



New European Succession Laws: or, why those with EU assets should review their English Wills

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It is often said that the reason that France and other continental countries have so many small farmers is due to their ‘forced heirship’ laws, introduced by Napoleon. We typically think of adjoining, tiny fields farmed by cousins, with all the family feuds that accompany such geographical and familial proximity.

Napoleon codified French and other European laws and created rigid legal structures which endure this day. Amongst these are the European ‘forced heirship’ rules whereby certain fixed portions of a deceased person’s estate must go to designated heirs. Contrast this with the English right of testamentary freedom and you will see one of many legal examples of ‘vive la difference’.

But is all that set to change?

New EU cross-border inheritance laws are now in place, allowing individuals to opt out of the forced heirship rules that apply in a number of EU countries. Individuals may opt either for the law of the country of their nationality or last habitual residence to apply to any assets across Europe.

The default rules will remain that the law of the country where someone is a habitual resident when they die is the law that governs succession to their estate as a whole. The new rules are intended to ease cross-border succession.

Even though the UK (and Ireland and Denmark) opted out of the new rules, there are implications for Brits with assets in other EU countries. If someone has an English Will, they will automatically have chosen English law. As well as removing EU forced heirship rules governing the succession of EU assets owned by a British national (a good thing), the changes mean, for instance, that the right for disappointed persons to claim against their overseas assets [under the Inheritance (Provision for Family and Dependents) Act 1975] might well now arise (a bad thing).

Those owning assets in other EU countries are well advised to take specialist advice on whether to alter their existing English Wills in the light of these new rules. In doing so, they can both seek to avoid potential conflicts and to ensure that what they own goes to whom they wish.

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If you require advice on this matter please contact Miranda on 01328 710210. If you require advice on any other legal matter please telephone our Wells office on 01328 710210 or email law@hayes-storr.com.

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