Thank you for your letter of 15 March requesting a written submission from my department about the exclusion of trusts from the requirements of the draft Registration of Overseas Entities bill. It is right that the Committee conducts proper scrutiny on this issue as it considers this bill. I hope that my letter explains the current UK framework in relation to trust registration, the work that is in train to extend this, and clarifies why the bill’s requirements do not therefore extend to trusts.

The Government has set an ambitious agenda that places reforms around beneficial ownership at the heart of its response to tackling economic crime. This was recognised in last year’s evaluation of the UK’s anti-money laundering and counter-terrorist financing (AML/CTF) regime by the Financial Action Task Force (FATF). FATF – which sets global AML/CTF standards – found that the UK has the strongest AML/CTF regime of the 60+ countries assessed to date. In particular, FATF concluded that the UK is only the second jurisdiction to date to be fully compliant with the FATF expectations on trust beneficial ownership. FATF additionally found that “the UK is a global leader in promoting corporate transparency and has a good understanding of the ML/TF risks posed by legal persons and legal arrangements”.

This conclusion reflects the UK’s existing approach to registering trusts. In July 2017, HMRC established the Trust Registration Service (TRS) through transposition of the Fourth EU Anti-Money Laundering Directive. The TRS – which is accessible to UK law enforcement authorities – captures full beneficial ownership information of the trustees, settlors, beneficiaries and other beneficial owners of trusts which generate a tax consequence in the UK. This register includes beneficial ownership information of offshore trusts when they generate a UK tax consequence – which would normally be the case with trusts which purchase land in the UK - and currently has 108,870 trusts registered on it. The TRS complements additional mechanisms which law enforcement have for obtaining beneficial ownership information on UK trusts, including through powers provided through Part 5 of the Money Laundering, etc, Regulations 2017 which require trustees to share this information with law enforcement on request.

The Government intends to expand the existing TRS during the envisaged Implementation Period through transposing the 5AMLD. During negotiations over 5AMLD, the Government supported expanding the scope of trust registration requirements to include non-EU administered trusts which acquire real estate within the EU. As such, 5AMLD does require the expansion of the scope of national registers of trusts to include:

- non-EEA trusts which acquire real estate within the EU, as well as bringing into scope:
  - all domestically-administered express trusts whether or not they incur a tax consequence, and
  - non-EEA trusts which conduct a business relationship with regulated entities based in the UK.
This will constitute a significant extension of the UK’s already world-leading framework for combating illicit financial flows through trusts; HMRC estimate that the number of trusts on the register will be increased to over 2 million as a result of this extension. HM Treasury expects to consult on the Government’s approach to transposition of 5AMLD shortly, and to transpose 5AMLD by January 2020. The expanded TRS should then be functional from March 2020, ahead of the envisaged implementation of the Registration of Overseas Entities Bill.

In the event of the UK leaving the EU without an Implementation Period, the Government still intends to expand the existing TRS, including to require non-UK trusts which acquire UK real estate to register their beneficial ownership information in the UK. The legal mechanism for that expansion would be a subject for discussion at that point.

5AMLD will also broaden the scope of access to the expanded TRS. Information on the register will be accessible to law enforcement authorities, and those who can demonstrate a ‘legitimate interest’ in access to data on this register. This means that anyone with a legitimate interest in tackling money laundering may benefit from data on the register in doing so, while ensuring that we do not infringe the privacy rights of trust beneficial owners, many of whom will be using trusts for ordinary family purposes such as providing for grandchildren or maintaining family property, and who will often be children or vulnerable individuals. Trustees will be obliged to provide evidence of registration to regulated firms for due diligence purposes. Further, there will be a general right of access to any member of the public in instances where the trust holds a controlling interest in a non-EEA company, so as to particularly improve transparency associated with opaque and complex corporate structures. These measures – which the UK took a leading role in negotiating at EU level – are aimed at ensuring that the legitimate privacy rights of individuals are protected, while ensuring that law enforcement agencies have access to a broad range of information and that opaque structures are made more transparent.

The expansion of the TRS will facilitate this proportionate approach to data sharing, which has been designed with the nature of trusts and their users in mind. Dividing the UK’s framework for trust registration between the TRS and the Registration of Overseas Entities Bill would place additional administrative burdens on both trustees and government. This risk would be exacerbated as trusts will often become liable to tax only some years after they were first set up, for example at the point at which they purchase property.

You refer to two instances in which it has been suggested that trusts could be used to conceal the ultimate beneficial owners of property. I can clarify that in both these instances, the trusts in question and their beneficial ownership will be recorded on the TRS.

Where a trust is established outside of the EEA for the purposes of 5AMLD, Member States are still required to register a trust where the trustees enter into a business relationship or acquire real estate in that Member State. Further, when a trust holds a controlling interest in a non-EEA company these details will also be
recorded on the TRS, with the public being able to access beneficial ownership information for trusts of this type.

In setting out the separate and comprehensive measures being taken through the UK’s anti-money laundering regime to register the details of beneficial owners of trusts (including non-EU trusts which acquire EU real estate), I hope to have clarified why trusts are out of scope of the Bill’s requirements.

Kelly Tolhurst MP

4 April 2019