



20 June 2017

Be transparent: who owns this?

The Government plans to create a register of beneficial ownership information for overseas entities that own or buy UK property or participate in UK central government procurement. The register is intended to help prevent UK property being used in money-laundering schemes and other criminal activities.

In April 2017 the Government issued a [call for evidence](#) about how such a register might work, which closed on 15 May. It is currently considering the responses received. This article discusses the Government's proposals and the property industry's reactions to them.

BACKGROUND

In the Housing White Paper published in February 2017 the Government pledged to "*clarify what land is available for new housing, through greater transparency over who owns land and the options held on it*". This echoes the Government commitment made at the International Anti-Corruption Summit in London in May 2016 to create a register of ownership of overseas companies that own property in the UK, or enter into contracts with the UK Government. The UK has previously taken various steps in this direction:

- HM Land Registry compiles an [Overseas Companies dataset](#) containing title records of freehold and leasehold property in England and Wales registered to foreign-owned companies since 1999 excluding titles registered by private individuals; UK companies with an overseas address; and charities. The records created prior to October 2015 are free to view, whereas those created since that date are only available by purchasing a monthly download package.
- Since April 2016, unlisted UK companies have been required to publicly disclose details of individuals who have significant interests in their shares in a register called the "[PSC Register](#)".
- The Government carried out an earlier consultation around this topic and in March 2016 published a report called "[Enhancing Transparency of beneficial ownership information of foreign companies undertaking certain economic activities in the UK](#)".

DESIGN OF THE PROPOSED REGISTER

The consultation considers various details of the proposed register including, in relation to property ownership, the following aspects:

- **When will the proposed new regime apply?**

The Government does not want to create a disproportionate burden or deter legitimate investors. The current proposal is that the new regime will:

- Apply to all legal entities that can hold properties and to ownership of freeholds and leases granted for more than 21 years, as the aim is to capture only those leaseholds that are analogous to freeholds.
- Mirror the concept of beneficial ownership contained in the PSC regime, ie direct or indirect holding of more than 25% of the shares or voting rights in the entity; direct or indirect holding of the power to appoint or remove a majority of the board of directors of the entity; and/or having the right to exercise or actually exercising significant influence or control over the entity.

- **What will the register look like?**

The Government suggests that the new register should be hosted by Companies House and that the information on it should be freely accessible to the public. It proposes that the new register require the same information about beneficial owners as is required of people with significant control. That includes the individual's name; date of birth (this may not be wholly publicly accessible); nationality; place where they usually reside; address for service; usual residential address (again, this is unlikely to be publicly accessible); the nature of their control over the company; the date on which that person became a person with significant control over the company; and whether or not there are any restrictions in place on using or disclosing any of the individual's details.

- **How will the regime be enforced?**

On sale, letting or charge – it is proposed that overseas entities that already own UK property be given a transitional year in which to decide whether to disclose the required information or dispose of their property. At the end of this year a restriction would then be placed on their title at HM Land Registry to prohibit them from selling, leasing or mortgaging their property unless they are fully compliant with the new requirements. Any unregistered land currently owned by an overseas entity would not be subject to any such restriction.

On purchase – under the proposed system, overseas entities wishing to buy property would have to register their beneficial ownership information with Companies House. They would then be issued with a registration number which they would have to submit to HM Land Registry with their application for the registration of their purchase. If not, the application would be cancelled and the legal ownership of the property would not pass to them.

Ongoing compliance - Some entities may have no plans to deal with their property so the Government is considering making it a criminal offence to fail to provide information to the new register or to keep it up to date.

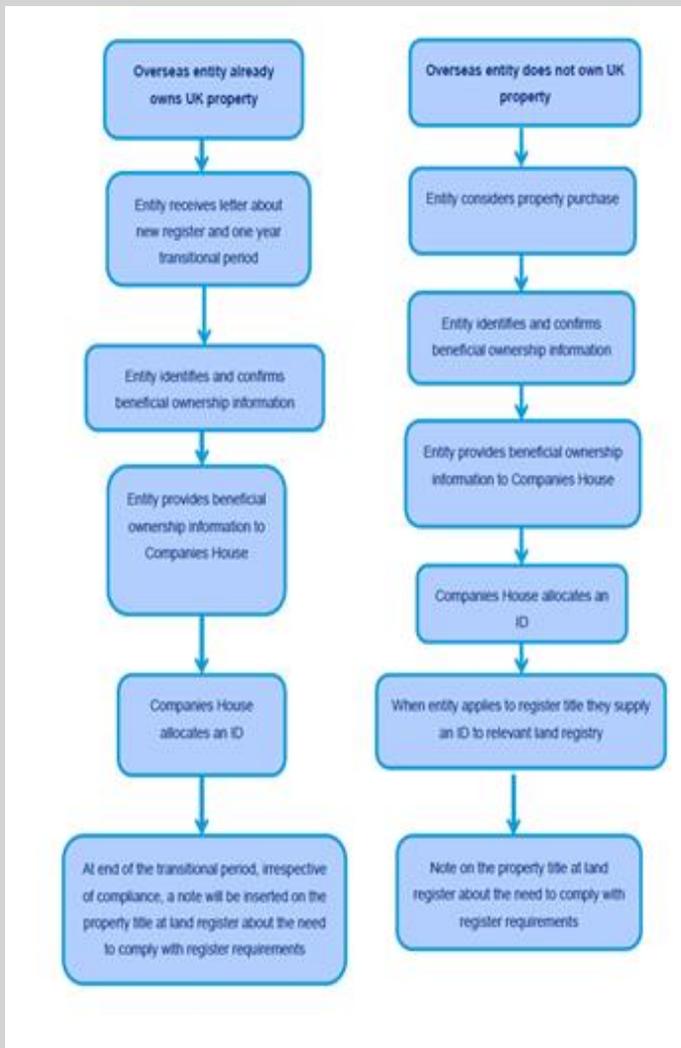


Views from the real estate industry

The proposals have been generally well received subject to several suggestions for improvement, including:

- These requirements should be brought within the existing PSC regime instead of creating a new one.
- Would the rules apply to offshore unit property trusts?
- The regime should only apply to leases if they are for more than 21 years and granted for a premium.
- The regime should not apply to overseas entities that already own land, due in part to the practical difficulty of identifying those owners and notifying them of the new rules.
- The transitional arrangements should be longer than one year and should provide for third party transactions that were already in place before the regime takes effect, eg conditional sale contracts, options, agreements for lease, off-plan sales, and renewal rights in leases.
- The provision of a registration number by Companies House should be a same-day service so as not to slow down transactions.
- Provisions to safeguard lenders' rights need to be considered further, and should also apply to insolvency practitioners.

How will the proposals affect overseas companies that own or buy real estate in the UK?



Source: Government's Call for Evidence, April 2017

• How would companies' private information be safeguarded?

The PSC regime contains protective measures which allows a company or individual to apply to have information about an individual with significant control suppressed if the individual is at risk of violence or intimidation as a result of that information being made public. The Government suggests that the new regime could adopt these safeguards. It is also considering extending this to allow individuals to apply for their information to be withheld if they are or could be at risk of violence or intimidation; if publicly linking the property or entity to the individual will lead to an elevated public safety risk; or in order to protect minors or people with diminished capacity.

• How will third parties who are contractually involved with non-compliant overseas entities be protected?

The Government wants to ensure that where an entity is not compliant with the register requirements and has defaulted on an existing loan secured on that property, the lender can still enforce its security by repossessing and disposing of the property. It has asked for suggestions as to how this right can be protected for bone fide lenders but not abused by non-compliant owners wishing to dispose of their property interests.

CONCLUSION

The real estate industry is generally supportive of these proposals, not least because they impose the same rules on overseas investors as are already in place for UK investors. Some of the details need to be fine-tuned but ultimately the register is likely to improve the reputation and efficiency of the UK real estate market.

FOR FURTHER INFORMATION, PLEASE CONTACT

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