

Draft Registration of Overseas Entities Bill

Response from NAEA Propertymark

September 2018

Background

1. NAEA Propertymark is the UK's leading professional body for estate agency personnel; representing more than 11,000 offices from across the UK property sector. These include residential and commercial sales and lettings, property management, business transfer, auctioneering and land.
2. NAEA Propertymark is dedicated to the goal of professionalism and by appointing an NAEA Propertymark agent to represent them consumers will receive in return the highest level of integrity and service for all property matters. NAEA Propertymark agents are bound by a vigorously enforced Code of Practice and adhere to professional Rules of Conduct. Failure to do so can result in heavy financial penalties and possible expulsion from the organisation.

Questions

1. Types of overseas entities that may not have beneficial owners or managing officers

Question 1.1: Are there any types of overseas entities that do not have beneficial owners and/or managing officers, who are in scope of the regime but would not have a route to be able to comply?

3. We are not aware of any types of overseas entities that do not have beneficial owners and/or managing officers, who are in scope of the regime but would not have a route to be able to comply.

2. Power to exempt types of overseas entities from the requirement to register

Question 2.1: Is it reasonable to keep the current requirements applicable as they relate to foreign governments and public authorities as beneficial owners? If not, how can the regime be modified to keep with the intent of the policy?

4. No, we do not think it is reasonable to keep the current requirements applicable as they relate to foreign governments and public authorities as beneficial owners.
5. We believe that the regime should be modified to ensure that foreign governments and public authorities provide annual updates to the register. Under the Fourth Money Laundering Directive estate agents must identify when a seller, buyer or beneficial owner is a Politically Exposed Person (or a family member or close associate of one) and undertake Enhanced Due Diligence. However, there is no central database

for checking Politically Exposed Persons. By ensuring that foreign governments and public authorities provide annual updates to the register this will make it easier for agents to comply with their legal responsibilities.

Question 2.2: Do you consider that foreign governments and public authorities should be exempt from the requirements to register in the overseas entities register? Please provide evidence as to why this should or should not be the case.

6. Yes, we do consider that foreign governments and public authorities should be exempt from the requirements to register in the overseas entities register unless they meet one of the five conditions of beneficial ownership as defined in Schedule 2 of the Bill or there is a reasonable excuse not to comply.

Questions 2.3: Are there other types of overseas entities that you consider should be exempt from the regime? If so, please explain why and provide evidence.

7. No, we do not consider that there are other types of overseas entities that should be exempt from the regime.
8. At this point we would like to raise the issue that we are unclear from reading the Bill whether foreign governments and public authorities covers inter-governmental and non-government organisations such as North Atlantic Treaty Organisation (NATO), European Commission, International Criminal Police Organisation (Interpol) who may own, purchase, sell or rent property in the UK.

Question 2.4: How should the power described at paragraph 18 be exercised to apply in a coherent and workable way in relation to these types of entities?

9. We are content for the Secretary of State to specify whether certain entities fall within the scope of the rules.

3. Power to modify the application of the regime for types of overseas entities

Question 3.1: Are there other types of overseas entities that you consider should have their application and update requirements modified in relation to an application to register in the overseas entities register and to their updating duty?

10. We do not consider that there are other types of overseas entities that should have their application and update requirements modified in relation to an application to register in the overseas entities register and to their updating duty.

Questions 3.2: Do you consider that the application requirements for those overseas entities that have already declared their beneficial ownership information on a public register overseas should be modified?

11. Yes, we do consider that the application requirements for those overseas entities that have already declared their beneficial ownership information on a public register overseas should be modified. We are concerned about the usability and compatibility of beneficial ownership information on public registers overseas. Consequently, the information should also be provided on the UK register.

Question 3.3: How should this power be exercised to apply in a coherent and workable way in relation to the types of entities described at Questions 3.1 and 3.2 above? For example, what criteria should be used to determine which registers may be considered “equivalent”?

12. We believe that the criteria to determine which registers may be considered equivalent should focus on ensuring the same accessibility of information. The detail must be the same and take into consideration public registers overseas that are in different languages.

4. Registration of entities unable to identify their beneficial owners

Question 4.1: Should it be possible for an entity to register without providing full details of its beneficial owners in the circumstances explained in paragraph 25?

13. Yes, it should be possible for an entity to register without providing full details of its beneficial owners where an overseas entity, despite taking reasonable steps to identify its beneficial owners, it has been unable to do so, or it has been able to identify them but has not got complete information about them. This is because we recognise that other countries have different registered company structures.

Question 4.2: If so, should this be the case only in specified circumstances, and, if so, what should these be (for example, for those entities that already own land in the UK when the provisions commence)?

14. Yes, we do think this should be the case only in specified circumstances. For instance, an overseas entity should be able to register, but unable to enter into a transaction to sell or purchase property or land unless they can identify the beneficial owner.

5. Scope of the prohibitions to certain dispositions relating to land

Question 5.1: Do you agree the inhibition in Northern Ireland shouldn't capture the granting of leases for less than 21 years without occupation (noting the inhibition also currently doesn't capture leases for less than 21 years with occupation)?

15. Yes, we agree the inhibition in Northern Ireland shouldn't capture the granting of leases for less than 21 years without occupation. We recognise that it is not possible for the Northern Ireland Land Registry to identify existing overseas entities that own land prior to commencement.

Question 5.2: Are there any unintended consequences if applications for registration as a proprietor by a "perspective claimant" in Scotland are prevented in the situation where either the prescriptive claimant is the overseas entity that is not "registered overseas entity" within the meaning of the Bill, or where the application is in relation to land owned by an overseas entity that is not a "registered overseas entity"?

16. We do not believe there are any unintended consequences if applications for registration as a proprietor by a "perspective claimant" in Scotland are prevented in the situation where either the prescriptive claimant is the overseas entity that is not "registered overseas entity" within the meaning of the Bill, or where the application is in relation to land owned by an overseas entity that is not a "registered overseas entity".

6. Power to disapply the effect of the prohibitions placed on land

Question 6.1: Do you consider the Bill should include provisions to allow an "appeal" of the effect of the prohibitions placed on the property, and/or a power by the Secretary of State to "disapply" the effect on a case-by-case basis? If so, in what scenarios should this be used, and what evidence should be required? Given the concept of owner's powers is unique to England and Wales, should any such provisions only apply in England and Wales?

17. Yes, we do consider the Bill should include provisions to allow an "appeal" of the effect of the prohibitions placed on the property. There should always be a route for appeal because circumstances might arise not covered by the legislation. Any appeal should go to Secretary of State and decide on a case by case basis.
18. We do not have any information relating to the scenarios where this should be used.

19. Yes, given the concept of owner's powers is unique to England and Wales, the provisions should only apply to these jurisdictions.

7. Exceptions to prohibitions placed on land

Question 7.1: Are there other exceptions, in respect of England and Wales, Scotland or Northern Ireland that you consider should be included in the Bill?

20. No, we do not consider that there are other exceptions, in respect of England and Wales, Scotland or Northern Ireland that should be included in the Bill.