



REGISTERS OF SCOTLAND
KEEPER-INDUCED REGISTRATION
CONSULTATION DOCUMENT
October 2015

KEEPER-INDUCED REGISTRATION

CONSULTATION

OCTOBER 2015

Purpose

1. In May 2014, the Keeper of the Registers of Scotland was invited by Scottish Ministers to complete the Land Register of Scotland in 10 years. There followed a public consultation (the 2014 consultation) by Scottish Ministers on how the statutory levers in the Land Registration etc. (Scotland) Act 2012 (the 2012 Act) could be used to enable that target to be met. There was general agreement to the suggestion in the consultation that the statutory powers for what is known as 'keeper-induced registration' (KIR) should be piloted to inform its use and that a further consultation be held on the detailed approach to, and strategy for, KIR. Those matters are the focus of this consultation document. A glossary of terms is available on our website at <https://www.ros.gov.uk/KIRconsultation>

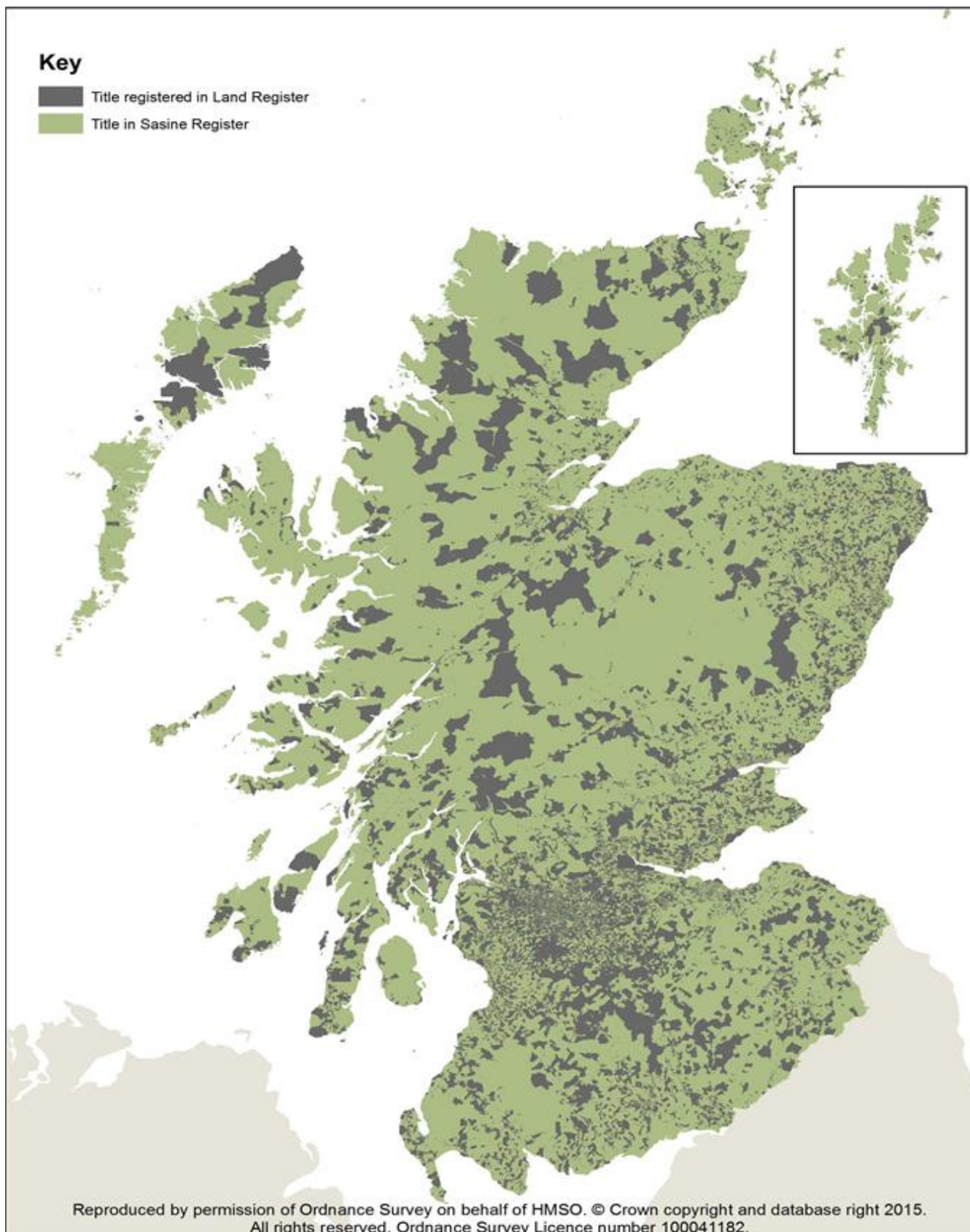
Completing the land register

2. The Land Registration (Scotland) Act 1979 (the 1979 Act) provided for the establishment of a land register under the management and control of the keeper. This is a transparent, plans-based, public register of rights in land. From 1981, land registration began to replace the recording of deeds in the General Register of Sasines and became fully operational in all areas of Scotland in 2003. The system of land registration underwent significant transformation in December 2014 when the main provisions of the Land Registration etc. (Scotland) Act 2012 were brought into force, effectively superseding the 1979 Act. The land register involves the creation of a title sheet that sets out the details of ownership of the property, any securities or other charges over it, any rights or title conditions, and also a depiction of the legal extent of the property through mapping of the legal boundaries on the Ordnance Survey (OS) based cadastral map (the cadastral map is a map of Scotland on which the legal boundaries, and other features, of individual registered properties are shown). An example of a land register title can be found in annex A.

3. There are currently some 1.6 million property titles on the land register, which represents about 59 per cent of all the potential property titles in Scotland. That equates to 27 per cent of the Scottish land mass (see below). Those properties not on the land register are typically held under title deeds recorded in the sasine register (though title to some property holdings, such as parts of the University of St Andrews, pre-date the sasine register). The sasine register has limitations: it is not map-based, requires interpretation by professional users, offers no guarantee of title, and is more complex. Also, the existence of two property registers adds to cost and creates confusion. Hence, one of the key policy drivers behind the 2012 Act was to provide a statutory framework to enable completion of the land register.

Key

- Title registered in Land Register
- Title in Sasine Register



Reproduced by permission of Ordnance Survey on behalf of HMSO. © Crown copyright and database right 2015.
All rights reserved. Ordnance Survey Licence number 100041182.

Registration county	Number of master map addresses	August 2015 number of titles on land register	% title coverage
Aberdeen	187,699	118,542	63.2%
Angus	137,390	64,223	46.7%
Argyll	36,862	20,224	54.9%
Ayr	185,362	99,463	53.7%
Banff	23,777	9,869	41.5%
Berwick	14,167	7,192	50.8%
Bute	9,584	4,878	50.9%
Caithness	14,183	5,651	39.8%
Clackmannan	25,146	14,625	58.2%
Dumbarton	116,241	84,666	72.8%
Dumfries	47,846	25,037	52.3%
East Lothian	36,664	18,853	51.4%
Fife	183,589	105,060	57.2%
Glasgow	335,623	206,341	61.5%
Inverness	67,041	32,966	49.2%
Kincardine	37,184	24,118	64.9%
Kinross	5,501	3,573	65.0%
Kirkcudbright	17,463	10,274	58.8%
Lanark	288,333	208,955	72.5%
Midlothian	326,699	159,149	48.7%
Moray	33,929	14,144	41.7%
Nairn	6,571	3,018	45.9%
Orkney and Zetland	24,399	10,743	44.0%
Peebles	9,953	5,653	56.8%
Perth	80,558	43,990	54.6%
Renfrew	169,947	131,630	77.5%
Ross and Cromarty	41,441	16,473	39.8%
Roxburgh	25,381	12,317	48.5%
Selkirk	11,803	5,363	45.4%
Stirling	113,974	69,345	60.8%
Sutherland	8,305	3,686	44.4%
West Lothian	75,039	46,394	61.8%
Wigtown	14,691	7,856	53.5%
Total	2,712,345	1,594,272	58.8%

4. The 2012 Act provides for completion of the land register in four ways:
- i. By requiring registration in the land register of all transfers of land (including those not for money). This was achieved by the closure of the sasine register to all new transfer deeds as of 8 December 2014.
 - ii. By giving Scottish Ministers the power (section 48) to close the sasine register to standard securities and/or to all deed types on a county-by-county or all-Scotland basis. Following the 2014 consultation, Scottish M

- iii. Ministers brought forward the Registers of Scotland (Voluntary Registration, Amendment of Fees, etc.) Order 2015 (S.S.I. 2015/265), which closes the sasine register to standard securities as of 1 April 2016. Closure of the sasine register in this way will require the applicant first to voluntarily register their property in the land register before the lender is able to register the standard security.
- iv. By giving Scottish Ministers the power (section 27) to end the keeper's discretion to refuse a voluntary land registration application. Scottish Ministers have since exercised this power and the keeper's discretion will end on 1 April 2016, though the keeper has, in practice, operated an open door policy for some years. In addition, the keeper has embarked on a campaign to promote voluntary registration, supported by a 25 per cent reduction in registration fees. The campaign is particularly directed at those with rural landholdings as these tend to be larger, and so registration has more benefit for completing the cadastral map.
- v. By giving the keeper the power (section 29) to undertake KIR, whereby a property can be registered without a registration application having been made.

Keeper-induced registration

5. KIR is a new legal concept introduced to Scotland under section 29 of the 2012 Act. The keeper now has the power to register property that is not yet on the land register. Over the last few months, RoS staff have been completing a series of pilots to identify ways where we can register property on the land register without having received an application. This has been a useful exercise that has enabled us to identify the opportunities and challenges of this new approach.

The KIR pilots

6. The pilot project undertaken as a result of the 2014 consultation covered three types of properties:

- i. RoS research areas (an explanation of a research area is contained in annex B).
- ii. Heritage assets.
- iii. A range of other properties, including residential properties outwith research areas; rural land; and land supporting other Scottish Government initiatives.

7. The vast majority of this work was completed on a test system, and therefore the titles created have not appeared on the land register. The exception is where we have worked in tandem with a number of heritage bodies. For instance, work with the National Trust for Scotland has resulted in the registration of four titles: St Kilda, plus three properties in Charlotte Square, Edinburgh. Except in those limited circumstances where we have worked in tandem with a heritage body, no owner or solicitor has otherwise been involved.

Evaluation of the pilots

The first pilot

8. The first pilot project considered 1,639 properties within research areas. The pilot cases were not actually registered. Rather, consideration was given to whether they **could** be registered and the extent to which each section of the title sheet could be populated from the information available to the keeper. The result of this pilot was that the keeper would be able to create a usable title. In a minority of cases, challenges were encountered. These can usefully be considered in two broad categories:

- i. Where the information held by the keeper is unclear in some way, eg where the copy deeds available (principally the extent deed) were of poor quality; and/or
- ii. Where the underlying property law position is unclear because of the potential for the title to have been influenced by off-register events, eg the operation of a special destination following the death of one of the proprietor; the extinction of an incorporeal right through non-use or lack of specification; or where the extent of land held in common is not clearly defined in the titles and requires to be explained by prescriptive possession.

9. The challenges are not such as to prevent these properties being registered. Rather, it simply means that the nature of the entry has to accurately reflect the information available to the keeper.

10. RoS estimates that around 700,000 properties of the remaining 1.2 million that have still to be registered are in a research area. In these cases, RoS would be able to build upon both the pre-work completed when the research area was set up, and the information available from titles in the research area that have already been registered as a result of a trigger-based application. The role of KIR will be to increase the rate at which groups of properties in research areas come on to the register.

The second pilot

11. The second pilot project focused on heritage assets to determine whether KIR, in partnership with the legal owner, could be a practical route to registration. RoS worked with three charitable organisations that had extensive land holdings: the National Trust for Scotland, RSPB and the John Muir Trust. We are grateful to those bodies and, as regards the latter two, their external legal advisers for their participation. The pilot was invaluable in assisting us to evaluate whether or not this approach offered a sustainable option for furthering completion. Notwithstanding that the pilot ran for four months, the number of actual registrations was small. Four titles were completed and entered onto the land register. Pre-registration analysis was also carried out on a number of other potential titles, but this did not lead to registration. From a RoS perspective the resource investment is not sustainable at this juncture. The approach is resource intensive, particularly during the pre-registration stage. We also have limited control over the timescale in which applications will be forthcoming, and this made for challenges in resource and financial planning. All participants sought to work within

agreed timescales, but were not always able to do so as a result of competing priorities; unlike the position with a trigger registration, there is no compelling driver at play to ensure an application is submitted by a particular date. This pilot demonstrated that working in partnership does not, at this juncture, offer a sustainable option for helping to deliver completion.

The third pilot

12. The third pilot project focused on property outwith research areas, and was conducted with no involvement from owners or solicitors. A number of different property types were considered. The results of this pilot were less clear cut. The results broadly show that, for some residential property, KIR is likely to be possible, in much the same way as for similar properties within research areas. It will, of course, be more labour intensive because of the lack of preparatory work, as well as the title history; and there are not the same economies of scale that arise from tenement or development properties that share a common route of title and so have similar rights and burdens. The pilots indicate that there will be more difficult cases than those identified for research area properties. This is not unexpected: housing estates, which are the focus of research areas, generally follow an estate plan, and so it is relatively straightforward to establish the legal boundaries of individual properties within that overall development extent. Properties with standalone titles present more challenges: the quality of the description and/or deed plan in the property title deed is crucial, as can be the presence of adjacent registered titles. Similar challenges were presented by non-residential urban property and were often compounded by the presence of commercial leases and sub-leases over part or whole of titles.

13. For properties such as farms, estates, and commercial titles (typically industrial estates), the results suggest that KIR will be significantly more challenging. In such cases, it can be difficult to identify the deeds that form the progress of titles to the land, particularly when the title forms the residue of a large area of land from which many properties have been sold. In such cases, the difficulty of interpreting a general description in the estate title (eg *all and whole the farm and lands of Pitroddie and Mearnskirk in the County of Angus*) may be compounded by the use of general descriptions in the titles to parts of the estate. The pilot also found that, for this type of property, it was much more common for there to be a discrepancy between the physical boundaries picked up by the OS map and the apparent legal extent provided for in the deeds. We therefore conclude that at this point in the development of the land register, it would not be practical to focus on non-research area properties.

Proposed approach to KIR

14. Following the results of the pilots, the principal proposed approach to KIR is to focus on the types of properties that best lend themselves to KIR and which we know, with reasonable certainty, can be registered. Initially, our intention would be to use a geographic approach, targeting KIR within our research areas and starting in areas that will have the highest impact on completing the land register and supporting conveyancing. These will, in the main, be urban areas and, once this approach is agreed, we will publish a timeline on our website setting out the where and the when on a registration county-by-county basis.

15. There are a number of reasons why we consider this approach to have merit:
- i. It builds on the work already completed by RoS when creating research areas, so offers significant economies of scale to RoS that will significantly reduce costs and would enable us to start on a programme of KIR in 2016.
 - ii. Those properties whose titles are registered in this way are getting a title that reflects their sasine deeds, is warranted (in full or part), and will make any subsequent conveyancing much more straightforward.
 - iii. This approach will allow progress to be made in terms of title coverage, while voluntary and triggered-registration will continue to provide increased land mass coverage.
 - iv. It will allow the keeper to build up significant experience of undertaking KIR, which can then be applied to more complex residential and other property types.
16. Based on our experience of the pilots, we do not consider working in partnership should be more widely pursued at this point in time, other than continuing to engage with the National Trust for Scotland which has put in place a programme to enable KIR of the heritage assets under their control.
17. Once we have completed registration of titles in our research areas and registered all public land (expected to be in 2019), we will take stock of what remains to be registered and refine the approach as necessary, looking at triggers, voluntary application and the further scope to use KIR.

Question 1

Do you agree with the proposed approach to KIR starting with residential properties in research areas?

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?

KIR and warranty

18. Section 74 of the 2012 Act sets out how the keeper's warranty works in relation to titles registered by KIR. The effect of the keeper's warranty is to provide a twofold guarantee to the person or persons shown in the proprietorship section of the title. The first part of the guarantee is that, at the time of registration, they are the proprietor. The second is that the title sheet reflects all the encumbrances (including, in this context, heritable securities) which it is supposed to reflect. The keeper is under a statutory duty to pay compensation to the owner for any loss which he or she incurs as a result of a breach of the warranty. As with registrations of other types, the keeper will warrant the title unless examination of the prior titles discloses a reason why warranty may require to be limited or excluded. We anticipate that this will be an unusual occurrence in the types of property that we propose to register by KIR. An example might be where the last recorded sasine title was partly a *non domino*, perhaps to correct a

discrepancy between occupied and legal extent of the property, and the prescriptive period is still running. In such cases, the keeper would exclude warranty from the area of ground in question. This would involve identifying the area on the cadastral map and including a statement on the title sheet that warranty had been excluded. It should be noted that no warranty applies to deeds recorded in the sasine register.

KIR: how it will look

19. A KIR will look and feel different to a triggered or voluntary registration - but not markedly so. Annex C shows an example of how information would be shown for each part of the title sheet and on the cadastral map. This information can be compared with a title sheet created through a triggered registration, as shown at annex A.

Cadastral map

20. The land register is a map-based register, so a key part is the cadastral map. An example of the cadastral map for the Meadowbank area of Edinburgh is set out below: the very many red edged areas indicate individual entries on the register. Red edging is the traditional method for indicating the legal boundaries of a property on the cadastral map (though in some cases other approaches can be taken as the properties in the top right of the map illustrate). The other colour references on the map refer to individual property rights and/or title conditions that pertain to specific properties; information on those will be set out in what is termed the 'title sheet' for the specific property. The title sheet provides textual information on the title. The areas not edged red or coloured indicate land and property that is not yet on the land register. Completion of the land register involves targeting those areas.



21. Consequently, a key part of KIR is mapping the areas of land that the keeper proposes to register. As with all registrations, the legal extent to be mapped will be set out in what is termed the split-off or break-off conveyancing deed for the individual property in question.

22. The KIR title would appear on the cadastral map and would be searchable like any other title through our Registers Direct service, or any of our existing and future land register searching services. We intend that a KIR title will be identifiable through a clear and easily found note in the property section. With KIR, there is no applicant. Accordingly, it is important for the keeper, property owners and their legal advisors to be able to determine easily that warranty was the result of a KIR in order to understand the protection that warranty gives and to assist in the processing of any possible claim.

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?

23. Sasine deeds contain varying levels of description which, though they meet the key legal criteria for acceptability in the sasine register, can in some cases create challenges when it comes to registration in the land register. For instance:

- *'All and whole that piece of ground with buildings thereon forming a portion of the lands of Pitheavlis in the county of Perth extending to two hundred and forty eight decimal or one thousandth part of an acre bounded east by the public road leading from Perth to Glasgow, on the north by subjects disposed or about to be disposed to John Stuart Guthrie, on the west by the line of a street known as Viewlands Terrace and on the south by ground owned by Mrs Grace Scott...'*
- *'All and whole that piece of ground extending to 5 and 375 thousandth part of an acre froming part of the lands and farm of Muirton in the county of Perth....'*
- *'All and whole the farm and lands of x...'*

24. As part of the conveyancing process, it is practice for a solicitor to obtain a pre-registration plans report. One of the key functions of such a report is to determine whether or not the property is capable of being mapped by the keeper. If the report indicates the keeper cannot map the property from the description or deed plan, a new plan would require to be commissioned and submitted with the subsequent application for registration.

25. As no solicitor will be involved with a KIR, our suggested approach is to focus KIR on those properties where we know that mapping is more straightforward. That is not to say that KIR cannot accommodate those title deeds where the description is less certain. The 2012 Act acknowledges that, under KIR, the keeper may not always be able to identify the legal boundaries with absolute certainty. Any accidental 'over registration' does not engage the keeper's warranty because of the way in which section 73(2) is modified by section 74(3). This

does give the keeper some comfort in difficult cases or where mistakes are made. However, our desire is to avoid such difficulties and the potential confusion that could arise at this stage in the growth of the land register. We consider it better to focus on property types where boundary issues are unlikely to arise and, where issues do arise, to investigate them thoroughly rather than relying on the 'carve out' from the warranty scheme.

26. For each KIR, the keeper will mimic the pre-registration plans report and so identify whether or not there is any difficulty in mapping the property. Evidence from the pilot suggests that, for those with which we intend to proceed, we will in the main be able to map them (indeed we have already carried out the pre-mapping of some 100,000 such properties). This means that mapping problems will be uncommon. However, our approach to KIR will be to consider all properties within a specified area at the same time. This differs from normal registration which focus on registering the title to one property at a time. By taking a more general approach, we can ensure consistency for all properties in a development. This will also enable us to identify any areas where neighbouring titles may overlap (ie both contain the same area of ground) or indeed where there is a gap (and so the land being occupied by a property is greater than that contained in the legal title).

27. Under the 2012 Act, it is not possible for the same area of ground to be contained within two separate land register titles. Under normal registration, any identified overlap has to be resolved before an application for registration can be accepted by the keeper. In general, there are two courses of action open to the applicant: they can either accept that the area of overlap should not be included within their forthcoming registered title (in which case, they would amend their conveyancing deed to remove the area of overlap), or they can seek to rectify the neighbouring title to have the area of overlap removed from that title.

28. For the purposes of KIR, overlaps cannot be ignored and we will apply the same legal principle that no two registered titles can include the same piece of land. We propose to prepare guidance on overlaps once the principle has been established post-consultation. An example for illustrative purposes of a common overlap that can arise, and the potential range of outcomes, is set out in annex D.

29. The 2012 Act recognised the difficulties the keeper could face in seeking to bring forward land held under sasine title deeds onto the land register, and so has sought to balance the KIR powers with provisions that ensure the proprietor is not prejudiced by a decision taken by the keeper. Schedule 5 of the 2012 Act amends the Prescription and Limitation (Scotland) Act 1973. Where KIR is undertaken, prescription will continue to run on the underlying deeds recorded in the sasine register; because there is no new deed being registered, registration in the land register does not start a new prescriptive period. This is an important distinction, because it means that any errors made by the keeper in the KIR process cannot change the underlying legal position by allowing positive prescription to operate.

30. Even in cases where a problem remains latent, prescription will continue to work in the usual way, despite the change of register. In the fourth scenario in annex D, if the proprietor of 6 Acacia Avenue has had unchallenged possession of the overlap area for the prescriptive period, then they will continue to have a good title to that area, notwithstanding its omission from the KIR title. By contrast, if the keeper includes in the KIR title more land than was

included in the underlying sasine title, possession of the additional land will not give the proprietor a good title to the additional land by prescription.

31. In some of these cases, the keeper may require to limit or exclude warranty. In doing so, however, the issue will be thoroughly investigated and any possible solutions identified. The owner of the property will then be able to take forward what is required with their legal advisor if they so wish. This will give them an opportunity to resolve any problems in their own time, rather than in a more hurried way to facilitate a future sale etc. Once a solution is identified and further evidence is available, the keeper can vary warranty under section 76 of the 2012 Act.

Question 4

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

The title sheet

32. The 2012 Act requires the keeper to make up and maintain a title sheet for each registered plot of land. There are four parts to the title sheet: a property section, a proprietorship section, a securities section, and a burdens section. This part of the consultation considers how a title sheet for an area of land that enters the land register through KIR will differ from one that enters through trigger-based or voluntary registration.

Property section

33. The property section will include a description of the property by reference to the cadastral map and the address of the property. It will also include the nature of the proprietor's right in the plot of land (which will always be ownership in KIR cases). That is all as required by section 6(1)(a) of the 2012 Act.

34. Accordingly, the property section for a KIR title will be identical to the property section for a voluntary registration or triggered registration. The one area where we propose a limited departure relates to incorporeal pertinents, which are required to be shown by section 6(1)(b) of the 2012 Act.

35. Incorporeal pertinents pose a problem for KIR for two main reasons. First, in respect of title conditions created before the Title Conditions (Scotland) Act 2003 came into force, it is often very difficult to establish when a particular property may have rights to enforce real burdens. Second, in respect of servitudes, it will often be difficult to identify and map the route of a servitude from historic information in the sasine register. In many cases, only part of the route is shown on the plan to the deed creating the servitude (if at all) and, without the input of the owner who utilises the route, it is difficult accurately to reflect that route. Additionally, servitudes are capable of extinction off-register, so including them poses a risk of time consuming investigation and mapping, only to find the register is inaccurate because the servitude was extinguished off-register. There are, of course, risks in either direction because including an extinguished pertinent leads to inaccuracy in the same way as omitting an extant

pertinent¹. Consequently, our approach to incorporeal pertinents is to provide sufficient information to ensure that the KIR title sheet offers such transparency as is possible on rights so as to ensure that anyone viewing or transacting with the title sheet can readily ascertain those rights that actually or potentially attach to the title.

36. Our proposed approach to incorporeal pertinents is therefore as follows:

- i. If no pertinents are disclosed in the prior deeds, we will specifically note that in the property section of the title sheet.
- ii. If pertinents are disclosed in the prior deeds, we will set them out in detail if it is possible to do so.
- iii. If it is not possible to do so, for example because the description of a right in a prior deed is unclear, we will include a reference to the relevant deed in which the right is narrated in the title sheet, and will add a note explaining the issue.

37. Our proposed approach, therefore, is to include incorporeal pertinents disclosed in the sasine deeds in the majority of cases, unless information gathered from surrounding registrations indicates they are likely to be extinguished.

Question 5

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

The proprietorship section

38. The proprietorship section will show the name and designation of the person or persons with the last recorded title as required by section 7(1) of the 2012 Act. In addition, any special destination in the title will be reflected in the usual way (eg "A and B, equally between them and the survivor of them"). We would also propose to show the date of entry and the consideration paid by the last recorded proprietor. Although this is historic information, we consider it is important in terms of having a completed data set for analytical purposes, and we also believe it is useful and interesting information from the owner's point of view. The statutory warranty of title in section 74(1) of the 2012 Act does not extend to information about the date of entry or the consideration.

39. We think there are two scenarios where the sasine register may not show the current position, and the keeper will be unable to establish the correct position from any other publically available source. The first is where the title is held by A and B and the survivor. The second is where title is held by ex-officio trustees. In both these scenarios, the proposal is to show the names and designations that are shown on the sasine search sheet, and add a note to say that the keeper is unsure of the details of the current proprietor. Such a note is authorised by section 30(5) of the 2012 Act.

40. A mock-up – including the proposed wording for a note regarding a survivorship destination – is shown in the proprietorship section of annex C.

¹ Although pertinents which can be extinguished off-register are carved out of the warranty scheme by virtue of s73(2)(e) and 74(2).

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?

Question 7

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

Securities section

41. The securities section will show heritable securities which appear, from the sasine search sheet, to affect the plot of land. They will be identical to the securities section in any other title sheet. The keeper will warrant to the proprietor that only the securities shown were outstanding.

42. A mock-up is shown in the securities section of annex C.

Burdens section

43. The burdens section will list the deeds that the keeper considers contain encumbrances affecting the plot of land. This differs from the approach in triggered or voluntary registration where the text of the deeds is set out at length on the face of the title sheet. This is a method of incorporation by reference to the sasine register permitted by section 10(3) (b) of the 2012 Act.

44. This is proposed for a number of reasons:

- i. Without the input of the owner and their legal advisor, we will not know the position 'on the ground' and so will be unable to reach clear conclusions on whether real burdens set out in deeds continue to subsist. Where that is the case, the benefits of setting out the text at length and omitting certain parts are lost.
- ii. It is important that no rights to enforce real burdens etc are lost as a consequence of KIR². We consider there are two main ways we can mitigate this risk. The first is the proposed approach to listing of deeds, which ensures all burdens contained in the deeds are carried over. The second approach is how we deal with the first transfer after a KIR. This is more fully explained in paragraphs 52 to 54.
- iii. The title sheet is much clearer and more succinct, and it allows registration to be completed more quickly, meaning that title coverage will increase at a faster rate.

45. It has been suggested to RoS by some stakeholders that consideration ought to be given to extending the approach highlighted above to all new first registrations, and not just to KIR. The rationale for this is that it can be more helpful to see the text of a deed in its entirety,

² This cannot happen as a consequence of KIR alone, but could happen following a further sale of a KIR plot where the conditions in section 91 are met.

rather than to read the edited version as produced by the keeper as, on occasion, the part(s) edited out can be helpful to the interpretation of the remaining clauses. It has therefore been suggested that either a listing of the deeds that the solicitor certifies are still extant, or a listing qualified by reference to the clauses no longer subsisting (eg *the Disposition by A to B recorded in the General Register of Sasines for the County of Ayr on 24 April 1969 under exception of clauses 2, 3, and 4*) be considered. As such, we could provide a hyperlink to a scanned copy of the deed. We are keen to receive views on this.

46. This approach does not affect mapping of encumbrances. Where encumbrances of a mappable nature are contained in the deeds, and the plans or descriptions are sufficient to allow mapping, then the encumbrance will be shown on the cadastral map. References on the map will be explained in text in the burdens section, but without repeating the deed at length. Following the example above:

'... - Disposition by A to B recorded in the General Register of Sasines for the County of Ayr on 24 April 1969 under exception of clauses 2, 3, and 4. The servitude right of access narrated in clause 6 is tinted blue on the cadastral map.'

47. The 2012 Act provides for five categories of encumbrance that are not extinguished on a future sale of the property. These are similar to overriding interests under the 1979 Act, and the reason for the special treatment is that they cannot be identified by a search of the sasine register. The three most relevant encumbrances are:

- servitudes created other than by dual registration
- public rights of way
- core path orders made under section 22 of the Land Reform (Scotland) Act 2003

48. The keeper will not be able to identify such encumbrances because she will not typically hold the information or have the required 'on the ground' knowledge that an owner and their legal advisor have. These will, however, be shown where they are already plotted on the cadastral map as a consequence of prior registrations in the area. Given the nature of the properties to be targeted, we think that it is unlikely, at least in respect of public rights of way and core paths, that the plots registered will be affected. However, where they are affected, the right is not changed or extinguished by registration or by a future transfer (section 91(4) of the 2012 Act).

49. The other two encumbrances not extinguished are leases and other encumbrances which do not require to be constituted by registration. The keeper will generally hold information on long leases (in excess of 20 years) because they now require registration in order to be made real. Short leases, and some long leases which stem from the time before registration was required, are made real by possession. Short leases do not fall to be shown on the title sheet anyway. Long leases made real by possession are unlikely to be shown because the keeper is unlikely to hold information on them.

50. A mock-up is shown in the burdens section of annex C.

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?

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?

Communication when creating a KIR title

51. Section 41 of the 2012 Act requires us to inform the proprietor that the keeper has registered the title. Our intention is to use the following communication model:

- Pre-KIR – we will publish our planned timeline of research area counties on our website and provide more detailed information and guidance to solicitors, who act as agents for the vast majority of people and businesses who transact with property, and to the wider conveyancing community. This will enable them to factor in the KIR timeline to day to day conveyancing business and also provide post-KIR registration advice to clients. We will also look to contact the wider citizen advisor community with guidance.
- Post-KIR – we will write to the registered owners at the registered address to advise that their property has been added to the land register and how they can access a copy of the title sheet.

Question 10

Are you content with how we plan to communicate KIR?

The next application

52. KIR titles will, for the most part, be fully warranted. Even where warranty has been excluded or limited, it will be for a particular reason, which will be explained on the title sheet. This will inform the action to be taken on the next registration. Where the title has been warranted, the applicant need not look behind the title sheet in most cases. So, for example, a solicitor acting for a potential new lender may rely on the title in the usual way.

53. However, in transactions which involve the owner – such as a sale – the parties to that transaction may wish to provide the keeper with additional information on certain aspects. This may be, for example, because the keeper has included incorporeal pertinent which have been extinguished off-register. In this respect these applications are no different to any other transaction with a registered title as there is always the possibility of off register change, irrespective of how the area of ground first came onto the register. As noted at paragraph 48 above, certain encumbrances may not be within the keeper's knowledge, and the parties may

wish to provide the keeper with information on these encumbrances where they are known about. Accordingly, we would propose to produce guidance for the first transaction after a KIR, highlighting areas in which the parties to that transaction may wish to provide additional or more up-to-date information. In many cases, of course, no new or additional information will be required.

54. Where there has been a limitation or exclusion of warranty on the KIR title, the action to be taken by the parties to the next transaction will be determined by the detail of the exclusion or limitation. It may be, for example, that the title problem (or perceived problem) has been fixed by positive prescription. In such cases, the applicant would certify this on the application form in the usual way, and the applicant in the deed to be registered will be given full warranty.

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?

55. Not all properties will be transacted upon immediately after the KIR, and sometimes will not be transacted upon for a number of years afterwards. Such a title could be amended through rectification to add additional relevant information or amend inaccurate information.

56. This would first require it to be established that the register is manifestly inaccurate in some way. We consider that our general approach to KIR – the types of property and consideration of groups of properties together – will help here. The types of properties we are proposing to tackle will not, typically, have issues around unclear or disputed boundaries or servitudes etc and, very often, surrounding access roads will be adopted by the local authority. In addition, our approach of considering groups of properties together gives the best opportunity for the KIR title to be accurate, because it will be informed by triggered registrations in the surrounding area including (very often) the registration of the burdened property.

57. Inevitably, we will not always get it right, but we do not consider there is any greater risk of the register being inaccurate following a KIR than as the result of any other registration. We also think that the manifest standard is not likely to be a bar to rectification in most cases, assuming clear evidence is available and there is not an ongoing property law dispute between neighbouring proprietors. Where there is an ongoing dispute, then that may require the parties to seek a solution, perhaps in mediation or litigation, before an inaccuracy can be established and the register rectified. We do not think this is a situation which is unique to KIR. A triggered application for first registration may, for example, certify that the property enjoys a servitude over a neighbouring property, and that may later be disputed by the burdened proprietor. Accordingly, our general view is that it is right for any inaccuracy created by virtue of a KIR to be subject to the same rectification process as any other inaccuracy or purported inaccuracy. We would propose to monitor closely any trends in inaccuracies introduced by KIR, and will work closely with home owners and their legal advisors on the evidence required to facilitate a rectification.

Conclusion



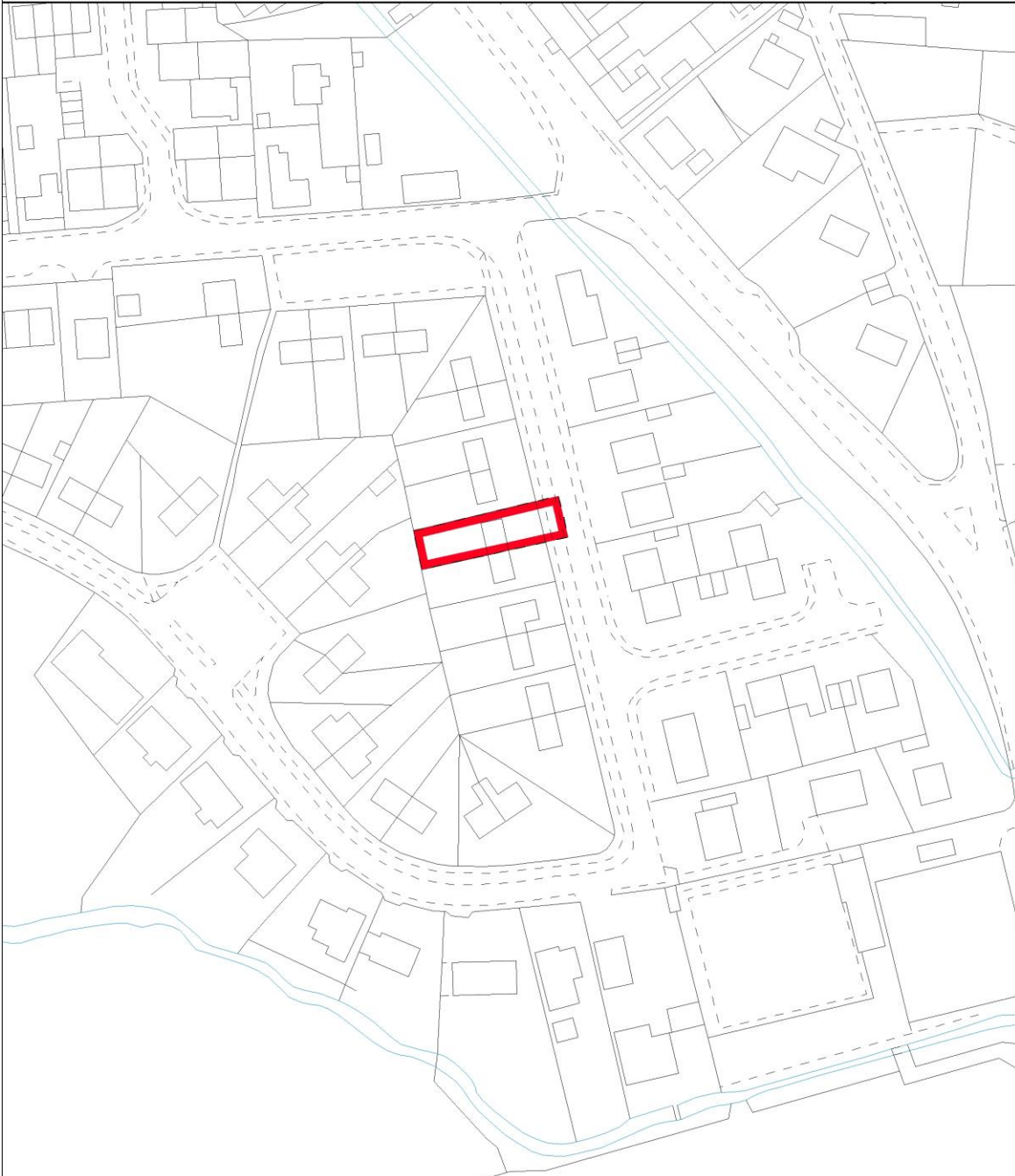
58. Our approach to completing the land register is a balance between triggers, voluntary applications and KIR. We believe that our approach to KIR will substantially increase the percentage of titles on the land register. Triggers and voluntary registration are the routes to increase land mass coverage. We are greatly encouraged by the number of large private and public land owners who have started positive steps to voluntarily registering their land. We believe that it is sensible to allow the next few years to assess the rate of voluntary registrations.

59. This will give us a clearer picture of what has been achieved by KIR, voluntary registration and triggered registration, and what remains to be done. We will also have much greater experience of dealing with the inevitable difficulties KIR will throw up. We will then consider the impacts of other triggers, such as the death of the owner, which are used in other jurisdictions. We are confident that the approach outlined here, along with our continuing work with public and private sector landowners, will enable us rapidly to accelerate progress towards the targets set by Scottish Ministers for land register completion and, when we come to assess the progress made, we will have a much clearer picture of what remains to be done for the final push to 100 per cent completion.

**Registers of Scotland
October 2015**

Example of a land register title

Annex A

 LAND REGISTER OF SCOTLAND	Officer's ID/Date	TITLE NUMBER
	3583 15/09/2015	PTH621342
	ORDNANCE SURVEY NATIONAL GRID REFERENCE	Scale
		1/1250
NNxyy NNxyy NNxyy NNxyy		Survey Scale
		1/1250
<small>CROWN COPYRIGHT © - This copy has been produced from the ROS Digital Mapping System on 29/09/2015 with the authority of Ordnance Survey under Section 47 of the Copyright, Designs and Patents Act 1988. Unless there is a relevant exception to copyright, the copy must not be copied without the prior permission of the copyright owner. OS License no 100041182</small>		
		



TITLE NUMBER PTH621342

A 1

A. PROPERTY SECTION

DATE OF FIRST REGISTRATION

15 SEP 2015

DATE TITLE SHEET UPDATED TO

15 SEP 2015

REAL RIGHT

OWNERSHIP

DESCRIPTION

Subjects cadastral unit PTH621342 5 ACACIA AVENUE, PERTH PH1 4BL edged red on the cadastral map. Together with a common or mutual right of property in the mutual boundary fences or walls, gables, drains, pipes, chimneys and chimney heads serving the subjects in this title and any adjoining subjects.



TITLE NUMBER PTH621342

B 1

B. PROPRIETORSHIP SECTION

**ENTRY PROPRIETOR
NO**

1 GILLIAN STUART 16 Baird Street, Perth,
PH1 4BL.

**DATE OF
REGISTRATION**
15 SEP 2015

CONSIDERATION
£48650

DATE OF ENTRY
11 SEP 2015

MOCK-UP



TITLE NUMBER PTH621342

C 1

C. SECURITIES SECTION

ENTRY NO	SPECIFICATION	DATE OF REGISTRATION
1	Standard Security for £38650 and further sums by said GILLIAN STUART to ABBEY NATIONAL PLC incorporated under the Companies Acts, Registered Office Abbey National House, 2 Triton Square, Regent's Place, London NW1 3AN.	15 SEP 2015

MOCK-UP



TITLE NUMBER PTH621342

D 1

D. BURDENS SECTION

**ENTRY
NO**

SPECIFICATION

- 1 Disposition by Perth and Kinross Council (hereinafter referred to as "the Council") to Gillian Stuart and her executors and assignees (hereinafter referred to as "the Donees"), registered 15 Sep. 2015, of the subjects in this Title, contains the following burdens:

Real Burdens

1. The dwellinghouse 5 Acacia Avenue, Perth forming part of the subjects hereby disposed shall be used in all time coming as a private dwellinghouse only.
2. The subjects hereby disposed shall not be used for the purposes of any trade, business, profession or manufacture.
3. Neither the subjects hereby disposed, nor any part thereof, shall be used in such a way as to constitute a nuisance or annoyance to any tenant or proprietor in the neighbourhood.
4. No board, sign or other advertising notice of any description shall be erected or displayed on the subjects hereby disposed.
5. No caravan or any vehicle other than two private motor cars or motor cycles shall be parked on or adjacent to the subjects hereby disposed.
6. No animals or birds, apart from ordinary domestic pets, may be kept on the subjects hereby disposed.
7. The subjects hereby disposed shall be maintained in a neat and tidy condition and in a reasonable state of repair and the Donees shall be granted all necessary rights of access over the adjoining subjects belonging or formerly belonging to the Council for the purposes of any maintenance, repair or replacement of any part of the subjects hereby disposed including such common or mutual parts subject to the Donees restoring all damage caused in the exercise of the said right of access.
8. Except with the prior written approval of the owners of the adjacent units, as defined in Section 32 of the Title Conditions (Scotland) Act 2003 (the subjects

hereby disposed being the affected unit as defined in the said Section 32), in addition to any statutory consents which may be required, the Disponees shall not (a) make any alterations or additions to the exterior of the dwellinghouse forming part of the subjects hereby disposed, or (b) erect any additional buildings on the subjects hereby disposed apart from any garden shed or greenhouse, or (c) replace any existing boundary enclosure with another of a different construction or type, or erect enclosures where none exist at present.

9. In the event of the dwellinghouse erected on the subjects hereby disposed being destroyed or damaged by fire or otherwise, the Disponees shall rebuild or restore the same within two years from the date of such loss or damage.

10. The Disponees shall be required to keep the said dwellinghouse hereby disposed constantly insured against destruction or damage by fire and such other risks as are appropriate to residential property with a reputable insurance company for the full reinstatement value from time to time applicable by means of an index-linked insurance policy; And in the event of the said dwellinghouse being destroyed or damaged all sums received by the Disponees in respect of such Insurance shall be applied towards rebuilding or restoring the same.

11. There shall be reserved,

(i) in favour of

(a) all statutory undertakers including for the avoidance of doubt and without prejudice to the foregoing generality all public gas and electricity suppliers, the Post Office and the operator of any telecommunications system and

(b) all adjoining proprietors a right of access over, under or through the subjects hereby disposed for any existing drains, gas or water pipes, electricity, telephone or television cables, communal aerial and ancillary equipment, electricity pylons, telephone poles, street lamps and all other equipment belonging to all such statutory undertakers and adjoining proprietors together with, where appropriate, a right of property in such drains and others and also with a right of access thereto for the purpose of maintenance, repair and renewal thereof and

(ii) in favour of any adjoining proprietors, a right of access over the subjects hereby disposed for the purpose of the maintenance, repair and renewal of any parts of the said adjoining subjects, including those parts common to or mutual with the subjects hereby disposed; but any such rights exercised in terms hereof shall be exercised subject to the obligation to make good any damage occasioned to the subjects hereby disposed by the exercise of such right.

12. In the event of the roadway and/or the footpath ex adverso the subjects hereby disposed not having been taken over by the Roads Authority and added to the statutory

list of roads then the Disponees will be responsible for the cost of the maintenance, repair or renewal of any footpaths ex adverso the subjects hereby disposed and for the cost of the maintenance, repair or renewal of any roadway ex adverso the subjects hereby disposed from the boundary of the subjects hereby disposed to the centre line of the roadway where there are dwellinghouses on the opposite side of the roadway and for the whole width of the roadway where there are no dwellinghouses on the opposite side of the roadway; In the event of the Council as proprietor of a roadway and/or footpath desiring to carry out any such maintenance, repair or renewal of such footpath or roadway or being required by the proprietor of a footpath and/or roadway or by the Roads Authority to contribute towards the maintenance, repair or renewal of such footpath or roadway

(a) which leads to the subjects hereby disposed from a public roadway and the costs of which the Council are not legally entitled to recover from the proprietors of subjects ex adverso such footpath or roadway or

(b) part of which is ex adverso the subjects hereby disposed the Disponees shall be required to pay to the Council an appropriate share of the costs incurred by the Council in such maintenance, repair or renewal; The Disponees will not at any time be entitled to require the Council as owners of adjacent subjects or otherwise to carry out any maintenance work to the roadway or footpaths or to require them to be made up to an adoptable standard.

13. Where a roadway serving inter alia the subjects hereby disposed which has not been taken over by the Roads Authority incorporates one or more car parking areas, or where a piece of ground belonging to the Council is or becomes designated a car parking area, and in either case any such car parking area provides facilities for the benefit of a group of houses including the subjects hereby disposed, then the Disponees shall be required to pay to the Council as proprietor of such car parking area an appropriate share of the costs incurred by the Council in maintaining, repairing or renewing such car parking area.

14. In the event of the proprietors of a dwellinghouse which

(a) adjoins the dwellinghouse hereby disposed or

(b) forms part of a terrace of dwellinghouses of which the dwellinghouse hereby disposed forms part desiring to maintain, repair or replace the gutters pertaining to said dwellinghouse then the said proprietor will be entitled to maintain, repair or replace the whole length of gutter including the section pertaining to the dwellinghouse hereby disposed and the Disponees shall be liable to repay to the said proprietor an appropriate proportion of the total cost.

15. Where the dwellinghouse erected on the subjects hereby disposed and other dwellinghouses are served by a communal television aerial provided by or owned by the

Council, the Disponees will pay to the Council a proportionate share of the costs of the maintenance, repair and renewal of the aerial and ancillary wiring and equipment based on the number of houses served by the system.

16. (a) where the subjects hereby disposed adjoin a road, the footpavement of a road or a footpath or an area of amenity ground or grassed area belonging to the Council the Disponees shall be solely responsible for the maintenance, repair or renewal of the relative boundary enclosure; (b) where the subjects hereby disposed adjoin subjects not now or formerly belonging to the Council the Disponees shall free and relieve the Council of all responsibility for such boundary enclosure; (c) unless otherwise referred to herein, any boundary enclosures or gable walls in so far as mutual separating the subjects hereby disposed from subjects belonging or formerly belonging to the Council shall be maintained, repaired or renewed mutually by the Disponees and the respective adjoining proprietors except where (1) the boundary enclosure is retaining either the subjects hereby disposed or the adjoining subjects in which case the proprietors of the ground being retained shall be responsible for the maintenance, repair and renewal of that boundary enclosure; or (2) the subjects hereby disposed adjoin a building of any kind in which case the wall of the said building adjoining the subjects hereby disposed shall not form part of the subjects hereby disposed and shall not be maintained by the Disponees, similarly any building on the subjects hereby disposed forming a boundary of the subjects hereby disposed shall be maintained exclusively by the Disponees; for the purposes of this Clause where the subjects hereby disposed includes areas, buildings or others held in common or jointly with another or other proprietor(s), the obligation to maintain, repair or renew the relative boundaries of such areas, buildings or others will be shared equally between or amongst the Disponees and the said joint or common proprietor(s).

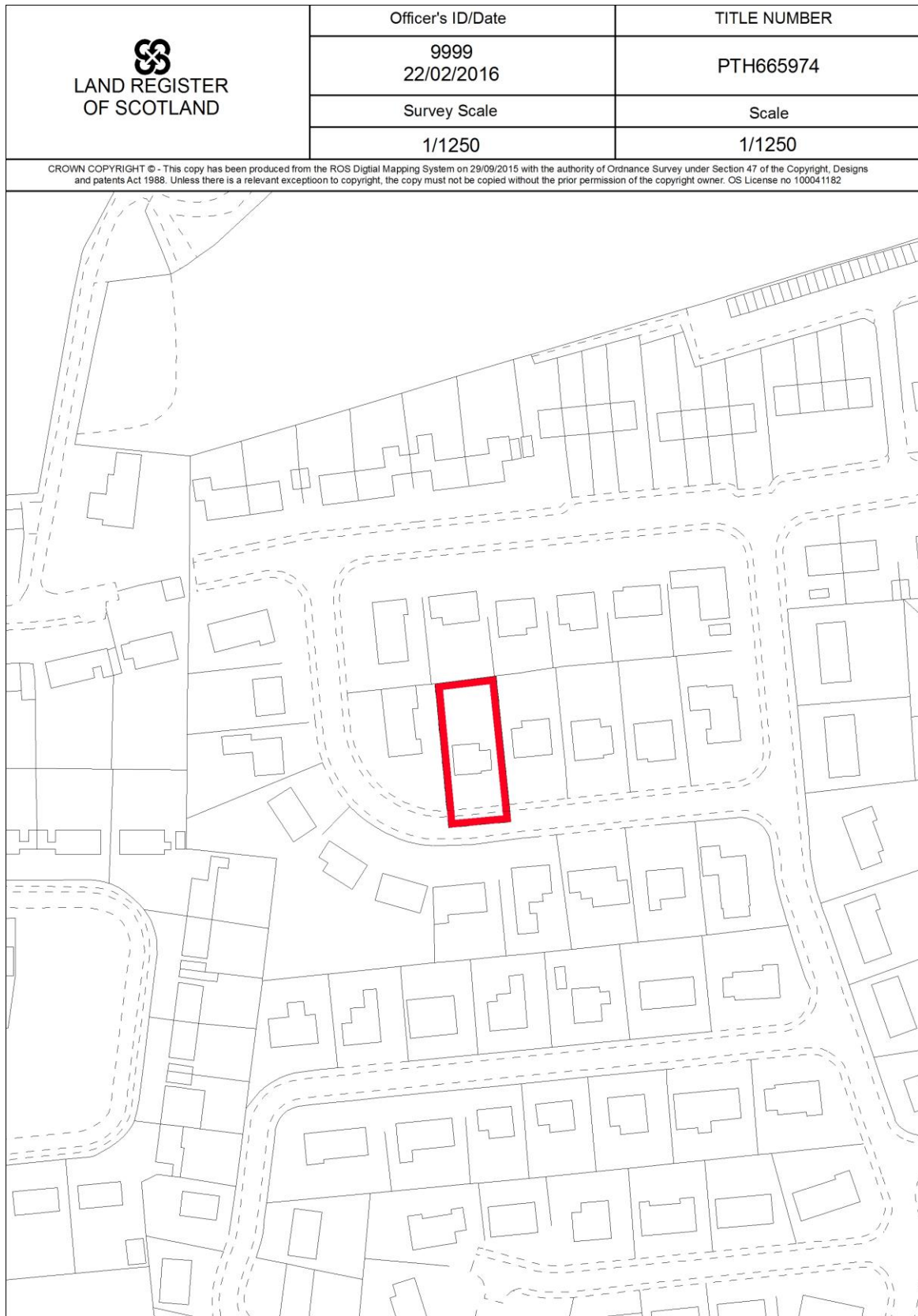
17 The drains, pipes, chimneys and chimneyheads and others common or mutual to the said dwellinghouse hereby disposed and any adjoining dwellinghouse shall be maintained mutually by the Disponees and the respective adjoining proprietors.

18. In the event of the Council having right in terms of these presents to recover from the Disponees the cost or a proportion of the cost of any works or services carried out by or provided by or on behalf of the Council, including without prejudice to the foregoing generality any common works or services, there is included right to recover from the Disponees a reasonable proportion of any fees and costs, whether professional, administrative, clerical or otherwise and whether such fees and costs are those of the Council or a third party, incurred in negotiating, instructing, contracting, supervising, carrying out or providing the works or services and the invoicing and recovery of said fees and costs or a proportion thereof from the Disponees.

1. RoS defines a research area as an area of land that has been, or is likely to be, split up into a number of units of property sharing common burdens. It contains at least six of more units of land.
2. Prior to each county becoming an operational area for land registration, RoS identified such areas – typically residential developments, including titles held by house builders.
3. The purpose of identifying these areas was:
 - to make information readily available for pre-registration reports, for example the prescriptive progress of titles, outstanding securities affecting the whole title or the residue of the title, and deeds other than transfers recorded within the previous 40 years
 - to make the registration process more efficient by identifying common burdens deeds and preparing standard entries for burdens sections, and identifying styles of split-off disposition, for example the approach to rights of access and ownership of common areas in the development
4. The information held for research areas was used in the KIR pilots to create and populate titles sheets.
5. We have estimated that around 58 per cent (700,000) of all remaining unregistered titles are in a research area.

Example of a title created through a KIR

Annex C





TITLE NUMBER PTH665974

A 3

A. PROPERTY SECTION

DATE OF FIRST REGISTRATION

22 FEB 2016

DATE TITLE SHEET UPDATED TO

22 FEB 2016

REAL RIGHT

OWNERSHIP

DESCRIPTION

Subjects cadastral unit PTH665974 1 RIVER DRIVE, SCONE, PERTH PH2 6PG edged red on the cadastral map. Together with a common or mutual right of property in the mutual boundary fences or walls, drains and pipes serving the subjects in this title and any adjoining subjects.



TITLE NUMBER PTH665974

B 1

B. PROPRIETORSHIP SECTION

**ENTRY PROPRIETOR
NO**

1 SCOTT BROWN and ELAINE BROWN
spouses, 8 Devon View, Oakbank, Perth,
equally between them and the survivor of
them.

**DATE OF
REGISTRATION**
22 FEB 2016

CONSIDERATION
£45,000

DATE OF ENTRY
12 February 1991

Note: The current proprietor of the subjects in this title is not known with certainty as the keeper has been unable to establish whether the survivorship destination has operated.

MOCK-UP



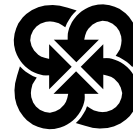
TITLE NUMBER PTH665974

C 1

C. SECURITIES SECTION

ENTRY NO	SPECIFICATION	DATE OF REGISTRATION
1	Standard Security by said SCOTT BROWN and ELAINE BROWN to CLYDESDALE BANK PUBLIC LIMITED COMPANY incorporated under the Companies Acts with companies registration number SC001111, Registered Office 30 St. Vincent Place, Glasgow G1 2HL, recorded G.R.S. (Perth) 15 Feb. 1991.	

MOCK-UP



TITLE NUMBER PTH665974

D 2

D. BURDENS SECTION

**ENTRY
NO**

SPECIFICATION

- 1 Disposition by Andrew Maclean to David Malcolm and Elizabeth Malcolm recorded G.R.S (Perth) 2 Dec. 1950. *[a hyperlink to access the deed will be included here]*
- 2 Disposition by John Smith to A & D Brown Limited recorded G.R.S (Perth) 3 May 1958. *[a hyperlink to access the deed will be included here]*

MOCK-UP



In the above example, the keeper is considering the KIR of 6 Acacia Avenue. The conveyancing description indicates that the extent as originally conveyed is coloured pink. Part of that area is already within the registered title for 8 Acacia Avenue. The keeper will not simply map to abut the registered extent of 8 Acacia Avenue. Rather, she will consider the split-off deed for that property (which is held in the land register archive), and will make use of her full suite of current ordnance survey maps and older county series maps, as well as aerial imagery, to help interpret the conveyancing descriptions. She may, exceptionally, supplement this by on-site surveys to ascertain who is in occupation. There are four possible scenarios here:

- i. In the first scenario, both the original title deeds for 6 and 8 Acacia Avenue included the same area of ground but it is apparent from both old and new ordnance survey maps that the area has always been within the physical boundary of 8 Acacia Avenue. This is confirmed by aerial imagery that has shown that the boundary feature is an ornamental wall which is of similar age to the property. In such an instance, the KIR of 6 Acacia Avenue would map the

property to abut with the red edge boundary for no. 8. This extent would be warranted.

- ii. In the second scenario, the outcome of the investigation is that the area of overlap had not been included within the original extent as initially conveyed within the split-off deed for no. 8, and is not in the possession of the proprietor of that property. In such a case, the keeper would rectify no. 8 to remove the area that had been erroneously included, and would then map the KIR of no. 6 to reflect the area shown pink. The extent would be warranted, and the keeper would notify the proprietor of no. 8 that their title had been rectified.
- iii. The third possible scenario is that the area was also included within the original title extent for no. 8, but is not being possessed by that proprietor. If, following due investigation, the keeper is satisfied that the ground is being possessed by no. 6, she would proceed to rectify no.8, and the KIR of no.6 would again be mapped and warranted to include the area coloured pink.
- iv. The fourth scenario is that the area of overlap is included within the split-off deeds for both properties, but it is not possible to determine who is actually in possession. In this instance, the keeper would map to abut the already registered title, and would warrant the registered extent.

Question 1

Do you agree with the proposed approach to KIR starting with residential properties in research areas?

Question 2

Do you agree that we should start KIR in areas that will have the highest impact on completing the land register and supportive conveyancing?

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?

Question 4

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

Question 5

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

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?

Question 7

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

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?

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?

Question 10

Are you content with how we plan to communicate 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?