

STATES OF JERSEY



DRAFT LONG-TERM CARE (RESIDENCY CONDITIONS) (JERSEY) REGULATIONS 201-

Lodged au Greffe on 29th October 2013
by the Minister for Social Security

STATES GREFFE



Jersey

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REPORT

The Island faces a substantial increase in both the number and proportion of older residents over the next 30 years, with care costs predicted to more than double by 2044. In response to this issue, in July 2011 the States approved the Long-Term Care (Jersey) Law 2012. Details of the operation of the proposed scheme have now been set out in Proposition P.99/2013, which will be debated before these Regulations are considered.

The introduction of a long-term care (LTC) scheme is designed to share long-term care costs more fairly across the community, and the scheme will establish a clear and simple process to help individuals and their families understand the choices available and plan for the cost of long-term care. The proposed new scheme will provide financial support to Jersey residents who have significant long-term care needs and who are being cared for either in their own home or in a care home.

As set out in section 21 of the report accompanying P.99/2013, individuals will need to meet a number of eligibility conditions to qualify for support under the LTC scheme. Four of these conditions are already specified in the LTC Law itself (relating to age, care level, care setting and previous offences). Article 3(2)(e) of the LTC Law refers to other eligibility conditions that will be approved through Regulations, including conditions relating to residency.

These Regulations set out the residency condition for the LTC scheme.

Residency rules – Regulation 1(a) and (b)

Two main conditions are proposed around residency and these are reflected in Regulation 1.

- the individual has been ordinarily resident continuously in Jersey for a period of 10 years at some time since reaching the age of 18; and
- the individual has been ordinarily resident in Jersey for the 12 months immediately preceding the application for the LTC benefit.

The term “ordinarily resident” is used in several Laws administered by the Social Security Department, but it does not have a single, legal definition. If there is any doubt that someone is “ordinarily resident” the Department’s officers will refer to previous legal decisions. To be “ordinarily resident” the individual must have made a decision to stay permanently in Jersey and must have somewhere to live locally.

The combination of the two tests will ensure that individuals are likely to have made a reasonable contribution to the LTC fund – and potentially in other ways to the wellbeing of the Island community – and that an individual is less likely to return to

Jersey specifically to apply for the LTC scheme. It recognises that today the careers of Islanders may involve them working for periods in different parts of the world, but later on they may want to return to Jersey where they have friends and family.

Special arrangements for Jersey residents under the age of 28 – Regulation 1(c) and (d)

For applicants below the age of 28, the first test will be modified so that they will need to have been ordinarily resident continuously in Jersey for a period of 10 years at any age.

This ensures that local children who grow up with a serious disability will be eligible for the long-term care scheme from the age of 18 onwards. The arrangement also covers young adults under 28 who have a serious accident or illness that leaves them needing long-term care for the rest of their life. To ensure consistency with the approach taken to older adults, this residency condition must be met immediately preceding the application; otherwise they must be ordinarily resident for a further year before becoming eligible.

Persons not treated as ordinarily resident – Regulation 2

Regulation 2 sets out particular situations where a person is not treated as being ordinarily resident. These provisions echo those that apply to Income Support.

Regulation 2(1) excludes periods spent in detention following a sentence of imprisonment or youth detention. The time spent in detention does not count towards the residency condition, but it does not create a gap in continuous residency. Consider an individual who has been resident in Jersey for 7 years, and is then sentenced to a 5 year prison sentence. Upon release, the individual will continue to build up continuous residency from the 7 year period and must remain in Jersey for a further 3 years in order to create a 10 year residency period. This exclusion only applies to individuals who have been sentenced to a period of imprisonment, and it does not apply to individuals detained in prison on remand.

Regulation 2, paragraphs (2) and (3), covers the situation when individuals are working in Jersey but employed by an employer from outside Jersey and paying contributions in that other country (as per a reciprocal agreement); these individuals do not build up years of residence towards the LTC scheme. Likewise, they will not be making contributions into the LTC Fund and will remain covered by the social security system of their home country.

Persons receiving long-term care outside Jersey – Regulation 3

Some individuals have specialist long-term care needs which cannot be provided in Jersey. In this situation an off-Island placement will be provided, normally in the UK, and will be arranged and funded by the Health and Social Services Department. The time spent outside Jersey in these circumstances will continue to be included as ordinary residence in Jersey. This will allow the individual to satisfy the residence condition if it becomes possible to arrange care in Jersey at a later date. This Regulation applies to both children and adults.

Commencement – Regulation 4

These Regulations form part of the long-term care legislation package and will come into force at the same time as the long-term care benefits are introduced under the main Law. If approved, the Appointed Day Act will bring the long-term care benefits into force on 1st July 2014.

Financial and manpower implications

The development costs of the LTC scheme are being met through existing departmental budgets. Ongoing costs will be met through the LTC Fund itself. It is estimated that an additional 9.5 FTE will be required to administer the new scheme.

Explanatory Note

These Regulations set out the conditions for residency that must be met by a person as one of the conditions for entitlement to benefits under the Long-Term Care (Jersey) Law 2012.

Regulation 1 sets out the conditions. The person must have been ordinarily resident in Jersey for a continuous period of at least 10 years. If the person was not continuously resident for that period immediately before the person's claim for benefit, the person must, in addition to satisfying the 10 years continuous residency test, have been ordinarily resident for a continuous period of at least a year immediately before the claim. The period of 10 years continuous residency must start on or after the person attains the age of 18 unless, at the time of making the claim, the person is under the age of 28 years.

Regulation 2 makes provision for 2 particular situations where a person is not treated as being ordinarily resident in Jersey. The first of these is where a person is detained in prison or youth detention. Any period of ordinary residence in Jersey prior to such detention is treated as if it immediately preceded the person's release from detention. The second situation is where a person is in Jersey only for the purposes of employment by an employer where the employer is in a country outside Jersey and the person remains liable for social security contributions in that other country under a reciprocal agreement between Jersey and that other country.

Regulation 3 provides that, for the purposes of Regulation 1, a person (of any age) who has received long-term care services outside Jersey the provision of which was arranged by the Minister for Health and Social Services, is treated as being ordinarily resident in Jersey for the period during which such services were provided.

Regulation 4 provides that these Regulations shall come into force on the same date that Article 3 of the Long-Term Care (Jersey) Law 2012 comes into force.



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Jersey

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Made [date to be inserted]
Coming into force [date to be inserted]

THE STATES, in pursuance of Articles 3 and 16 of the Long-Term Care (Jersey) Law 2012¹, have made the following Regulations –

1 Residency requirements

For the purposes of Article 3(2)(e) of the Long-Term Care (Jersey) Law 2012² a person must meet any of the following conditions as to residency –

- (a) the person has been ordinarily resident in Jersey for a continuous period of 10 years or more –
 - (i) immediately prior to the person's claim for benefit under that Law, and
 - (ii) since attaining the age of 18 years;
- (b) the person –
 - (i) has been ordinarily resident in Jersey for a continuous period of 10 years or more since attaining the age of 18 years, and
 - (ii) has been ordinarily resident in Jersey for a continuous period of 1 year or more immediately prior to the person's claim for benefit under that Law;
- (c) the person –
 - (i) has not attained the age of 28 years at the time of the person's claim for benefit, and
 - (ii) the person has been ordinarily resident in Jersey for a continuous period of 10 years or more immediately prior to the person's claim for benefit under that Law; or
- (d) the person –
 - (i) has not attained the age of 28 years at the time of the person's claim for benefit under that Law,
 - (ii) has been ordinarily resident in Jersey for a continuous period of 10 years or more, and

- (iii) has been ordinarily resident in Jersey for a continuous period of 1 year or more immediately prior to the person's claim for benefit.

2 Persons not treated as ordinarily resident in Jersey

- (1) For the purposes of Regulation 1 –
 - (a) a person detained by virtue of a sentence of imprisonment, youth detention or similar punishment (whether in Jersey or elsewhere) is not treated as ordinarily resident in Jersey during the period for which the person is so detained; and
 - (b) the period during which a person is ordinarily resident in Jersey immediately prior to such detention is treated as if it immediately preceded the person's release from detention.
- (2) For the purpose of Regulation 1, a person resident in Jersey for the purposes of his or her employment by an employer, where that employer is outside Jersey and such employment is covered by a reciprocal agreement, is not treated as ordinarily resident in Jersey for the period during which he or she is so employed.
- (3) In paragraph (2), "reciprocal agreement" means an agreement between any country or territory and Jersey whereby a person continues to be liable for contributions in respect of social security in that country or territory despite the fact that he or she works in Jersey.

3 Long-term care outside Jersey treated as ordinary residence

- (1) In this Regulation –
 - "accommodation services" means the provision of accommodation, including meals and other services incidental to the provision of accommodation
 - "long-term care services" means services, including accommodation services, provided to a person (of any age) for the purpose of providing to that person permanent help with activities that are an essential part of normal daily living (such as bathing, dressing, grooming, and eating), the provision of such services being arranged by the Minister (whether or not the person has been assessed as being in need of long-term care under the Long-Term Care (Jersey) Law 2012³);
 - "Minister" means the Minister for Health and Social Services;
 - "permanent" means continuing, or likely to continue, for the rest of a person's life.
- (2) For the purposes of Regulation 1, a person who has received long-term care services outside Jersey (whether before or after the commencement of the Long-Term Care (Jersey) Law 2012⁴) is treated as being ordinarily resident in Jersey during the period such services were provided.

4 Citation and commencement

These Regulations may be cited as the Long-Term Care (Residency Conditions) (Jersey) Regulations 201- and shall come into force on the same day that Article 3 of the Long-Term Care (Jersey) Law 2012⁵ comes into force.

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- ¹ *L.21/2012*
 - ² *L.21/2012*
 - ³ *L.21/2012*
 - ⁴ *L.21/2012*
 - ⁵ *L.21/2012*