



Department for
Business, Energy
& Industrial Strategy

OVERVIEW DOCUMENT: DRAFT REGISTRATION OF OVERSEAS ENTITIES BILL

A draft bill that establishes the register of overseas entities and contains provisions requiring overseas entities to register if they own UK property



July 2018

OVERVIEW DOCUMENT: DRAFT REGISTRATION OF OVERSEAS ENTITIES BILL

The relevant documents can be found on the BEIS section of GOV.UK:

<https://www.gov.uk/government/consultations/draft-registration-of-overseas-entities-bill>

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General information

Purpose of this Overview document

This document provides an overview of the proposed register of overseas entities (the “**Register**”) that will contain information about who owns and controls overseas entities, including those entities that own UK property. This document also seeks views on how the clauses within the draft Registration of Overseas Entities Bill (“**the Bill**”) will be implemented in practice, and additional evidence on the impacts of the policy.

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Respond by: 17 September 2018 (5pm)

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Reference: Draft Registration of Overseas Entities Bill

Territorial extent:

The policy outlined in this Overview document and draft Bill will apply across the UK and we will continue to work with the Devolved Administrations as the proposals are refined.

How to respond

Substantial consideration has been given to all aspects of the Bill. We would welcome, however, views on several areas outlined within this document. 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.

Additional copies:

You may make copies of this document without seeking permission. An electronic version can be found at <https://www.gov.uk/government/consultations/draft-registration-of-overseas-entities-bill>.

Confidentiality and data protection

Information you provide in response to this consultation, including personal information, may be disclosed in accordance with UK legislation (the Freedom of Information Act 2000, the Data Protection Act 2018 and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential please tell us, but be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

We will process your personal data in accordance with all applicable UK and EU data protection laws. See our [privacy policy](#).

Introduction

Context

1. The Industrial Strategy seeks to maintain the UK's global reputation as a good place to do business. People come to Britain confident in our high corporate standards, including market transparency, which fosters confidence and trust. Transactions are improved and the market has greater confidence when people know who they are doing business with, whilst lack of transparency can facilitate criminal behaviour.
2. There has been widespread concern expressed about the lack of transparency around who ultimately owns land in the UK, where the land is registered to an overseas company or other entity. The information currently available about overseas owners of land (or registered leaseholders) is often limited to the entity's name and territory of incorporation. It is therefore not clear who really owns and controls the entity and, by extension, the land itself.
3. Evidence from UK law enforcement and transparency campaigners shows that overseas entities are often used as a vehicle by criminal organisations and corrupt individuals to hide and launder the proceeds of bribery, corruption and organised crime.¹ The UK's property market is particularly attractive because of the UK's stable and open political and business environment. Law enforcement investigations, including those targeting the proceeds of corruption, are often hampered by an inability to access information about the individuals who ultimately own or control overseas entities that have been used to conceal the proceeds of crime and corruption.
4. In contrast, since June 2016, most UK-registered entities have been required to provide information about their ultimate owners and controllers to Companies House, and these are held on the public [People with Significant Control \(PSC\) register](#).
5. A commitment was made at the 2016 Anti-Corruption Summit in London to establish a public register of beneficial owners of non-UK entities that own or buy UK property, or which participate in UK Government procurement over certain thresholds (see paragraph 11). The intention was that the register would identify, in a public and easily accessible way, the beneficial owners and controllers of these overseas entities, increasing transparency and trust in the UK property market, and supporting law enforcement in their investigations.

¹ <http://www.transparency.org.uk/wp-content/plugins/download-attachments/includes/download.php?id=6903>
https://www.globalwitness.org/documents/17790/global_witness_blood_red_carpet_march_2015.pdf
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/606611/beneficial-ownership-register-call-evidence.pdf

6. Since the 2016 commitment, a [call for evidence](#) has been issued last year and a [Government response](#) was published earlier this year. A [Written Ministerial Statement](#) (WMS) was published in January 2018, outlining the Government's timetable for implementing the policy: to publish a draft Bill by summer recess, with introduction of the Bill to Parliament early in the second session. Following Royal Assent and the making of secondary legislation, the Government intends that the register will be operational in 2021.
7. The purpose of this document is to provide an overview of the Bill and to seek views on how the clauses will be implemented in practice. In the interest of clarity, the overview document explains the new requirements on overseas entities to register in the overseas entities register in relation to ownership of registered land in England and Wales and does not in parallel explain the effect of the amendments about ownership of registered land in Scotland and in Northern Ireland. Detailed explanation of the amendments relating to ownership of registered land and land transactions in Scotland and in Northern Ireland can be found in the Explanatory Notes for Schedule 4 (in respect of Scotland) and Schedule 5 (in respect of Northern Ireland).

Summary of the draft Registration of Overseas Entities Bill

Overview

8. The Register has the following primary objective: to prevent and combat the use of land in the UK by overseas entities for the purposes of laundering money or investing illicit funds by increasing transparency in overseas entities engaged in land ownership in the UK.
9. The Bill will require any overseas entity that wishes to own land in the UK to take steps to identify their beneficial owner(s) and to register them. Once registered, an overseas entity will obtain an overseas entity ID and will be required to update their information annually, until such time as it successfully applies to be removed from the live register of overseas entities. In order to comply with the updating duty, the overseas entity will have to annually deliver updated information (or confirm that the information in relation to it on the overseas entities register is up-to-date) and statements required for registration and will have to have taken steps to identify registrable beneficial owners (including sending notices to such beneficial owners). Failure to provide an update on the information held on the register is an offence under the Bill, as is delivering (or causing to be delivered) misleading, false or deceptive information.
10. In order to register title to land, an overseas entity will have to be registered with Companies House and to have complied with the updating duty – the entity will then be referred to as “registered overseas entity”, using the term used in the Bill. Although registration is *prima facie* voluntary, the Bill provides that not doing so will result in: (1) an overseas entity being unable to register as proprietor of land in the UK (necessary for

obtaining full legal title) via the three land registries of England and Wales, Scotland, and Northern Ireland; and (2) certain dispositions made by an overseas entity registered proprietor being incapable of registration at the land registries. In practice, this means that a failure to register with Companies House, or to comply with the updating duty, will in most cases affect the ability of the entity to either sell or lease the land, or create a charge over it as any disponee would be unable to register the disposition with the relevant land registry in any part of the UK and therefore be reluctant to transact with the overseas entity.

11. The Government has considered carefully how to deliver the central government procurement element of the policy to maximise its effect against corruption and money laundering. The Government has decided that the most effective way to achieve the required level of transparency is to require information about beneficial ownership as a condition of awarding contracts that meet certain conditions or thresholds. This information will be published separately from the information that will be published under the provisions of this Bill, and the Government believes that this targeted approach will enable the public and interested parties to easily identify the beneficial owners of entities awarded central government contracts. The information about beneficial ownership that will be required will, as a minimum, be equivalent to that proposed for the Register of Overseas Entities, and it will be published in an equally transparent way. The Government is currently considering mechanisms including the Contracts Finder Service (currently used to publish contract award information) to achieve this. The Government believes that using a different mechanism to that proposed for overseas entities dealing with land is proportionate, will better meet the anti-corruption aim, and will fit more naturally with the existing scheme of procurement rules, drawing on existing transparency mechanisms. The Government remains committed to the timetable already laid out. Cabinet Office is leading on this strand of work.

Structure of the Bill

12. Clauses 1 to 16 of the Bill create the register and the framework through which an overseas entity can apply to be registered. Once registered, an overseas entity is required to update the information annually until such time as it successfully applies to be removed from the register. The application will require the overseas entity to provide information about itself and its beneficial owners, having first taken steps to identify its beneficial owner(s) and confirm their details.
13. The register will be held by the registrar of companies (the “**Registrar**”) and will be, for the most part, accessible to the public. Clauses 17 to 28 replicate a number of functions and powers contained in the Companies Act 2006 pertaining to the Registrar in relation to the register it keeps for UK companies. This will increase consistency of approach between the requirements placed on UK companies and the requirements envisioned for overseas entities.

14. The Bill contains five Schedules:-

- a. Schedule 1 sets out the information required about an overseas entity, its beneficial owners, and if applicable, its managing officers for the purposes of (i) the application to register as a “registered overseas entity”, and (ii) the updating requirements (set out in clause 7 of the Bill).
- b. Schedule 2 sets out who the beneficial owner of an overseas entity is. This is modelled on the PSC regime for UK companies and other UK entities.
- c. Schedule 3: Part 1 inserts new provisions (“Schedule 4A”) into the Land Registration Act 2002 (“**LRA 2002**”). Schedule 4A sets out the circumstances in which overseas entities may apply for registration as proprietor of land, and the restrictions that will be imposed on overseas entities that own land. Part 2 of Schedule 3 provides for a transitional regime for certain overseas entities that own qualifying land when the Bill comes into force. These entities will have 18 months from the commencement date to either provide beneficial ownership and other information to the Registrar as part of an application to register or to dispose of the land if they do not wish to register.
- d. Schedule 4 makes provisions equivalent to the provisions in Schedule 4A described above for Scotland, subject to the differences in land registration in Scotland.
- e. Schedule 5 makes provisions equivalent to the provisions in Schedule 4A described above for Northern Ireland, subject to the differences in land registration in Northern Ireland. The key difference is that the requirements will only apply to new purchases by overseas entities on or after the commencement date. Existing overseas entities that own land prior to commencement are outside of scope because it is not possible for the Northern Ireland Land Registry to identify them.

Questions

Substantial consideration has been given to all aspects of the Bill. We would welcome, however, views on several areas outlined below. 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.

Summary of questions

1. **Types of overseas entities that may not have beneficial owners or managing officers (page 12)**

- **Question 1.1:** Are there any types of overseas entities that do not have beneficial owners and/or managing officers, who are in scope of the regime but would not have a route to be able to comply? Please provide evidence.

2. **Power to exempt types of overseas entities from the requirement to register (pages 12-13)**

- **Question 2.1:** Is it reasonable to keep the current requirements (described at paragraphs 18 and 19) applicable as they relate to foreign governments and public authorities as beneficial owners? If not, how can the regime be modified to keep with the intent of the policy?
- **Question 2.2:** Do you consider that foreign governments and public authorities should be exempt from the requirements to register in the overseas entities register? Please provide evidence as to why this should or should not be the case.
- **Question 2.3:** Are there other types of overseas entities that you consider should be exempt from the regime? If so, please explain why and provide evidence.
- **Question 2.4:** How should the power described at paragraph 18 be exercised to apply in a coherent and workable way in relation to these types of entities (referred to at Questions 2.2 and 2.3 above)?

3. **Power to modify the application of the regime for types of overseas entities (pages 13-14)**

- **Question 3.1:** Are there other types of overseas entities that you consider should have their application and update requirements modified in relation to an application to register in the overseas entities register and to their updating duty? If so, please explain why and provide evidence.

- **Question 3.2:** Do you consider that the application requirements for those overseas entities that have already declared their beneficial ownership information on a public register overseas should be modified? Please provide evidence as to why this should or should not be the case.
- **Question 3.3:** How should this power be exercised to apply in a coherent and workable way in relation to the types of entities described at Questions 3.1 and 3.2 above? For example, what criteria should be used to determine which registers may be considered “equivalent”?

4. Registration of entities unable to identify their beneficial owners (page 14-15)

- **Question 4.1:** Should it be possible for an entity to register without providing full details of its beneficial owners in the circumstances explained in paragraph 25?
- **Question 4.2:** If so, should this be the case only in specified circumstances, and, if so, what should these be (for example, for those entities that already own land in the UK when the provisions commence)? Please provide examples.

5. Scope of the prohibitions to certain dispositions relating to land (pages 15-17)

- **Question 5.1:** Do you agree that the inhibition in Northern Ireland shouldn't capture the granting of leases for less than 21 years without occupation (noting the inhibition also currently doesn't capture leases for less than 21 years with occupation)? If not, please provide evidence of why.
- **Question 5.2:** Are there any unintended consequences if applications for registration as a proprietor by a “prescriptive claimant” in Scotland are prevented in the situation where either the prescriptive claimant is the overseas entity that is not a “registered overseas entity” within the meaning of the Bill, or where the application is in relation to land owned by an overseas entity that is not a “registered overseas entity”? Please provide evidence.

6. Power to disapply the effect of the prohibitions placed on land (pages 17-18)

- **Question 6.1:** Do you consider the Bill should include provisions to allow an “appeal” of the effect of the prohibitions placed on the property, and/or a power by the Secretary of State to “disapply” the effect on a case-by-case basis? If so, in what scenarios should this be used, and what evidence should be required? Given the concept of owner's powers is unique to England and Wales, should any such provisions only apply in England and Wales?

7. Exceptions to prohibitions placed on land (pages 18)

- **Question 7.1:** Are there other exceptions, in respect of England and Wales, Scotland or Northern Ireland that you consider should be included in the Bill? If so, please

explain why and provide evidence. What type of evidence could be provided to demonstrate exception?

1. Types of overseas entities that may not have beneficial owners or managing officers

15. There are several types of legal entities that can own land 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. We have therefore kept the scope wide, and the definition of “overseas entity” fairly broad.
16. Overseas entities will be required to take reasonable steps to find out who their beneficial owners are (clause 11 of the Bill). Where entities are not able to provide beneficial ownership information (e.g. because they do not believe they have any beneficial owners, or believe they do but have not been able to obtain complete information about them), they will be asked instead/in addition to provide information about their managing officers (clause 4 of the Bill). This will ensure that there will be at least some information relating to the control of overseas entities that are subject to the regime and who manages their day-to-day affairs.
17. We are reasonably confident that every overseas entity will have at least one person (whether an individual or another corporate body) that directs or manages the affairs of the entity or acts in a similar capacity to a UK company director or secretary. The drafting of the Bill allows for both eventualities in clause 4(2) and Schedule 1. The definition of managing officer (see paragraph 6 of Schedule 1) is non-exhaustive in that it “includes” a director, manager or secretary of the overseas entity. This may be helpful in case a situation arises where an overseas entity does not have anyone occupying one of those specific roles, in which case it can provide details of a person occupying a similar role in relation to that entity.

Question 1.1: Are there any types of overseas entities that do not have beneficial owners and/or managing officers, who are in scope of the regime but would not have a route to be able to comply? Please provide evidence.

2. Power to exempt types of overseas entities from the requirement to register for land registration purposes

18. Notwithstanding the broad definition of “overseas entity” in clause 2 of the Bill, it may not be appropriate for some entities to be in scope of the requirements. The Bill currently includes a power which allows the Secretary of State to specify, by regulations, a description of overseas entity that would otherwise fall into the definition of “overseas entity” and be in scope of the new requirement to register in relation to land transactions. An overseas entity that is exempt will be able to engage in land transactions without having to have registered in the overseas entities register.

19. For example, foreign governments or public authorities which have legal personality may fall under the definition of “overseas entity” and therefore be in scope of the new requirements. We cannot, however, envisage a foreign government having a “beneficial owner” or “managing officer” as defined in the Bill, in most circumstances. It may also be inappropriate or unrealistic to require foreign governments or public authorities to provide annual updates to the Registrar.
20. It is worth noting that this situation is distinct from one in which a foreign government or public authority meets one of the five conditions of beneficial ownership as defined in Schedule 2 of the Bill in relation to the overseas entity (i.e. it is the beneficial owner of an overseas entity that owns UK property). In this scenario, it will be registered as a beneficial owner in relation to that overseas entity’s entry in the register.
21. In this case, the Bill requires the overseas entity, for as long as it remains an overseas entity on the live register, to take reasonable steps to identify its beneficial owners and to regularly check that the information held by the Registrar is up to date (clause 7 of the Bill). The Bill also requires the beneficial owners (i.e. potential foreign government or public authority), unless there is a reasonable excuse, to comply with a notice sent to them by an overseas entity (clauses 11 and 12 of the Bill).

Question 2.1: Is it reasonable to keep the current requirements (described at paragraphs 18 and 19) applicable as they relate to foreign governments and public authorities as beneficial owners? If not, how can the regime be modified to keep with the intent of the policy?

Question 2.2: Do you consider that foreign governments and public authorities should be exempt from the requirements to register in the overseas entities register? Please provide evidence as to why this should or should not be the case.

Question 2.3: Are there other types of overseas entities that you consider should be exempt from the regime? If so, please explain why and provide evidence.

Question 2.4: How should the power described at paragraph 18 above be exercised to apply in a coherent and workable way in relation to these types of entities (referred to at Questions 2.2 and 2.3 above)?

3. Power to modify the application of the regime for types of overseas entities

22. The Bill currently includes a power which allows the Secretary of State, in regulations, to modify the application requirements (and subsequent update requirements) as they apply to certain types of overseas entities (clause 15 of the Bill). To be clear, this does not remove the requirement for an overseas entity to become registered where they are required to under the regime, but would change or reduce the information they have to provide in order to become registered.

23. For example, an overseas entity may already be disclosing its beneficial ownership information to an “equivalent” public register in its country of formation. In this case, we do not consider the overseas entity should be required to disclose this information again in order to register, and instead intend to modify the application requirements in relation to these entities so that they may register without providing beneficial ownership information. They may instead be asked to provide details of the overseas register on which that information can be found.

24. As of June 2016, all EU Member States have been required by the 4th EU Anti-Money Laundering Directive 2015 to hold information about the beneficial ownership of companies incorporated in their territory on a central register. This Directive has recently been amended by the [5th EU Anti-Money Laundering Directive](#) so as to require these central registers to be publicly accessible. We expect this amendment to have been implemented by Member States by early 2020 (before this Bill is likely to have come into force). This modification to the application requirements described above would therefore have in scope EU companies, and indeed any other overseas entity that is providing beneficial ownership information to a public register in its country of formation.

Question 3.1: Are there other types of overseas entities that you consider should have their application and update requirements modified in relation to an application to register in the overseas entities register and to their updating duty? If so, please explain why and provide evidence.

Question 3.2: Do you consider that the application requirements for those overseas entities that have already declared their beneficial ownership information on a public register overseas should be modified? Please provide evidence as to why this should or should not be the case.

Question 3.3: How should this power be exercised to apply in a coherent and workable way in relation to the types of entities described at Questions 3.1 and 3.2 above? For example, what criteria should be used to determine which registers may be considered “equivalent”?

4. Registration of entities unable to identify their beneficial owners

25. The Bill currently allows an overseas entity to register at Companies House if, despite taking reasonable steps to identify its beneficial owners, it has been unable to do so, or, it has been able to identify them but has not got complete information about them. In these circumstances, the entity must provide any information it has about its beneficial owners, and provide information about its managing officers. This provision has been included because there may be rare circumstances (for example, an entity incorporated in a territory that, contrary to the UK, still allows “bearer” shares) in which this situation might arise.

Question 4.1: Should it be possible for an entity to register without providing full details of its beneficial owners in the circumstances explained in paragraph 25 above?

Question 4.2: If so, should this be the case only in specified circumstances, and if so, what should these be (for example, for those entities that already own land in the UK when the provisions commence)? Please provide examples.

5. Scope of the prohibitions to certain dispositions relating to land

26. We want to ensure that overseas entities that own land in the UK comply with the new registration and other relevant requirements, and the regime achieves this using controls over land (in addition to those in scope of the new regime who fail to comply being subject to criminal sanctions). Land registration in England and Wales, Scotland, and Northern Ireland sits with their respective land registries. The aim is to have the policy apply consistently across the UK, subject to the differences in land registration.

England and Wales

27. In England and Wales, the restriction will prohibit the registration of certain dispositions in respect of the estate in land unless the entity is a registered overseas entity (or is exempt) at the time of the disposition. The dispositions are (a) a transfer of the estate (e.g. selling it); (b) the grant of a lease of over seven years out of the estate; and (c) the creation of a charge over the estate (e.g. creating a mortgage over the land as security for a loan) (see the new Schedule 4A inserted into the Land Registration Act 2002 by paragraph 3 of Schedule 3 to the Bill). When land is sold to a person, it is legally possible for that person to make dispositions in respect of the land before being registered as the proprietor. The new Schedule 4A therefore also prohibits the registration of the dispositions mentioned above made by an overseas entity in these circumstances.

Northern Ireland

28. An “inhibition” will be placed on the Northern Ireland land register, which will act in a similar way to the restriction on titles located in England and Wales. The inhibition will inhibit the registration of certain dispositions, namely (a) transfer of the estate; (b) the grant of a new lease of over 21 years out of the estate; and (c) the creation of a charge on the land (see Part 1 of new Schedule 8A to the Land Registration Act (Northern Ireland) 1970, inserted by Schedule 5 to the Bill).

29. Leases with and without occupation: The difference in length of leases that cannot be registered between England and Wales and Northern Ireland owes to the fact that in general terms, leases of under 21 years are not registrable dispositions in Northern Ireland. The exception to the rule that leases of under 21 years in Northern Ireland are not registrable are leases that are granted for less than 21 years without occupation. At this stage, the inhibition doesn’t capture the granting of these types of leases as this does not create a new legal estate; the leases are noted as “burdens” on the title register. They are also rare in practice.

Scotland

30. Under Scottish land registration law, there is no legal equivalent of a restriction to prohibit certain dealings with an interest in heritable property (land and buildings). The Keeper of the Registers of Scotland will therefore not make an entry on the title register for interests in land owned by overseas entities in Scotland but the law will still require overseas entities to be a “registered overseas entity” in order to undertake certain dealings with their interest in heritable property. Schedule 4 to the Bill inserts new Schedule 1A into the Land Registration Act etc. (Scotland) Act 2012. This provides that the Keeper will be required to reject an application to register, in the Land Register of Scotland, certain registrable deeds granted by an overseas entity unless at the time the deed was delivered the entity is a registered overseas entity (or is exempt). The registrable deeds affected are: (a) a disposition (i.e. transfer) of the property; (b) the grant or assignation of a lease of over 20 years of the property; (c) a standard security. Similarly, the Keeper will reject an application by an overseas entity seeking to complete a title (for example following a sale of the property to it) in the Land Register of Scotland unless that overseas entity is a registered overseas entity (or exempt). The Keeper will also reject prescriptive claimant applications where either the existing owner, or the claimant, are an overseas entity which is not a registered overseas entity (or exempt). Prescriptive claimant applications are more fully explained in the next paragraph.

31. Prescriptive claimants:

- In Scotland, a person who is not the owner of land can seek to acquire a title to that land by applying for registration in the Land Register of Scotland as a “prescriptive claimant”. Certain conditions must be met (including evidence relating to occupation of the land in the year preceding the application) before an application will be accepted. Once accepted, if the applicant occupies the land for the prescriptive period (usually 10 years) without a challenge, they will acquire a good title to the land and the entry for the property in the Land Register of Scotland can be adjusted to show them as the owner of the land in question.
- Therefore where the prescriptive claimant is an overseas entity, they must be a “registered overseas entity” (or exempt) as this scenario is no different from their seeking to register a valid disposition in their favour – otherwise, the Keeper must reject their application.
- The new Schedule 1A to the Land Registration etc. (Scotland) Act 2012 provides that this is also the case if the existing owner is an overseas entity (whose interest was registered on or after 8 December 2014), and that overseas entity is not a “registered overseas entity” as defined in the Bill (or exempt). The reason for this is a concern about a potential avoidance loophole. In brief, an overseas entity that is trying to disguise its beneficial ownership might use the device of setting up a UK entity, and so the new entity and overseas entity owner could then seek to satisfy the pre-application conditions around occupation and notice to the existing owner and then bring forward a prescriptive claimant application. Within ten years, the “UK entity” could acquire a good title, and could possibly

obtain third party title insurance to enable a dealing with the property in the interim.

- We recognise however that there is a risk of putting land ‘in limbo’ if a prescriptive claimant application is barred, or of impacting on legitimate use of the prescriptive claimant provisions. We believe these risks to be low.

Question 5.1: Do you agree that the inhibition in Northern Ireland shouldn’t capture the granting of leases for less than 21 years without occupation (noting the inhibition also currently doesn’t capture leases for less than 21 years with occupation)? If not, please provide evidence of why.

Question 5.2: Are there any unintended consequences if applications for registration as a proprietor by a “prescriptive claimant” in Scotland are prevented in the situation where either the prescriptive claimant is the overseas entity that is not a “registered overseas entity” within the meaning of the Bill, or where the application is in relation to land owned by an overseas entity that is not a “registered overseas entity”? Please provide evidence.

6. Power to disapply the effect of the prohibitions placed on land

32. In rare cases, there could be situations in which a third party disponee has engaged in a valid transaction, but is prohibited from registering title to the land that is the subject of that transaction. There is also a theoretical risk that land becomes “locked-out” of ever being able to be registered.

33. Paragraphs 3 and 4 of the new Schedule 4A (inserted by Schedule 3 to the Bill) is explicit that where an overseas entity, which is either the registered proprietor of land or becomes “entitled to be registered as the proprietor”² on or after the commencement date, makes certain “registrable dispositions” that are prohibited or prevented under the Bill, the third party disponee will not be able to register title with HM Land Registry. The Department’s view is that, in addition, owing to the restriction or prohibition (as the case may be) the disponee will not be “entitled to be registered” within the meaning of section 24 of the LRA 2002 (that is, they will not have owner’s powers to further dispose of the property).

34. Such cases are expected to be very rare, because conveyancers and other professionals involved in land transactions conduct due diligence checks that would highlight that an overseas entity is either not registered, or has not complied with update

² There is a concept of “owner’s powers” in England and Wales land registration law that does not exist in Scotland and Northern Ireland. Section 23 and 24 of the LRA 2002 sets out that a person is entitled to exercise “owner’s powers” in relation to a registered estate if he “is the registered proprietor” or is “entitled to be registered as the proprietor”. Owner’s powers consist of “power to make a disposition of any kind permitted by the general law” and for our purposes would include being able to transfer the legal estate (or assign in the case of a registered leasehold estate), grant a lease of over seven years out of it or a legal charge. Schedule 3 of the Bill also prohibits the registration of these dispositions in relation to the estate in the circumstances where an overseas entity becomes, on or after the commencement date, entitled to be registered as proprietor, but is not a registered overseas entity for the purposes of the Bill.

requirements, and is therefore prohibited from making dispositions in relation to the land which cannot be registered. It is also worth noting that both the restriction, and the prohibition (as the case may be) are subject to certain exceptions in paragraphs 3 and 4 of the new Schedule 4A, aimed at ensuring the policy protects the rights of third parties.

Question 6.1: Do you consider the Bill should include provisions to allow an “appeal” of the effect of the prohibitions placed on the property, and/or a power by the Secretary of State to “disapply” the effect on a case-by-case basis? If so, in what scenarios should this be used, and what evidence should be required? Given the concept of owner’s powers is unique to England and Wales, should any such provisions only apply in England and Wales?

7. Exceptions to prohibitions placed on land

35. The restriction, and the prohibition (as the case may be) placed on land as part of the regime are subject to certain exceptions in paragraphs 3 and 4 of the new Schedule 4A (and equivalents in respect of Scotland and Northern Ireland), aimed at ensuring the policy protects the rights of third parties.

36. The first is where the disposition is made in pursuance of a statutory obligation or court order. The second is where the disposition is made in pursuance of a contract made before the restriction was entered in the title register (or as the case may be, before the overseas entity became entitled to be registered in respect of the land). The last is where the disposition is in exercise of a power of sale conferred on a proprietor of a registered charge or a receiver appointed by the proprietor of the charge. Examples of these exceptions can be found in the Explanatory Notes for Schedule 3. The third party’s application for registration of the disposition will need to be accompanied by evidence of the applicable exception.

Question 7.1: Are there other exceptions, in respect of England and Wales, Scotland or Northern Ireland that you consider should be included in the Bill? If so, please explain why and provide evidence. What type of evidence could be provided to demonstrate exception?

