



ST. HELENA

## **(Chapter No. not allocated yet)**

# **IMMIGRATION ORDINANCE**

### **Non-authoritative Consolidated Text**

This is not an authoritative 'revised edition' for the purposes of the Revised Edition of the Laws Ordinance; it has been prepared under the supervision of the Attorney General for the purpose of enabling ready access to the current law, and specifically for the purpose of being made accessible via the internet.

Whilst it is intended that this version accurately reflects the current law, users should refer to the authoritative texts in case of doubt. Enquiries may be addressed to the Attorney General at Essex House, Jamestown  
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Visit our [LAWS page](#) to understand the St. Helena legal system and the legal status of this version of the Ordinance.

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<sup>1</sup> These contact details may change during 2011 or early in 2012. In case of difficulty, email [shgwebsite@sainthelena.gov.sh](mailto:shgwebsite@sainthelena.gov.sh) or telephone (+290) 2470.

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## IMMIGRATION ORDINANCE

(Ordinances 8 of 2011, 2 of 2013, 4 of 2014 and 6 of 2016)

AN ORDINANCE TO CONTROL IMMIGRATION OF PERSONS INTO ST. HELENA, TO PROVIDE FOR THE STATUS, RIGHTS, OBLIGATIONS AND DISABILITIES OF IMMIGRANTS, AND FOR PURPOSES CONNECTED THEREWITH OR INCIDENTAL THERETO.

### Commencement

[23 January 2012 (in Part)<sup>2</sup> and 1 May 2012<sup>3</sup>]

## PART 1 PRELIMINARY

### Citation and Commencement

1. (1) This Ordinance may be cited as the Immigration Ordinance, 2011, and shall come into force on such date as the Governor in Council may appoint by Order in the *Gazette*.

(2) An Order under subsection (1) may appoint different dates for different provisions or for different purposes of the same provision, and may contain such incidental or transitional provisions as to the Governor in Council appear necessary or expedient.

### Interpretation

2. (1) In this Ordinance—
- “**Board**” means the Immigration Control Board referred to in section 6;
- “**Chairman**” means the Chairman of the Board;
- “**Chief Immigration Officer**” means the Officer appointed under section 4(1)(a);
- “**dependant**”, in relation to a person, means—
- (a) the spouse or life partner of that person; and
  - (b) a child, step-child or adopted child of that person, who is under the age of 18 years or who is over that age and—
    - (i) in full time education; and
    - (ii) under the age of 25 years;
- “**Entry Permit**” means a permit granted in accordance with sections 18 to 20;
- “**immigrant**” means a person who does not have St. Helenian status in accordance with Part 3;
- “**Immigration Officer**” means the Chief Immigration Officer or an Immigration Officer appointed under section 4(1)(b);
- “**Islander**” means—
- (a) a person who immediately before 18<sup>th</sup> October 1999, was an islander under the Immigration Ordinance, 1972 (the definition of which is reproduced in Schedule I);

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<sup>2</sup> Legal Notice 2 of 2012

<sup>3</sup> Legal Notice 15 of 2012

- (b)<sup>4</sup> a British Citizen or a British Overseas Territories Citizen who was born, or one of whose parents was born, in St. Helena after the 31st December, 1982 but before 18<sup>th</sup> October 1999;
- (c) a British Citizen or a British Overseas Territories Citizen who, immediately before 18<sup>th</sup> October 1999, had been resident in St. Helena for not less than seven years:

Provided that any period of imprisonment for six months or more or any period during which the person concerned was in St. Helena in breach of any law relating to immigration shall be excluded from computation of the qualifying period under this paragraph;

- (d) the spouse of a person to whom any of the foregoing paragraphs applies, who is not separated from his or her spouse under a Court order or a deed of separation, who has satisfied the definition of “islander” in section 2 of the Immigration Ordinance 1972;

**“Landing Permission”** means permission granted in accordance with section 21;

**“master”**, in relation to—

- (a) a water-borne vessel, means any person (other than a pilot or Harbour Master) having charge, control or command of such vessel; and
- (b) an aircraft, includes the person in command or in charge of it;

**“passport”** includes other internationally recognised documents verifying the holder’s identity and nationality;

**“prescribed form”**<sup>5</sup> or **“prescribed”** in relation to any form, means such form as may be determined by the Chief Immigration Officer;

**“Secretary”** means the Secretary of the Board appointed under section 6(7);

**“vessel”** includes every description of vessel used in navigation, including any and all craft and aircraft;

**“Work Permit”** means a permit granted in accordance with section 24.

(2) A person is not to be treated as the spouse of another person if those persons are living apart under a decree or order of a competent court or under a deed or agreement of separation.

### Obligations of masters of vessels

3.<sup>6</sup> (1) A master of a vessel who intends to land or put ashore on St. Helena any thing or person, shall, prior to entering the territorial waters or the airspace of St. Helena, obtain the permission of an Immigration Officer to do so.

(2) The master of a vessel shall, upon being requested by an Immigration Officer to do so, provide him with—

- (a) a list of the names, dates of birth, and nationalities of all passengers and other persons on board the vessel who intend to land on St. Helena; or
- (b) such other information as may be required by the Immigration Officer to enable him to make a determination with respect to the admittance to St Helena of such passengers and persons referred to in paragraph (a).

(3) If an immigrant arrives in St. Helena without having first been granted an Entry Permit, and is not granted entry on arrival, the master of the vessel in or on which that immigrant arrived in St. Helena shall secure his removal from St. Helena as soon as is practicable.

<sup>4</sup> Paragraph (b) of “Islander” amended by Ord. 2 of 2013

<sup>5</sup> Definition of “prescribed form” or “prescribed” inserted by Ord. 6 of 2016

<sup>6</sup> Section 3 amended by Ord. 2 of 2013 and Ord. 6 of 2016

(4) Any order or warrant of the Governor for the deportation of an immigrant may include a requirement for the master of a named vessel to transport that immigrant from St. Helena to a named destination and the master of such vessel shall comply with such requirement;

Provided that—

- (a) the master may refuse to transport the immigrant if the Governor fails to make reasonable provision for the immigrant to be escorted in order to secure the safety of the vessel and persons on board; and
- (b) subject to paragraph (c), the costs and expenses of and incidental to the removal of such immigrant from St. Helena shall be charged upon the Consolidated Fund;
- (c) the order or warrant for deportation may make provision for all or any of the property of the immigrant to be applied towards the costs and expenses mentioned in paragraph (b); and
- (d) in the case of an immigrant who arrived by aircraft, such named destination shall be the point of departure prior to arriving in St. Helena or other place where the inadmissible immigrant is admissible.

(5) A master of a vessel who fails to comply with the requirements of this section is guilty of an offence for which the maximum penalty on conviction is a fine of £5000 or imprisonment for 12 months, or both such fine and imprisonment.

## PART 2 ADMINISTRATION AND CONTROL

### Appointment of Immigration Officers

4. (1) The Governor may appoint public officers to be—
- (a) the Chief Immigration Officer; and
  - (b) Immigration Officers.
- (2) An Immigration Officer shall, in the exercise of his duties under this Ordinance, have the rights, powers, privileges and immunities of a police officer.
- (3) Every police officer shall be deemed to have been appointed to be an Immigration Officer.

### Powers and duties of Immigration Officers

5.<sup>7</sup> (1) It is the duty of every Immigration Officer to administer and enforce the provisions of this Ordinance.

(2) Without prejudice to the powers of the Board contained in this Ordinance, an Immigration Officer shall initially determine whether any person who wishes to enter St. Helena shall be allowed to do so.

(3) An Immigration Officer may board any vessel and search any part thereof for the purpose of exercising or performing his powers or duties under this Ordinance.

(4) An Immigration Officer may question and search any person who arrives in St. Helena for the purpose of establishing his nationality, identity and status:

Provided that no person shall be searched other than by an Immigration Officer of the same gender.

(5) Every person arriving in St. Helena shall produce to an Immigration Officer a valid passport:

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<sup>7</sup> Section 5 amended by Ord. 6 of 2016

Provided that this subsection does not apply to any person who produces valid proof that such person is a crew member of such vessel.

(6) Where an Immigration Officer is not satisfied that the requirements of this Ordinance have been complied with, he may refuse any person seeking to enter St. Helena permission to do so.

(7) The Chief Immigration Officer shall maintain a record of all determinations of applications by persons seeking permission to enter St. Helena and produce the same to the Secretary whenever required to do so.

(8) Without prejudice to any other power of arrest or detention, an Immigration Officer who reasonably suspects that the presence of any person in St. Helena is in contravention of any provision of this Ordinance, may detain such person for a period not exceeding 48 hours and any person so detained shall be deemed to be in lawful custody.

### Immigration Control Board

6. (1) There shall continue to be a Board to be known as the Immigration Control Board.

(2) The Board shall consist of a Chairman, a Deputy Chairman, and three other members, all of whom shall be persons who have St. Helenian status:

Provided that Justices of the Peace, Immigration Officers, and members of the Legislative Council are not eligible to be members of the Board.

(3) Each member of the Board shall be appointed by the Governor, for a term not exceeding three years, and notice of every such appointment shall be published in the *Gazette*;

Provided that an appointment shall not be invalidated by any failure to publish it in the *Gazette*.

(4) A member of the Board may resign from office by a notice signed by him and submitted to the Governor.

(5) The Governor may revoke the appointment of a member of the Board on the grounds of disability, neglect of duty or misconduct;

Provided that section 93 of the Constitution applies to such revocation as if a member of the Board is a judicial officer.

(6) A member of the Board shall cease to hold office as provided in subsection (4) or (5) of this section, or if—

(a) he is absent from three consecutive meetings of the Board without the leave of the Chairman;

(b) he becomes a member of the Legislative Council;

(c) he is appointed to be a Justice of the Peace or an Immigration Officer; or

(d) he is adjudged bankrupt.

(7) The Governor shall appoint a public officer to be the Secretary to the Board, who shall—

(a) maintain minutes of the meetings, proceedings and decisions of the Board;

(b) maintain a register, containing prescribed particulars of all applications for—

(i) Declarations of St. Helenian status (under section 15(3));

(ii) Long Term Entry Permits (under section 20);

(iii) Work Permits (under section 24);

(iv) Immigrant Employment Certificates (under section 25); and

(v) Immigrant Landholding Licences (under section 34);

(c) carry out any other duties provided for by this Ordinance.

## **Powers of the Board**

7. The Board shall have the various powers and functions conferred upon it by this Ordinance or any other law, and such incidental powers as are necessary to enable it to exercise and perform its powers and functions.

## **Meetings of the Board**

8. (1) Meetings of the Board shall be convened by the Chairman, and a quorum shall be formed by not less than three of those entitled to be present.

(2) The Chairman shall convene a meeting of the Board as often as is necessary for the efficient and effective discharge of the Board's functions.

(3) The Chairman shall preside at meetings of the Board and, in his absence, the Deputy Chairman shall preside:

Provided that if the Chairman and the Deputy Chairman are both absent the remaining members shall elect a member who shall preside.

(4) All matters before the Board shall be determined by a majority:

Provided that if the members are equally divided the person presiding shall have a casting vote.

## **Disclosure of interests by Board members**

9. (1) Any member of the Board who has a direct or indirect interest in any matter which is to be considered shall, if present at such meeting, make full disclosure of such interest, and refrain from participation in discussion or voting thereon.

(2) Any member of the Board who knowingly fails to comply with the provisions of subsection (1) is guilty of an offence for which the maximum penalty on conviction is a fine of £2,500.

## **Remuneration of members of the Board**

10. The members of the Board shall receive such fees, allowances or other remuneration as the Governor shall from time to time determine.

## **Duty of confidentiality**

11. (1) The members of the Board shall treat as confidential all information presented to the Board in the exercise of its functions.

(2) A member who wilfully discloses to any person any such information is guilty of an offence for which the maximum penalty on conviction is a fine of £2,500:

Provided that nothing in this subsection prevents the disclosure of information to a person having lawful functions to perform in connection with—

(a) any appeal under section 13;

(b) any civil or criminal proceedings; or

(c) the investigation of any suspected offence against this Ordinance.

(3) The duty imposed by subsection (1) shall continue to apply to members after they have ceased for any reason to act as such.



(4) For the purposes of this section, the Secretary shall be deemed to be a member of the Board.

### Appeals from decisions of Immigration Officer

12. (1) Any person aggrieved by or dissatisfied with a decision of an Immigration Officer may appeal to the Board within seven days of being notified of such decision.

(2) On an appeal under this section, the appellant shall not have a right to an oral hearing, but shall be entitled to make written submissions in support of his appeal, either personally or through a legal representative or other agent:

Provided that the Board may (in its discretion) grant an appellant an oral hearing if it considers that the appeal can be more justly determined in that way.

### Appeals from decisions of Board

13. (1) Any person aggrieved by or dissatisfied with a decision of the Board (including a decision made on an appeal under section 12) may appeal to the Magistrates' Court within 14 days (or such longer period as the Court may, in exceptional circumstances, allow) of being notified of such decision

(2) Appeals under this section shall be heard *in camera* unless the Court, with the consent of the appellant, orders otherwise.

### Appeals: supplemental

14. (1) Subject to the provisions of sections 12 and 13, and this section, the procedure relating to appeals shall be as prescribed in regulations made under section 43.

(2) On an appeal under section 12, the Board may either confirm the decision of the Immigration Officer, or substitute any decision which the Immigration Officer could lawfully have made.

(3) On an appeal under section 13, the Court may either confirm the decision of the Board, or substitute any decision which the Board could lawfully have made.

## PART 3 ST. HELENIAN STATUS

### Persons having by right or by grant St. Helenian status

15.<sup>8</sup> (1) A person has St. Helenian status by right of birth if—

(a) he is an islander; or

(b) he was born in St. Helena on or after 18 October 1999 and, at the time of his birth, his father or mother had St. Helenian status.

(2) A person has St. Helenian status by right of descent if he was born outside St. Helena on or after 18 October 1999 and, at the time of his birth his father or mother—

(a) had St. Helenian status by right of birth; or

(b) had St. Helenian status by descent, or by virtue of a declaration made under subsection (3), and was ordinarily resident in St. Helena; or

<sup>8</sup> Section 15 amended by Ord. 2 of 2013

- (c) had St. Helenian status by right of descent, which he acquired by reason of having at least one parent who had St. Helenian status by right of birth.
- (3) If, on an application for the grant of St. Helenian status made by a person of full age and capacity, the Board is satisfied that the applicant fulfils the requirements of Schedule II, it shall grant him a declaration that he has such status.
- “(3A) If the Board issues, or has issued, a declaration under subsection (3) to an applicant (‘the primary applicant’) it may grant such a certificate also to a person who—
- (a) is a child of the primary applicant and is under the age of 18 years; and
  - (b) is or was, at the time the certificate is issued to the primary applicant, residing with the primary applicant in St Helena; and
  - (c) has or had so resided during the period of residence in St Helena which is the basis upon which the certificate is granted to the primary applicant.
- (4) A person who claims to have St. Helenian status under subsection (1) or (2) may apply to the Board for a declaration that he has such status, and the Board—
- (a) if satisfied, after making such enquiries as the Board thinks fit, that he has such status, shall issue a declaration to that effect;
  - (b) in any other case, shall refuse the application.
- (5) An application may be made under subsection (4) by a parent or guardian of any minor whom the parent or guardian believes to have St. Helenian status.

### Deprivation and loss of status

16. (1) Subject to the provisions of this section, the Board may, if it is satisfied that a declaration granted under section 15(3) or section 15(4) was obtained by means of fraud, false representation or the concealment of any material fact of a nature which, had the true facts been made known to the Board at the time of application, would, in the opinion of the Board, have justified refusal of such declaration, revoke the declaration.

(2) Regulations made under section 43 shall provide for the procedure to be adopted by the Board in relation to the power conferred by subsection (1), and such rules shall, in particular, require that the person to whom the relevant declaration was granted must have an opportunity to make representations to the Board before the power is exercised.

(3)<sup>9</sup> A person to whom a certificate of St. Helenian status has been granted under section 15(3) or (3A) shall cease to have such status if he is absent from St. Helena for a continuous period of ten years.

## PART 4 ENTRY AND RESIDENCE

### Visa requirement to travel to St Helena

16A.<sup>10</sup> (1) Subject to subsection (2), no person holding a passport from a country specified by the Governor by order shall be allowed to travel to St Helena without first having obtained a visa prior to embarking on his or her journey to St Helena.

(2) Subsection (1) does not apply to any person who—

- (a) has St Helenian status or a dependant of a person who has St Helenian status;
- (b) holds a valid long term entry permit issued under section 20; or

<sup>9</sup> Section 16(3) amended by Ord. 2 of 2013

<sup>10</sup> Section 16A inserted by Ord. 6 of 2016

(c) can produce valid proof that he or she will be a crew member on duty on the vessel on which he or she will be travelling to St Helena.

(3) Every application for a visa and every visa issued under subsection (1), shall be in the prescribed form.

(4) A person who contravenes the provisions of subsection (1) is guilty of an offence for which the maximum penalty on conviction is a fine of £5,000 or imprisonment for a period of 12 months, or both.

### General provisions for control of immigrants

17.<sup>11</sup> (1) Subject to subsection (2) no immigrant shall enter or remain in St. Helena unless he is authorised to do so by either—

- (a) an Entry Permit;
- (b) a Landing Permission; or
- (c) Special Leave granted in accordance with regulations made under section 43 and subsection (1A) of this section.

issued under this Ordinance.

(1A) Regulations may prescribe circumstances in which an Immigration Officer may give permission (to be known as a ‘Special Leave’) for an Immigrant to enter (or remain in) St Helena though not authorised to do so by either an Entry Permit or a Landing Permission.

(2) Subsection (1) shall not apply to—

- (a) a dependant of a person who has St. Helenian status;
- (b) a person in the service of the Crown in right of the Government of St. Helena, or who is in (or wishes to enter) St. Helena primarily for the purpose of engaging in activities which are, by virtue of section 23(1)(b), not to be regarded as employment or work for the purposes of Part 5;
- (c) a dependant of a person referred to in paragraph (b);
- (d) a person who, upon arrival in St. Helena, is an officer or a member of the crew of a vessel which has been approved by the Chief Immigration Officer for the purposes of this subsection, and who is under an engagement requiring him to leave on that vessel;
- (e) any consular officer within the meaning of the Vienna Convention on Consular Relations 1963.

(2A) In respect of persons to whom subsection (2) applies such persons will be deemed, hereby, to have permission to enter St Helena and should they no longer for any reason fall into any of the categories listed under subsection (2) such permission will be regarded as automatically revoked one month after the date upon which they no longer fall into such categories.

(3) Policy directions given under section 41 shall specify the circumstances in which the Chief Immigration Officer may approve a vessel for the purposes of subsection (2)(d).

(4) Any person who contravenes any of the provisions of subsection (1) is guilty of an offence for which the maximum penalty on conviction is imprisonment for 12 months or a fine of £5,000, or both.

(5) A person is not to be regarded as having committed an offence against subsection (4) by reason of entering the territorial waters or airspace if—

- (a) he does so with the *bona fide* intention (the proof whereof shall lie upon him) that he will apply for permission to enter and remain in St Helena at the first practicable opportunity to present himself to an Immigration Officer for that purpose; and

<sup>11</sup> Section 17 amended by Ord. 2 of 2013 and Ord. 4 of 2014

- (b) he in fact so presents himself.
- (6) Regulations may provide that, in such circumstances as may be prescribed, an application for an Entry Permit may only be made by a person who is outside St Helena, and may further provide that a person who has entered the territorial waters or airspace is (in such circumstances as may be prescribed) to be treated as outside St Helena for the purposes of those Regulations.

### Entry Permits

**18. (1)** Subject to the provisions of this section and sections 19 and 20, an Entry Permit may be granted to authorise an immigrant to enter and remain in St. Helena for a period not exceeding five years;

Provided that the Governor in Council may, in exceptional circumstances, authorise the Board to grant an Entry Permit for such period exceeding five years as the Governor in Council may determine.

(2) Every application for an Entry Permit, and every Entry Permit, shall be in the prescribed form.

(3) Regulations made under section 43 may prescribe the evidence to be produced by an immigrant as to any matter relevant to his application for an Entry Permit, and may (without prejudice to the generality) provide that a declaration made by the immigrant (either in the application for an Entry Permit, or separately) shall be acceptable as sufficient evidence of any fact.

(4)<sup>12</sup> Regulations made under section 43 may prescribe circumstances in which an Entry Permit may not be granted or may be granted only subject to such conditions as may be prescribed; and, without prejudice to the generality, such regulations may provide—

- (a) that an Entry Permit shall not be granted to citizens of, or to immigrants who have arrived from or travelled through, such countries or places as may be prescribed;
- (b) that, in such circumstances as may be prescribed, a person may not be granted permission to enter St Helena unless it has been granted prior to embarking on his travel to St Helena;
- (c) that, in such circumstances as may be prescribed, an Entry Permit shall be granted only for such period (less than the maximum period mentioned in section 18(1) or 19(1)(a), as the case may be) as may be prescribed.

(5) In a case to which regulations of the kind described in subsection (4)(b) apply, an Entry Permit may not be granted after the immigrants leaves his country of origin.

### Short Term Entry Permits

**19.<sup>13</sup> (1)** An Immigration Officer may grant an Entry Permit (a ‘Short Term Entry Permit’) to an immigrant who:

- (a) applies, in the prescribed form, for permission to visit St. Helena for a period not exceeding 183 days;
- (b) produces a passport which is valid on the date of entry into St. Helena and will remain valid for at least six months after the expiry of the Entry Permit;
- (c) establishes to the satisfaction of the Immigration Officer that he has the intention to leave St Helena within 183 days and that he has the means to provide for—
- (i) the accommodation, food, clothing, health and welfare of himself and any dependants throughout the duration of the Entry Permit; and

<sup>12</sup> Section 18(4) amended by Ord. 2 of 2013

<sup>13</sup> Section 19 amended by Ord. 2 of 2013 and Ord. 6 of 2016

(ii) his and their repatriation to their place of domicile.

(2) A Short Term Entry Permit shall be valid for such period (not exceeding 183 days) as is specified therein.

(3) At any time before the expiry of a Short Term Entry Permit, the person to whom it was granted may apply to an Immigration Officer for the duration of the permit to be extended and such Immigration Officer may grant such application if he is satisfied that—

- (a) the immigrant's passport is valid until a date which is at least six months after the extended period of validity of the Entry Permit;
- (b) the immigrant will continue to have the means to provide for the matters referred to in subsection (1)(c) throughout the extended duration of the Entry Permit; and
- (c) the total duration of the Entry Permit will not thereby exceed 183 days.

### Long Term Entry Permits

20. (1) The Board may grant an Entry Permit (a 'Long Term Entry Permit') to an immigrant who—

- (a) applies, in the prescribed form, for permission to enter, or remain in, St. Helena for a period exceeding 183 days;
- (b) is in possession of a passport which is valid on the date commencement of the Entry Permit and will remain valid for at least six months after the expiry thereof;
- (c) establishes to the satisfaction of the Board that he has the means to provide for—
  - (i) the accommodation, food, clothing, health and welfare of himself and any dependants throughout the duration of the Entry Permit; and
  - (ii) his and their repatriation to their place of domicile; and
- (d) makes a declaration, in such form as may be prescribed, concerning his character and antecedents.

(2) At any time not exceeding three months before the expiry of a Long Term Entry Permit, the person to whom it was granted may apply to the Board for renewal thereof and the Board (after such enquiries in the matter as it shall think fit to make) shall renew the said permit (for a period not exceeding five years) unless it is satisfied that circumstances have changed since the permit was granted or last renewed in such a way that it would be contrary to the public interest to renew the permit.

### Landing Permission

21. (1) The Chief Immigration Officer may issue to the master of a vessel to which this section applies, a Landing Permission authorising a specified number of passengers and crew of that vessel to enter St. Helena without obtaining an Entry Permit.

(2) This section applies to any vessel in respect of which the Chief Immigration Officer is satisfied—

- (a) that the total number of passengers and crew onboard the vessel exceeds 20;
- (b) that the vessel will remain in St. Helena for less than 24 hours;
- (c) that all of the passengers and crew onboard at the time of arrival will be leaving on the vessel when it departs, and that adequate arrangements are or will be made to ensure this; and
- (d) that dispensing with the requirement for Entry Permits is not, in all the circumstances, against the public interest.

(3) There shall be paid, in respect of each Landing Permission, such fee as may be prescribed, being a fee calculated *per capita* upon the number of persons authorised to enter St. Helena by that permit.

(4) For the avoidance of doubt, a person who enters St. Helena on the authority of a Landing Permission is guilty of an offence under section 17 if he remains in St. Helena after the departure of the vessel on which he arrived.

(5)<sup>14</sup> The master of a vessel to whom a Landing Permission has been issued is guilty of an offence if, except where he does so with the prior permission of an Immigration Officer, he causes or permits the vessel to leave St. Helena having failed to ensure that all of the passengers and crew who arrived on the vessel are onboard at the time of departure.

(6) The maximum penalty on conviction for an offence against subsection (5) is imprisonment for two years or a fine or both.

### Revocation of Entry Permits

22.<sup>15</sup> (1) An Entry Permit may be revoked by the Board if it is satisfied that the holder of the permit—

- (a) obtained such permit by means of fraud, false representation or concealment of any material fact; or
  - (b) has been convicted anywhere of an offence and sentenced to imprisonment; or
  - (c) has contravened any of the provisions of this Ordinance or any regulations made under it, or
  - (d) has breached any condition of the permit, or has failed to do anything which (in or in connection with his application for the permit) he undertook to do; or
- in such other circumstances, if any, as may be prescribed.

(2) The Secretary shall give notice in writing to the holder of a permit which is revoked pursuant to subsection (1) and such notice shall state the grounds of revocation, and inform him of the right of appeal under section 13.

## PART 5 EMPLOYMENT OF IMMIGRANTS

### Restrictions on employment of immigrants

23. (1) In this Part, “**employment**” and “**work**” in either instance means to carry on or to be employed in any profession, trade, business or vocation for gain or reward, whether as an employee, agent, director or other officer of a corporate body, or as a self-employed person, in partnership or otherwise, but does not include any work done by a person—

- (a) in the course of his duties in the service of the Crown;
- (b) in fulfilment of the provisions of a contract entered into on behalf of Her Majesty (whether in right of Her Government of the United Kingdom or in right of Her Government of St. Helena) whereby goods or services are provided to Her Government of St. Helena; or

<sup>14</sup> Section 21(5) amended by Ord. 2 of 2013

<sup>15</sup> Section 22 amended by Ord. 2 of 2013

- (c) who has been present in St. Helena for less than 183 days in the period of one year preceding the day on which the work is done.
- (2)<sup>16</sup> No immigrant, other than a dependant of a person who has St Helenian status, may lawfully work in St Helena unless his presence in St Helena is authorised by an Entry Permit (or he is not required to have an Entry Permit by virtue of his falling under the provision of paragraph 17(1)(c) or 17(2)(c)) and his employment is authorised—
- (a) in the case of a person doing work on a self-employed basis (either alone or in partnership), by a Work Permit issued under section 24; or
- (b) in any other case, by an Immigrant Employment Certificate issued under section 25.
- (3) If a person who holds more than ten per cent of the issued shares in a company performs any work in the course of the company's business, he shall be deemed (for the purposes of this Part) to be employed by the company notwithstanding that he receives no payment other than dividends.
- (4) If, in any proceedings for an offence under this Part, it is proved that an immigrant performed work of a type for which and in circumstances in which payment would normally be made, the court may draw an inference (for the purposes of this Part) either—
- (a) that a relationship of employer and employee exists; or
- (b) that he is employed on a self employed basis,
- as the case may be.
- (5) (a) Any immigrant who engages in employment other than as authorised in accordance with subsection (2) is guilty of an offence for which the maximum penalty on conviction is a fine of £2,500 or imprisonment for three months, or both.
- (b) Any person who employs an immigrant other than as authorised in accordance with subsection (2) is guilty of an offence for which the maximum sentence on conviction is a fine of £10,000 or imprisonment for 12 months, or both;
- Provided that, in the case of self-employment, proceedings shall be commenced under paragraph (a) but the penalties on conviction shall be as provided for in paragraph (b).
- (6) The Governor in Council may, by Order, amend subsection (1)(c) by substituting for the number '183' such lower number as may be prescribed in the Order.

## Work Permits

**24. (1)** An application for a Work Permit shall be made to the Board in the prescribed form, and the Board may require the applicant to provide additional information, or to provide evidence to substantiate any information provided, to enable the Board to be satisfied as to the matters listed in subsection (2).

**(2)** If the Board, having regard to—

- (a) the condition of the local labour market generally; and
- (b) any special skills or experience of the applicant relevant to the work to be undertaken,

is satisfied that it would not be against the public interest to do so, it shall (subject to any regulations made under section 43(1)) grant a Work Permit to the applicant for such period (subject to subsection (5)) not exceeding five years as it may determine.

**(3)** Section 22 applies to a Work Permit as it applies to an Entry Permit.

**(4)** Any permit granted under this section shall cease to be valid if the holder -

- (a) is absent from St. Helena for a continuous period of more than six months; or

<sup>16</sup> Section 23(2) amended by Ord. 2 of 2013

(b) he ceases to be the holder of a valid Entry Permit or, having been exempt from the requirement to have an Entry Permit, ceases to be so exempt.

(5) The Governor in Council may, in exceptional circumstances, authorise the Board to grant a Work Permit for such period exceeding five years as the Governor in Council may determine.

(6) Every Work Permit issued shall specify—

(a) the period of its operation;

(b) the nature of the work in which the immigrant may be engaged;

(c) a condition that the holder of the permit shall immediately inform the Secretary of any change in his circumstances; and

(d) such other conditions (if any) as the Board in its discretion shall see fit to impose.

(7) At any time not exceeding three months before the expiry of a Work Permit, the person to whom it was granted may apply to the Board for renewal thereof and the Board (after such enquiries in the matter as it shall think fit to make) shall renew the said permit (for a period not exceeding five years) unless it is satisfied that circumstances have changed since the permit was granted or last renewed in such a way that it would be contrary to the public interest to renew the permit.

### **Immigrant Employment Certificate**

25. (1) An application for an Immigrant Employment Certificate may be made by any person engaged in any trade, profession or vocation in St. Helena who wishes to employ one or more immigrants in that business, and shall be made to the Board in the prescribed form.

(2) The Board may require the applicant to provide additional information, or to provide evidence to substantiate any information provided, in order to satisfy itself as to the matters listed in subsection (3).

(3) If the Board, having regard to—

(a) the condition of the local labour market generally and the extent of any specialist skills or experience which the prospective employer seeks to recruit; and

(b) the arrangements made or proposed to be made by the employer in relation to—

(i) living accommodation, health and welfare of immigrant employees; and

(ii) repatriation of each employee (and any dependants) on completion of the period of employment,

is satisfied that it would not be against the public interest to do so, it shall (subject to any regulations made under section 43(1)) grant an Immigrant Employment Certificate.

(4) Every Immigrant Employment Certificate issued shall specify—

(a) the name of the employer and the period (which shall not exceed five years) of its operation;

(b) the nature of the work in which the employer may employ immigrants;

(c) the number of immigrants which may be employed;

(d) such other conditions (if any) as the Board in its discretion shall see fit to impose.

### **Effect of non-compliance with conditions**

26. (1) If a Work Permit or an Immigrant Employment Certificate is issued subject to conditions, anything done in contravention of any condition renders the permit or Certificate void with effect from the date of the contravention.

(2)<sup>17</sup> The Board may revoke a Work Permit or an Immigrant Employment Certificate—

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<sup>17</sup> Section 26(2) inserted by Ord. 2 of 2013



- (a) if it is satisfied that the holder thereof has failed to do anything which (in or in connection with his application for the permit) he undertook to do; or
- (b) in such other circumstances (if any) as may be prescribed.

## PART 6

### LANDHOLDING BY IMMIGRANTS

#### Interpretation of Part

**27. (1)** In this Part, unless the context otherwise requires—  
**“controlled immigrant”** means—

- (a) a natural person who is an immigrant, other than one who is the spouse or life partner of a person who has St. Helenian status ; or
- (b) a body corporate other than—
  - (i) the Crown;
  - (ii) the Governor;
  - (iii) a charity registered under the Charities Ordinance, 2005;
  - (iv) a corporation established by an Ordinance;
  - (v) an exempt body corporate, as defined in subsection (2); or
  - (vi) the Lord Bishop of St. Helena.

**“cumulative landholding”** has the meaning given in section 28;

**“land”** includes every interest in land, whether legal or equitable, other than an exempt interest as defined in subsection (3);

**“licence”** means a licence granted or deemed to have been granted under this Part.

**“transaction”** means any transfer, lease or other instrument, contract or transaction the effect (or an effect) of which is to vest any land in a controlled immigrant.

**(2)** A body corporate is an exempt body corporate if it is:

- (a) a society registered under the Co-operative Societies Ordinance, Cap 112;
- (b) a Mutual Organisation registered under the Mutual Organisations Ordinance 2008; or
- (c) a company incorporated under the Companies Ordinance 2004,

and (in any such case) the structure and control of the body corporate is such that:

- (i) the total number of votes capable of being cast by controlled immigrants in a general meeting of the members does not exceed 45% of the total number of votes capable of being so cast; and
- (ii) on a dissolution of the body, not more than 45% of the funds or assets available for distribution to the members would become payable or due to controlled immigrants.

**(3)** The following interests in land are exempt interests, namely:

- (a) a mortgage or similar charge upon land granted as bona fide security for a loan;
- (b) an interest acquired by a controlled immigrant as bona fide purchaser of land sold by a mortgagee in exercise of his power of sale; and
- (c) a lease, periodic tenancy, or licence which is incapable of subsisting for longer than 99 years and which does not contain an option to renew or extend the lease, or to purchase the freehold;
- (d) an interest acquired by a controlled immigrant as a result of being the successful bidder or tenderer in an approved process.

(4) In subsection (3)(d), ‘approved process’ means a process for the disposal or creation of an interest in land, being a process of sale by way of auction or tender which has been approved (prior to its commencement) by the Governor in Council as an approved process for the purposes of this section.

### **Cumulative landholding**

**28. (1)** The ‘cumulative landholding’ of any person is the total area of land in St. Helena which that person owns or is deemed, by this section, to own.

(2) For the purposes of the definition of ‘cumulative landholding’, a person is to be deemed to own all land in St. Helena which is owned by any associated person of his.

(3) The associated persons of a natural person are—

- (a) his grandparents, parents, siblings, spouse or life partner, children, and grandchildren;
- (b) the spouses or life partners of his siblings, children and grandchildren; and
- (c) any body corporate the activities of which he (either alone or in association or combination with any of the persons mentioned in paragraph (a) and (b)) is able to direct.

(4) The associated persons of a body corporate are—

- (a) any person (either natural or corporate) who is able to direct the activities of the body corporate;
- (b) the grandparents, parents, siblings, spouse or life partner, children, and grandchildren of any natural person within paragraph (a); and
- (c) any body corporate the activities of which it (either alone or in association or combination with any of the persons mentioned in paragraphs (a) and (b)) is able to direct.

(5) For the purposes of subsections (3) and (4), a person (or a group of associated persons) is able to direct the activities of a body corporate if—

- (a) he is a director, secretary, or similar officer of the body corporate;
- (b) he is (or they together are) entitled to cast more than 25% of the votes which can be cast at a general meeting (or any meeting, however described or entitled, similar in nature to a general meeting of shareholders in a company); or
- (c) he is (or they together are) entitled to more than one-third of net assets available for distribution on a dissolution of the body corporate.

### **Prohibited transactions**

**29. (1)** A controlled immigrant is guilty of an offence if, except under the authority of a licence granted to him under this Part, he is a party to a transaction which has the effect (or an effect) that his cumulative landholding exceeds two acres.

(2) The maximum penalty upon conviction for an offence against subsection (1) is imprisonment for five years or a fine, or both.

(3) On conviction on indictment, for an offence against subsection (1), the Supreme Court may (in addition to any penalty imposed under subsection (2), order that any land or interest in land owned by the offender shall be forfeit to Her Majesty.

(4) An order under subsection (3)—

- (a) shall not be made unless the Court has allowed an opportunity for all persons likely to be affected thereby to make representations to the Court;
- (b) shall be sufficient authority for the Registrar of Lands to register the land or interest in land as Crown Land.

(5) The Governor in Council may, by Order, amend subsection (1) by substituting for the words ‘two acres’ such smaller area as may be prescribed in the Order.

### **Prohibited trusts**

30. (1) A person is guilty of an offence if, except under the authority of a licence issued under this Part, he holds any land in St. Helena in trust for a controlled immigrant.

(2) The maximum penalty upon conviction for an offence against subsection (1) is imprisonment for five years or a fine, or both.

(3) On conviction on indictment, for an offence against subsection (1), the Supreme Court may (in addition to any penalty imposed under subsection (2), order that both the legal and beneficial interests in the land unlawfully held in trust shall be forfeit to Her Majesty.

(4) An order under subsection (3)—

(a) shall not be made unless the Court has allowed an opportunity for all persons likely to be affected thereby to make representations to the Court;

(b) shall be sufficient authority for the Registrar of Lands to register the land or interest in land as Crown Land.

(5) A person is not guilty of an offence against this section by reason only of the fact that he is the executor or administrator of the estate of a deceased person and the beneficiaries of the estate include a controlled immigrant.

### **Conditional instruments**

31. For the avoidance of doubt, parties to any instrument are not guilty of an offence against this Part if the instrument is so expressed that the granting of a licence under this Part is a condition precedent to the instrument taking effect.

### **Change of status**

32. (1) This section applies when—

(a) an exempt body corporate ceases to be exempt; or

(b) a person who was a spouse or life partner of a person having St. Helenian status ceases to have that relationship;

and the body corporate or natural person (as the case may be) owns land at the time of the change of status.

(2) Every director, secretary or other similar officer of a body corporate to which this section applies, and every natural person to whom this section applies must, within 21 days of any event which causes this section to apply, notify the Attorney General of the occurrence of the event, and supply such other information in relation thereto as may be prescribed.

(3) A person who fails to comply with subsection (3) is guilty of an offence for which the maximum sentence on conviction is a fine not exceeding £5,000 or imprisonment for 12 months, or both:

Provided that (in the case of an offence relating to a body corporate) a person shall not be liable to be convicted for such an offence if he shows that he was unaware of (and could not by reasonable diligence have been aware of) the facts giving rise to the duty under subsection (2).

(4) In relation to a controlled immigrant to whom this section applies, section 29(1) applies to that controlled immigrant on and after the change of status as if the reference to ‘two acres’ is a reference to the cumulate landholding of that person at the date of the change.

## Applications for licences

**33. (1)** Every application for a licence shall be in writing, in such form as may be prescribed, and shall be delivered to the Secretary to the Board accompanied by—

- (a) the prescribed fee; and
- (b) such additional documents or information (if any) as may be prescribed.

**(2)** Regulations made under section 43 shall provide for—

- (a) enquiries to be made by or on behalf of the Board before making a decision on the application;
  - (b) publication of information about the application and arrangements for members of the public to comment or object; and
  - (c) generally for the effective processing of applications,
- and different provisions may be made for different circumstances.

## Determination of applications

**34. (1)** The Board may grant a licence authorising—

- (a) a controlled immigrant to acquire any land notwithstanding that his cumulative landholding will thereby exceed two acres; or
- (b) a person to hold land in trust for a controlled immigrant.

**(2)** Every licence shall be in the prescribed form and may be either unconditional or subject to such conditions as may be prescribed.

**(3)** The Board shall grant a licence unless it is satisfied that it would be against the public interest to do so.

**(4)** Policy guidance<sup>18</sup> issued under section 41 may include guidance as to the matters which the Board is to take into consideration when making a decision.

## Breach of conditions

**35. (1)** A person is guilty of an offence if, being the holder of a licence, he fails to comply with any condition in his licence.

**(2)** The maximum penalty on conviction for an offence under subsection (1) is imprisonment for five years or a fine of £5,000, or both.

**(3)** On conviction on indictment, for an offence against subsection (1), the Supreme Court may (in addition to any penalty imposed under subsection (2), order that any interests in land in relation to which the offence was committed shall be forfeit to Her Majesty.

**(4)** An order under subsection (3)—

- (a) shall not be made unless the Court has allowed an opportunity for all persons likely to be affected thereby to make representations to the Court;
- (b) shall be sufficient authority for the Registrar of Lands to register the land or interest in land as Crown Land.

## Investigation and Discovery

**36. (1)** The Attorney General may, by writing under his hand, appoint any public officer to carry out an investigation as to whether anything has been done in contravention of this Part, and a person so appointed is in this section referred to as an ‘Investigator’.

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<sup>18</sup> Policy Guidance on Immigrant Landholding Control issued in Gazette Notice No. 66 of 10 May 2012

- (2) An Investigator may, by written notice, require any person in St. Helena—
- (a) to appear before the Investigator, at a time and place stated in the notice;
  - (b) to produce any document or thing; and
  - (c) to answer any question relating to any matter which the Investigator is investigating;

and a person is guilty of an offence if he fails to comply with any such requirement or knowingly gives false information in response thereto.

(3) A statement made by a person in compliance with a requirement imposed by virtue of this section may be used in evidence against him—

- (a) in any civil proceedings, including any proceedings under this Ordinance; and
- (b) in criminal proceedings for an offence of perjury or for an offence contrary to subsection (2).

(4) The maximum penalty on conviction for an offence against subsection (2) is a fine of £5,000 or imprisonment for 12 months, or both.

### **Duties of Registrar of Lands**

37. (1) If it appears to the Registrar of Lands that any instrument presented to him for registration is or might be (or be part of) a forbidden transaction, the Registrar shall enquire into the matter and shall refuse to proceed with the registration of the transaction unless satisfied that it has been lawfully effected in conformity with this Ordinance.

(2) For the purposes of his enquiries under this section, the Registrar may exercise any of the powers vested in him under the Registered Land Ordinance, Cap 65.

(3) In this section ‘forbidden transaction means any transaction which is prohibited by section 29 or section 30.

## **PART 7 SUPPLEMENTARY**

### **General offences**

38. (1) A person is guilty of an offence if he—
- (a) without lawful authority or reasonable excuse (the proof whereof shall lie with him) refuses to supply any information lawfully required by an Immigration Officer or the Board;
  - (b) supplies any information to the Board or to an Immigration Officer which he knows or believes is false;

and the maximum sentence on conviction for an offence against this subsection is a fine of £5,000 or imprisonment for 12 months, or both.

- (2) A person is guilty of an offence if he—
- (a) harbours or otherwise gives comfort and assistance to any person whom he knows or believes is in St. Helena in contravention of this Ordinance;
  - (b) assaults or wilfully obstructs or impedes an Immigration Officer or a member of the Board acting in the execution of his duty under the provisions of this Ordinance or any regulations made hereunder.

and the maximum sentence on conviction for an offence this subsection is imprisonment for five years, or a fine, or both.

### Offences by bodies corporate

**39.** Where an offence under this Ordinance is committed by a body corporate every director, manager, secretary or other similar officer of the body corporate is guilty of the like offence and liable to be proceeded against, convicted and punished accordingly:

Provided that a person shall not be liable to be convicted under this subsection if he shows that he was unaware (and could not by reasonable diligence have been aware) of the acts or omissions which constituted the offence.

### Evidence

**40. (1)** Every document purporting to be a permit, licence, certificate or other authority given, issued, granted or made under this Ordinance may be received in evidence in any proceedings before a court, and shall be deemed, unless the contrary is proved, to have been validly given, issued, granted or made and shall be *prima facie* evidence of the contents thereof.

**(2)** Every stamp or imprint in or on any passport or other travel document produced in evidence shall be deemed to have been validly affixed or imprinted unless the contrary is proved.

**(3)** A copy, certified by an Immigration Officer or by the Secretary (as the case may be) of an entry made in any record or register required to be kept or maintained under this Ordinance shall be received as evidence in any proceedings before a court and shall be sufficient evidence of the matters stated in the entry.

**(4)** In any proceedings the burden of proving that a person has St. Helenian status, or that any provisions of this Ordinance do not apply to him, or that he is the holder of a permit, licence, certificate or other authority shall lie on that person.

### Policy directions

**41.<sup>19</sup> (1)** The Governor, acting in his discretion, may from time to time issue policy directions for guidance to the Chief Immigration Officer and Immigration Officers.

**(2)** The Governor in Council may from time to time issue policy directions for guidance to the Board.

**(3)** The Chief Immigration Officer, Immigration Officers, and the Board shall, in the exercise of their respective powers and duties under this Ordinance, comply with any and all policy directions given pursuant to this section.

### Prohibited immigrants

**42. (1)** If, after consultation with the Chief Immigration Officer and any other person or authority he may deem appropriate, the Governor is satisfied that the entry or presence in St. Helena of any person not having St. Helenian status is not conducive to the public interest, or is prejudicial to the maintenance of public order or the interests of security, he may, by notice published in the *Gazette*, declare that person to be a prohibited immigrant.

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<sup>19</sup> Notice of Policy Directions published in Gazette Notice No. 3 of 23 January 2012

(2) A copy of any notice published in accordance with subsection (1) shall be served upon the person named therein as soon as practicable after the making of such decision, and may be served before or after publication.

(3) Any person declared to be a prohibited immigrant under this section shall not enter St. Helena or, if already in St. Helena, shall be detained in such place as the Governor shall direct, and be removed from St. Helena at the earliest opportunity.

(4) Any person liable to be detained under subsection (3) may be arrested without warrant by a police officer or an Immigration Officer and forthwith conveyed to the place of detention designated and such person shall be deemed to be in lawful custody.

## Regulations

43. The Governor in Council may make regulations for the further and better execution of this Ordinance and, without prejudice to the generality of this power, such regulations may provide for—

- (a) anything which by this Ordinance is required or permitted to be prescribed;
- (b) the amount and nature of any security, by way of cash deposit or otherwise, to be given before a permit or pass is issued, for the due carrying out of any conditions attached to any permit or pass, and for the repatriation of the person in respect of whom the permit or pass is issued;
- (c) the enforcement of any security given and the forfeiture and repayment of any cash deposit;
- (d) requiring immigrants to submit to medical examination;
- (e) the forms of permits and passes issued under this Ordinance, the conditions which may be attached to the same, and the variation of such conditions;
- (f) the information to be supplied and documents to be produced in connection with any application for a permit, licence, certificate or other form of permission, or any variation thereof;
- (g) the extension or variation of any of the powers and duties of either an Immigration Officer or the Board specified in this Ordinance;
- (h) any additional measures deemed necessary for the landing, detention and removal of illegal immigrants on any vessel calling at St. Helena;
- (i) the imposition of duties on and the recovery of expenses from the masters, owners and agents of vessels;
- (j) the fees to be charged in respect of anything required or permitted to be done under this Ordinance;
- (k) the documents necessary, and the procedure for making appeals under sections 12 and 13 of this Ordinance, including the determination and notification thereof;
- (l) requiring that no Entry Permit, residence permit, Work Permit, or Immigrant Employment Certificate, shall be granted to prescribed categories of persons or in prescribed circumstances;
- (m) the exemption from all or any of the provisions of this Ordinance of any immigrant or class thereof for such period and in such circumstances as may be prescribed;
- (n) the matters referred to in paragraph 3 of Schedule II.

## Asylum Rules

44. The Governor, acting in his discretion but after consulting the Executive Council, may make rules for securing St. Helena's obligations under—

- (a) the Convention relating to the Status of Refugees done at Geneva on 28<sup>th</sup> July 1951, and its protocols, as applied to St. Helena;
- (b) Article 3 of the Convention for the Protection of human Rights and Fundamental Freedoms agreed by the Council of Europe at Rome on 4<sup>th</sup> November 1950, as applied to St. Helena; and
- (c) section 7 of the Constitution protecting a person from being subject to torture or to inhuman or degrading treatment or punishment;

and such rules may modify the provisions of this Ordinance in their application to such matters.

### **Repeals and transitional provisions**

**45. (1)** The Immigration Control Ordinance, 2008, (in this section referred to as ‘**the old Ordinance**’) is repealed.

**(2)** The Chairman, Deputy Chairman, and members of the Immigration Control Board who held office immediately before the commencement of this Ordinance shall be deemed to have been duly appointed to their respective offices under section 6(3) of this Ordinance and, subject to subsections (4) to (6) of section 6, shall remain in office until the expiry of their respective appointments.

**(3)** The persons who, immediately before the commencement of this Ordinance, held office as Chief Immigration Officer, Immigration Officer, and Secretary to the Board, shall be deemed to have been appointed to their respective offices under the corresponding provisions of this Ordinance.

**(4)** Every permit, licence, certificate, or declaration issued under the old Ordinance and remaining in force or having effect immediately prior to the commencement of this Ordinance shall remain in force and have effect as if it had been made under a corresponding provision of this Ordinance.

**(5)** Regulations made under section 43 may make transitional arrangements for the conclusion of any application, appeal or other proceeding or process commenced under the old Ordinance and remaining unresolved at the time of commencement of this Ordinance.

**(6)** For the avoidance of doubt, this Ordinance shall be treated (for the purposes of section 10(2) of the Interpretation Ordinance, Cap. 3) as repealing and re-enacting the old Ordinance.



**SCHEDULE I***(Section 2)***DEFINITION OF “ISLANDER” UNDER 1972 ORDINANCE****“islander”** means—

- (a) a British Dependent Territories citizen—
  - (i) who was born, registered or naturalised in St. Helena; or
  - (ii) who was adopted in St. Helena; or
  - (iii) whose father or mother was born, registered or naturalised in St. Helena; or
  - (iv) whose father or mother became a British Dependent Territories citizen by virtue of his or her adoption in St. Helena; or
  - (v) whose grandfather or grandmother was born, registered or naturalised in St. Helena; or
  - (vi) who is, or has at any time been, married<sup>#</sup> to a person who is an islander by virtue of any of the subparagraphs above, or who would have been so but for his death.
- For the purposes of this paragraph, references to registration or naturalisation shall be construed as references to registration or naturalisation as a citizen of the United Kingdom and Colonies, in relation to a time before commencement of the British Nationality Act 1981, and to registration and naturalisation as a British Dependent Territories citizen, in relation to a time after commencement of that Act;
- (b) a British citizen or a British Overseas citizen—
  - (i) who was born in St. Helena, whether before or after the commencement of the British Nationality Act 1981; or if not so born;
  - (ii) who was adopted in St. Helena; or
  - (iii) whose father or mother was born in St. Helena; or
  - (iv) whose father or mother became a British Dependent Territories citizen by virtue of having been adopted in St. Helena;
- (c) a British citizen, a British Overseas citizen or a British Dependent Territories citizen (otherwise than is mentioned in paragraph (a) above) who has been ordinarily resident in St. Helena for a period of seven years or more; provided that any period during which he is serving a sentence of imprisonment exceeding six months or during which he is lawfully detained as a criminal lunatic or during which his presence in the Island is unlawful shall not be reckoned as ordinary residence in the Island;
- (d) the wife or husband<sup>#</sup> of a person to whom either of the foregoing paragraphs (b) or (c) applies not living apart from such person under a decree of a competent court or a deed of separation;
- (e) a child (including an adopted or illegitimate child or step-child), under the age of eighteen years, of a person to whom any of the foregoing paragraphs applies;
- (f) a person in respect of whom the Governor—
  - (i) is satisfied that such person has, by reason of descent, kinship, residence or interest, a close and substantial connexion with the Island; and
  - (ii) has by order under his hand declared to have the status of islander for the purposes of this Ordinance.

[<sup>#</sup>Ord. 5 of 1987 provided that no marriage celebrated after 1 January 1987 shall be recognized or taken into account.]

**SCHEDULE II<sup>20</sup>***(Section 15(3))***REQUIREMENTS FOR ST HELENIAN STATUS**

**1.** Except where paragraph 2 applies, and subject to the provisions of paragraphs 3 and 4, the requirements for the grant of St Helenian status are that the applicant—

- (a) is of good character; and
- (b) intends, in the event of a certificate being granted to him, that his home or (if he has more than one) his principal home will be in St Helena; and
- (c) was in St Helena at the beginning of a period of five years ending with the date of the application and that—
  - (i) the total number of days on which he was absent from St Helena in that period does not exceed 500;
  - (ii) the number of days on which he was absent from St Helena in the period of twelve months so ending does not exceed 100; and
  - (iii) he was not in either of those periods undergoing a sentence of imprisonment nor in breach of any of the laws relating to immigration;

or that the Governor in Council has granted (under paragraph 4) a dispensation from the requirements of paragraphs (i) and (ii) (or either of them) of this subparagraph.

**2.** Subject to paragraphs 3 and 4, the requirements for the grant of St Helenian status in the case of a person who is the spouse or life partner of a person having St Helenian status are that—

- (a) the marriage or life partnership has been in existence for at least three years; and
- (b) the applicant is of good character; and
- (c) the applicant was in St Helena at the beginning of a period of three years ending with the date of the application and that—
  - (i) the total number of days on which the applicant was absent from St Helena in that period does not exceed 150;
  - (ii) the number of days on which the applicant was absent from St Helena in the period of twelve months so ending does not exceed 100;
  - (iii) the applicant was not in either of those periods undergoing a sentence of imprisonment nor in breach of any of the laws relating to immigration;

or that the Governor in Council has granted (under paragraph 4) a dispensation from the requirements of paragraphs (i) and (ii) (or either of them) of this subparagraph;

but nothing in this paragraph prevents a person who is the spouse or life partner of a person having St Helenian status from applying for status under paragraph 1.

**3.** Regulations made under section 43 may provide—

<sup>20</sup> *Schedule II substituted by Ord. 2 of 2013*

- (i) that periods of time spent in St Helena shall be counted as time spent outside St Helena; or
- (ii) that periods of time spent outside St Helena shall be counted as time spent in St Helena.

**4.** The Governor in Council may grant a dispensation from the requirements of paragraph 1 or 2 (as the case may be) as to the number of days absent from St Helena, if he is satisfied—

- (i) that the applicant for the dispensation has a substantial economic, social or historical connection with St Helena; and
  - (ii) that, there are exceptional circumstances (such as, but not limited to, shipping schedules or illness) why strict compliance with the requirements should be dispensed with; and
  - (iii) that it would be in the public interest to grant the dispensation.
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**IMMIGRATION REGULATIONS – SECTION 43**

*(Legal Notices 3 of 2012, 6 of 2013, 7 of 2014 and 10 of 2016 and Ordinance 14 of 2017)*

**PART 1  
PRELIMINARY AND INTERPRETATION****Citation and commencement**

1. These Regulations may be cited as the Immigration Regulations, 2012, and shall come into force on 23<sup>rd</sup> January 2012.

**Interpretation**

2. Any word or expression to which a meaning has been assigned in the Ordinance, bears the meaning so assigned and for purposes of these Regulations—

“**public funds**” means—

- (a) housing where rent or contributions to the rent are paid for by St. Helena Government, either directly or indirectly, or where the house is owned by St. Helena government and no rent is paid;
- (b) any government allowances;
- (c) publicly provided or subsidised healthcare, unless otherwise stated;

“**outside St. Helena**”<sup>21</sup> ...

“**terrorist activity**” means any act committed, or the threat of action, designed to influence a government or intimidate the public and made for the purposes of advancing a political, religious or ideological cause and which—

- (a) involves serious violence against a person;
- (b) may endanger another person’s life;
- (c) creates a serious risk to the health or safety of the public;
- (d) involves serious damage to property; or
- (e) is designed to seriously disrupt or interfere with an electronic system,

and “**terrorist**” has a corresponding meaning; an organisation is concerned with terrorism if it commits or participates in acts of terrorism, prepares for terrorism, promotes or encourages terrorism (including the unlawful glorification of terrorism), or is otherwise involved in terrorism.

**PART 2  
ST. HELENIAN STATUS AND DECLARATION****Application for declaration of status**

3.<sup>22</sup> (1) A person applying for declaration of his St. Helenian status under section 15(4) of the Ordinance, shall complete the prescribed form and provide documentary or other evidence of—

- (a) in the case of status obtained by right of birth—
  - (i) his Islander status as referred to in Schedule I of the Ordinance; or

<sup>21</sup> Definition of “outside St Helena” revoked by LN 7 of 2014

<sup>22</sup> Regulation 3 amended by LN 10 of 2016

- (ii) proof of his birth in St. Helena and details of his parent(s)'s St. Helenian status; or
- (b) in the case of status obtained by right of descent, the relationship with his parent with St. Helenian status and details of such parent's status and—
  - (i) where section 15(2)(b) of the Ordinance applies, proof of such parent's residence in St. Helena; or
  - (ii) where section 15(2)(c) of the Ordinance applies, details of the St. Helenian status of his grandparent referred to in that section.
- (2) A declaration of status issued by the Board shall be in the prescribed form.

### **Application for St. Helenian status**

**4.**<sup>23</sup> (1) A person applying for St. Helenian status under section 15(3) of the Ordinance, with reference to paragraph (1) of Schedule II thereto, shall apply in the prescribed form and provide documentary or other evidence that the applicant is eligible to be granted St Helenian Status in accordance with section 15(3) of, and Schedule II to, the Ordinance.

(2) An applicant applying for St. Helenian status under section 15(3) of the Ordinance as the spouse or life partner of a person with St. Helenian status shall apply in the prescribed form and provide documentary or other evidence that the applicant is eligible to be granted St Helenian Status in accordance with section 15(3) of, and Schedule II to, the Ordinance.

(3) A declaration of St. Helenian status granted by the Board shall be made in the prescribed form and shall state details of how the applicant qualified for such status.

### **Periods counted as time spent outside St. Helena**

**5.** For the purpose of Regulation 4, any period of time spent in St. Helena in fulfilment of any contract entered into on behalf of Her Majesty, for goods or for services, to be provided to Her Government of St. Helena shall be counted as time spent outside St. Helena.

### **Deprivation and loss of status**

**6.** (1) Where the Board intends to revoke a declaration of St. Helenian status, it shall notify the person in writing of such intention.

(2) A person who has received notification under paragraph (1), may make written representations to the Board within 14 days from the date of service of such notification and the Board must consider such representations prior to exercising its power to revoke the declaration.

## **PART 3 ENTRY AND RESIDENCE**

### **Application to enter St. Helena**

**7.**<sup>24</sup> (1) All persons landing in St. Helena shall complete an arrival declaration in the prescribed form and present it to an Immigration Officer prior to entering St. Helena.

<sup>23</sup> Regulation 4 amended by LN 7 of 2014 and LN 10 of 2016

<sup>24</sup> Regulation 7 amended by LN 10 of 2016

(2) An entry permit issued in accordance with section 19 or 20 of the Ordinance may be in the form of an endorsement in the immigrant's passport.

(3) Any person seeking to enter St. Helena shall fully and truthfully answer all questions and enquiries put to him by an Immigration Officer relating directly or indirectly to establishing his identity, nationality or occupation or bearing on any of the matters contained in the Ordinance and shall disclose and produce to an Immigration Officer on demand all documents in his possession relating to such matters.

(4) An Immigration Officer who has reasonable grounds to suspect that a person seeking to enter St. Helena may be suffering from a mental disorder or a communicable disease may require such person to undergo a medical examination by a Government medical officer before granting entry into St. Helena.

(5) An Immigration Officer who has reasonable grounds to suspect that a person seeking to enter St. Helena in contravention of the Ordinance or Regulations may refuse entry to such a person and require him to depart immediately or as soon as reasonably practicable thereafter.

(6) Any costs associated with removing an immigrant who does not have an Entry Permit and is not exempt from the requirement for obtaining an Entry Permit, may be claimed from the master of the vessel on which such immigrant arrived.

### Short Term Entry Permit

8.<sup>25</sup> (1) A person applying to enter St. Helena for a period of 183 days or less under section 19 of the Ordinance shall—

- (a) be outside St. Helena;
- (b) complete the prescribed form;
- (c) either—
  - (i) hold a valid onward ticket for travel from St. Helena to their next destination or otherwise satisfy the Immigration Officer in accordance with Section 19(1)(c)(ii) of the Ordinance with regard to his repatriation; or
  - (ii) arrive on a vessel of which he is the owner, master or a crew member and he will leave on that vessel;
- (d) provide evidence of a valid address where he shall be staying in St. Helena; and
- (e) make a declaration that he does not have any outstanding fines or unspent convictions which are multiple or serious in nature.

(2) A person applying to extend a Short Term Entry Permit under section 19(4) of the Ordinance shall apply in the prescribed form and provide proof that he continues to meet the requirements of this regulation.

(3) For the purposes of this regulation, a person who has entered the territorial waters or airspace in the circumstances set out in section 17(5) of the Ordinance, and has presented himself to an Immigration Officer at the first practicable opportunity after so entering, shall be treated as being outside St Helena.

### Long Term Entry Permit

9.<sup>26</sup> (1) A person applying to enter or remain in St. Helena for a period exceeding 183 days under section 20 of the Ordinance shall—

- (a) be outside St. Helena, unless such person entered St. Helena on a Short Term Entry Permit which is still valid;

<sup>25</sup> Regulation 8 amended by LN 7 of 2014 and LN 10 of 2016

<sup>26</sup> Regulation 9 amended by LN 7 of 2014 and LN 10 of 2016

- (b) apply in the prescribed form;
  - (c) provide an undertaking that he does not intend taking up employment in St. Helena, or if he will be taking up such employment, make a declaration he has made or will be making an application for a work permit under section 24 of the Ordinance;
  - (d) provide proof of a valid address where he shall be staying in St. Helena; and
  - (e) make a declaration that he does not have any outstanding fines or unspent convictions which are multiple or serious in nature.
- (2) A person applying to extend or renew a Long Term Entry Permit under section 20(2) of the Ordinance shall apply in the prescribed form and provide proof that he continues to comply with the requirements of this regulation.
- (3) The Board shall, if satisfied that the applicant qualifies for a Long Term Entry Permit, issue a permit in the prescribed form.
- (4) Regulation 8(3) applies to this regulation as it applies to regulation 8.

### **Persons claiming exemption from Entry Permit requirement**

10.<sup>27</sup> (1) Where a person is exempt from the requirement to obtain an Entry Permit under section 17(2)(b) of the Ordinance (because he is in, or wishes to enter, St Helena primarily for the purpose of engaging in activities which are, by virtue of section 23(1)(b) of the Ordinance, not to be regarded as employment or work for the purposes of Part 5 of the Ordinance) and such person will be in St Helena for a period of six months or more, the person or organisation employing such person shall complete the prescribed form and submit it to an Immigration Officer in advance of arrival.

(2) A person claiming exemption from the requirement to hold an Entry Permit under section 17(2)(a) of the Ordinance as the spouse or life partner of a person with St. Helenian status shall—

- (a) complete the prescribed form to declare their exemption; and
- (b) provide proof that he has been in a subsisting relationship as married, or akin to marriage, with such person with St. Helenian status for a period of at least three months immediately preceding the date of application and intends to continue the relationship, living together in St. Helena.

(3) Where the person claiming exemption from the requirement to hold an Entry Permit under section 17(2)(a) is a dependant (other than the spouse or life partner) of the person with St. Helenian status, such person with St. Helenian status shall, on behalf of such dependant, complete the prescribed form to declare their exemption.

(4) The Board shall, if satisfied that the applicant qualifies for exemption from holding an Entry Permit, issue a certificate of exemption in the prescribed form which shall remain valid as long as all the conditions listed in paragraph (1), (2) or (3), as the case may be, remain satisfied.

### **Landing permission**

11.<sup>28</sup> (1) The master of a vessel seeking to obtain a landing permission under section 21 of the Ordinance for the crew and passengers of his vessel shall—

- (a) apply for such permission on the prescribed form;
- (b) ensure that passengers and crew present to the Immigration Officer upon entering St. Helena a valid passport or an adequate alternative for determining nationality

<sup>27</sup> Regulation 10 amended by LN 7 of 2014 and LN 10 of 2016

<sup>28</sup> Regulation 11 amended by LN 10 of 2016

and identity which must be agreed in advance with the Chief Immigration Officer; and

- (c) accept responsibility for any health requirements, emergency medical evacuation and emergency repatriation that the passengers and crew may require;
- (d) provide a complete list of all passengers and crew members who have or will have the Master's permission to land in St. Helena at least 14 days in advance of arrival to an Immigration Officer or a shorter period with permission of an Immigration Officer.

(2) The Chief Immigration Officer will issue a landing permission which shall be valid for one visit of the vessel.

### **Special Leave to Enter or Remain in St. Helena**

**12.<sup>29</sup> (1)** The Chief Immigration Officer or a person acting under his authority may grant special leave to an immigrant to enter or remain in St. Helena where—

- (a) such immigrant does not immediately meet the requirements of the Ordinance or Regulations, but for a compelling reason should be allowed to enter St. Helena temporarily either to make provision to meet the requirements of the Ordinance or Regulations or to make arrangements for onward passage to another destination;
- (b) such immigrant requires temporary admittance for medical assessment or treatment;
- (c) such immigrant unknowingly allows their permit or other permission to stay on St. Helena to lapse and alerts an Immigration Officer or the Immigration Control Board at the earliest practicable opportunity;
- (d) such immigrant has submitted an application for an extension of his permit or other permission to stay in St. Helena, but the decision of the Board or Immigration Officer has not been made by the date of expiry of his permit or other permission;
- (e) following a decision by the Board or Immigration Officer to deny his application, such immigrant is left without a valid entry permit or other permission to stay in St. Helena and such special leave shall be valid—
  - (i) pending further representations to the Board or Immigration Officer;
  - (ii) pending an appeal to the Magistrates Court;
  - (iii) pending departure on the next available vessel; or
  - (iv) ...
- (f) despite not strictly complying with the definition of a consular officer, nor being directly in the service of the Crown, he is serving in or supporting Her Majesty's forces or those of any other United Nations member nation.

**(1A)** Special leave as contemplated by sub-regulation (1) may also be granted if a claim for asylum under the Asylum Rules, 2012 is refused and the claimant's appeal rights are exhausted, but it is impossible for the asylum seeker to return to his or her country of origin.

**(2)** Special leave granted under paragraph (1) or (1A) shall be indicated by way of endorsement in the immigrant's passport and shall apply for a specified period not exceeding three months which shall not count as time spent on St. Helena for purposes of Schedule II of the Ordinance.

### **Grounds for refusal of a permit or permission to enter**

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<sup>29</sup> Regulation 12 amended by LN 7 of 2014 and Ord. 14 of 2017



**13.**<sup>30</sup> The Board or an Immigration Officer, as the case may be, may refuse an application for an entry permit or may refuse an immigrant permission to enter St Helena, if—

- (a) the immigrant fails to make a declaration confirming that he or she is of good character or the Board or Immigration Officer is satisfied on the balance of probabilities that the immigrant could not truthfully make this declaration;
- (b) the Governor has declared the person to be a prohibited immigrant under section 42(1);
- (c) the Board or Immigration Officer has reason to believe that the immigrant—
  - (i) has an adverse immigration history in St Helena or elsewhere;
  - (ii) is a terrorist, has links to any terrorist organisation, supports or encourages terrorist activity or has ever expressed views that justify or glorify terrorist activity;
  - (iii) has been involved in or associated with war crimes, crimes against humanity or genocide;
  - (iv) has an infectious disease which he or she was aware of but failed to inform an Immigration Officer about;
  - (v) has a conviction for an offence under section 38 of the Ordinance; or
  - (vi) has committed crimes that are multiple or serious in nature.

#### **Grounds for revocation of entry permit or permission**

**14.**<sup>31</sup> The Board or an Immigration Officer, as the case may be, may revoke an entry permit or other permission of a person—

- (a) on any of the grounds mentioned in regulation 13(b) or (c) as justifying the refusal of an entry permit or permission to enter;
- (b) if the person is unable to show that he or she has financial means to adequately maintain and accommodate himself or herself and any dependants for the duration of their intended stay in St Helena and pay for their repatriation (including in a medical emergency);
- (c) the person fails to notify an Immigration Officer as soon as is reasonably practicable of any change in circumstances which may affect the person's permit or permission to stay in St Helena.

#### **Refusal of entry and removal**

**15.**<sup>32</sup> (1) An Immigration Officer or the Board may refuse entry to St. Helena of any person if such person does not comply with any condition of the Ordinance or these Regulations.

(2) In the case of any refusal under paragraph (1), the Immigration Officer or the Board, as the case may be, shall provide reasons for refusal in the approved form and provide all details that are available to the Immigration Officer or the Board at the time of refusal.

(3) The Board may direct that an immigrant be deported from St. Helena if—

- (a) such immigrant does not comply with or has not complied with any condition of the Ordinance or these Regulations; or
- (b) such immigrant previously complied with the Ordinance and Regulations, but as a result of any change in circumstances does not now comply; or

<sup>30</sup> Regulation 13 amended by LN 7 of 2014 and substituted by Ord. 14 of 2017

<sup>31</sup> Regulation 14 substituted by Ord. 14 of 2017

<sup>32</sup> Regulation 15 amended by LN 10 of 2016 and Ord. 14 of 2017

- (c) such immigrant remains in St. Helena beyond the period for which his Entry Permit or any other permission to be in St. Helena is valid; or
  - (d) such immigrant deliberately facilitates entry into St. Helena of other persons illegally.
- (4) The Board will provide a notice of intention to deport under paragraph (3) in the approved form.

## **PART 4**

### **WORK PERMITS AND EMPLOYMENT**

#### **Work Permits**

16.<sup>33</sup> (1) A person applying under section of 24 of the Ordinance to work in St. Helena, shall apply in the prescribed form.

(2) ...

(3) ...

#### **Immigrant Employment Certificates**

17.<sup>34</sup> (1) An employer who intends to employ immigrants in St. Helena, shall apply for an Immigrant Employment Certificate under section 25 of the Ordinance in the prescribed form.

(2) The Board shall grant an Immigrant Employment Certificate to the employer in the prescribed form.

(3) If the circumstances so require, the Board may vary the conditions attached to an Immigrant Employment Certificate.

## **PART 5**

### **APPEALS**

#### **Appeal procedures**

18.<sup>35</sup> (1) A person who wishes to appeal to the Board against a decision of an Immigration Officer under section 12 of the Ordinance shall submit his written representations in the approved form.

(2) A person who wishes to appeal to the Magistrates' Court against a decision of the Immigration Control Board under section 13 of the Ordinance shall appeal by notice to such Court and shall set out—

(a) the decision against which the appeal is made;

(b) the grounds of the appeal; and

(c) whether the appellant wishes to be heard personally or by a representative.

(3) On receipt of a notice of appeal under paragraph (2), the Clerk of the Court shall—

(a) notify the Immigration Officer or the Board, as the case may be, of the decision against which the appeal is being made with the grounds of such appeal and the Immigration Officer or Board shall have 28 days (or such longer period as the

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<sup>33</sup> Regulation 16 amended by LN 7 of 2014 and LN 10 of 2016

<sup>34</sup> Regulation 17 amended by LN 10 of 2016

<sup>35</sup> Regulation 18 amended by LN 10 of 2016 and Ord. 14 of 2017

Chief Magistrate may, on good cause shown, allow) to provide a written response to the appeal; and

- (b) if the appellant has indicated that he wishes to be heard personally or by representative, fix a date and time for such hearing and notify the appellant and respondent thereof.

### **Fees**

**19. (1)** The fees specified in Schedule II shall be paid in respect of the several matters set out therein.

**(2)** The Governor in Council may waive or reduce the said fees, or any of them, in any particular case or class of case.

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## SCHEDULE I<sup>36</sup>

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## SCHEDULE II<sup>37</sup> (Regulation 19)

### Fees

Fee No.	Matter	Fee (£)
<b>1</b>	<b>Issue of a Short Term Entry Permit</b> (Person under 12 years of age are exempt from these fees) Valid for up to 183 days	17.00
<b>1A</b>	<b>Landing Permission</b> <i>Per capita</i> fee for purposes of section 21(3)	12.00
<b>2</b>	<b>Issue of a Long Term Entry Permit</b>	
2a	Valid for up to 12 months	25.00
2b	Valid for up to 2 years, other than in 2a	40.00
2c	Valid for over 2 years, for each year or part of a year exceeding 2 years	10.00
<b>3</b>	<b>Issue of a Work Permit</b>	
3a	Valid for up to 12 months	50.00
3b	Valid for up to 2 years, other than in 3a	90.00
3c	Valid for over 2 years, for each year or part of a year exceeding 2 years	30.00
<b>4</b>	<b>Issue of an Immigrant Employment Certificate</b>	
4a	For each employee-year (where the number of employee-years is the number of employees authorised multiplied by the number of years or part years of the validity of the certificate) First 2 employee years	60.00
	Each additional employee year	40.00
<b>5</b>	<b>In relation to applications for grant of St. Helenian Status</b>	
5a	On lodging an application for grant	50.00
5b	Granting of status	100.00
<b>6</b>	<b>Application for a certificate of status under section 15(4)</b>	
6a	On the lodging of an application	20.00
6b	On granting a certificate	20.00
<b>7</b>	<b>Immigrant Landholding</b>	
7a	On an application for a licence	100.00
7b	On the granting of a licence	100.00
<b>8</b>	<b>Appeals</b>	
8a	On lodging an appeal with the Board under section 12	10.00
8b	On lodging an appeal to the Magistrates Court under section 13	30.00

These fees are refundable in the event of the appeal being allowed.

<sup>36</sup> Schedule 1 amended by LN 7 of 2014 and revoked by LN 10 of 2016

<sup>37</sup> Schedule II amended by LN 6 of 2013

**NOTICE OF WAIVER OF FEES IN RESPECT OF PASSENGERS AND CREW  
MEMBERS OF YACHTS**

*(Legal Notice 9 of 2012)*

In exercise of the power conferred by Regulation 19(2) of the Immigration Regulations, 2012, the Governor in Council waives the fees payable under Item 1a of the Second Schedule to such Regulations in respect of the issue of a Short Term Entry Permit to any person who arrives on St Helena on or after 1<sup>st</sup> April 2012 as a passenger or crew member of a yacht and who will depart from St Helena on such yacht within 72 hours after so arriving.

For purposes of this notice, “**yacht**” means any vessel which is so constructed or adapted that it can be propelled by wind power, whether or not it is fitted with one or more engines.

**ASYLUM RULES – SECTION 44**

*(Legal Notice 1 of 2012)*

**Citation and commencement**

1. These Rules may be cited as the Asylum Rules, 2011, and shall come into force on 23<sup>rd</sup> January 2012.

**Interpretation**

2. (1) Any word or expression to which a meaning has been assigned in the Ordinance, bears the meaning so assigned and—

“**refugee**” means any person who—

- (a) owing to a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, he is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or
- (b) not having a nationality and being outside the country of his former habitual residence, he is unable or, owing to a well founded fear of being persecuted for reasons of race, religion, membership of a particular social group or political opinion, is unwilling to return to it,

but does not include any person referred to in paragraph (2) or (3);

“**asylum seeker**” means a person who makes a request to be recognised as a refugee under the Geneva Convention on the basis that it would be contrary to St. Helena’s obligations under the Geneva Convention for him to be removed from or required to leave St. Helena;

“**Human Rights Convention**” means the Convention for the Protection of Human Rights and Fundamental Freedoms agreed by the Council of Europe at Rome on 4<sup>th</sup> November 1950, as applied to St. Helena; and

“**Refugee Convention**” means the Convention relating to the Status of Refugees done at Geneva on 28<sup>th</sup> July 1951, and its protocols, as applied to St. Helena.

(2) A person shall not be recognised as a refugee for purposes of these Rules if—

- (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in any international instrument to which the United Kingdom is a party by virtue of its extension to St. Helena and which has been drawn up to make provision in respect of such crimes; or
- (b) he has committed a serious non-political crime outside of St. Helena prior to his admission to St. Helena as a refugee; or
- (c) he has been guilty of acts contrary to the purposes and principles of the United Nations Organisation; or
- (d) having more than one nationality, he has not availed himself of the protection of one of the countries of which he is a national and has no valid reason, based on well founded fear of persecution, for not having availed himself of protection.

(3) A person shall cease to be a refugee in St. Helena if—

- (a) he voluntarily re-avails himself of the protection of the country of his nationality; or
- (b) having lost his nationality, he voluntarily reacquires it; or

- (c) he is granted status in St. Helena or he acquired the nationality of another country and enjoys the protection of the country of his new nationality; or
- (d) he voluntarily re-establishes himself in the country which he left, or outside which remained, as the case may be; or
- (e) the circumstances in connection with which he was recognised as refugee have ceased to exist; or
- (f) he continues to refuse to avail himself of the protection of his country of nationality; or
- (g) if he has lost his nationality, continue to refuse to return to the country of his former habitual residence.

### **Claim for asylum**

**3. (1)** A person who is within St. Helena (whether he has entered St. Helena lawfully or otherwise) and who wishes to remain in St. Helena as a refugee may, within seven days of his arrival in St. Helena, or within such further period as the Board may allow on good cause shown to its satisfaction, apply to the Board for recognition of his status as a refugee in terms of the refugee convention either on the prescribed form or in person.

**(2)** If a person is required to leave St. Helena due to a decision of the Board or an Immigration Office, such a person may within 7 days of the date of decision make an application to the Board for recognition of his status as a refugee on the prescribed form or in person.

**(3)** A person is eligible to apply for asylum under these Rules if—

- (a) he is in St. Helena; and
- (a) he is at least 18 years of age or is an unaccompanied minor .

**(4)** Where a minor who is not accompanied by his parents submits an application for asylum, his rights and lawful interests shall be represented during the asylum procedure by an independent representative nominated by the Board and such representative shall act objectively in the interest of the minor.

**(5)** The Board or an Immigration Officer shall refer an unaccompanied minor to the Social Works Manager as soon as reasonably practicable.

**(6)** A minor who is not accompanied by parents has the right to receive legal assistance free of charge during the asylum procedure.

**(7)** The minor children of an asylum seeker shall be entitled to education in conformity with the laws in force.

**(8)** Where an asylum claim is made to the Board, it shall be recorded by the Secretary of the Board.

**(9)** If the Chief Immigration Officer is satisfied that the claim under paragraph (8) was made as soon as reasonably practicable after the applicant's arrival in St. Helena, he shall—

- (a) if satisfied that for obvious and compelling reasons the applicant cannot be returned to his country of origin or nationality, grant him special leave to remain in St. Helena; and
- (b) make arrangements for his support, accommodation and maintenance.

**(10)** The grant of special leave under this Rule does not confer any rights to gainful occupation in St. Helena and may be revoked by the Chief Immigration Officer or the Board.

**(11)** Where an asylum seeker is to be deported to a country of which he is a national or citizen and—

- (a) the country to which he is to be deported requires identification data in respect of the applicant as a condition of the admission of the applicant to such country; and
  - (b) he does not possess a passport or other travel document,
- the Chief Immigration Officer shall provide the requested data to such country but shall not disclose that the applicant has sought asylum in St. Helena.

### **Consideration of Claim**

**4. (1)** Unless it is impossible or inexpedient to do so, the Board shall consider every application for asylum within 30 days of the application being made and may, either within such period of 30 days or thereafter, make such inquiry or investigation into such application as the Board thinks necessary.

- (2)** The Board may for the purpose of inquiring or investigating any application—
- (a) seek the assistance of any expert as an advisor;
  - (b) seek the assistance of the British Government; or
  - (c) seek the assistance or cooperation of United Nations High Commissioner for Refugees or any non-governmental organisation.

### **Grant of refugee status and rights of a recognised refugee**

**5. (1)** After the inquiry or investigation into the application under Rule 4, the Board may recognise or refuse to recognise the applicant as a refugee and shall notify the applicant of their decision in writing.

- (2)** Where a person is recognised as a refugee, he shall be granted—
- (a) a long term Entry Permit carrying permission to stay in St. Helena for five years after which time he may apply for St Helenian status;
  - (b) the right to work for any employer in St. Helena.
- (3)** Any person whose claim for asylum has been successful may also apply for asylum for persons present in St. Helena who are—
- (a) his spouse or life partner;
  - (b) his dependent children under the age of 18 years; and
  - (c) his children over the age of 18 who are wholly dependent on him.
- (4)** Every recognised refugee in St. Helena shall—
- (a) be entitled to the rights and be subject to the duties contained in the Refugee Convention as if the references therein to refugee were reference to recognised refugee;
  - (b) be subject to all laws in force in St. Helena; and
  - (c) be afforded a reasonable opportunity to work and contribute to the development of St. Helena.

### **Removal of Asylum Claimant to a safe third country**

- 6. (1)** A person may not bring an appeal under Rule 9 if the Board certifies that—
- (a) it is proposed to remove the person to a country of which he is not a national or citizen; and
  - (b) there is no reason to believe that the person's rights under the Human Rights Convention will be breached in that country,
- and in such cases the Board shall certify that the applicant can be deported to a particular country.



(2) In determining whether a person in relation to whom sub-rule (1) applies may be removed from St. Helena, the country specified must be regarded as—

- (a) a place where a person's life and liberty is not threatened by reason of his race, religion, nationality, membership of a particular society, group, or political opinion; and
- (b) a place from which a person will not be sent to another country otherwise than in accordance with the Refugee Convention.

(3) The person in respect of whom the certificate referred to in paragraph was issued may appeal against the decision to remove to the Magistrates Court on the grounds that any of the conditions applicable to that certificate was not satisfied when it was issued or has since ceased to be satisfied.

### **Limitations on Rights of Appeal**

7. Rule 9 does not entitle a person to appeal against a refusal of an asylum application if—

- (a) there are reasonable grounds for regarding such person as a danger to the security of St. Helena, or who, having been convicted by a final judgement of a crime, constitutes a danger to the community of St. Helena;
- (b) the Governor has certified the person to be a prohibited immigrant; or
- (c) the reason for the refusal was that he was a person to whom the Refugee Convention does not apply by reason of Article 1(F) of that Convention.

### **Assisting asylum seeker to enter St. Helena**

8. A person who—

- (a) knowingly and for gain facilitates the arrival in St. Helena of an individual; and
- (b) knows, or who has reasonable cause to believe, that the individual intends to apply for asylum,

is guilty of an offence and shall be liable on conviction to imprisonment for five years or a fine, or both.

### **Appeal**

9. A person who is aggrieved by—

- (a) a decision of the Board under Rule 5; or
- (b) any decision of the Board or an Immigration Officer which invokes St. Helena's duties under the European Convention of Human Rights,

may appeal against such decision to the Supreme Court within 14 days of being notified of such decision.

### **Person not required to leave St. Helena pending application or appeal**

10. (1) A person appealing a decision against their asylum under Rule 3 or who has appealed against the decision of the Board or an Immigration Officer invoking St. Helena's duties under the European Convention of Human Rights shall not be required to leave St. Helena pending the outcome of his application or appeal.

(2) For the purposes of sub-rule (1), an application or appeal is pending with effect from the date on which it is submitted or instituted up until the date on which the claimant or

appellant is either formally notified of the outcome of the application or appeal or withdraws or abandons his application or appeal.

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## IMMIGRATION (LANDHOLDING) REGULATIONS – SECTIONS 43 AND 45(5)

(Legal Notice 16 of 2012)

### Citation and commencement

1. These Regulations may be cited as the Immigration (Landholding) Regulations, 2012, and shall come into force on 1 May 2012.

### Application for a Landholding Licence

2. (1) Every application for a licence under Part 6 of the Ordinance shall be in the form set out in Schedule 1, and shall be delivered to the Secretary to the Board together with the relevant fee.

(2) Upon receiving an application, the Secretary shall—

(a) cause notice thereof to be published in the *Gazette*, and in such other ways (if any) as may be required by policy guidance issued under section 42 of the Ordinance, stating that any person may submit comments or objections to the Secretary within 14 days of the date of publication of the notice;

(b) send a copy of the application to the Registrar of Lands, requesting a report as to whether or not the information given in the application is consistent with the information held in the Land Register; and

(c) send a copy of the application to the Chief Immigration Officer, requesting a report as to whether or not any information given in the application about the applicant visiting, or being in, St. Helena is consistent with immigration records.

(3) The Registrar of Lands and the Chief Immigration Officer shall each provide his report to the Secretary within 14 days from the date on which he received the request.

### Applicant to have opportunity to comment on objections

3. (1) If the Secretary receives comments upon, or objections to, the application, the applicant shall be given an opportunity to comment thereon.

(2) For the purposes of paragraph (1), it shall be sufficient if the applicant is informed of the general nature of each comment or objection, without being told the identity of the commentator or objector, and invited to submit any comments thereon (in writing) within seven days.

### Decisions to be made promptly

4. (1) The Board shall make a decision on each application within 42 days of the date on which it was presented to the Secretary.

(2) If the application was incomplete in any material way, or was not accompanied by the fee, the period specified in paragraph (1) shall run from the date on which the deficiency was fully rectified.

(3) Nothing in this regulation prevents the Board from seeking additional information from the applicant or other persons and delaying a decision until such information has been supplied.

**Form of Licence, and conditions**

5. (1) Every licence shall be in the form appearing in Schedule 2.
- (2) The Board, when granting a licence, may grant it unconditionally or subject to such conditions as appear to the Board to be necessary or desirable to secure that the acquisition of the land by an immigrant is not contrary to the public interest.
- (3) Notwithstanding the generality of paragraph (2), conditions may not relate to matters which are not matters to be taken into consideration either under the Ordinance or under policy guidance issued pursuant to section 34(4) of the Ordinance.

**Fees**

6. There shall be payable in respect of the several matters listed in the first column of Schedule 3 the fees respectively specified in the second column of the said Schedule.

**Transitional provisions**

7. Following the repeal on 1 May 2012 of the remaining provisions of the Immigration Control Ordinance, 2008, by the Immigration Ordinance, 2011 (Commencement)(No. 2) Order, 2012, any application received under section 28 of such Ordinance on or before 30 April 2012, which—

(a) has not been placed before the Governor in Council by such date, shall be delivered to the Secretary to the Immigration Control Board and thereafter be considered and determined by the Board under the Immigration Ordinance, 2011, with such modifications (if any) as may be necessary; or

(b) was placed before the Governor in Council on or before 31 March 2012, but has not yet been finally determined, shall be considered and determined by the Governor in Council in accordance with the provisions of the Immigration Control Ordinance, 2008, as if such Ordinance had not been repealed.

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**SCHEDULE I**  
*(Regulation 2(1))*

<b>FORM LH1</b> <b>St. Helena</b> <b>Immigration Ordinance, 2011</b>				
<b>APPLICATION FOR: IMMIGRANT LANDHOLDING LICENCE</b> <i>Do not complete this form until you have read the notes section at the end of this form</i>				
1. Surname:		2. Forenames:		
3. Date of birth (dd/mm/yyyy):				
4. Current Address:				
Tel:..... E-mail:.....				
5. Is this a joint application?				
<input type="checkbox"/> Yes (please provide details of any other joint applicants on a separate attached sheet) <input type="checkbox"/> No				
6. If applying for a landholding licence on behalf of a body corporate (see the interpretation section 27(1) of the Immigration Ordinance 2011) please give details of the body corporate below:				
Name of body corporate:.....				
Country of Incorporation:..... Registration No:.....				
Address :.....				
.....				
Tel:..... E-mail:.....				
Your position (e.g. Director):.....				
7. Details of <b>proposed</b> landholding				
<b>Location</b> (including land registry section, block and parcel number)	<b>Zone</b> (I.e. Green Heartland / Coastal / Intermediate)	<b>Freehold / Leasehold</b> (Please specify length of any lease)	<b>Intended land-use</b> (e.g. agriculture / industry / residential – please add further detail as appropriate)	<b>Size</b> (acres)
7b. Please provide details of the seller:				
Name:.....				

Address:.....  Tel:..... E-mail:.....					
8. Do you have development permission for the intended land-use(s) outlined above? <i>(Note: A grant of a landholding licence does not guarantee a grant of development permission).</i>  <input type="checkbox"/> Yes <i>(Please attach evidence of development permission to this application)</i> <input type="checkbox"/> No, I am not changing the land-use, use of any buildings on it or intending to construct or alter any buildings <input type="checkbox"/> No					
<i>Note: The Immigration Control Board may make enquiries with other Government Directorates</i>					
9. Do you already reside or intend to reside in St. Helena?  <input type="checkbox"/> Yes, I live in St. Helena already <i>(Please attach a copy of your Entry Permission)</i> <input type="checkbox"/> Yes, I intend to reside in St. Helena and am at the same time applying for an Entry Permit <i>(Please attach entry permit applications for you and accompanying dependents)</i> <input type="checkbox"/> No  If you have ticked 'No' please provide details of the purpose of your intended land-holding in St. Helena  ..... ..... .....					
10. Are you aware of any other persons or bodies corporate undertaking similar activity to your proposed land-use in St. Helena (excluding owner-occupying residential)? Please specify below:  ..... ..... .....					
11. Details of <b>current</b> landholding(s) by applicant and associated persons:					
	<b>Owner</b> <i>(E.g. Self / spouse / sibling)</i>	<b>Location</b> <i>(including land registry section, block and parcel number)</i>	<b>Freehold / Leasehold</b> <i>(Please specify length of lease)</i>	<b>Land-use</b> <i>(e.g. Agriculture / industry / residential – please add further detail as appropriate)</i>	<b>Size</b> <i>(acres)</i>
1					
2					
3					

## 12. Declaration

- ☐ I authorise the decision maker to conduct background checks via credit checking organizations and other government departments prior to the grant of any landholding certificate.
- ☐ I have not been involved in or associated with terrorist activity or organisation, war crimes, crimes against humanity or genocide.
- ☐ I have read and understood the notes section of this form.
- ☐ I do not have any outstanding fines or unspent criminal convictions in any country. Please specify all outstanding fines or unspent convictions if you have any here:
- .....

- ☐ To the best of my knowledge and belief all particulars supplied by me are correct and complete.

You may be asked to provide evidence in support of the statements above.

13. Signature

14. Date (dd/mm/yyyy)

## NOTES:

- 1) It is unlawful, subject to defined exceptions, for any person who does not have St. Helenian status to own land in St. Helena. Please refer to Part 6 of the Immigration Ordinance 2011 for further detail.
- 2) Under the Land Development Control Plan St. Helena is divided into three zones for the purpose of regulating land use and development; these are;

**Green Heartland:**

Some strictly controlled tourism development is allowed and some existing or derelict dwellings can be rebuilt and extended. Development necessary for agriculture and forestry may also be permitted. In summary:-

- In principle, built development is discouraged in the Green Heartland
- Traditional houses and cottages which have fallen in to disrepair may be carefully restored without damaging the visual quality of the area.
- Extensions are controlled to prevent erosion of the area's character

**Coastal Zone**

Extensive tourism development is encouraged, as well some housing development provided that, in both cases, the sites for development are carefully chosen to maintain the natural character of the landscape – development must be in hollows and valleys not on ridges or exposed slopes and the layout and design of buildings must respect their natural setting. Agricultural development may be permitted and agricultural land is strictly protected from other development.

**Intermediate Zone**

All types of development normally permitted providing it is in accordance with good planning principles. New buildings must be sited and planned so that they relate properly to each other and to existing buildings both in appearance and use. There is an emphasis on working with natural levels rather than creating flat sites by large excavations and emphasis on planting to blend development into the landscape. Agricultural development is normally allowed and agricultural land is strictly protected from other development.

- 3) A presumption in favour of development does not mean that developments will always be permitted and such development will always be subject to planning policies to achieve acceptable standards.
- 4) It is a criminal offence to give false information

**SCHEDULE 2**  
(Regulation 5(1))

<p style="text-align: center;"><b>Form LH2</b> (Regulation 5(1))</p> <p style="text-align: center;"><b>St. Helena</b> <b>Immigration Control Ordinance, 2011</b></p>
<p style="text-align: center;"><b>IMMIGRANT LANDHOLDING LICENCE</b></p>
<p><b>IN EXERCISE</b> of the powers conferred upon me by section 34(1) of the Immigration Ordinance, 2011, the Board hereby grants unto ..... (hereinafter called the 'licensee') a licence to hold a freehold/leasehold* interest in the following land:</p> <p style="text-align: center;">This licence to hold land is subject to the following conditions:</p> <p style="text-align: center;">Dated this                  day of                  20 .</p> <p style="text-align: center;">..... Chairman of the Board (*delete whichever is not applicable)</p>
<p style="text-align: center;"><b>NOTE</b></p> <p>(1)     This Licence is not a document of title, nor does it imply any warranty as to the title of any person.</p> <p>(2)     This Licence does not entitle the licensee to work in St Helena, nor does it permit entry into St Helena, for which there are separate requirements.</p>

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**SCHEDULE 3**  
(Regulation 6)**FEEES**

- |          |  |         |
|----------|--|---------|
| <b>1</b> | <b>Immigrant Landholding</b>                                   |         |
|          | (a) On an application for a licence                            | £100.00 |
|          | (b) On the granting of a licence                               | £100.00 |
| <b>2</b> | <b>Appeals</b>   |         |
|          | On lodging an appeal to the Magistrates Court under section 13 | £30.00  |
-



## IMMIGRATION (VISA REQUIREMENT) ORDER – SECTION 16A

*(Legal Notice 15 of 2016)*

### Citation

1. This Order may be cited as the Immigration (Visa Requirement) Order, 2016.

### Countries for which travel visa required

2. The following persons are required under section 16A of the Immigration Ordinance, 2011, to obtain a travel visa prior to embarking on his or her journey to St Helena:

(a) Nationals or citizens of the following countries or territorial entities:

Afghanistan  
Albania  
Algeria  
Angola  
Armenia  
Azerbaijan  
Bahrain  
Bangladesh  
Belarus  
Benin  
Bhutan  
Bolivia  
Bosnia Herzegovina  
Burkina Faso  
Burma  
Burundi  
Cambodia  
Cameroon  
Cape Verde  
Central African Republic  
Chad  
People's Republic of China  
Colombia  
Comoros  
Congo  
Cuba  
Democratic Republic of the Congo  
Djibouti  
Dominican Republic  
Ecuador  
Egypt  
Equatorial Guinea  
Eritrea  
Ethiopia  
Fiji

Gabon  
Gambia  
Georgia  
Ghana  
Guinea  
Guinea Bissau  
Guyana  
Haiti  
India  
Indonesia  
Iran  
Iraq  
Ivory Coast  
Jamaica  
Jordan  
Kazakhstan  
Kenya  
Korea (North)  
Kosovo  
Kuwait  
Kyrgyzstan  
Laos  
Lebanon  
Lesotho  
Liberia  
Libya  
Macedonia  
Madagascar  
Malawi  
Mali  
Mauritania  
Moldova  
Mongolia  
Montenegro  
Morocco  
Mozambique  
Nepal  
Niger  
Nigeria  
Oman  
Pakistan  
Palestinian Territory  
Peru  
Philippines  
Qatar  
Russia  
Rwanda  
Sao Tome e Principe  
Saudi Arabia

Senegal  
Serbia  
Sierra Leone  
Somalia  
South Sudan  
Sri Lanka  
Sudan  
Surinam  
Swaziland  
Syria  
Taiwan  
Tajikistan  
Tanzania  
Thailand  
Togo  
Tunisia  
Turkey  
Turkmenistan  
Uganda  
Ukraine  
United Arab Emirates  
Uzbekistan  
Venezuela  
Vietnam  
Yemen  
Zambia  
Zimbabwe

The territories formerly comprising the socialist Federal Republic of Yugoslavia

(b) Persons who hold passports or travel documents issued by the former Soviet Union or by the former Socialist Federal Republic of Yugoslavia.

(c) Stateless persons.

(d) Persons travelling on any document other than a national passport, regardless of whether the document is issued by, or evidences nationality of, a state not listed in paragraph (a), except where that document has been issued by St Helena or the United Kingdom.