

# UK Economic Crime Act Strengthens Anti-Money Laundering and Sanctions Framework

16 March 2022

On 15 March, the long-anticipated Economic Crime (Transparency and Enforcement) Act received royal assent. It had been introduced on 1 March and fast-tracked through Parliament in response to recent events.

As outlined below, the Act is an important step in strengthening certain aspects of the UK's anti-money laundering and sanctions laws, especially by making it easier to identify and seize property obtained through illicit funds. However, effective enforcement of its provisions is likely to present a major challenge for UK authorities.

**Unmasking Property Ownership.** Previously, owners of real estate in the UK were able to conceal their identities by holding property through an overseas legal entity or a web of legal entities, leading to significant money laundering risk. It has been reported that there are over 95,000 UK properties, worth about £5 billion, owned by overseas companies. While UK companies are required to disclose their ultimate owners or controllers (with that information publicly available through Companies House), overseas companies were not subject to similar obligations.

The extensive and opaque ownership of UK property by individuals with criminal affiliations or close links to foreign governments has long been criticised, but it has not been a priority for concrete government action until now. The Act aims to uncover foreign property ownership, enabling UK authorities to target owners using measures such as unexplained wealth orders ("UWOs").

The key features of the Act are summarised below:

- Within six months, any overseas legal entity that owns UK property must register with Companies House if it took ownership of the property after January 1999. Failure to do so will be a criminal offence potentially rendering every officer of the entity liable to a two-year prison sentence.
- For any property purchased by an overseas entity after the Act takes effect, the entity must be registered with Companies House.

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- For any property purchased by an overseas entity since January 1999, unless the entity is registered with Companies House, the property cannot be sold (except in very limited circumstances).
  - Registration with Companies House involves providing specified information regarding the overseas entity and its beneficial owner(s)—including their name, date of birth, nationality and usual residential address. This information must be updated annually. Legal entities (including trusts) and government authorities may be beneficial owners, not just individuals; however, they also need to be registered, which should result in the individual who ultimately owns a property being identifiable.
  - A ‘beneficial owner’ is a person or entity who (directly or indirectly) holds more than 25% of the shares or voting rights, has the right to appoint or remove the board of directors, or has the right to exercise significant influence or control over the entity.
  - These obligations are reinforced by a requirement that the overseas entity must take “reasonable steps” to identify any beneficial owners and obtain the relevant information by giving them (and any others who might know the beneficial owner’s identity) an information notice. Failure to comply with an information notice, or making a false statement, is a criminal offence punishable by up to two years’ imprisonment.
  - Regulations supplementing the law will require the overseas entity to undertake a verification process regarding the information before registration.
  - The new register will be publicly accessible, although a beneficial owner’s date of birth and residential address will not be shown.

**Bolstering the Unexplained Wealth Orders Regime.** UWOs are a means of requiring individuals suspected of holding criminal property to explain how it was obtained; a failure to satisfy the terms of a UWO will lead to the presumption that the property is criminal property liable to recovery by UK authorities.<sup>1</sup> The Act sets out some changes to the UWO regime, including:

- Allowing UWOs to be issued to any responsible officer of a corporate, for property that is held through offshore or trust structures.

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<sup>1</sup> See our previous client updates regarding UWOs:  
<https://www.debevoise.com/insights/publications/2017/05/uk-criminal-finances-act-2017> and  
<https://www.debevoise.com/insights/publications/2020/04/uk-unexplained-wealth-orders-english-high-court>

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- Extending the period potentially available to the authorities to decide what further enforcement or investigatory proceedings they wish to take once the property is subject to an interim freezing order. Previously, the authorities had up to 60 days to make this decision from the date that the subject of the UWO provided the information requested. Now, with a court order, the authorities will now have up to 186 days.
  - Preventing a court from ordering the authorities to pay the legal costs incurred by the subject of the UWO, unless the authority had acted unreasonably, dishonestly or improperly in conducting its unsuccessful case. This is intended to encourage the authorities to apply for UWOs more often and take on 'difficult' cases, as they have been heavily criticised for the limited use of UWOs so far: only nine UWOs have been obtained since their introduction in 2017, and none since the end of 2019.

**Expanding Civil Liability for Sanctions Breaches.** Another important feature of the Act is that it will make it significantly easier for the Office of Financial Sanctions Implementation ("OFSI") within HM Treasury to impose monetary penalties for breaching financial sanctions obligations. Previously, liability required the target of OFSI's investigation to know or have reasonable cause to suspect that it was in breach of sanctions laws. Now, OFSI will not need to demonstrate knowledge or suspicion of a sanctions breach. Civil sanctions breaches are now subject to strict liability.

This creates a disparity between how sanctions will be enforced by OFSI on a civil penalty basis compared to criminal penalties. It will also give OFSI an incentive to pursue civil penalties, as they will effectively have a 'lower hurdle' of proof. It appears that this expansion of civil liability for sanctions breaches is modelled on the system in the U.S., where the Office of Foreign Assets Control has a strict liability regime and a strong track record of enforcement action. It may be that OFSI was finding it difficult to show that targets of its investigations had reasonable cause to suspect that funds or economic resources were sanctioned: it remains to be seen whether the removal of this safeguard will result in a significant uptick in civil enforcement action from OFSI.

**Analysis.** The Act has undoubtedly given UK authorities significant new intelligence tools and powers in combating money laundering and sanctions breaches; however, it raises equally significant questions.

The UK already has some of the world's most stringent financial crime laws. Historically, the difficulty has been a track record of enforcement that has ranged from patchy to poor. Considerable resources will be required to make use of the greater transparency regarding property ownership in terms of investigating the information, initiating UWOs and taking action for failures to comply with the disclosure requirements. The 6-month transition period for registration, although an

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improvement on the 18-month period that was originally proposed, still allows ample opportunity for circumvention.

In addition, more resources and expertise will be needed at Companies House, which has gained an increasingly important role in the last few years. The Government has announced plans to expand its responsibilities further, including requiring it to verify the identity of directors and beneficial owners of legal entities and enabling it to challenge the information it receives.

Notably, the Act does not include the long-delayed ‘failure to prevent economic crime’ offence. It is expected that this is being accelerated and will be introduced in the coming months. The government has also indicated that further reforms to the UK’s money laundering regime to build on the Act will be implemented in the near future.

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Please do not hesitate to contact us with any questions.

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