

LEGAL BRIEFING

Voluntary Registration of Title

Background

The Scottish Government now seeks to ensure transparency of land ownership in Scotland. This effort involves accelerating registration of land ownership in the Land Register of Scotland (the Land Register). Introduced in 1979, the Land Register is a public register of land ownership compiled and maintained by Registers of Scotland. The Land Register is map based and, area by area, Registers of Scotland is compiling a map of Scotland. Each separate area of land registered is allocated a title number and the underlying owner of that title number can be identified on the public register.

Currently Scotland has two registers for titles to land – the Land Register and the General Register of Sasines (the Sasine Register). The Sasine Register has been in operation since 1617 and is a deeds-based register. In other words, it is a record of transactions and it can be difficult to determine accurately the identity of a landowner or even the extent of their ownership from the Sasine Register.

Since 1979, the process of transferring registered titles from the Sasine Register to the Land Register has been slow. Titles only transferred to the Land Register when ownership changed hands for value and, by 2015, only around 28% of the land mass of Scotland was registered on the Land Register. The Scottish Government has now set a target to complete the transfer of all titles in Scotland to the Land Register by 2024 (2019 for publically owned land). To October 2022 Registers of Scotland now claim to have 85.1% of the land mass of Scotland either registered, undergoing registration or covered by their “unlocking Sasines” project which looks to digitalise and map the Sasine Register to provide an indicative map of ownership under the older Sasine Register, this is still however under construction and not available for public access. Much of the land that remains Sasine is however of a rural nature.

To achieve this target, the Land Registration (Scotland) Act 2012 (the Act) came into force on 8 December 2014. This introduced a variety of new circumstances which will trigger registration of title in the Land Register; principally, all transfers of ownership, whether or not for value. From 1 April 2016, the grant of a new standard security over land (mortgage) also triggers registration of the land over which the security is created in the Land Register. The Keeper of the Registers is also now compelled to accept applications for voluntary registration; previously this was at the Keeper’s discretion.

The Act also introduces Keeper Induced Registration (KIR). This gives the Keeper the power to carry out compulsory registration of title, whether the owner wants that or not. Recently, the Keeper confirmed that at the moment KIR is considered best suited to “research areas” – that is, areas where the Keeper has previously identified the rights and burdens relevant to each property. These areas are typically residential housing developments that contain high volumes of properties of a similar nature. At present, therefore, there are no plans for KIR to be extended to

cover rural properties. However, this may change as the 2024 deadline approaches. As that date advances all properties still in the Sasine Register will become vulnerable to KIR.

Thorntons consider that now is a good time to consider voluntary registration of title. There are some significant financial and practical advantages in proceeding with a voluntary registration and, given the 2024 deadline, and the possibility of compulsory registration before then, we recommend that the registration of title is carried out sooner rather than later and always under the landowner's control.

Benefits of Voluntary Registration – Why Do It?

There are five principal benefits to carrying out voluntary registration at this stage:

1. The biggest advantage of the Land Register over the Sasine Register is certainty. The extent of land ownership is defined by reference to the OS map, therefore there should be no ambiguity over exactly what is owned. The title sheet should also contain clearer descriptions of all servitudes, wayleaves and burdens affecting the land. The route of many servitudes may now be able to be mapped accurately.
2. Voluntary registration allows the landowner to take control of the process of the registration of the title to their land. The nature of the Sasine Register, which often relies simply on a written description of the land (for example, “the Lands and Farms of....”) means that it is not uncommon for two neighbouring titles to be capable of including the same piece of ground. Even where plans of the land exist, they can simply be wrong, or fail accurately to reflect the occupied extent of the land. If title is registered ahead of the title to neighbouring properties, the landowner can to some extent at least make the decision about where the boundaries should lie on the map. It would then be for a neighbour to challenge this should they disagree at the time of their own title registration. The landowner may also choose how their title is registered; for example it may make practical or business sense to register different parts of a farm or estate separately to ensure that dealing with the land afterwards is simpler and clearer.
3. Undertaking voluntary registration avoids the potential pitfalls of compulsory registration. While KIR is cost free to the landowner at the point of registration, the landowner will have no input to the process and therefore may still incur significant professional costs after registration in order to (i) review the title produced by the Keeper and (ii) rectify any problems or inaccuracies.
4. Registration in the Land Register should make future transactions affecting the land considerably easier and less costly. Rather than comprising a large bundle of old deeds and a collection of different plans and descriptions of the land, the title will be clearly mapped and the burdens listed, all in a single Title Sheet.
5. The Keeper is offering a 25% reduction in registration fees for voluntary registrations. Registration fees are calculated based on the value of the registered land. The fees range from £60 for land worth under £50,000 to £6190 for land worth over £5,000,000.

Voluntary Registration Process, Thorntons' Role and Fees

At Thorntons, we have set up a dedicated specialist team to deal with voluntary registrations. We work closely with the Land Register Completion Team at the Registers of Scotland and have access to a dedicated contact for each large title. Our aim is to make the process as cost effective and efficient as possible and to achieve the best outcomes for our clients.

After our examination of the titles to your land we will work to produce an accurate plan showing the extent of your ownership, as you understand it. That will enable us in due course to have a digital plan prepared. This will assist us to deal with the registration of your title.

Depending upon the nature of the title and the number of title deeds involved, having the plan prepared may be a complex process; however, when the plan has been prepared it will serve to confirm ownership information and highlight any potential problems ahead of the registration process. Potential problems could be, for example, areas where boundaries overlap with those of neighbouring properties or where there are gaps between fences and adjacent roads which may result in access issues or ransom strips.

Where possible we will enlist the services of the Keeper's Plan Assistance Service since this should make the map preparation process quicker and more cost effective. Fees for that service will depend on the number of title deeds involved and on the number and extent of any servitudes, wayleaves or other burdens affecting the land which would also need to be mapped.

Once the initial plan is prepared we will work with you and the Plan Assistance Service and any other relevant parties to resolve any issues and finalise the plan ready for registration. We will also undertake a detailed review of the underlying titles to determine the full extent of all servitudes, wayleaves and other burdens affecting or benefiting the land to ensure that they are accurately reflected in the new registered title.

This process will provide an excellent opportunity to "tidy up" the title, for example to remove conditions that are no longer enforceable, before submitting the application for registration of the title. After the application has been submitted we will work with the Land Register Completion Team at the Registers of Scotland to resolve any remaining issues arising from the application.

Once the registered title is available we will check it thoroughly to ensure that it accurately reflects the full and true extent of your title.

We will provide you with a fee estimate and anticipated costs for this service following our initial receipt of your titles at the outset of the process. We will of course always strive to ensure that the process is as efficient and cost-effective as possible. Should the voluntary registration process highlight any title disputes or other matters that need to be dealt with separately, we would reserve the right to charge an additional fee, but only after discussion with you as to the work involved. Again, we would discuss any issues with you before undertaking the necessary work.

We will also discuss with you whether you might want to consider staggering the process of voluntary registration. There is no need to register all your lands at once for various reasons and carrying out the process in stages, if appropriate, would also allow costs to be spread over a period of time.

What Should You Do Next?

To discuss any aspect of the registration of your title in the Land Register or to obtain an individual fee quote, please contact any of the following members of our Land and Rural Business team.

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