

**Memorandum of Understanding (MoU) between the Government of the United Kingdom of Great Britain and Northern Ireland (UKG) and the Government of St Helena (SHG), together 'the Participants' and singly 'Participant', for the provision of an arrangement to support the UKG's interest in the welfare of persons who may arrive in future in the British Indian Ocean Territory (BIOT) who may claim to be unable to return to their country of nationality.**

## **1. INTRODUCTION AND BACKGROUND**

Whereas the UKG has sought the assistance of SHG in relation to the resolution of an issue over migrants on BIOT who may arrive in future, and whereas SHG is willing to provide assistance to UKG under the following arrangement by committing to accommodate and process the asylum or protection claims of any migrants who may arrive in BIOT over the duration of this arrangement and would otherwise be the responsibility of the BIOT Administration.

## **2. OBJECTIVES OF THE ARRANGEMENT**

This arrangement reflects a reciprocal enhanced partnership between UKG and SHG. It sets out the basis on which SHG commits to support UKG's interest in the welfare of persons who, under this arrangement when operational, may arrive in BIOT and who may claim to be unable or unwilling to return to their country of nationality. In return the UKG will support SHG's sustainable development aspirations to build and maintain a coherent community underpinned by a vibrant economy, which over time reduces St Helena's reliance on external aid. This arrangement is based on mutually accepted principles on the part of both governments (UKG and SHG) which are amplified in the ensuing paragraphs.

## **3. COMPLIANCE WITH INTERNATIONAL LAW**

UKG takes responsibility for ensuring this arrangement remains compliant with international law and has given assurances to that effect to SHG and will indemnify SHG in relation to any legal claims in relation to this arrangement brought before an international court or domestic tribunal to the extent that SHG is a party to such proceedings.

## **4. PRINCIPLES**

1. The UKG remains the dominant partner in the relationship.
2. The arrangement operates for the mutual benefit of the United Kingdom and St Helena with due regard for the welfare of migrants and the national interest of St Helena.
3. The arrangement is compliant with international law, for which UKG takes full responsibility.
4. The arrangement ensures that St Helena's integrity and reputation is maintained.
5. The Constitution of St Helena is upheld.
6. UKG accepts responsibility for arranging the safe and lawful transfer of migrants to St Helena.
7. The arrangement does not present a financial burden for St Helena.
8. UKG ensures that St Helena has appropriate capacity and capability to establish and implement the arrangement.

## **5. PARAGRAPHS**

Paragraph 1 (Principle 1 - The UKG remains the dominant partner in the relationship.)

- 1.1 As the sovereign state, the UK retains ultimate responsibility for compliance with international obligations as they apply to St Helena. As an Overseas Territory of the United Kingdom, St Helena is governed democratically under a Constitution granted by the United Kingdom but in a separate legal jurisdiction. UK sovereignty is vested in the Crown and consists of the power of government of the overseas territory and the title to the country of St Helena. BIOT is also an Overseas Territory of the United Kingdom with its own constitution and separate legal jurisdiction, for which the UK as sovereign state retains ultimate responsibility for compliance with international obligations.
- 1.2 While in accepting the arrangement at the request of the Government of the United Kingdom, both UKG and SHG recognise the innovative character of this arrangement. UKG will indemnify SHG in relation to this arrangement and will prioritise the resolution of outstanding issues and SHG reserves the right to suspend or terminate this arrangement in line with this arrangement.

Paragraph 2 (Principles 3 and 4 - The arrangement is compliant with international law. The arrangement ensures that St Helena's integrity and reputation is maintained.)

2. UKG will conduct appropriate legal due diligence to ensure compliance with international law regarding this arrangement and will proactively consult with the United Nations High Commission for Refugees (UNHCR).

Paragraph 3 (Principle 5 - The Constitution of St Helena is upheld.)

3. The Participants commit to upholding the partnership values and human rights provisions in the Constitution of St Helena, for all persons on St Helena. In the event of any issue raised by the St Helena Commission for Equality and Human Rights, UKG will investigate and resolve such issue consistent with the Constitutional protection provisions for redress of breach of human rights. UKG will provide all support necessary to enable the fulfilment of the partnership values, in particular the rule of law, good government and compliance with the international obligations of the United Kingdom and St Helena.

Paragraph 4 (Principle 6 - UKG accepts responsibility for arranging the safe and lawful transfer of migrants to St Helena)

- 4.1 Under the arrangement, UKG accepts complete responsibility for the safety and lawfulness of relocating claimants from BIOT to St Helena, which is undertaken by the BIOT Administration.
- 4.2 SHG will assume responsibility for the welfare of migrants upon arrival in St Helena including any conditions to be attached to their residence, provided that the reception of migrants and integration into the community does not lead to civil unrest. In that event, UKG will provide the resources to address the issues and the arrangement will then fall to be reviewed or terminated if unresolvable.

Paragraph 5 (Principle 7 - The arrangement does not present a financial burden for St Helena)

5. In recognition of the financial constraints on the budget of SHG, UKG will ensure that this arrangement will not become a financial burden on St Helena. The operation of the arrangement and accountability for it will be reviewed at agreed intervals throughout its duration and upon its conclusion.

Paragraph 6 (Principle 8 - UKG ensures that St Helena has appropriate capacity and capability to establish and implement the arrangement)

6. The Participants acknowledge that UKG will provide the additional infrastructure and human capacity to establish and maintain the operability of this arrangement. This will take into account improving the means of ensuring continuity across the whole range of SHG activities such that current constraints are not aggravated by the introduction of the arrangement.

Paragraph 7 (Principle 2 - The arrangement operates for the mutual benefit of the United Kingdom and St Helena with due regard for the welfare of migrants and the national interest of St Helena.)

7. The Participants are entering into this arrangement with several jointly held goals:
  - i. SHG is willing to support UKG in ensuring that BIOT meets its international obligations.
  - ii. In turn, UKG will support the longer term developmental aspirations of St Helena and its people, recognising that in time and as a direct result of this support, St Helena may cease to be eligible for Official Development Assistance (ODA).
  - iii. As a result, and over time, this enhanced partnership will aim to reduce SHG's financial reliance on UKG by means of sustainable economic activity on the island.

Paragraph 8 (Principles 1 & 2 - The UKG remains the dominant partner in the relationship. The arrangement operates for the mutual benefit of the United Kingdom and St Helena with due regard for the welfare of migrants and the national interest of St Helena.

8.1 Under this arrangement SHG will take responsibility, with support from the UKG, for:

- i processing any claims for asylum or international protection,
  - ii providing support, including accommodation, to migrants seeking asylum or international protection;
  - iii granting appropriate rights to remain to any migrants to whom it grants refugee status or international protection;
  - iv removing to their country of origin any migrants whose refugee or international protection claims are refused,
- in line with the law of St. Helena and relevant international obligations, as applicable.

8.2 UKG will take reasonable steps, with the co-operation of the BIOT Administration, to screen migrants prior to transfer to St. Helena and will proactively disclose to SHG all relevant information relating to any migrant to be transferred to SHG in a timely manner and in accordance with applicable data protection standards, for the purposes of assisting SHG with pre-screening migrants and identifying any particular concerns including in relation to physical or mental health, security or criminal history. As a last resort, if SHG considers that a migrant presents a danger to the security of St Helena, it must reserve to itself a right of refusal of entry or continued residence, subject to paragraph 10.4. In such event UKG will support their urgent removal.

8.3 UKG will commit to not knowingly send to St Helena any migrant who would be incompatible with St Helena's internal security provision.

Paragraph 9 (Principle 2 - The arrangement operates for the mutual benefit of the United Kingdom and St Helena with due regard for the welfare of migrants and the national interest of St Helena.)

9.1 In the event of any difference of opinion or difficulty encountered over the operation of this arrangement, the participants will seek to resolve the issue speedily and candidly through mutual discussion. In the event that the issue remains unresolved, it will be escalated by either participant to ministerial level for swift resolution.

9.2 This arrangement will come into operation immediately upon signature by both Participants.. The arrangement will endure for a period not exceeding 18 months once operational unless sooner terminated. Any extension will be jointly decided. Both sides will work together to put in place the necessary practical arrangements ahead of the transfer of any migrants.

Paragraph 10 (suspension and termination)

10.1 This arrangement may be terminated for any reason by either Participant on 6 months notice, to be given in writing.

10.2 Should this arrangement present challenges to SHG which prove beyond resolution by either SHG or UKG, SHG may suspend this arrangement with immediate effect by giving written notice to UKG.

10.3 Should UKG choose to suspend this arrangement it may do so for any reason with immediate effect by giving written notice to SHG.

10.4 In the event of either suspension or termination SHG will continue to process any pending asylum or protection claims, in accordance with the law of St. Helena and in accordance with obligations of the Participants under international law.

10.5 This arrangement will terminate 18 months after signature, or sooner if agreed by the parties or terminated under paragraph 10.1.. This will not entail any further responsibility for SHG for reception of any migrants from BIOT in St Helena, subject to paragraph 10.4.

## **6. ADMINISTRATION AND MANAGEMENT OF ARRANGEMENT**

The Participants will in due course establish appropriate implementation and monitoring mechanisms in furtherance of the objectives of this arrangement. This will entail consideration of the following factors and any other relevant issues arising:

- Communication and branding
- Disbursement and financial reporting
- Safeguarding of claimants and the community
- Information and data protection obligations
- Audit and assurance

**ANNEX A**

<b>REQUIREMENTS AND REQUESTS</b>	
<b>(I) CRITICAL TO IMPLEMENTATION</b>	<b>(II) TO SUPPORT ST HELENA'S LONG TERM DEVELOPMENT</b>
In person UKG Home Office support and capacity development to process applications; including preparatory work (training package for SHG Border Control) once MOU signed, to ensure arrangement works once operational	Clear overseas health referral waiting list which is impacting on SHG's ability to focus on preventative health strategy (£1.65m)
Legal support	Support for implementation of Strategic Priorities discussed during 2023/24 Financial Aid Mission (indicative amounts) <ul style="list-style-type: none"> <li>• Education (£2m)</li> <li>• Health (£1.5m)</li> <li>• IT (£1.5m)</li> </ul>
Foreign language support	Thawing of UK state pension freeze (c. 20 individuals)
Support to bolster public service capacity and capability	
Subsistence for migrants	
Capital investment, logistical support and security if required, to ensure basic infrastructure is in place (remedial works to Bradleys Camp)	A mechanism for ensuring St Helena's social/economic sustainability should St Helena cease to be eligible for ODA.
Commitment to resolve satisfactorily any liability falling on SHG as a result of MOU	
Commitment to the signing of an MOU between UKG Home Office & SHG regarding the transmission and use of information concerning passenger data to support the administration and enforcement of SHG customs, immigration and policing of border-related procedures	