

19-21 Broad Street | St Helier
Jersey | JE2 3RR

Deputy Sam Mézec
Chair, Corporate Services Scrutiny Panel

BY EMAIL

18 May 2023

Dear Chair

1. What is the current process for addressing appeals under the Control of Housing and Work (Jersey) Law 2012?

The appeals process under the Control of Housing and Work (Jersey) Law 2012 (CHWL) is set out in Article 41 (see appendix for full details). In summary, an appeal against a decision made under the CHWL can be made to the Royal Court within two months of the date of the decision.

2. What changes to the appeals process under the Control of Housing and Work (Jersey) Law 2012 are being considered, if any?

In March 2022, the States Assembly approved the Draft Control of Housing and Work (Amendment) (Jersey) Law 2012 (CHWAL). This law is not yet in force. When it is brought into force it will introduce a revised decision making, review and appeal process. Most initial decisions will be made by authorised officers and will be able to be referred for initial formal review to a new political body – the Housing and Work Control Panel (HWCP). The HWCP will give their recommendation to the Chief Minister who will formally determine the outcome of the review. A further right of external appeal against the decision of the Chief Minister will continue to be available to the Royal Court.

3. Can you provide the current roles and responsibilities of the HAWAG, whether these have changed and, if so, when and why?

The Housing and Work Advisory Group (HAWAG) is set up under article 48 of the CHWL (see appendix for full details). In summary, the Chief Minister may refer issues or cases to the group for their advice. If the Chief Minister seeks advice in respect of a proposed change in legislation, the HAWAG will provide a report to the Chief Minister and the Chief Minister will include that report in any proposition in respect of the proposed legislation change.

In addition, HAWAG is required to consider any application for entitled status under regulation 2(1)(e) of the Control of Housing and Work (Residential and Employment Status) (Jersey) Regulations 2013. See Appendix for the full regulation.

The statutory role of HAWAG in respect of 2(1)(e) applications is the most recent change to the responsibilities of the HAWAG. The regulations were amended on 4 March 2020.

4. Can you clarify the role of the HAWAG in the appeals process and whether it is permitted to act on appeals under the Control of Housing and Work (Jersey) Law 2012?

Under the current CHWL the HAWAG has no formal power to take decisions on appeals.

Previous Chief Ministers have taken the opportunity to use the membership of the HAWAG as an appropriate political body to provide advice on specific decisions in respect of individual applications under the CHWL. The final decision on any application lies with the Chief Minister.

5. Can you clarify the link between an appeal and a review in respect of the HAWAG's function under the Control of Housing and Work (Jersey) Law 2012?

Under the current CHWL there is no right to review. An applicant has a direct right of appeal to the Royal Court. Under the new CHWAL a formal right of review will be established with the review being considered by the HWCP and the final decision being taken by the Chief Minister. Under the new CHWAL the existing right of appeal against the Chief Minister's decision to the Royal Court will remain.

6. Can you outline the involvement between the HAWAG, the Chief Minister and Officers when addressing an appeal or undertaking a review under the Control of Housing and Work (Jersey) Law 2012?

As above, there is no formal right of review in the current CHWL. Under the CHWL the Chief Minister is the decision maker, with a single layer of appeal against the first decision available via the Royal Court. The great majority of cases are determined by officers acting under delegated powers from the Chief Minister.

7. Can you clarify how the HAWAG interacts with the Population and Skills Ministerial Group (established as one of your 100 Days Actions), whether any overlap exists

The current role of HAWAG is to provide statutory advice to the Chief Minister in respect of 2(1)(e) applications. In addition, the Chief Minister may seek informal advice from the HAWAG before taking a decision on a particular case.

The membership of the HAWAG is as follows:

Assistant Chief Minister Stephenson

Minister for Economic Development, Tourism, Sport and Culture

Minister for Housing and Communities

Minister for Social Security

Minister for Home Affairs

Chief Minister



All of these ministers are also members of the PSMG, which also includes:

Chief Minister

Minister for Children and Education

Minister for External Relations

The role of PSMG is to co-ordinate strategies and policies across ministerial areas. PSMG does not deal with individual applications under the CHWL.

Yours sincerely

A handwritten signature in blue ink, appearing to read "Kristina Moore".

Deputy Kristina Moore
Chief Minister

Appendix

CHWL art 41

41 Appeals

- (1) In this Article, “decision” means a condition, determination, refusal, revocation, variation or notice described in paragraph (2), as the case requires.
- (2) A person aggrieved by a –
 - (a) condition relating to a person’s residential and employment status determined by the Minister under Regulations made under Article 2(2)(b);
 - (b) a determination of a persons’ residential and employment status under Article 3(5);
 - (c) determination under Article 15(3) in respect of the categorization of a unit of dwelling accommodation or the conditions relating to such categorization;
 - (d) refusal to grant consent for occupation of a unit of dwelling accommodation under Article 17(2);
 - (e) refusal to grant consent to a purchase by a legal person under Article 20(2) or the imposition of a condition under Article 20(5);
 - (f) refusal of the grant of a licence under Article 26(4);
 - (g) the imposition of a licence condition under Article 26(5) or Article 27(2) or the refusal to impose a requested licence condition under Article 26(5);
 - (h) variation or refusal to vary a condition of a licence under Article 29(4);
 - (i) revocation of a licence under Article 30;
 - (j) a notice requiring cessation of activity under Article 37(1) or (2),may, within 2 months of the date of the decision, or within such longer period as the Court may allow, appeal to the Court on the ground that the decision is unreasonable having regard to all the circumstances of the case.
- (3) On hearing the appeal, the Court may –
 - (a) confirm, reverse or vary the decision against which the appeal is brought;
 - (b) make such interim Order as it thinks fit; and
 - (c) make such order as to the costs of the appeal that it thinks fit, including any order with respect to the payment of costs or the payment of any compensation by the Minister resulting from any expected diminution in the value of land following a successful appeal under paragraph (2)(c).

CHWL art 48

48 Housing and Work Advisory Group

- (1) There shall be constituted a group to be known as the Housing and Work Advisory Group (referred to in this Article as “Group”).
- (2) An Assistant Minister of the Minister shall chair the Group.
- (3) The Group shall include the Minister for Housing and Communities and the Minister for Economic Development, Tourism, Sport and Culture.^[29]
- (4) The Minister may appoint to the Group such other persons, including any elected member of the States, as the Minister may determine, such other persons being appointed for the general purposes described in paragraph (5) or for a specific purpose only.
- (5) The Minister may refer to the Group for consideration and advice –

- (a) any matters in connection with the discharge of the Minister's functions under this Law; and
- (b) proposals for any changes in enactments related to matters under this Law.
- (6) The Group shall consider any proposals referred to them under paragraph (5)(b) and draft a report to the Minister containing such recommendations with regard to the subject matter of the proposals as they think appropriate.
- (7) If the Minister presents any Proposition to the States which comprises the whole or any part of the subject matter of any proposals which are the subject matter of a report under paragraph (6), the Minister shall present to the States a copy of the Group's report with the Proposition.
- (8) Except to the extent that the Minister directs otherwise, the Group may determine its own procedures.

Control of Housing and Work (Residential and Employment Status) (Jersey) Regulations 2013.

2 Conditions for Entitled status and loss of status

- (1) A person who satisfies any of the conditions set out in sub-paragraphs (a) to (f) of this paragraph shall have Entitled status –
 - (a) the person was born in Jersey and has been ordinarily resident in Jersey for a period, or aggregate periods, of at least 10 years;
 - (b) the person was not born in Jersey and has been ordinarily resident in Jersey for a continuous period of at least 10 years;
 - (c) the person –
 - (i) was not born in Jersey,
 - (ii) arrived in Jersey before attaining the age of 20,
 - (iii) has been ordinarily resident in Jersey for a period, or aggregate periods, of at least 10 years on or before attaining the age of 40, and
 - (iv) is the child of a parent who was Entitled on the date at which the person completed the period or aggregate periods of 10 years ordinary residence referred to in clause (iii);
 - (d) the person –
 - (i) was not born in Jersey, and
 - (ii) has been ordinarily resident in Jersey for a continuous period of at least 10 years commencing before the person attained the age of 16;
 - (e) the person –
 - (i) has been granted Entitled status by the Minister on the ground that the **Housing and Work Advisory Group** is satisfied that such grant is justified –
 - (A) on social or economic grounds or both, and
 - (B) as being in the best interests of the community, and
 - (ii) the person satisfies any condition to which the grant of such status is subject under paragraph (2);
 - (f) the person –
 - (i) has been granted Entitled status by the Minister on the ground that the Minister is satisfied that the hardship (other than solely financial hardship) which would be caused to the person or to any individual ordinarily resident in Jersey if the person were not granted Entitled status outweighs the fact that the person does not meet any other condition in this paragraph, and
 - (ii) the person satisfies any condition to which the grant of such status is subject under paragraph (2A).¹¹

- (2) The Minister may grant Entitled status under paragraph (1)(e) subject to such conditions as the **Housing and Work Advisory Group** thinks fit.¹²¹
- (2A) The Minister may grant Entitled status under paragraph (1)(f) subject to such conditions as the Minister thinks fit.¹³¹
- (2B) Without prejudice to the generality of conditions which may be imposed under paragraph (2) or (2A), conditions may include limiting the period for which consent is granted or specifying the unit of dwelling accommodation occupied or to be occupied.¹⁴¹
- (3) Any condition subject to which a person is granted Entitled status under paragraph (2) may be amended on such terms as the person and the **Housing and Work Advisory Group** may agree.¹⁵¹
- (3A) Any condition subject to which a person is granted Entitled status under paragraph (2A) may be amended on such terms as the person and the Minister may agree.¹⁶¹
- (4) A person has permanent Entitled status if –
 - (a) the person has had a continuous period of ordinary residence in Jersey of at least 30 years; or
 - (b) the person has Entitled status by virtue of paragraph (1)(a), (c) or (d).
- (5) Where a person who has Entitled status by virtue of paragraph (1)(e) also qualifies for Entitled status by virtue of any other sub-paragraph of paragraph (1) –
 - (a) that person may, on giving notice in writing to the Minister, elect to have Entitled status by virtue of such other paragraph; and
 - (b) upon giving such notice the person's Entitled status by virtue of paragraph (1)(e) shall cease.
- (6) Except in relation to a person who has Permanent Entitled status under paragraph (4), a person loses Entitled status if either of the following applies to that person –
 - (a) the person, since gaining Entitled status, has been absent from Jersey for a period or aggregate periods exceeding 5 years and was not ordinarily resident in Jersey during those periods of absence; or
 - (b) the person has Entitled status under paragraph (1)(e) or (f) and has breached any condition subject to which that status was granted.
- (7) In this Regulation "child" includes a child adopted in pursuance of an adoption order made by a court of competent jurisdiction in the British Islands or elsewhere.