

Ownership of UK land by overseas entities



Mishcon de Reya

It's business. But it's personal.

The Economic Crime (Transparency and Enforcement) Act 2022 requires overseas entities which own or purchase UK property to register details of their beneficial ownership. The aim of the legislation is to identify those individuals who ultimately own or control those overseas entities. The register is maintained at Companies House and is publicly accessible.

The overseas entities register launched at Companies House on 1 August 2022 and the ban on unregistered entities buying and selling land came into force on 5 September 2022. A six-month transitional period for overseas entities that already owned UK land ended on 31 January 2023. This note focuses on the application of the Act in England and Wales only.

Which entities are affected by the Act?

The Act affects non-UK companies, bodies corporate, partnerships or other entities that are defined as a legal person under the law by which they are governed, and which hold a “qualifying estate” in UK land. A “qualifying estate” is a freehold or lease granted for more than seven years.

What is the effect on existing property holdings?

Where a property was acquired by an overseas entity prior to 1 January 1999 and is still held by that entity, the entity is not caught by the Act and is not required to register its beneficial ownership.

Where a property was acquired by an overseas entity on or after 1 January 1999 and was still held by the entity on 28 February 2022, the entity should have applied to be registered on the overseas entities register by 31 January 2023, even if the entity disposed of the property before 1 August 2022. Failing to apply by the end of January 2023 is a criminal offence and is punishable by a fine and/or imprisonment. Overseas entities who have not complied should register now as a matter of urgency to reduce the likelihood of a fine.

The Land Registry has entered a restriction on the titles of properties owned by overseas entities. The restriction prevents any “disposition” by the overseas entity unless that entity has registered its beneficial ownership or an exception applies. These exceptions include dispositions pursuant to statutory obligations or pre-existing contracts, as well as by a bank lender in exercise of a power of sale. A “disposition” for the purposes of this restriction is a transfer, a lease granted for more than seven years or a charge.

What is the effect on dispositions by overseas entities?

Where an overseas entity is selling, letting or charging a UK property, the Land Registry will not register the disposition without proof that the entity has been registered on the overseas entities register.

It is also a criminal offence to enter into such a disposition unless the entity is registered at Companies House. Contracting parties will need to ensure that any overseas entity has complied with the Act and will continue to do so up to completion.

What is the effect on purchases by overseas entities?

Following the purchase of UK land, registration at the Land Registry is necessary to transfer the legal title of the land to the entity. An overseas entity cannot apply to the Land Registry for registration of a purchase without an overseas entity ID.

Obligation to provide information and update the overseas entity register.

An overseas entity must take reasonable steps to identify its registrable beneficial owners and must serve notices to obtain the necessary information on any person it believes should be registered. Failure to comply with information notices and giving false information are criminal offences and punishable by imprisonment.

An overseas entity is under a duty to review and update the information on the register annually. Failure to provide initial information or update information in time is a criminal offence by the entity and each officer of the entity. Fines of up to £2,500 a day can be imposed until the necessary information is provided.

If an entity fails to comply with its updating obligations, then its ability to dispose of the property is suspended until that failure is remedied.

Where an overseas entity ceases to hold a qualifying estate in UK land, it may make an application to be removed from the overseas entities register, but only once the registration of the transfer at the Land Registry has been completed. In the meantime, the overseas entity will need to continue with its updating duty.



Failure to comply with the registration requirements can result in fines and even imprisonment.



Who is a beneficial owner?

Beneficial owners are broadly defined as individuals or other entities which:

- hold (directly or indirectly) more than 25% of the shares or voting rights; or
- can appoint or remove a majority of the board of directors; or
- can exercise significant influence or control over the entity; or
- have significant influence or control over a trust or partnership, the trustees or partners of which meet one of the tests above.

There are detailed provisions in the Act about identifying those beneficial owners which need to be registered.

Until 4 March 2024, the Act did not require the ultimate beneficial owner of a *property* to be disclosed, but only the beneficial owner of the *overseas entity* which owns the property.

Following widespread criticism of this lacuna for trust arrangements, the Economic Crime and Corporate Transparency Act 2023 (the "2023 Act") expanded the definition of "beneficial owner" to include someone for whom an overseas entity holds the property as nominee. This means that details of ultimate beneficial owners *of the property* now need to be publicly disclosed to Companies House if they meet the beneficial owner criteria mentioned above.

Property investors who were temporarily able to use this loophole to remain off the public register will no longer be able to do so.

Where the beneficial owner of the entity is itself a trustee, certain information about the trust must be provided. Until 31 August 2025, information regarding beneficiaries and settlors of such a trust will not be made public. After that date, anyone will be able to apply to Companies House to request access to that trust information. There is power for Companies House to grant protection to beneficiaries and settlors, preventing their information from being disclosed, but only on certain prescribed grounds. Anyone eligible for protection can apply in advance of 31 August.

New retroactive requirement

The 2023 Act also introduces a retroactive requirement to provide details of changes in beneficial ownership (including information regarding trusts) which occurred between 28 February 2022 and 31 January 2023. Any restructuring undertaken during that period is now likely to be caught by this new requirement.

Where an entity's update statement is due between 31 July 2025 and 31 October 2025, there is a choice between providing this historical information in that update, or waiting until the 2026 update. Where an entity's update statement falls due on or after 31 October 2025, the historical information must be filed in that update.

What information is required about the beneficial owners?

The information required by the Act includes: name; address / registered office; address for service; date of birth (for individuals); legal form / governing jurisdiction and any public registration details (for entities); date on which they became a beneficial owner; basis on which they are a registrable beneficial owner; whether they are a trustee; and whether they are subject to sanctions.

Although the register is public, access to information about individuals is limited and excludes details such as the day of their birth (month and year is still available) and their residential address.

Verification of beneficial owner information

The information submitted to Companies House about the entity's beneficial owners must be verified by a relevant person who is subject to the UK Money Laundering Regulations (e.g. accountants, trust service providers or lawyers). This verification must be based on information obtained from a reliable and independent source.

Other registration considerations.

The new overseas entity register is another layer in the UK's anti-money laundering armoury. UK companies are already under separate but similar obligations to identify and record the people who own or control them on a "register of people with significant control".

Where UK land is held under a trust structure (whether the trust is UK resident or not), it is also likely that details of the trust are registrable with the Trust Registration Service. It is therefore possible that if the overseas entity is holding land as trustee, two registrations will be required: the overseas entity will need to register at Companies House and details of the trust will need to be added to the trusts register. Unlike the overseas entities register, information on the trust register is not publicly available.

Contacts

Please get in touch with us if you have any queries about how the Act may affect your property holdings.