



LAW COMMISSION

1st Floor, Tower,
52 Queen Anne's Gate
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ENGLAND

For the attention of Mr. Damien BRUNEAU

Venelles, 10 November 2017

Dear Mr. BRUNEAU,

ENRWA (the European Network of Registers of Wills Association) has taken note of the consultation carried out by the Law Commission relating to a possible reform of the wills law in England and Wales. As an association making it possible to locate wills in the different European countries, ENRWA is interested in the discussions concerning the possible establishment of a register of wills, as referred to in question no. 29 of the consultation. There are, of course, numerous European citizens living in England and Wales, just as there are numerous English and Welsh nationals living in continental Europe. Since 2002, ENRWA has created an IT platform linking the different national registers of wills. To date, 15 registers have been interconnected in this way. More than 2,500 will searches have already been made in 2017, and around 230 wills have been located.

As a preliminary point, we believe it is important to clarify that the registers linked by the ENRWA platform only record their reference details, and not their content. Depending on the State, the registration of the provisions of wills in the national register may be mandatory or optional, and ENRWA conforms to the specificities of each national register. Of course, the advantage of registering will references is that they can be located. That is why the public authorities generally recommend that wills are entered in the register and preserved by a network of reliable holders. As the custodians of wills, these professionals can guarantee that the last wills are kept in a safe place. It is of course important that the will is maintained with the institution or the law professional in charge of this safekeeping. Such a system is not incompatible with the existence of holographic wills, and almost all European States allow testators to keep such documents at their home or in a safe-deposit box, etc. In this case, no registration can be made in a register.

A registration system for will references has a number of advantages for testators and their families. Firstly, it makes it possible to keep the existence of the will secret. It also protects the legal security of the will, by preventing the destruction of the document after the death of the testator. The document may then be located swiftly, with the settlement of the succession usually beginning with a search of the register, which avoids having to reopen the succession if a will is found late on in the process. This also helps strengthen the legal certainty. With modifications, withdrawals and revocations of the will also being registered, it is entirely possible for the testator to change his mind on several occasions throughout his life. The registration of wills thus enhances legal certainty.

ARERT/ ENRWA

AISBL

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In ENRWA's opinion, it is important that it is the State, in the broad sense, that organises this registration system and appoints a register manager, whether this is a public authority or a body assigned by that authority. The creation of a national register would make it possible to satisfy the conditions imposed by the Basel Convention of 16 May 1972 on the Establishment of a Scheme of Registration of Wills, of which the United Kingdom is a signatory.

The creation of an official register makes searching for wills much easier for the heirs and anyone responsible for settling the succession. A single search of this register is sufficient and avoids the need for several searches of the different registers provided by private companies. In addition, the establishment of a national register is usually accompanied by a regulation concerning the storing of the will. Indeed, it must be combined with the certainty that the will can be located after the death of the testator. It is therefore essential for the State to monitor the storing of these last wills to ensure that, on the death of the testator, which usually occurs many years later, the will can be located. This guarantees that the wishes of the deceased will be respected.

ENRWA hopes that these clarifications will contribute to your national discussions on the introduction of a national register and will continue to monitor any legislative developments in England and Wales.

Yours sincerely,

Philippe GIRARD
ENRWA President

A handwritten signature in black ink, consisting of a large, stylized 'P' followed by a series of loops and a long horizontal stroke extending to the right.