

If you are one of the majority of overseas entities (OEs) that complied with the legal requirement to register beneficial ownership of UK properties on the Register of Overseas Entities (ROE), then you will certainly have your eye on the updating provisions brought in by the same legislation.

The Economic Crime (Transparency and Enforcement) Act 2022 (the Act) not only imposed a duty on OEs to register beneficial ownership, but it also brought in an obligation to update that information on an annual basis. 1 August was the first anniversary of the ROE, meaning that the updating process has begun.

What, exactly, is now required of OEs? And why will lenders be concerned to ensure that the legislation is complied with? This article takes a look at the duty to update, the tight deadlines, risks for failure to comply, and lender concerns.

### Update Period

The underlying obligation is to update the beneficial ownership records held on the ROE annually. It does not arise on each change of beneficial ownership (although that may change in the future) but falls within 14 days of each “update period”. An update period is:

- 12 months beginning with the date of the OE’s registration
- Each subsequent period of 12 months beginning with the day following the end of the previous update period



### Updating Duty

To discharge its updating duty, a registered OE must submit various statements to Companies House, including statements to the effect that:

- The OE has no reasonable cause to believe that anyone has become or ceased to be a registrable beneficial owner during the update period. This means that the updating duty applies even where there has been no change of beneficial ownership. Where there have been no changes at all, verification by a UK regulated agent is not required, but caution is advised, as changes in the details of beneficial owners (such as address) may trigger the verification requirement.
- The OE has reasonable cause to believe that there has been a change of beneficial ownership with details of the change and the relevant dates. Such changes must be verified by a UK regulated agent.
- The OE has complied with its duty to identify registrable owners.

A failure to update has real potential to disrupt transactions. If there are genuine concerns around national security as a result of making certain information publicly available, an application may be made to the Secretary of State for an exemption. However, the updating duty should not be ignored on that basis.

### If OEs Do Not Update?

- Failure to update is a criminal offence. Offending OEs may be prosecuted or face a financial penalty.
- Any existing OE ID will become invalid and will remain so until records are brought up to date.
- Any transfers, leases of more than seven years, or charges will not be able to be registered with HM Land Registry. OEs will not be able to buy, sell, or otherwise transfer, lease, or charge property in the UK.
- Finance is unlikely to be available to OEs without a valid ID, with lenders unwilling to jeopardise their security.
- Late updating will not resolve the problem – a disposition completed without a valid OE ID will remain unregistrable.

## Lender Concerns

Lenders will want to ensure that any OE giving security is registered on the ROE and has maintained its records in accordance with the updating requirements. Due to the restriction on title, HM Land Registry will not register a charge without a valid OE ID (or other statutory exception). This is likely to prejudice a lender's position in the event that, for example, the ROE is later updated and a subsequent charge is registered that would take priority over the first lender's unregistered charge. OEs will need to plan to be sure that any critical new lending, or refinancing, is not delayed due to a failure to update the ROE on time.

When lending on acquisitions from sellers that are OEs, lenders will also want to be certain that the ROE is up to date for that party. HM Land Registry will not register the purchase (and, therefore, a lender's charge) where the ROE has not been properly updated.

Lenders with existing security over properties owned by OEs can take comfort from the fact that one of the exceptions to the prohibition against dealings allows lenders to dispose of a property in exercise of a power of sale or leasing notwithstanding any failure by the OE to update the ROE.<sup>1</sup> They might also be able to rely on provisions of lending agreements entered into prior to the relevant restriction being entered on the register.

Nonetheless, lenders will still be keen to establish that both new and existing security arrangements are fully protected by registration with HM Land Registry and that any of its mortgagees that are OEs comply with their obligations to update the ROE.



## Key Takeaways

### For OEs:

- Check the original registration date and prepare to update in good time. (The update falls due 12 months from the date of initial registration with a 14-day window to complete the update.)
- Carefully check all the information currently recorded in the ROE.
- If nothing has changed, an update statement to that effect must be filed.
- If changes have occurred, these must be verified by a UK regulated agent. Verification checks must be carried out no more than three months before the date of the update statement. It is, therefore, important that once the information is verified, Companies House is updated within that period to avoid a further verification fee. OEs may update with verified information, but the more usual approach appears to be for the verifying agent to submit the update.

### For Lenders:

- Ensure existing security is fully protected by registration with HM Land Registry.
- Check that no new lending is entered into without securing a valid OE ID on completion.

For changes to beneficial ownership taking place close to the cutoff date, there is little time within which to have the information verified. However, accurate diarising and keeping the lines of communication open with verifying agents should ensure that transactions proceed smoothly, and the legislation is complied with. The one thing OEs must not do is ignore it.

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<sup>1</sup> Land Registration Act 2002, new Schedule 4A, paragraph 3(2)(d).