

Registers of Scotland
Completion of the Land Register
Public Consultation

July 2014

Purpose

1. The Keeper of the Registers of Scotland has been invited by Scottish Ministers to complete the Land Register over the next ten years. This consultation considers the use of statutory levers for advancing completion, suggests an approach for completion, looks at options for funding the Keeper's registration costs and discusses milestones for measuring the growth of the Land Register. Views are sought on all of these matters.

Registration in Scotland

2. In registration terms, land in Scotland falls into a number of categories:
- i. land that is owned or leased under title deeds recorded in the Sasine Register. We estimate that there are some 1.1 million properties remaining in the Sasine Register;
 - ii. land that is registered on the Land Register and which is identified on the Land Register map (which uses as its basis the OS Map); and
 - iii. land that is in neither the Sasine or the Land Register.

The Sasine Register

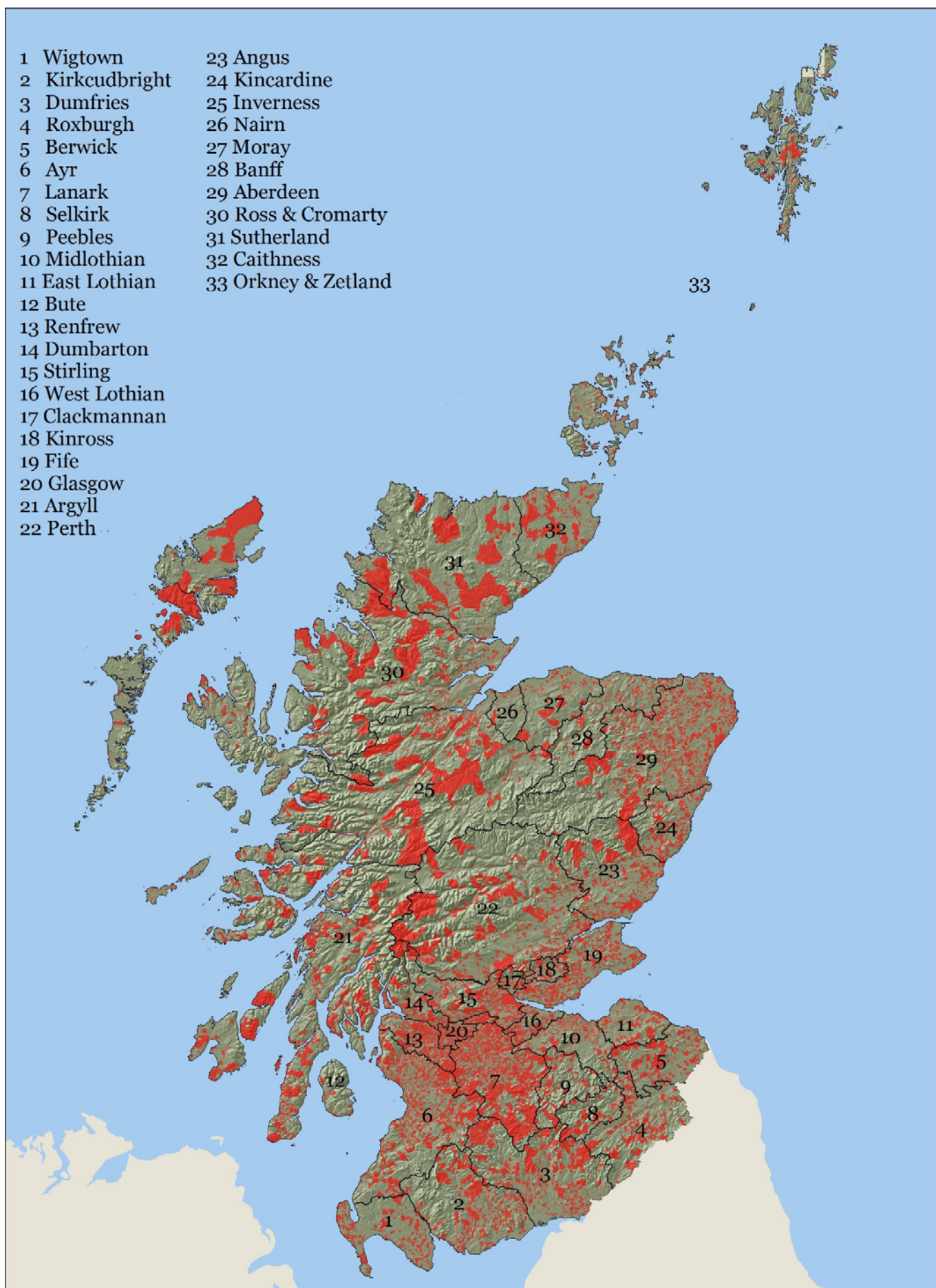
3. Scotland has the world's oldest public property register. In Scotland, the State's role in recording and safeguarding rights to title in land dates back to the twelfth century and was formalised by legislation to establish the General Register of Sasines in 1617. The Sasine Register is a register in which deeds relating to rights in property are recorded and made publicly available. This register was the mainstay of the Scottish system of land ownership and other rights in land from the 17th Century until the introduction of the Land Register in 1981.

The Land Register

4. The Land Registration (Scotland) Act 1979 (the 1979 Act) provided for the establishment of a Land Register under the management and control of the Keeper. This is a transparent, plans-based, public register of interests in land. From 1981, land registration began to replace the recording of deeds in the Sasine Register. The main route to land registration is when a property is transferred for value. Land registration was introduced incrementally, starting in the registration county of Renfrew, and only became fully-operational in all areas of Scotland in 2003. The Land Register consists of some 1.5 million titles, which represents about 58% of all potential property titles in

Scotland, and accounts for some 26% of the Scottish land mass. The following map illustrates the current extent of Land Register coverage. A more detailed breakdown is available in Appendix 2.

- | | |
|-----------------|---------------------|
| 1 Wigtown | 23 Angus |
| 2 Kirkcudbright | 24 Kincardine |
| 3 Dumfries | 25 Inverness |
| 4 Roxburgh | 26 Nairn |
| 5 Berwick | 27 Moray |
| 6 Ayr | 28 Banff |
| 7 Lanark | 29 Aberdeen |
| 8 Selkirk | 30 Ross & Cromarty |
| 9 Peebles | 31 Sutherland |
| 10 Midlothian | 32 Caithness |
| 11 East Lothian | 33 Orkney & Zetland |
| 12 Bute | |
| 13 Renfrew | |
| 14 Dumbarton | |
| 15 Stirling | |
| 16 West Lothian | |
| 17 Clackmannan | |
| 18 Kinross | |
| 19 Fife | |
| 20 Glasgow | |
| 21 Argyll | |
| 22 Perth | |



5. It should be noted that registration counties do not generally align with current local authority boundaries. Registration counties were established in the late 19th century and corresponded with the then Scottish counties; hence, there are 33 registration counties whereas there are now 32 local authority areas.

6. The Land Register involves the creation of a title sheet that sets out the details of ownership of the property (or details of the tenant and landlord if it is the leasehold interest that is registered), any securities or other charges over it, any rights or title conditions, and a depiction of the legal extent of the property through mapping of the property boundaries on the Ordnance Survey (OS) base map.

Un-registered land

7. It is currently impossible to ascertain the full extent of land that does not fall within either the Land Register or the Sasine Register. We have anecdotal knowledge of some such land, for example the original land holdings of St Andrews University and some City of Edinburgh Council land holdings in Edinburgh's Old Town. The full extent of un-registered land will only become apparent when all properties held on title deeds recorded in the Sasine Register are in turn registered in the Land Register. It is important to emphasise that unregistered land is not necessarily ownerless land. Much of this land will have seen ownership transferred via charters and deeds that were executed prior to the establishment of the Sasine Register. It is also possible that some of this land will have been gifted as common good land, may be undivided commonly or may, if never alienated, remain with the Crown. It is, however, inevitable that some unregistered land will turn out to be ownerless, at least in the sense that it is not possible to identify an owner.

Completing the Land Register

8. Completing the Land Register involves transferring all properties held on title deeds recorded in the Sasine Register on to the Land Register. That in turn will identify the unregistered land. Steps can then be taken to identify owners and bring forward this information on to the face of the Land Register. Where unregistered land is in use, the steps necessary to establish who the owner is may not be challenging; it will be more so where the land is not being occupied or used. However, there are mechanisms for ensuring such land can be brought back in to economic use. First, where such land has fallen to the Crown by virtue of the doctrine of *Bona Vacantia* or *Ultimus Haeres*, a person may approach the Queen's and Lords Treasure's Remembrancer (QLTR) who may, on certain conditions being met, grant a disposition of the land in favour of the person. That disposition would bring the land on to the Land Register. Second, where land appears to be abandoned but it is not clear whether it has fallen to the Crown, a person who is making use of the land may rely on the provisions set out in sections 43–45 of the 2012 Act in order to do so. These provisions allow, on certain criteria being met, registration of a disposition in favour of the person, which also has the effect of

bringing the land in question onto the Land Register. This highlights that completion of the Land Register is not solely about closing the Sasine Register; it also involves identifying who is in right of the remaining unregistered land.

9. The 1979 Act made no specific provision for completing the Land Register. Instead, it envisaged gradual accretion as properties were sold for value. The Scottish Government recognised that this approach would take too long and that without completing the Land Register, Scotland would not be able to maximise fully the gains to be had from having secure, reliable and accessible information on land ownership. To lay the legislative foundations for a completed Land Register, Scottish Ministers introduced the Land Registration etc. (Scotland) Bill into the Scottish Parliament in 2011 and the legislation was enacted as the Land Registration etc. (Scotland) Act 2012 when it received Royal Assent in July 2012.

10. The 2012 Act followed on from, and developed, the recommendations made by the Scottish Law Commission in their Report on Land Registration published in February 2010. The primary purpose of the 2012 Act is to reform and restate the law on the registration of rights to land in the Land Register of Scotland and to provide for the completion of the Land Register.

The case for completion

11. The Scottish Law Commission succinctly summed up the case for completion:

‘The short answer is that the Land Register is better than the Register of Sasines.’

Transparency

12. The Sasine Register is a register of deeds. It can be difficult, sometimes impossible, to determine from the Register of Sasines who owns unregistered parts of Scotland. Not all recorded deeds describe the property to which they relate by reference to a deed plan. To complicate matters further, many deeds, particularly older deeds, contain written conveyancing descriptions that are at best indicative as to location (for example ‘all and whole the farm and lands of x’) and so require to be considered and interpreted in conjunction with legal possession of the property and a number of other legal presumptions. The Land Register, by contrast, provides certainty as to ownership, other rights and interests in land and shows the legal boundaries of the properties on the OS map.

Cost

13. Transactions involving Sasine titles are, by their nature, more complex and costly and the knowledge-base regarding the Sasine Register and the past conveyancing practice that applied to recording in that register is diminishing. The Land Register is clear and transparent and, with more comprehensive coverage, transfers of all types of

residential, commercial and agricultural property should be simpler and more cost effective.

Efficiency

14. It is inefficient for those transacting with heritable property in Scotland to have to consult two property registers. Most countries in the World only have a single national property register. This in turn can act as a barrier to inward investment. An efficient, effective and indemnified land registration system is recognised by the World Bank as one of the most important factors in achieving economic development and growth. We have seen a number of examples in recent years where prospective purchasers of high value properties have demanded a Land Register title in advance of concluding the purchase contract.

National asset

15. A completed Land Register will be a national asset. It will provide clear and unambiguous knowledge of who owns land in Scotland, making it simple to work out who owns a property, what they own and what restrictions, burdens and securities apply to that property. This is of benefit to those whose business activities require them to be able to access information about ownership. Local authorities, Police Scotland and Her Majesty's Revenue and Customs are amongst the public sector bodies that require such information; credit firms, lenders and utility companies are amongst the private sector bodies. It also aids discussion and consideration of land reform issues.

Completion: assessing the challenge

16. To date, some 58% of potential titles and 26% of Scotland's land mass is on the Land Register. There is, of course, a large variation between urban and rural Scotland and also between different towns and cities within Scotland. That stems in part from when an area came on to the Land Register (for instance, the greater Glasgow area was the first area to become Land Register operational and has close on 80% of all property titles registered whereas Edinburgh, which came on much later, has only 45% registered); whether an area is predominantly rural as opposed to urban as properties in the latter transfer more regularly than those in the former; and local market activity (some areas are more buoyant than others).

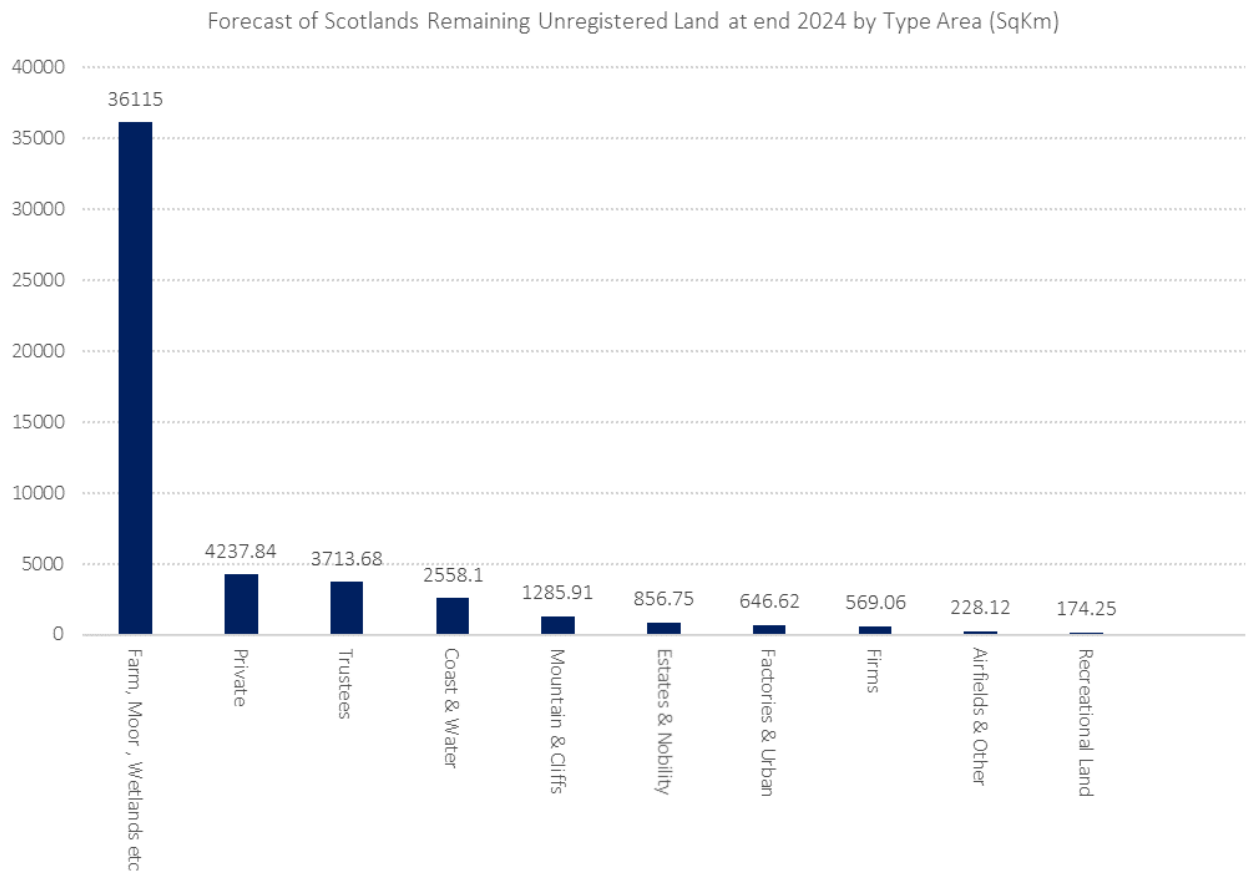
17. The average number of first registrations on to the Land Register completed by RoS over the period 2003-04 to 2013-14 was 45,000 per year, with a high of 62,000 and a low of 24,000. Completing the Land Register by end 2024 will require RoS to complete 113,000 property registrations each year for 10 years. (This figure has been calculated by taking the estimated number of properties existing in Scotland, subtracting the number of titles already registered and dividing by 10 (end 2014 to end 2024)). This is a significant number of potential property titles to be registered; however, tackling

titles in a systematic and organised way will make the challenge more manageable and grouping properties together will reduce the number of registrations required.

18. There are roughly 700,000 properties held under title deeds recorded in the Sasine Register that fall within what we term 'research areas' – where we have already done considerable pre-examination of title, extent, rights and title conditions. Of those 700,000, in excess of 500,000 comprise local authority and social housing. A managed approach working in tandem with local authorities and housing associations to register housing areas comprising a number of properties would significantly reduce the actual number of individual property registrations that we need to carry out and thus reduce costs for both the landlord and ourselves. Based on our previous experience with some six local authority housing stock transfers some 120,000 properties were registered and this was managed within some 3000 Land Register titles. We are confident that the task is manageable; the general changes to registration brought about by the 2012 Act streamline the registration process and in so doing lower our operating costs thereby enabling us to do more for the same cost.

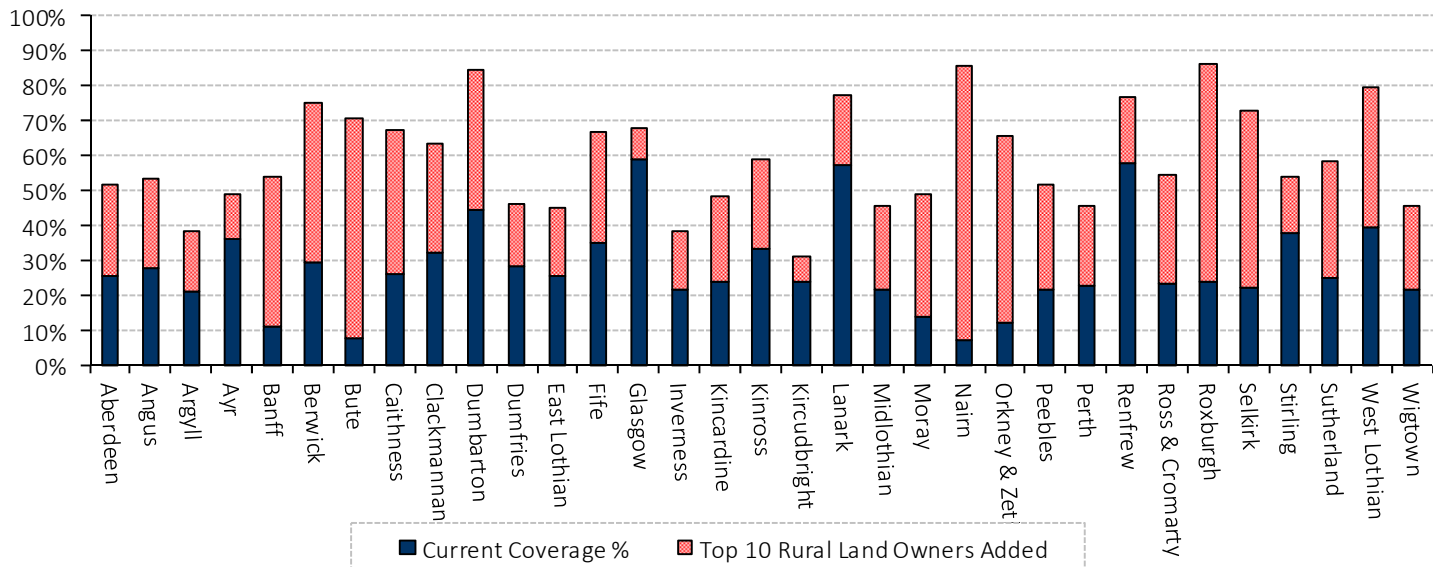
19. As of the commencement on 8 December 2014 of the new trigger provisions under the 2012 Act, whereby all transfers of title will be registrable, we anticipate an additional 8–10,000 new registrations each year. In addition, Scottish Ministers have committed to registering all public land within five years. These two steps alone will make a significant impact upon completion. By the end of 2019, we would expect title coverage to stand at 78% and land mass coverage at 54%. By the end of 2024, we expect the number of property titles on the Land Register to be close to 88%. Predicting land mass coverage is more difficult as much will depend on the actual titles that are transferred but unless a significant number of rural estates and farms are registered we would anticipate land mass coverage would only have increased to circa 58% by 2024.

20. The challenge for completion is to bring on to the Land Register the remaining 12% (approximately 275,000) of titles (and of course the as yet unknown unregistered land). For without taking additional steps to progress the registration of these properties, the Land Register will take many generations to progress much beyond 90% completion. It is at this point that we predict registration will plateau without further intervention, as has been the case in England and Wales. Based on their experience and Scotland's own registration trends, we forecast that much of the remaining property will be rural. A breakdown of the forecast remaining land type is contained in the following table:



21. Forecasting the remaining property type assists in targeting and planning. Additionally, because it is rural land, the number of actual property titles to focus on is that much smaller and so supports, for instance, a targeted voluntary registration approach. This can be seen from the following graph, which illustrates, based on the current state of Land Register completion, the significant growth in coverage that would be achieved if the land owned by the top 10 landowners by size in each registration county was brought on to the Land Register.

Land Register coverage if TOP 10 Rural Landowners were added



Completion: options under the 2012 Act

22. The 2012 Act provides for the completion of the Land Register in four ways:

- I. by requiring registration in the Land Register of all transfers of land (including those not for money). This will coincide with the closure of the General Register of Sasines to all new transfer deeds. The impact of this is considered in paragraph 18 above;
- II. by giving Scottish Ministers the power (section 48) to close the Sasine Register to standard securities and/or to all deed types on a county-by-county or all-Scotland basis. Closure of the Sasine Register in this way will create additional “triggers” that will increase the number of properties having their first registration onto the Land Register;
- III. by giving Scottish Ministers the power (section 27) to end the Keeper’s discretion to refuse a voluntary land registration application; and
- IV. by giving the Keeper the power (section 29) to undertake “Keeper-Induced Registration” (KIR), whereby a property can be registered without the Keeper having received a registration application.

These provisions and the Keeper’s proposals and plans for each are detailed below.

Closure of the Sasine Register to standard securities

23. Section 48 of the 2012 Act gives a power to Scottish Ministers, after consultation with the Keeper and other appropriate persons, to close the Sasine Register to standard securities (section 48(2)) or other specific deed types (section 48(3)). These powers may be exercised for different cases and purposes. For example, this could allow the register to be closed to all standard securities in the first instance or for different provisions to apply in different areas of Scotland. Before these powers can be enabled, section 48(7) requires that the Keeper's discretion to refuse an application for voluntary registration under section 27(3)(b) be removed. The reason for this is perhaps best explained by an example. If the Sasine Register is closed to a standard security, the creditor's rights under the security can only be made real through registration of the security in the Land Register. To enable registration of the security, there must be a Land Register entry for the property. Thus, the property to which the security relates must be registered in the Land Register either before or at the same time as the security. As there is no statutory trigger for this, the proprietor must apply for voluntary first registration in the Land Register.

24. Based on historic figures for standard security deeds entering the Sasine Register we estimate some 50,000 standard securities would be impacted over the 10-year completion period by using the power in section 48(2). That figure is based on the current low-level of re-mortgaging compared with the active re-mortgage market that was prevalent in the early- to mid-2000s. If the levels of re-mortgaging were to return to those levels, the impact on completion of the Land Register would potentially double. Closing the Sasine Register to standard securities would have a significant impact on completion. We propose that steps be taken to commence section 48(2).

25. We recognise that this will involve the proprietor in applying for voluntary registration. However, we note that a title examination has to be carried out on behalf of the creditor to support the standard security and in most cases this is paid for by the debtor. We recognise that the legal process around the grant of a new standard security will have to evolve to support the requirement for voluntary registration of the property. We anticipate that lending institutions and the legal profession will be sufficiently flexible to adopt new processes that can best support the proprietor. In this regard, we note that in recent years we have seen an increasing number of requests, relating to commercial loans, for voluntary registration due to a potential lender requiring the certainty of a Land Register title before granting a loan. In order that the registration cost of a voluntary registration does not act as a barrier to a party acquiring a new mortgage, we would propose that subordinate legislation prescribe that the voluntary registration fee be waived where it relates to the grant of a standard security

26. It is proposed that this section be introduced to all registration counties at the same time. Introducing it on a staggered basis would mean different legal requirements for different parts of Scotland and so would place additional burdens on lending institutions and their legal advisers, particularly in those situations where transactions involved properties in different parts of Scotland. To enable the

commencement of section 48(2), we would propose to remove the discretion afforded to the Keeper under section 27(3)(b) to refuse a voluntary application for registration. Over the next ten years, we anticipate that introduction of this trigger would result in circa 45,000 additional first registrations.

Question 1: Do you agree that Scottish Ministers should close the Sasine Register to standard securities?

Answer:

Yes

Question 2: Do you agree that the fee for the associated voluntary registration of the property should be waived?

Answer:

Yes

Question 3: Do you agree that closure of the Sasine Register for standard securities should be introduced across Scotland at the one time or should it be introduced on a staggered basis by county or by groups of counties?

Answer:

Yes, although this is really an issue for Registers of Scotland. From a consumer's perspective there would appear to be little merit in having different requirements for different counties and if RoS can absorb the resultant increase in first registrations without affecting accuracy and timescales then a Scotland-wide introduction would seem appropriate.

Closure of the Sasine Register to other deed types

27. The powers in section 48 envisage that the Sasine Register can be closed to other deeds as well as those set out in sub-sections (1) and (2). Those remaining deeds comprise in the main discharges of standard securities, local authority charge deeds, deeds of conditions and deeds of servitude. (See Appendix 1 for a breakdown of the deed types.) Post the Designated Day, the other common deed still to be entered on the Sasine Register will be the advance notice.

28. Many of the deed types listed in Appendix 1 are deeds that are drawn up by and granted by a body other than the proprietor. We consider that it would raise a number of practical difficulties at this time to require the property to be registered in order that such a deed could be registered. In effect, we would have to carry out a Keeper-

induced registration (KIR) of the property. Our desire is to approach KIR systematically in the first instance, working where we can with the proprietor to register all properties such a body may have. That approach brings structure and economies of scale. We do, however, recognise that as the programme of completion advances, it may be appropriate to re-consider this for those deed types not granted by the proprietor.

29. It may still be that the Sasine Register should be closed to some of the remaining deeds, in particular those deeds where it is the owner of the property that is granting them and where they seek to inform the nature of the title. Examples would be Deeds of Condition and Deeds of Servitude. In those instances, the grantor of the deed will have engaged the services of a solicitor who will need to be aware of the title position and have reference to the deeds that make up the title. In those instances, we consider that, as is the case for closing the register to standard securities, the additional work involved would not cause substantial inconvenience and would better inform those parties who will subsequently transact with the property. As with standard securities, we would propose that the voluntary registration fee be waived.

Question 4: What deeds do you consider it appropriate to close the Sasine Register to and so require voluntary registration of the title in order to give legal effect to the deed?

Answer:

It is not really for this Council to advocate the closure of the Sasine Register; rather we can point out difficulties which might arise from the closure of the register to certain types of deed. In general terms we do not disagree that transactions involving the granting of new rights over property and where the landowner is in control of the grant should generally be a trigger for a voluntary registration: however the list of deeds at Appendix 1 is not particularly helpful as many of them, eg "Agreement" "Revocation""Undertaking" etc are meaningless out of context.

We do not consider it appropriate that a discharge of any deed should automatically trigger a registration of title. The very fact that a burden, debt or restriction over a title is being discharged is consistent with an element of finality in respect of that restriction. Neither the title holder nor the "charge" holder have any logical interest in inducing a first registration.

We do not consider it appropriate that any renunciation of a lease, nor any lease which itself does not trigger registration by way of its duration (ie less than 20 years) should induce a registration.

Similarly, those unilateral deeds recorded by Council's eg Notices of potential liability for costs, Charging Orders, Tree Preservation Orders etc should not induce trigger a voluntary registration as there is no locus for the Council to insist on this.

The recording or registration of Notices of repairs or improvement grants is mandatory under the Housing Acts, and the issue of introducing an element of discretion has been raised already with the Scottish Government, given that many of these grants are for small sums to people on low incomes and the grants themselves are time limited. To require an additional voluntary registration of those affected titles to allow for the mandatory registration of a grant would be entirely disproportionate to the amounts secured by the grants.

The Sasine Register should not be closed to Deeds of Servitude. We often grant such deeds for small value and very localised transactions. Where the servitude area is part of a large housing estate title (which is common) the mapping of that larger title could prove unduly onerous and costly in comparison to the transaction which is triggering the registration.

Care would also need to be taken in respect of Notices of Title which Local Authorities have used as a convenient way of updating titles held in the name of predecessor Councils. To insist that large estate titles should be reissued in their entirety as a byproduct of registering a Notice of Title for a particular small transaction seems completely disproportionate.

The closure of the Sasine Register to S75 Obligations under the Town and Country Planning (Sc) Act 1997 would also have a significant detrimental effect on the issue of associated planning permissions which will hinder development. Again the deed is being submitted by a party who is not the Landowner.

Question 5: Do you agree that the fee for the associated voluntary registration of the property should be waived?

Answer:

Yes

Voluntary Registration

30. The Keeper has operated an open door policy for voluntary registration for some time and this will continue. We propose that Scottish Ministers take the necessary steps to remove the Keeper's discretion to refuse an application for voluntary registration. We note that Scottish Minister's commitment to register all public land in the next five years will significantly increase the volume of voluntary registrations. In addition, we will actively engage throughout the next ten years with those who may have an interest in voluntary registration. We note that the 2012 Act creates more opportunities for this (for instance automatic plot registration on a lease can make it more practical for a landlord to register their whole title as this makes the grant of any further leases more

straightforward). Along with the triggers for registration, voluntary registration remains our preferred approach for moving land from the Sasine to the Land Register.

31. Currently, the registration fee for a voluntary application is the same as for a trigger-based conveyance of title; it is based on the consideration (price paid) or the value, whichever is greater. This is because the benefits to the applicant from registration are the same irrespective of whether the application is submitted as a result of a trigger or on a voluntary basis. Similarly, the costs to the Keeper in processing the application are the same. We do recognise that the more properties that are registered through triggers or voluntary registration the less there will be to tackle through Keeper-induced registration, for which no fee is proposed with the costs being met from the general pool of registration and other income generated by the Keeper. Consequently, we do recognise the benefit in encouraging a growth in voluntary registration. We are also mindful that the level of registration fee is often not the critical factor in determining whether or not to proceed with a voluntary registration; for complex property titles, the legal and associated costs of the title examination will form the bulk of the expense incurred by the applicant. On balance, we consider there should be a modest fee discount to aid the promotion of voluntary registration. We propose that the registration fee should be reduced by 10% for voluntary registration.

Question 6: Do you agree that the legal power the Keeper has to refuse a request for voluntary registration should be removed, irrespective of the outcome of the proposals on introducing additional triggers?

Answer:

This is an issue for the Keeper, although retaining the power seems inconsistent with the drive to complete the Land Register and encourage voluntary registrations. There may however be compelling cases where a party to a deed has reason to prevail upon the Keeper to exercise the power not to proceed with a voluntary registration.

Question 7: Do you agree that a reduced fee should apply to voluntary registrations? If so, do you agree with the proposed 10% reduction?

Answer:

No. This answer should be read alongside the answers to questions 10 and 11. The fee should be waived in its entirety. In the context of the proposed completion of the Land Register, and with the ultimate measure of Keeper Induced Registration, we do not consider that registration applications will be truly voluntary.

In broad terms, Falkirk Council has an accurate record of its land assets and is rolling out a digitisation process to capture all our titles. There is therefore no compelling benefit in the Council voluntarily registering its titles and accordingly no imminent need for it to incur any registration fees, reduced or otherwise.

This Council has over 6000 title packets covering an asset base encompassing Schools, Housing, Library and Lesiure facilities, Museums, Parks, Offices, Shops, Roads etc. We currently estimate that only 350 or so of those titles are on the Land Register.

For accounting purposes, the Council's estate is estimated at c.£600M. For the purposes of valuation for voluntary registration the value would be considerably more and the exercise to arrive at those values would be a time consuming and costly one. Depending on how the titles to those individual assets are configured, registration fees could run into several hundred thousand pounds. As the majority of these assets are in operational use there is simply no benefit to be derived from having the titles to them registered in the Land Register. This is therefore a cost which the Council would not at this moment voluntarily bear, given its other competing priorities and pressure to make drastic cuts to operational budgets.

Keeper-induced Registration

32. From the Designated Day, the Keeper, for the first time ever, will have the power to register property on the Land Register without having received an application (section 29(1)). Our focus in the first five years will be trigger-based and voluntary registration, particularly the voluntary registration of public land. The more properties that come in through these routes the less KIR there will be. However, KIR is essential to completing the Land Register; the Land Register will not complete without it. The reason is simple: not every property owner will be impacted by a trigger event or wish to engage with us through voluntary registration. KIR must therefore work.

33. Given the newness of this power, the Keeper intends to test its use through piloting a number of approaches. This will enable us to highlight the specific challenges of this new approach and will let us develop processes and policies to deal with them. It will also let us plan an approach that best meets the needs of the property owner and those placing reliance on the Land Register with the aim of completing the Land Register. For KIR will not be without challenge. Unlike with a trigger based registration or a voluntary registration, the Keeper will not have had the benefit of the involvement of a solicitor acting for the applicant, who will have examined title, obtained and interpreted the appropriate pre-registration reports, will have discussed the title with his or her client and so be fully aware of all information pertinent to the title to the property. Although the Keeper will have access to the title deeds as recorded in the Sasine Register, an extensive set of maps and associated records and for many urban properties will

already have carried out extensive title research as part of her preparation for trigger based registrations, issues will arise.

34. The 2012 Act recognises this. So, for instance, in terms of mapping the legal boundaries of a property, the Act acknowledges that under KIR, the Keeper may not always be able accurately to identify them, for instance, where the title deeds for the property contain a general conveyancing description such as 'all and whole the farm and lands of Kennedies along with the houses, timber standing or fallen, plains, muirs, paths.....'. Although the Keeper will have access to a range of current and historic maps as well as any neighbouring registrations, such a description could lead to the Keeper under- or over-mapping the extent of the property. If the extent is under-mapped the proprietor will become aware when the Keeper notifies them with details of the registration, as is required. If the extent is over-mapped, the 2012 Act provides a general exception to the Keeper's warranty under section 74(3)(a)(ah), the effect of which is that the 'over-registration' is not warranted. The owner or a third party with title and interest would be able to apply for rectification.

35. Equally, difficulties can arise in establishing the owner of the plot of land. Again, in many cases, the Keeper will be able to establish this information with reasonable certainty from the Sasine Register and other records. However, there will be some instances where that certainty will not be possible. For example, where the title is held with a survivorship destination, it will not be possible to establish from the Sasine Register alone whether the destination has operated or been extinguished. The 2012 Act recognises this difficulty and offers two possible solutions. First, section 30(5) provides that where, under KIR, the name or designation of any person to be entered in the title sheet cannot or cannot with reasonable certainty be determined then the Keeper may enter a statement that the name or designation is not known or not known with reasonable certainty. Second, where the Keeper is sufficiently certain to enter a named proprietor but is not sufficiently certain to warrant the accuracy of that entry then the Keeper may exclude warranty.

36. Whilst the 2012 Act can provide statutory solutions for key issues, the challenge will be to minimise the occurrence of such issues. A pilot exercise will establish where the risks lie and the circumstances where full warranty can be granted and those where it cannot. The pilots will also identify many of the practical and legal problems that have to be resolved and will enable the Keeper to put forward proposals for a detailed approach to KIR. The Keeper would propose to consult further on the detailed approach to and strategy for KIR following evaluation of a number of pilot KIR exercises.

37. The pilots that the Keeper intends to run are as follows:

- registering Scotland's heritage assets – RoS will work with charitable bodies such as the National Trust for Scotland, the John Muir Trust and the RSPB to register, by way of KIR, a sample of land and property that is important to Scotland's historic and natural environment. Such land and property is unlikely to enter the Land Register through other routes;

- registering properties in RoS research area – see paragraph 18. These properties tend to be the remaining flats in a tenement or houses on an estate where the majority of titles have already been registered. We intend to register around 1,000 of these properties over a one-year period to assess any issues around undertaking KIR in this type of scenario ;
- registering titles that support other Scottish Government initiatives. Examples of such initiatives include the work being progressed by the Crofting Commission to register crofting common grazings land (estimated at some 5500 square kilometres) and the registration of estates that are subject to a pre-emptive right to buy over land under the Land Reform (Scotland) Act 2003. We will aim to register a small number of titles related to such initiatives;
- registering titles in non-research areas – it is important to establish the specific opportunities and challenges associated with this not-insignificant tranche of titles. This is because any closure of the Sasine Register to certain unilateral deeds (such as those mentioned in paragraph 27 above) may require the Keeper to first register the property through the Keeper-induced registration powers. We will seek to register a cross section of urban, rural, commercial, residential and agricultural properties; and
- registering coastal titles and titles located in or extending into territorial waters – the 2012 Act, for the first time, gives the Keeper the power to register titles in Scotland’s territorial waters. We intend to undertake a small pilot project to test procedures and the inter-relationship between the cadastral map and the map of the sea. We will work closely on this with Marine Scotland.

38. The initial pilot-based approach to KIR will not inhibit the pace of completion; our focus in the first five years will be trigger-based and voluntary registration, particularly the voluntary registration of public land. The more properties that come in through these routes the less KIR there will be. KIR must, however, work and the proposed pilots will identify many of the practical problems that have to be resolved.

Question 8: Do you agree with the proposed approach to piloting KIR to inform a consultation on the detailed approach to and strategy for KIR?

Answer:

Yes. Any exercise which helps to inform the completion process on a practical level must be of benefit.

Question 9: Should other elements be included in the pilot and what should these be?

Answer:

We would have thought that a Local Authority housing estate title, complete with split offs under “right to buy” legislation would be a valuable exercise to help inform the KIR process.

Difficulties will also arise in relation to Common Good land, land held under Acts of Parliament, the solum of adopted roads and consideration could be given to identifying a process for dealing with these issues.

Approach to completion

39. Scottish Ministers have set a ten-year timeframe for completion. Our favoured approach is to encourage property owners to register their titles either as a result of the triggers for registration or through voluntary registration. During the first five years, the emphasis will be on:

- (1) trigger based registration – ensuring all such applications are processed within the Keeper’s published service standards setting the maximum time to process first registration applications;
- (2) registration of public land – we envisage this will be based on a set of service level agreements between RoS and individual public bodies;
- (3) promoting voluntary registration – we will run targeted sector based campaigns to encourage voluntary registration. One off voluntary applications will be dealt with in accordance with published service standards setting the maximum time to process first registration applications;
- (4) pilot Keeper induced registration – pilots will run through late 2014 and 2015.
- (5) consult on detail and approach to KIR – late 2015; and
- (6) commence, initially low level, KIR following evaluation of consultation - 2016.

40. Progress will be monitored on an ongoing basis with information being provided in the Keeper’s Annual Report. During the second five year period, the emphasis will shift slightly. Focus will remain on (1) and (3) above and activity will increase around KIR. We feel that the proposed approach strikes the right balance in that it favours use of triggers and voluntary registration over KIR in the early years. It also acknowledges

the target to register all public land within the first five years. As the period progresses and we have more transparency as to those properties that look less likely to enter the register, we can ramp up KIR, from the initial focus on heritage assets to those that will fill in much of the title and land mass gaps. Finally, we can tackle the wholly unregistered land.

Question 10: Do you agree with the proposed approach to completion?

Answer:

No. With particular emphasis to the registration of Public land, there is reference to Service level agreements but absolutely no detail on what these will contain and the rights and responsibilities on the parties. Who is providing the services, is it Councils to Registers of Scotland or vice versa? Much more information on this is required before giving any more detailed comment.

All Councils are being subjected to severe and ongoing cuts to their budgets and are struggling to use existing resources to provide valuable front line services. This Council faces cuts of c.£40M over the next three years. The suggestion that against that background the Council should divert resources to facilitating the completion of the Land Register at all is completely unrealistic and even more so in the timescales outlined.

In isolation, the proposed approach to completion of the Land Register is not unexpected; however in our initial enquiries of RoS representatives, it was suggested that Councils would be expected to resource this exercise from existing budgets, albeit we were encouraged to highlight the difficulties with this in our responses. In the absence of a commitment from RoS or Scottish Ministers to underwriting the inevitable costs, this Council (and we suspect most others) will not voluntarily embark on registration of its titles. This may then distort the proposed approach to completion as KIR would presumably be the overriding means of achieving the stated aims.

Broadly speaking, the objective to complete the Land Register is a laudable one; however it has to be realistic in the current economic climate, especially when one of the major element of that exercise involves Public Land. The resources available to Councils to provide existing services are constantly under strain. This project will simply not be a priority for our elected members.

Funding Land Register completion

41. Completing the Land Register will consume resources. Helpfully, the eradication of historic stocks of work and the forthcoming move to a more straightforward

registration process under the 2012 Act will free up some resource within RoS that can be allocated to progressing voluntary registration and KIR. Encouraging a growth in trigger based applications and, to an extent, voluntary registration will ensure costs can be managed as in overall terms the costs of this work is covered by the registration fee. The main impact on costs will be the extent to which Keeper-induced registration is used, as costs will be incurred solely by the Keeper. Based on the proposed approach to Land Register completion this is likely to be a matter for the latter five years. The Keeper will seek to grow her reserves, through efficiencies as opposed to fee increases, to accommodate the future costs of KIR.

42. The Registers of Scotland (Fees) Order 2014 proposes no change to the current fees for registration. The Keeper is committed to reviewing fees every two years. This bi-annual review will consider the ongoing costs of completion. This is required by section 110(3)(b) of the 2012 Act which provides that before making a Fees order Scottish Ministers must consult with the Keeper about *'the expenses incurred by the Keeper in bringing all titles to land into it'*. Any proposed change in fees, be it the introduction of new fees or a decrease or increase in fees would be publicly consulted upon following such a review.

43. During the passage of the 2012 Act, questions were asked as to whether the Keeper would pay any solicitors' costs in respect of legal work instructed by owners of property that the subject of a Keeper-induced registration. As Keeper-induced registration will not change a person's legal rights, an owner should not need to employ a lawyer. However, if an owner chooses to employ a lawyer to check the extract of the title sheet and title plan supplied, and the Keeper has made an error, in terms of section 84 of the Act, the Keeper must pay compensation for the reimbursement of reasonable extra-judicial expenses incurred by a person in securing rectification of the Land Register. There are no plans to change this approach.

Question 11: Have you any views on our proposals for funding the completion of the Land Register?

Answer:

Yes

Paragraphs 41-43 above appear to relate purely to the Keeper's costs. This is really a matter for the Keeper.

There is only a passing reference to potential reimbursement of costs under KIR, which, along with the suggested 10% reduction in fees for voluntary registrations seems to be the only concessions that this exercise will have any financial impact on Public bodies. For there to be no apparent acknowledgement in this consultation paper of the potential crippling financial effects which voluntary registration could have for Public bodies is a glaring omission.

Even if the registration fees were waived, the impacts of this proposal on already stretched Council staff would be overwhelming, as would the potential outlays which would inevitably be incurred in search costs, acquiring missing title deeds, research into problem titles, title mapping etc.

All relevant staff are at maximum capacity dealing with property transactions designed to generate income and meet the Council's committed objectives. This project could not be accommodated from existing resources. We have provisionally estimated that a minimum of around 10 additional staff would be required, across Legal, Valuation, Technical and Archival disciplines. With on-costs (eg NI, Pensions, IT, accommodation etc) this is likely to cost in the region of £1.8M in staffing costs alone over the five year period.

In practical terms we doubt whether the market would be able to provide sufficient qualified staff in terms of both volume and experience, especially when other Councils will be dipping into the same pool.

Add to that search fees, quick copy deeds, valuation costs and other inevitable outlays to get titles ready for registration and, assuming that registration fees will not be waived, the costs could easily rise to well over £4M. This is a very rough estimate but is all expenditure which, but for this proposal, this Council would not have in contemplation and would be viewed as a waste of public funds which we would be unable to justify to our Council Tax payers.

The case for completion of the land Register is well understood; however the reasons given are simply not priorities on a local level and with the corresponding costs of completion weighed against swingeing budgetary cuts, as matters stand it is difficult, if not impossible, to support the proposals.

Land Reform Issues

44. This consultation focuses on the use of the provisions set out in the Land Registration etc. (Scotland) Act 2012 (the 2012 Act) for enabling completion of the Land Register. The Land Reform Review Group recently suggested that additional triggers for registration should be considered, over and above those provided for by the 2012 Act. Their report suggests that *'one approach to this would be making certain types of public grants and tax concessions to land owners for the management of buildings and land, conditional on the property involved being registered in the Land Register.'* This suggestion will be considered further. The review group also made recommendations on beneficial ownership and on who might be eligible to register particularly in Scotland. We are mindful of the need for such analysis to take place in the right policy context and

the appropriate context is that of land reform. Scottish Ministers have committed to consider the recommendations of the Land Reform Review Group and their suggestion on completion will be considered as part of that.

Appendix 1

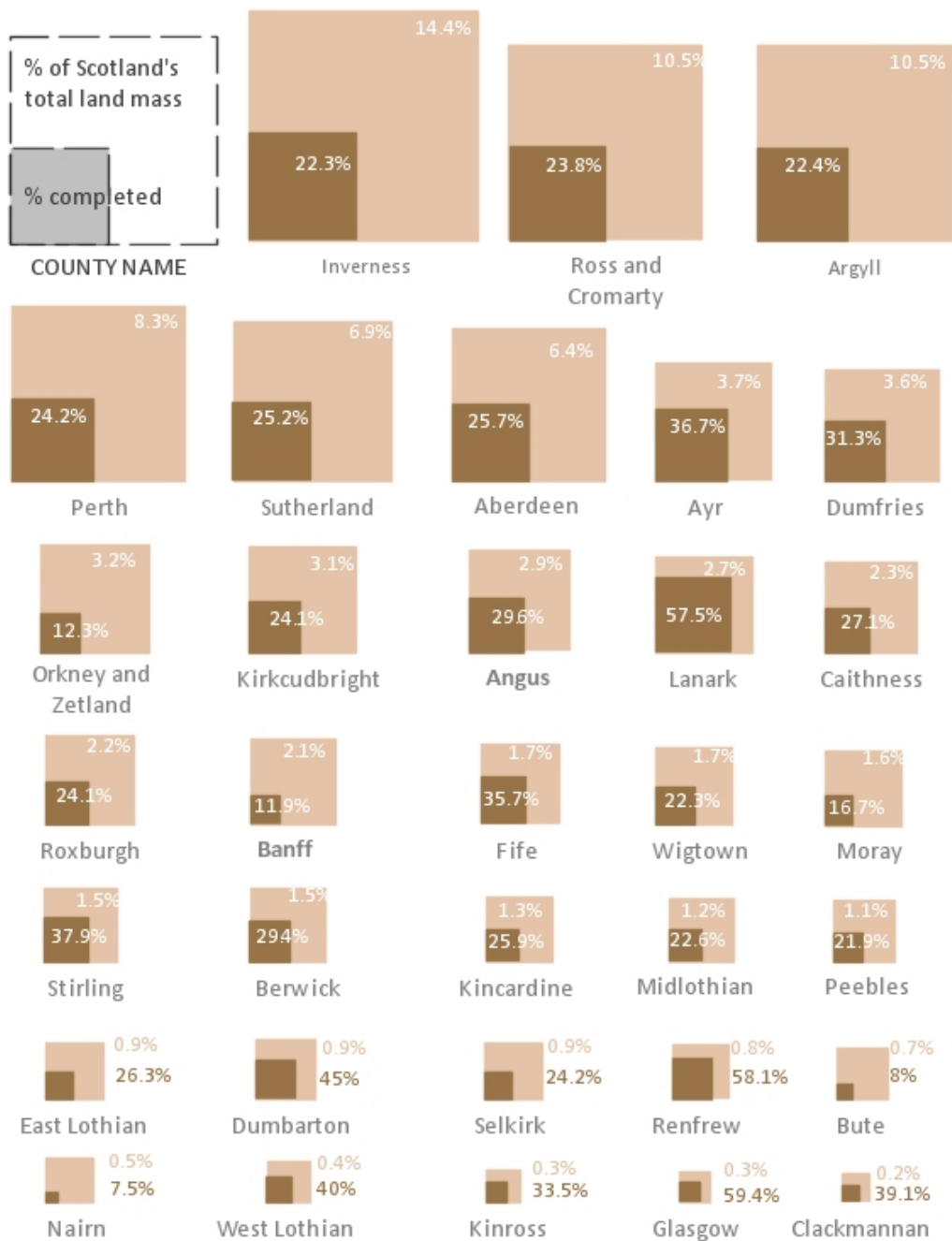
Type and volume of deeds recorded in the Register of Sasines (2013-2014)

1. Discharge (12,852)
2. Disposition (8,662)
3. Standard Security (5,446)
4. Improvement Grant (1,338)
5. Deed of Servitude (730)
6. Notice of Grant (570)
7. Notice of Title (475)
8. Charging Order (303)
9. Deed of Evacuation (183)
10. Agreement (s.75 of the Town and Country Planning (Scotland) Act 1997 (175)
11. Extract Interlocutor (167)
12. Deed of Conditions (160)
13. Assignment of Standard Security (142)
14. Repairs Grant (134)
15. Deed of Restriction (131)
16. Notice of Costs (122)
17. Schedule of Monuments (104)
18. Deed of Variation (101)
19. Deed of Real Burdens (80)
20. Agreement (79)
21. Renunciation of Lease (78)
22. Guardianship Order (62)
23. Ranking Agreement (55)
24. Death Certificate (52)
25. Ex. from Schedule of Monuments (37)
26. Assignment (34)
27. Contract of Excambion (28)
28. Discharge (Charging Order) (22)
29. Minute of Waiver (220)
30. Discharge (*ex facie* absolute disposition) (20)
31. Conveyance (16)
32. Deed of Postponement (14)
33. Repairing Order (13)
34. Discharge (Servitude) (12)
35. Grant of Servitude (11)
36. Lease (11)
37. Reconveyance (10)
38. Variation of Lease (10)
39. Tree Preservation Order (8)
40. Corrective Disposition (7)
41. Deed of Pre-Emption (6)

- 42. Discharge of Conditions (6)
- 43. Discharge of Liferent (6)
- 44. Compulsory Purchase Order (5)
- 45. Agreement (s.19 of the Land Registration (Scotland) Act 1979 (3)
- 46. Deed of Assumption & Conveyance (3)
- 47. Deed of Disburdenment (3)
- 48. Discharge (Charging Order) (3)
- 49. Repayment Charge (3)
- 50. Notice of Converted Servitude (3)
- 51. Certificate of Payment (2)
- 52. Disposition and Assignation (2)
- 53. Extract Decree (2)
- 54. Extract Decree of Adjudication (2)
- 55. Extract Order (2)
- 56. Notice of Cessor of Conditions (2)
- 57. Notice of Payment (2)
- 58. Revocation (2)
- 59. Undertaking (2)
- 60. Amendment Order (1)
- 61. Certificate of Declaration (1)
- 62. Deed of Acknowledgement (1)
- 63. Discharge of Bond (1)
- 64. Discharge (Forestry Dedication Agreement) (1)
- 65. Discharge (Pre-Emption) (1)
- 66. Extract Decree of Right (1)
- 67. Extract Decree of Reduction (1)
- 68. Extract Lease (1)
- 69. Extract Order (1)
- 70. Minute of Extension (1)
- 71. Notice of Repayment (1)
- 72. Notice of Payment of Improvement Grant (1)
- 73. Preservation Notice (1)
- 74. Termination Notice (1)

Land Mass Coverage

Land Mass Coverage Progress: The larger light brown boxes on the graphic below represent the size of each county as a proportion of Scotland. For example, Inverness covers 14.4% of Scotland's land mass. The smaller brown boxes represent the area of land registered in the Land Register within that given county, e.g. 22.3% of the land mass of Inverness is on the Land Register. The areas of land not registered in the Land Register can be found in the Keeper's other property register, The General Register of Sasines.



The Scottish Government Consultation Process

Consultation is an essential aspect of the way in which the Scottish Government works. The Scottish Government encourages consultation that is thorough, effective and appropriate to the issue under consideration and the nature of the target audience. Consultation exercises take account of a wide range of factors and no two exercises are likely to be the same. Typically, the Scottish Government consultations involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the issue, and they are also placed on the Scottish Government website enabling a wider audience to access the paper and submit their responses.

Consultation exercises may also involve seeking views in a number of different ways, such as through public meetings, focus groups or questionnaire exercises. Copies of all the written responses received to a consultation exercise (except those where the individual or organisation requested confidentiality) are placed in the Scottish Government Library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, Telephone 0131 244 4565).

All Scottish Government consultation papers and related publications (e.g. analysis of response reports) can be accessed at: Scottish Government consultations (<http://www.scotland.gov.uk/consultations>).

The views and suggestions detailed in consultation responses are analysed and used as part of the decision-making process, along with a range of other available information and evidence. Depending on the nature of the consultation exercise the responses received may: indicate the need for policy development or review; inform the development of a particular policy; help decisions to be made between alternative policy proposals; and be used to finalise legislation before it is implemented.

Final decisions on the issues under consideration will also take account of a range of other factors, including other available information and research evidence.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

Completion of the Land Register Public Consultation

Please note that this form must be returned with your response to ensure that we handle your response appropriately.

Name: Douglas Blyth Organisation Name: Falkirk Council

Postal Address: Municipal Buildings, Falkirk FK1 5NS

Phone I Email 01324 506086- douglas.blyth@falkirk.gov.uk

1. Are you responding as: (please tick one box)

An individual ☐ go to 2a/b

On behalf of a group or organisation ☒ go to 2c

2a. INDIVIDUALS

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

Yes ☐ go to 2b below

No ☐

2b. Where confidentiality is not requested, we will make your response available to the public on the following basis (Please tick one of the following boxes):

Yes, make my response, name and address all available ☐

Yes, make my response available, but not my name and address ☐

Yes, make my response and name available, but not my address ☐

2c. ON BEHALF OF GROUPS OR ORGANISATIONS:

The name and address 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 ☒

No ☐

3. We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for the Scottish Government to contact you again in relation to this consultation exercise?

Yes ☒

No ☐

List of Consultees

[Organisations – Annex 3](#)

Individuals

Professor George Gretton

Professor Kenneth Reid

Professor Kenneth Ross

Professor Robert Rennie

Professor Roderick Paisley

Professor Stuart Brymer