

# Publication of draft bill regulating overseas entities owning land in the UK

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The government is asking for comments on a draft bill that will require overseas entities owning land in the UK, or intending to own land in the UK, to disclose details of their beneficial owners on a public register.

Our recent articles '[Overseas companies owning UK property will have to provide details of their owners](#)' and '[A register of overseas companies owning UK properties](#)' reported on the government's intention to require overseas organisations that own or buy property in the UK to disclose details of their ultimate owners on a public register, and its proposals for how that might be done.

The government's aim is to 'prevent and combat the use of land in the UK by overseas entities for the purposes of laundering money or investing illicit funds by increasing transparency in overseas entities engaged in land ownership in the UK'. The government states that evidence from UK law enforcement and transparency campaigners shows that overseas entities are often used as a vehicle by criminal organisations and corrupt individuals to hide and launder the proceeds of bribery, corruption and organised crime.

As a result, the government has published a draft bill, the Registration of Overseas Entities Bill, for comments, and has raised a number of questions about specific aspects of the proposals. The consultation exercise ends on 17 September. The government has said that it expects that the new requirements will come into effect in 2021.

The original proposals stated that the new rules should also apply to overseas entities that wish to take part in central government procurement exercises. The government has now said that this will be addressed in a separate exercise.

## The proposals

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The draft Registration of Overseas Entities Bill is accompanied by an overview document, which sets out the way in which the register is intended to work, and a research paper entitled 'A register of beneficial owners of overseas companies and other legal entities: potential impacts'. The overview document raises a number of technical, but extremely important, questions on which views are invited (more details of which appear below). It really does look as if this exercise is an example of the old adage 'the devil is in the detail'.

By way of summary, the new requirements will apply to so-called overseas entities. This term is defined widely as 'a body corporate, partnership or other entity that is a legal person governed by the law of a country or territory outside the UK'.

The principal requirement is for an overseas entity to register information about its beneficial owners on the new register, which will be operated by the Registrar of Companies. The intention is that most of the information on the register will be available to

members of the public, although certain personal information (including dates of birth and residential addresses) will not be publicly available.

Once an organisation has registered for the first time, there will be an ongoing obligation to update the information annually, or to confirm that the information does not need to be updated.

Schedule 1 to the Bill sets out the information that an entity must include in the register, and Schedule 2 explains the meaning of beneficial owner. This broadly follows the concept of 'person with significant control' (PSC) in the regime that applies to certain UK companies and limited liability partnerships. Unlike the PSC regime, however, the proposed new legislation for overseas entities also requires details of managing officers (i.e., directors, managers or secretaries) to be included in the register if there are no beneficial owners or if some, or all, of them cannot be identified.

## Consequences of non-compliance

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As anticipated, non-compliance -including failure to update information or delivering misleading or false information -will be offences punishable by a fine or by imprisonment.

More importantly from a practical point of view, failure to register will also prevent the overseas entity being able to register as a proprietor of land in the UK. Different requirements will apply in the three different land registries in England and Wales, Scotland and Northern Ireland, and these are addressed in Schedules 3, 4 and 5 respectively to the Bill by amending the relevant legislation relating to land registration.

The new requirements will also affect overseas entities that are already registered as proprietors of land in the UK when the new regime comes into operation. This will be achieved by restricting the ability of the overseas entities to sell or lease the land, or create a charge over it. Overseas entities that already own land in the UK when the new regime comes into operation will be required to register within 18 months, or dispose of the property before that deadline.

## Consultation questions

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The overview document contains 14 questions within seven different categories, including the following issues:

- Should there be special arrangements for overseas entities that may not have beneficial owners or managing officers?
- Should there be power to exempt particular types of overseas entities from the requirement to register in relation to land transactions? This might include foreign governments or public authorities.
- Should there be special arrangements for those overseas entities that are already required to disclose beneficial ownership information in an equivalent public register in the country of formation? This could well apply to all EU companies by 2020, under the fifth EU anti-money laundering directive, for example and to British Overseas Territories under proposals to establish beneficial ownership registers in those territories.

- What should happen where entities are unable to identify their beneficial owners, such as where bearer shares are still used?
- How should the new requirements apply to particular categories of land dispositions? The aim is to have the policy apply consistently across the UK, subject to the differences in land registration, but this is easier to state than to apply in practice.
- Should there be a saving provision to rescue a third party that has inadvertently entered into a land transaction with an overseas entity that is not correctly registered? There is a concern that land could become unusable in such circumstances.

Responses to this consultation need to be made by 5pm on Monday 17 September 2018.

## Disclaimer

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This document is for informational purposes only and does not constitute legal advice. It is recommended that specific professional advice is sought before acting on any of the information given.