

Dear Sirs,

I attach the respondent information form and make the following responses:

Question 4

If the object of completing the Land Register is to encourage economic activity, the granting of Servitudes, Deeds of Real Burdens and Deeds of Conditions should not be a trigger inducing first registration. These deeds are often used to facilitate development or economic use of land. The economic use of land may require the user to approach neighbouring proprietors for agreement as to the grant of additional rights. The compulsory registration of the burdened property may be regarded as a disincentive upon the burdened owner to grant the rights, and will increase the costs to the developer requesting the grant of rights, all the more so when registration dues for first registration of the burdened property may be substantial.

Questions 2 and 5

Yes. It absolutely must be waived.

Questions 8, 9 and 11

I do not agree with the proposed approach to KIR and the approach to financing the completion of the Register. It has some merits but is incomplete.

The Keeper will only be able to learn from the pilot projects if the subjects of the KIRs are legally represented and more capable of challenging the Keeper's approach. The Keeper will need to meet the costs to these organisations of their legal representation.

I am a solicitor with 13 years post-qualification experience in handling low volumes of high value and complex property transactions. In my view, Solicitors ought to check Land Certificates issued in favour of their clients but frequently do not do so (or delay doing so) because the clients are usually unwilling to pay for that work. I am in the fortunate position where I can do so and so I can report that, in my 13 years of practice, I have never received a Land Certificate following on a first registration or a transfer of part that has not contained errors in some shape or form. Correcting these problems is a substantial cost to my clients and/or my firm.

In my view, the biggest problem for KIR is that without the landowner being represented, mistakes by the Keeper will not be identified and the Land Register runs a very high risk of being flawed. That being so, the purposes of completing the Land Register will be undermined.

If a local or other authority was compulsorily purchasing a landowner's interest in land, the acquiring authority would pay for the landowners' legal costs in representing its interests. A similar approach should be taken to KIR whereby the state should meet the cost of the landowner taking legal advice to protect the landowner's interests as may be prejudiced by the compulsory interference by the state. Doing so will have the following benefits:

(a) The consultation document notes that where the landowner does not apply for registration, as with KIR, then the Keeper will not benefit from the expertise and knowledge of the landowner and its representations. This issue can also be addressed by the state providing the resources by which the landowner can obtain representation.

(b) by minimising errors arising from KIR through the process not being examined by the landowner's representation, there will be an improvement in quality of the registered titles at the point of KIR. This will reduce the number of challenges to the Keeper and will reduce the resources required of the Keeper for future remedial work. There is no point carrying out KIR if it is of poor quality and does not meet the economic and informational objectives that are used to justify the policy of KIR.

(c) paying for the landowner's representation will allow the Keeper to grant the usual title warranty. If the Keeper's response to the risk of over-registration or failure to identify the owner is to exclude warranty then there is limited use in having that land on the Land Register. We would anticipate that titles without warrant will not be marketable. Such registrations do not address the economic and informational purposes upon which KIR relies for its justification.

The policy set out at paragraph 43 of the consultation document is misconceived. To suggest that a person's rights will not be altered by KIR is unknown until somebody checks whether that is the case. For example, the Keeper will be well aware that errors made at Registers of Scotland under the present system have had profound effects on people's rights. The policy set out at paragraph 43 is clearly designed to dissuade landowners from engaging in the process of KIR and will undermine the integrity of the registers.

It is also not clear to me why other participants in the property market should pay (though registration dues on their own property) for government policy that is intended to be of national economic benefit. Funding such a policy could only reasonably come from general taxation.

Regards,

Respondent Information Form

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

1. Name/Organisation

Organisation Name

Title Mr Ms Mrs Miss Dr *Please tick as appropriate*

Surname

Forename

2. Postal Address

<input type="text" value="XXXXXXXXXXXXXXXXXXXX"/>		
<input type="text" value="XXXXXXXXXXXXXXXXXXXX"/>		
<input type="text"/>		
<input type="text"/>		
Postcode <input type="text" value="XXXXXXXXXX"/>	Phone <input type="text"/>	Email <input type="text" value="XXXXXXXXXXXXXXXXXXXX"/>

3. Permissions - I am responding as...

<input checked="" type="checkbox"/> Individual	/	<input type="checkbox"/> Group/Organisation
<i>Please tick as appropriate</i>		

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?
Please tick as appropriate Yes

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis
Please tick ONE of the following boxes

Yes, make my response available, but not my name and address *or* *or*

(c) The name and address of your organisation *will be* made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your *response* to be made available?
Please tick as appropriate Yes No

(d) 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 Scottish Government to contact you again in relation to this consultation exercise?
Please tick as appropriate No