



# Crofters (Scotland) Act 1993

## 1993 CHAPTER 44

### *Succession to croft*

#### **10 Bequest of croft**

- (1) A crofter may, by will or other testamentary writing, bequeath the tenancy of his croft to any one person; but where the power conferred by this subsection is exercised in favour of a person not being a member of the crofter's family, the bequest shall be null and void unless the Commission, on application made to them by the legatee, otherwise determine.
- (2) A person to whom the tenancy of a croft is bequeathed as aforesaid (in this section referred to as "the legatee") shall, if he accepts the bequest, give notice of the bequest to the landlord within 2 months after the death of the crofter, unless he is prevented by some unavoidable cause from giving such notice within that time, and in that event he shall give such notice within a further period of 4 months. If no such notice is given in accordance with the provisions of this subsection the bequest shall become null and void.

The giving of such notice shall import acceptance of the bequest and, unless the landlord intimates objection to the Commission under subsection (3) below, the legatee shall come into the place of the deceased crofter in the croft as from the date of death of the deceased crofter, and the landlord shall notify the Commission accordingly.

- (3) Where notice has been given as aforesaid to the landlord he may within one month after the giving of the notice intimate to the legatee and to the Commission that he objects to receiving the legatee as tenant of the croft and shall state the grounds of his objection.
- (4) If, after affording to the legatee and to the landlord an opportunity of making representations to them, the Commission are—
  - (a) satisfied that the objection is reasonable, they shall declare the bequest to be null and void, and shall notify the landlord and the legatee accordingly;
  - (b) not so satisfied, they shall notify the landlord and the legatee to that effect, and the legatee shall thereupon come into the place of the deceased crofter in the croft as from the date of the death of the deceased crofter.

- (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.
- (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.

## 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 furnish particulars of the transferee to the landlord, who shall accept the transferee as tenant; and the landlord shall notify the Commission accordingly.
- (2) If at the expiry of a period of 3 months commencing with the relevant date the executor has not furnished to the landlord particulars of any transferee in accordance with subsection (1) above, the landlord shall forthwith notify the Commission to that effect.
- (3) In this section “the relevant date” means—
  - (a) where the deceased crofter has exercised his power to bequeath the tenancy of the croft in favour of a person not being a member of the deceased crofter’s family and the Commission, on application made to them by the legatee, have refused to determine that the bequest shall not be null and void, the date of the Commission’s refusal;
  - (b) where the deceased crofter has otherwise failed to bequeath the tenancy, 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 10(2) of this Act, the date on which the bequest became null and void as aforesaid;
  - (d) where the deceased crofter has bequeathed the tenancy and the Commission have declared the bequest to be null and void under section 10(4) of this Act, the date on which the Commission notified the landlord and the legatee to that effect.
- (4) If at the expiry of the said period of 3 months it appears to the Commission, whether from a notification under subsection (2) above or otherwise, that the executor has not furnished to the landlord particulars of any transferee in accordance with subsection (1) above, the Commission may give notice in such manner as they may think proper, whether by advertisement or otherwise, to persons who may claim to be entitled—
  - (a) to succeed to the intestate estate of the deceased crofter, or
  - (b) to claim legal rights or the prior rights of a surviving spouse out of that estate, requiring them if they desire to have the tenancy of the croft transferred to them in or towards satisfaction of their entitlement or claim to give intimation accordingly to the Commission before such date as may be specified in the notice, being a date not earlier than 6 months after the relevant date; and the Commission may, subject

to subsection (5) below, nominate as successor to the tenancy any one of the persons who have so given intimation.

- (5) The Commission shall, before nominating any person as successor to the tenancy of the croft in pursuance of subsection (4) above, consult with the executor (if any) of the deceased crofter, and the Commission shall not nominate any person as successor unless it appears to them—
  - (a) that that person is a person entitled to succeed to the intestate estate of the deceased crofter, or to claim legal rights or the prior rights of a surviving spouse out of that estate, and
  - (b) that adequate provision is being, or will be, made for the settlement of the entitlement or claim in the said intestate estate of any other person who is known to them to be entitled to succeed to, or to claim any such rights out of, that estate.
- (6) The Commission shall give notice to the landlord of any person nominated by them in pursuance of subsection (4) above, and the landlord shall accept that person as successor to the tenancy of the croft.
- (7) The nomination by the Commission, in pursuance of subsection (4) above, of any person as successor to the tenancy of the croft shall transfer the interest of the tenant under that tenancy to that person, and such transfer shall be in or towards satisfaction of that person's entitlement or claim in the intestate estate of the deceased crofter.
- (8) If at the expiry of one month after the end of the period referred to in section 16(3)(b) of the 1964 Act the executor has not furnished to the landlord particulars of any transferee in accordance with subsection (1) above and the Commission have not nominated any person as successor under subsection (4) above, the Commission may declare the croft to be vacant and, if they do so, shall notify the landlord accordingly.
- (9) Where the Commission have under the foregoing provisions of this section nominated a person as successor to the tenancy or, as the case may be, have declared the croft to be vacant, any right of any person (other than the person so nominated) in, or in relation to, the tenancy shall be extinguished.
- (10) Where a croft has been declared under subsection (8) above to be vacant, the landlord shall be liable—
  - (a) if the deceased crofter was at the date of his death under any liability to the Secretary of State in respect of any loan, to pay to the Secretary of State the whole or so much of the value of the improvements on the croft as will discharge the liability of the deceased crofter, and to pay to the executor of the deceased crofter, if a claim is made in that behalf not later than 12 months after the date on which the croft was declared to be vacant, any balance of the value aforesaid;
  - (b) if at the date of his death the deceased crofter was not under any such liability to the Secretary of State and a claim is made in that behalf as aforesaid, to pay to the executor of the deceased crofter the value of the improvements on the croft.

In this subsection the expression “the value of the 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.

## (11) Where—

- (a) a croft has been declared under subsection (8) above 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 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 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.