

KIR Consultation Survey Response

PAGE 2: Information about you

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

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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

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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

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

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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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: RoS' investigation of title for KIR purposes will not be the same as the investigation done by an owner registering in the usual way. For example RoS will have no knowledge of prescriptive servitudes and cannot be certain of the extent of possession. In any case, a KIR registered title does not have the same statutory protection as other registered titles. The Keeper's warranty is purely financial and does not change ownership in any way. In any case the warranty does not generally extend to over-registration i.e. the Keeper registering too much land in the title. As for ownership, KIR title errors cannot be cured by prescriptive possession. The only possible reliance for the right itself (the mud as opposed to the money) is via realignment. This cannot protect the first registered owner (who will be giving warrandice in deeds, usually) and can only protect subsequent owners if they are in good faith, the Keeper granted warranty and named the seller on the title sheet as owner, and various other criteria (possession etc) are fulfilled. Therefore it is important that KIR titles are marked as such, because they neither have the same process of investigation nor the same legal outcome as other registered titles. We would however like to see some process to allow the KIR marking to be removed following the first dealing after registration. That first dealing will in all likelihood involve Sasine vs KIR examination by a solicitor, so the title should be able to be reissued as a "clean" title sheet afterwards so that unnecessary concerns are not raised for every subsequent dealing. We would hope that rectification of a KIR title would also be easier, particularly in relation to boundaries (when possession is checked) and prescriptive servitudes.

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

Comment: Generally we agree with RoS' approach. We just have a couple of comments. First, if there is a registered overlap, there is a risk that discrepancies (especially small ones) will not be evident to people reading the title sheet alone, particularly after the property has changed hands (as the chance of Sasine examination decreases where realignment becomes a possibility). This means that the act of KIR could inadvertently lead to true owners losing part of their land, because of their reasonable reliance on the title sheet. Therefore we would suggest that where there is a registered overlap, the Keeper should exclude that area from the extent of the registered title. However such an overlap should be flagged on the title sheet in a similar way to a Plans Report. Second, there is suggestion in the Consultation that in some cases RoS might decide to rectify a neighbouring registered title so that the KIR title boundaries can snap to that. We do not think this is necessary and we can envisage it leading to disgruntled owners. There are various different types of title now, so the question of competing titles is more complex than under the 1979 Act (see <http://www.journalonline.co.uk/Magazine/60-11/1020986.aspx>). While it is commendable that RoS will look at possession so far as they can, we do not think that RoS should be adjudicating on the matter by deciding who, in registered title competitions, has the better title when neither owner is engaged in the process. Therefore existing registered titles should remain as they are, particularly given that most will still be 1979 Act titles and therefore protected by the Midas Touch. We would suggest that where there is an overlap with an existing registered title, RoS register the KIR title up to that boundary (if appropriate) and note on the KIR title sheet that there is a discrepancy, again showing that in a similar way to a Plans Report.

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

Comment: The provisions on what needs to be included on a title sheet under the Act are the same regardless of whether the title sheet is created by KIR or some other method e.g. voluntary registration. We therefore agree with the proposed approach generally. However we do not think that RoS should omit any pertinents without the benefited owner agreeing. At worst this could lead to benefited owners losing property rights. For example, omission of a servitude in a benefited property title sheet could (directly or indirectly) lead to it being omitted from the relevant burdened property title sheet too. Section 91 presents real risks to innocent benefited parties if written servitudes are omitted from the burdened property title sheet since omission would, on change of ownership, lead to automatic extinction of the servitude. In our opinion RoS should continue to include reference to all existing pertinents without making a unilateral determination on their continued validity, just as with other registrations. If a servitude looks likely to be gone by abandonment, negative prescription etc, we would suggest that the servitude be included on the title sheet but a note be added to flag this up.

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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: Yes, though this means that realignment cannot apply so a reference specifically to s30(5) would be useful for the purpose of flagging this up.

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

Statutory successors, though generally we do not think there is any need for a s30(5) declaration since their statutory links in title are well known. In any case KIR is unlikely to be used for their titles.

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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?

No

Comment: We think listing the burden writs in Section D for KIR titles with hyperlinks to the deeds (free of charge) is a very good idea. The first dealing with a KIR title will require some Sasine examination anyway. It will allow RoS to complete KIR registrations quickly and will limit the chance of human error in typing out Section D. Perhaps the hyperlinked versions could have the burdens on the property highlighted in one colour, and the benefits in another colour. This may present the middle ground between RoS typing it all, and typing none.

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?

No. We do not think this should be the practice across the board (i.e. outwith KIR) unless in addition to the terms being typed out in Section D, because that would represent a step backwards from the Curtain Principle of the Land Register. Transacting with Land Register titles would be more expensive than ever before if that were to become the practice.

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

Comment: Generally yes. Bulletins to the profession once an area is completed would be useful. When RoS notify an owner that their title has been registered, a copy of the title sheet should be included with the letter. The impact on deeds which have or are just being completed may need to be considered. Following stakeholder representation, the Keeper has already extended the grace period within which she does not require a title number to be included in a discharge etc. However this issue will become more pronounced for titles which are registered without the solicitor's knowledge. A transaction could settle with final legal reports showing no registration, a discharge be sent to a lender to sign, and meantime a KIR could be completed and title number issued. Not all KIR owners will be known to the Keeper and even those who are notified, may not realise the importance of sending on the title sheet to their solicitor urgently. Therefore the solicitor may apply to register the discharge (or other deed) using the Sasine description, without any idea that the title number has been issued and should have been in the deed. We would ask that the Keeper relax the grace period further for KIR scenarios.

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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