

Completion of the Land Register Public Consultation

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

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1. Are you responding as: (please tick one box)

An individual go to 2a/b

On behalf of a group or organisation go to 2c

2a. INDIVIDUALS

Do you agree to your response being made available to the public (in the Scottish Government library and on the RoS website)?

Yes go to 2b below

2b. Where confidentiality is not requested, we will make your response available to the public on the following basis (Please tick one of the following boxes):

Yes, make my response, name and address all available

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

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

2c. ON BEHALF OF GROUPS OR ORGANISATIONS:

The name and address 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

No

3. 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 the Scottish Government to contact you again in relation to this consultation exercise?

Yes

No

Response from Turcan Connell, Solicitors, 1 Earl Grey Street, Edinburgh EH3 9EE to Registers of Scotland Public Consultation on the Completion of the Land Register.

Question 1: Do you agree that Scottish Ministers should close the Sasine Register to standard securities?

While we agree that an impetus to complete the Land Register is beneficial, we are concerned that Registers of Scotland have under-estimated the challenges involved, particularly in relation to rural land which comprises much of the extent of unregistered land.

While insisting on the registration of underlying land whenever a security is granted will assist in completion of the Land Register, the associated registration will not be, truly, voluntary on the part of the landowner. Registers of Scotland state in the Consultation that as the title will be noted as part of the grant of the security, there should not be considerable additional costs for a landowner in such a situation. We disagree. Additional costs may well be incurred, as follows:-

- The landowner may have to produce a plan which could have been unnecessary if the Security was to be Sasine registered.
- If a plan does need to be produced it could be time consuming and, thus, expensive, for the landowner to map their property to satisfy Land Registration requirements.
- In complex Estate transactions a lender may appoint their own solicitor who is often asked to note the title rather than the owner's solicitor providing a Certificate of Title. Accordingly, the level of title examination which would be required to ensure a correct Land Certificate is issued will be an additional cost to the landowner.

A landowner may grant a security over part only of his title. In that case we assume the associated registration will be in respect of the part over which the Standard Security is being granted. This could lead to piecemeal registration of an Estate particularly if the granting of leases also trigger registration of the underlying land.

If there is piecemeal registration, consideration will need to be given to the creation of servitudes and burdens over parts of an Estate which are then placed on separate titles. We consider this leaves a considerable capacity for error and will also lead to additional costs for the landowner.

For the reasons given we consider that the Sasine Register should not be closed to Standard Securities immediately but that, rather, voluntary registration should be encouraged.

Question 2: Do you agree that the fee for the associated voluntary registration of the property should be waived?

Yes. If an owner requires to register the underlying land on the grant of a security (or, indeed, any other document such as a lease) they will have considerable additional costs and, accordingly, any registration fee should be waived.

Question 3: Do you agree that closure of the Sasine Register for standard securities should be introduced across Scotland at the one time or should it be introduced on a staggered basis by county or by groups of counties?

Yes (if it is introduced). Estates can straddle more than one county and it would be difficult if a Standard Security triggered registration in one county and not in another.

Question 4: What deeds do you consider it appropriate to close the Sasine Register to and so require voluntary registration of the title in order to give legal effect to the deed?

It would be appropriate to close the Sasine Register to all dispositions, including those granted for no consideration, corrective dispositions and statutory conveyances. The Sasine Register could also be closed to leases but again we have the concern about forcing the registration of the underlying land particularly as this could create piecemeal registration of an Estate. We refer to our comments above regarding the registration of Standard Securities.

Question 5: Do you agree that the fee for the associated voluntary registration of the property should be waived?

Yes.

Question 6: Do you agree that the legal power the Keeper has to refuse a request for voluntary registration should be removed, irrespective of the outcome of the proposals on introducing additional triggers?

Yes. For the reasons set out in the answers to Question 1 above we consider that voluntary registration should be encouraged. Landowners will be in control and will be able to choose the time of registration. This would be beneficial to all parties as it could avoid the difficulties caused with piecemeal registration or registration being undertaken at a time when there are other transactions within the Estate which could make it complicated to register the underlying land correctly. We appreciate that to complete registration within the desired timescale, measures would need to be put in place to encourage voluntary registration and that triggers (such as closing the

Sasines Register to Standard Securities and Leases) and KIR would also need to be introduced at some point.

Question 7: Do you agree that a reduced fee should apply to voluntary registrations? If so, do you agree with the proposed 10% reduction?

Voluntary registration, whether compelled by the closure of the Sasine Register to the recording of Standard Securities (and other deeds) or entirely as a voluntary decision by the landowner will, as set out above, result in costs to the landowner. These costs will far outweigh the 10% reduction in the registration fee. For the reasons given above we consider that voluntary registration should be incentivised. This will assist in meeting the target to complete the Land Register and will engage landowners to assist in the smooth and correct registration of their land leading to completion of an accurate Land Register.

Question 8: Do you agree with the proposed approach to piloting KIR to inform a consultation on the detailed approach to and strategy for KIR?

We agree that KIR should be piloted. It is important that a variety of types of property are included in any pilot. We would ask that the Keeper work with solicitors to choose pilots to ensure there is a variety and also throughout the process to address difficulties which arise. We consider there will be costs to the landowner in KIR either in the landowner's solicitor engaging with the Keeper throughout the process to assist in an accurate Land Certificate being produced or, if there is no engagement, to check the Land Certificate at the end of the process. If neither of these happen then we would be concerned as to the accuracy of the Land Certificate produced.

On registration of the underlying land, we presume any areas of land not included in the Land Certificate will remain within the landowners ownership in the Sasine Register. This would certainly be the case if there were a disposition. If a disposition of land is completed and it refers to a plan, then only that land is conveyed. Any land inadvertently "left behind" will remain in the Sasine Register. We are not clear as to the position with a voluntary or KIR induced registration where there is no disposition. If the registration does not capture all the land owned by the applicant but is intended to do so, will such a Land Certificate supercede the Sasine Title (with unintended consequences)?

Question 9: Should other elements be included in the pilot and what should these be?

Yes.

- The accuracy of the Land Certificates produced from KIR.
- Assess whether that accuracy is better with the engagement of the landowner's solicitor.

- Assess the costs to the landowner either in their solicitor being engaged throughout the process or, if they are not so engaged, at the end in checking the Land Certificate.
- We consider it would be useful to test the accuracy of the boundaries plotted to see how accurate KIR is.

Question 10: Do you agree with the proposed approach to completion?

Yes, broadly. However, as mentioned above, we consider that landowners should be encouraged to register voluntarily, in the first instance. We are concerned that an over emphasis on the proposed ten year time frame for completion may result in further endangering the quality of the information on the Land Register. This would be a retrograde step. We consider it is of paramount importance that the Land Register is correct (so far as possible). It would be beneficial to all parties to work together to achieve this within a reasonable time frame. To do so will not only require skill and resources at Registers of Scotland but also engagement with and amongst landowners' solicitors.

Interpretation is (and will be) a part of the Keeper's role. Sasine titles are not always clear and it can be a matter of interpretation as to the true extent of a property. In many instances there is no title plan, just a generic description. Where a solicitor is involved an owner has a representative to advise them there is or may be another opinion; to check the position with regard to the boundary; and to point out to them the importance of checking the Land Certificate plan against what they consider they own. For example, if, as a result of KIR, a strip of ground has been excluded from a landowner's title, it may not always be easy on just looking at the registered title to know if this would be a potential issue; it may be necessary to visit the ground in question.

If KIR does not include any representative of the landowner, will the owner be advised to check their Land Certificate when the Keeper advises them it has been completed? The owner specified in the Land Certificate may be incorrect. The original owner may have died and there may be a previous transfer not registered in the relevant title register, for example.

Will owners be forced to go to court to have Land Certificates which are incorrect changed?

There are, inevitably errors contained in Land Certificates and, accordingly, we consider it vital that these are checked on behalf of clients.

Question 11: Have you any views on our proposals for funding the completion of the Land Register?

We consider that landowners will incur legal fees as a result of being compelled to register their property in the Land Register, as result of any KIR and, of course, if they voluntarily register, and that this must be taken into account.

Additional Comments

a) Encouraging Accurate Registration

As mentioned above we would prefer to see any triggers delayed and incentives introduced, instead, for landowners to voluntarily register. We believe this would be beneficial to the accurate completion of the Land Register encouraging landowners to engage to assist with the process. With large rural properties there are, usually, a number of complexities in registering land. We would ask that in complex transactions the Keeper uses her discretion in applying the "one shot rule" to try and engage with the solicitor in question to achieve an accurate and speedy registration whether that be voluntary, as a result of one of the triggers set out in the consultation (if, ultimately, introduced) or on first registration following a purchase. Could Registers of Scotland designate a complex team to deal with such matters and agree criteria for a transaction to be complex? We believe the collaborative approach would assist Registers of Scotland and landowners and, hopefully, encourage them to proceed with registration of their land.

b) Form of Land Certificates

On completion of the Land Register, it would be useful if the information which will be held on the public register can be readily understood by solicitors and lay people alike. We do not consider the current format of the Land Certificate is easy to understand. While outwith the bounds of the current Consultation we do believe that it would be beneficial to the profession, Registers of Scotland and the general public for the format of the Land Certificate to be reviewed. We would suggest:-

- i) A section setting out what property is owned. This would, of course, as present, be by reference to a plan. Current plans are not easy to follow, however. This is particularly true of complex large titles. Areas sold off which are currently outlined in green and numbered in green are not always easy to see and often make the red outline denoting the owned property difficult to follow. If sales also require to be shown we suggest those are shown on separate plans and the ownership plan shows only the property owned. We appreciate that sometimes it is necessary to have separate colours on the plan to denote burdened areas, access rights and others. Where there are a number of colours would the Keeper consider putting a key with the plan so that it is readily and easily understood?

- ii) Proprietorship section: this would remain unchanged showing the details of the owner(s).
- iii) Charges Section: again, this would remain unchanged showing details of any outstanding Securities.
- iv) A new section setting out the pertinents of the property should be included. This would list all rights pertaining to the property including rights of access, servitude rights for water and drainage and any other relevant rights. It would include details of which properties are burdened by these rights.
- v) Another new section could be added setting out the burdens imposed on other properties for the benefit of the registered property. It would be most useful if this could be done in a table showing the burdened property, the burdened property owner (at the time the Land Certificate was produced) and detailing the burden in question.
- vi) Finally there would be a Burdens Section (as at present). It would simpler if this just listed the burdens which were imposed on the property and referred to the property the proprietors of which were entitled to enforce them.