

New UK Economic Crime and Transparency Laws Take Effect

Skadden

04 / 26 / 22

If you have any questions regarding the matters discussed in this memorandum, please contact the following attorneys or call your regular Skadden contact.

James Anderson

Partner / London
44.20.7519.7060
james.anderson@skadden.com

Greg Norman

Partner / London
44.20.7519.7192
greg.p.norman@skadden.com

Elizabeth Robertson

Partner / London
44.20.7519.7115
elizabeth.robertson@skadden.com

Jason Williamson

Associate / London
44.20.7519.7093
jason.williamson@skadden.com

This memorandum is provided by Skadden, Arps, Slate, Meagher & Flom LLP and its affiliates for educational and informational purposes only and is not intended and should not be construed as legal advice. This memorandum is considered advertising under applicable state laws.

One Manhattan West
New York, NY 10001
212.735.3000

40 Bank St., Canary Wharf
London, E14 5DS, UK
44.20.7519.7000

The Economic Crime (Transparency and Enforcement) Act 2022 (the Act) took effect in the UK on 15 March 2022. The Act was expedited through the UK Parliament following Russia's invasion of Ukraine, but it has been on the agenda of successive Conservative governments since at least 2016, when then-Prime Minister David Cameron signalled that foreign companies holding UK property would be required to disclose information related to their beneficial ownership as part of the UK government's anti-corruption regime.

The objective of the Act is to make it easier to identify and trace illicit wealth in money laundering and economic crimes. The Act implements three key changes:

1. The UK company registry, Companies House, will be required to operate a "Register of Overseas Entities" that will include beneficial ownership information for foreign entities that are registered proprietors (*i.e.*, appear as such on the title register of the property) of certain interests in land in the UK.¹
2. The Unexplained Wealth Order (UWO) regime, first implemented by the Criminal Finances Act 2017, will be expanded to provide intelligence and enforcement agencies with additional avenues to obtaining information about property ownership.
3. The UK sanctions regime will be amended to make it easier for the Office of Financial Sanctions Implementation to impose monetary penalties for breaches of sanctions regulations.

While the Act applies across the UK, certain provisions are applied differently between England and Wales, Scotland and Northern Ireland.

Register of Overseas Entities

The Act introduces a new public "Register of Overseas Entities" that will require an "overseas entity," or non-UK entity, with a "relevant interest" in UK land to identify "registrable beneficial owners" and register with Companies House. Perhaps most significantly, the Act applies retrospectively, meaning that land acquired in England and Wales by foreign entities since 1 January 1999 and in Scotland since 8 December 2014 will be caught by the registration requirements. While it is unusual for an Act to have such extensive retrospective effect, the primary goal of the new requirements is to promote greater transparency and to deter individuals and businesses outside of the UK from using UK property to launder funds.

An "overseas entity" includes any body, corporate, partnership or other entity that is governed by the law of a country other than the UK (including, for example, Jersey and Guernsey). The foreign entity will have a "relevant interest in land" if it is the registered proprietor of a "qualifying estate" (*i.e.*, a freehold title or leasehold title of longer than seven years in England and Wales²). The UK Land Registry will be prevented from registering a foreign entity as a proprietor of a qualifying estate unless, at the time of the application, the entity is registered with Companies House or is exempt from the requirements of the Act.

The Act does not affect overseas persons owning UK land through a UK-incorporated company. Such UK companies have been required to disclose their beneficial owners to Companies House since 2016 under the "People With Significant Control" (PSC) register. The Act intends to put overseas entities that **are** the registered proprietors of UK land on a similar footing in terms of the disclosure requirements related to beneficial ownership under

¹ Overseas entities intending to purchase UK land and therefore become a registered proprietor will also need to register for the transaction to be properly registered by the UK Land Registry.

² With respect to Scotland, the Act applies to foreign entities that own property or hold leases of more than 20 years. In Northern Ireland, the registration requirement applies only prospectively.

New UK Economic Crime and Transparency Laws Take Effect

English law. It should also be noted that, during the parliamentary debate concerning the Act, the legislation was described as an iterative process, and it is possible the scope of the Act will be extended.

In relation to the requirement that overseas entities caught by the Act disclose beneficial ownership information to Companies House, a beneficial owner includes a person:

- holding, directly or indirectly, more than 25% of the shares in the foreign entity;
- holding, directly or indirectly, more than 25% of the voting rights in the foreign entity;
- holding the right, directly or indirectly, to appoint or remove a majority of the board of directors of the foreign entity; and
- who exercises, or has the right to exercise, significant influence over the foreign entity.

This is similar to the approach to beneficial ownership the UK government has taken with respect to the PSC register. Schedule 2 of the Act expands on the thresholds applied to the definition of beneficial owner and reserves the power for the secretary of state to alter or replace the thresholds. Trusts are not included within the definition of an overseas entity, but it is possible that a trust could be caught by the Act in circumstances where an overseas entity is used by a trust to hold a “qualifying estate” in the UK. For example, a trustee could also be caught where he or she is the beneficial owner of a freehold title and any of the conditions above are met, which would require the overseas entity to provide information about the trust to Companies House.

A foreign entity that is the registered proprietor of a “qualifying estate” must provide information in relation to its beneficial owners (as defined by Schedule 2 of the Act) to Companies House as part of the registration process. The Act specifies the information that must be provided by the overseas entity (*e.g.*, name, incorporation information, registered office, service address) and relating to registrable beneficial owners (*e.g.*, name, date of birth, nationality, residential address, service address, the date on which the individual became a beneficial owner, etc). All supporting documents provided as part of the application process must be in English.

The Land Registry will include a restriction on the title register for land within the scope of the Act that prevents the registration of any disposition unless it can be shown that the foreign entity holding the land has complied with the Act or is exempt. If land caught by the Act is disposed of after 28 February 2022 and before the foreign entity owning the land has made a registration application, the foreign entity will be required to include information related to the disposition when submitting its registration application (*e.g.*, the date of the disposition).

The secretary of state may exempt a person from the registration requirements under the Act by providing written notice. However, the exceptions are limited and are unlikely to assist many foreign entities and beneficial owners. The secretary of state may only grant an exemption in the interest of national security, or for the purpose of preventing or detecting serious crime.

The UK government had originally intended to implement a transition period allowing foreign entities 18 months to comply with the Act’s new registration requirements. Following opposition within Parliament, the transition period has been reduced to six months, but it has not yet come into force; the Act provides that the clock on the six-month transition period will start running from a date to be confirmed by the secretary of state in subsequent regulations. At the time of writing, it is not clear when this will take effect, but given the current momentum behind measures targeting property owned by Russian individuals and entities connected to the Putin regime, it could be implemented in short order.

The Act imposes penalties where a person (*e.g.*, an entity, its officers) fails to comply with the registration requirements, or provides false or misleading information to Companies House. This could include monetary penalties and/or imprisonment for up to five years for the most serious offences (*e.g.*, making prohibited dispositions of UK land within the scope of the Act). If a foreign entity fails to register within the six-month transition period, it may be subject to a fine, and its officers could be fined and/or imprisoned for up to two years. Foreign entities that fail to submit the required details may also face restrictions on selling, purchasing or mortgaging UK land. The Act also requires the register to be updated annually, and the failure to do so is a criminal offence.

Unexplained Wealth Orders

As noted above, UWOs were implemented by the Criminal Finances Act 2017, which amended the Proceeds of Crime Act 2002. A UWO is a court order that can require a person to explain their interest in identified property, including how they obtained it.

Previously, a UWO could only be made against two categories of people: politically exposed persons and individuals where there were reasonable grounds to suspect they may be involved in serious crime. When granting a UWO, the court also had to be satisfied that there were “reasonable grounds for suspecting that the known sources of the respondent’s lawfully obtained income would have been insufficient for the purposes of enabling the respondent to obtain the property.” The Act has amended the UWO regime as follows:

- A UWO can now be obtained against a third category of persons, namely “responsible officers” of an entity that owns the property identified in the order. This will apply where a

New UK Economic Crime and Transparency Laws Take Effect

respondent to a UWO is a company rather than an individual. A “responsible officer” includes a director, manager or partner, in or outside the UK.

- The court may also grant a UWO where there are “reasonable grounds for suspecting that the property has been obtained through unlawful conduct.” The intention behind this change may be to encourage UK authorities to exercise UWO powers, despite setbacks in recent years.
- Enforcement agencies that apply for a UWO and are unsuccessful will see potential cost liabilities limited. The enforcement agency will not be required to pay the legal costs incurred by the subject of the unsuccessful UWO application unless the agency acts unreasonably, dishonestly or improperly in conducting the investigation.
- At the same time as applying for a UWO, an enforcement agency may apply for an interim freezing order, which would prohibit the person receiving the UWO from selling property identified in the order. The Act extends the period potentially available to enforcement agencies deciding whether further investigatory or enforcement action is required. Previously, enforcement agencies had up to 60 days to make this determination, but — with the court’s permission — enforcement agencies will now have up to 186 days.

The amendments to the UWO regime introduced by the Act appear to be aimed at addressing criticisms made of the regime and responses to the UK government’s 2021 consultation regarding how the regime may be improved. At the time of writing, only nine UWOs have been granted since they were introduced in 2017, and none since 2019.

UK Sanctions

As noted in our [24 March 2022 client alert](#), the Act amended the UK sanctions regime and, perhaps most significantly, implemented the following changes:

- **Urgent designation procedure:** This allows a person to be designated for sanctions despite the absence of reasonable grounds to suspect that they have been involved in sanctionable conduct. It applies where (i) the person is subject to similar sanctions by the US, EU, Australia, Canada or any other specified country and (ii) it is in the public interest to make such a designation. Urgent procedure designations end after 56 days, unless by then the person is certified as an involved person. The urgent procedure came into force on 15 March 2022 and has already been utilised by the UK to impose further blocking sanctions.

- **Strict liability regime:** This will remove the requirement that a person must have “known, suspected or believed” that they were breaching sanctions prohibitions in order to be subject to a determination that a breach has occurred. This is not yet in force. It appears the expansion of civil liability for sanctions breaches may be modelled on the U.S. approach to sanctions, which has a strict liability regime and strong record in taking enforcement action. The Act does not amend the criminal sanctions framework, and the strict liability regime will apply only to civil penalties.
- **Reporting on sanctions breaches:** The HM Treasury may publish reports where no monetary penalty has been imposed, so long as it is satisfied (on a balance of probabilities) that a person has breached a prohibition. This is not yet in force.

Conclusion

While certain provisions of the Act are yet to come into force (*e.g.*, the registration requirements), they could be implemented in relatively short order. Non-UK entities that are caught by the Act should take steps now to review their UK property portfolios and ensure that they are ready to comply with the registration requirements when they come into force. Companies looking to sell assets to an “overseas entity” will also need to ensure the buyer has complied with the Act, or the transfer may not be capable of registration. Individuals who own their UK real estate through an “overseas entity” to safeguard their privacy will also need to consider the Act’s implications. Lenders should ensure the requirements of the Act are considered when dealing with an “overseas entity” that has purchased, or intends to purchase, a “qualifying estate” in the UK.

In relation to the changes to the UK sanctions regime, companies should also review training and policies to ensure they reflect the new requirements of the Act.

The Act is not the end of the UK government’s reforms with respect to combatting economic crime. The UK government has committed to introducing a second economic crime bill in the upcoming parliamentary session (2022-23). While it is not clear precisely what will be included in the second bill, the home secretary has said it will be a “very substantial piece of legislation.” Notably, the Act does not include the long-awaited “failure to prevent economic crime” offence, so it is possible this may find a home in the second bill. The bill may also include reform of Companies House, powers to seize cryptoassets and additional reforms to the UK’s money laundering regime.