

# Ownership of UK land by overseas entities

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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 will be maintained at Companies House and will be publicly accessible.

Once the Act comes into force (which is rumoured to be Summer 2022) there will be a six-month transitional period during which affected entities must register information in respect of their existing property holdings. This note focuses on the application of the Act in England and Wales only.

#### Which entities are affected by the Act?

Non-UK 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 land are caught by the Act. A "qualifying estate" is a freehold or lease granted for more than 7 years.

Any affected entity must take reasonable steps to identify its beneficial owners and submit relevant information to the overseas entities register.

#### 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.

The Act contains detailed provisions about identifying those beneficial owners which need to be registered.

While the overseas entities register will show the registrable beneficial owners of the overseas entity which holds the property, it will not show whether the overseas entity holds the property as trustee for someone else.

#### 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
- Whether they are subject to sanctions

Although the register is public, access to information about individuals will be limited and will exclude details such as the day of their birth (month and year will still be available) and their residential address. Where a beneficial owner is a trustee, certain information about the trust needs to be provided to Companies House, although that information will not be made public.



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

#### 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 will not be caught by the Act and will not be required to register its beneficial ownership.

Where a property was acquired by an overseas entity on or after 1 January 1999 and is still held by the entity on 28 February 2022, the entity must provide the relevant details to the overseas entities register within the six-month transitional period even if the entity disposes of the property before the Act comes into force.

HM Land Registry will enter a restriction on the title to properties owned by overseas entities. The restriction will prevent 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 7 years or a charge.

#### What is the effect on dispositions by overseas entities?

Once the Act is in force, where an overseas entity is selling, letting or charging a UK property, HM Land Registry will not register the disposition without proof that the entity has been registered on the overseas entities register. Contracting parties will need to ensure that any overseas entity has complied with the Act and will continue to do so up to completion.

#### There are also important transitional provisions:

Overseas entities registering on the overseas entities register during the 6-month transitional period (for example because they will continue to hold other UK land) must provide details of any disposals made since 28 February 2022 when applying for registration. If the overseas entity no longer holds any UK land once the new register is created, the entity must still lodge certain information about any post-28 February 2022 dispositions at Companies House, including details of beneficial owners, by reference to the position immediately before the disposition was made.

#### What is the effect on purchases by overseas entities?

Following the purchase of UK land, registration at HM Land Registry is necessary to transfer the legal title of the land to the entity. An overseas entity will not be able to apply to HM Land Registry for registration of a purchase without an overseas entity register ID. For purchases made before the Act comes into force, the entity will be required to register within the transitional period.

#### 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.

#### Other registration considerations.

The new overseas entity register will be 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.



Relevant disposals by overseas entities made since 28 February 2022 will trigger a requirement to submit information to the overseas entities register once the Act comes into force.