



Ministry of
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Sir Roger Gale MP
House of Commons
London
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Our ref: MC327410

10 July 2012

Dear Sir Roger,

Oliver Rowland – Cross-Border Inheritance

Thank you for your letter of 1 May to David Lidington on behalf of Oliver Rowland from the Connexion newspaper. I have not seen a copy of the e-mail to which you refer but I have seen a transcript of a radio interview on Sound of Brittany with Oliver about inheritance laws and the proposed EU Regulation on Succession and Wills. I hope that I have correctly understood his concerns but if not please do not hesitate to write again. I am replying as I support the Secretary of State on EU and international matters.

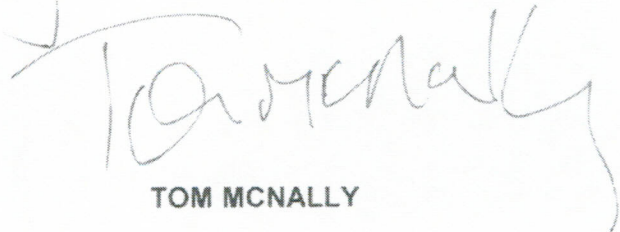
You ask about the effect of the current law in England and Wales in relation to an individual, domiciled in the United Kingdom, who owns property in France and who wishes to arrange his or her succession on death in such a way that those entitled to inherit that property should not be limited to those family members who are entitled to do so under French succession law. As you rightly point out, there is no such limitation under English succession law where an individual has much greater testamentary freedom and is entitled in principle to leave his property to whoever he or she wishes. This freedom is only subject to a requirement to make adequate provision under the Inheritance (Provision for Family and Dependents) Act 1975.

As you also say, there may well be circumstances, particularly in relation to immovable property in France, where the effect of English law will be to apply French succession law notwithstanding a testator's desire to avoid the limitations on his or her testamentary freedom. That situation will, however, shortly change when the Council of Ministers adopts the Regulation on Succession and Wills. For reasons which I shall explain the UK has decided not to participate in this Regulation; however this will not prevent that instrument having a beneficial impact on the situation with which you are concerned.

The Regulation will benefit two groups of individuals with UK nationality who own property in France. The first consists of those habitually resident in the UK. Under the Regulation's general rule on choice of law these individuals will have English succession law (or Scots or Northern Irish succession law) applied to their French property. The second group consists of those habitually resident in France. As an exception to the general rule on choice of law, these individuals will be able to select one of the laws of succession which applies within the UK; this selection will reflect their entitlement as UK nationals. For all these individuals these outcomes will result in them not being subject to the limitations on testamentary freedom that are currently imposed by French succession law. In most cases it is anticipated that the Regulation's connecting factor of habitual residence will produce the same outcomes as the English law concept of domicile.

You may be interested to know the main reasons behind the Government's decision that the UK should not participate in this Regulation. The first is that the Regulation would, to an unacceptable extent, result in the application within the UK of an objectionable feature of the succession laws of many other Member States, namely "clawback" which enables family members, who claim that they have not received their full legal entitlement on succession, to make claims on property gifted to third parties by the deceased during his lifetime. The prospect of the legal uncertainty which this would have created, particularly for charities, would not, in the Government's view, have been acceptable within the UK. The second reason was that, where a foreign law of succession would have been applicable in relation to property located within the UK that would, in most cases, have excluded the application of our well established and satisfactory administrative procedures on death. The exclusion of these efficient administrative arrangements would have created, in various ways, confusion and uncertainty, particularly for creditors of the deceased who might well have been forced to recover money owing to them from foreign heirs under legal systems with which they were not familiar.

I enclose a copy of this letter for you to send to Mr Rowland if you wish.

Yours Sincerely,

TOM MCNALLY

