

Draft Regulations laid before Parliament under sections 33(7), 39(7) and 67(4) of the Economic Crime (Transparency and Enforcement) Act 2022, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2023 No.

COMPANIES

LAND REGISTRATION, NORTHERN IRELAND

The Register of Overseas Entities (Penalties and
Northern Ireland Dispositions) Regulations 2023

Made - - - - - ***
Coming into force - - - - - ***

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 33(4), 39(1) and (2), 67(2) and (3) of the Economic Crime (Transparency and Enforcement) Act 2022⁽¹⁾.

The Secretary of State has consulted the Department of Finance in Northern Ireland, in accordance with section 33(6) of the Economic Crime (Transparency and Enforcement) Act 2022.

In accordance with sections 33(7), 39(7) and 67(4) of the Economic Crime (Transparency and Enforcement) Act 2022, a draft of these Regulations has been laid before Parliament and approved by a resolution of each House of Parliament.

PART 1

Introductory

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Register of Overseas Entities (Penalties and Northern Ireland Dispositions) Regulations 2023 and come into force on 21st June 2023.

(2) These Regulations extend to England and Wales, Scotland and Northern Ireland, except for Part 5 which extends to Northern Ireland only.

Interpretation

2. In these Regulations—

“the ECTEA” means the Economic Crime (Transparency and Enforcement) Act 2022;

“conduct” means an act or omission;

“financial penalty” means a requirement to pay to the registrar a penalty, of an amount determined by the registrar in accordance with regulation 7, which may be—

- (a) a fixed amount (“a fixed penalty”);
- (b) an amount calculated by reference to a daily rate (“a daily rate penalty”); or
- (c) a combination of a fixed penalty and a daily rate penalty.

PART 2

Financial Penalties

The registrar’s powers

3.—(1) Subject to paragraph (2), regulation 7 and following the process in regulations 4 and 5, the registrar(2) may impose a financial penalty on a person if satisfied, beyond reasonable doubt, that the person has engaged in conduct amounting to an offence under Part 1 of the ECTEA.

(2) No financial penalty may be imposed under these Regulations on a person in respect of conduct amounting to an offence if the person has been convicted of that offence in respect of that conduct.

(3) 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 these Regulations in respect of that conduct.

Warning and penalty notices

4.—(1) If the registrar suspects that a person has engaged in conduct amounting to an offence under Part 1 of the ECTEA, the registrar may issue a warning notice in writing to that person.

(2) The warning notice referred to in paragraph (1) above must contain—

- (a) the grounds for suspecting that an offence has been committed;
- (b) the period within which the person may make written representations to the registrar about their conduct (which must be at least 28 days beginning on the day after the date of the warning notice) and how such representations may be delivered; and
- (c) a warning that at the end of the period referred to in sub-paragraph (b) above, the registrar may impose a financial penalty.

5.—(1) After the end of the period stated in the warning notice, the registrar, if satisfied beyond reasonable doubt that the person has engaged in the conduct referred to in the warning notice and that that conduct amounts to an offence under Part 1 of the ECTEA, may issue a penalty notice in writing to the person who was issued the warning notice.

(2) The penalty notice referred to in paragraph (1) above must contain—

- (a) the grounds for issuing the financial penalty;

(2) For the meaning of “the registrar” see section 3(1) of the Economic Crime (Transparency and Enforcement) Act 2022

- (b) whether the financial penalty is a fixed penalty, a daily rate penalty or a combination of both and how it is calculated;
- (c) in the case of a fixed penalty, the amount of the penalty;
- (d) in the case of a daily rate penalty, the amount of the daily rate, the day on which the amount first starts to accumulate and the day on which, or the circumstances in which, it ceases to accumulate;
- (e) how payment may be made;
- (f) the period within which payment is to be made (which period must not end sooner than 28 days beginning on the date of the penalty notice);
- (g) rights of appeal; and
- (h) the consequences of non-payment.

Review, variation and revocation of financial penalties

6.—(1) Subject to regulations 7(1) and (2), the registrar may vary or revoke the penalty notice as the registrar considers appropriate.

(2) If a financial penalty is revoked under these Regulations, the registrar must, as soon as practicable, give a notice in writing to the person upon whom the financial penalty was imposed.

(3) If a financial penalty, or the period within which a financial penalty is to be paid, is varied under this regulation, the registrar must, as soon as practicable, issue a new penalty notice which, in addition to the information referred to in regulation 5(2), must state the variation and the reasons for the variation.

Penalties

7.—(1) A financial penalty must not exceed the maximum fine that could be imposed by a court for the same offence under criminal proceedings in the jurisdiction in which the offence was committed.

(2) The registrar may not impose a daily rate penalty unless the person's conduct constitutes an offence in respect of which a daily default fine may be imposed in the jurisdiction in which the offence was committed.

(3) In relation to conduct for which the fine for the relevant offence in the jurisdiction in which the offence was committed does not include a daily default fine, the registrar may impose more than one fixed penalty in relation to that conduct where there is a continuing contravention.

(4) For the purposes of a daily rate penalty—

- (a) the first day on which the amount may start to accumulate is the day after the date of the penalty notice;
- (b) unless the registrar determines an earlier date, the daily rate ceases to accumulate at the beginning of the earliest of—
 - (i) the day on which the requirement to comply to which the offence relates is satisfied,
 - (ii) the day on which that requirement no longer applies.

(5) Interest accrues on a financial penalty which has not been paid within the period stated in the penalty notice at such rate as the registrar may direct or, if no such direction is given, the rate for the time being specified in section 17 of the Judgments Act 1838(3).

PART 3

Penalty Appeals

8.—(1) Subject to paragraph (3), a person who has received a penalty notice under regulations 5 or 6(3) may appeal the financial penalty to the High Court or, in Scotland, the Court of Session on the grounds mentioned in paragraph (2).

(2) The grounds referred to in paragraph (1) are that the decision to impose a financial penalty or the level or type of financial penalty—

- (a) is unlawful;
- (b) is irrational or unreasonable; or
- (c) has been made on the basis of a procedural impropriety or otherwise contravenes the rules of natural justice.

(3) No appeal may be brought unless the permission of the court has been obtained.

(4) No application for such permission may be made after 28 days beginning on the day after the date of the penalty notice unless the court is satisfied that there was good reason for the failure of the applicant to seek permission before the end of that period.

(5) An applicant who seeks permission to appeal must serve written notice of the application on the registrar within 7 days beginning with the date on which the application for permission was issued.

(6) The court determining an appeal may—

- (a) dismiss the appeal;
- (b) vary the amount the financial penalty;
- (c) change the nature of the financial penalty between a fixed penalty, a daily rate penalty or a combination of a fixed penalty and a daily rate penalty; or
- (d) quash the financial penalty.

PART 4

Penalty Enforcement

Recovering penalties

9.—(1) The registrar may recover any of the financial penalty and any interest that has not been paid if—

- (a) no appeal relating to the financial penalty has been brought under regulation 8 during the period within which such an appeal may be brought; or
- (b) an appeal has been determined or withdrawn.

(2) In England and Wales, and in Northern Ireland, the financial penalty is recoverable as if it were payable under an order of the High Court.

(3) In Scotland, the financial penalty may be enforced in the same manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.

(4) Where action is taken under this regulation for the recovery of a sum payable under a penalty notice, the financial penalty is—

- (a) in relation to England and Wales, to be treated for the purposes of section 98 of the Courts Act 2003⁽⁴⁾ as if it were a judgment entered in the High Court, and
- (b) in relation to Northern Ireland, to be treated for the purposes of Article 116 of the Judgments Enforcement (Northern Ireland) Order 1981⁽⁵⁾ as if it were a judgment in respect of which an application has been accepted under Article 22 or 23(1) of that Order.

PART 5

Northern Ireland Dispositions

Amendment of the Land Registration Act (Northern Ireland) 1970

10.—(1) Schedule 8A to the Land Registration Act (Northern Ireland) 1970⁽⁶⁾ is amended as follows.

(2) After paragraph 4 (Registrable dispositions by overseas entity entitled to be registered (but not registered)), insert—

“4A. Consent to registration of dispositions that cannot otherwise be registered

(1) The Secretary of State may consent to the registration of a disposition that would otherwise be prohibited by an inhibition entered under paragraph 3, or by paragraph 4, if satisfied—

- (a) that at the time of the disposition the person to whom it was made did not know, and could not reasonably have been expected to know, of the prohibition, and
- (b) that in all the circumstances it would be unjust for the disposition not to be registered.

(2) The Secretary of State may by regulations make provision in connection with applications for consent, and the giving of consent, under sub-paragraph (1).

(3) The regulations may, for example, make provision about—

- (a) who may apply;
- (b) evidence;
- (c) time limits.

(4) Regulations made under sub-paragraph (2) are to be made by statutory instrument within the meaning given by section 1 of the Statutory Instruments Act 1946⁽⁷⁾ subject to annulment in pursuance of a resolution of either House of Parliament.”

(3) In paragraph 3(5) —

- (a) omit “or” at the end of paragraph (d), and
- (b) after paragraph (d) insert—

“(da) the Secretary of State gives consent under paragraph 4A to the registration of the disposition, or”.

(4) In paragraph 4(3) —

- (a) omit “or” at the end of paragraph (d), and
- (b) after paragraph (d) insert—

(4) 2003 c. 39.
(5) S.I. 1981/226 (N.I. 6).
(6) 1970 c. 18.
(7) 1946 c. 36

“(da) the Secretary of State gives consent under paragraph 4A to the registration of the disposition, or”.

(5) In paragraph 5(1), after “An overseas entity must not make a registrable disposition of a qualifying estate if” insert “, disregarding the possibility of consent under paragraph 4A,”.

	<i>Name</i>
	Title
Date	Department for Business and Trade

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision relating to the register of overseas entities (“the register”) kept by the registrar of companies for England and Wales (“the registrar”) in accordance with Part 1 of the Economic Crime (Transparency and Enforcement) Act 2022 (c. 10). The provisions relate to financial penalties, appeals, and enforcement.

The Regulations also amend the Land Registration Act (Northern Ireland) 1970, to provide for the registration of otherwise unregistrable dispositions in Northern Ireland.

Part 2 confers power on the registrar to impose a financial penalty on a person if satisfied beyond reasonable doubt that the person has engaged in conduct amounting to an offence under Part 1 of that Act.

Regulations 4 and 5 describe the process by which the registrar may issue warning notices and penalty notices. They also set out when the registrar may issue either type of notice, the required contents and information about relevant time periods. Regulation 6 allows the registrar to vary or revoke the penalty notice as the registrar considers appropriate subject to certain conditions and regulation 7. Regulation 7 provides rules for imposing and calculating penalties under a penalty notice, and states that amounts recovered by the registrar under these Regulations are to be paid into the Consolidated Fund.

Part 3 makes provision for the route of appeal against a financial penalty imposed under regulations 5 or 6(3) and sets out the substantive grounds of appeal, procedural rules, and the court’s powers in relation to the appeal.

Part 4 makes provision for the enforcement of the financial penalties imposed.

Regulation 9 allows the registrar to recover the financial penalty (with any accrued interest) after the expiry of the period stated in the penalty notice, if no appeal has been brought, or, if an appeal has been determined or withdrawn. It also describes how the financial penalty is treated for recovery purposes in England and Wales, Northern Ireland, and Scotland.

Part 5 amends Schedule 8A to the Land Registration Act (Northern Ireland) 1970⁽⁸⁾. Schedule 8A was inserted by Schedule 5 to the Economic Crime (Transparency and Enforcement) Act 2022⁽⁹⁾ and makes provision about the ownership of registered land by overseas entities and the registrable dispositions they make.

Regulation 10(2) inserts new paragraph 4A into Schedule 8A to the Land Registration Act (Northern Ireland) 1970.

Sub-paragraph (1) of new paragraph 4A provides that 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 an inhibition entered under paragraph 3 or by paragraph 4 of Schedule 8A. The Secretary of State must be satisfied that, at the time of the disposition, the person to whom it was made did not know, and could not reasonably have been expected to know, 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.

Sub-paragraph (2) of new paragraph 4A provides that the Secretary of State may make regulations in connection with applications for consent under paragraph 4A(1) and these regulations may, for

⁽⁸⁾ 1970 c. 18.

⁽⁹⁾ 2022 c. 10.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument:
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example, set out who may apply, the evidence required to be produced, and time limits (paragraph 4A(3)). Such regulations are subject to the negative resolution procedure (paragraph 4A(4)).

Paragraphs (3) and (4) of regulation 10 introduce a new exception to the prohibition on registration of certain dispositions under paragraphs 3 and 4 of Schedule 8A, where the Secretary of State gives consent to registration of the disposition under new paragraph 4A.

Regulation 10(5) amends paragraph 5(1) of Schedule 8A to make clear that the possibility of obtaining consent under paragraph 4A is to be disregarded in determining whether an overseas entity breaches the prohibition on making a registrable disposition of a qualifying estate which cannot be registered under paragraphs 3 or 4 of Schedule 8A.