

INTESTACY (termination of tenancy by the Commission): Where the croft tenancy has not been transferred by the executor within the statutory time period

(Crofters (Scotland) Act 1993 ("the 1993 Act") – Section 11(4) – 11(8))

LAW

If at the expiry of the period of 24 months referred to in subsection 11(2) of the 1993 Act, it appears to the Commission (whether from notification under that subsection or otherwise) that the executor has not given the landlord any notice in accordance with subsection 11(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.

POLICY

Crofting Commission Policy Plan 2022

Policy on croft residency and use of crofts (Paragraphs 32 & 33)

The Commission will promote the concept of “living succession” as a measure to reduce the number of intestate situations and unresolved successions.

The Commission will seek to ensure that long-standing unresolved successions are resolved in the first instance by the executor of the deceased crofter or the landlord, but failing that the Commission may use its statutory powers to terminate the tenancy and declare the croft vacant, to enable the tenancy to be let to an individual who will comply with the statutory duties relating to residence and land use.

PROCEDURE

These provisions apply where:

- (1) The confirmed executor¹ of the deceased crofter has failed to give notice of the transfer to the landlord² and sent a copy of the notice to the Commission within 24 months of:
 - (a) Where there has been no bequest –
 - (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.
 - (b) Where there was a bequest which became null and void³, within 24 months of the date on which the bequest became null and void.
- (2) If at the expiry of the 24 month period referred to in paragraph 1 above the executor has not given the landlord notice of the transfer, the landlord must notify the Commission accordingly.
- (3) If at the expiry of the 24 month period referred to in paragraph 1 above, it appears to the Commission (whether from notification by the landlord or otherwise) that the executor has not given the landlord notice of a transfer of the tenancy, the Commission shall give notice in such manner as it thinks proper, whether by advertisement or otherwise –

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.

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.

³ 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)).

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

that the Commission propose to terminate the tenancy and declare the croft vacant.

- (4) The notice will invite recipients to make representations¹, 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 representation (if any) made to it in accordance with paragraph 4 (above), the Commission is 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;
 - (b) the executor is proposing to transfer the tenancy²; 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 estate³

¹ Please refer to separate Rules of Procedure on *Hearings and the Opportunity To Be Heard Following Representations*

² The Commission has received legal advice to the effect that this provision can only apply where the executor has obtained either (a) the agreement of the landlord or (b) an order from a Court extending the 24 month period in which the tenancy can be transferred.

³ The Commission has received legal advice to the effect that this provision can only apply where the executor has obtained either (a) the agreement of the landlord or (b) an order from a Court extending the 24 month period in which the tenancy can be transferred.

the Commission will not implement its proposal to terminate the tenancy or declare the croft vacant, but if it is not so satisfied the Commission may implement the proposal if it considers it appropriate to do so.

- (6) If the Commission is not entitled to implement its proposal as a result of the representations received in response to the notice, but it appears subsequently (whether from representations made to them or otherwise) that the tenancy is not being transferred or is unable to be transferred, the Commission may give a further notice to terminate under subsection 11(4).
- (7) Where the Commission declare the croft vacant –
 - (a) it shall give notice to that effect to
 - (i) the landlord;
 - (ii) the executor (if an executor is confirmed in respect of the intestate estate of the deceased crofter), and
 - (iii) each person of whom the Commission is aware and who the Commission consider may be entitled to claim prior or legal rights out of, or succeed to the intestate estate (if no executor is so confirmed).
- (8) Any right of any person in, or in relation to, the tenancy shall be extinguished and the landlord shall be liable to pay the executor of the deceased crofter the value of the permanent improvements on the croft.
- (9) The notice shall require the landlord to submit to the Commission, **before the expiry of the period of 4 months beginning with the date on which the notice is given**, proposals to let the croft¹.

¹ If proposal(s) are received they shall be dealt with under the Rules of Procedure relating to “*Re-letting of a Vacant Croft (proposal) – section 23(5).*”

***N.B.** A proposal to let the croft entails proposing to let it to a specific individual person in a form that is capable of being approved or rejected by the Commission. To this end the Commission will provide a form which will contain a number of questions. The landlord's answers to these questions will provide the basis for the proposal. This will assist the Commission when deciding whether to approve or reject a proposal.*

(10) If at the end of the 4 month period (referred to in paragraph 9 above) either:

- (i) no proposals have been submitted, or
- (ii) the landlord has submitted proposals which the Commission has rejected

then the Commission shall take over the letting process by inviting applications for the tenancy of the croft .¹

¹ If no proposals are received or the proposals are not acceptable, please refer to Rules on Procedure on "Commission Letting of a Vacant Croft – section 23(5C)."