

## KIR Consultation Survey Response

### PAGE 2: Information about you

**Q3: Are you responding as: (please select below)**  
on behalf of a group or organisation

### PAGE 3

**Q4: Individuals Do you agree to your response being made available to the public (in the Scottish Government library and on the RoS website)?**

*Respondent skipped this question*

### PAGE 4

**Q5: Where confidentiality is not requested, we will make your response available to the public on the following basis (Please select ONE of the options)**

*Respondent skipped this question*

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**Q6: On behalf of groups or organisations The name of your organisation WILL BE made available to the public (in the Scottish Government library and on the RoS website). Are you content for your response to be made available?**

Yes

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**Q7: 1. Do you agree with the proposed approach to KIR starting with residential properties in research areas?**

Yes

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**Comment:** Yes. This approach will allow obvious “gaps” on the cadastral map to be completed, where surrounding properties have been registered, and the underlying burdens writs for an area will often have been examined by the Keeper. Similarly, filling in obvious gaps in other estate titles (e.g. where a small property has been previously split from a large estate title, and that large estate is undergoing registration) may be of benefit to all parties.

**Q8: 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?**

Yes

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**Comment:** Yes. By tackling the “easier” (often residential) areas first, this gives a further short period where voluntary registration or registration following transfer/security can proceed in tandem for larger land mass areas, reducing the need for KIR in these areas in due course.

**Q9: Q3. Do you agree that we should work in partnership with the owners of heritage assets to complete registration of their titles by KIR?**

Yes

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**Comment:** We note that this question is omitted from paper based questionnaire – the Keeper has presumably already elected not to pursue this course, given the limited results from the pilot scheme. Whilst working closely with owners of heritage assets in the method outlined in the pilot scheme may not be of use at present, we would suggest (per Answer 10 below) that affected parties are contacted and invited to insist in KIR where possible, albeit on the basis that KIR will proceed by a set date, regardless of input by that proprietor.

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**Q10: Q3. 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?**

Yes

**Comment:** Yes. If there will be differences in the operation of the Keeper's warranty, it should be readily identifiable that a title sheet has been created following KIR. This would also serve as an important flag to conveyancers and others that there is a potentially increased risk of error in the title sheet details (e.g. a change in proprietorship which would not have been obvious in the course of KIR).

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**Q11: Q4. Do you agree with the Keeper's general approach to the KIR mapping of legal extent?**

Yes

**Comment:** The proposed approach on mapping and prescription in particular appears to adequately preserve the rights of affected parties. Where an overlap or other potential discrepancy or uncertainty is uncovered, we would encourage the Keeper to do their utmost to engage with affected parties prior to proceeding, and only proceed with KIR where a "standstill" period has expired, and the affected parties have not responded.

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**Q12: Q5. Do you agree with the keeper's proposed approach to incorporeal pertinents?**

Yes

**Comment:** This appears to be the most pragmatic approach to a difficult area. The statement to be made under option 3 should be clear and obvious, so that any parties examining the title can quite clearly see that further investigation of prior writs and the factual position may be required.

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**Q13: Q6. 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?**

Yes

**Comment:** The inclusion of this information in the title sheet (from the last recorded information) is useful. In title sheets which have been created following a dealing, there may still be a situation where the title sheet states a proprietor which is different from the current proprietor (where the survivorship destination subsequently operates, for example). It might be better to state in KIR title sheets that "The proprietor of the subjects in this title is taken from [detail sasines deed and date of recording] and does not necessarily reflect the present proprietor of the subjects. It is not known whether the survivorship destination will have operated."

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**Q14: Q7. Are there any other circumstances where the sasine register may not show the last person with a completed title?**

The name given on a sasines title may not reflect the current entity where a change of company name has occurred. This could be particularly problematic where the last recorded title discloses a company name only (with no company number) – Companies House records from the date of signing / recording of the sasines deeds would need to be confirmed. There are situations where company names have been used multiple times (e.g Northern Rock Plc has been used by company numbers 03257046, 03273685 and 0695231) and so great care must be taken to record the correct company. The current entity may also differ where a transfer of the business interests has occurred. For the SSE plc group of companies, a number of titles are still recorded in the names of former electricity boards (for example North of Scotland Hydro Electric Board), and these properties may now in fact be vested in one of a number of companies (Scottish Hydro Electric Power Distribution plc / Scottish Hydro Electric Transmission plc / SSE Generation Limited or others). It will not be clear to the Keeper which entity is not the current proprietor, but it would improve the accuracy and usefulness of the Register if the current entity could be noted at this stage. Our answer to Question 10 below also touches on this topic.

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**Q15: Q8. 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?**

Yes

**Comment:** The position on real burdens under KIR is not entirely dis-similar to previous voluntary registration or registration following a dealing – it would be unusual for the submitting agent to highlight to the Keeper which specific burdens clauses do or do not apply – to date the Keeper has often narrated only burdens which are believed (in their opinion, but where there is a degree of certainty) to still be valid, along with some other burdens where there might be a reasonably be believed to be have been extinguished, but where there is no sufficient certainty. This option would appear to still be open to the Keeper in KIR cases, and would preserve the oft stated mantra that there is no need to “look behind the title sheet”. Having said that, most practitioners will have had occasion where a Sasines deed has been obtained and checked, to assist in the interpretation of a title sheet. There are therefore benefits to the Sasines deed being linked to from the title sheet. This could give some practical difficulties around quality – undoubtedly, the copy obtained by the Keeper in the course of KIR will be a better copy than a scan of the deed, which may be virtually illegible in many cases. Here, there is a clear benefit to practitioners of the Keeper having typed up the burdens writs, which can then be interpreted. The point made about core-paths, public rights of way and so on, has the potential to create a two tier system – there is a suggestion that the Keeper will plot these where they are already known. If that is the case, in situations where the information is not already to hand, an entry will be required, confirming that core-paths / public rights of way etc. are not known, and their omission from the title sheet does not necessarily indicate that there are none in existence.

**Q16: Q9. 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?**

Subject to necessary notes arising for a limitation knowledge of the position “on the ground”, we would suggest that KIR and “regular” title sheets should be closely aligned, and therefore the same approach should be applied in both cases.

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**Q17: Q10. Are you content with how we plan to communicate KIR?**

No

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**Comment:** We would suggest that greater emphasis be placed on pre-KIR communication with individual landowners. Proprietors may be willing and able to assist in the process, and furnish the Keeper with information which can resolve mapping discrepancies and result in better title sheets. Matters such as the survivorship destinations / company changes can also be better explored. We would suggest writing to the proprietor at the address of the property to be registered, or if not a building, at the proprietors last known address / registered office etc. There may also be merit in affixing notices in relation to areas of land / derelict properties etc. Such intimation could provide a timeframe (of say 3 months) for submissions to be made to Registers of Scotland. Although further intimation may add to the time to complete each KIR, in some cases, the time may actually be reduced where the proprietor can furnish the Keeper with information which assists in the process. We would also encourage Registers of Scotland to maintain a list of preferred contact details for larger entities with significant land holding. The legal department for the SSE plc group of companies would be keen and willing to assist where KIR areas involve or abut areas owned by any SSE plc company or their predecessors (a significant number of properties are recorded in the name of North of Scotland Hydro Electric Board or other electricity boards for example), and we would be keen to have the opportunity to confirm the correct company which now holds the proprietor's interest.

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**Q18: Q11. Do you agree the keeper should produce guidance on the additional information likely to be required at the next transaction after a KIR?**

Yes

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**Comment:** We agree that this information would be useful to proprietor's and their solicitors, and should be made clearly available in each KIR title sheet. A note on the title sheet with a link to current guidance may best resolve this.