



# Draft Registration of Overseas Entities Bill: Government Response to Joint Committee Report 2019





# Draft Registration of Overseas Entities Bill: Government Response to Joint Committee Report 2019

Presented to Parliament  
by the Secretary of State for Business, Energy and Industrial Strategy  
by Command of Her Majesty

July 2019



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## Ministerial Foreword



As the Minister responsible for Small Business, Consumers and Corporate Responsibility, I have the privilege of overseeing the development of this world-leading legislation. It will establish the first national register of beneficial owners of overseas entities, placing the UK at the forefront of the fight against international money laundering.

Knowing who ultimately owns and controls a company is an important part of the global fight against corruption, money laundering and terrorist financing. The UK is leading by example and our public register of company beneficial ownership, the People with Significant Control register, was one of the first to be publicly available worldwide, and the first in the G20. The Financial Action Task Force (“FATF”), the body that sets global anti-money laundering and counter-terrorist financing standards, completed a landmark review of the UK’s regime for tackling money laundering in December 2018, concluding that we have some of the strongest controls in the world.

The purpose of this draft Bill is to crack down on the use of UK property for money laundering, by improving transparency of property ownership through identification of the beneficial

owners of overseas entities that own or plan to own UK property. This legislation will be a significant deterrent, helping ensure there is no safe space for illicit money in our society. It forms an important part of the Government’s overall strategy to combat economic crime, while ensuring legitimate businesses continue to see the UK as a great place to invest.

I am grateful to the Joint Committee of MPs and Lords for their scrutiny of the draft Bill, and I welcomed the opportunity to give evidence to the Committee. I also welcome their report, which the Government has considered carefully. In this response, we are committing to act on a number of areas as a result of the recommendations from the Committee’s report; further improving the draft Bill. Even where we have not accepted recommendations in full, the Committee’s work has caused us to scrutinise our position carefully. There are some areas where we are considering changes but where it is prudent to look further into the implications of the recommendations.

This legislation will be a major step forward in tackling dirty money and safeguarding the reputation of the UK’s business environment. I look forward to engaging with Parliamentarians on all sides of the House to turn this Bill into an Act, and to deliver an operational register in 2021.

A handwritten signature in blue ink that reads "Kelly Tolhurst".

**Kelly Tolhurst MP**  
Minister for Small Business,  
Consumers and Corporate  
Responsibility

## Introduction

Our modern Industrial Strategy seeks to maintain the UK's global reputation as a good place to do business. People come to Britain confident in our high corporate standards, including market transparency, which foster confidence and trust.

The 2017 National Risk Assessment of Money Laundering and Terrorist Financing<sup>1</sup> highlights the fact that property continues to be an attractive vehicle for criminal investment, in particular for high-end money laundering. Transactions are improved and the market has greater confidence when people know who they are doing business with, whilst lack of transparency can facilitate criminal behaviour.

The risks relating to abuse of property are most acute where property is owned anonymously through corporate structures or trusts. The draft Registration of Overseas Entities Bill ("the draft Bill") seeks to address this risk by identifying the beneficial owners of overseas entities that own or plan to own UK property. This information is presently not available and this legislation aims to achieve this, by way of a public register.

The draft Bill was published in July 2018 for the purposes of pre-legislative scrutiny and to seek views from stakeholders, including industry and civil society. The Joint Committee on the draft Bill ("the Committee") was established in February and published its report on 20 May 2019.<sup>2</sup> The Government welcomes the Committee's report, and our responses to the Committee's recommendations are set out in this document.

The Government agrees with the Committee that this draft Bill is both timely and a vital part of the Government's strategy to combat economic crime.

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<sup>1</sup> <https://www.gov.uk/government/publications/national-risk-assessment-of-money-laundering-and-terrorist-financing-2017>

<sup>2</sup> HL Paper 358 / HC 2009

<https://publications.parliament.uk/pa/jt201719/jtselect/jtovensent/358/35802.htm>

## Recommendations

The Committee's recommendations and, where relevant, commentary, are set out below in the order in which they appear, followed by the Government's response. Where appropriate, recommendations are grouped together.

### Definition of "Legal Entity"

#### Committee recommendation

*Entities which do not fit the description [of "legal entity"] set out in the Bill will not be bound by its requirements. The definition of overseas entities must therefore be clear and authoritative, and sufficiently wide and flexible to encompass the broad range of overseas entities which own UK property. (Paragraph 39)*

*It is unlikely that the definition of "legal entity" would be interpreted as including individuals. But we have heard concern that the draft Bill's unqualified reference to a "legal person" in Clause 2 may add unnecessary difficulty to those questioning whether they come under the scope of the Bill. (Paragraph 42)*

*The description of the term "legal entity" in Clause 2 of the draft Bill and its Explanatory Notes should therefore put the definition of such a pivotal term beyond any possible doubt. (Paragraph 43)*

*The land registries are not equipped to make final decisions on the legal personality of an entity. It is inappropriate to delegate this task to them, not least because such a decision could, under the draft Bill, lead to criminal prosecution if the entity had not registered correctly. (Paragraph 54)*

*We consider that such a requirement would put significant burdens on the land registries. There may be new forms of structures which emerge in other jurisdictions whose status as legal persons the registries, the entities themselves, and lawyers will find difficult to determine. (Paragraph 55)*

*Decisions [on the legal personality of an entity] of such consequence are much better suited to Companies House. Furthermore, the Government should publish guidance on how the definition of overseas entities should be interpreted. (Paragraph 56)*

*We agree that the Government should make efforts to avoid registering individuals out of scope of the Bill. We therefore recommend a pre-clearance mechanism, including some formal means of adjudication, which confirms in advance of transactions whether legal entities are registrable. Disputes about categorisation will be inevitable, and the Government will need to consider necessary mechanisms to account for entities which disagree with decisions under the Act. (Paragraph 57)*

*Any such pre-clearance mechanism should be open to all parties to a proposed property transaction involving an overseas entity. (Paragraph 189)*



## **Government response**

The Government agrees that it is vital that overseas entities and third parties understand the Bill and its scope. The Government considers the definitions of “overseas entity” and “legal entity” in the draft Bill to be sufficiently wide, clear and flexible. In order to ensure that as much clarity as possible is provided, the Government intends to publish guidance to help: overseas entities; third parties transacting with overseas entities; and facilitators to understand the requirements of the Bill. We will also use the Explanatory Notes to help achieve this objective.

The Government is of the view that it is not appropriate for a UK agency such as one of the land registries or Companies House to ‘make decisions’ on the legal personality of a foreign entity. The Government is confident that overseas entities (as well as their agents who are required to conduct Know Your Customer and due diligence checks) will know their own legal status and whether they are in scope of the Bill. The concept of legal personality is generally well understood globally, and that legal personality is required for an entity to hold property.

Third parties transacting with overseas entities (e.g. where an overseas entity is buying UK land from a UK individual) may arguably be less likely to know whether an overseas entity is in scope of the Bill’s requirements.

However, conveyancers already carry out a number of checks on parties for the mitigation and management of money laundering, such as checking the identity of persons on an ongoing basis, checking the source of funds and reporting any discrepancies to the authorities. Through the course of these checks it will also be apparent to the conveyancer and the third party that they are entering into a contract with a legal entity. On this basis they will be aware that the entity will fall under the scope of the Bill.

We therefore do not consider that a pre-clearance mechanism which indicates whether legal entities are registrable is required.

## Companies House

### Committee recommendation

*We are persuaded of the need for entities to be able to register their beneficial ownership information as quickly as possible, particularly in the case of special purpose vehicles and property holding companies which are sometimes incorporated only a few days before a transaction. We urge the Government to provide Companies House with sufficient resources to meet this challenge. (Paragraph 59)*

### Government response

The ability to register overseas entities in a timely manner will be an important function of the Registrar. This was an issue raised by those representing the property sector in response to the Overview Document<sup>3</sup> published alongside the draft Bill.

Companies House is well equipped to achieve this. It incorporates over 600,000 companies per year, most of which are usually registered within 48 hours. The Government anticipates that registration of overseas entities will be to a similar timeframe to that of the incorporation of companies, subject to provision of accurate information by the applicant. Companies House has commenced with a programme of transformation to invest in its ability to deliver additional functions, many of which will underpin the implementation of the Register of Overseas Entities (“the Register”), and intends to continue with this work in the coming months and years.

### Committee recommendation

*We urge the Government to move forward as quickly as possible with reforming the role of Companies House to ensure that it can conduct checks on the veracity of the information that it holds. We recommend that Companies House be provided with sufficient resources to undertake these additional tasks. (Paragraph 169)*

### Government response

The Government’s vision is for a companies register built upon relevant and accurate information that supports the UK’s global reputation as a trusted and welcoming place to do business and a leading exponent of greater corporate transparency. To achieve this vision the Government launched, on 5 May 2019, a consultation which considers reform to the information companies are required to disclose; increasing the checks on this information; and measures to improve the exchange of intelligence between Companies House and UK Law Enforcement bodies.<sup>4</sup>

The proposed reforms will be the most significant since the companies register was established in 1844. A new operating model will be needed to deliver these new responsibilities and will involve new digital technologies, process capabilities, and new skills requirements.

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<sup>3</sup> <https://www.gov.uk/government/consultations/draft-registration-of-overseas-entities-bill>

<sup>4</sup> <https://www.gov.uk/government/consultations/corporate-transparency-and-register-reform>

On completion of the programme Companies House will be a truly digital organisation. Its services will be simple and easy to use, allowing customers to interact with it using the latest technology. It will be better able to respond to broader challenges and adapt to changing needs. This in turn will mean Companies House is able to better support wider government policy on corporate transparency and tackling economic crime.

In most cases changes to the powers of Companies House will require primary legislation. That fact, and the need for a programme of systems and staffing transformation at Companies House, will mean that these reforms will take some years to deliver. The Government will set out its next steps when it formally responds to this consultation.

### **Committee recommendation**

*Section 1063 of the Companies Act 2006 entitles Companies House to charge fees. We understand that the Government may be recompensed for the cost of running of the Register, at least in part, by the overseas entities that use it. The Government should ensure that Companies House is fully equipped and properly resourced for the likely surge in demand from overseas entities that refrain from registering until the end of the 18-month transition period. (Paragraph 173)*

### **Government response**

The Government agrees that Companies House needs to be equipped to manage any surge in demand that might arise towards the end of the transition period.

The Government, working with Companies House and key stakeholders, will seek to ameliorate any surge in demand through an active campaign of awareness raising and publishing guidance.

Companies House is funded by fees set to recover the cost of its services, and any increases in demand are matched by increased income. Fees will continue to be charged to recover the costs associated with providing this service.

### **Committee recommendation**

*We recognise that commercial sensitivities, the volume of work required, and the timescales involved may have prevented the Government from providing a model version of the Register so that we could ascertain how well it might work for users. (Paragraph 135)*

*However, we urge the Government to publish such a model as soon as possible, so that potential users—and particular those working in the conveyancing profession—can be fully prepared for the implementation of this Bill. (Paragraph 136)*

## **Government response**

The Government acknowledges the need for clarity on how the Register will look and operate, and welcomes the Committee's recognition of commercial sensitivities, volume of work, and timescales involved and the impact this has had on the production of digital representations of how the Register may operate.

BEIS will continue to work closely with Companies House, the land registries and other relevant sectors to ensure that all users, including those in the conveyancing profession, will be fully able to use the Register and comply with their legal requirements. Guidance will be published ahead of the operational launch of the regime along with a package of comprehensive communications to those interested parties.

## **Committee recommendation**

*The Government should ensure that the Register includes a mechanism allowing users of the Register to "flag" suspicious or potentially incorrect information and that mechanisms are in place to examine this information. It could replicate the successful 'Report it Now' function of the Companies House register in its design of the Register of Overseas Entities. (Paragraph 162)*

## **Government response**

The Government welcomes this recommendation and agrees that the Register should include a mechanism similar to 'Report it Now' to ensure users can flag suspicious or potentially incorrect information to Companies House.

## **Publication of Information**

### **Committee recommendation**

*Regulations made under Clause 30(6) would exempt entities described in secondary legislation not only from the requirement to publicise beneficial ownership information, but also from providing that information to Companies House. The Government should consider the merits of a new clause to protect information registered by certain types of entities—such as foreign governments—from public disclosure, while still requiring the provision of that information. (Paragraph 67)*

### **Government response**

The Government considers that such a clause is not required. Foreign governments generally meet the definition of an “overseas entity”. The Government considers, however, that it is not possible to “look through” a foreign government in the same way that you can other entities, such as limited companies, to find a registrable beneficial owner, hence it would have no route to comply with the regime. When the draft Bill was published, respondents to the Overview Document generally agreed with this rationale. This is why we are considering potentially exempting foreign governments under regulations made under clause 30(6).

Where foreign governments own land directly, this information is already transparent on the land registers. The Government takes the view that it is therefore unnecessary to require foreign governments directly owning land to register with Companies House. Where a foreign government owns land via an overseas entity, the entity will be required to register. In these circumstances, given that it is not possible to “look through” a foreign government to find a registrable beneficial owner, these entities are likely to be subject to modified application requirements which take into consideration the limits of the information that can be provided.

The Government cannot at this stage envisage a scenario where it would be appropriate to require information from whole classes of entities that are subsequently protected from public disclosure.

## **Exemptions**

### **Committee recommendation**

*We understand that new overseas entities may appear, and that the powers outlined by the Bill will need to be flexible enough to accommodate such developments. Yet Clause 30(6) allows the Secretary of State much discretion, and the types of overseas entities which might be exempted under this power are fundamental to the scope of the Bill. (Paragraph 68)*

*Our clear preference would be for categories of those types of entities which may be eligible for exemptions under Clause 30(6) to be on the face of the Bill. (Paragraph 69)*

*Although we do not believe that it is the Government's intention to exempt, wholesale, entities from certain countries, the potential effects of Clause 30(6) call for adequate Parliamentary scrutiny. We therefore recommend the use of the affirmative resolution procedure for this significant power. (Paragraph 70)*

### **Government response**

The Government understands the Committee's desire to provide clarity about who is in scope of the Bill and subject to its requirements. It is the Government's view that listing types of entities on the face of the Bill which may be eligible for exemptions could limit our ability to respond to changing circumstances (e.g. if in the future it is decided that a listed category of entity or some entities within a listed category should no longer be exempt). The types of overseas entity that will be exempt will be set out in secondary legislation, which will also set out any evidence that might be required to be presented to the land registries to demonstrate that an overseas entity is or was exempt (e.g. a conveyancer's certificate). The Government intends to publish, and consult on, draft regulations to ensure that the proposals are workable and will have no unintended consequences.

The Government notes that the Delegated Powers and Regulatory Reform Committee (DPRRC) reported to the Committee that the "the mix of affirmative and negative procedures (seven of each) strikes a good balance". Nonetheless we accept the Committee's recommendation that the power under clause 30(6) should be subject to the affirmative resolution procedure to allow for greater scrutiny.

The Government has already provided examples of how it is intended that this power is used, including in the Explanatory Notes, the Overview Document published with the draft Bill, and during the Committee's pre-legislative scrutiny.

### **Committee recommendation**

*Provided that the Government gives further assurance that the power provided by Clause 16 of the draft Bill to exempt a beneficial owner from the requirement to register would be used only sparingly, and that it would be used only in the interests of—for instance—national security, we would be content with the inclusion of this power in the*

*draft Bill. The Government's response to each of these points will merit close attention when the Bill is introduced to Parliament. (Paragraph 120)*

*However, the draft Bill proposes only that "special reasons" will justify exemptions. This is a very broad term. Given the envisaged lack of parliamentary scrutiny of this power to exempt, our preference would be that the possible reasons for exemptions under this section should be set out on the face of the Bill. (Paragraph 121)*

### **Government response**

The Government appreciates the Committee's preference that the circumstances in which this power may be exercised are laid out on the face of the Bill. The Government can confirm that the intention and expectation is that this power will be used very rarely, and only in the interests of national security, the economic wellbeing of the UK, or for the prevention or detection of serious crime. The Government is considering whether these circumstances should be laid out on the face of the Bill.

## **“Equivalent” Registers**

### **Committee recommendation**

*The Government proposes that powers under Clause 15 to modify application requirements should be exercised only when registers are truly “equivalent” to the Register proposed by the draft Bill. (Paragraph 74)*

*We are concerned that the meaning of “equivalent” under Clause 15 should be closely defined. For true equivalence, we believe that overseas registers should be publicly accessible. Companies House should ensure that it signposts these registers so that users can find them without difficulty, providing a link to, or contact details for, the relevant register. (Paragraph 75)*

### **Government response**

Clause 15 of the draft Bill provides that regulations may be made by the Secretary of State that modify the application or update requirements in relation to a description of overseas entity specified in regulations. Regulations may therefore be made to modify application requirements where overseas entities are already providing beneficial ownership information to an “equivalent” register in their own country of formation.

The Government sought views on the use of clause 15 in respect of equivalent registers in the Overview Document published alongside the draft Bill. Respondents, the majority of which were civil society groups, shared the Committee’s view that equivalence means that the register should be publicly accessible. Respondents also provided helpful suggestions on other potential criteria that an equivalent beneficial ownership register should meet.

The Government is considering what best constitutes an equivalent register but can confirm at this time that it agrees with the Committee that an equivalent register must, at a minimum, be publicly accessible. The Government can also confirm its intention that the Register of Overseas Entities signposts users to those registers deemed to be equivalent.



## Trusts

### Committee recommendation

*We heard evidence that trusts might be used to circumvent the obligation to register contained within the draft bill. This possible loophole is worrying, and, to allay these concerns, the Government should set out in detail in its response to this report how it intends to counteract this possibility. (Paragraph 87)*

*The Government told us that the UK's implementation of the Fifth Anti-Money Laundering Directive would aim to close such loopholes. It is of critical importance that it does so, and as soon as possible. We are therefore grateful for the Minister's assurance that 5AMLD would be implemented by expanding the HMRC Trust Registration Service even if the UK leaves the EU without a Withdrawal Agreement. (Paragraph 88)*

*We also welcome the Government's assurance that the TRS will cover discretionary trusts, and that overseas trusts with assets which include UK land will be required to register. We suggest, however, that the Government consider what information the TRS should require from these trusts in order to establish their true beneficiaries. (Paragraph 89)*

*Because of its importance in preventing the use of trusts in money laundering, we recommend that the TRS be publicly accessible. (Paragraph 90)*

*Given that the Fifth Anti-Money Laundering Directive is to be implemented before this draft Bill, we regret that the Government's proposals for the former are not yet available. It is difficult to scrutinise part of the proposed anti-money laundering regulatory framework without being able to see the full picture. (Paragraph 91)*

*The Government will need to exercise great care in ensuring that trusts do not slip into any gaps between the two frameworks. We therefore call on the Government to explain which arrangements for holding land in the UK involving trusts will be covered by the draft Bill, and which by implementation of 5AMLD. The draft Bill should set out expressly those situations where it covers arrangements for holding land in the UK that involve trusts. At the very least, we would expect such situations to be covered by statutory guidance. (Paragraph 92)*

*Trusts should not be required to register twice, which, the Government says, would create an unacceptable administrative burden. Accordingly, we invite the Government to give serious consideration to implementing the provisions in this draft Bill at the same time as 5AMLD, and to ensure that charitable institutions are covered by one of the two frameworks. (Paragraph 93)*

*With the introduction of this draft Bill and the Fifth Anti-Money Laundering Directive, the Government has a clear opportunity to strengthen the efficacy and transparency of its efforts against financial crime. It should grasp this opportunity, by establishing workable verification mechanisms for each of the registers that it has established. (Paragraph 161)*

*This Register will be the first of its kind in the world, but it will work together with existing anti-corruption measures. If the Government delays the introduction of the draft Bill to Parliament until the next Parliamentary session, it may create an unnecessary incongruence between this legislation and the Fifth EU Anti-Money Laundering Directive. We therefore recommend that the Bill and 5AMLD be presented to Parliament as soon as possible. (Paragraph 226)*

## **Government response**

The Government has an ambitious agenda to continue strengthening the UK's regime around beneficial ownership transparency. The draft Bill is an important part of this agenda and of the Government's wider response to tackling economic crime. These reforms will improve what is already recognised as a strong anti-money laundering regime (AML) in the UK. In 2018, the UK was evaluated by the Financial Action Task Force (FATF), which found that the UK has the strongest AML regime of the more than 60 countries assessed to date. In particular, the FATF concluded that the UK is only the second jurisdiction to date to be fully compliant with the FATF expectations on trust beneficial ownership, and additionally noted that "the UK is a global leader in promoting corporate transparency and has a good understanding of the Money Laundering / Terrorist Financing risks posed by legal persons and arrangements"<sup>5</sup>.

While trusts do present a method by which illicit funds can flow, the 2017 National Risk Assessment of money laundering and terrorist financing concluded that "the risk of criminals exploiting UK trusts to launder money is...assessed to be low".

We welcome the Committee's close scrutiny of the draft Bill to identify circumstances in which trusts might be used in attempts to circumvent the requirements of the Bill. Trusts do not themselves have 'legal personality', and therefore cannot directly hold land. Assets are held by the trustees 'on trust' for the beneficiaries of the trust, under terms that are usually set out in a trust deed. The legal ownership of trust assets, including land, therefore must either be vested directly in trustees, or in a legal entity of some kind. The draft Bill already captures circumstances in which an overseas entity is being used by a trust to hold land in the UK. Schedule 2 sets out what is meant by the term "beneficial owner" (see Schedule 2, Part 2 of the draft Bill). There are five 'conditions' for testing beneficial ownership. Condition 5 specifically notes that the trustees of a trust, if exercising significant influence or control over the overseas entity, or otherwise meeting any of the other four conditions must, subject to specified exceptions in Schedule 2, provide their details to Companies House.

In summary, any overseas entity holding land on behalf of a trust will be required to register with Companies House, even though the trust itself will not. We would expect to see in the Register the name of the entity, and the names of the trustees or any

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<sup>5</sup> <https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-United-Kingdom-2018.pdf>

other person that exerts significant influence and control over the entity that is being registered, subject to specified exceptions in Schedule 2.

The UK has already taken action to ensure that information about UK trusts is collected and made available to law enforcement. In July 2017, Her Majesty's Revenue and Customs (HMRC) established the Trust Registration Service (TRS) through transposition of the Fourth EU Anti-Money laundering Directive (4AMLD). The TRS – which is accessible to UK law enforcement authorities and those in other EU member states – captures full beneficial ownership information of the trustees, settlors, beneficiaries and other beneficial owners of trusts which generate a tax consequence in the UK. The trusts register includes beneficial ownership information of offshore trusts when they generate a UK tax consequence – which would normally be the case with trusts which purchase land in the UK – and currently has c.110,000 trusts registered on it. The TRS complements existing additional mechanisms which law enforcement have for obtaining beneficial ownership information on UK trusts, including through powers provided through Part 5 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 which require trustees to share this information with law enforcement on request.

But the Government intends to do more. We will expand the existing TRS to include non-EEA trusts which acquire real estate in the EU as part of transposing the Fifth Anti-Money Laundering Directive (5AMLD). During negotiations over 5AMLD, the Government supported expanding the scope of the trust registration requirements to include this requirement. This is in addition to including all domestically administered express trusts, whether or not they incur a tax consequence, and also non-EEA trusts that conduct a business relationship with regulated entities based in the UK.

The transposition deadline for 5AMLD is 10 January 2020, and so – in the event that an Implementation Period is in place after the UK leaves the EU – the UK will be legally required to transpose this Directive. 5AMLD requires that an expansion of the TRS is functional from March 2020. HM Treasury is currently consulting on the Government's approach to transposition of 5AMLD, with the consultation closing on 10 June 2019 and the Government's response to follow in due course. The consultation sets out in detail the information that is expected to be collected by the TRS. It includes details about settlors, trustees, protectors (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising effective control of the trust. This is a clear and comprehensive means of ensuring that the TRS is holding the right information about the true beneficiaries of trusts holding land in the UK. HMRC estimates that the number of trusts on the register will increase to over 2 million as a result of this extension. This will ensure that there is a comprehensive

regime in place, constituting a significant extension of the UK's already world-leading framework for combatting illicit financial flows through trusts.

The Committee has expressed some concern that discretionary trusts might be used in order to try to circumvent the requirements of the Bill. A discretionary trust is one under which the person establishing the trust (the settlor) grants the trustee(s) discretion over the disposition of the trust property and income. As with other trust types, the settlor transfers the legal ownership of trust property to the trustees, who hold it for the benefit of the beneficiaries under the terms of the trust. We recognise the concern that criminals might use this kind of structure to disguise their involvement in the trust and/or their receipt of income or other trust assets. Non-UK discretionary trusts, captured under the definition of 'express trusts' for the purposes of 5AMLD, will be required to register with the TRS if they acquire land in the UK. However, a trust of this kind would already be under the obligation to register if it would generate a UK tax consequence. If such a trust acquires and holds land in the UK via an overseas entity, that entity will be required to register with Companies House, under the draft Bill.

In summary, the Government considers that trusts and overseas entities will not be required to register twice (once with Companies House and once with TRS). This is because trusts are out of the scope of the Bill. They must, if they meet the criteria outlined above, register with the TRS. If a trust is using an overseas entity to hold land, that entity, rather than the trust, will be required to register with Companies House, and the information that the entity will have to provide is not the same information that the trust will have to provide to the TRS, as outlined above.

The Committee recommended that verification mechanisms are in place for each register. For TRS, 5AMLD requires specified businesses (referred to in the directive as 'obliged entities') who enter into a business relationship with a registrable trust to carry out a check of the information held on TRS. This forms part of the obliged entity's due diligence checks, with any discrepancies required to be reported to HMRC.

The Government is considering whether the requirements for registration with Companies House could be tightened further by, for example, requiring overseas entities registering with Companies House to declare if they are representing a trust. This would assist in making links between information held on the Register of Overseas Entities and the TRS.

### ***Trusts - Access***

One main difference between TRS and the Register of Overseas Entities is the level of access provided to the public. While access to TRS is currently limited to law

enforcement, 5AMLD will broaden the scope of access to those individuals who can demonstrate a 'legitimate interest' in access to the data on this register. HM Treasury's consultation document<sup>6</sup> includes a section on the meaning of 'legitimate interest' and invites views on the Government's proposed definition of it, proposing that someone who has a legitimate interest in this data will:

- Have active involvement in anti-money laundering or counter-terrorist financing activity
- Have reason to believe that the trust or person that is the subject of the legitimate interest enquiry is involved with money laundering or terrorist financing, and
- Have evidence underpinning that belief

The Government is keen to strike the correct balance between allowing legitimate access to the data held by the TRS and ensuring that it does not infringe on the privacy rights of trust beneficial owners. Many trusts will be used for ordinary family purposes such as maintaining family property or providing for dependents, who will often be children or vulnerable individuals. The Government intends that its definition of 'legitimate interest' protects such persons from purely speculative enquiries made for any reason, other than for anti-money laundering or counter-terrorist financing purposes. HM Treasury will respond to the consultation on 5AMLD later in 2019, setting out the Government's approach to transposing this requirement taking account of feedback received through the consultation process.

The Government also intends to require that trustees be obliged to provide evidence of registration with the TRS to regulated firms for due diligence purposes. Further, there will be a general right of access to any member of the public in instances where the trust holds a controlling interest in a non-EEA company, so as to particularly improve the lack of transparency currently associated with opaque and complex corporate structures.

These measures – on which the UK took a leading role in negotiating at EU level – are aimed at ensuring that law enforcement agencies have access to a broad range of information and that opaque structures are made more transparent.

### ***Trusts – Implementation / alignment***

5AMLD requires that the expanded TRS be in place during March 2020. HM Treasury's consultation proposes that trusts registered on or after 1 April 2020 should be registered within 30 days of their establishment. For unregistered trusts already in existence on 31 March 2020, the Government proposes a deadline of 31 March 2021 for them to register with TRS. This longer lead in time is proposed given the significantly increased number of trusts that will need to be registered. These deadlines align well with our target 2021 implementation date for the Register of

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<sup>6</sup> <https://www.gov.uk/government/consultations/transposition-of-the-fifth-money-laundering-directive>

Overseas Entities and will address the Committee's concern over loopholes existing across the registration frameworks.

The Committee has recommended that charitable institutions are covered by one of the two frameworks. If a charity is either an overseas entity or is using an overseas entity to hold land, it will be in scope of the Bill and the entity will be required to register with Companies House. As a charity may not have an identifiable registrable beneficial owner, the Government is considering whether entities holding land for charities might appropriately be subject to modified application requirements. The Government will consider how charitable institutions that are trusts might fall into the scope of the TRS in view of responses received to the consultation on transposing 5AMLD.

The Government intends to publish guidance to help: overseas entities; third parties transacting with overseas entities; and facilitators to understand the requirements of the Bill. This guidance will include a detailed explanation of the position of trusts within the registration requirements, and examples of the circumstances in which we would expect overseas entities holding property on behalf of a trust to register. We will also use the Explanatory Notes to help achieve this objective.

## Thresholds and “Significant Influence or Control”

### Committee recommendation

*We were convinced by the view of witnesses, particularly those campaigning for greater transparency in land transactions, that a 25 per cent ownership and voting threshold for the definition of beneficial ownership could undermine the draft Bill’s aim to capture the true beneficial owners of overseas entities. We therefore urge the Government seriously to consider the case for lowering the 25 per cent ownership and voting rights thresholds. In its response to this report, it should outline in detail the rationale for its ultimate decision on thresholds. (Paragraph 103)*

*While we are restricted in our consideration to the provisions of the draft Bill, we feel strongly that the problems identified with the proposed thresholds for the Register of Overseas Entities apply equally to the People with Significant Control register. Consideration regarding thresholds should therefore also be extended to the PSC register. To avoid unnecessary administrative burdens on interested parties, and to promote the coherence and efficacy of the two registers, whatever ownership or voting threshold is determined for the Register of Overseas Entities should be mirrored by the People with Significant Control register. (Paragraph 106)*

### Government response

The 25 per cent threshold contained in the draft Bill follows the UK’s People with Significant Control (PSC) regime and is in line with global norms in beneficial ownership. The Government will keep these thresholds under review as we already do in respect of the PSC regime.

When the PSC regime was in development, significant analysis, including consultation, considered the question of thresholds. The threshold of more than 25 per cent reflects the level of control a person needs (under English company law) to be able to block special resolutions of a company<sup>7</sup>. It was considered that 25 per cent represented the optimum opportunity to understand who is in a position to exert significant influence and control over a company. Collecting information on legal ownership below that threshold would be much less likely to do this. We are mindful of the risk that an individual wishing to disguise their beneficial ownership might therefore deliberately reduce their shareholding. The Government has therefore ensured that anyone who exerts significant influence or control over an entity is captured within the meaning of ‘beneficial owner’.

There are a number of conditions set out in Schedule 2 to the draft Bill, for determining who is a beneficial owner for the purposes of the Register of Overseas Entities regime, in common with the PSC regime. An individual who meets any one or more of the conditions must be registered, subject to specified exceptions in Schedule 2. The draft Bill provides that where an individual holds less than 25 per cent of shares or voting rights in an overseas entity, but has significant influence or control over the entity, such

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<sup>7</sup> <https://www.legislation.gov.uk/ukpga/2006/46/section/283>

a person should be registered as a beneficial owner. This condition is laid out in condition 4 of paragraph 6 of Schedule 2.

The FATF, which sets global anti money laundering and counter terrorist financing standards, does not mandate a threshold for determining beneficial ownership. In guidance<sup>8</sup> and through its assessment process, the FATF has found a 25 per cent threshold to be acceptable as an example of how to determine beneficial ownership. As a result, “25 per cent” or “more than 25 per cent” is used in many beneficial ownership definitions, such as the European Union’s Fourth<sup>9</sup> and Fifth<sup>10</sup> Anti-Money Laundering Directives (AMLD).

As already noted, the FATF’s recent review of the UK’s regime for tackling money laundering and terrorist financing concluded that the UK has the strongest regime of the approximately 60 countries assessed to date.

As the Committee’s report notes, there is a power in paragraph 25 of Schedule 2, to amend the thresholds for who is considered a “beneficial owner” for the purposes of the Bill. We would consider amending the thresholds if, for example, domestic or international anti-money laundering regulations were to adopt different thresholds, or if circumstances were otherwise to change. This power is subject to affirmative resolution, ensuring that any proposed changes to the thresholds are subject to parliamentary scrutiny.

### **Committee recommendation**

*The definition of beneficial ownership encompassed by ‘Condition 4’ in the draft Bill (a person having “significant influence or control” over a legal entity) will be crucial in ensuring that beneficiaries who may not otherwise meet the proposed ownership or voting thresholds of beneficial ownership fall within the scope of the draft Bill. (Paragraph 111)*

*However, we were concerned by evidence outlining how an inexact definition of “significant influence or control” might hinder the utility of this Condition in the draft Bill. We therefore welcome the Minister’s intention to produce such guidance. (Paragraph 112)*

*To underline how integral this Condition will be to the Bill’s stated purpose of encompassing the true range of beneficial ownership of overseas entities, the Government should include within the Bill a requirement for the Secretary of State to produce guidance on interpreting the meaning of “significant influence or control” for the purposes of this legislation. (Paragraph 113)*

*To avoid any duplication or contradiction, the Government should ensure that this guidance tallies as far as possible with equivalent guidance on the meaning of*

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<sup>8</sup> [FATF Guidance on transparency and beneficial ownership](#)

<sup>9</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32015L0849&from=EN>

<sup>10</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32018L0843&from=EN>



*“significant influence or control” under the People with Significant Control regime.  
(Paragraph 114)*

### **Government response**

The Government agrees with the Committee’s recommendation that it is important that the users of the Register understand what “significant influence or control” may encompass. The Government is committed to ensuring that the term is as clear as possible to assist users in relation to their obligations and will contribute to ensuring that the Register is accurate and robust.

The Government will seek to ensure that guidance it produces with respect to the Register takes account of the existing guidance available in relation to the PSC regime, which uses the same terminology.

## **Protection of Information**

### **Committee recommendation**

*We believe that consideration should be given to some form of procedure for challenging a decision on the suppression of information. The Government should include a detailed analysis of this proposal when it responds to this report. (Paragraph 127)*

*In addition, we call on the Government to publish in an annual Written Statement the number of occasions on which it uses Clauses 16 and 22 of the draft Bill. (Paragraph 131)*

### **Government response**

The Government welcomes the Committee's agreement that there may be circumstances in which information provided to the Registrar may need to be suppressed from public view. The Government is of the view that the Register requires a protection regime that assures individuals that they can comply without risk of harm.

The powers in clause 22, together with the regulations that the Government intends to make under these powers, will provide confidence to those individuals engaging with the regime that if they apply with convincing evidence, they will be protected. If that were in any doubt, such individuals might feel incentivised to seek to evade their obligations.

The Government does not therefore plan on introducing such a mechanism. However, this will not prevent interested parties from challenging decisions taken in respect of that regime, were they to be seen as unlawful.

The Government understands why for reasons of transparency, parties might be interested in such a mechanism. Parliament and others, including civil society, should find confidence in the fact that the powers to protect information in the PSC regime, on which clause 22 of the draft Bill is based, has been used infrequently; exercised on a case-by-case basis and exercised only following advice from law enforcement agencies. The Government agrees that it would be helpful to those using and scrutinising the operation of the Register to know how frequently the power to protect information is being used and will consider the best vehicle for providing that information.

### **Committee recommendation**

*Though the effect of Clause 22 will be to restrict information being made public, it is in the Government's interests to promote as great a degree of transparency as possible. We therefore recommend, as we proposed for Clause 16, that the Government should outline on the face of the Bill the circumstances under which the powers in Clause 22 may be exercised, or at least publish draft regulations to that effect at the same time as introducing the Bill. To mirror the PSC regulations, such regulations could, for*

*example, protect those living with an applicant, and should allow applications for exemption where there was any serious risk of violence or intimidation. (Paragraph 130)*

## **Government response**

The Committee's report highlights a concern from the Chair of the Joint Committee on Human Rights (JCHR) regarding the threshold for disclosing information being too high, i.e. that the threshold might not allow for an application to be made 'if the person's family members could be harmed as a result of disclosure, or if some lesser, yet still serious, level of harassment, threat or harm was likely.'

The Government can confirm that the power in clause 22 applies to information relating to 'relevant' individuals and is not limited solely to beneficial owners. The Government can also confirm that while risk of physical harm would be an appropriate justification for the exercise of clause 22, the power might be exercised to allow an application where an individual is at 'serious risk of being subject to violence or intimidation'. The latter is the criterion set out in the Register of People with Significant Control Regulations 2016<sup>11</sup> (regulation 36 refers), i.e. that the grounds on which an application may be made are that the applicant reasonably believes that disclosing certain information will 'put the applicant or a person living with the applicant at serious risk of being subject to violence or intimidation'.

The Government intends to publish, and consult on, draft regulations, and in any event will make clear the grounds on which applications will be possible under the protection regime.

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<sup>11</sup> <http://www.legislation.gov.uk/ukdsi/2016/9780111143018/part/7>

## **Accuracy of Information**

### **Committee recommendation**

*We believe that the efficacy of the Register proposed by this Bill will be damaged should the proposed Register not be kept up-to-date, and that the Bill should make specific reference to this necessity. (Paragraph 144)*

*We acknowledge that an “event-driven” update requirement might adversely affect third parties. We therefore suggest that, in addition to the annual update requirement, the Bill should include a specific requirement on the overseas entity to update the Register before any disposition is made. This will capture information at the point of transaction, where any potential money laundering might occur. In addition, a third party should be able to request enough information to ascertain whether the overseas entity had complied with its duty. (Paragraph 145)*

*Schedule of minor and drafting issues: Clause 7 is not drafted sufficiently clearly. We recommend that the clause is re-drafted to be easier to follow (Appendix 6)*

### **Government response**

Clause 7 in the draft Bill outlines the requirement for overseas entities, once on the Register, to update their information annually with Companies House. In practice this means that each year, overseas entities must undertake reasonable steps to identify and confirm their beneficial owners, as set out in clause 11 of the draft Bill, and provide this information to Companies House. This confirmation process ensures that information held about individuals is accurate and up to date.

The Government welcomes the Committee’s acceptance of the reasons why an “event-driven” update requirement for overseas entities could adversely affect third parties transacting with them.

We agree that it is important that the Register is as accurate as possible at the point at which dispositions take place, and will consider further how best to achieve this aim. It is important to determine firstly how this could work in practice, considering the likely uncertainty and impact on third parties and overseas entities; potential sanctions; and how other recommendations in this report and wider Government proposals interact to ensure accurate and timely information on the Register.

The Government understands the Committee’s concern that third parties should be able to fully satisfy themselves that the overseas entity is compliant. The Government’s intention is to implement a robust public register which will give third parties sufficient information to be assured of the overseas entity’s compliance.

The Committee has also requested that clause 7, Updating Duty, be re-drafted to ensure that it is sufficiently clear. Officials are carefully considering this recommendation.

## **Committee recommendation**

*Licensed professionals are already bound by the Money Laundering Regulations to perform checks on their clients. It may be possible to make use of these requirements in relation to this Register. It may also be possible to exempt entities registered in certain jurisdictions from the requirement to obtain verification from a regulated professional if the jurisdictions have already conducted verification checks. (Paragraph 175)*

*We therefore recommend that the Government should explore the viability of requiring regulated professionals to verify beneficial ownership information submitted to the Register. (Paragraph 176)*

## **Government response**

The Government agrees that it is essential that potential users, such as law enforcement, professional services companies, and civil society, have confidence in the reliability of information held on the Register. The Government's vision is for an overseas register which is public, free to access, and which enables users to flag suspicious or potentially incorrect information to Companies House. The Government recognises, however, that this should be in addition to, and not an alternative to other checks and validation of information.

The Government is currently consulting on major reforms to Companies House, which include seeking views on proposals for Companies House to verify identity information; more powers to query and seek corroboration on information received from companies and to cross-check information and work more closely with other agencies, most importantly law enforcement and the financial sector.<sup>12</sup> The consultation also seeks views on how the checks carried out by AML-regulated professionals should be considered within the new regime. The consultation proposes that Companies House checks do not duplicate those carried by regulated professionals (third parties subject to customer due diligence obligations by virtue of Anti-Money Laundering Regulations)<sup>13</sup>, but that the professionals be required to pass the details of the checks carried out to Companies House. The consultation will close on 5 August 2019, after which due consideration will be given to responses and proposals developed accordingly.

Regarding the introduction of verification measures within the draft Bill, the Government is mindful of the general consensus that the Register should be implemented without delay. The Government therefore welcomes the Committee's suggestion about the possibility of using "licensed professionals... already bound by AML regulations" to perform checks on clients. As the Committee highlights in its report, the Government is of the view that "the vast majority of those who undertake land transactions in the UK, particularly high-value or complex ones, will already be using a UK regulated professional".<sup>14</sup> The Government accepts the Committee's

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<sup>12</sup> <https://www.gov.uk/government/consultations/corporate-transparency-and-register-reform>

<sup>13</sup> <http://www.legislation.gov.uk/ukxi/2017/692/contents/made>

<sup>14</sup> Paragraph 47 of the Committee's report.

recommendation to explore whether this is viable and will take into account the evidence received from respondents to the consultation on the reform of the companies register.

### **Committee recommendation**

*We are satisfied that the absence from the Scottish Register of any express limitation where an overseas entity is the owner will not cause conveyancing professionals any difficulty. (Paragraph 187)*

*However, while it is unlikely that many third parties would attempt their own conveyancing without professional help, we see no good reason why those who do should be exposed to a new risk. To cover the potential risk to third parties, the Government may wish to consult further with the Scottish Government about whether Land Register title sheets should signal expressly and in writing that the Keeper regards the applicant as an overseas entity, and that deeds will only be registrable if the entity is compliant. (Paragraph 188)*

### **Government response**

As the Committee has recognised, the majority of people seeking to transact with land in Scotland (and the rest of the UK) will use a solicitor or other conveyancing professional.

The registration of overseas entities regime has been designed to work as consistently as possible across the UK subject to the differences in land registration requirements that currently apply, and with which those regularly involved in land transactions are familiar. Although there is no legal concept in land registration law for Scotland similar to a ‘restriction’ in England and Wales, or an ‘inhibition’ in Northern Ireland, the prohibition on the registration of certain registrable deeds is explicit on the face of the draft Bill.

We do not consider that the Scottish land register requires modification to mirror England and Wales or Northern Ireland, as the public Proprietorship Section of a Title Sheet (the official record relating to a particular property) clearly indicates an entity’s territory of incorporation, which is a signal that the entity should be further checked to see if it is subject to the requirements of the register. Stakeholders have indicated that this will simply be another matter to be checked by third parties, along with other matters (e.g. a community right to buy a property that has been registered) which do not appear on the Title Sheet.

The Government intends to work with Companies House, the land registries and relevant sectors to assist them in providing guidance about the new requirements, and we commit to undertake comprehensive communications about the regime ahead of the Register becoming operational.

## **Committee recommendation**

*An inaccurate update under Clause 7 would, and should, attract criminal penalties. However, it seems inconceivable that the Government intends that an inaccurate update under Clause 7 should affect the registration by third parties of dispositions to them: such inaccuracy might be impossible for third parties to discover. But, as drafted, Schedules 3 to 5 could indeed have such consequences. (Paragraph 210)*

*We therefore recommend that the Government should clarify, on the face of the Bill, the extent to which the land registries and applicants for registration should be concerned with the accuracy of updates under Clause 7. To avoid a “chilling effect” on the property market, the accuracy of such updates should not be a matter of concern for innocent third parties entering into property transactions with overseas entities. (Paragraph 211)*

*The Government should continue to consult with the public as it implements the legislation, and communicate clearly to individuals and entities about how they might be affected. (Paragraph 213)*

## **Government response**

The Government agrees that the accuracy of information provided pursuant to the updating duty in clause 7 is very important. An overseas entity must provide correct information to Companies House. This is why it is a criminal offence under clause 28 for a person to knowingly or recklessly deliver, or cause to be delivered to the Registrar, any document that is misleading, false or deceptive in a material particular. Further, it is an offence to make to the Registrar any statement that is misleading, false or deceptive in a material particular. Please refer to clause 28 of the draft Bill for the full wording and details of the offence.

The duty is on the Registrar of Companies House to maintain the Register; and for overseas entities to provide specified information. The Register will then be publicly available for applicants seeking to register land to check. Both the land registries and applicants seeking to register are entitled to rely on information contained in this register as correct. As such, the Government believes third parties are adequately protected, but will continue to keep this under review as the draft Bill is finalised.

The Government will continue to work closely with interested parties. This will include running a comprehensive communications campaign to ensure that those that may be affected are made aware.

## **Devolved Administrations**

### **Committee recommendation**

*Land law is within the devolved competence of the Scottish Government. We welcome the discussions which have taken place between the Scottish Government and the Department for Business, Energy and Industrial Strategy on the possibility of double-reporting between the Register of Persons Holding a Controlled Interest in Land and the Register of Overseas Entities. (Paragraph 149)*

*We urge the two governments to continue to engage on this matter, and to consult and communicate with interested parties about any future reporting requirements. (Paragraph 150)*

### **Government response**

The Government's intention is that the regime works as consistently as possible across the UK, subject to differences in land registration requirements. Officials are working closely with the Scottish Government to reduce administrative burdens by limiting the possibility of double-reporting between the Register of Overseas Entities and the Register of Persons Holding a Controlled Interest in Land as far as practicable.

This is in addition to other work ongoing with the other devolved administrations and interested parties on any future reporting requirements to ensure that the regime is workable.



## **Communications**

### **Committee recommendation**

*The variation between the length of leases caught by the Bill in the UK's three legal jurisdictions means that prospective tenants in England and Wales are more likely than those elsewhere to be without legal advice about a lease affected by the draft Bill. The Government should mitigate this possibility by publicising the requirements of the Register as widely as possible. (Paragraph 193)*

### **Government response**

The Government welcomes the Committee's recommendation for measures to minimise the risk of third parties being disadvantaged by the variation between the length of leases caught by the draft Bill in the UK's three legal jurisdictions.

Comprehensive communications about the regime will be undertaken prior to the implementation of the Register, to ensure stakeholders are aware of the Register's requirements.

The guidance that the Government intends to produce will account for the differing legal arrangements within each jurisdiction.

## Scope

### Committee recommendation

*According to the provisions of the draft Bill, only those entities which, under existing rules, were obliged to supply the land registries with information identifying them as overseas entities would need to register at Companies House. But there is no obvious reason why the Secretary of State's power under Clause 30 to order registration should be limited to these overseas entities. The registrars, or the Secretary of State, may be able to call on enough information to identify overseas entities which registered property even before collection of an owner's country of incorporation became mandatory in the various legal jurisdictions. (Paragraph 198)*

*We therefore recommend that the Secretary of State be given power to require any overseas entity to register at Companies House if registered as proprietor or owner of a qualifying estate (or its equivalent in Scotland). This might be achieved by amending Clause 30 to remove the incorporation of the retrospective time limits in Clause 9(9)(a) (ii), (b)(ii) and (c)(ii). (Paragraph 199)*

*To ensure that this approach will be fully enforced, we recommend that Schedules 3 to 5 be amended so that the recipient of such a notice is restricted from disposing of land. To avoid the difficulty that this might otherwise cause for third parties in Scotland (where no restriction or inhibition would be registered), the Secretary of State, or the Keeper of the Registers of Scotland, should be required to publish and maintain a list of those to whom such notice had been given. (Paragraph 200)*

### Government response

The Government is of the view that the scope of the Register is both targeted and comprehensive, capturing not only those overseas entities purchasing new properties but also, via the draft Bill's transitional regime, certain overseas entities already owning UK property.

The scope of the draft Bill and the overseas entities that are captured as part of the transitional regime are based on the three relevant land registries' ability to identify, in a consistent way, existing overseas entities that currently own land. The England and Wales land registry can identify with a level of assurance overseas companies registering title after 1 January 1999; the date after which the Registers of Scotland can do so is 8 December 2014. It was not a statutory requirement for entities to provide this information nor was it requested on land registration forms prior to these dates. The Northern Ireland land registry has never requested this information.

While the Government understands the Committee's desire to capture as many overseas entities that own property in the UK as possible, the Committee's proposed approach would lead to inconsistent, and arguably unfair, treatment of any entities outside those dates which were identified, compared with those overseas entities captured as part of the transitional regime. Those currently in scope of the transitional regime have 18 months to comply; will have been notified of the new requirements by Companies House; and will have the option of disposing of the

property rather than complying with the registration requirements. Any overseas entities written to by the Secretary of State under a revised clause 30 would have six months to comply, but with no prior notification of requirements or option to dispose of the property. It may also create uncertainty for third parties looking to transact with overseas entities, as they would not be sure whether an entity with which they were dealing was in scope of the requirements or might become so during a given transaction.

We recognise however the Committee's concern that the approach that the Government has taken might lead to a lack of transparency around entities that registered title to land prior to the dates identified within the draft Bill. We are therefore considering whether the power within clause 30 should be widened to allow the Secretary of State to require registration of some entities that would otherwise be out of scope in certain limited circumstances, and whether this could be done without creating uncertainty for third parties.

## **Enforcement**

### **Committee recommendation**

*We recognise that there will inevitably be hurdles to enforcement, and that the aim of this legislation is to create a hostile environment in the UK for money laundering. But Parliament should not enact unenforceable legislation, and legislation without “teeth” will be no deterrent. (Paragraph 221)*

*We are attracted to the idea of civil penalties, particularly if they are easier than criminal sanctions to enforce abroad, and against land or other assets in the UK. Civil penalties could be backed up by criminal sanction for non-payment. (Paragraph 222)*

*We therefore recommend that the Government should introduce civil penalties and explore with the devolved administrations the possibility of enforcement against land of any criminal fines imposed under the Bill. (Paragraph 223)*

### **Government response**

As the Committee recognises, the draft Bill forms part of a wider suite of measures designed to reduce the harm caused to the UK by money-laundering and corruption, and is intended to complement other law enforcement measures, such as the Proceeds of Crime Act 2002 and the Criminal Finances Act 2017, which set the framework for anti-money laundering investigations and provide for criminal offences against those committing money laundering offences.

While we agree that the criminal sanctions in the Bill are unlikely to be enforceable extra-territorially, the use of criminal sanctions will still act as a deterrent, not least because they could be enforced against someone who commits an offence and later enters the UK. It is worth noting that there are likely to be numerous UK residents choosing to hold land via an overseas entity.

The Government has tried to ensure that it is not asking more of overseas entities than it does of UK companies.

The Register of Overseas Entities policy is designed to attain the highest possible level of compliance by overseas entities, rather than high numbers of prosecutions. This is why the draft Bill outlines in Schedules 3, 4 and 5 that failure to comply with the requirements will result in an inability of overseas entities and third parties to register legal title to the land after certain transactions. In practice, this is expected to affect the ability of the entity to undertake certain transactions. Any person buying or leasing the land from the overseas entity would be unable to register the disposition with the relevant land registry in any part of the UK, and would therefore be reluctant to transact with the overseas entity.

The Government will consider further the idea of civil penalties in addition to the use of criminal sanctions as an alternative means of regulating behaviour.

## **Parliamentary Scrutiny**

### **Committee recommendation**

*Parliament will need to keep a close eye on the operation of the Register, and on the extent to which it is achieving its aims. While we recognise that measuring the success of this legislation will be difficult, we expect the Government to publish, in an annual Written Statement, their assessment of the extent to which this legislation has achieved its aims. (Paragraph 227)*

*In the near future, scrutiny of the Register may be conducted by Select Committees of both Houses. Five years after the Act has been brought fully into force, further scrutiny of the legislation itself will provide instructive lessons for other anti-corruption efforts. Consideration should be given to the establishment of a Select Committee to carry out post-legislative scrutiny of the Registration of Overseas Entities Act. (Paragraph 228)*

### **Government response**

The Government agrees with the Committee's recommendations that it will be important to assess the effectiveness of the Register. The Sanctions and Anti-Money Laundering Act 2018 requires the Government to publish a report explaining the progress made regarding the Register. A Written Ministerial Statement (WMS) was laid on 24 May 2019 to meet this requirement, and two further WMS will be laid in 2020 and 2021 to meet this obligation. The Government plans to assess how best to inform Parliament about the operation of the Register.

The Committee's recommendation that Parliament should scrutinise this legislation after it has come into force is welcome. We agree it is important that post-legislative scrutiny is done on this Act at an appropriate time following the passing of the legislation.





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