



**CROFTING COMMISSION
COIMISEAN NA CROITEARACHD**

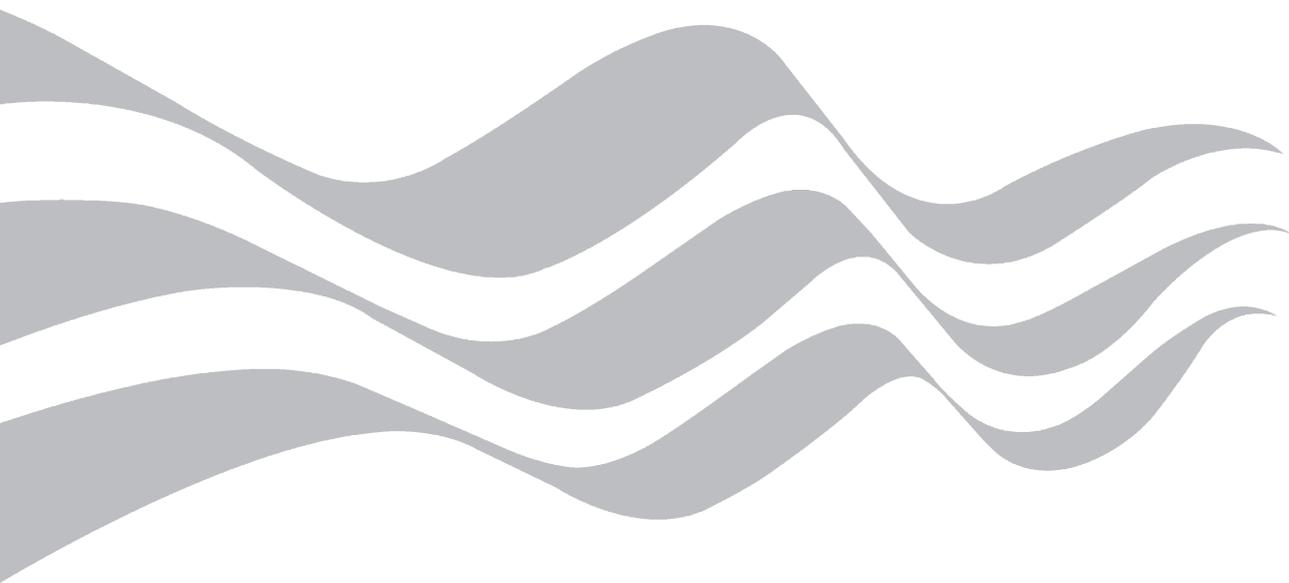
Great Glen House, Leachkin Road,
Inverness IV3 8NW

T: (01463) 663439 • F: (01463) 725067

E: info@crofting.scotland.gov.uk

W: www.crofting.scotland.gov.uk

Intestate Succession – Transfer by Executor Notice to Landlord(s) Guidance Notes



1. IMPORTANT INFORMATION

This pro-forma Notice is provided by the Crofting Commission in order to assist Executors. However, Executors are urged to obtain independent legal advice to ensure that they are fulfilling their obligations and reflecting recent major changes in the law.

This Notice should be used where (1) a crofter has died leaving no Will or (2) if they did leave a will, if the bequest became null and void. If these steps are not completed within 24 months, the tenancy will be at risk.

The steps which an Executor must take within 24 months of either the crofter's death or the bequest becoming null and void are as follows:-

- (1) Obtain Confirmation from the Sheriff Court to the Estate of the deceased crofter. The croft tenancy and any grazing rights or shares must be detailed on the inventory to the Confirmation;
- (2) Transfer* the tenancy of the croft (including any grazing rights or shares); AND
- (3) Send this Notice to the landlord or landlords of the croft and send a copy of it to the Crofting Commission.

These steps **MUST** be completed within 24 months of the crofter's death, otherwise the tenancy will be at risk. If you are not going to be in a position to transfer the tenancy within the 24 month period set out at Page 1, you must either:

- (1) Obtain agreement from the landlord to extend the period OR
- (2) Obtain an extension from the Court for extending the period in which the croft can be transferred.

*The case of McGrath -v- Nelson (2010 CSOH 149) established that one way in which to transfer a tenancy was for the confirmed Executor to use a docket endorsed on the Confirmation. Executors should take legal advice on the question of how to transfer the tenancy and whether the case of McGrath -v- Nelson is applicable in their particular circumstances.

In the event that the Executor considers that it is appropriate to transfer the tenancy by way of a docket, a pro forma docket can be found at Appendix 3 of the notification or on our website.

To avoid delays, please ensure you answer all relevant questions and provide all documents requested to the address above. Failure to do so may mean we have to return your notification.

Please note that any information you provide is part of an open process and made available to other parties involved in the process. Your information would also be released under a Freedom of Information enquiry subject to any disclosure exemptions under the Data Protection Act 1998.

2. Requirement to Register your Croft land

The final element of the Crofting Reform (Scotland) Act 2010 relating to the registration of croft land came into effect on 30 November 2013. The Crofting Register is map-based and provides a definitive record of the extent of, and interest in, land within crofting tenure in Scotland. In addition to showing the boundaries of land, the register also contains information on the tenant, owner-occupier crofter and/or the landlord of the registered croft. The Crofting Register is maintained by the Keeper of the Registers of Scotland, although the application for registration should be made in the first instance to the Crofting Commission who will check the information contained in or accompanying the registration application against the information contained in the Commission's Register of Crofts.

If the croft is unregistered, the transfer of tenancy will take effect once the croft is registered with the Keeper of the Registers of Scotland. If the croft is already registered, the transfer of tenancy will take effect once the transfer has been registered with the Keeper of the Registers of Scotland.

Ideally, the registration form should accompany the notification form. However, if this is not possible, you must still complete steps 1-3 as indicated in '1. Important Information' or the transfer of the tenancy will be invalid if the croft is unregistered. This registration form needs to be accompanied by a map showing the boundaries of the croft along with the registration fee otherwise no map is required.

The registration form and accompanying guidance notes can be found at www.ros.gov.uk/services/registration/crofting-register

3. Notification of Landlord

The Executor must send Parts 1 and 2 of the notification form to the croft landlord(s). You are encouraged to use a mail service by which you can ensure that delivery has been completed, for example Royal Mail's Recorded Delivery service.

Copies of Parts 1 and 2 of the Notice, plus Appendix 1 and 2 should be sent to the Commission.



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