen and Mary do nothing, the interaction between the Regulation and English conflict of laws rules is likely to result in the cottage being governed by French law because it is immovable property located in France. Therefore, it is likely that French forced heirship rules will apply to the cottage (as they did before the Regulation came into force)

However, if Stephen and Mary include a choice of English law in their Wills, France will apply English law to the property, and they can leave it to whoever they want.

English law will apply to their other assets (including the contents of the cottage in Brittany), whether they make a choice of law.

Example 3: UK national resident abroad

Janet and Martin are British and live in Cyprus. They are domiciled there but are most closely connected to England in the UK. They own houses in Cyprus and Devon. They want to know how the Regulation affects these properties.

Cyprus will apply the rules in the Regulation. If Janet and Martin do nothing, Cyprus will apply Cypriot law, including its forced heirship rules, to both properties. However, England will apply English law to the house in Devon because it is immovable property located in England. This will lead to uncertainty and potential disputes if Janet and Martin want to override Cypriot forced heirship rules for the property in Devon.

Janet and Martin can remove this uncertainty by including a choice of English law in their Wills. Cyprus will then apply English law to their estates as a whole, including both houses.

Making this choice will also mean that English law will apply to Janet and Martin's other assets (that is, their movable property in both countries) instead of Cypriot law.

Example 4: foreign national resident in UK

Pierre is French and domiciled in France. He moved from Paris to work in London for a few years. He owns a flat in London but still spends most weekends and holidays at his apartment in Paris. He wants to know how the Regulation affects these properties.

France will apply the rules in the Regulation. It is uncertain whether Pierre is habitually resident in England or France. If Pierre does nothing and is habitually resident in England when he dies, France will apply English law to the London flat but the interaction between the Regulation and English conflict of laws rules is likely to result in the Paris apartment being governed by French law because it is immovable property located in France.

If Pierre is habitually resident in France when he dies, France will apply French law to both properties but England will apply English law to the London flat, which will lead to uncertainty and potential disputes if Pierre wants to override the French forced heirship provisions. Similarly, if Pierre includes a choice of French law in his Will, France will apply French law to his whole estate but England will still apply English law to the London flat.

If Pierre wants English law to apply to the London flat, he should avoid making a choice of French law in his Will and try to ensure that he is habitually resident in England. If he wants French law to apply, he can make a Will that has the same effect as the French forced heirship provisions. (England will recognise this, even though it will not apply French law as such.)

French law will apply to Pierre's other assets (that is, his movable property in both countries) whether or not he makes a choice of law.

Example 5: foreign national resident abroad

Andrei is Russian and lives in a house that he owns in the south of France, but remains domiciled in Russia. He also owns houses in Moscow and London. He wants to know how the Regulation affects his properties.

France will apply the rules in the Regulation. As Andrei is habitually resident in France, France will apply French law to the whole of Andrei's estate unless Andrei includes a choice of Russian law in his Will, in which case France will apply Russian law to his whole estate.

England will apply English law to Andrei's house in London, French law to his house in France, and Russian law to his house in Moscow and his other assets (that is, his movable property in all three countries). England will take into account French and Russian conflict of laws rules.

Therefore, the Regulation will determine which law England applies to the house in France, because England is likely to apply the law that France would apply. Similarly, if Russian conflict of laws rules apply the law of a different country to Andrei's house in Moscow and his movable property, England is likely to do the same. Andrei needs advice on Russian law to complete the picture.

Countries in which the Regulation applies

The Regulation applies in the following EU member states:

- Austria
- Belgium
- Bulgaria
- Croatia
- Cyprus
- The Czech Republic
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Italy
- Latvia
- Lithuania
- Luxembourg
- Malta
- The Netherlands
- Poland
- Portugal
- Romania
- Slovakia
- Slovenia
- Spain
- Sweden

The Regulation **does not** apply in Denmark, Ireland, or the UK.

The following countries are candidates to join the EU in future: Albania, Montenegro, Serbia, the former Yugoslav Republic of Macedonia, and Turkey. We expect the Regulation to apply in these countries if they do join.

What should I do now?

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 explicitly. In rare cases, this may mean that your

Will does not have the effect that you want or expect.

How Roche Legal can help

Dealing with legal issues can be confusing and stressful. We understand this, and we're always on hand to untangle jargon and offer support.

If you need advice on any of the issues raised in this help guide, please don't hesitate to [get in touch](#). Roche Legal is an award-winning legal practice, offering practical and caring advice.

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