

STATES OF JERSEY



ESTABLISHMENT OF A DIGITAL REGISTER OF ALL COMMERCIAL AND RESIDENTIAL PROPERTIES (P.93/2020): ADDENDUM TO THE REPORT

Presented to the States on 24th September 2020
by Deputy M.R. Higgins of St. Helier

STATES GREFFE

COMMENTS

Proposers comments to the Council of Ministers Comments Paper on 'P.93/2020 – Establishment of a digital register of all commercial and residential properties'.

Last night at 8pm members received an email which had an attachment containing the Council of Ministers Comments Paper on my Proposition. Members may not have yet had sight of it or had the time to read it but I want to make a number of general comments about it and take Members through many of the points in it as it contains a number of inaccurate and misleading statements and contradictions.

General Comments

1. This is one of the worst examples I have come across since entering the States of the Council of Ministers throwing together a last minute response to oppose a backbencher's proposition. Not only was it delivered at almost the 11th hour literally (it was emailed at 8pm and I saw it just before 11pm) when the proposition was lodged on the 16th July before the summer break. To respond to it I have had to work through most of the night and whist listening to this morning's States sitting. It is extremely discourteous not only to me the Member whose proposition it is addressing who has to respond to the points contained in it but it is also to all States Members who should have had it in plenty of time to consider all the competing arguments associated with the proposition. Ministers may claim that they have been extremely busy and their officers have only just got around to it but so have backbenchers who have been busy on scrutiny and dealing with constituency matters from which there are never breaks.
2. I would also like to advise Members that I have had 2 separate conversations with ministers on the proposition - one with the Chief Minister and one with the External Relations Minister in the last 5 days and I was asked by the latter to delay the proposition to a later sitting so they could study it further. I did not agree to this request because it was lodged almost 3 months ago. It was also obvious from the conversations that it had not been read properly because of the questions I was asked as will be apparent from some of the comments contained in their paper.
3. Since being in the States I have been called by a number of Treasury or Economic Development Ministers a wrecker when I have criticised some of their policies or the finance industry or Jersey Finance for some of their practices or failures, or a conspiracy theorist by Home Affairs Ministers when I have highlighted specific failures by the Police Force in their treatment of members of the public and even their own officers but that is par for the course when someone doesn't conform to the Establishment line or is raising injustices but this is the first time that I have been opposed for doing something that is genuinely altruistic and designed to help them better understand the nature of one of the most important and difficult problems the government needs to address and to help make better decisions for the benefit of the Island and its

citizens. There is no hidden motive and I am surprised it hasn't been taken at face value. Or is it that they had not thought of it and they should have to deal with a problem that has been staring them in the face for years.

Specific Comments relating to the Comments Paper

Please note the Comments in the Council of Ministers Comments Paper are in red and my responses to their points are in black.

Opening

It is essential that Government, and the Assembly, have high-quality information on which to make good-quality policy decisions. Any decision to make additional requirements of individuals or industry, be it regulation or information collection, must however be for a clear policy purpose.

Agreed. The purpose of the proposition is to help the government gauge the size and nature of perceived problems in the housing and commercial property markets in the Island to assist them coming up with remedies to deal with them.

Residential Property

This proposition adopts a single approach to residential and commercial property.

Correct. As the register will collect data that will assist in dealing with the perceived problems in both sectors of the property market. The policy prescriptions, however, may well be different and it is for the Council of Ministers to decide, perhaps with the input of the Assembly, what measures to take.

There is a perception, and some anecdotal suggestions, that external investment in residential property might be having negative consequences for Islanders – limiting supply and increasing prices.

Correct. But it goes much further than this.

The Jersey property market exhibits the same characteristics and features exhibited by the London, New York, Toronto, Vancouver, Sydney, Melbourne and Singapore property markets, and other property markets around the world, where foreign direct investment has led to property prices being driven up by some 20% to 30% and rental prices by at least 8%.

The real estate market is a global market and investment opportunities in Jersey in commercial and residential property are marketed via the internet around the world by our local estate agents and building developers. All one has to do is look at the websites of Dandara, or estate agents such as Savilles or Thompson Estates to see in their marketing literature just how advantageous and profitable it is for foreign nationals to invest in the Jersey property market. Dandara, for example, have advertised a return of 8% on their buy-to-let properties.

This material stresses how the Island is economically and politically stable, that there is no capital gains or inheritance taxes, which makes speculative purchases less risky and

more profitable, and how generous tax allowances can be offset against the 20% tax on profits made on rentals returns.

There is no restriction on capital flows in and out of the Island and anyone can purchase a property in Jersey, although anyone wanting to live in Jersey must get permission under the Housing Law to occupy it.

In addition, foreign investment in real estate helps to distort the type of properties being built – expensive homes and flats which only the rich or better off can afford. Look at all the exceptionally expensive square, glass fronted houses and apartment buildings that have been, and are being, built along the coast roads around the Island and best vantage points overlooking the sea (eg. Portelet). Why? because they generate the greatest investment returns.

It also causes key workers and the less well-off to be deprived of properties they can afford.

It also puts pressure on public social housing demand and provision. The 8% return on a buy to let property to the foreign owner, mentioned earlier, is likely to result in a much higher percentage rises for the lessee or renter when various management/maintenance fees or other costs are taken into account. Also because of the ludicrous States policy of charging social housing renters 90% of the market price of property we are inflating the rental market for social housing by up to 30% of what it could otherwise be resulting in higher subsidies through the social security fund to social and private sector renters.

In cities surrounded by large areas of land they also push people out of town or to substandard and very expensive properties in the cities themselves. In Islands, such as Jersey, it also causes people to have to leave the Island completely to try and purchase or rent affordable housing elsewhere.

The comments paper then goes on to say that the information, I am seeking is already available from a number of registers or bodies and it is therefore not correct to state that the government have no idea who owns residential property in Jersey. The registers and bodies are:

1. Deeds transferring freehold property from one person to another person in Jersey are held in the Public Registry, which is open to the public;
2. Parishes hold information on the owners and occupiers of all immovable property in Jersey through the annual rates return;
3. Land Transaction Tax is charged on transactions involving the transfer of domestic share transfer property, and data on these transactions is held by Revenue Jersey. Information with respect to the ultimate beneficial owners of share transfer property will be accessible if required by the JFSC;
4. For commercial property, where information about the ultimate beneficial owner is relevant, this can already be accessed under the Financial Services (Disclosure and Provision of Information) (Jersey) Law 202-, which was recently adopted by the Assembly. This Law requires the disclosure and holding of data of beneficial ownership for all corporate entities (not including trusts) and is part of EU beneficial

ownership changes. The Law enables inter-regulator disclosure in the short term and public access in the long-term. It will be held by the JFSC.

In the case of the latter database, the Comments Paper says my proposition paper will duplicate a register already in existence, if indeed it has been set up. It will not do so as my proposal will be fully integrated within the JFSC.

Records 1 and 2 are mentioned and used to compile the register I am proposing with the JFSC and the information from 3 and 4 can also be included in this register for completeness. As can any others that are considered important to include.

If these records are already available and in existence why hasn't the government used the information already to deal with this problem and why is the Council of Ministers' saying that as an alternative to my Proposition they will gather this information together by the end of 2021 in a different way. How?

One of the reasons the information is not being used to date is that it is on a combination of public and private registers and those registers do not have all the information that is required.

For example, the Royal Court property register and some, if not all, the Parish Rates Registers do not know who the ultimate beneficial owners of these properties are. They simply state, such and such a company, trust or foundation and may have a registered office address to send the rates demand and assessment forms to. Without knowing who is the ultimate beneficial owner is it is useless and the only place where this information can be obtained is from the JFSC who know who ultimately owns the business and in the case of trusts and foundations can legally require trust companies and others such as legal firms to provide the information to them on demand.

The information is also on different software that may not be compatible or easily shared with other systems. They also not have the level of security that one can expect on the JFSC's network which is one of the most secure on the Island. By migrating the data onto the JFSC system all the information will it will be in one place using one piece of software. It will also be managed by staff use to handling highly sensitive information.

It is acknowledged, however, that improvements could be made to the manner in which we utilise existing available information, and action in this regard could support policy formation. An assessment also needs to be made of any data gaps in respect of ownership information.

This statement is correct all government systems could be made better but as we know the States legacy systems and software are well behind in this area and millions of pounds are going to have to be spent over a number of years to bring them up to scratch. By integrating the proposed Property Register into the JFSC system, we do not have to re-invent the wheel which can be done faster and cheaper than anything the government is proposing.

Commercial property

Commercial property is quite different. Jersey has spent more than a decade successfully growing its commercial property market for overseas investment.

The commercial property market forms part of Jersey's crucial international finance sector. It plays an important role in making Jersey attractive to large international investors structuring their deals through Jersey and even locating their offices to the Island. This supports jobs and livelihoods in Jersey.

In the commercial property market, ownership is not a key factor which drives how the market works. Size, location and purpose are much more relevant to value and these levers are already within the Government's control.

This is correct but the Council of Ministers have missed the point of my Proposition.

It is not attempting to do anything to affect the external commercial property market and the work of the Jersey Finance industry in this sector. It is intended to deal only with the local commercial property market. Gathering data on who owns commercial property in Jersey which can show whether we have oligopolies, cartels or collusion operating which distorts the market and pushes up the price of rent and leases and will as a by-product tell us whether what retailers and others are telling us that the high and in some cases excessive cost of leasing property in this Island is one of the reasons they charge higher prices for their goods.

Data Protection

This proposition also potentially presents data protection challenges and these need to be thoroughly considered.

This is true but what I am proposing will require the Council of Ministers to work with the Information Commissioner to ensure that it is compliant with the [Data Protection \(Jersey\) Law](#) which is Jersey's implementation of the European General Data Protection Regulation (GDPR) which makes the government and individuals responsible for using information in accordance with the "data protection principles" and in particular using it fairly, lawfully and transparently and this equally applies to the alternative proposition the Council of Ministers are suggesting members accept below rather than my proposition.

To overcome data protection problems I deliberately did not make the proposed register a public register which could be accessed by all and sundry. The register will not release details of the ultimate beneficial ownership of Jersey companies, trusts and foundations in exactly the same way as the JFSC does not release this information. Nor do specific names need to be provided to Ministers in exactly the same way as the Treasury Ministers who decide policy with regard to taxation have to know the specific names of individual taxpayers. The information can be anonymised.

The consent of a data subject for the use of their personal data by the operator of this register will very likely be required. A clear purpose is required to enable that consent to be given within statute authorising the use of data. It is not clear what the purpose would be in P.93, other than to inform policy, which is rather general and vague. Careful and further thought needs to be given in this respect.

This is not a problem as we utilise very sensitive tax information to determine tax policy and legislation can be amended or written to allow this.

Members should also note that the [Statistics and Census Law 2018](#) already allows Government to access existing data it holds in an anonymised form for statistical purposes to inform policy making.

Correct. But it does not cover the information we are seeking.

Resources

There are also financial and manpower implications of pulling together and maintaining data from various sources, especially if it is a single-use, confidential property register, rather than something that has a wider utility for Government. The integration of existing data faces challenges of accuracy, consistency and complexity.

The Proposition does not include any estimated costs, either for the initial set up of the register or its ongoing operation, and no indication is given as to how these costs would be met.

This is true. It was my intention to provide members with an addendum to my report. I have researched costs and have been quoted figures up to £500,000 if we were creating a new register using newly created software, however, if we are using existing software and integrating it into that software it should cost considerably less as it will only be the cost of writing new code and inputting the data. The £500,000 provided to me by the government was considered high by a number of IT professionals that I spoke to. It is also only the cost of one Jersey house and if it helps make house purchase and renting cheaper it is worth every penny. As to ongoing costs we would have to pay the JFSC for one, or possibly two additional staff if the number of property transactions was high which should be covered through cost recovery – charging a small sum to cover the cost of updating the register when property changes hands. This staff resource could also be utilized by the JFSC registry for other tasks.

JFSC

There is also concern as to the role of the JFSC, who have not been consulted regarding this proposition.

This statement is false. I have been looking into this area and proposing this register for more than a year. I not only spoke with the Chief Minister early on and explained what I was doing and why but I have also had conversations about the Parish Rates Register with the Constable of St. Ouen. I met with Richard Corrigan, the Chief Officer - Financial Services, Digital & Enterprise. I also had meetings with Julian Lamb the Director of the Registry at the JFSC and had a separate meeting with other directors of the Commission who were not opposed to the register being located with them. It was stated that they would assist the States with the register if it was asked to do so.

The JFSC has a clear and crucial role to play in the success of our financial services industry and tackling financial crime. Their priority should be to implement international regulatory standards and ensure that Jersey receives excellent reports from international bodies such as Moneyval. The regulation of ownership within the commercial and residential property market is clearly outside of the JFSC's remit.

This is not true. Internationally it is recognised that money laundering can be carried out by criminals and terrorists through property and the JFSC has issued guidance to

Real Estate Agents and finance firms that they are expected to report suspicious transactions in this area and having this register within the JFSC would assist Jersey in achieving the highest possible level of Moneyval approval by cross-checking information it receives.

It has also been identified in a recent House of Commons Select Committee Report on Russian money laundering in London that it is a major problem and much of it is associated with real estate so much so that London is very often referred to as “Londongrad”. The weaknesses of money laundering measures in London and elsewhere by international banks, including Barclays, has also been highlighted in a Panorama documentary this week and in international newspapers with the leak of FinCen papers on suspicious transaction reports.

Nor is the JFSC going to be regulating the ownership of residential and commercial property markets it is simply gathering the data and putting it into a form that meets data protection requirements for analysis by a government department and for the government to regulate if deemed necessary.

Operating this register is not a priority for the JFSC and would not be achievable by the end of 2021.

I know from my discussions with the JFSC that it is introducing a number of new initiatives and processes and I believe the register could be completed in this timeframe if part of the work was outsourced to the software company who wrote the Commissions software and the inputting of the data was done by a third party approved by the JFSC.

Conclusion

Bearing all this mind, this proposition is not supported.

Instead, the Government Plan lodged on the 12th October will include a commitment to report to the Assembly on a clear plan for the collection, maintenance and use of property information, for policy development and other purposes, by the end of 2021, factoring in data protection compliance, and aligning this with other workstreams. This work will have a particular focus on the extent of external investment in residential property.

Members are asked to commend the objectives of the proposition, but to nevertheless reject it in favour of this alternative approach which hopefully supports the spirit of the Proposition whilst recognising the practical complexities.

How many times in the past have been asked by the Council of Ministers to trust them rather than a backbench Proposition and how many times have they delivered on it, on time and on cost?