EXPLANATORY MEMORANDUM TO

THE REGISTER OF OVERSEAS ENTITIES (VERIFICATION AND PROVISION OF INFORMATION) (AMENDMENT) REGULATIONS 2022

2022 No. 1389

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 His 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 Register of Overseas Entities (please see section 6 for more context). This instrument will amend certain requirements regarding the verification of information.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument replaces the term “close business relations” in regulation 7(4)(a) of Register of Overseas Entities (Verification and Provision of Information) Regulations 2022 (S.I. 2022/725), which was reported in the Eleventh Report of Session 2022–23 for doubt as to whether it is intra vires.

4. Extent and Territorial Application

4.1 The extent of this instrument is the whole of the United Kingdom.

4.2 The territorial application of this instrument is the whole of the United Kingdom.

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 These regulations are laid before Parliament under sections 16 and 67(2) of the Economic Crime (Transparency and Enforcement) Act 2022 ("the Act”).

6.2 The Register of Overseas Entities (the Register) was created by the Act, which was expedited through Parliament in response to the Russian invasion of Ukraine. The Register 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 one of a series of essential regulations to be made under the Act and other statutory legislation such as the Companies Act 2006, 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 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.

Explanations

What did any law do before the changes to be made by this instrument?

7.6 Regulation 5 of the Register of Overseas Entities (Verification and Provision of Information) Regulations 2022 (2022/725) sets out the "relevant information" that must be verified before an overseas entity can apply for registration, file its update, or apply for removal.

7.7 Regulation 6(6)(b) of the Register of Overseas Entities (Verification and Provision of Information) Regulations 2022 (2022/725) sets out that "verify" means verify on the basis of documents or information in either case obtained from a reliable source which is independent of the person whose identity is being verified, and "verified" and "verification" are to be interpreted accordingly.

Why is it being changed?

7.8 This Statutory Instrument addresses practical difficulties identified after commencement of the Register by amending certain provisions relating to the

verification of information in The Register of Overseas Entities (Verification and Provision of Information) Regulations 2022 (2022/725).

What will it now do?

7.9 Regulation 2(2) excludes certain information from being verified: where this relates to a government or public authority, the beneficiaries of certain pension trusts, and relating to updating and applications for removal where the information has already been verified.

7.10 Regulation 2(3) and (4) allow a relevant person to verify information relating to beneficial ownership differently from other information.

7.11 Regulation 2(5) replaces "close business relations" with a more precise phrase.

7.12 Regulation 2(6) expands the scope of the information which must be retained by a relevant person.

8. European Union Withdrawal and Future Relationship

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

9. Consolidation

9.1 This Statutory Instrument amends another Statutory Instrument, so consolidation is needed.

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.

10.2 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. The Committee raised concerns about the lack of a mechanism for information submitted to Companies House to be verified, so this was added to the draft Bill.

10.3 Informal consultation has been carried out with Companies House, as well as wider stakeholders, on the measures in this Statutory Instrument. A draft of the Statutory Instrument was shared with the Law Society of England and Wales, the Law Society of Scotland and the City of London Law Society.

11. Guidance

11.1 Guidance is publicly available and can be freely accessed by overseas entities, professional service providers and any interested parties, and will be updated relating to the provisions in this Statutory Instrument. The guidance explains who is required to register, how and when they should register, the information to be provided and verified and how to update the information on the Register. Overseas entities who own property after certain dates have a six-month transitional period to comply with the requirements of the Register.

11.2 Ongoing communication to raise awareness of the Register of Overseas Entities, include highlighting the new requirement to overseas entities via British overseas embassies. This targets overseas entities who may be required to register, as well as professional organisations who work on property transactions and advise overseas entities.

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 Eoin Parker, Director of Business Frameworks 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.