

BEIS Call for Evidence: A Register of Beneficial Ownership of Overseas Companies and Other Legal Entities



Comments by the Scottish Property Federation

Introduction

1. The Scottish Property Federation (SPF) is the voice for the property industry in Scotland and speaks for over 185 corporate members with interests in Scottish real estate. We include within our membership major institutional investors and funds, developers, real estate lenders, landlords of commercial and residential property, and professional property consultants and advisers.
2. The BPF submission explains the importance of overseas capital and investment to the real estate industry and the wider UK economy. In Scotland, the picture is in some ways even more acute with more than 60% of commercial real estate transactions during 2016 by value originating from overseas investors. This may be via major real estate funds or indeed from high net worth individuals. However, what is clear is that the Scottish real estate markets are much more dependent on overseas companies' investing than is the picture for the wider UK.
3. The BEIS consultation identifies that the Scottish Government has been making its own proposals in respect of improving the transparency of ownership of Scottish land and property. We have engaged with the Scottish Government on these proposals and raised the UK proposals at various times (on PSCs and the potential for broader UK-wide regulations). We are pleased to see the collaboration between the UK and Scottish Governments to avoid duplication of regulatory burdens for overseas companies' registration of beneficial ownership and we urge the two governments to continue to ensure there is no double registration process that would be a burden on overseas investment in Scotland.
4. As part of the British Property Federation our comments support the points made in the separate BPF submission. Where we do not comment explicitly we share the views submitted by our BPF colleagues.

General/Specific remarks

5. We believe that the intention to align the beneficial ownership rules with the existing PSC requirements and to host them both through Companies House is appropriate and welcome. The process will involve in the Scottish context the Registers of Scotland as opposed to HMLR but nonetheless we agree with basing the beneficial ownership register with Companies House.
6. Questions 2 and 3. We agree that 21 years is the correct threshold to be required to enter the beneficial ownership register as a leaseholder.
7. Question 10 – we share the concerns of our colleagues in respect of making the rules effectively retrospective. It is clear that there is a significant gap of knowledge in terms of official records of overseas investor ownership of Scottish land and property. To introduce a penalty based regime for existing owners to comply with beneficial ownership rules seems to be inviting significant regulatory issues in the markets. If the government is determined to impose the measures on existing owners then at the least a much greater compliance period than one year for existing owners of UK real estate should be supported.
8. In addition, we have concerns regarding the resource implications of the proposals for a beneficial ownership register and the process required to support that register. In Scotland, the Registers of Scotland already have a significant challenge to complete the Scottish Land Register within a decade and there is a

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clear lack of information held by the RoS on existing investors despite a push for voluntary registration currently underway. There are added initiatives that the RoS have been asked to lead as well such as SCOTLIS (Scottish Land Information System, initiated by Deputy First Minister John Swinney MSP last year).

9. Question 11 – enforcement. We have concerns regarding the process and indeed scale of enforcement action suggested in the consultation. It is not clear who will be responsible for enforcing the beneficial ownership regime or indeed who they will be targeting initially, given the knowledge gap of overseas beneficial ownership. Who would know that they are liable for beneficial ownership if they were an overseas investor and who would be checking for Companies House – Registers of Scotland? In this situation, we are concerned at the prospects of significant sanctions that could include the effective freezing of investors' real estate assets and the negative signals that this would send to highly liquid global real estate markets. The UK as a whole is seen as a positive location for overseas capital and investment in real estate and infrastructure, we should not act to deter this positive image of the UK.
10. Question 19. The BEIS proposals consider a regime whereby the register should be updated by overseas companies every two years, could inadvertently lead to significant delays in the markets. For example, if a long lease or a purchase is under active consideration and compliance checks underway then a registration not updated for up to 2 years will add a significant concern. An annual requirement in line with other regular reporting demands would appear to be more appropriate.
11. In summary, we would affirm our support for the general approach to a transaction-based registration of beneficial ownership that is under consideration by the UK Government. We have yet to see whether the Scottish Government will add any further requirements to the UK proposals but we would certainly urge the two governments to continue to avoid multi-registration.
12. It is vitally important that the regulatory burden is not excessive for existing or new overseas UK real estate investors and this particularly true from a Scottish perspective as explained in our opening remarks. Investment capital can easily be relocated from country to country and it is important not to inadvertently create regulatory burdens for investors that are perceived negatively. There is a major UK infrastructure requirement required in the next five years which will not be achieved by purely domestic capital and we must capitalise on the good work of DIT and others to attract this capital to invest across the UK.
13. We would be pleased to explain our comments in further details at your convenience and we are happy for our comments to be made public and shared within the government.

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