

Births and Deaths (Registration)(Amendment) Bill 2018

Ordinary Residence Key Principles

The Births and Deaths (Registration)(Amendment) Bill 2018 contains provisions that will permit a the birth of a child who was born overseas to be registered in St Helena if at least one parent was ordinarily resident on the island at the time of the birth. This note explains the key principles that are applied to decide whether a person is ordinarily resident on the island.

A person is ordinarily resident *in a particular place or country which he has adopted voluntarily and for settled purposes as part of the regular order of his life for the time being, whether of short or long duration*. This definition comes from the House of Lords in the case of Shah v London Borough of Barnet (1983) 1 All ER 226.

In most cases, it is easy to assess whether the person was living on the island as part of the regular order of his or her life for the time being. There is no minimum period in which a person has to be living in St Helena before they become ordinarily resident here. However, a person's ordinary residence is not changed by a temporary absence.

Ordinary residence depends on the nature and quality of the connection to the island. So a person who comes to the island to work with the settled intention to live here for the duration of a two year contract is ordinarily resident here for that time whereas a person who comes to the island for a week to carry out a specific piece of work is not ordinarily resident here.

Where the child's parents have previously been resident in St Helena but are working overseas at the time of the birth, the Registrar will have to consider the nature and quality of their connection with the place where they are working. The fact that the parent has a property on the island and intends to return at some point in the future does not (by itself) mean that he or she remains ordinarily residence here.

There is no fixed rule about how long the person must intend to stay in order to be ordinarily resident in a particular place. Some judges have indicated that a period of about six months would be required but this will depend on all the circumstances of the case. Where a person

Annex B

goes overseas for temporary work but then stays for a long period, he or she will no longer be ordinarily resident in St Helena. However, a person who intentionally divides their time approximately equally between two homes will be ordinarily resident in both places.

These are the principles that the Registrar will apply in deciding whether the birth of a child who was born overseas can be registered in St Helena.

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