



Department for  
Business, Energy  
& Industrial Strategy

# DRAFT REGISTRATION OF OVERSEAS ENTITIES BILL



# Draft Registration of Overseas Entities Bill

Presented to Parliament  
by the Secretary of State for Business, Energy and Industrial  
Strategy  
by Command of Her Majesty

July 2018



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# Registration of Overseas Entities Bill

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Set up a register of overseas entities and their beneficial owners and require overseas entities who own land to register in certain circumstances.

**B**E IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

*Introduction*

**1 Overview**

This Act—

- (a) sets up a register of overseas entities, which will include information about their beneficial owners (sections 3 to 28), and
- (b) makes provision that, broadly speaking, is designed to compel overseas entities to register if they own land (sections 29 and 30).

**2 Definition of “overseas entity” etc**

- (1) In this Act “overseas entity” means a legal entity that is governed by the law of a country or territory outside the United Kingdom.
- (2) In this Act “legal entity” means a body corporate, partnership or other entity that (in each case) is a legal person under the law by which it is governed.

*The register and registration*

**3 Register of overseas entities**

- (1) The registrar of companies for England and Wales (“the registrar”) must keep a register of overseas entities in accordance with this Act.
- (2) The register is to consist of—
  - (a) a list of registered overseas entities,

- (b) documents delivered to the registrar under this Act or regulations made under it, or otherwise in connection with the register, and
  - (c) any other information required to be included in the register by this Act or regulations made under it.
- (3) The list of registered overseas entities must contain the name of each overseas entity that—
- (a) has made an application for registration in accordance with the requirements of this Act (see section 4), and
  - (b) has not been removed from the list under section 9.

#### 4 Application for registration

- (1) An application by an overseas entity for registration must be delivered to the registrar and contain—
- (a) the statement and information listed in row 1, 2 or 3 of the table,
  - (b) a statement that the entity has complied with section 11 (duty to take steps to identify registrable beneficial owners etc), and
  - (c) the name and contact details of an individual who may be contacted about the application.
- (2) This is the table—

	<i>Statement</i>	<i>Information</i>
1	<p>A statement:</p> <ul style="list-style-type: none"> <li>(a) that the entity has identified one or more registrable beneficial owners and that it has no reasonable cause to believe there are others, and</li> <li>(b) that the entity is able to provide the required information about each registrable beneficial owner it has identified.</li> </ul>	<ul style="list-style-type: none"> <li>1. The required information about the entity.</li> <li>2. The required information about each registrable beneficial owner that the entity has identified.</li> </ul>
2	<p>A statement that the entity has no reasonable cause to believe that it has any registrable beneficial owners.</p>	<ul style="list-style-type: none"> <li>1. The required information about the entity.</li> <li>2. The required information about each managing officer of the entity.</li> </ul>

	<i>Statement</i>	<i>Information</i>
3	<p>A statement:</p> <p>(a) that the entity has reasonable cause to believe that there is at least one registrable beneficial owner that it has not identified,</p> <p>(b) that the entity is not able to provide the required information about one or more of the registrable beneficial owners it has identified, or</p> <p>(c) that paragraphs (a) and (b) both apply.</p>	<p>1. The required information about the entity.</p> <p>2. The required information about each managing officer of the entity.</p> <p>3. The required information about each registrable beneficial owner that the entity has identified or so much of that information as it has been able to obtain.</p>

- (3) For the required information, see Schedule 1.
- (4) For the meaning of “registrable beneficial owner”, see Schedule 2.
- (5) The Secretary of State may by regulations specify additional statements or information that must be included in an application under this section.
- (6) Regulations under subsection (5) are subject to the negative resolution procedure.

## 5 Registration and allocation of overseas entity ID

- (1) On the registration of an overseas entity under this Act, the registrar must—
- record the date of registration in the register,
  - allocate an overseas entity ID to the entity, and
  - record the overseas entity ID in the register.
- (2) Overseas entity IDs are to be in such form, consisting of one or more sequences of figures or letters, as the registrar may determine.
- (3) The registrar may adopt a new form of overseas entity ID and make such changes to existing overseas entity IDs as appear necessary.
- (4) A change of an overseas entity ID has effect from the date on which the overseas entity is notified by the registrar of the change.

## 6 Notice of registration

- (1) On the registration of an overseas entity under this Act, the registrar must notify the overseas entity that it has been registered.
- (2) The notice must state—
- the date of registration, and
  - the overseas entity ID allocated to the entity.
- (3) The notice must also contain information about—
- the updating duty under section 7 and the consequences of failing to comply with it;

- (b) applying under section 9 for removal from the list of registered overseas entities.

### *Updating*

## **7 Updating duty**

- (1) A registered overseas entity must, within the period of 14 days after each update period, deliver to the registrar –
  - (a) the statement and information listed in row 1, 2 or 3 of the table in section 4(2),
  - (b) a statement that the entity has complied with section 11 (duty to take steps to identify registrable beneficial owners etc), and
  - (c) the name and contact details of an individual who may be contacted about the statements and information.
- (2) The statement and information required by subsection (1)(a) must relate to the state of affairs as at the end of the update period.
- (3) The requirement in subsection (1)(a) to provide information may be met (in whole or in part) by confirming information previously provided.
- (4) For the purposes of this section, each of the following is an update period –
  - (a) the period of 12 months beginning with the date of the overseas entity's registration;
  - (b) each period of 12 months beginning with the day after the end of the previous update period.
- (5) But a registered overseas entity may shorten an update period by –
  - (a) delivering the statements and information required by subsection (1) early, and
  - (b) notifying the registrar of the shortened update period.
- (6) The Secretary of State may by regulations amend this section for the purpose of changing the meaning of update period in this section.
- (7) Regulations under this section are subject to the affirmative resolution procedure.

## **8 Failure to comply with updating duty**

- (1) If a registered overseas entity fails to comply with the duty under section 7 an offence is committed by –
  - (a) the entity, and
  - (b) every officer of the entity who is in default.
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction –
  - (a) in England and Wales to a fine and, for continued contravention, a daily default fine not exceeding the greater of £500 and one-tenth of level 4 on the standard scale;
  - (b) in Scotland or Northern Ireland, to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.

- (3) The contravention continues until such time as the registered overseas entity has delivered the statements and information required by section 7(1).
- (4) In the case of continued contravention, an offence is also committed by every officer of the registered overseas entity who did not commit an offence under subsection (1) in relation to the initial contravention but who is in default in relation to the continued contravention.
- (5) A person guilty of an offence under subsection (4) is liable on summary conviction—
  - (a) in England and Wales, to a fine not exceeding the greater of £500 and one-tenth of level 4 on the standard scale for each day on which the contravention continues and the person is in default;
  - (b) in Scotland or Northern Ireland, to a fine not exceeding one-tenth of level 5 on the standard scale for each day on which the contravention continues and the person is in default.

### *Removal*

## **9 Application for removal**

- (1) An application by a registered overseas entity for removal from the list of registered overseas entities must be delivered to the registrar and contain—
  - (a) a statement confirming that the entity is not registered as the proprietor of a relevant interest in land,
  - (b) the statement and information listed in row 1, 2 or 3 of the table in section 4(2),
  - (c) a statement that the entity has complied with section 11 (duty to take steps to identify registrable beneficial owners etc), and
  - (d) the name and contact details of an individual who may be contacted about the application.
- (2) The statement and information required by subsection (1)(b) must relate to the state of affairs as at the time of the application.
- (3) The requirement in subsection (1)(b) to provide information may be met (in whole or in part) by confirming information previously provided.
- (4) On receipt of an application, the registrar must check whether the overseas entity is registered as the proprietor of a relevant interest in land.
- (5) If the overseas entity is not registered as the proprietor of a relevant interest in land, the registrar must remove it from the list of registered overseas entities.
- (6) If the overseas entity is registered as the proprietor of a relevant interest in land, the application is unsuccessful.
- (7) The registrar must send the overseas entity a notice stating—
  - (a) whether the application for removal has been successful, and
  - (b) if it has been successful, the date of removal from the list of registered overseas entities.
- (8) Where an overseas entity is removed from the list of registered overseas entities, the registrar must record the date of removal in the register.

- (9) For the purposes of this section an overseas entity is registered as the proprietor of a relevant interest in land if—
- (a) the entity—
    - (i) is registered in the register of title kept under the Land Registration Act 2002 as the proprietor of a qualifying estate within the meaning of Schedule 4A to that Act, and
    - (ii) became so registered in pursuance of an application made on or after 1 January 1999,
  - (b) the entity—
    - (i) is registered in the Land Register of Scotland as the proprietor or as the tenant under a lease (“lease” and “proprietor” having the meanings given by section 113(1) of the Land Registration etc. (Scotland) Act 2012 (asp 5)), and
    - (ii) became so registered on or after 8 December 2014, or
  - (c) the entity—
    - (i) is registered in the register kept under the Land Registration Act (Northern Ireland) 1970 (c. 18 (N.I.)) as the owner of a qualifying estate within the meaning of Schedule 8A to that Act, and
    - (ii) became so registered on or after the day on which that Schedule came into force.

## 10 Transfer of documents to Public Record Office

Where an overseas entity has been removed from the list of registered overseas entities for at least two years, the registrar may transfer any records relating to that entity to the Public Record Office.

*Obtaining information for applications and updating*

## 11 Identifying registrable beneficial owners

- (1) An overseas entity must comply with this section before—
- (a) making an application under section 4 for registration;
  - (b) complying with the updating duty under section 7;
  - (c) making an application under section 9 for removal.
- (2) The overseas entity must take reasonable steps—
- (a) to identify any registrable beneficial owners in relation to the entity, and
  - (b) if it identifies any, to obtain the information required by Schedule 1 about them (“the required information”).
- (3) The steps that an overseas entity must take include giving an information notice under this section to any person that it knows, or has reasonable cause to believe, is a registrable beneficial owner in relation to the entity.
- (4) An information notice under this section is a notice requiring the person to whom it is given—
- (a) to state whether or not the person is a registrable beneficial owner in relation to the overseas entity, and
  - (b) if the person is a registrable beneficial owner, to confirm or correct any of the required information about the person that is specified in the

notice and to supply any of the required information that the notice states the overseas entity does not already have.

- (5) An information notice under this section must require the person to whom it is given to comply with the notice within the period of one month beginning with the day on which it is given.

## **12 Additional powers to obtain information**

- (1) An overseas entity may give a person an information notice under this section if it knows or has reasonable cause to believe that the person knows the identity of—
  - (a) a person who is a registrable beneficial owner in relation to the overseas entity,
  - (b) any legal entity not falling within paragraph (a) that is a beneficial owner in relation to the overseas entity, or
  - (c) a person likely to have knowledge of the identity of a person within paragraph (a) or (b).
- (2) An information notice under this section is a notice requiring the addressee—
  - (a) to state whether or not the addressee knows the identity of a person within paragraph (a), (b) or (c) of subsection (1), and
  - (b) if so—
    - (i) to supply any information that the addressee has that might help the overseas entity to identify that person, and
    - (ii) to state whether that information is being supplied with the knowledge of the person to whom it relates.
- (3) An information notice under this section must require the person to whom it is given to comply with the notice within the period of one month beginning with the day on which it is given.
- (4) A person given a notice under subsection (1) is not required by that notice to disclose any information in respect of which a claim to legal professional privilege or, in Scotland, confidentiality of communications, could be maintained in legal proceedings.
- (5) In this section a reference to knowing the identity of a person includes knowing information from which that person can be identified.

## **13 Sections 11 and 12: supplementary**

- (1) The Secretary of State may by regulations make further provision about the giving of notices under section 11 or 12, including provision about the form and content of any such notices and the manner in which they must be given.
- (2) Regulations under subsection (1) are subject to the negative resolution procedure.

## **14 Failure to comply with notice under section 11 or 12**

- (1) A person who, without reasonable excuse, fails to comply with a notice under section 11 or 12 commits an offence.
- (2) A person who is given a notice under section 11 or 12 commits an offence if, in purported compliance with the notice, the person—

- (a) makes a statement that the person knows to be false in a material particular, or
  - (b) recklessly makes a statement that is false in a material particular.
- (3) Where an offence under subsection (1) or (2) is committed by a legal entity, the offence is also committed by every officer of the entity who is in default.
- (4) A person does not commit an offence under subsection (1), or under subsection (3) as it applies in relation to subsection (1), if the person proves that the requirement to give information was frivolous or vexatious.
- (5) A person guilty of an offence under this section is liable –
  - (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding 12 months or a fine (or both);
  - (b) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both);
  - (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both);
  - (d) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both).
- (6) In relation to an offence committed before section 154(1) of the Criminal Justice Act 2003 comes into force, the reference in subsection (5)(a) to 12 months is to be read as a reference to 6 months.

#### *Exemptions*

### **15 Power to modify application process etc in certain cases**

- (1) The Secretary of State may by regulations modify the application requirements or the update requirements in relation to a description of overseas entity specified in the regulations.
- (2) The regulations may modify the application or update requirements in relation to a description of overseas entity only if the Secretary of State considers that the modifications are appropriate in light of the information that is publicly available otherwise than by virtue of this Act.
- (3) Regulations under subsection (1) may make such modifications to this Act as are consequential on those regulations.
- (4) Regulations under subsection (1) are subject to the negative resolution procedure.
- (5) In this section –
  - “the application requirements” means the requirements as to the contents of applications under section 4 or 9;
  - “the update requirements” means the requirements as to the material that must be delivered to the registrar under section 7.

### **16 Exemptions**

- (1) The Secretary of State may exempt a person under this section by giving written notice to the person.

- (2) The effect of an exemption is that –
  - (a) overseas entities are not required to take steps or give notices under section 11 in relation to the exempt person,
  - (b) the exempt person is not required to comply with any notice given by an overseas entity under section 11 or 12 if the exempt person brings the existence of the exemption to the attention of the entity,
  - (c) a notice given by an overseas entity under section 12 does not require any other person to supply information about the exempt person, and
  - (d) the exempt person does not count as a registrable beneficial owner in relation to any overseas entity for the purposes of this Act.
- (3) The Secretary of State may only exempt a person under this section if satisfied that, having regard to any undertaking given by the person, there are special reasons why that person should be exempted.

*Language requirement*

## **17 Documents to be in English**

Documents delivered to the registrar under this Act, or under regulations made under it, must be drawn up and delivered in English.

*Annotation of the register*

## **18 Annotation of the register**

- (1) The registrar must place a note in the register recording –
  - (a) the date on which a document is delivered to the registrar under this Act or regulations made under it, or otherwise in connection with the register;
  - (b) if a document is replaced (whether or not material derived from it is removed), the fact that it has been replaced and the date of delivery of the replacement;
  - (c) if material is removed –
    - (i) what was removed (giving a general description of its contents),
    - (ii) under what power, and
    - (iii) the date on which that was done.
- (2) The Secretary of State may by regulations make provision –
  - (a) authorising or requiring the registrar to annotate the register in such other circumstances as may be specified in the regulations, and
  - (b) as to the contents of any such annotation.
- (3) No annotation is required in the case of a document that by virtue of section 1072(2) of the Companies Act 2006 (documents not meeting requirements for proper delivery) is treated as not having been delivered.
- (4) A note may be removed if it no longer serves any useful purpose.
- (5) Any duty or power of the registrar with respect to annotation of the register is subject to the court's power under section 27 (powers of court on ordering removal of material from the register) to direct –
  - (a) that a note be removed from the register, or

- (b) that no note may be made of the removal of material that is the subject of the court's order.
- (6) Regulations under this section are subject to the negative resolution procedure.

*Inspection of the register and protection of information*

**19 Inspection and copies of register**

- (1) Any person may –
  - (a) inspect the register (but see the exceptions in section 20);
  - (b) require a copy of any material on the register that is available for inspection.
- (2) The registrar may specify the form and manner in which an application is to be made for inspection or a copy.
- (3) The registrar may determine the form and manner in which copies are to be provided.
- (4) Section 1091 of the Companies Act 2006 (certification of copies), and any regulations made under it, apply in relation to copies provided under this section as they apply in relation to the copies provided as mentioned in that section.

**20 Material unavailable for inspection**

- (1) The following material must not be made available by the registrar for public inspection –
  - (a) any date of birth or residential address information protected under subsection (2),
  - (b) the name or contact details of an individual delivered to the registrar under section 4(1)(c) (application for registration), 7(1)(c) (updating duty) or 9(1)(d) (application for removal),
  - (c) information that, by virtue of regulations under section 22 (power to protect other information), the registrar must omit from the material on the register that is available for inspection,
  - (d) any application or other document delivered to the registrar under section 25 (application for rectification of register),
  - (e) any court order under section 26 (rectification of the register under court order) that the court has directed under section 27 is not to be made available for public inspection, and
  - (f) any email address, identification code or password deriving from a document delivered for the purpose of authorising or facilitating electronic filing procedures or providing information by telephone.
- (2) Date of birth information or residential address information is “protected” if –
  - (a) it relates to an individual who, at the time the information is delivered to the registrar, is a registrable beneficial owner or managing officer in relation to an overseas entity,
  - (b) it is contained in a document delivered to the registrar in which date of birth information or residential address information is required to be stated, and

- (c) in the case of a document having more than one part, it is contained in a part of the document in which date of birth information or residential address information is required to be stated.
- (3) In this section –
- “date of birth information” means information as to the day of the month on which an individual was born (but not the month or year);
  - “residential address information” means –
    - (a) information as to the usual residential address of an individual, or
    - (b) information that the service address of an individual is the individual’s residential address.
- (4) Nothing in this section obliges the registrar to check documents other than those mentioned in subsection (2)(b), or parts of documents other than those mentioned in subsection (2)(c), to ensure the absence of date of birth information or residential address information.

## **21 Disclosure of protected information**

- (1) The registrar must not disclose protected date of birth information or protected residential address information about a person unless –
- (a) the same information about the person (whether in the same or a different capacity) is made available by the registrar for public inspection as a result of being contained in another description of document in relation to which no restriction under section 20 applies, or
  - (b) disclosure is permitted by subsection (2).
- (2) The registrar may disclose protected date of birth information or residential address information to any person or body who –
- (a) has functions of a public nature, and
  - (b) is specified for the purposes of this section by regulations made by the Secretary of State.
- (3) The Secretary of State may by regulations make provision –
- (a) specifying conditions for the disclosure of protected date of birth information or residential address information in accordance with this section, and
  - (b) providing for the charging of fees.
- (4) This section does not apply to protected date of birth information, or protected residential address information, about a person in their capacity as a registrable beneficial owner or managing officer if an application under regulations made under section 22 has been granted in respect of that information and has not been revoked.
- (5) In this section –
- “date of birth information” has the meaning given by section 20(3);
  - “protected” has the meaning given by section 20(2);
  - “residential address information” has the meaning given by section 20(3).
- (6) Regulations under this section are subject to the negative resolution procedure.

## 22 Power to protect other information

- (1) The Secretary of State may by regulations make provision requiring the registrar, on application—
  - (a) to make information relating to a relevant individual unavailable for public inspection, and
  - (b) to refrain from disclosing that information or to refrain from doing so except in specified circumstances.
- (2) In this section “relevant individual” means an individual who is or used to be—
  - (a) a registrable beneficial owner in relation to an overseas entity, or
  - (b) a managing officer of an overseas entity.
- (3) Regulations under this section may make provision as to—
  - (a) who may make an application,
  - (b) the grounds on which an application may be made,
  - (c) the information to be included in and documents to accompany an application,
  - (d) how an application is to be determined,
  - (e) the recording of restrictions in the register,
  - (f) the duration of and procedures for revoking the restrictions on disclosure, and
  - (g) the charging of fees by the registrar for disclosing information where the regulations permit disclosure, by way of exception, in specified circumstances.
- (4) The provision that may be made under subsection (3)(d) or (f) includes provision—
  - (a) conferring a discretion on the registrar;
  - (b) providing for a question to be referred to a person other than the registrar for the purposes of determining the application or revoking the restrictions.
- (5) Regulations under this section are subject to the affirmative resolution procedure.
- (6) Nothing in this section or in regulations made under it affects the disclosure of information about a person in any capacity other than that mentioned in subsection (2).

### *Correction or removal of material on the register*

## 23 Resolving inconsistencies in the register

- (1) Where it appears to the registrar that the information contained in a document delivered to the registrar is inconsistent with other information on the register, the registrar may give notice to the overseas entity to which the document relates—
  - (a) stating in what respects the information contained in it appears to be inconsistent with other information on the register, and
  - (b) requiring the overseas entity to take steps to resolve the inconsistency.
- (2) The notice must—

- (a) state the date on which it is issued, and
  - (b) require the delivery to the registrar, within 14 days after that date, of such replacement or additional documents as may be required to resolve the inconsistency.
- (3) If the necessary documents are not delivered within the period specified, an offence is committed by –
  - (a) the overseas entity, and
  - (b) every officer of the overseas entity who is in default.
- (4) A person guilty of an offence under subsection (3) is liable on summary conviction –
  - (a) in England and Wales, to a fine and, for continued contravention, a daily default fine not exceeding the greater of £500 and one-tenth of level 4 on the standard scale;
  - (b) in Scotland or Northern Ireland, to a fine not exceeding level 5 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 5 on the standard scale.

## **24 Administrative removal of material from register**

- (1) The registrar may remove from the register –
  - (a) anything that there was power, but no duty, to include;
  - (b) anything listed in section 20(1) (material unavailable for public inspection), if it no longer appears to the registrar reasonably necessary for the purposes for which it was delivered to the registrar.
- (2) This power in subsection (1)(a) is exercisable, in particular, so as to remove –
  - (a) unnecessary material within the meaning of section 1074 of the Companies Act 2006,
  - (b) material derived from a document that has been replaced under section 1076 of that Act (replacement of document not meeting requirements for proper delivery), or
  - (c) material derived from a document that has been replaced under section 23.
- (3) On or before removing any material under subsection (1)(a) (otherwise than at the request of the overseas entity) the registrar must give notice –
  - (a) to the person by whom the material was delivered (if the identity, and name and address of that person are known), or
  - (b) to the overseas entity to which the material relates (if notice cannot be given under paragraph (a) and the identity of that overseas entity is known).
- (4) The notice must –
  - (a) state what material the registrar proposes to remove, or has removed, and on what grounds, and
  - (b) state the date on which it is issued.

## **25 Application to rectify register**

- (1) The Secretary of State may by regulations make provision requiring the registrar, on application, to remove from the register material of a description specified in the regulations that –

- (a) derives from anything invalid or ineffective or that was done without the authority of the overseas entity, or
  - (b) is factually inaccurate, or is derived from something that is factually inaccurate, or forged.
- (2) The regulations may make provision as to—
  - (a) who may make an application,
  - (b) the information to be included in and documents to accompany an application,
  - (c) the notice to be given of an application and of its outcome,
  - (d) a period in which objections to an application may be made, and
  - (e) how an application is to be determined.
- (3) An application must—
  - (a) specify what is to be removed from the register and indicate where on the register it is, and
  - (b) be accompanied by a statement that the material specified in the application complies with this section and the regulations.
- (4) If no objections are made to the application, the registrar may accept the statement as sufficient evidence that the material specified in the application should be removed from the register.
- (5) Regulations under this section are subject to the affirmative resolution procedure.

## **26 Court order to rectify register**

- (1) The registrar must remove from the register any material—
  - (a) that derives from anything that the court has declared to be invalid or ineffective, or to have been done without the authority of the overseas entity, or
  - (b) that a court declares to be factually inaccurate, or to be derived from something that is factually inaccurate, or forged, and that the court directs should be removed from the register.
- (2) The court order must specify what is to be removed from the register and indicate where on the register it is.
- (3) A copy of the court's order must be sent to the registrar for registration.

## **27 Court powers on ordering removal of material from the register**

- (1) Where the court makes an order for the removal of anything from the register under section 26, it may give directions under this section.
- (2) It may direct that any note on the register that is related to the material that is the subject of the court's order is to be removed from the register.
- (3) It may direct that its order is not to be available for public inspection as part of the register.
- (4) It may direct—
  - (a) that no note is to be made on the register as a result of its order, or
  - (b) that any such note is to be restricted to such matters as may be specified by the court in the direction.

- (5) The court must not give any direction under this section unless it is satisfied –
  - (a) that –
    - (i) the presence on the register of the note or, as the case may be, of an unrestricted note, or
    - (ii) the availability for public inspection of the court’s order, may cause damage to the overseas entity, and
  - (b) that the overseas entity’s interest in non-disclosure outweighs any interest of other persons in disclosure.
- (6) In this section “note” means a note placed in the register under section 18 or regulations made under it.

*False statements*

## **28 General false statement offence**

- (1) It is an offence for a person knowingly or recklessly –
  - (a) to deliver or cause to be delivered to the registrar for the purposes of this Act any document that is misleading, false or deceptive in a material particular, or
  - (b) to make to the registrar, for the purposes of this Act, any statement that is misleading, false or deceptive in a material particular.
- (2) A person guilty of an offence under this section is liable –
  - (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding 12 months or a fine (or both);
  - (b) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both);
  - (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both);
  - (d) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both).
- (3) In relation to an offence committed before section 154(1) of the Criminal Justice Act 2003 comes into force, the reference in subsection (2)(a) to 12 months is to be read as a reference to 6 months.

*Land ownership and transactions*

## **29 Land ownership and transactions**

- (1) Schedule 3 contains amendments about –
  - (a) the ownership of registered land in England and Wales by overseas entities, and
  - (b) land transactions in England and Wales involving overseas entities.
- (2) Schedule 4 makes corresponding provision for Scotland.
- (3) Schedule 5 makes corresponding provision for Northern Ireland.

**30 Power to require overseas entity to register if it owns certain land**

- (1) The Secretary of State may by notice require an overseas entity to register in the register of overseas entities within the period of 6 months beginning with the date of the notice if at the time the notice is given—
  - (a) the entity is registered as the proprietor of a relevant interest in land within the meaning given by section 9(9), and
  - (b) the entity is neither registered as an overseas entity nor an exempt overseas entity.
- (2) A notice under subsection (1) lapses if, before the end of the period mentioned there, the overseas entity becomes an exempt overseas entity.
- (3) If an overseas entity fails to comply with a notice under subsection (1) an offence is committed by—
  - (a) the entity, and
  - (b) every officer of the entity who is in default.
- (4) A person guilty of an offence under subsection (3) is liable—
  - (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding 12 months or a fine (or both);
  - (b) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both);
  - (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both);
  - (d) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both).
- (5) In relation to an offence committed before section 154(1) of the Criminal Justice Act 2003 comes into force, the reference in subsection (4)(a) to 12 months is to be read as a reference to 6 months.
- (6) In this section “exempt overseas entity” means an overseas entity of such description as may be specified in regulations made by the Secretary of State for the purposes of this section.
- (7) Regulations under subsection (6) are subject to the negative resolution procedure.

*Supplementary provision about offences***31 Liability of officers in default**

- (1) Sections 1121 to 1123 of the Companies Act 2006 (liability of officers in default: interpretation etc) apply for the purposes of any provision made by this Act as they apply for the purposes of provisions of the Companies Acts.
- (2) In those sections as applied, a reference to an officer includes a person in accordance with whose directions or instructions the board of directors or equivalent management body of a legal entity are accustomed to act.
- (3) A person is not to be regarded as falling within subsection (2) by reason only that the board of directors or equivalent management body acts on advice given by the person in a professional capacity.

**32 Meaning of “daily default fine”**

Section 1125 of the Companies Act 2006 (meaning of “daily default fine”) applies for purpose of any provision made by this Act as it applies for the purposes of provisions of the Companies Acts.

**33 Consent required for prosecutions**

Proceedings for an offence under this Act—

- (a) may not be brought in England and Wales except by or with the consent of the Secretary of State or the Director of Public Prosecutions;
- (b) may not be brought in Northern Ireland except by or with the consent of the Secretary of State or the Director of Public Prosecutions for Northern Ireland.

**34 Further provision about proceedings**

The following provisions of the Companies Act 2006 apply in relation to offences under this Act as they apply in relation to offences under the Companies Acts—

- (a) section 1128 (summary proceedings: time limits);
- (b) section 1130 (proceedings against unincorporated bodies).

*General***35 Regulations**

- (1) A power to make regulations under this Act is exercisable by statutory instrument.
- (2) Regulations under this Act may make different provision for different purposes.
- (3) Regulations under this Act may—
  - (a) include supplementary, incidental and consequential provision;
  - (b) make transitional provision and savings.
- (4) Where regulations under this Act are subject to “the affirmative resolution procedure”, the regulations may not be made unless a draft of the statutory instrument containing them has been laid before and approved by a resolution of each House of Parliament.
- (5) Where regulations under this Act are subject to “the negative resolution procedure”, the statutory instrument containing the regulations is subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) Any provision that may be made by regulations under this Act subject to negative resolution procedure may be made by regulations subject to affirmative resolution procedure.

**36 Interpretation**

In this Act—

“beneficial owner”, in relation to an overseas entity, has the meaning given by Part 2 of Schedule 2;

- “the court” has the same meaning as in the Companies Acts (see section 1156 of the Companies Act 2006);
- “document” means information in any recorded form;
- “government or public authority” means –
- (a) a corporation sole;
  - (b) a government or government department of a country or territory or a part of a country or territory;
  - (c) an international organisation whose members include two or more countries or territories (or their governments);
  - (d) a local authority or local government body in the United Kingdom or elsewhere;
  - (e) any other public authority in the United Kingdom or elsewhere;
- “legal entity” has the meaning given by section 2;
- “managing officer”, in relation to an overseas entity, includes a director, manager or secretary;
- “overseas entity” has the meaning given by section 2;
- “registrable beneficial owner”, in relation to an overseas entity, has the meaning given by Schedule 2;
- “register” means the register kept under section 3;
- “registered”: an overseas entity is registered if its name appears in the list of registered overseas entities kept in accordance with section 3(3);
- “the registrar” has the meaning given by section 3(1).

### **37 Extent**

- (1) Except as mentioned in subsections (2) to (4), this Act extends to –
  - (a) England and Wales,
  - (b) Scotland, and
  - (c) Northern Ireland.
- (2) Section 29(1) and Schedule 3 extend to England and Wales only.
- (3) Section 29(2) and Schedule 4 extend to Scotland only.
- (4) Section 29(3) and Schedule 5 extend to Northern Ireland only.

### **38 Commencement**

- (1) Sections 35 and 37, this section and section 39 come into force on the day on which this Act is passed.
- (2) The other provisions of this Act come into force on such day as the Secretary of State may by regulations appoint.
- (3) Different days may be appointed for different purposes.

### **39 Short title**

This Act may be cited as the Registration of Overseas Entities Act 2018.

## SCHEDULES

### SCHEDULE 1

Section 4

#### APPLICATIONS: REQUIRED INFORMATION

##### PART 1

##### INTRODUCTION

- 1 This Schedule sets out the required information for the purposes of the table in section 4.

##### PART 2

##### OVERSEAS ENTITIES

- 2 (1) The required information about an overseas entity is –
- (a) name;
  - (b) country of incorporation or formation;
  - (c) registered or principal office;
  - (d) a service address;
  - (e) an email address;
  - (f) the legal form of the entity and the law by which it is governed;
  - (g) any public register in which it is entered and, if applicable, its registration number in that register.
- (2) In sub-paragraph (1)(g) “public register” means a register kept by a government or public authority in the country in which the overseas entity was incorporated or formed.

##### PART 3

##### REGISTRABLE BENEFICIAL OWNERS

##### *Individuals*

- 3 (1) Where a registrable beneficial owner is an individual, the required information about the owner is –
- (a) name, date of birth and nationality;
  - (b) usual residential address;
  - (c) a service address;
  - (d) the date on which the individual became a registrable beneficial owner in relation to the overseas entity;
  - (e) which of the conditions in paragraph 6 of Schedule 2 is met in relation to the individual.

- (2) For the purposes of sub-paragraph (1)(a), “name” means a person’s first name (or other forename) and surname, except that in the case of –
- (a) a peer, or
  - (b) an individual usually known by a title,
- the title may be stated instead of the person’s first name (or other forename) and surname or in addition to either or both of them.

*Governments and public authorities*

- 4 Where a registrable beneficial owner is a government or public authority, the required information about the owner is –
- (a) name;
  - (b) principal office;
  - (c) a service address;
  - (d) its legal form and the law by which it is governed;
  - (e) the date on which the entity became a registrable beneficial owner in relation to the overseas entity;
  - (f) which of the conditions in paragraph 6 of Schedule 2 is met in relation to the registrable beneficial owner.

*Other legal entities*

- 5 (1) Where the registrable beneficial owner is a legal entity other than a government or public authority, the required information about the owner is –
- (a) name;
  - (b) registered or principal office;
  - (c) a service address;
  - (d) the legal form of the entity and the law by which it is governed;
  - (e) any public register in which it is entered and, if applicable, its registration number in that register;
  - (f) the date on which the entity became a registrable beneficial owner in relation to the overseas entity;
  - (g) which of the conditions in paragraph 6 of Schedule 2 is met in relation to the registrable beneficial owner.
- (2) In sub-paragraph (1)(e) “public register” has the meaning given by paragraph 2(2).

PART 4

MANAGING OFFICERS

*Individuals*

- 6 (1) Where a managing officer is an individual, the required information about the officer is –
- (a) name, date of birth and nationality;
  - (b) any former name (unless sub-paragraph (2) applies);
  - (c) usual residential address;
  - (d) a service address (which may be stated as the entity’s registered or principal office);

- (e) business occupation (if any).
- (2) This sub-paragraph applies in the following cases –
  - (a) in the case of a peer or an individual normally known by a British title, where the name is one by which the person was known previous to the adoption of or succession to the title;
  - (b) in the case of any person, where the former name –
    - (i) was changed or disused before the person attained the age of 16 years, or
    - (ii) has been changed or disused for 20 years or more.
- (3) In sub-paragraph (1)(a), “name” has the meaning given by paragraph 3(2).
- (4) For the purposes of sub-paragraph (1)(b), “former name” means a name by which the individual was formerly known for business purposes.  
Where a person is or was formerly known by more than one such name, each of them must be stated.

*Persons other than individuals*

- 7 (1) Where a managing officer is not an individual, the required information about the officer is –
  - (a) name;
  - (b) registered or principal office;
  - (c) a service address;
  - (d) the legal form of the entity and the law by which it is governed;
  - (e) any public register in which it is entered and, if applicable, its registration number in that register.
- (2) In sub-paragraph (1)(e) “public register” has the meaning given by paragraph 2(2).

PART 5

POWERS TO MAKE FURTHER PROVISION UNDER THIS SCHEDULE

- 8 (1) The Secretary of State may by regulations make further provision about the information required by paragraph 3(1)(e), 4(f) or 5(1)(g).
- (2) Regulations under this paragraph are subject to the negative resolution procedure.
- 9 (1) The Secretary of State may by regulations amend this Schedule so as to add to or remove from any list of information in this Schedule.
- (2) Regulations under this paragraph are subject to the affirmative resolution procedure.

SCHEDULE 2

Section 4

REGISTRABLE BENEFICIAL OWNERS

PART 1

MEANING OF “REGISTRABLE BENEFICIAL OWNER”

*Introduction*

- 1 (1) This Part defines “registrable beneficial owner” for the purposes of this Act.
- (2) A registrable beneficial owner may be –
- (a) an individual (see paragraph 2),
  - (b) a legal entity (see paragraph 3), or
  - (c) a government or public authority (see paragraph 4).

*Registrable beneficial owners: individuals*

- 2 An individual is a “registrable beneficial owner” in relation to an overseas entity if the individual –
- (a) is a beneficial owner of the overseas entity (see Part 2), and
  - (b) is not exempt from being registered (see Part 4).

*Registrable beneficial owners: legal entities*

- 3 A legal entity other than a government or public authority is a “registrable beneficial owner” in relation to an overseas entity if it –
- (a) is a beneficial owner of the overseas entity (see Part 2),
  - (b) is subject to its own disclosure requirements (see Part 3), and
  - (c) is not exempt from being registered (see Part 4).

*Registrable beneficial owners: government or public authority*

- 4 A government or public authority is a “registrable beneficial owner” in relation to an overseas entity in all cases where it is a beneficial owner of the entity (see Part 2).

PART 2

MEANING OF “BENEFICIAL OWNER”

*Introduction*

- 5 This Part defines “beneficial owner” for the purposes of this Act.

*Beneficial owners*

- 6 A person (“X”) is a “beneficial owner” of an overseas entity or other legal entity (“Y”) if one or more of the following conditions are met.

*Ownership of shares*

Condition 1 is that X holds, directly or indirectly, more than 25% of the shares in Y.

*Voting rights*

Condition 2 is that X holds, directly or indirectly, more than 25% of the voting rights in Y.

*Right to appoint or remove directors*

Condition 3 is that X holds the right, directly or indirectly, to appoint or remove a majority of the board of directors of Y.

*Significant influence or control*

Condition 4 is that X has the right to exercise, or actually exercises, significant influence or control over Y.

*Trusts, partnerships, etc*

Condition 5 is that –

- (a) the trustees of a trust, or the members of a partnership, unincorporated association or other entity, that is not a legal person under the law by which it is governed meet any of the conditions specified above (in their capacity as such) in relation to Y, and
- (b) X has the right to exercise, or actually exercises, significant influence or control over the activities of that trust or entity.

PART 3

MEANING OF “SUBJECT TO ITS OWN DISCLOSURE REQUIREMENTS”

- 7 (1) For the purposes of this Schedule a legal entity is “subject to its own disclosure requirements” if –
- (a) Part 21A of the Companies Act 2006 applies to it (whether by virtue of section 790B of that Act or another enactment that extends the application of that Part),
  - (b) it is a company to which section 790C(7)(b) of that Act applies (companies with voting shares traded on regulated European markets),
  - (c) it is of a description specified in regulations under section 790B(1)(b) or 790C(7)(d) of that Act (or under either of those sections as extended),
  - (d) it is an eligible Scottish partnership within the meaning of regulation 3 of the Scottish Partnerships (Register of People with Significant Control) Regulations 2017 (S.I. 2017/694),
  - (e) it is registered in the register of overseas entities under this Act, or
  - (f) it is of a description specified by the Secretary of State in regulations under this paragraph.
- (2) Regulations under sub-paragraph (1)(f) are subject to the affirmative resolution procedure.

PART 4

BENEFICIAL OWNERS EXEMPT FROM REGISTRATION

*“Exempt from being registered”*

- 8 For the purposes of paragraphs 2(b) and 3(c) a person who is a beneficial owner of an overseas entity is “exempt from being registered” if –
- (a) the person does not hold any interest in the overseas entity other than through one or more legal entities (see paragraph 9),
  - (b) the person is a beneficial owner of every legal entity through which the person holds such an interest (see paragraph 9),
  - (c) as respects any shares or right in the overseas entity which the person holds indirectly as described in paragraph 9(3)(b)(i), the legal entity through which the shares or right are held is a beneficial owner of the overseas entity and is subject to its own disclosure requirements, and
  - (d) as respects any shares or right in the overseas entity which the person holds indirectly as described in paragraph 9(3)(b)(ii), at least one of the legal entities in the chain is a beneficial owner of the overseas entity and is subject to its own disclosure requirements.

*Holding an interest in an overseas entity etc*

- 9 (1) This paragraph specifies the circumstances in which, for the purposes of paragraph 8 –
- (a) a person (“V”) is to be regarded as holding an interest in an overseas entity (“entity W”);
  - (b) an interest held by V in entity W is to be regarded as held through a legal entity.
- (2) V holds an interest in entity W if –
- (a) V holds, directly or indirectly, shares in entity W,
  - (b) V holds, directly or indirectly, voting rights in entity W,
  - (c) V holds, directly or indirectly, the right to appoint or remove any member of the board of directors of entity W,
  - (d) V has the right to exercise, or actually exercises, significant influence or control over entity W, or
  - (e) the following conditions are both satisfied –
    - (i) the trustees of a trust, or the members of a partnership, unincorporated association or other entity, that is not a legal person under the law by which it is governed hold an interest in entity W in a way mentioned in any of paragraphs (a) to (d);
    - (ii) V has the right to exercise, or actually exercises, significant influence or control over the activities of that trust or entity.
- (3) Where V –
- (a) holds an interest in entity W by virtue of indirectly holding shares or a right, and
  - (b) does so by virtue of having a majority stake (see paragraph 18) in –
    - (i) a legal entity (“L”) which holds the shares or right directly, or

- (ii) a legal entity that is part of a chain of legal entities such as is described in paragraph 18(1)(b) or (2)(b) that includes L, V holds the interest in entity W through L and, where relevant, through each other legal entity in the chain.

## PART 5

### SUPPLEMENTARY PROVISION ABOUT INTERPRETATION OF SCHEDULE

#### *Introduction*

- 10 This Part sets out further rules for the interpretation of this Schedule.

#### *Joint interests*

- 11 If two or more persons hold a share or right jointly, each of them is treated for the purposes of this Schedule as holding that share or right.

#### *Joint arrangements*

- 12 (1) If shares or rights held by a person and shares or rights held by another person are the subject of a joint arrangement between those persons, each of them is treated for the purposes of this Schedule as holding the combined shares or rights of both of them.
- (2) A “joint arrangement” is an arrangement between the holders of shares (or rights) that they will exercise all or substantially all the rights conferred by their respective shares (or rights) jointly in a way that is pre-determined by the arrangement.
- (3) “Arrangement” includes –
- (a) any scheme, agreement or understanding, whether or not it is legally enforceable, and
  - (b) any convention, custom or practice of any kind.
- (4) But something does not count as an arrangement unless there is at least some degree of stability about it (whether by its nature or terms, or the time it has been in existence, or otherwise).

#### *Calculating shareholdings*

- 13 (1) In relation to a legal entity that has a share capital, a reference to holding “more than 25% of the shares” in that entity is a reference to holding shares comprised in the issued share capital of that entity of a nominal value exceeding (in aggregate) 25% of that share capital.
- (2) In relation to a legal entity that does not have a share capital –
- (a) a reference to holding shares in that entity is a reference to holding a right to share in the capital or, as the case may be, profits of that entity;
  - (b) a reference to holding “more than 25% of the shares” in that entity is a reference to holding a right or rights to share in more than 25% of the capital or, as the case may be, profits of that entity.

### *Voting rights*

- 14 (1) A reference to the voting rights in a legal entity is to the rights conferred on shareholders in respect of their shares (or, in the case of an entity not having a share capital, on members) to vote at general meetings of the entity on all or substantially all matters.
- (2) In relation to a legal entity that does not have general meetings at which matters are decided by the exercise of voting rights –
- (a) a reference to exercising voting rights in the entity is to be read as a reference to exercising rights in relation to the entity that are equivalent to those of a person entitled to exercise voting rights in a company registered under the Companies Act 2006;
  - (b) a reference to exercising more than 25% of the voting rights in the entity is to be read as a reference to exercising the right under the constitution of the entity to block changes to the overall policy of the entity or to the terms of its constitution.
- 15 In applying this Schedule, the voting rights in a legal entity are to be reduced by any rights held by the entity itself.

### *Rights to appoint or remove members of the board*

- 16 A reference to the right to appoint or remove a majority of the board of directors of a legal entity is a reference to the right to appoint or remove directors holding a majority of the voting rights at meetings of the board on all or substantially all matters.
- 17 References to a board of directors, in the case of an entity that does not have such a board, are to be read as references to the equivalent management body of that entity.

### *Shares or rights held “indirectly”*

- 18 (1) A person holds a share “indirectly” if the person has a majority stake in a legal entity and that entity –
- (a) holds the share in question, or
  - (b) is part of a chain of legal entities –
    - (i) each of which (other than the last) has a majority stake in the entity immediately below it in the chain, and
    - (ii) the last of which holds the share.
- (2) A person holds a right “indirectly” if the person has a majority stake in a legal entity and that entity –
- (a) holds that right, or
  - (b) is part of a chain of legal entities –
    - (i) each of which (other than the last) has a majority stake in the entity immediately below it in the chain, and
    - (ii) the last of which holds that right.
- (3) For these purposes, A has a “majority stake” in B if –
- (a) A holds a majority of the voting rights in B,
  - (b) A is a member of B and has the right to appoint or remove a majority of the board of directors of B,

- (c) A is a member of B and controls alone, or pursuant to an agreement with other shareholders or members, a majority of the voting rights in B, or
  - (d) A has the right to exercise, or actually exercises, dominant influence or control over B.
- (4) In the application of this paragraph to the right to appoint or remove a majority of the board of directors, a legal entity is to be treated as having the right to appoint a director if –
- (a) a person’s appointment as director follows necessarily from that person’s appointment as director of the legal entity, or
  - (b) the directorship is held by the legal entity itself.

*Shares held by nominees*

- 19 A share held by a person as nominee for another is to be treated for the purposes of this Schedule as held by the other (and not by the nominee).

*Rights treated as held by a person who controls their exercise*

- 20 (1) Where a person controls a right, the right is to be treated for the purposes of this Schedule as held by that person (and not by the person who in fact holds the right, unless that person also controls it).
- (2) A person “controls” a right if, by virtue of any arrangement between that person and others, the right is exercisable only –
- (a) by that person,
  - (b) in accordance with that person’s directions or instructions, or
  - (c) with that person’s consent or concurrence.
- (3) “Arrangement” has the meaning given in paragraph 12(3) and (4).

*Rights exercisable only in certain circumstances etc*

- 21 (1) Rights that are exercisable only in certain circumstances are to be taken into account only –
- (a) when the circumstances have arisen, and for so long as they continue to obtain, or
  - (b) when the circumstances are within the control of the person having the rights.
- (2) But rights that are exercisable by an administrator or by creditors while a legal entity is in relevant insolvency proceedings are not to be taken into account even while the entity is in those proceedings.
- (3) “Relevant insolvency proceedings” means –
- (a) administration within the meaning of the Insolvency Act 1986,
  - (b) administration within the meaning of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), or
  - (c) proceedings under the insolvency law of a country or territory outside the United Kingdom during which an entity’s assets and affairs are subject to the control or supervision of a third party or creditor.

- (4) Rights that are normally exercisable but are temporarily incapable of exercise are to continue to be taken into account.

*Rights attached to shares held by way of security*

- 22 Rights attached to shares held by way of security provided by a person are to be treated for the purposes of this Schedule as held by that person—
- (a) where apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in accordance with that person’s instructions, and
  - (b) where the shares are held in connection with the granting of loans as part of normal business activities and apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in that person’s interests.

*Limited partnerships*

- 23 (1) A person does not meet Condition 1, 2 or 3 of paragraph 6 in relation to an overseas entity by virtue only of being a limited partner.
- (2) A person does not meet Condition 1, 2 or 3 of paragraph 6 in relation to an overseas entity by virtue only of, directly or indirectly—
- (a) holding shares, or
  - (b) holding a right,
- in or in relation to a limited partner.
- (3) Sub-paragraphs (1) and (2) do not apply for the purposes of determining whether the requirement set out in Condition 5(a) of paragraph 6 is met.
- (4) In this paragraph “limited partner” means—
- (a) a limited partner in a limited partnership registered under the Limited Partnerships Act 1907 (other than one who takes part in the management of the partnership business), or
  - (b) a foreign limited partner.
- (5) In this paragraph “foreign limited partner” means an individual who—
- (a) participates in arrangements established under the law of a country or territory outside the United Kingdom, and
  - (b) has the characteristics prescribed by regulations made by the Secretary of State.
- (6) Regulations under this paragraph may, among other things, prescribe characteristics by reference to—
- (a) the nature of arrangements;
  - (b) the nature of an individual’s participation in the arrangements.
- (7) Regulations under this paragraph are subject to the affirmative resolution procedure.

*Meaning of “director”*

- 24 In this Schedule “director” includes any person occupying the position of director, by whatever name called.

PART 6

POWER TO AMEND THRESHOLDS ETC

- 25 (1) The Secretary of State may by regulations amend this Schedule for a permitted purpose.
- (2) The permitted purposes are –
- (a) to replace any or all references in this Schedule to a percentage figure with references to some other (larger or smaller) percentage figure;
  - (b) to change or supplement the conditions in paragraph 6 so as to include circumstances (for example, circumstances involving more complex structures) that give individuals a level of control over entity Y broadly similar to the level of control given by the other conditions in that Part;
  - (c) in consequence of any provision made by virtue of paragraph (b), to change or supplement paragraph 9 so that the circumstances specified in that paragraph in which a person is to be regarded as holding an interest in an overseas entity correspond to any of the conditions in paragraph 9, or would do so but for the extent of the interest.
- (3) Regulations under this paragraph are subject to the affirmative resolution procedure.

SCHEDULE 3

Section 29(1)

LAND OWNERSHIP AND TRANSACTIONS: ENGLAND AND WALES

PART 1

AMENDMENTS TO LAND REGISTRATION ACT 2002

- 1 The Land Registration Act 2002 is amended as follows.
- 2 After section 85 insert –

*“Overseas entities*

**85A Overseas entities**

Schedule 4A is about the ownership of registered land by overseas entities and about registrable dispositions made by them.”

- 3 After Schedule 4 insert –

“SCHEDULE 4A

Section 85A

OVERSEAS ENTITIES

*Meaning of “qualifying estate”*

- 1 In this Schedule “qualifying estate” means –
- (a) a freehold estate in land, or

- (b) a leasehold estate in land granted for a term of more than seven years from the date of grant.

#### *Registration*

- 2 No application may be made to register an overseas entity as the proprietor of a qualifying estate unless, at the time of the application, the entity –
  - (a) is a registered overseas entity, or
  - (b) is an exempt overseas entity.

#### *Restrictions on disposal*

- 3 (1) The registrar must enter a restriction in the register in relation to a qualifying estate if satisfied that –
  - (a) an overseas entity is registered as the proprietor of the estate, and
  - (b) the entity became registered as the proprietor in pursuance of an application made on or after 1 January 1999.
- (2) The restriction must prohibit the registration of any disposition within section 27(2)(a), (b)(i) or (f) unless –
  - (a) the entity is a registered overseas entity, or is an exempt overseas entity, at the time of the disposition,
  - (b) the disposition is made in pursuance of a statutory obligation or court order,
  - (c) the disposition is made in pursuance of a contract made before the restriction is entered in the register, or
  - (d) the disposition is made in the exercise of a power of sale or leasing conferred on the proprietor of a registered charge or a receiver appointed by such a proprietor.

#### *Registrable dispositions by overseas entity entitled to be registered (but not registered)*

- 4 (1) This paragraph applies where –
  - (a) an overseas entity is entitled to be registered as the proprietor of a qualifying estate,
  - (b) the overseas entity became entitled to be registered as the proprietor of that estate on or after the day on which this paragraph comes into force, and
  - (c) the entity makes a registrable disposition within section 27(2)(a), (b)(i) or (f).
- (2) The disposition must not be registered unless –
  - (a) the entity is a registered overseas entity, or is an exempt overseas entity, at the time of the disposition,
  - (b) the disposition is made in pursuance of a statutory obligation or court order,
  - (c) the disposition is made in pursuance of a contract made before the overseas entity became entitled to be registered, or

- (d) the disposition is made in the exercise of a power of sale or leasing conferred on the proprietor of a registered charge or a receiver appointed by such a proprietor.

*Making dispositions that cannot be registered*

- 5 (1) An overseas entity must not make a registrable disposition of a qualifying estate if the registration of the disposition is prohibited by –
  - (a) a restriction entered under paragraph 3, or
  - (b) paragraph 4.
- (2) If an overseas entity breaches sub-paragraph (1) an offence is committed by –
  - (a) the entity, and
  - (b) every officer of the entity who is in default.
- (3) Nothing in this paragraph affects the validity of a disposition made in breach of sub-paragraph (1).
- (4) Sections 1121 to 1123 of the Companies Act 2006 (liability of officers in default: interpretation etc) apply for the purposes of this paragraph as they apply for the purposes of provisions of the Companies Acts.
- (5) In those sections as applied, a reference to an officer includes a person in accordance with whose directions or instructions the board of directors or equivalent management body of an overseas entity are accustomed to act.
- (6) A person is not to be regarded as falling within sub-paragraph (5) by reason only that the board of directors or equivalent management body acts on advice given by the person in a professional capacity.
- (7) A person guilty of an offence under this paragraph is liable –
  - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine (or both);
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or both).
- (8) In relation to an offence committed before section 154(1) of the Criminal Justice Act 2003 comes into force, a references in sub-paragraph (7)(a) to 12 months is to be read as a reference to 6 months.
- (9) Proceedings for an offence under this may only be brought by or with the consent the Secretary of State or the Director of Public Prosecutions.

*Interpretation etc*

- 6 In this Schedule –
  - “exempt overseas entity” means an overseas entity of a description specified in regulations under section 30(6) of Registration of Overseas Entities Act 2018;

“overseas entity” has the meaning given by section 2 of the Registration of Overseas Entities Act 2018;

“qualifying estate” has the meaning given by paragraph 1;

“register of overseas entities” means the register kept under section 3 of the Registration of Overseas Entities Act 2018;

“registered overseas entity” means an overseas entity that is registered in the register of overseas entities (but see paragraph 7).

- 7 (1) For the purpose of this Schedule, an overseas entity that fails to comply with the duty in section 7 of the Registration of Overseas Entities Act 2018 (updating duty) is not to be treated as being a “registered overseas entity” until it remedies the failure.
- (2) For the purpose of sub-paragraph (1), an overseas entity “remedies” the failure when it delivers the statements and information mentioned in section 7(1)(a), (b) and (c) of the 2018 Act.”

## PART 2

### TRANSITION: QUALIFYING ESTATES REGISTERED PRE-COMMENCEMENT

#### *Duty of proprietor to register as an overseas entity within transitional period*

- 4 (1) An overseas entity, and every officer of the entity who is in default, commits an offence if –
- (a) at the end of the period of 18 months beginning with the commencement date, the entity –
    - (i) is the registered proprietor of a qualifying estate, but
    - (ii) is neither a registered overseas entity nor an exempt overseas entity, and
  - (b) the entity became the registered proprietor of that qualifying estate in pursuance of an application made on or after 1 January 1999 but before the commencement date.
- (2) A person guilty of an offence under this paragraph is liable –
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine (or both);
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).
- (3) In relation to an offence committed before section 154(1) of the Criminal Justice Act 2003 comes into force, the reference in sub-paragraph (2)(a) to 12 months is to be read as a reference to 6 months.
- (4) In this paragraph “exempt overseas entity” means an overseas entity of a description specified in regulations under section 30(6).

#### *Registrar’s duty to enter restriction in relation to qualifying estate*

- 5 (1) This paragraph applies where the Chief Land Registrar is satisfied that –
- (a) an overseas entity is the registered proprietor of a qualifying estate, and

- (b) the entity became the registered proprietor of that estate in pursuance of an application made before the commencement date.
- (2) The Chief Land Registrar must comply with the duty to enter a restriction under paragraph 3 of Schedule 4A to the Land Registration Act 2002 (inserted by Part 1 of this Schedule) in relation to the estate before the end of the period of 12 months beginning with the commencement date.
- (3) But the restriction does not take effect until the end of the period of 18 months beginning with the commencement date.

### *Interpretation*

- 6 In this Part of this Schedule –
- “the commencement date” means the day on which this Part of this Schedule comes into force;
  - “registered proprietor”, in relation to a qualifying estate, means the person entered as proprietor of the estate in the register of title kept by the Chief Land Registrar;
  - “qualifying estate” has the meaning given by paragraph 1 of Schedule 4A to the Land Registration Act 2002.

## SCHEDULE 4

Section 29(2)

### LAND OWNERSHIP AND TRANSACTIONS: SCOTLAND

#### PART 1

#### AMENDMENTS

### *Conveyancing (Scotland) Act 1924*

- 1 (1) Section 4A of the Conveyancing (Scotland) Act 1924 (completion of title by registration of notice of title in Land Register of Scotland) is amended as follows.
- (2) The existing text becomes subsection (1).
  - (3) After that subsection insert –
    - “(2) Subsection (1) is subject to paragraph 3 of schedule 1A to the Land Registration etc. (Scotland) Act 2012.”

### *Land Registration etc. (Scotland) Act 2012 (asp 5)*

- 2 The Land Registration etc. (Scotland) Act 2012 is amended as follows.
- 3 In section 21 (application for registration of deed) –
- (a) in subsection (4), after “45(5)” insert “and paragraphs 1 to 5 of schedule 1A”, and
  - (b) after that subsection insert –
    - “(5) Schedule 1A makes provision about certain land transactions involving overseas entities.”

4 In section 27 (application for voluntary registration), after subsection (4) insert –

“(4A) Subsection (3) is subject to paragraph 6 of schedule 1A.”

5 The italic heading before section 112 becomes “Offences”.

6 After section 112 insert –

**“112A Offence by overseas entity**

- (1) An overseas entity must not grant a qualifying registrable deed in favour of a person and deliver it to the person if by virtue of paragraph 2 of schedule 1A the Keeper would be required to reject an application under section 21 for registration of the deed.
- (2) If an overseas entity breaches subsection (1), an offence is committed by –
  - (a) the entity, and
  - (b) every officer of the entity who is in default.
- (3) Nothing in this section affects the validity of a qualifying registrable deed granted in breach of subsection (1).
- (4) A person guilty of an offence under subsection (2) is liable –
  - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both);
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or both).
- (5) Sections 1121 to 1123 of the Companies Act 2006 (liability of officers in default: interpretation etc.) apply for the purposes of this section as they apply for the purposes of provisions of the Companies Acts.
- (6) In those sections as applied, a reference to an officer includes a person in accordance with whose directions or instructions the board of directors or equivalent management body of an overseas entity are accustomed to act.
- (7) A person is not to be regarded as falling within subsection (6) by reason only that the board of directors or equivalent management body acts on advice given by the person in a professional capacity.
- (8) In this section –
 

“overseas entity” has the meaning given by section 2 of the Registration of Overseas Entities Act 2018;

“qualifying registrable deed” means a registrable deed which is –

  - (a) a disposition;
  - (b) a standard security;
  - (c) a lease;
  - (d) an assignation of a lease.”

7 After Schedule 1 insert –

“SCHEDULE 1A

Section 21

LAND TRANSACTIONS: OVERSEAS ENTITIES

*Cases where Keeper must reject application under section 21*

- 1 (1) This paragraph applies where –
  - (a) a person applies under section 21 for registration of a qualifying registrable deed or a registrable deed which is –
    - (i) an extract of a decree of foreclosure,
    - (ii) a discharge of an *ex facie* absolute conveyance, or
    - (iii) an order for rectification made under section 8 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (order for rectification of defectively expressed document) in respect of a document which has been registered in the Land Register, and
  - (b) the applicant is an overseas entity.
- (2) The Keeper must reject the application unless the entity is –
  - (a) a registered overseas entity, or
  - (b) an exempt overseas entity.
- 2 (1) This paragraph applies where –
  - (a) a person applies under section 21 for registration of a qualifying registrable deed or a registrable deed which is a standard security,
  - (b) the granter of the deed is an overseas entity whose interest was registered on or after 8 December 2014, and
  - (c) as at the date of delivery of the deed, the entity was not a registered overseas entity or an exempt overseas entity.
- (2) The Keeper must reject the application unless one of the following conditions is met –
  - (a) the application is made in pursuance of a statutory obligation or court order,
  - (b) the application is made in pursuance of a contract entered into before the later of the dates mentioned in subparagraph (3),
  - (c) the application is made in pursuance of the exercise of a power of sale or lease by the creditor in a heritable security.
- (3) The dates are –
  - (a) the date on which the granter’s interest was registered in the Land Register;
  - (b) the commencement date.

*Case where Keeper must reject application to register notice of title*

- 3 (1) This paragraph applies where –

- (a) a person having right to land makes an application under section 21 by virtue of section 4A(1) of the Conveyancing (Scotland) Act 1924, and
  - (b) the person is an overseas entity.
- (2) The Keeper must reject the application unless the entity is –
- (a) a registered overseas entity, or
  - (b) an exempt overseas entity.

*Cases where Keeper must reject prescriptive application*

- 4 (1) This paragraph applies where an application under section 21 which is received by the Keeper by virtue of section 43(1) is made by an overseas entity.
- (2) The Keeper must reject the application unless the entity is –
- (a) a registered overseas entity, or
  - (b) an exempt overseas entity.
- 5 (1) This paragraph applies where –
- (a) an application under section 21 is received by the Keeper by virtue of section 43(1),
  - (b) the proprietor is an overseas entity, and
  - (c) the overseas entity was registered in the Land Register of Scotland as the proprietor on or after 8 December 2014.
- (2) The Keeper must reject the application unless the entity is –
- (a) a registered overseas entity, or
  - (b) an exempt overseas entity.

*Case where Keeper must reject voluntary application*

- 6 (1) This paragraph applies where an application under section 27 is made by an overseas entity.
- (2) The Keeper must reject the application unless the entity is –
- (a) a registered overseas entity, or
  - (b) an exempt overseas entity.

*Interpretation*

- 7 (1) In this schedule –
- “the commencement date” means the day on which Part 1 of Schedule 4 to the Registration of Overseas Entities Act 2018 comes into force;
  - “exempt overseas entity” means an overseas entity of a description specified in regulations under section 30(6) of the Registration of Overseas Entities Act 2018;
  - “overseas entity” has the meaning given by section 2 of the Registration of Overseas Entities Act 2018;
  - “qualifying registrable deed” means a registrable deed which is –
    - (a) a disposition;
    - (b) a lease;

- (c) an assignment of a lease;
- “register of overseas entities” means the register kept under section 3 of the Registration of Overseas Entities Act 2018;
- “registered overseas entity” means an overseas entity that is registered in the register of overseas entities (but see sub-paragraphs (2) and (3)).
- (2) For the purposes of this Schedule, an overseas entity that fails to comply with the duty in section 7 of the Registration of Overseas Entities Act 2018 (updating duty) is not to be treated as being a “registered overseas entity” until it remedies the failure.
- (3) For the purpose of sub-paragraph (2), an overseas entity “remedies” the failure when it delivers the statements and information mentioned in section 7(1)(a), (b) and (c) of the 2018 Act.”

## PART 2

### TRANSITION: DEEDS REGISTERED PRE-COMMENCEMENT

#### *Duty to register as an overseas entity within transitional period*

- 8 (1) An overseas entity, and every officer of the entity who is in default, commits an offence if in relation to land –
- (a) at the end of the period of 18 months beginning with the commencement date, the entity –
- (i) is registered in the Land Register of Scotland as the proprietor or as the tenant under a lease, but
- (ii) is neither a registered overseas entity nor an exempt overseas entity, and
- (b) the entity became so registered as the proprietor or as the tenant under a lease on or after 8 December 2014 but before the commencement date.
- (2) A person guilty of an offence under this paragraph is liable –
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both);
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).

#### *Disapplication of certain provisions during transitional period*

- 9 (1) This paragraph applies if, in relation to land (the “relevant land”) –
- (a) an overseas entity is registered in the Land Register of Scotland as the proprietor or as the tenant under a lease, and
- (b) the entity became so registered on or after 8 December 2014 but before the commencement date.
- (2) During any part of the transitional period in which the entity remains so registered, the Land Registration etc. (Scotland) Act 2012 (asp 5) (“the 2012 Act”) applies subject to the following modifications.
- (3) Section 112A of the 2012 Act does not apply in relation to the entity or an officer of the entity as regards the relevant land.

- (4) Paragraphs 2 and 5 of schedule 1A to the 2012 Act do not apply in relation to the entity as regards the relevant land.
- (5) In this paragraph, the “transitional period” means the period of 18 months beginning with the commencement date.

*Interpretation*

- 10 In this Part of this Schedule –
- “the commencement date” means the day on which this Part of this Schedule comes into force;
  - “exempt overseas entity” means an overseas entity of a description specified in regulations under section 30(6);
  - “lease” has the meaning given by section 113(1) of the Land Registration etc. (Scotland) Act 2012;
  - “proprietor” has the meaning given by section 113(1) of the Land Registration etc. (Scotland) Act 2012.

SCHEDULE 5

Section 29(3)

LAND OWNERSHIP AND TRANSACTIONS: NORTHERN IRELAND

- 1 The Land Registration Act (Northern Ireland) 1970 is amended as follows.

- 2 After section 61 insert –

**“61A Overseas entities**

Schedule 8A is about the ownership of registered land by overseas entities and about registrable dispositions made by them.”

- 3 After Schedule 8 insert –

“SCHEDULE 8A

Section 61A

OVERSEAS ENTITIES

PART 1

REGISTRATION AND DISPOSITIONS

*Meaning of “qualifying estate”*

- 1 In this Schedule “qualifying estate” means –
- (a) a freehold estate in land, or
  - (b) a leasehold estate in land granted for a term of more than 21 years from the date of grant.

*Registration*

- 2 No application may be made to register an overseas entity as the owner of a qualifying estate unless, at the time of the application, the entity –
- (a) is a registered overseas entity, or

- (b) is an exempt overseas entity.

*Restrictions on disposal*

- 3 (1) The Registrar must enter an inhibition (“an overseas entity inhibition”) against the title of the registered owner of a qualifying estate if satisfied that –
  - (a) the registered owner is an overseas entity, and
  - (b) the entity became registered as the owner in pursuance of an application made on or after the date on which paragraph 2 comes into force.
- (2) No fee is to be charged for the entry of an overseas entity inhibition.
- (3) From and after the entry of an overseas entity inhibition, none of the dispositions mentioned in sub-paragraph (4) affecting the land in question are to be entered on the title register, unless one of the conditions in sub-paragraph (5) is met.
- (4) The dispositions are –
  - (a) a transfer of the owner’s estate,
  - (b) a grant of a leasehold estate where the term granted exceeds 21 years, and
  - (c) the creation of a charge on the land.
- (5) The conditions are that –
  - (a) the entity is a registered overseas entity, or is an exempt overseas entity, at the time of the disposition,
  - (b) the disposition is made in pursuance of a statutory obligation or court order,
  - (c) the disposition is made in pursuance of a contract made before the inhibition is entered in the register, or
  - (d) the disposition is made in the exercise of a power of sale or leasing conferred on the owner of a registered charge or a receiver appointed by such an owner.

*Registrable dispositions by overseas entity entitled to be registered (but not registered)*

- 4 (1) This paragraph applies where –
  - (a) an overseas entity is entitled to be registered as the owner of a qualifying estate,
  - (b) the overseas entity became entitled to be registered as the owner of that estate on or after the day on which this paragraph comes into force, and
  - (c) the entity makes a disposition mentioned in sub-paragraph (2).
- (2) The dispositions are –
  - (a) a transfer of the owner’s estate,
  - (b) a grant of a leasehold estate where the term granted exceeds 21 years, and
  - (c) the creation of a charge on the land.
- (3) The disposition must not be registered unless –

- (a) the entity is a registered overseas entity, or is an exempt overseas entity, at the time of the disposition,
- (b) the disposition is made in pursuance of a statutory obligation or court order,
- (c) the disposition is made in pursuance of a contract made before the overseas entity became entitled to be registered, or
- (d) the disposition is made in the exercise of a power of sale or leasing conferred on the owner of a registered charge or a receiver appointed by such an owner.

*Making dispositions that cannot be registered*

- 5 (1) An overseas entity must not make a registrable disposition of a qualifying estate if the registration of the disposition is prohibited by –
- (a) an inhibition entered under paragraph 3, or
  - (b) paragraph 4.
- (2) If an overseas entity breaches sub-paragraph (1) an offence is committed by –
- (a) the entity, and
  - (b) every officer of the entity who is in default.
- (3) Nothing in this paragraph affects the validity of a disposition made in breach of sub-paragraph (1).
- (4) Sections 1121 to 1123 of the Companies Act 2006 (liability of officers in default: interpretation etc) apply for the purposes of this paragraph as they apply for the purposes of provisions of the Companies Acts.
- (5) In those sections as applied, a reference to an officer includes a person in accordance with whose directions or instructions the board of directors or equivalent management body of an overseas entity are accustomed to act.
- (6) A person is not to be regarded as falling within sub-paragraph (5) by reason only that the board of directors or equivalent management body acts on advice given by the person in a professional capacity.
- (7) A person guilty of an offence under this paragraph is liable –
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both);
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or both).
- (8) Proceedings for an offence under this paragraph may only be brought by or with the consent the Secretary of State or the Director of Public Prosecutions for Northern Ireland.

*Interpretation etc*

- 6 In this Schedule –

“exempt overseas entity” means an overseas entity of a description specified in regulations under section 30(6) of the Registration of Overseas Entities Act 2018;

“overseas entity” has the meaning given by section 2 of the Registration of Overseas Entities Act 2018;

“qualifying estate” has the meaning given by paragraph 1;

“register of overseas entities” means the register kept under section 3 of the Registration of Overseas Entities Act 2018;

“registered overseas entity” means an overseas entity that is registered in the register of overseas entities (but see paragraph 7).

- 7 (1) For the purpose of this Schedule, an overseas entity that fails to comply with the duty in section 7 of the Registration of Overseas Entities Act 2018 (updating duty) is not to be treated as being a “registered overseas entity” until it remedies the failure.
- (2) For the purpose of sub-paragraph (1), an overseas entity “remedies” the failure when it delivers the statements and information mentioned in section 7(1)(a), (b) and (c) of the 2018 Act.”

# REGISTRATION OF OVERSEAS ENTITIES BILL

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Registration of Overseas Entities Bill as published in Draft on 23 July 2018.

- These Explanatory Notes have been prepared by the Department of Business, Energy and Industrial Strategy in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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*These Explanatory Notes relate to the Registration of Overseas Entities Bill as published in Draft on 23 July 2018*

## Overview of the Bill

- 1 The purpose of the Bill is to prevent and combat the use of land in the UK for money laundering purposes by increasing the transparency of beneficial ownership information relating to overseas entities that own land in the UK. The Bill therefore creates a register of the beneficial owners of such entities. The register will be held by Companies House and made public.
- 2 In order to ensure compliance, the Bill:
  - makes provisions relating to both the registration of land in the UK owned by overseas entities and transactions involving the land; and
  - makes provisions for ensuring that non-compliant entities face restrictions in the buying and selling of land in the UK.
- 3 The Bill has 39 clauses, and five accompanying schedules.
- 4 Clauses 1 to 16 create the register and the framework in which an overseas entity can apply to be registered. Once registered, an overseas entity is required to provide updates annually until such time as it successfully applies to be “removed” from the register. The application will require the overseas entity to disclose information about itself and its beneficial owners, having first taken steps to identify its beneficial owners.
- 5 The register will be held by the registrar of companies and will be, for the most part, accessible to the public. Clauses 17 to 28 replicate a number of functions and powers contained in the Companies Act 2006 (“the Act”) pertaining to the registrar in relation to the register it keeps for UK companies.
- 6 Schedule 1 to the Bill sets out the information required about an overseas entity, its beneficial owners, and where required, its managing officers for the purposes of the application to register and the updating requirements.
- 7 Schedule 2 to the Bill sets out “who” is a beneficial owner of an overseas entity. This is modelled on the “People with Significant Control” (PSC) Regime for UK companies set out in Part 21A of, and Schedule 1A to, the Act.
- 8 Part 1 of Schedule 3 to the Bill inserts new “Schedule 4A” into the Land Registration Act 2002 (“LRA 2002”). Schedule 4A provides that no application may be made to register an overseas entity as proprietor of a “qualifying estate” (a freehold estate or a leasehold estate of over 7 years), unless the overseas entity is a “registered overseas entity” at the time of the application (or is exempt). For these purposes, an overseas entity will not be a “registered overseas entity” unless it has registered on the overseas entities register and has complied with the update requirement.
- 9 Where an overseas entity is registered as proprietor of a qualifying estate, Schedule 4A requires HM Land Registry for England and Wales (“HMLR”) to insert a restriction into the title register for the estate. The restriction will prohibit the registration of certain dispositions in respect of the estate unless the entity is a registered overseas entity (or is exempt) at the time of the disposition (or an exception applies). The dispositions are (a) a transfer of the estate (i.e. sale); (b) the grant of a lease of over 7 years out of the estate; and (c) the creation of a charge over the estate.
- 10 When land is sold to a person, it is legally possible for that person to make dispositions in respect of the land despite not being registered as the proprietor. Schedule 4A therefore also prohibits the registration of the dispositions mentioned above that are made by an overseas

entity in these circumstances.

- 11 The restriction and the prohibition on registration are subject to exceptions, aimed at protecting third party rights. An overseas entity that makes a disposition which cannot be registered by virtue of the restriction or prohibition against registration (as the case may be) will be guilty of a criminal offence.
- 12 Part 2 of Schedule 3 provides for a transitional regime for certain overseas entities that are registered proprietors of qualifying estates when the Bill comes into force. These entities will have 18 months from the commencement date in which they can register as an overseas entity or dispose of the land if they choose to. If, at the end of that period, the overseas entity remains the registered proprietor of the estate and has not registered in the overseas entities register, it will have committed an offence. HMLR is also required to insert the restriction described above into the title registers of these estates, which will come into effect at the end of the transitional period.
- 13 Schedule 4 to the Bill amends the Land Registration Act etc. (Scotland) Act 2012. It inserts new Schedule 1A into this Act which makes equivalent provision as Schedule 4A described above in respect of Scotland, subject to existing differences in land registration in Scotland. The key difference is that, while the requirements will apply to some overseas entities that are existing registered proprietors of qualifying estate at the time of commencement, it is limited to those entities that were registered on or after 8 December 2014 (rather than 1 January 1999, which is the relevant date in England and Wales). This is the relevant date on which the Registers of Scotland (the equivalent to HMLR) began to record whether or not a registered proprietor was an overseas entity.
- 14 Schedule 5 to the Bill inserts Schedule 8A into the Land Registration Act (Northern Ireland) 1970. Schedule 8A makes provision equivalent to Schedule 4A described above in respect of Northern Ireland, again subject to existing differences in land registration in Northern Ireland. The key difference is that the requirements will only apply to new purchases by overseas entities on or after the commencement date; those which are existing registered owners of land in Northern Ireland are not in scope due to the lack of information held about those entities by the Northern Ireland Land Registry currently.

## Policy background

- 15 There has been widespread concern expressed about the lack of transparency around who ultimately owns land in the UK, where the land is registered to an overseas company or other entity. Currently, the information available from the land register about overseas owners of land (or registered leaseholders) is, at best, limited to the entity's name and territory of incorporation. It is therefore not clear 'who' really owns and controls the entity and, by extension, the land itself.
- 16 Evidence from UK law enforcement and transparency campaigners shows that overseas entities are often used as a vehicle by criminal organisations and corrupt individuals to hide and launder the proceeds of bribery, corruption and organised crime. The UK's property market is particularly attractive because of the UK's stable and open political and business environment. Law enforcement investigations, including those targeting the proceeds of corruption, are often hampered by an inability to access information about the individuals who ultimately own or control overseas entities that have been used to conceal the proceeds of crime and corruption.
- 17 In contrast, most UK entities have, since the implementation of the People with Significant Control (PSC) register in June 2016, been required to provide information about their ultimate

owners and controllers to the Registrar of Companies (“Companies House”), where they are held on the publicly accessible companies register.

- 18 In 2016, at the Anti-Corruption Summit held in London, a commitment was made to establish a public register of beneficial owners of non-UK entities that own or buy land in the UK. A call for evidence was issued last year, and the Government response to this was published this year. A Written Ministerial Statement was published in January 2018, outlining the Government’s timetable for implementing the policy.
- 19 The register’s primary objective is to prevent and combat the use of land in the UK by overseas entities for the purposes of laundering money or investing illicit funds by increasing transparency about overseas entities engaged in land ownership in the UK.
- 20 The desired outcome of this Bill is to deliver transparency about who ultimately owns and controls overseas entities that own land in the UK. It is intended to act as a deterrent to those who would seek to hide and launder the proceeds of bribery, corruption and organised crime in land in the UK. Wider benefits will include improving confidence and trust among the wider public and legitimate investors as to who they are doing business with in any land transaction.

## Effect of the Bill and its main provisions

- 21 The Registration of Overseas Entities Bill will require any overseas entity that wishes to own UK land to take steps to identify their beneficial owner(s) and to register them. It also imposes a duty on overseas entities to update the information provided to the register annually. Failure to update the register is an offence, as is delivering (or causing to be delivered) misleading, false or deceptive information.
- 22 In order to register title to land, an overseas entity will have to be registered with Companies House and comply with the updating duty. A failure to register, or to comply with the updating duty, will in most cases affect the ability of the entity to (i) acquire legal title to land as the entity will be unable to register as proprietor or owner (as the case may be) of land in the UK with the three Land Registries of England and Wales, Scotland and Northern Ireland and, where already registered as proprietor, to (ii) sell or lease the land, or create a legal charge over the land, as any buyer, tenant or a mortgagee (as the case may be) would be unable to register that disposition with the (relevant) land registry in any part of the UK.

## Legal background

- 23 It is intended that the information aspects of the register will mirror as far as possible the regime currently in place for UK entities subject to the PSC regime, though there are differences in enforcement of the regime given that some of the PSC enforcement mechanisms cannot be applied to overseas entities (other than the imposition of criminal offences).
- 24 The PSC regime originated in the Small Business, Enterprise and Employment Act 2015. In summary, all UK registered companies (with some specified exceptions) are obliged to keep a register of “people with significant control” over that company, and to disclose that information to the public register held at Companies House. Unlike the PSC regime, however, overseas entities will not be required to keep their own registers; instead they will be required to deliver the information directly to the registrar with their application to register in the overseas entities register.
- 25 The PSC regime was intended to capture individuals who exercise ‘significant influence and control’ over a company – over and above the control you would expect a typical director or shareholder to exercise (although occupying those roles does not preclude an individual from

being a PSC). A number of conditions are specified to determine whether or not an individual is a PSC – these conditions were based on the definition of ‘beneficial ownership’, a concept which forms part of the Money Laundering Regulations 2007, and which is used within EU legislation, including the Anti-Money Laundering Directives.

- 26 These conditions capture individuals who own a significant share in the company’s share capital, those who have the right to exercise significant control through voting rights, which may or may not be directly related to the size of their shareholding, and those who control the company through other means, including by control of the management.
- 27 UK-registered companies are required to take reasonable steps to find out if they have a registrable person or registrable legal entity, and if so to identify them. This includes via the means of sending notices to anyone a company might reasonably think is a registrable person, or to anyone who the company thinks might know the identity of a registrable person. These requirements are mirrored in this Bill.
- 28 A protection regime is in place for individuals that may be placed at risk as a result of being identified on the public register; this regime will also be in place for overseas entities.
- 29 Company law requires UK-registered companies to annually check and confirm that the information held on the register remains accurate. A similar requirement will be imposed also on overseas entities via this Bill.
- 30 As mentioned above, the overseas entities register will be held by the registrar of companies and will be, in most part, accessible to the public. Many of the powers and functions of the registrar contained in the Companies Act 2006 in relation to the register kept for UK-registered companies have to be replicated in the Bill. The information that an overseas entity must provide in order to register, and detail as to who is a beneficial owner of an overseas entity is closely modelled on the PSC regime for UK-registered companies (and contained in Schedules 1 and 2 to the Bill respectively).
- 31 To deliver the policy aims, an enforcement mechanism had to be devised through (i) primarily, novel land registration requirements in England and Wales, Scotland and Northern Ireland (taking into account differences in land registration laws) and (ii) criminal sanctions. Please see section “Overview of the Bill” for details of the land registration requirements in each territory of the UK. The Bill amends the Land Registration Act 2002, the Land Registration Act etc. (Scotland) 2012, the Conveyancing (Scotland) Act 1924 and the Land Registration Act (Northern Ireland) 1970.
- 32 Certain Bill provisions will apply to current registered proprietors of land in England and Wales and in Scotland as at the commencement date. Paragraph 3 of Schedule 3 to the Bill inserts a new Schedule 4A into the LRA 2002. Paragraph 3(1) of Schedule 4A requires HMLR to enter a restriction on the title register of a “qualifying estate” in England and Wales where satisfied that the registered proprietor is an overseas entity, and that entity became registered as proprietor on or after 1 January 1999.
- 33 The practical effect of the restriction is that where an overseas entity makes a relevant disposition at a time when it is not a registered overseas entity, is not exempt and no exceptions apply, those dispositions cannot be completed by registration. In relation to overseas entities that are registered proprietors before the commencement date (and registered on or after 1 January 1999) the restriction will however not come into effect until 18 months after the commencement date. There are equivalent transitional provisions in relation to existing overseas entity proprietors of land in Scotland who became proprietors on or after 8 December 2014. As there is no equivalent of a “restriction” (or an “inhibition” in the case of Northern Ireland) in land registration law for Scotland, there will be no entry on the title

registers of land owned by overseas entities in Scotland, but the same 18-month transitional period will apply to them. In Northern Ireland, the Bill provisions will apply only to new registrations that occur after the commencement date.

## Territorial extent and application

- 34 Clauses 1 to 39 of, and Schedules 1 and 2 to, the Bill apply and extend to England and Wales, Scotland and Northern Ireland. Schedules 3, 4 and 5 make amendments to the applicable land registration legislation in each of the three jurisdictions.
- 35 The intention is for the legislation to extend across the UK.
- 36 The elements of the Bill that deal with land registration will need to be delivered by the three Land Registries responsible for land registration across England and Wales, Scotland, and Northern Ireland. There are some differences in the way that the land registries operate, and as far as possible these differences have been addressed within the Bill.
- 37 The table in Annex A summarises the position regarding territorial extent and application in the United Kingdom.

## Commonly used terms

- Overseas entity – a legal entity that is not governed by the law of the UK
- “Registered overseas entity” – This term has two meanings in the Bill. In respect of clauses 1 to 39 it means an overseas entity that is registered in the list of registered overseas entities (which comprises the overseas entities register). Where the term is used in Schedules 3, 4 and 5 (which deal with land registration), the term means an entity that is registered in the overseas entities register and has complied with the updating requirements
- “Registrar” – the Registrar of Companies in England and Wales
- “HMLR” – HM Land Registry (the Land Registry for England and Wales)
- Beneficial owner – an individual, legal entity or government or public authority who meets one or more of the qualifying conditions set out in Part 2 of Schedule 2 in relation to an overseas entity
- Registrable beneficial owner – an individual, a legal entity, or a government or public authority who is a beneficial owner of an overseas entity and, by virtue of Part 1 of Schedule 2, is registrable in respect of the overseas entity (i.e. must be identified in the overseas entities register)
- Qualifying estate in land – land that for the purposes of this Act that is within the scope of the requirements
- Proprietor – the legal owner of the land

# Commentary on provisions of Bill

## Introduction

### Clause 1: Overview

- 38 This clause explains that the Bill creates a new register that holds information about the ‘beneficial owners’ of overseas entities, as well as other pertinent information, and provides that, in most circumstances, overseas entities must register if they own land.

### Clause 2: Definition of “overseas entity” etc

- 39 This clause provides definitions of the most important terms that are used in the legislation. Subsection (1) explains what is meant by an “overseas entity”, while subsection (2) defines what is meant by “legal entity”. In broad terms, this legislation is designed to apply to those entities incorporated or formed overseas that want to buy, sell or otherwise transact with land in the UK.
- a. Subsection (1): This explains what is meant by “an overseas entity”: this term means a “legal entity” (see below) that is not governed by the law of the UK.
  - b. Subsection (2): defines what is meant by “legal entity” within this Act. This includes a body corporate (e.g. a company) or a partnership or other type of entity. What is key is that whatever the type of corporate vehicle, it must have legal personality under the law by which it is governed. This could therefore include companies, partnerships, corporations sole, governments and public authorities.

## The register and registration

### Clause 3: Register of overseas entities

- 40 This clause gives effect to the establishment of a register of overseas entities and states, in subsection (1), that the register must be kept by the “registrar of companies for England and Wales”. Subsection (2) lists what must be contained on the register, which will be comprised of three categories of information: the list of registered overseas entities; documents delivered with applications for registration or otherwise in connection with the register; and a further category of ‘any other information’ that may be required to be included elsewhere in the Bill.
- 41 The registrar must also ensure that the list of registered overseas entities includes the names of each entity that has made an application for registration and that has not been removed under clause 9(5).

### Clause 4: Application for registration

- 42 This clause describes what an overseas entity must provide in an application for registration. An overseas entity is required to confirm that it has taken reasonable steps to identify its beneficial owners pursuant to clause 11, and to make a statement (subsection (2)) declaring:
- a. that it has identified one or more beneficial owners and has no reason to believe there are others, and that it is able to provide the required information about those identified; or
  - b. that it has no reason to believe that it has any registrable beneficial owners – in which case, the entity must provide required information about its managing officers (for example, directors or company secretary); or
  - c. (i) that it has reasonable cause to believe that it has a registrable beneficial owner, but has been unable to identify the beneficial owner and therefore cannot provide the

required information; or (ii) that it has identified beneficial owners but cannot provide all of the required information about one or more of them; or (iii) that the circumstances in both (i) and (ii) apply. The overseas entity must in this case provide the required information about each managing officer of the entity and as much of the required information as it has been able to obtain about the beneficial owner(s).

- 43 In all scenarios mentioned above, the overseas entity must also provide the required information about the entity itself.
- 44 Subsections (3) and (4) signpost that the “required information” is set out in Schedule 1 and that the meaning of “registrable beneficial owner” can be found in Schedule 2.
- 45 Subsection (5) enables the Secretary of State to prescribe by regulations additional statements or information that the overseas entity must provide. For example, the regulations might specify that details about the notice(s) the overseas entity has sent out under clause 11 need to be included in an application. Subsection (6) provides that any such regulations will be subject to the negative resolution procedure.

### Clause 5: Registration and allocation of overseas entity ID

- 46 This clause describes what happens when an application is received by the registrar, and what the registrar must do (subsection (1)). On the registration of an overseas entity, the registrar must record the date of registration and allocate an overseas entity ID to the entity (and record this ID in the register). The registrar may decide what form (consisting of one or more sequences of numbers and letters) an overseas ID will take, that the form of ID may change as necessary, and that any change of overseas entity ID takes effect from the date on which the overseas entity is informed of the change (subsections (2), (3) and (4)). The intention is that the overseas entity ID will be a similar concept to the registered number of UK companies; unique to the entity and once allocated to the entity, a permanent ID, which will not change in relation to that entity.

### Clause 6: Notice of registration

- 47 The registrar is obliged to notify overseas entities that their application was successful and that they have been registered. Subsection (2) describes what must be contained in the notification (the date of registration and the overseas entity ID allocated to the entity). In addition, the notice must tell overseas entities that they have a duty to update their information in accordance with clause 7 and the consequences of failing to comply with that duty. Failure to comply would result in that overseas entity having committed an offence under clause 8. In addition, failure by the overseas entity to comply with the update duty may cause that entity difficulties in relation to buying and selling land (these are discussed further in respect of Schedules 3, 4 and 5). The notice sent by the registrar must also contain information about how an entity can apply for removal from the register (subsection (3)). Removal from the register, among other things, would mean that the overseas entity would no longer be required to comply with the updating duty.

## Updating

### Clause 7: Updating duty

- 48 This clause explains that registered overseas entities are required to annually update the statements and information provided to the register and must do so within 14 days after the end of the ‘update period’. The first update period is 12 months beginning with the date of the overseas entity’s registration. The information required at update is set out in subsection (1): the required information is the same as that required at first registration, and the entity remains obliged to take reasonable steps to identify beneficial owners, even

if none could be identified at the time of registration or the previous update (as the case may be). Subsections (2) to (5) provide further details and explanation about updating requirements, the “update period” and explain that the entity can provide updates earlier than required if they choose to do so.

- 49 Where an entity chooses to update before the end of the update period, this has the effect of re-setting the clock in respect of when the next update is due.

#### Example (1): Update period

An example would be where an overseas entity registers on 1 January 2022. Its update period would therefore expire on 31 December 2022, with the update due in respect of that period by 14 January 2023. If the overseas entity chooses instead to update on 6 July 2022 and notifies the registrar that it has shortened its update period so that the update is in respect of the period between 1 January and 6 July, the next update period will run from 7 July 2022 to 6 July 2023, with the update due 14 days after the expiry of that update period.

- 50 Subsections (6) and (7) explain that the Secretary of State may amend the update period by regulations. This would allow the Government, were it to become clear that the 12-month update period was not sufficient, to shorten or extend it as the case may be. Any such regulations would be subject to affirmative resolution procedure.

### Clause 8: Failure to comply with updating duty

- 51 It is a criminal offence to fail to comply with the updating duty. Clause 8 explains that if the duty is not complied with, not only does the entity commit an offence, but also every officer of the entity who is in default (subsection (1)). The explanatory note for clause 31 explains what it means to be an “officer in default” for the purposes of the Bill.
- 52 Subsection (2) sets out that a person guilty of an offence under subsection (1) is liable on summary conviction to an initial fine as well as a daily default fine for continued contravention. The contravention continues until such time as the registered overseas entity has delivered the required statements and information.
- 53 In the case of continued contravention, subsection (4) provides that the offence may also be committed by an officer who did not commit the offence in relation to the initial contravention, but who is in default in relation to the continued contravention.

## Removal

### Clause 9: Application for removal

- 54 This clause explains how an overseas entity can apply to be removed from the ‘live’ list of registered overseas entities. In order to be removed, an entity must, among other things, confirm that it is not a registered proprietor of a relevant interest in land. It must also update the information previously delivered to the registrar relating to it and its beneficial owners as at the time of the removal application or confirm that the information held on the register about the entity is up to date (subsections (1) to (3)).
- 55 The confirmation given by an overseas entity in its application for removal under subsection (1)(a) reflects the policy that an overseas entity which is the registered proprietor of certain estates in land is required to be registered in the overseas entities

register. As such, subsection (6) provides that if the entity is a registered proprietor at the time of the application, the application will be refused.

- 56 The registrar must inform the entity whether or not the application has been successful, and if it has, the date on which the entity was removed from the list of registered overseas entities.
- 57 Subsection (9) explains what is meant by the terms “qualifying estate in land” and “registered” in the context of this clause. An overseas entity will be a proprietor of a relevant interest in land if:
- a. it is the proprietor of a qualifying estate in England and Wales (see the new Schedule 4A to the Land Registration Act 2002) and became so in pursuance of an application to register made on or after 1 January 1999;
  - b. it is the proprietor of land in Scotland or the tenant under a lease of land in Scotland and became so on or after 8 December 2014; or
  - c. it is the proprietor of a qualifying estate in Northern Ireland (see the new Schedule 8A to the Land Registration Act (Northern Ireland) 1970), and became so on or after the day on which that Schedule comes into force.
- 58 The effect of being removed from the list of registered overseas entities is that an overseas entity will no longer be required to comply with the updating duty and the entry on the register relating to that entity will be comprised of historic information previously provided, until such time as those records are transferred to the Public Record Office (see clause 10). An overseas entity that has been removed from the list of registered overseas entities would have to reapply to register in the event that it chooses to be listed on the register again in the future or where it is required to do so in order to register title to land in the UK.

## Clause 10: Transfer of documents to Public Record Office

- 59 This clause enables the registrar to transfer any records relating to an overseas entity that has been removed from the list of registered overseas entities to the Public Record Office after two years.

## Obtaining information for applications and updating

### Clause 11: Identifying registrable beneficial owners

- 60 Clause 11 provides that before making an application to register under clause 4, complying with the updating duty under clause 7 or applying for removal under clause 9, an overseas entity must take reasonable steps to find out who its registrable beneficial owners are and to obtain the relevant information (set out in Schedule 1) about them. The entity must take reasonable steps (i) to identify any beneficial owner that may be “registrable” in relation to the entity and (ii) to obtain the information about the beneficial owner.
- 61 As a minimum, an entity must, as part of its reasonable steps, send an information notice to any person that it knows or has reasonable cause to believe is a “registrable beneficial owner” (subsection (3)). A person who receives an information notice is required to reply to it within a month, and where relevant (i.e. where they are the beneficial owner) confirm, correct or provide the required information set out in Part 3 of Schedule 1 to the overseas entity.

### Clause 12: Additional powers to obtain information

*These Explanatory Notes relate to the Registration of Overseas Entities Bill as published in Draft on 23 July 2018*

- 62 This clause provides that an overseas entity can (but is not obliged to) send an information notice to an individual or legal entity if the overseas entity knows or has reasonable cause to believe that the person to whom the notice is sent knows the identity of the entity's registrable beneficial owners, any beneficial owners who would not be registrable or if that person can identify a third party who may know this information. Subsection (3) sets out the time limit for responding to an information notice. A person who receives a notice must respond within one month, stating whether or not they know the identity of any beneficial owner, or know the identity of another person who might have information about the entity's beneficial owner(s). If they know any information that might help the overseas entity identify a beneficial owner, they must supply it to the overseas entity.
- 63 Subsection (4) provides that a recipient of a notice sent under subsection (1) is not required to disclose information in respect of which a claim to legal professional privilege (or, in Scotland, confidentiality of communications) could be maintained in legal proceedings.

### Clause 13: Sections 11 and 12: supplementary

- 64 Clause 13 confers on the Secretary of State a power to make regulations about the giving of notices under clauses 11 or 12, including the form and content of notices and the manner in which they must be given. Any regulations under this clause will be subject to the negative resolution procedure.

### Clause 14: Failure to comply with notice under section 11 or 12

- 65 Any individual who does not comply with an information notice (as set out in clauses 11 and 12) commits an offence unless they have a reasonable excuse for not complying with the notice (subsection (1)). An offence is also committed if a person appears to comply with the notice but makes a statement that they know is false or if they recklessly make a statement that is false in a material way (subsection (2)).
- 66 In some cases a notice may have been sent to a legal entity. Should a legal entity fail to respond to the notice the offence is committed by every officer of the entity in default (subsection (3)).
- 67 Subsection (4) provides that an offence is not committed if the person can prove that the requirement to give information was frivolous or vexatious. This test is likely to be met for example if the overseas entity repeatedly sends to a notice to a person where it has no reasonable cause to believe that the person is their beneficial owner or can assist that entity in identifying its beneficial owners.
- 68 Subsection (5) provides that a person guilty of an offence under this clause may be subject to imprisonment and/or a fine.

## Exemptions

### Clause 15: Power to modify application process etc in certain cases

- 69 Clause 15 provides that regulations may be made by the Secretary of State that modify the application or update requirements in relation to a description of overseas entity specified in the regulations. Such modifications may only be made if the Secretary of State considers that they are appropriate, taking into consideration information that is already publicly available otherwise than under the provisions of this Act. An example of where this power might be exercised is in relation to overseas entities that are already providing beneficial ownership information to a register in their own country of formation and the UK Government considers that register to be equivalent to the overseas entities register. In such circumstances, the regulations may require that the overseas entity only provide

details of that register, rather than be required to disclose beneficial ownership information again. Any such regulations made will be subject to the negative resolution procedure.

### Clause 16: Exemptions

- 70 The Secretary of State may exempt a person from certain requirements of the Bill. In subsection (2) the effects of an exemption are set out. Overseas entities are not required to take steps to identify or obtain information about an exempt person or give notices to an exempt person; should such a notice be received, the exempt person does not have to comply with the notice requirements if it brings the existence of the exemption to the attention of the entity. Others are not required to provide information about the exempt person, and the exempt person is not regarded as a 'registrable beneficial owner' for the purposes of the Act.
- 71 The Secretary of State may only exempt a person if satisfied that there are special reasons for doing so.

## Language requirement

### Clause 17: Documents to be in English

- 72 Clause 17 requires all documents sent to the registrar under this Bill or any regulations drawn up from it, to be delivered in English.

## Annotation of the register

### Clause 18: Annotation of the register

- 73 It is important that the register is as useful and transparent a source of information as possible for users. This clause provides that the registrar must annotate the register in certain circumstances (i.e. on receipt, replacement and removal from the register of documents or material sent to the registrar under this Bill). The registrar must also record the date on which documents are received under this Bill.
- 74 Subsection (2) confers on the Secretary of State a power to make provision by regulations, authorising or requiring the registrar to annotate the register in such other circumstances as may be specified in the regulations and as to the contents of any such annotation. Any such regulations will be subject to the negative resolution procedure (subsection (6)).

## Inspection of the register and protection of information

### Clause 19: Inspection and copies of register

- 75 Clause 19 ensures that the information on the overseas entities register is, as far as possible, publicly accessible. Subject to exceptions as set out in clause 20, anyone may access the information that is on the register, and may apply for a copy of it. Subsection (4) provides that the provisions of section 1091 of the Companies Act 2006 on certification of copies provided by the registrar as true copies (or regulations made under it) apply to copies provided under this Act.

### Clause 20: Material unavailable for inspection

- 76 This clause lists certain information on the register that must not be made available by the registrar for public inspection.
- 77 Some information is permanently suppressed from the public register in light of the potential risk to individuals if it were to be made publicly available, such as the day of a

person's date of birth or information about their usual residential address. Other information that cannot be made available for public inspection includes any information the registrar is prevented from making publicly available by regulations made under the power in clause 22.

### Clause 21: Disclosure of protected information

- 78 This clause sets out what the registrar may and may not do in respect of "protected" date of birth and residential address information (see clause 20). In summary, the registrar must not disclose protected date of birth information or protected residential address information, except in certain circumstances (subsection (1)).
- 79 These circumstances are:
- a. the same information is already publicly available on the register by virtue of it being included in another document, the public inspection of which is not restricted under clause 20, and
  - b. disclosure of "protected information" is to any person or body who has functions of a public nature and is specified for the purposes of this section in regulations made by the Secretary of State.
- 80 The Secretary of State may (by regulations) specify conditions for the disclosure of protected date of birth and residential address information, and may provide for the charging of fees by the registrar (subsection (3)). Regulations made under clause 21 are subject to the negative resolution procedure (subsection (6)).
- 81 Subsection (4) disapplies the provisions in clause 20 in relation to protected date of birth and residential address information (relating to a registrable beneficial owner or managing officer) where a person has made a successful application under clause 21 to have their information suppressed. This is because a beneficial owner or managing officer who has made a successful application under clause 21 will have all of the information that relates to them in respect of the overseas entity protected from public inspection and disclosure by the registrar. This would include information about the day of their date of birth and their residential address information.

### Clause 22: Power to protect other information

- 82 As mentioned in the explanatory note to clause 21, there may be circumstances in which all of a beneficial owner or managing officer's required information (over and above the day of birth and usual residential address) should be suppressed from public disclosure. For example, if the activities of the overseas entity meant that the public disclosure of information relating to the individual would put that individual at risk of physical harm.
- 83 This clause therefore enables the Secretary of State to make regulations which allow an application to be made to the registrar for an individual's details to be protected from public inspection on the register (or from disclosure by the registrar). The regulations would then require the registrar to make information relating to that individual unavailable for public inspection and to refrain from disclosing that information, except in specified circumstances (subsection (1)). Any such regulations will be subject to the affirmative resolution procedure (subsection (5)).
- 84 Regulations under this section may make provision as to the grounds on which an application can be made and the process by which applications are determined. They may also make provision in respect of the duration of the protection; procedures for its revocation; and the charging of fees by the registrar in relation to access to such information in prescribed circumstances (subsection (3)).

- 85 Subsection (6) clarifies that this section does not affect the disclosure of a person's details in any other capacity, for example, as a director or member of a UK company.

## **Correction or removal of material on the register**

### **Clause 23: Resolving inconsistencies in the register**

- 86 Where it appears to the registrar that there is an inconsistency between information contained in a document delivered to the registrar and other information on the register, the registrar may, by way of a notice sent to the overseas entity, require an overseas entity to take steps to resolve the inconsistency. In the notice to the overseas entity, the registrar must state in what respects the information appears to be inconsistent and the issue date of the notice. The notice must require the overseas entity to respond to the notice within 14 days of the issue date of the notice. If the overseas entity does not deliver the required documents within this period, it and every officer of the entity who is in default commit an offence (subsections (1) to (3)).
- 87 The penalty for an offence committed under this section is set out in subsection (4) and includes a fine for the initial contravention, followed by a daily default fine for continued contravention.

### **Clause 24: Administrative removal of material from register**

- 88 This clause sets out the type of material which the registrar may remove from the register. The registrar can remove material that there was no duty to include; in particular: material which is unnecessary; material obtained from a document that has been replaced because it did not meet requirements for proper delivery under section 1076 of the Companies Act 2006; and material that has been derived from a document that has been replaced under clause 23. The registrar must give notice of the removal of such material or the intention to remove such material to both the person by whom the material was delivered (if known) and the overseas entity to which the material relates. The notice must set out what material has been removed or is to be removed and the grounds for removal. The registrar may also remove from the register material which is not available for public inspection (listed in clause 20(1)) if it appears to the registrar that the retention of the material is no longer necessary.

### **Clause 25: Application to rectify register**

- 89 Regulations by the Secretary of State (subject to the affirmative resolution procedure) may make provision for the registrar, on application, to remove material from the register, for example if it is factually inaccurate (subsection (1)). The regulations may set out who can apply for rectification of the register, what an application must consist of, any notice period for both an application and the outcome of an application, any objection period that may apply to an application and how an application is to be determined (subsection (2)). Regulations under this clause might, for example, allow an overseas entity to make an application to the registrar for it to remove material on the register about the entity where the entity considers that material to be factually inaccurate.
- 90 Applications must specify what is to be removed from the register, where on the register it is, and must include a statement that the material specified complies with subsection (1) and regulations made under it.
- 91 If there are no objections to the application the registrar may accept the statement as sufficient evidence that the material should be removed from the register (subsection (4)).

### **Clause 26: Court order to rectify register**

- 92 Clause 26 requires the registrar to remove from the register any information that a court directs should be removed. A court may make this direction in relation to any material that derives from anything the court has declared to be invalid, ineffective or done without the authority of the overseas entity, or if it derives from something that is factually inaccurate or forged. The court order must specify what is to be removed from the register and indicate where on the register the material is. A copy of the court order itself must be sent to the registrar for registration. The registrar must also remove any material that is obtained from anything that the court has declared invalid or ineffective.

### Clause 27: Court powers on ordering removal of material from the register

- 93 Where the registrar removes material from the register, it is usually required by clause 18 to place a note on the register recording that material was removed, under what power and the date of the removal. However subsection (2) of this clause provides that a court may direct that any note placed on the register that is related to the material that is removed pursuant to a court order given under clause 26 must also be removed from the register. Similarly, the court may also direct that no note is made on the register as a result of the order under this clause. Before making any such direction, the court must be satisfied that the presence on the register of the note or the availability for public inspection of the court's order might damage the overseas entity and that the overseas entity's interest in non-disclosure outweighs the interest of other persons in disclosure (subsection (5)).

## False statements

### Clause 28: General false statement offence

- 94 It is an offence for a person knowingly or recklessly to deliver or cause to be delivered to the registrar any document that is misleading, false or deceptive in a material particular; or to make a statement that is misleading, false or deceptive in a material particular. Subsection (2) sets out the penalty for this offence in relation to convictions in England and Wales, Scotland or Northern Ireland and includes imprisonment and/or a fine.

## Land ownership and transactions

### Clause 29: Land ownership and transactions

- 95 Schedules 3, 4 and 5 of the Bill contain amendments to land registration legislation in England and Wales, Scotland and Northern Ireland respectively. In summary, the amendments provide that an overseas entity must have registered in the overseas entities register (and be in compliance with the update duty in clause 7) in order to register title to land and/or to make certain dispositions in respect of land.

### Clause 30: Power to require overseas entity to register if it owns certain land

- 96 Clause 30 allows the Secretary of State, by way of notice, to require an overseas entity to register in the register of overseas entities if the entity is registered as the proprietor of a relevant interest in land and at the time the notice is given the entity is neither registered in the overseas entities register, nor is it exempt.
- 97 This power exists in parallel to the general amendments to land registration legislation made by Schedules 3, 4 and 5 to the Bill which set out the circumstances in which a non-exempt overseas entity must be registered in the overseas entities register for land ownership purposes.
- 98 This clause defines what it is meant by "the proprietor of a relevant interest in land" by reference to the meaning given in clause 9(9). In summary, an overseas entity is a

proprietor of a relevant interest in land if it is a registered proprietor of a qualifying estate in England and Wales, Scotland or Northern Ireland and became so on or after 1 January 1999 in the case of England and Wales, on or after 8 December 2014 in the case of Scotland or on or after the day on which Schedule 8A to the Land Registration (Northern Ireland) 1970 Act comes into force in the case of Northern Ireland.

- 99 Where a notice is sent under this clause, an overseas entity must comply with the notice within the period of 6 months, unless it is a type of overseas entity that has been exempted from the requirement to register under regulations made under subsection (6). Regulations made under subsection (6) may exempt a type of overseas entity from the scope of the Bill's requirements where the Government considers it would not be appropriate to require that type of overseas entity to comply. For example, the Government may use this power to exempt governments and public authorities where they would otherwise meet the definition of overseas entity.
- 100 An overseas entity that is not exempt and fails to comply with the notice will commit an offence, as will every officer of the entity who is in default. The offence is punishable by way of imprisonment and/or a fine.

## Supplementary provision about offences

### Clause 31: Liability of officers in default

- 101 Sections 1121 to 1123 of the Companies Act 2006 (liability of officers in default; interpretation etc) apply for the purposes of this Act as they apply for the purposes of provisions of the Companies Acts. Therefore, an officer of an overseas entity includes any director, manager or secretary and that officer will be "in default" if they authorised, permitted, participated in or failed to take all reasonable steps to prevent the contravention.
- 102 A reference to an "officer" also includes a person in accordance with whose directions or instructions the board of directors or equivalent management body of a legal entity are accustomed to act, e.g. a shadow director (subsection (2)). Subsection (3) provides that persons giving advice in a professional capacity to a board of directors or equivalent management body are not caught by subsection (2), if the only reason why they would be caught is because their advice is acted upon.

### Clause 32: Meaning of "daily default fine"

- 103 Section 1125 of the Companies Act 2006 (meaning of "daily default fine") applies for the purposes of any provision made by or under this Act as it applies for the purposes of provisions of the Companies Acts.

### Clause 33: Consent required for prosecutions

- 104 Proceedings for an offence under this Bill may not be brought in England and Wales except by or with the consent of the Secretary of State or the Director of Public Prosecutions. In Northern Ireland proceedings for an offence under this Act may not be brought except by or with the consent of the Secretary of State or the Director of Public Prosecutions for Northern Ireland.

### Clause 34: Further provision about proceedings

- 105 This clause provides for the following provisions of the Companies Act 2006 to apply in relation to offences under this Act as they apply in relation to offences under the Companies Act: (i) section 1128 (summary proceedings; time limit); and (ii) section 1130 (proceedings against unincorporated bodies).

## General

### Clause 35: Regulations

106 This clause sets out general provisions for regulations that will be made under the Registration of Overseas Entities Act. A power to make regulations will be exercisable by statutory instrument. Regulations may make different provisions for different purposes; they may include supplementary, incidental and consequential provisions; and they may make transitional provision and savings. Subsections (4) and (5) give detail on what is meant by affirmative and negative resolution procedures. Subsection (6) provides that provisions made by regulations under this Act that are subject to the negative resolution procedure may also be made by regulations subject to the affirmative resolution procedure.

### Clause 36: Interpretation

107 This clause provides definitions of key terms, including what is meant by a “beneficial owner” of an overseas entity, the “registrar of companies” etc.

### Clause 37: Extent

108 This clause sets out that the Bill applies to England and Wales, Scotland and Northern Ireland except:

- a. clause 29(1) and Schedule 3 which extend to England and Wales only;
- b. clause 29(2) and Schedule 4 which extend to Scotland only; and
- c. clause 29(3) and Schedule 5 which extend to Northern Ireland only.

### Clause 38: Commencement

109 This clause provides when provisions of the Act would come into force.

### Clause 39: Short title

110 The Act may be cited as the Registration of Overseas Entities Act 2018.

## Schedule 1: Applications: Required information

### **Part 1: Introduction**

111 Schedule 1 sets out the information that is required from an overseas entity when it makes an application to register in the overseas entities register under clause 4, including details about the entity itself, its beneficial owners and, where required, its managing officers. Schedule 1 is also relevant when an overseas entity updates its information under clause 7 and in the event that an overseas entity applies to be removed from the list of registered overseas entities under clause 9.

### **Part 2: Overseas entities**

112 This sets out the information required about the overseas entity itself. It includes the name of the overseas entity, the country in which it was incorporated or formed, its registered or principal office, a service address, an email address, the legal form of the entity (e.g. a company limited by shares or a limited liability partnership) and the law by which it is governed. In the event that the overseas entity is entered on a public register in the country in which the entity was formed, details about that register are required, and, if applicable, the entity’s registration number in that register. “Public register” means a register kept by a government or public authority in the country in which the overseas entity was incorporated or formed. This could include, for example, a companies register

akin to the companies register maintained by the Registrar of Companies under Part 35 of the Companies Act 2006. A further example would be if the overseas entity, by virtue of its activities, is regulated by a public body and appears on a register held by that body. An example of this in the UK is the Charity Commission which maintains a register of charities in England and Wales.

### **Part 3: Registrable beneficial owners**

113 Paragraph 3 of Schedule 1 sets out the information that must be provided about the overseas entity's registrable beneficial owner where they are an individual. The information required is closely based on the information required about "people with significant control" of UK companies under Part 21A of the Companies Act 2006. It includes their name, date of birth, service address and the date on which they became a registrable beneficial owner in relation to the overseas entity.

114 It is possible that a registrable beneficial owner of an overseas entity will not be a natural person (see Schedule 2 to the Bill). Paragraphs 4 and 5 of Schedule 1 therefore set out the required information about a registrable beneficial owner which is a government or public authority, or another legal entity. In the case of the former, this term is defined in clause 36 and includes a corporation sole, a government or government department, an international organisation or a local authority. The required information about the government or public authority includes the name of the government or authority, principal office, a service address, the legal form of the entity and the law by which it is governed.

115 Where the registrable beneficial owner is a legal entity that is not a government or public authority, the required information is broadly the same as that in paragraph 4, except that it must also give details of any public register in which it is entered and, if applicable, its registration number in that register (for further information, please see the explanatory note for paragraph 2 of Schedule 1).

### **Part 4: Managing officers**

116 In certain circumstances, an overseas entity will be required to provide information about its managing officers, for example when it cannot provide complete information about its beneficial owners (see clause 4). Paragraph 6 sets out the information that must be provided in respect of a managing officer that is an individual. This includes their name, date of birth and nationality; any former name (unless subparagraph (2) applies), usual residential address, a service address (which may be stated as the overseas entity's registered or principal office), and business occupation (if any). The required information is modelled closely on the information required about directors of UK companies (see section 163 of the Companies Act 2006).

117 Paragraph 7 sets out the information required about an overseas entity's managing officer where that officer is not an individual.

118 For the purposes of the Bill, "managing officer", in relation to an overseas entity, includes a director, manager or secretary.

### **Part 5: Powers to make further provision under this Schedule**

119 Paragraph 8 of Schedule 1 contains a power for the Secretary of State to make regulations which make further provision about the information required in paragraphs 3(1)(e), 4(f) or 5(1)(g) of the Schedule. This is similar to the power in section 790K(5) of the Companies Act 2006 and may therefore be used to require further information about the nature of a beneficial owner's control over the overseas entity. For example, if a person is a beneficial

owner due to holding over 25% of the shares in the overseas entity (see paragraph 6 of Schedule 2 to the Bill) regulations made under this power might require the overseas entity to provide further information about the size of the beneficial owner's shareholding (for example, if it is over 50% or 75%). Regulations made under paragraph 8 are subject to negative resolution procedure.

- 120 Paragraph 9 provides that this Schedule may itself be amended by regulations to add or remove from any list of information in the Schedule. This is again based on the equivalent power under the People with Significant Control regime for UK entities - see section 790L of the Companies Act 2006. The list of information in the Schedule might be amended were the Government to become aware of additional information that ought to be required from overseas entities in order to meet the policy objectives underlying the Bill. Any such regulations will be made under the affirmative resolution procedure.

## Schedule 2: Registrable beneficial owners

### **Part 1: Meaning of "registrable beneficial owner"**

- 121 Schedule 2 to the Bill explains "who" is a beneficial owner of an overseas entity. While not identical, it is based closely on section 790C of, and Schedule 1A to, the Companies Act 2006 which contains provisions on the equivalent People with Significant Control regime for UK companies.
- 122 Schedule 2 differentiates between two concepts: a beneficial owner and a "registrable" beneficial owner. If a beneficial owner is "registrable" they should appear on the register of overseas entities in relation to the overseas entity. It is possible for a person to be a beneficial owner, but not to be registrable.
- 123 Part 1 firstly sets out that a registrable beneficial owner of an overseas entity may be an individual, a legal entity, or a government or public authority. To work out whether an individual, legal entity or government or public authority is registrable beneficial owner, the test in paragraphs 2, 3 or 4 (as the case may be) must be applied.
- 124 An individual is a registrable beneficial owner in relation to an overseas entity if the individual (1) is a beneficial owner of the overseas entity (see Part 2 of this Schedule) and (2) is not exempt from being registered (see Part 4). While more detail is available in the separate explanatory note about Part 4, an individual will never be exempt under Part 4 if they hold the interest directly in the overseas entity. Therefore, where an individual is a beneficial owner as a result of satisfying a condition under Part 2, and does so directly in respect of the entity, that individual will be registrable.
- 125 A legal entity other than a government or public authority is a registrable beneficial owner in relation to an overseas entity if it is a beneficial owner of the entity (see Part 2); is subject to its own disclosure requirements (see Part 3) and is not exempt from being registered (see Part 4). Again, a legal entity that satisfies a condition under Part 2 directly in relation to the overseas entity will never be exempt under Part 4. While more detail is available in the separate explanatory note about Part 3, broadly speaking a legal entity will be subject to its own disclosure requirements if it too is transparent about its beneficial ownership information. In other words, if the beneficial owner of an overseas entity (X) is another legal entity (Y) which itself is disclosing information about its beneficial owner (Z), there would be no requirement for X to have to investigate or disclose further information about Z, seeing as Y will already have made that information available elsewhere. On the other hand, if Y was not disclosing any information about its beneficial owner, it would defeat the purpose of the overseas entity register if X could simply provide details about Y, as anyone looking to track the ultimate beneficial owners

of X would be unable to find any information past Y.

126 A government or public authority (defined in clause 36) is a registrable beneficial owner in relation to an overseas entity in all cases where it is a beneficial owner of the entity (see Part 2). This is because it is unlikely that the government or public authority will, itself, have a beneficial owner.

### **Part 2: Meaning of “beneficial owner”**

127 This Part sets out what is meant by the term “beneficial owner” for the purposes of this Bill. It mirrors the equivalent conditions under the People with Significant Control regime (see Schedule 1A to the Companies Act 2006). A person (X) is a beneficial owner of an overseas entity or other legal entity (Y) if they meet one or more of the following conditions.

- a. *Ownership of shares*: The first condition is that X holds, directly or indirectly, more than 25% of the shares in Y.
- b. *Voting rights*: The second condition is that X holds, directly or indirectly, more than 25% of the voting rights in Y.
- c. *Right to appoint or remove directors*: The third condition is that X holds the right, directly or indirectly, to appoint or remove a majority of the board of directors of Y.
- d. *Significant influence or control*: The fourth condition is that X has the right to exercise, or actually exercises, significant influence or control over Y. This provision is intended to capture individuals who exercise control other than through the first, second or third conditions, and is intended to mean individuals with a level of control that is broadly equivalent to those with an interest in more than 25% of Y’s shares or voting rights.
- e. *Trusts, partnerships, etc*: The fifth condition is that the trustees of a trust or the members of a partnership, unincorporated association or other entity, that is not a legal person under the law by which it is governed meet any of the conditions specified above (in their capacity as such) in relation to Y, and X has the right to exercise, or actually exercises, significant influence or control over the activities of that trust or entity.

### **Part 3: Meaning of “subject to its own disclosure requirements”**

128 A legal entity is “subject to its own disclosure requirements” for the purposes of this Schedule if:

- (i) Part 21A of the Companies Act applies to it (whether by virtue of section 790B of that Act or another enactment that extends the application of that Part). This could therefore be a UK company or UK limited liability partnership that is required to comply with the People with Significant Control regime is therefore disclosing information about its PSC to the companies register held by the registrar;
- (ii) it is a company which has voting shares traded on a regulated European market. This would therefore mean that the legal entity is already required to disclose information about its beneficial owners;
- (iii) it meets the description of an entity specified in regulation 4 of the Register of People with Significant Control Regulations 2016. These are described as those which have voting shares admitted to trading on a market listed in Schedule 1 to those Regulations, and include, for example, an entity which has voting shares traded on a

market such as the NASDAQ Stock Market in the US or the Tel Aviv Stock Exchange in Israel. Again, this would mean that the legal entity is already required to disclose information about its beneficial owners;

- (iv) it is an eligible Scottish partnership within the meaning of regulation 3 of the Scottish Partnerships (Register of People with Significant Control) Regulations 2017 (and therefore is having to disclose information about its people with significant control);
- (v) it is registered in the register of overseas entities. In other words, if an overseas entity's beneficial owner is another overseas entity which has registered in the overseas entities register, that entity is itself subject of its own disclosure requirements; or
- (vi) it is of a description specified by the Secretary of State in regulations made under paragraph 7. This power would allow the Secretary of State therefore to specify other types of legal entities that, for the purposes of this Schedule, are subject to their own disclosure requirements. For example, regulations made under this power might specify a legal entity that is required to disclose beneficial ownership information to a central register in its own country of formation, such as a company incorporated in an EU Member State which is required to comply with the Fourth Anti-Money Laundering Directive (2015/849). Regulations made under paragraph 7 would be subject to affirmative procedure.

#### **Part 4: Beneficial owners exempt from registration**

*"Exempt from being registered"*

- 129 This part sets out the circumstances in which a beneficial owner is exempt from being registered in relation to the overseas entity. A beneficial owner is exempt if:
- a. such person does not hold any interest in the overseas entity other than through one or more legal entities (this would therefore not be satisfied if, for example, the beneficial owner held shares in the overseas entity through another legal entity, but separately to this, held voting rights in the overseas entity directly);
  - b. such person is a beneficial owner of every legal entity through which the person holds such an interest;
  - c. in relation to the shares or rights which that person holds indirectly (as described in paragraph 9(3)(b)(i) of this Schedule), the legal entity through which the shares or rights are held is a beneficial owner of the overseas entity and is subject to its own disclosure requirements; and
  - d. in relation to the shares or rights which that person holds indirectly (as described in paragraph 9(3)(b)(ii) of this Schedule) at least one of the legal entities in the chain is a beneficial owner of the overseas entity and is subject to its own disclosure requirements.

*Holding an interest in an overseas entity etc*

- 130 Paragraph 9 sets out, for the purposes of paragraph 8, when a person ("V") would be regarded as holding an interest in an overseas entity ("W") and when that interest is regarded as being held through a legal entity. This helps the person to identify whether they are registrable or not, based on the conditions set out in Part 2 of this schedule.
- 131 The grounds on which a person is regarded as holding an interest in a company are set out in paragraph 9, and interests are regarded as being held through a legal entity under

*These Explanatory Notes relate to the Registration of Overseas Entities Bill as published in Draft on 23 July 2018*

paragraph 9 by reference to paragraph 18 (shares or rights held “indirectly”).

## **Part 5: Supplementary provision about interpretation of Schedule**

### *Introduction*

132 This Part sets out further rules for interpretation of the Schedule.

### *Joint interests*

133 Shares or rights in an entity may be held jointly. For example, in the case of a partnership, the partners may hold the shares jointly and indivisibly. In such cases each person is treated for the purposes of this Schedule as holding the shares or rights in their own right (paragraph 11).

#### **Example (2): Joint interests**

For example, if A and B have a joint interest in 26% of the shares in entity Y, each of them will be a registrable person in respect of Y by virtue of each holding 26% of Y’s shares.

### *Joint arrangements*

134 Shares or rights in an entity may also be subject to joint arrangements between persons, where those persons agree to act jointly in respect of the shares or rights in question. Paragraph 12 provides that in such cases, each person is treated for the purpose of this Schedule as holding the combined shares or rights of both of them.

#### **Example (3): Joint arrangements**

For example, if A and B each hold 20% of the shares in entity Y and have made a joint arrangement, each of them will be a registrable person in respect of Y by virtue of holding 40% of Y’s shares.

135 Paragraph 12(2) provides that a “joint arrangement” is an arrangement between the holders of shares or rights that they will exercise all or substantially all their respective rights together, as pre-determined by the arrangement in question.

136 An “arrangement” includes:

- a. Any scheme, agreement or understanding, whether or not is legally enforceable, and
- b. Any convention, custom or practice of any kind.

137 Paragraph 12(4) provides that something does not count as an arrangement unless there is at least some degree of stability about it (whether by its nature or terms, or the time it has been in existence, or otherwise).

### *Calculating shareholdings*

138 Paragraph 13 sets out the way shareholdings are to be calculated, including in relation to a legal entity that does not have a share capital. All shares issued by the company, as set out in the company’s statement of capital, are to be factored in to the calculation. Where an overseas entity is one which does not have a share capital, a reference to holding shares in that entity should be read as a reference to holding the right to share in the capital or, as the case may be, profits of that entity.

### *Voting rights*

139 Paragraph 14 sets out the way in which references to voting rights are to be interpreted. A reference to voting rights therefore is to rights conferred on shareholders in the first instance in respect of their shares to vote at general meetings of the entity on all or substantially all matters. Paragraph 14 also sets out how references to voting rights should be interpreted in relation to legal entities which do not have, or are not required to have, general meetings in which case the reference should be read as a reference to exercising rights in relation to the entity that are equivalent to those of a person entitled to exercise voting rights in a company registered under the Companies Act 2006.

### *Rights to appoint or remove members of the board*

140 Paragraph 16 clarifies that the third condition (in determining beneficial ownership as laid out in Part 2 of this Schedule) relates to the right to appoint or remove directors holding a majority of the voting rights at board meetings on all or substantially all matters.

141 This provision is intended to capture scenarios which would give the holder of the right a level of control over the company broadly equivalent to holding more than 25% of the shares or voting rights.

142 If an entity does not have a board of directors, references to a board of directors are to be read as references to the equivalent managing body of the entity.

### *Shares or rights held “indirectly”*

143 Paragraph 18 sets out what is meant by shares or rights held indirectly.

144 A person holds shares in Y indirectly if they have a majority stake in a legal entity and that entity holds the shares in Y (paragraph 18(1)(a)).

145 If that legal entity is part of a chain of legal entities, a person will hold the shares indirectly if each entity in the chain has a majority stake in the entity immediately below in the chain, and the last entity in the chain holds the shares in Y (paragraph 18(1)(b)).

146 A person has a right “indirectly” if they have a majority stake in a legal entity and that entity has the right in question (paragraph 18(2)(a)).

147 If the legal entity is part of a chain of legal entities, a person will exercise the right indirectly if each entity in the chain has a majority stake in the immediately below it in the chain, and the last entity in the chain has the right in question (paragraph 18(2)(b)).

148 “Majority stake” is defined in paragraph 18(3) by reference to having a majority of or controlling a majority of (either alone or pursuant to a shareholder’s or member’s agreement) the voting rights, dominant influence or control, and the right to appoint or remove directors on a board.

149 The majority stake allows the person to control the legal entity in question. The person can then, by extension, control – for example – the way in which the legal entity exercises its voting rights in entity Y. Without a majority stake in the legal entity, the person will not normally have sufficient control to do this in respect of entity Y. In a chain of entities, this level of control needs to be reflected at each point in the chain in order that the person can be said to indirectly hold the shares or rights in entity Y.

150 In applying this paragraph to the right to appoint or remove a director, paragraph 18(4) provides that a legal entity is treated as having the right to appoint a director if a person is appointed as a director of entity Y as a result of being appointed director of the legal

entity; or if the legal entity is the director of entity Y.

#### *Shares held by nominees*

151 Where a share is held by a nominee on behalf of a person, the share is treated as held by that person for the purpose of this Schedule. This means that the person – and not the nominee – could be registrable.

#### *Rights treated as held by a person who controls their exercise*

152 Similarly to paragraph 19, paragraph 20 provides that where a person controls a right, the right is treated as held by that person for the purpose of this Schedule. This means that the controller of the right – and not the holder, unless they are also a controller – is registrable where the relevant conditions are met.

153 Paragraph 20(2) sets out when a person has control of a right. This is by reference to an arrangement between a person and others such that the right is only exercisable by that person; in accordance with that person's directions or instructions; or with that person's consent or concurrence. The definition of "arrangement" in this paragraph is broad, but as with the meaning given in paragraph 12(3) and (4) provides that there must be a degree of stability about the arrangement. The intention is to exclude one-off actions or decisions which would not equate to "significant control".

#### *Rights exercisable only in certain circumstances etc*

154 Some rights in an overseas entity are only exercisable in certain circumstances. Paragraph 21 provides that for the purpose of determining whether a person has significant control, such rights should only be taken into account when the circumstances have arisen and for as long as they continue to exist; or when the circumstances are within the person's control.

155 Paragraph 21(2) specifies that the rights of administrators or creditors during relevant insolvency proceedings should not be taken into account for the purposes of the register. The control exercised in such circumstances is not considered relevant because of the exceptional nature of the circumstance and its limited duration. "Relevant insolvency proceedings" are defined in paragraph 21(3).

156 Rights temporarily incapable of exercise - for example, because they have been suspended – should continue to be taken into account (paragraph 21(4)).

#### *Rights attached to shares held by way of security*

157 Where shares are provided by a person as security, the rights attached to those shares are to be treated in this Schedule as belonging to that person (paragraph 22). This is provided that the rights are only exercisable in accordance with that person's instructions and in that person's interests (with the exception of the right to preserve or realise the value of the security).

#### *Limited partnerships*

158 Where a limited partnership is deemed to hold shares or rights in an entity, the limited partners will hold those shares or rights jointly and will meet the specified conditions accordingly (see paragraph 12). Limited partners will not however normally be involved in the management of the partnership business. They do not therefore have control over the entity in the same way as other holders of shares or rights. Paragraph 23 accordingly provides that an individual does not meet the first, second or third specified conditions of paragraph 6 by virtue only of being a limited partner.

- 159 Similarly, paragraph 23(2) provides that individuals who directly or indirectly hold shares or rights in relation to a limited partner are not considered to meet the first, second or third specified condition by virtue only of that interest.
- 160 Paragraphs 23(1) and (2) do not apply in relation to identifying whether an entity meets the requirement set out in condition 5(a) of paragraph 6.
- 161 For the purposes of this paragraph, “limited partner” means a limited partner in a limited partnership registered under the Limited Partnerships Act 1907 (other than one who takes part in the management of the partnership business); or a foreign limited partner.
- 162 In this paragraph “foreign limited partner” means an individual who (i) participates in arrangements established under the law of a country or territory outside the United Kingdom, or (ii) has the characteristics prescribed by regulations made by the Secretary of State. Any such regulations will be made under the affirmative resolution procedure.

#### *Meaning of “director”*

- 163 In this Schedule, “director” includes any person occupying the position of director, by whatever name called.

#### **Part 6: Power to amend thresholds etc**

- 164 Paragraph 25 gives the Secretary of State the power to amend Schedule 2 for a permitted purpose. This power would be exercised by regulations made under the affirmative resolution procedure.
- 165 The permitted purposes are to increase or decrease the percentage figures laid out in this Schedule and to change or add to the specified conditions. The latter may be used to include circumstances that give individuals a level of control over overseas entity Y broadly similar to the other specified conditions. These amendments may be required in future to react to changing circumstances and on-going monitoring and review. Changes to conditions made be needed to ensure that Schedule 2 adequately covers scenarios involving, for example, more complex corporate structures – particularly as new corporate structures develop or individuals seek new ways to evade the disclosure requirements.

#### **Schedule 3: Land ownership and transactions: England and Wales**

- 166 Schedule 3 makes amendments to the Land Registration Act 2002, the overall effect of which is that overseas entities that wish to become the legal owners of land in England and Wales, or to transfer legal ownership, will be required to have registered in the overseas entity register.

#### **Part 1: Amendments to Land Registration Act 2002**

- 167 This Part amends the LRA 2002. Paragraphs 1 and 2 of Schedule 3 insert (after section 85) new section 85A into Part 7 of the LRA 2002. Paragraph 3 inserts new Schedule 4A into the LRA 2002.
- 168 Schedule 4A is about the ownership of registered land by overseas entities and about registrable dispositions made by them and sets out, amongst other things, the registration regime in the LRA 2002 for overseas entities.

#### *Meaning of “qualifying estate”*

- 169 Paragraph 1 of the new Schedule 4A sets out the two main estates in land that are in scope of the registration requirements in England and Wales: a freehold estate in land and a leasehold estate in land where the lease is granted for a term of more than seven years

from the date of the grant. Either of these estates in land is a “qualifying estate” for the purposes of Schedule 4A.

#### *Registration*

170 Paragraph 2 of the new Schedule 4A prohibits the making of an application to register an overseas entity as the proprietor of a qualifying estate unless the entity is a “registered overseas entity” (i.e. is registered in the overseas entities register and has complied with update requirements under clause 7 of the Bill). This includes circumstances such as (i) where an overseas entity owns unregistered land (and attempts to register voluntarily under section 3 of the LRA 2002), (ii) where compulsory first registration is triggered under section 4 of the LRA 2002, and (iii) where there is a transfer of an already registered qualifying estate to an overseas entity, and that entity then subsequently applies to be registered as proprietor.

171 Section 27 of the LRA 2002 provides that a disposition of a registered estate must be completed by registration or else does not operate at law. The effect of this is that an overseas entity which has bought land in England and Wales (either a freehold or leasehold of over 7 years) will be unable to obtain legal title to the land without being a registered overseas entity. The only exception to this is if the entity is an exempt overseas entity at the time that the application is made to HMLR. An exempt overseas entity for these purposes is one which meets the description in any regulations made under clause 30(6) of the Bill.

#### *Restrictions on disposal*

172 If an overseas entity is a registered overseas entity at the time of the application to register as proprietor of a qualifying estate, it will be registered as proprietor (assuming all other registration requirements are met). Paragraph 3(1) of the new Schedule 4A however requires HMLR on registration of the overseas entity to enter a restriction in the title register of the qualifying estate.

173 The effect of the restriction under paragraph 3(1) is set out in paragraph 3(2): the restriction must prohibit the registration of certain dispositions in relation to a qualifying estate unless the overseas entity is “a registered overseas entity” at the time of the disposition (or is exempt). The dispositions in scope are (i) a transfer of the estate (i.e. transfer of a freehold estate or assignment of a leasehold estate granted for a term of more than 7 years), (ii) the grant of a lease for a term of more than 7 years out of a freehold or a leasehold estate, and (iii) the grant of a charge over a qualifying estate. The statutory duty to enter a restriction in the register applies regardless of whether the overseas entity is exempt or not. The restriction will however not “bite” if an overseas entity makes a disposition at a time when it is an exempt overseas entity.

174 Should the overseas entity not be a registered overseas entity (or exempt) at the time of the disposition, it will not be possible to register that disposition subsequently. There are three exceptions to this: the disposition is made (i) in pursuance of a statutory obligation or court order; (ii) in pursuance of a contract made before the restriction was entered in the register; and (iii) in the exercise of a power of sale or leasing conferred on the proprietor of a registered charge over the estate, or a receiver appointed by the chargeholder.

175 In respect of exception (i), an example of this is where the overseas entity is the proprietor of a qualifying estate out of which a lease has been created. Where the leaseholder is entitled by reason of statute to an extension or renewal of that lease, any failure by the overseas entity to comply with the requirement to register in the overseas entities register

(or to update) will not affect that leaseholder's ability to exercise their statutory rights in respect of that lease.

- 176 Exception (ii) is relevant, for example, if an overseas entity buys a qualifying estate that is itself subject to an existing lease, and the leaseholder has a contractual entitlement under that lease to an extension or renewal of the lease. Any failure by the overseas entity to comply with the updating duty will not prevent the leaseholder exercising their contractual rights.
- 177 Exception (iii) protects the rights of a proprietor of a registered charge. Where an overseas entity grants a legal charge over the qualifying estate at a time when it is not a registered overseas entity, that charge will not be capable of registration under the terms of the restriction. However once the charge is successfully registered, any subsequent failure by the overseas entity to comply with the updating duty will not prejudice the ability of the registered chargeholder (or a receiver appointed by them) to exercise a power of sale or leasing in respect of the estate.
- 178 Before registering a disposition in the circumstances outlined in the exceptions, it is likely that HMLR will require evidence (such as a conveyancer's certificate) that the exception is engaged.
- 179 Sections 23 and 24 of the LRA 2002 refer to the right of a registered proprietor, or a person who is "entitled to be registered" as the proprietor of a registered estate to exercise owner's powers in respect of that estate. Owners powers consist of the power to make a disposition of any kind permitted by the general law, such as, for example, the ability to sell the estate to someone else. Where an overseas entity makes a disposition, such as a transfer of the estate, to a third party, at a time when it is not a registered overseas entity, is not exempt, and no exceptions apply, not only will that disposition be incapable of registration, the third party to the transaction will not be entitled to be registered as the proprietor for the purposes of section 24 of the LRA 2002. An overseas entity which has purported to dispose of the estate in these circumstances, alongside any officers of the entity who are in default, will have committed a criminal offence (see paragraph 5 (making dispositions that cannot be registered) of Schedule 4A).
- 180 As well as requiring HMLR to enter the overseas entity restriction on registration of the overseas entity as proprietor of the qualifying estate after the commencement of Schedule 4A, paragraph 3(1)(b) also requires that that restriction is entered in existing registered titles if the Chief Land Registrar is satisfied that the proprietor is an overseas entity and became registered as proprietor on or after 1 January 1999. This concerns the application of the requirements to overseas entities that are existing proprietors of qualifying estates when the requirements come into force. The explanatory note for Part 2 of Schedule 3 to the Bill explains this in more detail.

*Registrable dispositions by overseas entities entitled to be registered (but not registered)*

- 181 As mentioned in the explanatory note for paragraph 3 of Schedule 4A, a person who is "entitled to be registered" but not registered as proprietor of a registered estate may exercise owner's powers in respect of the estate. However, by virtue of paragraph 4, where an overseas entity is entitled to be registered as the proprietor of a qualifying estate (but is not registered, either because of paragraph 2 of Schedule 4A or otherwise), and became so entitled on or after the day on which paragraph 4 of the new Schedule 4A comes into force, any disposition within section 27(2)(a), (b)(i) or (f) of the LRA 2002 made by the overseas entity cannot be registered unless (i) the entity is "a registered overseas entity" (or is exempt) at the time of the disposition; or (ii) the disposition is made in

pursuance of a statutory obligation or court order; or (iii) the disposition is made in pursuance of a contract that was made before the overseas entity became entitled to be registered; or (iv) the disposition is made in the exercise of a power of sale or leasing conferred on the proprietor of a registered charge, or a receiver appointed by such a chargeholder. A further effect of paragraph 4 is that the third party to whom a qualifying estate is transferred, assigned or charged (as the case may be) will not be entitled to be registered within the meaning of section 24 of the LRA 2002 and they will therefore not have owner's powers to further dispose of the qualifying estate. The overseas entity and any officer of that entity that is in default will also have committed a criminal offence under paragraph 5 of Schedule 4A.

#### *Making dispositions that cannot be registered*

182 Under paragraph 5(1) of Schedule 4A, an overseas entity is prohibited from making a registrable disposition of a qualifying estate which cannot be registered under paragraphs 3 and 4. Where an overseas entity acts in breach of this prohibition, an offence will be committed by the entity and every officer of the entity who is in default (paragraph 5(2)).

183 Paragraph 5(3) provides that nothing in paragraph 5 affects the validity of a disposition made in breach of 5(1). In other words, if an overseas entity that is not exempt makes a disposition at a time when it is not a registered overseas entity (and no exception applies), while the disposition will not be capable of registration and the entity will have committed an offence, the validity of the disposition itself will not be affected. This is intended to avoid situations where a potentially void, voidable or unenforceable transfer causes significant disruption to a chain of conveyances.

184 Paragraph 5(4) provides that sections 1121 to 1123 of the Companies Act 2006 apply for the purposes of defining the term "any officer in default" in paragraph 5. An officer will therefore be in default for the purposes of the offence under paragraph 5 if that person authorised, permitted, participated in or failed to take all reasonable steps to prevent the contravention. Paragraph 5(5) provides that a reference to an officer in those sections as applied includes (as well as any director, manager or secretary) a person in accordance with whose directions or instructions the board of directors or equivalent body of an overseas entity are accustomed to act. A person who gives advice in a professional capacity that is acted upon by the board of directors or equivalent management body of the overseas entity is not to be regarded as falling within paragraph 5(5) by the reason only that their advice is acted upon (paragraph 5(6)).

185 Paragraph 5(7) sets out the penalties where a person is found guilty of an offence under paragraph 4 or 5. This is the most serious offence in the Bill and is punishable by a fine and/or up to 5 years imprisonment.

186 Paragraph 5(9) provides that proceedings for an offence under paragraphs 4 and 5 may only be brought by or with the consent of the Secretary of State or the Director of Public Prosecutions.

#### *Interpretation etc*

187 Paragraph 6 of the new Schedule 4A defines key terms used in Schedule 4A, including the meaning of "registered overseas entity", "register of overseas entities", "overseas entity" and "exempt overseas entity".

188 For the purposes of Schedule 4A, an overseas entity that is registered in the overseas entities register but fails to comply with the updating duty in clause 7 of the Bill is not to be treated as a registered overseas entity until it remedies the failure (paragraph 7(1)). An

overseas entity “remedies” the failure when it delivers the required statements and information under clause 7(1)(a), (b) and (c) of the Bill (paragraph 7(2)).

## **Part 2: Transition: qualifying estates registered pre-commencement**

189 Part 2 of Schedule 3 makes provision about the transitional regime for those overseas entities that are registered proprietors of qualifying estates in England and Wales on the commencement date and became such proprietors in pursuance of an application made on or after 1 January 1999. Paragraph 3(1)(b) of Schedule 4A requires HMLR, where it is satisfied that the conditions are met, to enter a restriction in the relevant title registers (as well as into the title registers of those that become registered proprietors of qualifying estates after the commencement of the Bill). This Part however provides for a transitional period of 18 months for those overseas entities to either dispose of their qualifying estate or to register as a “registered overseas entity” under the provisions of the Bill.

### *Duty of proprietor to register as an overseas entity within transitional period*

190 Paragraph 4(1) of Schedule 3 provides that where an overseas entity that is registered as a proprietor of a qualifying estate, having become so registered on or after 1 January 1999 but before the commencement date, is still the registered proprietor at the expiry of 18 months beginning with the commencement date and is neither a registered overseas entity nor an exempt overseas entity, that entity will have committed an offence, as well as every officer of the entity who is in default. Paragraphs 4(2) and 4(3) set out the penalties for a person found guilty of an offence under this paragraph and include a fine and or up to 2 years imprisonment.

### *Registrar’s duty to enter restriction in relation to qualifying estate*

191 Paragraph 5 of Schedule 3 applies where the Chief Land Registrar is satisfied that an overseas entity is registered as the proprietor of a qualifying estate and became so registered in pursuance of an application made before the commencement date. Under paragraph 5(2), the Chief Land Registrar must comply with the duty to enter a restriction under paragraph 3 of Schedule 4A to the LRA 2002 in relation to the estate before the end of the period of 12 months beginning with the commencement date. Although the restriction will appear on the title register of the estate, the terms of the restriction will make clear that it will only apply to dispositions taking place at least 18 months after the commencement date.

192 The effect of paragraph 5(3) of Schedule 3 is that overseas entities that are existing registered proprietors of qualifying estates (and became so on or after 1 January 1999 but before the commencement date) will have a period of 18 months from the commencement date to either register in the overseas entities register or freely dispose of the qualifying estate. These transitional provisions will also ensure that any third party who inspects the title register for a qualifying estate whose proprietor is an overseas entity will see a restriction on the title register and be able to take the restriction into account when considering whether to enter into a contract (for a disposal of or charge over the qualifying estate) with the overseas entity.

### *Interpretation*

193 Paragraph 6 defines the terms “the commencement date”, “registered proprietor” and “qualifying estate” for the purposes of Part 2 of Schedule 3.

## **Schedule 4: Land ownership and transactions: Scotland**

## **Part 1: Amendments**

194 This part amends the Conveyancing (Scotland) Act 1924 (the “1924 Act”) and the Land Registration etc. (Scotland) Act 2012 (the “LRSA 2012”).

### *Conveyancing (Scotland) Act 1924*

195 Paragraph 1 of Schedule 4 amends section 4A of the 1924 Act by the insertion of a new subsection into section 4A. The existing text of section 4A becomes subsection (1) and after that subsection, a new subsection (2) is inserted that provides that subsection (1) is subject to paragraph 3 of the new schedule 1A to the LRSA 2012.

196 Subsection (1) provides that any person who has right either to land or to heritable security may complete title by registration in the Land Register of Scotland of a notice of title in or as nearly as may be in the terms of the form in schedule BA to the 1924 Act. The new subsection (2) makes subsection (1) subject to paragraph 3 of the new schedule 1A to the LRSA 2012, which provides that where an overseas entity makes an application under section 21 of the LRSA 2012 by virtue of section 4A(1) of the 1924 Act, the Keeper must reject the application unless the overseas entity is a registered overseas entity or an exempt overseas entity. Section 4A(2) therefore prevents an overseas entity from completing title by registration in the Land Register of Scotland of a notice of title unless it is a registered overseas entity or an exempt overseas entity.

### *Land Registration etc. (Scotland) Act 2012 (asp 5)*

197 Paragraph 2 of Schedule 4 provides that the LRSA 2012 is amended; the amendments are set out in paragraphs 3 to 7 of Schedule 4.

198 Paragraph 3(a) of Schedule 4 provides for the amendment of section 21 (application for registration of deed) of the LRSA 2012 by inserting, in section 21(4), references to paragraphs 1 to 5 of the new schedule 1A to the LRSA 2012. Section 21(1) provides that a person may apply to the Keeper for registration of a registrable deed. Section 21(2) provides that the Keeper must accept such an application if, at the date of the application, the applicant satisfies the Keeper that the general application conditions are met, subject to certain other conditions set out in paragraphs (a) – (c) of subsection (2). Section 21(3) provides that to the extent that the application does not satisfy the Keeper, the Keeper must reject the application. Section 21(4) as amended by paragraph 3(a) provides that section 21(2) is subject to section 45(5) and paragraphs 1 to 5 of the new schedule 1A to the LRSA 2012. Paragraphs 1 and 2 of schedule 1A to the LRSA 2012 set out new cases where the Keeper must reject application under section 21 of the LRSA 2012 and paragraph 3 of schedule 1A to the LRSA 2012 sets out a case where the Keeper must reject an application under section 21 of the LRSA 2012 and paragraph 3 of schedule 1A to the LRSA 2012 sets out a case where the Keeper must reject an application to register a notice of title. Paragraphs 4 and 5 of schedule 1A to the LRSA 2012 set out new cases where the Keeper must reject prescriptive claimant applications. Paragraphs 1-5 of schedule 1A to the LRSA 2012 are discussed in detail below.

199 Paragraph 3(b) of Schedule 4 provides for the amendment of section 21 (application for registration of deed) of the LRSA 2012 by inserting, after section 21(4), a new subsection (5), which provides that schedule 1A makes provision about certain land transactions involving overseas entities.

200 Paragraph 4 of Schedule 4 amends section 27 (application for voluntary registration) of the LRSA 2012 by inserting, after section 27(4), as new section 27(4A), which provides that section 27(3) is subject to paragraph 6 of schedule 1A to the LRSA 2012. Section 27 of the LRSA 2012 makes provisions for application for voluntary registration of unregistered

land by the owner. Section 27(3) provides that the Keeper must accept an application under subsection (1) to the extent the applicant satisfies the Keeper that, as at the date of the application, the general application conditions and the conditions of registration in relation to voluntary registration are met. Section 27(3) is by virtue of paragraph 4 of Schedule 4 subject to paragraph 6 of schedule 1A, which provides that the Keeper must reject an application under section 27 of the LRSA 2012 made by an overseas entity unless the entity is a registered overseas entity or an exempt overseas entity.

- 201 Paragraph 5 of Schedule 4 provides that the italic heading before section 112 becomes “Offences”.
- 202 Paragraph 6 of Schedule 4 inserts, after section 112, a new section 112A into the LRSA 2012. Subsection (1) of the new section 112A provides that it is an offence for an overseas entity to grant a qualifying registrable deed in favour of a person and deliver it to the person if by virtue of paragraph 2 of the new schedule 1A to the LRSA 2012, the Keeper would be required to reject an application under section 21 of the LRSA 2012 for registration of the deed. Where an overseas entity acts in breach of subsection (1), an offence is committed by the entity and every officer of the entity who is in default (subsection (2)).
- 203 Subsection (3) of the new section 112A provides that nothing in section 112A affects the validity of a qualifying registrable deed made in breach of subsection (1). In other words, if an overseas entity that is not exempt grants and delivers to a person a qualifying registrable deed at a time when it is not a registered overseas entity, while the deed will not be capable of registration and the entity will have committed an offence, the validity of the deed itself will not be affected. This is intended to avoid situations where a potentially void, voidable or unenforceable dealing might otherwise mean that any contractual right of a party under the deed in question would not be enforceable. Although the deed cannot be registered, a party can look to contractual rights against the other party such as a claim under warrandice or to constitute a debt set out in a standard security. Penalties for any person guilty of an offence under subsection (2) are set out in subsection (4).
- 204 Subsection (5) of the new section 112A provides that sections 1121 to 1123 of the Companies Act 2006 apply for the purposes of defining the term “any officer in default” in section 112A. Subsection (6) provides that a reference to an officer in those sections as applied includes a person in accordance with whose directions or instructions the board of directors or equivalent body of an overseas entity are accustomed to act. A person who gives advice in a professional capacity that is acted upon by the board of directors or equivalent management body of the overseas entity is not to be regarded as falling within subsection (6) by the reason only that their advice is acted upon (subsection (7)).
- 205 Subsection (8) of the new section 112A defines the terms “overseas entity” and “qualifying registrable deed” for the purposes of section 112A. Overseas entity has the meaning given by clause 2 of the Bill and “qualifying registrable deed” means a registrable deed which is (i) a disposition; (ii) a standard security; (iii) a lease; and (iv) an assignation of a lease.
- 206 Paragraph 7 of Schedule 4 inserts the new schedule 1A into the LRSA 2012. Schedule 1A is explained below.

#### *Cases where Keeper must reject application under section 21*

- 207 Paragraph 1 of the new schedule 1A provides that where a person applies under section 21 of the LRSA 2012 to register (i) a qualifying registrable deed or (ii) a registrable deed that is (a) an extract of a decree of foreclosure, or (b) a discharge of an *ex facie* absolute

conveyance (i.e. a discharge by a creditor of a heritable security constituted by *ex facie* absolute conveyance), or (c) an order for rectification of a document made under section 8 of the Land Reform (Miscellaneous Provisions) (Scotland) Act 1985 (e.g. where there is a mistake in a document which has been registered in the Land Register), and the applicant is an overseas entity, the Keeper must reject the application unless the entity is (i) a registered overseas entity or (ii) an exempt overseas entity. “Qualifying registrable deed” is for purposes of schedule 1A defined as a registrable deed which is a disposition, a lease or an assignation of a lease. The registrable deeds in relation to land that are in scope of the registration requirements in Scotland therefore are: a transfer of ownership (i.e. by a disposition), a lease where its duration exceeds 20 years, an assignation of any such lease, an extract of a decree of foreclosure, a discharge of an *ex facie* absolute conveyance and an order for rectification of a defectively expressed document. Lease includes a sub-lease.

- 208 The effect of the provisions in paragraph 1 is that in Scotland, an overseas entity will not be able to acquire a real right to land that is registrable in the land register by virtue of application under section 21 of the LRSA 2012 without having complied with the registration and updating requirements under the Bill at the time the application is made under section 21.
- 209 Paragraph 2 of the new schedule 1A applies where an overseas entity whose interest in land was registered on or after 8 December 2014 grants a qualifying registrable deed or a registrable deed which is standard security and an application is made to register such deed under section 21 of the LRSA 2012. The overseas entity who grants any of the aforementioned deeds must be, at the date of delivery of the deed, a registered overseas entity or an exempt entity to ensure that the Keeper does not reject the application (or one of the conditions set out in paragraph 2(2) of the new schedule 1A must be met).
- 210 The conditions set out in paragraph 2(2) are: (i) the application is made in pursuance of a statutory obligation or court order, (ii) the application is made in pursuance of a contract entered into before the later of the dates mentioned in sub-paragraph (3), and (iii) the application is made in pursuance of the exercise of a power of sale or lease by the creditor in a heritable security.
- 211 The dates mentioned in paragraph 2(2) are: (i) the date on which the grantor’s interest was registered in the Land Register of Scotland; (ii) the commencement date (paragraph 2(3)). For a grantee to be able to rely on the condition set out in paragraph 2(2)(b), the contract in pursuance of which the application is made to register the grantee’s interest must therefore have been entered into before the overseas entity’s interest was registered in the Land Register of Scotland, or the commencement date, whichever date is later.

*Case where Keeper must reject application to register notice of title*

- 212 Paragraph 3 of the new schedule 1A applies where an overseas entity that has a right to land makes an application under section 21 of the LRSA 2012 by virtue of section 4A(1) of the 1924 Act, i.e. to complete title by registration in the Land Register of Scotland of a notice of title. The Keeper is required to reject such application unless the entity is a registered overseas entity or an exempt overseas entity.

*Cases where Keeper must reject prescriptive application*

- 213 Paragraphs 4 and 5 of the new schedule 1A set out the circumstances in which the Keeper must reject a prescriptive application.
- 214 Paragraph 4 applies where a prescriptive claimant application under section 21 which is received by the Keeper by virtue of section 43(1) of the LRSA 2012 is made by an overseas

entity. If the entity is neither a registered overseas entity nor an exempt overseas entity, at the time of the application, the Keeper must reject the application.

215 Paragraph 5 applies where a prescriptive claimant application under section 21 is received by the Keeper by virtue of section 43(1), and the existing proprietor is an overseas entity whose interest was registered on or after 8 December 2014. The Keeper must reject the application if the overseas entity is neither a registered overseas entity nor an exempt overseas entity.

#### *Case where Keeper must reject voluntary application*

216 Paragraph 6 of the new schedule 1A applies where an application for voluntary registration under section 27 of the LRSA 2012 is made by an overseas entity. The application must be rejected by the Keeper unless the entity is either a registered overseas entity, or an exempt overseas entity (paragraph 6(2)).

#### *Interpretation*

217 Paragraph 7 of the new schedule 1A defines key terms used in schedule 1A: “the commencement date”; “exempt overseas entity”, “overseas entity”; “qualifying registrable deed”; “register of overseas entities” and “registered overseas entity”. Paragraph 7(2) provides that for the purposes of schedule 1A, an overseas entity that fails to comply with the “updating duty” in clause 7 of the Bill is not to be treated as a “registered overseas entity” until it remedies the failure. Paragraph 7(3) provides that, for the purpose of paragraph 7(2), an overseas entity “remedies” the failure when it delivers the required statements and information mentioned in clause 7(1)(a), (b) and (c) of the Bill.

### **Part 2: Transition: deeds registered pre-commencement**

218 Part 2 of Schedule 4 provides for a transitional period for overseas entities whose interest (as owner or a tenant) in relation to land in Scotland was registered on or after 8 December 2014 but before the commencement date. This part provides for a transitional period of 18 months in duration for overseas entities to either dispose of their land or interest under a registered lease or to register as a “registered overseas entity” under the Bill provisions.

#### *Duty to register as an overseas entity within transitional period*

219 Paragraph 8(1) of Schedule 4 provides that an overseas entity that is registered in the Land Register of Scotland as proprietor or a tenant under a lease and became so registered on or after 8 December 2014 but before the commencement date, and, at the end of the period of 18 months beginning with the commencement date the entity is neither a registered overseas entity nor an exempt overseas entity, commits an offence and every officer of the entity who is in default also commits an offence. Paragraph 8(2) sets out the penalties for a person found guilty of an offence under paragraph 8.

#### *Disapplication of certain provisions during transitional period*

220 Paragraph 9 of Schedule 4 disapplies certain provisions of the LRSA 2012 during the transitional period. Transitional period means, for the purposes of paragraph 9, the period of 18 months from the commencement date (paragraph 9(5)).

221 The provisions that do not apply during the transitional period as regards the relevant land, are set out in sub-paragraphs (3) and (4). Section 112A of the LRSA 2012 does not apply in relation to the overseas entity or an officer of the entity as regards the relevant land (sub-paragraph 3). Paragraphs 2 and 5 of schedule 1A do not apply in relation to

the overseas entity as regards the relevant land (sub-paragraph 4).

222 The effect of paragraph 9 is that:

- a. if an overseas entity that is a proprietor of registered land or as a tenant under a registered lease (and became so registered in the Land Register on or after 8 December 2014 but before the commencement date) grants, within 18 months of the commencement date, a qualifying registrable deed or a registrable deed which is a standard security at a time when it is not registered in the overseas entities register or exempt, the application to register such a deed will not be rejected by the Keeper;
- b. if a person makes, within 18 months of the commencement date, a prescriptive claimant application in respect of land registered in favour of the overseas entity described in a. above and the overseas entity is not registered in the overseas entities register or exempt, the application will not be rejected by the Keeper;
- c. neither the overseas entity described in a. above nor its officers will commit an offence under section 112A if the entity grants a deed described in a. above within 18 months of the commencement date.

#### *Interpretation*

223 Paragraph 10 of Schedule 4 provides definitions of terms used in Part 2 of Schedule 4.

### **Schedule 5: Land ownership and transactions: Northern Ireland**

224 Schedule 5 makes amendments to the Land Registration Act (Northern Ireland) 1970 (the “1970 Act”) the overall effect of which is that overseas entities that wish to engage in land ownership and land transactions in Northern Ireland will be required to have registered in the overseas entity register.

225 Paragraphs 1 and 2 of Schedule 5 insert (after section 61) new section 61A into the 1970 Act. Paragraph 3 inserts new Schedule 8A into the 1970 Act.

226 Section 61A provides that Schedule 8A is about the ownership of registered land by overseas entities and registrable dispositions made by them. Schedule 8A makes provisions equivalent to Schedule 4A described above in respect of England and Wales, subject to existing differences in land registration on Northern Ireland.

#### *Meaning of “qualifying estate”*

227 Paragraph 1 of the new Schedule 8A sets out the two estates in land that are in scope of the registration requirements in Northern Ireland: a freehold estate in land and a leasehold estate in land where the lease is granted for a term of more than 21 years from the date of the grant. The length of the leasehold estate differs from the 7 years for England and Wales because leases of under 21 years in Northern Ireland do not usually have to be completed by registration.

#### *Registration*

228 Paragraph 2 of the new Schedule 8A prohibits the making of an application to register an overseas entity as the owner of a qualifying estate unless, at the time of the application, the entity is either (i) a “registered overseas entity” (i.e. an entity registered in the overseas entities register and which has complied with the update requirements under clause 7 of the Bill), or (ii) is an exempt overseas entity. This includes circumstances such as (i) where an overseas entity owns freehold or leasehold estate and voluntarily applies for first registration under sections 14(1)(a) or 19(1)(a) of the 1970 Act; (ii) hitherto unregistered freehold or leasehold estate is transferred / assigned to the overseas entity and triggers

compulsory first registration under entry 2 of the table in Schedule 2 to the 1970 Act; (iii) a lease of over 21 years is granted out of unregistered land and triggers compulsory first registration of that lease under entry 2; (iv) registered freehold or leasehold estate is transferred or assigned to the overseas entity; or (v) a lease of over 21 years is granted out of registered estate to the overseas entity which triggers compulsory first registration of that lease under entry 4 of the table in Schedule 2 to the 1970 Act.

#### *Restrictions on disposal*

229 Paragraph 3(1) of the new Schedule 8A requires the Registrar of Titles for Northern Ireland (“NI Land Registry”) to enter an inhibition (“an overseas entity inhibition”) against the title of the registered owner of a qualifying estate if the Registrar is satisfied that (i) the registered owner is an overseas entity and (ii) the application for the entity to be registered as the owner was made on or after the date on which paragraph 2 came into operation. Paragraph 3(1) therefore applies to overseas entities that become registered owners of a qualifying estate in pursuance of an application made on or after the commencement date. Unlike in England and Wales and in Scotland, no restrictions or inhibitions on disposals will apply to overseas entities that are registered owners of a qualifying estate and became so before paragraph 3 came into operation.

230 Paragraph 3(2) of the new Schedule 8A provides that no fee will be charged for the entry of an overseas entity inhibition.

231 Paragraph 3(3) of the new Schedule 8A sets out the effect of the overseas entity inhibition: from and after the entry of an overseas entity inhibition, none of the dispositions mentioned in paragraph 3(4) affecting the land in question are to be entered on the title register, unless one of the conditions in paragraph 3(5) is met. The relevant dispositions which entry on the title register is prohibited are (i) a transfer of the owner’s estate (i.e. transfer of a freehold estate or assignment of a leasehold estate where the term granted exceeds 21 years), (ii) a grant of a leasehold estate where the term exceeds 21, and (iii) the creation of a charge on the land. The conditions mentioned in paragraph 3(3) are set out in paragraph 3(5): (i) the entity is a registered overseas entity, or is an exempt overseas entity, at the time of the disposition; or (ii) the disposition is made (a) in pursuance of a statutory obligation or a court order, (b) in pursuance of a contract made before the inhibition is entered in the register, or (iii) in exercise of a power of sale or leasing conferred on the owner of a registered charge or a receiver appointed by such an owner (i.e. owner of the registered charge). For further detail about the conditions in paragraph 3(3) please see the explanatory note for paragraph 3 of Schedule 4A to the Land Registration Act 2002 (insert by Schedule 3 to the Bill).

232 The duty to enter an overseas entity inhibition against each relevant title applies regardless of whether the overseas entity is exempt or not. The inhibition will however not “bite” if an overseas entity makes a disposition at the time it is an exempt overseas entity.

#### *Registrable dispositions by overseas entity entitled to be registered (but not registered)*

233 Where an overseas entity is entitled to be registered as the owner of a qualifying estate, or became so entitled on or after the day on which paragraph 4 of the new Schedule 8A comes into operation; and makes any of the dispositions set out in paragraph 4(2), the disposition must not be registered unless the entity is a registered overseas entity, or exempt, at the time of the disposition, or unless the disposition is made (i) in pursuance of a statutory obligation or court order, (ii) in pursuance of a contract made before the entity became entitled to be registered, or (iii) in the exercise of a power of sale or leasing

conferred on the owner of a registered charge or a receiver appointed by such an owner.

234 The effect of paragraph 4 is that a third party to whom a qualifying estate is transferred, assigned or charged (as the case may be) by an overseas entity will not be able to register that disposition unless the overseas entity was, at the time of the disposition, “a registered overseas entity”, an exempt overseas entity, or one of the exceptions listed in paragraph 4(3) of the new Schedule 8A applies.

#### *Making dispositions that cannot be registered*

235 Paragraph 5 of the new Schedule 8A provides that an overseas entity must not make a registrable disposition of a qualifying estate if the registration of the disposition is (i) prohibited by an inhibition entered under paragraph 3, or (ii) prevented by paragraph 4. Should an overseas entity make such a disposition (i.e. one that cannot be registered) it commits an offence, and an offence is also committed by every officer of the entity who is in default. An officer will be in default for the purposes of the offence under paragraph 5 if that person authorised, permitted, participated in or failed to take all reasonable steps to prevent the contravention.

236 Nothing in paragraph 5 of the new Schedule 8A affects the validity of a disposition made in breach of paragraph 5(1). In other words, if an overseas entity that is not exempt makes a disposition at a time when it is not a registered overseas entity, while the disposition will not be capable of registration and the entity will have committed an offence, the validity of the disposition itself will not be affected. This is intended to avoid situations where a potentially void, voidable or unenforceable transfer causes significant disruption to a chain of conveyances.

237 Paragraph 5(7) of the new Schedule 8A sets out the penalties for offences committed under paragraph 5. This is the most serious offence in the Bill and is punishable by a fine and/or up to 5 years imprisonment.

238 Paragraph 5(8) of the new Schedule 8A provides that proceedings for an offence under paragraph 5 may only be brought by or with the consent of the Secretary of State or the Director of Public Prosecutions for Northern Ireland.

#### *Interpretation etc*

239 Paragraph 6(1) of the new Schedule 8A defines key terms used in Schedule 8A, including the meaning of “registered overseas entity”, “register of overseas entities”, “overseas entity” and “exempt overseas entity”.

240 For the purposes of Schedule 8A, an overseas entity that is registered in the overseas entities register but fails to comply with the updating duty in clause 7 of the Bill is not to be treated as a registered overseas entity until it remedies the failure (paragraph 7(1) of the new Schedule 8A). An overseas entity “remedies” the failure when it delivers the required statements and information under clause 7(1)(a), (b) and (c) of the Bill (paragraph 7(2)).

## Commencement

241 Clauses 35, 37, 38 and 39 come into force on the day the Bill is passed. The other provisions of the Bill come into force on such day as the Secretary of State may appoint in regulations.

## Financial implications of the Bill

242 There will be set up costs associated with the creation of the register by Companies House, and costs to the Land Registries for implementing new systems to accommodate the requirements of the Bill. Work is underway to quantify these costs.

## Parliamentary approval for financial costs or for charges imposed

243 A money resolution is required where a Bill gives rise to, or creates powers that could give rise to, new or increased charges on the public revenue (broadly, new or increased expenditure). This Bill is not a money Bill and therefore no Parliamentary resolution is required.

## Compatibility with the European Convention on Human Rights

244 The Secretary of State for the Department for Business, Energy and Industrial Strategy has made a statement under section 19(1)(a) of the Human Rights Act 1998 that, in his view, the provisions of the Bill are compatible with the ECHR rights.

## Related documents

245 The following documents are relevant to the Bill and can be read at the stated locations:

- The draft Bill, Overview document and Impact Assessment:  
<https://www.gov.uk/government/consultations/draft-registration-of-overseas-entities-bill>

## Annex A - Territorial extent and application in the United Kingdom

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Legislative Consent Motion needed?
Clause 1	Yes	Yes	Yes	Yes	[To be confirmed]
Clause 2	Yes	Yes	Yes	Yes	
Clause 3	Yes	Yes	Yes	Yes	
Clause 4	Yes	Yes	Yes	Yes	
Clause 5	Yes	Yes	Yes	Yes	
Clause 6	Yes	Yes	Yes	Yes	
Clause 7	Yes	Yes	Yes	Yes	
Clause 8	Yes	Yes	Yes	Yes	
Clause 9	Yes	Yes	Yes	Yes	
Clause 10	Yes	Yes	Yes	Yes	
Clause 11	Yes	Yes	Yes	Yes	
Clause 12	Yes	Yes	Yes	Yes	
Clause 13	Yes	Yes	Yes	Yes	
Clause 14	Yes	Yes	Yes	Yes	
Clause 15	Yes	Yes	Yes	Yes	
Clause 16	Yes	Yes	Yes	Yes	
Clause 17	Yes	Yes	Yes	Yes	
Clause 18	Yes	Yes	Yes	Yes	
Clause 19	Yes	Yes	Yes	Yes	
Clause 20	Yes	Yes	Yes	Yes	
Clause 21	Yes	Yes	Yes	Yes	
Clause 22	Yes	Yes	Yes	Yes	
Clause 23	Yes	Yes	Yes	Yes	
Clause 24	Yes	Yes	Yes	Yes	
Clause 25	Yes	Yes	Yes	Yes	
Clause 26	Yes	Yes	Yes	Yes	
Clause 27	Yes	Yes	Yes	Yes	
Clause 28	Yes	Yes	Yes	Yes	
Clause 29(1)	Yes	Yes	No	No	
Clause 29(2)	No	No	Yes	No	
Clause 29(3)	No	No	No	Yes	
Clause 30	Yes	Yes	Yes	Yes	
Clause 31	Yes	Yes	Yes	Yes	

*These Explanatory Notes relate to the Registration of Overseas Entities Bill as published in Draft on 23 July 2018*

<b>Provision</b>	<b>Extends to E &amp; W and applies to England?</b>	<b>Extends to E &amp; W and applies to Wales?</b>	<b>Extends and applies to Scotland?</b>	<b>Extends and applies to Northern Ireland?</b>	<b>Legislative Consent Motion needed?</b>
Clause 32	Yes	Yes	Yes	Yes	
Clause 33	Yes	Yes	Yes	Yes	
Clause 34	Yes	Yes	Yes	Yes	
Clause 35	Yes	Yes	Yes	Yes	
Clause 36	Yes	Yes	Yes	Yes	
Clause 37	Yes	Yes	Yes	Yes	
Clause 38	Yes	Yes	Yes	Yes	
Clause 39	Yes	Yes	Yes	Yes	
Schedule 1	Yes	Yes	Yes	Yes	
Schedule 2	Yes	Yes	Yes	Yes	
Schedule 3	Yes	Yes	No	No	
Schedule 4	No	No	Yes	No	
Schedule 5	No	No	No	Yes	

# REGISTRATION OF OVERSEAS ENTITIES BILL

## EXPLANATORY NOTES

These Explanatory Notes relate to the Registration of Overseas Entities Bill as published in Draft on 23 July 2018.

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