



**CROFTING COMMISSION
COIMISEAN NA CROITEARACHD**



Succession Information Pack



Contents

Succession in crofting	4
The benefits of an active croft in the local area	4
What may happen if there is no Will or if the Will cannot be given effect to	6
How to pass on your croft during your lifetime	6
Things to Consider	
<i>Your Successor</i>	7
<i>House on the Croft</i>	7
<i>Croft Division</i>	7
<i>Croft Registration</i>	8
<i>Power of Attorney</i>	8
Planning for your croft in your Will	9
Further sources of help	10

Succession in Crofting

Succession is the process by which someone passes on an asset (croft) either during their lifetime or in their Will. It is something people do not necessarily want to think about. When it comes to crofting, succession is very important, and it is a good idea to have given it some thought, regardless of your current situation or age. Crofting plays a vital role in the life of the Highlands and Islands. Crofts are in great demand, and so crofts which are not being used are a lost opportunity. The longer that a croft is not being worked, the land, the fencing, buildings and drainage will deteriorate. This will make it more difficult and expensive for the next crofter to bring the croft back into use.

When the time comes that you no longer use your croft, choosing to pass it on during your lifetime has several benefits to you and your successor(s).

- *Your wishes are clear and can be carried out during your lifetime*
- *The croft is passed on in the best possible condition for the new crofter so it can remain active*
- *It avoids the prospect of intestate succession (see further information below)*
- *You will have the opportunity to oversee the process*
- *You can share your knowledge and experience of crofting with your chosen new crofter*
- *It avoids potential disputes between possible successors*
- *It allows you to see the croft in new hands and the many benefits it can bring to the area*

The benefits of an active croft in the local area;

Economy

- *Agriculture grants for livestock or growing crops*
- *Money spent in the local community*
- *Crofters can operate businesses from their croft, for example agritourism*
- *Access to crofting agricultural funding and support schemes*
- *Crofting households may include several people, who are all looking after the croft, and are making a contribution to the rural economy*
- *Renewable energy opportunities on croft land*
- *When common grazings are positively managed, this can offer the opportunity for development taking place*

Environment

- The opportunity to retain and enhance biodiversity
- Croft land is kept in good condition for present and future generations
- Crofting's low intensity form of land management has a positive environmental impact on the landscape
- Locally grown food helps to reduce food miles

Culture

- The culture associated with crofting forms a distinctive part of the cultural heritage of Scotland and will be preserved
- Local crofting knowledge built up over many generations is passed on to new crofters

Community

- The opportunity for building houses to increase or retain population
- Helping to retain or grow community services and amenities such as schools, shops, community facilities, through population retention
- Crofters developing cooperative working with the sharing of communal crofting activities, machinery, and skills
- A strong sense of community and common purpose





What may happen if there is no Will or if the Will cannot be given effect to

When a crofter dies with no Will or the Will is not able to be given effect to, then the croft tenancy falls into what is known as "intestacy". Intestate croft succession is a complex area of law which can take a long time to resolve, and sometimes there is no clear line of succession and on occasion several parties can have an interest in the tenancy. It can also be expensive. In intestacy, the croft will often not pass directly to the person you might have expected or hoped would succeed.

You should always seek independent legal advice before transferring a croft (tenancy or owner-occupied) as the transfer is permanent and cannot be reversed, should you change your mind.

How to pass on your croft during your lifetime

As a tenant crofter you can:

Apply to Assign your Croft

Assignment is the **permanent transfer** of a tenancy to a person of your choice, which is subject to approval by the Crofting Commission. This can be to a family member, or you can transfer your tenancy, for a price you agree, with a proposed assignee.

If you have a croft house then this can be decrofted (made separate from the croft) in advance of the assignation, or you can include it in the transfer, if you have or are moving into separate accommodation.

As an Owner-Occupier crofter you can:

Transfer the land ownership using a solicitor

You should seek independent legal advice before transferring ownership of any croft land.

The onus is on the new owner-occupier crofter to notify the Commission when a change of ownership takes place. There may be a requirement to register the croft under certain circumstances.





Your Successor

When choosing your successor, you should consider their ability to fulfil the duties of a crofter.

These duties are defined in legislation and include:

- A duty to be resident on or within 32 kilometres of the croft
- A duty not to neglect the croft
- A duty to cultivate and maintain the croft or to put it to another purposeful use

Should you have no successor in mind, the Scottish Land Matching Service (SLMS) holds details of those looking for an opportunity in crofting. It also offers a place to register an opportunity which may be of interest to aspiring crofters. www.slms.scot.

House on the Croft

If you intend to continue to live in your house on the croft, it is important that you understand the implications of the house status. If the house is not decrofted, any changes to the croft will affect your house as well.

You may wish to de-croft your house before assigning the tenancy or transferring ownership.

If you wish for the croft house to remain part of the croft but for you to live there until your death, a solicitor can arrange a life rental agreement.



Croft Division

A crofter can, if they wish, divide their croft prior to succession. This may be something you want to consider if you have more than one successor in mind. It is important to note that you can only assign the croft to one named individual. The process for division is different depending on the crofter's status. Further information is available on our website.



Croft Registration

You may wish to consider the voluntary registration of your croft with Registers of Scotland. This registration is based on the map of your croft. A fee is payable to Registers of Scotland (currently £90) to first register your croft. Subsequent amendments including division, assignation or decrofting will incur an additional fee of £90. Further information is available on the Crofting Register website www.crofts.ros.gov.uk

Power of Attorney

Putting in place a Power of Attorney can give you peace of mind that someone you trust is in charge of your affairs. For more information see the **What is a Power of Attorney** (publicguardian-scotland.gov.uk)



Further information and guidance on the application types and processes mentioned in this booklet can be found on the Commission's website. www.crofting.scotland.gov.uk



Planning for your croft in your Will

If you would rather keep your croft during your lifetime, you should be aware that, for as long as you are a crofter, you are required to comply with all crofting duties, including the duty to cultivate the croft.

It is important that crofters make a Will that includes the croft and any grazing share(s). It is advisable that you instruct a solicitor, who has knowledge and experience of dealing with Wills involving crofts. The Law Society of Scotland can help you find a solicitor with crofting experience. Please visit their website at www.lawscot.org.uk

Key Points of Croft Wills

01

Ensure the solicitor you use has experience of dealing with crofting matters in a Will

02

*Make sure you know your croft status
(are you a Tenant or an Owner-Occupier)*

03

Make sure you know the status of any grazings shares (whether they form part of the croft tenancy or whether they are stand-alone shares)

(The status of your croft and shares can be checked on the Register of Crofts page on the Crofting Commission website)

04

Be specific as to who you are leaving the croft to

05

Ensure grazings shares are dealt with in the Will, particularly if they are stand-alone shares (Deemed Croft)

06

Make specific provision for who is to inherit the house on the croft, if it has been decrofted

(If the house is still part of the croft, whoever succeeds to the croft, may also acquire the croft house)

07

Keep your Will up to date; make sure any material changes to your croft or circumstances are included

Further Sources of Information

Crofting Commission Website

Please visit our website for further information and guidance of all the regulatory applications mentioned above including; assignation, decrofting, subletting, short term lets and succession.

Telephone 01463 663439

www.crofting.scotland.gov.uk

Your Landlord

Landlords often have original estate maps which may be of assistance in the croft registration process.

Farm Advisory Service Funding

Crofters can now access up to £1,000 in funding through the Farm Advisory Service (FAS) for specialist advice on succession planning – without the need for a prior Integrated Land Management Plan (ILMP). Please visit

www.fas.scot/succession-planning-crofting/

Telephone 0300 323 0161

Scottish Land Matching Service

The Scottish Land Matching Service holds details of those looking for an opportunity in crofting and also offers a place to register an opportunity, which may be of interest to aspiring crofters.

www.slms.scot

Telephone 07741 902648

Scotland's Citizens Advice

Advice provided by this service is free, independent, confidential, impartial and available to everyone.

Free Helpline 0800 028 1456

Royal Scottish Agricultural Benevolent Institution (RSABI)

RSABI can discuss any concerns over succession and point you in the direction of professional support and advice.

www.rsabi.org.uk

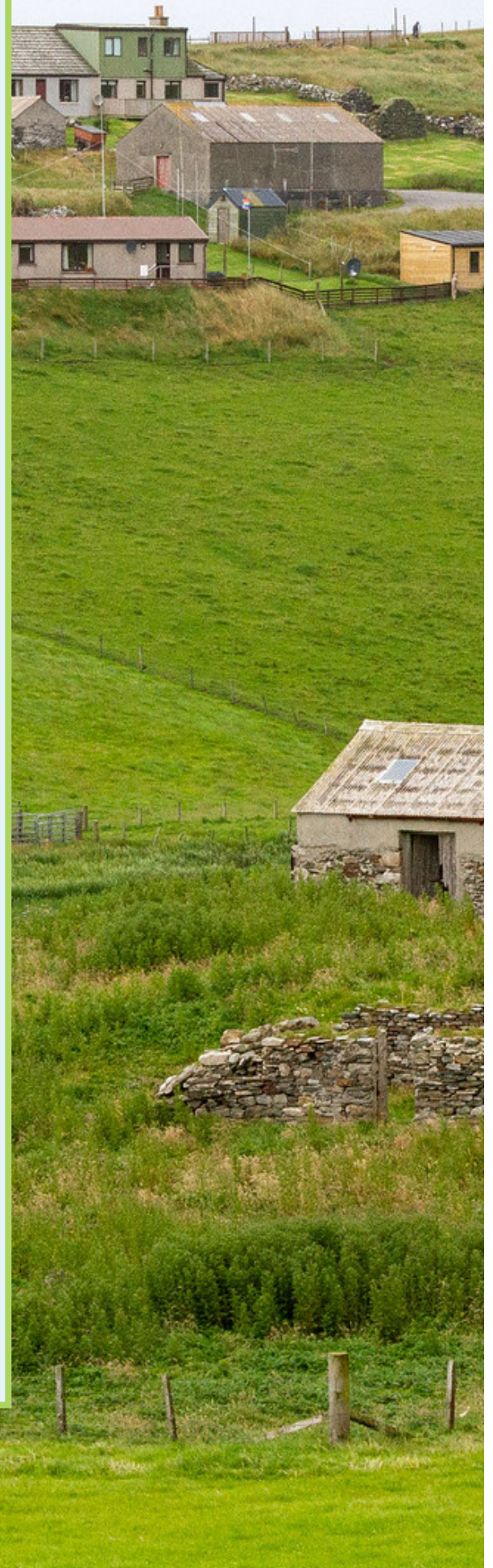
Freephone 0808 1234 55

Law Society of Scotland

Want to know more about some common legal issues and how a solicitor can help you?

www.lawscot.org.uk/for-the-public/

Telephone 01312267411







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