

EXPLANATORY MEMORANDUM TO
THE REGISTER OF OVERSEAS ENTITIES (PENALTIES AND NORTHERN
IRELAND DISPOSITIONS) REGULATIONS 2023

2023 No. [XXXX]

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Business and Trade and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 To implement aspects of the Register of Overseas Entities (“the Register”) (please see section 7 for more context). This instrument will:

- Confer a power on the Registrar to impose a financial penalty on a person if satisfied, beyond reasonable doubt, that the person has engaged in conduct amounting to an offence under Part 1 of the Economic Crime (Transparency and Enforcement) Act 2022 (“the Act”), and
- Provide a mechanism to allow the Secretary of State to consent to the registration of a land transaction that would otherwise be prohibited.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the whole of the United Kingdom.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the whole of the United Kingdom except for Part 5, which applies to Northern Ireland only.

5. European Convention on Human Rights

5.1 The Parliamentary Under Secretary of State, Department for Business and Trade, has made the following statement regarding Human Rights:

“In my view the provisions of The Register of Overseas Entities (Penalties and Northern Ireland Dispositions) Regulations 2023 are compatible with the Convention rights.”

6. Legislative Context

6.1 These regulations are laid before Parliament under sections 33(4), 39(1), 39(2), 67(2) and 67(3) of the Act.

6.2 The Register was created by the Act, which was expedited through Parliament in response to the Russian invasion of Ukraine. The Act requires overseas entities owning or buying property in the United Kingdom to provide information to the

Registrar of companies, including about their “beneficial owners”. The Act contains various regulation-making powers which allow the Secretary of State to prescribe further technical details of the requirements and operation of the Register. These regulations are part of a series of essential regulations to be made under the Act to implement the Register.

7. Policy background

What is being done and why?

- 7.1 In 2016 the UK implemented a register of beneficial ownership of UK companies, called the ‘people with significant control’ (PSC) register. The UK became one of the first countries to introduce a central, publicly accessible register requiring all companies incorporated in the UK to give information to Companies House about who held significant influence or control over a company.
- 7.2 In 2016 the UK committed to collecting and making publicly accessible the beneficial ownership information of overseas entities owning or buying property in the UK, which would level the playing field with UK companies.
- 7.3 The UK is an open economy and one of the major destinations for foreign direct investment. The overwhelming majority of companies that invest in the UK do so productively and within the law. However, there is concern around illegal activity taking place through overseas entities investing in UK property. In particular, the concerns focus on the potential for criminals to use overseas entities to obscure their identity when hiding illicit funds or laundering criminal proceeds through investments in UK property.
- 7.4 The Register enhances transparency around the owners and controllers of overseas entities that own or buy UK property. The Register is designed to:
 - deter and disrupt crime, by making it more difficult to use corporate vehicles in the pursuit of crime;
 - deter criminals from money laundering in the UK;
 - preserve the integrity of the financial system;
 - increase the efficiency of law enforcement investigations, particularly in relation to identifying and tracing the proceeds of crime; and
 - require the same transparency of overseas entities holding land as required from UK companies.
- 7.5 The Register will also protect the information of those at serious risk and avoid creating disproportionate burdens or putting off legitimate investors.
- 7.6 Further information can be found in the Explanatory Notes for the Act: <https://www.legislation.gov.uk/ukpga/2022/10>.
- 7.7 This instrument is one of several regulations to complete the implementation of the Register, which provides a:
- 7.8 **Power to Impose Financial Penalties:** These regulations confers a power on the Registrar to impose a financial penalty on a person if satisfied, beyond reasonable doubt, that the person has engaged in conduct amounting to an offence.
- 7.9 Part 2 sets out the Registrar’s powers to impose a financial penalty, the procedure she must follow and the maximum amounts of penalties.

- 7.10 Part 3 sets out the mechanism for appeals against the issue of a penalty notice, the grounds for appeal and the court’s powers in relation to the appeal.
- 7.11 Part 4 sets out how penalties will be enforced.
- 7.12 This measure adds to the tools available to the Registrar to promote compliance and maintain the Register’s credibility as a vehicle for improving transparency and reducing the misuse of UK property.
- 7.13 **Power to consent to Northern Ireland Dispositions:** If an overseas entity is non-compliant under the Act, it will be restricted in how it may deal with its land. Among other things, this restriction prohibits the registration of the sale, transfer, lease or charge of this land with the relevant Land Registry, effectively ‘freezing out’ the land from any further transactions until the overseas entity complies under the Act. However, it is possible that a third-party may transact in good faith, without knowing that the overseas entity was non-compliant, leaving them through no fault of their own with an unregistrable land title.
- 7.14 To mitigate this, part 5 of these regulations amends Schedule 8A to the Land Registration Act (Northern Ireland) 1970 (inserted by the Act) to provide a mechanism to allow the Secretary of State to consent to the registration of a land transaction that would otherwise be prohibited. The new paragraph inserted by the regulations describes the information needed for the prohibition to be waived, which will be considered on a case-by-case basis. The new paragraph inserted by the regulations also confers a power on the Secretary of State to make provision by regulations in connection with applications for consent, and the giving of consent.
- 7.15 These regulations apply only in Northern Ireland; the power to consent to registration is already available for England and Wales, and Scotland. It was not possible to include this for Northern Ireland in the Act before its introduction and expedited passage through Parliament, so providing the mechanism via these regulations provides consistency across the UK.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

- 9.1 This Statutory Instrument is a standalone measure and does not amend or consolidate existing laws.

10. Consultation outcome

- 10.1 Extensive consultation was carried out prior to the Act receiving Royal Assent. A Call for Evidence was undertaken in 2017 and consultation carried out in 2018, alongside the publication of a draft Registration of Overseas Entities Bill (“the Bill”). Stakeholder responses to both showed strong support for the proposals. Stakeholder suggestions were taken into account during the drafting of the Bill, and afterwards following publication of the draft Bill. The draft Bill underwent pre-legislative scrutiny by an ad-hoc Joint-Committee in 2019 and many of the Committee’s recommendations, including a civil financial penalty regime, were added to the Bill.

- 10.2 Informal consultation was carried out with delivery partners Companies House, the Insolvency Service, HMRC and the three UK Land Registries on the measures in this Statutory Instrument. Stakeholders were supportive of the measures.
- 10.3 Formal consultation, as required by the Act, has taken place with the Northern Ireland Department of Finance about Part 5 of the Regulations.

11. Guidance

- 11.1 General guidance for the Register is currently available for overseas entities, professional service providers and any interested parties. The guidance explains who is required to register, how and when they should register, information to be provided and how to update the information on the register.
- 11.2 The guidance can be found here:
<https://www.gov.uk/government/publications/register-of-overseas-entities-guidance-on-registration-and-verification>.
- 11.3 The extant guidance will be updated to ensure that overseas entities are aware of any changes and are able to adapt to them.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A full Impact Assessment has not been prepared for this instrument because the Impact Assessment published alongside the primary legislation quantified the impacts and had a net annual direct cost to business below the de minimis threshold of £5 million – please see here for more:
<https://www.publications.parliament.uk/pa/bills/cbill/58-02/0262/RegisterofOverseasEntitiesImpactAssessment.pdf>. The net annual direct cost to business did not change significantly during the Bill's passage or the development of secondary legislation such that the measure remains below the de minimis threshold.

13. Regulating small business

- 13.1 The legislation does apply to activities that are undertaken by small overseas businesses, but no specific action is proposed to minimise the regulatory burdens on them. The rationale for this is outlined in the Bill's Impact Assessment.

14. Monitoring & review

- 14.1 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 the Parliamentary Under Secretary of State, Department for Business and Trade, has made the following statement:

“A statutory review clause is not included in the instrument since the additional requirements are not extensive and are considered to meet the Government’s ‘de minimis’ regulatory impact criteria, meaning no impact assessment is required (in particular, because the impacts are below £5m, do not impact on small business and create no open-ended new powers in legislation).”

15. Contact

- 15.1 Trevor Smith at the Department for Business, Energy and Industrial Strategy Telephone: 07917955883 or email: trevor.smith@beis.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Matthew Ray, Deputy Director for Company Law & Transparency at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Kevin Hollinrake, Parliamentary Under Secretary of State at the Department for Business and Trade can confirm that this Explanatory Memorandum meets the required standard.