

The Telegraph

EU to force Britons to publish details of wills and property

A bill being debated in Brussels would force UK citizens to disclose 'reams' of private, financial information on a public register

New legislation planned in Brussels is set to heap fresh costs and paperwork on families' financial planning, as well as leaving their affairs open to unwanted public scrutiny.

A European law is being drafted whose original aim was to prevent corporate money-laundering. The objective, supported by the UK, was to force companies to disclose on a register the money and other assets held inside trusts or equivalent legal arrangements.

But officials in Brussels have widened out the proposals as the bill has evolved, to include trusts. The effect could be to force millions of families to compile elaborate accounts of their assets and financial arrangements including insurance policies, property and bequests made in their wills, for entry into a register. And that register, if legislators get their way, could be made available to any member of the public.

British lawyers and tax experts are baffled by the potential implications. Most are bitterly opposed to the costs and intrusion that could result. The use of trusts or what the EU would define as "legal arrangements" is commonplace in Britain and Ireland, but not elsewhere in Europe. As a result many run-of-the-mill transactions between British individuals, or between individuals and financial institutions, would fall within the net of the law if applied to the UK. Similar transactions in Europe would not be affected, lawyers say.

Richard Frimston, partner at solicitors Russell-Cooke, said: "The European Parliament thinks all trusts are the work of the devil designed to aid tax dodgers. But trusts are an integral part of English law and underpin the most everyday of transactions."

The proposed law is under debate. The draft bill will be subject to a vote on Thursday and, if approved, will go through to the European Parliament, forming the basis of decision-making there. After that it would become a component of the European Commission's anti-money-laundering directive which all member states would have to implement.

David Cameron voiced concern about its implications for private families in a letter to Herman Van Rompuy, President of the European Council, in November. Other politicians such as Mark Field, MP for the City of London and Westminster, are also objecting. Mr. Field has said the proposals "threaten a family's right to keep their affairs confidential".

Trusts, although widely used in the UK, are little understood both here and abroad. This partly explains why the matter has been overlooked outside legal and tax circles. If a strict regime of disclosure were introduced, what would be the implications on our personal finances? A number of experts unraveled the issue for The Telegraph.

Joint property owners

Where property is owned by more than one person, as is the case with millions of married and unmarried couples, the ownership is formed as a trust. Mr. Frimston said: "When you buy in joint names, at the end of the Land Registry transfer document there is an express trust, where the buyers declare the basis of their ownership."

For Mr. Frimston this neatly illustrates the extent to which trusts underpin UK, but not European, financial arrangements. "In the UK being a trustee means you remain liable to HMRC and other authorities," he said. "But in German, France, Italy and Spain the idea is that trusts are about avoiding liability, and that they are somehow dodgy."

Estate planning and wills

Many families of even modest wealth establish trusts to protect their estates from inheritance tax. The effect is to remove some of the individual's assets from their estate so at death they are excluded from tax. When in 2007 it was made easier for married couples to transfer unused allowances between themselves the use of trusts diminished. Subsequent tightening of the rules has also limited their application. But hundreds of thousands remain in force.

There is also the issue of privacy. Tony Mudd, director at wealth manager St James's Place, and a specialist in tax and trusts, said: "There is a misconception that the use of trusts is about avoiding tax. Many people set up trusts because, for example, they do not want the beneficiaries of their will to be known. A will is a public document whereas inside a trust the information is not revealed. It seems perfectly reasonable that people might not want it known that half of their estate was to go to A, and not B, and so on."

Mr. Mudd also raises the potential costs and logistical difficulties in updating the register in which trusts' details are lodged. "Many beneficiaries and other details change over the years," he said. "Who would be responsible for updating the information, and would there be penalties for families who did not?"

Families seeking to protect children or other vulnerable members

Trusts are commonly used to ensure income or assets are set up to provide for vulnerable family members, such as a disabled child. But there are many other, less obvious uses.

Tina Riches, tax expert at accountant and investment manager Smith & Williamson, said: "We see more examples where, say, a parent wants to help a child buy a home but where that child's partner is a potential risk, say, because he or she is self-employed and in debt. So a very simple trust will be established, giving the child what is called 'interest in possession'.

"We can see where this law comes from because, yes, some trusts are large, corporate entities where public interest might be justified. But others are set up for purely private, family reasons."

Life insurance policies

Life insurance is bought for many reasons but is often held in trust, particularly where it is being used to meet a tax bill. Mr. Frimston said: "It makes perfect sense to establish a policy in trust to pay for inheritance tax if, for example, the tax will become due on the owner's death but the family want to keep the home." In such a case the proceeds of the policy would pay the tax with no expense incurred by the surviving family.

Relationships and divorce

Trusts are so embedded in English law that courts increasingly acknowledge them, even where formal paperwork does not exist.

Ms Riches said: "There are growing cases in court where there is no formal trust or deed but where the situation has the nature of a trust and so is treated by courts as a trust."

These instances often applied in divorces where “assets are in the name of one person but the court finds the nature of ownership is akin to a trust”.

Richard Frimston is a partner and head of the private client group at Russell-Cooke.

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