

EXPLANATORY MEMORANDUM TO
THE REGISTER OF OVERSEAS ENTITIES (DELIVERY, PROTECTION AND
TRUST SERVICES) REGULATIONS 2022

2022 No. 870

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 To implement aspects of the new Register of Overseas Entities (please see section 6 for more context). This instrument will:

- Require certain documents to be delivered to the Registrar of Companies of England and Wales by electronic means.
- Set up a protection regime which will allow beneficial owners and managing officers of overseas entities to apply to have their information made unavailable for public inspection and not disclosable, where they can provide evidence that they or someone living with them are at serious risk of violence or intimidation.
- Set out that legal entities governed by the law of a country or territory outside of the United Kingdom that provide trust services are subject to their own disclosure requirements, for the purpose of the definition of registrable beneficial owner.

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 territorial extent of this instrument is the whole of the United Kingdom.

4.2 The territorial application of this instrument is the whole of the United Kingdom.

5. European Convention on Human Rights

5.1 The Lords Parliamentary Under Secretary of State, Minister for Business, Energy, and Corporate Responsibility has made the following statement regarding Human Rights:

“In my view the provisions of The Register of Overseas Entities (Delivery, Protection and Trust Services) Regulations 2022 are compatible with the Convention rights.”

6. Legislative Context

6.1 These regulations are laid before Parliament under sections 25(6) and 67(4) of, and paragraph 7(2) of Schedule 2 to, the Economic Crime (Transparency and Enforcement) Act 2022 (“the Act”) and sections 1069(3) and 1290 of the Companies Act 2006.

6.2 The new Register of Overseas Entities will be created by the Act, which was expedited through Parliament in response to the Russian invasion of Ukraine. The Act will require 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 the first of a series of essential regulations to be made under the Act and other legislation such as the Companies Act 2006, 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 control of the 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. 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 will enhance 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 of harm by others and avoid creating disproportionate burdens or putting off legitimate investors.
- 7.6 Further information can be found in the Explanatory Notes and Impact Assessment for the Act: <https://bills.parliament.uk/bills/3120/publications>.
- 7.7 This SI is the first of several regulations to implement the Register, by enabling:
- **Electronic delivery:** Regulation 3 sets out a duty on overseas entities to deliver certain required information to the Registrar by electronic means. Regulation 4 sets out an exception to this duty to deliver documents by electronic means. The

aim is to require overseas entities to deliver certain documents to the Registrar by electronic means, with limited exceptions, for the Register of Overseas Entities to work effectively and efficiently. If these certain documents were not delivered to the Registrar by electronic means, then this could result in additional time and effort processing hard copies received and there would likely be a substantial delay in turnaround time, leading to less optimal operation of the Register.

- **Protection of information:** Part 3 sets out details of the protection regime. This allows beneficial owners and managing officers (or the relevant overseas entity) to apply to have their details protected from disclosure and from inclusion in the Register if they or someone who lives with them are at serious risk of violence or intimidation. Evidence must be provided to the Registrar to support the application. There is an equivalent regime for the “People with Significant Control” of UK companies.
- **Inclusion of corporate trustees:** Part 4 provides a description of legal entities subject to their own disclosure requirements. Paragraph 3(b) of Schedule 2 to the Act provides that beneficial owners that are legal entities must be subject to their own disclosure requirements in order to be registrable beneficial owners. The aim is to provide that corporate trustees that are subject to their own disclosure requirements will fall within the definition of ‘registrable beneficial owner’. If this definition is satisfied, overseas entities must take reasonable steps to obtain and provide to the Registrar the required information about those trusts, providing greater transparency about the true owners and beneficiaries of the land. This reflects the requirements already imposed where trustees are individuals.

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 does not amend another Statutory Instrument, so consolidation is not relevant.

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 Bill. Stakeholder responses to both showed strong support for the proposals, including the design of the protection regime. Stakeholder suggestions were considered during the drafting of the Bill, and afterwards following publication of the draft Bill.
- 10.2 The draft Bill underwent pre-legislative scrutiny by an ad-hoc Joint-Committee in 2019 and many of the Committee’s recommendations were added to the Bill. The Committee raised concerns about the use of trust structures to hide ownership, and during passage of the Act, Government amendments relating to the disclosure of information about trusts were added, which this instrument builds upon.
- 10.3 To meet the expedited timetable for the Act and laying of regulations, informal consultation has been carried out with delivery partners Companies House, HMRC

and the three UK land registries, as well as wider stakeholders, on the measures in this instrument. Stakeholders were broadly supportive of the measures.

11. Guidance

- 11.1 Guidance will be made available for overseas entities, professional service providers and any interested parties. The guidance will explain who is required to register, how and when they should register, information to be provided when registering, and how to update the information on the Register. Overseas entities who already own property after certain dates in Scotland or England and Wales will have a six-month transitional period to comply with the requirements of the Register.
- 11.2 Communication plans to raise awareness about the Register of Overseas Entities include highlighting the new requirement to overseas entities via British embassies and foreign company registries. This will target overseas entities who may be required to register, as well as professional organisations who work on property transactions and advise overseas entities.

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. 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. 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.

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 Lords Parliamentary Under Secretary of State, Minister for Business, Energy, and Corporate Responsibility 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 The Lords Parliamentary Under Secretary of State, Minister for Business, Energy, and Corporate Responsibility at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.