



## BRIEFING PAPER

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# Registers of beneficial ownership

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## Summary

Beneficial ownership refers to the person **who ultimately owns or controls an asset** (for example, a property or a company).

The concept of beneficial ownership exists because the direct legal owner of an asset is not necessarily the person who actually controls and benefits from it. For example, the registered legal owner of a residential property may be a company registered overseas, which is controlled by an individual.

There are both lawful and unlawful reasons for wanting to separate the legal and beneficial owners of something. Nonetheless, registers of beneficial ownership provide transparency and play an important role in the fight against corruption, tax evasion and money laundering.

The UK has or intends to have registers of beneficial ownership for three different types of assets: companies, properties and land, and trusts. Information on the beneficial ownership of companies (the People with Significant Control (PSC) register) has been publicly available since 2016, although concerns have been raised about its accuracy. The register for trusts was introduced in 2017 and is not public.

The Government has since 2016 said it plans to launch a public beneficial ownership register for UK property. Despite being mentioned in the December 2019 Queen's Speech the Government has not yet announced when it plans to bring forward legislation to implement such a register.

Around the world, many countries have created or have plans to create registers. In the EU, Member States had to introduce public company beneficial ownership registers by January 2020. As at March 2020, campaign group Global Witness said most had still not done so.

All British Overseas Territories and Crown Dependencies have or will introduce public company beneficial ownership registers. An amendment introduced by MPs to the *Sanctions and Anti-Money Laundering Act 2018* intended to require the UK Government to legislate to ensure British Overseas Territories introduce such registers by the end of 2020, although the Government interpreted this provision differently and British Overseas Territories have now committed to introduce such registers by the end of 2023. Crown Dependencies have also committed to do so after the EU reviews the implementation of its own public registers, in 2022 or 2023.

Our briefing [Economic crime in the UK: a multi-billion pound problem](#) discusses attempts to tackle economic crime, including the role of beneficial ownership registers.

# 1. Background

## 1.1 What is beneficial ownership?

The beneficial owner of an asset is the person who ultimately owns or controls it.<sup>1</sup>

Usually, the *legal* owner of something, and the *actual* owner, will be the same person. But sometimes they can be different. A person might be listed as the legal owner, but in reality they hold the property for someone else (through a trust). Or Land Registry records might show the owner of a house as a foreign company, but not show who owns or controls that company.

### Why have separate legal and beneficial owners?

There are both lawful and unlawful reasons for wanting to separate the legal and beneficial owners of something. These include:

- **Asset management.** If you wanted to gift an asset to someone who wasn't able or willing to manage it for themselves, you might create a trust. For example, you might gift a property to a child, but make their parent the legal owner (the trustee) until the child became an adult.
- **Privacy.** You might want to own something but without others knowing that you own it. It might be because you want to avoid media intrusion or to avoid criminals knowing what you own.
- **Tax.** Someone might want to disguise their ownership of an asset to illegally hide their ownership from tax authorities (tax evasion), or as part of lawful tax structuring.
- **Money laundering.** A criminal might want to avoid suspicion by hiding their connection to property bought using illegally-obtained wealth by having their property registered in the name of someone else or a company.

### What is a register of beneficial ownership?

Register of beneficial ownership are records of who the beneficial owners of something are. When a regulator or an official registrar collects and collates this information in one place, it creates a *central* register of beneficial ownership. They might be publicly available, or only accessible by law enforcement and tax authorities.

## 1.2 Tackling crime with registers of beneficial ownership

Registers of beneficial ownership prevent people from being able to hide assets and income that are ill-gotten or on which they owe tax. For example, a corrupt foreign official might buy a property in the UK through a company registered abroad to try and avoid suspicion that the property has been bought by them using dirty money. If law enforcement could check the register of beneficial ownership for that country, they would know who owns the company, and therefore who

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<sup>1</sup> This is a simplified definition taken from Regulation 6 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017

owns the property. If no such register were available, there would be no way of telling who is behind the company that bought the property.

The register does not have to be public for tax authorities and law enforcement to benefit from it. A non-public register also protects privacy. But a non-public register prevents other interested organisations like NGOs and journalists from accessing the data. Anti-corruption group Transparency International [argues](#) that making the registers public makes them more accurate and useful:

A public, central register is the most effective and practical way to record information on beneficial ownership and facilitate access for the authorities. [...]

Even with the adoption of beneficial ownership registers, however, the reliability of information is likely to remain an issue. The authorities responsible for maintaining such registers often do not have the capacity or the mandate to verify the information provided. Registers should be adequately resourced so they can verify the accuracy of information provided by companies. Making the register publicly available can help minimise the risk of false information, as external watchdogs and even obliged entities (financial institutions and DNFBPs [designated non-financial businesses and professions, such as lawyers and accountants]) could help monitor the information provided.<sup>2</sup>

### 1.3 FATF recommendations

The [Financial Action Task Force](#) (FATF) is an intergovernmental body that develops and promotes policies to tackle money laundering and the financing of terrorism. [39 countries, jurisdictions and regional organisations](#) are members of FATF, including the UK, China, the US and the European Commission. Over [200 jurisdictions](#) have committed to adopting FATF recommendations.

FATF first set standards on beneficial ownership in 2003. Today, its recommendation on transparency and beneficial ownership of legal persons (Recommendation 24) states:

Countries should take measures to prevent the misuse of legal persons for money laundering or terrorist financing. Countries should ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities [such as law enforcement]. [...]<sup>3</sup>

FATF recommends that competent authorities have access to adequate, accurate and timely information on the beneficial ownership and control of legal entities. Its [Guidance on Transparency and Beneficial Ownership](#) explains:

Cooperation between government entities holding such information is essential and communication mechanisms should be established in legislation or regulations to ensure information held by other government entities is accessible in a timely manner. [...]

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<sup>2</sup> Transparency International, [Taking a step back: Why do we care so much about public registers of beneficial ownership?](#), 9 May 2018

<sup>3</sup> FATF, [The FATF Recommendations](#), updated October 2020, p22

## 6 Registers of beneficial ownership

The results of the FATF mutual evaluations have highlighted the fact that in many countries, law enforcement and other competent authorities do possess adequate powers and expertise to obtain information. However, such powers on their own are insufficient to meet the requirements of Recommendations 24 and 25, if adequate information on beneficial ownership is not collected and maintained in the first place. Consequently, it is essential that countries also implement measures to ensure that accurate beneficial ownership information on corporate vehicles will be collected and maintained in the country.<sup>4</sup>

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<sup>4</sup> FATF, [Guidance on Transparency and Beneficial Ownership](#), October 2014, p39

## 2. Registers of beneficial ownership in the UK

The UK maintains, or intends to maintain, central registers of beneficial ownership for three types of assets: companies, properties and land, and trusts.

### 2.1 Companies

Trade, tax and transparency were the key themes of the June 2013 G8 summit in Northern Ireland. To implement commitments made in the summit, the UK agreed to “establish a publicly accessible central registry of company beneficial ownership”.<sup>5</sup>

The UK Government introduced provisions to establish a register of company beneficial ownership in the [Small Business, Enterprise & Employment Act 2015](#). The register launched in 2016 and is known as the [People with Significant Control \(PSC\) register](#). Campaign group Global Witness said this was the world’s first publicly available register of the beneficial ownership of companies.<sup>6</sup> The Government said it was the first in the G20.<sup>7</sup>

Most companies must keep a register of people with significant control over it. There are different ways of identifying whether someone has significant control but it includes for example anyone who holds more than 25% of the shares or voting rights in a company. This could be direct or indirect (such as through another company or trust structure).<sup>8</sup>

Companies must take reasonable steps to identify PSCs, and once the register is set up, they must take steps if they know or believe that the register has become incorrect or incomplete. Failure to comply with these obligations is a criminal offence for both the company and officers of the company responsible for the default.<sup>9</sup>

To find out who has significant control over a company (the beneficial owner), one can search the company on the Companies House website, and click on the ‘people’ tab. For example, the company that used to own BHS, [Taveta Investments Limited](#), has one person with significant control: Lady Cristina Stuart Green (the wife of Philip Green). Alternatively, [the entire PSC register](#) can be downloaded.

Before the PSC register, searches for similar information could only be done by looking at a company’s annual return to see the full list of shareholders. These shareholders could be, and indeed often are, other companies, thus hiding the identity of the individual person in control. For example, the sole shareholder of Project Forty Four Limited is Inday

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<sup>5</sup> See [The 2013 UK G8 Presidency Report](#), p10

<sup>6</sup> Global Witness, [10 lessons from the UK’s public register of the real owners of companies](#), 23 October 2017

<sup>7</sup> Alan Duncan (FCO), Sanctions and Anti-Money Laundering Bill [Lords] debate, 20 February 2018, [Volume 636](#)

<sup>8</sup> See [Schedule 1A](#) to the *Companies Act 2006*

<sup>9</sup> See [sections 790D-709F](#) of the *Companies Act 2006*

Rose Ltd, a company registered in the British Virgin Islands (see the annual return in the company's [filing history](#)). But thanks to the [PSC register](#), we know that the ultimate owner of Project Forty Four is racing driver Lewis Hamilton.

### Calls for improvements to the PSC register

Analysis of PSC data by Global Witness in May 2019 found that:

- the PSC register was accessed more than two billion times in 2017;
- there were 4,252,811 companies to which the PSC regime applied;
- the average number of PSCs per company was 1.16; and
- there were 23 people who controlled more than 100 companies each – such a large number suggests that these people are not the true owners but “fronts” who shield the identity of the true owner.<sup>10</sup>

Global Witness recommended that the Government make the following improvements to the register:

The Government must give Companies House the powers and resources to carry out comprehensive verification of all the information it receives and holds on companies, amending UK legislation accordingly.

The Government must start enforcing its rules and apply sanctions for those that maliciously break the rules - including fines and prison sentences.

Companies House should take a proactive approach to tackling money laundering and other crimes by analysing the company information it holds, identifying suspicious companies and ensuring they are investigated.<sup>11</sup>

One of the criticisms of the register stems from the fact that the information submitted by companies is not verified. Companies House is a *registrar*, not a regulator. By and large, it does not verify the accuracy of what it receives.

In August 2019, the Department for Business, Energy and Industrial Strategy (BEIS) published a [Review of the implementation of the PSC Register](#). The main findings on the use and usefulness of the register were:

- Twenty-two percent of businesses surveyed had used the PSC register to look up information about other businesses. Of the businesses that used the PSC register for this purpose, most considered it to be useful. Furthermore, the PSC register was widely used by stakeholder organisations.
- All Law Enforcement Organisations we spoke to had used the PSC register to inform criminal investigations. The extent to which the PSC register is used by these organisations varied, but most reported using it at least weekly.
- Similarly, all Financial Institutions interviewed as part of this study had used the PSC register. This was mainly to identify the PSCs of prospective corporate clients during the

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<sup>10</sup> Global Witness, [Getting the UK's house in order](#), 6 May 2019

<sup>11</sup> Ibid



onboarding process. All Civil Society Organisations we spoke to had also made use of the register for their work.

- All Civil Society Organisations, most Law Enforcement Organisations and some Financial Institutions felt that the introduction of the PSC register has had a positive effect on their work. This is primarily because the PSC register was felt to have made the process of obtaining information about beneficial ownership quicker and easier, and in some cases cheaper.
- However, some Law Enforcement Organisations and Financial Institutions did not think that the introduction of the PSC register had had a positive effect on their work. This is because, due to concerns about the quality of information held of the PSC register, these organisations did not consider it a reliable source of information about beneficial ownership.
- To improve the quality of the information held on the PSC register, many stakeholders suggested that Companies House introduce both validation (e.g. checks at the point information is submitted) and verification processes (e.g. checks to verify the information submitted). Stakeholders felt that the combination of these two processes would significantly improve the quality of the information held on the PSC register and so make the register more useful.
- Another key way in which stakeholders thought the PSC register could be improved was through the introduction of a unique ID for individuals listed on the register. Stakeholders told us that this would be a valuable addition to the register as it would enable them to quickly identify all the businesses that an individual is listed as a PSC for. There is currently no way of doing this.<sup>12</sup>

Building on the BEIS review, Minister for Climate Change and Corporate Responsibility Lord Callanan announced some reforms of the PSC register in a September 2020 written statement:

These reforms will support the Government's ambition of making the UK the best place in the world to start and grow a business. Businesses will benefit from more reliable information, streamlined and digitised processes and an improved user experience, reflecting the needs of business in the 21st century.

The key measures are:

*Identity verification.* We will introduce compulsory identity verification for all directors and beneficial owners (People with Significant Control) and individuals filing information on behalf of a company.

*Reforms to Companies House powers.* We propose giving the Registrar much stronger powers to query, seek evidence for, amend or remove information and to share it with law enforcement partners when certain conditions are met.

*Protecting personal information.* We will give individuals more rights to remove personal information from the register, to help protect them from fraud and other harms.

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<sup>12</sup> BEIS, [Review of the implementation of the PSC Register](#), BEIS Research Paper number 2019/005, March 2019, pp5-6

## 10 Registers of beneficial ownership

*Company accounts.* We propose mandating electronic filing to bring the UK in line with international best practice and will look to simplify the filing of accounts with Companies House and HMRC. We propose a further consultation on options to deliver these reforms.

Lord Callanan concluded:

The Government will consult on further reforms to make Companies House data more useful and usable, including reforms to the filing of company accounts and the Registrar's powers. Once the detail of all the proposals has been settled, the Government will bring forward legislation to implement the reforms when Parliamentary time allows.<sup>13</sup>

Three consultations consultation was then published which closed on 3 February 2021.<sup>14</sup>

### 2.2 Properties and land

The situation for properties is the same as it was for companies before the PSC register was introduced. Land registries show the direct legal owner of properties, but not the beneficial owner (if it differs from the legal owner).

The Government is planning to introduce a beneficial ownership register for UK properties owned by overseas companies and legal entities. The then Prime Minister, David Cameron, warned foreign companies in his 2016 [anti-corruption summit opening speech](#) that they will be required to disclose the beneficial ownership of UK property, including around 100,000 properties in England and Wales owned by foreign companies.

In April 2017, the [Government consulted](#) on the design of a beneficial ownership register for UK properties owned by overseas companies and legal entities. In the consultation foreword, the Government said that this register would be the first of its kind in the world:

The UK is a world leader in corporate transparency. In 2016 we became the first country in the G20 to introduce a register of company ownership, allowing the public to access a central record of information about who really owns and controls UK companies.

At the International Anti-Corruption Summit held in London in May 2016, we committed to go further, by creating a new register showing the beneficial owners of overseas companies that own or want to buy property in the UK, and of overseas companies involved in central government contracts. [...]

The UK property market should be seen as fair, transparent and clean in order to attract the right investors and owners. [...] This register will be the first of its kind in the world.

In January 2018 the Government set out its intention for the register to be operational in 2021:

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<sup>13</sup> Written [Statement](#) UIN HLWS453, Lord Callanan, 21 September 2020

<sup>14</sup> See the consultations on [powers of the registrar](#), [improving the quality and value of financial information on the UK companies register](#), and [implementing the ban on corporate directors](#)

The Government intends to legislate to establish a public register of beneficial owners of non-UK entities that own or buy UK property, or which participate in UK Government procurement. It will publish a draft Bill before the summer recess this year. This will be a significant piece of legislation that delivers a streamlined policy, consistent across the UK, where currently the Land Registries for England and Wales, for Scotland and for Northern Ireland have taken different approaches to land registration and registration of overseas entities.

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.<sup>15</sup>

Lord Ahmad (FCO Minister) explained the timetable during the report stage of the Sanctions and Anti-Money Laundering Bill in January 2018:

I can confirm that we will publish the draft Bill by the summer recess this year. I can also confirm that formal introduction of the Bill will be a priority for the second Session of this Parliament. We anticipate that being in summer 2019, and doing so will put us on track to implement the register itself, which will be operational by early 2021. [...]

Let me say why early 2021 is the appropriate timescale. First, it is because a dedicated primary Bill is the right way of delivering such a policy, and that will take time, given other pressures on Parliament at present. The Government will therefore introduce legislation as soon as possible, but it is impossible for me to make commitments to do so in the very near term— [...].

Secondly, it is appropriate because that must be followed by secondary regulations, in which we will set out the more technical details underpinning the regime, such as the essential changes needed to the land registration rules. New systems must also be built between Companies House and the three land registries. Their design will depend on the precise content of those regulations. While much preparatory work will be done while the legislation and secondary regulations are passed, there are some inevitable lead times, because the systems and processes can be finalised only after Parliament has approved the legislation.

Finally, an appropriate transition period will be needed to ensure that lenders and other stakeholders can adjust to the new requirements. We believe that the policy must be robust, but fair. Overseas entities that have bought property in the UK, in some cases many years ago, will not have had this in their contemplation at the time. In most cases, the property will have been bought for legitimate and innocent purposes and by those who expected the degree of privacy offered by ownership through a legal entity. We should give those entities, and their beneficial owners, time to understand the requirements and consider their options.<sup>16</sup>

In March 2018, the Government published its [response](#) to the April 2017 consultation. In July 2018, it published a draft Bill for consultation,

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<sup>15</sup> Lord Henley (BEIS), UK Public Register of Overseas Entity Beneficial Ownership: Written statement [HLWS417](#), 24 January 2018

<sup>16</sup> Lord Ahmad (FCO), Sanctions and Anti-Money Laundering Bill [Lords] Report (2nd Day), 17 January 2018, Volume 788, [Column 710](#)

the [Draft Registration of Overseas Entities Bill](#), along with [research on the potential impacts of the register](#). In summary:

The Bill will require any overseas entity that wishes to own land in the UK to take steps to identify their beneficial owner(s) and to register them. Once registered, an overseas entity will obtain an overseas entity ID and will be required to update their information annually, until such time as it successfully applies to be removed from the live register of overseas entities. In order to comply with the updating duty, the overseas entity will have to annually deliver updated information (or confirm that the information in relation to it on the overseas entities register is up-to-date) and statements required for registration and will have to have taken steps to identify registrable beneficial owners (including sending notices to such beneficial owners). Failure to provide an update on the information held on the register is an offence under the Bill, as is delivering (or causing to be delivered) misleading, false or deceptive information.

In order to register title to land, an overseas entity will have to be registered with Companies House and to have complied with the updating duty – the entity will then be referred to as “registered overseas entity”, using the term used in the Bill.<sup>17</sup>

The Joint Committee responsible for scrutinising the draft Bill published their [report](#) on 20 May 2019. The report was supportive of the Bill and concluded that the draft legislation was “timely, worthwhile, and, in large part, well drafted”.<sup>18</sup> The Committee made a range of detailed recommendations to improve the Bill, with a particular area of concern being the timetable for the Bill and its interaction with the EU’s Fifth Anti-Money Laundering Directive (see [section 3.2](#) for information on the Directive).

On 18 July 2019, the Government published its [response](#) to the report of the Joint Committee. The Government accepted many of the Committee’s recommendations, but did not give any indications as to when the Bill might be presented.

In a Ministerial Statement on 21 July 2020, Paul Scully (Minister for Small Business, Consumers and Labour Markets) noted the Government’s commitment to introduce the register:

The Government committed in primary legislation, through Section 50 of the Sanctions and Anti-Money Laundering Act 2018, to report to Parliament annually on the progress that has been made towards putting in place such a register. The register is included as one of the key measures of the UK’s Economic Crime Plan 2019-2022[1], and the December 2019 Queen’s Speech included a commitment to progress the required legislation.

However, he did not commit to a timetable for the legislation:

This register will be novel, and careful consideration is needed before any measures are adopted, as it is imperative that the register is as robust as it reasonably can be, with reliable data and sufficient deterrent effects to make it clear that the UK property market is not a safe haven for dirty money. Engagement with

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<sup>17</sup> BEIS, [Overview Document: Draft Registration Of Overseas Entities Bill](#), July 2018, p6

<sup>18</sup> Joint Committee on the Draft Registration of Overseas Entities Bill, Report of Session 2017–19, HL Paper 358, 20 May 2019, p53

members of civil society, business and the property market throughout all nations of the United Kingdom has been ongoing to ensure the proposed measures work equitably across the country.<sup>19</sup>

An answer to a parliamentary question asked by Dame Margaret Hodge in September 2020, enquiring about the timetable for the proposal, referred her back to the July statement above.<sup>20</sup> A response on 3 February 2021 to a similar question tabled by Labour MP Dan Carden said that the Government “will legislate when Parliamentary time allows”.<sup>21</sup>

During the Second Reading of the Financial Services Bill 2012-21 on Monday 9 November 2020, in response to a request from SNP Treasury Spokesperson Alison Thewliss for an update on the status of the Registration of Overseas Entities Bill, Economic Secretary to the Treasury John Glen replied that “I think I have demonstrated that I have quite a lot to deal with in the Treasury, but I would be very happy to correspond with the hon. Lady further on the status of that Bill.”<sup>22</sup>

## Scotland’s Register of Controlling Interests

On 20 June 2018 the Scottish Government published the proposed [draft Land Reform Act 2016 \(Register of Persons Holding a Controlled Interest in Land\) \(Scotland\) Regulations](#) alongside an [Explanatory Document](#) and a consultation.

The Explanatory Document considers that the [Land Reform \(Scotland\) Act 2016](#) was a “substantial step in the development of land reform in Scotland”. Section 39 of the 2016 Act enabled and required Scottish Ministers to legislate for information about persons who have controlling interests in land to be published in a public register kept by the Keeper of Registers of Scotland.

The purpose of the Draft Regulations is to increase transparency in relation to individuals who have control over land. They are intended to ensure that:

[...] there can no longer be categories of land owner or tenant where, intentionally or otherwise, control of decision-making is obscured. In conjunction with other transparency regimes, this means that it will be possible to look behind every category of entity in Scotland, including overseas entities and trusts, to see who controls land. We do not require double reporting for entities subject to other regimes as we do not want to duplicate existing publicly available information.<sup>23</sup>

Noting the UK Government’s intention to introduce a similar Registration of Overseas Entities Bill, the Scottish Government stated its intention that “our respective proposals are complementary and that we do not duplicate information where there is already transparency. We

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<sup>19</sup> [Statement](#) UIN HCWS413, Paul Scully, 21 July 2020

<sup>20</sup> Question [UIN 84136](#), answered on 8 September 2020

<sup>21</sup> Question [UIN 145870](#), answered on 3 February 2021

<sup>22</sup> [HC Deb](#) 9 November 2020, vol 683, col 694

<sup>23</sup> Scottish Government, [Draft Explanatory Document](#) - Register of Persons Holding a Controlled Interest in Land (Scotland) Regulations, 19 June 2018, p5

will therefore consider the UK Government's proposals and, if we consider them suitable for our purposes, our final regulations may take account of them.”<sup>24</sup>

In January 2020 the Draft Regulations were [laid](#) before the Scottish Parliament for a second time.

### 2.3 Trusts

A trust is a way of managing assets. They typically involve a settlor who puts assets into the trust, a trustee who manages the trust, and the beneficiary who is the person who ultimately owns and benefits from the assets managed by the trustee. Because they separate legal and beneficial owners, they can be used to disguise ownership of assets.

As a requirement of the EU's [Fourth Anti-Money Laundering Directive](#),<sup>25</sup> the UK introduced a *non-public* register of beneficial ownership for trusts (July 2017). The information is only available to law enforcement, but as a result of the [Fifth Anti-Money Laundering Directive](#) (5AMLD)<sup>26</sup> members of the public will be able to access trust data if they can demonstrate a legitimate interest, such as a journalist investigating corruption or money laundering. 5AMLD also extended the types of trusts that need to be registered to all UK trusts (with specific exceptions) rather than only those that owe tax.<sup>27</sup> Both civil sanctions (like fines and statements of censure) and criminal sanctions can be imposed for non-compliance.<sup>28</sup>

Such trusts will need to be registered within 30 days of creation or of any changes to beneficial ownership.<sup>29</sup> This does not apply yet, however, as HMRC has said “trustees cannot register trusts under the new rules until later in 2021 when the new TRS [Trust Registration Service] service is ready. The deadline for registration is 10 March 2022.”<sup>30</sup>

The EU directives are explained in more detail in [section 3.2](#).

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<sup>24</sup> Scottish Government, [Improving the transparency of land ownership: consultation on draft regulations](#), 20 June 2018

<sup>25</sup> Implemented in UK law by the [Money Laundering, Terrorist Financing and Transfer of Funds \(Information on the Payer\) Regulations 2017](#)

<sup>26</sup> Implemented in UK law by the [Money Laundering and Terrorist Financing \(Amendment\) Regulations 2019](#)

<sup>27</sup> For a summary of the current (pre-5AMLD) regime see [Guidance, Register a trust as an agent](#), last updated 9 October 2020

<sup>28</sup> See Part 9 of [The Money Laundering, Terrorist Financing and Transfer of Funds \(Information on the Payer\) Regulations 2017](#)

<sup>29</sup> *Ibid*, Reg45ZA

<sup>30</sup> HMRC, [Guidance – Trust Registration extension - an overview](#), 25 January 2021

## 3. Registers around the world

At the end of 2016, a group of 53 jurisdictions including the UK, France and Germany signed a statement committing to the systematic sharing of beneficial ownership information.<sup>31</sup> According to the [Financial Action Task Force](#), over [200 jurisdictions](#) have committed implementing its recommendations, which include law enforcement having access to adequate, accurate and timely information on the beneficial ownership and control of legal entities.<sup>32</sup>

Under the *Fifth Anti-Money Laundering Directive*, all EU Member States were required to launch publicly accessible registers of the beneficial ownership of companies by January 2020. British Overseas Territories and Crown Dependencies already have or will launch similar registers, although timescales are the subject of controversy. The UK Government seeks to make public registers the global norm by the end of 2023. The next sections look at these developments in more detail.

### 3.1 Overseas Territories and Crown Dependencies

The UK Government introduced provisions to establish a register of beneficial ownership for companies in the [Small Business, Enterprise & Employment Act 2015](#). In April 2014, the Prime Minister wrote to the Crown Dependencies and British Overseas Territories to encourage them to follow the UK's example.<sup>33</sup>

Subsequently, just before the London Anti-Corruption Summit in May 2016, the Government announced that the UK had completed a series of bilateral [agreements](#) with the Crown Dependencies (CDs) and six Overseas Territories (OTs) on sharing beneficial ownership information.<sup>34</sup> Since their coming into effect in July 2017, the arrangements have provided UK law enforcement with access to company beneficial ownership information in support of investigations. Under the terms of the arrangements, the information is available within 24 hours or one hour if the request for information is notified as 'urgent'.<sup>35</sup>

The state of development of beneficial ownership registers in the OTs and CDs, by 1 May 2018, was as follows:

The CDs, Bermuda, Gibraltar and the Turks and Caicos Islands (TCI) all have central registers to hold the required information. Jersey's is already fully populated (it has had a private register

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<sup>31</sup> Government correspondence, [Statement on the initiative for the systematic sharing of beneficial ownership information](#), 14 December 2016

<sup>32</sup> These jurisdictions have committed to implementing the recommendations of the Financial Action Task Force (FATF), which include creating and maintaining registers of beneficial ownership, and sharing that information with competent authorities from other countries. See: FATF, [Guidance on Transparency and Beneficial Ownership](#), October 2014, p39

<sup>33</sup> [Prime Minister's letter on beneficial ownership](#), 25 April 2014

<sup>34</sup> For more background on the events that led up to the summit see, [Shining a light on beneficial ownership: what's happening in the UK and elsewhere?](#), Commons Briefing paper CBP7616, 17 June 2016.

<sup>35</sup> [HC WS 1 May 2018 661](#)

since 1989), as are the Guernsey and Alderney registers. The Isle of Man's register is nearing completion (81%), in accordance with the agreed timeframe for full population by 30th June 2018. Bermuda has had a central register for over 70 years, and its new database is nearly 100% populated. Gibraltar expects its register to be fully populated by 30 June 2018, following a transition period. TCI, which was severely affected by hurricanes Maria and Irma, brought its enabling legislation into force on 1 February 2018. It anticipates that its register will be fully populated by December 2018, following a transition period.

"Similarly effective arrangements" (as permitted by the EoNs) are in place in British Virgin Islands (BVI) and the Cayman Islands. BVI, which was also severely affected by the hurricanes, has now attained around 80% population of its system. The Cayman Islands expect their beneficial ownership system to be fully populated by 30 June 2018, following a transition period provided for by their legislation. The UK is finalising with Anguilla a Memorandum of Understanding on the terms for provision of UK support for the establishment of Anguilla's beneficial ownership system. This was delayed due to the impact of Hurricane Irma.<sup>36</sup>

Except for Montserrat,<sup>37</sup> access to these registers was restricted to law enforcement authorities to protect confidentiality and privacy. Gibraltar, as part of the EU, is required to transpose the EU's *Fifth Anti-money Laundering Directive*, which includes provisions for public registers of beneficial ownership, by January 2020 (see [section 3.2 EU countries](#)).<sup>38</sup>

So, with the exceptions of Montserrat and Gibraltar, OTs and CDs did not intend to open their registers to the public. During the Lords Committee Stage of the *Sanctions and Anti-Money Laundering Bill 2017-19*, Baroness Stern moved [Amendment 69G](#) so that the Government would have to make sure that Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, Montserrat and the Turks and Caicos Islands made public their register of the beneficial ownership of companies in their jurisdiction.<sup>39</sup>

Lord Ahmad said that it was only in exceptional circumstances that the UK Government had legislated for the Overseas Territories without their consent and "that we wish to take action within the existing framework of friendly co-operation, building on the progress already made."<sup>40</sup>

He said that at present the [Financial Action Task Force](#) (FATF) standards<sup>41</sup> did not require countries to publish registers of beneficial ownership, and that if public registers became the internationally-required standard, the Overseas Territories would have to comply.

Foreign Office Minister Sir Alan Duncan said the same in the Commons:

While we continue to push for public registers to become the global standard, we should recognise that the arrangements that the territories and dependencies have concluded with the UK exceed the international standards set by the Financial Action Task

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<sup>36</sup> [HC WS 1 May 2018 661](#)

<sup>37</sup> [PO 117952](#), 6 December 2017

<sup>38</sup> [HC Deb 1 May 2018 c184](#)

<sup>39</sup> [HL Deb 6 December 2017, c1108](#)

<sup>40</sup> [HL Deb 6 December 2017, c1117](#)

<sup>41</sup> See [section 3.4 FATF standard: the exchange of information](#)



Force, which do not require private registers, let alone public registers. Nevertheless, should public registers become the global standard, we would expect the overseas territories and Crown dependencies to meet that standard.<sup>42</sup>

However, at the Report Stage of the *Sanctions and Anti Money Laundering Bill 2017-19* in the Commons, facing probable defeat, the Government conceded. It agreed to a new clause which compels Overseas Territories (OTs) to establish public registers of beneficial ownership, but did not agree to a second, which would have extended this requirement to the Crown Dependencies (CDs).

The new clause which mandated public registers of beneficial ownership for the OTs was tabled by Dame Margaret Hodge. The effect was summed up by Sir Alan Duncan during the debate:

New clause 6... would put a duty on the Government to work with the overseas territories to set up public registers of company beneficial ownership by 31 December 2020. If they do not do so, the new clause would require the Secretary of State to prepare a draft Order in Council, aiming to legislate directly.<sup>43</sup>

The other clause, which would have made similar steps for the CDs, had been tabled by Helen Goodman MP. Sir Alan Duncan explained its effects:

Opposition new clause 14 would require the Secretary of State to provide all reasonable assistance to the Governments of the Crown dependencies to enable them to establish a public register of company beneficial ownership, and if, by the implementation of the European Union's fifth anti-money laundering directive, they have not, the new clause would require the Secretary of State to take all reasonable steps to ensure that the Privy Council legislates to require each Crown dependency to do so.<sup>44</sup>

New clause 6 was agreed, but following a request from the Minister, Helen Goodman chose not to put new clause 14 to a vote.<sup>45</sup>

The main difference between the OTs and the CDs is that while UK legislation can apply to OTs, it does not normally extend to the CDs. The introduction of public registers in the three CDs would, therefore, require legislation following consultation with the relevant legislative assemblies.

The UK Government's 2012 White Paper, *The Overseas Territories*, notes that Parliament has unlimited power to legislate for the OTs:

The UK, the Overseas Territories and the Crown Dependencies form one undivided Realm, which is distinct from the other States of which Her Majesty The Queen is monarch. Each Territory has its own Constitution and its own Government and has its own local laws. As a matter of constitutional law the UK Parliament has unlimited power to legislate for the Territories. Territory Constitutions set out the powers and responsibilities of the institutions of government, which for most Territories include a Governor or Commissioner, an elected legislature and Ministers.

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<sup>42</sup> [HC PBC Deb 6 March 2018, c140](#)

<sup>43</sup> [HC Deb 1 May 2018 c180](#)

<sup>44</sup> [HC Deb 1 May 2018 c180](#)

<sup>45</sup> [HC Deb 1 May 2018 c181](#)

## 18 Registers of beneficial ownership

Governors or Commissioners are appointed by Her Majesty The Queen on the advice of Her Ministers in the UK, and in general have responsibility for external affairs, defence, internal security (including the police) and the appointment, discipline and removal of public officers. Elected governments have a wide range of responsibilities.<sup>46</sup>

On the other hand, UK legislation does not normally extend to the Crown Dependencies. A Ministry of Justice background briefing on the Crown Dependencies explains the instances where it does extend:

it may do so either by virtue of the Act itself or by Order in Council made with [...] agreement under an enabling provision contained in the Act which provides for it to be extended to the Crown Dependencies. For an Act to extend otherwise than by an Order in Council is now very unusual. Departments must consult the Crown Dependencies at the earliest opportunity in the event that extension is under consideration. It is to be noted that there are different formalities in each jurisdiction which must be observed before such an Order in Council can become effective, all of which have the potential to impact on Bill timetables.<sup>47</sup>

The Government said that the CDs would adopt public registers when they become the global standard:

The Government intends to use its best endeavours, diplomatically and with international partners, to promote public registers of company beneficial ownership as the global standard. The Government would expect the Crown Dependencies to adopt public registers in line with changes in global standards and they have committed to doing so.<sup>48</sup>

After the passing of the *Sanctions and Anti Money Laundering Act 2018*, the Government explained that it interpreted the OTs amendment as requiring the Government to order the adoption of the registers if the 2020 deadline is not voluntarily met by the Overseas Territories, but not as the deadline for implementation to be imposed in the Order. The Government said it would therefore order Overseas Territories that have not introduced a public register by the deadline to do so by December 2023. PQ [215576](#) illustrated the controversy and presented the Government's reasoning:

*Asked by Valerie Vaz (Walsall South) on 01 February 2019*

To ask the Secretary of State for Foreign and Commonwealth Affairs [...] on what date his Department will require the Governments of Overseas Territories to introduce publicly accessible registers of the beneficial ownership of companies within their jurisdictions; and whether that date is consistent with the 31 December 2020 target in section 51(2) of the Sanctions and Anti-Money Laundering Act 2018.

*Answered by Sir Alan Duncan (Rutland and Melton) on 06 February 2019*

The Sanctions and Anti-Money Laundering Act 2018 states that "the Secretary of State must no later than 31 December 2020, prepare a draft Order in Council requiring the government of any

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<sup>46</sup> Foreign and Commonwealth Office, [The Overseas Territories](#), June 2012, p14

<sup>47</sup> Ministry of Justice, [Fact sheet on the UK's relationship with the Crown Dependencies](#), p2

<sup>48</sup> MoJ, Companies: Ownership: Written question [162506](#), 16 July 2018

British Overseas Territory that has not introduced a publicly accessible register of the beneficial ownership of companies within its jurisdiction to do so”.

The UK Government will therefore prepare the draft legislation by this date, requiring an Overseas Territory that has not introduced a public register, to do so by December 2023. This is consistent with the both the Act and the Government’s call for all countries to make public registers the global norm by 2023.

The Government’s position left many MPs dissatisfied. With the passage of the [Financial Services \(Implementation of Legislation\) Bill 2017-19](#) through the House of Commons, these MPs found an opportunity to reassert the end-of-2020 deadline. Andrew Mitchell and Margaret Hodge tabled a cross-party amendment ([NC3](#)) to that effect. The proposed new clause also extended the public register requirement and deadline to the Crown Dependencies. The amendment would have been voted on at Report Stage, which was set for 4 March 2019, but, facing probable defeat, the Government pulled the Bill.<sup>49</sup> The Speaker of the House remarked that there should be other opportunities to vote on this or a similar amendment:

[T]he legislation may have been delayed, but presumably it will have to come back. [...] Members have been complaining about the perversion of the purpose of a new clause that was accepted in earlier legislation. That purpose, and any current new clause or amendment, can feature again in the business. Insofar as it is for the Chair to select a new clause or amendment, people would expect that the Speaker would give an indication of his thinking. I had certainly intended to select either a new clause or an amendment on this matter today.<sup>50</sup>

In the meantime, the CDs announced on 19 June 2019 that they would implement their own publicly accessible registers of company beneficial ownership in line with EU norms, but some years after. The [joint commitment](#) by the governments of [Guernsey](#), [Jersey](#) and the [Isle of Man](#) pledges to “bring forward to our own parliament legislative proposals to establish public access to beneficial ownership data of companies held on a central register” “within 12 months” of the publication of the EU’s Implementation Review of the *Fifth Anti-Money Laundering Directive* in January 2022.<sup>51</sup>

## Latest Developments

In a House of Lords debate on 8 July 2020, Lord Ahmad sought to explain why the Government had set a 2023 deadline for OTs to adopt company beneficial ownership registers, saying that the “reason for the 2023 date was to allow sufficient time for such public registers to be initiated, because it adds a requirement on every single overseas territory, some of which do not have the technical ability to do so”.<sup>52</sup>

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<sup>49</sup> [HC Deb 4 March 2019 cc663-6](#)

<sup>50</sup> [HC Deb 4 March 2019 c666](#)

<sup>51</sup> Guernsey, Jersey and the Isle of Man, [Joint commitment on registers of beneficial ownership of companies](#), June 2019

<sup>52</sup> HL Deb 8 July 2020, vol804, col1146

On 15 July 2020, Wendy Morton, Minister for European Neighbourhood and the Americas, issued a [Written Ministerial Statement](#). In the statement, the Government reiterated its commitment to legislating before the end of 2020 to require OTs to publish registers before the end of 2023. The statement also referenced announcements by Crown Dependencies to implement their own registers “within the next few years”.

On 14 December 2020, the draft Order in Council which would impose the requirement on OTs to adopt company beneficial ownership registers was published. In a [Written Ministerial Statement](#), Wendy Morton said:

On 15 July 2020 a written ministerial statement (HLWS361/HCWS369) welcomed the statements from eight Overseas Territories committing to introduce publicly accessible registers of company beneficial ownership. In a welcome step forward, the British Virgin Islands’ Government have also committed to adopt publicly accessible registers, meaning that all on the United Kingdom’s inhabited Territories are committed to adopt such registers. This is a major change, and the unanimous action from all the Overseas Territories demonstrates their commitment to tackle flows of illicit finance

[...]

In the light of the firm commitments from all of the inhabited Overseas Territories to adopt publicly accessible registers, the UK Government have decided that it is now not necessary to make the Order under Section 51, but will keep this under review.

Hence, the draft Order in Council has been [published](#) but the Government has not brought it into force on the basis that the requirement on OTs which was inserted during the passage of the *Sanctions and Anti-Money Laundering Act 2018* is already met by them voluntarily agreeing to introduce these registers.

### 3.2 EU countries

All EU Member States set up central registers of beneficial ownership for companies, as part of the [Fourth Anti-Money Laundering Directive](#), which entered in force in June 2017.

Member States must ensure that legal entities incorporated within their territory (for example, companies) obtain and hold adequate, accurate and current information on their beneficial ownership.

Each Member State must ensure that the information on beneficial ownership is held in a central register in that Member State. Member States did not have to make the registers public.<sup>53</sup>

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<sup>53</sup> Articles 30 and 31 of [MLD4](#)

However, amendments to 5AMLD agreed on 20 December 2017 between the European Parliament and the Council included provisions to make beneficial information in the registers public:

Confidence in financial markets from investors and the general public depends in large part on the existence of an accurate disclosure regime that provides transparency in the beneficial ownership and control structures of corporate and legal entities as well as certain types of trusts and other legal arrangements. Member States should therefore allow access to beneficial ownership information in a sufficiently coherent and coordinated way, by establishing clear rules of access by the public, so that third parties are able to ascertain, throughout the Union, who are the beneficial owners of corporate and legal entities as well as certain types of trusts and other legal arrangements.<sup>54</sup>

The European Parliament [adopted](#) 5AMLD on 19 April 2018, and it entered into force on 9 July 2018. EU Member States had 18 months to implement [5AMLD](#) into national law (i.e. by 10 January 2020).<sup>55</sup>

5AMLD requires public access to data on the beneficial owners of legal entities such as companies, but not trusts. Instead, members of the public wishing to access trust data need to demonstrate a legitimate interest:

The access to data on the beneficial owner of trusts will be accessible without any restrictions to competent authorities, Financial Intelligence Units, the professional sectors subject to Anti-Money laundering rules (banks, lawyers...) and will be accessible to other persons who can demonstrate a legitimate interest.<sup>56</sup>

The Directive allowed Member States to define legitimate interest themselves, but requires the definition to include “preventive work in the field of anti-money laundering, counter terrorist financing and associate predicate offences undertaken by non-governmental organisations and investigative journalists”.<sup>57</sup>

An analysis of EU Member State compliance with this requirement in March 2020 by Global Witness found that 17 of 27 EU member countries still had not introduced a publicly available register of company beneficial ownership (including France and Spain), 5 countries had introduced such registers but with significant restrictions that hinder its usefulness (including Germany and Ireland), and only 5 had implemented public register which are free to access (including Denmark).<sup>58</sup>

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<sup>54</sup> Council of the European Union, Interinstitutional File: 2016/0208 (COD), [15849/17](#), p. 17

<sup>55</sup> EUR-Lex, [Directive \(EU\) 2018/843](#) on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, 30 May 2018

<sup>56</sup> European Commission, [Factsheet on the main changes of the 5th Anti-Money Laundering Directive](#), 9 July 2018

<sup>57</sup> EUR-Lex, [Directive \(EU\) 2018/843](#), recital 42

<sup>58</sup> Global Witness, [Patchy progress in setting up beneficial ownership registers in the EU](#), 20 March 2020

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