

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

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

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

Yes

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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?

A third scenario with regard to para. 39 is the transfer of title to a beneficiary following a death, by means of a docquet on a certificate of confirmation.

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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: I foresee no difficulty so long as there is a hyperlink to the deeds. This may actually be an improvement because in a complex title it is often difficult in Section D of a title sheet to identify which is the benefited and which is the burdened property e.g in a break off writ of part of a parent title. In such cases it is already necessary to see the text of the deed in question.

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?

Yes, for the reasons just mentioned.

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

Yes

Comment: I think this is the right approach. At your presentation in Perth I suggested that, in order to minimise errors in the Register the Keeper should write to the affected owners with a draft of the proposed KIR Title Sheet. However, I was fully satisfied with the answers you and your colleagues gave for only writing directly to owners once the KIR has been completed. In particular (a) writing to owners with a draft would get some people worried and they would consult solicitors (and incur expense) unnecessarily, (b) any error can be corrected later without incurring a registration fee, and (c) the new title sheet should have the same information and be as up to date as the sasine title.

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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: Guidance would be helpful to conveyancers. Conveyancing at the first transaction after KIR will require a bit more care and scrutiny by the solicitors than for many other registered titles, but will still be much simpler than dealing with a sasine title.

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Additional Feedback

I would like to thank you, Scott Bond and Colin Miller for a good presentation in Perth last November. I attended because I act mainly for farmers and landowners and was interested to know how the Keeper might intend to apply KIR to farm and estate titles. It came as no surprise to learn that this would be too difficult and that the intention is that KIR should generally be confined to Research Areas, at least initially. As explained at that presentation and in your consultation paper, it would be difficult and “resource intensive” to apply KIR to individual titles outwith Research Areas, even in the case of individual houses, and your Third Pilot indicated, among other things, that this would be difficult without the bundles of title deeds. I also noted that your Second Pilot, dealing with heritage assets (NTS, RSPB and John Muir Trust) encountered difficulties and indicated that KIR of such property would also be resource intensive.

You are recommending Voluntary Registration of titles outwith Research Areas, particularly estate titles. I have been recommending this to many of our estate owning clients, most of whom wish us to deal with voluntary registration of their titles, and we shall be working on this in the next few months. I was pleased to see from the video with Jamie Williamson that his experience of this has been positive.

There is, as you are aware, a lot of legal work required in preparing an estate title for Voluntary Registration, with consequent legal fees, plus in many cases, the cost of a new plan, plus substantial registration fees, notwithstanding the 25% discount. Although most estate owners to whom I have spoken, wish to proceed with Voluntary Registration notwithstanding these costs, the costs are much harder to justify for residential or other property.

There does appear to be the prospect of a large and unfair discrepancy between, on the one hand, the costs to an owner outwith a Research Area registering voluntarily and, on the other hand, completely free registration of titles to residential property within Research Areas. The same discrepancy may apply between charities owning heritage property (KIR) and other charities that own land.

Someone who voluntary registers is saving the Keeper a problem and a substantial amount of money in the future. With these points in mind I wish to make the following recommendations:-

1. The fee for Voluntary Registration in any case should be no more than £60.
 2. Maximum cooperation and assistance from your staff in matters relating to Voluntary Registration are critical in encouraging Voluntary Registration. Your Plans Assist Service should be helpful in this context. I have also noticed what appears to be a generally more helpful and cooperative approach by many of your staff when dealing with first registrations of complex titles. This is very welcome and I hope will continue to improve.
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