



Department for
Business, Energy
& Industrial Strategy

A REGISTER OF BENEFICIAL OWNERS OF OVERSEAS COMPANIES AND OTHER LEGAL ENTITIES

Call for evidence on a register showing who owns and controls overseas legal entities that own UK property or participate in UK government procurement

April 2017

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Call for Evidence on a register showing who owns and controls overseas legal entities that own UK property or participate in UK government procurement

This call for evidence can be found on GOV.UK:

www.gov.uk/government/consultations/property-ownership-and-public-contracting-by-overseas-companies-and-legal-entities-beneficial-ownership-register

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Any enquiries regarding this publication should be sent to us at transparencyandtrust@beis.gov.uk

Ministerial foreword

This government is committed to building an economy that works fairly for everyone. An important element of this is our continued commitment to improve transparency of company ownership.

Greater transparency of ownership brings many benefits. We know that market transparency fosters confidence and trust. Transactions are improved and the market has greater confidence when people know who they are doing business with. Transparency also plays a vital role in helping combat corruption and money laundering.

The UK is a world leader in corporate transparency. In 2016 we became the first country in the G20 to introduce a register of company ownership, allowing the public to access a central record of information about who really owns and controls UK companies.

At the International Anti-Corruption Summit held in London in May 2016, we committed to go further, by creating a new register showing the beneficial owners of overseas companies that own or want to buy property in the UK, and of overseas companies involved in central government contracts.

The UK property market attracts a great deal of inward investment to the UK. This investment benefits the UK economy and supports the construction industry and a host of connected trades across the country. It is something that the UK government is committed to protecting. Therefore it is important to ensure the integrity and reputation of the UK property market.

The UK property market should be seen as fair, transparent and clean in order to attract the right investors and owners. Honest business should not fear that they are supporting criminal enterprise when investing in UK property. A higher level of transparency will boost investor confidence.

These requirements will also extend to entities bidding for government contracts. This will ensure that we, as government, know who we are dealing with, and that we meet the standards we expect of others.

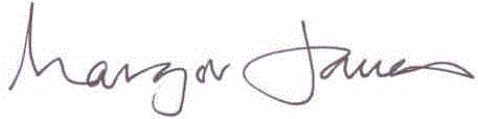
This register will be the first of its kind in the world. That is good news for the UK, enhancing our already strong reputation as an honest and trusted place to do business. But it also means we need to proceed with care. Our open economy benefits greatly from foreign companies looking to do business in Britain. We need to make sure the new requirements are workable and proportionate, such that the UK remains an attractive place for foreign investment. This call for evidence will help us test and refine our proposals to strike the right balance.



Margot James

Parliamentary Under Secretary of State and
Minister for Small Business, Consumers and
Corporate Responsibility

The government, working with the Scottish, Welsh and Northern Irish administrations, will ensure the UK remains a great place to do honest business, but that it is not a safe haven for illicit finance. We look forward to engaging with interested parties to help us achieve this.

A handwritten signature in dark ink, reading "Margot James". The signature is written in a cursive style with a prominent loop at the end of the name.

Margot James
Parliamentary Under Secretary of State and Minister for Small Business, Consumers and Corporate Responsibility

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General information

Purpose of this call for evidence

This call for evidence seeks views on the proposals for a register of beneficial ownership information for overseas companies or other legal entities that own or buy UK property or participate in UK central government procurement. This call for evidence seeks views on the design of the policy and additional evidence on the impacts of the policy.

Issued: 5 April 2017

Respond by: 15 May 2017 (5pm)

Enquiries to:

Beneficial Ownership Team

Department for Business, Energy & Industrial Strategy,

1st Floor Victoria

1 Victoria Street

London SW1H 0ET

Email: transparencyandtrust@beis.gov.uk

Reference: Overseas Entity Register Call for Evidence response

Territorial extent:

The proposals outlined in this call for evidence are intended to apply across the UK and we will work with the Devolved Administrations as the proposals develop. The proposals will complement those currently being developed by the Scottish government that aim to improve transparency behind who controls land in Scotland. The Scottish government published a consultation on this in September 2016 that closed in December¹. Both the UK and Scottish governments are keen to ensure that no companies will be required to report their information twice under the linked proposals.

How to respond

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome.

¹ This can be found at www.gov.scot/Publications/2016/09/6681.

Additional copies:

You may make copies of this document without seeking permission. An electronic version can be found at: www.gov.uk/government/consultations/property-ownership-and-public-contracting-by-overseas-companies-and-legal-entities-beneficial-ownership-register

Confidentiality and data protection

Information provided in response to this call for evidence, including personal information, may be subject to publication or disclosure in accordance with the access to information legislation (primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).

If you want information that you provide to be treated as confidential please say so clearly in writing when you send your response to the call for evidence. It would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded by us as a confidentiality request.

We will summarise all responses and place this summary on the [GOV.UK website](http://gov.uk). This summary will include a list of names or organisations that responded but not people's personal names, addresses or other contact details.

Quality assurance

This call for evidence has been carried out in accordance with the [Government's Consultation Principles](#).

If you have any complaints about the process (as opposed to comments about the issues which are the subject of the consultation) please address them to:

Email: enquiries@beis.gov.uk

Questions

Questions

Question 1: Do you agree that all legal forms that can hold properties should be in the scope of the new register's requirements? If not, what legal forms should we consider an exemption for and why?

Question 2: Is the suggested definition of leasehold appropriate?

Question 3: Will setting the leasehold definition at leases over 21 years create any unintended consequences?

Question 4: Do you agree that the definition of beneficial owner for the new overseas register should be aligned to the definition of PSC in the PSC regime?

Question 5: Do you agree that entities that are not similar to UK companies limited by shares should use these adaptations to identify their beneficial owners?

Question 6: Do these adaptations provide sufficient flexibility in the beneficial owner conditions to apply to most legal entities? If not, what additional adaptations should there be?

Question 7: What methods of raising awareness would be most effective?

Question 8: Do you have any information that is relevant to our assessment of the cost and benefits of the policy to businesses, society and the economy?

Question 9: What, if any, impact do you think that the proposed policy will have on the UK property market (residential and commercial)? Please describe the impacts and provide evidence.

Question 10: Do you agree that the duration of the period given to overseas entities to comply with the new requirements should be one year?

Question 11: Is a system of statutory restrictions and putting notes on the register, backed up by criminal offences, a comprehensive way to ensure compliance?

Question 12: Do you agree that we should prevent any beneficial interest in the property passing to an overseas legal entity that does not have a valid registration number at completion or settlement?

Question 13: Do you agree that the most appropriate way to do this would be to void the transfer document?

Questions

Question 14: Is there another way that we could achieve this result?

Question 15: Which is your preferred option for procurement and why?

Question 16: Do you agree that the information on the new register for overseas entities should be the same as the information required under the PSC regime?

Question 17: Do you agree that entities unable to give information about beneficial owners should be asked to provide information about their managing officers?

Question 18: Is there any additional information that we should ask for from entities that are unable to give information about their beneficial owners?

Question 19: Is a requirement for an update every two years appropriate?

Question 20: Would a criminal offence be an appropriate way of enforcing the requirement to update information?

Question 21: Do our proposals achieve the right balance between ensuring compliance and enabling overseas entities to maintain existing assets?

Question 22: Are these mechanisms enough to deal with situations where bidders provide false beneficial ownership information or do not keep their information up to date?

Question 23: Do you think that this provides the correct balance between protecting individuals from harm and ensuring transparency of how properties are owned?

Question 24: Are there additional situations we should consider where protections should be granted?

Question 25: Are there other situations where exemption from putting information on the register should be permitted for entities participating in procurement?

Question 26: How can we best ensure that only legitimate lenders are able to repossess and dispose of a property with a restriction against it?

Question 27: We are interested in views and evidence of other commercial transactions that could be disrupted by the proposed restrictions regime.

Question 28: Are there additional third party impacts that should also be addressed?

Introduction

The importance of transparency of company ownership

1. The creation of an independent vehicle through which people can join their interests together to carry out business has been a remarkably successful and useful construct for over 150 years in the UK. Well regulated company law is vital to the UK and supports the growth of a dynamic, innovative economy.
2. In the UK there are a wide range of checks and balances covering the activities of companies. On incorporation and annually companies must provide or confirm information about their directors and their shareholders. Most of this information is made available to the public through Companies House.
3. This information is very important but although the shareholders are the legal owners of the company, they may not be the ultimate owners or controllers of the company. Companies may be owned through a chain of companies with an ultimate controller at the top, or individuals may appoint a nominee to hold their shares for them so that they don't appear on a shareholder register. These people are the beneficial owners of the company. If they have a high level of interest or control, they can materially influence the way the company is run.
4. So although the use of companies is a vital and important part of the UK economy, complex company structures can create avenues for corruption, terrorist financing and money laundering, and in some instances can enable tax evasion. A lack of transparency can also inhibit investment. Investors generally choose to invest in less corrupt, more transparent economies².

What the government has done so far

5. The UK is leading the world on improving corporate transparency. In June 2016 we became one of the first countries to introduce a central, publicly accessible, register of beneficial ownership called the *people with significant control register* (the *PSC register*).

² Shanh-Jin Wei (1997) in 'How Reluctant are Nationals in Global Integration?' Kennedy School of Government, Harvard University; unpublished but quoted in 'Gauging the Investment Potential of International Real Estate Markets' by Stephen Lee (2005); <http://centaur.reading.ac.uk/20959/1/1905.pdf>

6. Since the establishment of the PSC register, all companies incorporated in the UK must give information about their people with significant control to Companies House with their annual confirmation statement. Most of the information on the register is publicly available, with some necessary exceptions to protect information about individuals at risk.
7. The PSC register is being populated over the course of a year, as and when UK companies are required to file their annual confirmation statement. By July this year it will be fully populated.

Rationale for further action

8. The UK is the number one destination for foreign direct investment in Europe. It is a great strength of the economy that so many overseas companies want to invest and do business in the UK. The overwhelming majority of companies that do so contribute productively and abide by the law.
9. However, the government is concerned about the potential for illegal activity to take place through overseas companies investing in the property sector. Some properties are owned through off-shore companies in order to obscure their true owners. This can make it difficult for regulators, legitimate businesses and the general public to know who the true owners are and can make it very difficult for law enforcement agencies to carry out effective investigations.
10. The use of offshore corporate vehicles to obscure the true owners of UK property has attracted those who wish to hide illicit funds and launder the proceeds of crime. Between 2004 - 2014, over £180m worth of property in the UK has been investigated as suspected proceeds of corruption³. In January 2016 the National Crime Agency reported the conviction of a money launderer who had used offshore companies to launder £12m stolen from Commerzbank through council properties in London. The secrecy that these offshore companies provided made it difficult for investigators to identify who owned the properties. Greater transparency of property ownership will make the job of enforcement agencies easier and will discourage criminals and the corrupt from choosing the UK to hide or launder their money.
11. In addition to these benefits, greater transparency should also support a better functioning property market. There are many cases where tenants do not know who truly owns the property they are renting, where neighbours struggle to identify who is

³ Data from cases investigated by the Metropolitan Police Proceeds of Corruption Unit between 2004 and 2014. This was collated by the Metropolitan Police Proceeds of Corruption Unit

responsible for work on adjoining properties that has affected them, and where it is difficult to trace the people who control vacant property.

12. The PSC register makes it possible to trace the true owners of registered properties owned by companies incorporated in the UK. This can be done by finding out the name of the UK company on the title register to the property (held at the relevant Land Registry) and then looking at that company's PSC information held by Companies House. However, the requirements of the PSC register, as set out in Part 21A of the Companies Act 2006, do not apply to companies incorporated outside the UK.
13. For these reasons in March 2016 the government published a discussion paper⁴ looking for views on how to enhance the transparency of beneficial ownership information for overseas companies investing in UK property. A summary of the responses to this paper is included in annex A.
14. Included within that discussion paper were parallel proposals to enhance transparency for overseas companies engaging in UK government procurement. The government is keen to ensure that where it contracts directly with overseas companies, it knows who it is dealing with. Public authorities are accountable for the public money they spend. We cannot allow corrupt individuals to profit from doing business with the UK government. The UK government would also like to use its purchasing power to raise the global level of transparency.
15. Following the discussion paper, the government announced that it intended to introduce a register of the beneficial owners of overseas companies owning UK property or engaging in UK government procurement. This was a key announcement of the International Anti-Corruption Summit in London in May 2016. This policy is an important element of the forthcoming new anti-corruption strategy. It will give assurance that the UK is a hostile environment for hiding the proceeds of corruption or laundering money.

This call for evidence

16. The new register will be the first of its kind in the world, and builds upon the UK's global leadership in tackling corruption. The downside of demonstrating such leadership is that we do not have a model to work from. We will therefore proceed cautiously, striking the right balance between improving transparency and minimising burdens on legitimate commercial activity. The government is keen to receive views and evidence on how best to achieve our objectives in an effective and efficient manner.

⁴ www.gov.uk/government/consultations/property-ownership-and-public-contracting-by-foreign-companies-improving-transparency

Extent

17. The proposals outlined in this call for evidence are intended to apply across the UK and we will work with the Devolved Administrations as the proposals develop. The proposals with relation to property will complement those currently being developed by the Scottish government who published a consultation in September 2016 about improving transparency over who controls land owners and tenants of leases in Scotland. It is important to both the UK and Scottish governments that no companies will be required to report their information twice under the linked proposals.

European context

18. On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.
19. The details of all the proposals in this paper will need to be considered in the light of the UK's obligations under the existing EU framework. The European Fourth Money Laundering Directive will require all companies incorporated in the European Union to collect information about their beneficial owners. Member States will be required to hold that information in respect of companies and certain other legal entities incorporated within their territory on a central register by June 2017. Although the UK register of people with significant control fulfils this requirement in the UK in most respects, some changes may be needed, for instance, expanding its scope so that it includes other types of legal entity. The UK government published a discussion paper in November 2016⁵ about transposing the aspects of the fourth Money Laundering Directive that affect the PSC register and will introduce amendments to the PSC legislation shortly. In September 2016 HM Treasury published a consultation paper about transposing other aspects of the fourth Money Laundering Directive⁶.

⁵ www.gov.uk/government/consultations/implementing-the-fourth-money-laundering-directive-beneficial-ownership-register

⁶ www.gov.uk/government/consultations/transposition-of-the-fourth-money-laundering-directive

Contents

The rest of this call for evidence is structured as follows:

Objectives, scope and impacts (pages 14-19)

- This section sets out the objectives of the new register, where it will be held, how we propose to define the entities and beneficial owners it will apply to, and how we raise awareness of its requirements and assess its impacts.

Registering information (pages 20-29)

- This section looks in more detail at exactly how entities might register their beneficial ownership information before they buy property, if they already own property or if they want to participate in central government procurement.

Required information (pages 30-35)

- This section sets out what information we might require about beneficial owners and the company that is registering, when this information should be updated, and looks at alternatives if this information is unavailable.

Compliance (pages 36-38)

- This section looks at what will happen if entities do not comply with the requirements of the register.

Protection regime (pages 39-40)

- This section looks at what protections might be needed to ensure that no individuals are put at risk because information about them is made public.

Third party protections (pages 41-42)

- This section looks at what the impact might be on third parties when entities do not comply with the register requirements and how these impacts can be mitigated.

Annex A (pages 43-52)

- A summary of responses to the discussion paper 'Enhancing Transparency of beneficial ownership information of foreign companies undertaking certain economic activities in the UK' from March 2016.

Objectives, scope and impacts

This section sets out the objectives of the new register, where it will be held, how we propose to define the entities and beneficial owners it will apply to, and how we raise awareness of its requirements and assess its impacts.

Objectives

20. The government is committed to ensuring that the UK is an open and transparent place to do business. In order to achieve this it was announced at the anti-corruption summit in May 2016 that the UK would create a register showing the owners and controllers of overseas companies that own property in the UK or participate in UK government procurement.
21. We aim to create a register that:
 - **Contains useful information.** For the register to be worthwhile it must not give superficial information that takes the reader no further in understanding a company than information that is currently available.
 - **Is publicly and easily accessible.** The information will be of interest to a wide range of people and organisations both at an individual level (a tenant, a potential purchaser or a neighbour) and in the wider community to help civil society groups, the media and investigating authorities. Whilst some respondents to the discussion paper published earlier this year (see annex A) were concerned about having this information on a register which is publicly accessible, many others felt that making the information public was important and would improve the transparency and accountability of companies operating in the UK.
 - **Protects the information of those at risk.** It will be important to have a thorough protection regime to protect people who are at risk of harm as a result of information about them being publicly accessible. See pages 39-40.
 - **Avoids creating disproportionate burdens or putting off legitimate investors.** In particular, we are conscious that the new register will need to be readily applicable to, and understandable by, companies across the world, which carries important implications for how we design and communicate it.

Hosting the new register

22. We propose that the new register will be held by Companies House, the registrar of companies in the UK. This is because of its expertise in holding information about companies and other types of legal entity, including information from the existing PSC Register, and in making this information publicly accessible.
23. Companies House usually charges a fee for its services so that it can recover its costs. We would expect that to apply to the entities that register but not to people who want to view the information: the register will be free to view. Companies House will need to carry out analysis to consider what fee levels would be appropriate. The government will ensure that fee levels are proportionate and will not materially affect property or procurement transactions.
24. The register will be available for anyone to view without charge on the Companies House website.

Scope

The scope of the new register

25. There are a number of different types of legal entities that can hold property in the UK and jurisdictions around the world provide a number of routes for people to create these entities. These entities have different purposes and structures and are designed to enable businesses to operate in the best way for their business model. Even though most jurisdictions around the world have a corporate vehicle equivalent to the UK's company limited by shares, the way these are defined in law can vary considerably, and change over time.
26. The government had initially conceived that the scope of the new register should be focused on companies limited by shares. However, further work and consultation has shown this approach would have significant drawbacks. Firstly, it is often not clear from land registry records what type of entity holds a title, which would make it difficult to ensure compliance with a register that only included some of those entities. Secondly, restricting the register purely to companies limited by shares may encourage the use of other less transparent entities as a means of owning property in the UK.
27. For these reasons we propose including all legal entities that can hold properties or bid on central government procurement contracts in the scope of the new register's requirements.
28. Some overseas companies that open a UK establishment already supply information to Companies House as required under the Overseas Companies Regulations 2009.

The government is considering how the new overseas register will interact with these requirements.

Question 1: Do you agree that all legal forms that can hold properties should be in the scope of the new register's requirements? If not, what legal forms should we consider an exemption for and why?

Leasehold

29. The government intends that entities that hold properties through certain types of lease arrangements (leases that last over a certain number of years that are registered with the land registers) will also need to comply with the requirements of the register.
30. The land registries have different arrangements for recording leaseholds, based on the length of the lease. Leases over 7 years are required to be registered in England and Wales, leases over 20 years are required to be registered in Scotland and leases over 21 years are required to be registered in Northern Ireland. We propose that any overseas entities that are leaseholders of property where the lease is required to be registered and the original term is for more than 21 years should register their beneficial ownership information with Companies House. This is because we aim only to capture leaseholds that are analogous to freeholds (for example, where a premium has been paid for the property up front). These leaseholds tend to be longer in duration, and we believe that by including leases that are initially for a term of more than 21 years the register will only hold information on significant leases.

Question 2: Is the suggested definition of leasehold appropriate?

Question 3: Will setting the leasehold definition at leases over 21 years create any unintended consequences?

Defining a beneficial owner

31. It is important that we identify who benefits from the legal entity **and** who exercises control over it and the asset that it holds. Whilst we have considered alternative definitions of beneficial ownership, we intend to adopt the existing definition that underpins the UK's PSC register. This definition was based on international best practice developed by the Financial Action Task Force and subsequently adopted in EU anti-money laundering legislation. Using the same definition will avoid mismatches with information on UK companies and prevent manipulation of holding structures.
32. The current definition is set out in Part 1 of Schedule 1A to the Companies Act 2006. This states that a person is a PSC if they meet one or more of the following conditions in respect of a UK company:
 - i. Directly or indirectly holds more than 25% of the shares in the company.

- ii. Directly or indirectly holds more than 25% of the voting rights in the company.
 - iii. Directly or indirectly holds the power to appoint or remove a majority of the board of directors of the company.
 - iv. Otherwise has the right to exercise or actually exercises significant influence or control over the company. (The meaning of 'significant control' is set out in the statutory guidance⁷.)
 - v. Has the right to exercise or actually exercises significant influence or control over a trust or firm that is not a legal entity, which meets one or more of conditions (i) to (iv). (Further detail on this is also set out in the statutory guidance mentioned above.)
33. Schedule 1A of the Companies Act 2006 also provides for situations where individuals hold rights or shares collectively or in a joint arrangement. This ensures that a beneficial owner cannot obfuscate their control or ownership of a company by diluting their shareholding amongst family members or other trusted individuals. We propose that these provisions are also applied to the definition of a beneficial owner for the new overseas register.

Question 4: Do you agree that the definition of beneficial owner for the new overseas register should be aligned to the definition of PSC in the PSC regime?

Adaptations to definition of people with significant control

34. The existing PSC legislation sets out some adaptations to the above definition to allow for different types of entity. These adaptations provide an interpretation of the conditions (i) to (v) above, including in circumstances where legal entities do not have share capital, or where they do not have general meetings at which voting rights can be exercised, or where they do not have a board of directors. The adaptations require the conditions (i) to (v) to be interpreted in the following ways:
- Where legal entities do not have share capital – instead consider rights to a share of the capital or profits of the entity.
 - Where legal entities do not have general meetings at which voting rights can be exercised – instead consider voting rights in relation to the entity that are equivalent to voting rights in a company.
 - Where legal entities do not have a board of directors – instead consider rights to appoint or remove a majority of the equivalent management body of that entity.

⁷ The statutory guidance can be found at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/523120/PSC_statutory_guidance_companies.pdf

35. The new register will require overseas entities that are not companies limited by shares to apply these adaptations, as appropriate, in identifying their beneficial owners. We intend to provide guidance to explain how entities assess themselves against the five conditions and the adaptations.

Question 5: Do you agree that entities that are not similar to UK companies limited by shares should use these adaptations to identify their beneficial owners?

Question 6: Do these adaptations provide sufficient flexibility in the beneficial owner conditions to apply to most legal entities? If not, what additional adaptations should there be?

Equivalent regimes in other countries

36. The European Fourth Money Laundering Directive will require all companies and certain other types of legal entity incorporated in the European Union to provide information about their beneficial owners to a central register by June 2017. We want to avoid double reporting where these entities would have to give information both to Companies House in the UK and to an equivalent organisation in the entity's country of incorporation. It is also our hope that other nations will follow the UK's lead and make beneficial ownership information of entities transparent. We therefore propose to exempt entities incorporated in countries with equivalent disclosure requirements.

Circumstances in which the beneficial owner of an overseas company is a legal entity

37. In some cases, another legal entity rather than a person might satisfy one or more of the conditions for significant control (conditions (i) to (v) above). To reduce burdens on businesses, under the PSC regime if a legal entity that keeps its own PSC register satisfies one of the conditions in relation to a UK company, it is enough for the UK company to name that legal entity, without having to investigate further up the ownership chain, because that information is already publicly available on the entity's PSC register⁸.
38. We propose using the same approach in the new overseas register. In cases where a legal entity that is required to provide information about its beneficial owners to a publicly accessible register (for instance if it is a UK company that is required to comply with the PSC regime) has significant control over an overseas legal entity, then the controlling entity's details should be provided by the overseas entity for the purposes of the new register, without the need to continue further up the ownership chain.

⁸ This is also the case in circumstances where the entity provides equivalent information elsewhere (e.g. if it is a DTR5 issuer).

Awareness and impacts

Raising awareness about the register

39. We recognise that the introduction of this new register will be a significant change for overseas legal entities and how they interact with the UK property market and UK government procurement. We will ensure that all legal entities affected by the changes are informed and made aware of the new requirements in good time. This will include working with international partners to raise awareness about the register with legal entities considering investing in the UK.
40. We want to ensure that all parties entering into a property deal are made aware of the new requirements on overseas legal entities as early as possible. Overseas legal entities should consider applying to join the register before they enter the conveyancing process and legal entities that already own property should consider updating their information on the register before negotiating to ensure that the conveyancing process can progress smoothly. The government proposes to explore a variety of methods to raise awareness about the new register with buyers, sellers and those acting for them.
41. In relation to entities that want to bid on UK government contracts, the requirement to apply to the new register will be made clear in the bidding documentation.

Question 7: What methods of raising awareness would be most effective?

Economic impacts

42. It is important that in creating the register we are sensitive to the likely economic impacts in the UK. In order to better understand these, we intend to commission research looking at how the proposals might influence those planning to invest in the UK and what impact that might have on the UK economy. The findings of this research will inform the Impact Assessment that will be published when these proposals are introduced to Parliament. The government will carefully consider the findings of the Impact Assessment before finalising the features of the register.

Question 8: Do you have any information that is relevant to our assessment of the cost and benefits of the policy to businesses, society and the economy?

Question 9: What, if any, impact do you think that the proposed policy will have on the UK property market (residential and commercial)? Please describe the impacts and provide evidence.

Registering information – property

This section sets out how the register will work and how the requirements that it places will interact with property transactions in the UK.

43. This section sets out how the register will work and how the requirements that it places will interact with property transactions in the UK.
44. We intend to ensure that overseas entities cannot buy or sell property in the UK unless they have provided information about their beneficial owners for the new register. In respect of property already owned by an overseas entity, we intend for this restriction to be reflected by a note on the title register for the property. Entities wishing to buy property will have to register their beneficial ownership information with Companies House. If their application is successful they will be allocated a registration number. This number will be required in order to register title to the property at the appropriate Land Registry. Checking that an overseas entity is compliant with the new legal requirements can be done very easily and quickly by checking the register on the Companies House website. Entities that already own property will be given a transitional year in which they will be free to choose whether to disclose the information or dispose of their property. This is set out in more detail below.

Entities that already own property

45. Compiling information about beneficial owners may take an entity some time. We cannot expect entities that already own property to supply the information immediately when the law comes into force. We want to ensure that all overseas entities that already own property are made aware of the need to register their beneficial owners in good time to provide the information. We propose giving these entities a year to comply with the new requirements and apply for a registration number. (In this period, entities will be unable to register title to new purchases of property without a registration number.) This will give entities enough time to dispose of property if they choose to. It is our aim that all overseas entities that own UK property before the law comes into force will be written to setting out the requirements and the consequences of not complying. We propose that these entities will be written to again 3 months before the end of the first 12 month period to remind them.

Question 10: Do you agree that the duration of the period given to overseas entities to comply with the new requirements should be one year?

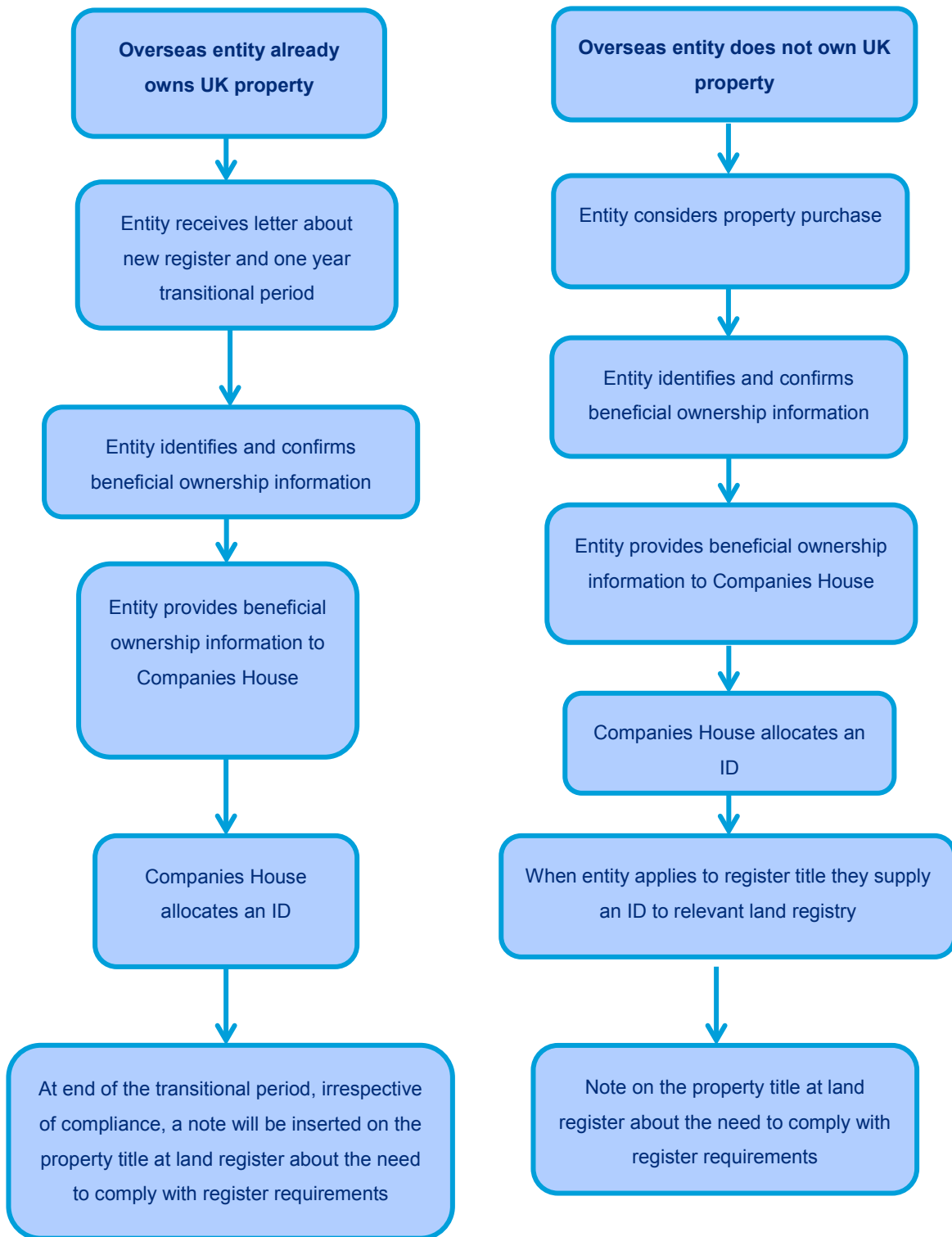
46. We propose that at the end of this transitional period, where an overseas legal entity owns property in the UK, that overseas entity will be prohibited from selling the property or creating a long lease or legal charge over it where they have not complied with the new register requirements. This will be reflected in a note that will be inserted into the title register of the property kept and maintained by the appropriate land registry. This note will reflect the fact that the entity will not be able to transfer the title of the property or register a long lease or a charge (such as a mortgage) over the property unless the entity is fully compliant with the new register's requirements.

Entities that wish to buy property

47. After the legislation setting up the new register has come into force, overseas legal entities that wish to buy property will be able to apply to Companies House to participate in the new register. As set out above, entities seeking to buy property will have to register their beneficial ownership information with Companies House. If their application is successful they will be allocated a registration number. Once the property has transferred to the new overseas owner, a note will be put on the title register that reflects the restrictions (on transferring the title of the property or registering a long lease or a charge) over the property if the entity is not fully compliant with the new register's requirements.
48. We believe that these statutory restrictions and notes will act as a considerable incentive to comply with the new requirements. Entities will be unable to realise fully the property's value as they will not be able to sell it, let it for a long period or use it as security for a loan if they are not compliant. Some entities may have no plans to sell, lease or mortgage their property so the government is considering whether to, in addition, make it a criminal offence to fail to provide information to the new register or, where the entity has provided information, failing to keep it up to date. See the section on compliance on page 36 that discusses this in more detail.
49. We are working closely with the devolved administration to develop this system of notes on the three Land Registries and to ensure that our proposals are workable in practice.

Question 11: Is a system of statutory restrictions and putting notes on the register, backed up by criminal offences, a comprehensive way to ensure compliance?

The diagrams on the next page show these processes.



How the system of notes will interact with property transactions

50. The way property is bought and sold is slightly different in the different jurisdictions in the UK. But, once a price has been agreed, property changing hands in the UK is roughly a three step process:

Stage	England and Wales	Scotland	Northern Ireland	What happens
1. Contract entered into	Exchange of contracts	Conclusion of missives	Offer and acceptance of contract	After this point the parties are legally obliged to give effect to the transaction
2. Contract finalised	Completion	Completion or settlement	Completion	The balance of the purchase price is paid and the buyer takes possession of the property
3. Register change of title with one of the UK Land Registries	Send application form to Land Registry	Send application form for registration to Registers of Scotland	Send application form to Land Registry	New owner is registered and legal title is conferred on new owner

Overseas entities buying property after the law comes into force

51. To register a new legal owner of a property in the UK an application must be submitted to the appropriate land registry. It is proposed that in the future when an overseas entity is applying to register itself as the legal owner of a property, the land register application form will require the overseas entity to give an overseas registration number. Without this number being included, the form will not be accepted by the land registry and the application will be cancelled. For example, where an overseas entity wishes to register their legal ownership of a property in England or Wales, a registration number will be required in the form that must be sent to the Land Registry in order to register the transfer. Failure to supply a valid registration number in the form will mean that the application is cancelled, the transfer of title will not be registered and the overseas entity

will not become the legal owner. The Land Registry will use the registration number supplied on the form to check that the overseas entity has indeed provided its beneficial ownership information to Companies House (and that this information has been updated as required). This is a direct way to ensure that entities that have not complied with the requirements will not be able to buy property.

52. This safeguard is only triggered at the end of the process of a sale. This may create a situation where completion (or settlement, in Scotland) has already taken place but the new owner cannot be registered as the legal owner because the title cannot legally be transferred to an overseas entity without an overseas registration number. In this situation the overseas entity would hold ‘beneficial interest’ in the property, because beneficial interest transfers on completion and settlement. This would put the seller in the position of holding the property on ‘trust’ for the overseas entity. We wish to explore ways to prevent this so that an overseas entity doesn’t receive legal or beneficial interest in a property unless they have a valid registration number.
53. One option could be to make the transfer document void if an overseas entity buying a property does not have a valid⁹ overseas registration number by the time the contract completes or is settled. The date of completion or settlement will be determined by the date on the transfer form that is sent to the land register to apply for the transfer of title to be registered. Voiding the transfer document would make it in the interests of both parties to the contract to ensure that the registration number is in place in time. Sellers to overseas entities might choose not to enter into a contract at all without reassurance that an overseas buyer has a valid registration number.
54. We want to ensure that all parties entering into a property deal are made aware of the new requirements on overseas entities as early as possible. Ideally overseas entities would apply for an overseas registration number before they begin the conveyancing process. The government proposes to explore a variety of methods to raise awareness about the importance of complying with the register requirements with buyers, sellers and those acting for them.
55. It is in the interests of the overseas entity that is buying the property to ensure that the title will pass to them so we think it is unlikely that overseas entities will attempt to complete on a contract without having a valid registration number.
56. Once the overseas entity has bought property in the UK, a note will be put on the title register that will reflect the statutory prohibition on sale, grant of lease or mortgage unless the entity is fully compliant with the register’s requirements.

⁹ Valid in this context means that the ID has been updated in accordance with the requirements (see pages 30-35).

Question 12: Do you agree that we should prevent any beneficial interest in the property passing to an overseas legal entity that does not have a valid registration number at completion or settlement?

Question 13: Do you agree that the most appropriate way to do this would be to void the transfer document?

Question 14: Is there another way that we could achieve this result?

Overseas entities that wish to sell property

57. Overseas entities that already own property in the UK when the law comes into force will be given a year to comply with the new register's requirements. After this year a note will be put on an overseas entity's property titles that will reflect that it will be unable to sell, lease or mortgage the property where it is not complying with the new law.
58. So at the end of the first year all overseas entities that own property in the UK, regardless of when they bought the property, will have a note on their title at the appropriate land register that will reflect the general prohibition from selling, leasing or mortgaging their property unless they are fully compliant with the new requirements.
59. This note on the title will be visible to prospective buyers during a search of the title. The note will flag up to third parties that the overseas entity will be unable to transfer title of the property if they are not fully compliant with the register. This compliance will be required at the time the contract for sale is completed or settled. This would avoid a situation arising where a buyer entered into a contract to buy a property from a non-compliant overseas entity unaware that registration of their ownership would not be possible because of non-compliance.
60. We propose that the transfer will be void if the overseas entity is not compliant with the register requirements at the time the contract completes.

Unregistered land

61. These proposals will only apply to overseas entities that own land or property that is registered. Not all land in the UK is currently registered. For example, 17% of freehold land in England and Wales is unregistered. Any unregistered land currently owned by an overseas entity would not be subject to the new overseas register requirements. However, a transfer of unregistered land triggers registration, so the proposals will apply to an overseas entity buying unregistered land.

Registration – procurement

This section looks in more detail at exactly how entities might register their beneficial ownership information if they want to participate in central government procurement.

Registration for overseas entities wishing to bid on UK government contracts

62. The new register will operate in a similar way in relation to procurement as it does with property purchases. Once the register is in place, overseas entities that wish to take part in central government procurement contracts will need to supply beneficial ownership information before the contract can be finalised.
63. All overseas entities that want to participate in UK central government procurement should supply their beneficial ownership information for the register, although we are exploring whether to vary this requirement for entities incorporated in countries with equivalent disclosure requirements. With those entities, we might, for example, instead require them to provide details of that register and how the relevant information within it can be accessed (noting that there should be no cost for contracting authorities to access to the register in question). This would operate on the basis that as long as the entity provides details to the contracting authority at the specified time and the contracting authority can access beneficial ownership information without charge, the contracting authority would treat the other country's register as sufficient for the purpose of awarding central government contracts.
64. The measures covering procurement will apply only to new UK government contracts. They will not apply to public contracts that have already been procured or procurement procedures that have already started. Separate discussions will take place to consider procurements by the devolved administrations. The provisions will only apply to procurements valued over £10 million. This figure is the value at which projects have historically been considered 'major' and at which certain other requirements are triggered, such as the Procuring Growth Balanced Scorecard. The scheme will be mandatory for procurements by central government and voluntary for wider public sector bodies such as Local Authorities.
65. There are three options for how the scheme will operate for entities involved in government procurement. The first option would **only** require the preferred bidder to provide beneficial ownership information. The second two options would require all bidders to give the information as part of their bid, but with different consequences for failing to provide this information.

1. Requiring the preferred supplier to provide its beneficial ownership information as a condition of being awarded the contract.
2. Excluding bids from entities that have not provided beneficial ownership information. (Under procurement rules this could result in a three year exclusion from bidding for that contracting authority's contracts.)
3. Treating bids without specified beneficial ownership information as incomplete or non-compliant and rejecting them on these grounds. (This exclusion would apply only to the procurement exercise in question and would not result in a three year exclusion.)

Option 1. Requiring the preferred supplier to provide its beneficial ownership information as a condition of being awarded the contract.

66. This would require the entity whose tender had already in principle been evaluated as highest scoring by the contracting authority to provide its beneficial ownership information or an overseas registration number. A contracting authority would set out this requirement in its procurement documentation so that all bidders would be aware that a condition of being awarded the contract would be that they provide beneficial ownership information or an overseas registration number. Any bidder's entitlement to proceed to contract award stage would depend on it providing this information.
67. If the bidder did not provide any beneficial ownership information or an overseas registration number, the contracting authority would ask the next highest ranked bidder to provide its beneficial ownership information or an overseas registration number (and award that bidder the contract if it was provided, or approach the next highest ranked bidder after that, if not).
68. This would provide a straightforward means to ensure that the government was able to identify the beneficial owners of its suppliers and would allow the government to meet the policy aim of knowing with whom it is entering into contracts. This approach would allow overseas entities to participate in the procurement process without requiring all of them, including the ones that are not successful, to apply for an overseas registration number before being eligible to bid.

Option 2. Excluding bids from entities that have not provided beneficial ownership information.

Under procurement rules this could result in a three year exclusion from bidding for the contracting authority's contracts.

69. The Public Contracts Directive 2014 (2014/24/EU), implemented by the Public Contracts Regulations 2015 (PCRs) provides express grounds for excluding bidders from a procurement process. These are set out in regulation 57 of the PCRs. The grounds fall into two categories: mandatory and discretionary.

Mandatory exclusion grounds include a bidder having been convicted of specified offences such as corruption, bribery or fraud. They extend to situations where the person convicted is a member of the administrative, management or supervisory board of the supplier, or has powers of representation, decision or control in them. This ground could therefore be relevant to the beneficial owner of an overseas entity if they have a conviction covered in regulation 57(1) of the PCRs.

Discretionary exclusion grounds include where the contracting authority has sufficient information to conclude the bidder has entered into anti-competitive agreements (regulation 57(8)(d)), or where the bidder has been guilty of serious misrepresentation about information required to verify whether exclusion grounds exist under regulation 57, or has withheld that information (regulation 57(8)(h)). The discretionary ground relating to withholding information could be relevant if information about the beneficial owner was needed to verify whether grounds for exclusion exist – for example that the beneficial owner has a conviction covered in regulation 57(1) or it might show there are plausible indications the bidder has entered into agreements with other bidders aimed at distorting competition.

70. Failure to provide its beneficial ownership information or an overseas registration number would be likely to result in a bidder being excluded from the procurement process on the grounds set out in regulation 57(8)(h)(ii) of the PCRs, namely that the bidder had withheld information required to verify there were no grounds for excluding it from the procurement.
71. This would require entities bidding for central government contracts to ensure they had supplied beneficial ownership information or an overseas registration number in the standard pre-qualification questionnaire (PQQ) or European Single Procurement Document (ESPD) when bidding.
72. This approach requires contracting authorities to check if the beneficial ownership information provided by all bidders was genuine and carry out other checks, including considering any evidence provided of self-cleaning (meaning the bidder has adopted compliance measures remedying the past behaviour and to prevent it from recurring). Decisions about excluding a bidder for not providing beneficial ownership information or an overseas registration number would therefore need to be made on a case-by-case basis. This would involve some additional time and cost burdens for contracting

authorities as a result of the checking process that it would have to undertake. Bidders excluded under this option, must be excluded from the contracting authority's procurement opportunities for three years, subject to self-cleaning.

Option 3. Treating bids without specified beneficial ownership information as incomplete or non-compliant and rejecting them on these grounds.

This exclusion would apply only to the procurement exercise in question and would not result in a three year exclusion.

73. Before awarding contracts, contracting authorities are required under Regulation 56(1) of the PCRs to verify that a tender complies with the requirements, conditions and criteria set out in the contract notice and the procurement documents. If the contracting authority imposes requirements, conditions, and criteria within the procurement process, the contracting authority is entitled not to award the contract to a bidder that fails to comply with them.
74. Where information or documentation to be supplied by bidders looks incomplete or erroneous, regulation 56(4) of the PCRs allows a contracting authority to request the bidder to correct, clarify or provide what is missing, provided that these requests comply with equal treatment and transparency.
75. Under this option, the contracting authority could require all bidders to provide beneficial ownership information or an overseas registration number. If the contracting authority requires the information to be provided as part of a bid for the contract and states clearly in procurement documentation that tenders not complying with this would be rejected, it should be able to reject a bid for a particular contract where the entity failed to provide the relevant information. The rejection would only apply for that specific contract opportunity
76. Arguably, this has a low impact burden on contracting authorities as they would not be required to take the detailed checking process set out above in relation to regulation 57(8)(h)(ii), and may be considered a more proportionate approach as it doesn't subsequently result in a 3-year exclusion from all procurement opportunities by that contracting authority¹⁰.

Question 15: Which is your preferred option for procurement and why?

¹⁰ This period of exclusion would be subject to evidence of effective self-cleaning under regulation 57.

Required information

This section sets out what information we might require about beneficial owners and the company that is registering, when this information should be updated, and looks at alternatives if this information is unavailable.

Information required about beneficial owners

77. The requirements of the UK's register of people with significant control were developed through extensive consultation with stakeholders, including business and legal sectors. The requirements have been well received both in the UK and internationally since its introduction. We therefore believe that the PSC register requirements have been rigorously tested and provide a good balance between providing transparency and the cost to business of compliance. Given this, and the similarities between the new overseas register and the PSC register, it would be appropriate to require the same information about beneficial owners as is required of people with significant control. Section 790K of the Companies Act 2006, sets out what particulars are required of an individual who is a PSC of a UK company and these are:

- The individual's name;
- Their date of birth (although the day of their date of birth is not publicly accessible);
- Their nationality;
- The country or state (or part of the United Kingdom) where they usually reside;
- A service address for them;
- Their usual residential address (again, this is not publicly accessible);
- The nature of his or her control over the company;
- The date on which that person became a person with significant control over the company;
- If there are any restrictions in place on using or disclosing any of the individual's PSC particulars (this is in cases where the individual's details are not made publicly accessible due to that person having made a successful application for protection under the protection regime).

Question 16: Do you agree that the information on the new register for overseas entities should be the same as the information required under the PSC regime?

78. We propose that this information about beneficial owners of overseas entities will be on a publicly accessible database. This will ensure transparency over who owns and controls entities that own UK property or deliver UK central government procurement contracts.
79. However, in order to ensure information held about an individual is accurate and up to date, we propose that it would be appropriate for overseas entities to check the information with their beneficial owners prior to disclosing it for the new overseas register. It would not be appropriate to put this information into the public domain without letting the person to whom the information relates know, and giving them an opportunity to correct inaccurate information where necessary. Therefore we propose that, as with the PSC register, entities should confirm information about beneficial owners with them before they disclose the information for the new overseas register.
80. The government is aware that requiring overseas entities to confirm information with their beneficial owners before sending it to Companies House creates the possibility that a beneficial owner not responding to the request for confirmation might delay an application for an overseas registration number. As entities need this registration number in order to buy a property, or deal with a property they already own, this requirement may put the beneficial owner in an effective 'veto' position in relation to the property. If the potential beneficial owner does not respond to the information request, the overseas entity would be unable to obtain a registration number. Without a registration number, the entity would be unable to progress on a property transaction. It could also put an entity that already owns a property at risk of non-compliance. However without this confirmation process the entity may inadvertently put inaccurate or false personal information on the register. We therefore consider it appropriate to place this requirement on entities before they can supply this information to Companies House.
81. Once the beneficial owner(s) have confirmed their information, the overseas entity will be able to give that information to Companies House for the purposes of the new overseas register. UK Companies already provide a great deal of useful information to Companies House. We propose that overseas entities should be required to provide the following information to Companies House alongside information about their beneficial owner(s):
- The entity's name and legal form;
 - The name and contact details of the person completing the application form;
 - The address of the entity's registered office or if none is available, another contact address;
 - A contact email address;
 - The entity's country of incorporation and any other national registration number allocated to that entity.

How do overseas entities find out about their beneficial owners?

82. Under the existing PSC regime, UK companies are required under section 790D of the Companies Act 2006 to take 'reasonable steps' to find out if they have a PSC and if so to identify them.
83. Similarly, overseas entities would be expected to take reasonable steps to find out who their beneficial owners are. These would include looking at any registers of members or shareholders, articles of association, any covenants or agreements or any other relevant or equivalent constitutional documents relating to the entity. The guidance covering the PSC register explained reasonable steps in more detail and we intend to produce similar guidance for overseas entities.

When entities cannot get information about their beneficial owners

84. As discussed above, prior to disclosing beneficial ownership information to the new overseas register, overseas entities will be required to have confirmed the information with their beneficial owners beforehand. However, some entities may not be able to get complete, confirmed information on their beneficial owners. For example, some entities may not be able to establish if they have any beneficial owners because shares are held in anonymous ways. Other entities may not have any owners that meet the conditions for being a beneficial owner for the purposes of the new overseas register. For instance, an overseas company that is owned by five people, all with an equal share and equal rights, is unlikely to have any single person who meets a condition for being a beneficial owner.
85. So entities may be unable to provide information about their beneficial owners for the following reasons:
 - a. They are unable to get full confirmed information from their beneficial owners despite taking reasonable steps to contact them;
 - b. They are unable to establish if they have any beneficial owners;
 - c. They have carried out investigations and concluded that they do not have any beneficial owners as no person meets a condition for control.
86. The current PSC register allows UK companies that fall into these categories to make similar statements in their PSC register and still comply with the requirements of the PSC regime. We propose to allow overseas entities to also record these statements for the purposes of the new register. However, it is important that this is not abused so we propose to make it an offence for anyone to knowingly or recklessly provide false or misleading information to the register. Such an offence already applies to information given to Companies House, including PSC information. See the section on compliance starting on page 36.

87. UK incorporated companies already provide detailed information to Companies House about how they are managed. For example, they are subject to obligations in Part 10 of the Companies Act 2006 to collect and maintain information about their directors. This enables third parties to get a clearer understanding of who is responsible for managing the day to day activities of the company. However equivalent information about an overseas entity is unlikely to be available unless specifically required by the new overseas register.
88. In light of this where entities do not give beneficial ownership information (under any scenarios outlined in (a), (b) or (c) above), they will be asked instead to provide information about their managing officers. This will ensure that there will be at least some additional information on the control of overseas entities that are subject to the new overseas register regime.
89. We propose that the information required about managing officers in this situation will be consistent with the managing officer information (directors particulars in section 162 – 166 of the Companies Act 2006) required of UK companies.

Where the managing officer is an individual:

- Name and any former names;
- A service address;
- Usual residential address (this will not be made public);
- The country or state (or part of the United Kingdom) in which they are usually resident;
- Nationality;
- Business occupation (if any);
- Date of birth (only month and year of birth will be publicly available).

Where the managing officer is a legal entity:

- Corporate or firm name;
- Registered or principal office;
- The legal form of the company and law by which it is governed;
- The register in which it is entered (including details of the state) and its registration number in that register.

90. We recognise that not all legal entities will have an officer equivalent to a director. We will therefore create a broad definition of managing officer.

Question 17: Do you agree that entities unable to give information about beneficial owners should be asked to provide information about their managing officers?

Question 18: Is there any additional information that we should ask for from entities that are unable to give information about their beneficial owners?

Keeping the information on the register up-to-date

91. Although some entities have very static ownership structures, others may not and we want the information on the register to give a full and up-to-date picture of ownership. So once entities have registered they will be required to update the information held on the register at regular intervals. Entities on the register will be written to three months before their update is due to remind them of this obligation.
92. We have considered whether the requirement to update the register should be driven by when there is a change to the beneficial ownership arrangements of the entity, but we believe that this would be difficult to enforce and be onerous for overseas entities to comply with. It would be very difficult for government to know when there has been a change to beneficial ownership information without active investigation, which would not be possible to administer for all the entities on the register.
93. The government proposes that the information on the new overseas register should be updated at least once every two years (the overseas entity will be able to choose to update its information sooner than that, see paragraph 95).
94. We believe this provides the right balance between maintaining an accurate register without placing undue costs and burdens. When this update is provided entities should include information about all changes in beneficial ownership in the interval since the last update. We are considering making it an offence if entities do not update their information as required (see the section on compliance starting on page 36 for more information on enforcement).

Question 19: Is a requirement for an update every two years appropriate?

Question 20: Would a criminal offence be an appropriate way of enforcing the requirement to update information?

95. Entities that already have an overseas registration number and are planning to buy or sell a property might want to update their information **before** the two year update is due. This would give the other parties to the sale or the contract the confidence that the registration number will not become invalid for two years. Two years would also cover a lengthy procurement process. Updating early will reset the date the update is due in future years.
96. Entities that have already got an overseas registration number but when an update is due are unable to establish who new beneficial owners are, or are unable to get

confirmed information from them, will be able to state this when they update their information. Where full beneficial ownership information is not available, entities will be asked to give information about their managing officers and they may be required to share evidence of why they do not have full beneficial ownership information with enforcing authorities to show what reasonable steps they have taken to update their information.

97. All entities that are registered will be expected to keep their information up-to-date. Registered entities that no longer have a need or obligation to have a registration number (for instance, because they have sold all their UK property), may wish to remove themselves from having a requirement to keep their information up-to-date. We intend to create a facility for them to close their membership of the register so that the on-going obligations no longer apply.

Compliance

This section looks at what will happen if entities do not comply with the requirements of the register.

For entities that own property

98. We want to ensure that overseas entities that own property in the UK comply with the new register requirements. The system outlined above achieves this using controls over property. If an entity does not supply the right information to Companies House it will not get an overseas registration number. Without this number it will not be able to buy property, and it will not be able to sell, lease or place a charge against any property it already owns. Some entities might be content to own property that is restricted in this way; the powers over the property might not act as enough of an incentive to comply with the law. Because of this the government is considering whether it would be appropriate to create a criminal offence for entities that still own property at the end of the transitional period but have not complied with the new register requirements by that time.
99. We are also considering making it an offence if entities fail to keep their information up-to-date as set out in the previous section.
100. To confirm beneficial ownership information, entities will be required to write to people or entities that they have reason to believe are beneficial owners (as explained in the section about what information is required, starting on page 30 above). This is equivalent to the PSC register provisions around providing beneficial ownership information.
101. Section 1112 of the Companies Act 2006 states that it is a criminal offence for a person to knowingly or recklessly provide false or misleading information to the registrar at Companies House in purported compliance with a company filing obligation. To ensure the accuracy of the register, we intend to similarly make it a criminal offence for a person to make false or misleading statements for the purposes of the new overseas register.
102. As set out on pages 34 and 35, it will be possible for an overseas entity to state that they are unable to get confirmed information on beneficial owners, or unable to establish whether they have any, or state they do not have any. The offence for knowingly or recklessly making a false or misleading statement will make it an offence to select these options if they are not correct. In addition, if an entity selects one of these options, this

will be clear to third parties and law enforcement bodies examining the register. Where an entity has not given full information we propose that law enforcement bodies may, where appropriate, request evidence of the reasonable steps (see paragraph 96) the entity has taken to acquire the information.

103. The Money Laundering Regulations 2007 (MLR) require people providing some legal and financial services, such as estate agents (facilitators), to identify and verify the identity of their immediate customer. The guidance to the MLRs requires facilitators to property transactions to satisfy themselves that they know certain things about an entity they are acting on behalf of, including its beneficial owners. The government will consider how the new register and MLR checks can work cooperatively to support each other and ensure accuracy of information.

Question 21: Do our proposals achieve the right balance between ensuring compliance and enabling overseas entities to maintain existing assets?

For entities participating in procurement

104. There should be a mechanism to ensure that overseas entities that have been awarded a contract keep their information about beneficial owners up to date. Contracting authorities should be put in a position to act effectively after the contract has been awarded if it is discovered that false or inaccurate information was provided during the procurement process.
105. Regulation 73 of the Public Contracts Regulations 2015 (PCRs) implement requirements by the EU Public Contracts Directive 2014 that contracting authorities provide for termination clauses in their contracts to cover three situations. One of these is relevant to beneficial ownership – i.e. where the contracting authority finds out, after contract award, that the bidder or its beneficial owner had relevant convictions that should have excluded it from the procurement. This does not mean the contracting authority must terminate the contract if those circumstances occur, but ensures it has the possibility of terminating the contract. A similar approach could be taken towards including contract conditions about beneficial ownership information that had been provided.
106. To support requirements to provide beneficial ownership information, contracting authorities could include contract conditions in public contracts that dealt with **two** situations:

(a) Where a bidder provides false or inaccurate beneficial ownership information

107. The government has standard terms and conditions that all contracting authorities can use and that central government authorities would be required to use where appropriate.
108. These standard terms and conditions already include a warranty by the bidder that the information provided in its bid was accurate. It would be possible to draft a termination clause to include situations where the contracting authority later discovers that beneficial ownership information was inaccurate or false. It would not be designed to cover a situation where the bidder should have been excluded under regulation 57(2) (i.e. because its beneficial owner had a relevant conviction). Those situations are already covered by termination clauses required by regulation 73 of the PCR (see paragraph 105 above).
109. The termination clause would allow, rather than require, the contracting authority to terminate the contract. This reflects and addresses the difficulties that may be caused to a contracting authority by stopping a contract part-way through its performance and requiring the contracting authority to start a procurement exercise for a completely new contract.

(b) Where a bidder does not keep its beneficial ownership information up to date during a contract.

110. This situation could be addressed via a contract termination clause that is included in the government standard terms and conditions. Once again, it would allow, but not require, the contracting authority to terminate the contract.
111. Both (a) and (b) could be pursued as measures that would complement and support any of options 1-3. These measures will help ensure that beneficial ownership information is accurate and kept up to date. It will be in entities' interests to do this, since their right to carry on delivering the contract is at risk if they do not. The contract conditions described in (a) and (b) above would, again, allow the government to meet the overarching policy aim of knowing with whom it is doing business.

Question 22: Are these mechanisms enough to deal with situations where bidders provide false beneficial ownership information or do not keep their information up to date?

Protection regime

This section looks at what protections might be needed to ensure that no individuals are put at risk because information about them is made public.

Protecting individuals at risk

112. The new overseas register will be publicly accessible to ensure transparency and increase ease of scrutiny by law enforcement bodies and transparency groups. There are, however, some situations where making information about an individual public would put that individual at risk of harm or would create a wider public safety risk. This builds on a principle in the UK PSC register. The PSC register has a protection regime which allows a company or individual to apply to have information about an individual with significant control suppressed if the individual is at risk of violence or intimidation as a result of that information being made public.
113. We propose to provide for a beneficial owner or managing officer to apply to have their information suppressed on the new register in similar circumstances. However we also consider that because the new overseas register will relate to individual properties the risk of harm to an individual or others may be increased by the individual's association with the property being known. We wish to consult on whether a more extensive regime may be appropriate for the new overseas register as it may include individuals' residential addresses.
114. For the new register, we propose enabling individuals to apply for their information to be suppressed based on four criteria:
 1. The individual is at risk of violence or intimidation due to the activities of the entity, or the way the property is being used.
 2. Certain characteristics or attributes of that individual when associated with that entity or property could put them or someone who lives with them at risk of violence or intimidation.
 3. Publicly linking the property or entity to the individual will lead to an elevated public safety risk.
 4. Protection for minors or people with diminished capacity. We believe this may be necessary as a minor or someone with diminished capacity might be unable to make an informed decision about the purchase of the property, and therefore the inclusion of their name in the new register.

115. We propose that applications for information to be suppressed will be assessed by an appropriate enforcement agency to ensure that information is only suppressed where the risk is credible and verifiable.

Question 23: Do you think that this provides the correct balance between protecting individuals from harm and ensuring transparency of how properties are owned?

Question 24: Are there additional situations we should consider where protections should be granted?

116. For entities involved in procurement, there will be circumstances where entities should not be required to put information on the register. This would include procurements that are exempt from the current procurement regulations on national security grounds, but there may be other situations where this is relevant.

Question 25: Are there other situations where exemption from putting information on the register should be permitted for entities participating in procurement?

Third party protections

This section looks at what the impact might be on third parties when entities do not comply with the register requirements and how these impacts can be mitigated.

Banks and other lenders

117. We are keen to ensure that the new register does not prevent or interfere with any commercial arrangements that an entity may enter into with a third party. One such consideration is commercial lending to an entity where a loan is secured against the property that the overseas entity owns.
118. A bank or other lender could be affected if they provided a loan to an overseas entity secured against a property located in the UK and the entity then fails to comply with the new register requirements. The enforcement of the register requirements will mean that an entity that is not compliant with the register requirements will not be able to sell, create a long lease or register a new charge against the property. We are keen to ensure that where an entity is not compliant with the register requirements and has defaulted on a loan secured on that property, that the lender can still enforce its security by repossessing and disposing of the property. We therefore intend to ensure that the restriction on the property would continue to allow the bank or other lender to sell the property in order to recoup their debt if necessary.
119. New lending secured against the property would not be possible where the entity has not complied with the new register requirements as the note on the register will make clear, but we need to ensure that existing lenders are not disadvantaged.
120. In enabling lenders to continue to hold and exercise their security over a property we are keen to ensure that we do not create a loop hole for overseas entities to realise the value of their asset without providing beneficial ownership information to the register. Where the beneficial owner of an overseas entity holds a charge against a property but is unwilling to provide their information for the new overseas register, they could repossess and dispose of the property under the guise of being a lender and therefore circumvent the new overseas register requirements. We are keen to ensure that this does not happen and therefore will need to ensure that only an accredited or legitimate lender is able to repossess and dispose of a property which has a restriction against it.

Question 26: How can we best ensure that only legitimate lenders are able to repossess and dispose of a property with a restriction against it?

Question 27: We are interested in views and evidence of other commercial transactions that could be disrupted by the proposed restrictions regime.

Joint Ventures/Co-ownership

121. Overseas entities can own property through joint ventures and co-ownership. We do not believe that the OEBO register will alter the position and rights of overseas entities in these arrangements.

Question 28: Are there additional third party impacts that should also be addressed?

Annex A: Summary of responses

Summary of responses to the discussion paper called Enhancing Transparency of beneficial ownership information of foreign companies undertaking certain economic activities in the UK.

The paper was published in March 2016. In total 38 responses were received, 29 from organisations and nine from individuals. The organisations that responded were:

1. Anthony Collins Solicitors LLP
2. Association of Company Registration Agents (ACRA)
3. Bidwell's Property Consultancy
4. British Property Federation (BPF)
5. Campaign for Legislation Against Money-laundering in Property by Kleptocrats (ClampK)
6. Clifford Chance LLP; Allen & Overy LLP; Nobarro LLP
7. Department for Transport
8. DVLA
9. Global Witness
10. Guernsey Association of Trusts
11. Information Commissioner's Office
12. Institute of Chartered Accountants in England & Wales (ICAEW)
13. Jersey Finance Limited (JFL)
14. Jersey Funds Association (JFA)
15. M&G (Real Estate)
16. Maritime and Coastguard Agency
17. Ministry of Defence
18. National Association of Estate Agents (NAEA)
19. Open Corporates
20. Open Government
21. Quoted Companies Alliance (QCA)
22. Savills Estate Agents
23. Scottish government
24. Spend Network
25. The Governance Institute
26. The Law Society
27. Transparency International UK
28. Trowers and Hamlin Solicitors LLP
29. The Welsh government

Summary of comments

There was a very high degree of support for the general principle of requiring the information about the beneficial owners of overseas companies that own property. The main reasons given for this were that UK companies already have to provide this information and given the extent of property ownership by overseas companies in the UK it made sense that they should also be required to provide it.

About half the respondents did not support making the information publicly accessible given that some beneficial owners may have legitimate reasons for wanting to keep their details private. However, for the register to provide the level of transparency that the people with significant control (PSC) register has achieved, the government believes that it must be publicly accessible. To mitigate any risks to individuals, there will be a comprehensive protections regime. The government intends the register to be held and maintained by Companies House because of its expertise of holding company information and their expertise in making this information publicly available and accessible.

There was a lot of support for the register to cover properties already owned by overseas companies, rather than restricting it to property bought after the requirements come into force. Respondents did point out how difficult it might be to inform some of these companies about the new requirements, which might be mitigated by a transition period. Provision would also need to be made to ensure that compliant shareholders or joint venture partners were not prejudiced by others non-compliance.

Fewer respondents commented on the proposals covering companies involved in procurement, but of those that did, there was almost unanimous agreement that knowing beneficial ownership information would help contracting authorities operate a fair and straightforward approach towards procurement. Further details below.

		Q1. Do you agree that foreign companies who want to buy land or property in England and Wales should be required to provide information about people with significant control?					
		Yes	24	No	3	Not Sure	3
Comments	Agree	<ul style="list-style-type: none"> Following the introduction of the UK PSC Register, it is now time for overseas companies to be exposed to the same level of scrutiny as UK companies. Overseas companies own £122bn of property in the England and Wales (FT) - such levels of investment require thorough examination. 					
	Disagree/Not Sure	<ul style="list-style-type: none"> The proposals would add to the burdensome number of regulations on business; this may lead to a chilling effect on FDI. There are already due-diligence checks in the UK and Crown Dependencies to counter money laundering. If measures are not reciprocated elsewhere this would likely cause a flow of capital out of the UK. Some individuals have legitimate reasons to maintain privacy over their ownership of property (e.g. celebrities, sensitive political figures). 					

		Q2/3. Do you have any views on the options on how and where the information should be stored?					
		Privately accessible	15	Publicly accessible	9	Not Sure/No Opinion given	6
Comments	General	<ul style="list-style-type: none"> • Most respondents in favour of a publicly <i>managed</i> register. • Companies House would be best suited to handle this information given their experience/knowledge involving the UK PSC Register. • The UK Land Registry would be an unpopular choice given their possible privatisation. • A 'registration number' scheme would be popular. Companies would be required to submit information to Companies House to gain a registration number. They would then need to pass this to the UK Land Registry when looking to purchase, sell, make charges on or submit planning applications on land and/or property. • It should be quick and easy for companies to register and update Beneficial Ownership information; this could be achieved by giving companies direct access to the register. • There must be a regime in place to ensure that information is kept up-to-date (annually was the most popular suggestion). • Consensus that a validation regime will be needed- no clear suggestions (possibility that we hold lawyers/accountants responsible for validating information and include their details on the register). • The UK should only exclude companies who have registered information in other jurisdictions when those registers require the same level of information, scrutiny and validation as the UK register. 					
	For Private	<ul style="list-style-type: none"> • A public register may risk the safety of some individuals with legitimate interest in keeping details private; there would need to be a protection regime. • Some information (e.g. the address of a beneficial owner) is extremely sensitive and should not be available to the public. 					
	For Public	<ul style="list-style-type: none"> • The UK PSC Register is publicly accessible; the register of beneficial owners of overseas companies should be too. • A public register would reflect the government's agenda for transparency and allow greater scrutiny to ensure validation. 					

	Q4. What information should foreign companies be asked to provide?	
Comments	<ul style="list-style-type: none"> • The same information as UK companies. • In keeping with FATF standards/requirements. • Physical evidence of beneficial ownership (e.g. deeds of incorporation/shareholder certificates). • Relevant overseas companies subject to broadly equivalent regimes in countries of incorporation should not have to provide information. 	

		Q5. Should the proposals be applied to companies that already own property?					
		Yes	21	No	9	Not Sure	0
Comments	Agree	<ul style="list-style-type: none"> • If retrospectivity is not applied, this would create a two-tier system, rewarding corrupt owners who previously invested and possibly creating a property bubble as overseas investors rushed to invest ahead of implementation. • The UK PSC register applies to all UK companies (not just newly registered companies after April 2016). • If this was to be retrospective, it would require a significant transition period, giving third parties, lenders and other partners to adjust stakes accordingly. 					
	Disagree/Not Sure	<ul style="list-style-type: none"> • Imposing legislation retrospectively would prejudice compliant majority/minority shareholders or Joint Venture partners. • Retrospectivity would have adverse implications on tenants, lenders etc. These parties would not have been aware of the requirement when entering into contract with the non-compliant party. • It may be difficult to communicate the policy to current owners (particularly those who have held property for a long time/small businesses with reduced property interest). 					

	Q6. Should the government work with the Devolved Administrations to apply this across the UK?	
Comments	<ul style="list-style-type: none"> • Yes: not applying this everywhere would create a confusing system. There must be a level playing field across the UK. 	

	Q7. What would be the costs/benefits to business, the economy and society of implementing this policy?
Costs	<ul style="list-style-type: none"> • Unintended adverse consequences for compliant shareholders in overseas companies owning land and property (particularly of publicly traded companies who may not be able to control who buys shares). • Cost to companies to gather information/update register (particularly for countries where beneficial owners are based in multiple jurisdictions). This may act as a barrier to FDI. • The proposals would present additional regulatory burdens on businesses, again discouraging investment. • Wealthy investors who value privacy may be disinclined to invest in UK property, instead choosing jurisdictions with reduced requirements. • Possible political risks (e.g. forcing political leaders who would qualify to be on the BO register to declare their details/creating an environment where it would appear owners from certain jurisdictions are being targeted).
Benefits	<ul style="list-style-type: none"> • As the headline suggests, the policy would target flows of corrupt wealth into the UK. • Creating a beneficial ownership register of overseas companies purchasing UK property would carry significant benefits for registered agents who are required to carry out due-diligence checks (e.g. SARs/KYCs). If public, it would provide an easy tool to verify details, saving time and money. • Proposals would also stem the flow of illicit money into UK property; this would halt any artificial inflation in house prices and reduce the number of unoccupied properties in the UK. • The UK's reputation as a location for clean investment and politically- as a world leader in anti-corruption- would benefit greatly. • The creation of a register would assist international partners in identifying the beneficial owners of companies operating in their jurisdictions. This may be particularly beneficial to developing nations who do not have the same infrastructure to counter corruption that we have in the UK. • A register would assist law enforcement in the UK, ensuring that checks could be carried out quicker and at less cost.

		Q.8/9 How should the proposals be enforced and what sanctions would be appropriate?
Comments	General	<ul style="list-style-type: none"> • Criminal sanctions would be difficult to enforce. • Sanctions should recognise the difference between overseas companies new to the UK property market and those already owning property. • Sanctions should cover both initial provision of information and requirements to keep beneficial ownership information updated. • Sanctions should recognise the complexity of beneficial owners being based in multiple jurisdictions and the difficulty that a company may have in pursuing information from each BO. • Sanctions should not negatively affect compliant shareholders in a company. • Proposed sanctions would need to take account of: <ul style="list-style-type: none"> ○ Companies that may be at risk of fines from their incorporated jurisdictions for sharing information with the UK authorities.
	For new purchases	<ul style="list-style-type: none"> • Overseas companies wishing to purchase property in the UK should only be allowed to register this property once they have provided beneficial ownership information. • Any introduction of legislation will need to account for those companies currently in the process of purchasing property.
	For current owners	<ul style="list-style-type: none"> • Overseas companies currently owning property in the UK should not be allowed to raise charges on, request planning permission for or sell/transfer their property until they have declared their beneficial ownership information. • Some suggestion that we should introduce incremental fines (based upon the value of property in question) for non-compliance in providing/updating information. • Whatever sanctions are considered here, they need to protect third parties (such as tenants, JV partners and lenders) who would be unfairly prejudiced by instigating complete restrictions on property.

		Any other comments
Comments		<ul style="list-style-type: none"> • The definition of ‘purchases of land and property’ was unclear in the discussion paper. A number of respondents requested further clarification on this and expressed an inability to answer on several points given this point.

	Q10. Do you agree that knowing beneficial ownership information of those companies participating in public contracting will help the contracting authorities operate a fair and straightforward approach towards procurement?					
	Yes	16	No	1	Not Sure	1

	Q11. Do you agree this £10 million threshold would be appropriate?					
	Yes	3	No	8	Not Sure	5
Comments	<ul style="list-style-type: none"> [6 respondents provided no response]. 					

	Q12. What are the potential benefits and burdens for contracting authorities and for bidders of the approach in Option A? Would It provide a proportionate way to deliver the proposal taking into account the 3-year exclusion that would apply for not providing a beneficial ownership unique identifier number?					
Comments	Benefits	<ul style="list-style-type: none"> Any bid that did not provide beneficial ownership information would not be progressed. 				
	Burdens	<ul style="list-style-type: none"> Provision of beneficial ownership information not seen as necessary at the start of the procurement process. MoD's procurement regulations do not allow for this option. Approach of excluding for failure to supply beneficial ownership information may be seen as disproportionate. 				

		Q13. What are the potential benefits and burdens for contracting authorities and bidders in Option B? Would the 3 year exclusion be appropriate?
Comments	Benefits	<ul style="list-style-type: none"> • A more direct approach than Option A.
	Burdens	<ul style="list-style-type: none"> • May weaken concept of a central register • 3-year exclusion period for failure to provide beneficial ownership information may appear harsh. • Directly provided beneficial ownership information may diverge from that held on a central register in the event of subsequent change since the register details were submitted.

		Q14. What are the potential benefits and burdens for contracting authorities and bidders in Option C?
Comments	Benefits	<ul style="list-style-type: none"> • [No direct benefits feedback was received].
	Burdens	<ul style="list-style-type: none"> • May be seen as reducing the severity of the punishment for failing to disclose beneficial ownership information as the exclusion applies only to that particular procurement process. • MoD has no such enabling provision in its procurement legislation. • Direct provision of beneficial ownership information to the contracting authority may detract from the value of data held on a central register.

		Q15. What are the potential benefits and burdens for contracting authorities and bidders of this variation of Option C?
Comments	Benefits	<ul style="list-style-type: none"> • Provides beneficial ownership declaration at the earliest stage in the procurement process.
	Burdens	<ul style="list-style-type: none"> • Query how this would comply with the EU's ESPD process.

		Q16. How does the approach in Option D compare with Options A-C in practical terms? What are the benefits and burdens for contracting authorities and bidders?
Comments	Benefits	<ul style="list-style-type: none"> • Potentially the least onerous option.
	Burdens	<ul style="list-style-type: none"> • Information would not be disclosed at the outset of the procurement process.

	<p>Q17. What other issues should be taken into account when considering the options outlined about procurement in the discussion paper?</p>
<p>Comments</p>	<ul style="list-style-type: none"> • Operational impact arising from delay in contract award is an issue. • Mechanisms would need to be in place to ensure that the beneficial ownership information provided at the outset is accurate and is kept up to date. • Government contracts should include civil penalties to cover the cost to the taxpayer of cancelling a contract and subsequent costs of re-tendering because of failure to disclose true beneficial ownership. • Making the collated data on business ownership open to the public allows for greater scrutiny. • Impact on SMEs and VCSEs should be considered • Any effect on relationships with other countries that do not operate a national register should be considered, as should the extra burden on contracting authorities.
	<p>Q18. Are there other options potentially available to government regarding procurement which would achieve the same aims overall, that have not been set out here? If so what are the associated likely practical constraints and benefits?</p>
<p>Comments</p>	<ul style="list-style-type: none"> • Government should carry out due diligence on bidders in the same way that private regulated sectors are required to carry out due diligence on their customers under Anti-Money Laundering regulations. • An open register of beneficial ownership of all companies doing business with the public sector should be available.

