



Department for  
Business, Energy  
& Industrial Strategy

# A REGISTER OF BENEFICIAL OWNERS OF OVERSEAS COMPANIES AND OTHER LEGAL ENTITIES

The Government response to the call for  
evidence

March 2018

A decorative blue arc that starts on the left side of the page, curves upwards and then downwards, ending with a small blue dot on the right side.

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# **A REGISTER OF BENEFICIAL OWNERS OF OVERSEAS COMPANIES AND OTHER LEGAL ENTITIES**

## **The Government response to the call for evidence**

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## Introduction

1. The Department for Business, Energy and Industrial Strategy (BEIS) published a call for evidence on 5 April 2017 on proposals for a register showing who owns and controls overseas companies and other legal entities that own UK property or participate in UK government procurement. This follows the discussion paper of March 2016 and the announcement of the register at the International Anti-Corruption Summit in May 2016.
2. This response sets out how the Government plans to implement the register in the light of the responses to the call for evidence and other views gained through the wider consultation process. It outlines how the policy proposals have developed since April 2017.
3. Following publication of this response, the Government will develop legislation to create the new register and intends to publish a draft Bill for scrutiny this summer. The Government intends to introduce 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.
4. The new register will be the first of its kind in the world, and builds upon the UK's global leadership in tackling corruption. As stated in the call for evidence, the downside of demonstrating such leadership is that the Government does not have an existing model to work from. The Government will therefore proceed cautiously, striking the right balance between improving transparency and minimising burdens on legitimate commercial activity.

## Summary of responses

5. The call for evidence received 56 responses from a wide range of stakeholders. 21 responses were from representative bodies; 19 were from businesses; 6 were from non-governmental organisations; 8 were from individuals; 1 was from a local government body, 1 was from a Crown Dependency government body.
6. Where the response refers to proportions of respondents, it is with reference to the total number who responded to each question (not the total who responded to any part of the discussion paper; many respondents answered only the portion of the questions of interest to them).

7. In addition to the call for evidence, the Government engaged businesses, representative bodies and non-governmental organisations through a series of meetings to discuss the proposals in detail and gather a wide range of views. Since the period for receiving views formally closed, we have continued to engage with interested parties and to take their views into consideration.
8. A full list of respondents to the call for evidence is included in Annex 1.

# Responses to the call for evidence

## The scope of the new register

**Question 1: Do you agree that all legal forms that can hold properties should be in the scope of the new register's requirements? If not, what legal forms should we consider an exemption for and why?**

9. The vast majority of responses to this question agreed that all legal forms that can hold property should be in the scope of the new register's requirements.
10. Several responses suggested that trusts should also be included. Unlike companies, trusts are typically used by private individuals for managing family owned assets including for minors and vulnerable family members. HMRC have recently set up the Trust Registration Service and the data is shared with law enforcement which should allow them to identify who owns and benefits from trusts. Publishing these persons' details would not be proportionate and effective especially as disclosure would undermine family confidentiality.
11. The Government intends that all legal forms which can hold properties will be within the scope of the new register's requirements, while ensuring that there is flexibility in the regime to permit exemptions for types of entity if this seems appropriate (e.g. to reduce burden where there is already transparency of beneficial ownership information).

## Leasehold

**Question 2: Is the suggested definition of leasehold appropriate?**

**Question 3: Will setting the leasehold definition at leases over 21 years create any unintended consequences?**

12. The majority of respondents to question two did not support the suggested definition of leasehold, with several feeling that the definition was not analogous to freeholds. Having explored the issue further, the Government has come to the view that, in order to ensure that the policy works effectively with land registration processes, the definition needs to be based on whether a lease requires registration.

13. The Government intends to include all leases of registrable duration in the scope of the new register's requirements.

## Defining a beneficial owner

**Question 4: Do you agree that the definition of beneficial owner for the new overseas register should be aligned to the definition of people with significant control (PSC) in the PSC regime?**

14. The vast majority of respondents agreed that the definition of beneficial owner for the new register should be aligned with the definition of PSC in the PSC regime. Some respondents wanted the thresholds of ownership and control to be lowered to capture more individuals, while some felt the definition should not be aligned because of the differences between the two registers.

15. As set out in the call for evidence, this definition is based on international best practice developed by the Financial Action Task Force and subsequently adopted in EU anti - money laundering legislation. Using the same definition will avoid mismatches with information on UK companies and prevent manipulation of holding structures.

16. The Government intends that the definition of beneficial owner for the new overseas register will be aligned to the definition of PSC in the PSC regime.

## Adaptations to definition of people with significant control

**Question 5: Do you agree that entities that are not similar to UK companies limited by shares should use these adaptations to identify their beneficial owners?**

**Question 6: Do these adaptations provide sufficient flexibility in the beneficial owner conditions to apply to most legal entities? If not, what additional adaptations should there be?**

17. The vast majority of respondents to question 5 agreed that entities which are not similar to UK companies limited by shares should use the adaptations listed in the call for evidence to identify their beneficial owners. The majority of respondents to question 6 did not raise concerns about the flexibility in the beneficial owner conditions to apply to most legal entities.

18. The Government intends that entities that are not similar to UK companies limited by shares should use the adaptations listed in the call for evidence to identify their beneficial owners.

## Raising awareness about the register

### **Question 7: What methods of raising awareness would be most effective?**

19. Respondents provided a wide range of suggestions, including the involvement of government organisations, professional bodies and other stakeholders.

20. The Government will take account of these suggestions as it develops a communications strategy in the run-up to implementing the new register.

## Economic impacts

### **Question 8: Do you have any information that is relevant to our assessment of the cost and benefits of the policy to businesses, society and the economy?**

### **Question 9: What, if any, impact do you think that the proposed policy will have on the UK property market (residential and commercial)? Please describe the impacts and provide evidence.**

21. The Government received a wide range of information in response to question 8, including assessments of the benefits of overseas investment in the UK property market and the negative impact of illicit finance. The Government will consider the information provided as part of the impact assessment that will be completed ahead of the implementation of the new register.

22. A majority of respondents to question 9 thought the new register could have a negative impact on the UK property market by deterring overseas investors and making the UK property market less competitive on a global level. Some respondents thought the proposed policy would have a positive impact by improving the reputation of the UK property market.

23. The Government will take account of the impacts described by respondents in the further development of the policy and has commissioned research on the impact of the new register on overseas investment in the UK property market.



## Entities that already own property

### **Question 10: Do you agree that the duration of the period given to overseas entities to comply with the new requirements should be one year?**

24. Respondents were roughly evenly split between those who agreed that the duration of the period given to overseas entities to comply with the new requirements should be one year and those who felt that one year was not long enough for overseas entities to comply. Having explored the issue further, the Government has come to the view that it is appropriate for overseas entities to have a longer period of time to comply and will consider the extent to which the one year period should be extended. The Government intends to strike a balance which ensures overseas entities have sufficient time to comply or sell the property while ensuring that the policy's underlying objective is achieved in a reasonable timeframe.

## Entities that wish to buy property

### **Question 11: Is a system of statutory restrictions and putting notes on the register, backed up by criminal offences, a comprehensive way to ensure compliance?**

25. The majority of respondents thought that a system of statutory restrictions and putting notes on the relevant land register, backed up by criminal offences would be a comprehensive way to ensure compliance. Several respondents raised concerns about whether criminal offences were proportionate. As outlined in the call for evidence, there is a need to provide an effective sanction for those entities which may have no plans to sell, lease or mortgage their property to ensure that they provide the information and keep it up-to-date.

26. The Government intends to introduce a system of statutory restrictions and of putting notes on the relevant land register, backed up by criminal offences.

## Overseas entities buying property after the law comes into force

**Question 12: Do you agree that we should prevent any beneficial interest in the property passing to an overseas legal entity that does not have a valid registration number at completion or settlement?**

**Question 13: Do you agree that the most appropriate way to do this would be to void the transfer document?**

**Question 14: Is there another way that we could achieve this result?**

27. Respondents to question 12 were roughly evenly split on whether beneficial interest in the property should pass to an overseas legal entity that does not have a valid registration number.
28. A clear majority of respondents to question 13 thought that voiding the transfer document was not the most appropriate way to ensure compliance and that the registration should instead be restricted. A significant number of respondents felt that preventing legal title from passing would be a sufficient deterrent.
29. Having explored the issues further, the Government has come to the view that preventing the transfer of beneficial interest and voiding the transfer document would not be workable within the broader framework of land law and could have damaging consequences for innocent third parties.
30. The Government therefore intends to allow beneficial interest but not legal title to pass to an overseas legal entity that does not have a valid registration number at completion or settlement.

## Registration for overseas entities wishing to bid on UK government contracts

**Question 15: Which is your preferred option for procurement and why?**

31. Only 14 of the 56 respondents to the call for evidence responded specifically to the procurement questions. Of those that did, most preferred the option of treating bids without specified beneficial ownership information as incomplete or non-compliant and rejecting them on these grounds. Respondents suggested capturing beneficial ownership for all bidders, and not just for the successful bidder.

32. The Government is not seeking to adopt this approach as it remains concerned that requiring the information from all bidders may be disproportionate to achieving the policy aim of knowing more about the suppliers Government is doing business with. In the absence of evidence presented as to why it would be necessary for all bidders to provide beneficial ownership information in order to meet the policy aim, the Government intends to require the preferred supplier to provide its beneficial ownership information as a condition of being awarded the contract.

## Information required about beneficial owners

### **Question 16: Do you agree that the information on the new register for overseas entities should be the same as the information required under the PSC regime?**

33. The great majority of respondents agreed that the information on the new register for overseas entities should be the same as the information required under the PSC regime. There were also suggestions for additional information (including political exposed person (PEP) status, exact percentages of ownership, Legal Entity Identifier code and citizenships held) that could be required.

34. The Government intends to require the same information for the new register as the information required under the PSC regime.

## When entities cannot get information about their beneficial owners

### **Question 17: Do you agree that entities unable to give information about beneficial owners should be asked to provide information about their managing officers?**

35. The clear majority of respondents agreed that entities unable to give information about their beneficial owners should be asked to provide information about their managing officers. Some respondents disagreed, questioning the usefulness of the information and raising concerns over the effort required to comply.

36. As outlined in the call for evidence, the Government considers it important to ensure that there will always be at least some additional information on the control of overseas entities that are subject to the new register.

37. The Government intends to require that entities unable to give information about their beneficial owners will be asked to provide information about their managing officers.

**Question 18: Is there any additional information that we should ask for from entities that are unable to give information about their beneficial owners?**

38. Respondents were roughly evenly split on whether there is any additional information that we should ask for from entities that are unable to give information about their beneficial owners. There was a range of suggestions for additional information (including shareholder register, individual who appointed the managing officers and ultimate parent company).
39. The Government intends to request the information set out in the call for evidence and will consider the benefits of additional requirements.

**Keeping the information on the register up-to-date**

**Question 19: Is a requirement for an update every two years appropriate?**

40. The clear majority of respondents felt that two years was too long as a period to require an update.
41. Several respondents suggested that event-driven updates would be the best approach. The Government is not seeking to adopt this approach as it is important that there is an element of predictability in the update process due to the interaction of the overseas registration number with the conveyancing process. By having a regular update requirement, it will be clear to the overseas entity and any third party doing business with the overseas entity when the next update is due.
42. Having explored the issue further, the Government is considering increasing the frequency of the update in order to achieve the right balance between maintaining an accurate register without creating undue costs and burdens. We will set out our preferred approach when publishing draft legislation.

**Question 20: Would a criminal offence be an appropriate way of enforcing the requirement to update information?**

43. Respondents were roughly evenly split on whether a criminal offence would be an appropriate way of enforcing the requirements to update information.

44. While several respondents questioned whether criminal offences were proportionate, others felt that there should be additional measures. As outlined in the call for evidence, there is a need to provide an effective sanction for those entities which may have no plans to sell, lease or mortgage their property
45. The Government intends to establish a criminal offence to enforce the requirement to update information.

## Compliance

### For entities that own property

#### **Question 21: Do our proposals achieve the right balance between ensuring compliance and enabling overseas entities to maintain existing assets?**

46. Respondents were roughly evenly split on whether the proposals achieve the right balance between ensuring compliance and enabling overseas entities to maintain existing assets.
47. Some respondents felt the proposals achieved the right balance in respect of new property transactions but not for existing property owners. The Government's view, as set out in the call for evidence, is that it is important for the effectiveness of the policy that the mechanisms for ensuring compliance are effective for both scenarios.

### For entities participating in procurement

#### **Question 22: Are these mechanisms enough to deal with situations where bidders provide false beneficial ownership information or do not keep their information up-to-date?**

48. The majority of respondents agreed the mechanisms were appropriate and noted a termination clause would be beneficial.
49. Some respondents suggested making bidders for contracts subject to penalties if found to have provided misinformation or failed to update beneficial ownership information. The Government is not seeking to adopt this approach. Its view is that because of the comparatively short duration of contracts compared to periods of property ownership, contractual mechanisms provide a more proportionate means through which to address the provision of false information.

## Protection regime

**Question 23: Do you think that this provides the correct balance between protecting individuals from harm and ensuring transparency of how properties are owned?**

**Question 24: Are there additional situations we should consider where protections should be granted?**

50. The clear majority of respondents to question 23 believed that the protection regime measures set out in the call for evidence provide the correct balance between protecting individuals from harm and ensuring transparency of how properties are owned.

51. Several respondents objected to the register being public on the grounds that it was not proportionate to the aims of the policy. The Government's view, as set out in the call for evidence, is that it is one of the essential aspects of the register that it is publicly and easily accessible in order to improve the transparency and accountability of overseas legal entities operating in the UK.

52. Respondents were roughly evenly split on whether there are any additional situations the Government should consider where protections should be granted. Several respondents suggested that further protection should be considered for residential addresses of the named individuals; the Government will consider options in this area.

53. The Government will take account of the suggestions made in the further development of the protection regime.

**Question 25: Are there other situations where exemption from putting information on the register should be permitted for entities participating in procurement?**

54. The majority of respondents who answered this question agreed there were no other situations where exemption, from putting information on the register, should be permitted for entities participating in procurement.

## Third party protections

**Question 26: How can we best ensure that only legitimate lenders are able to repossess and dispose of a property with a restriction against it?**

55. A clear majority of respondents did not consider defining legitimate lenders to be workable. Having explored the issue further, the Government has come to the view that such a distinction would be impractical to create and implement.

**Question 27: We are interested in views and evidence of other commercial transactions that could be disrupted by the proposed restrictions regime.**

**Question 28: Are there additional third party impacts that should also be addressed?**

56. Respondents set out a range of commercial transactions and third party impacts (including land options, statutory rights, pre-emption rights, co-ownership, off-plan purchases, rights of collective enfranchisement, joint ventures) that they thought could be disrupted by the proposed restrictions regime.

57. After exploring this range of scenarios, the Government is confident that pre-existing contractual and statutory rights will be protected.

58. Several respondents were concerned that minority stakeholders in a joint venture could be unfairly penalised as a result of the restrictions. As stated in the call for evidence, the Government does not believe that the register's requirements will alter the position and rights of overseas entities in these arrangements.

59. Several respondents were concerned that the policy could prevent the appointment of insolvency practitioners. The Government is developing the policy to ensure that it is compatible with insolvency procedures.

## Annex 1: List of Respondents

BDO LLP

Berwin Leighton Paisner LLP

Bond Anti-Corruption Group

Bond Dickinson

Boodle Hatfield LLP

British Bankers Association

British Property Federation

Burges Salmon LLP

Cifas

City of London Law Society

City of London Law Society Financial Law Committee

Clifford Chance

CMS Cameron McKenna Nabarro Olswang LLP

Council for Licensed Conveyancers (CLC)

Council of Mortgage Lenders

Deloitte LLP

Family Office Real Estate Advisers (FORA)

Financial Transparency Coalition

Forsters LLP

Freshfields Bruckhaus Deringer LLP

Global Witness



International Financial Centres Forum

Investment Property Forum

Isle of Man Government

Jersey Finance

Katten Muchin Rosenman LLP

Loan Market Association

London Mayor

Rt Hon Dame Margaret Hodge

Maurice Turner Gardner

McDermott Will & Emery UK LLP

Open Corporates

Open Ownership

PricewaterhouseCoopers

Property Mark – National Association of Estate Agents

Scottish Land & Estates

Scottish Property Federation

Shelter

Shepherd and Wedderburn LLP

Standard Life Investments

Stephenson Harwood LLP

Taylor Wessing

The Association of Investment Companies

The Committee for Legislation Against Money-laundering in Properties by Kleptocrats (ClampK)

The Institute of Chartered Accountants in England and Wales (ICAEW)

The Law Society of England and Wales

The Law Society of Scotland

Transparency International UK

Withers LLP

We received seven further responses from individuals.

