

## **Registration of Overseas Entities Bill (draft)**

### **Department for Business, Energy and Industrial Strategy**

**RPC rating: fit for purpose**

#### **Description of proposal**

To address the potential for criminals to use off-shore corporate vehicles to invest in UK property as a means of laundering money, the Government propose to extend the 'people with significant control' register (the PSC register) to overseas entities that own UK property. The PSC register requires all companies incorporated in the UK to provide Companies House with an annual confirmation statement about their people with significant control, so that the Department could identify and record the people who own or control the companies.

The proposals are intended to improve transparency; to assist criminal investigations and to deter the use of UK property as a vehicle for money laundering.

The Department expects that the proposals will also reduce the information asymmetries between buyers and sellers in the property market, a problem that could discourage productive transactions.

#### **Impacts of proposal**

Overall, the impact assessment (IA) estimates that the proposals would generate an equivalent annual net direct cost to business (EANDCB) of £2.7 million and a total net present value (NPV) of -£30.79 million. This entire negative total NPV originates from the compliance cost. It has not been possible for the Department to monetise the benefits of the proposal.

#### Compliance cost

The IA utilises a survey for the trust and transparency IA<sup>1</sup> to estimate the compliance cost. The survey was carried out by IFF Research in 2014, interviewing 575 companies. The survey results were used to estimate the costs of the PSC register requirement. To comply with the proposed legislation, the Department expects that companies will need to: familiarise themselves with the policy; collect information about their beneficial owners; update beneficial ownership information, and provide

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<sup>1</sup> IA available at: <https://www.gov.uk/government/publications/company-ownership-transparency-and-trust-impact-assessments>. RPC reference no.: RPC13-BIS-1989(2) and RPC13-BIS-1990(2)

such information to a central registry, annually. Except providing the information to the central registry, which would incur an annual cost, all these actions would incur a one-off cost to businesses. The survey estimated that the compliance cost would be £1,860 to each of 7,907 entities, resulting in a total overall cost of £13.48 million in the first year. Taking account of the annual growth of the number of overseas registrations and the annual cost of updating beneficial ownership information, the IA expects that the policy would cost around £2 million annually in the subsequent years, resulting in a total net present value of the proposals of -£30.79 million.

#### Impact on foreign investment into the UK and the UK property market

The IA provides a qualitative assessment about the potential impact on incentives of foreign direct investment. The IA divides overseas entities, which decide to purchase UK property, into four distinct groups: overseas companies with UK branches, foreign institutional real estate investors, foreign private real estate investors, and foreign individuals buying primarily residential property.

##### (i) Overseas companies with UK branches

The Department expects that the number of overseas companies with UK branches deciding not to invest in the UK because the compliance cost is minimal.

The IA adds that the loss of anonymity should be of little concern to legitimate businesses. Where there are genuine concerns, access to the protection regime should offer a solution.

##### (ii) Foreign institutional real estate investors

The IA states that given the very large size of the investments, the compliance costs should have little impact on real estate investors. Moreover, as the overriding motivation of these companies is seeking a profit, anonymity should not be a primary concern to them. The IA supports that view by quoting two well-publicised examples: the transaction of 122 Leadenhall Street (the 'cheesegrater') and the redevelopment of Battersea Power Station, as both transactions were carried out by large institutional investors and the information of their beneficial owners is public.

##### (iii) Foreign private real estate investors

The Department recognises that these private investors are more sensitive to a loss of anonymity than institutional investors. As these investors are not required to register with supervising authorities, the IA is unable to accurately identify the number of these high net-worth individuals. The IA does not estimate the potential reduction of these.

(iv) Foreign individuals buying primarily residential property

Using the research from the Institute for Public Policy Research (IPPR) in 2012, the IA expects that the loss of anonymity will affect only a small group of individuals, wealthy buyers from non-OECD countries preserving attained levels of wealth from expropriation by corrupt regimes. There could be potential for a reduction in demand from these individuals. Despite the lack of evidence, the Department presumes that the other buyers, such as buyers from Europe, North America and East Asia, who are more motivated by the potential for financial returns, are less likely to be affected by the loss of confidentiality.

Wider impacts

Although the IA does not draw any conclusion on the wider impacts, it provides an overview of the UK housing market, with most of the properties (44 per cent) owned by overseas entities located in Greater London and a further 16 per cent found in the South East. In addition, the IA provides some literature review about the impacts of foreign direct investment (FDI), suggesting that it could bring stalled sites into use and that a higher level of FDI would not increase the number of vacant homes. Overall, while the IA has no robust basis on which to forecast the impact on transaction volumes, the Department sets out why the overall costs are expected to be small.

Costs to public bodies

The IA argues that the costs are ultimately not realised by the public sector because Companies House and land registries operate on a cost-recovery basis. These costs are correctly treated as direct costs to business (paragraph 164).

Benefits

The Department states that the proposals would reduce the ability of criminals to use UK property to launder illicit gains. The loss of anonymity would make law enforcement easier, increasing the chances of criminals being caught. It is expected, therefore, to lead to a reduction in the total amount of criminal activity. The IA does not, however, monetise the benefit given the lack of information about company ownership under the status quo.

Secondly, the IA suggests that dealing with an effectively unnamed seller is likely to make buyers more cautious. The policy could reduce this and hence improve the functioning of the property market to certain extent. The IA acknowledges, however, that the argument is theoretical and the IA does not have evidence to support the claim.

## Quality of submission

The Department's assessment of the overall impacts of the proposals, including the impacts on business, is sufficient. Using the analysis from *Transparency International* and the National Crime Agency, the IA sets out clearly the rationale for the policy and has considered different options, including a non-regulatory option. The IA provides qualitative assessment when monetisation is not possible and has considered the impacts on different stakeholders. Overall, the RPC is pleased that the Department submitted the IA to the RPC for quality assurance even though the EANDCB is below the *de minimis* threshold of £5 million. The RPC also acknowledges that the Department has demonstrated a good policy making process in the IA.

There are significant uncertainties around the overall impacts of the proposal, in particular whether it could deter legitimate investment in the UK (for example, where investors are not acting illegally but who wish to remain anonymous for other reasons). However, the Department has explained why it is unable to monetise these impacts and provides reasonable argument for why they would be small. The Department's assessment is reasonable and sufficient to demonstrate that the impact on business is likely to fall below the *de minimis* threshold. However, should the proposals change significantly during scrutiny of the draft bill or subsequently such as at the secondary legislation stage, and this could affect the *de minimis* assessment, the Department will need to submit a revised IA for RPC scrutiny.

The small and micro businesses assessment (SaMBA) is sufficient. Despite the lack of data, the IA has tried to identify the possible small businesses in scope, which are some family offices serving high net-worth individuals, and some single purpose entities being used by private investors. The SaMBA states, however, that single-purpose entities are not engaged in ongoing economic activity in the UK and thus not considered within the SaMBA. The Government do not propose to exempt small business as this would open loopholes that criminals could exploit.

The Department discusses whether it is appropriate to include costs to overseas companies in the NPV and EANDCB figures (pages 19-20). It distinguishes between overseas companies that are just owning, or purchasing, a UK asset (property in this case) and those that are using that asset to conduct business in the UK. Paragraph 77 states: "*The cost of collecting and providing this information strictly speaking falls on the "parent" overseas entity. However, facing these costs is inextricably linked to the fact that the parent is physically conducting business in the UK via its establishment. As such, these costs represent a change in the cost of doing business in the UK for a subset of companies. Therefore, for overseas companies*

*with UK establishments which also own or buy UK property, we treat the administrative costs of complying with the register as direct costs to business; despite these costs strictly falling on firms not incorporated in the UK.”* The Department’s approach appears to be reasonable.

The IA would benefit from providing a clearer explanation in a number of areas:

1. Why the best estimate is the sum of 93 per cent of the second trimmed mean and 7 per cent of the first trimmed mean (para 99).
2. Whether the policy would affect any UK property business specialising in serving overseas investors and, if so, what would be the impact.
3. Why it is appropriate to make the survey results from the trust and transparency IA trimmed twice in table 4 (page 26).
4. The calculations leading to the final compliance cost estimation in table 5 (page 26).
5. Besides the research from IPPR, include more evidence from independent research bodies when predicting the impact on foreign individuals buying primarily residential property.
6. Provide a monitoring and evaluation plan for the policy.
7. Discuss the possible savings to business arising from not having to deploy defence lawyers etc in the event of government prosecuting even one case of money laundering.
8. Discuss the possible impacts on public sector/government:
  - (i) savings to the judicial system as expensive money laundering trials are averted; and
  - (ii) costs to diplomatic service which may arise from overseas governments being opposed to the measures.

### Departmental assessment

Classification	Non-qualifying regulatory provision ( <i>de minimis</i> )
Equivalent annual net direct cost to business (EANDCB)	£2.7 million
Business net present value	-£30.79 million
Overall net present value	-£30.79 million

### RPC assessment

Classification	Non-qualifying regulatory provision ( <i>de minimis</i> )
Small and micro business assessment	Sufficient

Regulatory Policy Committee