



# The St. Helena Government Gazette

## EXTRAORDINARY

|                            |                               |                      |
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| <i>Vol. XLX.</i>           | <i>Published by Authority</i> | <i>No. 2.</i>        |
| <i>Annual Subscription</i> | 23 January, 2012              | <i>Present Issue</i> |
| <i>£13.75 Post Free</i>    |                               | <i>50p per copy</i>  |

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No. 3

### LEGISLATION

The following Legal Notices were enacted on the 23<sup>rd</sup> January, 2012

The Asylum Rules, 2012. Price 75p

The Immigration Ordinance, 2011 (Commencement)(No. 1)

Order, 2012. Price 30p

The Immigration Regulations, 2012. Price £6.00

Owen O'Sullivan  
Chief Secretary

The Castle, St Helena  
23 January 2012

No. 4

### IMMIGRATION ORDINANCE, 2011

#### ***NOTICE OF POLICY DIRECTIONS FOR IMMIGRATION CONTROL BOARD AND IMMIGRATION OFFICERS***

The Policy Directions for the Chief Immigration Officer and Immigration Officers and for the Immigration Control Board, issued respectively by the Governor and the Governor in Council under section 41 of the Immigration Ordinance, 2011, and copies of which were approved by the Executive Council on the 10th January 2012, shall have effect from the 23rd day of January 2012. Copies of the Policy Directions are available from the Immigration Office, Ogborne House, Jamestown.

Dated this 23<sup>rd</sup> day of January 2012.

Gina M Benjamin  
Clerk of Councils



## ST. HELENA

### Immigration Ordinance, 2011

#### Policy Guidance issued by the Governor in Council

#### PART 1

##### Background and purpose

1. The Immigration Ordinance came into force on 23<sup>rd</sup> January 2012. This Policy Guidance is made under the authority of section 41 of the Ordinance but reference must be made to the Ordinance (and to subsidiary legislation made under it) for a definitive statement of the law. Nothing in this Policy Guidance detracts from that formal legal position.
2. The policy is issued by the Governor in Council for the guidance of Immigration Officers and the Immigration Control Board with a view to improving the transparency and consistency of decision-making.

##### General principles

3. Across all decision making by Immigration Officers and the Immigration Control Board there has been a move in the 2011 Ordinance towards rationalising decisions as far as possible to minimise discretion and increase transparency.
4. The speed at which decisions are made is targeted within operational guidelines to improve efficiency of service.
5. All immigration decisions will be taken on the balance of probabilities.
6. There is a presumption in favour of renewal of permissions to enter and work where circumstances are unchanged since the previous decision was made and where it would not be against the public interest to grant the renewal of a permit.
7. Immigration Officers and the Immigration Control Board shall only make their decisions after full consideration of Human Rights as enshrined within St Helena's Constitution

## PART 2

### Entry and Residence

8. Immigration Officers are responsible for initially determining whether or not a person should be granted entry into St. Helena. The law provides that permission to enter should be granted unless the Officer, after considering prescribed factors, considers that it would be against the public interest to do so.
9. Immigration Officers will continue to grant shorter term permissions; the 'Short Term Entry Permit' replaces the 'Entry Permit' and can be granted for up to 183 days as opposed to 90 days as was the case under the 2008 Ordinance. Immigrants may work for up to 183 days on a Short Term Entry Permit without obtaining a separate permission.
10. Currently, entry permits are applied for and issued at the point of arrival and there are no requirements in the nature of a visa. However, officers must be vigilant in relation to the criteria in section 19 of the Ordinance and refuse entry where they are not satisfied as to the matters listed.
11. The Chief Immigration Officer may class a vessel an 'Approved Vessel' which will allow crew members who are under an engagement to leave on that vessel an exemption from the requirement to obtain an entry permit or landing permission.
12. (1) The vessels approved by the Chief Immigration Officer under section 17(2)(d) of the Ordinance for crew exemption from the requirement for an Entry Permit or Landing Permission shall be—
  - (a) the RMS Saint Helena; and
  - (b) any other vessel that successfully applies in writing to the Chief Immigration Officer for exemption which visits, or intends to visit, St. Helena at least 20 times in a calendar year.
- (2) The Chief Immigration Officer must before granting the approval ensure that the master of the vessel undertakes to —
  - (a) provide to the Chief Immigration Officer a list of crew members at least two days, or such longer period determined by the Chief Immigration Officer if he deems necessary, in advance of arrival in St. Helena; and
  - (b) accept responsibility for the repatriation of each of the crew members he brings onto St. Helena including any health requirements, emergency medical evacuation and emergency repatriation such crew members should require.
13. The Immigration Control Board shall continue to be responsible for granting all other permissions. In terms of entry and residence, the 'Long Term Entry Permit' replaces the 'Residence Permit' and may be issued for a duration of 1-5 years as opposed to 1-2

years as was the case under the 2008 Ordinance. The Board shall ensure that a person has adequate means for the duration of their stay on island including medical requirements and repatriation and is of good character. Where the Board has any query regarding character they may request a vetting certificate from the applicant's country of origin.

14. Dependent spouses and life partners of persons holding St. Helenian status are exempt from the requirement to obtain an entry permission. Under the 2011 Regulations, a person may be classed as a life partner or spouse if they have been in a subsisting relationship for more than 3 months with the person holding St. Helenian status at the point of entry or application to remain in St. Helena.
15. Under the 2011 Regulations, Immigration Officers and the Immigration Control Board are able to grant Special Leave to Enter or Remain where a person does not immediately meet the requirements of the 2011 Ordinance. This will prevent situations arising where a person is present in St. Helena without any permission to enter or remain. Use of this provision should be in exceptional circumstances and for as short a period as possible and immigrants should be encouraged to regularise their immigration status as quickly as possible.

### **PART 3**

#### **Employment**

16. When an applicant applies for permission to work, to increase transparency in decision making the Immigration Control Board shall consider applications under a Points Based System.
17. There shall be two categories under the Points Based System, the Investor / Entrepreneur category and the Migrant Worker category. Under both categories there shall be essential and qualifying criteria which must be met to qualify for permission to work.
18. The Points Based System shall be a simple and transparent way to assess immigrants against set criteria before granting permission to work and offers protection to the local labour market as immigrants will be used where there is limited or no local labour available to fill skills gaps.
19. The Points Based System Shortage Occupation List shall identify those positions which cannot be filled by the local labour market. Jobs nominated for removal or addition to the Shortage Occupation List will be managed by the Labour Oversight Group who will make a quarterly recommendation to the Immigration Control Board. The Immigration

Control Board will determine those occupations which are added or removed from the Shortage Occupation List.