

PAGE 2: Information about you

Q1: Name: Dr Jill Robbie

Q2: Email address

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Q3: Are you responding as: (please select below)

an individual

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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)?

Yes

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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)

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

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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?

Respondent skipped this question

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

Yes

Comment: I agree with the reasons put forward by Registers of Scotland (RoS) that beginning with residential properties in research areas would build on existing work and it would also allow the Keeper to acquire experience of undertaking KIR.

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: The answer to this question depends on what is the purpose and intended outcome of using KIR. From the consultation document, it appears that the intended purpose of KIR is to register a large number of relatively simple residential titles. This will increase the percentage of titles on the Land Register but will not have the highest impact on completing the Land Register. In order to cover significant land mass, the large complex rural estates need to be registered. If it is intended to use KIR to register these rural properties at one point, it is recommended that after experience of the process of KIR has been acquired through registering residential properties, the Keeper begins the process of KIR of some of these rural properties. Registering these estates will be time consuming, labour intensive and will require solicitor input. Therefore, the process should be begun at the earliest opportunity to ensure it is complete by the time the 10-year deadline is reached. If large rural estates are registered at a later stage, limitations of time may result in the production of skeletal title sheets. This may be a small improvement on Sasine registration but it will not significantly increase the transparency of land ownership or greatly facilitate conveyancing processes in Scotland.

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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

Comment: I understand that there are challenges involved in working in partnership with the owners of heritage assets and their external advisors to complete registration of their titles. However, if the aim of KIR is to accurately and comprehensively register the titles of properties on the Land Register which otherwise would not be registered, working in partnership with owners is the only viable option. If the process is time-consuming, it is best to start the process as soon as possible instead of rushing registration at the end of the 10 year deadline.

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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 answer to this question depends on what such labelling would be intended to convey. If, as consultation document envisages, solicitors and owners will have little involvement in the KIR process, this may give rise to a greater likelihood of inaccuracies, of which any potential purchaser should be made aware. In this situation, it would be preferable for KIR titles to be labelled differently from trigger or voluntary registration titles. This does, however, detract from the principle that one should be able to rely on the Register. A potential side effect of this identification is that it may affect the value of properties which have been registered through KIR.

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

No

Comment: I agree that if there is to be no communication with owners or their solicitors, focusing on properties where the mapping is straightforward would be recommended. Where an overlap is identified, it is suggested that contacting the owners and their respective legal advisors would be helpful to resolve the issue. The Keeper would be determining the extent of proprietors' ownership for the purpose of Land Registration and therefore her decisions should be as informed as possible. It is worth the small amount of delay in investigating the situation to ensure the Register is accurate. In the illustrative example in Annex D, "option iv" appears to be a pragmatic solution which is based on maintaining the status quo of the already Land Registered property. This may not have the most legally accurate result. I agree it would be helpful to issue guidance on overlaps once the Keeper establishes the principle. It should be noted that in the event that the Keeper does map a property incorrectly, this is not without potential legal consequences. If the Keeper warrants the title, even if the proprietor listed in the title sheet does not own the incorrectly mapped area, a third party in good faith may acquire ownership under s86 of the 2012 Act.

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

No

Comment: Again, if the aim of KIR is to create a complete and accurate Land Register, it would be recommended to involve the owner's solicitors in order to clarify issues like the route of servitudes. In the absence of any solicitor involvement, the Keeper's proposed approach to incorporeal pertinents appears to be sensible.

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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?

No

Comment: In these circumstances, I think it would be preferable to investigate the factual situation rather than adding a note to the proprietorship section. The factual situation in these cases should be relatively easy to find out.

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

Respondent skipped this question

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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: Setting out the burdens in full on the title deed is an incredibly valuable aspect of the Land Registration process and I would strongly recommend against just providing a hyperlink to the burdens deeds for KIR. Setting out the burdens attempts to fulfil the aim of a complete and accurate Land Register. It often also prevents each solicitor examining title spending time, and thereby costing owners money, deciphering the burdens deeds. Providing a hyperlink in addition to setting out the burdens in full would, however, be useful especially where, for example, there are plans in the burden deeds.

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?

I agree that providing a hyperlink to the text of the deed would be useful but I think the burdens should also be set out in full.

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

No

Comment: Although the consultation document envisages that owners and their solicitors would have little involvement with the registration process, I would suggest that owners should be informed that their property is being registered through KIR whilst the registration is in progress. This will give owners the opportunity, if they wish, to contact their solicitors to input into the process. Getting owners and solicitors involved in the registration process may resolve issues before registration, thereby avoiding the potentially costly need for rectification following registration.

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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: Yes, in the event that solicitors are not involved in the process at all and there are issues which the Keeper has identified in the registration process, it would be helpful and would avoid the duplication of work to provide guidance on the additional information likely to be required in the next transaction.