

EXPLANATORY MEMORANDUM TO
THE LAND REGISTRATION (AMENDMENT) RULES 2022

2022 No. 730

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 To implement aspects of the new Register of Overseas Entities (“the Register”) (please see section 6 for more context). This instrument makes amendments to the Land Registration Rules 2003 (S.I. 2003/1417) (“the 2003 Rules”) which are necessary to implement the new requirements for overseas entities to apply for registration, or where an application includes some types of disposition made by an overseas entity.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is England and Wales.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 The Register will be created by the Economic Crime (Transparency and Enforcement) Act 2022 (“the ECTEA”), which was expedited through Parliament in response to the Russian invasion of Ukraine. The Register will require overseas entities owning or buying property in the United Kingdom to provide information to the registrar of companies, including about their “beneficial owners”. The ECTEA contains various powers to make secondary legislation allowing the Secretary of State to prescribe further technical details of the requirements and operation of the Register. These rules are part of essential statutory instruments to implement the Register and the ECTEA regime.
- 6.2 The Chief Land Registrar is under a duty to keep a register of the ownership of land in England and Wales. More particularly, the registrar keeps a register of title to legal

estates in land (for example, freeholds and leases having more than seven years to run) and several other types of estate.

- 6.3 A registered owner of land or of a charge (for example, a mortgage) has certain powers of disposition under the Land Registration Act 2002 (“the LRA”). For example, in the case of an owner of land, those powers include the power to transfer the land, to charge it, to grant a lease out of it or to grant a right of way over it. Certain dispositions, such as a transfer or charge, must be completed by registration. They do not take effect in law until this has been done.
- 6.4 The 2003 Rules make detailed provision for keeping the register and for making applications to change the register or create new entries in it. This includes specifying forms for making applications and certain types of disposition (for example, transfers, leases and charges).
- 6.5 Schedule 3 to the ECTEA introduces a new Schedule 4A to the LRA which sets out requirements for applications made to the registrar to register (a) an overseas entity as proprietor of land and (b) certain types of dispositions made by overseas entities. The requirements are that either the overseas entity is registered in the Register or an exemption or exception applies.

7. Policy background

What is being done and why?

- 7.1 In 2016 the UK implemented a register of beneficial ownership of UK companies, called the ‘people with significant control’ (PSC) register. The UK became one of the first countries to introduce a central, publicly accessible register requiring all companies incorporated in the UK to give information to Companies House about who held significant control of the company.
- 7.2 In 2016 the UK committed to collecting and making publicly accessible the beneficial ownership information of overseas entities owning or buying property in the UK, which would level the playing field with UK companies.
- 7.3 The UK is an open economy and one of the major destinations for foreign direct investment. The overwhelming majority of companies that invest in the UK do so productively and within the law. However, there is concern around illegal activity taking place through overseas companies investing in UK property. The concerns focus in particular on the potential for criminals to use offshore corporate vehicles to obscure their identity when hiding illicit funds or laundering criminal proceeds through investments in UK property.
- 7.4 The Register will enhance transparency around the owners and controllers of overseas entities that own or buy UK property. The Register is designed to:
 - deter and disrupt crime, by making it more difficult to use corporate vehicles in the pursuit of crime;
 - deter criminals from money laundering in the UK;
 - preserve the integrity of the financial system;
 - increase the efficiency of law enforcement investigations, particularly in relation to identifying and tracing the proceeds of crime; and
 - require the same transparency of overseas entities holding land as required from UK companies.

7.5 Further information can be found in the Explanatory Notes and Impact Assessment for the Act: <https://bills.parliament.uk/bills/3120/publications>.

7.6 This statutory instrument is one of several instruments to implement the Register, by:

- amending some of HM Land Registry’s prescribed forms (for applications and disposition) contained in Schedule 1 to the 2003 Rules and to the required wording to the prescribed clauses lease in Schedule 1A to the 2003 Rules; and
- permitting existing forms to be used for a period of fifteen months from the commencement of the Rules, provided the overseas entity ID or confirmation that none is required is included with the application.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

9.1 The Law Commission reviewed the Land Registration Act 2002 in its Twelfth Programme of Work. If the recommendations are implemented, there will need to be a full review of the 2003 Rules. In the meantime, an informal consolidated text is available to the public free on HM Land Registry’s website - <https://www.gov.uk/government/publications/land-registration-rules-2003> - and the text will take account of these Rules.

10. Consultation outcome

10.1 Extensive consultation was carried out prior to the ECTEA receiving Royal Assent. A Call for Evidence was undertaken in 2017 and consultation carried out in 2018, alongside the publication of a draft Registration of Overseas Entities Bill (“the Bill”). Stakeholder responses to both showed strong support for the proposals. Stakeholder suggestions were taken into account during the drafting of the Bill, and afterwards following publication of the draft Bill. The draft Bill underwent pre-legislative scrutiny by an ad-hoc Joint-Committee in 2019 and many of the Committee’s recommendations were added to the Bill.

10.2 To meet the expedited timetable for the ECTEA and laying of regulations, informal consultation has been carried out with delivery partners Companies House, HMRC and the three UK land registries, as well as wider stakeholders, on the measures in this Statutory Instrument. A draft of the Statutory Instrument has been considered by HM Land Registry and (as required by the LRA) the Land Registration Rule Committee, which includes members of the conveyancing and property sector and a person appointed for their experience in consumer affairs.

11. Guidance

11.1 Guidance will be made available for overseas entities, professional service providers and any interested parties. The guidance will explain who is required to register, how and when they should register, information to be provided and how to update the information on the Register. Overseas entities who already own property since certain dates will have a six-month transitional period to comply with the requirements of the Register.

- 11.2 Communications plans to raise awareness about the Register of Overseas Entities, include highlighting the new requirement to overseas entities via British embassies. This will target overseas entities who may be required to register, as well as professional organisations who work on property transactions and advise overseas entities.
- 11.3 HM Land Registry will be issuing separate practice guidance which will explain the land registration requirements to register an overseas entity as proprietor of an estate in land or for an application that includes some types of disposition made by an overseas entity.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A full Impact Assessment has not been prepared for this instrument. The Impact Assessment published alongside the primary legislation quantified the impacts and had a net annual direct cost to business below the de minimis threshold of £5 million. The net annual direct cost to business did not change significantly during the Bill's passage or the development of secondary legislation such that the measure remains below the de minimis threshold.

13. Regulating small business

- 13.1 The legislation does apply to activities that are undertaken by small overseas businesses, but no specific action is proposed to minimise the regulatory burdens on them.

14. Monitoring & review

- 14.1 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 the Lords Parliamentary Under Secretary of State, Minister for Business, Energy, and Corporate Responsibility has made the following statement: A statutory review clause is not included in the instrument since the additional requirements are not extensive and are considered to meet the Government's 'de minimis' regulatory impact criteria, meaning no impact assessment is required (in particular, because the impacts are below £5m, do not impact on small business and create no open-ended new powers in legislation).

15. Contact

- 15.1 Trevor Smith at the Department for Business, Energy and Industrial Strategy Telephone: 07917955883 or email: trevor.smith@beis.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Matthew Ray, Deputy Director for Company Law & Transparency at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Lords Parliamentary Under Secretary of State, Minister for Business, Energy, and Corporate Responsibility at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.