

Commons Act 2006

Section 9 - Temporary Severance of Rights

Examples

It should be noted that the following examples are by no means an exhaustive list. The scenarios are intended to give a flavour of the type of temporary severance agreements commoners and land owners may see. They are only intended to provide basic information to those considering entering into temporary severance agreements. Further information may be obtained from the relevant local Commons Registration Officer.

The examples provided below have no legal standing, in case of doubt please refer to the Commons Act 2006 or consult your own legal advisor.

Example 1

Farmer A owns a farm that is a dominant tenement with attached rights to graze 1000 sheep on the local common. He decides to semi-retire, and not put any sheep on the common, but he will continue to run his farm. His neighbour asks if he can rent the rights **Farmer A** is not going to use, so he can increase the size of his own flock. **Farmer A** decides that his neighbour can use his rights for the next 5 years and will receive some rent for these. This is a temporary severance agreement, as the neighbour is using someone else's rights temporarily, and in this case, is paying for that use in rent. **Farmer A** will need to notify the relevant people (for example by using Form: CA 2006 No. 1 (TS)) of the agreement.

Example 2

Farmer B owns a farm that is a dominant tenement with attached rights to graze 1000 sheep on the local common. He is not very well, so reluctantly he decides to go to live with his family who also farm in the area. He doesn't want to sell his farm just yet, but he does want to keep the flock he keeps on the common. He therefore rents out his farm to a tenant for 3 years, but retains his rights of common so he can continue to keep his sheep. This is a temporary severance agreement, as someone else is renting the farm without rights temporarily, and **Farmer B** as the owner of the farm, is retaining the use of the rights himself. Farmer B will need to notify the relevant people (for example by using Form: CA 2006 No. 1 (TS)) of the agreement.

Example 3

Farmer C owns a farm that is a dominant tenement with attached rights to graze 1000 sheep on the local common. He wants to help his son to build up his own farming business, as all his son can afford is a smallholding with limited grazing. He agrees that his son can use half of his rights to get him started. This is still a temporary severance agreement, even though the son is making use of the rights and not paying anything, as the person using some of the rights is different to the owner of the dominant tenement. **Farmer C** and his son will still be limited to the 5 year maximum time allowed for agreements. **Farmer C** will need to notify all the relevant people (for example by using Form: CA 2006 No. 1 (TS)).

Example 4

Mrs D lives in a house that has cottagers rights to graze 5 ponies on the small common behind her house. The common is overgrown and could do with some animals on it to graze. She has never been interested in keeping animals herself, but she has friends in the village who have asked her if they can put their two ponies out on the common every day and bring them in at night. **Mrs D** thinks this is a good idea, and her friends take the ponies to the common every day. However, another person objects, saying that the ponies have no right to be there, as their owners do not have cottagers rights. This is a temporary severance agreement, as the persons using some of the rights are different to the owner of the dominant tenement. **Mrs D** and the owners of the ponies will still be limited to the 5 year maximum time allowed for agreements, and must notify all the relevant people. However, **Mrs D** is within her rights to make a temporary severance agreement, and is not exceeding her rights. As long as **Mrs D** puts in place an agreement with the owners of the ponies and notifies all the relevant people (for example by using Form: CA 2006 No. 1 (TS)), there can be no complaint about someone else/others borrowing her rights with her permission.

Example 5

Mrs E inherits a farm that is a dominant tenement with attached rights to graze 1000 sheep on the local common. She decides to keep the farm, but to rent it out to a tenant under a farm tenancy agreement. No severance occurs in this instance, as the tenant is renting the dominant tenement and the rights as a complete package.

Example 6

Mrs F inherits a farm that is a dominant tenement with attached rights to graze 1000 sheep on the local common. She decides to sell off a large proportion of the farm, but to retain the house and some land for herself to run as a smallholding. In this case **Mrs F**, as part of the sale process, will have to

have the rights that are attached to the whole of the dominant tenement correctly apportioned according to the part of the land she intends to sell and the part she intends to retain. Once this is done, she will retain the correct apportionment of rights attached to her smallholding, so no severance occurs.

If at a later date **Mrs F** decided that she was not going to use her remaining rights she could enter into a temporary severance agreement with a third party. **Mrs F** will need to notify the relevant people accordingly (for example by using Form: CA 2006 No. 1 (TS)).

Example 7

Mrs G inherits a farm that is a dominant tenement with attached rights to graze 1000 sheep on the local common. She decides to rent out a large proportion of the farm, but to retain the house and some land for herself to run as a smallholding. In this case, **Mrs G** has to have the rights that are attached to the whole of the dominant tenement correctly apportioned according to the part of the land she intends to rent out, and the part she intends to retain. Once this is done, the correct apportionment of rights are rented with the land as a complete package, and she retains the correct apportionment of rights attached to her smallholding, so no severance occurs.

However, if she decides to keep all of the rights of the dominant tenement for herself, and to just rent out the land without the rights that would normally be apportioned to them, then temporary severance does occur, and she will need to notify the relevant people accordingly (for example by using Form: CA 2006 No. 1 (TS)). She will still be bound to a maximum of 5 years for the agreement, after which she can renew the arrangement.