



Register of Overseas Entities Land in Scotland

BRIEFING NOTE – NOVEMBER 2022

The Register of Overseas Entities Land in Scotland

The Economic Crime (Transparency and Enforcement) Act 2022 (the “**Act**”) came into force on **1 August 2022**. The Act, which applies to the whole of the UK, seeks to:

- prevent and combat the use of property in the UK by overseas entities to launder money or invest illicit funds, and
- increase transparency and public trust in overseas entities engaged in property ownership in the UK.

One way the Act seeks to do this is with the introduction of the **Register of Overseas Entities** (the “**ROE**”). The ROE is a public register, maintained by Companies House, and the information held in it will be largely accessible by the public. It opened on **1 August 2022**.

Its effect is that (broadly) overseas entities who own or lease property in the UK, or who want to buy, sell or transfer property in the UK, must register with Companies House and disclose who their beneficial owners and/or managing officers are. They will also need to comply with a duty to file annual updates to the ROE.

While the legislation allows for statutory exemptions to the requirements of the ROE regime, there are none at present, so the Act has far-reaching consequences. If you are (i) an overseas entity who owns or leases and/or may sell or buy further property, grant leases or fixed (standard) securities; and/ or (ii) will purchase or lease property from an overseas entity, you may need to act quickly to ensure you do not fall foul of the legislation.

Read on to find out if the requirements apply to you, and what to do next if they do.

1 THE SCOPE OF ROE

The requirement to register in the ROE will apply if you are an **Overseas Entity** with an existing **qualifying estate** OR will grant a **qualifying registrable deed** OR will acquire a **qualifying estate** as an Overseas Entity or from one.

- **Overseas Entity:** covers body corporates, partnerships and other entities governed by a law or territory outside of the UK. This includes the Channel Islands and the Isle of Man.

- **Qualifying Estate:** land owned or tenanted under a registered lease of 20 years or more in Scotland and registered in the Land Register of Scotland any time from and including 8 December 2014.

Note: Given the purposes of the legislation the existence of a backstop date is anomalous. It could be reviewed in the future and pushed back or removed to include more or all property interests.

- **Qualifying Registrable Deeds:** a disposition (conveyance), a standard security (legal charge), lease or sub-lease (for more than 20 years) or an assignation of such lease or sub-lease.

2 WHAT IS NOT COVERED AND EXEMPTIONS

- The requirement to register in the ROE will **not** apply:
 - Where an Overseas Entity owns or purchases property in Scotland via a UK registered company.
 - Where the Overseas Entity owns or tenants property which is either unregistered (recorded in the Sasine Register) or was registered prior to 8 December 2014 (under 1979 Land Register law).
 - The Act does not restrict the sale or purchase of a property where that is by way of a share purchase/sale of the shares in the Overseas Entity.

Note: if a share purchase/sale includes as part of it the grant of a standard security by an Overseas Entity this security would be in scope and would trigger the ROE registration requirements.

- **Exemptions:** There is provision in the Act to designate certain entities as exempt from the requirements, but there are no exceptions as at the date of this note.

3 DUTIES UNDER THE ACT

- **Existing Qualified Estates:** Overseas Entities with a **qualifying estate** must register in the ROE before **1 February 2023**.

Overseas Entities with a qualifying estate should have received notification from Companies House of their duties under the Act.

Note: This applies even if the Overseas Entity granted a deed between 28 February 2022 and 1 August 2022 or will not immediately be granting any qualifying registrable deeds in relation to the land.

- **Grant of Qualifying Registrable Deeds:** Overseas Entities who will grant a qualifying registrable deed because they will sell, grant or assign a lease of more than 20 years or grant a fixed standard security and the application relating to the qualifying registrable deed will be submitted to the Land Register of Scotland then:

(i) in the case of a grant since 28 February 2022 which on disposal means the Overseas Entity will hold no other UK land interests as at 1 August 2022, there is a specific statutory disclosure duty which requires all the same information as for a full ROE registration to be disclosed to Companies House. Such disclosure will not result in a registration or the creation of an Overseas Entity ID, and

(ii) in the case of a grant by an Overseas Entity since 28 February 2022 (where the Overseas Entity continues to hold other UK land interests) and **prior 31 January 2023**, the Overseas Entity must register in ROE **before the end of the Transitional Period**. In practice, this means that a transaction involving the sale of a property by an Overseas Entity which completes during the Transitional Period can have the relevant deeds registered in the Land Register even if the Overseas Entity has not completed their ROE registration at the time of submission.

Note: Purchasers or lenders may insist on ROE registration before completion even if the law allows until the end of the Transitional Period.

There are limited statutory exceptions to the ROE registration requirements including deeds granted pursuant to a contract entered into prior to 5 September 2022, deeds requiring registration due to a statutory obligation, court order or by operation of law or deeds granted pursuant to a power of sale/lease by a creditor in a standard security.

(iii) in the case of a grant on or after 1 February 2023 the Overseas Entity is required to register in ROE prior to deeds being registered in the Land Register.

- **Purchaser or new tenant of a Qualifying Estate:** Any Overseas Entity who buys or becomes a tenant of a qualifying estate requires to register in the ROE prior to submitting their application for registration of their interest in the Land Register.

Note: There are no time allowances for such transactions (the limited exception ended on 5 September 2022).

4 KEY DATES

- **Key Dates:** The ROE opened on **1 August 2022**. The restrictions on dealing with property in Scotland (and the rest of the UK) came into force on **5 September 2022**.
- **Transitional Period:** There is a six-month transitional period between **1 August 2022** and **31 January 2023**.

5 CONSEQUENCES OF FAILURE TO COMPLY

- **Prohibition on registration of titles:** Registration of property ownership by an Overseas Entity or registering an interest as a purchaser, tenant or security holder acquiring an interest from an Overseas Entity in the Land Register of Scotland will not be possible unless an application to the ROE is properly made and approved (and kept up to date). Non-compliance means that a conveyance, security, lease or assignment of a lease is incapable of registration. The Keeper of the Registers of Scotland is under a duty to reject any such Land Register applications made without submitting evidence of ROE registration.

Note: This do not impact non-registerable leases ie. leases for a term of 20 years or less (only registered or recorded leases fall within the ambit of the requirements).

- **Offences:** Breach may result in a criminal offence, punishable by fines and imprisonment.

6 REGISTRATION IN THE ROE

- An Overseas Entity who comes within the ambit of the requirements must register with Companies House and where relevant provide details of any **beneficial owners** (even if there are no beneficial interests there is still a duty to register). See **Verification** below for details on steps required before submitting an application to register in the ROE.

- **Beneficial Owners** are those who:
 - Hold, directly or indirectly, more than 25% of the shares in the Overseas Entity;
 - hold directly or indirectly, more than 25% of the voting rights in the Overseas Entity;
 - hold the right, directly or indirectly to appoint or remove a majority of the board of directors, and/or
 - have the right to exercise, or actually exercise significant influence or control over the Overseas Entity.
 - A beneficial owner is also anyone who exercises significant influence or control over the activities of a trust or entity (whether that entity has legal personality or not) which meets the criteria set out above.
 - Information about trusts is also required, including the name of the trust, the date of its creation, current and historic trustees, and those with the power to appoint and remove the same, or exercise rights over the trustees' powers. There are further requirements in relation to related information relating to beneficiaries, the settlor, and anyone else with control.

Note: The requirements differ from those of other transparency regimes operating in the UK such as the Persons of Significant Control register. The full details are included in the guidance notes referred to in **Additional Information** below.

- **ID number:** When Companies House accept the application for registration, the notice of registration will be emailed to you. It will include the Overseas Entity ID number which is necessary for any Land Register application.
- **Annual update:** The Overseas Entity must file an annual update. This will identify any changes or otherwise confirm that the information held by Companies House remains the same.
- **Removal:** You can apply to be removed from the ROE if you are no longer the registered owner or tenant of land.

7 VERIFICATION

Prior to submitting an application for registration to the ROE, an Overseas Entity must take the following steps:

- **Notify:** Information notices must be served on each beneficial owner in order to confirm their details are correct. A beneficial owner has a period of 1 month in which to respond.
- **Verify:** All information which will be submitted with an application to register in the ROE must be independently verified by a relevant person (which can include financial institutions, auditors, tax advisors and trust or company service providers). We do not offer verification services. A list of known providers is listed at the end of this note along with a link to further guidance published by BEIS.
- Overseas Entities applying for registration to the ROE will also need to give information about any disposals **since 28 February 2022** together with details of any beneficial owners at the time of the disposition.

Note: It may take some time to complete the verification and registration processes. It is important to start the process well in advance of any proposed completion to avoid any delays.

8 WHAT NEXT?

If you are an Overseas Entity you should:

- **Review** your property interests particularly when they were acquired (if this was since 8 December 2014) or disposed of (in the case of disposals since 28 February 2022);
- **Identify** any interests or dealings that trigger the registration requirements (and if any, whether any key dates are critical to achieving ROE Registration), and any lending for which the lender may insist on registration.

Note: Timing may be particularly critical in the run up to completion of a transaction, or in the month before the end of the Transitional Period when volumes of applications to register may impact on how quickly verifications and registrations can be processed.

- **Notify** the beneficial owners who need to confirm their details;
- **Engage** a verifier who can complete the verification process;

- **Register** (or instruct registration on your behalf) by the relevant deadline (see **Key Dates** above), and
- **Update** your registration annually as required.
- If you are dealing with an Overseas Entity, you should **ensure that the contracts include the necessary obligations regarding ROE registration**. We would be delighted to assist with this.

Note: Double reporting may be required for Overseas Entities in other transparency regime registers such as the Register of Persons Holding a Controlled Interest in Land (Scotland only) and the Trust Registration Service. Different businesses and individuals will be subject to the regimes in different ways and each matter will need to be considered carefully.

Additional information

Some useful explanatory notes to the Act, preceding Bill and technical guidance are noted below. A further bill has been published and there will be some further technical amendments as a result.

- **Legislation:** [Economic Crime \(Transparency and Enforcement\) Act 2022 \(legislation.gov.uk\)](#) and [Economic Crime and Corporate Transparency Bill - Parliamentary Bills - UK Parliament](#)
- **Explanatory notes:** [Economic Crime \(Transparency and Enforcement\) Act 2022 - Explanatory Notes \(legislation.gov.uk\)](#)
- **Register of Scotland guidance:** [Registers of Overseas Entities Scenarios \(ros.gov.uk\)](#)
- **Verifiers guidance:** [Register of Overseas Entities: guidance on registration and verification - GOV.UK \(www.gov.uk\)](#)

Verifiers

Companies House have a list of UK regulated verifiers available here: [List of UK-regulated agents who can complete verification checks on beneficial owners of an overseas entity - GOV.UK \(www.gov.uk\)](#)

Others include:

- Crestbridge
- Dixcart
- GlobalX
- Maples
- Ocarian
- Vistra

This note provides an overview of ROE requirements which are complex in places. It should be noted that this briefing note sets out a summary of the requirements in relation to the ROE at the time of writing. It is for information purposes only and should not be regarded as legal advice.

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