

Economic Crime (Transparency and Enforcement) Act 2022 – new rules for overseas entities which own UK land

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The Economic Crime (Transparency and Enforcement) Act 2022 (the “Act”) was given Royal Assent on 14 March. It has been on the “transparency” agenda since 2015 but has been rushed through parliament as part of the UK government’s response to the conflict in Ukraine. It is not yet clear when it will come into force and much of the practical detail is still to be settled but overseas entities which already have interests in UK land, or intend to enter the UK property market, should know what to expect.

A new register of overseas entities

Once the Act is in force, an overseas entity which owns or acquires UK land must be entered on a new register of overseas entities (ROE), which will be held at Companies House. Failure to comply will be a criminal offence by the overseas entity and its officers, punishable by fines and imprisonment. The UK government has retained the right to exempt specific overseas entities from the provisions of the Act but this is likely to be very limited, so this briefing note assumes that all overseas entities will potentially be within the scope of the Act.

Beneficial owners

The key “transparency” measure is that when applying to be registered on the ROE, the overseas entity must disclose details of its beneficial owners, if it has any. Broadly, a beneficial owner will be someone who has more than 25% of the shares or voting rights in relation to the overseas entity or is in a position to exercise significant influence or control over it. A beneficial owner may be a person, another company or a trust (and note this will include entities like Jersey Property Unit Trusts). The information supplied to Companies House must be updated annually.

Which interests in land are caught?

The Act applies throughout the UK but there are slightly different rules for Scotland and Northern Ireland. This note covers only land in England and Wales.

The obligation to register on the ROE applies where an overseas entity is registered at HM Land Registry as the proprietor of a “qualifying estate”, which means that they are:

- the owner of freehold land; or
- the tenant of a lease granted for a term of more than 7 years.

It will apply to freeholds or leases which the overseas entity already holds (unless they were registered before 1 January 1999) and any it acquires. Once the Act is in force, there will be a transition period of 6 months, during which an overseas entity which is the registered proprietor of a qualifying estate must apply to be included on the ROE. Failure to do this will be a criminal offence.

Impact on dealing with land

As well as the requirement to register on the ROE, the Act will be enforced by changes to the land registration regime. When anyone buys or takes a lease of land in England and Wales, they do not become the legal owner until the transaction is registered at HM Land Registry. Once the Act is in force:

- HM Land Registry will be obliged to put a restriction on any title held by an overseas entity.
- If the overseas entity is not on the ROE, the restriction will make it impossible for anyone to whom the overseas entity disposes of land to register their transaction. This will affect:
 - sales of freehold land;
 - leases granted for more than 7 years; and
 - legal charges over the land to secure finance.
- It will be a criminal offence for an overseas entity to enter into any of those transactions if it is not on the ROE. There will also be a clear commercial impact, because in practice, overseas entities will have to demonstrate that they have complied with the Act whenever they are negotiating a sale or letting or using land as security for debt.
- If an overseas entity buys land or takes a new lease of more than 7 years, they must not apply to be registered as proprietor at HMLR unless they are also on the ROE.

Advice for those dealing with overseas entities

The main risk for anyone buying or taking a lease from an overseas entity or taking security over land held by an overseas entity, is that it will not be possible to register the transaction at HM Land Registry if the overseas entity has not complied with its duties under the Act. There is also a possible money laundering offence if someone acquires an interest in land from a non-compliant overseas entity, because the overseas owner will have committed a criminal offence in making the disposal.

The key protections against these risks will be:

- due diligence to check that the overseas entity is properly registered. We expect the ROE to be searchable, although there are no details about this yet; and
- contractual protections, including warranties, obligations, and a right to withdraw if an overseas entity has not complied with the Act.

The Act reflects the time it will take for the ROE to be set up and the new restrictions to be added to the relevant titles, by carving out sale contracts and agreements for lease made with overseas entities before the new restrictions are in place. This means anyone currently dealing with an overseas entity should be protected.

Obligations during the transitional period

Overseas entities which already own qualifying estates in land must register within the 6 month transition period, which will start running from the date the Act is brought into force.

The government has also introduced measures to capture information about any disposals of qualifying estates before the end of the transition period. Any disposals on or after 28 February 2022 must be disclosed to Companies House when an overseas entity applies to be registered on the ROE. Overseas entities who have disposed of all their interests in UK land by the end of the transition period will not need to register on the ROE but the Act still requires them to provide information about any disposals since 28 February 2022.

Next steps

Overseas entities should review their property holdings and identify any UK land, keeping records of any disposals since 28 February 2022, as well as preparing to apply to be included on the ROE.

As more detail emerges about how the mechanics of the Act will work, we will be working on the necessary legal drafting to protect those buying or taking leases from overseas entities and those lending to them, as well as updating clients on any key information. Meanwhile, if you would like to discuss how the Act may affect your business, please get in touch with your usual contact at Maples Teesdale or [Fiona Larcombe](#).