



Home Office

# **STATUTORY REVIEW OF THE IMPLEMENTATION OF THE EXCHANGE OF NOTES ON BENEFICIAL OWNERSHIP BETWEEN THE UNITED KINGDOM, CROWN DEPENDENCIES AND OVERSEAS TERRITORIES**

**June 2019**





Home Office

**Statutory Review of the Implementation  
of the Exchange of Notes on Beneficial Ownership  
between the United Kingdom, Crown Dependencies and  
Overseas Territories**

Presented to Parliament pursuant to section 445A(4)(b) of the  
Proceeds of Crime Act 2002, as amended by section 9 of the  
Criminal Finances Act 2017

June 2019



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# Executive summary

In 2016 the UK, the three Crown Dependencies (CDs) and six British Overseas Territories (OTs) committed to enhance the effectiveness of sharing company beneficial ownership information on a bilateral basis between the UK and the Crown Dependencies and participating<sup>1</sup> Overseas Territories. They agreed to provide law enforcement agencies with this information on request for companies<sup>2</sup> incorporated in their respective jurisdictions. These arrangements were called the Exchange of Notes (EoN) for Information Sharing and came into force on 1 July 2017.

This 18 month Statutory Review is required by section 445A of the UK's Proceeds of Crime Act 2002, as amended by section 9 of the Criminal Finances Act 2017, to assess the effectiveness of the arrangements. It covers the period from 1 July 2017 to 31 December 2018.

The key findings of this Review are summarised as follows:

- UK Law Enforcement Agencies (LEAs) report that the EoN has been extremely useful in accessing the information needed to support ongoing investigations;
- This process gives UK LEAs rapid access to beneficial ownership information on over half a million entities based in the three CDs and six participating OTs. This represents 87% of businesses in scope of the scheme. Plans are in place for this to reach 100% by December 2020. In addition, these jurisdictions have reciprocal access to information on 3.8 million UK entities through the UK's People with Significant Control public register;
- During the first 18 months of operation 296 requests were made. Nearly all of these were originated by UK law enforcement agencies and 118 asked for multiple pieces of information in a single request. This equates on average to nearly four requests per week. Responses were provided for all requests made and all but four were provided within the agreed time frame;
- As many of these requests are in support of long-running investigations it is too soon to quantify the full outcome in terms of successful investigations, but interim indicators are positive;
- This Review notes challenges that were faced during the initial six months of the process (July–December 2017), including some information being shared with caveats on use and the occasional use of out-of-date contact address lists when making or responding to an information request. Substantial progress has been made on most of these issues following an internal review, but some residual administrative issues remain;
- This Review did not identify any instances in which a search, or any details about a search, became public knowledge, including in relation to the beneficial owners of companies being investigated.

This Review concludes with Recommendations for continuing improvement. In making these Recommendations relevant international standards have been considered. The primary Recommendation is that any remaining gaps in the coverage of company beneficial ownership

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<sup>1</sup> "Participating" refers to the six British OTs with established financial centres. Other British OTs were not asked to participate in the EoN arrangements as they are not significant financial centres and have very few company incorporations e.g. St Helena, British Indian Ocean Territories, Pitcairn Islands, Montserrat and Falkland Islands.

<sup>2</sup> Also referred to in the agreements as "corporate and legal entities".

registers should be fully closed by December 2020 at the latest, to ensure 100% coverage of all businesses in scope. This is essential to ensure that the process can be as effective as possible.

# Introduction

In this context, beneficial ownership information relates to the person(s) who owns or exercises control over a legal entity (e.g. a company). Under the Exchange of Notes agreements, this is defined as “any natural person(s) who ultimately owns or controls a corporate or legal entity through direct or indirect ownership of more than 25% of the shares or voting rights or ownership interests in that entity, or through control via other means”.

Information on the ultimate beneficial owner of a legal entity is valuable to support law enforcement agencies in tackling or preventing economic crime, including fraud and corruption. It can be used, for example, to identify situations in which the proceeds of crime have been hidden using complex corporate structures, or to identify individuals who may have relevant information to further an ongoing investigation<sup>3</sup>.

In 2016, the UK, the three Crown Dependencies (CDs: the **Bailiwick of Jersey, the Bailiwick of Guernsey** including **Alderney** but not Sark<sup>4</sup>, and the **Isle of Man**) and the six British Overseas Territories with global financial centres (OTs: **Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Gibraltar and Turks & Caicos Islands**) committed to enhance the effectiveness of enforcement agencies’ sharing of beneficial ownership information. They agreed to do this by providing UK law enforcement authorities with beneficial ownership information on request for corporate and legal entities incorporated in each participating jurisdiction. These arrangements are bilateral in nature and are between the UK and each of the OT and CD jurisdictions. The UK can submit a request for information to a participating dependency or territory, who can also do likewise with the UK.

The arrangements for this are set out in the ‘Exchange of Notes’ (EoN) and Technical Protocol (referred to as “the EoN” or “the Arrangements” in this report). The UK, CDs and OTs jointly completed a six-month internal review of the Arrangements covering the period 1 July 2017 to 31 December 2017. A written ministerial statement covering that review was laid before the UK Parliament on 1 May 2018.

This 18 month Statutory Review is required by the UK’s Proceeds of Crime Act 2002, as amended by the Criminal Finances Act 2017, to review the effectiveness of the EoN Arrangements and will meet the relevant provisions laid out in the Act. It covers the period 1 July 2017 to 31 December 2018. This Statutory Review meets the requirement to hold an annual review (as referenced in the EoN Arrangements) for 2019 only. The next joint internal annual review will take place early next year and will cover performance for 2019.

## About this Review

This Review was carried out by members of the Joint Anti-Corruption Unit in the UK Government (the Reviewers), in collaboration with officials from across relevant UK departments and agencies and participating jurisdictions.

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<sup>3</sup> For further background on beneficial ownership, please see Financial Action Task Force (2014), Transparency and Beneficial Ownership, FATF, Paris, France <http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf>

<sup>4</sup> Sark does not have legislation permitting the registration of companies or other legal entities and does not have a company register. Therefore, Sark is not included in the EoN Arrangements.

This Review is required under section 445A of the UK's Proceeds of Crime Act 2002 (as amended by the Criminal Finances Act 2017). See Annex A for the relevant legal text.

This Review is structured around seven themes, reflecting the agreed terms of reference. They relate to each Participant and the UK on a reciprocal basis as follows:

1. Quality of information held on corporate and legal entities;
2. Ability to search this information effectively;
3. Secure storage of information;
4. Ability to carry out searches without awareness of the corporate and legal entities concerned;
5. Provision of timely and unrestricted access for law enforcement agencies;
6. Cooperation of Participants, including with more complex searches (e.g. sequential or multiple requests); and
7. Provision of systems to allow sharing of information without conditions on use.

The findings reported below are benchmarked against these criteria and based on information provided by the three CDs and six OTs, as well as UK authorities<sup>5</sup>: the National Crime Agency (NCA), the Serious Fraud Office (SFO), HM Revenue and Customs (HMRC), and the Department for Business, Energy and Industrial Strategy (BEIS). The findings are structured according to the seven review criteria listed above.

## Findings

### 1. Quality of information held on corporate and legal entities

*Criterion: Participants hold adequate, accurate and current beneficial ownership information for corporate and legal entities incorporated in their own jurisdictions.*

#### Adequate information

This tests whether Participants hold sufficient beneficial ownership information to respond to incoming EoN requests, without the need to refer to additional information.

All respondents, apart from Anguilla, have now established a private register containing information on company beneficial ownership, although some are not yet fully populated. While Anguilla does not yet have a central register, beneficial ownership information can be accessed by other means as set out below.

In total, as of 31 December 2018, these registers contained information on 553,487 legal entities, representing nearly 87% of the 638,942 entities in scope for the EoN. The remaining 13% is largely explained by delays in full completion of registers in a small number of OTs. In particular, Anguilla has yet to develop its register and the Turks and Caicos Islands<sup>6</sup> were still in the process of completing their register by December 2018 and were delayed by wider administrative reforms to their Companies Ordinance 2017 law framework. Although the Turks and Caicos Islands were at a relatively low level of completeness by the end of the reporting period, they had reached 100% coverage by May 2019. The Cayman Islands, British Virgin

<sup>5</sup> BEIS lead for the UK Government on company beneficial ownership policy domestically; and the NCA, SFO and HMRC are the UK law enforcement agencies who most often utilise the EoN arrangements.

<sup>6</sup> The Turks and Caicos Islands' preparations were severely affected by the passage of hurricanes Irma and Maria.

Islands and Gibraltar have substantial registers, with work ongoing to address remaining gaps due to delays in the process of populating their registers. Bermuda, Guernsey, Alderney, Isle of Man and Jersey all have complete or nearly complete registers, as set out in the table below.

*Table 1: Proportion of entities on beneficial ownership databases at 31st December 2018*

	In scope corporate and legal entities registered in jurisdiction	Number in beneficial ownership database	Proportion covered <sup>7</sup>	Notes
<b>Anguilla</b>	18,381	0	0%	Discussed below
<b>Bermuda</b>	15,467	15,467	100%	
<b>British Virgin Islands</b>	384,700	346,230	90%	
<b>Cayman Islands</b>	91,767	79,162	86%	
<b>Gibraltar</b>	13,700	10,800	79%	
<b>Guernsey</b>	16,584	16,577	100%	
<b>Alderney</b>	319	319	100%	
<b>Isle of Man</b>	25,689	25,689	100% <sup>8</sup>	
<b>Jersey</b>	56,126	56,126	100%	
<b>Turks and Caicos Islands</b>	16,209	3,117	19%	100% coverage was achieved by May 2019
<b>Total</b>	638,942	553,487	87%	

CDs and OTs also have reciprocal access to the UK public register, containing beneficial ownership information on around 3.8 million companies. Requests can be made under the EoN to access information that is not in the public register, such as information subject to protection from public disclosure (e.g. in cases where an application was made for information to be protected on the grounds that such disclosure will put the individual at serious risk of violence or intimidation as a result of the activities of the company they are associated with). This process was not needed during the period covered by this Review.

Gibraltar is notably also in the process of making its company register public, and has made substantial progress towards this, including passing legislation and building the necessary IT systems.

Anguilla, the smallest of the six OTs involved in the Arrangements, is making progress towards the full implementation of their beneficial ownership platform, following the devastating effects of Hurricane Irma and it is expected to be implemented by the end of 2020. Anguilla has drafted the primary and secondary legislation needed to establish the register and officials are finalising the evaluation of bids received for the design and implementation of the secure IT platform. Pending the outcome of this, Anguilla anticipates being able to begin engagement with a successful contractor during June. It has also established an interim process that would allow EoN requests to be investigated, which relies on gathering the necessary information on a case-by-case basis. This process may not necessarily be able to operate within the standard

<sup>7</sup> Figures rounded to the nearest whole number.

<sup>8</sup> Sufficient beneficial ownership information is available for 96.54% of the entities on the Isle of Man's beneficial ownership database.

24-hour timescale, but was untested in the 18-month review period as no requests were made by UK LEAs with regard to companies registered in Anguilla. The Reviewers do have some concerns that collecting bespoke information each time an information request is submitted may increase the risk that an individual or entity under investigation could inadvertently become aware of a search, although the scale of this risk is unknown.

All respondents' definitions of legal entity (e.g. company) beneficial ownership meet or exceed the 25% threshold agreed in the EoN, in line with globally accepted Financial Action Task Force (FATF) guidelines, and in some cases exceed these. For example, Bermuda's threshold varies between 10% and 25% depending on the nature of the entity and Jersey applies a more stringent threshold for entities it considers to be higher risk, which can go below 10% for the highest risk cases.

The amount of available historical data<sup>9</sup>, including for corporate entities that no longer exist, varies between registers. Most registers include a relatively long history; the longest being Jersey's register which stretches back to 1989. Bermuda also has archived records in addition to its registry, held by the Bermuda Monetary Authority, as it has collected beneficial ownership information by a central authority for several years. In other cases where historical data is limited in the register itself (the Cayman Islands and the Turks and Caicos Islands), authorities have alternative means to access that information outside of the register, but this may involve contacting organisations outside of the government.

While most jurisdictions fully or nearly meet this requirement, there are a few gaps largely caused by delayed implementation of the Arrangements. Some of these delays were driven by external factors such as recent devastating hurricanes in the Caribbean. This Review notes that plans are in place to ensure all jurisdictions complete their registers and we expect this to happen by the end of 2020 at the latest.

### Accurate information

All jurisdictions with beneficial ownership registers have processes in place to check and validate the information on the register. The two main approaches are for central authorities to check the information directly (e.g. using spot checks or existing administrative processes) or for information to be checked by corporate service providers that are separately monitored by the central authority.

It falls beyond the scope of this Review to independently stress test the effectiveness of the Arrangements in each jurisdiction. However, it should be noted that these approaches can be compatible with related FATF Recommendations<sup>10</sup>, notably Recommendation 24, which states that a country may use existing information obtained by a financial institution and/or designated non-financial business, in accordance with recommendations 10 and 22, to obtain beneficial ownership information.

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<sup>9</sup> Historical data includes information on companies that are no longer operational or have ceased to exist. We also use the term here to refer to information about previous beneficial owners of companies that are still in existence.

<sup>10</sup> FATF (2012-2018), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, FATF, Paris, France, [www.fatf-gafi.org/recommendations.html](http://www.fatf-gafi.org/recommendations.html)

## Current information

All jurisdictions with beneficial ownership registers require information on newly established legal entities to be added to the register<sup>11</sup>. In Jersey, Guernsey, Isle of Man and Bermuda, registration is an integral part of the incorporation process to establish a new entity, while in other jurisdictions it is an additional requirement that needs to be completed during the incorporation process or shortly afterward.

All registers have requirements for regular updates to reflect any changes of beneficial ownership. Most require an update within a specific time period, e.g. within 15 days of the change of ownership (British Virgin Islands) or as part of a regular monthly update of records (Cayman Islands). Bermuda requires this information before a change of beneficial ownership can take place, for certain types of entity related to specific share issuances and transfers. This is due to existing processes to ensure fit and proper beneficial ownership.

## 2. Ability to search information effectively

*Criterion: Beneficial ownership information is searchable by name of the corporate and legal entity and name of individual.*

All CDs and OTs, apart from Anguilla, report that they are able to effectively conduct both kinds of search. Anguilla has plans in place to ensure it can do so once its register is operational.

Some jurisdictions have systems which also allow more sophisticated searches to take place. For example, the Isle of Man, Guernsey, Jersey and Bermuda are able to search by additional criteria including nationality of the owner.

## 3. Secure storage of information

*Criterion: the information is held in a secure central electronic database or similarly effective arrangement.*

All beneficial ownership registers that are in place hold the information securely in an encrypted environment. Anguilla is tendering for a secure system. All jurisdictions restrict access to a list of named individuals within each jurisdiction's administration. Additional security features in place in some jurisdictions include:

- Building the database on a secure server with limited access channels;
- Ongoing security probing to continuously test defences; and
- Surveillance or audit of searches that have taken place.

The Cayman Islands describe their system as a similarly effective arrangement, as permitted under the EoN agreements. This differs from a central database in that the data is kept in a series of databases in a secure environment, rather than one central database, for administrative reasons. The Reviewers are content with this arrangement as a single search query draws results from across all these databases meaning access to data is not compromised and comprehensive security arrangements appear to be in place.

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<sup>11</sup> This requirement will only be fully implemented in the Turks and Caicos Islands from May 2019.

#### 4. Ability to carry out searches without awareness of the corporate and legal entities concerned

*Criterion: Participants in whose jurisdictions the requested beneficial ownership information is held are ensuring that searches are carried out securely; in particular ensuring that those interested in or otherwise connected to the corporate and legal entities concerned are not informed about a search and ensuring search information is not made known publicly and by criminalising any disclosure of information relating to the requests made in accordance with the Protocol and reinforcing the severity of the offence with a suitable dissuasive penalty.*

##### Individuals and corporate and legal entities concerned are not informed about a search

This Review did not identify any instances where an individual or entity became aware that they were the subject of a search taking place. This part of the criterion therefore appears to have been met: while it cannot be conclusively ruled out that an undetected breach may have occurred, we have no evidence to suggest this has happened.

This Review did identify a few situations in which information about a search was known to corporate service providers outside of the immediate government authority responding to the request. In most cases this was intentional and in line with agreed processes, but there was one case of unintentional information sharing with an intermediary, discussed below.

There are a limited number of occasions where agents of the party concerned were intentionally made aware of a search, under a strict duty of confidentiality. This was to confirm information that was not available in the beneficial ownership database. Guernsey has used this process during the review period, but no longer needs to do so as its database is now complete. The Cayman Islands maintains this process when information is not in its register. It has a structure in place to ensure that such approaches are only made with explicit consent from the UK LEA making the request. Until Anguilla's register is established, this process is likely to be necessary to respond to all EoN requests.

As noted above, we are aware of one instance where an agent was unintentionally informed about a search. They were copied into an email which included reference to the existence of a search taking place, but no direct information on the details of the search. This situation appears to have been dealt with appropriately and seems to have been an isolated incident.

This Review did not identify any situations in which information about a search was passed on to the corporate or legal entity that was the ultimate subject of the search.

##### Search information is not known publicly

This Review did not identify any instances in which a search, or any details about a search, became public knowledge.

##### Criminalising disclosure with a sufficiently dissuasive penalty

All jurisdictions involved have legislation in place to criminalise disclosure. In most cases, this is covered by existing legislation protecting sensitive information (e.g. official secrets legislation, anti 'tipping off' legislation and similar) rather than bespoke legislation on beneficial ownership. The Isle of Man and Turks and Caicos are exceptions. In the case of the former, information in

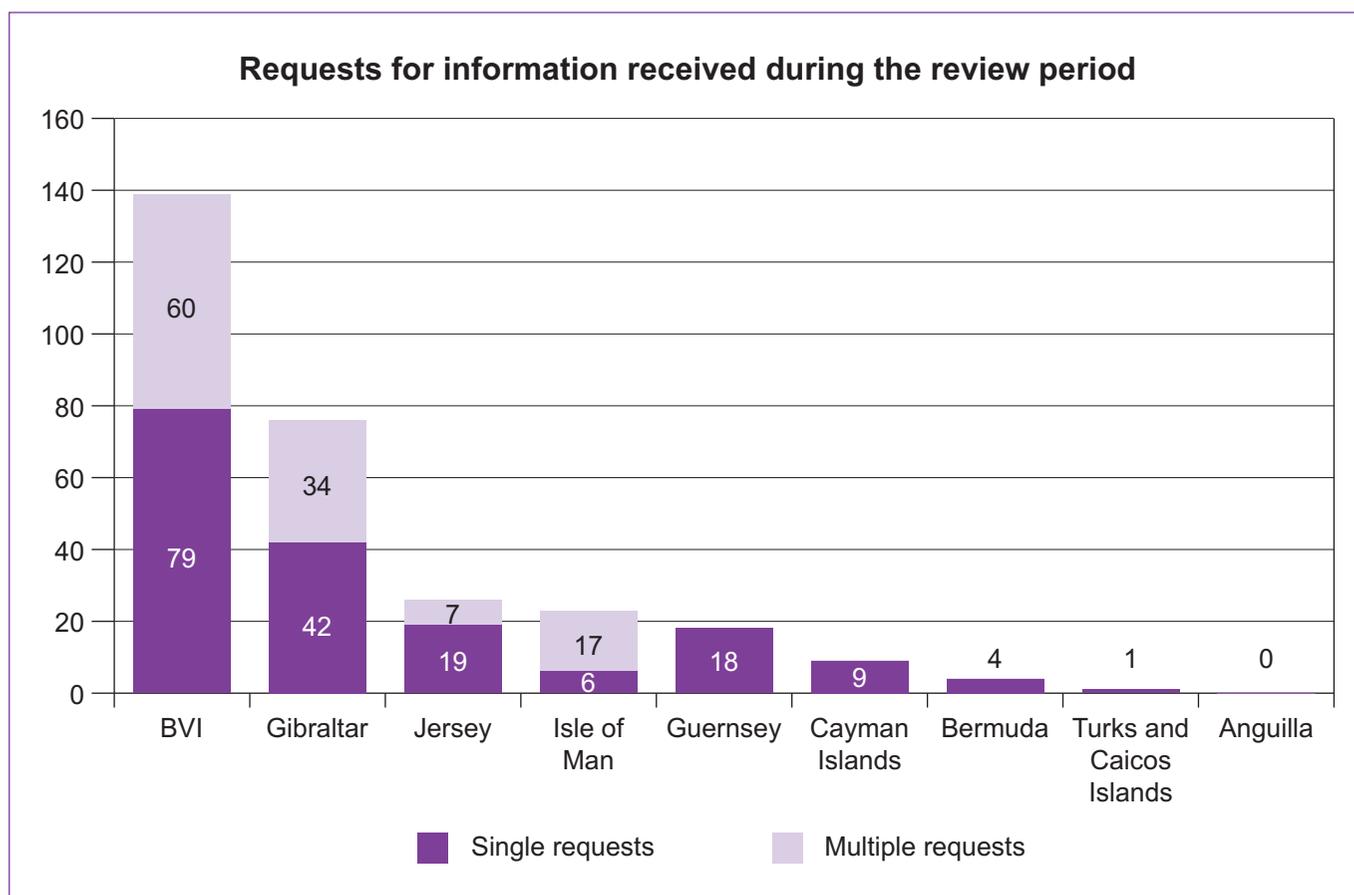
the beneficial ownership database is explicitly mentioned in legislation criminalising the act of tipping off individuals or companies. For the latter, it is specifically mentioned and criminalised in their Companies Ordinance 2017 legislation.

Maximum penalties vary by jurisdiction, ranging from a \$5,000 fine and/or one year in prison (Cayman Islands), through to unlimited fines and/or two years in prison (Guernsey), or a fine and/or up to 14 years in prison (Jersey). This large range seems to partly be explained by the scope in broader purpose of the underlying legislation.

**5. Provision of timely and unrestricted access for law enforcement agencies.**

*Criterion: law enforcement authorities of Participants have an automatic right to the provision of unrestricted and timely (within 24 hours and where urgently required within one hour) beneficial ownership information held in the other jurisdiction, or such other time period as may be agreed between the requesting law enforcement authority and the designated point of contact in accordance with the individual circumstances of the request.*

Figure 1: Total number of EoN requests received by jurisdiction



*Note: 'Multiple requests' refer to requests for numerous pieces of information in a single form, for example beneficial owners of a number of companies, and/or entity ownership for a number of individuals. Each multiple request therefore represents substantially more information than a single request.*

### Provision of unrestricted information

According to the information received, all requests for information from UK authorities to other Participants were responded to. However, there were initially some instances where information was provided with restrictions on use, as discussed below under Review criterion 7. There were also some instances where certain aspects of a particular request could not be met, leading to partial information.

### Provision of timely information

Of the 296 requests during the Review period, Participants collectively report responding to only four responses outside of the requested or agreed timeframe, suggesting a high degree of compliance.

There were cases in which Participants spoke to the requestor to agree an extension to the standard 24-hour process upon receiving a request. It should also be noted that likely errors in certain contact details created at least one additional delayed response not reported here: the information was provided within 24 hours of the request being resent to the correct contact, but not within 24 hours of the initial attempted contact.

The EoN requires information to be available within one hour where this is requested in urgent cases. The one-hour process has yet to be tested as such a rapid timescale for information has not been required by LEAs in the 18-month period being assessed. While a number of efficient processes are in place, the Reviewers are not confident that a one-hour turnaround could be relied on in all jurisdictions, should the need ever arise. Reasons for this include potential delays created by high levels of security on some registers and reliance on short lists of designated individuals to notice and respond to a request.

### Requests to the UK

The reasons for the low numbers of requests to the UK include the availability of the UK public register, making formal requests unnecessary, and the use of other existing channels (including pre-existing agreements with the UK (Bermuda) or procedures under the global Egmont Group of financial intelligence units (British Virgin Islands)). Bermuda noted that while it would often use other existing channels to identify information, it feels the EoN process adds another valuable tool to supplement these if needed.

## 6. Cooperation of Participants, including with more complex searches

*Criterion: Participants are accepting and replying to requests for information, which includes requests for sequential searches to be carried out. Multiple or sequential search requests should be conducted within the same 24-hour period (or one hour in urgent cases).*

Of the 296 requests for information during this Review period, 118 were multiple requests. As stated above, 'multiple requests' refer to requests for numerous pieces of information in a single form, for example beneficial owners of a number of companies, and/or entity ownership for a number of individuals. All Participants receiving a multiple request provided a response.

While no Participants reported providing a late response to a multiple request, some did clarify that it can be more challenging to respond to these within 24 hours. In some cases, we are aware of jurisdictions agreeing a longer time period with the requesting LEA immediately upon receipt of the request.

Sequential requests refer to requests which involve a requirement for additional information to be sought on the basis of initial findings (for example identifying the beneficial owners of an entity and further identifying other entities that they own). All jurisdictions have processes in place to respond to these kinds of request, in most cases they are conducted manually.

## **7. Provision of systems to allow sharing of information without conditions on use**

*Criterion: beneficial ownership information supplied under these Arrangements can be used by Participants law enforcement authorities free from any further procedural conditions, including in criminal and/or civil proceedings, and may be disclosed by law enforcement in accordance with applicable legal provisions, including data protection and freedom of information.*

Some issues were reported in the initial six months of the Arrangements in which data was disclosed to UK authorities with explicit restrictions on use. These reduced the impact of the EoN as the information was not always available, for example as evidence in prosecutions. However, these issues appear to have been resolved following further collaboration between UK authorities and authorities in other jurisdictions. We are only aware of one case of caveated data after the initial six-month period during 2018.

The Serious Fraud Office reported a number of examples where the ability to use this information evidentially has been beneficial to them. For example, being able to put information obtained through the EoN process to a suspect in interview without the need for further requests for use of the material via the Mutual Legal Assistance (MLA) / Letter of Request (LoR) process.

It should also be noted that some jurisdictions have expressed reservations about information being available through UK Freedom of Information requests. The UK Government has clarified the legal position with regard to the Freedom of Information Act 2000, which is that disclosure or non-disclosure of each case needs to be considered on its own merits by the LEA concerned.

# Illustrations of impact

UK LEAs report that the EoN has played a valuable role in a large number of investigations. Due to the long running nature of many investigations, and after only 18 months of operation, it is too early for the long-term impacts of these intermediate benefits to be quantified in terms of increased successful prosecutions and reduction in corruption. Nevertheless, a number of intermediate outcomes can be identified at this stage, which will plausibly support the delivery of these longer-term goals.

The main intermediate impacts for which we have evidence are illustrated below using anonymised case studies from UK LEAs. Across these specific examples, it is clear that the Arrangements have provided UK LEAs with access to a substantially broader pool of information than was previously available to them.

## **Case study 1: Unexplained Wealth Order**

The NCA used the EoN process in obtaining the UK's first Unexplained Wealth Order (UWO). The EoN return confirmed the beneficial ownership of a company holding high-value London property, enabling investigators to satisfy the requirements of a UWO application. Further requests have also identified additional connected property. The case is currently valued at approx. £25 million.

## **Case study 2: Fraud investigation**

The information received through the EoN confirmed intelligence received via a Suspicious Activity Report regarding a suspect's spouse potentially being the beneficial owner of a company under investigation. This helped the Serious Fraud Office to build the profile of the suspect's spouse and along with other information, led to their affairs also being investigated. This investigation is ongoing.

## **Case study 3: Time critical account freezing order**

Information obtained under the EoN provided a time critical exchange of information that enabled the National Crime Agency to apply for an Account Freezing Order on a politically exposed person for approx. £450k. The information allowed investigators to track the flow of funds into the account and this information was used to secure the forfeiture of the money.

## **Case study 4: International bribery and corruption investigation**

Material received by the Serious Fraud Office under the EoN confirmed the registration of several companies and provided useful information, such as the registration number and immediate beneficial owner details. In turn this has been used in the preparation of a Letter of Request for fuller incorporation records for companies relevant to the investigation and registered in the territory in question.

# Best Practice and Recommendations

Overall the EoN is functioning well and has improved substantially following the initial phase (the first six months) when the Arrangements were being established. Crucially, law enforcement agencies, particularly in the UK, report that the Arrangements are adding significant value in informing time sensitive economic crime investigations. UK law enforcement reports that although less than two years has elapsed since the EoN commenced, the Arrangements have a very positive impact on participating jurisdictions' ability to combat illicit financial flows. Opportunities for ongoing improvement are considered below, alongside specific Recommendations to ensure the EoN process functions as effectively as possible.

**Completeness of registers.** Some registers are yet to be fully populated. This carries a number of possible risks: i) it may lead to delays in responding to requests; ii) it creates a risk of a 'false negative', implying an entity or beneficial owner does not have a footprint in a jurisdiction where one may actually exist; iii) it increases the risk of unintentional disclosure as information may need to be gathered afresh to respond to a request; and iv) it creates a risk that it may not be possible to respond to some requests. The Reviewers note that all Participants have plans in place to complete (or in the case of Anguilla, establish) their registers where coverage is not yet 100%. The Reviewers recommend that this work continues to be pursued as a priority to include all companies in scope by the end of 2020 or before. In addition, some jurisdictions have plans in place to reduce the risk of a false negative, for example the Cayman Islands and Turks and Caicos Islands already have full information on whether companies are present in the jurisdiction.

The Reviewers also noted an example of best practice in ensuring that registers remain complete once fully implemented. Bermuda, Guernsey, Jersey and the Isle of Man have processes which mean that you cannot create a new entity without being entered onto the beneficial ownership register, ensuring complete coverage of new entities.

**Recommendation 1.** Where beneficial ownership registers are currently incomplete, the Reviewers note that all Participants have plans in place to establish or complete their registers and recommend that this work continues to be pursued as a priority and be completed by the end of 2020 at the latest.

**Verification of information in databases.** A number of Participants have processes in place to continually assure the quality of information held in their registers, for example through ongoing random checks and comparing information between different systems.

**Recommendation 2.** All Participants may wish to review best practice on verifying the accuracy of information within their databases and consider creating opportunities to improve the verification processes if necessary.

**Security when including third parties.** Where third parties need to be included in the response to a request (e.g. to identify information that is missing from a beneficial ownership database), the Reviewers note that existing examples of best practice include: i) notifying the requesting LEA before making any contact so that they can assess the likely risks and benefits of this; and ii) ensuring effective non-disclosure agreements are in place to eliminate any risk of intentional or unintentional tipping off.

**Recommendation 3.** Where third parties need to be contacted to identify information that is missing from a register in response to a request, in all cases the requesting LEA should be informed before any communication is made with the third party. Suitable legally binding agreements should also be in place to prevent disclosure, which may be in the form of existing legislation or additional non-disclosure agreements. This is to ensure that every effort is taken to eliminate any risk of tipping off. There should only be rare instances when this process is needed following December 2020.

**Use of correct contact details.** LEAs should ensure they always use the correct contact details when making a request to ensure a rapid response. This issue was raised during the first six months of the Arrangements. While it seems to have largely now been resolved, some challenges persist especially where designated staff move on to different roles. The Reviewers note that a number of Participants have adopted a generic email address rather than named individuals, to proactively reduce the risk of these issues occurring. In most cases, this will be the best approach to take.

**Recommendation 4.** LEAs should ensure that they are making use of the most up to date contact details for all participating jurisdictions and in all cases, should look to adopt generic email addresses rather than named individuals.

**Building strong relationships.** Where LEAs and Participants have invested in building strong interpersonal relationships, this has led to reported benefits. For example, staff from Gibraltar have worked closely with UK LEAs. This has created open channels of communication which can be used to support the EoN Arrangements, such as to clarify the detail of requests quickly and informally.

**Recommendation 5.** Participants and LEAs should continue their good work in building effective interpersonal dialogue to complement the efficient functioning of administrative processes.

**Collaboration on register design.** There may also be opportunities to collaborate at a policy level. Given that all Participants' registers address similar issues to achieve the same end result, Participants may wish to consider sharing knowledge and expertise on the design and management of this information. Existing collaboration between Crown Dependencies is notable on this point, where a number of processes have been aligned, e.g. to ensure that consistent forms are in use.

**Speed of response.** The Reviewers note that the vast majority of requests were responded to within the agreed time frame. However, they have some concerns about whether the administrative processes in place would always be able to support a response within one hour if one was requested. Potential barriers include: i) short lists of individuals with access to the register, increasing the risk that no one is available to immediately process the request, and ii) the speed with which information can be extracted from databases, e.g. where an air-gapped system requires manual transcription of information. However, the Reviewers note that both these features are in place to improve security of the registers: there is a meaningful trade off to be considered between security and speed of access. As no one hour requests were made during the Review period, the Reviewers consider this issue to be of limited importance and have not attached a specific recommendation to this observation.

**Possible developments beyond the current scope of the EoN.** This review identified two possible ways to further increase the effectiveness of the process, which fall beyond the scope of existing Arrangements. Firstly, HMRC noted that further benefits could be realised from the

EoN if the process was made available for use in civil tax cases, in addition to criminal cases. Secondly, the current EoN agreements focus on company beneficial ownership, and are proving highly valuable in this regard. The Reviewers note that if these, or similar, arrangements were extended to include beneficial ownership information for trusts, this could provide an additional valuable resource for law enforcement agencies. As they fall outside of the existing scope of the agreements, any changes in these two areas would need full collaboration and consent from all Participants.

**Recommendation 6.** Ongoing consideration and discussion should continue to establish the appropriateness of possible further opportunities to expand the EoN process, such as the considerations on possibly expanding the process to include civil cases or trusts as noted above.

**Ongoing reviews and evidence gathering.** It has not been possible in this Review to establish the full impact of the EoN system as many of the cases involved are long running investigations that are still to be concluded. There have clearly been many benefits for UK LEAs to support their ongoing work, which can over time be expected to translate into reduced fraudulent and corrupt activity and more successful prosecutions.

**Recommendation 7.** The involved parties should continue to gather and share evidence on the extent to which these longer-term benefits are being realised and investigate any opportunities to maximise these impacts. This information should be summarised in future annual reviews of these Arrangements.

The Reviewers suggest that the next annual review of the EoNs includes a review on progress made against each of the above Recommendations.

# Conclusion

The Exchange of Notes Arrangements have proven highly valuable to UK law enforcement agencies.

The Arrangements have increased in effectiveness since their introduction as initial administrative challenges and misunderstandings have been resolved. Improvements following the initial six-month review have included ensuring that information could be shared without caveats on use and completeness of registers. The issue of caveated information appears to have been resolved following the first six months of the EoN. There has also been substantial progress to complete beneficial ownership registers, however some jurisdictions have still not fully populated their register. These jurisdictions are all engaging proactively with the scheme and have workarounds in place which aim to address data gaps. As Participants continue the process of completing the remaining registers, it can be expected that the effectiveness of the process will continue to improve.

# Annex A: Legislative requirement for this Review in Proceeds of Crime Act 2002, as amended by Criminal Finances Act 2017

## Sharing of beneficial ownership information

- (1) The relevant Minister must prepare a report about the arrangements in place between—
  - (a) the government of the United Kingdom, and
  - (b) the government of each relevant territory,for the sharing of beneficial ownership information.
- (2) The report must include an assessment of the effectiveness of those arrangements, having regard to such international standards as appear to the relevant Minister to be relevant.
- (3) The report—
  - (a) must be prepared before 1 July 2019, and
  - (b) must relate to the arrangements in place during the period of 18 months from 1 July 2017 to 31 December 2018.
- (4) The relevant Minister must—
  - (a) publish the report, and
  - (b) lay a copy of it before Parliament.
- (5) The reference in subsection (1) to arrangements in place for the sharing of beneficial ownership information between the government of the United Kingdom and the government of a relevant territory is to such arrangements as are set out in an exchange of notes—
  - (a) for the provision of beneficial ownership information about a person incorporated in a part of the United Kingdom to a law enforcement authority of the relevant territory at the request of the authority, and
  - (b) for the provision of beneficial ownership information about a person incorporated in a relevant territory to a law enforcement authority of the United Kingdom at the request of the authority.
- (6) In this section—

“beneficial ownership information” means information in relation to the beneficial ownership of persons incorporated in a part of the United Kingdom or (as the case may be) in a relevant territory;

“exchange of notes” means written documentation signed on behalf of the government of the United Kingdom and the government of a relevant territory setting out details of the agreement reached in respect of the arrangements for the matters mentioned in subsection (5)(a) and (b);

“relevant Minister” means the Secretary of State or the Minister for the Cabinet Office;

“relevant territory” means any of the Channel Islands, the Isle of Man or any British overseas territory.”





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