

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: We do agree that KIR should start with residential properties but we would also encourage the use of KIR for any other types of properties, if any, which happen to fall within research areas.

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: Yes it is important to gain some quick wins and achieve a large increase in the number of registered titles. However, in parallel, it would probably be beneficial overall if some of the more complex titles were tackled and not left until nearer the 2024 deadline. Such complex titles could be tackled and then the owners and their solicitors could be given an opportunity to review the work done by Registers before the final version of the title is registered. This opportunity to review need not be taken in each case but could be an option. When deciding which properties to register using KIR it should perhaps be borne in mind that KIR is in effect free registration of title and some may view it as unfair to limit KIR to residential properties.

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: Yes. See our comments at Question 2 suggesting an opportunity to review work done by Registers prior to completion of registration



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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: Yes. Given the comments in the Consultation paper recognising that the Keeper has limited (and sometimes partial) access to information relating to a property and that KIR presents challenges in this regard, it is essential that any person dealing with that property (whether it be a lease, purchase, security or servitude), is aware that the title was registered under KIR. It is likely that solicitors will treat the first dealing with a property after KIR as a first registration and will want to examine the prior titles and supporting documentation to satisfy themselves that the KIR is accurate.

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

Yes

Comment: Yes to the extent explained in the Consultation Paper. We are pleased to note that action will be taken to deal with overlaps and will be interested to see the guidance on this.

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

Yes

Comment: Yes but we would suggest that there is an appeal mechanism available to those benefiting from such pertinents to vary, amend or add to what has been noted.

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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?

Other circumstances include where the property is owned by a company which has changed its name or been struck off the register and where titles have passed to beneficiaries through wills. When it comes to securities registered against the title, some may have been granted in favour of banks which no longer exist or have transferred their assets or changed their name.

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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: We appreciate that using this method to refer to encumbrances will speed up the process of KIR. However, with the drive to make ownership of and rights over land more transparent, we think this is a potentially retrograde step. Narrating a list of deeds and providing hyperlinks will be accessible and understandable by legal advisors but will be less so for clients and intermediaries. If it is intended that a link to the relevant deeds be attached, at the very least, we would suggest that there should be a summary of the encumbrances contained in those deeds in the Title Sheet with a warning to consult the relevant deed for more detail.

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?

See our comments at Question 8 above

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

Comment: We are content with the proposed communication plans but would suggest that some further communications should be made. Where a plans report or a legal report is requested in respect of a property which is undergoing KIR, a note should be added to the reports to alert the solicitors dealing with the property that KIR is happening. The owner and any creditor with a security registered against the title should be notified of the KIR. The major banks and lending institutions should be asked to provide contact details for those who should be informed of KIR. We would also suggest that, when KIR has occurred, the owner and the creditor of the property should be given a review period during which they can review the registration of the title and make representations about any changes which they believe are required. Any such review period should be long enough to allow the owner or creditor to consult their legal advisors if they have any queries. If the Keeper receives no comments or objections to the registered title within, for example, 6 weeks of the notification of KIR being issued, the period for review should close and the only option for the owner or creditor to change anything should be rectification. Consideration should also be given to the position of proprietors of properties which bound the property being registered under KIR. It is accepted that a neighbour will not, in the normal course of events, always have knowledge of a dealing leading to a registration of their neighbour's property. However, in many cases it is apparent due to the property having being advertised for sale or other known circumstances. Where the neighbour has knowledge, there is an opportunity to raise queries or concerns about the extent of the property being registered and ensure that the boundaries are accurate. In the case of KIR, the neighbour will have no such knowledge and therefore no such opportunity to engage and could find, within a short timeframe, that unidentified errors in the boundaries become unchallengeable if a transfer to a third party in good faith occurs. It is accepted that this is a risk for any neighbouring proprietor, but the risk is increased in the case of KIR due to the higher scope for error resulting from the limited information available when a title sheet is prepared under KIR. As a result, consideration should be given to providing neighbouring proprietors with notification of the proposed title sheet boundaries.

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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: We think that it is essential that the Keeper provides guidance on the additional information likely to be required at the next transaction. Again, going back to our suggestion for a review period, owners on receiving such guidance could have the opportunity to present evidence or documentation to increase the warranty granted.