

CROFTING REFORM ETC. ACT 2007

EXPLANATORY NOTES

BACKGROUND

The Act

Part 2: Crofts

Section 14: Prior rights, on intestacy, in relation to tenancy of croft

62. The whole of section 14 consists of amendments to section 8 of the 1964 Act. These amendments extend the prior rights of a spouse or civil partner of a crofter to cover the whole of the croft rather than the croft house alone and convey the same rights to a cohabitant where there is no spouse or civil partner (a civil partnership is defined in section 1 of the Civil Partnership Act 2004 as a relationship between two people of the same sex which is formed when they register as civil partners of each other in accordance with provisions of that Act). (A cohabitant is defined for this purpose in section 14(5) which inserts a definition of “cohabitant” into section 8(6) of the 1964 Act). The effect of these changes is to afford a spouse or civil partner or cohabitant of a deceased crofter the same degree of protection in retaining the croft tenancy as the 1964 Act affords the spouse or civil partner of any other individual in retaining a dwelling-house owned by that person. This essentially means that where there is a house on the croft and the value of the relevant interest in that house is below the statutory threshold (currently £130,000), the spouse or civil partner or cohabitant of the deceased crofter is entitled to the croft tenancy (including the house) up to that amount. Where the value is above that threshold the entitlement is to the sum specified by order under section 8(1)(b) of the 1964 Act.
63. The aforementioned changes are made by section 14(3) which provides new sections 8(2A) and 8(2B) in the 1964 Act. New subsection (2A) qualifies the existing provision in subsection (2) of that Act so as to provide that a croft tenancy is treated as being subject to prior rights in the same way as a house owned or leased under other forms of tenure. (Prior rights are the statutory rights of a spouse on intestacy to claim the house (with furniture and plenishings up to a certain value) and a fixed sum of money depending on whether or not the deceased is also survived by issue). New subsection (2B) sets out what happens when there is more than one property over which a spouse, civil partner or cohabitant could exercise a prior right.
64. [Section 14\(4\)](#) modifies section 8(4) of the 1964 Act to distinguish between properties to which prior rights apply which are crofts and those that are not.