

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 2022

Policy on Consent to be absent (Paragraph 34)

When considering applications by crofters for consent to be absent, the Commission recognises that there can be legitimate reasons why a crofter is unable to be ordinarily resident on a croft for a period of time. The Commission would have to be satisfied that there is a good reason to be absent, and the period of time approved for any absence would depend on the circumstances of the individual application. The Commission will need to be satisfied that the other crofting duties (besides the residency duty) will be complied with for the duration of the consent to be absent. The Commission's policy here is that it will balance the interests of the individual crofter who is applying for consent to be absent with the interests of the wider crofting community and the desirability of retaining an active population within remote rural communities and crofting communities where most of the crofters reside on or close to their crofts (and not more than 32 kilometres away from them). It may also consider the contribution that the absent crofter makes to his or her crofting community, albeit that the crofter is unable for a good reason not to live on or close to the croft.

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 for the period of time applied for.
- (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.