

# STATES OF JERSEY



## ENTITLED STATUS ON SOCIAL AND ECONOMIC GROUNDS: CHANGES TO LEGISLATION

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Lodged au Greffe on 14th August 2018  
by Deputy J.H. Perchard of St. Saviour

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STATES GREFFE

## **PROPOSITION**

**THE STATES are asked to decide whether they are of opinion –**

- (a) that Regulation 2(1)(e) of the Control of Housing and Work (Residential and Employment Status) (Jersey) Regulations 2013 should be amended so that it cannot be applied to persons employed by the States or States-owned bodies;
- (b) that, pending enactment of the legislative changes required to implement paragraph (a), Regulation 2(1)(e) of the Control of Housing and Work (Residential and Employment Status) (Jersey) Regulations 2013 should not be applied to the recruitment and employment of any future Chief Executive of the States of Jersey following the current post-holder;
- (c) that policy guidance issued under the Control of Housing and Work (Jersey) Law 2012 should be amended to include defined and measurable criteria for the application of Regulation 2(1)(e) of the Control of Housing and Work (Residential and Employment Status) (Jersey) Regulations 2013;
- (d) that decisions to grant Entitled status under Regulation 2(1)(e) of the Control of Housing and Work (Residential and Employment Status) (Jersey) Regulations 2013 should be taken by the Housing and Work Advisory Group; and
- (e) to request the Chief Minister to bring forward the necessary policy and legislative changes by 31st March 2019 to give effect to these measures.

DEPUTY J.H. PERCHARD OF ST. SAVIOUR

## REPORT

### The Law

The [Control of Housing and Work \(Jersey\) Law 2012](#) (“the 2012 Law”) was introduced to “establish a registration process for residents of Jersey” and to “make provision for the control of work and housing”. It states that provision is needed for “controlling the population density of Jersey” and for controlling the “availability of work and housing in Jersey”. It clearly states that this is intended to be used for people with “strong connections” with the Island. It also states that this “control of work and housing” shall be carried out in a way that is “in the best interests of the community in Jersey”.

### The Regulations

The [Control of Housing and Work \(Residential and Employment Status\) \(Jersey\) Regulations 2013](#) seek to explain and define the conditions for each residential status, as referred to in the 2012 Law. Regulation 2 outlines the conditions for Entitled status and the loss of this status. Regulation 2(1)(e) states that a person may be granted Entitled status if –

- “(e) the person –
  - (i) has been granted Entitled status by the Minister on the ground that the Minister 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);”.

[my emphasis]

### The Policy

The policy guidance, signed off by Ministerial Decision in March of this year, and presented to the States on 5th April as [R.42/2018](#) (Control of Housing and Work (Jersey) Law 2012: Residential and Employment Status – Policy Guidance – March 2018), was supposed to outline what could be meant by “social and economic grounds” and “best interests of the community”. However, the extent to which it does this is insufficient.

Phrases such as “international recognition”, “positive publicity”, “media coverage”, “sporting achievements”, “charitable contributions”, etc. are used to suggest possible “social grounds” and to, assumedly, cover the clause: “best interests of the community”; it is clear that being a recognised international figure is an implied quality of this criteria. However, the guidance given is vague and open to interpretation, which is further compromised by the fact that the final decision regarding Regulation 2(1)(e) status is made by one individual who, currently, has the legal right to grant this status on very little data.

When it comes to “economic grounds”, the guidance is more precise –

- “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. [...]"

"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).

[...]"

As we can see in this section of the policy guidance, there are many indicators that the Regulation 2(1)(e) policy is intended to be used for high net worth individuals and that such persons are identified by their income. Indeed, it states earlier (in paragraph 115) that: "Persons granted Entitled status on this [economic and/or social grounds] basis are often referred to as High Net Worth Residents or High Value Residents.". The terms "High Net Worth Residents or High Value Residents" are also used in the [Income Tax \(Jersey\) Law 1961](#).

The biggest issue with the policy guidance is that in its attempt to define criteria for "social and economic grounds", the last criterion is this (in paragraph 127.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."

In short, the terms are defined by the terms themselves, rendering this tautological definition completely open to subjectivity. Allowing government to be flexible when it comes to decision-making is, in many contexts, important. However, it is exactly at these times when we should be ensuring that there is a clear, transparent and objective process in place to ensure that decisions are approached with consistency, with fairness and following clear procedures. For this reason, when it comes to granting Regulation 2(1)(e) status, it is important that the decision is taken out of the hands of one person, and put back into the hands of a committee whose meetings are minuted, as used to be the case. The most appropriate body in this case is HAWAG (the Housing and Work Advisory Group), as this group is already involved in the process but, currently, has no say in the final decision, which is taken solely by the Assistant Chief Minister. In addition to securing objective action, this also serves to quash any perceptions of inconsistency, injustice or bias and, thus, will reassure the electorate that Entitled status is granted to Regulation 2(1)(e) residents on robust and measurable grounds.

On our own [website](#), it states that –

"If you apply to become a high value resident, you must meet the following main criteria:

[...]

- you'll need to show that you have annual worldwide earnings comfortably in excess of £725,000 per year, and this must be sustainable income. The minimum tax payable on your income is £145,000 per year, however this does not guarantee your high value residency status.”;

and whilst it concedes that: “We may accept a lower tax contribution if you provide a compelling economic benefit for the Island.”, the overall impression is that a high value resident is defined by monetary wealth.

It is clear that this Regulation was never intended for use within the public sector. The social and economic benefit of someone working in the public sector is not interchangeable with the economic benefit accrued by the States through tax revenue. Furthermore, we simply cannot allow our public sector to be governed by rules that we refuse to apply to the private sphere. Giving an Executive a package-deal that includes Entitled status in the public sector, sets an undeniable precedent for the private sector. We cannot have different rules for ourselves and private business. Entitled status under Regulation 2(1)(e) should not be used in job offer packages in either sphere.

The social and economic benefit produced by those working in the public sector is an inevitable, expected output of their work. How do we measure the social benefits provided by teachers who ensure that the next generation of doctors exist? How do we measure the economic benefit of a social worker who helps a person to rehabilitate from addiction and re-enter the workplace? How do we measure the social benefit of a surgeon who saves a life? And, vitally, how can we possibly put a price on the value that each brings to our society?

Teachers, nurses, social workers, emergency service providers, prison officers, and anyone else who provides a public service, contribute immeasurably to the well-being of our society and, whether directly or indirectly, to the economic health of the Island. We cannot compare the social benefit of the work of a nurse to the economic benefit of the Chief Executive. To do so is divisive, and division in the public sector is very much not in the “best interests of the community”.

If we allow Entitled status to be granted as an exception to some, but not others, we will simply divide our community, rid our public services of the goodwill that currently fuels many of them, and devalue vital professions.

### **Financial and manpower implications**

In terms of finances, there is only positive impact to be gained. Prospective and current high net worth individuals will be unaffected by this law change. Applications for high net worth residency will be unaffected. In fact, the insistence upon robust and measurable criteria is likely to have positive financial implications, as we will be able to evidence the economic benefit brought to the Island by Regulation 2(1)(e) residents.

In terms of manpower, we will save time by putting the decision in the hands of HAWAG. Currently, the process is such that HAWAG are consulted at the penultimate stage of the application for high net worth residency. Then, the decision is made by the Assistant Chief Minister. This proposition simply cuts the latter stage which will, in fact, serve to reduce manpower and increase efficiency.