

Consultation Title: Keeper Induced Registration

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To: LRCompletion@ros.gov.uk

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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 communications with Registers of Scotland staff useful. As owners and managers of land our members are interested in the process of 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 Land 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 with the proposed approach to KIR starting with residential properties in research areas?

Scottish Land & Estates has some concerns regarding the information provided on the pilots. Specifically the wording in relation to the second pilot which admittedly is not being pursued at this time: “*working in partnership does not, at this juncture, offer a sustainable option for helping to deliver completion*”. This bold statement would seem to be at odds with the positive communication and collaboration we have had with the Keeper and Registers of Scotland, especially over the past year and we are wary of such an attitude in relation to the proposed pilot to be taken forward. We are of the view that for Keeper-Induced Registration to succeed, partnership will be crucial. Ultimately if a Sasine title is placed 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. We are firmly of the view that solicitors experienced in rural estate work should be specifically asked how best KIR can operate.

It is not entirely clear from the information thus far provided where research areas will be which makes it difficult to properly assess this approach. We have some concern that if small development sites are being looked at, this will have limited geographic impact in meeting the set target within agreed timescale.

Scottish Land & Estates recognises that resourcing may be an issue in relation to rural areas and estates, but proper partnership working would reduce the challenges involved. For instance there may be the possibility of estates providing access to Registers of Scotland to their estate chartularies and we also believe that where Estates have undertaken earlier mapping exercises this may well assist with getting titles onto the Land Register, while also saving Registers of Scotland time and expenditure. It is important that Registers of Scotland therefore take up such offers where they exist as we are concerned that the current proposed approach is about endeavouring to avoid any complexities and acting in isolation from owners who may have a valuable contribution to make.

It should also be borne in mind that it is in residential property where the most transactions take place. While such an approach may therefore go some way to meeting the objective of benefiting the end consumer, the wider value is questionable, given that such property would be placed on the Land Register in any event.

Question 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?

This consultation question differs between the question in the body of the document and those listed in Annexe E, which we assume is simply a typo.

As indicated above, in order to judge the impact down the line, more information is needed as to the intended research areas. We are also not clear that “completing the land register and supporting conveyancing” are necessarily completely mutually compatible. Evidently a Land Register which is 100% complete, but which has been rushed and where the information contained therein is incomplete or unreliable will not in any sense support conveyancing.

Greater incentives for owners to voluntarily register land would have a more substantial impact in completing the Land Register and would of course reduce the amount of land which is the subject of KIR. Measures to support landowners with that voluntary registration process, practically and financially, require to be developed and further enhanced.

Question 3: 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?

Scottish Land & Estates agrees that KIR land should definitely be clearly identified as such, by disclosure on the face of the title sheet and we do not consider that this should be onerous for Registers of Scotland. We also believe that any legal report or search provided by Registers of Scotland should disclose where a deed has been registered by virtue of KIR.

Especially in a rural setting we are concerned that the KIR title may not have all the pertinent information to that title and so in order for KIR to work it is important that it is clearly designated. As a general rule the information contained in the title sheet should be as accessibly formatted as possible.

Question 4: Do you agree with the keeper's general approach to the KIR mapping of legal extent?

Scottish Land & Estates has some concern regarding the exemplar map provided on page 8 of the consultation paper which omits the *solum* of the roads and the verges and residue. We do not believe that such mapping is of sufficient use and more information requires to be shown on the cadastral map to make it worthwhile.

In terms of a specific title we are concerned that guidance is to be prepared on overlaps at a later stage and would have preferred to have been able to comment on proposed guidance at this stage. We would hope that opportunity will be afforded to pass comment on any guidance which is produced.

While we accept the observation at paragraph 29 of the consultation document that "*any errors made by the keeper in the KIR process cannot change the underlying legal position by allowing positive prescription to operate*", this is only of assistance in terms of rectification of the title. However, if the property changes hands in the interim and is acquired by a purchaser in good faith then this is not of subsequent use. Therefore while we agree with the Keeper's approach generally, the situation regarding the management of "overlaps" is of concern, especially if a unilateral judgement is made without input of either landowner.

Scottish Land & Estates believes that proper intimation is required where there is KIR. Otherwise until adjacent proprietors know what is being Land Registered by the Keeper, effectively land could be given / taken without knowledge.

Question 5: Do you agree with the keeper's proposed approach to incorporeal pertinents?

Scottish Land & Estates considers that there is no other practical way to deal with incorporeal pertinents and this literal approach is all that can be done. However, we do foresee problems with transactions where a purchaser's solicitor requests all of the burdens writs narrated for examination and of course it is worth noting that salmon fishings and minerals for instance have value.

Question 6: 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?

We agree that this is as practical an approach as may be taken in the circumstances.

Question 7: Are there any other circumstances where the sasine register may not show the last person with a completed title?

Another circumstance is where a company is no longer on the register at companies house.

Question 8: 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?

Scottish Land & Estates perceive a number of difficulties with this approach. If the quality of information provided is hindered at the expense of quantity then this is a false economy. Adopting this approach appears to be a backwards step going away from the title sheet as the “log book” with all of the information in one place, which was one of the main objectives of the Land Register in contrast to the Sasine Record. It also seems to be at odds with the direction of Scottish Government thinking with the future introduction of ScotLIS.

Ultimately someone requires to take a view of which of the “x” number of burdens writs remain relevant. It should be borne in mind that where for instance there is a large amalgamated title, accesses may only relate to certain parts of the land and this could have a significant impact for something like forestry access for timber haulage.

The more time solicitors spend examining not only title certificates, but prior writs, the greater the costs which will be passed on to their clients. This obviously defeats one of the suggestions put forward by Registers of Scotland for land registering property - a cost saving for the consumer.

Question 9: 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?

As per our response to question 8 we believe that the burdens should be set out on the face of the deed and to do otherwise would be a hugely retrograde step. If there was a desire, we see no problem with a hyperlink to the provisions in the earlier deed in addition to this.

Question 10: Are you content with how we plan to communicate KIR?

Scottish Land & Estates does not feel that the communication proposed is sufficient. We note the intended communication model pre-KIR as set out at paragraph 51, but if we had the research area and timeline now, it would have proven easier to answer questions 1 and 2 of the consultation document. In fact we are being asked to assess approach and impact without clarity as to either.

As per the last paragraph of our response to question 4 above, if there is any overlap in boundaries then proprietors require to know at the time. We believe that it should be possible for Registers of Scotland to contact neighbouring proprietors at the time of purchase, through a process similar to neighbour notifications at the time of planning applications. Where there is no clear plan or bounding description there is always going to be a potential issue with overlap. Contacting adjacent proprietors at the time would assist in minimising the chances of an ECHR claim subsequently and reduce potential costs to be incurred by Registers of Scotland. While we appreciate that in a normal sale transaction the adjacent proprietor will not necessarily be involved or receive any notification, they will through the marketing of the property or where private sale sometimes through local knowledge be aware of the planned conveyance and so know to be aware of the situation in contrast to the position with KIR.

Question 11: Do you agree the keeper should produce guidance on the additional information likely to be required at the next transaction after a KIR?

Scottish Land & Estates agrees that the Keeper should produce such guidance and as importantly that there ought to be consultation on any forthcoming guidance.

Jason Rust

Legal Adviser

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