

## **Consultation – Registers of Scotland – Keeper Induced Registration**

### Introduction

The Church of Scotland General Trustees (“the General Trustees”) act as the main corporate body in which title to the heritable property of the Church of Scotland is vested. The General Trustees hold title to around 4,000 ecclesiastical buildings (churches, halls and manses) and over 12,000 acres of agricultural land known as Glebes spread throughout the whole of Scotland. In addition, they are the title holders of a diverse property portfolio used by the various General Assembly Standing Committees including the Assembly Hall, numerous care homes and the Church Offices at 121 George Street, Edinburgh. Title to only a very few of these properties is in the Land Register.

Because of the history of the Church, title to around a further 1,200 congregational properties remain held by local office-bearers as trustees *ex officio*.

The General Trustees see advantages in registering the title to their properties in the Land Register. However, moving all these properties from the Sasine Register to the Land Register will be a considerable undertaking, however this is tackled. Difficult questions also arise as to how much resource, both in time and money, it is possible for the Church to devote to this exercise and, indeed, to what extent it is appropriate that charitable funds earmarked for the advancement of religion be spent on such a project. An exercise is underway with a view to costing voluntary registration of the General Trustees’ properties. However, looking to the number of solicitor hours involved, the cost of legal and plans reports and of new plans (needed probably in most cases) plus registration costs, the likelihood is that the General Trustees will feel able to register voluntarily only a small number of properties each year and may await Keeper Induced Registration (“KIR”) of the remainder. However, the General Trustees would prefer to work in partnership with the Registers’ staff with a view to achieving accurate outcomes rather than in the manner suggested in the Consultation Paper which is unlikely to prove feasible given the various specialties of the titles. It is understood that a further consultation is to take place in the future to discuss KIR of properties other than residential properties in Research Areas and the General Trustees would intend to respond to that in detail.

### Response to Consultation Paper

The General Trustees would meantime offer the following responses to the questions posed in the consultation paper:-

#### **Question 1**

*Do you agree with the proposed approach to KIR starting with residential properties in research areas?*

While the General Trustees understand the attractions of dealing with properties which best lend themselves to KIR, this will not greatly increase the percentage of the Scottish land mass held on registered titles. It is suggested that the Keeper should be actively considering other initiatives to move other types of properties onto the Land Register, particularly those where the introducing of further registration triggers will not lead to registration. The current reduction in registration fees is unlikely to persuade many landowners to register voluntarily,

given the other costs involved. It is concerning to note the comment on page 5: “From a RoS perspective the resource investment [of registering the properties of heritage assets belonging to certain charities] is not sustainable at this juncture.” No indication is given as to how or when that might change.

## **Question 2**

*Do you agree that we should start KIR in areas that will have the highest impact on completing the land register and supporting conveyancing?*

See response to Question 1.

## **Question 3**

*Should land that has entered the land register through KIR be identified differently from a trigger-based or voluntary registration through a note in the property section of the title sheet, and/or a separate field marking the date of keeper-induced registration?*

The General Trustees agree that, given the limitations of KIR and the possibility of, for example, the wrong proprietor being given in certain circumstances, a clear and easily found note should be included in the property section plus a separate field with the date of KIR.

## **Question 4**

*Do you agree with the keeper’s general approach to the KIR mapping of legal extent?*

In general yes. However, difficulties may arise when the property is sold on as for example it is unclear from the title sheet that more land has been included than in the underlying Sasine title. In cases where the Keeper has decided to limit or exclude warranty, the Consultation Paper refers to the proprietor consulting with their solicitor. It is therefore presumed that the proprietor will be advised of the title problem at once and will be given full information as to the outcome of the Keeper’s investigations and the possible solutions identified.

## **Question 5**

*Do you agree with the keeper’s proposed approach to incorporeal pertinents?*

Yes.

## **Question 6**

*Do you agree with the keeper’s proposed approach to property titles that include an ‘equally and survivor’ destination or are held by ex-officio trustees?*

The General Trustees would suggest that in such cases, it would be better for the Keeper to attempt to clarify matters during the registration process by enquiring with the last named proprietors. A search in the Register of Deaths may also assist.

### **Question 7**

*Are there any other circumstances where the sasine register may not show the last person with a completed title?*

In the cases of a property-owning Trust, there may well be changes of trusteeship made via Deeds of Assumption and Conveyance registered in the Books of Council and Session only. Where the last named proprietor has died, title may have passed to his/her beneficiary via confirmation but without title being completed.

### **Question 8**

*Do you foresee any practical difficulties in narrating a list of the deeds that contain encumbrances, rather than setting out the burdens in full? If so, how could these difficulties be addressed?*

The General Trustees can see pros and cons to this proposal. Obviously it will save time for the Keeper's staff not to require to edit lengthy burdens sections in writs referred to for burdens. Quite often, following such editing, the burdens can be difficult to construe and it is preferable to be able to examine the original terms. On the other hand, the proposal will greatly reduce the readability of title sheets, particularly for non-solicitors. The General Trustees are surprised at such a stance being mooted by the Keeper given the overriding objective of the 2000 and 2003 Acts being to increase the transparency of the Land register thus making the transfer of title to properties more straightforward. What has changed in the intervening period to render such a laudable goal as being potentially redundant?

### **Question 9**

*Do you agree that the keeper should adopt the same approach to listing deeds in the burdens section for triggered registrations with a hyperlink to the text of the deed?*

On balance, yes.

### **Question 10**

*Are you content with how we plan to communicate KIR?*

The General Trustees consider that the Keeper should communicate with owners pre-KIR as well as after and that a copy of the title sheet should be sent to the owner once the title has been registered. It is also suggested that there requires to be a campaign to inform the general public of the exercise and its purpose to avoid confusion and worry, particularly for older owners.

### **Question 11**

*Do you agree the keeper should produce guidance on the additional information likely to be required at the next transaction after a KIR?*

Yes.