

KIR Consultation Survey Response

PAGE 2: Information about you

Q1: Name: Tim Macdonald

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 and name available, but not my email address

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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?

No

Comment: By all means begin working on the "easy" cases now -- there are, after all, apparently 700,000 of them to get through. The part I disagree with is leaving the difficult cases until last. Surely it is better to break the back of the task earlier rather than later. The relatively small number of complex registrations should be started now so that they are not all done in a rush, and poorly, in year 9 -- especially given your comment that owners, where you work in partnership, do not have an impetus to complete registration by a specific deadline.

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: Agreed provided that this is not at the expense of the difficult cases. These should be progressed in tandem as mentioned above.

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: Engagement with the landowner, who knows the position on the ground and should be able to provide details of off-register events (e.g. prescriptive servitudes, supported by Affidavits if necessary; extinction of rights/encumbrances through non-use, and survivorship destinations operating) has got to be better than registering the title first and expecting them to correct any mistakes later. That approach also makes it difficult to get prescriptive servitudes onto the register, since these are easier to deal with at first registration than through rectification, due to the requirement to show that the error is manifest. If it is taking too long to progress cases by working in partnership, these should be started earlier.

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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: You state "We intend that a KIR title will be identifiable through a clear and easily found note in the property section", but this does not appear in the example at Annex C. This is important as it affects the Keeper's Warranty applicable to the title, and how title needs to be examined by the conveyancer in the first post-KIR transaction. There should be a note in Section A of the Title Sheet along the lines of:- "This title was registered under section 29 of the Land Registration etc (Scotland) Act 2012 (Keeper-induced registration)."

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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?

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: In many cases this will make the title more difficult to examine as the user will have to download multiple files and subsequently read scanned copies old deeds, which may be poor quality and/or handwritten. This would have to be done in every case, not only where a problem has arisen, e.g. a difficulty with interpretation. Presumably the details in any plans would not be transposed to the Title Plan, and therefore historic plans would have to be compared with the Title Plan to make any sense of what is actually registered. This would be a step backward toward Sasine conveyancing. It may mean less work for Registers of Scotland but it means more work for conveyancers for years to come, which surely is the opposite of the goal. Further, it undermines the core principle of the Land Register that the pre-registration deeds do not need to be referred to. I agree with the idea of including a link to any deeds which are only partly reproduced, so that the whole deed can be referred to for interpretation if needed, but the typewritten text of the relevant parts should still be included as before. Otherwise the usefulness of the Land Register will be severely undermined.

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?

No, though I do consider a hyperlink should be included in addition to the detail being reproduced, so that if the user has difficulty interpreting the Title Sheet, the deed can be referred to. A typical example is where other subjects outwith the title are mentioned in the deed as a defined expression, but the definition is not brought over into the Title Sheet.

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

No

Comment: Your proposed approach is all very well for residential properties but not all titles have a postal address. Where the property is e.g. bare land, presumably you ought to write to the last recorded proprietor at the address stated in the most recent deed to which they are a party.

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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