



Crofters (Scotland) Act 1993

1993 CHAPTER 44

Succession to croft

10 Bequest of croft.

[^{F1}(1) A crofter may, by will or other testamentary writing,]

- [^{F2}(a) bequeath the tenancy of the whole of the crofter's croft to any one natural person; or
- (b) bequeath the tenancy of that croft to two or more natural persons provided that—
 - (i) each person would come into the place of the crofter in relation to the tenancy of part of the croft; and
 - (ii) no part of the croft would, were all the bequests accepted, be untenanted.]

[^{F3}(2) A person to whom the tenancy of a croft (or of part of a croft) is bequeathed (in this section, the “legatee”) must, if the legatee accepts the bequest—

- (a) give notice of the bequest to the landlord; and
- (b) send a copy of the notice to the Commission,

before the end of the period of 12 months beginning with the death of the crofter.]

[^{F4}(2A) Notice under subsection (2) above of the bequest may be given by an executor of the deceased crofter authorised for that purpose by the legatee.]

[^{F5}(3) The bequest is null and void if—

- (a) in the case of a bequest such as is mentioned in subsection (1)(a), no notice is given (and no copy sent) in accordance with subsection (2) or (2A);
- (b) in the case of a bequest such as is mentioned in subsection (1)(b), any legatee fails to give notice (and send a copy) in accordance with subsection (2) or (2A).

(4) Where, in the case of a bequest as is mentioned in subsection (1)(a), notice is given (and a copy sent) in accordance with subsection (2) or (2A), the legatee comes into the

Changes to legislation: There are currently no known outstanding effects for the Crofters (Scotland) Act 1993, Cross Heading: Succession to croft. (See end of Document for details)

place of the deceased crofter (as from the date of death of that crofter) on the relevant date of registration.

(4A) Where—

- (a) a crofter bequeaths the tenancy of a croft as mentioned in subsection (1)(b); and
- (b) each legatee gives notice (and sends a copy) in accordance with subsection (2) or (2A),

the deceased crofter's executor must apply to the Commission for consent under section 9 to divide the croft accordingly.

(4B) Where the Commission give their consent to the division of the croft under section 9, each legatee comes into the place of the deceased crofter in relation to that legatee's new croft (as from the date of death of that crofter) on the relevant date.

(4C) The bequest is null and void if—

- (a) the Commission do not give their consent to the division of the croft under section 9; or
- (b) such consent is given but an application for registration of the division is not made in accordance with subsection (3)(a) of that section.]

^{F5}(4D)

(4E) [^{F6}Subject to subsection (4EA),] A legatee who comes into the place of a deceased crofter in accordance with subsection [^{F7}(4) or, as the case may be, (4B)] above, in doing so—

- (a) becomes liable for such debts of the deceased crofter's estate as are attributable to the tenancy; and
- (b) shall, if requested to do so by the executor, pay the reasonable expenses necessarily and wholly incurred by the executor in relation to the administration and management of the tenancy during the period beginning with the date of the deceased crofter's death and ending immediately before the date when the legatee so comes into the place of the deceased crofter; and such expenses—
 - (i) shall, in the event of a dispute as to amount, be determined by the Land Court on the application of the executor or the legatee; and
 - (ii) shall not fall to be met from the deceased crofter's estate.

[^{F8}(4EA) Where, as a result of the Commission giving their consent to the division of the croft under section 9, two or more legatees come into the place of the deceased crofter, those legatees are jointly and severally liable for—

- (a) the debts mentioned in subsection (4E)(a); and
- (b) any expenses mentioned in subsection (4E)(b).]

(4F) Notwithstanding that a legatee comes into the place of the deceased crofter as mentioned in subsection (4E) above, the tenancy is an asset of the deceased crofter's estate, available along with the other assets of the estate to meet the other expenses of administration, and debts, of the estate; and any such legatee is liable to contribute to such expenses and debts accordingly.

(5) If the bequest becomes null and void under this section, the right to the croft shall be treated as intestate estate of the deceased crofter in accordance with Part I of the 1964 Act.

Changes to legislation: There are currently no known outstanding effects for the Crofters (Scotland) Act 1993, Cross Heading: Succession to croft. (See end of Document for details)

(6) Subject to the foregoing provisions of this section, any question arising with respect to the validity or effect of the bequest shall be determined by any court having jurisdiction to determine the validity and effect of the whole testamentary writings of the deceased crofter.

[^{F9}(7) In subsection (4), the “relevant date of registration” is—

- (a) where the croft was unregistered, the date of registration in relation to the application for registration of the croft by virtue of section 4(4)(e) of the 2010 Act;
- (b) where the croft was registered, the date of registration in relation to the application for registration of the notice by virtue of section 5(3)(e) of that Act.

(8) In subsection (4B)—

“legatee's new croft” means the new croft, formed by division under section 9, which corresponds to the part of the original croft bequeathed to the legatee (“division”, “new croft” and “original croft” being construed in accordance with section 9(6));

“relevant date” means—

- (a) where the croft was unregistered, the date the Keeper receives notification of the Commission's consent to divide the croft by virtue of section 10(7) of the 2010 Act;
- (b) where the croft was registered, the date of registration in relation to the application for registration of the division by virtue of section 5(3)(d) (i) of that Act.]

Textual Amendments

- F1** S. 10(1) substituted (28.1.2008) by [Crofting Reform etc. Act 2007 \(asp 7\)](#), **ss. 13(2)**, 43(3) (with **ss. 40, 43(2)**); [S.S.I. 2007/568](#), art. 2
- F2** Words in s. 10(1) substituted (1.10.2011) by [Crofting Reform \(Scotland\) Act 2010 \(asp 14\)](#), **ss. 49(2)**, 57(2) (with [s. 57\(4\)](#)); [S.S.I. 2011/334](#), art. 3, sch. Pt. 1 (with arts. 45(3))
- F3** S. 10(2) substituted (1.10.2011) by [Crofting Reform \(Scotland\) Act 2010 \(asp 14\)](#), **ss. 49(3)**, 57(2) (with [s. 57\(4\)](#)); [S.S.I. 2011/334](#), art. 3, sch. Pt. 1 (with arts. 45(3))
- F4** S. 10(2A)-(2D) inserted (28.1.2008) by [Crofting Reform etc. Act 2007 \(asp 7\)](#), **ss. 13(4)**, 43(3) (with **ss. 40, 43(2)**); [S.S.I. 2007/568](#), art. 2
- F5** S. 10(3)-(4C) substituted for s. 10(2B)-(4D)(1.10.2011 for specified purposes, 30.11.2012 in force in so far as not already in force) by [Crofting Reform \(Scotland\) Act 2010 \(asp 14\)](#), **ss. 49(4)**, 57(2) (with [s. 57\(4\)](#)); [S.S.I. 2011/334](#), art. 3, sch. Pt. 1 (with arts. 4, 5(3)); [S.S.I. 2012/288](#), art. 3(1)(b), (2), sch. 1 Pt. 2
- F6** Words in s. 10(4E) inserted (1.10.2011) by [Crofting Reform \(Scotland\) Act 2010 \(asp 14\)](#), **ss. 49(5)(a)**, 57(2) (with [s. 57\(4\)](#)); [S.S.I. 2011/334](#), art. 3, sch. Pt. 1 (with arts. 45(3))
- F7** Words in s. 10(4E) substituted (1.10.2011) by [Crofting Reform \(Scotland\) Act 2010 \(asp 14\)](#), **ss. 49(5)(b)**, 57(2) (with [s. 57\(4\)](#)); [S.S.I. 2011/334](#), art. 3, sch. Pt. 1 (with arts. 45(3))
- F8** S. 10(4EA) inserted (1.10.2011) by [Crofting Reform \(Scotland\) Act 2010 \(asp 14\)](#), **ss. 49(6)**, 57(2) (with [s. 57\(4\)](#)); [S.S.I. 2011/334](#), art. 3, sch. Pt. 1 (with arts. 45(3))
- F9** S. 10(7)(8) inserted (30.11.2012) by [Crofting Reform \(Scotland\) Act 2010 \(asp 14\)](#), **ss. 49(7)**, 57(2) (with [s. 57\(4\)](#)); [S.S.I. 2012/288](#), art. 3(1)(b)(2), sch. 1 Pt. 2 (with sch. 2 para. 8)

Changes to legislation: There are currently no known outstanding effects for the Crofters (Scotland) Act 1993, Cross Heading: Succession to croft. (See end of Document for details)

11 Intestacy.

- (1) Where, owing to the failure of a crofter to bequeath the tenancy of his croft or of such a bequest to receive effect, the right to the tenancy of the croft falls to be treated as intestate estate of the deceased crofter in accordance with Part I of the 1964 Act, and the tenancy is transferred in pursuance of section 16(2) of that Act, the executor of the deceased crofter shall as soon as may be ^{F10}give notice of the transfer containing particulars of the transferee to the landlord, who shall accept the transferee as tenant; and ^{F11}at the same time as giving the notice the executor must send a copy of the notice to the Commission].

^{F12}(1A) A transfer such as is mentioned in subsection (1) takes effect in relation to an application for registration of—

- (a) the giving of notice under that subsection by virtue of section 4 of the 2010 Act; or
- (b) the transfer by virtue of section 5 of that Act, on the date of registration.]

- (2) If at the expiry of a period of ^{F13}24] months commencing with the relevant date the executor has not ^{F14}given the landlord any notice] in accordance with subsection (1) above, the landlord shall forthwith notify the Commission to that effect.

- (3) In this section “the relevant date” means—

- ^{F15}(a)
- (b) where the deceased crofter has ^{F16}... failed to bequeath the tenancy, ^{F17}the date (no later than 2 months after the date of death of the deceased crofter) on which the Commission receive notification of the death or, where no such notification is received,] the date of death of the deceased crofter;
- (c) where the deceased crofter has bequeathed the tenancy and the bequest has become null and void under section ^{F18}10] of this Act, the date on which the bequest became null and void as aforesaid;
- ^{F19}(d)

^{F20}(4) If at the expiry of the period of ^{F21}24] months referred to in subsection (2) above, it appears to the Commission (whether from notification under that subsection or otherwise) that the executor has not ^{F22}given the landlord any notice] in accordance with subsection (1) above, they shall give notice in such manner as they think proper, whether by advertisement or otherwise—

- (a) to the landlord;
- (b) if an executor is confirmed in respect of the intestate estate of the deceased crofter, to the executor; and
- (c) if no executor is so confirmed, to each person of whom the Commission are aware and who the Commission consider may claim to be entitled to claim prior or legal rights out of, or to succeed to, the intestate estate,

that they propose to terminate the tenancy and declare the croft vacant and inviting the recipients of the notice to make representations as respects the proposal to the Commission before the expiry of the period of one month after the date of the notice.

- (5) If, having considered representations (if any) made to them in accordance with subsection (4) above, the Commission are satisfied that—

- (a) the landlord or the executor has terminated the tenancy in accordance with section 16(3)(b) of the Succession (Scotland) Act 1964;

Changes to legislation: There are currently no known outstanding effects for the Crofters (Scotland) Act 1993, Cross Heading: Succession to croft. (See end of Document for details)

- (b) the executor is proposing to transfer the tenancy; or
- (c) a person is entitled to a transfer of the tenancy in or towards the satisfaction of his claim to prior rights or his entitlement to succeed to the deceased's intestate estate,

they are not to implement their proposal; but if not so satisfied they may implement their proposal if they consider it appropriate to do so.

(6) If, by virtue of subsection (5) above, the Commission are not entitled to implement their proposal, but it appears to them subsequently (by means of representations made to them or otherwise) that the tenancy is not being transferred or is unable to be transferred, the Commission may give notice again as mentioned in subsection (4) above.

(7) If, having considered representations (if any) made to them in accordance with subsection (4) above as respects a proposal contained in a notice given by virtue of subsection (6) above, the Commission are satisfied that it is appropriate to implement their proposal they may do so.

(8) Where the Commission, in pursuance of this section, declare the croft vacant—

- (a) they shall give notice to that effect—
 - (i) to the landlord;
 - (ii) if an executor is confirmed in respect of the intestate estate of the deceased crofter, to the executor; and
 - (iii) if no executor is so confirmed, to each person of whom the Commission is aware and who the Commission consider may claim to be entitled to claim prior or legal rights out of, or to succeed to, the intestate estate,

and any such notice to the landlord shall require him to submit to them [^{F23}, before the expiry of the period of 4 months beginning with the day on which the notice is given,] such proposals as are mentioned in section 23(5) of this Act;

- (b) any right of any person in, or in relation to, the tenancy shall be extinguished; and
- (c) the landlord shall be liable to pay to the executor of the deceased crofter the value of the permanent improvements on the croft in so far as—
 - (i) the improvement is suitable to the croft;
 - (ii) the improvement was executed or paid for by the deceased crofter or by any of the predecessors of the deceased crofter in the tenancy; and
 - (iii) either the improvement was executed otherwise than in pursuance of a specific agreement in writing under which the deceased crofter was bound to execute the improvement or, if the improvement was executed in pursuance of such an agreement, the deceased crofter did not receive and his executor has not received, by way of reduction of rent or otherwise, fair consideration for the improvement.]

^{F24}(9)

(10) [^{F25}In subsection (8)(c) above, the expression “the value of the permanent] improvements on the croft” means such sum as may be agreed, or as, failing agreement, may be determined by the Land Court, to be the sum which would have been due by the landlord by way of compensation for permanent improvements if the deceased crofter had immediately before his death renounced his tenancy.

Changes to legislation: There are currently no known outstanding effects for the Crofters (Scotland) Act 1993, Cross Heading: Succession to croft. (See end of Document for details)

(11) Where—

- (a) a croft has been declared under [^{F26}this section] to be vacant consequent on the death after 27th August 1961 of a crofter who immediately before his death was qualified as mentioned in subsection (12) below; and
- (b) the value of the improvements on the croft is determined by the Land Court under subsection (10) above,

the executor of the crofter may request the Land Court to determine what would have been the value of the improvements on the croft if the ^{M1}Crofters (Scotland) Act 1961 had not been passed; and if the value last mentioned is greater than the value determined by the Land Court under subsection (10) above, the difference between the two said values shall be payable to the executor by the Secretary of State:

Provided that the Secretary of State shall be entitled to set off any amount due to him by the crofter at the date of his death in respect of a loan made under section 42(4) or (5) of this Act, section 22(2) or (3) of the 1955 Act or section 7(7) or 9 of the ^{M2}Small Landholders (Scotland) Act 1911 against any sum payable to the executor by the Secretary of State under this subsection.

(12) The reference in subsection (11) above to a crofter who immediately before his death was qualified is a reference to a crofter—

- (a) whose tenancy of the croft in question began before 27th August 1961, or
- (b) who held the tenancy of such croft as statutory successor to his immediate predecessor in the tenancy and each of whose predecessors (being in each case a person whose tenancy of the croft began after 27th August 1961) held such tenancy as statutory successor to his immediate predecessor.

Textual Amendments

- F10** Words in s. 11(1) substituted (1.10.2011) by Crofting Reform (Scotland) Act 2010 (asp 14), s. 57(2), **sch. 4 para. 3(10)(a)(i)** (with s. 57(4)); S.S.I. 2011/334, art. 3, sch. Pt. 1 (with art. 4)
- F11** Words in s. 11(1) substituted (1.10.2011) by Crofting Reform (Scotland) Act 2010 (asp 14), s. 57(2), **sch. 4 para. 3(10)(a)(ii)** (with s. 57(4)); S.S.I. 2011/334, art. 3, sch. Pt. 1 (with art. 4)
- F12** S. 11(1A) inserted (30.11.2012) by Crofting Reform (Scotland) Act 2010 (asp 14), s. 57(2), **sch. 4 para. 3(10)(b)** (with s. 57(4)); S.S.I. 2012/288, art. 3(1)(b)(2), sch. 1 Pt. 2 (with sch. 2 para. 12)
- F13** Word in s. 11(2) substituted (1.10.2011) by Crofting Reform (Scotland) Act 2010 (asp 14), s. 57(2), **sch. 4 para. 3(10)(c)(i)** (with s. 57(4)); S.S.I. 2011/334, art. 3, sch. Pt. 1 (with art. 4)
- F14** Words in s. 11(2) substituted (1.10.2011) by Crofting Reform (Scotland) Act 2010 (asp 14), s. 57(2), **sch. 4 para. 3(10)(c)(ii)** (with s. 57(4)); S.S.I. 2011/334, art. 3, sch. Pt. 1 (with art. 4)
- F15** S. 11(3)(a) repealed (28.1.2008) by Crofting Reform etc. Act 2007 (asp 7), **ss. 17(3)(a)**, 43(3) (with ss. 40, 43(2)); S.S.I. 2007/568, art. 2
- F16** Word in s. 11(3)(b) repealed (28.1.2008) by Crofting Reform etc. Act 2007 (asp 7), **ss. 17(3)(b)(i)**, 43(3) (with ss. 40, 43(2)); S.S.I. 2007/568, art. 2
- F17** Words in s. 11(3)(b) inserted (28.1.2008) by Crofting Reform etc. Act 2007 (asp 7), **ss. 17(3)(b)(ii)**, 43(3) (with ss. 40, 43(2)); S.S.I. 2007/568, art. 2
- F18** Word in s. 11(3)(c) substituted (1.10.2011) by Crofting Reform (Scotland) Act 2010 (asp 14), s. 57(2), **sch. 4 para. 3(10)(d)(i)** (with s. 57(4)); S.S.I. 2011/334, art. 3, sch. Pt. 1 (with art. 4)
- F19** S. 11(3)(d) repealed (1.10.2011) by Crofting Reform (Scotland) Act 2010 (asp 14), s. 57(2), **sch. 4 para. 3(10)(d)(ii)** (with s. 57(4)); S.S.I. 2011/334, art. 3, sch. Pt. 1 (with art. 4)
- F20** S. 11(4)-(8) substituted for s. 11(4)-(9) (28.1.2008) by Crofting Reform etc. Act 2007 (asp 7), **ss. 17(4)**, 43(3) (with ss. 40, 43(2)); S.S.I. 2007/568, art. 2
- F21** Word in s. 11(4) substituted (1.10.2011) by Crofting Reform (Scotland) Act 2010 (asp 14), s. 57(2), **sch. 4 para. 3(10)(e)(i)** (with s. 57(4)); S.S.I. 2011/334, art. 3, sch. Pt. 1 (with art. 4)

Changes to legislation: There are currently no known outstanding effects for the Crofters (Scotland) Act 1993, Cross Heading: Succession to croft. (See end of Document for details)

- F22** Words in s. 11(4) substituted (1.10.2011) by Crofting Reform (Scotland) Act 2010 (asp 14), s. 57(2), **sch. 4 para. 3(10)(e)(ii)** (with s. 57(4)); S.S.I. 2011/334, art. 3, sch. Pt. 1 (with art. 4)
- F23** Words in s. 11(8)(a) inserted (1.10.2011) by Crofting Reform (Scotland) Act 2010 (asp 14), **ss. 44(2), 57(2)** (with s. 57(4)); S.S.I. 2011/334, art. 3, sch. Pt. 1 (with art. 4)
- F24** S. 11(4)-(8) substituted for s. 11(4)-(9) (28.1.2008) by Crofting Reform etc. Act 2007 (asp 7), **ss. 17(4), 43(3)** (with ss. 40, 43(2)); S.S.I. 2007/568, **art. 2**
- F25** Words in s. 11(10) substituted (28.1.2008) by Crofting Reform etc. Act 2007 (asp 7), **ss. 17(5), 43(3)** (with ss. 40, 43(2)); S.S.I. 2007/568, art. 2
- F26** Words in s. 11(11)(a) substituted (28.1.2008) by Crofting Reform etc. Act 2007 (asp 7), **ss. 17(6), 43(3)** (with ss. 40, 43(2)); S.S.I. 2007/568, art. 2

Marginal Citations

- M1** 1961 c. 58.
M2 1911 c. 49.

Changes to legislation:

There are currently no known outstanding effects for the Crofters (Scotland) Act 1993, Cross
Heading: Succession to croft.