

REGISTER OF OVERSEAS ENTITIES LAUNCHED ON 1 AUGUST 2022: IMPACT ON LAND TRANSACTIONS

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BRIEFLY, WHAT DO REAL UK ESTATE OWNERS NEED TO KNOW?

- The new [Register of Overseas Entities \(OE Register\)](#) introduced by the [Economic Crime \(Transparency and Enforcement\) Act 2022 \(Act\)](#) went **live on 1 August 2022**.
- The OE Register is a public register maintained by Companies House revealing the ultimate beneficial owners (which fit certain criteria) of Overseas Entities (**OEs**) holding UK property to ensure that companies, or other structures, cannot be used to disguise ownership.
- OEs which already own UK property (subject to a few exclusions) have six months to get themselves (and details of their registrable beneficial owners) registered on the OE Register.
- OEs wanting to purchase UK property will likely need to register sooner to be able to complete transactions.
- Restrictions will go on most England and Wales (**E&W**) land titles owned by OEs preventing certain dispositions without registration on the OE Register.
- There are criminal penalties for non-compliance.
- UK entities entering into land transactions with OEs will need to ascertain whether the OE should be registered on the OE Register prior to the transaction proceeding.
- Although the **Act applies throughout the UK, this note mainly considers the position in E&W**. The Act applies similar provisions across Scotland and Northern Ireland but there are some minor differences.
- **The Act is complex, and this note is only a simplified guide to some of the most important issues. It will be crucial to obtain specific legal advice in relation to any UK land transaction involving an OE.**

A LONGER READ...

WHAT IS AN OVERSEAS ENTITY (OE)?

For the purposes of the Act, an OE means a legal entity that is governed by the law of a country outside the UK (which includes the Channel Islands, the Isle of Man and the Republic of Ireland). It captures non-UK incorporated companies, LLPs, non-UK partnerships with a legal personality (e.g. an overseas limited liability partnership) or any other entity that is a legal person under the law by which it is governed. Non-UK trusts that hold UK land directly are not themselves OEs because they do not have a separate legal personality. However, where a registrable beneficial owner of an OE is a trustee, then certain information about the trust and the trustee will need to be provided to Companies House. The information about the trust will not be made public.

WHO NEEDS TO REGISTER ON THE OE REGISTER AND BY WHEN?

- **Any OE that is or will be registered at HM Land Registry (HMLR) as owner of a freehold or lease over 7 years from the date of grant (Qualifying Estate)** pursuant to an application made to HMLR on or after 1 January 1999, but prior to 1 August 2022.

Failure to register (or have an application pending) on the OE Register by 31 Jan 2023, and thereafter comply with the annual updating duty when it comes into force, will be a criminal offence for the OE and its officers. Penalties include fines (of up to £2,500 per day) and custodial sentences (of up to 5 years in prison) or both.
- **OEs wishing to register themselves at HMLR as owner of a Qualifying Estate on or after 5 September 2022** will not be able to apply to HMLR unless the OE has already registered on the OE Register. **Urgent action will be required to obtain registration for OEs already contractually obliged to acquire Qualifying Estates.**
- **Any OE that intends:**
 - transferring;
 - granting a lease over 7 years from the date of grant; or
 - charging,a Qualifying Estate which was registered at HMLR pursuant to an application made on or after 1 January 1999 (**Relevant Dispositions**). The date by which the OE needs to register will depend on the date of application to HMLR to register the Qualifying Estate and the date of the Relevant Disposition.

- **Any OE** (whether or not they are under an obligation to substantively register) **should keep track of Relevant Dispositions made since 28 February 2022 and any made up to 31 January 2023** (or their date of application to Companies House for registration on the OE Register, if earlier). **Details of such dispositions (and the OE's registrable beneficial owners at the time of such dispositions) must be submitted to Companies House, even if the OE no longer holds any UK property by 31 January 2023.**

This means an OE cannot escape revealing its "beneficial owners" by disposing of all of its UK property between now and 31 January 2023.

There will be a separate criminal offence if information about such dispositions from and including 28 February 2022 is not provided.

WHAT ARE REGISTRABLE BENEFICIAL OWNERS?

Broadly speaking, a registrable beneficial owner is a person who directly or indirectly holds over 25% of the shares or voting rights of the OE, directly or indirectly holds the right to appoint or remove a majority of the board of directors of the entity or who otherwise has the right to exercise or actually exercise significant influence and control over it (including, for example, through a trust). The UK already holds beneficial ownership information in relation to **UK companies and LLPs** via the **People with Significant Control Register (PSC Regime)**. The definition of beneficial owner under the Act closely follows, but is not identical to, the UK's PSC Regime.

Where the registrable beneficial owner is a trustee of a trust (which includes any arrangements outside the UK that are of a similar character to a trust) the information provided as part of the registration on the OE Register must include details of the identity of each beneficiary, or grantor of the trust.

WHAT INFORMATION ABOUT THE OE MUST BE PROVIDED?

Please see the [Appendix](#) for details.

WHAT IS THE IMPACT ON E&W LAND TRANSACTIONS?

- **From and including 5 September 2022, no application can be made to HMLR to register a Qualifying Estate in the name of an OE unless it has registered on the OE Register** and (once in force) has complied with its duty to update the relevant information. A registered OE ID number must be submitted to HMLR.
HMLR will cancel applications from OEs made on or after 5 September 2022 without an OE ID number and will check the OE Register to confirm compliance with the updating duty (once in force).
- **On or shortly after 5 September 2022, HMLR must place a restriction on Qualifying Estate titles** where the application to register the property at HMLR was made on or after 1 January 1999 (**OE Restriction**).
- The OE Restriction will **prohibit Relevant Dispositions made by an OE from being registered at HMLR unless the disposing OE has registered on the OE Register at the date of the disposition** (subject to some exceptions).
- The exceptions include where the Relevant Disposition is made:
 - pursuant to a contract made before the OE Restriction is entered on the title register;
 - pursuant to the exercise of the power of sale by a registered charge-holder or their receiver;
 - by an insolvency practitioner in "specified circumstances" (yet to be defined in regulations); or
 - in pursuance of a statutory obligation, court order or occurring by operation of law.
- Where a Qualifying Estate was registered in pursuance of an application to HMLR prior to 1 August 2022, any restriction placed on title won't take effect until 1st February 2023.
- Where a Qualifying Estate was registered in pursuance of an application to HMLR on or after 1 August 2022, any restriction placed on title will have immediate effect.
- **OEs that make a Relevant Disposition after 31 January 2023, without being registered on the OE Register (or pursuant to another exception to the OE Restriction) commit a criminal offence.** The disposition itself remains valid but cannot be registered at HMLR. There are criminal sanctions for non-compliance (including potential imprisonment) on both the entity and every officer of the entity.
- It is likely that protective drafting will be needed in transactional documents involving OEs and Relevant Dispositions.

PRACTICAL CONSIDERATIONS

- It should not be underestimated how complex and time consuming the OE Register registration process may be. Information gathering and engaging an entity willing to verify information to Companies House may mean that it may take some time before actual applications can be made. Verification needs to be carried out by an independent entity also registered with Companies House. It is currently unclear how many providers of this service are available in the market and lack of supply could cause more delays.
- Before submitting an application to Companies House, an OE must serve an "information notice" on each person it knows (or has reasonable cause to believe) is a registrable beneficial owner to confirm their details are correct. They must be given one month to reply. This procedure may delay the ability to apply for registration on the OE Register, so notices should be served promptly.
- If an OE both owns E&W property and has made Relevant Dispositions since 28 February 2022, it will not be possible to register on the OE Register and, separately, later provide information to Companies House about those dispositions. We understand that Companies House will want to discuss applications with OEs that also need to disclose Relevant Dispositions since 28 February 2022, which may add delay to the registration process.
- We understand there are tens of thousands of OEs that need to be registered prior to 31 January 2023 and around 100 have registered so far. Therefore we are expecting a large volume of applications to land at Companies House as time progresses, which may result in further delay - the quicker OEs can apply the better.
- An OE cannot avoid all disclosure requirements by setting up a UK company (for which the OE is beneficial owner) to acquire land as UK companies must comply with the PSC Register and its disclosure requirements. There may be other advantages to using a UK company but further legal advice would be necessary.

THE POSITION IN SCOTLAND

There are differences in the way the legislation applies in Scotland. These include:

- From 5 September, if an OE is not registered on the OE Register, Registers of Scotland must refuse to accept any application to register a disposition, lease, assignation, voluntary registration, prescriptive application or notice of title in favour of that OE.
- Where an OE already has Scottish property interests (as proprietor or as tenant) the Regulations only apply to Land Register of Scotland titles registered on or after 8 December 2014. For these titles, until 31 January 2023 Registers of Scotland can still accept applications to register dispositions, leases, assignations or standard securities granted by the OE, even if the OE is not registered on the OE Register. From 1 February 2023, Registers of Scotland must reject these applications unless the OE is registered on the OE Register.

Legal advice should be obtained from a Scots Law qualified lawyer who can advise on the Act's implications for OEs which own, or are acquiring, property interests in Scotland.

OBTAIN LEGAL ADVICE

The Act is complex and this note is only a simplified guide to some of the most important issues. It will be crucial to obtain specific legal advice in relation to any UK land transaction involving an OE.

THE APPENDIX

WHAT ARE THE OE REGISTRATION REQUIREMENTS?

Any OE to which the Act applies will be required to:

- take steps to identify its "registrable beneficial owners".
- register information about the OE itself and any registrable beneficial owners of the OE or confirm that it has none;
- if there is no registrable beneficial owner, provide details of each managing officer of the OE (which includes a director, manager or secretary).
- update that information on an annual basis (or confirm that the information on the register is up to date) until such time as it successfully applies to be removed from the OE Register. An application to remove an OE from the OE Register will only be successful if the OE no longer holds any relevant interests in UK land.

Failure to update is a criminal offence with sanctions for non-compliance on both the OE and every officer of the OE in default. The part of the Act dealing with updating duties/applications for removal from the OE Register has not come into force yet. We can only assume that it will come into force with separate commencement regulations.

The process involves making an [online application](#) and paying a £100 registration fee.

OE ID NUMBER

Once registered, Companies House will issue a registered OE ID number, which serves as evidence of registration. The OE will then be subject to the annual updating duty once this is in force.

The information on the OE Register will be open to the public, apart from personal data such as dates of birth, residential addresses, contact details and certain information regarding trusts where a trustee is the registrable beneficial owner.

WHAT EXEMPTIONS APPLY?

Currently, there are no exempt categories for registration (it may change). The Secretary of State may, by giving written notice to a person, exempt the person if satisfied that to do so is necessary: (a) in the interests of national security; or (b) for the purposes of preventing or detecting serious crime. In the case of an OE which has provided beneficial ownership information to registers in their own jurisdiction, if the government considers those registers to be equivalent to the OE Register, it may make regulations to exempt these entities.

WHAT INFORMATION MUST BE PROVIDED?

The information that must be provided for an OE and its registrable beneficial owners is extensive. The information needs to be independently verified by a UK Regulated Agent from a prescribed list of professions before it is added to the new OE Register.

Verification checks have to be completed no more than 3 months before the OE is registered. Verification must be undertaken on documents or information from a reliable source which is independent of the person whose identity is being verified. Those who are capable of verifying information must themselves register with Companies House first and obtain their own unique [agent assurance code](#) and complete an [OE verification checks statement](#). BEIS has published a [guidance note](#) which gives some parameters around the level of verification they believe is required. OEs must ensure that anyone who is engaged to verify the information has the relevant assurance code. Verifiers face criminal liability if they deliver (or cause to be delivered) materially false or misleading information to Companies House.

Contact enquiries@companieshouse.gov.uk for further guidance.

Required information

The OE is required to provide the following details:

- its name, country of incorporation or formation, and its registered or principal office;
- a service address;
- an email address;

- the legal form of the entity and the law by which it is governed; and
- any public register in which it is entered and, if applicable, its registration number in that register.

The OE will be required to deliver one of three statements about its registrable beneficial owners as well as the required information pertaining to each statement.

Where a registrable beneficial owner is an individual, the required information includes:

- their name, date of birth, usual residential address and nationality;
- a service address;
- the date they became a registrable beneficial owner and the nature of their ownership i.e. which of the conditions has been met;
- whether the individual meets that condition by virtue of being a trustee. If the beneficial owner is a trustee then information around the trust needs to be disclosed, such as the name and description of the trust and details of the settlor, grantor and beneficiaries. The trust information will not be made public; and
- whether the individual is sanctioned in the UK. See [UK Sanctions List](#).

Where there is no registrable beneficial owner or they have not been able to provide the required information, the following information about each managing officer should be provided:

Where the managing officer is an individual, the required information includes:

- their name (including any former name), date of birth, usual residential address and nationality;
- a service address;
- business occupation;
- a description of the officer's roles and responsibilities in relation to the OE.

Where the managing officer is not an individual, the required information includes:

- its name, registered or principal office;
- a service address;
- the legal form of the entity and the law by which it is governed;
- any public register in which it is entered and, if applicable, its registration number in that register;
- a description of the officer's roles and responsibilities in relation to the OE;
- the name and contact details of an individual who may be contacted about the managing officer.

There are different information requirements depending on the statement provided as well as the type of registrable beneficial owner.

The OE must make an annual confirmation that the information on the OE Register is correct once the updating requirements are in force. If the information previously provided is not accurate, it must provide updated information within a 14 day 'window' after that 12 month update period.

Any person may apply to see the OE Register. However, certain information such as the full date of birth (only the month and year will be shown), agent assurance code, residential address and contact details will not be made available for public inspection, nor will certain information regarding trusts which is provided where a trustee is the registrable beneficial owner (however it may be shared with HMRC).

In the absence of a reasonable excuse, it is an offence to fail to comply with an information notice, provide false information in response to such a notice or provide misleading, false or deceptive material to the registrar. Failure to provide the annual update is also an offence and will also impact on the restriction placed on the title. For most offences under the Act, defaulting officers as well as the OE may be guilty. There are daily fines of £2,500 and breaches can carry a prison sentence up to 5 years.

Required UK regulated agent information

The UK regulated agent's details as follows:

- their name, correspondence and email address;
- supervisory body;
- Anti- Money Laundering (AML) number (where applicable); and
- the name of the person of the person with overall responsibility for verification checks.

The UK regulated agent has to confirm when the checks were completed and provide the [agent assurance code](#).

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