

Consultation Response

Crofting Consultation 2024: Proposals for Crofting Law Reform

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Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

We welcome the opportunity to consider and respond to the Scottish Government's *Crofting Consultation 2024: Proposals for Crofting Law Reform*.¹ We have the following comments to put forward for consideration.

General Remarks

We greatly welcome the publication of the consultation, and the Scottish Government's intention to modernise the law in this area.

Crofting law has developed over time in a piecemeal fashion. It is generally considered to be a complex and difficult area of the law, made particularly so by the combination of the law relating to property and that relating to landlord and tenant matters.

Widespread reform of the law of crofting is required, both in terms of simplifying and restating the existing law and making further changes. The Law Society of Scotland has advocated for modernising the legal framework relating to crofting for many years, including publishing a paper on Crofting Law reform in October 2020 ("**Crofting Law Reform Paper**").² The object of the paper was to highlight the need for reform of the law in this area and to propose legislative change in relation to certain aspects. We refer to the paper for more detail where relevant. We are also represented on the Crofting Bill Group, whose work informed the consultation.

We have included comments below on additional areas that were not covered in the consultation where we would welcome legislative changes to improve or clarify the law.

More widely, we highlight the extensive ongoing and prospective legislative and policy reform concerning land reform and the agricultural and environmental legal landscape. We primarily highlight the Land Reform (Scotland) Bill, currently at Stage 1, and other relevant reforms including the recent passage of both the Agricultural and Rural Communities (Scotland) Act 2024 and the Wildlife Management and

¹ [Crofting consultation 2024](#)

² Our Crofting Law Reform Paper can be accessed [here](#); and an executive summary [here](#).



Muirburn (Scotland) Act 2024. We also note further prospective legislative and policy changes concerning biodiversity and land use, including the introduction of a Natural Environment Bill providing for statutory nature recovery targets³ and changes relating to deer management.⁴

We stress the importance of considering the interplay and overlap between such reforms to ensure a consistent and aligned approach. It is important that there is clarity as to how these proposals are intended to align with other relevant areas of law and practice, and that there is consideration of any unintended consequences. In particular, we stress the importance of ensuring consistency across different areas of law to ensure that the objectives in one area are not disrupted by technical obstacles in others.

Consultation Questions

Entry to crofting

Q1.1. Do you agree that two people should be able to share a joint croft tenancy?

Yes

It seems anomalous that owner-occupier crofts can be held in joint names but tenancies cannot.

The succession point mentioned in the consultation paper is a real one and greater detail would be welcomed on the proposed treatment of a joint tenant's interest – both for succession purposes on the death of a tenant, and the broader aspects of how a share can be dealt with during the lifetime of a tenant in the context of entry and succession to crofting. Consideration could be given to the extent to which the succession process should be controlled in circumstances where there are joint tenants.

For example, whether the tenancy could only be transferred on succession following the death of a tenant either (i) by one joint tenant to the other; or (ii) by both joint tenants to a third party (albeit noting that it is unlikely in practice that two tenants would die at the exact same moment in the context of transfer by succession). We also refer to our comments at question 7.1 regarding other aspects of succession that would merit reform in this context.

Similar considerations apply in respect of how a lifetime assignation of one of the two shares would be possible, and any restrictions that would apply in this context; as well as the effect of a joint tenant seeking to terminate/renounce their interest.

It may also be useful to consider a process such as division and sale where one joint tenant can force a sale of the whole if the other party refuses to buy them out. Thought may also be required as to whether amendments to the Family Law

³ [Tackling the Nature Emergency: Consultation on Scotland's Strategic Framework for Biodiversity](#)

⁴ [Managing deer for climate and nature: consultation](#)



(Scotland) Act 1985 are required to deal with the situation where joint tenants divorce.

Thought also requires to be given as to whether both or just one of the joint tenants would need to comply with the statutory duties.

Q1.2. Do you agree with the proposal that regulatory barriers that limit the ability of an owner-occupier to grant a standard security over their croft should be removed or reduced?

Yes

We would recommend that a security over an owner-occupier croft is also intimated to the Commission and/or registered on the Crofting Register. Once this is done, any correspondence about duties investigations or the like should be intimated to the lender. We would envisage a process where the lender has the ability to step in and call up the security if a breach of duties is established.

Q1.3. Do you agree with the proposal that a tenant crofter should in principle be able to use their croft tenancy as security for a loan?

Yes

As above. We consider that more detail would be welcomed on how the mechanism will work and related practical and commercial considerations, including how the bank's interest would be dealt with following enforcement of the security. We consider that this area would particularly merit substantial stakeholder engagement, including with lenders and other relevant stakeholders, e.g. rural housing bodies operating in the crofting counties.

Q1.4. Do you agree that there needs to be modifications to rights and responsibilities when a security is in place over a croft?

Yes

We believe these changes to the law are necessary to give banks and other lenders confidence to lend.

Q1.5. Do you agree that if a croft tenancy is repossessed by a lender, the lender should be able to assign (sell) the tenancy on to a new tenant provided that either the landlord or the Crofting Commission agrees?

Don't know

If the proposal regarding the Crofting Commission not being required to consent to an assignation is brought in to law, it is not clear why a creditor in possession would require to obtain consent.



Q1.6. Do you wish to add comments in regard to the proposed application of standard securities to crofts?

Other stakeholders will be better placed to comment on the potential practical and economic impacts of these proposals. We also note that consideration would need to be given to such impacts and whether they are consistent with the policy intentions. For example, we anticipate that these proposals should help new entrants to the system afford a croft. There is also the possibility of prices increasing as a result of adding more money to the market (due to the ability to grant a security over a croft, allowing more people to access the necessary funding) without altering the supply of crofts.

Crofting communities

Q2.1. Do you agree that the right to object to applications should continue to be limited to crofters and grazings shareholders in the same township or grazings?

Don't know

We have no specific comments, as we consider these questions are fundamentally policy questions as to who should be involved in these decisions.

Q2.2. Do you agree that when deciding a decrofting application, the Crofting Commission should, alongside other considerations, be required to weigh up the sustainability of crofting across the parish?

Don't know

We highlight that the legislative regime already provides a possibility for this at section 25(1B) of the Crofters (Scotland) Act 1993 ("**1993 Act**").

Q2.3a. Would you support the extension of the right to report a suspected breach of duty to: a) Subtenants and short-term leaseholders of crofts within the local crofting community?

Don't know

This is broadly a policy point. We would note in this context, however, that it would appear that subtenants and short-term leaseholders of crofts may have more of a vested interest in these circumstances than non-crofters who reside within the local community where the croft is situated.

Consideration would need to be given to the risk of vexatious reports depending on the extent to which the right may be extended. Related capacity and resourcing questions arise in this context for dealing with such reports, depending on the extent to which the right is extended.



Q2.3b. Would you support the extension of the right to report a suspected breach of duty to: b) Non-crofters who reside within the local community where the croft is situated?

Don't know

We refer to our comments at question 2.3a.

Q2.4. Do you agree that the Crofting Commission should be empowered to determine the permitted method to be used for a public notice, and should be able to change the requirements from time to time?

Yes

We consider it appropriate for there to be flexibility for the Crofting Commission to determine this from time to time without a legislative change being necessary on each occasion.

We suggest consideration is given to ensuring consistency in the methodology and procedural aspects if the method used for public notices is changed, e.g. that relevant timescales provided for in the notice remain consistent.

Care should also be taken to ensure that any revised method is accessible to interested stakeholders to ensure this does not present a barrier to engagement.

Q2.5. Do you agree that it should be possible for public meetings to be held on an appropriate online forum or as a hybrid meeting and need not be solely in-person meetings?

Yes

We would highlight, however, that care should be taken when formulating the legislative provisions that affected stakeholders are not excluded from effectively participating. For example, not every crofting community will have high speed broadband available, so provision should remain for those unable to contribute online to do so in another manner (e.g. an opportunity to ask questions in advance).

Use of common grazings

Q3.1. Do you agree that the grazings committee duty to report should be limited to the condition of the common grazings?

Yes

This is largely a policy matter.

We can see, however, that the current duty of the grazings committee to report on the condition of the common grazings and on every croft could lead to tensions in



the community. The relaxation of parts of the reporting requirements may also encourage participation in the grazing committee as result.

We note that not all common grazings have a grazings committee. Consideration could also be given more widely to how any prospective legislation could encourage uptake and participation in a grazings committee.

Q3.2. Do you agree that meetings to appoint a grazings committee need to be notified publicly?

Yes

It is important that all those with an interest are aware of such meetings. Public notice gives an opportunity for those whose details may be out of date to attend.

Q3.3. Do you agree that shareholders should be responsible for informing their Grazings Committee of their preferred email or postal contact address?

Yes

Q3.4. Is there a need for further legislation on the purchase of grazings rights, or should the details of each transaction be left to the parties as currently?

More legislation is required

We highlight the complexities in this area. There are many aspects where the “deeming” provision does not sit well with other parts of the legislation and clarity would be welcomed. This includes, for example, how the croft extent should be registered.

Whether or not the grazing share should be capable of being separated is a policy question on which we do not express a view.

However, members have expressed concern that the law in this area is being used in unintended ways and there are a number of issues with the operation of the law currently. We consider that more detailed consideration and consultation is required to modernise these provisions appropriately, in a way which is consistent across the wider legal framework, and avoids unintended consequences. We note that the operation of “deemed crofts” engages a number of legal areas, including conveyancing practice, crofting law, and the right to buy.

Should the decision be taken to prevent such separation in future, we suggest that two points arising for further consideration include:

- i. what should the relationship be between the owner of the croft and the owner of the grazings (e.g. lease, servitude, sui generis)?
- ii. will a method of “reattachment” be proposed for those shares already detached (and perhaps now in different hands)?

We would be pleased to engage with the Scottish Government in more detail about our concerns in this area and the issues arising from the practical application of the law.

Q3.5. Do you agree that the Crofting Commission should enforce adherence to residency and land use duties for stand-alone grazings shares?

Don't know

This largely concerns policy points and practical considerations regarding the use of resources.

Q3.6. If a grazings share is forfeited by someone who is in breach, which organisation should have the initial responsibility of finding a new shareholder?

Landowner

We do not see why there would be a difference between a grazing share and any other croft in this regard.

Q3.7. If none of the grazings committee, the landlord and the Crofting Commission can find a new shareholder for a vacant grazings share, do you agree that the share should be dissolved and absorbed by the current shareholders and grazings committee?

Don't know

We are unsure as to how this would work in practice.

It is sometimes impractical to divide a small souming amongst multiple shareholders. For example, there will be many common grazings with more shareholders than each share has souming (meaning each shareholder would receive less than one sheep in additional souming).

A suggestion could be that any such grazings share, if terminated by the Crofting Commission, is either apportioned amongst existing shareholders or – given the above impracticalities – re-let by the landlord/owner. Failing which, a possibility could be that the Crofting Commission takes on the letting.

We consider that it would make sense for the Crofting Commission to be able to serve a notice on the landlord/owner asking for letting proposals in such circumstances.

We would welcome clarity on whether the rent attributable to the grazing share would be divided as well.

Q3.8. Do you agree that the provisions which allow crofter-led and joint-venture forestry schemes should be extended and adapted, to provide similarly for peatland restoration schemes, biodiversity schemes, and other schemes relating to carbon sequestration, habitat restoration or environmental improvements?

Yes

It is important that the legal framework does not present a barrier against use of the land for environmental and related purposes, where there is a policy intention to encourage use in this manner and a desire from the relevant parties.

The question of compensation for any lost rights arises in this context. We highlight that the crofter forestry provisions in the 1993 Act (from the Crofter Forestry (Scotland) Act 1991 and the existing joint forestry/woodland ventures) did not require compensation to the landlord (although ECHR considerations should be borne in mind where a loss of property rights occurs). Further, in the case of a joint-venture, the crofter and owner would be in agreement about establishing such a scheme.

We consider that there should also be provision to regulate the situation where crofters and landlord wish to undertake such projects which are not compatible with each other.

Q3.9. Do you agree that an owner who does not respond to a crofter or grazings committee application for forestry can be deemed to have consented (while retaining the right to make comments or objections at the next stage)?

Yes

Q3.10. Do you agree that the assessment of crofter-led innovations on common grazings should parallel the arrangements for inbye land?

Yes

We consider, however, it needs to be borne in mind that some shareholders may have valid objections to the scheme as well.

Q3.11. Do you agree that a landowner should be able to apply to designate land as a new common grazing even if it is adjacent or contiguous to an existing croft?

Yes

There seems no purpose to this restriction currently.



Strengthening residency and land use

Q4.1. Do you agree that the first two stages in the current process for investigating suspected breaches of duty should be combined, in order to streamline the overall process?

Yes

We welcome changes intended to improve the efficiency of the investigation process, noting that the current process seems unnecessarily cumbersome.

Q4.2. Do you agree that a crofter should not have to use or maintain their croft themselves, so long as they arrange for all the necessary and appropriate work to be carried out on their behalf?

Yes

We generally consider that this would be appropriate, and do not see the basis for why the legislation would require a crofter to undertake such work themselves. This could be of particular assistance to, for example, elderly crofters that may be unable to carry out this work themselves. We also consider that this would allow the duty to be more easily applied to trustees, executors, and companies that hold crofts.

We suggest that consideration should be given to ensuring there are appropriate controls retained to guard against unintended consequences, e.g. that some crofts do not become simply components of a large farm.

Q4.3. Do you agree that a tenant crofter should not have to obtain consent before making use of the croft for an activity that is environmentally beneficial?

Don't know

This is primarily a policy question.

It is important that any prospective legislation includes an appropriate definition of “environmentally beneficial” and there is clarity on the scope and meaning of this term.

Consideration should also be given to the existence of multiple definitions covering similar purposes across the statute book. For example, we note the ongoing development of the term “sustainable and regenerative agriculture” in the context of the Land Reform (Scotland) Bill and the Agriculture and Rural Communities (Scotland) Act 2024. The Land Reform (Scotland) Bill also proposes a duty for Scottish Ministers to publish a model lease for letting land for an “environmental purpose” (section 7). A definition of “environmental purpose” is included at section 7(4), including a reference in section 7(4)(a) to “sustainable and regenerative agriculture”. We would welcome attempts for a consistent approach to how such terms are used if there is to be an overlap or connection between them across different contexts.



Further, consideration should be given to the merits of a consenting process in this context and how this could operate. For example, who would determine whether a proposal is “environmentally beneficial” and any related avenues for appeal. Relevant considerations in addition to environmental aspects may include the permanence of the proposed activity, its scale and proportion, and the extent of the community benefit. These factors could also be determinative of the procedures under a consenting regime, e.g. whether consent is required, or solely notice of the proposed activity (or neither).

We highlight the parallels with the proposed changes, and relevant considerations, regarding agricultural improvements at section 14 of the Land Reform (Scotland) Bill.

Q4.4. Do you agree that only natural persons should be able to become owner-occupier crofters?

Don't know

This is primarily a policy question.

We would note that with regard to an owner-occupier crofter being a natural person, this would create parity between tenants and owner-occupier crofters and is one of the fundamental principles of the Crofting Reform (Scotland) Act 2010.

Other relevant considerations include how a legal person would carry out the crofting duties – for example, how a limited company or partnership be “resident” for these purposes. We consider it is important that the approach decided upon should take into account consistency with the broader crofting regime. There are related points which will require consideration, such as how a legal person’s interest would be dealt with in the event of its, e.g., insolvency, liquidation, or dissolution.

Q4.5. Do you agree that where a company or charity is currently an owner-occupier crofter, the croft should require to be transferred to one or more natural persons, the next time it changes hands?

Yes

If the legislation changes in this manner, we would agree that this is the appropriate first step in this approach. However, as companies and charities do not die, it is not necessarily inevitable that these crofts will change hands. It may be that further provision will ultimately be necessary.



Q4.6. Do you agree that we amend the Annual Notice requirement to at least once every three years, with the Crofting Commission entitled to choose how often and which years, subject to that constraint?

Don't know

This is to some extent a question of use of resources. We would comment that other proposed changes (e.g. removing the need for Commission consent to an assignation) will make the annual notice a more important process.

Q4.7. Do you agree that if a subtenant is not meeting their statutory duties, the Crofting Commission should be entitled to terminate the sublet?

Yes

We would note, however, that appropriate procedural safeguards would need to be in place in such circumstances.

Enhanced Crofting Commission powers

Q5.1. Do you agree that assignations should only require prior approval if the landlord raises an objection or if the incoming crofter already holds three or more holdings in the Register of Crofts?

Yes

This is to some extent a policy question. However, we would generally favour tenants and owner-occupiers being treated in the same manner wherever possible.

Consideration could in this context be given to:

- i. whether stand-alone grazing shares should count towards this total; and
- ii. what should happen if it is discovered that an assignee does in fact have three holdings, when they have advised the assignor or the Crofting Commission that they have less than three?

Clarity would be welcomed on whether the term “holdings” is intended to capture both tenancies and owner-occupancies. We anticipate that this is the case, although this could be open to interpretation. Similarly an appropriate definition would be required in any subsequent legislation.

Q5.2. Do you agree that transfer of owner-occupier crofter status should be subject to a Crofting Commission decision, in cases where the purchaser already holds 3 or more holdings in the Register of Crofts?

Yes

We refer to our comments at question 5.1.



Q5.3. Do you agree that sublets should only require prior approval if the landlord raises an objection?

Yes

If the proposal regarding allowing sublets to be terminated due to breach of duties is advanced, this seems a sensible use of resources.

Q5.4. Do you agree that each incoming assignee and owner-occupier crofter should be required to confirm, at the next Census or within 2 years of taking up the croft, whether they are complying with duties?

Don't know

We question whether the two year provision is necessary. We would suggest that this could be left to the next census.

A possible approach could be for the Crofting Commission to have a system to identify such crofts, and if the census is not returned that could trigger a duties investigation.

Q5.5. If you wish, please comment on your answers to Q5.1 to Q5.4.

We have no further comments to make.

Q5.6. Do you agree that the Crofting Commission should be given the power to correct the status of croft owners who deserve owner-occupier status?

Yes

We are supportive of the proposal, having raised particular concerns about this issue in our Crofting Law Reform Paper.⁵

Appropriate controls are necessary to ensure that this is only used by those actually occupying and working crofts and, we would suggest, already complying with duties as if they were crofters. We would suggest that consideration be given to preventing “true” landlords from seeking such status for themselves. It may be that a requirement to advertise the application would be appropriate so other crofters could object if they felt this was being abused.

Q5.7. Do you agree that the Crofting Commission should have the power to adjust croft boundaries, on an application by all the parties, where those parties are in agreement?

Yes

We would welcome this. We suggest that some more detail is required as to:

- i. if there will be an area limit on “minor” changes;

⁵ See “2. Owner occupier status”.



- ii. whether tenants should be able to make an application if the landlord does not respond; and
- iii. where the crofts have different landlords, whether any conveyancing will be necessary or how the rents should be divided.

We also suggest that it is not proportionate to limit this to registered crofts. It would seem a waste of resources to have to register the current boundaries as a condition of changing them. For both registered and unregistered crofts, such an order would require to be registered against both/all crofts.

[Q5.8. Do you agree that the Crofting Commission should be able to correct errors in its Directions and Orders where the case for doing so is clear?](#)

Yes

We would suggest a word other than “manifest” is used. The way that word is interpreted in the context of the Land Register is quite different from what appears to be intended here. Perhaps “obvious” errors would be a more helpful term.

We would suggest that there be some protection for those in good faith relying on the incorrect order. For example, it would be inequitable for a purchaser of a decrofted house site to find part of their garden under crofting tenure when it is discovered that there was an error in the decrofting direction.

[Q5.9. When considering a decrofting application, do you agree that the Crofting Commission should consider whether the applicant is complying with their statutory crofting duties, such as being resident and cultivating the croft?](#)

Don't know

This is largely a policy question.

A further point of consideration is whether there may be merit in allowing the decrofting of a pre-existing house. Often this is all that a crofter is keeping the croft for, so it may facilitate an efficient and consensual process if the house can be decrofted and the croft sold or assigned.

Consideration should also be given to any interaction between these proposals and those at question 5.11.

[Q5.10. When considering a decrofting application, do you agree that the Crofting Commission should consider whether the croft has received previous decrofting applications?](#)

Don't know

This is largely a policy question.

We would recommend any reform in this area stop short of a bar on a certain number of decroftings and that these are considered on a case-by-case basis. The imposition of an arbitrary number of decroftings should be avoided.



If a reasonable purpose that is not compatible with crofting tenure can be shown, we consider that it would be inappropriate for “over-regulation” to act as a barrier. Equally, the size of such decroftings should be taken in to account.

Q5.11. Do you agree that the Crofting Commission should be able to use administrative sanctions where there is a regulatory breach?

Don't know

This is a policy question.

We would suggest that any such rules should only come into effect once a formal finding of breach has been made and should be subject to appeal to the Land Court. Consideration could also be given in this context to the possibility of any interim sanctions.

Q5.12. If you answered yes to Q5.11, do you agree that the Crofting Commission should be able to revoke approval or decline to deal with applications?

Don't know

Q5.13. If you answered yes to Q5.11, do you consider that any other type of administrative sanction should be available as well as, or instead of, a power to revoke approvals or consider applications?

Don't know

Q5.14. Do you have any suggestions for how we split the number of Commissioners between elected and appointed?

We have no specific comments to make.

Q5.15. If we were to reduce the number of elected Commissioners, how should we divide the crofting counties into constituencies?

We have no specific comments to make.

Q5.16. Should anyone who has twice previously been elected as a Crofting Commissioner be able to stand again in another crofting election?

Don't know

Q5.17. Should voter eligibility operate on the same basis as for the previous three elections?

Don't know



Simplifying crofting

Q6.1. Do you agree that we should extend the powers of the Keeper of the Registers of Scotland for correcting errors in the Crofting Register?

Yes

The Keeper should be empowered to correct the Register however the inaccuracy comes to her attention.

Q6.2. Do you agree that all registration applications should be copied to the relevant landlord, in order to allow the landlord to comment if he or she chooses to do so?

No

If the decision as to what is registered rests with the crofter, we are not sure what the purpose of this is. We suspect it will add time and cost to processing all sorts of applications but may not yield much benefit.

If the proposal at question 6.1 is given effect to, we are not convinced there is a need to widen the definition of “original applicant” in the way suggested. We consider that the specific case of executors is now governed by *Executor of the late Alexander James Murray v Crofting Commission* SLC/49/23.

If the proposal at question 6.1 is not given effect to, we would suggest that the concept of the original applicant could be replaced with allowing either the landlord, tenant, or owner-occupier of the croft to bring such matters to the Keeper’s attention (it being recognised that the Keeper would still have the ability to either accept the submission and correct the Register, or refuse it and require an order from the Land Court).

Q6.3. Do you agree that the purchase of title to a croft by a tenant crofter should be a trigger for registration in the Crofting Register?

Yes

Q6.4. Do you agree that owner-occupiers should be required to give the same personal information for the Register of Crofts as tenants?

Yes

Q6.5. Do you agree that the deadlines for these four particular types of decision should be removed from the legislation?

Don’t know

This is a question that is fundamentally about the use of resources and priorities for public money.



Q6.6. Do you agree that where all the crofters and owners of the land in question, wish to set up a permanent crofting right of access, they should be entitled to do so?

Yes

It is not stated in the consultation paper, but we assume that such a right of access would be entered on the Crofting Register. We also assume that the consent of the “benefited” crofter would be required before the route of the access was decrofted.

Clarifications and corrections

Q7.1. If you wish, please add any comments on any of the proposed clarifications set out in this section of this consultation.

Notification of Change of Ownership & Uninfert Proprietors

We believe that the fee structures in the Land Register and the Crofting Register play at least some role in these two issues.

For example, where a crofting estate changes hands, the new landlord must pay £90 per croft to update the Crofting Register. Where an estate has, say, 100 crofts, £9,000 seems a disproportionate cost to update the Register.

Similarly, Land Register fees on inheritance are based on the value of the property, which again can seem disproportionate to the work involved in updating the Land Register.

Jurisdiction of the Land Court

We would suggest that there may be more scope for the Land Court’s jurisdiction to be expanded in relation to crofts. An application under section 16(3)(b) of the Succession (Scotland) Act 1964 (“**1964 Act**”) would be an obvious example where jurisdiction could be given to the Land Court.

Aspects of Succession

Succession matters relating to crofting tenancies are covered by section 16 of the 1964 Act and by the provisions of sections 10 and 11 of the 1993 Act. The law in this area is complex and would merit simplification and greater clarity in order to benefit all parties involved.

We refer to our Crofting Law Reform Paper⁶ for more detail on a number of issues arising in this context. These include:

⁶ See “1. Aspects of succession”.



- (i) Intestate estates: in the interests of clarity in the law, we suggest that the relevant sections of the 1964 Act be re-framed to set out the differing rules applying to agricultural tenancies and croft tenancies clearly.
- (ii) Testate estates: the position as to whether a croft tenancy can legitimately pass under the residue clause of a will or testamentary writing needs to be clarified.
- (iii) There are various points relating to the transfer process which we would welcome greater legislative clarity on.

Consideration could also be given to how the notice provisions in section 16(3) of the 1964 Act can be exercised by a Landlord in situations where an executor has not been appointed.

Other minor matters

Our members have brought to our attention other minor matters which we would bring to the attention of the Scottish Government:

- (i) different views exist as to what status the croft tenant has after a purchase by their nominee. Section 19B of the 1993 Act suggests the nominee becomes an owner-occupier; but on another view, unless the tenancy is renounced or ended by confusion (i.e. landlord and tenant being the same person), it is not obvious why the tenancy does not continue under the Leases Act 1449.
- (ii) Section 52(4) of the 1993 Act provides a blanket prohibition on apportioning an area of common grazings used for crofter forestry. We are aware of at least one case where an apportionment has been refused for this reason despite the applicant being the only crofter in the forestry scheme.
- (iii) the 1993 Act currently only allows consent to be absent to be granted if the crofter seeking consent intends to be personally resident at a point in the future. That means that where crofters seek such consent to allow them time to dispose of their interest (for example because they have moved to a nursing home) a duties investigation can proceed. We are not sure that that meets policy objectives.

For further information, please contact:

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