

FAQs on the impact on English, Scottish and Welsh real estate of the Economic Crime Act

1. What does the Economic Crime (Transparency and Enforcement) Act 2022 (“Act”) do?

This provides for the setting up on 1 August 2022 of a Companies House register for overseas entities that own certain property registered at the Land Registry or Land Register of Scotland. The register contains information about the entity and its beneficial owners. The Act impacts on real estate transactions and their registration. The Act affects the United Kingdom, but these FAQs only relate to England, Scotland and Wales.

2. Is all property affected?

No. For England and Wales, it affects freeholds and leases for more than 7 years that are or will be registered at the Land Registry in the name of an overseas entity. Unaffected are properties where the entity became the owner before 1 January 1999.

For Scotland, it affects leases for more than 20 years and heritable interests that were registered in the Land Register of Scotland on or after 8 December 2014.

3. Who is impacted?

An overseas entity which owns or is applying to register ownership of affected property. Any funder to such an entity. Any party entering into certain property transactions with the entity. The entity’s officers.

4. Which transactions are affected?

For England and Wales - transfer of a freehold or a lease for more than 7 years; a legal charge; and a grant of a lease for more than 7 years.

For Scotland – a disposition (transfer of heritable interest); a grant of a long lease (over 20 years); the assignation of a long lease; the grant of a standard security; an application for voluntary registration; and a notice of title.

5. What does an overseas entity include?

A body corporate, partnership or other entity that is a legal person governed by the law of a country or territory outside the United Kingdom. So this would include Jersey, Guernsey and Isle of Man entities. Overseas individuals owning UK property directly or through a UK entity are unaffected.

6. How does this affect an overseas entity purchaser or tenant?

For England and Wales - An application to register an affected transaction made to the Land Registry from 5 September 2022 will be cancelled if the overseas entity is not already registered on Companies House’s

register of overseas entities. A cancellation increases the possibility of other transactions affecting the relevant property being registered at the Land Registry in priority to the entity's purchase or lease or related funding.

For Scotland - an application to register an affected deed will be rejected.

7. How does this affect a funder to an overseas entity purchaser or tenant?

If the application to register the relevant charge is made to the Land Registry or Land Register of Scotland from 5 September 2022, the entity must be registered on Companies House's register at the time of the charge and also at the time of the application to the Land Registry or Land Register of Scotland.

8. How does this affect an existing overseas entity owner of relevant registered property?

The entity must apply to be registered on the Companies House register before 1 February 2023. Details must also be provided to Companies House of any transfer, legal charge or lease for more than 7 years (or more than 20 years for Scotland) entered into since 28 February 2022. In England and Wales the Land Registry will enter a restriction on the title to the entity's properties.

9. What does the restriction do?

It prohibits any registration from 1 February 2023 of any transfer, legal charge or lease for more than 7 years unless an exception applies, in particular, that the entity was registered on the Companies House register at the time of the transaction. There is an equivalent restriction for when an overseas entity purchaser or tenant is registered, but this takes effect immediately.

10. What does the Company House registration involve?

- Providing prescribed information about the entity, its registrable beneficial owners (including, where a registrable beneficial owner is a trustee, about the trust) and, where applicable, its managing officers.
- A so-called "supervised agent" (known as a "relevant person" in the Act) must have verified the information. The supervised agent must be independent of the entity and beneficial owner and must be a business carried on in the United Kingdom. The agent can include credit and financial institutions; auditors, insolvency practitioners, external accountants and tax advisers; independent legal professionals; trust or company service providers; and estate agents and letting agents, with certain exceptions. Some UK law firms will not provide the verification statement due to concerns about the process, but there are a number of providers of this verification service in the market.
- Before application is made to Companies House, the entity must give an information notice to each beneficial owner requiring them to provide and confirm certain information. The beneficial owner has up to one month to respond.

11. Who are the registrable beneficial owners?

In broad terms, anyone who:

- holds, directly or indirectly, more than 25% of the shares or voting rights in the overseas entity;
- holds the right, directly or indirectly, to appoint or remove a majority of the board of directors of the overseas entity;
- has the right to exercise, or actually exercises, significant influence or control over the entity; or
- has the right to exercise, or actually exercises, significant influence or control over the activities of a trust, partnership or other non-legal entity, where the trustees or members of such trust, partnership or other non-legal entity meet any of the above in relation to the overseas entity;

and who is considered 'registrable' under the regime.

The analysis of ownership structures for the new register broadly follows the UK's Persons of Significant Control regime. Each entity will require its own analysis.

12. Will the information at Companies House be publicly available?

The contents of the register will for the most part be available to the public, except for the day of the month of any birthdate, residential and email addresses, required information about trusts (although it may be shared with HM Revenue & Customs) and any information specifically protected by application to Companies House.

13. What does the entity receive for its registration at Companies House?

An overseas ID which must be provided to the Land Registry or Land Register of Scotland to enable registration of transactions. The Companies House information must be updated annually and failure to do so will invalidate the ID.

14. Are there sanctions for non-compliance with the Act?

Yes, including criminal sanctions both for the entity and its officers, punishable by a fine and/or imprisonment of up to 5 years.

This is a summary of some of the key points from the Economic Crime (Transparency and Enforcement) Act 2022. For further details, see [Update on the implications of the Economic Crime Act for real estate \(cms-lawnow.com\)](#) and [Staggered implementation of the Economic Crime \(Transparency and Enforcement\) Act – an update for real estate lenders \(cms-lawnow.com\)](#)