

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

Comment: Broadly yes: but only on the basis that KIR will initially at least focus on simple titles where it is unlikely that extrinsic information (outwith that held by Registers) would (or would likely to) be required to achieve correct registration. However it was also felt that consideration should be given, perhaps after another public consultation, to expanding the use of KIR to complex and larger titles which would speed completion of the Land Register in a meaningful way and provide certainty.

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

Comment: See comments at question 1 above.

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: The concern was raised that this would, potentially, have the effect of creating a two-tiered system of land registration, at least initially pending any transfer being effected. A solicitor dealing with property registered under KIR may presumably require to treat a first transfer of it as, in effect, a first registration application. A query was raised whether properties which, if the subject of a triggered first registration, would be rejected for registration, could nevertheless be entered into the Land Register under the KIR procedure?

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

Yes

Comment: Broadly yes as this seems to be the only approach that can realistically be taken in the circumstances. A concern was raised however on how long the underlying prescriptive protection would last, for example following a post KIR-sale, in respect of any errors made in the KIR mapping process as these may take some time to come to light.

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

Yes

Comment: Broadly yes, as again this seems to be the only approach which can realistically be taken in the circumstances. It was suggested however that copies of deeds creating incorporeal pertinents could be attached to the land certificate where possible.

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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

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

Statutory successors; ex facie absolute dispositions where there is a reversion to a third party; farm titles with numerous trustee and/or partnership arrangements; partnerships generally; changes of trustees.

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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: Broadly no, however it was felt that it would be beneficial to include hyperlinks in the text of the deed narrated in the burdens section and/or in the property section for benefits as long as this does not dilute Registers' approach to (a) distinguishing between benefits and burdens; (b) mapping incumbrances on the cadastral map where possible and (c) assessing whether any burdens are no longer relevant with a view to leaving them off the title sheet if not and (d) that copies of the deeds could be obtained from Registers as required. In terms of practical difficulties, a concern was raised about the quality of scanned deeds and the potential unavailability of scaled colour plans such that difficulties with establishing areas affected by encumbrances will remain. Clarification should be provided as to the cost to the landowner of copy deeds and whether the hyperlinks would be available at no cost to the owner and that they would not expire.

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?

Possibly, depending on whether the system proposed proves to be workable in practice and see our comments above but in a triggered registration the applicant should have carried out the relevant checks in order to whittle down the encumbrances that affect and to identify so far as possible the relevant part of the property under registration which is affected and therefore there should presumably be no reason why the Registers' usual approach of narrating in full the text of the relevant writ in the land certificate issued at completion of the registration process should not be taken.

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

Comment: Generally it was felt that it would be useful for proprietors adjoining any property being registered under KIR to be notified as well and the owner of the property itself. Generally it was felt that further clarification should be provided about the information which will be made available about KIR properties as there is a concern as to what might happen should a property be in the process of KIR while it was also the subject of a negotiation for sale. It may therefore not be sufficient simply to list counties/general areas being affected on the RoS website but might be better to list specific addresses where possible and see below. It was suggested that perhaps the submission of an advance notice application for a deed in respect of a property should stop any KIR process in relation to that property. Perhaps a separate website could be set up by Registers for KIR properties with affected areas being mapped and/or a list of properties which have been or are in the process of being KIR'd so that solicitors could check more easily if any property being dealt with by them was affected.

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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

Comment: Could clarification be given as to whether a title would continue to be identified as having originally been entered into the Land Register as a KIR title even after subsequent transfers. The guidance given should in any event be comprehensive with as much detail and certainty as possible. We would like clarification as soon as possible on how the costs of KIR are expected to be met and whether this will result in higher registration dues for triggered and voluntary registrations. In addition could an alternative be considered for formal rectification where an error has been made in the KIR process (simpler, less expensive and possibly not requiring a solicitor to act on behalf of the proprietor)?