

CROFTING REFORM ETC. ACT 2007

EXPLANATORY NOTES

BACKGROUND

The Act

Part 2: Crofts

Section 13: Bequest of tenancy of croft

50. This section amends the provisions of section 10 of the 1993 Act.
51. **Section 13(2)** amends section 10(1) to make it clear that a crofter may only bequeath the tenancy of his croft to a “natural person”. The tenancy must be left to an individual and not to a company or institution.
52. **Section 13(3)** amends section 10(2). Section 13(3)(a) introduces a requirement that the legatee must send a copy of the notice of the bequest to the Commission in addition to the current requirement that notice be given to the landlord. Sections 13(3)(b) and (e) extend by 2 months the periods available to the legatee to give notice of a bequest. Section 13(3)(c) emphasises that whether a cause is accepted to be “unavoidable” is a matter for the Commission to determine. Section 13(3)(d) clarifies that a legatee, as well as giving notice to the landlord within the further 6 month period for notification must also copy the notice to the Commission. Section 13(3)(h) repeals the latter half of section 10(2) which is replaced by the new sections inserted by section 13(4).
53. **Section 13(4)** creates 4 new subsections to be inserted after section 10(2). New section 10(2A) allows the executor to give notice of the bequest of the tenancy in addition to the current provision in section 10(2) requiring the legatee to do so. New section 10(2B) provides that the legatee will (provided there is no objection from the landlord in the case of a non-family legatee) take control of the tenancy on the date on which the Commission indicate that the information that they require under the provisions of new section 10(2C) has been provided. It also provides that when the legatee takes over the tenancy it will be as if the transfer took place on the date of the death of the previous tenant.
54. New section 10(2C) provides that on receipt of notice of a bequest from a legatee or executor the Commission must notify the legatee of the information required by the Commission to update the Register of Crofts. In the case of a legatee who is not a member of the deceased crofter’s family they will only do so if there has not been an objection from the landlord and in such cases must also indicate in the notification to the legatee that there has been no objection.
55. New section 10(2D) requires the Commission to notify the legatee once they are satisfied that the information set out in the notification given under section 10(2C) has been provided.

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

56. **Section 13(5)** replaces section 10(3) with a new but similar provision setting out the detail of how a landlord should exercise the right to object to a bequest to a person other than a member of the deceased crofter's family.
57. **Section 13(6)** replaces section 10(4)(b) with a new provision which retains the existing requirement to notify and adds a provision to the effect that the legatee should be notified by the Commission of the need to provide information to be entered in the Register of Crofts.
58. **Section 13(7)** inserts seven new subsections into section 10 after subsection (4). Section 10(4A) provides that, when the legatee has provided the information that new section 10(4)(b) requires the legatee to supply, the Commission must notify the legatee that this has been done. On receipt of that notice the legatee is empowered to take control of the tenancy except where there has been an appeal under the provisions of section 10(4B). New section 10(4B) sets out the arrangements for appealing a decision made by the Commission in accordance with the provision of section 10(4). It provides that appeal shall be by way of a stated case, on one or more of the grounds mentioned in new section 52A(3).
59. New section 10(4C) inserted into the 1993 Act introduces (in relation to appeals regarding bequests of croft tenancy) a power of open remit for the Land Court. After hearing an appeal the Land Court can confirm the decision, direct the Commission to come to a different decision or remit a case back to the Commission without directing the Commission as to what to do. New section 10(4D) explains what happens where the Land Court finds on appeal that a bequest should be upheld.
60. New section 10(4E) introduces a new provision to the effect that (a) a legatee accepting the bequest of a tenancy assumes responsibility for debts incurred by the deceased as former tenant of the croft and (b) the executor can recover reasonable expenses relating to the management of the tenancy from the legatee, including arrangements for the settlement of any disputes in the Land Court.
61. New section 10(4F) makes it clear that a croft tenancy is an asset of the deceased crofter's estate and so liable to be set against expenses and debts of the estate. This would require the legatee to contribute to the settlement of such expenses and debts if the legatee chooses to retain the tenancy.