



**Chartered  
Institute of  
Taxation.**

## **Economic Crime (Transparency & Enforcement) Bill Part One: Register of Overseas Entities**

### **Executive Summary**

**Greater transparency of overseas ownership of UK property is welcome, but there is a lack of clarity over what the Government are trying to achieve with this measure. If it is, as suggested in some government statements, revealing the real identities of foreigners who own UK property, we do not believe that the Bill will achieve this. This is because the legislation as currently drafted does not require the disclosure of the ultimate beneficial owner of the property, but rather the disclosure of the beneficial owner of the overseas entity which in turn owns the property.**

**If the Government's aim is to make public the names of foreign individuals who are the ultimate beneficial owners of UK property then the legislation should be amended to achieve this.**

**We also have concerns around the definitions of 'overseas entities' and 'beneficial owners', how this legislation will be enforced, and whether the penalties proposed are a sufficient deterrent.**

### **1 Overview**

- 1.1 The Economic Crime (Transparency and Enforcement) Bill contains a number of measures. This briefing focuses entirely on the proposal for a register of overseas entities owning UK property (Part One of the Bill).
- 1.2 Under this measure, "overseas entities" (corporate bodies) owning property in the UK will be required to register the identity of their beneficial owners to Companies House and keep that record updated. The register will be made public.
- 1.3 The registration requirement will apply in respect of property purchased in England and Wales on or after 1 January 1999 (8 December 2014 for Scotland). Penalties for incorrect statements include imprisonment for up to five years, with failure to register, deliver documents or update being met with daily £500 fines.
- 1.4 As stated by the Government in the explanatory notes to the Bill, this measure has two primary objectives:
  - To prevent and combat the use of land in the UK by overseas entities as a means to launder money or invest illicit funds;
  - To increase transparency and public trust in overseas entities engaged in land ownership in the UK.

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- 1.5 The definition of a beneficial owner of an entity is set out in Part 2 of Schedule 2 of the Bill. It includes (though is not limited to) someone who holds 25% or more of the shares or voting rights in that entity.
- 1.6 This is a measure which the Government had already been planning, having issued a call for evidence last year, but, following the Russian invasion of Ukraine, increased concerns about foreign (Russian, in particular) ownership of property in the UK have led to it being fast-tracked.
- 1.7 Although this is not a tax measure, our members have considerable practical experience of working with the requirements of Companies House and the Trust Register, and most of them have obligations to identify ultimate beneficial ownerships under Anti Money Laundering ('AML') legislation. CIOT is also an AML Supervisor.

## **2 CIOT comments**

- 2.1 Whilst greater transparency of overseas ownership of UK property is welcome, our members have expressed a number of concerns in relation to this measure, and highlighted some areas where greater clarity would be welcome.

### **Lack of clarity over the aim of the register**

- 2.2 It is unclear to us what the aim of the register is – whether it is to disclose beneficial ownership of property, or to achieve parity for overseas entities with the current position for UK companies in terms of what must be disclosed. The two are not the same!
- 2.3 According to the Government's fact sheet on the Bill: "The new register will require anonymous foreign owners of UK property to reveal their real identities to ensure criminals cannot hide behind secretive chains of shell companies, setting a global standard for transparency."<sup>1</sup> Announcing the Bill in Parliament<sup>2</sup>, the Business Secretary used almost identical words. This suggests the Government's aim is the former.
- 2.4 However the legislation is drafted to achieve the latter. The legislation as currently drafted does not require the identification of the ultimate beneficial owner of the property, merely the beneficial owner of the overseas entity which holds the legal title to the property. That entity may not own the property itself beneficially at all.
- 2.5 This is a significant distinction. If an individual were to buy a UK property through a limited company of which he is the owner, then his personal details will be recorded on the register under these new rules, in his capacity as the owner of the company. However, if an offshore services company were to buy the property and hold it for the individual as a nominee, then the individual's name will not appear on the Companies House register, as they are not the owner of the service company. Only the service company's owners would – even then only if they own more than 25% of the service company.

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<sup>1</sup> <https://www.gov.uk/government/publications/economic-crime-transparency-and-enforcement-bill-2022-overarching-documents/factsheet-the-register-of-overseas-entities-web-accessible>

<sup>2</sup> <https://hansard.parliament.uk/commons/2022-02-28/debates/BAC256B1-BD80-48E2-9A84-EC365D176375/CorporateTransparencyAndEconomicCrime>

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2.6 The fact that only corporate bodies are subject to these rules means that trusts/nominee arrangements could potentially bypass the intention behind the legislation.

2.7 This can be illustrated with an example.

Mr X wants to buy a house in London and establishes a company (possibly owned by a trust where he is settlor) to own the land either beneficially or as his nominee. In these circumstances the statement required by clause 4 (2) of the Bill would provide information about Mr X. In this scenario the Bill works as intended.

However, consider a scenario where, instead, Mr X uses a professional firm – e.g. a nominee in Panama called Y Ltd which is beneficially owned by Z and Co, a corporate services firm where no person holds more than a 25% interest. Y Ltd buys the land and issues a declaration to Mr X that it is holding the land as nominee for Mr X who is the beneficial owner of the property – or maybe a trust (where he is the settlor and/or beneficiary) actually owns the property. (While these sound like – and are – convoluted structures they are the kind of structures that we expect those wishing to remain anonymous to put in place if this legislation passes as it stands, in order to avoid disclosure.)

In this scenario Z and Co merely has to state on the register that the entity (Y Ltd) has no reasonable cause to believe that it has any registrable beneficial owners. This is true – it is not owned by anyone with more than a 25% interest. But that is hardly the point – you are none the wiser as to who owns the land. The declaration by Z and Co that while Y Ltd is the bare trustee/legal owner, it is holding it for Mr X (ie. he is the beneficial owner of the property) is not a public one.

Additionally, if Mr X decides to use a trust corporation (that is, a limited specially licensed UK company, acting as a trustee) to hold the land – or even two UK companies that he wholly owns to hold the land as nominee for him – again there would be no disclosure even under clause 4(2) as they are not within the definition of overseas entity in clause 2(1).

2.8 It should be noted that, in the scenario described above, we would in most circumstances expect Mr X to be registered under the UK Government's Trust Register. This can be accessed by HMRC, the police and other parts of UK government (and we understand that public interest journalists might be able to gain access in some circumstances). But it is not a public register.

2.9 It is not necessarily a deficiency in the Trust Register that it is not public. There can be legitimate reasons, such as security concerns, for property owners to wish to remain anonymous. However we point this out here to show that this is not, in any case, a route by which, as the Government state in their fact sheet, "anonymous foreign owners of UK property [will] reveal their real identities".

2.10 Returning to the example featuring Mr X, we observe that, additionally, if the trust in question is a non-UK trust, without other tax liabilities and which acquired the land on or before 6 October 2020, it would not have to register on the Trust Register in any case. In this scenario, it is possible a future change in ultimate beneficial ownership of

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the land could be hidden by Y Limited simply issuing a new, non-public declaration that it henceforth holds the property as nominee for Mr W not Mr X.

2.11 We note that the Government's approach here mirrors what is currently the case for a UK nominee company. HM Land Registry records would show that a property was owned by the UK nominee company, and you could see from Companies House records that the owners of the UK nominee company were a particular law or corporate services firm (provided they owned at least 25 per cent of the nominee company). However it would not be publicly available information who the beneficial owner of the land is. That information would generally be available to the authorities (and in limited cases investigative journalists etc.) via the Trust Register.

2.12 In summary, if the Government's aim is to achieve parity between overseas and UK companies in respect of revealing beneficial ownership the legislation does that. But if the aim is to reveal to the public which UK properties are owned by which wealthy foreigners then it does not achieve that.

**It would be helpful if the Government could explain which of these is their aim.**

2.13 If the Government's aim is the latter of these – that is, a fully public register – then the legislation should be amended to require the disclosure of the ultimate beneficial owner of the UK property (rather than merely the overseas entity which owns it). It should state that this applies wherever the settlor is resident, and that this is the case whether or not the legal owner is overseas. We would suggest this should be done through extending the meaning of registrable beneficial owner in Schedule 2 of the Bill.

2.14 The UK Government may also want to look at the Scottish approach which is to reveal the person who has 'significant influence or control' over the owner or long-lease tenant of land and property in Scotland. According to the Scottish Government, "this means that it will be possible to look behind every category of entity in Scotland, including overseas entities and trusts, to see who controls land."<sup>3</sup> The Scottish Register will be available from 1 April 2022.

**Definition of overseas entity**

2.15 Many overseas owners of UK properties might do so through direct trust structures, which are not subject to registration under these rules. An amended definition of "overseas entity" to include trusts would likely tackle this issue. However, ownership through trusts raises another question beyond this legislation, namely: how (if at all) will this change affect the requirements surrounding the Trust Registration Service? If a trust controls the overseas entity then further clarification should be given as to whether the trustees or beneficiaries would be deemed the beneficial owner.

**Definition of beneficial owner**

2.16 We are a little concerned too about the definition of beneficial owner – in relation to the share ownership criterion it is only someone who owns 25% or more of the

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<sup>3</sup> [The Land Reform \(Scotland\) Act 2016 \(Register of Persons Holding a Controlled Interest in Land\) \(Scotland\) Regulations 2021: Explanatory Document prepared in accordance with section 41\(2\)\(a\)\(ii\) of the Land Reform \(Scotland\) Act 2016 \(www.gov.scot\)](#)

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company's shares; multiple owners could bring the individual ownership down below 25% to the extent that no one is a beneficial owner. Also, the legislation seems to make no provision for related or "connected" parties. A family of six could each own 16.67% share of the company thus bringing them outside the registration requirements. Whilst joint ownership is mentioned within Schedule 2, this will not cover wider associated ownership.

**Administration of the new register**

- 2.17 Finally, the administration behind the new rules raises some concerns. Firstly, the penalties seem relatively lenient, especially when considering the types of individuals this legislation is aimed at. A daily penalty of £500 is unlikely to pose much of a deterrent to many of them.
- 2.18 Second, there appears to be no time limit to register property ownership – what is to stop the property being sold before the omission is noticed? Should there not be something in the legislation to prevent a sale in the event of non-compliance?
- 2.19 Third, how is any of this to be evidenced? There seems to be no requirement for supporting documents to be submitted alongside the registration.
- 2.20 Fourth, who is to enforce this? It seems as though Companies House and the Land Registry are to be joint custodians of the regime, though no Land Registry numbers appear to feature in the Companies House register so collaborative enforcement and administration could be hindered. Also, which agency is ultimately responsible for maintaining, checking and enforcing registration?
- 2.21 Fifth, will the Companies House entry automatically fail if there are continued delays at the Land Registry due to the current backlog?

**3 The Chartered Institute of Taxation**

- 3.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT's comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

The CIOT's 19,000 members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

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