

## Joint Committee on the Draft Registration of Overseas Entities Bill

### Written Evidence submitted by NAEA Propertymark

March 2019

#### Background

1. NAEA Propertymark is the UK's leading professional body for estate agency personnel; representing more than 11,000 offices from across the UK property sector. These include residential and commercial sales and lettings, property management, business transfer, auctioneering and land.
2. NAEA Propertymark is dedicated to the goal of professionalism and by appointing an NAEA Propertymark agent to represent them consumers will receive in return the highest level of integrity and service for all property matters. NAEA Propertymark agents are bound by a vigorously enforced Code of Practice and adhere to professional Rules of Conduct. Failure to do so can result in heavy financial penalties and possible expulsion from the organisation.

#### Executive Summary

- The draft Bill in its current form will not achieve in its aims, this is largely due to it being self-certified, and Companies House not having the capacity or resource to administer it.
- The Government should seek to ensure that the Register is not self-certified. This will create poor and inconsistent data.
- Companies House will need to be adequately resourced to effectively administer and monitor the Register, as well as to avoid high-risk individuals 'slipping through the net.'
- Information provided by the Register should accompany Customer Due Diligence checks as required by the UK Money Laundering Regulations. This data should be available to cross-reference by professional parties involved in property and land sales.
- Where a beneficial owner cannot be identified, these overseas entities should be allowed to register, but not to enter into property or land transactions.
- A communications campaign needs to be undertaken to inform involved parties of the requirements of the Register.
- Beneficial owners of overseas entities should be required to supply annual updates to the Register.

- The UK Register should be complemented by comparable registers for British Overseas Territories, as is now required by the Sanctions and Anti-Money Laundering Act 2018.

### Objectives and scope

3. The public Register as established by the draft Bill will not effectively deliver the policy aim of preventing and combatting the use of land in the UK for the purposes of laundering money or investing illicit funds. NAEA Propertymark is concerned that information held by the Register may not be entirely reliable, which is further exacerbated by the intention for the scheme to be self-certified and Companies House not having adequate capacity to administer and monitor the Register. Whilst NAEA Propertymark has long called for a public register of overseas companies owning property in the UK, the draft Bill in its current form is not fit for purpose. In our response to the Treasury Committee's Economic Crime Inquiry in May 2018<sup>1</sup>, we made it clear that a public register of overseas companies owning property in the UK will be vital in maintaining the integrity of the property market. Whilst this needs to be acted on efficiently and in a timely manner, without adequate measures in place, the Register will not be effective in its aims.

### Operation of the Register

#### Self-certification

4. The Government must ensure that the Register does not operate on the basis of being self-certified. NAEA Propertymark is concerned that self-certification of data leaves the Register open to abuse with the submission of false information. The Register of Overseas Entities regime has been modelled on the existing People with Significant Control (PSC)<sup>2</sup> for UK companies. However, a major weakness of the PSC Register is that the data submitted is not verified and relies entirely on self-reported data from companies.
5. If this procedure is replicated in the operation of the Register, we are concerned that the information will be compromised and therefore questioning how useful the Register will be. This is likely to result in three outcomes. Firstly, less confidence in the Register. Secondly, poor quality data. Thirdly, property agents will be unable to meet their Customer Due Diligence requirements under the Money Laundering Regulations 2017. The Government

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<sup>1</sup> <https://www.naea.co.uk/media/1047081/uk-parliament-treasury-committee-economic-crime-inquiry.pdf>

<sup>2</sup> <https://www.gov.uk/government/publications/guidance-to-the-people-with-significant-control-requirements-for-companies-and-limited-liability-partnerships>

must look at simple ways of guaranteeing that information is accurate and consistent. For instance, not being able to submit data unless all fields are completed, ensuring that postal address validation is integrated and through the inclusion of a pre-populated list of recognised countries, which would reduce discrepancies on spelling or shortened names. It is imperative that the Government consider validation from when data is inputted to reduce the number of blank documents and varied responses. If there is no independent verification and the Register relies upon self-reporting, this is likely to mean that only law-abiding companies will comply.

#### Administration

6. NAEA Propertymark does not believe that Companies House has the sufficient capacity or resources to administer and monitor the Register. With this brings concern over the reliability of the information held. Without being adequately resourced, the Register will not be effective in recording information on beneficial ownership, nor will it facilitate the right level of access and detail on overseas entities. This will have a significant impact on law enforcement agencies investigating illegal activities that have been masked by complex off-shore structures. We are concerned that without sufficient resource, Companies House will relax standards for certifying information, and there could be a repeat of issues that arose in 2008. In 2008 data management firm, Datanomic, cross referenced Companies House data with information on high-risk individuals and found that 1,504 disqualified directors were being allowed to run other UK companies.<sup>3</sup> Through the Register, Companies House must be able to make checks, as well as cross reference and ensure documents are legitimate. To this end, Companies House must be adequately resourced to ensure that it can verify information that is provided, and that the Register is accurate.

#### Anti-money laundering

7. The Government must ensure that information provided by overseas entities concurs with the Customer Due Diligence checks administered by property agents, the financial sector and legal professionals as required by the Money Laundering Regulations 2017.<sup>4</sup> This is important as not only will it improve the verification of data through the allowance of cross-referencing, but will also provide equivalence to overcome criminal property transactions.

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<sup>3</sup> <https://www.computerweekly.com/news/2240085116/UK-Companies-House-register-contains-3994-high-risk-individuals-Datanomic-finds>

<sup>4</sup> <http://www.legislation.gov.uk/ukxi/2017/692/made>

8. Through data cross-referencing, property agents, finance professionals and solicitors will have the ability to report discrepancies in Customer Due Diligence findings. For property agents, Customer Due Diligence means taking steps to identify their customers and checking they are who they say they are. It is a cumulative process and means obtaining the customer's: Full name; Official documentation which confirms their identity (preferably a form of photo ID); Residential address and date of birth; Details of any resulting beneficial owners. The level of due diligence depends on the agent's risk assessment of each customer. Under the Money Laundering Regulations 2017, estate agents must be able to prove the identity of both the buyer and seller, and any beneficial owner of the customer, to the property sale.<sup>5</sup> Whilst the beneficial owner is likely to own or control the customer, it may also be the person on whose behalf a transaction or activity is carried out. If the agent has any doubts about a customer's identity, they must cease activities with them until this is resolved. Therefore, unless the information on the Register can be verified, strengthening existing rules for property agents, it will become a box ticking and futile political exercise that does not contribute to the fight against money laundering and terrorist financing.
  
9. To limit property transactions enabled through criminal activity there must be equivalence. To this end, it is imperative that the Register adds to the current anti-money laundering regime in the UK and does not work in isolation. For instance, the Bill could require proof of identity or proof of ownership/control by requiring a scanned copy of a passport or national ID, which would be in line with action agents take to identify customers. To this end, the Government must do three things. Firstly, work with professional bodies and Anti-money laundering supervisors to understand the requirements of the Money Laundering Regulations 2017. Secondly, liaise directly with HM Revenue and Customs regarding the implications on regulated sectors. Thirdly, refer to *HM Revenue & Customs Estate agency guidance for money laundering supervision*<sup>6</sup> to ensure that the information on the Register mirrors the Customer Due Diligence requirements of property agents.

## Technicalities

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<sup>5</sup> <http://www.naea.co.uk/lobbying/money-laundering-regulations/>

<sup>6</sup> <https://www.gov.uk/government/publications/money-laundering-regulations-2007-supervision-of-estate-agency-businesses>

10. NAEA Propertymark believes that an overseas entity should be able to register, but unable to enter into a transaction to sell or purchase property or land unless the beneficial owner can be identified. Despite taking all reasonable steps to identify a beneficial owner, sometimes this may not be possible, or in other instances all the data may not be available. For example, certain data is not held due to differing registered company structures outside of the UK. To this end, the managing agent that applies for the overseas entity ID should also be responsible for the entity where it has been unable to confirm beneficial owners. In addition to this, we think that it should be possible to appeal the suppression of information from public disclosure. Without this power, overseas entities will have the ability to block requests for information, which could result in obstruction for investigating enforcement authorities, journalists and the wider public.

## **Compliance and enforcement**

### Compliance

11. NAEA Propertymark believes that to encourage compliance with the Register, the Government must do two things. Firstly, a communications campaign must be undertaken to inform all relevant parties of the requirements of the Register. Secondly, by requiring all on the Register to provide annual updates, beneficial owners will have to proactively comply with the new rules, and Companies House will have a clear route to monitoring progress.
12. To raise awareness of the compliance requirements of the new Register, the Government should work with HM Land Registry, British Chambers of Commerce and Companies Houses to ensure that a full communications campaign to stakeholders and interested parties is undertaken before the Register becomes fully operational (including the transition period). To complement the campaign, a guidance document must be provided. This should contain the date from which overseas entities will be required to register by, a list of information they must include and details about enforcement of the Register.
13. To ensure the longevity of the Register's accuracy, NAEA Propertymark believes that entities should be required to provide annual updates or clarification of no change to the company's structure. This replicates the current requirement to update the PSC on an annual basis. Annual updates will require overseas entities to be proactive in compliance and will allow UK authorities to check progress. We believe that any measures to increase the timeframe for

mandatory updates are likely to give rise to criminal offences, limit the accuracy and reduce public confidence in the Register.

## **Delegated powers**

### Devolved Administrations

14. We do not see any issue in consistency across the UK, despite differences in how property is brought and sold in England, Wales, Scotland and Northern Ireland. The proposed delegated powers in the draft Bill are appropriate. The UK Government should continue working with the Devolved Administrations to ensure a consistent and single approach across the UK to create a level playing field.

### British Overseas Territories

15. To further the work of the UK Government and the Devolved Administrations, the British Overseas Territories must also open their registers. This would provide property agents, law enforcement and the wider public with the ability to identify individuals or groups hiding illicit activities behind companies registered in the British Overseas Territories, and ultimately act as deterrent. It is known that many owners of high-value property, typically located in London, hide the true identity of the owner through registering ownership with HM Land Registry through offshore trusts that can be pinpointed to places such as Jersey, the Cayman Islands and the British Virgin Islands. To this end, we supported the amendment to the Sanctions and Anti-Money Laundering Act 2018<sup>7</sup> that requires British Overseas Territories to put in place a publicly accessible register of beneficial owners. As with the UK's Register, this will require adequate resources to ensure its operability. Furthermore, it will require policing to ensure the accuracy of data provided, with tough sanctions where false information has been supplied.

## **Further clarification**

### SPV (Special Purpose Vehicle)

16. The Government must clarify how the Register will deal with the sale of an SPV (Special Purpose Vehicle). An SPV is a type of limited company that mortgage lenders will accept. They are set up, under which an application for mortgages as a limited company can be applied for, to hold a property. Individual real estate assets are often directly owned by a

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<sup>7</sup> [http://www.legislation.gov.uk/ukpga/2018/13/pdfs/ukpga\\_20180013\\_en.pdf](http://www.legislation.gov.uk/ukpga/2018/13/pdfs/ukpga_20180013_en.pdf)

SPV. This allows flexibility when selling an asset, such as the ability to sell a proportion of rather than its entirety. It also allows for specific borrowing at the level of the asset if required. To this end, it is not uncommon for SPVs to be incorporated days in advance of a transaction. Consequently, the Register will need to be online and fully automated to allow for real time application. If real time registration is not feasible, HM Land Registry and Companies House will need the capacity to offer a fast-track service. This must be clarified in order to ensure that the transactions are not delayed unduly.

#### Sovereign wealth funds and companies

17. Further clarity is required on sovereign wealth funds and companies within these structures, such as when the beneficial owner of a company is a government. A sovereign wealth fund is a state-owned pool of money that is invested in various financial assets. The money typically comes from a nation's budgetary surplus. To this end, the Government must clarify whether sovereign wealth funds will be exempt, or will they be required to sign up to the Register.