

Business Licensing guidance notes

# Part 7: Controls on Working, Control of Housing and Work (Jersey) Law 2012

NOVEMBER 2020

## Introduction

1. This guidance is designed to assist applicants - so they understand why the Law exists and how it is applied.
2. The purpose of the Control of Housing and Work (Jersey) Law 2012 (“the Law”) is 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. Assistance or clarification is available on request by contacting the Business Licensing team on [businesslicensing@gov.je](mailto:businesslicensing@gov.je) or by calling 01534 444444.

## Definitions

4. A person shall not carry on an undertaking in Jersey unless there is in force an appropriate licence:
  - *An undertaking means any trade, business or activity involving work or services performed for, or offered to members of the public, including a section of the public, carried on in Jersey by any person whether or not carried on for profit.*
  - *An appropriate licence is a business licence, a non-resident trading licence or a hawker’s licence as the case requires.*

## Matters considered when making a decision

5. When deciding whether to grant or vary a licence, the following matters are relevant:
  - a. *Preserving and maximising the benefits of Jersey’s resources*
  - b. *Promoting a balanced and prosperous economy*
  - c. *Protecting the integrity and reputation of Jersey in commercial and financial matters*
  - d. *Any relevant policies of the States of Jersey*
  - e. *Whether such a grant would be in the public interest; and*
  - f. *In the case of a hawker’s licence, whether the applicant is a fit and proper person.*
6. The relevant policies of the Assembly are, in particular but not exclusively, as outlined in the States’ Strategic Plan, the Medium-Term Financial Plan, the Interim Population Policy (see Appendix for extracts from these documents).

7. The policies of the States Assembly seek to optimise economic growth while limiting migration - doing this by selectively approving applications to support migration which delivers the greatest social and economic value.
8. This focus on economic growth is essential. Our society is ageing, and this brings additional costs, for example, for our health service. We need a strong economy to fund high quality public services.
9. Other policies dealing with the reputation of the Island are also important - promoting Jersey as a well-respected jurisdiction in which to do business and promoting the widest interests of the Island.
10. In this way, we keep what is best about Jersey, for example, our outstanding natural environment, while also supporting economic growth.

### **How the Law is applied**

11. The Chief Minister is responsible for the Law and delegates those responsibilities to the Assistant Chief Minister, who chairs the Housing and Work Advisory Group (“the Group”). The Group includes the Ministers for Housing and Social Security, and the Assistant Minister for Economic Development. The Group meet approximately every two weeks to consider applications, and to develop policies in support of the Law.
12. Business Licensing Officers, and other selected staff of the Customer & Local Services Department, have delegated powers to make decisions under the Law, but may refer applications to the Assistant Chief Minister and/or the Group - in particular, where there is a concern about Jersey’s reputation in commercial or financial matters; or where an applicant appeals a decision; or for larger applications where there may be a significant impact.
13. Each application presents its own unique range of facts and circumstances and will be considered accordingly in support of the objectives outlined in paragraphs 5 – 10 above.
14. For the avoidance of doubt, the Law shall be applied unfettered by previous decisions that would be inconsistent with these policies.

### **Staffing**

15. There is no limit on the number of Entitled/Entitled for Work Only persons who may work for an undertaking.
16. Undertakings who wish to employ Registered or Licensed staff must have appropriate permission to do so from Business Licensing.
17. Registered or Licensed persons are normally prohibited from working in an undertaking, unless the role or individual warrants an exception in support of the objectives outlined in paragraphs 5 – 10 above.

18. A business licence may be issued with conditions supporting the objectives outlined in paragraphs 5 – 10 above, including, but not limited to:
- *The maximum number of Registered and Licensed staff who are permitted to work for the undertaking (which may be nil).*
  - *A description of the types of role for which any Licensed permissions may be used*
  - *The period of time for which such a person(s) may be engaged by the undertaking;*
  - *Naming such person(s) who may be engaged.*
19. A licence can be varied at any time:
- *An undertaking may apply for a variation of its licence at any time, including with reference to the maximum number of Registered and Licensed staff who are permitted; or*
  - *The Minister, with notice, may vary the licence at any time, including reducing/removing permission(s); and/or applying additional conditions; so long as this does not result in a breach of the licence by continuing to employ staff permitted prior to the variation.*

20. A business should check the residential status of any new employee by seeing their registration card, to ensure they are within the maximum numbers as specified on their business licence. It is the employees' responsibility to get a registration card from the Customer & Local Services Department.

### Summary of Employment Status

Employment Status	Definition	Employment
<b>Entitled</b>	Someone who has lived in Jersey for 10 years or who is granted this status on hardship or on social or economic grounds	Someone who can work anywhere
<b>Entitled for Work Only</b>	Someone who has lived in Jersey continuously for the last 5 years, or is the spouse or civil partner of someone who is Entitled, Licensed, or Entitled for Work Only	Someone who can work anywhere
<b>Licensed</b>	Someone who is an 'Essential Employee' engaged by a specific business with permission to engage such a person	Employer needs permission to employ a 'licensed' person
<b>Registered</b>	Someone who does not qualify under the above categories	Employer needs permissions to employ a 'registered' person

21. A business licence to carry on an undertaking is normally granted without expiry to operate, but some licences may be granted with an expiry date, or a specific licence condition may be time limited, to support the objectives outlined in paragraphs 5 – 10 above.
22. In limited circumstances, a Registered person's relationship with an Entitled/Entitled for Work Only or Licenced person will support an application. In particular:
- *Where a Registered person is in a long term co-habiting relationship (not normally less than 3 years<sup>1</sup>) with an Entitled/Entitled for Work Only or Licensed person.*

There should be no presumption that permission will be granted. The above relationships support an application and are taken into consideration as part of an overall assessment of the application.

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<sup>1</sup> The long-term co-habiting relationship would need to be evidenced by documentation across the 3 year period, and be addressed jointly in both names wherever possible. If not all documentation is in joint names, then documents addressed to each person may be acceptable, provided they show the same address across the 3 year period. This evidence should be from different and authoritative sources e.g. joint mortgage, utility bills, bank statements, tenancy agreements, insurance policies/certificates or other correspondence, loan agreements, correspondence from government departments or agencies.

23. Applications for permission to employ short term seasonal workers, usually between March and October, will generally be supported. This is because seasonal permissions do not add to the permanent resident population of the Island. At the same time, Entitled/Entitled for Work Only individuals will continue to be supported into these roles and employers will be expected to advertise these roles to Entitled/Entitled for Work Only residents before a seasonal permission can be considered.
24. Other than non-resident Hawkers, the policy is normally to grant a Hawkers licence to persons whose status is Entitled/Entitled for Work Only and not those who are Registered.
25. The presumption against employing Registered staff will not apply generally for visiting non-resident undertakings and non-resident traders, because these permissions do not add to the permanent resident population of the Island and are generally short term. However, conditions may be placed on the licence to support the objectives outlined in paragraphs 5 – 10 above.

### **Beneficial Owners of an undertaking**

26. There is no presumption against people who are not resident or Registered from being the beneficial owners of an undertaking. However, ownership does not confer any right to work in an undertaking or to obtain a permission to work in that undertaking (and permission may be refused if there are reasonable grounds to believe this to be the case).
27. Where there is a “significant change” in the ownership of the undertaking, the original Business Licence is no longer valid. “Significant change” means the acquisition of share capital (whether or not by means of one or more acquisitions) such that the share capital in the company owned by Entitled, Licensed or Entitled for Work Only people (whether or not acting collectively) is, when aggregated, less than 60% . Therefore, where a significant change in the ownership of an undertaking is proposed, full information should be submitted to the Business Licensing team to ascertain whether a licence would be granted. This request will be treated “as if” it was an application for a new undertaking. Further information is available at [www.gov.je/working/startbusiness](http://www.gov.je/working/startbusiness) or by contacting the Business Licensing team
28. For applicants (beneficial owners) that intend to carry on an undertaking working with children and vulnerable adults, evidence of relevant police checks, or a request for these to be obtained via the Jersey Vetting Bureau, may be required. Furthermore, a condition may be imposed to require police checks to be obtained in respect of any staff or persons involved in the undertaking.

### **How to make an application**

29. Application forms are available at [www.gov.je/working/startbusiness](http://www.gov.je/working/startbusiness) and can be completed on line and submitted by email; or they can be obtained from the Business Licensing team.

30. The Business Licensing team will normally deal with applications within 10 working days, often sooner. To support this, please ensure that the required information is submitted with the application. An application may take longer if all the information required is not provided, or additional information is required to determine the application, or if the application is referred to the Minister. All efforts will be made to provide a decision as soon as possible.
31. Assistance with making an application can be obtained by contacting the Business Licensing team. In addition, other agencies will be able to offer advice and guidance on the application process or other matters relating to your business, in particular:
- *If you are Entitled/Entitled for Work and are considering starting a new business, it is recommended that you seek advice from Jersey Business ([www.jerseybusiness.je](http://www.jerseybusiness.je) / 01534 610300) (who can also provide advice on the set-up of a business).*
  - *If you are not resident in Jersey, and are considering relocating your business to Jersey, or setting up a new business in Jersey, in the first instance you should contact Locate Jersey ([locatejersey.com](http://locatejersey.com) / 0044 (0)1534 440604) to discuss this further.*

### **Required information**

32. If an undertaking applies for Registered and/or Licensed staff, the following will be required (as outlined in the application form):
- *Details of your current staffing numbers broken by residential status and contract type*
  - *Details of the roles you are seeking Registered or Licensed permission for including:*
    - salary
    - experience and qualifications required
  - *Evidence of where you have advertised the role(s) you are applying for a permission(s) for in the past three months (i.e. photo of job advert(s) or email confirmation from the Back to Work Recruitment team that the job was advertised on gov.je or email confirmation from a recruitment firm)*
  - *Results of your recruitment including:*
    - how many people applied for the roles
    - Details of why each Entitled or Entitled to Work applicant was unsuccessful
  - *Information about your training, development and succession planning*
  - *Evidence of your financial contribution to the island (including profits, salary costs, tax benefits)*
  - *Evidence of wider benefits to the community that will occur as a result of granting the permission for example job creation and training or important services to islanders*

It is accepted that businesses vary in size, and that some of these requirements may be challenging. Jersey Business and Locate Jersey should be able to assist, and the Business Licensing team will seek to be understanding of the constraints that businesses face. At the same time, the better the information provided, the easier it is to determine an application appropriately.

33. All undertakings with a business licence shall provide a statement of the name and current residential status of staff engaged by the undertaking during any period as notified, and any other information as may be required. This will normally be required every six months as part of the 'manpower survey' but may be required at intervals in-between. This information enables the Business Licensing team to confirm compliance with any licence conditions and provides valuable statistics on employment in the Island. More information is available at [www.gov.je/manpowerreturns](http://www.gov.je/manpowerreturns).
34. Information may be sought from and disclosed to relevant organisations and Government Departments for the processing of applications and verifying the information provided pursuant to the Law, or to enable them to carry out their functions. This includes supplying information to other parts of the Customer & Local Services Department to support the employment of Entitled/Entitled for Work Only persons, in line with the objectives outlined in paragraphs 5 - 10 above.
35. Personal data provided will be used by the Business Licensing team to discharge its statutory functions, and it may be disclosed to third parties for those purposes. For more information on Business Licensing's privacy policy, visit the [privacy policy on gov.je](http://privacy.policy.on.gov.je) or request a written copy by calling +44 (0) 1534 444444.

### **Important Information**

36. Failure to obtain an appropriate licence when required, or to comply with any licence conditions, or to comply with any provisions of the Law, may result in fines, the revocation of licences, notice of cessation of the undertaking or prosecution. If an undertaking operates without an appropriate licence it is an offence under the Law for which the maximum penalty is imprisonment for two years and an unlimited fine.
37. The granting of any appropriate licence does not absolve the licensee from obtaining, nor does it overrule, any other permission that may be required under any other law.
38. The information provided in this statement is not a substitute for the Law and its subordinate legislation, copies of which are available from [www.jerseylaw.je](http://www.jerseylaw.je).

### **Appeals**

39. If a licence is refused or granted but any condition requested by the applicant refused, the applicant has the following courses of action.



## **Ministerial Appeal**

40. If the applicant considers the decision to be unreasonable, this should be set out in writing explaining why, with reference to the Law and Policy, and the Assistant Chief Minister may be prepared to reconsider a decision.
41. The Ministerial appeal shall involve a review of the application on the understanding that all relevant information should have been provided at the time, although additional information may be considered where it is appropriate to do so.
42. The applicant may also request a meeting with the Assistant Chief Minister to discuss the application in person, and this will normally take place with the other members of the Housing and Work Advisory Group, which includes the Ministers for Housing and Social Security, and an Assistant Minister of the Economic Development Department.
43. The Assistant Chief Minister will normally seek the views of Housing and Work Advisory Group in making a decision and will either maintain or amend the decision. The Assistant Chief Minister is unlikely to consider a decision more than once.
44. Should an applicant wish to undertake the above course of action, they should write, within two months of the date of the decision notice, to the Business Licensing team. Should the applicant continue to be unsatisfied with the decision once the above process is complete, the following courses of action remain open.

## **Statutory Appeal**

45. Under Article 41 of Law any person aggrieved by a decision may, within two 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.

Copies of the enactments referred to are available on the Jersey Legal Information Board website at [www.jerseylegalinfo.je](http://www.jerseylegalinfo.je) or from the States Bookshop, the contact details for which are as follows:

Address: Morier House,  
Halkett Place,  
St. Helier,  
JE1 1DD.  
Telephone: 00 44 (0) 1534 441020  
Email: [statesgreffe@gov.je](mailto:statesgreffe@gov.je)

## **Application for additional Registered and/or Licensed staff**

In order to engage Registered and / or Licensed staff, you'll need to complete our online application form. This can be found on the gov.je website here [www.gov.je/working/startbusiness](http://www.gov.je/working/startbusiness) or by following [this link](#)

## **Appendix: Extracts from the Medium Term Financial Plan 2016 – 2019; Strategic Plan 2015 – 2019; and Interim Population Policy 2014-2015**

### **Medium Term Financial Plan 2016 – 2019**

- In 2014, there were more pensioners living in Jersey than ever before and the total number of deaths in the Island was the lowest since 1952. This will cost us more. This is why the size of our workforce is so important. Currently, for each person in Jersey receiving a pension, there are about four working age people paying contributions to fund that pension.
- These projections show that if we have net nil migration, we will also have over 7,000 fewer workers by 2035, which would equate to £400 million of economic value. This is not sustainable, leaving us unable to maintain our standard of living or services, possibly leaving Jersey as a place where employers cannot recruit, where young people seek opportunities elsewhere.
- Jersey must resolutely respond to this challenge by taking action to maintain an adequate, appropriately skilled workforce. In doing this, we cannot do as other places have done and encourage high levels of net migration to fund our ageing society. In Jersey, this would require net inward migration averaging 3,000 people a year to maintain a dependency ratio – the ratio of workers to pensioners – at the current levels. This is unacceptable to the Council of Ministers and most Islanders.
- Employers must be able to access staff with the skills, market knowledge and experience they require if we are to stimulate growth and create job opportunities for established Islanders, including children leaving education.
- What we can do is to identify different future population scenarios, understand their potential impact on services and infrastructure, and plan for our future.
- We also need to be realistic about the extent to which government can exercise control over the size of our population and migration. We cannot control who is born, who dies, or whether established Islanders leave Jersey, or return to Jersey in later life, often with a family.
- We can then use our legislation to limit the availability of work and to manage migration in support of these plans. Most people who move to Jersey do so in order to work, with over 90% of all new migrants working.

### **States Strategic Plan 2015 – 2019**

- We must find a solution that meets our economic challenges without sacrificing the prized asset of 'liveability' that many competitors crave. In Jersey, this means getting the most value out of our existing workforce and the most value from every migrant worker. Only in this way can we grow our economy while limiting migration.
- We must also be realistic. Inward migration has a key role to play in Jersey's future. Employers will always need staff with skills, market knowledge and experience that is not immediately available locally. Our policy must continue to focus on migration which adds the greatest economic and social value, and only where local talent is not available.
- Desired outcome: A skilled workforce aligned to the needs of productivity-led economic growth - key area of focus: Secure migration that is targeted and delivers the greatest economic and social gain.

### **Interim Population Policy 2014-2015**

- We should adopt a planning assumption for net migration of +325 people per year – giving direction that will secure stability in the size of our workforce
- businesses that have more permissions for migrant workers than an average competitor should be focused upon, supporting them to recruit more Entitled/Entitled for Work Only staff
- new businesses should predominately employ Entitled/Entitled for Work Only people
- unused permissions for migrants should be removed
- generally migrants would not come to Jersey, or at least could not afford to stay in Jersey, if they could not work
- it is not enough for a business to show they cannot identify an "entitled" or "entitled to work" person, they must also demonstrate "high value" . . . there is no clear definition of high value – although having an economic value per worker above £60,000 is the guide

- the starting point for businesses which are not deemed high value is that they do not receive any additional permanent permissions to employ 'registered' and 'licensed' staff
- some businesses are able to show that they are creating something exceptional in terms of their offering to customers, or wider benefits for Jersey, even though as a business they may have a below average economic value
- ...the simple test is: What benefit does the application have to the Island as a whole (bearing in mind the Island as a whole wants us to limit migration)?
- if we succeed in attracting and developing high value businesses, then to limit migration we must limit the ability of lower value businesses to recruit migrants, otherwise our population could grow considerably.
- our objective is that a greater proportion of our migration relates to higher value economic and social value activities....while equally recognising that other industries need time and support in moving toward a more "local" labour force.