

Consent to be Absent from Croft

LAW

Crofters (Scotland) Act 1993, sections 21B, 21C & 21D

*A crofter or an owner-occupier crofter may apply to the Commission for consent to be ordinarily resident other than on, or within 32 kilometres of, the croft or, as the case may be, the owner-occupied croft. **Section 21B(1)***

*The Commission may grant consent only if they consider that there is good reason for the person not to be ordinarily resident on, or within 32 kilometres of, the croft or, as the case may be, the owner-occupied croft. **Section 21B(3)***

*The Commission may grant consent subject to such conditions as they consider it appropriate to impose which may, in particular, relate to the duration of the absence. **Section 21B(4)***

POLICY

Crofting Commission Policy Plan on “Consent to be Absent”

The Commission will consider applications for consent to be absent and it recognises that there may be legitimate reasons why a crofter is unable to take up residency on a croft for a reasonable period of time. However, the Commission must be satisfied that there is good reason to be absent and the period of time approved for any absence will depend upon the specific circumstances in each case. Any extension will require a further application. Consent to be absent, if granted, will be subject to conditions and the applicant may be requested to provide evidence that the croft will be cultivated or put to purposeful use during their absence. For example, the good reasons for absence that the Commission may consider include:

- *Where there are medical reasons which prevents ordinary residence on or within 32 kilometres of the croft*
- *Where the crofter is undertaking training or an educational course that requires residency away from the croft for extended periods of time*
- *Where the crofter may be working away for a contracted period of time*
- *Where the croft has recently been assigned or purchased and the crofter is unable to take up immediate residence*

Where someone decides to leave the area, they can choose to retain their family croft house by applying for a decrofting direction for the statutory house site.

The Commission recognises that there may be reasons why a croft is without a resident crofter. There are a number of options open to tenants or owner-occupier crofters who are unable to meet their residency duty for the time being. The Commission wishes to avoid, if at all possible, terminating croft tenancies or requiring letting proposals. This will always be a last resort after the crofter has had the opportunity to resolve the breach of duty.

PROCEDURE

- (1) A tenant crofter or an owner-occupier crofter may submit an application to the Commission for consent to be other than ordinarily resident on, or within 32 kilometres of, the croft or owner-occupied croft on the relevant form provided by the Commission.
- (2) On receipt of a relevant application form, the Commission will check that the application is valid. This will include checking that an application by a tenant crofter has been sent to the landlord, as required by legislation.
- (3) Where a valid application has been submitted the Commission will consider it in relation to its specific policy on Consent to be Absent. The Commission decision will be taken at the agreed level of delegated authority and within 28 days of receipt of the application. The Commission will only give its consent to a period of absence if it considers there is a good reason for the tenant crofter or owner-occupier crofter to be absent from the croft.
- (4) The Commission may impose conditions for its consent as it considers appropriate. Such conditions may relate to the cultivation and maintenance of the croft and, in particular, the length of time for which consent is granted.
- (5) Having made a decision to give its consent, with or without conditions, or to refuse its consent, the Commission will inform the applicant and the landlord of the croft, where appropriate. The Commission will also provide the reasons for its decision.
- (6) An application to extend a consented period may be made before that period of time expires. The application must be submitted on the relevant form provided by the Commission. The validity of the application will be checked, including whether it has been copied to the landlord where the application has been made by a tenant crofter. The application will be subject to all the same requirements as the initial application; in particular there must be a good reason for the applicant's continued absence. The Commission will decide the application within 28 days from its receipt, and may condition any consent, if

granted, as it considers appropriate. The Commission will inform the applicant and the landlord, where appropriate, of its decision and provide the reasons for it.

- (7) An application to vary a condition to which the Commission has consented may also be submitted. This cannot include any variation of a condition relating to the duration of the agreed absence. The application must be submitted on a relevant form provided by the Commission. The validity of the application will be checked, including whether it has been copied to the landlord where the applicant is a tenant crofter. The application will be subject to the same requirements as the initial application. The Commission will decide the application within 28 days from its receipt, and may condition any consent, if granted, as it considers appropriate. The Commission will inform the applicant and the landlord, where appropriate, of its decision and the reasons for it.
- (8) A decision taken by the Commission on an application for consent to be absent, extension of consent to be absent or variation of a condition for absence may be appealed to the Land Court. The applicant or anyone with an interest in the application may appeal to the Land Court within 42 days of the Commission giving notice of its decision.