

45. **DUTIES:** An application from a crofter in breach of their statutory duties, including the residency duty when they do not have consent to be absent, will need to demonstrate how the proposal will help to resolve their breach of duty.

CROFTERS' DUTIES

46. All crofters are required to comply with a number of statutory duties relating to residency at and management of their crofts. Each year all crofters have to provide the Commission with information on how they are meeting these duties. The Commission itself is obliged to investigate any reports of non-compliance with a duty and ensure, unless there is good reason not to, adherence to the duties. The Commission will encourage crofters to be pro-active in addressing any breaches of duties. Where a crofter is unable to comply with a duty, the Act allows for the crofter to apply for a sublet or a 'short lease' and, if consented to, ensure that the duty is complied with for the duration of the sublet or 'short lease'.
47. The Commission is not obliged to investigate information provided by individuals or organisations other than those specifically listed in the legislation. However, it may give consideration to information provided where it could prove detrimental to a crofting community, there is a specific public interest or the Commission is collaborating with other organisations "for the economic development and social improvement of the crofting counties."

RESIDENCY DUTY

48. **The Law:** The Acts require that a crofter must be ordinarily resident on, or within 32 kilometres of, that crofter's croft.
49. **Policy:** The Commission's policy is unequivocal and will aim to secure residency on crofts with all the economic, social and cultural benefits that follow. If the Commission becomes aware that a crofter is not ordinarily resident, it will give notice of the breach of duty. It will take individual and other relevant factors into account. Legislation requires that an undertaking be given to comply with the duty within a period of time which the Commission considers reasonable. Where the Commission gives consent to a sublet or 'short lease' and the subtenant or short lease holder meets the residency requirement, the duty is complied with for the duration of that period, but the responsibility to ensure duties are complied with remains with the crofter. Discretion may be applied in certain circumstances, on receipt of an application for consent to be absent, as set out in paragraphs 52-55. Where the Commission approves an application for consent to be absent, the crofter complies with the residency duty.
50. The Commission is aware of crofts with tenants or owner-occupier crofters who are not ordinarily resident and will give priority to cases based on length of absence. However, it will also investigate complaints and reports of non-residency within the requisite distance and take action to enforce the residency duty. We will also examine the residency status of anyone making an application to the Commission. The residency duty applies equally to tenants and to owner-occupier crofters. Crofters are required by law to submit an annual return to the Commission confirming that they are meeting their residency and other crofting duties.

51. Where it is assessing non-compliance with the residency duty, there are a number of practical requirements on which the Commission must be satisfied:

- For the purpose of determining whether a crofter is ordinarily resident in a crofting context, the Commission requires that the crofter must show some degree of continuity and settled purpose - notwithstanding some accidental or temporary absence - at their abode. It is expected that a house on or within 32 kilometres of the croft will be the main residence of the crofter. Any absences of this nature should not have a detrimental impact upon the management of the croft and the crofter must still be able to make an ongoing and meaningful contribution to the shared management of the common grazings as required.
- In considering the general interests of the crofting community in the locality of the croft, the Commission will assess how a non-resident crofter contributes to the sustainability of that community. In particular, it will consider whether the crofter contributes materially to the working of that community through active involvement in communal crofting activities or in the shared management of crofting resources.
- Where a number of individuals have joint ownership of a whole croft and thus constitute the owner-occupier crofter, as long as one of those individuals resides within the required distance the duty is complied with. This is not the same as where there are owners of different parts of a croft, where all the owners are collectively the landlord of the whole croft. This is covered separately at paragraph 97.

The Commission will also take into account the circumstances for non-residency and may consider 'good reasons' not to take action to include, for example, where there are medical reasons or family obligations that prevent current residency at the croft for a limited period, or where the Commission consider that the croft is in a particularly remote location and there is no expressed demand for the croft.

CONSENT TO BE ABSENT

52. 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, good reasons for absence that the Commission may consider include:

- Where there are medical reasons which prevent 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.

53. As residency of their croft is a primary duty of crofters, any application on a regulatory matter from an absentee crofter will be required to demonstrate how the proposed activity will help to resolve their absentee status and ensure that the applicant complies with their residency duty.