

Division of owner-occupied crofts

Solicitors will be aware that section 34 of the Crofting Reform (Scotland) Act 2010 ('the 2010 Act') came into force on 1 October 2011 by virtue of the Crofting Reform (Scotland) Act 2010 (Commencement No. 2, Transitory, Transitional and Saving Provisions) Order 2011. Section 34 of the 2010 Act inserts a new section 19D into the Crofters (Scotland) Act 1993 (the '1993 Act').

Under section 19D, an owner-occupier crofter requires the consent of the Crofters Commission before dividing his or her croft. If the croft has not been divided with the Commission's consent prior to a transfer, any deed purporting to transfer ownership of any part of the croft is null and void. The provisions apply to any such transfer, unless missives were concluded prior to 1 October 2011.

The provisions potentially affect rural property in the original crofting counties of Argyll, Caithness, Inverness, Orkney and Zetland, Ross and Cromarty, and Sutherland. Furthermore, Scottish Ministers may designate

an area outwith the original counties for the creation of new crofts and have already used these powers to designate new areas in the counties of Bute and Moray.

Applications for registration in the Land Register

Where a client is acquiring property in a crofting area, the Keeper takes the view that the onus is on the acquirer's solicitor to consider whether any provisions of the Crofting Acts are relevant. In an application for registration in the Land Register, if section 19D of the 1993 Act applies to the current transaction (or to a previous transaction within the prescriptive progress), then the applicant's solicitor should disclose this on the application form and should enclose evidence of compliance with the provisions (e.g. evidence of division of the croft with the Commission's consent). If a transaction appears to be in breach of section 19D, the Keeper reserves the right to cancel the application.

The provisions of section 19D apply to transactions in which missives are concluded on or

after 1 October 2011. (Where there are no formal missives, the Keeper will accept that section 19D cannot apply if the date of delivery of the disposition was prior to 1 October 2011).

For the avoidance of doubt, there is no change to current practice in the General Register of Sasines.

Any queries regarding this Update should be directed to our Customer Services Centre in the first instance.

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