



House of Lords  
House of Commons  
Joint Committee on the  
Draft Registration of  
Overseas Entities Bill

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# Draft Registration of Overseas Entities Bill

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**Report of Session 2017–19**

*Report, together with formal minutes relating  
to the report*

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## Joint Committee on the Draft Registration of Overseas Entities Bill

The Joint Committee on the Draft Registration of Overseas Entities Bill was appointed by the House of Commons on 19 February 2019 and the House of Lords on 25 February 2019 “to conduct pre-legislative scrutiny of the Government’s draft Bill.

### Membership

The Members of the Joint Committee on the Draft Registration of Overseas Entities Bill were:

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[Lord Faulkner of Worcester](#)  
[Lord Faulks QC](#) (Chairman)  
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See Appendix 1.

A full list of Members’ interests can be found in the Commons Register of Members’ Financial Interests and the Register of Lords’ Interests:

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## Summary

Unlike some other countries, the United Kingdom permits the ownership of land by individuals or entities based overseas. The UK is valued for its democratic political environment, its independent legal system, and its rigid financial protections. While these advantages have made property in this country popular among legitimate investors, they also appeal to those, such as money launderers, who may wish to use property to conceal illicit funds. Criminal investigations are often hindered because enforcement agencies cannot access information about the individuals who own or control overseas entities which have been used to launder the proceeds of crime and corruption.

The draft Registration of Overseas Entities Bill aims to increase the transparency of information about who really owns land in the United Kingdom. It will establish a publicly accessible Register of the beneficial owners of overseas entities purchasing land, and of those who already own land. Beneficial owners are the individuals who ultimately profit from the overseas entities' investment. Such entities will be required to enter their beneficial ownership information with Companies House. If they are deemed "non-compliant"—if they fail to enter the necessary information when registering, or if they fail to register at all—they will face sanctions.

In this report we assess whether the draft Bill is likely to achieve its aim. We have concluded that in general terms, the Bill is timely, worthwhile, and, in large part, well drafted. But we believe that the legislation will be improved—and will be more likely to achieve the Government's stated objectives—if our conclusions and recommendations are accepted.

We are concerned, for example, that trusts could be used to circumvent the draft Bill's obligation on entities to register. The Government told us that the provisions of the Fifth EU Anti-Money Laundering Directive would be applied in the UK whether or not the UK leaves the European Union with a deal, and that the UK's implementation of the Directive would aim to close the trusts loophole. The Directive must be transposed into UK law by January 2020. Given the significant congruence between the Directive and the draft Bill, the Government has an important opportunity to introduce both measures simultaneously. The Government should therefore not tarry in implementing this draft legislation. And it must exercise great care in ensuring that trusts do not slip into any gaps between the two frameworks.

The Government plans to introduce the Bill to Parliament later in 2019, and to launch the Register in 2021. The Register will work alongside other anti-money laundering measures. These measures include the People with Significant Control (PSC) register, unexplained wealth orders, and suspicious activity reports. The proposed Register is an important piece of the anti-money laundering jigsaw, but it is only one piece. We recommend that the percentage of ownership thresholds that the draft Bill uses to define beneficial ownership, as well as the definition of what it means to have "significant influence or control" over an entity, must therefore reflect those used in the PSC framework. Such an approach should avoid unnecessary administrative burdens on users, and promote the coherence and efficacy of the two registers.

The draft Bill proposes powers to exempt certain entities from the requirement to register. Such powers would give exemptions not only from the requirement to publish beneficial ownership information, but also from providing that information to Companies House. The Government should consider introducing a new clause to protect only the information registered by certain types of entities—such as foreign governments—from public disclosure. And it should publish, in an annual Written Statement, the number of occasions when such exemptions are used.

The report argues that the efficacy of the proposed Register will be damaged should it not be kept up-to-date. We therefore suggest that, as well as a requirement to update information once a year, vendors should update information about a proposed transaction before it takes place. This will capture information at the point where any potential money laundering might occur.

We are also concerned that the proposals lack verification checks to deter criminals wishing to submit false information. Without such checks, the draft Bill risks failing in its central policy aim: to provide a reliable and transparent record of the beneficial ownership information of overseas entities investing in the UK property market. But a workable verification mechanism could, for example, delegate verification responsibilities to Companies House or regulated professionals.

We recognise that there will inevitably be hurdles to enforcement and that the purpose of the legislation is to deter significantly the use of UK property for money laundering. However, effective sanctions are also required. In this context, civil penalties may well be easier than criminal sanctions to enforce abroad, and against land or other assets in the UK. Furthermore, they could be backed up by criminal sanctions for non-payment.

Provided that the Government takes our recommendations into account, we are satisfied that the overall effect of the draft Bill on the UK property market will be beneficial for those involved in land transactions. But the Government should continue to consult with the public as it implements the legislation, and communicate clearly to individuals and entities about how they may be affected by its provisions.

# 1 Introduction

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## Transparency and the UK property market

1. The United Kingdom benefits from a long-established democratic political environment, an internationally well-regarded legal system, and robust financial mechanisms. These advantages make investment in the UK an enticing prospect for overseas investors seeking a country in which to buy property.

2. But the very factors which attract legitimate investors also appeal to those with more malign intent. In the first oral evidence session of our inquiry, Professor Jonathan Fisher QC, barrister at Bright Line Law, told us:

“If you asked the fraudsters [...] they would tell you that it is a very stable regime. They are very comfortable with the political environment [...] London property has always been a good bet. We see evidence of organised criminals buying property outside London as well. It is broadly the stability element that attracts them.”<sup>1</sup>

3. This tension—between the continuing desire to encourage investment from abroad and the need to discourage illegitimate activity—creates a policy priority for the Government. The property market is built on trust. That trust builds, in turn, on the expectation of vendors and buyers that they operate within an equitable and transparent legal framework, and that they know, with every possible certainty, with whom they are dealing. The draft Registration of Overseas Entities Bill (“the draft Bill” or “the Bill”) aims to increase the transparency of information about who really owns UK land. It seeks to establish a publicly accessible Register (“the Register”) of the beneficial owners of entities purchasing land, and of those who already own land, in the UK—that is to say, the individuals to whom profit from investment in land ultimately accrues.<sup>2</sup> It was the task of this Committee to examine whether the draft Bill is likely to achieve this aim.

4. As we explain in the following chapter, the proposed Register will be one tool in a larger “tool box” of measures designed to combat money laundering.<sup>3</sup> The Minister responsible for the Bill, Parliamentary Under-Secretary of State for Small Business, Consumers and Corporate Responsibility Kelly Tolhurst MP, told us that transparency—“together with information sharing and our enforcement agencies—is just one of the tools that we know work together to combat criminality, money laundering and all those things.”<sup>4</sup> Our report considers the draft Bill in the context of complementary anti-money laundering measures, and asks how the key goal of achieving transparency in property ownership might be informed by lessons learned from implementing other legislation.

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1 [Q 2](#)

2 “Beneficial ownership refers to the person(s) who ultimately own(s) or control(s) an asset (for example, a property or a company) and benefit(s) from it. The concept of beneficial ownership exists because the direct legal owner of an asset is not necessarily the person ultimately controlling and benefitting from the asset. For example, the direct legal owner of a residential property may be an anonymous company registered overseas.” House of Commons Library, Registers of beneficial ownership, Briefing Paper, [Number 8259](#), 15 March 2019

3 [Q 9](#) (Tom Keatinge)

4 [Q 70](#)

## Our inquiry

5. The Joint Committee was appointed by the House of Commons on 19 February 2019 and the House of Lords on 25 February 2019 to conduct pre-legislative scrutiny of the Government’s draft Bill. Both Houses instructed the Committee to report by 10 May 2019.<sup>5</sup> Pre-legislative scrutiny is the detailed examination of an early draft of a Bill, carried out by a Parliamentary Select Committee before the final version of the Bill is drawn up by the Government and laid before Parliament. This process is not applied to every draft Bill.<sup>6</sup> Six Members of the House of Commons and six Members of the House of Lords were appointed to the Committee, which was chaired by Lord Faulks.

6. Within the short timescale that we were set, a range of witnesses had the opportunity to express their views. We held six oral evidence sessions and issued a public call for written evidence which received 21 responses. Our witnesses included representatives of enforcement agencies, professional associations, land registries, Companies House, academic and legal experts, conveyancing professionals, and the Minister and her civil service colleagues. A full list of those who gave oral and written evidence is attached to this report. We take this opportunity to express our gratitude to all those who submitted evidence or appeared before us, often at necessarily short notice. We are also most grateful to the Government’s Bill team for their thorough and prompt assistance throughout this inquiry in responding to our various queries.

## Report structure

7. The report is set out as follows. Chapter 2 describes the existing anti-money laundering framework in which the Bill will operate, and provides a brief summary of the provisions and powers that it contains. Chapter 3 explores the draft Bill’s definition of “overseas entities”, which will be required to enter their beneficial ownership information on the proposed Register. It asks whether this definition is sufficient to capture the full range of entities investing in the UK property market. It looks, in particular, at whether trusts should fall under the scope of the Bill. Chapter 4 considers how the term “beneficial owner” is defined, and assesses the adequacy of this definition for the purposes of the legislation. Chapter 5 examines the information that entities will need to enter into the Register, and asks whether the information held will be accurate, up-to-date, and pertinent to achieving the stated aim of the Bill. Chapter 6 questions whether the enforcement mechanisms laid out in the Bill are practicable, and whether they can be improved. A consolidated list of our conclusions and recommendations can be found after Chapter 7, the conclusion.

8. Appendix 5 contains a list of possible loopholes that could be used to evade the requirements of the draft Bill. In Appendix 6 we present a range of technical drafting points that we put to the Government’s Bill team during the inquiry. The Government’s response to those points is also included, and in one case, our recommendation in response. Appendices 3 and 4 contain analyses of the draft Bill provided by the House of Lords Delegated Powers and Regulatory Reform Committee (DPRRC), and the Joint Committee on Human Rights (JCHR). The Rt Hon Lord Blencathra, Chair of the DPRRC, wrote: “The DPRRC has nothing which it wishes to draw to the attention of the Joint Committee [...]

5 House of Commons, [Order Paper No. 253](#), 19 February 2019; House of Lords, [Order Paper No. 259](#), 25 February 2019

6 UK Parliament, *Pre-legislative scrutiny*: <https://www.parliament.uk/site-information/glossary/pre-legislative-scrutiny> [accessed 1 April 2019]



the delegated powers are proportionate.”<sup>7</sup> We have referred to our communication with the JCHR where appropriate below.<sup>8</sup>

9. Appendix 6 is a glossary of some of the terms that we use most frequently in the report. We acknowledge that the draft Bill deals with an area of law that is often complex, and we hope that the glossary will go some way to reducing that complexity. We have endeavoured throughout our report to use as clear language as possible, and to explain technical terms wherever we can. Pre-legislative scrutiny reports necessarily deal with draft Bills in significant and sometimes technical detail. Since this draft Bill seeks to tackle money laundering, a crime with far-reaching impacts on our economy and society—more than £90 billion a year is estimated to be laundered through the UK—we hope that our report will be read by a wider audience than those individuals who will be most immediately affected by the Bill.<sup>9</sup>

10. Our inquiry is just the start of parliamentary and public debate on this Bill, but we believe that the Bill will be improved—and will be more likely to achieve the Government’s stated objectives—if the recommendations of this report are accepted. It is in this spirit that we commend our report to both Houses of Parliament.

11. ***We support the Government’s ambition to improve the transparency of overseas beneficial ownership in the United Kingdom property market. Overall, we feel that this draft legislation is timely, worthwhile, and, in large part, well drafted.***

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7 See Appendix 3.

8 Letter from Rt Hon Harriet Harman MP to the Chair, 24 April 2019 ([ROE0021](#))

9 ‘Counting the cost of money laundering’, *The Independent* (5 February 2018): <https://www.independent.co.uk/news/business/news/counting-the-cost-of-money-laundering-a8122916.html> [accessed 8 April 2019]

## 2 The draft Bill in context

12. This chapter describes the legislative and policy context in which the draft Bill sits. It looks at the scale of overseas property ownership in the UK, and its varying distribution across the country. Next, it summarises wider efforts against money laundering, and recent efforts at the UK, EU and global levels to combat these crimes. It considers initiatives such as the People with Significant Control (PSC) register, and the EU's Fourth and Fifth Anti-Money Laundering Directives (4AMLD and 5AMLD).

13. The second half of the chapter explains what the Government intends to achieve with the proposed Register, and how it consulted on the draft Bill. It describes the proposed provisions in the legislation, including its “teeth”—the requirement to register land transactions, and its sanctions for non-compliance—to provide a context for the analysis which comes in later chapters.

### Overseas ownership of UK land

14. In comparison with other jurisdictions, the United Kingdom has a relatively open and welcoming approach to the ownership of land by individuals or entities based overseas. There are no legal restrictions on the ability of foreigners to purchase and hold land in this country.<sup>10</sup> This compares with, for example, New Zealand, Thailand, India, and Switzerland, which have varying legal restrictions on the ownership of land by non-nationals, or those who cannot demonstrate a family connection to those countries.<sup>11</sup> Crown Dependencies such as Jersey and Guernsey also impose restrictions on the ownership of land by non-residents.<sup>12</sup>

15. A result of this liberal attitude to overseas ownership, and of the stable investment environment discussed in the previous chapter, is that the UK has become a very popular destination for overseas individuals and entities wishing to purchase property.<sup>13</sup> One property company estimated that, within the high-end “prime London” market, 32 per cent of buyers in 2013/14 were international.<sup>14</sup> Another report found that of “prime London” sales worth over £1 million, 49 per cent were to foreign nationals.<sup>15</sup> Research commissioned as part of the Mayor of London's inquiry into the impact of foreign

10 Bryan Bletso, Sarah Cardew, Georgie Collins, Laurence Gavin, Ian Silverblatt, Mandeep Khrouf and Rachel Adams, 'Investing in the UK (England and Wales)', *Practical Law Country Q & A (2018)*: [https://uk.practicallaw.thomsonreuters.com/2-602-9807?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&comp=pluk&bhcp=1](https://uk.practicallaw.thomsonreuters.com/2-602-9807?transitionType=Default&contextData=(sc.Default)&firstPage=true&comp=pluk&bhcp=1)

11 International Living, *To Have or to Lease: A Global Guide to Property Ownership Rules and Restrictions*: <https://internationalliving.com/global-property-ownership> [accessed 6 April 2019]; Jones Lang LaSalle, *Restrictions on Property Ownership*, <http://www.joneslanglasallesites.com/investmentguide/country/india/restrictionsonpropertyownership> [accessed 6 April 2019]; Jones Lang LaSalle, *Restrictions on Foreign Property Ownership*: <http://www.joneslanglasallesites.com/investmentguide/country/china/restrictionsonforeignpropertyownership> [accessed 6 April 2019]

12 Nathan Brooker, 'UK property: the Channel Islands debate', *Financial Times* (6 March 2015): <https://www.ft.com/content/36ebfd20-bdc6-11e4-8cf3-00144feab7de> [accessed 10 April 2019]; 'The Observer view on the need for a crackdown on non-resident property owners', *The Guardian* (19 August 2018): <https://www.theguardian.com/commentisfree/2018/aug/19/observer-view-on-cracking-down-on-non-resident-property-owners> [accessed 10 April 2019]

13 House of Commons Library, *Foreign Investment in UK Residential Property*, Briefing Note, [Number 07723](#), July 2017

14 Savills, Spotlight, *The World in London: Capital appreciation - How London's status as a world city is reflected through its residential buyers* (2013) p 5: <https://pdf.euro.savills.co.uk/residential---other/spot-worldlondon-lr.pdf> [accessed 8 May 2019]

15 Knight Frank, *International Buyers in London* (October 2013) p 2: <https://web.archive.org/web/20151123012525/http://content.knightfrank.com/research/556/documents/en/oct-2013-1579.pdf> [accessed 8 May 2019]

investment on London’s housing market suggested that overseas buyers accounted for 36 per cent of sales in “prime” boroughs of London, compared to 5.7 per cent in outer London.<sup>16</sup>

16. Most research into overseas ownership of property in the UK centres on London and the South East, which have the greatest concentration of property with owners based abroad. But throughout the country, land and property is in the hands of such owners, and there is some indication that property in towns and cities outside London is seeing growing interest from overseas investment.<sup>17</sup> The lack of comprehensive information about overseas investment in land outside London and the South East further underlines the importance of this draft legislation, to increase transparency and enable similar research in the rest of the UK.

17. The level of overseas investment in UK land has led to public concern about the affordability and availability of housing. Continuing investment from overseas can raise the price of property, making it unaffordable for residents. There is also concern about under-occupation of foreign-owned housing, with research indicating that high-value homes in prime areas of London owned by overseas buyers are less likely to be occupied than UK-owned homes.<sup>18</sup> While it is not the overt intention of the draft Bill, the deterrents that the legislation will give to illegitimate foreign owners may bring about the incidental benefit of decreasing under-occupation.<sup>19</sup>

18. Various Governments have attempted to reflect this public sentiment in policy, through the introduction of measures such as the Annual Tax on Enveloped Dwellings (ATED, or the “Envelope Tax”), a levy on properties with a taxable value above £500,000. ATED’s aim was to make it less attractive to hold high-value UK residential property indirectly, for example through a company (known as “enveloping” the property), in order to avoid or minimise taxes such as stamp duty land tax.<sup>20</sup> However, beneficial owners who paid the levy were able to retain anonymity. Research commissioned by HM Revenue and Customs (HMRC) suggests that following the introduction of this tax, instances of “de-enveloping” properties from their companies were rare, and that “for some owners the benefits of the envelope far outweighed the cost of paying ATED”.<sup>21</sup> The willingness of beneficial owners to spend a sizeable amount to avoid their identity being made public

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16 University of York Centre for Housing Policy, *Overseas Investors in London’s New Build Housing Market* (June 2017) p 8: <https://www.london.gov.uk/moderngovmb/documents/s58641/08b2c%20University%20of%20York%20data%20report.pdf> [accessed 20 April 2019]

17 ‘London mayor launches unprecedented inquiry into foreign property ownership’, *The Guardian* (30 September 2016): <https://www.theguardian.com/cities/2016/sep/29/london-mayor-sadiq-khan-inquiry-foreign-property-ownership> [accessed 11 April 2019]

18 University of York Centre for Housing Policy, *Overseas Investors in London’s New Build Housing Market* (June 2017) p 21: <https://www.london.gov.uk/moderngovmb/documents/s58641/08b2c%20University%20of%20York%20data%20report.pdf> [accessed 20 April 2019]

19 ‘The Observer view on the need for a crackdown on non-resident property owners’, *The Guardian* (19 August 2018): <https://www.theguardian.com/commentisfree/2018/aug/19/observer-view-on-cracking-down-on-non-resident-property-owners> [accessed 10 April 2019]

20 Lexis PSL, *Annual tax on enveloped dwellings (ATED) — overview*; [https://www.lexisnexis.com/uk/lexispsl/tax/document/393773/5BR0-C761-F18C-V13M-00000-00/Annual\\_tax\\_on\\_enveloped\\_dwellings\\_\\_ATED\\_\\_overview](https://www.lexisnexis.com/uk/lexispsl/tax/document/393773/5BR0-C761-F18C-V13M-00000-00/Annual_tax_on_enveloped_dwellings__ATED__overview) [accessed 11 April 2019]

21 HM Revenue & Customs, *Views and behaviours in relation to the Annual Tax on Enveloped Dwellings* (September 2015): [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/457946/HMRC\\_Research\\_Report\\_384\\_-\\_Views\\_and\\_behaviours\\_in\\_relation\\_to\\_the\\_Annual\\_Tax\\_on\\_Enveloped\\_Dwellings.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/457946/HMRC_Research_Report_384_-_Views_and_behaviours_in_relation_to_the_Annual_Tax_on_Enveloped_Dwellings.pdf) [accessed 12 April 2019]

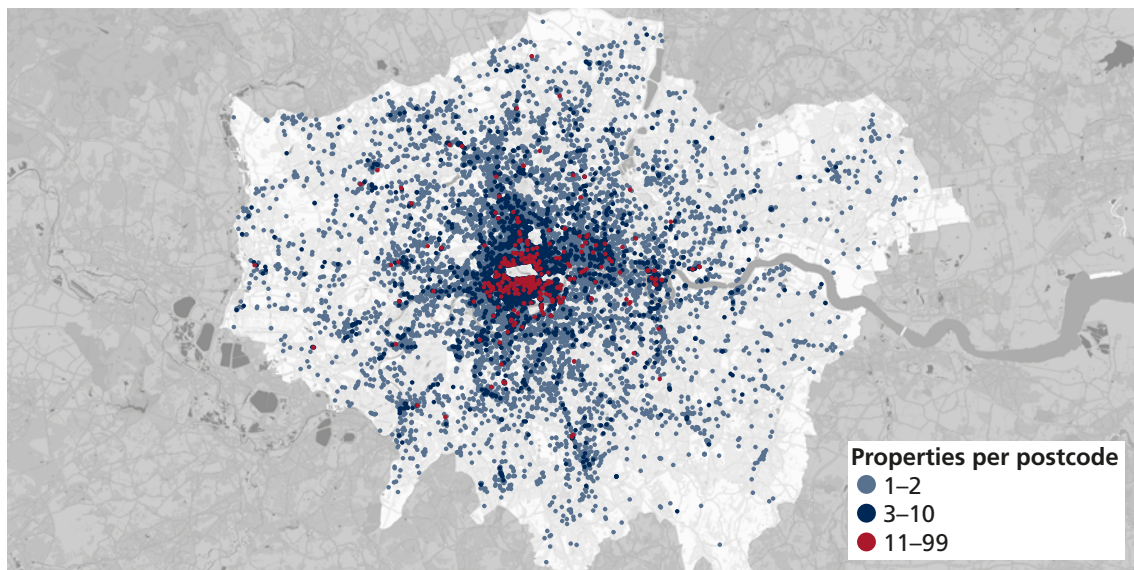
suggests that establishing a truly transparent Register of overseas entities will represent a substantial task for the Government.<sup>22</sup>

## Money laundering

19. A further area of public concern about overseas investment in UK land derives from the use of land and property to launder the proceeds of crime. Money laundering is broadly defined in the UK. It is a process which conceals the proceeds of crime to make them appear legitimate.<sup>23</sup>

20. A recent House of Commons Treasury Committee report concluded: “The scale of economic crime in the UK is very uncertain [...] it is exceptionally difficult to measure economic crime, given [that] those undertaking it are actively trying to hide it.”<sup>24</sup> Evidence that we received suggests that this holds true for money laundering within the UK property market. When asked to assess the scale of this problem, Prof Fisher QC told us: “The essence of the activity of the fraudster is to conceal what they are doing and what they are gaining from it. Therefore, it will be incredibly difficult to estimate, if not impossible.”<sup>25</sup> Alison Barker, Director of Specialist Supervision at the Financial Conduct Authority (FCA), agreed: “It is difficult to estimate the total amount of money laundering. It is by its nature covert.”<sup>26</sup>

**Figure 1: A ‘heat map’ demonstrating the number of Greater London properties owned by companies with at least one owner incorporated in “secrecy jurisdictions”**



Provided by Global Witness and based on Land Registry data from January 2018. Base map © OpenStreetMap and Carto.

21. Transparency International has nevertheless attempted to make such an estimate. In 2017 they identified 160 properties worth over £4 billion purchased by high corruption-risk

22 HM Revenue & Customs, *Annual Tax on Enveloped Dwellings (ATED)* (April 2019): [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/791573/ATED\\_1718\\_Commentary.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/791573/ATED_1718_Commentary.pdf) [accessed 25 April 2019]

23 Proceeds of Crime Act 2002, [section 329](#)

24 Treasury Committee, [Economic Crime - Anti-money laundering supervision and sanctions implementations](#), (Twenty-Seventh Report, Session 2017–19, HC 2010) , paras 15–16

25 [Q 2](#)

26 [Q 46](#)

individuals.<sup>27</sup> Our witnesses from the National Crime Agency (NCA), the Serious Fraud Office (SFO), and the Office for Professional Body Anti-Money Laundering Supervision (OPBAS) agreed that this estimate was reasonable.<sup>28</sup> Between 2004 and 2017, £180 million of UK property was subject to criminal investigation as suspected proceeds of corruption,<sup>29</sup> but this was described by Transparency International as “the tip of the iceberg”.<sup>30</sup> In total, Global Witness identified 86,000 properties in England and Wales owned by companies incorporated in “secrecy jurisdictions”.<sup>31</sup> In 2015, Transparency International identified that 9.3 per cent of all properties in the City of Westminster and 7.3 per cent of those in Kensington and Chelsea were owned by companies registered in an offshore “secrecy jurisdiction”.<sup>32</sup>

22. Law enforcement investigations are often hampered by an inability to access information about the individuals who ultimately own or control overseas entities which have been used to conceal the proceeds of crime and corruption.<sup>33</sup> The proposed Register will be viewed by practitioners as one of several mechanisms to combat money launderers investing in land, and in the UK economy more broadly. Donald Toon, Director of the National Economic Crime Centre at the NCA, told us:

“Certainly the Register will be of assistance, but it has to be seen alongside all the other tools, the suspicious activity reporting regime, the PSC register, the changes that are likely to strengthen the position under the Fifth Anti-Money Laundering Directive, as well as the prioritisation and targeting of that activity by law enforcement.”<sup>34</sup>

## Existing anti-money laundering measures

23. The draft Bill is one of a series of pieces of legislation to emerge from the Government’s efforts to tackle money laundering. Former Prime Minister, the Rt Hon David Cameron MP, laid out his ambitions in this field at the 2016 Global Anti-Corruption Summit, held in London and attended by 43 countries. At the summit, the Government committed to establish a public register of beneficial owners who buy or sell land in the UK.<sup>35</sup>

24. Since then, various legislative initiatives have attempted to deal with the issue of money laundering in the UK. In June 2016 the Government amended the Companies Act 2006 to introduce the People with Significant Control register.<sup>36</sup> This requires most

27 Transparency International UK, *Overseas corruption pricing londoners out of the capital* (March 2017): <https://www.transparency.org.uk/press-releases/faulty-towers> [accessed 30 April 2019]

28 Q 46

29 Home Office, *Economic crime factsheet* (December 2017): <https://homeofficemedia.blog.gov.uk/2017/12/11/economic-crime-factsheet> [accessed 22 April 2019]

30 Transparency International UK, *UK corruption on your doorstep: how corrupt capital is used to buy property in the UK* (February 2015): <https://www.transparency.org.uk/publications/corruption-on-your-doorstep> [accessed 27 April 2019]

31 Global Witness, *Two years on, we’re still in the dark about the UK’s 86,000 anonymously owned homes* (December 2017): <https://www.globalwitness.org/en-gb/blog/two-years-still-dark-about-86000-anonymously-owned-uk-homes> [accessed 18 April 2019]

32 Transparency International UK, *UK corruption on your doorstep: how corrupt capital is used to buy property in the UK, Report* (February 2015): <https://www.transparency.org.uk/publications/corruption-on-your-doorstep> [accessed 27 April 2019]

33 Q 51

34 Q 47

35 [Explanatory Notes to the Draft Registration of Overseas Entities Bill](#), para 18

36 Companies Act 2006, [Chapter 2, Part 21A](#)



UK entities to provide information about their ultimate owners and controllers to the Registrar of Companies (“Companies House”). As we show in the following chapters, the PSC register can offer many instructive lessons for the Register of Overseas Entities. The Government will also need to ensure that the requirements placed on practitioners by the two registers complement, rather than contradict, each other.

25. There are three further important mechanisms with a bearing on anti-money laundering efforts. The Criminal Finances Act 2017 introduced ‘unexplained wealth orders’ (UWOs). These court orders give UK law enforcement agencies more latitude to seize the proceeds of corruption.<sup>37</sup> Prof Fisher QC told us that UWOs and the proposed Register were “weapons in the armoury. I see them sitting together rather happily; there is certainly no inconsistency.”<sup>38</sup> The Proceeds of Crime Act 2002 requires regulated professionals (such as estate agents or accountants) to disclose, through ‘suspicious activity reports’ (SARs), if they know, suspect or have reasonable grounds for knowing or suspecting that a person is engaged in money laundering.<sup>39</sup> In January 2018, the Government created the Office for Professional Body Anti-Money Laundering Supervision. This body, part of the Financial Conduct Authority, oversees the UK’s 22 accountancy and legal professional body anti-money laundering supervisors. It ensures that these organisations meet the Government’s anti-money laundering standards, and has powers to investigate and penalise those which do not.<sup>40</sup>

## The Fourth and Fifth EU Anti-Money Laundering Directives

26. The EU has also taken action in the anti-money laundering (AML) arena. The Fourth AML Directive, agreed by the European Parliament and Council of the European Union in 2015, introduced a requirement for legal entities to hold adequate, accurate, and current information about their beneficial ownership. The European Commission’s aim for the Fifth AML Directive—adopted in July 2018 and due to come into force by 10 January 2020—is that beneficial ownership registers will be made public, and that Member States will put in place mechanisms to verify the information collected by these registers.<sup>41</sup>

## Background to the draft Bill

27. Following the 2016 Anti-Corruption Summit, the Government launched a public consultation on its plans to establish a public register of the beneficial owners of overseas entities owning land in the United Kingdom. Once that exercise was complete, the Government announced that it would publish a draft Bill for scrutiny in the summer of 2018 with the aim of introducing the Bill to Parliament in 2019, and the Register

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37 Criminal Finances Act 2017, [sections 1 and 4](#)

38 [Q 9](#)

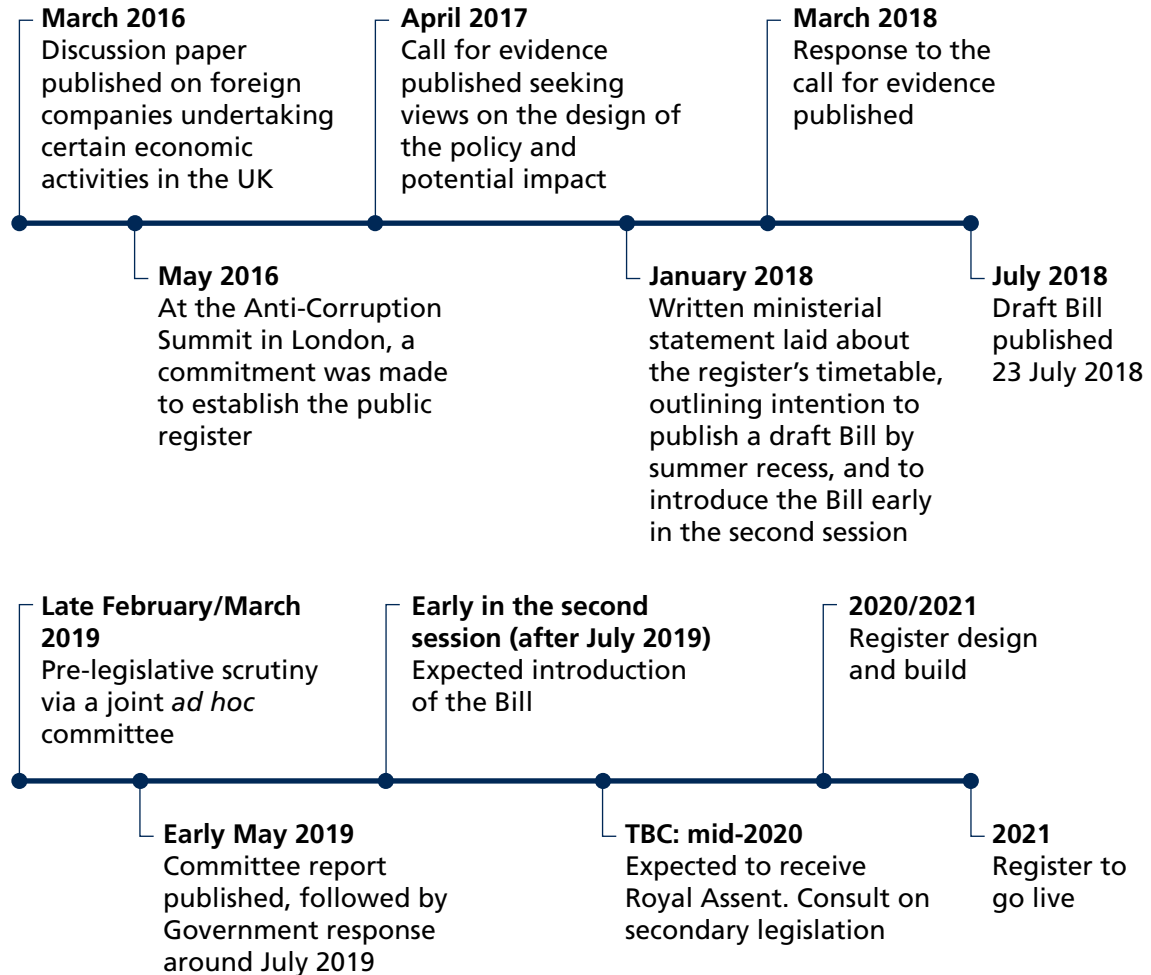
39 The Law Society, *Suspicious Activity Reporting* (August 2018): <https://www.lawsociety.org.uk/support-services/advice/articles/suspicious-activity-reporting> [accessed 18 April 2019]; Proceeds of Crime Act 2002, [section 330](#)

40 HM Treasury, *UK launches new anti-money laundering watchdog* (January 2018): <https://www.gov.uk/government/news/uk-launches-new-anti-money-laundering-watchdog> [accessed 18 April 2019]

41 European Commission, *Anti-money laundering and counter terrorist financing* (July 2018): [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/criminal-justice/anti-money-laundering-and-counter-terrorist-financing\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/criminal-justice/anti-money-laundering-and-counter-terrorist-financing_en) [accessed 6 April 2019]

becoming operational in 2021. The draft Registration of Overseas Entities Bill was laid before Parliament on 23 July 2018.<sup>42</sup>

Figure 2: Timeline of the draft Bill



Source: Department for Business, Energy and Industrial Strategy. Please note that certain dates within the timetable, such as introduction date, are indicative, for planning purposes, and subject to change to take into account the new Parliamentary session.

28. The Government claims that the Register will be the “the first register of its kind in the world”.<sup>43</sup> Its desired outcome is to “to deliver transparency about who ultimately owns and controls overseas entities that own land in the UK”. The Government states that the Register

“is intended to act as a deterrent to those who would seek to hide and launder the proceeds of bribery, corruption and organised crime in land in the UK. Wider benefits will include improving confidence and trust among the wider public and legitimate investors as to whom they are doing business with in any land transaction.”<sup>44</sup>

42 Department for Business, Energy & Industrial Strategy, *Overview Document: Draft Registration of Overseas Entities Bill* (July 2018): [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/727901/2\\_FINAL\\_Overview\\_document\\_\\_1\\_\\_1\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/727901/2_FINAL_Overview_document__1__1_.pdf) [accessed 1 April 2019]

43 Q 59 (Kelly Tolhurst MP)

44 [Explanatory Notes to the Draft Registration of Overseas Entities Bill](#), para 20

29. In its call for evidence on the draft Bill, the Government went even further: it described the aim of the Bill as giving “assurance that the UK is a hostile environment for hiding the proceeds of corruption or laundering money”.<sup>45</sup>

### The draft Bill: a summary

30. In broad terms, the Government wishes to establish a Register, held by Companies House, into which overseas entities which own or wish to purchase land in the UK would be required to enter information about their beneficial owners.<sup>46</sup> The “teeth” of the Bill would bite whenever the entities sought to buy or sell land—in the legal terminology of the draft Bill, whenever they sought to register proprietorship or “disposition” of certain interests in property. This provision would therefore require coordination between Companies House and the land registries of England and Wales, Scotland, and Northern Ireland.

31. Overseas entities would be deemed “non-compliant” if they failed to enter the requisite information when registering, or if they failed to register at all. The draft Bill contains sanctions for such entities. Perhaps the most consequential would be restrictions on dispositions: restriction of the ability to transfer the legal title of the land, or let or create a charge over it.<sup>47</sup> But criminal sanctions are also proposed.<sup>48</sup>

32. The Bill envisages an 18-month transition period before its sanctions would be enforceable on overseas entities which already own UK land and fall within the Bill’s scope.<sup>49</sup> This is designed to give existing entities owning UK property enough time to declare their beneficial ownership information. In Chapter 5 we explore the consequences of this proposed timeframe for entities wishing to evade the Bill’s prescriptions.

33. If it is to be successful, the proposed Register of Overseas Entities must cohere with the other aspects of the Government’s anti-money laundering efforts outlined above. Tom Keatinge, Director at the Centre for Financial Crime and Security Studies, Royal United Services Institute (RUSI), offered a helpful metaphor:

“Perhaps I could use an image. Over recent years, the Government have taken the economic and financial crime jigsaw out of the cupboard, where it has languished for many years, and are starting to find the edges of the picture of the solution we are looking for. The Bill is one of the important edges, but an awful lot in the middle still needs to be addressed, and I am sure that we will come on to points about resourcing, and all those sorts of things. But this Bill is a welcome edge, which we have found and are starting to implement.”<sup>50</sup>

45 Department for Business, Energy & Industrial Strategy, *Overview document: Draft Registration of Overseas Entities Bill*, (July 2018), p 11: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/727901/2\\_FINAL\\_Overview\\_document\\_\\_1\\_\\_1\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/727901/2_FINAL_Overview_document__1__1_.pdf) [accessed 1 April 2019]

46 Overseas entities which already own UK land will also be required to register if they registered legal title to the land after 8 December 2014 in Scotland and 1 January 1999 in England and Wales. There is no requirement for existing owners to register in Northern Ireland. See paragraph 194.

47 Department for Business, Energy & Industrial Strategy, *Draft Registration of Overseas Entities Bill*, Cm 9635, July 2018, Schedule 3, part 1, new Schedule 4A, for England and Wales. Schedule 4, Part 1, new Schedule 1A for Scotland. Schedule 5, new Schedule 8A for Northern Ireland

48 See *Draft Registration of Overseas Entities Bill*, Clause 8, ‘Failure to comply with updating duty’, Clause 14, ‘Failure to comply with notice under section 11 or 12’, and Clause 28, ‘General False Statement Offence’

49 *Draft Registration of Overseas Entities Bill*, Schedule 3, Part 2 for England and Wales, and Schedule 4, Part 2 for Scotland

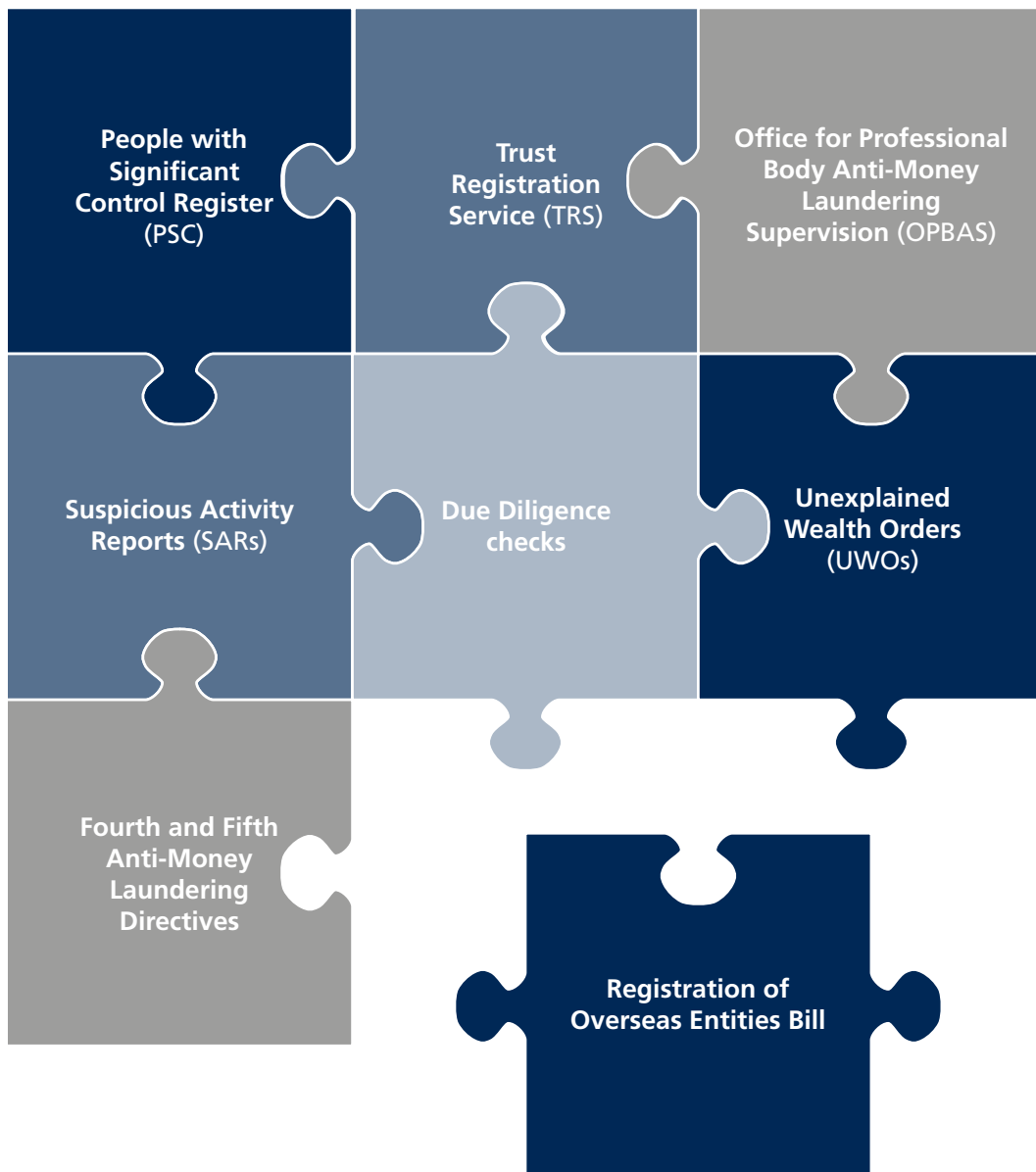
50 [Q 1](#)



34. It is our hope that, by improving the legislation proposed by the Government, the work of this Committee will help to fill in some of the gaps in the UK's current anti-money laundering efforts.

35. *We have approached this draft Bill on the clear understanding that while the Register is an important piece of the anti-money laundering jigsaw, it is only one piece. The Government should not lose sight of how this proposal fits with other anti-money laundering measures in its commendable efforts to design as effective a Register as possible.*

Figure 3: The anti-money laundering jigsaw



### 3 Structures required to register

36. This chapter considers the definition of “overseas entities” that the draft Bill seeks to introduce. It looks at structures which will be exempted by the draft Bill—such as entities owned by foreign governments—as well as those that the draft Bill does not cover, such as trusts. It asks whether these exemptions and omissions will amount to loopholes that money launderers might seek to exploit, and analyses how well the Government’s proposals to close such loopholes might work.

#### Overview

37. Clause 2 of the draft Bill sets out its definition of “overseas entity”:

(1) In this Act “overseas entity” means a legal entity that is governed by the law of a country or territory outside the United Kingdom.

(2) In this Act “legal entity” means a body corporate, partnership or other entity that (in each case) is a legal person under the law by which it is governed.

38. The Explanatory Notes state that the draft legislation is designed to apply to entities formed or incorporated overseas, which transact with land in the UK.<sup>51</sup> These notes also elaborate upon the definition of “legal entity”:

“[A ‘legal entity’] includes a body corporate (e.g. a company) or a partnership or other type of entity. What is key is that whatever the type of corporate vehicle, it must have legal personality under the law by which it is governed. This could therefore include companies, partnerships, corporations sole, governments and public authorities.”<sup>52</sup>

39. *Entities which do not fit the description 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.*

#### Does the Bill cover individuals?

40. If the draft Bill is effectively to increase the transparency of overseas landholding in the UK and avoid loopholes, the Government will need to enforce consistency in ensuring that overseas entities register. Since failure to register will be an offence under the proposed Act, it will be important for the entities themselves, third parties wishing to transact with overseas entities, legal professionals and enforcement agencies that the Bill’s definition of “registrable overseas entity” is as clear as possible.

41. The Law Society of Northern Ireland told us that that Bill’s definition of “legal entity” was “arguably unclear” about whether it includes individuals. An individual can be a “legal person”, but the Bill refers only to “a body corporate, partnership or other entity that (in each case) is a legal person under the law by which it is governed”.<sup>53</sup>

51 [Explanatory Notes to the Draft Registration of Overseas Entities Bill](#), para 39

52 [Explanatory Notes to the Draft Registration of Overseas Entities Bill](#), para 39

53 [Draft Registration of Overseas Entities Bill](#), Clause 2(2)

42. **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.**

43. *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.*

## The meaning of “overseas entity”

44. When determining whether an entity should register its beneficial ownership information, it will be necessary to ascertain whether that entity is indeed an “overseas entity” for the purposes of the Bill. Given that such entities are, by definition, based abroad, the draft Bill’s definition will be likely to apply to a wider range of legal entities than UK-based practitioners will be familiar with. The definition in Clause 2 of an overseas entity as “a legal person under the law by which it is governed” means that practitioners dealing with foreign structures owning UK property will need to refer to foreign law or lawyers to determine whether an entity has “legal personality” in another jurisdiction, and is therefore registrable under the Bill.<sup>54</sup>

45. John Sinclair from the Law Society of Scotland pointed to the discrepancy between Scottish limited partnerships, which have juridical personality, and their equivalents in England and Wales, which do not: “It is easy to anticipate that equivalent situations will arise in foreign jurisdictions where it will not be clear whether or not an entity is a legal entity.”<sup>55</sup>

46. Philip Freedman CBE QC (Hon) of the Law Society of England and Wales highlighted the cost implications of determining whether entities based abroad would come under the scope of the Bill:

“A legal opinion from lawyers in the jurisdiction in which the entity exists [...] adds to the costs of the transaction, but many overseas buyers are aware that they may have to produce these and bear the cost.”<sup>56</sup>

47. However, Jacquie Griffiths, BEIS policy lead on the draft Bill, downplayed the potential hurdles for overseas entities: “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>57</sup>

48. Schedule 3 requires Her Majesty’s Land Registry (HMLR) to prohibit the registration of an overseas entity as the proprietor of land unless the entity is either registered or exempt.<sup>58</sup> If an entity were to attempt to register its ownership of land at HMLR or one of the other UK land registries, the Registrar (or, in Scotland, Keeper) would check the proposed Register of Overseas Entities to establish whether the entity was a registered

54 [Draft Registration of Overseas Entities Bill](#), Clause 2

55 [Q 26](#)

56 [Q 25](#)

57 [Q 62](#)

58 Corresponding provision is made for Scotland ([Draft Registration of Overseas Entities Bill](#) Schedule 4, new Schedule 1A, (4)(2) and Northern Ireland, Schedule 5, new Schedule 8A, (3)(3)).

overseas entity. If not registered, restrictions on the disposition of title would apply, and the registry would refuse to register the entity as proprietor. The onus would then be on the entity to prove that it was not a registrable overseas entity. Ms Griffiths described the process: “If they then apply to register title at any of the three land registries and believe that they are not a legal entity, they must provide evidence that will satisfy the relevant land registry.”<sup>59</sup>

49. If an entity wished to argue either at Companies House or at a land registry that it was not a registrable legal entity, the responsibility to provide evidence would lie with the entity. The Law Society of Scotland noted the “potential for a dispute to arise if an entity considers it does not meet the requirements for registration and Companies House takes a different view (or even vice versa)”.<sup>60</sup>

50. Mr Freedman suggested that, to solve any such dispute:

“There needs to be some sort of adjudicator [...] it needs to be a dispute procedure the outcome of which, for the purposes of the legislation, is binding on the Land Registry and on Companies House. Some adjudicator who makes a ruling that binds the Land Registry and Companies House seems to be what is needed.”<sup>61</sup>

51. The Minister, Ms Tolhurst argued that such an adjudicator was unnecessary: “The individuals concerned will know that they are a legal entity in the country in which they are based [...] the onus is on the entity. It needs to assure us that it is legal.”<sup>62</sup> When making an application for registration, an overseas entity will need to provide, among other information, the country of incorporation or formation, the legal form of the entity, and the law by which it is governed.<sup>63</sup> If it has information about which country’s law governs the entity, Companies House should be able to establish whether the entity is a registrable overseas entity.

52. This position assumes, however, that an entity knows that it is registrable and therefore makes an application to Companies House. Ms Griffiths told us: “If an entity truly believed that it was not a legal entity in scope of the Bill, Companies House would never hear about it. That is because they would not go to register.”<sup>64</sup> As we saw above, if a legal entity failed to register at Companies House, a land registry could reject its application to register land. The Registrar would then decide whether the entity was an overseas entity for the purposes of the Act, and therefore obliged to register.

53. It is possible that some new forms of entities may be developed that would not be classed as registrable. The Minister stated: “We [...] cannot possibly dictate all those potential entities.”<sup>65</sup> The Government’s delegated powers memorandum, published alongside the Bill, also acknowledged that some entities ought not to be captured by the Bill—there may be “new types of entities introduced in other countries which should not

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59 [Q 65](#)

60 Written evidence from the Law Society of Scotland ([ROE0006](#))

61 [Q 27](#)

62 [Q 65](#)

63 [Draft Registration of Overseas Entities Bill](#), Schedule 1, Part 2, 2 (1)

64 [Q 65](#)

65 [Q 65](#)

be in scope of the overseas entities regime”.<sup>66</sup> However, the draft Bill does not provide for any pre-clearance mechanism or procedure to resolve these discrepancies.

**54. 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.**

**55. 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.**

**56. Decisions 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.**

**57. 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.**

## **A “fast-track” registration service?**

58. There is some evidence of a need for a “fast-track” registration service, because some property holding companies or special purpose vehicles (SPVs) are commonly incorporated only days in advance of a transaction. We heard evidence that delays in registration could have an adverse effect on the property market. John Condliffe of the Investment Property Forum told us: “If Companies House has to produce a registration number, it will need to be able to do that very quickly in order not to hold up transactions that involve overseas entities acquiring legal title.”<sup>67</sup>

**59. 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.**

## **Exemption and modification powers**

60. Under the draft Bill, an overseas entity is registrable unless it is exempt. The effect of an exemption would be that an entity would not be required to register its beneficial ownership information with Companies House. When attempting to register ownership of land, or challenge the entry against its land of a restriction or inhibition, an exempt overseas entity could provide evidence to a land registry of this exemption and the resultant freedom from restrictions on acquisition and dispositions.

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66 [Delegated Powers Memorandum to the Draft Registration of Overseas Entities Bill](#), para 51

67 [Q 4](#)

61. No immediate exemptions are laid out on the face of the Bill. There is instead a delegated power in Clause 30(6) which allows the Secretary of State to determine categories of entities, or individual entities, that are exempt from the requirement to register.<sup>68</sup>

62. The Government’s proposal is that the secondary legislation would be laid under the negative resolution procedure, whereby a statutory instrument becomes law on the day that it is signed by a Minister, and automatically remains law unless a motion to reject it is agreed by either House within 40 sitting days.<sup>69</sup> This procedure involves less parliamentary scrutiny than the affirmative procedure, which requires both Houses to agree to secondary legislation.

63. The Bill’s Explanatory Notes explain that there may be certain cases where entities currently within scope of the Bill could be exempt from registration requirements. For instance, the Government may not wish to require a foreign government to register: “The Government may use this power to exempt governments and public authorities where they would otherwise meet the definition of overseas entity.”<sup>70</sup>

64. Some of our witnesses challenged the idea of exempting governments. Duncan Hames, Director of Policy at Transparency International, accepted that in the case of foreign governments, “the means of sanction might not be as open to us as otherwise.”<sup>71</sup> He nevertheless suggested that they should not be exempted:

“Foreign Governments are a particularly interesting case, because a Government will be very conscious of their inability to follow through with sanctions and their requirements. Nonetheless, we would argue that the reporting requirement should be no less stringent, not least because property that is owned by another country’s Government will in a number of cases be at particular risk of the kind of corrupt acts I described. We often see state-owned companies and enterprises as part of the arrangements whereby public assets leak into private hands.”<sup>72</sup>

65. Ava Lee, Senior Anti-Corruption Campaigner at Global Witness argued: “It would be much more useful if [a foreign government] was literally named as the state [on the Register] so that you could see the breadth of what states own.”<sup>73</sup> Mr Hames thought that information about foreign governments’ beneficial ownership could be published after an asset had passed into private hands:

“Even if there is an acceptance that you cannot pursue this information while it is the property of a foreign government, it is very important that at the moment it ceases to be the property of a foreign government that event triggers the release of information that would be entirely relevant.”<sup>74</sup>

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68 [Q 67](#) (Kelly Tolhurst MP)

69 UK Parliament, *Negative Procedure*: <https://www.parliament.uk/site-information/glossary/negative-procedure> [accessed 12 April 2019]

70 [Explanatory Notes to the Draft Registration of Overseas Entities Bill](#), para 99

71 [Q 39](#)

72 [Q 39](#)

73 [Q 39](#)

74 [Q 39](#)

66. Clause 30(6) is designed to future-proof the Bill against new types of entities which may arise, but which should not be in scope. The Minister told us: “Things can change quickly, so we want to be in a position where we can act relatively speedily.”<sup>75</sup>

*67. 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.*

68. 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.

*69. 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.*

*70. 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.*

### **“Equivalent” registers**

71. Clause 15 enables the Secretary of State to modify requirements for overseas entities where the Government decides that the entity is already providing beneficial ownership information to a register in its country of formation, and where the Government considers that register to be “equivalent” to the Register of Overseas Entities.<sup>76</sup>

72. Our understanding is that this Clause aims to avoid double-reporting for entities which already provide beneficial ownership information to registers in other countries. The Register held by Companies House would contain information about where this information was held. As of April 2019, 836 companies were exempt from the requirement to file information to the PSC register because they were subject to “other disclosure requirements”.<sup>77</sup>

73. The draft Bill does not contain any definition of ‘equivalence’. We are inclined to accept the definition proposed by OpenCorporates (a database that shares information on corporate entities), which stated that “equivalent” registers:

- Must contain the same—we would suggest substantially the same—level of detail as the UK Register, including unique identifiers;
- must be publicly accessible;
- must be freely available;

<sup>75</sup> [Q 67](#)

<sup>76</sup> [Explanatory Notes to the Draft Registration of Overseas Entities Bill](#), para 69

<sup>77</sup> Written Answer by Kelly Tokhurst MP to Question [248713](#) by Alison Thewliss MP, 29 April 2019



- must be available as open data;
- and must be updated at least as often as the UK Register.<sup>78</sup>

74. **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.**

75. *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.*

## Trusts

76. The draft Bill does not require trusts to register. Unless a trust is a “legal person” under its national law, it cannot be described as an entity, as defined in Clause 2 or otherwise. Indeed, many of the draft Bill’s provisions would be inapposite for trusts. For example, the draft Bill defines beneficial ownership in terms of shareholdings, voting rights, power to appoint to boards, and “control”.<sup>79</sup> Only the last is relevant to trusts.

77. A trust is a relationship in which the trustee holds property for the benefit of the beneficiary (trusts may have multiple trustees and beneficiaries). The trustee is the legal owner of the property, but the beneficiary is the ‘true’ or beneficial owner. Some trusts are ‘discretionary’: their terms allow the trustee to pay beneficiaries as the trustee chooses. Trusts are used for a variety of legitimate purposes, including by charities, whose property is usually held by trustees.

78. Witnesses explained, however, that trusts could be used to bypass the draft Bill’s registration requirements. Prof Fisher QC suggested that anyone wishing to conceal their ownership of a property might place the overseas entity’s shares in a discretionary trust.<sup>80</sup> Ms Lee of Global Witness gave very detailed examples of cases in which trusts had been used to mask true ownership.<sup>81</sup> Mark Thompson, Chief Operating Officer of the SFO, suggested that fraudsters believed that “an offshore trust” was “a good starting point”, describing it as part of “the fraudster’s handbook”.<sup>82</sup> Mr Thompson had:

“seen the same structure a number of times. There is typically a discretionary trust at the top, incorporated outside the UK, and then any number of intermediate holding companies [...], three, four or five, which could be multiple jurisdiction.”<sup>83</sup>

79. Under Schedule 2, paragraph 6, ‘Condition 4’ of the draft Bill, beneficial owners who set up a discretionary trust for avoidance purposes will have to register if they exercise “significant influence or control over the trustees”. But other trust beneficiaries are not

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78 Written evidence from OpenCorporates ([ROE0020](#))

79 See paragraphs 96 to 97.

80 [Q 5](#)

81 Written evidence from Global Witness ([ROE0007](#)); [Q 35](#)

82 [Q 53](#)

83 [Q 48](#)



*expressly* required to register, and the draft Bill would not apply if the immediate owners of land were individuals.<sup>84</sup>

## **Other measures relating to trusts**

### **HMRC Trust Registration Service**

80. Some trusts are already obliged to register under the HMRC Trust Registration Service (TRS), which is the Government’s proposed vehicle for implementing the EU’s Fifth Anti-Money Laundering Directive. The Minister, Ms Tolhurst, wrote that requiring trusts to register under the draft Bill as well as the TRS would “divide” the UK’s framework for trust registration between two mechanisms, and so “place additional administrative burdens on both trustees and Government”.<sup>85</sup>

81. The TRS requires “trusts with a UK tax consequence”<sup>86</sup> to give HMRC information about their beneficial owners.<sup>87</sup> The relevant taxes include capital gains tax and stamp duty land tax.<sup>88</sup> The Government told us that offshore trusts purchasing land in the UK would normally generate a UK tax consequence.<sup>89</sup> Jersey Finance Limited explained how the effect of these stipulations was that beneficial owners must be registered with the TRS when land held on trust is bought or sold.<sup>90</sup>

### **Fifth Anti-Money Laundering Directive**

82. In 2018, the EU adopted the Fifth Anti-Money Laundering Directive (5AMLD).<sup>91</sup> The Directive amends the EU’s earlier Fourth Anti-Money Laundering Directive to widen access to beneficial ownership registers and amend the type of trusts which must register information. The Directive is to be transposed into national law by January 2020, and its registers set up by March 2020.<sup>92</sup> The Government intends to widen the scope of the TRS in order to transpose 5AMLD into UK law.<sup>93</sup> The Minister said that the Treasury was “looking to consult” on the introduction of that legislation, and assured us that the Government would implement 5AMLD even if the UK leaves the EU without a deal.<sup>94</sup>

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84 [Q 29](#) (John Sinclair)

85 Letter from Kelly Tolhurst MP to the Chair, 4 April 2019 ([ROE0018](#))

86 Written evidence from the Department for Business, Energy and Industrial Strategy ([ROE0011](#))

87 The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ([SI 2017 No 692](#))

88 The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ([SI 2017 No 692](#)), Regulations 42(2)(b) and 45(14). The taxes also include land and buildings transaction tax in Scotland and land transaction tax in Wales.

89 Letter from Kelly Tolhurst MP to the Chair, 4 April 2019 ([ROE0018](#))

90 Written evidence from Jersey Finance Limited ([ROE0010](#))

91 Council Directive 2018/843 of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU, [OJ L 156/43](#) (19 June 2018)

92 Council Directive 2018/843 of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU, [OJ L 156/43](#) (19 June 2018), Recital 53

93 Written evidence from the Department for Business, Energy and Industrial Strategy ([ROE0011](#))

94 [QQ 59, 66](#)

83. It remains unclear whether 5AMLD will require that the TRS:
- a) reveal those who *actually* benefit from discretionary trusts (rather than those with a potential benefit);<sup>95</sup> and
  - b) record beneficiaries of discretionary trusts holding shares in offshore companies owning UK property.<sup>96</sup>
84. Currently, the TRS is not publicly accessible. The Government will implement 5AMLD by widening access to the TRS to those with a “legitimate interest”.<sup>97</sup> Witnesses from transparency groups emphasised the importance of information about the beneficiaries of trusts being made publicly available.<sup>98</sup>

### ***Should trusts be brought into the scope of the draft Bill?***

85. Our witnesses expressed mixed support for using the draft Bill as a vehicle for requiring the registration of trust beneficiaries. Omitting trusts, some argued, would leave significant loopholes. Mr Hames of Transparency International told us: “If we leave big loopholes, at the same time as taking strong action in one area, we should not be surprised if they are fully exploited.”<sup>99</sup> The City of London Police felt that if trusts were excluded, “the process will be fairly pointless”.<sup>100</sup> The Solicitors Regulation Authority said that owners might move property into trusts, to hide it from the public, unless the draft Bill included them.<sup>101</sup>

86. Mr Hames suggested that trusts might be included depending on when the Bill was introduced relative to the transposition of 5AMLD into UK law.<sup>102</sup> Global Witness said that the Government should either bring trusts within the draft Bill or commit to publishing the trusts register required by 5AMLD.<sup>103</sup> The SFO considered trusts to be problematic, but did not press for the implementation of 5AMLD within the draft Bill.<sup>104</sup>

***87. 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.***

**88. 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.**

95 [Q 36](#) (Alex Cobham)

96 5AMLD refers to trustees acquiring real estate in the name of the trust but is silent on the acquisition of interests in entities which own property. Council Directive 2018/843 of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU, [OJ L 156/43](#) (19 June 2018), Article 31(1) and (3a).

97 Letter from Kelly Tolhurst MP to the Chair, 4 April 2019 ([ROE0018](#))

98 [QQ 37, 41](#)

99 [Q 35](#)

100 Written evidence from City of London Police ([ROE0016](#))

101 Written evidence from the Solicitors Regulation Authority ([ROE0002](#))

102 [Q 35](#)

103 Written evidence from Global Witness ([ROE0007](#))

104 [QQ 48, 53](#) (Mark Thompson)

89. 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.

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

91. 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.<sup>105</sup>

92. *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.*

93. *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.*

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<sup>105</sup> Since the time of writing, the Government has published proposals for the implementation of the Fifth Anti-Money Laundering Directive. This was published after our evidence sessions had concluded.

## 4 Beneficial owners

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94. This chapter examines the definition of “registrable beneficial owner” laid out in the draft Bill. It considers ‘Condition 4’ of the draft Bill, which includes within the definition of beneficial owner anyone who has the right to, or actually exercises, “significant influence or control” over an overseas entity. It then assesses whether further guidance on this definition is required. Finally, it examines the provisions of the draft Bill which either except or exempt beneficial owners from registration, and considers the delegated powers which some of these provisions confer on the Secretary of State.

### Beneficial owners: an overview

95. The draft Bill requires registrable overseas entities to identify their beneficial owner or owners. A registrable beneficial owner can be an individual, a legal entity, or a government or public authority.

96. Schedule 2 of the draft Bill sets out what is meant by a beneficial owner:

#### *Beneficial owners*

6. A person (“X”) is a “beneficial owner” of an overseas entity or other legal entity (“Y”) if one or more of the following conditions are met.

#### *Ownership of shares*

Condition 1 is that X holds, directly or indirectly, more than 25% of the shares in Y.

#### *Voting rights*

Condition 2 is that X holds, directly or indirectly, more than 25% of the voting rights in Y.

#### *Right to appoint or remove directors*

Condition 3 is that X holds the right, directly or indirectly, to appoint or remove a majority of the board of directors of Y.

#### *Significant influence or control*

Condition 4 is that X has the right to exercise, or actually exercises, significant influence or control over Y.

#### *Trusts, partnerships, etc*

Condition 5 is that—

- (a) the trustees of a trust, or the members of a partnership, unincorporated association or other entity, which is not a legal person under the law by which it is governed meet any of the conditions specified above (in their capacity as such) in relation to Y, and

(b) X has the right to exercise, or actually exercises, significant influence or control over the activities of that trust or entity.<sup>106</sup>

97. ‘Condition 5’ refers to the trustees of a trust. Trustees might, under the draft Bill, be *beneficial owners* of an overseas entity, even though trusts could not be *overseas entities*.<sup>107</sup>

### ‘Conditions’ 1 and 2: the 25 per cent threshold

98. If a beneficial owner holds more than 25 per cent of the shares or voting rights in an overseas entity owning UK land, they will fall under the draft Bill’s definition of a registrable beneficial owner. Throughout this report we refer to the definition of a beneficial owner based on percentage ownership as a “threshold”.

99. Some witnesses challenged the adequacy of a 25 per cent threshold in shares or voting rights as a definition of beneficial ownership. Ms Lee from Global Witness told us:

“We are particularly concerned by the 25 per cent minimum threshold. If I was a criminal using the UK property market to launder money right now, I would simply use the 18-month transitional period to restructure my ownership. I would get five companies, each of which owned 20 per cent of my property, and then I would not be covered by the register. That loophole is easy to exploit, and it is not just hypothetical. Global Witness has shown that corruption can flourish through shareholdings as small as five per cent.”<sup>108</sup>

Alex Cobham from the Tax Justice Network agreed: “I would strongly favour low or no thresholds.”<sup>109</sup>

100. In general, enforcement agencies were more concerned with ensuring that overseas entities registered than with the exact percentage of ownership. Mr Thompson of the SFO said:

“For me it is about forcing somebody to go on the record. If they do that correctly, happy days, we get the information. If they do not and someone else has had to lie for them, it will have introduced an extra layer of dishonesty.”<sup>110</sup>

101. When asked whether she would be prepared to consider a change in the proposed percentage threshold, the Minister, Ms Tolhurst suggested that it might be possible to do so: “We can play around with the thresholds.”<sup>111</sup>

102. Schedule 2, paragraph 25 of the draft Bill gives the Secretary of State the power to amend the thresholds defining a beneficial owner. This power is designed to give flexibility if domestic or international regulations governing anti-money laundering change; or if new, more complex ownership and control structures emerge:

“Changes to conditions [may] be needed to ensure that Schedule 2 adequately covers scenarios involving, for example, more complex corporate structures—

<sup>106</sup> [Draft Registration of Overseas Entities Bill](#), Schedule 2, Paragraph 6.

<sup>107</sup> See paragraph 76.

<sup>108</sup> [Q 34](#)

<sup>109</sup> [Q 34](#)

<sup>110</sup> [Q 52](#)

<sup>111</sup> [Q 64](#)

particularly as new corporate structures develop or individuals seek new ways to evade the disclosure requirements.”<sup>112</sup>

The Government’s delegated powers memorandum acknowledges that this ability to change the definition of beneficial owner “could have a material impact on the efficacy of the policy”; the draft Bill therefore makes this power subject to the affirmative resolution procedure.<sup>113</sup>

**103. *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.***

**104. We welcome the flexibility given to the Secretary of State by Schedule 2, paragraph 25 of the draft Bill to account for the emergence of new and more complex ownership and control structures. Given the Government’s stated concerns about the effect that such powers could have on the efficacy of the Bill, we agree that the affirmative resolution procedure is appropriate.**

### ***Congruence with the People with Significant Control Register***

105. The thresholds for beneficial ownership proposed in the draft Bill are broadly the same as those under the PSC register for UK companies.<sup>114</sup> We discuss the PSC provisions in paragraphs 107-114 below. The Explanatory Notes to the draft Bill state: “The information aspects of the Register will mirror as far as possible the regime currently in place for UK entities subject to the PSC regime.”<sup>115</sup> The Law Society of Scotland believed that “aligning the definition of beneficial owner to the PSC regime should help to ensure coherence between the PSC regime and the proposed regime for overseas entities.”<sup>116</sup> Indeed, Ms Lee from Global Witness told us that the thresholds for the PSC register should be decreased to match any reduction in the ownership thresholds of the Register of Overseas Entities.<sup>117</sup>

**106. *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.***

<sup>112</sup> [Delegated Powers Memorandum to the Draft Registration of Overseas Entities Bill](#), para 83

<sup>113</sup> [Delegated Powers Memorandum to the Draft Registration of Overseas Entities Bill](#), para 83

<sup>114</sup> The thresholds for a person with significant control can be found in the Companies Act 2006, [Schedule 1A](#)

<sup>115</sup> [Explanatory Notes to the Draft Registration of Overseas Entities Bill](#), para 23

<sup>116</sup> Written evidence from Law Society of Scotland ([ROE0006](#))

<sup>117</sup> [Q 34](#)

### ‘Condition 4’: “Significant influence or control”

107. ‘Condition 4’ of the draft Bill—the exercise of “significant influence or control”—is designed to encompass those beneficial owners who do not meet the percentage criteria, but who may still be beneficiaries. Ms Griffiths, policy lead on the draft Bill, explained that this provision was designed “specifically to capture somebody who owns five per cent of the shares but who for historical reasons—they may be the patriarch or matriarch of the family—makes all the decisions”.<sup>118</sup> The Minister told us: “We have deliberately tried to keep it flexible—to capture the individuals who are beneficiaries of the entities. That is why the significant influence and control condition is in there.”<sup>119</sup> She added:

“The whole point of having a very wide, broad-scoping definition of beneficial owner is to make sure that we capture anybody who has any control of that entity. It does not necessarily equate to the position of share ownership. It could even be somebody who does not control voting rights—who does not have a 25 per cent or even a five per cent share. This is about making sure that we keep the definition as wide as we can: to catch [...] anybody that has a significant degree of control.”<sup>120</sup>

108. The Companies Act 2006 obliged the Government to produce statutory guidance about the definition of “significant influence or control” under the People with Significant Control (PSC) regime.<sup>121</sup> The guidance explains the meaning of “significant influence or control”:

“In the context of a company, a person may hold a right to exercise significant influence or control as a result of a variety of circumstances including the provisions of a company’s constitution, the rights attached to the shares or securities which a person holds, a shareholders’ agreement, some other agreement or otherwise.”<sup>122</sup>

109. If a similar definition were applied to the provisions of the draft Bill, many beneficiaries who were not otherwise covered by the voting and shareholding thresholds would come under the “significant influence or control” condition. While the draft Bill makes no provision for similar guidance, the Minister told us: “The intention is to work on guidance on ‘significant influence or control’ and make sure that we keep up to date with it.”<sup>123</sup>

110. Witnesses highlighted what they felt was the nebulous nature of this Condition in the draft Bill. Mr Sinclair from the Law Society of Scotland said:

“On its own [...] [“significant influence or control”] is a difficult concept [...] at present I anticipate that the idea of either having the right to or actually exercising significant control is one of the areas which our members will have

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118 [Q 60](#)

119 [Q 64](#)

120 [Q 64](#)

121 Companies Act 2006, [Schedule 1A, Paragraph 24\(1\)](#)

122 Department for Business, Energy & Industrial Strategy, *Statutory guidance on the meaning of “significant influence or control” over companies in the context of the Register of People with Significant Control*, (June 2017): [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/675104/psc-statutory-guidance-companies.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/675104/psc-statutory-guidance-companies.pdf) [accessed 12 April 2019]

123 [Q 64](#)



difficulty knowing whether or not, or how, to test if they are required to do so.”<sup>124</sup>

His organisation questioned the utility of further Government guidance, without defining the Condition more clearly:

“We do not consider it to be satisfactory that the question of whether a criminal offence has been committed under the draft Bill’s proposals should depend on the precise meaning of this undefined phrase. Even if guidance were to be given, this might not be sufficient to give the level of clarity necessary where a person may find themselves guilty of a criminal offence.”<sup>125</sup>

**111. 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.**

**112. 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.**

**113. *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.***

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

## **Beneficial owners exempt from registering**

115. Under the draft Bill, an individual or legal entity that is a beneficial owner is registrable unless they are “exempt from being registered” by virtue of Schedule 2, Part 4.

116. Witnesses considered that reasons for exempting beneficial owners should be laid out on the face of the Bill.<sup>126</sup> Global Witness wrote:

“The grounds on which an exemption can be granted under the draft Bill should:

- be articulated expressly in the Bill or in its guidance;
- not go beyond the grounds allowed under the PSC regime;
- be granted only on a case-by-case basis; and

124 [Q 25](#)

125 Written evidence from Law Society of Scotland ([ROE0006](#))

126 [Q 38](#)



- be subject to the same reporting requirements as under the PSC regime (i.e. with the number of successful applications published annually by Companies House).<sup>127</sup>

## Clause 16

117. Clause 16 gives the Secretary of State the power to exempt a person from some of the requirements of the Bill. The effect of an exemption would be that the exempt person did not count as a registrable beneficial owner in relation to any overseas entity for the purposes of the Bill.<sup>128</sup>

118. The Minister told us that this power “would be used very rarely and on the basis of national security or something like that”.<sup>129</sup> A written answer on an equivalent power applying to the PSC Register stated that as of January 2016, no similar exemptions to that register had been made. Exemptions can also be granted in very limited circumstances: in the interests of national security, the economic wellbeing of the UK, or in the support or prevention or detection of serious crime.<sup>130</sup>

119. The draft Bill restricts the Secretary of State in their use of this power. They may only exempt a person under Clause 16 “if satisfied that, having regard to any undertaking given by the person, there are special reasons why that person should be exempted”.<sup>131</sup>

**120. 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.**

**121. 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.**

## Protection of information

122. Clause 22 of the draft Bill enables the Secretary of State, by regulations, to provide that an individual’s information should not appear on the public Register.<sup>132</sup> The Explanatory Notes suggest that such protection would be appropriate where, “for example, if the activities of the overseas entity meant that the public disclosure of information relating to the individual would put that individual at risk of physical harm”.<sup>133</sup> Individuals could make an application to prevent their information from being made public. However, the

127 Written evidence from Global Witness ([ROE0007](#))

128 [Draft Registration of Overseas Entities Bill](#), Schedule 2, Paragraph 8, Clause 16(2)

129 [Q 67](#)

130 Written Answer by Kelly Tolhurst MP to Question [248713](#) by Alison Thewliss MP, 29 April 2019

131 [Draft Registration of Overseas Entities Bill](#), Clause 16(3)

132 [Draft Registration of Overseas Entities Bill](#), Clause 22

133 [Explanatory Notes to the Draft Registration of Overseas Entities Bill](#), para 82

information, while unavailable to the public, would still be known to the Government. Ms Griffiths told us:

“The protection regime is that under which a beneficial owner who would otherwise appear on the public register can apply to the Secretary of State saying, ‘I am at risk for these reasons’. That does not prevent them from giving the information [...] but it will be suppressed in the public register.”<sup>134</sup>

123. Transparency International was comfortable with this exemption, drawing parallels with existing exemptions under the PSC regime:

“The exemptions provided under legislation surrounding the existing PSC register allow those with legitimate security concerns to have their information removed from the public-facing aspect of the register, although it remains on file at Companies House. A similar process should be implemented with this Register, to ensure those with security concerns can apply for exemptions.”<sup>135</sup>

124. Yet the organisation also argued that such exemptions should be “granted only on a case-by-case basis with oversight by law enforcement agencies”.<sup>136</sup> The Solicitors Regulation Authority considered that these provisions should be “used sparingly and kept under review to make sure they are being used appropriately”.<sup>137</sup>

125. OpenCorporates thought that it should be possible for the public to appeal the suppression of information from public disclosure under these exemptions. They stated: “This way civil society organisations, journalists and companies with anti-money laundering duties can test that such a suppression outweighs the public interest reasons for disclosure.”<sup>138</sup>

**126. We note the suggestion by OpenCorporates that it should be possible to challenge the suppression of information from public disclosure. It is our assessment that the draft legislation would not prevent interested parties from appealing through the Courts the suppression of information—or the suppression rules themselves—if the Government’s decisions were seen to be unlawful.**

**127. *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.***

128. The Joint Committee on Human Rights (JCHR) was concerned that protecting information only where disclosure put individuals at risk of “physical harm” might be too stringent a requirement, and could render the draft Bill non-compliant with Article 8 of the European Convention on Human Rights (ECHR). Article 8 enshrines the right to respect for private and family life. The JCHR suggested that applications for exemptions should be possible to protect family members, and to protect against a “lesser, yet still serious, level of harassment, threat or harm”.<sup>139</sup> The Government is likely to base the relevant secondary

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134 [Q 67](#)

135 Written evidence from Transparency International ([ROE0004](#)), para 2.2

136 Written evidence from Transparency International ([ROE0004](#)), para 8.2

137 Written evidence from the Solicitors Regulation Authority ([ROE0002](#)), para 10

138 Written evidence from OpenCorporates ([ROE0020](#))

139 Letter from Rt Hon Harriet Harman MP to the Chair, 24 April 2019 ([ROE0021](#))

legislation on what is currently in place for the PSC regime.<sup>140</sup> Those regulations allow application to protect “a person living with” the individual, and where there is a risk of “violence or intimidation”. If the regulations indeed follow the PSC regime, the JCHR’s concerns are likely to be answered.<sup>141</sup>

**129. We are persuaded that, if individuals are at risk of harm should their beneficial ownership information be made public, it would be appropriate for the Secretary of State to restrict publication of that information. We therefore agree with the powers provided for in Clause 22 of the draft Bill.**

*130. 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.*

**131. 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.**

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<sup>140</sup> [Explanatory Notes to the Draft Registration of Overseas Entities Bill](#), para 26

<sup>141</sup> [The Register of People with Significant Control Regulations 2016 \(SI 2016 No 339\)](#), Reg 36(2)

## 5 Information held on the Register

132. As we have seen, the policy aim of the draft Bill is to combat money laundering in the UK property market by increasing the transparency of beneficial ownership information. We heard convincing evidence that the efficacy of the Register in reaching this goal will depend upon the accuracy and veracity of the information that it holds.

133. This chapter considers the information that the proposed Register will contain. It gives first an overview of the Register, examining how it will function. It then examines the categories of information in the Register, and asks whether it would be pertinent to include any other information. Lastly, it examines mechanisms for determining the accuracy of the information held on the Register. Ensuring accuracy will, we suggest, be vital to the Register's effectiveness.

134. To gain a sense of how interested parties would use the Register, we asked BEIS to provide a 'mock-up' of the proposed layout.<sup>142</sup> At this stage, the Department was unable to do so.

**135. 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.**

**136. 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.**

### Information held on the Register

137. Overseas entities must submit information about themselves and their beneficial owners. Schedule 1 sets out the required information about the beneficial owner:

- For an individual: (a) name, date of birth and nationality; (b) usual residential address; (c) a service address; (d) the date on which the individual became a registrable beneficial owner in relation to the overseas entity; (e) which of the conditions in paragraph 6 of Schedule 2 [the conditions defining a beneficial owner] is met in relation to the individual.
- For governments and public authorities: (a) name; (b) principal office; (c) a service address; (d) its legal form and the law by which it is governed; (e) the date on which the entity became a registrable beneficial owner in relation to the overseas entity; (f) which of the conditions in paragraph 6 of Schedule 2 is met in relation to the registrable beneficial owner.
- For other entities: (a) name; (b) registered or principal office; (c) a service address; (d) the legal form of the entity and the law by which it is governed; (e) any public register in which it is entered and, if applicable, its registration number in that register; (f) the date on which the entity became a registrable beneficial owner in relation to the overseas entity; (g) which of the conditions in paragraph 6 of Schedule 2 is met in relation to the registrable beneficial owner.<sup>143</sup>

<sup>142</sup> Q 71

<sup>143</sup> [Draft Registration of Overseas Entities Bill](#), Schedule 1, Part 3

138. Most of our witnesses were content with the categories of information that the draft Bill requires.<sup>144</sup> Mr Hames of Transparency International said: “Broadly we think it is right.”<sup>145</sup>

## Updating period

139. Clause 7 of the draft Bill requires that overseas entities update or confirm their beneficial ownership information every 12 months. This provision will be enforced by a cumulative fine for non-compliance.<sup>146</sup> Global Witness stated that the annual update provides:

“only a ‘snapshot’ of the entity’s beneficial ownership information at the date of registration and on the date of each annual update thereafter, meaning that any changes throughout the year (including any aimed at concealing the owner’s identity) would not be caught”.<sup>147</sup>

140. It was suggested that the update requirements for the Register of Overseas Entities should equate to those for the PSC register. The PSC register is updated on an “event basis”: a company must notify Companies House within 28 days of a change to its beneficial ownership information. There is some suggestion that this “event basis” has improved the quality of information held in that register: “The move from annual to event-driven reporting for the PSC register was a big boost for proactive compliance, and has been key in making it possible for Companies House to follow up with companies on their PSC filings,” Mr Hames reported.<sup>148</sup> Ms Lee from Global Witness suggested that difficulties might arise from any incongruity between the proposed Register and the PSC regime:

“Having it as an annual reporting standard, as opposed to triggered by events, would put UK companies at a competitive disadvantage and might encourage people to [use] foreign companies because they would have to register less regularly.”<sup>149</sup>

141. It appears that the purpose of the annual update requirement in the draft Bill is to ensure clarity and predictability for overseas entities and those who transact with them.<sup>150</sup> Non-compliance with this update requirement will be enforced with criminal sanctions and restrictions on the transfer of land.<sup>151</sup> Ms Griffiths from BEIS told us that the aim of this provision was “to find the balance between making something as robust as we can and not interrupting legitimate transactions”.<sup>152</sup>

142. To ensure the transfer of legal title, a third party transacting with an overseas entity would need to check that the entity was compliant. With an annual update, a third

144 [Q 30](#), [Q 37](#), [Q 53](#)

145 [Q 37](#)

146 [Draft Registration of Overseas Entities Bill](#), Clause 8

147 Written evidence from Global Witness ([ROE0007](#)), para 6.2

148 [Q 40](#)

149 [Q 40](#)

150 [Q 63](#)

151 [Draft Registration of Overseas Entities Bill](#), Clause 8. “Failure to comply with updating duty” institutes a criminal offence and criminal sanctions for failure to update information. Restrictions on the disposition of land for entities are included in Schedule 3, part 1, 7(1) (England and Wales), Schedule 4, part 1, 7(2) (Scotland), and Schedule 5, part 1, 7(1) (Northern Ireland). These provide that entities which fail to comply with the update duty are not to be treated as registered overseas entities.

152 [Q 63](#)

party could easily confirm compliance or non-compliance by ascertaining whether the update had been filed (though this would be no guarantee of the accuracy of the update). However, if updates were required on an “event basis”, a third party would have no means of knowing whether an “event” had occurred, thereby triggering the update requirement. The third party might therefore transact unknowingly with a non-compliant entity; as such, it might not be able to transfer or obtain the legal title. The Deputy Director of Company Law, Transparency and Tax at BEIS, Matthew Ray, emphasised the importance of predictability to third parties:

“We think it will be better for both parties, including the innocent buyer, if they can be absolutely certain when they look at the Register that: ‘Right, this entity was due to file its annual updates last January. They did it. Fine, we can transact with this body.’ With an ‘event-driven’ approach, there will always be that slight worry in their mind: ‘How do we know that they are keeping their information up to date?’ There will be no way of knowing that for certain.”<sup>153</sup>

143. Clause 7(6) gives the Secretary of State the power, by regulations, to alter the update period if necessary. These regulations would be subject to the affirmative resolution procedure.

144. *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.*

145. *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.*

146. *Legitimate transactions will be likely to amass a quantity of information about all parties involved in the transaction. This requirement should not, therefore, prove onerous. It would also provide predictability for third parties: the prospective passing of title would be an “event”, thereby triggering the update requirement.*

## Scotland: possible double-reporting?

147. In June 2018, the Scottish Government launched a consultation on the proposed Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) (Scotland) Regulations.<sup>154</sup> These regulations proposed the establishment of a new Register of Persons Holding a Controlled Interest in Land, containing information about the persons who influence or control owners or tenants of land. It is envisaged that this

153 [Q 63](#)

154 Scottish Government, ‘Delivering improved transparency in land ownership in Scotland: Consultation on draft regulations’ (November 2018): <https://consult.gov.scot/land-reform-and-tenancy-unit/transparency-in-land-ownership> [accessed 1 May 2019]



register will be operational in 2021. An analysis of responses to this consultation was published on 17 April 2019.<sup>155</sup>

148. The draft regulations focus more closely on land reform than on determining beneficial ownership, but there is a possibility of double-reporting requirements with the proposed Register of Overseas Entities. We are aware that the Scottish Government has engaged with BEIS on this possibility, and has stated that it will continue to monitor the further development of the draft Bill prior to publishing the final regulations.<sup>156</sup>

**149. 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, Enterprise 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.**

*150. 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.*

## Verification

151. The draft Bill aims to increase the transparency of information about who really owns UK land. The information provided on the Register must therefore be accurate. Without a verification mechanism to ensure that the information provided is true and correct, the information on the Register will not provide the requisite level of transparency.

152. OpenCorporates offered a useful definition of ‘verification’. It is a three-stage process:

1. Ensuring that the person making a statement about beneficial ownership is who they say they are, and that they have the right to make the claim (authentication and authorisation);
2. ensuring that the data submitted is legitimate (validation);
3. ascertaining that the statement made is true (truth verification).<sup>157</sup>

153. Clause 14 of the draft Bill provides that submission of false information would be an offence punishable by a fine or a prison sentence. A determined fraudster giving false information would risk identification by a professional involved in a property transaction—who could report the fraudster to the NCA—or by a reader of the Register—who could ‘flag’ the information to Companies House.

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155 Scottish Government, *Improving the transparency of land ownership: consultation on draft Regulations* (June 2018): <https://www.gov.scot/publications/delivering-improved-transparency-land-ownership-scotland-consultation-draft-regulations/pages/2/> [accessed 17 April 2019]; Scottish Government, *Analysis of responses - Delivering improved transparency of land ownership in Scotland - Consultation on draft Regulations, Final Report* (April 2019): <https://consult.gov.scot/land-reform-and-tenancy-unit/transparency-in-land-ownership/results/analysisofresponses-delivering-improved-transparency-land-ownership-scotland-consultation-draft-regulations-final-report-april-2019.pdf> [accessed 1 May 2019]

156 Scottish Government, *Delivering improved transparency of land ownership in Scotland: Consultation on draft Regulations: A consultation on the proposed draft Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) (Scotland) Regulations* (June 2018), p 4: [https://consult.gov.scot/land-reform-and-tenancy-unit/transparency-in-land-ownership/user\\_uploads/sct06188595101-01.pdf](https://consult.gov.scot/land-reform-and-tenancy-unit/transparency-in-land-ownership/user_uploads/sct06188595101-01.pdf) [accessed 17 April 2019]

157 Written evidence from OpenCorporates ([ROE0020](#))



154. At no point, however, would the fraudster undergo any official checks to verify that the beneficial ownership information that they submitted to the Register was true and correct (truth verification) or that they were who they said they were (authentication and authorisation). Licensed professionals would conduct their own checks on the client’s identity, but there is no obligation in the draft Bill for an entity to use a licensed professional, and, as discussed below, reporting regimes used by licensed professionals are unreliable at best.<sup>158</sup> Readers (for example transparency campaigners) who comb through the Register would no doubt notify Companies House of any false information, but this does not amount to a verification process.

155. Mr Condliffe of the Investment Property Forum described the lack of verification checks as an “inherent limitation” of the proposed Register.<sup>159</sup> The Institute of Chartered Accountants for England and Wales wrote that “for the information held on the Register to be of any value, some form of verification of the information gathered” was necessary.<sup>160</sup> The International Financial Centres Forum stated:

“Verification of information is essential to ensure the Register may be relied upon by HMRC, law enforcement, and courts. Law and tax enforcement, and the Financial Action Task Force, view unverified, self-contributed data as being of limited use for this reason.”<sup>161</sup>

156. Several organisations believed that the Register should be subject to verification checks. These included the Law Society of Northern Ireland, NAEA Propertymark, the Solicitors Regulation Authority, Transparency International, the City of London Police, and UK Finance.<sup>162</sup>

157. Mr Keatinge of RUSI suggested that, in the absence of verification checks, professional services companies might unknowingly use inaccurate information held on the Register of Overseas Entities in carrying out the due diligence checks required by the Money Laundering Regulations.<sup>163</sup> There might therefore be a “reinforcing loop of weakness”, he believed.<sup>164</sup>

158. Among other transparency measures, the Fifth EU Anti-Money Laundering Directive calls on Member States to draw up registers of the beneficial ownership information of companies in their jurisdiction. It requires Member States to “take adequate measures to ensure that only the information [...] that is up-to-date and corresponds to the actual beneficial ownership is made available”.<sup>165</sup> Transparency International wrote that the Directive required the Government to ensure that UK company ownership data was

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158 See also Treasury Committee, *Economic Crime - Anti-money laundering supervision and sanctions implementation* (Twenty-Seventh Report, Session 2017–19, HC 2010)

159 [Q 29](#)

160 Written evidence from the Institute of Chartered Accountants of England and Wales ([ROE0005](#)), para 10

161 Written evidence from the International Financial Centres Forum ([ROE0014](#)), para 3.4

162 Written evidence from the Law Society of Northern Ireland ([ROE0012](#)); NAEA Propertymark ([ROE0001](#)); the Solicitors Regulation Authority ([ROE0002](#)); Transparency International UK ([ROE0004](#)); City of London Police ([ROE0016](#)); UK Finance ([ROE0003](#))

163 The money laundering, terrorist financing and transfer of funds (Information on the payer) Regulations 2017 ([SI 2017 No 692](#))

164 [Q 6](#) (Tom Keatinge)

165 Council Directive 2018/843 of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU, [OJ L 156/43](#) (19 June 2018)

accurate and that the Government “should apply these standards for overseas entities”.<sup>166</sup> According to BEIS officials, the PSC register has answered these requirements: “The PSC register is pretty much compliant with the requirements of [...] the Fifth Anti-Money Laundering Directive.”<sup>167</sup>

159. One aspect of Companies House practice could provide a useful tool to ensure the accuracy of the information held on the Register of Overseas Entities. Companies House told us that its ‘Report it Now’ function, which enables any member of the public to let Companies House know if they think any information on the companies register is incorrect, had been “an improvement that helps with the integrity of the register”. The mechanism “allows those inspecting the companies register to quickly and easily report back any discrepancies or anomalies they spot”.<sup>168</sup>

**160. It is regrettable that, as currently conceived, the proposed Register of Overseas Entities will have insufficient verification checks to deter criminals who wish to submit false information. It therefore seriously risks failing in its central policy aim: to provide a reliable and transparent record of the beneficial ownership information of overseas entities investing in the UK property market.**

**161. 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.**

*162. 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.*

### **Verification: a role for Companies House?**

163. Martin Swain, Director of Policy, Strategy and Planning at Companies House, reported that his organisation was currently unable to conduct verification checks. He referred to the role of Companies House in verifying information on the PSC register, where it is constrained by the Companies Act 2006:

“The principle of the Companies Act is that information is properly delivered to us. If it is correct within the constructs of the Companies Act, it is the responsibility of the Registrar to place that on the register. We do not have the power to check the accuracy at this time. The principle of the Companies Act is about proper delivery. If it is delivered in that way, we legally have to put it on the register.”<sup>169</sup>

166 Written evidence from Transparency International ([ROE0004](#)), para 5.2

167 [Q 59](#) (Matthew Ray)

168 Supplementary written evidence from Companies House ([ROE0013](#))

169 [Q 14](#)

164. Companies House can conduct data integrity checks, and has around 80 members of staff who carry out this work.<sup>170</sup> Above, we refer to these processes as “validation”. The organisation can take certain actions when data is incorrect. For example, it can remove information from registers, or refer it to other agencies such as the Insolvency Service, a BEIS agency which addresses financial misconduct.<sup>171</sup>

165. Many of our witnesses suggested that Companies House should play a larger role in ensuring the veracity of the data held on the Register of Overseas Entities. Transparency International believed that demanding further information from a beneficial owner (such as a requirement to prove their identity and their ownership of an entity) would allow Companies House to carry out basic verification checks.<sup>172</sup> Mr Keatinge told us that Companies House was becoming an “increasingly important tool in securing the integrity of the UK financial system. It should be empowered to play that role, and if that means that we have to strengthen its responsibilities as a result, yes, absolutely, we should.”<sup>173</sup>

166. Global Witness made the same suggestion, recommending that resources should be provided alongside a verification mandate: “The UK Government should clearly mandate and resource Companies House to verify beneficial ownership data submitted to both the PSC and Property Registers and sanction non-compliance.”<sup>174</sup> Ms Lee of Global Witness stated: “We think [Companies House] should be given more resources and the powers to do that, including powers not just to verify but to police the Register when it is not being adhered to properly.”<sup>175</sup>

167. We heard that the role played by Companies House in ensuring the accuracy of information was currently under review. The Minister, Ms Tolhurst, explained that she was planning to consult on checks that Companies House might perform:

“One thing that we are going to consult on with regard to the reform of Companies House is the validity of checks. I will bring that forward. Actually, I anticipate bringing it forward as quickly as possible [...] I recognise, not necessarily in relation to this Bill, the absolute necessity of verifying that data.”<sup>176</sup>

168. Mr Swain of Companies House told us: “We support and are working closely with BEIS on the potential reform of Companies House.”<sup>177</sup> We have since heard from the Government that the consultation on Companies House was launched on 5 May 2019. It considers reforms to the overarching anti-money laundering framework, and to the role of Companies House in verifying the identities of users and improving the accuracy of the data that it holds.<sup>178</sup>

**169. *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***

170 Supplementary written evidence from Companies House ([ROE0013](#))

171 [Q 14](#) (Martin Swain); supplementary written evidence from Companies House ([ROE0013](#))

172 Written evidence from Transparency International ([ROE0004](#)), para 5.13

173 [Q 6](#)

174 Written evidence from Global Witness ([ROE0007](#)), para 7.2

175 [Q 41](#)

176 [Q 57](#)

177 [Q 14](#)

178 Department for Business, Energy & Industrial Strategy, *Corporate transparency and register reform: Consultation on options to enhance the role of Companies House and increase the transparency of UK corporate entities* (May 2019): [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/799662/Corporate\\_transparency\\_and\\_register\\_reform.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/799662/Corporate_transparency_and_register_reform.pdf) [accessed 7 May 2019]

*the information that it holds. We recommend that Companies House be provided with sufficient resources to undertake these additional tasks.*

### **Verification: a role for regulated professionals?**

170. Mr Hames of Transparency International proposed that professional service providers regulated by the Money Laundering Regulations could play a role in verifying information: “A UK professional registered with a UK anti-money laundering supervisor [could] verify the beneficial ownership information that is being filed for any overseas entity seeking to buy UK property.”<sup>179</sup> The International Financial Centres Forum wrote:

“To ensure that [the information] is of suitable quality and usable by law enforcement, it should be verified by a UK professional except where it can be demonstrated that verification takes place systematically and by an equivalent or superior system elsewhere.”<sup>180</sup>

171. Global Witness elaborated on how this might work:

“Regulated professionals should play a role in the verification of beneficial ownership information. All entities and arrangements wishing to own property in the UK should be required to appoint a UK-based professional such as a solicitor, bank or accountant (or any professional accredited by a supervisory body and covered by the UK’s Money Laundering Regulations) who will be responsible for verifying the beneficial ownership of that company. The name of that professional should be publicly declared on the Property Register. This will charge professionals with the task of verifying the information that is provided by non-UK companies to the UK Government, and will provide a point of contact in the UK that law enforcement can take action against in the event that incorrect or false information has been provided.”<sup>181</sup>

172. We heard concerns about the additional administrative and cost burden that this responsibility might place upon entities. The draft Bill’s Impact Assessment estimated the cost per entity of obtaining external advice at £35.60 for learning about the new requirements, and £9.10 for identifying beneficial owners and collecting their information.<sup>182</sup> The International Financial Centres Forum was concerned that “the costs of verification would be significantly greater—perhaps a hundred times greater—than the £9.10 per transaction that the Impact Assessment claims,”<sup>183</sup> and Valerie Holmes of the Society for Licensed Conveyancers thought that the figure “should have a few noughts added to it”.<sup>184</sup> The Law Society of Scotland was concerned that “in practical terms, it may be difficult to create processes to verify much of the information without incurring unreasonable costs and potentially delays.”<sup>185</sup>

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179 [Q 41](#)

180 Written evidence from the International Financial Centres Forum ([ROE0014](#))

181 Written evidence from Global Witness ([ROE0007](#)), para 9.1

182 The total estimated compliance cost per entity was £1,860. Department for Business, Energy & Industrial Strategy, *Impact Assessment*, (July 2018), table 5: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/727827/3.\\_ROEBO\\_final\\_stage\\_impact\\_assessment.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/727827/3._ROEBO_final_stage_impact_assessment.pdf) [accessed 30 April 2019]

183 Written evidence from the International Financial Centres Forum ([ROE0014](#))

184 [Q 31](#)

185 Written evidence from Law Society of Scotland ([ROE0006](#))

*173. 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.*

174. We are concerned that the Government has wholly underestimated the likely true cost to entities of obtaining external advice from regulated professionals. Costs would almost certainly rise if additional responsibilities were placed on professionals.

175. 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.

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

## 6 Enforcement

177. The draft Bill would oblige certain entities to register. This chapter looks at the two mechanisms that the draft Bill proposes to enforce this provision: restrictions on registering land transactions, and criminal offences. It considers the practicability of both mechanisms and focuses in particular on possible hurdles presented by the application of the draft Bill to the UK's different legal jurisdictions.

### Overarching considerations

178. In designing this legislation, the Government has faced two important considerations: first, the difficulty of enforcing sanctions against those who are overseas; and second, the need for sanctions to be proportionate.<sup>186</sup> Yet these considerations create a tension. Difficulty enforcing other sanctions has led to the inclusion of potentially intrusive enforcement against property, which could be harder to justify.

179. The proposed restriction on property dispositions would be an interference with owners' property rights. The effect of Article 1 of Protocol 1 (A1P1) to the European Convention on Human Rights is that any interference with property rights must be proportionate to the public interest aim which justifies it. Where possible, courts must interpret statutes compatibly with the ECHR.<sup>187</sup>

180. Some possible approaches to enforcement might therefore be harder to justify as a proportionate interference with property rights. For example, Global Witness argued that authorities should have the power, after a period of non-compliance, to "seize" and sell the property, and to distribute the net proceeds among various recipients (not including the overseas entity).<sup>188</sup> Transparency International also suggested a confiscation power.<sup>189</sup>

### Restrictions on registering land transactions

181. The principal method proposed in the draft Bill for enforcing the registration requirements is to restrict overseas entities from registering dispositions. This would thereby restrict entities from acquiring legal title to land or disposing of title, including by letting the land. If a defaulting overseas entity owns land in the UK, there is an obvious opportunity for enforcement. As Mr Keatinge of RUSI observed: "You cannot put [land] in your pocket and run away with it."<sup>190</sup>

182. The enforcement provisions of the draft Bill highlight three differences in land law between the UK's legal jurisdictions:

- a) on the Scottish register, the lack of any notice that a future transaction might not be registered;
- b) differences in the length of leases that will be caught by the restrictions in the draft Bill; and

<sup>186</sup> See for example, [QQ 8; 9](#).

<sup>187</sup> Human Rights Act 1998, [section 3](#)

<sup>188</sup> Written evidence from Global Witness ([ROE0007](#)), para 9.5

<sup>189</sup> Written evidence from Transparency International UK ([ROE0004](#)), para 10.9

<sup>190</sup> [Q 9](#)



- c) differences in the dates after which registration of an overseas entity's title to land will trigger the requirement to enter a restriction against that land.

183. In the following paragraphs we consider these in turn, before assessing the potential effect of the enforcement framework on innocent third parties transacting with overseas entities.

### ***Absence of an entry on the Registers of Scotland***

184. In England and Wales, non-compliant entities would be prevented from registering a disposition of land by a 'restriction', which would appear on the title record for the land at HMLR. A restriction prevents HMLR from registering a disposition unless it is satisfied that its conditions are met. The draft Bill would require HMLR to enter a restriction against land when any overseas entity registered its ownership.<sup>191</sup> There would be a similar provision for Northern Ireland, where an 'inhibition' is the equivalent of a 'restriction'.<sup>192</sup>

185. There is no equivalent of a 'restriction' in Scotland. Instead, the Keeper of the Registers of Scotland would be required to reject applications to register a deed where a non-compliant entity was the buyer or seller. The current Keeper, Jennifer Henderson, told us:

“Solicitors in Scotland are used to the idea that they need to go to other places [than the Registers] to check whether anything is inhibiting the property transaction [...] If an overseas entity is selling, whether they are appropriately registered or exempt will just be another thing we envisage being checked as part of that process before a purchaser is advised to go ahead. It will be completely clear on the face of the title sheet that an overseas entity is the current owner of the property. We think that will trigger with no issue the solicitor or the searcher following up and checking that the right legal basis for them to transact on the property is in place.”<sup>193</sup>

186. Mr Sinclair, representing the Law Society of Scotland, said: “There will be ways in which the nature of a proprietor or purchaser as an overseas entity will be flagged other than through the Land Register.”<sup>194</sup> Third parties purchasing from overseas entities will have an interest in knowing whether a structure is a registrable overseas entity. It remains unclear to us whether the registrar's decision on these cases will be publicly available. As the JCHR told us, the legislation is at risk of breaching A1P1 if it is unclear to third parties whether a seller of land is a registrable overseas entity.<sup>195</sup>

**187. 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.**

191 Land Registration Act 2002, [Schedule 4A, paragraph 3 \(Draft Registration of Overseas Entities Bill, Schedule 3, paragraph 3\)](#). Restrictions must also be entered against land already registered by an overseas entity, where registered from 1999. See paragraph 194.

192 Land Registration Act (Northern Ireland) 1970, [Schedule 8A, paragraph 3 \(Draft Registration of Overseas Entities Bill, Schedule 5, paragraph 3\)](#)

193 [Q 17](#)

194 [Q 28](#)

195 Letter from Rt Hon Harriet Harman MP to the Chair, 24 April 2019 ([ROE0021](#))



188. *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.*

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

### **Length of leases which qualify for registration**

190. The draft Bill would restrict a non-compliant entity seeking to register the acquisition of a long lease, or a lessee from a non-compliant entity seeking to register the creation or transfer of a long lease. The length of lease affected varies by jurisdiction. It is tied to the length of leases that must be registered to be fully effective.<sup>196</sup> In England and Wales, it includes all leases with a term of more than seven years.<sup>197</sup> In Scotland, leases over 20 years are registrable.<sup>198</sup> In Northern Ireland, the figure is 21 years.<sup>199</sup>

191. Mr Condliffe told us that there was no reason for these periods to be different, other than the underlying land registration law.<sup>200</sup> Mr Freedman, representing the Law Society of England and Wales, pointed out that parties obtaining a lease from an overseas entity of, for instance, 10 years, might not seek legal advice, and might be at greater risk of finding themselves with an unregistrable lease—and therefore no legal title.<sup>201</sup> Lessees of longer, more valuable, leases are more likely to take legal advice. There is thus less risk that tenants will be without legal advice in Scotland and Northern Ireland, where the minimum term for registrable leases is longer.

192. Although the Government justifies the length of leases caught by the Bill by reference to those leases which are registrable under the law in each jurisdiction, there would not be perfect alignment: in Northern Ireland some registrable leases would be excluded.<sup>202</sup>

**193. 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.**

196 Written evidence from the Department for Business, Energy and Industrial Strategy ([ROE0011](#)), para 31. In England and Wales, a registrable lease (and the transfer of such a lease) does not operate in law until registered (it may operate in equity): Land Registration Act 2002, [section 27\(1\)](#). In Scotland, no 'real' (proprietary) right can be obtained other than by registration: Land Registration etc (Scotland) Act 2012, [section 50\(3\)](#).

197 Land Registration Act 2002, [section 27\(2\)\(b\)\(i\)](#)

198 Registration of Leases (Scotland) Act 1857, [section 1\(1\)](#)

199 Land Registration Act (Northern Ireland) 1970, [section 24 and Schedule 2](#). When a lease is assigned (transferred), it is the term remaining that is counted.

200 [Q 12](#)

201 [Q 23](#)

202 Written evidence from the Department for Business, Energy and Industrial Strategy ([ROE0011](#)), para 31

### **Registration dates after which land may be subject to restriction**

194. In Northern Ireland, the Registrar would need only to enter an inhibition if the overseas entity registered ownership after the draft Bill had come into force.<sup>203</sup> In Scotland, application to register a deed granted by a non-compliant overseas entity would be rejected if the entity's interest in the land was first registered on or after 8 December 2014.<sup>204</sup> In England and Wales, only interests first registered on or after 1 January 1999 will be restricted.<sup>205</sup> The dates chosen were those on which the registers started to collect information about overseas entities for every registration. The Land Registers of Northern Ireland do not yet require that this information be provided.<sup>206</sup>

195. The result of these various cut-off dates is that property held by some identifiable overseas entities would fall outside the scope of the draft Bill. In Northern Ireland, overseas entities could buy property until the commencement of the Bill without having to register at Companies House.

196. Chris Pope OBE, Chief Operations Officer at HMLR, told us that while HMLR does have information that could help to identify overseas entities which registered before 1999, it was not confident that it had a “sufficient view of entities that were registered as owners prior to [...] 1 January 1999”.<sup>207</sup> The Keeper of the Registers of Scotland, Ms Henderson, had similar reservations about the completeness of data in respect of registrations before December 2014.<sup>208</sup> Jonathan McCoy, Deputy Registrar at the Land Registers of Northern Ireland, said that his organisation was in a comparable position in relation to all current registrations.<sup>209</sup> Mr Pope did not think that it would be problematic to extend the scope of the draft Bill to registrations before 1999, but believed that HMLR would not be able to guarantee that all entities would be identified.<sup>210</sup>

197. Clause 30 of the draft Bill would give the Secretary of State power to issue a notice requiring an overseas entity to register at Companies House. A notice would be given to an entity registered as the owner of land (or a tenant on a sufficiently long lease) but only if they registered after the dates referred to above.<sup>211</sup> Failure to comply with the notice would

203 Land Registration Act (Northern Ireland) 1970, [Schedule 8A, paragraph 3\(1\)\(b\)](#) ([Draft Registration of Overseas Entities Bill](#), Schedule 5, paragraph 3)

204 Land Registration etc (Scotland) Act 2012, [Schedule 1A, paragraph 1](#) ([Draft Registration of Overseas Entities Bill](#), Schedule 4, paragraph 7). In addition, an overseas entity which so registered as owner or long-lease tenant must register at Companies House within 18 months of commencement: [Schedule 1A, paragraph 8](#) of the 2012 Act.

205 Land Registration Act 2002, [Schedule 4A, paragraph 3\(1\)\(b\)](#) ([Draft Registration of Overseas Entities Bill](#) Schedule 3, para 3). Similarly to Scotland, an overseas entity that so registered as proprietor (freehold or of a long lease) must also register at Companies House within 18 months of commencement ([Draft Registration of Overseas Entities Bill](#), Schedule 3, para 4)

206 Registers of Scotland began to record whether a registered proprietor was an overseas entity on 8 December 2014: [Explanatory Notes to the Draft Registration of Overseas Entities Bill](#), para 13; [Q 19](#) (Jennifer Henderson). HMLR started routinely entering a company's country of incorporation into the register in January 1999, when it required that data to be provided as part of registration: [Q 19](#) (Chris Pope); see also Her Majesty's Land Registry and Law Society of England & Wales, *Property and title fraud*, (September 2017), p 16: <https://www.lawsociety.org.uk/support-services/advice/articles/property-and-title-fraud-advice-note> [accessed 12 April 2019]; Her Majesty's Land Registry, *Overseas Companies Ownership Data: technical specification* (November 2017): <https://www.gov.uk/government/publications/overseas-companies-ownership-data-technical-specification/overseas-companies-ownership-data-technical-specification> [accessed 3 April 2019].

207 [Q 19](#)

208 [Q 19](#)

209 [Q 19](#)

210 [Q 19](#)

211 1 January 1999 in England and Wales, 8 December 2014 in Scotland and commencement of the Act in Northern Ireland. See [Draft Registration of Overseas Entities Bill](#), Clause 9(9)

be a criminal offence but the power would run “in parallel” with the amendments to land registration, and would not itself lead to any restriction on dealing with property.<sup>212</sup>

198. 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.

199. *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).*

200. *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.*

### ***Innocent third parties***

201. When a third party buys land from an overseas entity, they run the risk of their title being unregistrable if the entity has not registered at Companies House. Similarly, a third-party vendor would wish to ensure that a purchaser registered title to their newly purchased land, and a tenant of a long lease could also be affected by non-compliance on the part of their landlord.<sup>213</sup>

202. As Mr Sinclair of the Law Society of Scotland pointed out, registration of deeds in Scotland can take a long time (“in excess of nine months”). If an application to register a deed were rejected and had to restart, and the overseas entity meanwhile breached its updating duty under the draft Bill, the purchaser would be unable to register.<sup>214</sup> In England and Wales, as the Government recognises, an overseas entity might not yet have registered its property at HMLR, but under existing legislation would still have the power to take a number of other courses of action.<sup>215</sup> These include making any other disposition

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212 [Explanatory Notes to the Draft Registration of Overseas Entities Bill](#), para 97

213 [Q 27](#) (Philip Freedman)

214 [Q 32](#)

215 Department for Business, Energy & Industrial Strategy *Overview Document: Draft Registration of Overseas Entities Bill*, para 33: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/727901/2\\_FINAL\\_Overview\\_document\\_\\_1\\_\\_1\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/727901/2_FINAL_Overview_document__1__1_.pdf) [accessed 1 April 2019]

(such as leasing or assigning the property).<sup>216</sup> Despite the Government’s statement in their overview document,<sup>217</sup> a very similar concept exists in Northern Ireland.<sup>218</sup>

203. If the overseas entity sold property when not compliant with the draft Bill’s registration requirements, the sale would never be registrable.<sup>219</sup> The purchaser would receive only what is known as an equitable interest: a class of ownership which can be lost in some circumstances. Yet there would be no indication on the land registry to alert the purchaser to the prohibition. Mr Freedman, of the Law Society of England and Wales, pointed out that this failure to receive good title could not be rectified at a later date.<sup>220</sup> The draft Bill provides that an overseas entity must either be registered or exempt “at the time of the disposition” or, in Scotland, “as at date of delivery of the deed”.<sup>221</sup>

204. The Government has recognised that there could be injustice to innocent third parties, and asked in its July 2018 draft Bill consultation paper whether there should be a power to disapply or appeal the effect of the prohibitions placed on property.<sup>222</sup> The Government told us that respondents “overwhelmingly believed” that there should be such a power, and that it was considering whether to include one, with “stringent guidelines as to when it would apply”.<sup>223</sup> But no such power was included in the draft Bill. The JCHR recommends the inclusion of such a power, to ensure compliance with the ECHR.<sup>224</sup>

**205. The Government is aware of many of the adverse consequences that the draft Bill could bring to third parties. Any enforceable mechanism prohibiting the disposal of property will create risks for innocent third parties. We therefore welcome the consideration that is being given to a possible power to disapply the effects of restrictions on registration.**

### *Accuracy of information: sanctions and innocent third parties*

206. The Law Society of Scotland raised a further issue affecting third parties: whether the validity of an entity’s registration at Companies House would depend upon it simply filing a return at Companies House, or whether it would depend on the accuracy of that return.<sup>225</sup>

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216 Land Registration Act 2002, [sections 23, 24](#)

217 Department for Business, Energy & Industrial Strategy, *Overview Document: Draft Registration of Overseas Entities Bill*, para 33: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/727901/2\\_FINAL\\_Overview\\_document\\_\\_1\\_\\_1\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/727901/2_FINAL_Overview_document__1__1_.pdf) [accessed 1 April 2019]

218 Land Registration Act (Northern Ireland) 1970, [section 33](#); Land Registration Rules (Northern Ireland) 1994 ([SR 1994 No 424](#)), regulation 39

219 Land Registration Act 2002, [Schedule 4A, paragraph 4](#) (*Draft Registration of Overseas Entities Bill*, Schedule 3, paragraph 3). See also Department for Business, Energy & Industrial Strategy *Overview Document: Draft Registration of Overseas Entities Bill*, para 33: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/727901/2\\_FINAL\\_Overview\\_document\\_\\_1\\_\\_1\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/727901/2_FINAL_Overview_document__1__1_.pdf) [accessed 1 April 2019].

220 [Q 32](#)

221 Land Registration Act 2002, [Schedule 4A, paras 3\(2\)\(a\) and 4\(2\)\(a\)](#) (*Draft Registration of Overseas Entities Bill*, Schedule 3, para 3), and Land Registration (Scotland) Act 2012, [Schedule 1A, para 2\(1\)\(c\)](#) (*Draft Registration of Overseas Entities Bill*, Sched 4, para 7). Provision similar to that for England and Wales is made for Northern Ireland: see Land Registration Act (Northern Ireland) 1970, [Schedule 8A, paras 3\(5\)\(a\) and 4\(3\)\(b\)](#) (*Draft Registration of Overseas Entities Bill*, Schedule 5, para 3).

222 Department for Business, Energy & Industrial Strategy *Overview Document: Draft Registration of Overseas Entities Bill*, July 2018, question 6.1: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/727901/2\\_FINAL\\_Overview\\_document\\_\\_1\\_\\_1\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/727901/2_FINAL_Overview_document__1__1_.pdf) [accessed 1 April 2019]. See also Written evidence from Department for Business, Energy and Industrial Strategy ([ROE0011](#)), para 33.

223 Written evidence from the Department for Business, Energy and Industrial Strategy ([ROE0011](#)), para 33.

224 Letter from Rt Hon Harriet Harman MP to the Chair, 24 April 2019 ([ROE0021](#))

225 Written evidence from Law Society of Scotland ([ROE0006](#))

207. The Government justifies an annual, rather than “event-driven”, update requirement on the basis that certainty is needed by third parties dealing with overseas entities.<sup>226</sup> The logic of the Government’s position is that even an inaccurate update will provide protection for a third party.

208. But the Government also told us that the duty in Clause 7 was to provide “correct information”.<sup>227</sup> Under Schedules 3 to 5, the land registrars are bound to refuse registrations where the overseas entity is not registered.<sup>228</sup> For these purposes an entity is not a registered overseas entity if it fails to comply with the duty in Clause 7 that the information should be accurate.<sup>229</sup> Thus a third party—and the land registrars—might need to satisfy themselves not only that an update had been delivered, but that it was accurate.<sup>230</sup>

209. The JCHR’s view is that the restriction may be disproportionate if it is not clear to third parties whether an overseas entity is “adequately registered at the time of sale”.<sup>231</sup> Its letter to our Committee suggests that it is not clear how a third party will know whether the Companies House register is up-to-date. Enabling third parties to know with ease whether an overseas entity was compliant would also help to avoid this potential “chilling effect” on the ability of overseas entities to deal effectively with their property, because of wariness of potential buyers.<sup>232</sup> In addition it would reduce the risk of the legislation breaching Article 14 of the European Convention on Human Rights, which requires that the rights in the ECHR must be secured without unlawful discrimination.

**210. 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.**

*211. 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.*

**212. Provided that the provisions of the draft Bill work as intended, and that the Government takes our recommendations into account, we are satisfied that the overall effect of the draft legislation on the UK property market will be beneficial for those involved in land transactions.**

*213. 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.*

226 [Q 61](#) (Kelly Tolhurst MP); see also paragraph 146 above.

227 See Appendix 6, issue 13.

228 See, for example, Land Registration Act 2002, [Schedule 4A, paragraphs 2\(a\) and 4\(2\)\(a\)](#) ([Draft Registration of Overseas Entities Bill](#), Schedule 3, paragraph 3) and Land Registration etc (Scotland) Act 2012, [Schedule 1A, paragraph 1\(2\)\(a\) and 2\(1\)\(c\)](#) ([Draft Registration of Overseas Entities Bill](#), Schedule 4, paragraph 7).

229 See, for example, Land Registration Act 2002, [Schedule 4A, paragraph 7](#) ([Draft Registration of Overseas Entities Bill](#), Schedule 3, paragraph 3) and Land Registration etc (Scotland) Act 2012, [Schedule 1A, paragraph 7\(2\) and \(3\)](#) ([Draft Registration of Overseas Entities Bill](#), Schedule 4, paragraph 7).

230 Written evidence from Law Society of Scotland ([ROE0006](#))

231 Letter from Rt Hon Harriet Harman MP to the Chair, 24 April 2019 ([ROE0021](#))

232 Letter from Rt Hon Harriet Harman MP to the Chair, 24 April 2019 ([ROE0021](#))



## Criminal offences

214. Under the draft Bill an entity would commit a criminal offence if it:

- a) made a disposition that could not be registered;
- b) (for UK land outside Northern Ireland) failed to register as an overseas entity within 18 months of commencement if it owned land that it registered before commencement; or
- c) failed to comply with the updating duty in Clause 7.

215. It would also be an offence for a person to fail to comply with a notice sent by an entity to acquire information from or about beneficial owners under Clauses 11 and 12, or to provide false or misleading information to Companies House. The Insolvency Service will be responsible for bringing any prosecutions.<sup>233</sup>

### *Use of criminal sanctions*

216. Some witnesses criticised the use of criminal sanctions. The Institute of Chartered Accountants in England and Wales told us that criminal sanctions for administrative breaches would “serve only to penalise predominantly legitimate investors”.<sup>234</sup> The British Property Federation stated that it was “highly likely” that existing owners would “fail to comply through genuine ignorance as opposed to any malicious intent”.<sup>235</sup>

217. The Law Society of Scotland was particularly concerned about the proportionality of using criminal sanctions to penalise any failure to provide annual updates: “It appears to be inappropriate for failure to provide an update to automatically trigger the same sanctions as providing false information.”<sup>236</sup> However, the sanction in Clause 8 for failing to update (a daily fine not exceeding £500) differs from that in Clause 28 for making a false statement (imprisonment of up to two years or a fine, or both). It is reasonably clear that Clause 28 is intended to apply even if a false statement might also amount to a breach of the updating duty.<sup>237</sup>

218. On the other hand, Transparency International and Global Witness considered the level of fines insufficient, arguing that a fine accumulating at £500 per day was likely to be less than the appreciation in value of a £5 million property.<sup>238</sup> They also noted that similar fines for Scottish limited partnerships which do not file beneficial ownership information were often not imposed. Mr Cobham of the Tax Justice Network suggested that enacting penalties which were not enforced could weaken respect for the rule of law.<sup>239</sup>

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233 Written evidence from Department for Business, Energy and Industrial Strategy (ROE0011), para 29

234 Written evidence from Institute of Chartered Accountants in England and Wales (ROE0005), para 13

235 British Property Federation, *Draft Registration of Overseas Entities Bill* (September 2018): <https://www.bpf.org.uk/sites/default/files/resources/BPF%20response%20Draft%20Registration%20of%20Overseas%20Entities%20Bill%2009.18.pdf> [accessed 18 April 2019]

236 Written evidence from Law Society of Scotland (ROE0006)

237 We deal with the argument that a false statement might amount to a breach of the updating duty in paragraphs 208 to 211.

238 [Q 43](#)

239 [Q 43](#)

## ***Enforceability***

219. The Law Society of Scotland referred to the difficulty of enforcing criminal offences against people or entities overseas. Criminal sanctions can be enforced overseas, if at all, only when the sanction is in respect of conduct that is an offence both in the UK and in the foreign jurisdiction.<sup>240</sup> Enforcement agencies told us that there was “certainly a difficulty” in enforcing criminal sanctions against overseas entities, though such sanctions could have a deterrent effect.<sup>241</sup> The Law Society of Scotland suggested that a civil penalty “might be more effective [than criminal sanctions] as it would potentially be easier to ensure enforcement in practical terms, for example a judgment in a UK court [...] could be enforced against other assets held in the UK”.<sup>242</sup>

220. However, the enforcement agencies agreed that land presented “an opportunity” for enforcement.<sup>243</sup> As noted above, land is an asset that cannot be removed from a jurisdiction.<sup>244</sup> In England and Wales, a charging order can be obtained to enforce a fine against an offender’s land.<sup>245</sup> The Minister told us that a similar sanction in Scotland and Northern Ireland had not been explored or discussed with the devolved administrations.<sup>246</sup> The agreement of the devolved administrations would be required to enact this change.

**221. 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.**

**222. 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.**

***223. 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.***

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240 The principle is known in international law as “double criminality”. The [EU’s Framework Decision 2005/214/JHA](#) of 24 February 2005 provides for enforcement of financial penalties in Member States which have implemented the Framework Decision. In those Member States (currently 24, including the UK) a fine can be enforced without the need to show “double criminality” for specified offences. These offences include money laundering and “offences established by the issuing State and serving the purpose of implementing obligations arising from instruments adopted under the EC Treaty or under Title VI of the EU Treaty” (Article 5(1)).

241 [Q 54](#) (Donald Toon)

242 Written evidence from Law Society of Scotland ([ROE0006](#))

243 [Q 49](#)

244 See paragraph 219.

245 Powers of Criminal Courts (Sentencing) Act 2000, [section 140](#); Magistrates’ Courts Act 1980, [section 87\(1\)](#)

246 [Q 70](#)



## 7 Conclusion

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224. It is now three years since the 2016 Global Anti-Corruption Summit, when the proposals now contained in this legislation were first announced. In the intervening period, the need for a Register of Overseas Entities has increased. We have shown how investment in UK property by overseas entities with unknown beneficial owners has continued. Public concern about this issue has grown. The new Director of the Serious Fraud Office, Lisa Osofsky, recently laid out her ambition to speed up her agency's response to fraud and corruption.<sup>247</sup> We hope that the proposed Register will help the SFO and other enforcement agencies such as the FCA and NCA to achieve this important objective.

225. But time is of the essence. We have outlined our conviction that implementation of the Bill should accompany the transposition of the Fifth EU Anti-Money Laundering Directive. The Government should match the determination of its enforcement agencies by introducing both pieces of legislation to Parliament without delay.

*226. 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.*

*227. 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.*

*228. 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.*

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<sup>247</sup> Barney Thompson, 'UK fraud chief moves to speed up investigations', *Financial Times* (April 2019) : <https://www.ft.com/content/b5eb36b6-680f-11e9-9adc-98bf1d35a056> [accessed 1 May 2019]; Public Finance, 'Serious Fraud Office 'should be more focused' (April 2019): <https://www.publicfinance.co.uk/news/2019/04/serious-fraud-office-should-be-more-focused> [accessed 1 May 2019]

## Conclusions and recommendations

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1. *We support the Government’s ambition to improve the transparency of overseas beneficial ownership in the United Kingdom property market. Overall, we feel that this draft legislation is timely, worthwhile, and, in large part, well drafted. (Paragraph 11)*
2. *We have approached this draft Bill on the clear understanding that while the Register is an important piece of the anti-money laundering jigsaw, it is only one piece. The Government should not lose sight of how this proposal fits with other anti-money laundering measures in its commendable efforts to design as effective a Register as possible. (Paragraph 35)*
3. *Entities which do not fit the description 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)*
4. *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)*
5. *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)*
6. *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)*
7. *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)*
8. *Decisions 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)*
9. *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)*
10. *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)*

11. *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)*
12. 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)
13. *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)*
14. *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)*
15. 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)
16. *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)*
17. *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)*
18. 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)
19. 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)

20. *Because of its importance in preventing the use of trusts in money laundering, we recommend that the TRS be publicly accessible. (Paragraph 90)*
21. *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)*
22. *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)*
23. *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)*
24. *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)*
25. *We welcome the flexibility given to the Secretary of State by Schedule 2, paragraph 25 of the draft Bill to account for the emergence of new and more complex ownership and control structures. Given the Government's stated concerns about the effect that such powers could have on the efficacy of the Bill, we agree that the affirmative resolution procedure is appropriate. (Paragraph 104)*
26. *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)*
27. *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)*

28. 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)
29. *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)
30. *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 “significant influence or control” under the People with Significant Control regime.* (Paragraph 114)
31. 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)
32. *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)
33. We note the suggestion by OpenCorporates that it should be possible to challenge the suppression of information from public disclosure. It is our assessment that the draft legislation would not prevent interested parties from appealing through the Courts the suppression of information—or the suppression rules themselves—if the Government’s decisions were seen to be unlawful. (Paragraph 126)
34. *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)
35. We are persuaded that, if individuals are at risk of harm should their beneficial ownership information be made public, it would be appropriate for the Secretary of State to restrict publication of that information. We therefore agree with the powers provided for in Clause 22 of the draft Bill. (Paragraph 129)
36. *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)



37. *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)*
38. 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)
39. *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)*
40. *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)*
41. *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)*
42. *Legitimate transactions will be likely to amass a quantity of information about all parties involved in the transaction. This requirement should not, therefore, prove onerous. It would also provide predictability for third parties: the prospective passing of title would be an “event”, thereby triggering the update requirement. (Paragraph 146)*
43. 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, Enterprise 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)
44. *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)*
45. It is regrettable that, as currently conceived, the proposed Register of Overseas Entities will have insufficient verification checks to deter criminals who wish to submit false information. It therefore seriously risks failing in its central policy aim: to provide a reliable and transparent record of the beneficial ownership information of overseas entities investing in the UK property market. (Paragraph 160)
46. 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)

47. *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)*
48. *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)*
49. *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)*
50. We are concerned that the Government has wholly underestimated the likely true cost to entities of obtaining external advice from regulated professionals. Costs would almost certainly rise if additional responsibilities were placed on professionals. (Paragraph 174)
51. 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)
52. *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)*
53. 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)
54. *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)*
55. *Any such pre-clearance mechanism should be open to all parties to a proposed property transaction involving an overseas entity. (Paragraph 189)*
56. 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)

57. 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)
58. *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)(i), (b)(ii) and (c)(ii).* (Paragraph 199)
59. *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)
60. The Government is aware of many of the adverse consequences that the draft Bill could bring to third parties. Any enforceable mechanism prohibiting the disposal of property will create risks for innocent third parties. We therefore welcome the consideration that is being given to a possible power to disapply the effects of restrictions on registration (Paragraph 205)
61. 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)
62. *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)
63. Provided that the provisions of the draft Bill work as intended, and that the Government takes our recommendations into account, we are satisfied that the overall effect of the draft legislation on the UK property market will be beneficial for those involved in land transactions. (Paragraph 212)

64. *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)*
65. 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)
66. 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)
67. *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)*
68. *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)*
69. *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)*
70. *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)*
71. *Clause 7 is not drafted sufficiently clearly. We recommend that the clause be re-drafted to be easier to follow. (Appendix 6)*

# Appendix 1: Members and interests

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## Members

Baroness Barker	Peter Aldous MP
Lord Faulkner of Worcester	Emma Dent Coad MP
Lord Faulks QC (Chair)	Mark Menzies MP
Lord Garnier QC	Mark Pawsey MP
Lord Haworth	Lloyd Russell-Moyle MP
Lord St John of Bletso	Alison Thewliss MP

## Declarations of interest (Lords)

Baroness Barker

*No relevant interests*

Lord Faulkner of Worcester

*Chairman, Alderney Gambling Control Commission*

*HMG Trade Envoy to Taiwan (unpaid)*

*Owner of two properties in Oxford let to students*

Lord Faulks QC (Chair)

*Owner of freehold house in Royal Borough of Kensington and Chelsea*

*Worked with Professor Fisher QC and has been previously been instructed by Mishcon de Reya (of which Philip Freedman QC (Hon) is Chairman)*

Lord Garnier QC

*Instructed by overseas individuals and companies in private practice at the Bar*

*Member, Serious Fraud Office Prosecution Fraud Panel 2017–2021*

*In a personal capacity knows several senior members of staff at the Serious Fraud Office and the Crown Prosecution Service*

*Previously worked with and is a personal friend of Professor Fisher QC*

Lord Haworth

*No relevant interests*

Lord St John of Bletso

*Director of Albion Ventures VCT*

Full lists of Members' interests are recorded in the Commons Register of Members' Financial Interests:

<http://www.parliament.uk/business/publications/commons>

and the Register of Lords' Interests:

<http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests>

Declarations of interest are also recorded in the formal minutes of the Committee:

<https://www.parliament.uk/business/committees/committees-a-z/joint-select/draft-registration-of-overseas-entities-bill/formal-minutes/>

The following additional interests were declared by Commons Members in the course of the inquiry:

Peter Aldous MP

*Freehold interests in two family farms in Suffolk*

Emma Dent Coad MP

*Councillor of the Royal Borough of Kensington and Chelsea with an allowance of £11,027 per annum for 40 hours per calendar month*

Mark Menzies MP

*Visited the Cayman Islands between 31 January and 3 February 2019 (visit donor: Cayman Islands Government Office)*

*HMG Trade Envoy to Argentina, Chile, Colombia and Peru*

Mark Pawsey MP

*No relevant interests*

Lloyd Russell-Moyle MP

*No relevant interests*

Alison Thewliss MP

*Husband an IT consultant to Registers of Scotland*

## Appendix 2: Call for Evidence

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The Joint Committee on the Draft Registration of Overseas Entities Bill was appointed in February 2019 to consider the Government's draft Bill for the implementation of a register that would require overseas companies and other legal entities that own property (i.e. real estate) in the UK to identify their ultimate principal beneficial owners. The Committee invites interested individuals and organisations to submit written evidence to this inquiry. The deadline for written evidence is 18 March 2019.

The Committee will make recommendations in a report to both Houses by 10 May 2019. In the short time available to us, the Committee will focus on the content of the draft Bill and its scope. We will not consider the merits of individual cases which have been, or are now, subject to formal proceedings in courts or tribunals.

### Draft Registration of Overseas Entities Bill

The draft Bill would establish a public register of the beneficial owners of overseas entities that own or purchase land in the UK, and require overseas entities that wish to own UK land to:

- identify their beneficial owner(s);
- disclose that information to the register (held at Companies House); and update the information provided to the register annually.

### *Our aims*

In scrutinising the draft Bill we aim to:

- Clarify and examine the Government's policy objectives
- Assess whether the Bill as drafted would achieve the Government's objectives
- Identify any unintended consequences of the Bill
- Make recommendations to improve the drafting of the Bill

### *Areas of interest*

We shall explore and would welcome views on any, or all, of the key questions outlined below:

### *Objectives & scope*

- Will the public register as established by the draft Bill effectively deliver the policy aim of preventing and combatting the use of land in the UK for the purposes of laundering money or investing illicit funds?
- Will the proposed register have a dampening effect on overseas investment into the UK property market? Is this a necessary consequence of increased transparency?

- Are the conditions for “registrable beneficial owners” appropriate? Are they sufficiently clear (i) for overseas entities with different ownership structures to be able to determine which individuals or legal entities are registrable, and (ii) to capture different types of legal entity?
- Should other types of entity (such as trusts) be included in the scope of the draft Bill?
- Are the proposed powers allowing the Secretary of State to exempt, or modify application requirements for, certain types of entities appropriate? Under what circumstances should these powers be exercised?

### ***Operation of the register***

- Are the information requirements sufficiently comprehensive? Are there other types of information that it would be useful to include? Conversely, do the requirements place an undue burden on entities?
- What controls should be in place to verify the information provided to the register?
- Does Companies House have sufficient capacity or resources to administer and monitor the register?
- Should entities which cannot identify, or provide full details of, their beneficial owners be allowed to register? Is it useful to hold the information of a managing officer in place of a beneficial owner? Is there any additional information that should be required from entities that are unable to give information about their beneficial owners?
- Does the draft Bill provide sufficient protections for individuals who could be put at risk by having information about them made publicly accessible?
- Should it be possible to appeal the suppression of information from public disclosure?

### ***Compliance & enforcement***

- Is a system of statutory restrictions and putting notes on the register, backed up by criminal offences, a comprehensive and practicable way to ensure compliance?
- How should the Government ensure that all prospective and existing overseas owners of qualifying estates are made aware of the new register and its requirements by the time the register is operational or before the end of the transition period?
- Will the draft Bill’s objectives be achieved in a consistent manner throughout the UK despite differences in how property is bought and sold—and in the draft Bill’s definitions of ‘qualifying estates’—in the different jurisdictions? Will there be a level playing field across the UK?
- Are the exceptions to the restrictions on disposal sufficient to protect the rights of third parties? Should any other exceptions be included in the draft Bill?
- Are the sanctions for non-compliance with information requirements proportionate and enforceable?

***Delegated powers***

- Are the proposed delegated powers in the draft Bill appropriate?
- Do the procedures selected (affirmative/negative resolution) for each power provide for sufficient levels of parliamentary scrutiny?



## Appendix 3: Delegated Powers Memorandum

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### **Letter from the Rt Hon Lord Blencathra, Chairman of the Delegated Powers and Regulatory Reform Committee**

Thank you for your recent invitation to the Delegated Powers and Regulatory Reform Committee (DPRRC) to submit a memorandum on the draft Registration of Overseas Entities Bill.

Unusually, and it is a testament to the Department for Business, Energy and Industrial Strategy, the DPRRC has nothing which it wishes to draw to the attention of the Joint Committee. In the view of the DPRRC, the delegated powers are proportionate and the mix of the affirmative and negative procedures (seven of each) strikes a good balance. Furthermore, the delegated powers memorandum offers a good justification for the powers sought and the level of parliamentary scrutiny applied to them. We found particularly helpful the use of statutory precedents to support the justification for the various powers.

11 April 2019

## Appendix 4: Human Rights Memorandum

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### Letter from the Rt Hon Harriet Harman MP, Chair of the Joint Committee on Human Rights

Thank you for your letter dated 28 March. Following your letter, we requested an ECHR Memorandum from the department responsible for the Draft Bill, BEIS, which we received late last week.

The JCHR fully supports efforts to combat money laundering in the UK, including through using the UK property market and understands the need for this legislation. We also appreciate the difficulties in legislating for entities that may not be subject to the jurisdiction of the UK in all respects.

We agree with the BEIS analysis that the draft Bill potentially engages Article 8 (right to private and family life), Article 1, Protocol 1 to the ECHR (right to peaceful enjoyment of one's possessions) and Article 1, Protocol 1 to the ECHR as read with Article 14 ECHR (non-discrimination in relation to property rights).

#### ***Article 1, Protocol 1 (property) and the potential impact on innocent third parties***

Considering the aim of the legislation (combatting money laundering), the means employed (provision of information) and the consequences of non-compliance (limitations on the use of property), the potential interference with the property rights of overseas entities is capable of being justified.

A more pressing concern under the draft Bill is the protection of the Article 1, Protocol 1 rights of innocent third parties. The reason this concern arises is because of the potentially adverse effects on the rights of such third parties of Schedule 3 to the Bill, in that any purchase by a third party of land in the UK from an overseas entity that has not completed the registration requirements (or annual update) would prevent the (potentially innocent) third party from registering and obtaining legal title and therefore legal recognition of their purchase of property in the UK.

As we understand it, where an overseas entity is registered as proprietor of a qualifying estate, the Schedule requires the Land Registry to “insert a restriction into the title register for the estate. The restriction will prohibit the registration of certain dispositions in respect of the estate unless the entity is a registered overseas entity (or is exempt) at the time of the disposition (or an exception applies). The dispositions are (a) a transfer of the estate (i.e. sale); (b) the grant of a lease of over 7 years out of the estate; and (c) the creation of a charge over the estate” (Explanatory Notes, para 9).

The Explanatory Notes explain (para 33) that “[t]he practical effect of the restriction is that where an overseas entity makes a relevant disposition at a time when it is not a registered overseas entity, is not exempt and no exceptions apply, those dispositions cannot be completed by registration” (emphasis added). Clearly, any innocent third-party acquiring rights to property in these circumstances could suffer significant loss by, for instance, having paid for a property, and then not being able to register the transaction in their name.

While the JCHR is aware that there are exceptions aimed at protecting the rights of third parties, these exceptions are rather narrow and would not protect the innocent third party to a contract for the sale of property who sought to register the transaction after the overseas entity was required to be registered. This is particularly concerning given the implications for the property rights on that third party and is especially concerning given that it is not clear how transparent the system will be, so it could unfairly impact upon innocent third parties who then find themselves in a situation which they are unable to get out of as they have bought and paid for the property but are unable to register it to get the legal title to the property.

While a restriction on the title deed of property owned by an overseas entity might alert an innocent buyer, this will not be the case in Scotland, for instance, where there is no mechanism to place such a restriction on the title deed (EN, para 33). Furthermore, where there is such a restriction, it is not clear to us how apparent the restriction will be on the title deed of the overseas entity, nor how the innocent third party will know whether the register is up-to-date. It may be that those undertaking the conveyancing will easily be able to cover these issues, but that is not clear from the information we have seen. These are issues which, in our view, require closer explanation or scrutiny.

The reason we think this is problematic is that the draft Bill provides no mechanism to assist an innocent third party who seeks to register such a transaction: the transfer of property cannot be registered, and it is not clear how, if at all, the situation can be rectified or resolved. Potential criminal sanctions against an unregistered overseas entity who may already have received payment for property which can now not be transferred, would count for little.

In order to protect innocent third parties, the system of registers should ensure that it is very easy to determine whether a seller is an overseas entity and whether they are adequately registered at the time of sale. Moreover, in order to make the interference with property rights justified and proportionate, it would also be better to ensure that there is a method to resolve legal ownership of property where an innocent third party has bought real estate from an overseas entity that was not properly registered.

***Article 14: Prohibition of discrimination (in the enjoyment of other Convention rights) and the impact of ‘restrictions’ in the land register***

Given the fact that the provisions will only be applicable to overseas entities (i.e. those legal entities that are governed by the law of a country or territory outside the United Kingdom), a further consideration is whether the scheme under the Bill engages Article 14 (prohibition of discrimination), in conjunction with Article 1 Protocol 1 property rights, on the basis of nationality.

We recognise fully that the scheme under the draft Bill is intended to mirror, to the extent possible, the People with Significant Control scheme applicable since 2016 to UK entities, and that it is not meant to be any more onerous.

Nevertheless, the differential treatment of UK and overseas entities means it may be necessary to examine aspects of the Bill more closely. In our view, the mere requirement to be a “registered overseas entity” in order to be able to register as proprietor of a “qualifying estate” is not, by itself, problematic.

What does concern the JCHR is the requirement, introduced into the 2002 Act by paragraph 3(1) of Schedule 3 to the draft Bill, for the registrar to enter a “restriction” in the register in relation to a qualifying estate if an overseas entity is registered as the proprietor of the estate. This is irrespective of whether or not the overseas entity has already registered as such (i.e. as a “registered overseas entity”) or not.

The entry of such a “restriction” may have serious adverse effects on the proprietor’s property rights, which would not affect a UK entity in a similar way under the PSC scheme; if this were the case, it is possible that this discriminates against overseas entities.

In particular, the potentially “chilling effect” on the ability of overseas entities to deal effectively with their property because of wariness of potential buyers, lenders etc, whenever they were dealing with restricted property could become a serious problem for compliant overseas entities.

Again, the main issue is transparency: how easy it would be for banks and other lenders, potential buyers and tenants to assess whether a particular owner of property is compliant and can be trusted. If the system is not sufficiently transparent and user-friendly, the effect of the scheme could constitute a disproportionate interference with their property rights. Our view is that this is an area which requires further consideration and information from the Department.

### ***Article 8: Right to respect for private and family life***

We consider that the Draft Bill engages Article 8 rights. This is because of the requirement to provide personal information to the registrar about the beneficial owners of the overseas entities. For the most part, we believe this interference with privacy rights is justifiable, taking into account the reasonably limited nature of the information, the aims of the Bill and the consequences that follow.

One aspect that causes us some concern is the provision that allows for information of “managing officers” to be provided where the overseas entity has no beneficial owners, or they cannot be found or cannot provide complete information. The ECHR Memorandum summarises the position as follows:

“20. A condition of registration is that the overseas entity discloses information about its beneficial owners. Where the entity has none, or they cannot provide complete information about them, details about their managing officers (e.g. a director) are required—see Clause 4.”

While this provision makes sense, it is unclear how much effort an overseas entity would have to make to find its beneficial owners before simply providing information of individuals who could provide a useful front for what might be a corrupt entity. Given the potentially serious consequences that could result for innocent third parties, outlined above, we are a little uneasy with a system that is apparently reasonably easy to circumvent. This aspect requires further clarification.

We also note that the Clause 22 of the Draft Bill allows for regulations which will allow an individual to apply for their details to be protected from public disclosure. The ECHR Memorandum suggests that this will be done on the basis that disclosure would put them at risk of “physical harm”. We note that although Clause 22 does not address the standard to

be used (this is to be set out in the regulations), we would have concerns about such a high standard. While that would clearly be a good justification for not disclosing information, it appears to us to be rather too high a threshold, and would not, for instance, allow for such 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. We note that this aspect will be dealt with in regulations, and we would recommend that this aspect is revisited at the appropriate time.

We remain willing to provide any further assistance we can.

25 April 2019

## Appendix 5: List of possible loopholes in the draft Bill

This table illustrates the possible loopholes that we have identified in the draft Bill, which could be exploited by those with malign intent. The list is not intended to be exhaustive.

List of possible loopholes in the draft Bill	
Trusts are not included within the definition of "overseas entities"	The definition of "overseas entity" contained in Clause 2 does not encompass trusts. They are not, therefore, required to register. Though the Government argues that other current and future measures will require the registration of trusts, such registers will not be public. Furthermore, the land registries will have no ability to restrict transactions by non-registered trusts.
Chapter 3: Structures required to register	<p>Someone wishing to launder money could establish a trust, allowing the trustees to hold property on their behalf. Although the trust would usually be recorded by the Trust Registration Service, this would not be public information. Moreover, although the ultimate owner would be caught by 'Condition 4' of the draft Bill, since they would exercise "significant influence or control" over the trustees, it is likely that this information would never be made known to the Register.</p> <p><b>Recommendations</b></p> <p><i>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.</i></p> <p><i>Because of its importance in preventing the use of trusts in money laundering, we recommend that the TRS be publicly accessible.</i></p> <p><i>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.</i></p> <p><i>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.</i></p>



List of possible loopholes in the draft Bill	
<p>Information will not be subject to routine verification</p> <p>Chapter 5: Information held on the Register</p>	<p>There is no provision in the draft Bill for the information provided by entities to be systematically verified. This could enable someone with malign intent to provide false information, undermining the draft Bill's aim to increase transparency.</p> <p>While we acknowledge that the provision of false information will be an offence under Clause 28 of the Bill, enforcement measures may not represent a sufficient deterrent.</p> <p><b>Recommendations</b></p> <p><i>The Government should ensure that the Register include 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.</i></p> <p><i>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.</i></p> <p><i>We therefore recommend that the Government should explore the viability of requiring regulated professionals to verify beneficial ownership information submitted to the Register.</i></p>
<p>Certain property is out of scope of the draft Bill</p> <p>Chapter 6: Enforcement</p>	<p>Entities owning property registered before December 2014 in Scotland, January 1999 in England and Wales, and before commencement of the Bill in Northern Ireland, will not be required to register their beneficial ownership information.</p> <p>Such property could be sold and used for money laundering purposes.</p> <p><b>Recommendations</b></p> <p><i>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).</i></p> <p><i>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.</i></p>

### List of possible loopholes in the draft Bill

Criminal sanctions may be unenforceable, and fines may not be a sufficient deterrent

Chapter 6:  
Enforcement

Criminal fines may be seen by fraudsters as a “cost of doing business”.

It is possible that the criminal sanctions outlined in the Bill will be difficult to enforce against individuals resident in other jurisdictions.

In practice, it may be possible to flout the provisions of the draft Bill with impunity.

#### **Recommendations**

*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.*

## Appendix 6: Schedule of minor and drafting issues

No	Location	Issue	Department response	Committee Recommendation
1	Cl 2(2)	“Legal entity” might include individuals. They are also “legal persons”. Might it be helpful to exclude individuals expressly—as does, for example, Sched 3 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012?	In our view it is already clear that the definition of “legal entity” does not catch individuals. The word “entity” connotes an organisation, body or institution. In ordinary usage it would be unusual to refer to a natural person as an “entity”. The context also makes it clear that we do not intend to catch individuals because individuals do not have beneficial owners. Moreover, Schedule 2 clearly draws a distinction between legal entities and individuals.	
2	Cl 7(5)	<p>The Explanatory Notes (ENs) suggest the intention to be that an update period can be shortened by early delivery of an updating statement (and information) coupled with a notice that the new period is to run from the following day.</p> <p>How does the Bill operate to cause the update period to end on the day that the information is provided?</p> <p>Does Cl 7(5)(b), coupled with Cl 7(1), in fact allow the entity to specify the end of the period to be any of the 14 days preceding the giving of the information?</p>	<p>The answers to these questions are worked through below.</p> <p>An update period is defined in clause 7(4). It is either: -</p> <p>(a) the period of 12 months beginning with the date of the overseas entity’s registration; and then subsequently—</p> <p>(b) each period of 12 months beginning with the day after the end of the previous update period.</p> <p>The update period, defined above, can be shortened. This is made clear by clause 7(5).</p> <p>In order to shorten the update period, the overseas entity needs to deliver the statements and information specified in Clause 7(1) and notify the registrar of the shortened update period.</p> <p>When these steps are completed the current update period ends automatically. In practice, this will be the day that the overseas entity notifies Companies House about the shortened update period and sends the statements and information specified in Clause 7(1).</p>	<p><b><i>Clause 7 is not drafted sufficiently clearly.</i></b></p> <p><b><i>We recommend that the clause be re-drafted to be easier to follow.</i></b></p>

No	Location	Issue	Department response	Committee Recommendation
			<p>The new update period commences the next day after the completion of the aforementioned steps.</p> <p>It is not the intention to afford an overseas entity the option of specifying the end of the update period in the 14 days preceding the completion of the steps specified in Clause 7(5). This is because it is only the completion of the steps in Clause 7(5) which terminates an existing update period. In the question posed, the overseas entity would effectively terminate an existing update period before complying with the steps in Clause 7(5), which is not the intention.</p>	
3	CI 15(1)	The clause has “description” as the object of the phrase “in relation to”. The “requirements” do not relate to “a description”. Should the clause read: “... requirements in relation to overseas entities of a description specified in the regulations”?	We agree with this suggestion and the legislation will be amended accordingly.	
4	CI 21(2)	Why does “or body” appear in CI 21(2), despite Interpretation Act 1978, Sched 1?	We agree with this suggestion and the legislation will be amended accordingly.	
5	CI 26(1)	As the Court must direct removal (see subsections (2) and (3)), the words “and that the court directs should be removed from the register” should appear underneath paragraph (b). Subsection (1) then takes on the form of a “sandwich”.	We agree with this suggestion and the legislation will be amended accordingly.	

No	Location	Issue	Department response	Committee Recommendation
6	Sched 1, para 3(1)	Why does the required information about a beneficial owner, in contrast to a managing officer (or a director: see CA 2006, s 163), not include any former name? The ENs relating to s 790K of the CA 2006 say former name and business occupation "are not thought relevant in the context of people with significant control" (ENs to the Small Business, Enterprise and Employment Act 2015, para 426). Why is this the case?	<p>Taking the second point first: for directors in the UK, it is considered desirable to have the ability to link names to previous or former activity and any former names in order to assist in identifying if someone appointed a director is disqualified or otherwise barred from becoming a director (for example, where being appointed as a director might be subject to them not being a former or discharged bankrupt). It is therefore considered proportionate and necessary to require former names for directors.</p> <p>With respect to the first point, within this Bill we have included a requirement for managing officers to provide former names because we believe that it is desirable to have the ability to link names in a similar way: within the context of this Bill, the definition of a managing officer of an overseas entity includes director, manager or secretary (Clause 36).</p> <p>We do not believe that the same points hold true for beneficial owners and therefore do not require it of them.</p>	
7	Sched 1, paras 3(1) (d), 4(e) and 5(f)	How should an entity determine the date on which an individual became a registrable beneficial owner by virtue of their actual exercise of significant control over the entity? That is, when does actual exercise of significant control begin?	The date the threshold conditions are met, as set out in schedule 2.	

No	Location	Issue	Department response	Committee Recommendation
8	Sched 2, para 7(1)(f)	<p>The Secretary of State may prescribe a description of legal entity as “subject to, its own disclosure requirements”, the effect of which is that it will become a registrable beneficial owner if it is a beneficial owner and not exempt. This is broadly similar to the power (itself referred to at para 7(1)(c)) in section 790C(7)(d) of the Companies Act 2006). But that power is circumscribed by requiring the Secretary of State to “have regard to the extent to which entities of that description are bound by disclosure and transparency rules ... equivalent to” those applying to entities falling within other paragraphs of s 790C(7). Why is this limitation not carried through to regulations under paragraph 7(1)(f)?</p>	<p>We have not replicated this limitation in order to provide flexibility and to future-proof the Bill because we want to ensure that we have maximum flexibility to add to the definition of “subject to its own disclosure requirements” if circumstances change. An example might be where the information that an overseas entity is required to provide is available on a public register elsewhere, but this is not a ‘free to access’ register: we may make a decision to specify that a company subject to these sorts of requirements is “subject to its own disclosure requirements”. This would be by secondary legislation subject to the affirmative procedure.</p>	
9	Sched 2, para 22, ENs para 157	<p>Are the ENs accurate? They describe the conditions in Sched 2, para 22 as cumulative. If either condition (a) or (b) in para 22 is satisfied, the rights attached to shares held by way of security are treated as held by the person who granted the security (the borrower).</p>	<p>The policy intention is for paragraphs (a) and (b) to be alternative cases and that in both cases the shares held by way of security provided by the person are to be treated as held by that person. The clause provides for two separate scenarios in subparagraphs (a) and (b). The wording reflects paragraph 23 of Schedule 1A to the Companies Act 2006 and other similar provisions of that Act. We will consider changing the Explanatory Notes before the Bill is introduced.</p>	



No	Location	Issue	Department response	Committee Recommendation
10	Explanatory Notes, generally	<p>There are minor and/or typographical errors in the ENs, in particular:</p> <p>para 42(a) omits “registrable” before “beneficial”</p> <p>para 67, “to” after “sends”</p> <p>para 81 refers to Clauses 21 and 22 as 20 and 21</p> <p>para 89 refers at the end of line 4 to a notice period: it should be “notice to be given of an application”</p> <p>para 128 is divided into sub-paragraphs numbered differently to other subdivisions</p> <p>para 128(i) omits “and” after “regime”</p> <p>para 182 refers to a disposition being un-registrable “under paragraphs 3 and 4”</p> <p>paras 185 and 186 refer to an offence “under paragraphs 4 or 5”, and “4 and 5”. There is no offence under paragraph 4</p> <p>para 221, “od” [sic] and lower-case reference to “schedule 4A” (which occurs elsewhere)</p>	We are grateful for these comments.	

No	Location	Issue	Department response	Committee Recommendation
11	Sched 2, para 23	<p>In relation to the definition of “foreign limited partner”, the Law Society of Scotland says the following are not clear—</p> <p>(1) the meaning of “arrangements” (para 23(6)), and</p> <p>(2) the scope of “characteristics” (para 23(5) and (6))</p>	<p>Both will be addressed in regulations, the content and structure of which is still being considered.</p> <p>The regulations will take into account the meaning of “arrangements” and scope of “characteristics” as outlined in The Register of People with Significant Control Regulations 2016, Regulation 8.</p> <p><a href="http://www.legislation.gov.uk/ukxi/2016/339/regulation/8/made">http://www.legislation.gov.uk/ukxi/2016/339/regulation/8/made</a></p>	
12	Sched 4, para 7 (new Sched 1A to 2012 Act, para 1(1) and para 2(1)).	<p>The Law Society of Scotland suggests that it is not clear whether subparagraphs (i) to (iii) of para 1(1)(a) are intended to qualify a “qualifying registrable deed” as well as a “registrable deed”. It makes a similar point in relation to para 2(2)(a) and “which is a standard security”.</p> <p>It seems reasonably clear, given the way “qualifying registrable deed” is defined in para 7(1), that the additional qualifications apply only to “registrable deed” in each case. Is this the Department’s view?</p>	<p>Yes, this is the Department’s view</p>	

No	Location	Issue	Department response	Committee Recommendation
13	Cl 7  Sched 3, para 3 (new Sched 4A to 2002 Act, para 7)  Sched 4, para 7 (new Sched 1A to 2012 Act, para 7(2) & (3))  Sched 5, para 3 (new Sched 8A to 1970 Act, para 7)	<p>The Law Society of Scotland points out that the duty in Clause 7 to update the register could be interpreted either—</p> <p>(1) as being satisfied simply by delivering the information referred to, regardless of its accuracy (the making of deliberate or reckless errors in which might be an offence under Cl 28), or</p> <p>(2) as requiring that the information submitted be accurate (which might mean the land registries would have to check it before registering any disposition / deed, as a result of para 7 of each of the inserted Schedules referred to).</p> <p>Which is the intended policy, and is the Department satisfied that the drafting is sufficiently clear?</p>	<p>The Department is satisfied that the drafting is sufficiently clear: it is an offence to provide false information and the overseas entity must provide correct information to discharge their statutory obligations. Land Registries must be satisfied that an overseas entity is a registered overseas entity prior to registering relevant dispositions.</p>	

## Appendix 7: Glossary

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'1970 Act'	Land Registration Act (Northern Ireland) 1970
AML	Anti-money laundering—a term mainly used to describe the legal controls which require financial institutions and other regulated entities to prevent, detect, and report money laundering activities.
AMLD	EU Anti-Money Laundering Directive, commonly used to refer to the 4th and 5th Directives (4AMLD and 5AMLD).
ATED	Annual Tax on Enveloped Dwellings, also known as the Envelope Tax
BEIS	Department for Business, Energy & Industrial Strategy
Beneficial owner	<p>A beneficial owner of a company ultimately owns or controls the entity in the draft Bill. A beneficial owner can be an individual, legal entity, or government or public authority which meets one or more of the conditions set out in Part 2 of Schedule 2. In summary, 'X' is a beneficial owner if:</p> <ul style="list-style-type: none"> <li>i. X holds, directly or indirectly, more than 25% of the shares in Y</li> <li>ii. X holds, directly or indirectly, more than 25% of the voting rights in Y</li> <li>iii. X holds the right, directly or indirectly, to appoint or remove a majority of the board of directors or Y</li> <li>vi. X has the right to exercise, or actually exercises, "significant influence or control" over Y</li> <li>v. the trustees of a trust, or the members of a partnership, unincorporated association or other entity, that is not a legal person under the law by which it is governed meet any of the conditions specified above (in their capacity as such) in relation to Y, and X has the right to exercise, or actually exercises, significant influence or control over the activities of that trust or entity</li> </ul>
Charge	An interest in land securing payment of a sum of money due from the land's owner to the person entitled to the benefit of the charge. A mortgage is a type of charge.
Chief Land Registrar	The head of HM Land Registry, who is appointed by the Secretary of State to be both Chief Land Registrar and Chief Executive of HM Land Registry.
Conveyance	The transfer of ownership or interest in real property from one person to another. (Conveyancing is the legal process involved in buying, selling or mortgaging a property to transfer its legal title from one person to another).

Disposition/ registrable disposition	<p>A transaction in land—the creation or transfer of an estate or interest in land. A registrable disposition is a transaction which must be registered to be fully effective.</p> <p>In England and Wales, a registrable disposition is one that is required to be completed by registration under the Land Registration Act 2002. Registrable dispositions include transfers, the grant of a lease for a term of more than seven years and the grant of a legal charge. In Scotland, landlords granting leases for more than 20 years must register their land as well as the lease. In Northern Ireland, registration is not compulsory for leases for terms not exceeding 21 years.</p>
Estate in land	<p>Legal interests in land.</p> <p>In England and Wales, a landowner can own either the freehold estate (which has a potentially indefinite duration) or the leasehold estate (where possession of the property lasts for a fixed lease term) in land. In Scotland (which does not use the expression “estate”), most property is held in outright ownership—often still referred to as heritable title—which is the equivalent to freehold title in England &amp; Wales. Leasehold titles are very rare.</p>
FCA	Financial Conduct Authority
HM Land Registry for England and Wales (HMLR)	<p>Executive agency (sponsored by BEIS) with the following responsibilities:</p> <ul style="list-style-type: none"> <li>• to provide a reliable record of information about ownership of and interests affecting land and property in England and Wales</li> <li>• to provide owners with a land title, guaranteed by the Government</li> <li>• to provide a title plan that indicates general boundaries</li> </ul>
Inhibition	In Northern Ireland, a notice in the land’s folio entry at the Land Registry for Northern Ireland which inhibits or prevents dealings with the land until certain conditions, which are specified in the entry, have been met.
Keeper of the Registers of Scotland (“Keeper”)	The title given to the person responsible for leading the Registers of Scotland and managing and controlling the Land Register of Scotland. The equivalent of the Chief Land Registrar.
Legal entity	In the draft Bill, a body corporate, partnership or other entity that is a legal person under the law by which it is governed.
Managing officer	In the draft Bill, in relation to an overseas entity, includes a director, manager or secretary.
NCA	National Crime Agency—leads and coordinates UK law enforcement’s response to serious and organised crime.
OPBAS	Office for Professional Body Anti-Money Laundering Supervisor: an FCA regulator which supervises professional body anti-money laundering regulators (the supervisor of supervisors).
Overseas entity	In the draft Bill, a legal entity which is governed by the law of a country or territory outside the UK.

Proprietor	In England and Wales, the legal owner of an interest in land.
PSC	People with Significant Control—all UK-registered companies are required to keep a register of “people with significant control” over the company and to disclose this information to Companies House.
Qualifying estate in land	An estate in land which for the purposes of the draft Bill is within the scope of the requirements.
Registers of Scotland (RoS)	The Scottish Government department responsible for keeping public registers of land, property, and other legal documents in Scotland.
Registrar of Companies (“Companies House”)	The Registrar of Companies for England and Wales—an executive agency sponsored by BEIS. (Referred to as “the registrar” in the draft Bill).
Registrar of Titles	Responsible for the Land Registry of Northern Ireland. The equivalent of the Chief Land Registrar and the Keeper of the Registers of Scotland.
Restriction	In England and Wales, an entry in a register that regulates the circumstances in which a disposition of a registered estate or charge can be the subject of an entry in a register.  <i>See ‘inhibition’ for Northern Ireland. There is no equivalent in land registration law for Scotland.</i>
SARs	Suspicious activity reports are filed to alert the National Crime Agency to cases of suspicious or potentially suspicious activity.
SFO	Serious Fraud Office—agency which investigates and prosecutes top-level serious and complex fraud, bribery and corruption, and associated money laundering.
Title	A freehold or leasehold owner’s right to a property.
Trust	An arrangement under which assets are held by trustees (which may include individuals or bodies) on behalf of beneficiaries (i.e. the ultimate owners).
TRS	Trust Registration Service
Unincorporated association	An organisation set up through an agreement between a group of people who come together for a reason other than to make a profit
UWO	Unexplained wealth order



# Formal minutes

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**Wednesday 8 May 2019**

Members present:

Lord Faulks QC, in the Chair

Baroness Barker

Peter Aldous

Lord St John of Bletso

Mark Menzies

Lord Garnier QC

Mark Pawsey

Lord Haworth

Alison Thewliss

Draft Report (Draft Registration of Overseas Entities Bill), proposed by the Chair, brought up and read.

*Ordered*, That the Chair's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 228 read and agreed to.

Summary agreed to.

Appendices to the Report agreed to.

*Resolved*, That the Report be the Report of the Committee to both Houses.

*Ordered*, That the Chair make the Report to the House of Lords and that Peter Aldous make the Report to the House of Commons.

*Ordered*, That embargoed copies of the Report be made available (Standing Order No. 134 of the House of Commons).

# Witnesses

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The following witnesses gave evidence. Transcripts can be viewed on the [publications page](#) of the Committee's website.

## Monday 4 March 2019

*Question number*

**Tom Keatinge**, Director at the Centre for Financial Crime and Security Studies, Royal United Services Institute, **Professor Jonathan Fisher QC**, Barrister at Bright Line Law, and **John Condliffe**, Partner at Hogan Lovells and Member of the Investment Property Forum, Regulation and Legislation Group

[QQ 1–12](#)

## Monday 11 March 2019

**Martin Swain**, Director of Policy, Strategy and Planning, Companies House, **Jennifer Henderson**, Keeper of the Registers, Registers of Scotland, **Jonathan McCoy**, Deputy Registrar, Land Registers of Northern Ireland, and **Chris Pope OBE**, Chief Operations Officer, HM Land Registry

[QQ 13–22](#)

**Valerie Holmes**, Chair, Society for Licensed Conveyancers, **John Sinclair**, Member of the Property Law Committee and Property and Land Law Reform Sub-Committee, the Law Society of Scotland; **Philip Freedman CBE QC (Hon)**, Member, Conveyancing and Land Law Committee, the Law Society of England and Wales

[QQ 23–32](#)

## Monday 18 March 2019

**Duncan Hames**, Director of Policy, Transparency International UK, **Ava Lee**, Senior Campaigner, Global Witness, and **Alex Cobham**, Chief Executive, Tax Justice Network

[QQ 33–44](#)

**Donald Toon**, Director, National Economic Crime Centre, National Crime Agency, **Alison Barker**, Director of Specialist Supervision, Financial Conduct Authority, and **Mark Thompson**, Chief Operating Officer, Serious Fraud Office

[QQ 45–55](#)

## Monday 25 March 2019

**Kelly Tolhurst MP**, Parliamentary Under-Secretary of State, Department for Business Energy and Industrial Strategy, **Jacquie Griffiths**, Policy Lead on the Draft Registration of Overseas Entities Bill, Department for Business Energy and Industrial Strategy and **Matthew Ray**, Deputy Director of Company Law, Transparency and Tax, Department for Business, Energy and Industrial Strategy

[QQ 56–71](#)

## Published written evidence

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The following written evidence was received and can be viewed on the [publications page](#) of the Committee's website.

ROE numbers are generated by the evidence processing system and therefore may not be complete.

- 1 City of London Police ([ROE0016](#))
- 2 Companies House ([ROE0013](#))
- 3 Delegated Powers and Regulatory Reform Committee ([ROE0019](#))
- 4 Department for Business, Energy and Industrial Strategy ([ROE0011](#))
- 5 Department for Business, Energy and Industrial Strategy ([ROE0015](#))
- 6 Department for Business, Energy and Industrial Strategy ([ROE0018](#))
- 7 Department for Business, Energy and Industrial Strategy ([ROE0022](#))
- 8 Faculty of Advocates ([ROE0009](#))
- 9 Global Witness ([ROE0007](#))
- 10 Global Witness ([ROE0017](#))
- 11 Institute of Chartered Accountants in England and Wales ([ROE0005](#))
- 12 IFC Forum ([ROE0014](#))
- 13 Jersey Finance Limited ([ROE0010](#))
- 14 Joint Committee on Human Rights ([ROE0021](#))
- 15 The Law Society of Northern Ireland ([ROE0012](#))
- 16 Law Society of Scotland ([ROE0006](#))
- 17 NAEA Propertymark ([ROE0001](#))
- 18 OpenCorporates ([ROE0020](#))
- 19 Solicitors Regulation Authority ([ROE0002](#))
- 20 Transparency International UK ([ROE0004](#))
- 21 UK Finance ([ROE0003](#))