

CIOT submission to Public Bill Committee

Levelling up and Regeneration Bill – Part 9

1 Executive Summary

- 1.1 We are supportive of this proposal for a register of the beneficial owners of UK land, which potentially closes a significant loophole in the register of foreign entities owning UK property created by the Economic Crime (Transparency and Enforcement) Act 2022.
- 1.2 It is regrettable that only a broad framework of enabling powers for this measure is being passed in primary legislation. Given so much is being left to regulations, it is important that the regulations are published in draft for widespread consultation with the opportunity for revision before final regulations are laid.
- 1.3 We have some concerns about the lack of detail and definition within the legislation about what is being requested, as well the uses to which it will be put. We hope ministers will fill some of these blanks during committee stage debate.
- 1.4 This is just the latest in a series of registers relating to UK property ownership. We encourage consideration of whether the interaction of the various registers could be streamlined, whether appearance on one register exempts the entity from appearance on another, as well as whether the scope of the Trust Register is excessive in its treatment of nominee arrangements such as parents holding premium bonds or small amounts of shares. HMRC, BEIS and the Department for Levelling-Up should work together to identify gaps and overlaps between the various registers and ensure better and more focused regulation which is effective and not duplicative.

2 About us

- 2.1 The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it –

taxpayers, their advisers and the authorities. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.

- 2.2 The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.
- 2.3 The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries.
- 2.4 Our members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

3 Overview

- 3.1 This Part of the Bill (clauses 178 to 183) concerns 'information about interests and dealings with land' and concerns the establishment of a register of all land ownership and transactions in England and Wales in order to inform the wider planning authorities of the ownership and control of relevant land. Rather than legislating for such a register in this Bill it provides enabling powers for the Secretary of State to require HM Land Registry (and potentially others) to collect such information. This means that the legislation in front of the committee lacks much of the detail of how such a register will be produced, what it will contain, how land owners will be defined and how the information will be used. This will only be evident when regulations are published.
- 3.2 The Government's Explanatory Notes on the Bill identify three purposes for collecting this information:
 - To meet the 2017 housing white paper land transparency commitment by collecting and publishing data on contractual arrangements used by developers to control land, such as rights of pre-emption, options, and conditional contracts.
 - To identify attempts to evade sanctions or the new disclosure requirements placed on companies owning UK land and property contained in the Economic Crime (Transparency and Enforcement) Act 2022.
 - For wider national security and macroeconomic purposes.
- 3.3 Clause 178 concerns the extent of information that the regulations may require, enabling it to cover not just individuals owning land/rights over land but also those able to exercise control or influence (directly or indirectly) in relation to the land in question.
- 3.4 Clause 179 sets out the information which regulations can require to be provided on land transactions, covering changes to rights over land as well as to ownership of the land. This includes the details of the relevant parties to the transaction, the persons on whose behalf/benefit they are acting, persons providing professional services, sources of monies paid in connection with the transaction, and documents evidencing a transaction.
- 3.5 Clause 180 outlines the details which regulations within c178 and c179 are obliged to specify – parties' descriptions, circumstances surrounding the requirement to provide information, time limits, and to whom the details are to be provided (ie the Chief Land Registrar or any Crown official). Subsection 4 of this section

allows these regulations to be retroactive in their effect, concerning ‘things done or arising’ before the Bill comes into force.

- 3.6 Clause 181 concerns how this information will be used. As well as retention for the requirements contained within c178 and c179, it says regulations may allow for the sharing of information with persons carrying out functions of a public nature, and for its publication.
- 3.7 Clause 182 allows for the creation of offences concerning failure to provide information or providing false/misleading information. Maximum criminal sanctions are up to 12 months’ imprisonment and/or a fine on summary conviction; or two years’ imprisonment and/or a fine upon indictment.
- 3.8 Clause 183 defines some of the phrases used in Part 9. ‘ownership’, ‘person’, ‘regulations’, ‘relevant interest in land’ and ‘relevant right concerning land’ are defined.

4 CIOT comments

- 4.1 We welcome the proposal for a register of the beneficial owners of UK land, and others with rights or influence over land.

Closing a loophole

- 4.2 This measure potentially (we cannot be certain until we see the regulations) closes a significant loophole in this year’s Economic Crime (Transparency and Enforcement) Act. That Act introduced a register of overseas companies and other entities owning or buying UK property, which came into force on 1 August.
- 4.3 On publication of that Bill the Government stated: ‘The new register will require anonymous foreign owners of UK property to reveal their real identities to ensure criminals cannot hide behind secretive chains of shell companies, setting a global standard for transparency.’¹ Announcing the Bill in Parliament², the Business Secretary used almost identical words.
- 4.4 However, challenged during debate in the House of Lords, the minister, Lord Callanan, conceded that while the register was designed to capture the beneficial owners of overseas entities owning UK property, it would not, and was not intended to, capture ultimate economic beneficiaries of land.
- 4.5 This is a significant distinction. If an individual were to buy a UK property through a limited company of which he is the owner, then his personal details will be recorded on the register created by the Economic Crime Act, in his capacity as the owner of the company. However, if an offshore services company were to buy the property and hold it for the individual as a nominee, then the individual’s name would not appear on the register, as he is not the owner of the service company. Only the service company’s owners would – even then only if they own more than 25% of the service company. (This is explained in more detail in our briefing on the Economic Crime Act³) There are other problems where a corporate trustee acquires land through an underlying corporate entity. In this scenario it will not have to go on the Trust Register nor will the corporate trustee necessarily be a registrable beneficial owner requiring details of the trust to be given if it is not subject

¹ <https://www.gov.uk/government/publications/economic-crime-transparency-and-enforcement-bill-2022-overarching-documents/factsheet-the-register-of-overseas-entities-web-accessible>

² <https://hansard.parliament.uk/commons/2022-02-28/debates/BAC256B1-BD80-48E2-9A84-EC365D176375/CorporateTransparencyAndEconomicCrime>

³ <https://www.tax.org.uk/economic-crime-transparency-enforcement-bill-part-one-register-of-overseas-entities>

to its own disclosure requirements. Although Regulation 14 of the Regulations on the Economic Crime Act partially corrected this there are still some gaps.

- 4.6 While any final verdict on this proposal must await the publication of the relevant regulations, what we can say at this stage is that the framing of the enabling powers in Part 9 of this Bill would seem to be of sufficient scope to enable a register which truly captures the beneficial owners of UK land, provided that ownership, control and influence are defined in regulations in such a way as to prevent ownership being disguised or hidden through means such as fragmentation of ownership (including within a family) and use of companies and trusts (UK or overseas).
- 4.7 It is regrettable that only a broad framework of enabling powers for this measure are being passed in primary legislation. Secondary legislation, which offers at best a single debate without the opportunity for amendments to be tabled and considered, is a significantly lesser form of parliamentary scrutiny for this important measure.
- 4.8 Given that the effectiveness of this measure depends on the contents of the regulations, we consider it important that the regulations are published in draft for widespread consultation with technical experts and other interested parties, with the opportunity for revision before final regulations are laid.

Scope and safeguards

- 4.9 While our primary interest in this measure is that it is effective in its goal of producing a register of beneficial ownership of English and Welsh land, we do have some wider questions and concerns regarding the scope and safeguards of the legislation, where we think clarification would be helpful.
- 4.10 Clause 178(2) states that *‘information is within this subsection if it appears to the Secretary of State that the information would be useful for the purposes of identifying persons...’*. Does this mean the need for the information is entirely subjective based on the individual SoS?
- 4.11 Clause 179(2) gives definitions of what ‘transactional information’ means, yet some of the details required seem to go beyond merely identifying who owns the land, eg those providing professional services, details of the sources of funds and documents evidencing the transaction. It would be helpful if ministers could set out why this information is needed, and also whether their intention is to require it for all transactions, just for a subset of transactions (eg above a particular value) or only for specific transactions where there are grounds for suspicion (and if so, who would determine this).
- 4.12 Clause 180 gives some detail about the information requirements, such as to whom it will be given, but there is no fixed or minimum time limit to comply – that is something to be given when an individual at the relevant time; however, we do not know what that relevant time is, as the clauses give no detail as to when or upon what occasion an individual is required to provide the information.
- 4.13 Clauses 181(1)(b) refers to the sharing of information ‘with persons exercising functions of a public nature, for use for the purposes of such functions’. It would be helpful for the Government to elucidate the purposes for which the information will be used. For example, will it be used by HMRC for tax compliance purposes? This would not be unreasonable, particularly as existing Land Registry data is available to HMRC already, but some clarification would be welcome.
- 4.14 With the above points in mind, it would be helpful if ministers could clarify how they expect this register to relate to the existing process of registering changes of property ownership with HM Land Registry. Will it

replace or be integrated with the existing process? That would seem to be preferable to two separate, largely duplicative, processes.

- 4.15 The enabling legislation in this Bill provides for some or all of the information in the register to be published. It would be helpful to probe the Government's intention in this respect.

Interaction with other registers

- 4.16 In addition to the new Register of Beneficial Owners of Overseas Entities owning UK property, and the register being created by this Bill, the Government also operates a public 'Companies Register' and a less public 'Trust Register'. The latter was created in 2017 as an anti-money laundering measure in response to an EU directive and extended in 2020 with effect from September 2022. It now places a requirement on all UK trusts or nominee arrangements whether or not they have a UK tax liability to register and provide information on their trustees, beneficiaries and assets to HM Revenue and Customs (HMRC). It might usefully be thought of as a 'companion volume' to the Companies Register, albeit one where access is limited to HMRC, the police and other parts of UK officialdom (though we understand that public interest journalists might be able to gain access in some circumstances).
- 4.17 We have a concern relating to the Trust Register which, while outside the scope of this Bill, is worth flagging up, not least as it highlights a broader point about the need for careful consideration of the scope of registers created by the Government. This is that that register subjects small and innocuous trusts holding nothing more than premium bonds or cash for minors to the same degree of scrutiny and registration as large, complex trusts. In practical terms this means that when parents or grandparents hold assets such as premium bonds, stocks and shares for their minor children or grandchildren as bare trustee or nominee, they are required to register this on the Trust Register. The registration process is onerous. There are over 860,000 premium bond holders under the age of 16. We suggest this requirement is somewhat excessive and heavy-handed. (We set out our concerns in more detail in an article.⁴)
- 4.18 The experience of the Trust Register emphasises the importance of ensuring that registration processes are not unduly onerous for those subject to them, especially those who are not rich and who are engaging in 'plain vanilla' transactions, and that appropriate protections are in place.
- 4.19 Still on trusts, but returning to this Bill, the word 'ownership' is defined in clause 182 as: '*including legal and beneficial ownership*'. The fact that both beneficial and legal ownership are included poses a question about land owned within trusts, whereby the legal and beneficial owners are usually separate persons. Who would be the primary owner of the land for these purposes? If it is an express trust, then its ownership of the land would already be registered as part of the Trust Registration Service per the 4th and 5th AML directives. Would beneficial ownership imposed by law through an implied trust require registration under this Bill? Implied trusts are specifically exempt from the Trust Registration Service requirements. Yet 'person', in this Bill, is defined in clause 182 as: '*any entity that has legal personality*', which trusts do not have. Greater clarification is therefore needed regarding land in trust to avoid any confusion with the two registers.
- 4.20 While necessary, the register created by this Bill adds to the proliferation of registers relating to the ownership of UK property. It is worth exploring whether a single, comprehensive and universal land register containing ownership and transaction information could replace the existing panoply of registers.

⁴ <https://www.tax.org.uk/how-grandparents-are-facing-more-restrictions-than-oligarchs>

5 Acknowledgement of submission

- 5.1 We would be grateful if you could acknowledge safe receipt of this submission, and ensure that the Chartered Institute of Taxation is included in the List of Respondents when any outcome of the consultation is published.

The Chartered Institute of Taxation

26 September 2022