

EXPLANATORY MEMORANDUM TO

THE REGISTER OF OVERSEAS ENTITIES (DEFINITION OF FOREIGN LIMITED PARTNER, PROTECTION AND RECTIFICATION) REGULATIONS 2023

[2023] No. [XXXX]

1. Introduction

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

2. Purpose of the instrument

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

- Prescribe the characteristics of a foreign limited partner within the Economic Crime (Transparency and Enforcement) Act 2022 (“the Act”)
- Allow for information held within the Register to be removed on application under certain circumstances, and
- Amend the protection elements of the Register of Overseas Entities (Delivery, Protection and Trust Services) Regulations 2022.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

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

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

5. European Convention on Human Rights

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

“In my view the provisions of The Register of Overseas Entities (Definition of Foreign Limited Partner, Protection and Rectification) Regulations 2023 are compatible with the Convention rights.”

6. Legislative Context

6.1 These regulations are laid before Parliament under sections 25(1), (3)(b) and (4), 29(1) and (2), 67(2) and paragraphs 23(5)(b) and 23(6) of Schedule 2 to, the Act.

6.2 The Register was created by the Act, which was expedited through Parliament in response to the Russian invasion of Ukraine. The Act requires overseas entities owning or buying property in the United Kingdom to provide information to the registrar of companies, including about their “beneficial owners”. The Act contains various regulation-making powers which allow the Secretary of State to prescribe

further technical details of the requirements and operation of the Register. These regulations are part of a series of essential regulations to be made under the Act to implement the Register.

7. Policy background

What is being done and why?

- 7.1 In 2016 the UK implemented a register of beneficial ownership of UK companies, called the ‘people with significant control’ (PSC) register. The UK became one of the first countries to introduce a central, publicly accessible register requiring all companies incorporated in the UK to give information to Companies House about who held significant control of a company.
- 7.2 In 2016 the UK committed to collecting and making publicly accessible the beneficial ownership information of overseas entities owning or buying property in the UK, which would level the playing field with UK companies.
- 7.3 The UK is an open economy and one of the major destinations for foreign direct investment. The overwhelming majority of companies that invest in the UK do so productively and within the law. However, there is concern around illegal activity taking place through overseas entities investing in UK property. In particular, the concerns focus on the potential for criminals to use overseas entities to obscure their identity when hiding illicit funds or laundering criminal proceeds through investments in UK property.
- 7.4 The Register enhances transparency around the owners and controllers of overseas entities that own or buy UK property. The Register is designed to:
- deter and disrupt crime, by making it more difficult to use corporate vehicles in the pursuit of crime;
 - deter criminals from money laundering in the UK;
 - preserve the integrity of the financial system;
 - increase the efficiency of law enforcement investigations, particularly in relation to identifying and tracing the proceeds of crime; and
 - require the same transparency of overseas entities holding land as required from UK companies.
- 7.5 The Register will also protect the information of those at serious risk and avoid creating disproportionate burdens or putting off legitimate investors.
- 7.6 Further information can be found in the Explanatory Notes and Impact Assessment for the Act: <https://www.legislation.gov.uk/ukpga/2022/10>.
- 7.7 This instrument is one of several regulations to improve the effectiveness of the Register post-implementation, as follows:
- 7.8 **Foreign limited partners:** Under the Act, if a “foreign limited partner” meets certain conditions it qualifies as a registrable beneficial owner and an overseas entity is obligated to submit the relevant information on them. However, the Act currently does not provide a complete definition of a “foreign limited partner”. Without a clear description of the characteristics of a foreign limited partner, overseas entities are frustrated in their attempts to satisfactorily identify them; they cannot then be expected to judge if a person is in fact a foreign limited partner, and therefore cannot properly identify if they are a registrable beneficial owner or not. This SI will remove

any confusion over this issue, ensuring the Register is populated correctly and effectively.

7.9 **Protection:** The Act contained powers to make regulations regarding the protection of personal information from public inspection. The regulations as made can only grant protection on application subject to strict criteria. Applicants must provide evidence that they, or a person living with them, are at risk of serious violence or intimidation if their details are publicly disclosed. Such disclosure must result from their link with the overseas entity. The amendment will remove the requirement to demonstrate the risk of violence or intimidation arising directly from the individual's association with the overseas entity. The SI will subsequently allow applications for protection that are needed because an individual is at serious risk. They would still need to demonstrate this risk before protection is granted, but the risk would no longer need to be linked to the overseas entity. The amendments will also allow for a relevant individual's usual residential address only to be protected.

7.10 **Rectification of the Register:** The Act compels overseas entities that own land within the UK to submit certain information to the registrar about their beneficial owners. This information is stored on a public register and is intended to enable law enforcement and other public authorities to better carry out their duties, as well as to provide information to third parties seeking to engage in land transactions with an overseas entity that is in scope of the Act. However, there may be occasions where information submitted to the registrar and visible on the Register is factually inaccurate, forged, or submitted without the consent of the overseas entity. This SI allows for the rectification of the Register through the removal of such information. There is an equivalent provision within the Companies Act 2006 which allows for the correction or removal of material on the companies register.

8. European Union Withdrawal and Future Relationship

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

9. Consolidation

9.1 The provisions relating to protection amend existing regulations but consolidation of relevant legislation is not required. Elements that deal with foreign limited partners and rectification are standalone provisions and do not amend existing regulations.

10. Consultation outcome

10.1 Extensive consultation was carried out prior to the Act receiving Royal Assent. A Call for Evidence was undertaken in 2017 and consultation carried out in 2018, alongside the publication of a draft Registration of Overseas Entities Bill ("the Bill"). Stakeholder responses to both showed strong support for the proposals. Stakeholder suggestions were taken into account during the drafting of the Bill, and afterwards following publication of the draft Bill. The draft Bill underwent pre-legislative scrutiny by an ad-hoc Joint-Committee in 2019 and many of the Committee's recommendations were added to the Bill.

11. Guidance

11.1 General guidance for the Register is currently available for overseas entities, professional service providers and any interested parties. The guidance explains who

is required to register, how and when they should register, information to be provided and how to update the information on the register.

11.2 The guidance can be found here:

<https://www.gov.uk/government/publications/register-of-overseas-entities-guidance-on-registration-and-verification>.

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

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument. The Impact Assessment published alongside the primary legislation quantified the impacts and had a net annual direct cost to business below the de minimis threshold of £5 million. The net annual direct cost to business did not change significantly during the Bill's passage or the development of secondary legislation such that the measure remains below the de minimis threshold.

13. Regulating small business

13.1 The legislation does apply to activities that are undertaken by small overseas businesses, but no specific action is proposed to minimise the regulatory burdens on them.

14. Monitoring & review

14.1 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 the Parliamentary Under Secretary of State, Department for Business and Trade has made the following statement: A statutory review clause is not included in the instrument since the additional requirements are not extensive and are considered to meet the Government's 'de minimis' regulatory impact criteria, meaning no impact assessment is required (in particular, because the impacts are below £5m, do not impact on small business and create no open-ended new powers in legislation).

15. Contact

15.1 Jacquie Griffiths at the Department for Business and Trade: 02072153337 or email: Jacqueline.griffiths@beis.gov.uk can be contacted with any queries regarding the instrument.

15.2 Matthew Ray, Deputy Director for Company Law & Transparency at the Department for Business and Trade, can confirm that this Explanatory Memorandum meets the required standard.

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