

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?

Comment: Given the lack of true success with other pilots tried by Registers of Scotland it does seem that a logical approach would be to commence with residential properties in research areas. However, we would suggest that these should be of the housing estate type mentioned rather than properties stand alone titles. The issues for properties with stand alone titles are likely to be exactly the same as those experienced by the Keeper when dealing with some of the farm, estates and commercial titles.

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?

Comment: Building on the research areas on the work already done is a sensible approach and should lead to higher numbers of properties being Land Registered than would otherwise be the case. However, dealing with residential properties and ignoring commercial, rural and agricultural titles is not going to help with percentages of land mass on the Land Register as by in large the residential titles are very small in comparison. It would seem to us that a mixed approach by the Keeper would be a more sensible approach bearing in mind that many commercial titles, particularly in towns will abut residential developments and those should not be ignored but should be factored in and perhaps the Keeper should consider working on a postcode basis within the research areas and cover both residential and commercial properties to try and get a larger land mass onto the Land Register more quickly.

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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?

Comment: It is essential that it is instantly identifiable from a title sheet that the property has undergone KIR. This highlights to both a selling and purchasing agent that the title has not been checked by any solicitor and should instantly ring alarm bells particularly when KIR operates neither a solicitor nor the owner of the property appears to be given any opportunity to contribute. Any marker should not be hidden away or being a small separate field marking. It should be blatantly obvious to anybody touching the title sheet that this is a KIR case eg rather than being printed on white paper or shown on a white title sheet, it is on a blue title sheet etc. There should also be a note in the properties section of the title sheet as this is going to be essential for lenders and solicitors acting on behalf of lenders. The issue of KIR and warranty on page 7 is not covered by these questions and we feel it should be. KIR should not operate if the Keeper is going to, having carried out the examination, not give a warranted title. If the Keeper gets to a case with KIR where they feel that warranty may require to be limited or excluded that case should be immediately removed from KIR and the owner of the property advised. The title sheet should not be issued on KIR with exclusion of warranty without recourse to the property owner.

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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?

Respondent skipped this question

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

Comment: For KIR the Keeper mimicking the pre-registration Plans Report is a sensible starting place. KIR should not proceed any further where titles are found to contain an over lap. The Keeper should not herself have sole decision as judge and jury over what goes with what title. KIR should stop immediately at the point of an over lap being recognised and should then revert to the owner. Guidance on over laps at KIR to be produced at some time in the future is not a solution. This has to be produced before KIR starts and consulted upon. The Keeper should not have the unilateral authority to effectively play God with peoples titles. The operation of prescription as mentioned in paragraphs 29 and 30 does go some way to addressing these points but these should not be allowed to simply lie on the Land Register without reverting to the property owner. The point regarding warranty again the Keeper should not complete KIR where she seeks to limit or exclude warranty without direct recourse to the property owner.

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

Comment: It is agreed that the Keeper should provide sufficient information to ensure that the KIR title sheets offers as much transparency as is humanly possible on rights to ensure anyone viewing or transaction with the title deed can readily ascertain that those rights actually or potential attach to the title. It is not a good policy or practice for the Keeper to simply include reference to the relevant deed in which the right is narrated in the title sheet because that means that the register is not complete or up to date or containing all information that anybody wishing to contract with the title would need to have to hand. They would need to have access, for example the sasine writ which induced the break-off of that title in the first place and that should be narrated in the KIR title, it should not be left for anybody transacting with the title to have to go and look at that separately. The points including, unless you are fully aware the right has been extinguished is 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?

Comment: The survivorship clause question will relate primarily to residential properties whereas the officio trustees clause will probably apply equally to residential and commercial and agricultural titles. Surely it would be more straight forward in the event of a survivorship clause that the Keeper made an attempt to contact the owner to see whether or not the survivorship clause had applied and obtain the ancillary documentation. Certainly for a number of elderly private clients who have titles with survivorship clauses, in the example where one spouse has subsequently died getting notifications in names of both spouses and then confirmation about title being registered in both names could be both confusing and potentially upsetting. Registers of Scotland have access to registers of deaths and it is suggested that this could be easily checked.

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

The property may be gifted under a Will and in those circumstances rather than a conveyance a docket transfer on a Certificate of Confirmation may be all that is prepared by the solicitor dealing with the executry. The docket transfer on the back of the Certificate of Confirmation would be placed with the title deeds and at that stage there is no requirement for a notice of title or any other conveyancing process to happen that would engage Registers of Scotland. Hence there is a potential that Registers would be completing KIR over a title where there has already been a docket transfer. That would lead to an inaccuracy on the Register while the Register would show the swap from the sasine register to the Land Register of the last person with a registered title it would not necessarily be the last person with the completed title. This could potentially have an effect on standard securities as well as prior to March 2016 when standard security is going to trigger first registration. It is perfectly possible under the 1970 Act for a person who has inherited the title under a docket to register a Standard Security over the property. In cases where this has happened (presumably they will be quite rare) you are going to get an example where the title sheet shows X&Y being the registered proprietors but Z having granted the Standard Security. This could cause issues for the lenders.

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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?

Comment: Just because a title sheet is clearly and more succinct does not mean it is correct. If the Keeper on KIR fails to input the burdens in full then the land register is potentially wrong. Deeds should not simply be listed as again by doing so means that the Land Register itself is incomplete and owners solicitors and others looking at the register should not be forced to look at ancillary documentation to work out who owns what and what the title conditions are. If it is suggested that it is more helpful to see the text of a deed in its entirety then that deed should be somehow scanned and incorporated as part of the title sheet not left to be a separate link which has to either be purchased or obtained separately. Hyperlinks to scanned copies of the deed could be very unhelpful and un-user friendly. Many burden deeds are old and hand written documents and originally written on paper much larger than A4 size. Scanning and attaching these simply means that the quality will be even more inferior and difficult to read and interpret. The burdens should be narrated in full and the Keeper should adopt a sensible and user friendly approach to proper paragraphing and pagination of these. The way that burdens have been narrated since 1979 makes them incredibly difficult to read regardless of the fact that they are now type written.

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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?

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

Comment: For many private clients, receiving a communication from you after KIR has been completed is probably going to be very stressful and potentially upsetting. Presumably you are going to tell them that they can access a copy of their title sheet by logging on to your online system. Many of the people who will be affected by KIR are likely to be elderly and probably not internet savvy and the proposal to simply tell them how they can access a copy of their title sheet fails to take any of this into account. For research areas you should be notifying the owners prior to KIR taking place and this should not be a difficult exercise particularly in your research areas. You should also be advertising in local and national press that this is your intention to do so and listing research areas to be effected with timescales. Providing information and guidance to solicitors is all very well but many of these people will have bought their houses 30 or 40 years ago and may well have had nothing to do with their solicitor ever since. There needs to be far more engagement with the public at large outwith the conveyancing community to deal with this. You should be liaising with MP's and MSP's so that they can be fully aware of the position so that they can deal with enquiries from their constituents. You should be liaising with bodies such as age concern and Citizens Advice Bureau to confirm that they approve of your proposals.

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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?

Comment: We would say it was essential that the Keeper produces guidance on the additional information likely to be required at the next transaction after the KIR and that should be given to the owner at the point of KIR registration with communications saying that this should be given to their solicitors. It should not only cover information likely to be required for the next transaction but information as to how they can have their KIR amended, adjusted etc with you, for free, if they believe you have got it wrong. KIR should not complete with a limitation or exclusion of warranty without negotiation with the owner. If KIR does complete with a limitation or exclusion of warranty then any owner must be given a detailed pack with information alone with detailed notes as to why exclusion of warranty or limitation of warranty on the KIR title has come about or alternatively this information should be noted as an additional note on the tile sheet as it may be many years down the line before anybody actually notices this particularly given you are only going to be writing to registered owners at the registered address, many of which will be incorrect. Some have moved abroad, live in nursing homes, have gifted the house under a Will etc. Reassurance should be given to owners that titles can be amended through rectification or additional irrelevant information added or amended at no cost to the property owner given that they have had no input in this in the first place. KIR is a risky process particularly when dealing with residential properties which to many people, are their home and have been for a great number of years of which they hold a great amount of emotional attachment to. Anyone seen to be "messing with" the persons right to their own property is likely to be seen in a bad light and pertraid negatively by the press and therefore it essential that the Keeper should consider a much higher level of public awareness and involvement with bodies such as age concern and Citizens Advice Bureau before taking this further forward.