

Change of Ownership of Croft Land

LAW

Under section 17(7) of the Crofters (Scotland) Act 1993 (“the 1993 Act”) “*Any person acquiring croft land shall...be required to give notice to the Commission of the change of ownership of the land.*”

Under section 29 of the Crofting Reform (Scotland) Act 2010 a person commits an offence if, having acquired the ownership of an **unregistered** owner-occupied croft, he fails within one year of acquisition to apply to register the croft with the Keeper of the Registers of Scotland in accordance with section 4(1) of that Act.

Under sections 29 and 30 of the Crofting Reform (Scotland) Act 2010 a person commits an offence if, having acquired the ownership of a **registered** owner-occupied croft; the ownership of any land in which a registered croft is situated; or the landlord’s interest in a registered croft; he fails within one year of acquisition to apply to register the acquisition with the Keeper of the Registers of Scotland in accordance with section 5(1) that that Act. This includes the initial purchase of a registered croft by the crofter tenant.

PROCEDURE

These procedures cover the three circumstances in which croft land can be acquired:

1. Through a change of landlord (whether the croft is vacant or not)
2. Through the transfer of ownership of an owner-occupied croft¹
3. Through the purchase (or acquisition) of land by the crofter tenant (either in his own name or in the name of a nominee(s))².

(1) Change of landlord (whether the croft is vacant or not)

1.1 Where the croft is unregistered

The change of landlord of an unregistered croft is **not a trigger for the compulsory registration of the croft** with the Keeper of the Registers of Scotland's Crofting Register.

On being notified of the change of landlord, either on our 'Notification of Change of Ownership' form or otherwise, the Commission will update its Register of Crofts to reflect the change of ownership. The effective date of transfer will be the date specified in the notification to the Commission.

If ownership of only part of the croft has been transferred, the croft will have an additional landlord.

If the whole of the croft has been transferred, the new landlord will replace the former landlord in the Register of Crofts. The croft status is unchanged by the transfer in circumstances where the former landlord was either the landlord of a vacant croft or the landlord of a tenanted croft.

¹ As defined at section 19B of the Crofters (Scotland) Act 1993

² Where the area purchased is the subject of advance of purchase decrofting direction. Please see separate Rules of Procedures on *Decrofting – various*.

However, where the former landlord was the “constituting landlord” of land constituted as a croft under section 3A of the 1993 Act, the following applies:

- If the transfer is in the form of a purchase for a financial consideration, the new owner will become the owner-occupier crofter and the croft will be an owner-occupied croft.
- If however, the new owner acquired the croft as a gift or through a succession they would retain the status of constituting landlord and the croft would retain its vacant status.

An updated copy entry from the Commission’s Register of Crofts will be sent to the landlord(s) and any tenant of the croft.

1.2 Where the croft is registered

Where the croft is registered, the change of landlord **is a change trigger** requiring notification of the change to be made to the Keeper of the Registers of Scotland. The **new landlord** is responsible for registering the change.

The Commission should be notified of the change of landlord in writing, either on our ‘Notification of Change of Ownership’ form or otherwise. The Commission will update its Register of Crofts to reflect the change of ownership. The effective date of transfer will be the date specified in the notification to the Commission.

If ownership of only part of the croft has been transferred, the croft will have an additional landlord.

If the whole of the croft has been transferred, the new landlord will replace the former landlord in the Register of Crofts. The croft status is unchanged by the transfer in circumstances where the former landlord was either the landlord of a vacant croft or the landlord of a tenanted croft.

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- If however, the new owner acquired the croft as a gift or through a succession they would retain the status of constituting landlord and the croft would retain its vacant status.

An updated copy entry from the Commission’s Register of Crofts will be sent to the landlord(s) and any tenant of the croft.

***N.B.** A person commits an offence if, having become the landlord of a croft, he fails, within one year of becoming such a landlord, to apply to register the change of landlord with the Registers of Scotland in accordance with section 5(1)(b)(ii) of the Crofting Reform (Scotland) Act 2010. A person commits an offence in respect of each further one year period where the person continues to fail to apply to register the change of landlord. A person who commits either offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale.*

(2) Through the transfer of ownership of an owner-occupied croft

A transfer of ownership of an owner-occupied croft can only relate to a whole croft. Any transfer of ownership of any part of an owner-occupied croft which is not a new croft created by a division under Section 19D of the Crofters (Scotland) Act 1993, and any deed purporting to transfer ownership of that part, is null and void.¹

¹ For further information please see “Rules of Procedure – Division of owner-occupied croft – (section 19D).”

2.1 Where the owner-occupied croft is unregistered

The transfer of ownership of an unregistered owner-occupied croft (whether or not for valuable consideration) **is a trigger for the compulsory registration of the croft** with the Keeper of the Registers of Scotland Crofting Register. The **new owner-occupier crofter** is responsible for the initial registration of the croft.

The Commission should be notified of the change of owner-occupier crofter in writing, either on our 'Notification of Change of Ownership' form or otherwise. The Commission will update its Register of Crofts to reflect the change of ownership. The new owner-occupier crofter will replace the former owner-occupier crofter from the date of transfer of the ownership of the croft as specified in the notification to the Commission. The owner-occupied croft status is unchanged by the transfer of ownership.

An updated copy entry from the Commission's Register of Crofts will be sent to the new owner-occupier crofter of the croft.

***N.B.** A person commits an offence if, having become the owner-occupier crofter, the person fails, within one year of the transfer of ownership, to apply to register the owner-occupied croft in accordance with section 4(1)(b) of the Crofting Reform (Scotland) Act 2010. A person commits an offence in respect of each further one year period where the person continues to fail to apply to register the owner-occupied croft. A person who commits either offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale.*

2.2 Where the owner-occupied croft is registered

Where the croft is registered, the transfer of the owner-occupied croft **is a change trigger** requiring notification of the transfer to be made to the Keeper of the Registers of Scotland. The **new owner-occupier crofter** is responsible for registering the change.

The Commission should be notified of the change of owner-occupier crofter in writing, either on our 'Notification of Change of Ownership' form or otherwise. The Commission will update its Register of Crofts to reflect the change of ownership. The new owner-occupier crofter will replace the former owner-occupier crofter from the date of transfer of the ownership of the croft as specified in the notification to the Commission. The owner-occupied croft status is unchanged by the transfer of ownership.

***N.B.** A person commits an offence if, having become the owner-occupier crofter of a croft, the person fails, within one year of becoming an owner-occupied croft, to apply to register the change of ownership in accordance with section 5(1)(b)(ii) of the Crofting Reform (Scotland) Act 2010. A person commits an offence in respect of each further one year period where the person continues to fail to apply to register the change of owner-occupier crofter. A person who commits either offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale.*

(3) Through the purchase or acquisition of land by the tenant (either in his own name or in the name of a nominee(s)).

If the whole croft is acquired, other than any grazings rights or apportioned common grazings land, then the grazings rights and/or apportionments shall be deemed to be a separate croft held in tenancy by the crofter¹.

3.1 Where the croft is unregistered

The purchase (or acquisition) of an unregistered croft by the tenant is **not a trigger for compulsory registration of the croft** with the Keeper of the Registers of Scotland Crofting Register.

On being notified of the acquisition of croft land, either on our 'Notification of Change of Ownership' form or otherwise, the Commission will update its Register of Crofts to reflect the change of ownership.

¹ Section 3(5)(a) of the Crofters (Scotland) Act 1993 sets out that where a person has acquired the entire croft other than (i) any right in common grazings land or (ii) any land comprising any part of a common grazing that has been apportioned, then the person shall be deemed to hold the right or land in tenancy and that right or land shall be deemed to be a croft.

If the tenant has acquired the croft land **in his own name** and if only part of the croft has been acquired, the croft will have an additional landlord and the part purchased by the former tenant will be vacant. The status of the croft in the Commission's Register of Crofts will be "part tenanted, part vacant".

If the whole of the croft has been acquired, the landlord will be removed from the Register of Crofts and the former tenant will be entered as the "owner-occupier crofter."

In both cases, the date of transfer of the croft will be the date specified in the notification to the Commission. An updated copy entry from the Commission's Register of Crofts will be sent to the owner-occupier crofter or to all of the croft owners.

If the croft has been acquired through **a nominee purchase** and if only part of the croft has been acquired, the croft will have an additional landlord and the part purchased by the tenant's nominee(s) will be vacant. The status of the croft in the Commission's Register of Crofts will be "part tenanted, part vacant." If the whole of the croft has been acquired, the nominee purchaser(s) will be entered in the Register of Crofts as the "owner-occupier crofter".

The date of transfer of the ownership of the whole or part of the croft will be the date specified in the notification to the Commission. An updated copy entry from the Commission's Register of Crofts will be sent to the nominee purchaser(s), any other owners of the croft and, where appropriate, the croft tenant.

3.2 Where the croft is registered

Where the croft is registered, the acquisition of croft land **is a change trigger** requiring notification of the acquisition of the croft land to the Keeper of the Registers of Scotland. The **person acquiring the croft land** is responsible for the registration of the change.

The Commission should be notified of the acquisition of croft land, either on our 'Notification of Change of Ownership' form or otherwise. The Commission will update its Register of Crofts to reflect the change of ownership on receipt of a valid application to register the change of owner in the Crofting Register.

If the tenant has acquired the croft land **in his own name** and if only part of the croft has been acquired, the croft will have an additional landlord and the part purchased by the former tenant will be vacant. The status of the croft in the Commission's Register of Crofts will be "part tenanted, part vacant."

If the whole of the croft has been acquired, then the landlord will be removed from the Register of Crofts and the former tenant will be entered as the "owner- occupier crofter" from the date specified in the notification to the Commission that the transfer took effect.

An updated copy entry from the Commission's Register of Crofts will be sent to the new owner-occupier crofter of the croft or to all of the croft owners.

If the croft has been acquired through **a nominee purchase** and if only part of the croft has been acquired, the croft will have an additional landlord and the part purchased by the nominee(s) will be vacant. The status of the croft in the Commission's Register of Crofts will be "part tenanted, part vacant." If the whole of the croft has been acquired the nominee purchaser(s) will be entered in the Register of Crofts as the "owner-occupier crofter".

The date of transfer of the ownership of the croft will be the date specified in the notification to the Commission.

An updated copy entry from the Commission's Register of Crofts will be sent to the nominee purchaser(s), any other owners of the croft and, if appropriate, the croft tenant.

***N.B.** A person commits an offence if, having acquired registered croft land, the person fails, within one year of the acquisition, to apply to register the transfer of ownership in accordance with section 5(1)(b)(i) of the Crofting Reform (Scotland) Act 2010. A person commits an offence in respect of each further one year period where the person continues to fail to apply to register the transfer of ownership. A person who commits either offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale.*

3.3 Note on notification of a purchase which includes a grazing share

The Land Court have previously found that in any croft purchase, the grazing share has to be **specifically referenced** in any conveyance of the croft and that there should be no presumption of grazing shares being carried without express reference being made in the disposition to them. This is why in any purchase of a croft by a tenant or a tenant's nominee(s) which purports to include the grazing share, the Commission will request that a copy of the title deeds/disposition be provided. This is to enable the Commission to confirm whether or not the grazing share has been included in the purchase of the croft.

Where the grazings share and/or any apportionments have not been included in the purchase of the croft by the tenant or the tenant's nominee(s), a new entry will be created in the Commission's Register of Crofts for the grazings share and/or the apportionments¹.

¹ Section 3(5)(a) of the Crofters (Scotland) Act 1993 sets out that where a person has acquired the entire croft other than (i) any right in common grazings land or (ii) any land comprising any part of a common grazing that has been apportioned, then the person shall be deemed to hold the right or land in tenancy and that right or land shall be deemed to be a croft.