

Your ref:
Our ref: CR
Date: 3 November 2014



Chris Kerr
Registers of Scotland
Room 6W-10
Meadowbank House
153 London Road
Edinburgh
EH8 7AU

Dear Sirs

**SCOTTISH LAND & ESTATES
COMPLETION OF THE LAND REGISTER: PUBLIC CONSULTATION RESPONSE**

We enclose a response to the above consultation on behalf of our members.

Whilst Scottish Land & Estates supports in principle the initiative to complete the Land Register, we do have concerns that the 10 year target for 100% completion is ambitious. Having taken soundings from members and having discussed the consultation in some detail with a sub group of their advisors, there is a real concern that efforts towards completion within that timescale may affect the accuracy and integrity of the Land Register. Those concerns are set out in more detail in the responses to the questions within the consultation.

We have sought to provide comprehensive answers to the questions set out in the consultation. In some cases we have expanded our comments beyond the scope of the question itself, in order to provide additional background and opinion on wider issues arising. In particular, although the consultation focuses on completion of the Land Register, we have commented more generally on the impact of some of changes arising from the implementation of the Land Registration etc (Scotland) Act 2012 and how that will affect the Keeper's efforts to complete the Land Register.

As you know, the subgroup has already met with members of the Keeper's staff and it would welcome the opportunity to continue with that engagement, which we hope will be of benefit both to Registers of Scotland and also our members. We also intend to produce guidance notes to assist our members in preparing for an application for voluntary first registration.

Meanwhile, we continue to inform our members of the benefits of voluntary first registration. We hope this will encourage applications to be made by landowners.

Yours faithfully

Douglas McAdam
Chief Executive

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Consultation Title: Completion of the Land Register

Date: 4 November 2014

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Scottish Land & Estates represents landowners, land managers and rural businesses across Scotland. We welcome the opportunity to respond to this consultation and have found our meetings with Registers of Scotland staff useful. As owners and managers of land our members are interested in the process and professional costs of voluntary or Keeper induced registration of title and in particular the impact of any changes to the current system from a practical perspective. We are concerned to ensure the integrity and accuracy of the Register for landowners across Scotland and specifically in rural areas and would be happy to discuss any aspect of our response further.

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

In principle, we agree that the Sasine Register should be closed to standard securities. However, we do not think that should happen straightaway. It is suggested that the Keeper initially focuses efforts on encouraging voluntary registrations in order to increase the coverage of the Land Register, before creating additional compulsory triggers for first registration.

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

Yes.

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?

We do not recommend introducing closure of the Sasine Register to standard securities on a staggered basis. Such staggering could cause inequalities between counties (in terms of transactional costs) and, more generally, it would be simpler to have the same rule applicable to the whole of Scotland.

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?

We consider it appropriate to close the Sasine Register to dispositions, notices of title, conveyances (it is assumed this reference is to statutory conveyances), corrective dispositions, compulsory purchase orders and leases and assignments. Our views on standard securities are noted above.

We do not consider it appropriate to close the Sasine Register for other deeds initially.

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

Yes. However, consideration also needs to be given to the other costs associated with voluntary registration of complex titles, in particular. Even if the registration fee is waived, an applicant with a complex title covering a large geographic area will still require to incur significant professional costs to put together an application.

Given the costs involved, it is likely that landowner may need to be incentivised to proceed down the voluntary route otherwise the Keeper may find that she has to initiate more KIRs. In this regard, consideration should be given to providing additional support to landowners considering the time and cost implications of taking forward a voluntary registration e.g. a reduced fee/fixed fee for the Registers of Scotland title investigation service; or a standalone "complex registration" service.

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, we agree that it would be preferable for Keeper's discretion to refuse a request for voluntary registration to be removed. This will give landowners the opportunity to

take forward a voluntary registration at a time which is convenient to them, without fear of it being refused (provided it meets the other registration criteria).

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

The landowner is already incurring potentially substantial costs in the form of professional fees in order to get to the point where an application for voluntary registration can be submitted. A 10% reduction would be welcome but it is unlikely to be enough of a reduction to have a material impact on incentivising landowners to take forward a voluntary registration. Consideration should be given to fee arrangements which could have a more significant impact, e.g. a larger reduction, or other incentives such as a waiver for particularly large or complex estates.

It is worth noting that, whilst a reduced fee for voluntary registration is important, it does not address the other professional costs facing a landowner contemplating a voluntary registration. Those other costs are, by comparison, likely to be more significant than the registration fees. It is suggested, therefore, that consideration be given to the introduction of practical measures to help facilitate the process of voluntary registration of large estates. Any practical measures which reduce the administrative burden (and therefore cost) on landowners and their advisors could have material impact on the likelihood of landowners taking forward a voluntary registration. By way of example, consideration should be given to the creation of a complex registrations team which could be available for consultation with solicitors preparing large and complex voluntary registrations. That team could work with solicitors to agree a sensible method of registration of large estates (in particular we are thinking of title sheet boundaries; reciprocal burdens between titles etc), in advance of the submission of an application. Given that there will be a "one shot rule", it is not currently clear how decisions about the delineation of boundaries etc between title sheets is going to be achieved unless there is some form of pre-application consultation process.

At application stage, it would be useful for solicitors to have the ability to submit the final application resulting from the consultation process directly to the individuals in the complex registration teams, as they would have the benefit of the knowledge of the pre-application discussion and the relevant expertise to process it.

In short, having a designated complex team for large rural estates would allow a useful contact point and ensure that the process of voluntary registration can be dealt with as smoothly as possible. This would help give landowners and their advisors comfort that the time and costs associated with voluntary registration could be mitigated to a degree and, as a result, incentivise more landowners to go down the voluntary registration route. To be clear, this would be an entirely different service to that provided from the title investigations team at Registers of Scotland.

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?

Yes, we agree there should be pilots of KIR in order to inform the consultation. It is suggested that solicitors should be involved in choosing the potential pilots of non-research areas in order to ensure a good variety of titles, including those with complex issues. In particular, solicitors practicing in rural estates work should be consulted for their views on how KIR may operate on large estates and suitable rural estate pilots chosen. Bearing in mind that in some cases a large number of title sheets will be required in order to cover a large rural estate, there are concerns about how the boundaries will be drawn between those title sheets and the implications for reciprocal burdens and transactional business on the estate.

The comments in Paragraph 33 about the information available to the Keeper give some cause for concern. Whilst the Keeper will have access to information in the public register, the information available is unlikely to be as comprehensive as that available to an applicant under the standard process. As a result, we have concerns about the accuracy of KIR and the risk of land being either taken from third parties by wrongly being included in a title sheet, or erroneously excluded in a KIR. The pilot projects may assist in allaying such concerns but it would be useful if practitioners involved in rural estates work could have a hands on role in this process.

Paragraph 35 comments on circumstances where the Keeper will be unable to determine ownership with any certainty (e.g. where survivorship destinations are noted in the title). There are other situations in which the true ownership cannot be determined from an examination of the information held on the Register of Sasines (e.g. title is held on a docquet transfer) therefore in many cases it is not clear the Keeper will determine herself "sufficiently certain" of the owner.

If the KIR process affects a Sasine title where there are competing title to the same area, it is not clear how this will be addressed. Will the Keeper decide which of the competing titles should be preferred for registration? How will that process be carried out?

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

It is suggested that solicitors should be involved in analysing the results of KIR pilots. This may help determine the potential accuracy of title sheets produced through the KIR process, which is a concern to legal practitioners. In addition, the time spent in checking the title sheets should be tracked and measured so that landowners and ROS have a clear understanding of the costs which can arise as a result of KIR.

Consideration should also be given to the production of the title sheet in different formats, to see if these could be produced in a more user-friendly format. Currently landowners (and advisors) find the process of deciphering some title sheets very difficult and that could be improved by changes to the layout and formatting and the way in which the information is set out. The inclusion of line and paragraph breaks would be a simple way of improving the current layout. It is suggested that discussions between Registers of Scotland and legal practitioners could achieve some improvement in this area, as minor formatting changes should be feasible within the framework of the existing legislation.

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

Yes. However, we need to be confident that there are sufficient resources at Registers of Scotland to ensure that the title sheets produced are accurate and that the emphasis on completion within a 10 year period does not impact upon the quality of the title sheets produced. The integrity of the Register is paramount and that must be maintained otherwise the public interest benefit in achieving completion of the Register will be undermined.

It would also be useful to have assurances from Registers of Scotland that landowners and their advisors will be consulted and involved in the process of registration. This will ensure that the challenges arising over the next 10 years can be addressed in a collaborative manner. As noted above, we believe there is merit in setting up a designated team to deal with large complex registrations so that there is appropriate resource available to process voluntary registrations of that sort efficiently. Otherwise, there is a risk that completion with the timescales set out may be difficult to achieve.

In addition, further consideration needs to be given to the following particular issues:

Minerals

There are mineral reservations in a vast number of title deeds currently recorded in the Sasines Register. Often it is not known who has the right to those minerals and these interests will only be **registered as part of the KIR process**. Consideration needs to be given to the Keeper's policy in such circumstances and whether or not the Keeper would be willing to include historic mineral reservations with no clear owner as part of the residue of the original estate, or whether title would ultimately fall to the QLTR. In most cases it would be very difficult to make use of Sections 43-45 of the 2012 Act due to the lack of possession of the minerals by any party.

Mapping

The nature of the current Registers mapping system means that in some circumstances it is not possible to map the whole estate on one Land Certificate. It is understood that this will remain the case under the new system and that several

title sheets will be required in order to map large farms or estates. This necessitates additional costs for the landowner as their solicitors have to ensure that the relevant burdens and servitudes are split between the appropriate Land Certificates (or title sheets, going forward) and that appropriate new rights and burdens are created. Consideration should be given as to whether Registers of Scotland can assist with this additional administrative burden – through the complex registrations team previously mentioned – or whether there is scope for the mapping system to be altered in the system (or for title sheets to be linked to multiple plans).

At present the Land Register is only as good as the OS map and, with a new cadastral map, it is not clear that this will necessarily improve. OS data will still be subject to change and therefore boundaries on title sheets will continue to be affected by ongoing adjustments to mapping data. From the Keeper's perspective, this is not a problem, as no indemnity is being provided where the Keeper incorrectly adds land to a Land Certificate (although subsequent sales could result in the real owner losing land and a claim against the Keeper). However, if the Keeper continues to map to features on the OS map in preference to legal title boundaries, landowners may find that their title sheets are inaccurate.

Effect of closure of the Sasine Register

We assume that it will still be possible to obtain copies of deeds held in the Sasine Register once the Register is fully closed. There will still be a need to review old Sasine titles and it is imperative that public access to those titles should not be lost.

It will remain important for landowners and their advisors to retain historic title information and plans (so that they can prove their title sheet is accurate or otherwise). It would be useful to have an assurance from the Keeper that old plans (including unrecorded plans) will be considered if required in connection with both registration and any rectification process.

One of the difficulties with closing the Sasine Register to Standard Securities (and, indeed, to leases and/or assignments of leases) and, as a result, triggering the first registration of an underlying piece of ground, will be the patchwork effect that this could create large landowners. Small pockets of land could be registered at different times when different deeds are granted. Will the Keeper have or consider a policy of keeping one Title Number and adding to it, or will a landowner have to accept that his or her title will end up being registered in the Land Register with a rather disparate set of title sheets?

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

With regard to the comments in paragraph 43, it is unrealistic to suggest that a landowner should not need to employ a lawyer in the event of KIR. It is quite feasible that, if a sasine title is put on the land register through the KIR process, a person's legal rights could be affected as their legal title could, if wrongly registered, be inaccurate. Whilst there are rectification procedures, it is not unreasonable to expect the prudent landowner to wish to check the title sheet issued at the outset.

Even under the current system, the process of registration regularly gives rise to inaccuracies that need to be rectified. This is especially true in respect of large estates and the proprietors of those estates routinely employ a lawyer to ensure that the title sheet issued is accurate.

While there may be a public interest in completing the Land Register. However, it is not clear that this should be funded by landowners who wish to engage with the process and assist, on a voluntary basis, with the process of completing the Land Register. Those landowners will incur substantial professional fees to take forward a voluntary registration, over and above any registration fee payable. It is suggested therefore that voluntary registration should be available without a fee in certain circumstances.

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.

Name: Organisation Name: Scottish Land & Estates

Postal Address:

Phone | Email

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
No

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