

Briefing for the Core Paths Working Group

Registers of Scotland

Registers of Scotland (RoS) is headed by the Keeper of the Registers of Scotland Sheenagh Adams, and is the non-ministerial government department responsible for compiling and maintaining 17 public registers. These relate to land, property, and other legal documents.

Our main registers are:

- **Land Register of Scotland:** this is our main register. Introduced in 1981, it is a register of who owns land and property in Scotland. This register is based on the Ordnance Survey map, and includes plans of registered properties.
- **General Register of Sasines:** set up in 1617, this is the oldest public land register in the world. It is gradually being replaced by the Land Register. 'Sasine' comes from the old French word 'seizer', which means 'take'. This register is a chronological list of land deeds.

In May 2014, Ministers invited Registers of Scotland (RoS) to complete the Land Register of Scotland by 2024 with all publicly owned land registered by 2019. A completed land register supports the Scottish Government's strategic objective of making Scotland a wealthier and fairer society. There is a dedicated Land Register Completion (LRC) programme team established within RoS who are working to meet this objective, which will see Scotland move to one system of land and property registration.

ScotLIS

ScotLIS is a new online land and property information system. In October 2015 the then Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy invited the keeper to lead the development of this project, so as to increase transparency around land ownership and support and improve the efficiency of property market transactions. The project aims to enable quick and easy access to information about any piece of land or property in Scotland through a single online source.

RoS is working with stakeholders (including the Improvement Service and Ordnance Survey) to undertake scoping and development work on ScotLIS, and the first phase is due to be launched in October 2017. This will focus on data from RoS and other public authorities that identifies title to property and supports property market transactions. Subsequent phases will enable the sharing and linking of further layers of data from a wide range of public sources.

Land Registration, core paths and rights of way

The Land Registration etc (Scotland) Act 2012, which provides the scheme for registration of title to land in Scotland, sets out what *encumbrances* the Keeper is required to enter in the Land Register of Scotland in relation to a property registered there. In addition, the Act states that the Keeper "must not enter any rights or

obligations except in so far as their entry is authorised by an enactment" (including the 2012 Act itself). This means we cannot include information in the register for which we know no statutory authority exists.

In general terms, the Keeper is required to enter encumbrances set out in deeds which have been publicised either by registration in the Land Register (or by recording in the Registers of Sasines), and she is also permitted to enter certain specified "off-register rights" which have been created otherwise by a deed.

The most common types of encumbrance are either

- **'real burdens'** which oblige an owner to do something or refrain from doing something with their property e.g. owner A is obliged not to use their property for a commercial purpose; and
- **'servitudes'** which are rights held by an owner in relation to another person's land, for example where owner B has a right of access to their property via a road owned by C.

Both are types of encumbrances set out in recorded or registered deeds. There are some less usual encumbrances also set out in recorded or registered deeds, for example, leases for a minimum of 20 years or where land is affected by an Entry in the Schedule of Monuments under the Ancient Monuments and Archaeological Areas Act 1979.

There are only two 'off-register' rights not set out in a recorded or registered deed that can be shown in the Land Register. These are

- public rights of way, by whatever means over or through the land where known to the Keeper (it is possible to create these by declaration in a deed but our understanding is that this is very uncommon);
- a path delineated by order under section 22 of the Land Reform (Scotland) Act 2003

Overall, this means that the Keeper cannot disclose in the Land Register core paths under section 17 of the 2003 Act, or indeed the general right of access held by the public under the 2003 Act. However, the fact that such matters cannot be ascertained from a search of the Land Register does not affect their existence or enforceability.

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