

Joint committee publishes its report on the draft Registration of Overseas Entities Bill

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Recently the House of Lords and House of Commons Joint Committee on the draft Registration of Overseas Entities Bill (Bill) published its report on the draft Bill following pre-legislative scrutiny. The draft Bill sets out provisions to put in place a new beneficial ownership register of overseas entities that own or purchase UK real estate – with the aim of ensuring transparency surrounding the ownership of UK land – and would be the first of its kind in the world.

Generally the report welcomes the Bill – calling it "timely, worthwhile, and, in large part, well drafted" - but it does set out some areas of concern as well as making recommendations, including the following:

- Giving serious consideration to whether the 25% ownership and voting thresholds in the Bill's definition of a registrable beneficial owner should be decreased – to stop people circumventing the regime by exploiting the thresholds. The report notes that the same could be said for the UK's existing PSC regime and discusses whether lowering the 25% thresholds should be considered for this regime too. If implemented, this would involve all entities currently required to comply with the PSC regime having to revisit their PSC analysis – for those with complex ownership structures this could prove to be a detailed exercise.
- As trusts are not technically 'entities' they are not caught by the Bill. Consequently, there are concerns that trusts will be used to get around compliance with the Bill's requirements. Through the UK's implementation of the EU Fifth Money Laundering Directive (EU 2018/843) the government plans to ensure that trusts are subject to transparency requirements – and therefore the suggestion is that these measures are brought in at the same time as the Bill.
- The report recommends that the government should make clear in the legislation precisely which entities can be exempt from publishing their information (or disclosing it all), for example by expressly clarifying that individuals are outside of its scope and introducing a prior clearance mechanism for confirming in advance of transactions whether legal entities are registrable. It also suggests the government should annually publish a statement setting out the number of times the exemptions are used.
- It is acknowledged that some overseas entities will need to register their beneficial ownership information quickly – for example, if they are special purpose vehicles or property holding companies which have only been incorporated a few days before a transaction – and that the government should provide Companies House with adequate resources to meet this challenge. This is a welcome addition to the report - giving greater confidence that these types of transaction will still be able to progress smoothly if and when the Bill is implemented.
- Sellers of property should update their ownership information annually – and also before any dispositions take place. Any third party dealing with the overseas entity on a transaction would need to check this has been complied with – but the report notes that this should not be too onerous given the large quantity of information that is routinely collated on a legitimate transaction. However, the requirement to update the register before every transaction could be onerous for some overseas entities – those owning property such as industrial estates, business parks or shopping centres could find themselves having to update the register on a fairly regular basis when units are let (if a 'disposition' captures the grant of leases typically granted in these circumstances (as currently appears to be proposed)).

- The report states that the current proposals lack verification checks to deter people from submitting false information - and suggests (amongst other things) using functionality similar to the recently introduced 'report it now' button available on the Companies House website.
- The report urges the government to publish a 'mock up' of the proposed layout of the register as soon as possible – this will help potential users (particularly those working in the conveyancing profession) to be fully prepared for implementation.
- The report notes that enforcing the Bill's requirements might be difficult – and without adequate enforcement measures it may not be an effective deterrent. It suggests that civil penalties (rather than criminal sanctions) would be easier to enforce overseas – but that any civil penalties could be backed up by criminal sanctions for non-payment.

The report makes it clear that even with some tweaks the Bill will still only "be one tool in the 'tool box' of measures designed to combat money laundering." The aim is for the register to be operational in 2021 and the report urges government to continue to consult with the public as it implements the legislation and to communicate clearly to individuals and entities about how they might be impacted. As we await the government's formal response to the report, at this stage everything points towards enhanced obligations being put in place for overseas entities.

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