

What will happen to my croft when I am no longer able to work it.

If you are a tenant and are no longer able to work your croft;

- **Consider** – Should I apply to assign (transfer) my croft to a younger person?

Remember that the assignation of a croft tenancy is a permanent transfer -you subsequently cannot change your mind!

- **Consider** - If you decide to transfer the tenancy to a younger person but want to retain the croft house you should decroft or purchase the house site before you transfer the croft land.

Remember when the tenancy of a croft is assigned, everything that is held in tenancy is transferred to the new tenant, including the croft house if you have not decrofted or purchased it.

- **Consider** - subletting the croft to someone who can cultivate and maintain it.

Remember a sublet is **NOT** a permanent transfer and you will remain the principal tenant of the croft and should consider making a Will that details who you wish to get the croft after your death.

We strongly advise all crofters to make provision during their lifetime for the succession to the tenancy of the croft. They should arrange for a solicitor who has some knowledge of crofting law to draw up their Will.

Make sure that all interests of the croft (such as grazing shares, where the croft has been purchased) are clearly dealt with in the Will.

If you are an owner-occupier crofter and are no longer able to work your croft;

- **Consider** - a short-term let of the croft to someone who can cultivate and maintain it.

Remember a short-term let is **NOT** a permanent transfer of the croft and you should consider making a Will that details who you wish to get the croft after your death.

- **Consider** -letting the croft tenancy to a younger person who can cultivate and maintain it.

Remember if you let the tenancy this is a permanent transfer of the croft and you would become the new tenant's Landlord. If for any reason the new tenant gave up (renounced) the tenancy you would not revert to being an owner-occupier crofter but the landlord of a vacant croft.



**Gheibhear tuilleadh
foisrachaidh mu
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www.crofting.scotland.gov.uk**

Transfer after death

When you either don't make a Will or the Will does not clearly deal with the crofting interests (this is known as **intestate succession**) the rules are complicated and can, in certain circumstances, result in loss of the croft tenancy.

It is easy to get caught out by an imprecise Will, for example "I bequeath my croft tenancy to my son." When you do not actually name your son, the croft or you have purchased the croft from the landlord several years ago and are no longer classed as a tenant but an owner-occupier crofter.

There is a basic right to bequeath (leave) a croft tenancy to a natural individual – it does not have to be a family member. It is also possible to bequeath a croft tenancy to more than one individual, but in most circumstances it is not to be recommended because the croft must be divided after death, with Commission consent for such a bequest to be effective. If the Commission refuse – if for instance the croft is too small to divide, the bequest falls into intestacy.

If you make a Will there is a period of **12 months** during which the executor or the legatee (the person you nominate to get the croft tenancy) must notify the Landlord and the Commission; if this deadline is missed, then an intestacy arises!

If intestacy arises the executor has **24 months** to notify the Landlord and the Commission.

If there is no Will or the Will does not clearly deal with the crofting interests get specialist legal advice as soon as possible! There is a **24 month** period during which an executor can transfer a croft tenancy in intestacy. It is surprising how frequently this deadline is missed. In intestacy the following must take place which can be very time consuming:-

- An executor must be found (usually the closest family member) and confirmed by the Sheriff Court;
- The executor must identify those with an interest in the croft under the rules of intestate succession
 - ◊ A professional valuation of the croft must be carried out;
 - ◊ The executor must decide if there is a suitable tenant amongst those entitled to succeed, who can afford to "buy out" the other entitled parties;
- If there is no suitable tenant, the croft may be marketed on the open market. Estate agents must be instructed, maps drawn up etc. all of which takes time. If the croft is not transferred within the 24 months, there are circumstances where the landlord can bring the croft tenancy to an end – and all that the beneficiaries are entitled to is compensation for any permanent improvements on the croft.

The Commission cannot be flexible with regard to these timescales and deadlines, as they are set out in the Crofters (Scotland) Act 1993.