

INTESTACY: Transfer by confirmed executor

(Crofters (Scotland) Act 1993 (“the 1993 Act”) – Section 11(1)-(3))

LAW

Intestacy provisions apply where:

- (a) a crofter fails to bequeath the tenancy of the whole croft to any one natural person¹,
or
- (b) a bequest of the tenancy of the whole croft to one natural person was not accepted by the legatee within 12 months of the crofter’s death, or
- (c) the Commission did not consent to the division of a croft where the tenancy was bequeathed to two or more natural persons, or
- (d) the Commission did consent to the division of a croft where the tenancy was bequeathed to two or more natural persons, but the registration of the division was not made by the executor of the deceased crofter.

There is no provision within section 11 to allow an executor to apply for Commission consent to divide the croft. The tenancy must therefore be transferred to one natural person.

¹ A firm, partnership or company is not a natural person and therefore cannot be the tenant of a croft (section 10(1)(a) of the Crofters (Scotland) Act 1993).

PROCEDURE

- (1) The confirmed executor¹ of the deceased crofter shall, as soon as may be:
 - (i) transfer the tenancy of the croft (including any grazings rights or shares). There are various modes of transfer of a croft tenancy in intestacy, but it is for executors and their agents to satisfy themselves as to the competency of the mode of transfer. The Commission has no jurisdiction to determine the competency of the mode of transfer by an executor. Its role is limited to noting any changes in the Register of Crofts.
 - (ii) give notice of the transfer to the landlord² who shall accept the transferee as tenant.
 - (iii) send a copy of the notice to the Commission.
 - (iv) the Commission on being copied into a notice of transfer notification will enter the transferee as the new tenant in the Register of Crofts unless the Commission is aware, for instance that the landlord has already served a notice terminating the tenancy or has become aware for instance that the relevant crofting interest has not been listed in the inventory.

- (2) The notice must be given within 24 months of one of the following:
 - (a) Where there has been no bequest, the 24 months begins on either –
 - (i) if the Commission has been provided with notification of the deceased crofter's death within 2 months of the death, the date of receipt of the notification; or
 - (ii) if no such notification has been received by the Commission, the date of the death of the deceased crofter.

¹ Legal provisions relating to the appointment of an executor and obtaining Confirmation of the deceased crofter's estate are contained in the Succession (Scotland) Act 1964. The Commission's understanding is that the **only** legal authority for effecting a transfer of tenancy in an intestate succession is by obtaining Confirmation to the intestate estate of the late tenant.

² The Commission has prepared a template notice for ease of notification purposes available to download from our website. It is not, however, compulsory to use this form for notification purposes.

- (b) Where there was a bequest which became null and void¹, the date on which the bequest became null and void.
- (3) In the case of an **unregistered croft**, the copy notice to the Commission of the transfer should be accompanied by an application by the executor to the Keeper of the Registers of Scotland to register the croft².

The transferee will come into the place of the deceased crofter on the date of registration of the croft.

In the case of a **registered croft**, the copy notice to the Commission of the transfer should be accompanied by an application by the executor to the Keeper of the Registers of Scotland to register the transfer of the tenancy of the croft.

The transferee will come into the place of the deceased crofter on the date of registration of the transfer of the tenancy of the croft.

The Commission will not be in a position to update the Register of Crofts to show the transferee has come into place of the deceased crofter, until the relevant registration application is made to the Keeper of the Registers of Scotland.

- (4) If the Commission receive a notification of transfer by the executor after the expiry of the 24 month period referred in paragraph 2 above:
- (a) Where the Commission **have not previously received** written notification neither the landlord or executor has terminated the tenancy in accordance with section 16(3)(b) of the Succession (Scotland) Act 1964, **the notification of transfer will proceed in terms of paragraph 3 above.**

¹ A bequest is null and void if (1) in the case of a bequest of the tenancy of the whole croft to one natural person, no notice of the bequest is given to the landlord and no copy sent to the Commission (section 10(3)(a)); (2) in the case of a bequest of the tenancy to two or more natural persons, any legatee fails to give notice of the bequest to the landlord and to send a copy to the Commission (section 10(3)(b)).

² Failure to submit a registration application with the notice does not invalidate the transfer. However, the transfer will not take effect until either the croft (where the transfer relates to an unregistered croft) or the transfer of the tenancy (where it relates to a registered croft) has been registered with the Registers of Scotland.

- (b) Where the Commission **have previously received** written notification that either the landlord or executor has terminated the tenancy in accordance with section 16(3)(b) of the Succession (Scotland) Act 1964, **the notification will be considered invalid, and the parties advised accordingly.**
- (5) If at the expiry of the 24 month period referred to in paragraph 2 above the executor has not given the landlord notice of the transfer, the landlord must notify the Commission accordingly¹.

N.B. *If the Commission is made aware of competing claims to the transfer of the tenancy of a croft, then the succession becomes a matter to be either determined through Court Order or by agreement of the parties.*

¹ In the event of the transfer not being notified within the relevant 24 month period, see separate Rules of Procedure on *Intestacy (termination of tenancy by the Commission): where the croft tenancy has not been transferred by the executor within the statutory time period*. If the timescales for Intestate Succession are not adhered to, then the tenancy of the croft will be at risk and the landlord or Executor could give notice terminating the tenancy in accordance with section 16(3)(b) of the Succession (Scotland) Act 1964. Alternatively, the Commission could take steps to terminate the tenancy and declare the croft vacant in terms of sections 11(4) - 11(8) of the Crofters (Scotland) Act 1993.