

EVOLUTION NOT REVOLUTION: THE ECONOMIC CRIME (TRANSPARENCY AND ENFORCEMENT) ACT 2022

1. Introduction

The rapid journey of the [Economic Crime \(Transparency and Enforcement\) Act 2022](#) came to an end in the early hours of 15 March 2022. Its measures (particularly in relation to overseas owners of UK property) have been in discussion for years, but Russia's invasion of Ukraine resulted in the fast-tracking of provisions intended to simplify identifying, tracing and enforcing against ill-gotten wealth.

Despite the circumstances of the Act's arrival, the introduction of a new register of overseas entities, amendments to Unexplained Wealth Orders and updates to the sanctions framework may not be quite as dramatic as they sound. But as the last few weeks have demonstrated, companies will need to be mindful of more than just strict legal tests.

2. Registration of Overseas Entities

Part 1 of the Act will introduce a new beneficial ownership register. Any company incorporated overseas wishing to be registered as owner of a freehold or leasehold interest in land will need to register with Companies House and identify its beneficial owners. The land registries in England and Wales, Scotland and Northern Ireland have been given the task of policing the new registration regime.

The key points to note when these provisions are brought into force are:

- Unless exempt, an unregistered overseas entity cannot be registered as the legal proprietor of property (i.e., the entity with power to sell, let or charge the property).
- The Land Registry will enter a new restriction on title to prevent the registration of any sale, letting or charge of property by an unregistered overseas entity already owning property (and any such disposition will be a criminal offence).

- The restriction will not apply to certain dispositions, including those made by registered mortgagees exercising their power of sale, those made pursuant to a statutory obligation or court order and those arising by operation of law.
- Overseas entities already owning registered land have six months in which to become registered, failing which they will commit an offence.
- The regime is retrospective and applies to overseas entities that became the registered proprietor of land pursuant to an application made to the Land Registry on or after 1 January 1999.
- Similar regimes will apply in respect of property in Scotland and in Northern Ireland.
- Finally, the criteria for identifying the beneficial owner of an overseas entity are modelled on the Persons with Significant Control regime. It is not yet clear the extent to which this new information will be integrated with existing information held at Companies House.

For real estate transactions involving an overseas entity, it will now be essential to ensure compliance with the new registration requirements. For the vast majority of transactions, this additional element of administration and due diligence should not be a significant issue. The threat of a criminal penalty - up to five years imprisonment - should be sufficient to ensure that legitimate overseas investors and their advisers are quick to adapt to the new regime.

It is important to note that the Act does not introduce a register of beneficial ownership of land itself, only of overseas owners of land. Both UK and overseas companies may still hold interests in UK property on trust for overseas beneficiaries, without any requirement for disclosure in a public register.

3. Unexplained Wealth Orders

Unexplained Wealth Orders (“UWOs”) were introduced by the [Criminal Finances Act 2017](#), which amended the [Proceeds of Crime Act 2002](#). A UWO is an investigatory tool used by law enforcement, which requires a respondent to explain the origins of their wealth where their assets appear disproportionate to their known lawfully obtained income. UWOs place the burden of proof on a respondent to explain that a particular asset has been obtained through legitimate means.

To date, UWOs have only been used nine times, with an estimated total value of £143.2 million. A [research briefing](#) issued by the House of Commons Library in February 2022 was critical of the UWO regime, suggesting that UWOs “are yet to have the desired impact”: no UWOs have been obtained since the end of 2019, and the only agency to employ UWOs so far has been the National Crime Agency.

[Part 2](#) of the Act introduces changes which will strengthen the UWO regime in three material ways:

- Where the respondent to a UWO is a legal (rather than natural) person, the application by law enforcement may name a “responsible officer” of the entity, including a director, board member, manager, or trustee. The Act permits that the responsible officer may be located abroad. ([Section 45](#))
- Where an interim freezing order has been sought at the same time as a UWO, law enforcement can be given additional time - from 60 days up to 186 days, on application to the court - to investigate the material received before the freezing order is discharged. ([Section 49](#))
- The financial liability of pursuing a failed UWO is reduced, as long as the law enforcement agency has demonstrated it behaved reasonably and honestly. ([Section 52](#))

UWOs will have little impact on corporate clients. For financial services institutions or asset managers who hold assets of a respondent to a UWO, there may be an additional administrative burden that accompanies the need to freeze a respondent’s assets for a longer period of time. Given the political climate, an institution may have to answer questions brought by the Financial Conduct Authority as to the adequacy of financial crime systems and controls at identifying source of wealth or funds. The FCA or other agencies may also query a firm’s reasons for continuing to hold assets on behalf of a potentially high risk client.

4. Sanctions

The Office of Financial Sanctions Implementation (“OFSI”) is the UK’s sanctions enforcement agency. Breaches of sanctions legislation can be enforced on either a civil or criminal basis, with large fines and imprisonment for individuals applicable on conviction. Despite having criminal enforcement powers, OFSI has only brought [six enforcement actions](#) - all civil - since the agency’s creation in 2016. The largest fine issued was in 2020 against Standard Chartered Bank, amounting to £20.47 million.

[Part 3](#) of the Act amends the sanctions designation and enforcement framework. Key features are listed below.

- OFSI will have the power to enforce sanctions breaches on a strict liability basis. [Section 54](#) of the Act will remove the existing defence - to a civil action only - that a person did not know, or have reasonable cause to suspect, that their transaction or activity was in breach of sanctions.
- [Section 56](#) of the Act enables OFSI to report the names of companies it had found, on the balance of probabilities, breached sanctions, but were not issued a fine.
- Finally, [Section 58](#) of the Act permits the government to rapidly designate individuals or entities for 56 days on an “urgent procedure” basis, if they have been designated by another country (the United States, the European Union, Australia, Canada, or elsewhere as specified by regulation). This urgent procedure is available even when no reasonable grounds yet exist to suspect that the person/entity would otherwise qualify for designation under the available regulations.

The result of these changes is that it will be much simpler for OFSI to bring civil enforcement actions in respect of breaches of sanctions legislation. That, plus an ability rapidly to designate individuals as subject to sanctions, means that companies will need to closely track additions to the UK’s lists to see if their business is affected, and move quickly if so. Companies must also consider the reputational impact of continuing to maintain relationships with any entities in higher-risk jurisdictions, regardless of any pre-sanctions agreements, and regardless of whether the law permits it.

5. Conclusion

Only section 58 of the Act (permitting urgent procedure designation of sanctioned individuals) is currently in force, with the remaining sections expected to be commenced in the coming months.

While the consequences of the Act (and in particular the amendments to sanctions legislation in Part 3) should be taken seriously, and companies will certainly need to consider the new obligations carefully, the rest of the Act does not contain particularly wide ranging or

immediate changes which we anticipate will have a significant impact on companies. It will be important to monitor changes in this area though. A second Economic Crime Bill is promised before the summer term and could be the government's opportunity to introduce a wider "failure to prevent economic crime" criminal offence, which has been debated for years. Perhaps the current political climate will mean that these new laws make it over the line. More generally, responsible businesses will be considering more carefully than ever the reputational implications of where and with whom they do business.

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