

Public Consultation “Saints First Policy”

Draft Amendments prepared by Attorney Generals Chambers to support and guide the public during the “Saints First Policy” Public Consultation.

1. Draft Amending Order in Council

Protection from discrimination

Section 21 of the Constitution set out in the Schedule to the St Helena, Ascension and Tristan da Cunha Constitution Order 2009 (*Statutory Instrument 2009/1751 (UK)*) is amended—

- (a) by deleting the words “subsection (4)” in subsection (1) and substituting “subsections (3A) and (4)” therefor;
- (b) by deleting the words “subsections (4) and (6)” in subsection (2) and substituting “subsections (3A), (4) and (6) therefor;
- (c) by inserting the following subsection after subsection (3):
 - “(3A) Subsection (1) shall not apply to any law so far as the law makes provision—
 - (a) with respect to the entry into or exclusion from, or the employment, engaging in any business or profession, movement or residence within, St Helena of persons who do not have St Helenian status, or for any other purpose with respect to such persons to the extent that the provision is reasonably justifiable in a democratic society; or
 - (b) whereby persons of any such description of grounds as is mentioned in subsection (3) may be subjected to any restriction or disadvantage or may be accorded any privilege or advantage that, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society.”.

2. Revised Section 21 of the Constitution will read as follows:

Protection from discrimination

21. (1) Subject to subsections (3A) and (4), no law shall make any provision which is discriminatory either of itself or in its effect.

(2) Subject to subsections (3A), (4) and (6), no person shall be treated in a discriminatory manner by any organ or officer of the executive or judicial branches of government or any person acting in the performance of the functions of the St Helena Public Service or any public authority.

(3) In this section, the expression "discriminatory" means affording different treatment to different persons on any ground such as sex, sexual orientation, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, age, disability, birth or other status.

(3A) Subsection (1) shall not apply to any law so far as the law makes provision—

(a) with respect to the entry into or exclusion from, or the employment, engaging in any business or profession, movement or residence within, St Helena of persons who do not have St Helenian status, or for any other purpose with respect to such persons to the extent that the provision is reasonably justifiable in a democratic society; or

(b) whereby persons of any such description of grounds as is mentioned in subsection (3) may be subjected to any restriction or disadvantage or may be accorded any privilege or advantage that, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society.

(4) Nothing contained in or done under the authority of any law shall be held to breach this section to the extent that it has an objective and reasonable justification and there is a reasonable proportion between the provision of law in question or, as the case may be, the thing done under it and the aim which that provision or the thing done under it seeks to realise.

(5) No person shall be treated in a discriminatory manner in respect of access to any of the following places to which the general public have access, namely, shops, hotels, restaurants, eating-houses, licensed premises, places of entertainment or places of resort; but the proprietor of such a place has a duty to provide amenities and equipment facilitating the access of disabled persons only to the extent provided by a law.

(6) For the purposes of subsection (2), the exercise, in relation to a person, of any discretion to institute, conduct or discontinue criminal or civil proceedings in any court shall not in itself be held to breach this section.
