

# CROFTING REFORM ETC. ACT 2007

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## EXPLANATORY NOTES

### BACKGROUND

#### *The Act*

#### **Part 2: Crofts**

#### *Section 17: Amendment of section 11 of the 1993 Act*

69. **Section 17** makes a number of amendments to section 11 of the 1993 Act to modify the arrangements that currently apply where the executor in an intestacy fails to find a new tenant. There are a number of changes but the most significant is that the Commission no longer have a role in identifying a tenant from amongst those who might be entitled to inherit the intestate estate of the deceased crofter. Instead, simpler arrangements are put in place, including a declaration by the Commission that the tenancy has fallen vacant. If the tenancy is declared vacant the landlord is then required to re-let in accordance with the provisions of section 23 of the 1993 Act.
70. **Section 17(2)** amends section 11(2) of the 1993 Act so as to increase the time limit available to an executor to notify the landlord of the particulars of a proposed new tenant to 12 months from the relevant date, thus giving the executor more time to find a suitable tenant.
71. **Section 17(3)** repeals section 11(3)(a) of the 1993 Act. This provision is no longer necessary because the change made to section 10 of the 1993 Act by section 13(3) of the Act means that the Commission are informed of a bequest at the same time as the landlord. The change made to the 1993 Act by section 17(3)(b)(i) of the Act is consequential upon the repeal of section 11(3)(a) of that Act. The change made to the 1993 Act by section 17(3)(b)(ii) of the Act has the effect of giving the executor up to 2 months to notify the Commission of the death of the crofter before the 12 month period allowed for the transfer of the tenancy starts. A failure to notify however means that the 12 month period will start at the date of death of the crofter. The Bill, therefore, creates a time penalty for a failure to notify the Commission.
72. **Section 17(4)** deletes subsections (4) to (9) of section 11 of the 1993 Act (measures that give the Commission power to get involved in finding a member of the deceased crofter's family who is suitable to be the new croft tenant and nominating that person as the tenant). In place of these provisions it puts in place new subsections (4) to (8) setting out a simpler process by which if a suitable tenant is not found by the executor the Commission will eventually declare the croft vacant and thus available for re-let by the landlord.
73. New section 11(4) of the 1993 Act requires the Commission to notify the landlord, the executor and, if there is no executor, such persons as the Commission know of and believe might have rights in the intestate estate that the 12 months from the relevant date has expired and the Commission propose to terminate the tenancy and declare the croft vacant. This provision does not require the Commission to take steps to try and identify every person who might be entitled to claim rights in the intestate estate. The

*These notes relate to the Crofting Reform etc. Act 2007  
(asp 7) which received Royal Assent on 1 March 2007*

Commission are only required to notify the individuals they were aware of at that time. That notice would invite those to whom it was sent to make representations on the proposal within a month of the date of the notice.

74. New section 11(5) of the 1993 Act allows the Commission, after considering any representations in terms of section 11(4), to proceed to terminate the tenancy, if they consider it appropriate to do so, providing that the tenancy had not been terminated already, the executor had not planned to transfer the tenancy or there was not someone entitled to exercise prior rights in relation to the tenancy.
75. New section 11(6) of the 1993 Act allows the Commission to issue a further termination notice under the provisions of new section 11(4) if they conclude that the tenancy is not or cannot be transferred. New section 11(7) allows the Commission to terminate the tenancy following that further notice if they consider it appropriate to do so.
76. New section 11(8) of the 1993 Act requires the Commission on deciding to terminate a tenancy to give notice to the same people as received notice under new section 11(4). The notice given to the landlord requires the landlord to submit re-letting proposals. Section 11(8) also provides that when that notice is given the rights any person may have in relation to the tenancy are terminated and sets out the landlord's liability to pay the executor the value of the permanent improvements on the croft.
77. [Section 17\(5\)](#) amends section 11(10) of the 1993 Act to leave only a definition of the value of improvements for the purposes of new section 11(8)(c). The effect of the amendment is to end the requirement for the landlord to repay from the value of the improvements any sums due by the deceased crofter to the Scottish Ministers.
78. [Section 17\(6\)](#) is a technical amendment necessary as a consequence of other changes to section 11.