

ECONOMIC CRIME (TRANSPARENCY AND ENFORCEMENT BILL)

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Economic Crime (Transparency and Enforcement) Bill as introduced in the House of Commons on 1 March 2022 (Bill 262).

- These Explanatory Notes have been prepared by the Home Office, Department for Business, Energy and Industrial Strategy and HM Treasury in order to assist the reader of the Economic Crime (Transparency and Enforcement) Bill. They do not form part of the Economic Crime (Transparency and Enforcement) Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Economic Crime (Transparency and Enforcement Bill) will mean in practice; provide background information on the development of policy; and provide additional information on how the Economic Crime (Transparency and Enforcement) Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Economic Crime (Transparency and Enforcement) Bill. They are not, and are not intended to be, a comprehensive description of the Economic Crime (Transparency and Enforcement) Bill.

Overview of the Economic Crime (Transparency and Enforcement) Bill	5
Policy background	5
Register of Overseas Entities	5
Unexplained Wealth Orders	6
Sanctions	7
Legal background	8
Register of Overseas Entities	8
Unexplained Wealth Orders	9
Sanctions	9
Territorial extent and application	10
Register of Overseas Entities	10
Unexplained Wealth Orders	10
Sanctions	10
Fast-track legislation	10
Commentary on provisions of Bill	12
Part 1 — Registration of overseas entities	12
Introduction	12
Clause 1: Overview	12
Clause 2: Definition of “overseas entity” etc	12
The register and registration	12
Clause 3: Register of overseas entities	12
Clause 4: Application for registration	12
Clause 6: Notice of registration	13
Updating	13
Clause 7: Updating duty	13
Clause 8: Failure to comply with updating duty	14
Removal	14
Clause 9: Application for removal	14
Clause 10: Processing of application under section 9	15
Clause 11: Transfer of documents to the Public Record Office	15
Obtaining, updating and verifying information	15
Clause 12: Identifying registrable beneficial owners	15
Clause 13: Additional powers to obtain information	16
Clause 14: Clause 12 and 13: supplementary	16
Clause 15: Failure to comply with notice under clause 12 or 13	16
Clause 16: Verification of registrable beneficial owners and managing officers	17
Exemptions	17
Clause 17: Power to modify application process etc in certain cases	17
Clause 18: Exemptions	17
Language requirement	18
Clause 19: Documents to be in English	18

These Explanatory Notes relate to the Economic Crime (Transparency and Enforcement) Bill as introduced in the House of Commons on 1 March 2022 (Bill 262)

Annotation of the register	18
Clause 20: Annotation of the register	18
Inspection of the register and protection of information	18
Clause 21: Inspection and copies of register	18
Clause 22: Material unavailable for inspection	18
Clause 23: Disclosure of protected information	18
Clause 24: Power to protect other information	19
Clause 25: Data protection	19
Correction or removal of material on the register	20
Clause 26: Resolving inconsistencies in the register	20
Clause 27: Administrative removal of material from register	20
Clause 28: Application to rectify register	20
Clause 29: Court order to rectify register	20
Clause 30: Court powers on ordering removal of material from the register	21
False statements	21
Clause 31 General false statement offence	21
Land ownership and transactions	21
Clause 32: Land ownership and transactions	21
Clause 33: Power to require overseas entity to register if it owns certain land	22
Supplementary provision about offences	22
Clause 34: Liability of officers in default	22
Clause 35: Meaning of “daily default fine”	23
Clause 36: Consent required for prosecutions	23
Clause 37: Further provision about proceedings	23
Financial penalties	23
Clause 38: Financial penalties	23
Clause 39: Interpretation	23
Schedule 1: Applications: Required information	24
Part 1: Introduction	24
Part 2: Overseas entities	24
Part 3: Registrable beneficial owners	24
Part 4: Managing officers	24
Part 5: Powers to make further provision under Schedule 1	25
Schedule 2: Registrable beneficial owners	25
Part 1: Meaning of “registrable beneficial owner”	25
Part 2: Meaning of “beneficial owner”	25
Part 3: Meaning of “subject to its own disclosure requirements”	26
Part 4: Beneficial owners exempt from registration	26
“Exempt from being registered”	26
Holding an interest in an overseas entity etc	26
Part 5: Supplementary provision about interpretation of Schedule	26
Introduction	26
Joint interests	26
Example: Joint interests	27
Joint arrangements	27
Example: Joint arrangements	27
Calculating shareholdings	27
Voting rights	27
Rights to appoint or remove members of the board	27
Shares or rights held “indirectly”	28
Shares held by nominees	28
Rights treated as held by a person who controls their exercise	28
Rights exercisable only in certain circumstances etc	29

These Explanatory Notes relate to the Economic Crime (Transparency and Enforcement) Bill as introduced in the House of Commons on 1 March 2022 (Bill 262)

Rights attached to shares held by way of security	29
Limited partnerships	29
Meaning of “director”	30
Part 6: Power to amend thresholds etc	30
Schedule 3: Land ownership and transactions: England and Wales	30
Part 1: Amendments to Land Registration Act 2002	30
Meaning of “qualifying estate”	30
Registration	30
Restrictions on disposal	31
Registrable dispositions by overseas entities entitled to be registered (but not registered)	31
Consent to registration of dispositions that cannot otherwise be registered	32
Making dispositions that cannot be registered	32
Interpretation etc	33
Regulations	33
Part 2: Transition: qualifying estates registered pre-commencement	33
Duty of proprietor to register as an overseas entity within transitional period	33
Registrar’s duty to enter restriction in relation to qualifying estate	33
Interpretation	34
Schedule 4: Land ownership and transactions: Scotland	34
Part 1: Amendments	34
Conveyancing (Scotland) Act 1924	34
Land Registration etc. (Scotland) Act 2012 (asp 5)	35
Cases where Keeper must reject application under Section 21	36
Case where Keeper must reject application to register notice of title	37
Cases where Keeper must reject prescriptive application	38
Case where Keeper must reject voluntary application	38
Consent to registration of certain deeds that cannot otherwise be registered	38
Interpretation	38
Part 2: Transition: deeds registered pre-commencement	39
Duty to register as an overseas entity within transitional period	39
Disapplication of certain provisions during transitional period	39
Interpretation	39
Schedule 5: Land ownership and transactions: Northern Ireland	40
Meaning of “qualifying estate”	40
Registration	40
Restrictions on disposal	41
Registrable dispositions by overseas entity entitled to be registered (but not registered)	41
Making dispositions that cannot be registered	42
Interpretation etc	42
Part 2 — Unexplained Wealth Orders	43
The Responsible Officers	43
Clause 40: Imposition of unexplained wealth orders on officers etc of property holder: England and Wales and Northern Ireland	43
Clause 41: Imposition of unexplained wealth orders on officers etc of property holder: Scotland	43
The Income Requirement	43
Clause 42: Alternative test to the income requirement: England and Wales and Northern Ireland	43
Clause 43: Alternative test to the income requirement: Scotland	43
Clause 44: Power to extend period for which interim freezing order has effect: England and Wales and Northern Ireland	43
Clause 45 Power to extend period for which interim freezing order has effect: Scotland	44
Costs of Proceedings	44

These Explanatory Notes relate to the Economic Crime (Transparency and Enforcement) Bill as introduced in the House of Commons on 1 March 2022 (Bill 262)

Clause 46 Limits on costs orders in relation to unexplained wealth orders: England and Wales and Northern Ireland	44
Clause 47 Limits on costs orders in relation to unexplained wealth orders: Scotland	44
Part 3 — Sanctions	44
Clause 48: Imposition of monetary penalties	44
Clause 49: Procedural rights	44
Clause 50: Publicising breaches of financial sanctions	45
Clause 51: Sharing of information	45
General	45
Clause 52 Regulations	45
Clause 53: Extent	45
Clause 54: Commencement	45
Clause 55: Short title	45
Commencement	46
Financial implications of the Bill	46
Parliamentary approval for financial costs or for charges imposed	46
Compatibility with the European Convention on Human Rights	46
Related documents	47
Annex - Territorial extent and application in the United Kingdom	49

Overview of the Economic Crime (Transparency and Enforcement) Bill

- 1 The Economic Crime (Transparency and Enforcement) Bill has three main objectives:
 - Prevent and combat the use of land in the UK for money laundering purposes by increasing the transparency of beneficial ownership information relating to overseas entities that own land in the UK. The Bill therefore creates a register of the beneficial owners of such entities. The register will be held by Companies House and made public.
 - Reform the UK's Unexplained Wealth Order (UWO) regime to enable law enforcement to investigate the origin of property and recover the proceeds of crime. The measures in the Bill aim to strengthen the UK's fight against serious economic crime; to clarify the scope of UWO powers; and to increase and reinforce operational confidence in relation to UWO powers.
 - Amend financial sanctions legislation, including the monetary penalty legal test and information sharing powers to help deter and prevent breaches of financial sanctions.

Policy background

Register of Overseas Entities

- 2 There has been widespread concern expressed about the lack of transparency around who ultimately owns land in the UK, where the land is registered to an overseas company or other entity. Currently, the information available about overseas owners of land (or registered leaseholders) is, at best, limited to the entity's name and territory of incorporation. It is therefore not clear 'who' really owns and controls the entity and, by extension, the land itself.
- 3 Evidence from UK law enforcement and transparency campaigners shows that overseas entities are often used as a vehicle by criminal organisations and corrupt individuals to hide and launder the proceeds of bribery, corruption and organised crime. The UK's property market is particularly attractive because of the UK's stable and open political and business environment. Law enforcement investigations, including those targeting the proceeds of corruption, are often hampered by an inability to access information about the individuals who ultimately own or control overseas entities that have been used to conceal the proceeds of crime and corruption.
- 4 In contrast, most UK entities have, since the implementation of the People with Significant Control (PSC) register in June 2016, been required to provide information about their ultimate owners and controllers to the Registrar of Companies ("Companies House"), where they are held on the publicly accessible companies register.
- 5 In 2016, at the Anti-Corruption Summit held in London, a commitment was made to establish a public register of beneficial owners of non-UK entities that own or buy land in the UK. A call for evidence was issued last year and the Government response was published this year, and consultation followed, and a draft bill was scrutinised by Parliamentary committee in 2019. A Written Ministerial Statement was published in January 2018, outlining the Government's timetable for implementing the policy.
- 6 The register has two primary objectives:
 - To prevent and combat the use of land in the UK by overseas entities as a means

These Explanatory Notes relate to the Economic Crime (Transparency and Enforcement) Bill as introduced in the House of Commons on 1 March 2022 (Bill 262)

to launder money or invest illicit funds;

- To increase transparency and public trust in overseas entities engaged in land ownership in the UK.
- 7 The desired outcome of this Bill is to deliver transparency about who ultimately owns and controls overseas entities that own land in the UK. It 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 who they are doing business with in any land transaction.
 - 8 The Economic Crime (Transparency and Enforcement) Bill 2022 will require any overseas entity that wishes to own UK land to take steps to identify their beneficial owner(s) and to register them. It also imposes a duty on overseas entities to update the information provided to the register annually. Failure to update the register is an offence, as is delivering (or causing to be delivered) misleading, false or deceptive information.
 - 9 In order to register title to land, an overseas entity will have to be registered with Companies House and comply with the updating duty. A failure to register, or to comply with the updating duty, will in most cases affect the ability of the entity to (i) acquire legal title to land as the entity will be unable to register as proprietor or owner (as the case may be) of land in the UK with the three Land Registries of England and Wales, Scotland and Northern Ireland and to (ii) sell or lease the land, or create a charge over the land, as any buyer, tenant or a mortgagee (as the case may be) would be unable to register that disposition with the (relevant) land registry in any part of the UK.

Unexplained Wealth Orders

- 10 The UK has one of the world's largest and most open economies, and London is one of the world's most attractive destinations for overseas investors. These factors make the UK attractive for legitimate business, but also expose the UK to money laundering risks from Politically Exposed Persons (PEPs) (as defined in section 362B and 396B of the Proceeds of Crime Act 2002). As noted in the joint Home Office and HM Treasury National Risk Assessment of money laundering and terrorist financing 2020, property in the UK is attractive to both foreign and domestic criminals seeking to conceal large amounts of illicit funds, disguise their ownership, and realise the proceeds of their criminal activities.
- 11 To continue to deliver the Government's economic crime agenda and target more kleptocrats and corrupt elites, enforcement agencies need to be equipped with the appropriate powers to investigate.
- 12 An Unexplained Wealth Order (UWO) requires a person who is a PEP or reasonably suspected of involvement in, or of being connected to a person involved in, serious crime to explain the origin of assets (minimum combined value of £50,000) that appear to be disproportionate to their known lawfully obtained income.
- 13 A UWO is not (by itself) a power to recover assets. However, any response from a UWO can be used in subsequent civil recovery proceedings.
- 14 Legislative reform is required to strengthen and reinforce the UWO regime to ensure the powers can be used to maximum effect, particularly to ensure property held via complex ownership structures and trusts is within the scope of the regime. The reforms are also

These Explanatory Notes relate to the Economic Crime (Transparency and Enforcement) Bill as introduced in the House of Commons on 1 March 2022 (Bill 262)

intended to mitigate the significant operational risks to an enforcement authority.

- 15 The desired outcome of these amendments is to strengthen the UWO regimes to enable law enforcement to take more effective action against kleptocrats and serious and organised criminals who launder their funds in the UK. In turn, this will lead to greater prospects of the recovery of assets bought with the proceeds of serious and organised crime, particularly corruption.
- 16 The UWO amendments have four primary objectives and are intended to both extend and clarify the scope of the powers including:
 - a. Counter the inability or unwillingness of kleptocratic foreign states to provide reliable support to enforcement authorities investigations.
 - b. Better enable enforcement authorities to meet the evidential standard at the outset of the investigation, thereby allowing powers to be used to maximum effect in the broadest range of suitable cases.
 - c. Allow a fuller investigation to take place by extending the maximum time a court can allow property to be frozen in relation to a UWO.
 - d. Remove a barrier to the use of UWOs, enabling legal costs to be limited for enforcement authorities unless they have used the powers unreasonably, improperly or dishonestly, increasing risk appetite and operational confidence.

Sanctions

- 17 Sanctions are an important foreign policy and national security tool. They are restrictive measures which are designed to be temporary and can be used to coerce a change in behavior, to constrain behavior, or to communicate a clear political message to other countries or persons. The UK currently implements over 35 sanctions regimes. These include country-specific sanctions regimes, including in relation to Russia, North Korea and Iran, as well as regimes targeting Da'esh, Al Qaida and other terrorist groups. Like all other UN states, the UK is obliged under international law to implement UN sanctions. There are currently over 2,000 individuals, entities and ships subject to sanctions implemented by the UK.
- 18 The Office of Financial Sanctions Implementation (OFSI), part of HM Treasury, is the UK's competent authority for financial sanctions and performs HM Treasury's functions in respect of implementing financial sanctions, including issuing licences; imposing monetary penalties for breaches of these sanctions; issuing guidance and engaging with stakeholders.
- 19 OFSI's current powers are contained in different places. Specific financial sanctions regimes are contained in regulations made under the Sanctions and Anti-Money Laundering Act 2018 ("the Sanctions Act"). These regulations contain the obligations and prohibitions specific to each sanctions regime. OFSI's ability to impose monetary penalties for breaches of these prohibitions is contained in the Policing and Crime Act 2017.
- 20 The sanctions measures will strengthen enforcement by providing for:
 - a. A more robust legal test that will support compliance and help OFSI to impose monetary penalties for breaches of financial sanctions
 - b. Greater flexibility in how the Treasury manages the review process for monetary penalties.
 - c. Enhanced intelligence and information sharing powers to give OFSI better tools to do enforcement through greater access to information from other agencies.

- d. A statutory power to publicly censure for financial sanctions non-compliance even if a decision is made not to impose a monetary penalty for the breach

Legal background

Register of Overseas Entities

- 21 It is intended that 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, though there are differences in enforcement of the regime given that some of the PSC enforcement mechanisms cannot be applied to overseas entities (other than the imposition of criminal offences).
- 22 The PSC regime originated in the Small Business, Enterprise and Employment Act 2015 (SBEE). In summary, all UK registered companies (with some specified exceptions) are obliged to keep a register of “people with significant control” over that company, and to disclose that information to the public register held at Companies House. Unlike the PSC regime, however, overseas entities will not be required to keep their own registers; instead they will be required to deliver the information directly to the Registrar with their application for an overseas entity ID.
- 23 The PSC regime was intended to capture individuals who exercise ‘significant influence and control’ over a company – over and above the control you would expect a typical director or shareholder to exercise (although occupying those roles does not preclude an individual from being a PSC). A number of conditions are specified to determine whether or not an individual is a PSC – these conditions were based on the definition of ‘beneficial ownership’, a concept which forms part of the Money Laundering Regulations 2007, and which is used within EU legislation, including the Anti-Money Laundering Directives.
- 24 These conditions capture individuals who own a significant share in the company’s share capital, those who have the right to exercise significant control through voting rights, which may or may not be directly related to the size of their shareholding, and those who control the company through other means, including by control of the management.
- 25 UK-registered companies are required to take reasonable steps to find out if they have a registrable person or registrable legal entity, and if so to identify them. This includes via the means of sending notices to anyone a company might reasonably think is a registrable person, or to anyone who the company thinks might know the identity of a registrable person. These requirements are mirrored in this Bill.
- 26 A protection regime is in place for individuals that may be placed at risk as a result of being identified on the public register; this regime will also be in place for overseas entities.
- 27 Company law requires UK-registered companies to annually check and confirm that the information held on the register remains accurate. A similar requirement will be imposed also on overseas entities via this Bill.
- 28 As mentioned above, the overseas entities register will be held by the Registrar of Companies and will be, in most part, accessible to the public. Many of the powers and functions of the Registrar contained in the Companies Act 2006 in relation to the register kept for UK-registered companies have to be replicated in the Bill. The information that an overseas entity must provide in order to register, and detail as to who is a beneficial owner of an overseas entity is closely modelled on the PSC regime for UK-registered companies (and contained in Schedules 1 and 2 to the Bill respectively).

- 29 In order to deliver the policy aims, an enforcement mechanism had to be devised through (i) primarily, novel land registration requirements in England and Wales, Scotland and Northern Ireland (taking into account differences in land registration laws) and (ii) criminal sanctions. Please see section “Overview of the Bill” for details of the land registration requirements in each territory of the UK. As noted above, this Bill amends the Land Registration Act 2002, the Land Registration Act etc. (Scotland) Act 2012 and the Land Registration Act (Northern Ireland) 1970.
- 30 Certain Bill provisions will apply to current registered proprietors of land in England and Wales and in Scotland as at the commencement date. Paragraph 3 of Schedule 3 to the Bill inserts a new Schedule 4A into the LRA 2002. Paragraph 3(1) of Schedule 4A requires HMLR to enter a restriction on the title register of a “qualifying estate” in England and Wales where satisfied that the registered proprietor is an overseas entity, and that entity became registered as proprietor on or after 1 January 1999.
- 31 The 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. In relation to overseas entities that are registered proprietors before the commencement date (and registered on or after 1 January 1999) the restriction will, however, not come into effect until 18 months after the commencement date. There are equivalent transitional provisions in relation to existing overseas entity proprietors of land in Scotland who became proprietors on or after 8 December 2014. As there is no equivalent of a “restriction” (or an “inhibition” in the case of Northern Ireland) in land registration law for Scotland, there will be no entry on the title registers of land owned by overseas entities in Scotland but the same 18-month transitional period will apply to them. In Northern Ireland, the Bill provisions will apply only to new registrations that occur after the commencement date.

Unexplained Wealth Orders

- 32 In 2002, Parliament enacted the Proceeds of Crime Act 2002 (“POCA”), which contains provisions to allow the investigation and recovery of any property obtained through unlawful conduct, or which is intended to be used for unlawful conduct. For a recovery order to be obtained under Part 5 of POCA (civil recovery), there must be sufficient evidence to indicate, through a judicial process, that on the balance of probabilities the property is related to unlawful activity.
- 33 Part 8 of POCA (investigation) includes various powers for law enforcement authorities to investigate assets, including production orders; search and seizure warrants; disclosure orders; customer information orders; and account monitoring orders.
- 34 The Criminal Finances Act 2017 inserted sections 362A to 362I into Chapter 2 to Part 8 of POCA which make provision for the High Court to make an Unexplained Wealth Order (“UWO”) in England, Wales and Northern Ireland. It also inserted sections 396A to 396U in Chapter 3 of that Part, providing for the Court of Session to make a UWO in Scotland.

Sanctions

- 35 UK sanctions are underpinned by regulations made under the Sanctions Act. These regulations outline the obligations and prohibitions of specific sanctions regimes and contain the criminal offences for breaching them. Section 16 of the Sanctions Act makes provision for the sharing of information and the retention of records.
- 36 The power to impose monetary penalties for breaches of financial sanctions is contained in section 146 of the Policing and Crime Act. Monetary penalties for breaches of financial sanctions can be up to 50% of the value of the breach or £1 million, whichever is greater. To

impose a penalty, the person suspected of breaching financial sanctions must have “knew, or had reasonable cause to suspect” they were in breach of the obligations or prohibitions imposed by financial sanctions legislation. Section 149 of the Policing and Crime Act contains a duty to publicise information about these penalties.

- 37 Once a relevant party has been notified that OFSI intends to issue a monetary penalty, they have a statutory right, as set out in section 147 of the Policing and Crime Act, to request a review of their case by the Minister. The Minister may uphold the decision to impose the penalty and its amount, substitute a different amount, or cancel the decision to impose the penalty altogether. Section 147 of the Policing and Crime Act currently specifies that such monetary penalty reviews must be conducted “personally” by the Minister.
- 38 This Bill makes amendments to both the Policing and Crime Act 2017 and the Sanctions and Anti-Money Laundering Act 2018.

Territorial extent and application

Register of Overseas Entities

- 39 Clauses 1 to 39 of, and Schedules 1 and 2 to, the Bill apply and extend to England and Wales, Scotland and Northern Ireland. The amendments in Part 2 of the Bill have the same extent as the provisions they amend. Schedules 3, 4 and 5 make amendments to the applicable land registration legislation in each of the three jurisdictions.
- 40 The elements of the Bill that deal with land registration will need to be delivered by the three Land Registries responsible for land registration across England and Wales, Scotland, and Northern Ireland. There are some differences in the way that the land registries operate, and as far as possible these differences have been addressed within the Bill.

Unexplained Wealth Orders

- 41 The intention is for the Unexplained Wealth Order regime to extend across the UK. The clauses relating to UWOs have the same extent as those they amend.

Sanctions

- 41 Sanctions measures are enforceable against all persons within the UK and all UK persons abroad.
- 42 The matters to which the provisions of the Bill relate are not within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly.

See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Fast-track legislation

- 43 The Government intends to ask Parliament to expedite the parliamentary progress of this Bill. In their report on Fast-track Legislation: Constitutional Implications and Safeguards, the House of Lords Select Committee on the Constitution recommended that the Government “should provide more information as to why a piece of legislation should be fast-tracked”. The justification for fast-tracking the Bill is explained below.

These Explanatory Notes relate to the Economic Crime (Transparency and Enforcement) Bill as introduced in the House of Commons on 1 March 2022 (Bill 262)

- 44 The legislation has been introduced as part of HM Government's urgent response to the Russian invasion of Ukraine.

What efforts have been made to ensure the amount of time made available for parliamentary scrutiny has been maximised?

- 45 This Bill has been brought forward at speed, in consequence of recent events in Ukraine. However, the majority of the Bill relates to the Register of Overseas Entities, which has previously been scrutinised by a Joint Ad-Hoc Committee.

To what extent have interested parties and outside groups been given an opportunity to influence the policy proposal?

- 46 Extensive public engagement has been undertaken on the Register of Overseas Entities, with several rounds of consultation, including on draft clauses, as well as the pre-legislative scrutiny committee referenced above. A targeted engagement exercise was conducted on the reforms to the Unexplained Wealth Order regime.

Does the Bill include a sunset clause (as well as any appropriate renewal procedure)? If not, why does the Government judge that their inclusion is not appropriate?

- 47 These reforms are intended to be permanent changes to legislation. A separate sunset clause is therefore not appropriate.

Are mechanisms for effective post-legislative scrutiny and review in place? If not, why does the Government judge that their inclusion is not appropriate?

- 48 Yes, this legislation will be subject to standard post-legislative scrutiny.

Has an assessment been made as to whether existing legislation is sufficient to deal with any or all of the issues in question?

- 49 New primary legislation is required for all the changes contained within this Bill.

Has the relevant parliamentary committee been given the opportunity to scrutinise the legislation?

- 50 As above, the Bill has been brought forward at speed in consequence of recent events in Ukraine. However, the majority of the Bill relates to the Register of Overseas Entities, which has previously been scrutinised by a Joint Ad-Hoc Committee.

Commentary on provisions of Bill

Part 1 — Registration of overseas entities

Introduction

Clause 1: Overview

- 51 This clause explains that Part 1 of the Bill creates a new register that holds information about the ‘beneficial owners’ of overseas entities, as well as other pertinent information, and provides that, in most circumstances, overseas entities must register if they own land.

Clause 2: Definition of “overseas entity” etc

- 52 This clause provides definitions of the most important terms that are used in the legislation. Subsection (1) explains what is meant by an “overseas entity”, while subsection (2) defines what is meant by “legal entity”. In broad terms, this legislation is designed to apply to those entities incorporated or formed overseas that want to buy, sell or otherwise transact with land in the UK.
- 53 **Subsection 1:** This explains what is meant by “an overseas entity”: this term means a “legal entity” (see below) that is not governed by the law of the UK.
- 54 **Subsection 2:** defines what is meant by “legal entity” within Part 1. This 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.

The register and registration

Clause 3: Register of overseas entities

- 55 This clause gives effect to the establishment of a register of overseas entities and states, in subsection (1), that the register must be kept by the “Registrar of companies”. The terms “Registrar of companies” and “the Registrar” is defined in clause 37 as having the same meaning as in the Companies Act (see section 1060 of the Companies Act 2006). Subsection (2) lists what must be contained on the register, which will be comprised of three categories of information: the list of registered overseas entities; documents delivered with applications for registration or otherwise in connection with the register, and a further category of ‘any other information’ that may be required to be included elsewhere in this Part.
- 56 The Registrar must also ensure that the list of registered overseas entities includes the names of each entity that has made an application for registration and that has not been removed under clause 9 (5).

Clause 4: Application for registration

- 57 This clause describes what an overseas entity must provide in an application for registration. An overseas entity is required to confirm that it has taken reasonable steps to identify its beneficial owners pursuant to clause 11, and to make a statement (subsection (2)) declaring:
- a. that it has identified one or more beneficial owners and has no reason to believe there are others, and that it is able to provide the required information about those identified; or
 - b. that it has no reason to believe that it has any registrable beneficial owners – in which

case, the entity must provide required information about its managing officers (for example, directors or company secretary); or

- c. (i) that it has reasonable cause to believe that it has a registrable beneficial owner, but has been unable to identify the beneficial owner and therefore cannot provide the required information; or (ii) that it has identified beneficial owners but cannot provide all of the required information about all or one of them; or (iii) that the circumstances in both (i) and (ii) apply. The overseas entity must in this case provide the required information about each managing officer of the entity and as much of the required information as it has been able to obtain about the beneficial owner(s).

- 58 In all scenarios mentioned above, the overseas entity must also provide the required information about the entity itself.
- 59 Subsections (3) and (4) signpost that the “required information” is set out in Schedule 1 and that the meaning of “registrable beneficial owner” can be found in Schedule 2.
- 60 Subsection (5) enables the Secretary of State to prescribe by regulations additional statements or information that the overseas entity has to provide. For example, the regulations might specify that details about the notice(s) the overseas entity has sent out under clause 11 need to be included in an application. Subsection (6) provides that any such regulations will be subject to the negative resolution procedure.

Clause 5: Registration and allocation of overseas entity ID

- 61 This clause describes what happens when an application is received by the Registrar, and what the Registrar must do (subsection (1)). On the registration of an overseas entity, the Registrar must record the date of registration and allocate an overseas entity ID to the entity (and record this ID in the register). The Registrar may decide what form (consisting of one or more sequences of numbers and letters) an overseas ID will take, that the form of ID may change as necessary, and that any change of overseas entity ID takes effect from the date on which the overseas entity is informed of the change (subsections (2), (3) and (4)). The intention is that the overseas entity ID will be a similar concept to the registered number of UK companies; unique to the entity and once allocated to the entity a permanent ID, which will not change in relation to that entity.

Clause 6: Notice of registration

- 62 The Registrar is obliged to notify overseas entities where their applications have been successful and that they have been registered. Subsection (2) describes what must be contained in the notification (the date of registration and the overseas entity ID allocated to the entity). In addition, the notice must tell overseas entities that they have a duty to update their information in accordance with clause 7 and the consequences of failing to comply with that duty. Failure to comply would result in that overseas entity having committed an offence under clause 8. In addition, failure by the overseas entity to comply with the update duty may cause that entity difficulties in relation to buying and selling land (these are discussed further in respect of Schedules 3, 4 and 5). The notice sent by the Registrar must also contain information about how an entity can apply for removal from the register (subsection (3)). Removal from the register, among other things, would mean that the overseas entity would no longer be required to comply with the updating duty.

Updating

Clause 7: Updating duty

- 63 This clause explains that registered overseas entities are required to annually update the statements and information provided to the Registrar and must do so within 14 days after the

These Explanatory Notes relate to the Economic Crime (Transparency and Enforcement) Bill as introduced in the House of Commons on 1 March 2022 (Bill 262)

end of the 'update period'. The first update is 12 months beginning with the date of the overseas entity's registration. The information required at update is set out in subsection (1); the required information includes a 'record of events' within the update period as regards changes of beneficial ownership within the period. The entity remains obliged to take reasonable steps to identify beneficial owners, even if none could be identified at the time of registration or the previous update (as the case may be). Subsections (2) to (5) provide further details and explanation about updating requirements, the "update period" and explain that the entity can provide updates earlier than required if they choose to do so.

- 64 Where an entity chooses to update before the end of the update period, this has the effect of re-setting the clock in respect of when the next update is due.
- 65 Example (1): Update period
- a. An example would be where an overseas entity registers on 1 January 2022. Its update period would therefore expire on 31 December 2022, with the update due in respect of that period by 14 January 2023. If the overseas entity chooses instead to update on 6 July 2022 and notifies the Registrar that it has shortened its update period so that the update is in respect of the period between 1 January and 6 July, the next update period will run from 7 July 2022 to 6 July 2023, with the update due 14 days after the expiry of that update period.
- 66 Subsections (6) and (7) explain that the Secretary of State may amend the update period by regulations. This would allow the Government, were it to become clear that the 12-month update period was not sufficient, to shorten or extend it as the case may be. Any such regulations would be subject to affirmative resolution procedure.

Clause 8: Failure to comply with updating duty

- 67 It is a criminal offence to fail to comply with the updating duty. Clause 8 explains that if the duty is not complied with, not only does the entity commit an offence, but also every officer of the entity who is in default (subsection (1)). The explanatory note for clause 31 explains what it means to be an "officer in default" for the purposes of this Part.
- 68 Subsection (2) sets out that a person guilty of an offence under subsection (1) is liable on summary conviction to an initial fine as well as a daily default fine for continued contravention. The contravention continues until such time as the registered overseas entity has delivered the required statements and information.
- 69 In the case of continued contravention, subsection (4) provides that the offence may also be committed by an officer who did not commit the offence in relation to the initial contravention, but who is in default in relation to the continued contravention.

Removal

Clause 9: Application for removal

- 70 This clause explains how an overseas entity can apply to be removed from the 'live' list of registered overseas entities. In order to be removed, an entity must, among other things, confirm that it is not, or no longer, a registered proprietor of a relevant interest in land. It must also update the information previously delivered to the Registrar relating to it and its beneficial owners as at the time of the removal application or confirm that the information held on the register about the entity is up to date (subsections (1) to (3)).
- 71 The confirmation given by an overseas entity in its application for removal under subsection (1)(a) reflects the policy that an overseas entity which is the registered proprietor of certain estates in land is required to be registered in the overseas entity register. As such, subsection

- (6) provides that if the entity is a registered proprietor at the time of the application, the application will be refused.
- 72 The Registrar must inform the entity whether or not the application has been successful, and if it has, the date on which the entity was removed from the list of registered overseas entities.
- 73 Subsection (9) explains what is meant by the terms “qualifying estate in land” and “registered” in the context of this clause. An overseas entity will be a proprietor of a relevant interest in land if:
- a. It is the proprietor of a qualifying estate in England and Wales (see Schedule 4A to the Land Registration Act 2002) and became so in pursuance of an application to register made on or after 1 January 1999;
 - b. It is the proprietor of a qualifying estate in Northern Ireland (see Schedule 8A to the Land Registration Act (Northern Ireland) 1970), and became so on or after the day on which that Schedule came into force; or
 - c. It is the proprietor of land in Scotland or the tenant under a long lease of land in Scotland and became so on or after 8 December 2014.
- 74 The effect of being removed from the list of registered overseas entities is that an overseas entity will no longer be required to comply with the updating duty and the entry on the register relating to that entity will be comprised of historic information previously provided, until such time as those records are transferred to the Public Record Office (see clause 11). An overseas entity that has been removed from the list of registered overseas entities would have to reapply to register in the event that it chooses to be listed on the register again in the future or where it is required to do so in order to register title to land in the UK.

Clause 10: Processing of application under section 9

- 75 This clause explains how applications under clause 9 are processed. Subsection (1) places an obligation on the Registrar to verify with the relevant land registry of the UK that the entity making an application under clause 9 has registered as the proprietor with a relevant interest in that land. The Registrar must remove the overseas entity if it is not registered as the proprietor of the relevant interest in land, under subsection (2). If the overseas entity is the registered proprietor, the application is unsuccessful, according to subsection (3). Subsection (4) requires the Registrar to send a notice to the overseas entity, communicating the outcome of the application and the date the removal will come into effect, if successful. Subsection (5) places an obligation on the Registrar to record the date of removal of the overseas entity from the register.

Clause 11: Transfer of documents to the Public Record Office

- 76 This clause enables the Registrar to transfer any records relating to an overseas entity that has been removed from the list of registered overseas entities to the Public Record Office after two years.

Obtaining, updating and verifying information

Clause 12: Identifying registrable beneficial owners

- 77 Clause 12 provides that before making an application to register under clause 4, complying with the updating duty under clause 7 or applying for removal under clause 9, an overseas entity must take reasonable steps to find out who its registrable beneficial owners are and to obtain the relevant information (set out in Schedule 1) about them. The entity must take

reasonable steps (i) to identify any beneficial owner that may be “registrable” in relation to the entity and (ii) to obtain the information about the beneficial owner.

- 78 As a minimum, an entity must, as part of its reasonable steps, send an information notice to any person that it knows or has reasonable cause to believe is a “registrable beneficial owner” subsection (3)). A person who receives an information notice is required to reply to it within a month (subsection 5), and where relevant (i.e. where they are the beneficial owner) confirm, correct or provide the required information set out in Part 3 of Schedule 1 to the overseas entity.

Clause 13: Additional powers to obtain information

- 79 This clause provides that an overseas entity can (but is not obliged to) send an information notice to an individual or legal entity if the overseas entity knows or has reasonable cause to believe that the person to whom the notice is sent knows the identity of the entity’s registrable beneficial owners and/or of any beneficial owners who would not be registrable or where there is reasonable cause to believe that person can identify a third party who may know this information. Subsection (3) sets out the time limit for responding to an information notice. A person who receives a notice must respond within one month, stating whether or not they know the identity of any beneficial owner, or know the identity of another person who might have information about the entity’s beneficial owner(s). If they know any information that might help the overseas entity identify a beneficial owner, they must supply it to the overseas entity.
- 80 Subsection (4) provides that a recipient of a notice sent under subsection (1) is not required to disclose information in respect of which a claim to legal professional privilege (or, in Scotland, confidentiality of communications) could be maintained in legal proceedings.

Clause 14: Clause 12 and 13: supplementary

- 81 Clause 14 confers on the Secretary of State a power to make regulations about the giving of notices under clauses 12 or 13, including the form and content of notices and the manner in which they must be given. Any regulations under this clause will be subject to the negative resolution procedure.

Clause 15: Failure to comply with notice under clause 12 or 13

- 82 Any individual who does not comply with an information notice (as set out in clauses 12 and 13) commits an offence unless they have a reasonable excuse for not complying with the notice (subsection (1)). An offence is also committed if a person appears to comply with the notice but makes a statement that they know is false or if they recklessly make a statement that is false in a material way (subsection (2)).
- 83 In some cases a notice may have been sent to a legal entity. Should a legal entity fail to respond to the notice the offence is committed by every officer of the entity in default (subsection (3)).
- 84 Subsection (4) provides that an offence is not committed if the person can prove that the requirement to give information was frivolous or vexatious. This test is likely to be met for example if the overseas entity repeatedly sends to a notice to a person where it has no reasonable cause to believe that the person is their beneficial owner or can assist that entity in identifying its beneficial owners.
- 85 Subsection (5) provides that a person guilty of an offence under this clause may be subject to imprisonment and/or a fine. For England and Wales, on summary conviction, person is liable to the maximum summary term for an either-way offence, or a fine, or both. Subsection (6) defines “the maximum summary term for either-way offences” as being six months, if

paragraph 24(2) of Schedule 22 to the Sentencing Act 2020 has not yet come into force, or 12 months if it has. Maximum liability in Scotland is 12 months imprisonment and or a fine which does not exceed the statutory maximum. For Northern Ireland, the liability extends to six months imprisonment and or a fine not exceeding the statutory maximum. If a person is convicted on indictment for an offence under this clause, they are liable up to a two-year term of imprisonment and or a fine.

Clause 16: Verification of registrable beneficial owners and managing officers

- 86 Subsection (1) enables the Secretary of State to make provision by regulations to require the verification of information supplied with applications for registration, removal, and complying with the updating duty.
- 87 Subsection (2) states regulations are permitted to make, among other things, provisions about the information that must be verified, the person by whom the information must be verified and requiring statements, or other evidence to be delivered to the Registrar.

Exemptions

Clause 17: Power to modify application process etc in certain cases

- 88 Clause 17 provides that regulations may be made by the Secretary of State that modify the application (clauses 4 and 9) or update requirements (clause 7) in relation to a description of overseas entity specified in the regulations. Such modifications may only be made if the Secretary of State considers that they are appropriate, taking into consideration information that is already publicly available otherwise than under the provisions of Part 1 and the Schedules to the Bill.
- 89 An example of where this power might be exercised is in relation to overseas entities that are already providing beneficial ownership information to registers in their own country of formation and the UK Government considers those registers to be equivalent to the overseas entities register. In such circumstances, the regulations may require that the overseas entity only provide details of that register, rather than be required to disclose beneficial ownership information again. Any such regulations made will be subject to the negative resolution procedure.

Clause 18: Exemptions

- 90 The Secretary of State may exempt a person from certain requirements of Part 1 if it is necessary to do so : (a) in the interests of national security, (b) in the interests of the economic wellbeing of the United Kingdom, and (c) for the purposes or preventing or detecting serious crime (subsection (1)).
- 91 In subsection (2) the effects of an exemption are set out. Overseas entities are not required to take steps to identify or obtain information about an exempt person or give notices to an exempt person; should such a notice be received the exempt person does not have to comply with the notice requirements if that brings the existence of the exemption to the attention of the entity. Others are not required to provide information about the exempt person, and the exempt person is not regarded as a 'registrable beneficial owner' for the purposes of the Part 1 and the Schedules to the Bill.
- 92 Subsection (3) defines the meaning of 'crime' and explains that it means conduct that is either a criminal offence, or would be a criminal offence if it took place in any one part of the United Kingdom. It is 'serious crime' if it would lead, on conviction, to a maximum prison sentence of 3 years or more, or if the conduct involves the use of violence, results in substantial financial gain or is conduct by a large number of persons in pursuit of a common

purpose.

Language requirement

Clause 19: Documents to be in English

1. Clause 19 requires all documents sent to the Registrar under Part 1 or any regulations drawn up from it, to be delivered in English.

Annotation of the register

Clause 20: Annotation of the register

2. It is important that the register is as useful and transparent a source of information as possible for users. This clause provides that the Registrar must annotate the register in certain circumstances (i.e. on receipt, replacement and removal from the register of documents or material sent to the Registrar under this Bill). The Registrar must also record the date on which documents are received under this Bill.
3. Subsection (2) confers on the Secretary of State a power to make provision by regulations, authorising or requiring the Registrar to annotate the register in such other circumstances as may be specified in the regulations and as to the contents of any such annotation. Any such regulations will be subject to the negative resolution procedure (subsection (6)).

Inspection of the register and protection of information

Clause 21: Inspection and copies of register

4. Clause 21 ensures that the information on the overseas entities register is, as far as possible, publicly accessible. Subject to exceptions as set out in clause 22, anyone may access the information that is on the register, and may require a copy of it. Subsection (4) provides that the provisions of section 1091 of the Companies Act 2006 on certification of copies provided by the Registrar as true copies (or regulations made under it) apply to copies provided under clause 21.

Clause 22: Material unavailable for inspection

5. This clause lists certain information on the register that must not be made available by the Registrar for public inspection.
6. Some information is permanently suppressed from the public register in light of the potential risk to individuals if it were to be made publicly available, such as the day of a person's date of birth or information about their usual residential address. Other information that cannot be made available for public inspection includes any information the Registrar is prevented from making publicly available by regulations made under the power in clause 24.

Clause 23: Disclosure of protected information

7. This clause sets out what the Registrar may and may not do in respect of "protected" date of birth and residential address information (see clause 22). In summary, the Registrar must not disclose protected date of birth information or protected residential address information, except in certain circumstances (subsection (1)).
8. These circumstances are:
 - a. the same information is already publicly available on the register by virtue of it being included in another document public inspection of which is not restricted under clause 22;

These Explanatory Notes relate to the Economic Crime (Transparency and Enforcement) Bill as introduced in the House of Commons on 1 March 2022 (Bill 262)

- b. disclosure of “protected information” is to any person or body who has functions of a public nature and is specified for the purposes of this clause in regulations made by the Secretary of State.
9. The Secretary of State may by regulations specify conditions for the disclosure of protected date of birth and residential address information, and may provide for the charging of fees by the Registrar (subsection (3)). Regulations made under clause 23 are subject to the negative resolution procedure (subsection (6)).
10. Subsection (4) disapplies the provisions in clause 23 in relation to protected date of birth and residential address information (relating to a registrable beneficial owner or managing officer) where a person has made a successful application under clause 24 to have their information suppressed. This is because a beneficial owner or managing officer who has made a successful application under clause 24 will have all of the information that relates to them in respect of the overseas entity protected from public inspection and disclosure by the Registrar. This would include information about the day of their date of birth and their residential address information.

Clause 24: Power to protect other information

11. As mentioned above, there may be circumstances in which all of a beneficial owner or managing officer’s required information (over and above the day of birth and usual residential address) should be suppressed from public disclosure. 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.
12. This clause therefore enables the Secretary of State to make regulations which allow an application to be made to the Registrar for an individual’s details to be protected from public inspection on the register (or from disclosure by the Registrar). The regulations would then require the Registrar to make information relating to that individual unavailable for public inspection and to refrain from disclosing that information, except in specified circumstances (subsection (1)). Any such regulations will be subject to the affirmative resolution procedure (subsection (6)).
13. Regulations under this clause may make provision as to the grounds on which an application can be made and the process by which applications are determined. They may also make provision in respect of the duration of the protection; procedures for its revocation; and the charging of fees by the Registrar in relation to access to such information in prescribed circumstances (subsection (3)).
14. Regulations under this clause may also impose a duty on the Registrar to publish details of how many applications have been made under the regulations and how many of them have been allowed (subsection (5)).
15. Subsection (6) clarifies that this clause does not affect the disclosure of a person’s details in any other capacity, for example, as a director or member of a UK company.

Clause 25: Data protection

16. This clause confirms nothing in clause 21 (inspection and copies of register) or clause 23 (disclosure of protected information) authorises or requires a disclosure of information which would contravene the Data Protection Act 2018.

Correction or removal of material on the register

Clause 26: Resolving inconsistencies in the register

17. Where it appears to the Registrar that there is an inconsistency between information contained in a document delivered to the Registrar and other information on the register, the Registrar may, in a notice to the overseas entity, require an overseas entity to take steps to resolve the inconsistency. In the notice to the overseas entity, the Registrar must state in what respects the information appears to be inconsistent and the issue date of the notice. The notice must require the overseas entity to respond to the notice within 14 days of the issue date of the notice. If the overseas entity does not deliver the required documents within this period, it and every officer of the entity who is in default commit an offence (subsections (1) to (3)).
18. The penalty for an offence committed under this clause is set out in subsection (4) and includes a fine for the initial contravention, followed by a daily default fine for continued contravention.

Clause 27: Administrative removal of material from register

19. This clause sets out the type of material which the Registrar may remove from the register. The Registrar can remove material that there was power, but no duty, to include; in particular, material which is unnecessary; material obtained from a document that has been replaced because it did not meet requirements for proper delivery under section 1076 of the 2006 Act; and material that has been derived from a document that has been replaced under clause 26. The Registrar must give notice of the removal of such material or the intention to remove such material to both the person by whom the material was delivered (if known) and the overseas entity to which the material relates. The notice must set out what material has been removed or is to be removed and the grounds for removal.

Clause 28: Application to rectify register

20. Under this clause, regulations by the Secretary of State (subject to the affirmative resolution procedure) may be made which make provision for the Registrar, on application, to remove material from the register, for example if it is factually inaccurate (subsection (1)). The regulations may set out who can apply for rectification of the register, what information is to be included in and what documents are to accompany an application, any notice period for both an application and the outcome of an application, any objection period that may apply to an application and how an application is to be determined (subsection (2)). Regulations under this clause might, for example, allow an overseas entity to make an application to the Registrar for it to remove material on the register about the entity where the entity considers that material to be factually inaccurate.
21. Applications must specify what is to be removed from the register, where on the register it is, and must include a statement that the material specified complies with subsection (1) and regulations made under it.
22. If there are no objections to the application the Registrar may accept the statement as sufficient evidence that the material should be removed from the register (subsection (4)).

Clause 29: Court order to rectify register

23. Clause 29 requires the Registrar to remove from the register any information that a court directs should be removed. A court may make this direction in relation to any material that derives from anything the court has declared to be invalid, ineffective or done without the authority of

the overseas entity, or if it derives from something that is factually inaccurate or forged. The court order must specify what is to be removed from the register and indicate where on the register the material is. A copy of the court order itself must be sent to the Registrar for registration. The Registrar must also remove any material that is obtained from anything that the court has declared invalid or ineffective.

Clause 30: Court powers on ordering removal of material from the register

24. Where the Registrar removes material from the register, it is usually required by clause 20 to place a note on the register recording that material was removed, under what power and the date of the removal. However subsection (2) of this clause provides that a court may direct that any note placed on the register that is related to the material that is removed pursuant to a court order given under clause 29 must also be removed from the register. Similarly the court may also direct that no note is made on the register as a result of the order under this clause. Before making any such direction, the court must be satisfied that the presence on the register of the note or the availability for public inspection of the court's order might damage the overseas entity and that the overseas entity's interest in non-disclosure outweighs the interest of other persons in disclosure (subsection (5)).

False statements

Clause 31 General false statement offence

25. It is an offence for a person knowingly or recklessly to deliver or cause to be delivered to the Registrar for the purposes of Part 1 any document that is misleading, false or deceptive in a material particular; or to make a statement that is misleading, false or deceptive in a material particular. Subsection (2) sets out the penalty for this offence in relation to convictions in England and Wales, Scotland or Northern Ireland and includes imprisonment and/or a fine.

Land ownership and transactions

Clause 32: Land ownership and transactions

26. Schedules 3, 4 and 5 of the Bill contain amendments to land registration legislation in England and Wales, Scotland and Northern Ireland respectively. In summary, the amendments provide that an overseas entity must have registered in the overseas entity register (and be in compliance with the update duty in clause 7) in order to register title to land and/or to make certain dispositions in respect of land.
27. Subsection (2)(b) refers to a power in Schedule 4 for the Secretary of State to make affirmative regulations which make further or alternative provision for the purpose of requiring or encouraging an overseas entity that owns or holds a right or interest in or over land in Scotland, or enters into land transactions in Scotland, to register as an overseas entity. No regulations may be made after the end of the period of 18 months beginning with the day on which the Bill is passed. Such regulations may amend, repeal or revoke provision made by Schedule 4, or any provision made by or under any other Act, or an Act of the Scottish Parliament, made (a) before the Bill, or (b) later in the same session of Parliament as the Bill. This power provides a secondary legislation mechanism to make changes that might transpire to be necessary after the Bill is enacted.

28. Subsection (4) provides a power by which the Secretary of State can amend, by regulations, Schedule 8A to the Land Registration (Northern Ireland) Act 1970 (inserted by Schedule 5 to this Bill) in order to ensure that provisions corresponding to those contained within paragraphs 3(2)(e), 4(2)(e) and 5 of Schedule 4A to the Land Registration Act 2002 (inserted by Schedule 3 to this Bill) and including the provision to make subordinate legislation. Regulations made under subsection (4) are subject to the affirmative resolution procedure.

Clause 33: Power to require overseas entity to register if it owns certain land

29. Clause 33 allows the Secretary of State, by way of notice, to require an overseas entity to apply for registration in the register of overseas entities if the entity is registered as the proprietor of a relevant interest in land and at the time the notice is given the entity is not registered in the overseas entity register, has not made an application for registration that is pending and is not an exempt overseas entity.
30. This power exists in parallel to the general amendments to land registration legislation made by Schedules 3, 4 and 5 to the Bill which set out the circumstances in which a non-exempt overseas entity must be registered in the overseas entity register for land ownership purposes.
31. This clause defines what it is meant by “the proprietor of a relevant interest in land” by reference to the meaning given in clause 9(8). In summary, an overseas entity is a proprietor of a relevant interest in land if it is a registered proprietor of a qualifying estate in England and Wales, Scotland or Northern Ireland and became so on or after 1 January 1999 in the case of England and Wales, on or after 8 December 2014 in the case of Scotland or on or after the day on which Schedule 8A to the Land Registration (Northern Ireland) 1970 Act comes into force in the case of Northern Ireland.
32. Where a notice is sent under this clause, an overseas entity must comply with the notice within the period of 6 months, unless it is a type of overseas entity that has been exempted from the requirement to register under regulations made under subsection (6).
33. An overseas entity that is not exempt and fails to comply with the notice will commit an offence, as will every officer of the entity who is in default. The offence is punishable by way of imprisonment and/or a fine.

Supplementary provision about offences

Clause 34: Liability of officers in default

34. Sections 1121 to 1123 of the Companies Act 2006 (liability of officers in default; interpretation etc.) apply for the purposes of Part 1 as they apply for the purposes of provisions of the Companies Acts. Therefore an officer of an overseas entity includes any director, manager or secretary and that officer will be “in default” if they authorised, permitted, participated in or failed to take all reasonable steps to prevent the contravention.
35. A reference to an “officer” also includes a person in accordance with whose directions or instructions the board of directors or equivalent management body of a legal entity are accustomed to act, e.g. a shadow director (subsection (2)). Subsection (3) provides that persons giving advice in a professional capacity to a board of directors or equivalent management body are not caught by subsection (2), if the only reason why they would be caught is because their advice is acted upon.

Clause 35: Meaning of “daily default fine”

36. Section 1125 of the Companies Act 2006 (meaning of “daily default fine”) applies for purposes of any provision made by or under Part 1 as it applies for the purposes of provisions of the Companies Act.

Clause 36: Consent required for prosecutions

37. Proceedings for an offence under Part 1 may not be brought in England and Wales except by or with the consent of the Secretary of State or the Director of Public Prosecutions. In Northern Ireland proceedings for an offence under Part 1 may not be brought except by or with the consent of the Secretary of State or the Director of Public Prosecutions for Northern Ireland.

Clause 37: Further provision about proceedings

38. This section provides for the following provisions of the Companies Act 2006 to apply in relation to offences under Part 1 as they apply in relation to offences under the Companies Acts: (i) section 1128 (summary proceedings; time limit); and (ii) section 1130 (proceedings against unincorporated bodies).

Financial penalties

Clause 38: Financial penalties

39. This clause empowers the Secretary of State to make regulations which provide that the Registrar has the power to impose financial penalties on a person if satisfied, beyond reasonable doubt, that the person has engaged in conduct amounting to an offence under Part 1.
40. Subsection (1) enables the Secretary of State to make provision by regulations to confer the power on the Registrar to impose financial penalties.
41. Subsection (2) states the regulations may include provisions about the procedure to impose and enforce penalties, the amount of penalties, interest and additional penalties for late payment, rights of appeal and the application of sums paid by way of penalty.
42. Subsection (3) states that unpaid amounts may be secured by a charge on an interest in land.
43. Subsection (4) states that regulations must provide that no financial penalty may be imposed in respect of conduct amounting to an offence under Part 1 if the person has been convicted of that offence in respect of that conduct. Subsection (4) also provides that regulations must provide that no proceedings may be brought or continued against a person in respect of conduct amounting to an offence if the person has been given a financial penalty under the regulations in respect of that conduct.
44. Clause 40: Interpretation
45. This section provides definitions of key terms, including what is meant by a “beneficial owner” of an overseas entity, the “Registrar of companies” etc.

Clause 39: Interpretation

46. This section provides definitions of key terms, including what is meant by a “beneficial owner” of an overseas entity, the “Registrar of companies” etc.

Schedule 1: Applications: Required information

Part 1: Introduction

47. This Schedule sets out the required information for the purposes of the table in clause 4.

Part 2: Overseas entities

48. This sets out the required information about an overseas entity, which includes its name, the country in which it was incorporated or formed, its registered or principal office, a service address, an email address, the legal form of the entity and the law by which it is governed, and any public register in which it is entered and, if applicable, its registration number in that register. “Public register” means a register kept by a government or public authority in the country in which the overseas entity was incorporated or formed.

Part 3: Registrable beneficial owners

49. This part sets out the information that must be provided if the registrable beneficial owner is an individual. With regard to the name of an individual, “name” means a person’s first name (or other forename) and surname, except if the person is a peer or an individual usually known by a title. In this case the title may be stated instead of the person’s first name (or other forename) and surname or in addition to either or both of them.

50. If the registrable beneficial owner is a government or public authority, the required information is the name of the government or authority, principal office, a service address, the legal form of the entity and the law by which it is governed; the date on which the entity became a registrable beneficial owner in relation to the overseas entity; and which of the conditions in paragraph 6 of Schedule 2 is met in relation to the registrable beneficial owner.

51. Where the registrable beneficial owner is a legal entity that is not a government or public authority the required information is the same as that in clause 4, except that it must give its registered or principal office; and must give details of any public register in which it is entered and, if applicable, its registration number in that register.

Part 4: Managing officers

52. Paragraph 6 sets out the information that must be provided by an individual who is a managing officer. The requirements are different from those imposed on beneficial owners. A managing officer must provide their name, date of birth and nationality; any former name (unless subparagraph (2) applies); usual residential address; a service address (which may be stated as the entity’s registered or principal office); business occupation (if any); and a description of the officer’s roles and responsibilities in relation to the entity.

53. The circumstances in which a former name does not have to be supplied are (i) in the case of a peer or an individual normally known by a British title, where the name is one by which the person was known prior to the adoption of or succession to the title; and (ii) in the case of any person whose former name was dropped or disused before the person turned 16 years old, or has been changed or disused for 20 years or more.

54. “Former name” means a name by which the individual was formerly known for business purposes. If a person was formerly known by more than one qualifying name, each of them must be stated.

55. When a managing officer is not an individual, slightly different information is required: name; registered or principal office; a service address; the legal form of the entity and the law by which it is governed; any public register in which it is entered and, if applicable, its registration number in that register; and a description of the officer's roles and responsibilities in relation to the entity. It is also a requirement to provide the name and contact details of an individual who may be contacted about the managing officer.
56. In Part 1, "managing officer", in relation to an overseas entity, includes a director, manager or secretary.

Part 5: Powers to make further provision under Schedule 1

57. Regulations under the negative resolution procedure may make further provision about the information requirements laid out above.
58. Schedule 1 may be amended by regulations to add or remove from any list of information in the Schedule. Any such regulations will be made under the affirmative resolution procedure.

Schedule 2: Registrable beneficial owners

Part 1: Meaning of "registrable beneficial owner"

59. Part 1 of Schedule 2 defines what is meant by the term "registrable beneficial owner" for the purposes of Part 1 of the Bill. A registrable beneficial owner may be an individual, a legal entity, or a government or public authority. Registrable beneficial owners for the purposes of this Act are beneficial owners who, unless exempt, must be registered with Companies House.
60. An individual is a registrable beneficial owner in relation to an overseas entity if the individual is a beneficial owner of the overseas entity (see Part 2 of Schedule 2) and is not exempt from being registered (see Part 4).
61. A legal entity other than a government or public authority is a registrable beneficial owner in relation to an overseas entity if it is a beneficial owner of the entity (see Part 2); is subject to its own disclosure requirements (see Part 3) and is not exempt from being registered (see Part 4).
62. A government or public authority is a registrable beneficial owner in relation to an overseas entity in all cases where it is a beneficial owner of the entity (see Part 2).

Part 2: Meaning of "beneficial owner"

63. Part 2 of Schedule 2 sets out what is meant by the term "beneficial owner" for the purposes of Part 1 of the Bill. Consistent with existing definitions in company law, a person (X) is a beneficial owner of an overseas entity or other legal entity (Y) if they meet one or more of the following conditions.
- Ownership of shares: The first condition is that X holds, directly or indirectly, more than 25% of the shares in Y.
 - Voting rights: The second condition is that X holds, directly or indirectly, more than 25% of the voting rights in Y.
 - Right to appoint or remove directors: The third condition 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: The fourth condition is that X has the right to exercise, or actually exercises, significant influence or control over Y. This provision is intended to capture individuals who exercise control other than through the first, second or

third conditions, and is intended to mean individuals with a level of control that is broadly equivalent to those with an interest in more than 25% of Y's shares or voting rights.

- e. Trusts, partnerships, etc: The fifth condition is that, in relation to Y, 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) and X has the right to exercise, or actually exercises, significant influence or control over the activities of that trust or entity.

Part 3: Meaning of “subject to its own disclosure requirements”

64. A legal entity is “subject to its own disclosure requirements” for the purposes of Schedule 2 if certain provisions of the Companies Act 2006 apply to it; or it is an eligible Scottish partnership within the meaning of the Scottish Partnerships (Register of People with Significant Control) Regulations 2017; or it is registered in the register of overseas entities under Part 1 of the Bill; or it is of a description specified by the Secretary of State in regulations (by the affirmative resolution procedure).

Part 4: Beneficial owners exempt from registration

“Exempt from being registered”

65. Part 4 of Schedule 2 sets out the circumstances in which a beneficial owner is exempt from registration. A beneficial owner is exempt if:

- a. such person does not hold any interest in the overseas entity other than through one or more legal entities;
- b. such person is a beneficial owner of every legal entity through which the person holds such an interest;
- c. the person has any shares or rights which are held indirectly (as described in paragraph 9(3)(b)(i) of the Schedule), and the legal entity through which the shares or rights are held is a beneficial owner of the overseas entity and is subject to its own disclosure requirements; and
- d. the person holds shares or rights indirectly as described in paragraph 9(3)(b)(ii) and at least one of the legal entities in the chain is a beneficial owner of the overseas entity and is subject to its own disclosure requirements.

Holding an interest in an overseas entity etc

66. Paragraph 9 specifies the circumstances in which a person (“V”) is to be regarded as holding an interest in an overseas entity (“W”) and when that interest is regarded as being held through a legal entity.

Part 5: Supplementary provision about interpretation of Schedule

Introduction

67. Part 5 of Schedule 2 sets out further rules for interpretation of the Schedule.

Joint interests

68. Shares or rights in an entity may be held jointly. For example, in the case of a partnership, the partners may hold the shares jointly and indivisibly as might, in the case of a trust, the trustees

of the trust. In such cases each person is treated for the purposes of Schedule 2 as holding the shares or rights in their own right (paragraph 11).

Example: Joint interests

69. For example, if A and B have a joint interest in 26% of the shares in entity Y, each of them will be a registrable person in respect of Y by virtue of each holding 26% of Y's shares.

Joint arrangements

70. Shares or rights in a company may also be subject to joint arrangements between persons, where those persons agree to act jointly in respect of the shares or rights in question. Paragraph 12 provides that in such cases, each person is treated for the purpose of Schedule 2 as holding the combined shares or rights of both of them.

Example: Joint arrangements

71. For example, if A and B each hold 20% of the shares in entity Y and have made a joint arrangement, each of them will be a registrable person in respect of Y by virtue of holding 40% of Y's shares.

72. Paragraph 12(2) provides that a "joint arrangement" is an arrangement between the holders of shares or rights that they will exercise all or substantially all their respective rights together, as pre-determined by the arrangement in question.

73. An "arrangement" includes:

- a. Any scheme, agreement or understanding, whether or not legally enforceable, an
- b. Any convention, custom or practice of any kind.

74. Paragraph 12(4) provides that something does not count as an arrangement unless there is at least some degree of stability about it (whether by its nature or terms, or the time it has been in existence, or otherwise).

Calculating shareholdings

75. Paragraph 13 sets out the way shareholdings are to be calculated, including in relation to where a legal entity does not have a share capital. All shares issued by the company, as set out in the company's statement of capital, are to be factored into the calculation.

Voting rights

76. Paragraph 14 sets out the way in which voting rights are to be interpreted, including in legal entities which do not have, or are not required to have, general meetings where matters are decided by the exercise of voting rights.

77. When calculating the percentage of voting rights held for the purpose of Schedule 2, any voting rights held by the entity itself should not be included when calculating the total voting rights in the entity (paragraph 15).

Rights to appoint or remove members of the board

78. Paragraph 16 clarifies that the third condition (in determining beneficial ownership as laid out in Part 2 of Schedule 2) relates to the right to appoint or remove directors holding a majority of the voting rights at board meetings on all or substantially all matters.

79. This provision is intended to capture scenarios which would give the holder of the right a level of control over the company broadly equivalent to holding more than 25% of the shares or voting rights.
80. If an entity does not have a board of directors, references to a board of directors are to be read as references to the equivalent managing body of the entity.

Shares or rights held “indirectly”

81. Paragraph 18 sets out what is meant by shares or rights held indirectly.
82. A person holds shares in Y indirectly if they have a majority stake in a legal entity and that entity holds the shares in Y (paragraph 18(1)(a)).
83. If that legal entity is part of a chain of legal entities, a person will hold the shares indirectly if each entity in the chain has a majority stake in the entity immediately below in the chain, and the last entity in the chain holds the shares in Y (paragraph 18(1)(b)).
84. A person has a right “indirectly” if they have a majority stake in a legal entity and that entity has the right in question (paragraph 18(2)(a)).
85. If the legal entity is part of a chain of legal entities, a person will exercise the right indirectly if each entity in the chain has a majority stake in the immediately below it in the chain, and the last entity in the chain has the right in question (paragraph 18(2)(b)).
86. “Majority stake” is defined in paragraph 18(3) by reference to having a majority of or controlling a majority of (either alone or pursuant to a shareholder’s or member’s agreement) the voting rights, dominant influence or control, and the right to appoint or remove directors on a board.
87. The majority stake allows the person to control the legal entity in question. The person can then, by extension, control – for example – the way in which the legal entity exercises its voting rights in entity Y. Without a majority stake in the legal entity, the person will not normally have sufficient control to do this in respect of entity Y. In a chain of entities, this level of control needs to be reflected at each point in the chain in order that the person can be said to indirectly hold the shares or rights in entity Y.
88. In applying this paragraph to the right to appoint or remove a director, paragraph 18(4) provides that a legal entity is treated as having the right to appoint a director if a person is appointed as a director of entity Y as a result of being appointed director of the legal entity; or if the legal entity is the director of entity Y.

Shares held by nominees

89. Where a share is held by a nominee on behalf of a person, the share is treated as held by that person for the purpose of Schedule 2. This means that the person – and not the nominee – could be registrable.

Rights treated as held by a person who controls their exercise

90. Similar to paragraph 19, paragraph 20 provides that where a person controls a right, the right is treated as held by that person for the purpose of Schedule 2. This means that the controller of the right – and not the holder, unless they are also a controller – is registrable where the relevant conditions are met.
91. Paragraph 20(2) sets out when a person has control of a right. This is by reference to an arrangement between a person and others such that the right is only exercisable by that person; in accordance with that person’s directions or instructions; or with that person’s consent or

concurrency. The definition of “arrangement” in this paragraph is broad, but as with the meaning given in paragraph 12(3) and (4) provides that there must be a degree of stability about the arrangement. The intention is to exclude one-off actions or decisions which would not equate to “significant control”.

Rights exercisable only in certain circumstances etc

92. Some rights in a company are only exercisable in certain circumstances. Paragraph 21 provides that for the purpose of determining whether a person has significant control, such rights should only be taken into account when the circumstances have arisen and for as long as they continue to exist; or when the circumstances are within the person’s control.
93. Paragraph 21(2) specifies that the rights of administrators or creditors during relevant insolvency proceedings should not be taken into account for the purposes of the register. The control exercised in such circumstances is not considered relevant because of the exceptional nature of the circumstance and its limited duration. “Relevant insolvency proceedings” are defined in paragraph 21(3).
94. Rights temporarily incapable of exercise - for example, because they have been suspended – should continue to be taken into account (paragraph 21(4)).

Rights attached to shares held by way of security

95. Where shares are provided by a person as security, the rights attached to those shares are to be treated in Schedule 2 as belonging to that person (paragraph 22). This is provided that the rights are only exercisable in accordance with that person’s instructions and in that person’s interests (with the exception of the right to preserve or realise the value of the security).

Limited partnerships

96. Where a limited partnership is deemed to hold shares or rights in an entity, the limited partners will hold those shares or rights jointly and will meet the specified conditions accordingly (see paragraph 12). Limited partners will not, however, normally be involved in the management of the partnership business. They do not therefore have control over the entity in the same way as other holders of shares or rights. Paragraph 23 accordingly provides that an individual does not meet the first, second or third specified conditions of paragraph 6 by virtue only of being a limited partner.
97. Similarly, paragraph 23(2) provides that individuals who directly or indirectly hold shares or rights in relation to a limited partner are not considered to meet the first, second or third specified condition by virtue only of that interest.
98. Paragraphs 23(1) and (2) do not apply in relation to identifying whether an entity meets the requirement set out in condition 5(a) of paragraph 6.
99. For the purposes of this paragraph, “limited partner” means a limited partner in a limited partnership registered under the Limited Partnerships Act 1907 (other than one who takes part in the management of the partnership business); or a foreign limited partner.
100. In this paragraph “foreign limited partner” means an individual who (i) participates in arrangements established under the law of a country or territory outside the United Kingdom, or (ii) has the characteristics prescribed by regulations made by the Secretary of State. Any such regulations will be made under the affirmative resolution procedure.

Meaning of “director”

101. In Schedule 2, “director” includes any person occupying the position of director, by whatever name called.

Part 6: Power to amend thresholds etc

102. Paragraph 25 gives the Secretary of State the power to amend Schedule 2 for a permitted purpose. This power is exercisable by regulations made under the affirmative resolution procedure.
103. The permitted purposes are to increase or decrease the percentage figures laid out in Schedule 2 and to change or add to the specified conditions. The latter may be used to include circumstances that give individuals a level of control over overseas entity Y broadly similar to the other specified conditions. These amendments may be required in future to react to changing circumstances and on-going monitoring and review. Changes to conditions made be needed to ensure that Schedule 2 adequately covers scenarios involving, for example, more complex corporate structures – particularly as new corporate structures develop or individuals seek new ways to evade the disclosure requirements.

Schedule 3: Land ownership and transactions: England and Wales

Part 1: Amendments to Land Registration Act 2002

104. This part amends the Land Registration Act 2002 (the “LRA 2002”). Paragraph 2 of Schedule 3 inserts (after section 85) new section 85A into Part 7 of the LRA 2002. Paragraph 3 inserts new Schedule 4A into the LRA 2002.
105. Schedule 4A is about the ownership of registered land by overseas entities and about registrable dispositions made by them and sets out, amongst other things, the registration regime in the LRA 2002 for overseas entities.

Meaning of “qualifying estate”

106. Paragraph 1 of the new Schedule 4A defines the two types of estate in land that are “qualifying estates” and so come within the scope of the registration requirements in England and Wales. These are a freehold estate in land and a leasehold estate in land where the lease is granted for a term of more than seven years from the date of the grant.

Registration

107. Paragraph 2 of the new Schedule 4A prohibits the making of an application to register an overseas entity as the proprietor of a qualifying estate unless the entity is a “registered overseas entity” (i.e. is registered in the overseas entities register and has complied with update requirements under clause 7 of the Bill), or is an exempt overseas entity, at the time that the application is made to the HMLR. This includes circumstances such as (i) where an overseas entity owns unregistered land (and attempts to register voluntarily under section 3 of the LRA 2002), (ii) where compulsory first registration is triggered under section 4 of the LRA 2002, and (iii) where there is a transfer or an assignment of already registered qualifying estate. As regards the person who can make an application under paragraph 2, this can be the overseas entity itself or a third party, e.g. the transferor or assignor.

108. The effect of the provisions in paragraph 2 is that in England and Wales, an overseas entity will not be able to acquire legal title to qualifying estate without having complied with the registration and updating requirements under the Bill at the time the application is made to HMLR.

Restrictions on disposal

109. Paragraph 3(1) of the new Schedule 4A sets out that HMLR is required to enter a restriction in the register in relation to a qualifying estate if it is satisfied that (i) an overseas entity is the registered proprietor and (ii) that entity became the registered proprietor in pursuance of an application made on or after 1 January 1999. This is the date from which HMLR began recording the nationality of legal entities registering as proprietors of estate in England and Wales. Paragraph 3(1) therefore applies to overseas entities that become registered proprietors of a qualifying estate in pursuance of an application made on or after the commencement date, as well as those overseas entities that are proprietors of a qualifying estate before the commencement date and have acquired title to the qualifying estate in pursuance of an application made on or after 1 January 1999 (but before the commencement date). Part 2 of Schedule 3 sets out the transitional regime in respect of those overseas entities that are existing proprietors at the commencement date.

110. The effect of the restriction under paragraph 3(1) is set out in paragraph 3(2): the restriction must prohibit the registration of certain dispositions in relation to a qualifying estate unless it is “a registered overseas entity” at the time of the disposition or unless one of the other conditions set out in paragraph 3(2) applies. The dispositions whose registration is prohibited are (i) a transfer of the estate (i.e. transfer of a freehold estate or assignment of a leasehold estate granted for a term of more than 7 years) (ii) the grant of a lease for a term of more than 7 years out of a freehold or a leasehold estate and (iii) the grant of a charge over a qualifying estate.

111. Should the overseas entity not be a registered overseas entity (or exempt) at the time of the disposition, it will not be possible to register that disposition subsequently. Paragraph 3(2) sets out five exceptions to the prohibition on registration of certain dispositions (listed in the paragraph above). These are (i) where the disposition is made in pursuance of a statutory obligation, court order, or by the operation of law; (ii) where the disposition is in pursuance of a contract made before the restriction was entered in the register; (iii) where the disposition occurs in the exercise of a power of sale or leasing conferred on the proprietor of a registered charge over the estate, or a receiver appointed by the chargeholder, (iv) where the Secretary of State gives consent to registration of the disposition; or (v) where the disposition is made by a specified insolvency practitioner in specified circumstances. (It is for the Secretary of State to specify both the insolvency practitioners and the circumstances in regulations.)

112. The duty under paragraph 3(1) to enter a restriction in the register applies regardless of whether the overseas entity is exempt or not. The restriction will however not “bite” if an overseas entity makes a disposition at the time it is an exempt overseas entity.

Registrable dispositions by overseas entities entitled to be registered (but not registered)

113. Paragraph 4 of the new Schedule 4A applies where an overseas entity is entitled to be registered as the proprietor of a qualifying estate, became so entitled on or after the day on which paragraph 4 comes into force, and the entity makes a registrable disposition of the type

mentioned in paragraph 111 above of these explanatory notes. When paragraph 4 applies the disposition cannot be registered unless (i) the entity is “a registered overseas entity”, or is exempt, at the time of the disposition; or one of the other exceptions in paragraph 4(2) applies. These other exceptions are the same as those in paragraph 3(2) and are described above.

114. Sections 23 and 24 of the LRA 2002 set out that a person is entitled to exercise “owner’s powers” in relation to a registered estate if it “is the registered proprietor” or is “entitled to be registered as the proprietor”. Owner’s powers consist of “power to make a disposition of any kind permitted by the general law” and, for the purposes of Schedule 4A, would include the ability to transfer the qualifying estate (or assign it in the case of a registered leasehold estate), grant a lease of over seven years out of a qualifying estate, or grant a charge over a qualifying estate. The effect of paragraph 4 is that the third party to whom a qualifying estate is transferred, assigned or charged (as the case may be) will not be entitled to be registered within the meaning of section 24 of the LRA 2002 and they will therefore not have owner’s powers to further dispose of the qualifying estate (unless the overseas entity is, at the time of the disposition, “a registered overseas entity”, an exempt overseas entity, or one of the exceptions referred to in paragraph 3(2) above of the new Schedule 4A applies.

Consent to registration of dispositions that cannot otherwise be registered

115. Under paragraph 5(1) of the new Schedule 4A, the Secretary of State may consent to the registration of a disposition that would otherwise be incapable of registration because it would be prohibited by a restriction entered under paragraph 3, or 4. The Secretary of State must be satisfied that, at the time of the disposition, the person to whom it was made could not have known, and could not reasonably have been expected to have known, that the disposition could not be registered. The Secretary of State must also be satisfied that in all the circumstances it would be unjust for the disposition not to be registered.
116. Paragraph 5(2) sets out that the Secretary of State may make regulations in connection with applications for consent under paragraph 5(1) and these regulations may, for example, set out who may apply, the evidence required to be produced, and time limits (paragraph 5(3)).

Making dispositions that cannot be registered

117. Paragraph 6(1) of the new Schedule 4A prohibits an overseas entity from making a registrable disposition of a qualifying estate which cannot be registered under paragraphs 3 and 4. Where an overseas entity acts in breach of this prohibition, an offence will be committed by the entity and every officer of the entity who is in default (paragraph 6(2)).
118. Paragraph 6(3) provides that nothing in paragraph 6 affects the validity of a disposition made in breach of 6(1). In other words, if an overseas entity that is not exempt makes a disposition at a time when it is not a registered overseas entity, while the disposition will not be capable of registration and the entity will have committed an offence, the validity of the disposition itself will not be affected. This is intended to avoid situations where a potentially void, voidable or unenforceable transfer causes significant disruption to a chain of conveyances.
119. Paragraph 6(4) provides that sections 1121 to 1123 of the Companies Act 2006 apply for the purposes of defining the term “any officer in default” in paragraph 6. Paragraph 6(5) provides that a reference to an officer in those sections as applied includes a person in accordance with whose directions or instructions the board of directors or equivalent body of an overseas entity are accustomed to act. A person who gives advice in a professional capacity that is acted upon

by the board of directors or equivalent management body of the overseas entity is not to be regarded as falling within paragraph 6(5) by the reason only that their advice is acted upon (paragraph 6(6)).

120. Paragraph 6(7) sets out the penalties where a person is found guilty of an offence under paragraph 6.
121. Paragraph 6(9) provides that proceedings for an offence under paragraph 6 may only be brought by or with the consent of the Secretary of State or the Director of Public Prosecutions.

Interpretation etc

122. Paragraph 7 of the new Schedule 4A defines key terms used in Schedule 4A, including the meaning of “registered overseas entity”, “register of overseas entities”, “overseas entity” and “exempt overseas entity”.
123. For the purposes of Schedule 4A, paragraph 8 provides that an overseas entity that is registered in the overseas entities register but fails to comply with the updating duty in clause 7 of the Bill is not to be treated as a registered overseas entity until it remedies the failure (paragraph 8(1)). An overseas entity “remedies” the failure when it delivers the required statements and information under clause 7(1)(a), (b) and (c) of the Bill (paragraph 8(2)).

Regulations

124. Paragraph 4 of Schedule 3 makes a consequential amendment to section 128 of the LRA 2002 to insert a reference to the new regulation making powers created by new Schedule 4A inserted by this Bill.

Part 2: Transition: qualifying estates registered pre-commencement

125. Part 2 of Schedule 3 makes provision about the transitional regime for those overseas entities that are registered proprietors of qualifying estate in England and Wales on the commencement date and became such proprietors in pursuance of an application made on or after 1 January 1999. This Part provides for a transitional period of 18 months in duration for overseas entities to either dispose of their qualifying estate or to register as a “registered overseas entity” under the provisions of the Bill.

Duty of proprietor to register as an overseas entity within transitional period

126. Paragraph 5 of Schedule 3 creates a duty to register as an overseas entity for an overseas entity that is registered as a proprietor of a qualifying estate and became so registered on or after 1 January 1999 but before the commencement date. Under paragraph 5(1) if, at the end of the period of 18 months beginning with the commencement date, the entity is neither a registered overseas entity nor an exempt overseas entity, it commits an offence and every officer of the entity who is in default also commits an offence. Paragraphs 5(2) and 5(3) set out the penalties for a person found guilty of an offence under this paragraph.

Registrar’s duty to enter restriction in relation to qualifying estate

127. Paragraph 6 of Schedule 3 applies where the Chief Land Registrar is satisfied that an overseas entity is registered as the proprietor of a qualifying estate and became so registered in pursuance of an application made before the commencement date. Under paragraph 6(2), the Chief Land Registrar must comply with the duty to enter a restriction under paragraph 3 of Schedule 4A to the LRA 2002 (which is inserted by this Bill) in relation to the estate before the end of the period

of 12 months beginning with the commencement date. The restriction will not take effect until the end of the period of 18 months beginning with the commencement date.

128. The effect of paragraph 6(3) of Schedule 3 is that overseas entities that are existing registered proprietors of qualifying estate (and became so on or after 1 January 1999 but before the commencement date) will have a period of 18 months from the commencement date to either register in the overseas entities register or dispose of the qualifying estate. During the period of 12 months from the date of commencement HMLR will insert a restriction into the relevant title registers. But the restriction will not take effect until the expiry of 18 months beginning with the commencement date. These transitional provisions will also ensure that any third party who inspects the title register for a qualifying estate whose proprietor is an overseas entity will see a restriction on the title register and be able to take the restriction into account when considering whether to enter into a contract (for a disposal of or charge over the qualifying estate) with the overseas entity.

Interpretation

129. Paragraph 7 defines the terms “the commencement date”, “registered proprietor” and “qualifying estate” for the purposes of Part 2 of Schedule 3.

Schedule 4: Land ownership and transactions: Scotland

Part 1: Amendments

130. This part amends Conveyancing (Scotland) Act 1924 (the “1924 Act”) and the Land Registration etc. (Scotland) Act 2012 (the “LRSA 2012”).

Conveyancing (Scotland) Act 1924

131. Paragraph 1 of Schedule 4 amends section 4A of the 1924 Act by the insertion of a new subsection into section 4A. The existing text of section 4A becomes subsection (1) and after that subsection, a new subsection (2) is inserted that provides that subsection (1) is subject to paragraphs 3 and 4 of the new schedule 1A to the LRSA 2012.
132. Subsection 4A(1) provides that any person who has the right either to land or to a heritable security may complete title by registration in the Land Register of a notice of title in or as nearly as may be in the terms of the form in schedule BA to the 1924 Act. The new subsection (2) makes subsection (1) subject to paragraphs 3 and 4 of the new schedule 1A to the LRSA 2012.
133. Paragraph 3 of the new schedule 1A to the LRSA 2012 provides that where an overseas entity makes an application under section 21 of the LRSA 2012 by virtue of section 4A(1) of the 1924 Act, the Keeper must reject the application unless the overseas entity is a registered overseas entity or an exempt overseas entity. Section 4A(2) therefore prevents an overseas entity from completing title by registration in the Land Register of a notice of title unless it is a registered overseas entity or an exempt overseas entity.
134. Paragraph 4 of the new schedule 1A to the LRSA 2012 provides that where a person makes an application under section 21 of the LRSA 2012 by virtue of section 4A(1) of the 1924 Act with respect to a qualifying registrable deed or a registrable deed which is a standard security, and the grantor of that deed is an overseas entity whose interest was registered on or after 8 December 2014, and was not a registered nor exempt overseas entity as at the date that the application is made, the Keeper must reject that application unless certain conditions are met.

Land Registration etc. (Scotland) Act 2012 (asp 5)

135. Paragraph 2 of Schedule 4 provides that the LRSA 2012 is amended; the amendments are set out in paragraphs 3 to 8 of Schedule 4.
136. Paragraph 3(a) of Schedule 4 provides for the amendment of section 21 (application for registration of deed) of the LRSA 2012 by inserting, in section 21(4), references to paragraphs 1 to 5 of the new Schedule 1A to the LRA 2012. Section 21(1) provides that a person may apply to the Keeper for registration of a registrable deed. Section 21(2) provides that the Keeper must accept such an application if, at the date of the application, the applicant satisfies the Keeper that the general application conditions are met, subject to certain other conditions set out in paragraphs (a) – (c) of subsection (2). Section 21(3) provides that to the extent that the application does not satisfy the Keeper, the Keeper must reject the application. Section 21(4) as amended by paragraph 3(a) provides that section 21(2) is subject to section 45(5) and paragraphs 1 to 5 of the new Schedule 1A to the LRSA 2012. Paragraphs 1 to 5 of schedule 1A to the LRSA 2012 set out the circumstances where the Keeper must reject applications under section 21 of the LRSA 2012, applications to register notice of title, and cases where the Keeper must reject prescriptive applications.
137. Paragraph 3(b) of Schedule 4 provides for the amendment of section 21 (application for registration of deed) of the LRSA 2012 by inserting, after section 21(4), a new subsection (5), which provides that schedule 1A makes provision about certain land transactions involving overseas entities.
138. Paragraph 4 of Schedule 4 amends section 27 of the LRSA 2012 by inserting, after section 27(4), a new section 27(4A), which provides that section 27(3) is subject to paragraph 6 of schedule 1A to the LRSA 2012. Section 27 of the LRSA 2012 makes provisions for application for voluntary registration of unregistered land by the owner. Section 27(3) provides that the Keeper must accept an application under subsection (1) to the extent the applicant satisfies the Keeper that, as at the date of the application, the general application conditions and the conditions of registration in relation to voluntary registration are met. Section 27(3) is, by virtue of new subsection 27(4A), subject to paragraph 6 of schedule 1A, which provides that the Keeper must reject an application under section 27 of the LRSA 2012 made by an overseas entity unless the entity is a registered overseas entity or an exempt overseas entity.
139. Paragraph 5 of Schedule 4 amends section 46 of the LRSA 2012 by changing the title of the provision so that it refers to the meaning of “dispositions” in certain provisions. Paragraph 5 also inserts a reference to the new schedule 1A of the LRSA 2012 to clarify the meaning of “dispositions” in that schedule with respect to transfers of ownership by virtue of compulsory acquisitions.
140. Paragraph 6 of Schedule 4 amends the heading that precedes section 112 to “Offences”.
141. Paragraph 7 of Schedule 4 inserts, after section 112, a new section 112A into the LRSA 2012. Subsection (1) of the new section 112A provides that it is an offence for an overseas entity to grant a qualifying registrable deed and deliver it to a person if, by virtue of paragraph 2 of the new schedule 1A to the LRSA 2012, the Keeper would be required to reject an application under section 21 of the LRSA 2012 for registration of the deed. Where an overseas entity acts in breach of subsection (1), an offence is committed by the entity and every officer of the entity who is in default (subsection (3)).

142. Subsection (2) of the new section 112A provides that a qualifying registrable deed is to be treated as having been granted for the purposes of subsection (1) even if at the time that it is delivered it has been executed by the overseas entity only.
143. Subsection (4) of the new section 112A provides that nothing in section 112A affects the validity of a disposition made in breach of subsection (1). In other words, if an overseas entity that is not exempt grants and delivers to a person a qualifying registrable deed at a time when it is not a registered overseas entity, while the deed will not be capable of registration and the entity will have committed an offence, the validity of the deed itself will not be affected. This is intended to avoid situations where a potentially void, voidable or unenforceable transfer causes significant disruption to a chain of conveyances. Penalties for any person guilty of an offence under subsection (3) are set out in subsection (5).
144. Subsection (6) of the new section 112A provides that sections 1121 to 1123 of the Companies Act 2006 apply for the purposes of defining the term “any officer in default” in section 112A. Subsection (7) provides that a reference to “an officer” includes a person in accordance with whose directions or instructions the board of directors or equivalent management body of an overseas entity are accustomed to act. A person who gives advice in a professional capacity that is acted upon by the board of directors or equivalent management body of the overseas entity is not to be regarded as falling within subsection (7) by the reason only that their advice is acted upon (subsection (8)).
145. Subsection (9) of the new section 112A defines the terms “overseas entity” and “qualifying registrable deed” for the purposes of section 112A. Overseas entity has the meaning given by clause 2 of the Bill and “qualifying registrable deed” means a registrable deed which is (i) a disposition; (ii) a standard security; (iii) a lease; and (iv) an assignation of a lease.
146. Paragraph 8 of Schedule 4 amends section 116(2) of the LRSA 2012 by substituting the reference to “sections” for “provisions” and inserting a reference to paragraphs 2(5) and 7(5) of the new schedule 1A, where regulations made under those provisions will be subject to the negative resolution procedure.
147. Paragraph 9 of Schedule 4 inserts the new schedule 1A into the LRSA 2012. Schedule 1A is explained below.

Cases where Keeper must reject application under Section 21

148. Paragraph 1 of the new schedule 1A provides that where a person applies under section 21 of the LRSA 2012 to register a qualifying registrable deed, the Keeper must reject the application unless the overseas entity is a registered overseas entity, an exempt overseas entity or certain conditions are met. “Qualifying registrable deed” is for purposes of schedule 1A defined as a registrable deed which is a disposition, a long lease or an assignation of a lease. The registrable deeds in relation to land that are in scope of the registration requirements in Scotland therefore are: a transfer of ownership (i.e. by a disposition), a lease where its duration is at least 20 years and a day, an assignation of any such lease, an extract of a decree of foreclosure, a discharge of an ex facie absolute conveyance and an order for rectification of defectively expressed document.
149. The effect of the provisions in paragraph 1 is that in Scotland, an overseas entity will not be able to acquire a real right to land that is registrable in the land register by virtue of application under section 21 of the LRSA 2012 without having complied with the registration and updating requirements under the Bill at the time the application is made under section 21.

150. Paragraph 2 of the new schedule 1A applies where an overseas entity whose interest in land was registered on or after 8 December 2014 grants a qualifying registrable deed or a registrable deed which is a standard security and an application is made to register such deed under section 21 of the LRSA 2012. The overseas entity who grants the aforementioned deed must be, at the date of delivery of the deed, a registered overseas entity or an exempt entity to ensure that the Keeper does not reject the application (or one of the conditions set out in paragraph 2(2) of the new Schedule. 1A must be met).
151. The conditions set out in paragraph 2(2) are: (i) the application is made in pursuance of a statutory obligation, court order, or occurs by the operation of law; (ii) the application is made in pursuance of a contract entered into before the later of the dates mentioned in sub-paragraph (3);(iii) the application is made in pursuance of the exercise of a power of sale or lease by the creditor in a standard security that was registered on or after 8 December 2014; or (iv) the application is made in pursuance of the exercise of a right conferred on a body by relevant legislation to buy land or the interest of a tenant under a lease; or (v) the Scottish Ministers give consent under paragraph 7(2) of schedule 1A to the registration of the deed; or (f) the disposition is made by a specified insolvency practitioner in specified circumstances
152. The dates mentioned in paragraph 2(2) are: (i) the date on which the grantor's interest was registered in the Land Register; (ii) the commencement date (paragraph 2(3)). For a grantee to be able to rely on the condition set out in paragraph 2(2)(b), the contract in pursuance of which the application is made to register the grantee's interest must have been entered into before the overseas entity's interest was registered in the Land Register, or the commencement date, whichever date is later.

Case where Keeper must reject application to register notice of title

153. Paragraph 3 of the new schedule 1A applies where an overseas entity that has a right to land makes an application under section 21 of the LRSA 2012 by virtue of section 4A(1) of the 1924 Act, for registration of a notice of completing title in respect of a qualifying registrable deed. The Keeper is required to reject such application unless the entity is a registered overseas entity or an exempt overseas entity.
154. Paragraph 4 applies where, by virtue of section 4A of the Conveyancing (Scotland) Act 1924, a person makes an application under section 21 for registration of a notice of title completing title in respect of a qualifying registrable deed, or a registrable deed which is a standard security, and the grantor of the deed is an overseas entity whose interest was registered on or after 8 December 2014, and was not a registered or exempt overseas entity on the date on which the application was made.
155. Sub-paragraph (2) sets out that the Keeper must reject such an application unless one of the conditions set out in paragraph 2(2) is met. These are: (i) the application is made in pursuance of a statutory obligation, court order, or occurs by the operation of law, (ii) the application is made in pursuance of a contract entered into before the later of the dates mentioned in sub-paragraph (3),(iii) the application is made in pursuance of the exercise of a power of sale or lease by the creditor in a standard security that was registered on or after 8 December 2014, or (iv) the application is made in pursuance of the exercise of a right conferred on a body by relevant legislation to buy land or the interest of a tenant under a lease, or (v) the Scottish Ministers give consent under paragraph 7(2) of schedule 1A to the registration of the deed, or (vi) the disposition is made by a specified insolvency practitioner in specified circumstances.

156. The relevant dates for sub-paragraph (2) are the date on which the granter’s interest was registered, and the commencement date.
157. Sub-paragraph (4) sets out the relevant legislation for the purpose of sub-paragraph 2(d) and sub-paragraph (5) explains that “specified circumstances” and “specified insolvency practitioner” have the meaning given by paragraph 2(5).

Cases where Keeper must reject prescriptive application

158. Paragraph 5 of the new schedule 1A sets out the circumstances in which the Keeper must reject a prescriptive application.
159. Paragraph 5 applies where a prescriptive claimant application by virtue of section 43(1) of the LRSA 2012 is made by an overseas entity and the entity is neither a registered overseas entity nor an exempt overseas entity, at the time of the application. In these circumstances, the Keeper must reject the application.

Case where Keeper must reject voluntary application

160. Paragraph 6 of the new schedule 1A applies where an application for voluntary registration under section 27 of the LRSA 2012 is made by an overseas entity. The application must be rejected by the Keeper unless the entity is either a registered overseas entity, or an exempt overseas entity (paragraph 4(2)).

Consent to registration of certain deeds that cannot otherwise be registered

161. Paragraph 7 provides that where the Keeper would otherwise be required to reject an application for registration of a qualifying registrable deed or a registrable deed which is a standard security; or an application for registration of a notice of title in respect of a qualifying registrable deed or registrable deed which is a standard security’ the Scottish Ministers may consent to registration of the relevant deed. The Scottish Ministers must be satisfied that at the time of delivery of the relevant deed that the person in whose favour it was granted did not know, and could not reasonably have been expected to know, of the duty imposed on the Keeper by paragraph 2(2), and that in all the circumstances it would be unjust for the deed not to be registered.
162. Sub-paragraph 5 sets out that the Scottish Ministers may by regulations make provision in connection with applications for such consent, and the giving of consent. Sub-Paragraph 6 provides that the regulations may, for example, make provision about who may apply, the evidence required to be presented, and time limits.

Interpretation

163. Paragraph 8 of the new schedule 1A defines key terms used in schedule 1A: “the commencement date”; “exempt overseas entity”, “overseas entity”; “qualifying registrable deed”; “register of overseas entities” and “registered overseas entity”. Paragraph 7(2) provides that for the purposes of schedule 1A, an overseas entity that fails to comply with the “updating duty” in clause 7 of the Bill is not to be treated as a “registered overseas entity” until it remedies the failure. Paragraph 7(3) provides that, for the purpose of paragraph 7(2), an overseas entity “remedies” the failure when it delivers the required statements and information mentioned in clause 7(1)(a), (b) and (c) of the Bill.

Part 2: Transition: deeds registered pre-commencement

164. Part 2 of Schedule 4 provides for a transitional period for overseas entities that are registered proprietors in relation to registered land in Scotland and became such proprietors on or after 8 December 2014 but before the commencement date. This part provides for a transitional period of 18 months in duration for overseas entities to either dispose of their qualifying estate or to register as a “registered overseas entity” under the Bill provisions.

Duty to register as an overseas entity within transitional period

165. Paragraph 10(1) of Schedule 4 provides that an overseas entity that is registered in the Land Register of Scotland as proprietor of an interest in land and became so registered on or after 8 December 2014 but before the commencement date, and, at the end of the period of 18 months beginning with the commencement date the entity is neither a registered overseas entity nor an exempt overseas entity, commits an offence and every officer of the entity who is in default also commits an offence. Paragraph 10(2) sets out the penalties for a person found guilty of an offence under paragraph 10.

Disapplication of certain provisions during transitional period

166. Paragraph 11 of Schedule 4 sets out the circumstances in which an overseas entity is not required to become a registered overseas entity within the transitional period.

167. The provisions in sub-paragraph 11(3) do not apply during the period of 18 months from the commencement date. These provisions are (i) section 112A so far as relating to paragraph 2 of schedule 1A (granting a registrable deed); (ii) paragraph 2 of schedule 1A; and (iii) paragraph 5 of schedule 1A (prescriptive applications).

168. The effect of paragraph 11 is that:

- a. an overseas entity that is a proprietor of registered land and became so registered in the Land Register on or after 8 December 2014 may, within 18 months of the commencement date, grant a qualifying registrable deed or a registrable deed which is a standard security without the overseas entity having to comply with the registration requirements under the Bill;
- b. a person may, within 18 months of the commencement date, make a prescriptive claimant application in respect of land registered in favour of the overseas entity described in a. without the overseas entity having to comply with the registration requirements under the Bill;
- c. an overseas entity described in a. above will not commit an offence under section 112 if it grants a deed described in a. above within 18 months of the commencement date.

Interpretation

169. Paragraph 11 of Schedule 4 provides definitions of terms used in Part 2 of Schedule 4.

Part 3: Power to make further provision

170. Paragraph 13 contains a power for the Secretary of State to make affirmative regulations which make further or alternative provision for the purpose of requiring or encouraging an overseas entity that owns or holds a right or interest in or over land in Scotland, or enters into land transactions in Scotland, to register as an overseas entity.

171. No regulations may be made after the end of the period of 18 months beginning with the day on which the Bill is passed.
172. Such regulations may amend, repeal or revoke provision made by Schedule 4, or any provision made by or under any other Act, or an Act of the Scottish Parliament, made (a) before the Bill, or (b) later in the same session of Parliament as the Bill.
173. This power provides a secondary legislation mechanism to make changes that might transpire to be necessary after the Bill is enacted.

Schedule 5: Land ownership and transactions: Northern Ireland

174. This Schedule amends the Land Registration Act (Northern Ireland) 1970 (the “1970 Act”), according to paragraph 1.
175. Paragraph 2 of Schedule 5 inserts (after section 61) of a new section 61A into the 1970 Act. Paragraph 3 inserts a new Schedule 8A into the 1970 Act.
176. New clause 61A sets out that new Schedule 8A is about the ownership of registered land by overseas entities and about registrable dispositions made by them. Schedule 8A makes provisions equivalent to Schedule 4A, described above, in respect of Northern Ireland, subject to existing differences in land registration on Northern Ireland.

Meaning of “qualifying estate”

177. Paragraph 1 of the new Schedule 8A sets out the two estates in land that are in scope of the registration requirements in Northern Ireland: a freehold estate in land and a leasehold estate in land where the lease is granted for a term of more than 21 years from the date of the grant.

Registration

178. Paragraph 2 of the new Schedule 8A prohibits the making of an application to register an overseas entity as the owner of a qualifying estate unless, at the time of the application, the entity is either (a) a “registered overseas entity” (i.e. an entity registered in the overseas entities register which has complied with the update requirements under clause 7 of the Bill), or (b) is an exempt overseas entity.
179. Circumstances which involve either compulsory or voluntary registration include:
- (i) Where an overseas entity owns freehold or leasehold estate and voluntarily applies for first registration under sections 14(1)(a) or 19(1)(a) of the 1970 Act;
 - (ii) A hitherto unregistered freehold or leasehold estate is transferred / assigned to the overseas entity and triggers compulsory first registration under entry 2 of the table in Schedule 2 to the 1970 Act;
 - (iii) A lease of over 21 years is granted out of unregistered land and triggers compulsory first registration of that lease under entry 2;
 - (iv) Where a registered freehold or leasehold estate is transferred or assigned to the overseas entity; or
 - (v) A lease of over 21 years is granted out of registered estate to the overseas entity which triggers compulsory first registration of that lease under entry 4 of the table in Schedule 2 to the 1970 Act.

Restrictions on disposal

180. Paragraph 3(1) of the new Schedule 8A sets out that an inhibition (“an overseas entity inhibition”) must be entered against the title of the registered owner of a qualifying estate if the Registrar is satisfied that (a) the registered owner is an overseas entity and (b) the application for the entity to be registered as the owner was made on or after the date on which paragraph 2 came into operation. Paragraph 3(1) therefore applies to overseas entities that become registered owners of a qualifying estate if the application to register was made on or after the commencement date. Unlike in England and Wales and in Scotland, no restrictions on disposals will apply to overseas entities that are registered owners of a qualifying estate and became so before paragraph 3 came into operation.
181. Paragraph 3(2) of the new Schedule 8A provides that no fee will be charged for the entry of an overseas entity inhibition.
182. Paragraph 3(3) of the new Schedule 8A sets out the effect of the overseas entity inhibition: from and after the entry of an overseas entity inhibition, none of the dispositions mentioned in paragraph 3(4) affecting the land in question are to be entered on the title register, unless one of the conditions in paragraph 3(5) is met. The relevant dispositions which entry on the title register is prohibited are:
- (i) A transfer of the owner’s estate (i.e. transfer of a freehold estate or assignment of a leasehold estate where the term granted exceeds 21 years),
 - (ii) A grant of a leasehold estate where the term exceeds 21, and
 - (iii) The creation of a charge on the land.
183. The conditions mentioned in paragraph 3(3) are set out in paragraph 3(5):
- (i) The entity is a registered overseas entity, or is an exempt overseas entity, at the time of the disposition;
 - (ii) The disposition is made in pursuance of a statutory obligation, a court order, or by the operation of law;
 - (iii) In pursuance of a contract made before the inhibition is entered in the register;
 - (iv) In exercise of a power of sale or leasing conferred on the owner of a registered charge or a receiver appointed by such an owner (i.e. owner of the registered charge); or
 - (v) The disposition is made by a specified insolvency practitioner in specified circumstances.
184. The duty to enter an overseas entity inhibition against each relevant title applies regardless of whether the overseas entity is exempt or not. The inhibition will however not “bite” if an overseas entity makes a disposition at the time it is an exempt overseas entity.
185. Sub-paragraph (6) explains that, in sub-paragraph (5), “specified circumstances” means circumstances set out in regulations made by the Department of Finance for the purposes of this paragraph, and “specified insolvency practitioner” means an insolvency practitioner of a description specified in regulations made by the Department of Finance for the purposes of that paragraph. Such regulations are subject to negative resolution (sub-paragraph (7)).

Registrable dispositions by overseas entity entitled to be registered (but not registered)

186. Where an overseas entity is entitled to be registered as the owner of a qualifying estate, or became so entitled on or after the day on which paragraph 4 of the new Schedule 8A comes into

operation; and makes any of the dispositions set out in paragraph 4(2), the disposition must not be registered unless:

- (i) The entity is a registered overseas entity, or exempt, at the time of the disposition, or unless the disposition is made
- (ii) In pursuance of a statutory obligation, court order, or by the operation of law,
- (iii) In pursuance of a contract made before the entity became entitled to be registered,
- (iv) In the exercise of a power of sale or leasing conferred on the owner of a registered charge or a receiver appointed by such an owner, or
- (v) The disposition is made by a specified insolvency practitioner in specified circumstances.

187. The effect of paragraph 4 is that a third party to whom a qualifying estate is transferred, assigned or charged (as the case may be) by an overseas entity will not be able to register that disposition unless the overseas entity was, at the time of the disposition, “a registered overseas entity”, an exempt overseas entity, or one of the exceptions listed in paragraph 4(3) of the new Schedule 8A applies.

188. Sub-paragraph (4) sets out that, in sub-paragraph 3(e), “specified circumstances” and “specified insolvency practitioner” have the meaning given by paragraph 3(6).

Making dispositions that cannot be registered

189. Paragraph 5 of the new Schedule 8A provides that an overseas entity must not make a registrable disposition of a qualifying estate if the registration of the disposition is (i) prohibited by an inhibition entered under paragraph 3, or (ii) prevented by paragraph 4. Should an overseas entity make such a disposition (i.e. one that cannot be registered) it commits an offence, and an offence is also committed by every officer of the entity who is in default.

190. Nothing in paragraph 5 of the new Schedule 8A affects the validity of a disposition made in breach of paragraph 5(1). In other words, if an overseas entity that is not exempt makes a disposition at a time when it is not a registered overseas entity, while the disposition will not be capable of registration and the entity will have committed an offence, the validity of the disposition itself will not be affected. This is intended to avoid situations where a potentially void, voidable or unenforceable transfer causes significant disruption to a chain of conveyances.

191. Paragraph 5(7) of the new Schedule 8A sets out the penalties for offences committed under paragraph 5. Those guilty of an offence on summary conviction face a term of imprisonment of up to six months or a fine not exceeding the statutory maximum, or both. Where convicted on indictment, liability is up to a term of imprisonment of five years, or fine, or both.

192. Paragraph 5(8) of the new Schedule 8A provides that proceedings for an offence under paragraph 5 may only be brought by or with the consent of the Secretary of State or the Director of Public Prosecutions for Northern Ireland.

Interpretation etc

193. Paragraph 6(1) of the new Schedule 8A defines key terms used in Schedule 8A, including the meaning of “registered overseas entity”, “register of overseas entities”, “overseas entity” and “exempt overseas entity”. They share the same meaning as defined elsewhere in this Part.

194. For the purposes of Schedule 8A, an overseas entity that is registered in the overseas entities register but fails to comply with the updating duty in clause 7 of the Bill is not to be treated as a registered overseas entity until it remedies the failure (paragraph 7(1) of the new Schedule 8A).

An overseas entity “remedies” the failure when it delivers the required statements and information under clause 7(1)(a), (b) and (c) of the Bill (paragraph 7(2)).

Part 2 — Unexplained Wealth Orders

The Responsible Officers

Clause 40: Imposition of unexplained wealth orders on officers etc of property holder: England and Wales and Northern Ireland

195. This clause inserts a new category of persons who may be specified in a UWO, referred to as “responsible officers”.
196. The definition of specified responsible officer is given in new section 362A(8), and means that, in a case where the respondent is not an individual, the application may also specify a person who is a responsible officer of the respondent (a “specified responsible officer”); and a person specified may include a person outside the United Kingdom.
197. In practice, this means increasing the scope of existing powers to enable UWOs to seek information more easily from persons who are officers of legal entities thought to have control over the asset, and therefore subject to the obligation to provide the information sought by it, even though the responsible officer is not the property holder. This is to ensure that individuals cannot hide behind complex ownership structures.

Clause 41: Imposition of unexplained wealth orders on officers etc of property holder: Scotland

198. This clause amends section 396A of POCA to provide equivalent provisions for the new category of specified responsible officers in Scotland.

The Income Requirement

Clause 42: Alternative test to the income requirement: England and Wales and Northern Ireland

199. This clause amends the existing income requirement to include a new test, which focuses upon there being reasonable grounds to suspect that property that is the subject of the UWO application has been obtained through unlawful conduct.

Clause 43: Alternative test to the income requirement: Scotland

200. This clause amends section 396B of POCA to provide equivalent provisions for the alternative test to the income requirement in Scotland.

The Interim Freezing Order time limit

Clause 44: Power to extend period for which interim freezing order has effect: England and Wales and Northern Ireland

201. This clause amends sections 362D and 362K of POCA, and inserts sections 362DA and 362DB

These Explanatory Notes relate to the Economic Crime (Transparency and Enforcement) Bill as introduced in the House of Commons on 1 March 2022 (Bill 262)

into POCA to allow the High Court to grant an additional 126 days to enforcement authorities who receive material provided in response to a UWO on application. Subsection (1) of new section 362DA outlines the safeguards which must be met before an extension can be made.

202. In practice this increases the maximum statutory time period afforded to enforcement authorities to review material provided to them in response to a UWO before a corresponding freezing order expires. This strikes an appropriate balance between the rights of the individual and the time needed for law enforcement to have sufficient time to investigate a case.

203. This allows for the initial 60-day time period to be extended in intervals of up to 63 days, totaling a review period of no more than 186 days.

Clause 45 Power to extend period for which interim freezing order has effect:

Scotland

204. This clause amends section 396D of POCA and inserts sections 396DA and 396DB into POCA to provide equivalent provisions enabling the Court of Session to extend the period for which the interim freezing order has effect in Scotland.

Costs of Proceedings

Clause 46 Limits on costs orders in relation to unexplained wealth orders: England and Wales and Northern Ireland

205. This clause inserts a new section 362U into POCA to provide for the High Court to limit an enforcement authority's liability by protecting them from any costs which could be awarded against them in UWO proceedings, unless the applicant enforcement authority seeking the UWO has acted dishonestly, unreasonably, or improperly. The relevant proceedings are listed in subsection (1).

Clause 47 Limits on costs orders in relation to unexplained wealth orders: Scotland

206. This clause inserts a new section 396V into POCA to provide equivalent provisions for limits on costs orders in relation to UWOs in Scotland.

Part 3 — Sanctions

Clause 48: Imposition of monetary penalties

207. This clause amends section 146 of the Policing and Crime Act 2017 so that civil monetary penalties can be applied to persons for breaches of financial sanctions with no requirement for OFSI to prove that the person had knowledge or reasonable cause to suspect their activity breached sanctions. The burden on OFSI to prove that there was a breach of a prohibited act or failure to comply with an obligation remains.

208. Subsection (1A) refers to financial sanctions legislation as defined in section 143 of the Act and makes clear that in determining for the purposes of section 146(1) whether a person has breached a prohibition, or failed to comply with an obligation, any requirement imposed by financial sanctions legislation for the person to have known, suspected or believed any matter must be ignored.

Clause 49: Procedural rights

These Explanatory Notes relate to the Economic Crime (Transparency and Enforcement) Bill as introduced in the House of Commons on 1 March 2022 (Bill 262)

209. The existing legislation requires a minister (in practice the Economic Secretary to the Treasury) to conduct administrative reviews of financial sanctions monetary penalties personally.
210. This clause amends section 147 of the Policing and Crime Act 2017 to take away the obligation on the Minister to carry out the review personally. The Minister retains the discretion to do so but in accordance with the *Carltona* doctrine this change means that other officials within the department may undertake the review instead where appropriate.

Clause 50: Publicising breaches of financial sanctions

211. This clause amends section 149 of the Policing and Crime Act 2017 to allow OFSI to publish notices detailing violations by persons of financial sanctions in cases where it has decided not to impose a penalty.

Clause 51: Sharing of information

212. This clause amends section 16 of the Sanctions and Anti-Money Laundering Act 2018 to make provision about the sharing of information. This will enable amendments to be made to extend relevant information powers in individual Sanctions Act regulations. This will help to ensure that other government departments, agencies and relevant bodies are authorised to share information proactively with the Treasury to facilitate OFSI's functions.

General

Clause 52 Regulations

213. This clause sets out general provisions for regulations that may be made under the Bill. A power to make regulations will be exercisable by statutory instrument. Regulations may make different provisions for different purposes; they may include supplementary, incidental and consequential provisions; and they may make transitional provision and savings. Subsections (4) and (5) give detail on what is meant by affirmative and negative resolution procedures. Subsection (6) provides that provisions made by regulations under the Bill that are subject to the negative resolution procedure may also be made by regulations subject to the affirmative resolution procedure.

Clause 53: Extent

214. This clause sets out that the Bill extends to England and Wales, Scotland and Northern Ireland except:
- a. Section 32(1) and Schedule 3 extend to England and Wales only
 - b. Section 32(2) and Schedule 4 extend to Scotland only
 - c. Section 32(3) and Schedule 5 extend to Northern Ireland only
- and except the amendments made by Part 2 (unexplained wealth orders) and Part 3 (sanctions) have the same extent as the provisions amended by those Parts.

Clause 54: Commencement

215. This clause provides when provisions of the Bill come into force.

Clause 55: Short title

216. This clause provides that, when enacted, the Bill may be cited as the Economic Crime (Transparency and Enforcement) Act 2022.

Commencement

217. Clauses 35, 37, 38 and 39 come into force on the day the Bill is passed. Part 3 comes into force on such day as the Treasury may by regulations appoint. The other provisions of the Bill come into force on such day as the Secretary of State may appoint in regulations.

Financial implications of the Bill

218. There will be no set up costs associated with the reforms to the UWO regime. The cost of using the powers will be offset by the scope for recovery of the illicit proceeds. For further detail please refer to the Impact Assessment.

219. The sanctions measures will have a negligible effect on public expenditure.

Parliamentary approval for financial costs or for charges imposed

220. A money resolution is required for the Bill. Part 1 gives new functions to the Registrar of companies, and there will be set up costs in establishing the new register of overseas entities. There will also be some costs to the Land Registry arising from Part 1.

221. Financial penalties imposed under clause 38 of the Bill are to be paid into the Consolidated Fund, which requires paying-in cover.

Compatibility with the European Convention on Human Rights

222. Part 2 potentially engages the following provisions of the European Convention on Human Rights: Article 6 (right to a fair trial), Article 8 (right to respect for private and family life), Article 1 of the First Protocol to (respect for peaceful enjoyment of possessions) (A1P1).

223. The Government considers that to the extent the amendments to the Unexplained Wealth Order (UWO) powers (including insofar as they relate to Interim Freezing Orders (IFOs)) interfere with any of those rights, any such interference is a justified and proportionate means of meeting the legitimate aim of preventing and detecting serious crime; and in particular the use of assets in the United Kingdom to launder the proceeds of crime.

224. The categories of person in respect of whom a UWO may be made are being extended to cover responsible officers of a legal entity thought to hold the asset in question. The person thought to hold the asset will themselves still be a respondent. The presumption that arises in relation to a property to which a UWO relates, where the UWO is not complied with, can still be rebutted by the owner of the property in any subsequent proceedings under Part 5 of POCA insofar as the person can put forward evidence in those proceedings that the property is not recoverable property.

225. In respect of Article 8, there are already provisions in POCA which provide protection in respect of the information that a respondent is required to disclose in response to a UWO (see section 362G and section 396G). These provisions will be extended to include a specified responsible officer.

226. It is already the case that an IFO is capable of interfering with A1P1 insofar as it prevents any person, including the respondent, from dealing with the property in any way. An IFO is subject to prior judicial authorisation and may be varied or may be discharged by the court at any time. Following the discharge of an IFO the owner of the affected property may make a claim for compensation.
227. The extension of the maximum length of an IFO will not be automatically applied in every case. Instead, it will enable the court to exercise its power proportionality and according to the circumstances, and compatibly with A1P1, whilst allowing enforcement authorities to take the additional measures that may be necessary in complex cases to carry out a thorough investigation.
228. Finally, the amendments relating to costs will retain the ability of the court to award costs against a law enforcement authority that has acted unreasonably, dishonestly or improperly. The Government considers that the ability of the court to continue to award costs in such circumstances, together with the obligation on enforcement agencies to comply to the code of practices published under Part 8 of POCA will provide adequate safeguards against the arbitrary use of the relevant powers and will strike a fair balance between the procedural protections required by A1P1 and the pressing need for authorities to take action to investigate assets where there are good reasons for doing so.
229. The Government does not consider that the provisions in respect of UWOs (including insofar as they relate to IFOs), whether in respect of a respondent or a specified responsible officer, engage Article 6(1). The Government believes nevertheless that the provisions concerning both UWOs and IFOs are such that the relevant provisions of POCA will continue to satisfy the requirements of Article 6, for a fair hearing in relation to the determination of a person's civil rights, Article 8 in respect of the right to private and family life, and the procedural protections required by Article 1 of the First Protocol in respect of the control of use of property arising from the making of an IFO.
230. Part 3 potentially engages the following provisions of the European Convention on Human Rights: Article 6 (right to a fair trial), Article 8 (right to respect for private and family life) and A1P1 (respect for peaceful enjoyment of possessions).
231. The Government considers that to the extent Article 6 is engaged, the safeguards available in the legislation fully protect a person's rights. These include protections such as the statutory right to make representations before a civil penalty is imposed, a right to request a review and an appeal to an independent and impartial tribunal on any ground. In respect of A1P1, the power to impose a monetary penalty for a breach of a sanctions prohibition or requirement serves a legitimate aim in the public interest.
232. In respect of the publication of outcomes and Article 8, reporting on a finding that a person has breached a sanctions prohibition helps deter others and raises awareness to assist compliance in companies and other persons. The Government considers this to be a justified and proportionate interference with Article 8 rights.

Related documents

233. The following documents are relevant to the Bill and can be read at the stated locations:

- Criminal Finances Act 2017 [[Criminal Finances Act 2017 \(legislation.gov.uk\)](https://legislation.gov.uk)]
- Corporate Transparency and Register Reform White Paper: [Corporate transparency and register reform - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

These Explanatory Notes relate to the Economic Crime (Transparency and Enforcement) Bill as introduced in the House of Commons on 1 March 2022 (Bill 262)

- The Policing and Crime Act 2017: <https://www.legislation.gov.uk/ukpga/2017/3/contents>
- The Sanctions and Anti-Money Laundering Act 2018: <https://www.legislation.gov.uk/ukpga/2018/13/contents>
- ROE Pre-Legislative Scrutiny: [Government responds to report by pre-legislative scrutiny Joint Committee - UK Parliament](#)

Annex- Territorial extent and application in the United Kingdom

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged ?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
Clause 1	Yes	Yes	No	Yes	Yes	Yes	Yes
Clause 2	Yes	Yes	No	Yes	Yes	Yes	Yes
Clause 3	Yes	Yes	No	Yes	Yes	Yes	Yes
Clause 4	Yes	Yes	No	Yes	Yes	Yes	Yes
Clause 5	Yes	Yes	No	Yes	Yes	Yes	Yes
Clause 6	Yes	Yes	No	Yes	Yes	Yes	Yes
Clause 7	Yes	Yes	No	Yes	Yes	Yes	Yes
Clause 8	Yes	Yes	No	Yes	Yes	Yes	Yes
Clause 9	Yes	Yes	No	Yes	Yes	Yes	Yes
Clause 10	Yes	Yes	No	Yes	Yes	Yes	Yes
Clause 11	Yes	Yes	No	Yes	Yes	Yes	Yes
Clause 12	Yes	Yes	No	Yes	Yes	Yes	Yes
Clause 13	Yes	Yes	No	Yes	Yes	Yes	Yes
Clause 14	Yes	Yes	No	Yes	Yes	Yes	Yes
Clause 15	Yes	Yes	No	Yes	Yes	Yes	Yes
Clause 16	Yes	Yes	No	Yes	Yes	Yes	Yes
Clause 17	Yes	Yes	No	Yes	Yes	Yes	Yes
Clause 18	Yes	Yes	No	Yes	Yes	Yes	Yes
Clause 19	Yes	Yes	No	Yes	Yes	Yes	Yes
Clause 20	Yes	Yes	No	Yes	Yes	Yes	Yes
Clause 21	Yes	Yes	No	Yes	Yes	Yes	Yes
Clause 22	Yes	Yes	No	Yes	Yes	Yes	Yes
Clause 23	Yes	Yes	No	Yes	Yes	Yes	Yes
Clause 24	Yes	Yes	No	Yes	Yes	Yes	Yes
Clause 25	Yes	Yes	No	Yes	Yes	Yes	Yes
Clause 26	Yes	Yes	No	Yes	Yes	Yes	Yes
Clause 27	Yes	Yes	No	Yes	Yes	Yes	Yes
Clause 28	Yes	Yes	No	Yes	Yes	Yes	Yes
Clause 29	Yes	Yes	No	Yes	Yes	Yes	Yes
Clause 30	Yes	Yes	No	Yes	Yes	Yes	Yes
Clause 31	Yes	Yes	No	Yes	Yes	Yes	Yes

These Explanatory Notes relate to the Economic Crime (Transparency and Enforcement) Bill as introduced in the House of Commons on 1 March 2022 (Bill 262)

Clause 32	Yes, other than 32(2-3)	Yes, other than 32(2-3)	No	Yes, other than 32(1) and (3)	Yes	Yes, other than 32(1-2)	Yes
Clause 33	Yes	Yes	No	Yes	Yes	Yes	Yes
Clause 34	Yes	Yes	No	Yes	Yes	Yes	Yes
Clause 35	Yes	Yes	No	Yes	Yes	Yes	Yes
Clause 36	Yes	Yes	No	Yes	Yes	Yes	Yes
Clause 37	Yes	Yes	No	Yes	Yes	Yes	Yes
Clause 38	Yes	Yes	No	Yes	Yes	Yes	Yes
Clause 39	Yes	Yes	No	Yes	Yes	Yes	Yes
Schedule 1	Yes	Yes	No	No	No	Yes	No
Schedule 2	Yes	Yes	No	No	No	No	No
Schedule 3	Yes	Yes	No	No	No	No	No
Schedule 4	No	Yes	No	Yes	Yes	No	No
Schedule 5	No	No	No	No	No	No	Yes
Clause 40	Yes	Yes	No	No	No	Yes	Yes
Clause 41	No	No	No	Yes	Yes	No	No
Clause 42	Yes	Yes	No	No	No	Yes	Yes
Clause 43	No	No	No	Yes	Yes	No	No
Clause 44	Yes	Yes	No	No	No	Yes	Yes
Clause 45	No	No	No	Yes	Yes	No	No
Clause 46	Yes	Yes	No	No	No	Yes	Yes
Clause 47	No	No	No	Yes	Yes	No	No
Clause 48	Yes	Yes	No	Yes	No	Yes	No
Clause 49	Yes	Yes	No	Yes	No	Yes	No
Clause 50	Yes	Yes	No	Yes	No	Yes	No
Clause 51	Yes	Yes	No	Yes	No	Yes	No

These Explanatory Notes relate to the Economic Crime (Transparency and Enforcement) Bill as introduced in the House of Commons on 1 March 2022 (Bill 262)

ECONOMIC CRIME (TRANSPARENCY AND ENFORCEMENT) BILL

EXPLANATORY NOTES

These Explanatory Notes relate to the Economic Crime (Transparency and Enforcement) Bill as introduced in the House of Commons on 1 March 2022 (Bill 262).

Ordered by the House of Commons to be printed, 1 March 2022.

© Parliamentary copyright

This publication may be reproduced under the terms of the Open Parliament Licence which is published at www.parliament.uk/site-information/copyright

PUBLISHED BY AUTHORITY OF THE HOUSE OF COMMONS