

INTERIM POLICY ON CONSENT TO BE ABSENT and EXTENSION OF CONSENT TO BE ABSENT

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Policy context

A croft which is fully used and has a resident crofter, offers considerable benefits to rural communities. These include population retention, social benefits, economic benefits, and continuity of traditional cultural practices. However, there are situations in which a crofter is unable to meet the residency duty for their croft for a temporary period but are able to meet the duty to cultivate or put the croft to another purposeful use. In these cases consent to be absent is a valuable option for crofters who are committed to their croft and will return to the croft. This supports continuity of familial ties to a croft, the development of crofters who are undertaking education or temporary employment opportunities elsewhere, and flexibility for crofters with health issues or those who have caring responsibilities. The Commission is committed to resolving residency breaches on a permanent basis and recognises the value of consent to be absent for crofters in certain circumstances and for limited periods of time.

Policy aims

1. Resolving residency breaches on a permanent basis

Policy principles

- Consent to be absent is required in all situations where the crofter is not resident within 32 km of their croft, other than those which have an official sublet or short term let.
- Consent to be absent should only be issued where there are clear reasons for the absence. Reasons which may be approved for consent to be absent are listed below. These reasons are not exhaustive. Indications of the length of time which may be considered appropriate for the different reasons are included in brackets.
 - Employment reasons (6 months to 3 years)
 - Building a new house on the croft or renovating a house on the croft (6 months to 3 years)
 - Time to acquire housing local to the croft (6 months to 18 months)
 - In the process of moving to the croft (6 months to 1 year)
 - Family or caring commitments that are time limited (6 months to 3 years)
 - Impending retirement (6 months to 3 years)
 - Recently succeeded to the croft and time required to take up residence or put another plan in place (6 months to 1 year)
 - Health reasons (6 months to 3 years)
 - Undertaking training or an educational course (6 months to 4 years¹)
- The length of consent to be absent granted is very much dependent on the individual circumstances. The list above should not be seen as prescriptive in terms of the lengths of time given. The Commission will grant consent to be absent for the minimum time possible in accordance with the crofter's individual circumstances. In general consent to be absent will be granted for 3 years or less, apart from in exceptional circumstances.
- The crofter should provide details of how they will meet the duty to cultivate or put the croft to another purposeful use during their absence period. Evidence may be required to demonstrate this. If the crofter does not satisfactorily demonstrate how they will continue to meet this duty throughout the absence period, their application is likely to be refused.

¹ 4 years is specified as this is a typical undergraduate course length. This is an exception to the usual 3 year maximum for consent to be absent.

- The crofter should detail how they intend to meet the residency requirement at the end of the consent to be absent period. Evidence may be required to demonstrate this. If the crofter shows an apparent lack of commitment to meet the residency duty at the end of the absence period, the application is likely to be refused.
- The crofter is expected to show a reasonable degree of long term commitment to their croft. They should indicate how they are committed to the croft, crofting community and local community. This may include the state of the croft, investment in the croft, involvement in shared work with neighbouring crofts/common grazings, involvement with the grazings committee and involvement with local community organisations. Evidence may be required to demonstrate this. If the crofter does not demonstrate a long term commitment to their croft, then their application may be refused.
- Consent to be absent is generally not allowed when the crofter has had another consent to be absent or a sublet or short term let within the last two years.
- Extension of consent to be absent can be used when the crofter continues to require absence from the croft due to unforeseen circumstances. The crofter must evidence their ongoing commitment to the croft, their reasons for being absent and their intention to take up residence at the end of the consent to be absent. These are detailed further in the relevant principles above. If any of these are not satisfactory then the application is likely to be refused.
- Extension of consent to be absent may be granted for up to a year, but this will be dependent on the individual circumstances, including the initial length of absence period. The Commission view is that crofters should have an overall absence time (of consent to be absent and extension of consent to be absent combined) of no more than 4 years. Overall periods of consent to be absent longer than 4 years will only be granted in very exceptional circumstances.

What will success look like

- An increase in the number of crofts where the crofter is meeting their duties on a permanent basis.