

STATES OF JERSEY



DRAFT CONTROL OF HOUSING AND WORK (RESIDENTIAL AND EMPLOYMENT STATUS) (AMENDMENT NO. 2) (JERSEY) REGULATIONS 202- (P.20/2023): COMMENTS

**Presented to the States on 16th May 2023
by the Corporate Services Scrutiny Panel**

STATES GREFFE

COMMENTS

Background and Context

1. The Chief Minister lodged the proposition Draft Control of Housing and Work (Residential and Employment Status) (Amendment No. 2) (Jersey) Regulations 202- [\[P.20/2023\]](#) (hereafter the “draft Regulations”) on 11th April 2023. If adopted, the draft Regulations will be observed alongside immigration controls to determine who can live and work in Jersey. The proposed changes under the [Control of Housing and Work \(Jersey\) Law 2012](#) (CHWL) will give unmarried eligible partners the same employment rights as partners who are married or in a civil partnership.
2. The Corporate Services Scrutiny Panel (hereafter “the Panel”) [received a briefing](#) on the draft Regulations from Deputy Lucy Stephenson, Assistant Chief Minister and Government Officers on 4th May 2022 (hereafter “the Briefing”).
3. The Panel observed that the Chief Minister is responsible for the CHWL, however, has delegated the responsibilities to Deputy Lucy Stephenson, Assistant Chief Minister by Ministerial Decision on 17th April 2023 ([MD-CM-2023-220](#))
4. The [Control of Housing and Work \(Residential and Employment Status\) \(Jersey\) Regulations 2013](#) (‘the principal Regulations’) set out the conditions for residential and employment status under the CHWL. Regulation four sets out the conditions for Entitled for Work Only (EFW) status and loss of such status. Spouses and civil partners of those with Entitled status, Licensed status or Entitled for Work Only status already receive EFW status under the principal Regulations.
5. During the briefing the Panel was informed of the four employment and residential statuses as follows:
 - a. Entitled – a personal who has lived in Jersey for ten years.
 - b. Licensed – a person who was considered and essential employee.
 - c. Entitled for work – a person who has lived in Jersey for five consecutive years or is married to a person who is Entitled, Licensed or ‘Entitled for work’.
 - d. Registered – a person not qualified under the other categories.

Details of Proposition

6. The Panel was informed that, under the principal Regulations, unmarried partners did not acquire any residential and employment status from their partner and were classified under the ‘Registered’ status. The changes proposed by the draft Regulations would provide unmarried partners with identical employment rights currently available to married and civil partners. Therefore, the status of those unmarried partners would change from ‘Registered’ to ‘Entitled for Work’. This would automatically provide unmarried partners with access to the local labour market without requiring further permission.

7. It was expressed that Jersey's current framework does not provide the same level of opportunity offered by other jurisdictions, which unnecessarily limits access to the local labour market.
8. It was further clarified that amending regulations is a more efficient process than amending the Law, whilst providing the same outcome.
9. The Panel was informed that adopting the draft Regulations removed unnecessary restrictions on unmarried partners and aligned the CHWL consistently with Immigration Rules, which already allow for an unmarried partner to accompany a migrant worker to Jersey when certain conditions are met. It was explained that, following Brexit, immigration controls had taken advanced importance in controlling the movement of workers into Jersey.
10. The Panel understood that the proposed changes would assist in alleviating the labour and skills shortages that Jersey is experiencing by enabling unmarried partners to access all employment opportunities akin to married and civil partners. Thereby, Jersey would be able to benefit from its total resident population and this would assist the supply of labour in all areas of the economy.
11. Through establishing the criteria of an 'eligible partner,' the draft Regulations provide a fairer system for individuals in relationships, particularly noting the declining proportion of marriages in the population.
12. It was also highlighted to the Panel that cases had been identified where unmarried partners had refrained from relocating to Jersey as a result of the principal Regulations, which limited a partner's access to employment opportunities. It was emphasised that this consequentially impacted the skills and labour that Jersey sought to attract.
13. The Panel was informed that to be considered an 'eligible partner,' evidence had to be provided to establish an 'enduring relationship.' This provided parity for individuals in committed relationships.
14. It was noted that an enduring relationship required historical evidence of the relationship for a minimum duration of two years. It was explained that an eligible partner would then acquire EFW status and, therefore, the same employment rights under the current position for married and civil partners.
15. The additional criteria to determine an 'enduring relationship' was presented to the Panel as follows:
 - a. Co-habitation – these documents should show both names, or should link the person who is applying as a partner and their partner sponsor to the same address over time.
 - b. Shared financial responsibilities.
 - c. Other evidence showing genuine and subsisting relationship (when apart).

16. The Panel was satisfied to observe that in respect of eligible partners that the draft Regulations would consider the circumstances resultant from the death of a partner, and the breakdown of an enduring relationship as it would for married or civil partners. It was explained that in such circumstances, the partner without the EFW status would maintain their employment rights until such time they reached the required period of five years residency to obtain the status in their own right, as long as the partner remained as an ordinary resident in Jersey during that time. It was emphasised that the draft Regulations, therefore, extended the employment rights in such circumstances if the conditions are suitably met.
17. The principal Regulations defined terms in which an individual or business is exempt from a requirement under the CHWL. The Panel understood that any current exemptions available under the principal Regulations for certain unmarried skilled workers (for example midwives, nurses and social workers) would continue, should the draft Regulations be adopted by the States Assembly.
18. The Panel understood, if an individual was determined not to be an 'eligible partner,' it was advised that the Chief Minister is able to review individual cases and seek advice from members of the Population and Skills Ministerial Group (PSMG) to inform the decision.

The Appeals Process

19. The Panel sought to understand the appeals process under the CHWL and sought clarity on the function of the PSMG and Housing and Work Advisory Group (HAWAG) in the appeals process.
20. Noting that the responsibility for the draft Regulations had been delegated to the Assistant Chief Minister by the Chief Minister, the Panel also sought to identify whether the Assistant Chief Minister is a member of the HAWAG. The Assistant Chief Minister confirmed that she is a member, however, it was clarified that she has not yet attended a meeting of the HAWAG.
21. The Panel understood that the PSMG, which was established as part of the Chief Minister's 100-days Action Plan to assist in addressing the Island's skills shortages, is a coordination group rather than a decision-making body. The membership of the group was outlined to the Panel, which includes the Chief Minister, Minister for Home Affairs, Minister for Economic Development, Tourism, Sport and Culture, Minister for Children and Education, Minister for Housing and Communities, Minister for Social Security and Minister for External Relations.
22. The Panel raised concern regarding the potential overlap between the roles and responsibilities of the PSMG and the HAWAG and sought to understand how that was managed when considering appeals in relation to the CHWL.
23. The Panel was informed that the HAWAGs legal responsibility is to address concerns regarding 2(1)e applications. It was emphasised that legally the HAWAG is not permitted to handle appeals but could undertake reviews on

request by the Chief Minister and provide advice on those reviews which would be reported and presented to the States Assembly.

24. It was further explained that previously the HAWAG was acting as the de facto appeals body. However, it was acknowledged that the CHWL had not permitted the HAWAG to act on appeals. It was highlighted that the HAWAG was permitted to undertake reviews that are requested through the Chief Minister and that the HAWAG could advise the Chief Minister as a result of the review process. However, it was clarified that the process undertaken by the HAWAG was a review and not an appeal. It was emphasised that the route for an appeal would only be possible via the Royal Court.
25. The Panel understood that the review process would enable Ministers to review a decision that was made by Officers. However, that the process was undertaken in a manner that would maintain the independence of the Chief Minister from the original decision made.

Further Considerations

Breakdown of an Enduring Relationship

26. The Panel sought to understand the potential impact should an enduring relationship break down prior to the five-year residency term being fulfilled by the partner. It was explained that the partner would be entitled to maintain the EFW status for the remainder of the duration until such time that the five-year period was fulfilled, as long as the partner remained ordinarily resident in Jersey during that time in accordance with the CHWL. It was further explained that after the five-year term was reached, the partner would be permitted to acquire the status in their own right. It was highlighted that the process is the same as the existing process for married and civil partners.
27. Noting that the partner would be required to remain ordinarily resident in Jersey during that period, the Panel also sought to understand what the maximum period of absence was that allowed for a partner to maintain their eligibility under such circumstances. The Panel was informed that a period of more than six weeks is recognised as an extended period of absence. However, the Panel was pleased to observe that possible exceptions to the rule were acknowledged and would be considered on a case-by-case basis should that be required.
28. In accordance with the draft Regulations, the Panel understood that the process the partner would need to follow, following the breakdown of an enduring relationship, is the same as the existing process for married and civil partners. It was explained that the partner would only need to action a change in status when applying for a change in circumstances such as applying for a new job.

Meeting the Criteria for an Enduring Relationship

29. The Panel raised concerns that circumstances could arise that challenged the objectives of the draft Regulations, should relationships not meet the specific criteria required to evidence an enduring relationship. An example was given of a partner relocating to Jersey within the first two years of the relationship. The Panel was informed that the evidence to demonstrate an enduring

relationship is outlined within the draft Regulations and that evidence of a relationship of a two-year duration would be required. It was noted that as Jersey was part of the Common Travel Area (CTA), where movement for Jersey residents through the CTA is not restricted, that under immigration controls an enduring relationship is required to be proven. It was further highlighted that the proposed changes would prevent marriages where the sole purpose of the marriage was for a partner to gain EFW status.

Applying for Entitled for Work Status

30. The Panel sought to understand what the bureaucratic procedure would be for the eligible partner to obtain the EFW status. The Panel was informed that the partner would be required to observe the existing immigration procedures when applying for an immigration visa. It was explained that the relationship would need to be evidenced in accordance with the CHWL. It was further explained that the partner would be required to provide the evidence to Customer and Local Services (CLS) in the same way that Jersey residents who reached their five-year residency term are required in order to obtain their EFW status.

The Appeals Process

31. Noting the importance of an effective appeals process, the Panel sought to understand how the appeals process is undertaken, if the HAWAG is not legally permitted to consider appeals under the CHWL. It was noted that appeals are handled in accordance with the CHWL and dealt with by the Royal Court system. The Panel raised concern that the HAWAG is no longer handling housing related appeals, other than addressing concerns regarding 2(1)e applications. The Panel raised concern that an effective appeals process appeared unavailable, in that case, and questioned how any appeals outside of 2(1)e applications are being addressed.
32. It was further explained that the Chief Minister could request for Ministers to consider a concern that is raised without having to wait for a meeting of the HAWAG to convene. The Panel asked, in that case, whether the request would be made to all the members of the HAWAG or only to specific Ministers. From the briefing received the appeals process was neither clear, nor was the implication of the PSMG on the HAWAG and the appeals process. The Panel raised concern regarding any potential overlap between functions of the two groups and any resultant impact on the appeals process.
33. Considering the importance of having an effective appeals process in place under the CHWL, subsequent to the briefing, [the Panel wrote to the Chief Minister on 10th May 2023](#) to seek further clarity on the appeals process and the role of the HAWAG and the PSMG as part of the process.
34. The Panel was anticipating receiving a written response from the Chief Minister by 18th May 2023. As the Panel's Comments were presented on 16th May 2023, prior to receiving the response, the Panel proposes that States' Members carefully consider the published response on the States Assembly website prior to the States' debate on the proposition.

Impact of the Draft Regulations on Residential Status

35. Considering that the proposed changes within the draft Regulations only impact employment status and not residential status, the Panel sought to understand, what the impact would be on the eligible partner's housing status should a relationship break down. The Panel raised concern that although the partner would be entitled to continue to work under the EFW status, the partner would lose their housing status and may be forced to leave Jersey as a result.
36. The Panel was informed that the concern was apparent, however, that the residential aspect is observed under the CHWL and not under the draft Regulations. It was explained that it is possible to deliver the proposed changes in relation to employment status through the draft Regulations. However, it was highlighted that there is no clear route or existing mechanism to assist in decisions regarding the housing aspect other than through amending the CHWL. However, the Panel was informed that a decision by the Chief Minister can be made outside of the policy to assist in such circumstances on a case-by-case basis.
37. In light of the concerns raised, it was emphasised that the residential status has no bearing on the changes that are being proposed within the draft Regulations. Therefore, the Panel understood that the objectives of the draft Regulations are completely isolated from the residential aspect and that their focus is on employment alone.

Development of the Draft Regulations

38. The Panel sought to understand the timeline and development process for the draft Regulations and additionally what consultations, and with whom, have been undertaken to inform the proposed changes. The Panel was informed that the work was undertaken over a three-month period and has developed quickly. It was explained that no stakeholder engagement was undertaken as the changes required were primarily for regularising purposes. It was noted that the Population and Skills Ministerial Group (PSMG) was involved in the process.

Conclusion

39. The Panel is appreciative of the briefing received and in full support of the proposition. Notwithstanding its support of the proposition, the Panel is minded that due consideration should be given to how the residential concerns highlighted can be addressed within the CHWL.
40. The Panel was informed that consideration is being given to whether any changes regarding the residential aspect should be made. However, it is noted that the process to address that aspect within the legislation is more challenging and would take longer to achieve.
41. The Panel emphasises, however, that the residential concerns are not impacted by the draft Regulations. Therefore, having examined P.20/2023, the Panel concludes that it is satisfied the draft Regulation sufficiently fulfils its intended purpose. Moreover, that the draft Regulations will address disparities within Jersey's employment rights and provide economic benefit.