

## Registration of Overseas Entities Bill

### Department for Business, Energy and Industrial Strategy

**RPC rating: fit for purpose**

#### Introduction

The Regulatory Policy Committee (RPC) issued an opinion on the impact assessment (IA) for the draft Registration of Overseas Entities Bill on 28 June 2018.<sup>1</sup> The present opinion updates this to take account of revisions to the IA with regard to changes made to the proposal in response to Parliament's pre-legislative scrutiny of the draft Bill.

#### 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 include overseas entities that own UK property or participate in UK government procurement. 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 can identify and record details of 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, especially when costs associated with carrying out due diligence are high.

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<sup>1</sup>RPC-4242(1)-BEIS 'Registration of Overseas Entities Bill (draft)', 28 June 2018.

## Changes to the proposals

The two main changes affecting the impact on business are:

- information provided by the overseas entity will now have to be verified by an appropriate regulated UK professional (paragraphs 97-99); and
- the proposals now require entities to provide an annual update, including a summary of changes that have happened over the year. (paragraphs 100-105).

The Department has taken the opportunity to update the evidence base, notably incorporating the findings of the post-implementation review for the domestic PSC register.<sup>2</sup>

## **Impacts of proposal**

Overall, the IA estimates that the proposals would generate an equivalent annual net direct cost to business (EANDCB) of £3.8 million. This figure has increased from £2.7 million. This is mainly accounted for by the second change listed above. The estimated cost of updating beneficial ownership information annually has increased from £1.6 million per year to around £2.35 million. The Department has not monetised the benefits of the proposal and the Department's net present value (NPV) figure is -£32.8 million (2016 prices; 2017 base year for discounting).

## Costs to business

The IA utilises a survey from the transparency and trust IA<sup>3</sup>, and the findings of the post-implementation review (PIR) of the domestic PSC register, 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 such information to a central registry, annually. Except providing the information to the central registry, which would incur an annual cost, these initial actions would incur a one-off cost to businesses. The survey estimated that the cost would be £1,858 to each of 8,223 entities, resulting in a total overall cost of £15.5 million in the first year (table 6, page 33). In the subsequent years, companies will

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<sup>2</sup> Available at: [http://www.legislation.gov.uk/ukpga/2015/26/pdfs/ukpgaod\\_20150026\\_en%20.pdf](http://www.legislation.gov.uk/ukpga/2015/26/pdfs/ukpgaod_20150026_en%20.pdf)

<sup>3</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)

face an annual cost of ‘*Updating beneficial ownership information*’ of £284 (table 4, page 30). Taking account of the annual growth of the number of overseas registrations and the annual cost of updating beneficial ownership information, this cost accounts for the large majority of the estimated ongoing cost of around £3.3 million annually in subsequent years.

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

The IA provides a qualitative assessment about the potential impact on incentives for foreign direct investment. The IA divides overseas entities, which decide to purchase UK property, into four distinct groups as follows:

(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, as a result of 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 sale of 122 Leadenhall Street (the ‘cheesegrater’) and the re-development of Battersea Power Station, as both transactions were carried out by large institutional investors and the information of their beneficial owners is public (paragraph 134, page 44).

(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 of members of this group to reduce, stop or reverse their UK investments as a result of the new register.

(iv) Foreign individuals buying primarily residential property

Using the research from the Institute for Public Policy Research in 2012, the Department 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 of the proposal, it provides an overview of the UK housing market. It summarises that most of the properties (44 per cent) owned by overseas entities are located in Greater London, with a further 16 per cent in the South East. In addition, the IA provides summarises the literature on impacts of Foreign Direct Investment (FDI), suggesting that it has potential to 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

Companies House will face additional costs as a result of entities being required to provide beneficial ownership information to it, including an annual confirmation and update of these details. The Department anticipates that these costs will be recovered from businesses in fees and treats this as a direct cost to business in the IA. Based upon existing registration and processing fees, the Department estimates a fee of £20. Applied to the estimated number of entities (8,223 in the first year), the Department estimates a cost of £0.2 million per year. This is a broad estimate; the costs will be clearer following secondary legislation and the Department has indicated that it will submit a further IA should the costs be significantly different.

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. However,

given the lack of information about company ownership under the status quo, the IA does not monetise the benefit.

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, remains fit for purpose. Using the analysis from *Transparency International* and the *National Crime Agency*, the IA sets out clearly the rationale for the proposals and has considered different options, including a non-regulatory option. The IA provides qualitative assessment when monetisation, including in relation to benefits, is not possible and has considered the impacts on different stakeholders. The RPC is pleased that the Department has submitted a further IA, reflecting changes to proposals, even though the total impact on business is below the *de minimis* threshold requiring RPC scrutiny. The Department's revised IA is consistent with the classification of the measure as *de minimis* under the better regulation framework rules for the 2017-19 parliament<sup>4</sup>.

The IA's evidence base is strengthened by reflecting the PIR of the domestic PSC register. *'The PSC PIR thus confirmed the overall estimates as viable, and as a switch to the estimates derived in the PIR would make only a negligible difference, we have, in this instance, maintained the same basis for cost estimations as in the previous IA for reasons of consistency and simplicity'* (paragraph 90, page 29). The Department has also strengthened the IA by addressing some of the points for improvement contained in the June 2018 RPC opinion, notably a more comprehensive explanation of why the calculations leading to the final compliance cost estimate (paragraphs 96-99, page 32).

There remain 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.

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<sup>4</sup> The framework for the present parliament is yet to be set.

Although a small and micro businesses assessment (SaMBA) is not required under the framework rules for the 2017-19 parliament for a *de minimis* measure, one has been provided and it is sufficient. Despite the lack of data, the IA has attempted to identify the small businesses possibly in scope of the proposals. These 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 20-22). 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 72 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 and consistent with guidance in this area.<sup>5</sup>

#### Areas for further improvement

Although correctly acknowledged by the Department as a direct cost to business, the RPC understands that the Companies House fees would fall under the ‘*tax, duty, levy or other charge*’ statutory exclusion under the terms of the *Small Business and Enterprise Act 2015* and should not, therefore, be included in the EANDCB. Taking this out would reduce the EANDCB by around £0.2 million. The Department is, however, commended for covering this impact in the IA and for undertaking best practice in taking this impact into account when deciding whether to submit an IA for RPC scrutiny.

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<sup>5</sup> <https://www.gov.uk/government/publications/rpc-guidance-issues-around-defining-a-business-january-2020>



The most significant area for improvement is to provide a monitoring and evaluation plan in the IA. A robust monitoring and evaluation plan would help with future IAs and aid the decision-making process.

The IA would also benefit from providing a clearer explanation in the following 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 (paragraph 95).
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 Transparency & Trust IA<sup>6</sup> trimmed twice in table 4 (page 30).
4. How the new arrangements will be enforced and made effective in relation to the objectives. This would contribute to an effective post-implementation review.
5. Whether there is a cost to Companies House if they operate a system to check whether an annual/updated return to the Register has been made, and whether this is covered in the £20 fee.

### Departmental assessment

Classification	Non-qualifying regulatory provision ( <i>de minimis</i> )
Equivalent annual net direct cost to business (EANDCB)	£3.8 million
Business net present value	-£32.8 million
Overall net present value	-£32.8 million (2016 prices; 2017 base year for discounting)

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<sup>6</sup> Available at: <https://www.gov.uk/government/publications/company-ownership-transparency-and-trust-impact-assessments>

## RPC assessment

Classification	Under the framework rules for the 2017-19 parliament: non-qualifying regulatory provision ( <i>de minimis</i> ) To be determined when the framework rules for the present parliament are set
Small and micro business assessment	Sufficient (although not required under framework rules for the 2017-19 parliament)

Regulatory Policy Committee