



Jersey

## **CONTROL OF HOUSING AND WORK (EXEMPTIONS) (JERSEY) ORDER 2013**

### **Arrangement**

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## **CONTROL OF HOUSING AND WORK (EXEMPTIONS) (JERSEY) ORDER 2013**

*Made*

*24th June 2013*

*Coming into force*

*1st July 2013*

**THE CHIEF MINISTER**, in pursuance of Articles 3(7), 25(9), 27(3), 44 and 50(5) of the Control of Housing and Work (Jersey) Law 2012<sup>1</sup>, orders as follows –

### **1 Interpretation**

In this Order –

“company” means a body corporate incorporated in any part of the world with or without limited liability;

“council of a foundation” has the same meaning as in the Foundations (Jersey) Law 2009<sup>2</sup>;

“day” includes any part of a day;

“Law” means the Control of Housing and Work (Jersey) Law 2012<sup>3</sup>;

“domestic premises” means –

- (a) a dwelling house; or
- (b) other building used principally as one or more dwellings,

including adjoining land;

“domestic purposes” means any purpose which is not for or in connection with the carrying on of any undertaking;

“domestic services” means any of the following services –

- (a) gardening;
- (b) cleaning (whether indoors or outdoors);
- (c) cooking;
- (d) ironing;
- (e) nursing or other personal care services;
- (f) services involving looking after children;

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“financial services company” means a company providing financial services business referred to in –

- (a) Part A; or
- (b) paragraphs 1 and 2 of Part B,

of Schedule 2 to the Proceeds of Crime (Jersey) Law 1999<sup>4</sup>, whether or not, in the case of Part A, such business falls within an exception or exclusion referred to in that Part;

“international group” means a group consisting of at least one company incorporated outside Jersey;

“group” in relation to a company, means that company, any other company which is its holding company or subsidiary and any other company which is a subsidiary of that holding company;

“holding company” has the same meaning as in Article 2 of the Companies (Jersey) Law 1991<sup>5</sup> (as if references to a “body corporate” were to a “company” as defined in this Order);

“medical purposes” means any of the following –

- (a) preventative medicine;
- (b) medical diagnosis;
- (c) medical research;
- (d) the provision of care and treatment;
- (e) the management of healthcare services;

“non-resident undertaking” means an undertaking which is not a resident undertaking;

“regulated activity” means an activity in respect of which a person –

- (a) is registered under the Banking Business (Jersey) Law 1991<sup>6</sup>;
- (b) holds a permit or is a certificate holder under the Collective Investment Funds (Jersey) Law 1988<sup>7</sup>;
- (c) is registered under the Financial Services (Jersey) Law 1998<sup>8</sup>; or
- (d) is authorized by a permit under the Insurance Business (Jersey) Law 1996<sup>9</sup>;

“resident undertaking” means an undertaking which has one or more persons working in or for it in Jersey where –

- (a) if one person only works for the undertaking, that person is ordinarily resident in Jersey; or
- (b) if more than one person works for the undertaking, all or the majority of the persons working in or for the undertaking are ordinarily resident in Jersey;

“subsidiary” has the same meaning as in Article 2 of the Companies (Jersey) Law 1991 (as if references to a “body corporate” were to a “company” as defined in this Order);

“zero hours contract” means a contract or other arrangement between an individual and an undertaking such that the individual may work for the

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undertaking from time to time but there is no minimum requirement for the individual to do any work for the undertaking.

## **2 Persons exempt from duty to have registration card for work**

A person who falls within any of the following descriptions shall, under Article 3(7) of the Law, be exempt from the duty to have an appropriate valid registration card in accordance with Article 24 of the Law –

- (a) a person who is in Jersey for an aggregate period of 60 days or less in any period of 12 months for the purposes of that person's work as one or more of the following –
  - (i) a director or secretary of a company,
  - (ii) a partner in a partnership,
  - (iii) a member of the council of a foundation,
  - (iv) a trustee of an express trust, or
  - (v) a person with equivalent responsibility to any of the foregoing;
- (b) a person who is in Jersey for an aggregate period of 60 days or less in any period of 12 months for the purposes of that person's work for one or more financial services companies, each such company being a member of an international group and for which the person works mainly outside Jersey;
- (c) a person who is a hawker or a non-resident trader for the purpose of the activities of hawking or being a non-resident trader;
- (d) a person working in or for a resident undertaking –
  - (i) where the person carries on activities in respect of which no business licence is required for the operation of the undertaking by virtue of any sub-paragraphs (b), (d), (g), (h) and (i) of Article 3(1), or
  - (ii) for the operation of which no business licences is required by virtue of any of sub-paragraphs (j) to (m) of Article 3(1);
- (e) a person who works in or for a non-resident undertaking;
- (f) a person who works in Jersey for an aggregate period of 10 days or less in any period of 12 months for one or more undertakings.

## **3 Undertakings exempt from duty to have a business licence**

- (1) Under Article 25(9) of the Law, an undertaking is exempt from the duty to have a business licence –
  - (a) in respect of any regulated activity by a non-resident undertaking;
  - (b) in respect of any regulated activity by a resident undertaking where each person working in or for the undertaking works for that undertaking for an aggregate period of 60 days or less in any period of 12 months and each person is any of the following in respect of the undertaking –

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- (i) in the case of a company, a director or secretary,
  - (ii) in the case of a partnership, a partner,
  - (iii) in the case of a foundation, a member of the council,
  - (iv) in the case of an express trust, a trustee,
  - (v) a person with equivalent responsibility to any of the foregoing;
- (c) in respect of any activity by a non-resident undertaking where the activity is administered or managed by a person or body of persons carrying out regulated activities;
- (d) in respect of any activity by a resident undertaking where –
- (i) the activity is administered or managed by a person or body of persons carrying out regulated activities,
  - (ii) each person working in or for the undertaking works for that undertaking for an aggregate period of 60 days or less in any period of 12 months, and
  - (iii) each person working in or for the undertaking is any of the following in respect of the undertaking –
    - (A) in the case of a company, a director or secretary,
    - (B) in the case of a partnership, a partner,
    - (C) in the case of a foundation, a member of the council,
    - (D) in the case of an express trust, a trustee,
    - (E) a person with equivalent responsibility to any of the foregoing;
- (e) in respect of any activity of the undertaking in the building or construction industry where –
- (i) the undertaking is a non-resident undertaking, and
  - (ii) the undertaking operates in Jersey for an aggregate period of 5 days or less in any period of 12 months;
- (f) in respect of any activity in Jersey for medical purposes where –
- (i) the undertaking is a non-resident undertaking,
  - (ii) the undertaking operates in Jersey for an aggregate period of 60 days or less in any period of 12 months, and
  - (iii) the undertaking's activities in Jersey are carried out on behalf of, or pursuant to arrangements with, any of the following –
    - (A) a States funded body,
    - (B) an undertaking that receives funding from the States of Jersey,
    - (C) an undertaking registered under the Nursing and Residential Homes (Jersey) Law 1994<sup>10</sup> or licensed under the Nursing Agencies (Jersey) Law 1978<sup>11</sup>;
- (g) in respect of any activity involving the provision of accommodation or premises in Jersey for any purpose where –

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- (i) the undertaking does not carry on property development in Jersey,
  - (ii) the undertaking is not registered under the Tourism (Jersey) Law 1948<sup>12</sup>, the Nursing and Residential Homes (Jersey) Law 1994 or the Lodging Houses (Registration) (Jersey) Law 1962<sup>13</sup>, and
  - (iii) any of the following applies –
    - (A) the undertaking is a non-resident undertaking,
    - (B) the aggregate number of separate units of accommodation or separate premises provided by the undertaking in Jersey does not exceed 5, or
    - (C) the undertaking is a sole trader who has Entitled, Licensed or Entitled for Work Only status or a company with one member, such member having Entitled, Licensed or Entitled for Work Only status;
  - (h) in respect of any activity of a resident undertaking involving the sale of goods from domestic premises where –
    - (i) the goods are situated on or in the vicinity of the domestic premises at the time of the sale, and
    - (ii) the sale is incidental to the use of those premises for domestic purposes;
  - (i) in respect of any activity of a resident undertaking involving the provision of domestic services to not more than 2 households;
  - (j) where the undertaking was carried on by a person immediately before the date that the Law came into force and, at that time, the person was exempt from the need to have a licence under Regulation 1(2) of the Regulation of Undertakings and Development (Jersey) Regulations 1978<sup>14</sup> and the person continues to carry on the undertaking –
    - (i) from the person's principal place of residence,
    - (ii) on the person's own account, and
    - (iii) without any other persons working in or for the undertaking;
  - (k) where the undertaking is –
    - (i) a sole trader who has Entitled or Entitled for Work Only status, or
    - (ii) a company with one member who has Entitled or Entitled for Work Only status, and  
the sole trader or member, as the case may be, works in or for the undertaking for less than 8 hours in any week;
  - (l) where none of sub-paragraphs (a) to (k) apply and –
    - (i) the undertaking is a resident undertaking that operates in Jersey for an aggregate period of 60 days or less in any period of 12 months, and
    - (ii) each person who works for the undertaking has a status that is any of the following –

- (A) Entitled,
  - (B) Licensed, or
  - (C) Entitled for Work Only;
- (m) where –
- (i) none of sub-paragraphs (a) to (k) apply,
  - (ii) the undertaking is a resident undertaking,
  - (iii) the undertaking operates in Jersey for an aggregate period of 10 days or less in any period of 12 months, and
  - (iv) one or more persons working for the undertaking at any time during that period has Registered status;
- (n) where the undertaking is a non-resident undertaking and –
- (i) none of sub-paragraphs (a) to (k) apply, and
  - (ii) the undertaking operates in Jersey for an aggregate period of 30 days or less in any period of 12 months.
- (2) For the purposes of paragraph (1)(g)(iii)(B), a unit of accommodation or premises (collectively referred to as “property”) is separate from other property in the same building if the former property is not ordinarily accessible by the occupiers of the other property.
- (3) In this Article, a reference to any activity by description includes any activity that is reasonably incidental to that activity.

#### **4 Description of individuals to be disregarded for maximum numbers condition in business licences**

- (1) For the purposes of complying with a condition under Article 27(1)(a) of the Law concerning the maximum number of individuals with Licensed or Registered status who are permitted to work in or for the undertaking there shall be disregarded any person –
- (a) working in or for the undertaking as a replacement for another person continuing to work in or for the undertaking provided that the 2 persons do not work simultaneously for the undertaking for a period of more than 30 days;
  - (b) providing cover for a person working in or for the undertaking who is on leave (including secondment or leave for training purposes), such period not exceeding –
    - (i) 9 months, in the case of maternity leave or sick leave, or
    - (ii) 3 months in all other cases of leave;
  - (c) working in or for the undertaking for an aggregate period of 10 days or less in any period of 12 months;
  - (d) working in Jersey for an aggregate period of 60 days or less in any period of 12 months for the purposes of that person’s work as any of the following –
    - (i) in the case of a company, a director or secretary,
    - (ii) in the case of a partnership, a partner,
    - (iii) in the case of a foundation, a member of the council,



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- (iv) in the case of an express trust, a trustee,
  - (v) a person with equivalent responsibility to any of the foregoing;
- (e) working in Jersey for an aggregate period of 60 days or less in any period of 12 months for the purposes of that person's work for a financial services company which is a member of an international group, such person being employed to work mainly outside Jersey.
- (2) Where a person works for an agency and is supplied by that agency to work for another undertaking ("second undertaking") in circumstances where, under Article 24(6) of the Law, the person is not deemed to work for the second undertaking, the agency shall, for the purposes of compliance with a condition of its licence under Article 27(1)(a) of the Law, disregard any person working for the second undertaking in the circumstances described in sub-paragraph (a), (b) or (c) of paragraph (1) as if "the undertaking" in those sub-paragraphs referred to the second undertaking.
- (3) An undertaking may, for the purposes of complying with a condition of its licence under Article 27(1)(a) of the Law, disregard any person who has a zero hours contract with the undertaking who would otherwise cause the condition to be breached provided that the person is disregarded only for such length of time as the person is not working for the undertaking.

## **5 Conditions of existing licences to be disregarded**

A condition of a licence granted under the Regulation of Undertakings and Development (Jersey) Law 1973<sup>15</sup> for the purpose of any activity for which a licence was required under the Part entitled "Regulation of Undertakings", such condition being to require, or the effect of which was to require, any change in the ownership of a person carrying on an undertaking to have the prior consent of the Minister for Economic Development, shall not be deemed under Article 50(1) of the Law to be a condition subject to which the licence is deemed to be granted under Article 26 of that Law.

## **6 Citation and commencement**

This Order may be cited as the Control of Housing and Work (Exemptions) (Jersey) Order 2013 and shall come into force on 1st July 2013.

**SENATOR I.J. GORST**

*Chief Minister*

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- 1 *L.31/2012*
  - 2 *chapter 13.265*
  - 3 *L.31/2012*
  - 4 *chapter 08.780*
  - 5 *chapter 13.125*
  - 6 *chapter 13.075*
  - 7 *chapter 13.100*
  - 8 *chapter 13.225*
  - 9 *chapter 13.425*
  - 10 *chapter 20.725*
  - 11 *chapter 20.700*
  - 12 *chapter 05.850*
  - 13 *chapter 05.450*
  - 14 *chapter 05.750.30*
  - 15 *chapter 05.750*