EXPLANATORY MEMORANDUM TO

THE REGISTER OF OVERSEAS ENTITIES (DISCLOSURE AND DISPOSITIONS) REGULATIONS 2023

2023 No. 344

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Business and Trade and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 To implement aspects of the Register of Overseas Entities ("the Register") (please see section 6 for more context). This instrument will:

- Specify who may apply under the Land Registration Act 2002 to register an otherwise prohibited disposition in England in Wales and under what circumstances, and
- Specify to whom the registrar of companies may disclose certain protected information and under what circumstances.

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 extent of this instrument is, in relation to disclosure, the whole of the United Kingdom.

4.2 The territorial application of this instrument is, in relation to registering dispositions, England and Wales.

5. European Convention on Human Rights

5.1 The Parliamentary Under Secretary of State for Enterprise, Markets and Small Business has made the following statement regarding Human Rights:

"In my view the provisions of The Register of Overseas Entities (Disclosure and Dispositions) Regulations 2023 are compatible with the Convention rights."

6. Legislative Context

6.1 These regulations are laid before Parliament under sections 23 and 24 of the Economic Crime (Transparency and Enforcement) Act 2022 (The Act) and paragraph 5(2) of Schedule 4A to the Land Registration Act 2002 (as inserted by paragraph 3 of Schedule 3 to the Act).

6.2 The Register was created by the Act, which was expedited through Parliament in response to the Russian invasion of Ukraine. The Act requires overseas entities owning or buying property in the United Kingdom to provide information to the registrar of companies, including about their "beneficial owners". The Act contains

various regulation-making powers which allow the Secretary of State to prescribe further technical details of the requirements and operation of the Register. These regulations are part of a series of essential regulations to be made under the Act to implement the Register.

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 holds significant control of a 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 entities investing in UK property. In particular, the concerns focus on the potential for criminals to use overseas entities to obscure their identity when hiding illicit funds or laundering criminal proceeds through investments in UK property.

7.4 The Register enhances 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 The Register will also protect the information of those at serious risk and avoid creating disproportionate burdens or putting off legitimate investors.

7.6 Further information can be found in the Explanatory Notes and Impact Assessment for the Act: https://www.legislation.gov.uk/ukpga/2022/10.

7.7 This instrument is one of several regulations to improve the effectiveness of the Register post-implementation by specifying within the Act:

7.8 Conditions under which an otherwise prohibited disposition may be registered in England and Wales: If an overseas entity is non-compliant under the Act, it will be restricted in how it may deal with its land. Among other things, this restriction prohibits the registration of the sale, transfer, lease or charge of this land with the relevant Land Registry, effectively 'freezing out' the land from any further transactions until the overseas entity complies under the Act. However, it is possible

that a third-party may yet transact in good faith with a non-compliant overseas entity, leaving them through no fault of their own with an unregistrable land title. To mitigate this, these regulations allow the Secretary of State to consent to the registration of an otherwise prohibited land transaction. These regulations will prescribe the information an applicant must provide in their application for consent and the circumstances under which they may apply. These regulations apply only in England and Wales; separate regulations are being made to allow the registration of an otherwise prohibited land transaction within Scotland and Northern Ireland.

7.9 Conditions under which certain protected information may be disclosed: Under the Act, an overseas entities in scope of the Act must provide certain information about the entity and its beneficial owners. The majority of this information is then displayed publicly on the Register, but certain information is automatically inaccessible to the public; the information is "protected". For example, the day of a date of birth, and usual residential addresses are not publicly available. However, the Act provides that this protected information may be disclosed to certain public authorities under certain circumstances. These regulations specify which public authorities and which circumstances. The Act is one of the Government's measures to reduce money laundering and abuse of corporate structures, and one of the purposes of the Act is to aid law enforcement and other public authorities in combatting economic crime. To help achieve this, it is therefore necessary for certain public authorities to be able to access information that may be inappropriate to display publicly. This will aid them in their investigations and contribute to whole-system efforts to reduce the risk of illicit money being laundered via UK property.

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 This Statutory Instrument does not amend another Statutory Instrument, so consolidation is not relevant.

10. Consultation outcome

10.1 Extensive consultation was carried out prior to the Act 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 Act 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. Stakeholders were broadly supportive of the measures.

11. Guidance

11.1 General guidance for the Register is currently available for overseas entities, professional service providers and any interested parties. The guidance explains who is required to register, how and when they should register, information to be provided and how to update the information on the register.

11.2 The guidance can be found here: https://www.gov.uk/government/publications/register-of-overseas-entities-guidance-on-registration-and-verification.

11.3 The extant guidance will be updated to ensure that overseas entities are aware of any changes and are able to adapt to them.

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 because 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 applies 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 Parliamentary Under Secretary of State for Enterprise, Markets and Small Business 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 Jacqueline Griffiths at the Department for Business and Trade Telephone: 0207 215 3337 or email: jacqueline.griffiths@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 and Trade can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Parliamentary Under Secretary of State for Enterprise, Markets and Small Business at the Department for Business and Trade can confirm that this Explanatory Memorandum meets the required standard.