

Scotland needs to get its company law into good order

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I gave evidence to the Scottish Affairs Committee yesterday on the importance of being able to track the ownership of Scottish land through offshore companies. This blog covers issues on which I did give evidence and other matters where questioning did not result in the issues coming up during the session. It will be submitted to the committee as a follow up submission for their consideration.

No one, not least me, will deny the importance of this issue and I was, of course, happy to explain why this issue remains of enormous concern despite the forthcoming introduction of automatic information exchange from the UK's Crown Dependencies and Overseas Territories, amongst others. The fact that all these places have joined together behind the leadership of Cayman [to say that they are refusing to create public registers of beneficial ownership for the companies located within their jurisdictions](#) makes a mockery of the commitments they gave to David Cameron before the G8 (as it then was) in June 2013. That they also say that they have refused to cooperate because such registers undermine their economy's business models is also telling: that business model is based solely on the provision of secrecy to persons from outside their jurisdictions to make sure they cannot be identified to be undertaking activities which, for a variety of reasons, legitimate and illegitimate, those people would not wish the world to know they were doing.

It is my opinion that the Committee should not sit and wonder what to do about this: they should legislate to deal with it. In my opinion the UK parliament has an absolute right to legislate for matters relating to the foreign affairs of both the Crown Dependencies and Overseas Territories. I am aware that this is contentious, but it is indisputable that the UK is responsible for the foreign affairs of these places, even if we have delegated certain tasks to them. And it is also indisputable that if we are responsible for those affairs then we can legislate on them on behalf of these places, with our law having application in the territories for which we are responsible. And if that is the case we have an obligation to act when we need to do so. If there is any doubt, note that not a single country in the world objected when Whitehall decided to take over direct rule of the Turks and Cacaos Islands: they couldn't because we had an absolute right to do just that if we wished, as we have in any of these jurisdictions. The

'self government' they enjoy is a choice by the Westminster government as much as, to be candid, has been self rule in Northern Ireland and as, at present, is the Scottish Parliament, which has not been established on a permanent basis, as yet.

Now it so happens that I think that there is good reason to devolve power to all these places as far as is possible, but like all power I think that it is granted with the expectation that it be used responsibly. This, unfortunately, is a condition that has yet to be met by any of these places precisely because they have abused their right to legislate to undermine the sovereign rights of other locations, including the UK. That, of course, means that their maintenance of those legal systems that are key to their economies but which are only so because they are designed to harm other places a foreign policy issue.

I stress, I have no problem with these places offering secrecy to their own populations so that those people can avoid any obligations imposed locally. If these governments really wish to undermine the good governance and sound management of their own economies and they do not impose a financial risk on the UK as a result (because we are also, indisputably, the guarantors of these governments and their financial obligations) then that is their own choice. But if that choice is extended so that other governments are harmed my suggestion is very simple and straightforward: taking such action is not a matter on which these governments can decide; or rather it is one where they can suggest but the UK can over-rule. And the time to over-rule has now come.

The governments of the UK's tax havens have blatantly chosen to ignore the call the UK has made for the establishment of company registries with beneficial ownership recorded on public record to ensure that all parties, including other states, know who might be making use of the benefits of limited liability entities that these jurisdictions permits to be created. And if that is their choice then we in the UK have a choice, and even more than that, an obligation to over-rule them since we are responsible for their foreign affairs.

I would strongly recommend that the Scottish Affairs Committee recommend the investigation of this legislative possibility that I am quite sure exists if the political will to enact it was established.

There is, however, another issue on which action with regard to company regulation is required and this, as I pointed out to the committee, is within Scotland itself. As I have pointed out for some years now, company regulation in the UK as a whole is dire. [Around 400,000 companies a year are struck off the Register of Companies](#) because they fail to comply with their most basic legal obligations, including failure to file accounts or failure to file the annual return forms that currently provide detail of the legal ownership of companies and which will in future supply details of the beneficial ownership of those organisations. A few thousand prosecutions a year are brought, but many of those are abandoned if missing accounts or forms are filed after the

prosecution begins. In effect, this means that the risk of penalty for failing to comply with company law throughout the UK as a whole is very small indeed. In Scotland, however, it is even lower. According to data published by Companies House they have no record of any prosecution for breaches of company law in Scotland since 2008, and this is important as it does have its own company registry.

The implication of this is clear: it would seem that the administration of company law in Scotland has, for all practical purposes, ceased. As a consequence the chance that anyone will feel obliged to actually comply with the new legal requirement that they disclose the beneficial ownership of a company if they think it not in their best interest to do so is very small indeed. Or, as I put it, this will be, at best, an honesty box arrangement on which no one should place any dependence as to truth or accuracy, let alone completeness. If Scotland is really serious about finding out who owns its companies then it needs to do four things.

First it must invest in the administration of company law in Scotland and vigorously pursue those companies who fail to comply with their obligations. This requires a commitment to law and order.

Second, it must require a register of trusts on public record as well as of companies, or all relevant details will be hidden behind discretionary trust arrangements. I have to admit the evidence HMRC gave on this issue to yesterday's committee was naive on this issue.

Third, it must demand that information be supplied by UK banks to HMRC on the companies to which they supply banking services, including names and addresses of directors and places of business as well as branch and account details and information in balances and total sums deposited in a year, all of which they must now have for UK automatic information exchange obligations so there is no significant cost to supplying this information. If there was, it should be covered by an increase in the company annual return fee. It is absurd that from 2016 this information will be supplied by banks in tax havens if the owners of a company there are UK resident but the information will not be supplied domestically.

And finally, property letting companies incorporated overseas must be deemed to be trading in the UK and so be required to file their accounts in this country, which is not (absurdly) the case at present. Then the same information regime on beneficial ownership could be applied to them as will be applied to UK companies.

All of this is possible. The abuse of land ownership rights created by anonymity has to end. The opportunity and the means to do so exist and all that is necessary is political will to put the measures in place. This committee needs to act by recommending that such powers be put in place, now.

I sincerely hope they do.

