



**CROFTING COMMISSION
COIMISEAN NA CROITEARACHD**

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

**Gluasad còir-sheilbh gun tiomnadh leis an
neach-gnìomha**



1. IMPORTANT INFORMATION

PLEASE READ THESE NOTES BEFORE YOU COMPLETE THE NOTIFICATION FORM

The Crofting Commission has prepared a Notice Form for the use of Executors to transfer a croft tenancy. 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.

The Notice Form should be used where (1) a crofter has died leaving no Will, or (2) where they did leave a will, but the bequest subsequently became null and void.

The steps which an Executor must take 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);*

*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.

AND

- (3) Send the Notice Form to the landlord(s) 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.

However, it is the Commission's understanding that an executor **can** still transfer a tenancy after the expiry of the statutory period of 24 months, **provided** that neither the landlord or the executor has terminated the tenancy in accordance with section 16(3)(b) of the Succession (Scotland) Act 1964.

To avoid delays, please ensure you answer all relevant questions and provide all documents requested to the address shown on the front page of this guidance note. Failure to do so may mean we have to return your notification.

2. REQUIREMENT TO REGISTER YOUR CROFT LAND

The Crofting Reform (Scotland) Act 2010 established the Crofting Register.

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.

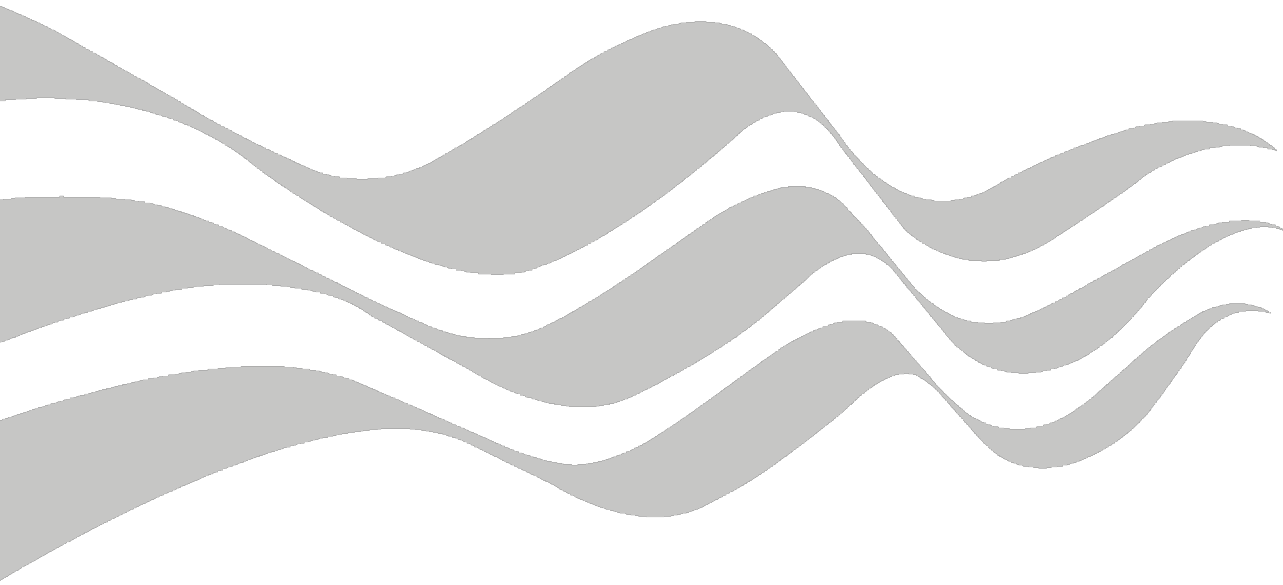
Ideally, the registration form should accompany the notification form. However, if this is not possible, you must still complete steps 1-3 as indicated in '1. Important Information' or the transfer of the tenancy will be invalid if the croft is unregistered. This registration form needs to be accompanied 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

Status of Croft	Relevant Date	Registers of Scotland Form
Where croft is unregistered	Date of registration of the croft	Form A application for first registration of a croft
Where croft is already registered	Date of registration of the transfer of the tenancy of the croft	Form B application for registration of subsequent event affecting a registered croft

3. NOTIFICATION TO 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 a 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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