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# STATES OF JERSEY



## **CONTROL OF HOUSING AND WORK (JERSEY) LAW 2012: RESIDENTIAL AND EMPLOYMENT STATUS – POLICY GUIDANCE – MARCH 2018**

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**Presented to the States on 5th April 2018  
by the Chief Minister**

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**STATES GREFFE**



# Control of Housing and Work (Jersey) Law 2012

## Residential and Employment Status

### Policy Guidance

March 2018

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## Introduction

1. This guidance is intended to help interpret and apply the *Control of Housing and Work (Jersey) Law 2012* and the *Control of Housing and Work (Residential and Employment Status) (Jersey) Regulations 2013* as they relate to the determination of residential and employment status. The guidance sets out parameters in which decisions under the legislation regarding residential and employment status are made. Notwithstanding these parameters, the Assistant Chief Minister has the ability to consider applications which do not fall within the guidance on a case-by-case basis and to exercise discretion in respect of such applications.
2. The Law's purpose is as follows:  
*"To enable Jersey to preserve and maximise the benefits of its resources. To further those aims, the Law aims to control the overall population density of Jersey and the availability of work and housing for people with strong connections or associations with Jersey, and, more generally, in such a way that is in the best interests of the community."*
3. All references in this document to political responsibility arising under the legislation are to the Assistant Chief Minister who has been delegated responsibility from the Chief Minister for Control of Housing and Work matters. This guidance revokes the guidance set out in R.125/2016 under the heading *Control of Housing and Work (Jersey) Law 2012: Guidance – Temporary Absence*, which was presented to the States by the Chief Minister on 1 December 2016.

## Residential and Employment Status

4. The Law establishes four residential and employment statuses:
  - Entitled;
  - Licensed;
  - Entitled for Work Only; and
  - Registered.

A person's status defines the level of access they have to work and housing in Jersey.

5. Persons with Entitled status can be divided into two categories: those who are permanently Entitled and those who are able to lose their Entitled status. This guidance reflects that distinction and refers to persons in the former category as people with Permanent Entitled status. Unless it is clearly established in that way, references in this guidance to a person simply with Entitled status therefore indicate someone who can lose that status.
6. Licensed status and Entitled for Work Only status can also be lost. Aside from those who are Permanent Entitled, a person can move from one status to another depending on how their circumstances change. It may therefore be necessary for a person's status to be determined more than once. For those with Permanent Entitled status, however, only an initial determination is ever required for that specific status.
7. The following table summarises the conditions established by Regulations that a person must meet in respect of each status:

<b>Residential and Employment Status</b>	<b>Conditions</b>
Permanent Entitled	<ul style="list-style-type: none"><li>• Jersey-born and 10 years of combined ordinary residence; or</li></ul>

	<ul style="list-style-type: none"> <li>• Not Jersey-born but ordinary residence taken up before the age of 16 and 10 years of continuous ordinary residence; or</li> <li>• Not Jersey-born but ordinary residence taken up before the age of 20 and 10 years of combined ordinary residence completed before the age of 40 (and having an Entitled parent at the end of those 10 years); or</li> <li>• Not Jersey-born but 30 years of continuous ordinary residence.</li> </ul>
Entitled	<ul style="list-style-type: none"> <li>• Not Jersey-born but 10 years of continuous ordinary residence; or</li> <li>• On social or economic grounds and judged as being in the best interests of the community; or</li> <li>• On hardship grounds.</li> </ul>
Licensed	<ul style="list-style-type: none"> <li>• Appointment to a job that may only be undertaken by Licensed persons (and not having Entitled or Entitled for Work Only status).</li> </ul>
Entitled for Work Only	<ul style="list-style-type: none"> <li>• 5 years of continuous ordinary residence; or</li> <li>• The spouse or civil partner of a person with Entitled, Entitled for Work Only or Licensed status; or</li> <li>• A person divorced less than 5 years previously from a spouse or civil partner who has Entitled, Entitled for Work Only or Licensed status.</li> <li>• A person whose spouse or civil partner died less than 5 years previously and whose spouse or civil partner had Entitled, Entitled for Work Only or Licensed status.</li> </ul>
Registered	<ul style="list-style-type: none"> <li>• 3 months of continuous ordinary residence; or</li> <li>• An intention to be ordinarily resident for a continuous period of 3 months.</li> </ul>

8. An assessment therefore needs to be made against the relevant conditions before a person can be granted a given residential and employment status. The table highlights that a number of factors may need to be considered:
- a. The person's place of birth.
  - b. The age at which the person took up ordinary residence in Jersey.
  - c. The person's parents' residential and employment status.
  - d. The length (and timing) of the person's ordinary residence in the Island.
  - e. Whether the person is undertaking 'essential employment'.
  - f. The residential and employment status of the person's spouse or civil partner (or, in the case of divorce or widowhood, the status of the former or late spouse or civil partner).
  - g. Whether the person is entitled to special consideration on the grounds of hardship.
  - h. Whether there are particular economic or social factors relating to the person's circumstances that would be of benefit to the Island's community.

This guidance considers each of these factors in turn.

9. Not all factors will apply in each case. For example, there is generally no need to consider the residential and employment status of a person's parents if the person is Jersey-born. In each case, it is a question of considering those factors which are pertinent in order to determine the status that applies.
10. A person's status must be determined before they are given a registration card. For everyone apart from those with Permanent Entitled status or Registered status, registration cards are issued with an expiry date. The fact that a person's registration card may have expired does not mean that the person has automatically lost the status recorded on the card. It does mean, however, that the person's status needs to be confirmed before a new card can be issued. The Assistant Chief Minister can also, at any time, require a person to provide documentation or information for their status to be verified, even where there has been no application for a card.

For example

As a condition of their business licence, businesses may be told how many persons of Registered or Licensed status they may engage. The residential and employment status of their employees is therefore of relevance to the validity of their business licence. If there were concerns that a business was in breach of their licence by employing persons of the wrong status, a request could be made for those people to provide information in order that their statuses might be verified.

11. A determination of status (whether or not it follows an application for a registration card) is only required for adults. An adult is a person of school leaving age or above. School leaving age effectively means the age at which a person can choose to leave school; in other words, the upper limit of compulsory school age.
12. School leaving age is the age that someone is on 30th June in the academic year in which the person turns 16. The academic year runs from the beginning of September to the end of the following August. For people born from September to June, this means they are 16 when they are of school leaving age; but for people born in July and August they are still 15. This also means that a person may in fact still be at school beyond that age by choice (e.g. in sixth-form) and yet be considered an adult for the purposes of the Law.

### **Place of Birth**

13. Whether or not a person is Jersey-born influences how Entitled status may be achieved (and whether it is permanent). Generally speaking, birth in the Island itself is required for someone to be considered Jersey-born. In certain circumstances, however, a person born elsewhere may also be regarded as Jersey-born.
14. This can happen where the person has at least one parent who was ordinarily resident in Jersey at the time of the birth; and where both the person and that parent were ordinarily resident in the Island immediately following a period of care relating to the birth. It does not matter whether the parent was physically present in Jersey at the time of the birth. Nor does it matter what residential and employment status the parent had at the time of the birth.
15. The permitted period of care relates to clinical or medical circumstances surrounding the birth (i.e. care that a child and / or mother may receive in hospital) and does not refer to the day-to-day care that a parent provides to their child.

For example

A couple are holidaying in the United Kingdom. Both are ordinarily resident in Jersey. The female partner is pregnant and unexpectedly goes into labour. The child is born in the UK. The child is not well and requires special care at the hospital for a period of 3 months. When the child is strong enough to be discharged, the family returns to Jersey to continue their ordinary residence. The child would be considered Jersey-born.

For example

A couple travels to the United Kingdom during the latter part of the female partner's pregnancy to visit her parents. The couple are both ordinarily resident in Jersey. The female partner gives birth whilst in the UK. Once she and her child are discharged from hospital, the family stays with the mother's parents for a period of 3 months before returning to Jersey so that the mother can receive support from her parents during the child's initial stages of infancy. There is no clinical requirement for this, however, and it is the mother's choice to do so. The child would not be considered Jersey-born.

### **Start of Ordinary Residency**

16. The date on which a person moves to Jersey can affect how the provisions of the legislation apply to them. Whether or not a person takes up ordinary residence before they turn 16 or (if they have a parent with Entitled status) before the age of 20 affects how they achieve Entitled status or whether that status is permanent.
17. The date of arrival refers to the point at which the person takes up ordinary residence in Jersey. It does not refer to the first time a person is present in the Island.

For example

Between the ages of 5 and 15, a person visits Jersey with their family each summer for a two-week holiday. They never take up ordinary residence during these visits and always return home afterwards. At the age of 21, the person moves to Jersey to take up employment. They are deemed to have taken up ordinary residence at this time. Their 'date of arrival' is therefore when they are 21 and the periods spent in Jersey on holiday as a child are not considered in any calculation of the length of their ordinary residence. To achieve Entitled status, the person would therefore need to remain continuously ordinarily resident for 10 years until the age of 31.

### **Parents' Status**

18. If a person arrives in Jersey before the age of 20 and achieves 10 years of combined ordinary residence before the age of 40, they may be granted Permanent Entitled status – provided that they are the child of a parent who is Entitled when the person completes their 10 years of combined ordinary residence. In these cases, the parent's residential and employment status must be taken into account during a determination of their status. It does not matter how a parent themselves gained Entitled status and whether they had Entitled status at the beginning of the person's combined ordinary residence.
19. This provision includes children who have been adopted in pursuance of an adoption order.

For example

A mother and her 15-year old child move to Jersey to take up ordinary residence. After 5 years, the child moves to the UK to work whilst the mother remains in Jersey. After a further 3 years, the child returns to become ordinarily resident in Jersey again. After a further 5 years of ordinary residence, the child applies for residential and employment status on the basis of having 10 years of combined ordinary residence. By that time, the mother has already gained Entitled status (on the basis of 10 years of continuous ordinary residence) and the child is therefore granted Permanent Entitled status.

20. The provision may also apply to people whose parents are dead at the time the child achieves 10 years of combined ordinary residence. Permanent Entitled status will be granted in circumstances where at least one parent was of Permanent Entitled status themselves. Where at least one parent had Entitled status (but it was not permanent), evidence will be required that the parent qualified for Entitled status at the time of their death for this provision to apply.



For example

A 17-year old moves to Jersey with their parents. Both parents have Permanent Entitled status. The child is themselves continuously ordinarily resident until the age of 25, at which time they move to the UK to work. They have 8 years of continuous ordinary residence at this point. At the age of 35, they return to Jersey and take up ordinary residence again. However, both of their parents have since died. After 2 further years of ordinary residence, the person applies for Entitled status. They are granted Permanent Entitled status on account of 10 years of combined ordinary residence before the age of 40 and because their parents had Permanent Entitled status.

For example

A 17-year old person moves to Jersey with their mother. After 5 years, the child moves to the UK. At the age of 30, the child returns to Jersey to take up ordinary residence. However, their mother had died when the child was 32. At the age of 35, the child requests Permanent Entitled status on the grounds that they have 10 years of combined ordinary residence and that their mother was of Entitled status. Evidence will therefore be required of the mother's status (as well as the child's own combined ordinary residence) for Permanent Entitled status to be granted.

## Ordinary Residence

21. Ordinary residence is especially significant in the determination of residential and employment status. In most cases, a test of ordinary residence needs to be applied before a person's status can be determined and it is generally via changes in ordinary residence that a person moves from one status to another.
22. The test can be for continuous ordinary residence or for aggregated (or combined) ordinary residence. 'Continuous ordinary residence' means continuous up to the point at which the determination of status is made. 'Aggregated ordinary residence' refers to combined periods from any time which are considered together when calculating the length of that person's ordinary residence.

For example

A 35 year old person, who is not Jersey-born, moves to the Island. They must be ordinarily resident continuously for 10 years (until the age of 45) before they become eligible for Entitled status.

For example

A Jersey-born person lives in the Island until the age of 5, when they move away. At the age of 15 they return. If they then remain continuously ordinarily resident for 5 years until the age of 20, they will become eligible for Permanent Entitled status (as they will at that point have achieved an aggregated period of 10 years of ordinary residence). Note that upon their return at the age of 15 they will essentially have Registered status. Although they may have previously had 5 years of continuous ordinary residence, for Entitled for Work Only status the 5-year period of continuous ordinary residence must take place immediately before the determination.

23. The Law does not specifically define 'ordinary residence' although it does contain provisions that indicate what may or may not be counted as ordinary residence. As a concept, however, 'ordinary residence' is distinct from 'residence'; and both in turn can be distinguished from 'presence'. The test under the Law relates to the first of those three concepts, albeit that the three are linked.
24. 'Presence' means physically being in the Island. For example, a day-tripper from France or Guernsey is present in Jersey during the time of their visit. 'Residence', meanwhile, refers to the place where a person eats, drinks and sleeps (or where their family eats, drinks and sleeps) or to having an abode in a place. A person can in this regard be resident in several places, or more than one country, at the same time. This could occur, for instance, where a person has a home in two countries and regularly spends equal parts of the year in each country.

25. The test of 'ordinary residence' goes further in its requirements. A person does not need to be permanently present for ordinary residence to be established: temporary absence from the Island does not necessarily mean that they are no longer resident. To be ordinarily resident, however, a person cannot have been permanently absent from the Island during the time under consideration and a degree of presence is therefore required. Furthermore, a person does need to have taken up residence in order then to be assessed as ordinarily resident. If a person has not taken up residence, they cannot be judged to be ordinarily resident; an intention to become resident does not suffice. A person may become ordinarily resident immediately upon arrival in Jersey, depending on their circumstances.
26. 'Ordinary residence' can be contrasted with extraordinary residence, or occasional or temporary residence. For a person to meet the test and to be considered ordinarily resident, there needs to be a habitual or continual nature to that person's residence and a regular course of conduct to their life. A person can therefore be considered ordinarily resident in a place if they live there habitually and lawfully from choice (apart from temporary or occasional absences) and for a settled purpose, even if that purpose is specific or limited in scope. A person who is unlawfully resident in the Island cannot be ordinarily resident.

For example

The *Immigration (Jersey) Order 1993* sets out the provisions by which a person may be deported from Jersey. If a person, having been deported, were to return to the Island in contravention of the deportation order, they would be unlawfully resident in the Island. Any time spent in Jersey under those circumstances would not be counted as ordinary residence.

27. Unlawful residence may also arise if a person has contravened the Law's provisions regarding the occupation of accommodation. The Law divides housing into two categories, Qualified and Registered, and states that Qualified accommodation may only be occupied by persons who meet the relevant criteria. If a person is deemed to have occupied Qualified accommodation in contravention of those criteria, the Assistant Chief Minister may make an application to the Royal Court for the period of occupation not to be considered as ordinary residence in Jersey.

For example

A person with Licensed status loses that status. On the basis of their Licensed status, they had occupied Qualified accommodation. Having lost that status, they are given permission to continue occupying that accommodation for a period of 3 months. They do not otherwise meet any of the criteria that allow them to occupy Qualified accommodation. Any time spent occupying the accommodation beyond those 3 months would effectively be in contravention of the Law. Subject to an application to the Royal Court, such time might therefore be deemed unlawful residence and the person would not be taken to have been ordinarily resident in Jersey beyond that initial 3-month period for which they had permission.

28. The principal factors in determining ordinary residence are whether the person in question has a settled purpose in the Island and whether there is a habitual or continual nature to that purpose.
29. 'Settled purpose' effectively means the reason why a person has taken up residence in the Island. There is no definitive list of settled purposes against which a person's ordinary residence in the Island can be judged. Indeed, there may be one or several reasons for why a person is in Jersey. They may include:
- a. Employment
  - b. Seeking employment
  - c. Education
  - d. Raising a family

- e. Looking after the family home
- f. Caring for another person
- g. Retirement

The ordinary residence test does not require judgement of the merits or otherwise of the reason why a person is in the Island; rather it involves an assessment of whether such a reason exists.

30. Determining whether there is a habitual or continual aspect to a person's settled purpose requires looking at how that person orders and manages their life and their affairs. Consideration therefore needs to be given to factors such as the person's accommodation arrangements; how they manage their income and possessions; the context in which they live (e.g. family arrangements and social circles); and the links, if any, which the person has and / or maintains to another jurisdiction.

For example

Scenario 1:

A person moves to Jersey from the UK to look after an elderly relative, however, their own partner and children remain in the UK and the person regularly returns to the UK at weekends. Their post, including bills and bank statements, continues to be sent to their address in the UK.

Scenario 2:

A person moves to Jersey from the UK to look after an elderly relative. Their own family moves with them and they begin to rent a house. They re-direct their post to Jersey so that all mail, including bills and bank statements are subsequently delivered to them in Jersey.

In these two scenarios, the first person is unlikely to have taken up ordinary residence in the Island, however, the second person is more likely to be said to have taken up ordinary residence.

31. If it can be said that a person has a settled purpose in the Island and that it is habitual in nature, it is likely that they can be said to be ordinarily resident. For the purposes of administering the Law, a person can only be ordinarily resident in one place at any one time, however. If a person has a settled purpose both in Jersey and elsewhere, a decision will need to be taken as to the true location of their ordinary residence.
32. For Control of Housing and Work purposes, time spent in imprisonment is considered in the same way as it is under the provisions of Income Support and Long-Term Care legislation. For detached workers, however, time spent in the Island is considered separately from what occurs under the Income Support and Long-Term Care regimes.

**Imprisonment**

33. Time spent in imprisonment in Jersey will be disregarded from the calculation of a person's ordinary residence in the Island. Imprisonment means a prison sentence, youth detention or similar punishment imposed by an authority in Jersey, however, it does not include periods when a person is detained in custody on remand whilst awaiting trial where, following the trial, they do not receive a sentence of imprisonment.
34. The amount of continuous ordinary residence built up before imprisonment may be frozen at the point that the imprisonment begins. This applies regardless of how long the person has been continuously ordinarily resident prior to their term of imprisonment. The period the person was ordinarily resident immediately prior to their imprisonment is treated as if it immediately preceded their release from prison. The person must be ordinarily resident in Jersey at the point of imprisonment for this provision to be applied.

For example

A person has been continuously ordinarily resident in the Island for a period of 7 years. They are found guilty of a criminal offence and are sentenced to 1 year in imprisonment, which they serve. Their time in imprisonment is not seen as ordinary residence and the calculation of their continuous ordinary residence is frozen at the point of their imprisonment. Upon their discharge from prison, they are considered to have completed 7 years of continuous ordinary residence and counting of their ordinary residence continues from that point.

For example

A person has been continuously ordinarily resident in the Island for 6 months. They are found guilty of a criminal offence and are sentenced to 1 year in imprisonment, which they serve. Their time in imprisonment is not seen as ordinary residence and the calculation of their continuous ordinary residence is frozen at the point of their imprisonment. Upon their discharge from prison, they are considered to have 6 months of continuous ordinary residence.

35. The same provision applies in instances where a person has been sentenced in Jersey but is required to serve their sentence (or part of their sentence) in an institution elsewhere.

36. However, where a person who is ordinarily resident in Jersey leaves the Island for a time (however short) and, whilst in the other jurisdiction, is sentenced to imprisonment by the other jurisdiction's authorities, they are treated as being absent from the Island during their imprisonment.

For example

A person with 7 years of continuous ordinary residence in Jersey travels to France. Whilst there, they are arrested for drugs offences and sentenced to 3 years of imprisonment by the French authorities. They serve this time in a French prison. Upon their release, they return to Jersey to take up ordinary residence and seek confirmation of their residential and employment status. They are judged to have been absent for 3 years and their previous residence is not banked. They are therefore granted Registered status.

**Detached Workers from Outside the Island on Secondment**

37. A detached worker is an employee who is sent by their employer to work temporarily in another jurisdiction for the same employer. Time spent in Jersey on secondment from another jurisdiction in this way as a detached worker may count as ordinary residence in the Island. Consideration is given to whether the person has truly taken up ordinary residence or whether they are effectively commuting from another jurisdiction to Jersey. This is done by looking at their accommodation arrangements; how they manage their income and possessions; their family arrangements; and the links, if any, maintained with the other jurisdiction.

For example

A 25 year old comes to Jersey from the UK on secondment for 3 years. During their secondment, they are permanently based in the Island, leasing a property. At the end of this period they leave that employer and take up new employment in Jersey. After a further 2 years, the person applies for a determination of their residential and employment status. They are judged to have completed 5 years of continuous ordinary residence and are granted Entitled for Work Only status.

For example

A 25 year old is contracted by their UK employer to undertake 6 months of work in Jersey. This requires the person to spend 4 days each week working in the Island. Whenever they visit, they stay at a hotel. Each weekend, they return to the UK where their partner and children continue to reside. Their 6 months of work in the Island would likely not be considered ordinary residence.

38. The fact that a person may pay contributions or taxes in another jurisdiction is not in itself taken to affect that person's settled purpose in the Island for Control of Housing and Work purposes.

For example

A 25 year old comes to Jersey from the UK on secondment for 3 years. During their secondment, they are permanently based in the Island, leasing a property. Their employment and residence means they are deemed to have a settled purpose in the Island and to be ordinarily resident during the time of their secondment. Under the Reciprocal Agreement which Jersey has with the UK, the person would remain liable to the UK for Social Security contributions during the entirety of their secondment. This fact, however, does not change the conclusion that they have a settled purpose and are ordinarily resident in Jersey for Control of Housing and Work purposes.

### **Absences from the Island**

39. The legislation requires ordinary residence of specific durations for the conditions of particular residential and employment statuses to be met. For example, a person needs to be continuously ordinarily resident for the preceding 5 years in order to be granted Entitled for Work Only status. If no other factors applied, the same person (if not Jersey-born) would need to undertake a further 5 continuous years of ordinary residence in order to gain Entitled status.
40. The legislation therefore requires confirmation of the length of a person's ordinary residence and (in instances where a person's ordinary residence can be aggregated or combined) confirmation of when the ordinary residence occurred.
41. It is nevertheless recognised in the legislation that absences from the Island can occur. These are times when a person is not physically present in Jersey, however, such absence from the Island does not automatically mean that a person is no longer ordinarily resident. Under the Law, the Assistant Chief Minister is required to issue guidance that states how temporary absences are to be dealt with in any consideration of a person's ordinary residence. When undertaking the ordinary residence test, it is also therefore necessary to consider any absences and to determine the impact of such absences.
42. In considering the effect of any absence, three general questions are considered:
- How long did the absence last?
  - What was the reason for the absence?
  - What was the person's residential and employment status when the period of absence began?
43. Underlying these questions is a consideration of what effect the absence has on a person's settled purpose. In that regard, if a period of absence is deemed to have broken a person's continual and habitual settled purpose, it is likely that the absence will be taken to have broken their ordinary residence.
44. Absences can effectively be divided into three categories:
- There are those absences which do not affect a person's ordinary residence. In other words, a person is taken to be ordinarily resident in Jersey even when absent from the Island.
  - There are those absences which do affect the person's ordinary residence and during which the person is judged to be not ordinarily resident in Jersey.
  - Finally, there are those absences which are disregarded in any consideration of ordinary residence – they do not count either towards, or against, a calculation of the person's ordinary residence.

45. Beyond these general considerations, specific provision has been made for certain circumstances. These are described below.

### **6 Week Breaks**

46. It is recognised that any person may be absent from the Island for short periods of time. Every person – regardless of their status – is allowed 6 weeks of absence during the calendar year (i.e. January to December) without that period breaking their ordinary residence.
47. In essence this 6 week period is designed to cover holidays but it does not in fact matter why a person is absent and the period of absence is taken to count as ordinary residence in Jersey. A single absence of up to 6 weeks during the calendar year therefore has no effect on a person's status and is included in the calculation of a person's period of ordinary residence (whether it be for an initial determination or for a subsequent one).

#### **For example**

During the course of a year, a person takes a two week holiday in January to New York. In May, they holiday in France for two weeks and in October they travel to the UK to spend two weeks with their mother, who is ill. They are otherwise never absent from the Island. They will be considered to have been ordinarily resident for the entirety of that year.

48. This policy does not apply, however, where back-to-back absences occur. For example, where a person is absent for 6 weeks at the end of one year and is then absent for 6 weeks at the beginning of the following year (i.e. from mid-November to mid-February). This period of 12 weeks is treated as a 12 week absence. Unless the absence is covered by other parts of the absence policy, it is therefore seen as a break in ordinary residence.
49. There needs to be a 6 week gap between an absence at the end of one year and an absence at the start of the following year for the two absences to be treated separately (and not together as a break in ordinary residence).

#### **For example**

From January to mid-November a person is permanently present and ordinarily resident in Jersey. They then go on a 6 week holiday until the beginning of the following January. They return to the Island but, after 2 weeks, they embark upon another 6 week holiday until the beginning of March. As there was only a 2 week gap between these two 6 week absences, they are not treated separately and the person is taken to have broken their ordinary residence from mid-November to the beginning of March.

50. Seasonal workers are covered by these provisions. Where a seasonal worker is absent from the Island for more than 6 weeks (or they have a 6 week absence at the start of one year which is not sufficiently removed from a 6 week absence at the end of the previous year), they are considered to have broken their ordinary residence in the Island. These provisions apply to seasonal workers irrespective of whether or not they return to the same employer after their absence from the Island.

### **Other Temporary Absences**

51. Unless specific provision is otherwise made, there is no guarantee that an absence of longer than 6 weeks during a calendar year will be seen as anything but a break in a person's ordinary residence. If a person intends to have an extended absence from Jersey, they are advised to contact the Social Security Department, in advance of the absence, to establish how their residential and employment status may be affected.

Provision has been made, however, for the following circumstances:

- a. Full-time education.
- b. Travelling and 'gap' years.
- c. Receipt of health care.
- d. Secondment to another jurisdiction.
- e. Caring for another person outside the Island.
- f. Extreme circumstances.
- g. Looked after children.

### **Full-Time Education**

52. For persons aged 25 or under (regardless of their residential and employment status) time spent at full-time education outside the Island may be considered as continuous ordinary residence in Jersey. This policy does not apply to persons over the age of 25 who study for a period outside the Island. In order for the policy to apply, the person must be ordinarily resident in the Island immediately before embarking on the study involved.
53. Evidence must be received from the relevant educational establishment that the person was enrolled there for the time under consideration. If that is the case, and provided the person's parents remain in Jersey during the entirety of the person's education, the time spent in full-time education elsewhere will be treated as ordinary residence in Jersey. It does not matter what status the parents have. Any absences covered by this provision are included in the calculation of a person's ordinary residence.

#### For example

A person aged 17 moves to the Island with their family and joins the sixth form at a local school. Their ordinary residence is taken to have started upon their arrival in Jersey. They complete 2 years of ordinary residence whilst studying for their A-Levels. If an application for residential and employment status were made, they would be granted Registered status.

Following their A-Levels, they undertake a 3 year course at a UK university. Their parents remain ordinarily resident in Jersey during the entirety of their course and the student returns home during holiday periods. Their 3 year course at university would be considered 3 years of continuous ordinary residence in Jersey. If an application for residential and employment status were made at the end of their degree course, they would be granted Entitled for Work Only status as they would be deemed to have achieved 5 years of continuous ordinary residence.

54. If the person's parents leave Jersey during the time of study, the person's time spent in education outside of the Island may still be counted as ordinary residence, however, evidence is required that the person returned to the Island during holidays and that they remained ordinarily resident in the Island during those holidays (i.e. they continued to have a settled purpose).

#### For example

At the end of a student's first year at university, their parents move from Jersey to France. The student redirects their mail to their parents' house in France and lists their 'home' contact address at university as that house in France. During some of the holidays of their second and third years at university, they stay with their parents in France. In some other of the holidays, however, they return to Jersey from time to time where they stay with friends. They do no work in Jersey during that time and are effectively on holiday. They would likely be considered not to have a settled purpose in Jersey from

the time their parents left. Their time in Jersey during subsequent university holidays and during their subsequent years at university would no longer be considered ordinary residence in Jersey.

For example

At the end of a student's first year at university, their parents move from Jersey to France. The student lists their new 'home' address as their grandparents' house in Jersey. During the holidays of their second and third years, they return to Jersey and live with their grandparents, occasionally travelling to France to see their parents. During the Christmas and summer holiday periods, they are employed in Jersey. They would likely be considered to have maintained their settled purpose in Jersey following their parents' departure and their time at university would be considered ordinary residence in Jersey.

55. If the person's parents are separated, or separate during the time of study, and one parent moves away from the Island during the period of study, evidence will need to be provided either that the person returned to Jersey with a settled purpose during holiday periods or that their parental home clearly continued to be with the parent who continued to reside in Jersey. The separation in this instance does not simply refer to a break in the relationship (e.g. divorce) but can also refer to geographical or physical separation.

For example

A person moves to Jersey as a Licensed employee. Their daughter remains at boarding school in the UK where the other parent is employed and remains so whilst the father is in Jersey. The daughter cannot be said to be ordinarily resident in Jersey in this instance, despite one parent's own ordinary residence in Jersey and the fact that the parents have not ended their relationship. The parents are physically separated and the daughter's residence with the parent in the UK means the daughter would be seen as ordinarily resident in the UK.

### **Travelling and 'Gap' Years**

56. Extended holidays of up to 1 year may be disregarded from any calculation of ordinary residence, provided that the person has attained Entitled for Work Only status on the basis of at least 5 years continuous residence in Jersey when the extended holiday begins. This effectively applies to persons with Entitled status as well. In such circumstances, any period of continuous ordinary residence is frozen at the point at which the holiday starts and re-commences upon the person's return to Jersey. This provision does not apply to Licensed or Registered persons. Sufficient evidence needs to be provided to ensure the absence relates to a *bona fide* period of travel. A person is permitted only one period of travelling for up to 1 year. Any further travelling beyond a 1 year period is not covered by the policy.
57. If an extended holiday of more than 1 year were taken, a person with Entitled for Work Only status would lose that status and would instead be granted Registered status upon their return. If the person were Jersey-born, however, or could potentially achieve Permanent Entitled status through combined periods of ordinary residence, the period of ordinary residence completed in order to achieve Entitled for Work Only status would remain 'banked' and could be counted in a subsequent determination for Permanent Entitled status.

For example

A person with 6 years of continuous ordinary residence undertakes up to 1 year of travel. Prior to their departure, they have Entitled for Work Only status. During their year travelling abroad, they visit Australia, New Zealand and a number of countries in South America. Upon their return, they maintain their Entitled for Work Only status and are said to have achieved 6 years of continuous ordinary residence.

58. Similar treatment may be exercised in respect of the following for absences of longer than 6 weeks in any calendar year and for up to 1 year, provided that the person has attained Entitled for Work Only



status on the basis of at least 5 years continuous residence in Jersey when the extended absence begins:

- a. Overseas aid projects or other similar voluntary work, for example, building an orphanage in Belize.
  - b. Teaching English as a foreign language in another country overseas.
  - c. Undertaking compulsory military/ national service in a person's native/ home country.
  - d. Post graduate work experience immediately following completion of higher education where the work experience is directly related to the studies undertaken and is a compulsory part of being able to gain employment in a specific field, for example, as a lawyer or doctor. In order for this to apply, the person must be aged 25 or under; have been ordinarily resident in the Island immediately before embarking on their study and their parents must remain in Jersey during the entirety of the person's study and post graduate work experience.
59. Extended absences to take employment outside of Jersey to gain further knowledge or experience relevant to a person's career, or to support a career change, are not covered by the policy and would be considered as a break in a person's ordinary residence. Similar treatment is applied in respect of extended periods of time spent living in a person's native/ home country with immediate or extended family. This is not counted as ordinary residence in Jersey unless the circumstances cause it to fall under one of the other provisions of the policy.

### **Medical Circumstances**

60. For persons who have gained Entitled status or Entitled for Work Only status and who are clinically required to remain outside the Island in order to receive medical treatment, any such absence from the Island is seen as continuous ordinary residence in Jersey. This may arise, for example, where a person is subject to an accident whilst on holiday and is necessarily hospitalised. It may also occur where a person is required to leave Jersey for medical treatment that cannot be provided in the Island, for instance where travel away from the Island may be necessary for an operation. If there is no option for the person to return to Jersey, the period of medically-enforced absence may be included in the calculation of ordinary residence, subject to the provision of sufficient evidence. This provision may also apply to Licensed and Registered persons, provided that they have been ordinarily resident for at least 1 year prior to the circumstances arising.

#### For example

A person of Entitled for Work Only status is holidaying abroad and, after 1 week, is involved in a car accident. They suffer serious injuries which require their hospitalisation and placement in intensive care. Their injuries are so serious that they are not allowed to leave hospital for a period of 3 months, at which point they return to Jersey. The period of 3 months spent abroad will be seen as continuous ordinary residence in Jersey.

61. In the case of parents, it may be medical circumstances affecting their child which would see a period of absence treated as ordinary residence.

#### For example

A woman of Entitled for Work Only status gives birth in the Island. The child requires special care and both mother and child are transported away from the Island for further treatment to be administered. After 5 months, the child is well enough to be discharged and both mother and child return to Jersey. The mother would be deemed to have been ordinarily resident in Jersey during that 5 month period.

## **Secondment**

62. Where a person with Entitled for Work Only status is sent on secondment by their employer to work in another jurisdiction, the person's period of continuous ordinary residence can be frozen at the point of their departure. This is permissible provided that the person returns to the Island at the end of their secondment and to the same employer and that sufficient evidence is provided. In such cases, an absence of up to 2 years may be disregarded from consideration of the person's ordinary residence. Continuous ordinary residence is taken to recommence upon the person's return. This provision effectively applies to persons with Entitled status as well. Again, if the person was Jersey-born or could achieve Permanent Entitled status through combined periods of ordinary residence, the period of ordinary residence completed before commencement of the secondment would remain 'banked' and could be counted in a subsequent determination of Permanent Entitled status.

### **For example**

A 25 year old moves to the UK on secondment from a Jersey company for 2 years. Prior to the secondment, they have 9 years of continuous ordinary residence and thereby have Entitled for Work Only status. At the end of this period they return to work for their employer in Jersey. They are judged to have completed 9 years of continuous ordinary residence and maintain their Entitled for Work Only status.

63. In the case of multiple secondments, the treatment outlined above is equally applied.

### **For example**

A 25 year old moves to the UK on secondment from a Jersey company for 2 years. Prior to the secondment, they have 6 years of continuous ordinary residence and therefore have Entitled for Work Only status. At the end of this period, the person returns to work for their employer in Jersey. They are judged to have completed 6 years of continuous ordinary residence and maintain their Entitled for Work Only status.

2 years later, when the person has completed 8 years of continuous ordinary residence, their employer in Jersey sends them on a further 1 year secondment to another jurisdiction. At the end of this period, the person again returns to work for their employer in Jersey. They are judged to have completed 8 years of continuous ordinary residence and maintain their Entitled for Work Only status.

64. The provision relating to secondments does not apply to persons with Registered status. Persons with Licensed status may be covered but they would also be required to return to the same employer at the end of the secondment.

### **For example**

A Licensed person with 3 years of ordinary residence is sent on secondment by their employer to work in another jurisdiction. After 1 year on secondment, they return to Jersey and continue working for the same employer, thereby maintaining their Licensed status. Upon their return, they are deemed to have 3 years of ordinary residence in Jersey.

## **Caring for another person outside the Island**

65. Where a person is obliged to travel away from the Island to care for either their parent or their child, the time spent away from the Island may be treated as ordinary residence in Jersey, subject to the provision of sufficient evidence. This may be applied to persons of Entitled for Work Only and Entitled status and may cover absences of no longer than 6 months. However, if it is seen that the person in fact no longer has a settled purpose in the Island, any absence in these circumstances will be seen as a break in ordinary residence. Absences whilst caring for a person other than a parent or child may

be considered on a discretionary basis, subject to the provision of sufficient information regarding the relationship between the person and the other person for whom they intend to care.

For example

A person with 6 years of ordinary residence travels to the UK to look after their mother during a period of illness. They remain in the UK for 3 months. Whilst they are away, their partner remains in the Island. The person returns for a couple of weekends during those 3 months. Their mail continues to be directed to their home in Jersey and, upon their return, they continue in the same employment. As the person's settled purpose in Jersey was maintained, that period of 3 months would likely be deemed to be ordinary residence in the Island.

For example

A person with 6 years of ordinary residence travels to the UK to look after their mother during a period of illness. They give notice to their landlord and to their employer in Jersey and they re-direct their mail to their mother's address. After a period of 8 months, they return to Jersey. As the person's settled purpose in Jersey was broken and they were absent for longer than 6 months, the period of absence would likely not be deemed to be ordinary residence and the calculation of their period of ordinary residence would be set to 0 upon their return.

**Extreme Circumstances**

66. Absence from Jersey due to extreme circumstances may see persons with at least Entitled for Work Only status allowed to retain that status and the length of their ordinary residence frozen during the period of absence – even though the absence may not otherwise be covered by the policies described elsewhere in this guidance.
67. The severity of the circumstances which require the person to be absent will be judged on the individual merits of each case. Extreme circumstances may include, however, instances in which a person is required to be absent for their own safety or instances where the death of a parent or child requires the person to be away from the Island. Absences of up to 3 months may be considered under this policy. Absences due to the death of a person other than a parent or child may be considered on a discretionary basis, subject to the provision of sufficient information.

For example

A person with 7 years of continuous ordinary residence leaves the Island following the breakdown of their relationship. The nature of the relationship and its breakdown means the person has a genuine fear for their safety. After 3 months of absence, the potential cause of harm to the person has been addressed and they are able to return to the Island. It is accepted that extreme circumstances forced the person to be absent. As the absence was for no more than 3 months, their ordinary residence is taken to have frozen upon their departure. Upon their return, they request confirmation of their residential and employment status. They are judged to have 7 years of continuous ordinary residence and their Entitled for Work Only status is thereby maintained.

This policy does not need to be applied to Entitled persons as such absences would be covered by the 5 year period that an Entitled person may be absent without losing their status (see Paragraph 67).

**Looked After Children**

68. Where a child is looked after and in the care of the Minister for Health and Social Services, and is placed into an off Island approved placement, the duration of time the child remains looked after will be deemed as ordinary residence in Jersey.

For example

Child in the care of the Minister for Health and Social Services is sent from Jersey and placed in an off Island specialist foster placement in the UK at the age of 7. The local authority in which the child is placed has no dealings with the child except through the provision of education. Responsibility for the child is retained by the Minister for Health and Social Services and regular visits to the child and necessary reviews are undertaken by Jersey employed Social Workers.

The child remains in the UK subject to a care order in favour of the Minister for Health and Social Services until the age of 18, at which point the child decides to return to Jersey. Upon their return, they are deemed to have been ordinarily resident in Jersey for a continuous period of more than 10 years and would have Permanent Entitled status.

69. When a child ceases to be looked after, and the Minister for Health and Social Services no longer has responsibility for a child placed in an approved placement, from that point any further period of off Island residence would not count as ordinary residence in Jersey, and would therefore be deemed as a break in ordinary residence.
70. If Permanent Entitled status has not been achieved by the time a young person ceases to be looked after by the Minister for Health and Social Services, the young person must resume ordinary residence in Jersey before attaining the age of 40 for previous periods of residence to be counted towards their total period of ordinary residence in Jersey. This includes time spent off Island whilst a looked after child by the Minister for Health and Social Services. Notwithstanding these parameters, the Assistant Chief Minister has the ability to consider applications on a case-by-case basis and to exercise discretion in respect of such applications.

**Permanent Entitled and Entitled Persons**

71. The legislation allows greater flexibility in relation to absences for persons with Entitled status. This reflects the position in the legislation that a person with a status allowing greater access to housing and work is allowed more flexibility in terms of absences than a person with a status that allows less access. A person with Entitled status is therefore afforded more flexibility than a person with Entitled for Work Only status.
72. A person with Permanent Entitled status cannot lose their status. Once a person has been granted Permanent Entitled status, they can therefore be absent from the Island for any period and for any reason without it impacting on their status. There is consequently never any need to undertake an absence test for Permanent Entitled persons.
73. For persons who are Entitled but not on a permanent basis, once they have attained that status they are permitted absences from the Island of up to 5 years in total – regardless of the reason for any such absence. They could potentially take up ordinary residence in another jurisdiction for that length of time without it affecting their residential and employment status under the legislation. This period of absence is a combined or aggregated period: the person does not need to be absent for one continuous 5 year period; it could instead be made up of smaller absences that add up to that amount. The period of residence initially acquired would not count towards any calculation for the purpose of establishing 30 years of continuous ordinary residence (in order to achieve Permanent Entitled status).
74. If an Entitled person is absent for longer than 5 years in total, however, they lose that status and upon re-application for a determination (e.g. to obtain a registration card) they would be assigned Registered status – unless affected by the provisions of another policy in this guidance.

For example

A person with 12 years of continuous residence (and who therefore has Entitled status) leaves the Island for 2 years. Upon their return, they seek a determination and it is confirmed that they still have Entitled status. They could in fact be absent for a further 3 years and yet retain their Entitled status.

In order to achieve Permanent Entitled status, however, they would need to complete a further 30 years of continuous ordinary residence; the 12 years of continuous ordinary residence achieved before their 2 year absence would not count.

### **Entitled for Work Only Persons**

75. In some cases, persons with Entitled for Work Only status may be allowed to bank the length of ordinary residence they attain prior to an absence from the Island. This relates to absences which are otherwise not addressed in this guidance. In such cases, the absence may see the person lose their Entitled for Work Only status but the period of prior ordinary residence may nevertheless be taken immediately to precede the ordinary residence which the person takes up again upon their return to the Island. Their ordinary residence is taken to have frozen at the point their absence begins.
76. As a result, if a person with Entitled for Work Only status were absent from the Island for longer than 6 weeks in a 12 month period, or the absence is not covered by a specific policy (e.g. secondment), the person would lose that status. Upon their return, they would be granted Registered status. However, they may be allowed to bank their prior ordinary residence, thereby reducing the length of time required for them to achieve Entitled status. Consideration is given to the length of the absence as a proportion of prior ordinary residence. Consideration is also given to any association with Jersey maintained by the person during their absence. A single absence of up to 1 year may be considered in this way.

#### **For example**

A person with 8 years of continuous ordinary residence (and who therefore has Entitled for Work Only status) leaves the Island and takes up residence elsewhere. After 5 months, they return to the Island and take up ordinary residence again. They are granted Registered status, however, they may be allowed to bank the 8 years of ordinary residence which they had achieved and would therefore need to remain ordinarily resident for only a further 2 years before achieving Entitled status.

#### **For example**

A person with 7 years of continuous ordinary residence (and who therefore has Entitled for Work Only status) leaves the Island and takes up residence elsewhere. After 6 months, they return to the Island and take up ordinary residence again. They may be allowed to bank the 7 years of ordinary residence which they had achieved. They are granted Registered status but are informed they would need to remain ordinarily resident for only a further 3 years before achieving Entitled status. After a further 2 years, however, they leave the Island again. As before, after 6 months they return to the Island and take up ordinary residence again. They are granted Registered status, however, as they have been absent on two occasions, their count of ordinary residence is deemed to start again from 0 upon their return for a second time.

### **Combined Effect of Policies**

77. If a person with Entitled status goes on secondment outside the Island, the time on secondment is not counted as part of the 5 year absence they are otherwise permitted – provided that the criteria of the secondment policy have been met (see Paragraph 60). If a person with Entitled status goes on secondment outside the Island for a period of up to 2 years, once they have returned they could be absent for a further 5 years without losing their status.

#### **For example**

A person with 12 years of continuous residence (and who has Entitled status) works on secondment in another jurisdiction for 1 year. The time spent on secondment meets the provisions of the secondment policy. The absence is therefore not counted as part of the 5 year period the person may

be absent. Upon their return to Jersey, they could subsequently be absent for a further combined period of 5 years without their Entitled status being lost.

One period of up to 2 years of secondment by an Entitled person may definitely be discounted from the 5 year absence that Entitled persons are permitted without losing their status. If further periods of secondment are undertaken by the same Entitled person, consideration may also be given to discounting them, dependent upon the circumstances.

78. Similarly, a period of up to 1 year travelling by an Entitled person is not counted as part of the 5 year period that they may be absent without losing their status – provided that the criteria of the travelling policy have been met (see Paragraphs 56 to 57).

For example

A person with 15 years of continuous residence (and who has Entitled status) travels abroad for 1 year. The time spent travelling meets the provisions of the travel policy. The absence is therefore not counted as part of the 5 year period the person may be absent. Upon their return to Jersey, they could subsequently be absent for a further combined period of 5 years without their Entitled status being lost.

79. The travelling policy may only be applied once to any one person, however. If a person took advantage of that policy whilst they had Entitled for Work status, they cannot take advantage of it again once they have gained Entitled status.

For example

A person with 7 years of continuous residence (and who has Entitled for Work Only status) travels abroad for 1 year. The time spent travelling meets the provisions of the travel policy. Their continuous ordinary residence is frozen at the point of their departure and the absence is disregarded. Upon their return, they remain continuously ordinarily resident for 3 years and gain Entitled status. Any further time they may spend travelling is counted as part of the combined period of 5 years that they may be absent without their Entitled status being lost.

80. Furthermore, only one 1 year period may be discounted from the calculation of the 5 year absence that an Entitled person may have without losing their status. Any time spent travelling by a person with Entitled status beyond 1 year would be counted as part of that 5 year absence. As already stated in Paragraph 57, if a person with Entitled for Work Only status travelled for more than 1 year, they would lose that status upon their return and would instead be granted Registered status.

For example

A person with 12 years of continuous residence (and who has Entitled status) travels abroad for 1 year. The time spent travelling meets the provisions of the travel policy. Upon their return, they could subsequently be absent for a further combined period of 5 years without their Entitled status being lost. However, after a further 5 years of continuous ordinary residence, the person travels abroad again for 1 year. That second period of travelling would count as part of their permitted 5 year absence. Upon their return, they could therefore subsequently be absent for a further combined period of 4 years without their Entitled status being lost

81. These provisions in respect of secondment and travelling mean that a person with Entitled status may in certain circumstances be absent for more than 5 years and yet not lose their status.

For example

A person with 12 years of continuous residence (and who therefore has Entitled status) works on secondment in another jurisdiction for a period of 1 year. The time spent on secondment meets the provisions of the secondment policy. The person's ordinary residence is therefore frozen at the point they begin their secondment and the time spent on secondment is disregarded. Upon their return,

they are judged to have 12 years of continuous ordinary residence. The person is ordinarily resident for a further period of 5 years before embarking upon a trip around the world that lasts 1 year. This meets the provisions of the travelling policy. Again their ordinary residence is frozen and the time spent travelling is disregarded. Upon their return, they seek to have their status confirmed. As both the secondment and the travelling meet the relevant criteria and are disregarded, the person is taken to have completed 17 years of continuous ordinary residence. As a person with Entitled status, they could subsequently be absent for a period of 5 years without losing that status, however, any further time spent travelling would be counted as part of that 5 year period.

82. Absences from the Island which are disregarded from a calculation of ordinary residence (i.e. secondment and travelling) do not count against achieving 30 years of continuous ordinary residence. This also applies to time spent in imprisonment which, under the imprisonment policy, is disregarded from the calculation.

For example

A person with 12 years of continuous residence works on secondment in another jurisdiction for a period of 2 years. The secondment meets the relevant criteria of the policy: the person's ordinary residence is frozen at the point they left and their time on secondment is disregarded. Upon their return, they are taken to have completed 12 years of continuous ordinary residence. They must therefore complete a further 18 years of continuous ordinary residence in order to achieve Permanent Entitled status.

## Essential Employment

83. A person may be granted Licensed status where they do not otherwise have Entitled or Entitled for Work Only status but where it is considered that they may take up employment in a Licensed position. Undertakings are granted licences that allow them to employ people with Licensed status to those licensed positions. If someone is appointed to that position and does not otherwise have Entitled or Entitled for Work Only status, they may be granted Licensed status.
84. The context in which decisions about Licensed persons are made is set out in separate policy guidance: *Business Licensing: Guidance Notes – Part 7 – Control of Housing and Work (Jersey) Law 2012 (R.124/2015)*.

## Partner's Status

85. A person may be granted Entitled for Work Only status if their spouse or civil partner has Entitled, Entitled for Work Only or Licensed status. The person retains that status for 5 years if their spouse or partner dies or if they divorce, provided that they remain continuously ordinarily resident in Jersey.

For example

A man with 2 years of continuous ordinary residence marries a woman with Entitled for Work Only status. Following the marriage, the man applies for a determination of his residential and employment status and is granted Entitled for Work Only status in his own right as the spouse.

After 2 further years of marriage, the couple divorce. The man moves to the UK and takes up employment. He is therefore deemed to have taken up ordinary residence in the UK. After 1 further year, he returns to Jersey and takes up employment in the Island. He applies for a determination of his residential and employment status. Although the divorce is less than 5 years previously, he has not been continuously ordinarily resident in the Island since the divorce. He does not therefore continue to meet the criteria for Entitled for Work Only status and he is consequently granted Registered status.

86. The legislation does not make any provision for long-standing, co-habiting couples (i.e. couples who have either not married or not entered into a civil partnership).

For example

A couple move in together. One has 7 years of continuous ordinary residence and is therefore of Entitled for Work Only status. The other has 1 year of continuous ordinary residence and is therefore of Registered status. After 3 years of cohabiting, the second partner requests Entitled for Work Only status. The second partner only has 4 years of continuous ordinary residence and so is not Entitled for Work Only in their own right. As the couple have not married, or entered into a civil partnership, the person also does not qualify on the basis of their partner's status. The second partner therefore remains of Registered status.

87. The position of an unmarried / non-civil partner may be taken into consideration during the determination of applications from a Registered person to carry on an undertaking; or from an existing undertaking to engage a Registered person. Under the Control of Housing and Work Law, undertakings need a licence to engage Registered persons.
88. In these circumstances, the Registered partner may be provided with a letter that indicates any application may be considered favourably on the basis of their relationship with a person of Entitled, Entitled for Work Only or Licensed status. Certain conditions must be met, however. The couple must be living together in a relationship akin to a marriage or civil partnership, intend to continue their relationship, and the relationship must have lasted at least the 3 years immediately preceding.
89. However, there is ultimately no guarantee that (regardless of how favourably any application may be considered) permission will in fact be granted for an undertaking to engage the Registered person. Consideration is also given during such decision-making to the nature of the employment and the ability of the employer to demonstrate that it has been unable to secure a locally-qualified person to undertake the role. The likelihood of the person therefore obtaining employment via this route will depend upon the specialist skills that they can offer and the essential nature of the employment in question. Further information on this point is available in the separate guidance on business licensing – see *Business Licensing: Guidance Notes – Part 7 – Control of Housing and Work (Jersey) Law 2012* (R.124/2015).
90. A co-habiting, long-term relationship needs to be appropriately evidenced for any letter to be provided.

For example

A couple move in together. One has 7 years of continuous ordinary residence and is therefore of Entitled for Work Only status. The other has 1 year of continuous ordinary residence and is therefore of Registered status. After 3 years of cohabiting, the second partner requests Entitled for Work Only status. They are not granted it as they only have 4 years of continuous ordinary residence and their status is confirmed as Registered. However, they are provided with a letter from the Department signifying that, should an employer wish to employ them, and on the basis that they are – and remain – in a long-term established relationship with an Entitled for Work Only, Entitled or Licensed person, the Department would take this into account when considering an application from an employer for an additional Registered permission.

## Hardship

91. Entitled status may be granted to persons who do not meet the relevant criteria where it is concluded that the hardship which would be caused by not granting the status outweighs the fact that they are otherwise not eligible.
92. Conditions may be attached to Entitled status on hardship grounds and a person may therefore lose that status if they fail to meet those conditions. Entitled status on hardship grounds is not in itself



permanent and policies in respect of temporary absence apply as they would to other persons of Entitled status.

93. Decisions on hardship cases are at the Assistant Chief Minister's discretion and there is consequently not a checklist of criteria that a person must meet in order to be guaranteed the granting of Entitled status. No two cases are identical and each request on hardship grounds is therefore considered on its own merits. Consideration is given, however, to previous instances in which the Assistant Chief Minister's discretion was exercised in order to help determine whether Entitled status should be granted.
94. Furthermore, a determination of whether Entitled status should be provided on hardship grounds takes into account the following factors:
  - a. The level of hardship that would be caused. The lower the likelihood of hardship, the less likely it is that Entitled status would be granted.
  - b. The length of ordinary residence. The closer a person is to meeting the criterion of 10 years of ordinary residence, the more likely it is that a request on hardship grounds would be considered favourably. Unless exceptional circumstances apply, applications with less than 8 years of ordinary residence are unlikely to be granted. This does not mean, however, that ordinary residence of more than 8 years will guarantee provision of Entitled status as it will depend upon the circumstances of the case in question.
  - c. The person's potential situation in relation to those in similar circumstances. In other words, the potential hardship in housing and employment terms that would be caused in comparison with the experience of residents in similar circumstances; and whether the granting of Entitled status would likely create an obligation to do likewise with others in similar or worse circumstances.
  - d. Whether it is vital that Entitled status be granted in order for the hardship to be avoided or whether there would be other means available to the applicant to avoid that hardship.

In order for Entitled status to be granted, it ultimately needs to be decided that the hardship which would be caused is the overriding factor: that it is so overwhelming that it should be given greater priority than the applicant's failure to meet the standard eligibility criteria

95. The legislation specifies that the hardship which would be caused by not granting Entitled status cannot simply be financial hardship. According to the dictionary, hardship means severe suffering or privation; harsh, adverse or harassing circumstances; or a difficulty in respect of one's ability to live comfortably. The potential for hardship must therefore be seen on other grounds, such as medical hardship; emotional or social hardship; or hardship in respect of living arrangements.
96. The hardship does not need to be caused to the person seeking Entitled status: it may be hardship that would be caused to another person who is ordinarily resident in the Island (e.g. the person's child).
97. It is currently recognised that hardship may be caused in the specified circumstances described below, for which special provision has been made. If an application on hardship grounds does not fall within these circumstances, it may still be considered but only in terms of the general position described above.

### **Relationship Breakdown**

98. It is recognised hardship may be caused where there has been a breakdown in a long-term relationship and where there are minor children from the relationship. Long-term relationships include marriages, civil partnerships and co-habiting arrangements of a defined duration. If Entitled status is granted, it is done so on the basis of avoiding any hardship caused to the minor children.
99. A grant of Entitled status may only be made where a person's former partner already has Entitled status and where they themselves are not of Licensed status. Upon breakdown of the relationship,

the partner who does not have Entitled status may be granted Entitled status if the following conditions apply:

- a. The person has been ordinarily resident for a continuous period of at least 7 years prior to the breakdown of the relationship (i.e. the person is of Entitled for Work Only status).
  - b. The relationship has lasted for at least the last 5 years.
  - c. Prior to the relationship breaking down, the person lived in Qualified accommodation with their Entitled partner and the minor children from the relationship.
  - d. Following the breakdown of the relationship, the minor children will live for the majority of the time with the non-Entitled partner, who will have parental responsibility. This is a condition of any Entitled status granted on these grounds and the Entitled status would be lost were the minor children to cease living with the applicant for the majority of the time.
100. Entitled status will not be granted, however, where it is evident that the applicant's financial position means the potential hardship arising from a change in housing can be avoided.

### **Death of a Spouse**

101. It is also recognised that hardship may be caused where a person's Entitled spouse or civil partner has died and the person does not have Entitled status.
102. The surviving partner must be ordinarily resident in Jersey at the time of their partner's death. The length of their ordinary residence is also taken into account. Unless exceptional circumstances apply in which the emotional hardship caused by the partner's death is overwhelming, applicants are expected to have been continuously ordinarily resident for at least the last 5 years prior to the time of their partner's death. Consideration would also be given to whether the person's circumstances meant that any hardship could in fact be avoided.
103. Where there are minor children in a long-standing, co-habiting partnership and the partner with Entitled status dies, the other partner may nevertheless be granted Entitled status in accordance with this provision, provided that the criteria in respect of relationship breakdowns are also met.

### **Medical Reasons**

104. Hardship may potentially be caused due to medical reasons and Entitled status granted accordingly. In such cases, consideration is given to the following matters:
- a. The medical condition in question and the resultant level of medical need;
  - b. The impact that the medical condition has on the person's ability to remain in their present accommodation; and
  - c. The length of the person's prior ordinary residence.
105. A substantial period of ordinary residence generally needs to have been achieved. The medical condition does not need to apply to the person themselves; it could be a condition affecting their child, for example, or another individual for whom the person is a recognised carer. In instances where the request is driven by hardship that might otherwise be caused to a child, however, Entitled status would normally be given to one parent alone.

### For example

A person with 9 years and 9 months of continuous ordinary residence lives in the top floor of an apartment block. They suffer an accident which results in permanent mobility challenges and which means that their accommodation is no longer suitable or practical. They cannot access more suitable accommodation without being granted Entitled status. On the basis that their medical need requires it and that they have achieved a reasonable period of ordinary residence, it is likely that Entitled status on hardship grounds would be granted in such a case.

### **Accommodation Related**

106. If a person's circumstances require them to leave their current accommodation but they are unable to access suitable accommodation without Entitled status, the status may exceptionally be granted on the basis of hardship. This can particularly be the case where persons in staff accommodation are forced to relocate (potentially because they have been made redundant or because the business has ceased to operate). Consideration is given to their family circumstances (i.e. the number of children) in order to judge how easily the person could find suitable alternative location in the Registered sector for themselves and their dependents. The person must be within 12 weeks of acquiring Entitled status for this provision to apply. Consideration is also given to the reasons for which the person is required to relocate and how much control they are able to exercise over their circumstances.
107. Similar consideration may be brought to bear in respect of Licensed persons when they lose the employment which underpins their Licensed status; and in respect of persons in lawful occupation of 'Registered' property which subsequently becomes 'Qualified' following re-inheritance.
108. A person can lawfully occupy a 'Qualified' freehold property if they have acquired that property by inheritance. This applies equally in respect of a person who inherits shares in a company relating to a 'Qualified' residential property, provided that the following criteria are also satisfied:-
  - a. The testator, being the person who dies leaving a will or testament in force, had Entitled or Licensed status at the time of their death.
  - b. The testator was ordinarily resident in Jersey at the time of their death.

### **Forces Policy**

109. Special provision is made in respect of the children of people serving overseas in Her Majesty's Armed Forces to avoid any hardship that may be caused to the children by having no or few ties to any jurisdiction. Time spent out of the Island by the child of a person serving time in the Armed Forces counts towards residential qualification providing that:
  - a. At least one of the parents is themselves Entitled (not including Entitlement on economic or social grounds).
  - b. One of the parents left the Island specifically to serve in Her Majesty's Forces.
110. Treatment of these periods as ordinary residence means that a person may in due course obtain Entitled status.
111. Her Majesty's Forces are the British Army, the Royal Air Force, the Royal Navy and the Royal Marines.

## **Extended Absences**

112. Applications on hardship grounds may be considered for the re-instatement of Entitled status from persons who previously held that status and who are returning to the Island after an absence of more than 5 years. Applications may be considered where the absence is no more than half of the period of prior ordinary residence. This may cover instances, for example, where there has been a relationship breakdown or the death of a spouse but where the particulars of the case do not fall within the provisions of those specific policies which have already been described.
113. In such cases, consideration is given to the level of hardship that would be caused by not granting Entitled status; the length of prior ordinary residence; the person's situation in relation to those in similar circumstances; and whether it is vital for Entitled status to be granted in order for the hardship to be avoided.
114. It is not possible to be granted Permanent Entitled status on these grounds.

### For example

A person with 24 years of continuous residence moves to Spain with their spouse. After 7 years of absence, the spouse dies. The person has no other family connections in Spain and no means of supporting themselves there. Their children remain ordinarily resident in Jersey, however, and the person therefore wishes to move back to Jersey. It is considered that hardship would be caused by not granting Entitled status and, as the absence is less than half of prior ordinary residence, Entitled status may be re-instated.

### For example

A person with 24 years of continuous residence moves to the United Kingdom with their partner. After 10 years of absence, they choose to move back to Jersey. On the basis of the length of the person's previous ordinary residence (provided that such ordinary residence can be evidenced), Entitled status may be reinstated.

## **Economic and Social Grounds**

115. A person may be granted Entitled status if the Assistant Chief Minister is satisfied that there are economic and / or social grounds for doing so and that it would be in the best interests of the community. Persons granted Entitled status on this basis are often referred to as High Net Worth Residents or High Value Residents. All decisions to grant Entitled status on these grounds are taken by the Assistant Chief Minister with delegated authority in Control of Housing and Work matters.
116. Applications for Entitled status on these grounds are not considered from existing Jersey residents.
117. The following factors are taken into account in respect of applications for Entitled status on these grounds.
  - a. The individual's contribution to tax revenues in accordance with Article 135A of the Income Tax Law.
  - b. The business / social background of the applicant and the associated benefit that could arise for Jersey as a result of their taking up residence in the Island.
  - c. Any other general benefits which the Island might obtain if the applicant were to take up residence.
118. The Income Tax Law states that anyone granted Entitled status on these grounds will be expected to contribute a given amount in Income Tax. Applicants would normally be expected to generate sufficient income so that, at the present rate of tax, their annual contribution would be at least

£145,000. However, a lower contribution may be accepted if other economic or social benefits for the Island would likely result from the applicant taking up residence. Where the economic test is met, other factors might nevertheless have a positive or negative bearing in the determination of the application.

119. Other than tax contributions, the following matters may also therefore be taken into account in order that the Assistant Chief Minister can assess the likely impact of the applicant taking up residence in Jersey:
- a. Any voluntary work or business contribution to the local community that might accrue.
  - b. Any training or sporting initiatives (particularly aimed at youth or educational organisations) driven by the applicant.
  - c. The nature of any media coverage of activities either by, or involving, the applicant, both in their business or social life. This would include any potential negative images relating to past business practice or positive images such as sporting achievements,
  - d. Any cultural interests or skills that would be of benefit to the local community.
  - e. General lifestyle and family circumstances, including charitable work and contributions.
120. Where an applicant intends to participate in some specific activities once resident in Jersey, any such intentions are evaluated and taken into account. Activities that are taken into account include:
- a. Evidence of past voluntary work that, if continued, might be of benefit to local charitable organisations.
  - b. Sporting or cultural interests which might benefit local clubs, or the wider local community.
  - c. International recognition in a cultural, sporting or business activity that is likely to bring positive publicity for Jersey as a result of being a resident of the Island.
121. In addition to the above, an applicant's intention to carry out further business activities in the Island will be taken into account, with particular regard to future local employment, training, diversification and any potential resultant increased tax revenues.
122. Entitled status on economic and social grounds may be granted with conditions attached to that status. In particular, the following conditions will be applied:
- a. Any property purchased must be, if a freehold house, worth at least £1.75 million and, if an apartment, at least £900,000 in value (unless otherwise agreed by the Assistant Chief Minister).
  - b. Only one single unit of residential accommodation can be leased or purchased for occupation by the person as their sole or main place of residence in Jersey (unless otherwise agreed by the Assistant Chief Minister), and permission to retain ownership of and occupy 'Qualified' property will depend, in future, on the person retaining Entitled status.
  - c. Any transaction in relation to property entered into by the person, either individually or via a body corporate, must incur Stamp Duty or Land Transaction Tax.
123. High Net Worth or High Value Residents are permitted to do the following once approved and ordinarily resident in Jersey, provided they continue to meet the conditions attached to their Entitled status:
- a. To purchase, develop and sell residential property through a property development company, subject to the condition that any freestanding units of residential accommodation must be sold out of the company to Entitled or Licensed persons on completion of the development.

- b. To purchase residential property in their own name that has either (i) been unoccupied for more than 2 years, and/ or (ii) on the market for sale for more than 2 years, and lease that property to persons with Entitled or Licensed status.
  - c. To purchase residential property adjoining their main place of residence in Jersey, where it can be demonstrated that the adjoining property more naturally falls within the same curtilage as the property already owned and occupied as their main residence. If approved by the Assistant Chief Minister, it is expected that the purchase would proceed in the same person or company name as the main residence, and that the purchase may be subject to conditions.
124. When a High Net Worth or High Value Resident has been continuously ordinarily resident in Jersey for 10 years, they can elect to participate in the local property market as they wish. However, if they also wish to continue to benefit from preferential tax arrangements, then conditions related to their ability to own and occupy 'Qualified' residential property will still apply.

### **Evidence-based Decision-making**

125. There is an implied imperative within the legislation that a determination of residential and employment status must be evidenced. The Assistant Chief Minister is therefore given the power to call for any documentation or information that may be required in order to determine a person's status.
126. If a person's status needs to be determined outside of the application process for a registration card, the requirement to provide documentation or information must be made in writing.
127. The legislation itself does not set out what evidence must be provided and various sources can therefore be used. It is implied within the Law, however, that sufficient evidence must be supplied in order to confirm that a person meets the relevant criteria for a particular status. Those criteria may be one or some of the following:
- a. The person's place of birth.
  - b. The age at which the person took up ordinary residence in Jersey.
  - c. The person's parents' residential and employment status.
  - d. The length (and timing) of the person's ordinary residence in the Island.
  - e. Whether the person is undertaking 'essential employment'.
  - f. The residential and employment status of the person's spouse or civil partner (or, in the case of divorce or widowhood, the status of the former or late spouse or civil partner).
  - g. Whether the person is entitled to special consideration on the grounds of hardship.
  - h. Whether there are particular economic or social factors relating to the person's circumstances that would be of benefit to the Island's community.

Evidence may also be required to justify the application of any absence policy. Furthermore, evidence may be required in some instances to support the fact that a couple have been co-habiting for a specified time.

#### For example

A 25 year old applies for their status to be determined in order to obtain a registration card. They say that they moved to the Island with their family at the age of 14; that they went to school in Jersey before undertaking a 3 year course at university in the UK. They then returned to Jersey after their studies and took up employment in the Island. Evidence will be required to justify that the person was ordinarily resident whilst at school and in employment – and that their time at university meets the requirements

of that part of the absence policy. That evidence could take the form of confirmation from their school and from their university regarding their education; and an employer contribution record to cover the period of employment.

For example

A 25 year old applies for their status to be determined in order to obtain a registration card. They say that they were born in Jersey and have lived in the Island ever since. Evidence will be required of their place of birth and to justify 10 years of combined ordinary residence. The evidence could take the form of the person's birth certificate or passport; and confirmation from schools regarding their education in the Island.

128. The legislation places the onus on the individual to provide the necessary information, when requested to do so. Efforts are nevertheless made by the Department to access information available to it, where possible, in order that the administrative burden on the individual may be reduced. In order to ensure that the principles of Data Protection legislation are respected, a person may be asked to give permission for the Department to access data. Nevertheless, a person may also be requested to provide documentary proof of their own accord.
129. The amount and type of evidence required to draw a conclusion about whether a person meets a given criterion will depend on the particulars of the case and the criterion in question. In some instances, one source of evidence may be sufficient (for example, a birth certificate is sufficient to determine a person's place of birth). In other cases, it will be necessary to consider and corroborate more than one source of evidence in order to arrive at a determination.
130. There is not an exhaustive list of evidence that may be used. A guide to how some of the more common sources of evidence are used is available on [www.gov.je](http://www.gov.je).
131. A judgement is effectively taken on the reliability or otherwise of the evidence available. A number of factors are used to do this, including:
  - a. When was the evidence created?
  - b. Who created the evidence?
  - c. How close is the person under consideration to the source of the evidence?
  - d. What risk is there that the person could have manipulated, distorted or influenced the nature of the evidence?

Consideration is also given to the risk that the evidence may be factually incorrect, notwithstanding any action that the person under consideration might or might not have taken. These factors are all used to decide whether the source of evidence reliably indicates that a person meets the criteria under consideration.

For example

Employer contributions are payable on behalf of employed persons working in Jersey under a contract of service. They are official records held by the Department of Social Security and are created monthly or quarterly by employers – essentially at the time to which they relate. An individual employee has no direct involvement in their creation. There is consequently little likelihood that a person could have interfered in the creation of their employer contribution record and there is little resultant risk that the record, as an official record generated for public administration, could be wrong. Employer contribution records are therefore considered a reliable source of evidence of a person's ordinary residence. They do not need to be corroborated by other sources.

132. In all cases, a decision is ultimately required on whether sufficient evidence of acceptable reliability has been presented in order that a reasonable conclusion can be drawn that a person meets the relevant conditions.

133. This requirement can be challenging, particularly in relation to ordinary residence. The test of ordinary residence can be hampered by a lack of evidence or by gaps in a person's evidential record.
134. Policy guidance surrounding temporary absences from the Island can, to an extent, be used to address such gaps in the evidential record. A person, regardless of their status, can be absent from the Island for 6 weeks in the calendar year, whatever the reason. Gaps in the evidential record of up to 6 weeks during a calendar year can therefore be disregarded without the person's ordinary residence being taken to cease.

For example

A person applies for determination of their residential and employment status. They have an employer contribution record that runs for 10 years, except for one 5 week period in July / August one year. The applicant explains that they were between jobs at the time but is unable to provide any documentary evidence that they remained ordinarily resident during that 5 week period. However, the temporary absence policy allows for periods of absence of up to 6 weeks within the calendar year. The 5 week gap in the person's evidential record can therefore be treated as a 5 week absence from the Island. This is taken to have no effect on the person's ordinary residence. The person can therefore be said to have 10 years of continuous ordinary residence and can be granted Entitled status.

135. For longer gaps in the evidential record which cannot be explained by a justifiable absence, consideration is given to the context of the evidence that is available and an assessment made of the risk or likelihood that a person was indeed no longer ordinarily resident during the period or periods for which no records are available.
136. This can be assisted by looking at the following circumstances:
- The person's family circumstances and whether it can be evidenced that their partner and / or their children were ordinarily resident during the time in question. This may help to determine whether the person was ordinarily resident as well but there is no guarantee that this factor will, in itself, mean that it is taken as a certainty.
  - The person's situation immediately before and immediately after the period for which there is no evidence. Ultimately, for any gap to be deemed as a period of ordinary residence, it must at least be seen that the person was ordinarily resident both immediately before and immediately after the gap.

The length of the gap is also taken into consideration: the longer the identified gap, the greater the risk that the person would not be deemed to have been ordinarily resident during that period. Or, at least, that further evidence would be required.

For example

A non-Jersey-born, 35 year old person applies for Entitled status on the basis of having completed 10 years of continuous ordinary residence. Employer contributions show that the person was ordinarily resident for a period of 6 years and then, after a gap of 2 years, for a further 4 years. The person is therefore asked to provide evidence of their ordinary residence during that 2 year gap. They obtain references from a landlord and from a doctor to show they were resident for the second of those 2 years. However, for the first year of the gap, they are unable to provide any evidence that shows they were ordinarily resident during that time or that their absence was covered by the temporary absence policy. It is therefore concluded that the person was not ordinarily resident for that period of 1 year. It can therefore only be shown that they have been continuously ordinarily resident for the preceding 5 years. They are therefore granted Entitled for Work Only status. They would need to be continuously ordinarily resident for a further 5 years to achieve Entitled status.