

21 February 2024

Introduction

INREV supports the Government's efforts to further enhance transparency of UK property ownership when trusts are involved in ownership structure and welcomes the opportunity to consider suggested measures. In particular, we believe that Government and its enforcement and record-keeping agencies should have access to relevant information to effectively combat criminal activity, such as money laundering. There will also be cases where greater visibility regarding the ownership of UK land and property by overseas trusts will support Government in addressing other policy priorities, such as improving the housing market and removing barriers to community groups making use of vacant or underused properties.

At the same time, we note that practical challenges could arise around implementation and sometimes burdensome administrative requirements placed on property owners and their advisors. In considering additional transparency and disclosure requirements we would therefore propose some caution on two fronts.

Firstly, it is important for Government to ensure that the compliance and administration regime surrounding any additional disclosure requirements is pragmatic and reflects the fact that different types of trust structures present different levels of risk from an economic crime perspective. This could be a fourth ownership disclosure regime that businesses need to comply with, so compliance across all regimes should be as streamlined and as simple as possible to avoid undue administrative burden. Furthermore, it is critical that the relevant agencies administering any new regime be appropriately resourced to avoid backlogs in registrations and the potential delays that these can cause to property transactions.

Secondly, we recognise that one of Government's biggest challenges will be to balance the potential benefits of greater public transparency of property ownership by overseas trusts with the possible risks associated with jeopardising the privacy of individuals' data. To that end, we recommend that Government plans for a phased approach to greater transparency, starting with full disclosure to Government and its various law enforcement and record-keeping agencies.

The Government's better oversight of the ownership of UK land and property through trusts would facilitate a comprehensive assessment of the potential risks associated with greater public disclosure of this data. This, in turn, would enable a more informed approach to assessing and mitigating these risks. Therefore, we recommend that steps to work towards greater public disclosure should be considered as part of a second workstream, after full disclosure to Government and enforcement agencies is established.

We present a brief executive summary on the following page, with responses to the consultation questions set out in Appendix 1. We also outlined alternative policies that could more effectively address some of the challenges to the housing and property market under consideration by the government within the context of this consultation. Finally, Appendix 2 presents a summary of different trust structures discussed in this response to the consultation.

We remain available to discuss in more detail any aspects of this response.



* INREV is the European Association for Investors in Non-Listed Real Estate Vehicles. We provide guidance, research and information related to the development and harmonisation of professional standards, reporting guidelines and corporate governance within the non-listed property funds industry across Europe, including all EU Member States and the UK. INREV currently has approximately 500 members. Our member base comprises institutional investors from around the globe including pension funds, insurance companies and sovereign wealth funds, as well as investment banks, fund managers, fund of funds managers and advisors representing all facets of investing into non-listed real estate vehicles in the UK and the rest of Europe. Our fund manager members manage more than 500 non-listed real estate investment funds, as well as joint ventures, club deals and separate accounts for institutional investors.

Executive summary

The obligations and impact of any new disclosure requirements on investors must be proportionate, particularly as regards large scale professional and institutional investment, which will be critical to supporting a number of our sector's priorities, such as decarbonising buildings and revitalising high streets.

While taking a proactive approach to tackling criminal activity through regulations is a noteworthy achievement for the UK, Government must remain mindful of the approaches in other countries to ensure that the UK does not inadvertently create a less favourable investment environment.

A number of potential measures should be considered to ensure that these new rules will not adversely impact on investment, including:

- *The administrative requirements must not be overly onerous.* Duplicative reporting requirements should be streamlined across existing and possible new disclosure regimes.
- *Low risk investors and funds should benefit from a carve-out.* Similarly to UK pension funds, a carve out or streamlined compliance process should be considered for very low risk, trusts and professional international investors, such as overseas pension funds, or other regulated vehicles meeting a Genuine Diversity of Ownership (GDO)-style test. A high number of investors in a widely held fund implies no single investor has control over the underlying assets, and, therefore, the administration levels would be excessive, especially for daily traded funds.
- *The bodies that currently manage disclosure and administer the registers must be better resourced.* Significant backlogs of up to two years in dealing with applications to existing registers were reported by some companies. These delays are commercially meaningful and increase the cost and risk of property transactions, ultimately making the UK a less attractive destination for overseas investment. In order to manage the existing backlogs, additional resources should be made available to the Land Registry, Companies House and HMRC's Trust Registration Service (TRS), in addition to further resources required to support any new disclosure obligations.
- *The risk of 'misleading reporting' must be managed.* It is not uncommon for the use of overseas ownership structures to be inaccurately conflated with tax avoidance or even evasion. Given over a third of UK investment property is owned directly by overseas investors (with additional investment held via indirect holdings, like funds), the use of overseas entities is not unusual in UK real estate investment structures. However, misleading reporting could easily result in reputational risk for entities that comply with the rules.

The rules must have appropriate consequences and enforcement powers. For the policy to effectively achieve its goal of identifying nefarious actors, the associated rules need appropriate sanctions and enforcement powers to better ensure comprehensive disclosure and compliance across the board.

We recommend a phased approach to transparency, starting with Government and enforcement agencies. Trust structures are traditionally used because of the discretion afforded to trustees and their families. Therefore, care must be taken around genuine cases where anonymity is important (minors, vulnerable people, politically exposed individuals, etc.). We recommend greater disclosure of ownership information to Government and enforcement agencies in the first instance. Public disclosure should be part of a second phase of transparency, once Government can better establish the risks associated with full public disclosure and consider how they can be mitigated.

Alongside these measures and while recommending deferring full public transparency of UK property ownership by overseas trusts to a second phase of work, **we encourage consideration of additional policies that would support the Government's housing and property objectives.**

For example, to reduce a number of **vacant units on high streets** we suggest *resourcing local planning departments* to allow for better response to the changing uses.

Moreover, *business rate bills should be affordable and responsive* to avoid imposing unmanageable fixed costs on units which have since reduced in value. A *'fresh start' style relief*, similar to Scotland, could be introduced, which would provide a business rates relief to new occupiers that take on a vacant unit for a period of time.

We propose establishing a *register of vacant units*, including contact details for landlords or agents associated with such properties. In instances where a local community group or business cannot find the information they need, it should be possible to apply for this information from the local authority or relevant agency.

To ensure that commercial property can be more easily let and that landlords with vacant properties are not disincentivised from seeking tenants looking for shorter and more flexible leases, we suggest *reforming the 1954 Landlord and Tenant Act*.

Addressing the challenge of **countering rogue landlords** requires providing local enforcement agencies with sufficient resources, information, and powers to curb this illegal activity. Moreover, a Landlord registration scheme as proposed by the Renters Reform Bill will be a helpful first step in addressing transparency and accountability. If the Government is contemplating a register, we would recommend referring to the Rugg Review 2008, as an example of an effective register.

In the long term, substantial investment in high quality housing is imperative, including professionally managed high quality rental homes. By improving the supply and standards of the whole sector, the market for rogue landlords will diminish. Large scale professional and institutional investors demonstrate considerable interest in increasing their investments into high quality professionally managed rental homes, known as 'Build to Rent'. By supporting and encouraging this professional investment, tenants will have a wider range of housing options, effectively eliminating the presence of rogue landlords within the market.

Finally, to **identify landlords accountable for remediation works**, we believe that ensuring relevant ownership data is made available to Government and appropriate agencies should be sufficient to encourage compliance and tackle any illegal activity. We understand that the Government made significant strides in identifying all buildings requiring cladding remediation works, with over 90%¹ of the buildings identified having started or completed remediation works, so it is not clear whether a public dataset would provide significant additional benefits in this regard.

¹ [Building Safety Data Release February 2023 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/data-releases/2023/02/building-safety-data-release-february-2023)

Appendix 1: Responses to the consultation questions

Chapter 1

Overall principle of transparency of trusts owning land

Question 1: Do you agree that more direct information about the ownership and control of land, including where a trust structure is involved, would help address the issues in the housing sector identified above?

We agree that greater transparency and disclosure of the beneficial owners of land and property to Government and enforcement agencies will help address some of the issues in the housing sector identified in the consultation. Furthermore, equipping enforcement agencies with sufficient resources, information, and powers will help ensure compliance across the board.

We consider that full public disclosure should be considered as part of a second phase of transparency, once Government better understands the risks associated with full public disclosure, and is able to consider appropriate options to mitigate those risks. In the meantime, there are other policy initiatives which would support a number of Government's objectives in relation to land and property. We present the following suggestions for your consideration:

To reduce a number of **vacant units on high streets** we suggest *resourcing local planning departments* to allow for better response to the changing uses.

Moreover, *business rate bills should be affordable and responsive* to avoid imposing unmanageable fixed costs on units which have since reduced in value. A *'fresh start' style relief*, similar to Scotland, could be introduced, which would provide a business rates relief to new occupiers that take on a vacant unit for a period of time.

We propose establishing a *register of vacant units*, including contact details for landlords or agents associated with such properties. In instances where a local community group or business cannot find the information they need, it should be possible to apply for this information from the local authority or relevant agency.

To ensure that commercial property can be more easily let and that landlords with vacant properties are not disincentivised from seeking tenants looking for shorter and more flexible leases, we suggest *reforming the 1954 Landlord and Tenant Act*.

Addressing the challenge of **countering rogue landlords** requires providing local enforcement agencies with sufficient resources, information, and powers to curb this illegal activity. Moreover, a Landlord registration scheme as proposed by the Renters Reform Bill will be a helpful first step in addressing transparency and accountability. If the Government is contemplating a register, we would recommend referring to the Rugg Review 2008, as an example of an effective register and potentially helpful starting point.

In the long term, a substantial investment in high quality housing is imperative, including professionally managed high quality rental homes. By improving the supply and standards of the whole sector, the market for rogue landlords will diminish. Large scale professional and institutional investors demonstrate considerable interest in increasing their investments into high quality professionally managed rental homes, known as 'Build to Rent'. By supporting and encouraging this professional investment, tenants will have a wider range of housing options, effectively eliminating the presence of rogue landlords within the market.

Question 2: Are you aware of, or have you experienced, any housing related issues where a lack of ownership information has caused a problem? Please give details.

No comment.

Question 3: What further benefits do you see from increasing the transparency of land ownership, especially where trusts are involved, and what are the risks? Please provide any evidence you may have to support your position.

The primary benefit of greater disclosure of beneficial ownership information to Government and enforcement agencies will be to allow sufficient information to tackle illicit finance, money laundering and other illegal activities.

We would recommend deferring full public disclosure of information to a second phase of work once Government is better able to assess the risks and consider appropriate options to mitigate them. Below we present possible adverse consequences of greater disclosure and transparency.

Risk in decreasing appetite to invest as a result of higher administration, expense or delays. Albeit this risk could be managed through streamlined compliance and administration processes, and adequate resourcing of the relevant government departments.

Reduction in liquidity, in cases where it's hard to deal in or finance property, e.g. due to Land Registry backlogs, will have a significantly detrimental impact on appetite to invest in the UK.

Risks to vulnerable, politically exposed, or otherwise at-risk individuals if their personal data or home address is made available.

Misleading reporting may cause the potential reputational damage that could be brought on an individual or business by misconstruing or misinterpreting the facts. In this regard, it is notable that, although in (just) a couple of areas the consultation document acknowledges that trusts can be used for wholly legitimate reasons, the only example given is where a person may be unable to hold property themselves, either because they are underage or have a disability that affects their capacity. In bringing forward legislative proposals it would be helpful if more commentary be added about the legitimate use of trusts in the context of investment fund and institutional investment, so the use of trust structures in these scenarios is better understood and not immediately associated with an illegitimate purpose. See Appendix 2 below.

Risk of lower appetite to invest from overseas investors who value their privacy. Some overseas investors, who are not undertaking any illegal activities but experience a higher level of privacy when investing domestically or in other foreign jurisdictions, may be deterred from investing in the UK. Cultural norms vary greatly in this respect globally and an international comparative analysis may inform an assessment of this risk.

Chapter 2

Questions about future transparency of trusts involving minors

Question 4: In any future proposed solution for enhancing transparency about trusts on the ROE following this consultation, do you believe that information about minors should be available to public inspection:

- a) by default, with the onus on the overseas entity, the trust, or their representatives, to apply for protection under section 25 of the ECTEA 2022; or,
- b) access permitted only by application with the applicant required to demonstrate a legitimate interest in the information?

Please give reasons for your answer.

See response to Question 5.

Question 5: If you believe that information about minors should not be made public by default, do you believe that it should remain accessible only to law enforcement, HMRC and public authorities, or would you support limited access under certain circumstances (for example, on application with a reason provided)? Please give reasons for your answer.

We would recommend that land and property ownership information is fully disclosed to Government in the first instance. Once Government has better oversight of the ownership information, including the number of possible minors and other vulnerable individuals that might be impacted, better assessment of the risks of a public disclosure regime and identification of possible strategies to mitigate them will be possible at a later date.

Options for enhancing transparency of trust information held on the ROE

Question 6: In your view, which of these options would it be most appropriate to take forward? Please give reasons for your answer, including your views about any risks associated with each option, and how it might help to achieve the government's aims.

See response to Question 7.

Question 7: What is the potential impact on business of your preferred option? If you believe there will be an impact, please evidence what that impact could be, and how businesses may be supported.

In the first instance we would suggest Option 3 (no change in public availability). Simply ensuring greater disclosure of information to Government and enforcement agencies, and equipping enforcement agencies with sufficient powers and resources, will enable Government to more effectively tackle money laundering and other criminal activity.

Options 1 and 2 could be considered at a second stage, once Government has better insights in the risks of a public or partially public data set and possible solutions to manage those risks.

Question 8: What is the potential impact on individuals of your preferred option? If you believe that this would not be helped by the expanded protection regime, please provide reasons, and any alternative suggestions.

No comment.

Question 9: If your preference is Option 2, which categories of data do you consider should be publicly available? Please give reasons for your answer with reference to the government's stated principles set out in chapter 1 of this document.

No comment.

Question 10: Do you have any other views on this issue that you wish to share with us?

No comment.

Chapter 3

Increasing transparency of land-owning trusts

Commercial vs residential

Question 11: Do you agree that any future transparency requirements should apply to all land, regardless of use class?

We would recommend the same rules apply to all types of land and property.

Question 12: Are there any factors the government should consider regarding different land use classes?

No comment.

Data collection

Question 13: Which of the following data do you consider necessary and proportionate for the government to collect (or continue to collect) in order to meet the objective of greater transparency of land ownership as a matter of public interest? Please tick all that apply and give reasons for your answer.

See below.

Question 14: Which of the following data do you consider necessary and proportionate for the government to collect (or continue to collect) in order to meet the objective of helping to address issues in the housing sector? Please tick all that apply and give reasons for your answer.

See below.

Question 15: Which of the following data do you consider necessary and proportionate for the government to collect (or continue to collect) in order to meet the objective of helping to tackle illicit finance and corruption in respect of UK land ownership by *overseas trusts*? Please tick

all that apply and give reasons for your answer, noting that overseas trusts are considered by the National Risk Assessment to pose a higher risk for money laundering.

See below.

Question 16: Which of the following data do you consider necessary and proportionate for the government to collect (or continue to collect) in order to meet the objective of helping to tackle illicit finance and corruption in respect of UK land ownership by *UK trusts*? Please tick all that apply and give reasons for your answer, noting that UK trusts are considered by the National Risk Assessment to pose a relatively lower risk for money laundering.

Name of trust (or other identifier)

Details of land owned by the trust

Name of trustees Beneficiaries' rights over the land

Name of beneficiaries Address(s) of parties to trust

Name of settlors

Dates of birth of parties to trust

Name of protectors (if applicable)

Any other details (please specify)

Response to Questions 13 to 16:

We consider that Government should have the ability to collect all this data, and relevant enforcement agencies should be able to use the data to support all of the policy objectives listed in questions 13 to 16 above. Although, we would like to emphasise that in the case of unit trusts and other types of investment funds, obtaining the data on the investors in the funds could be onerous task for the fund manager. The funds may have a very large number of investors who may change on a regular basis; there are funds in the form of unit trusts that allow daily subscriptions and redemptions. In addition, there is a high level of intermediation in the fund market so the ultimate investor may have come through other products in the chain, such as fund-of-funds. For this reason, we have recommended a carve out or simplified compliance requirements for widely held and regulated pension and investment funds.

Data access

Question 17: Which of the above options do you consider reasonable and proportionate to address the issues outlined in this consultation? Please give reasons for your answer.

Option 1 – Retain existing access practices relating to trusts information

Option 2 – Increased transparency of non-UK trusts holding UK land

Option 3 – Publish the minimum information necessary to fulfil objectives and retain current privacy practices for all other information

Option 4 – Publish the minimum information necessary to fulfil objectives and increase access to further information through a new ‘legitimate interest’ test

Option 5 – Publish all information collected about trusts by default

In the long run, we are supportive of Government gradually increasing transparency of ownership of UK land and property. In the short term, we would recommend Option 1, with disclosure made to Government and enforcement agencies only in the first instance. Once Government is comfortable with the risks associated with public disclosure of personal information, and how these should be mitigated, policies involving greater public disclosure could be considered at that stage.

Question 18: If you chose options 3 or 4, which of the following data would you consider necessary and proportionate for the government to publish by default in order to identify a trust holding a particular piece of land, if further data is available under certain circumstances? Please tick all that apply and give reasons for your answer.

Name of trust (or other identifier)

Details of land owned by the trust

Name of trustees

Beneficiaries’ rights over the land

Name of beneficiaries

Address(s) of parties to trust

Name of settlors

Dates of birth of parties to trust

Name of protectors (if applicable)

Any other details (please specify)

No comment.

Question 19: If you chose option 4, who do you think should qualify under a ‘legitimate interest test’ to allow access to further detail? Please tick all that apply and give reasons for your answer.

Resident on land owned by the trust

Owner/resident of land neighbouring the land owned by the trust

Residents associations or their representatives

Relevant local authorities Investigative journalists (for reasons other than money laundering or terrorist financing)

Academic institutions (for research reasons)

Other (please specify)

No comment.

Exemptions from publication

Question 20: Please detail any situations where you think trust information should be protected from publication by default, and give reasons for your answers.

We would reiterate that, in the first instance, we would not support trust information being made public. By default, the first stage should be to ensure that Government and enforcement agencies have all the information and enforcement powers they need.

As a second stage, Government can consider greater public disclosure once they have a better sense of the risks associated with public disclosure of data, and how those risks could be managed. We would assume these new disclosure rules would seek to protect vulnerable individuals, and generally seek to respect individuals' private and family lives, in accordance with Article 8 of the Human Rights Act.

In addition, as well as UK pension fund trusts, there are other types of investment funds, that invest in property, where the holders of those funds, like members of pension funds, do not direct or control the investments in the funds. These funds may have a large number of beneficial owners all with a right to a very small proportion of the property held by the fund.

We see a number of practical difficulties in applying both the reporting and transparency rules to such funds:

- There may be a very large number of investors;
- The investors may change on a regular basis. There are funds in the form of unit trusts that allow daily subscriptions and redemptions;
- There is a high level of intermediation in the market so the ultimate investor may have come through other products in the chain, such as fund-of-funds;
- The identity of a fund manager's clients is commercially sensitive. They do not want to share this with their competitors.

Fund managers of such funds are regulated, and comprehensive rules are already in place in respect of anti-money laundering (AML). In terms of other transparency benefits of disclosure, for such funds, it is much more relevant who the fund manager is, rather than the ultimate investor. For example, we do not believe there is any public interest in publicly disclosing beneficial owners of pension fund trusts.

We assume these are not the types of trusts envisioned when ensuring more transparency of land and property ownership. We recommend a carve-out from any new transparency rules for land and property ownership for such fund trusts. We believe that this would be best achieved through applying existing legislative definitions. We would propose excluding the following types of funds:

- Authorised and unauthorised unit trusts, as defined under s237 of the Financial Services and Markets Act 2000.
- Funds that meet a Genuine Diversity of Ownership (GDO)-style test. This definition of funds applies to various pieces of tax legislation and includes a common set of conditions. It is set out in the HMRC Investment Funds Manual under IFM17000. This section of the manual was updated very recently following an extensive consultation exercise with industry bodies by HMRC.
- Institutional investors such as pension schemes with existing definitions applied.

Other comments

Below we would like to present some other areas for consideration. These details were not specifically raised in the consultation questions:

- Consideration needs to be given to how property will be registered and at what level of detail e.g. individual buildings/units, or blocks. Will these registrations match the Land Registry title?
- Consideration should be given to whether the way Land Registry titles are registered is appropriate for this policy. Should they be amended to better reflect the ownership of individual units/properties, e.g. by using a Unique Property Reference Number?
- Consideration needs to be given to different lease structures: mixed-use buildings may have a variety of headleases and underleases with different parties responsible for each.
- Residential properties can often have several 'owners': from a short/medium term leaseholder, a longer lease holder, to a freeholder. Consideration must be given to which owner would be required to disclose.
- Consideration should be given to the impact of any new measures on financing and lenders, and how these can be mitigated.

Appendix 2: Summary of different trust structures

As discussed in the consultation, a trust can arise expressly and by implication. Trusts generally are established where the legal and beneficial owners are different, and this can happen or be structured in a number of different ways. Tailored rules may be appropriate to reflect these differences. We set out some common examples below.

A company has a separate legal personality to own legally and beneficially. Given its legal status, it can also be a beneficiary under a trust or be a trustee.

The beneficiaries under a trust can be any natural or legal person such as family members (including children), a company, a charity, an institution (such as educational or the arts), participants in a business, or investors in a fund or a financial or similar product. The trust may arise as a result of private and family type arrangements or in the course of a business.

For example, a **bare trust** is where a person(s)/ nominee(s) holds an asset on trust for one or more persons and acts at their direction. In this case, the person/ nominee holds the legal title to the asset and the beneficiary has the beneficial interest. A company acting as a nominee may be owned by a completely different person to the beneficiary.

This may also be seen in property nominee arrangements including co-ownership arrangements where two or more people have common interests as tenants in the land (e.g. half share each) but the land is held legally by two nominees or a trust corporation.

Partnerships can be blurred as assets are usually held as partnership assets under partnership law but sometimes, they may be described as held on trust according to the partnership arrangements.

The term **constructive trust** refers to a situation where, for example, a third party has purchased land, but it has not been legally transferred to it.

A **unit trust** is where a trust corporation or trustees hold assets as a collective investment scheme and sometimes have power to manage (or the manager does under the terms of the trust deed). In this case, the Unit Trust issues units to unitholders, who do not have power to manage as such, but collectively own the trust assets according to the units they hold subject to the terms of the trust deed. In the UK, these can be regulated products, such as authorised unit trusts for retail investors, and usually with the likes of big insurers and similar. In some cases, they may be exempt unauthorised unit trusts for capital gains exempt investors (UK pension funds and charities). There are also Charities funds and other investment schemes (LTAFs, etc.) which may include trust arrangements.

Many UK assets are also held in **offshore unit trusts**, e.g. Jersey Property Unit Trusts (JPUTs) and Guernsey Property Unit Trusts (GPOTs). Many UK assets (generally non-residential, but for some large-scale PRS, student accommodation or assisted living developments) are also held in these structures. In simple terms, they are typically private offshore versions of the unit trust type arrangements above, almost exclusively for institutional investment in non-private residential assets given their attendant running costs, but the trust's Trustees/Manager and/or administrator are regulated locally, including in relation to AML/CFT compliance.

Pension funds are constituted as trusts by their trust documents and empower the trustees to act and invest for the pension beneficiaries (actual or future).

Private trusts (settlements, wills and trusts) are established when many people set up trusts or act as trustees where assets are held for their family members or discretionary (the trustees can choose

from selected potential beneficiaries). Wills often include a trust where executors may end up holding assets for a spouse (perhaps for life) and in part or subsequently for children etc.

Charities will also hold assets on trust for the charitable purposes of the trust.