



St Helena  
Government

ST HELENA GOVERNMENT

THE IMMIGRATION (AMENDMENT) BILL, 2024

Laid on the Table 5th Dec 2024.



ST HELENA

A BILL

FOR

AN ORDINANCE

to amend the Immigration Ordinance, 2011, to revise the provisions for entry into St Helena; to further regulate the conditions for the employment of immigrants in St Helena; to revise penalties; to make the Chief Immigration Officer responsible for matters related to asylum and for connected and incidental purposes.

---

Enacted by the Governor of St Helena with the advice and consent of the Legislative Council of St Helena.

**Short title, commencement and interpretation**

1. (1) This Ordinance may be cited as the Immigration (Amendment) Ordinance, 2024, and comes into force on a date or dates fixed by the Governor by Order.

(2) In this Ordinance “the principal Ordinance” means the Immigration Ordinance, 2011.

**Amendment of section 2 - interpretation**

2. The principal Ordinance is amended in section 2 as follows—

(a) by inserting in the appropriate alphabetical sequence the following definition—

“**administrative review**” refers to the Immigration Department review process established by the Chief Immigration Officer whereby a matter determined by an officer is assigned by the Chief Immigration Officer to be reviewed by another officer who is independent of the process by which the matter was initially determined;”;

(b) in the definition of the word “dependant” as follows—

(i) by repealing the word “and” at the end of paragraph (a);

(ii) at the end of paragraph (b)(ii) by inserting the word “and”; and

(iii) by inserting after paragraph (b) the following paragraph—

“(c) a person who depends on the person for support and for whom evidence of that dependence is provided.”;

(c) by repealing the term “long term entry permit” and the definition of this term and substituting the following—

“**permission to stay and work permit**” means a permit, applied for and granted as prescribed, to enter, remain and work or be employed in St Helena for a period of up to 5 years initially and may be extended thereafter;”;

- (d) by repealing the term “short term entry permit” and the definition of this term and substituting the following—

“**holiday permit**” means a permit, applied for and granted as prescribed, to enter and remain in St Helena but without the right to work in St Helena for an initial period of 183 days and may be extended to 365 days;”;

- (e) by repealing the term “work permit” and the definition of this term.

### **Repeal and Substitution of the term “long term entry permit”**

3. The principal Ordinance is amended by repealing the term “long term entry permit” wherever this term appears and substituting the term “permission to stay and work permit”.

### **Repeal and Substitution of the term “short term entry permit”**

4. The principal Ordinance is amended by repealing the term “short term entry permit” wherever this term appears and substituting the term “holiday permit”.

### **Amendment of section 3 - obligations of masters of vessels**

5. The principal Ordinance is amended in section 3(5) by repealing “£5000” and substituting “£8000”.

### **Amendment of section 4 - appointment of immigration officers**

6. The principal Ordinance is amended in section 4 as follows—

- (a) by repealing subsection (2) and substituting the following subsection—

“The Chief Immigration Officer may delegate any of his or her powers and duties under this Ordinance to any other Immigration Officer.”; and

- (b) by repealing subsection (3).

### **Amendment of section 5 - powers and duties of immigration officers**

7. The principal Ordinance is amended in section 5(2) by repealing the words “Without affecting the powers of the Board contained in this Ordinance, an” and substituting the word “An”.

### **Amendment of section 6 - Immigration Control Board**

8. The principal Ordinance is amended by repealing section 6(7)(b)(i), (ii), (iii) and (iv).

### **Amendment of section 9 - disclosure of interests by board members**

9. The principal Ordinance is amended in section 9 as follows—

- (a) in the heading by repealing the words “by Board members”;
- (b) inserting after subsection (1) the following subsection—

“(1A) An Immigration Officer who has a direct or indirect interest in any matter which is being considered by the Immigration Officer must make full disclosure of the interest and refrain from participation on the matter.”; and

- (c) in subsection (2) by repealing “£2500” and substituting “£4000”.

#### **Amendment of section 11 - duty of confidentiality**

**10.** The principal Ordinance is amended in section 11 as follows—

- (a) in subsection (1) as follows—

- (i) by repealing the words “The members of the Board” and substituting the words “A member of the Board and an Immigration Officer”; and
- (ii) by repealing the words “presented to the Board in the exercise of its functions” and substituting the words “presented to the member of the Board or the Immigration Officer in the exercise of the functions of the member of the Board or the Immigration Officer”;

- (b) in subsection (2) by repealing “£2500” and substituting “£4000”; and

- (c) in subsection (3) by inserting after the words “apply to members of the Board” the words “or an Immigration Officer”.

#### **Amendment of section 12 - appeals from decisions of Immigration Officer**

**11.** The principal Ordinance is amended in section 12 as follows—

- (a) by repealing subsection (1) and substituting the following subsection—

“(1) A person aggrieved by or dissatisfied with a decision of an Immigration Officer may in the manner specified by the Chief Immigration Officer submit an application for administrative review of the decision of the Immigration Officer within 7 days of being notified of the decision.”;

- (b) in subsection (2) by repealing the words “subject to subsection (3)”;

- (c) by repealing subsection (3) and substituting the following subsection—

“(3) This section does not apply to a decision of the Chief Immigration Officer made in respect of a matter related to asylum.”.

#### **Amendment of section 13 - appeals from decisions of Board**

**12.** The principal Ordinance is amended in section 13 as follows—

- (a) in the heading by repealing the words “from decisions of Board”; and

- (b) in subsection (1) as follows—

- (i) by repealing the words “the Board” and substituting the words “an Immigration Officer or the Board”; and

- (ii) by repealing the word “an appeal under section 12” and substituting the words “an administrative review under section 12”; and

- (c) by inserting after subsection (2) the following subsection—

“(3) This section does not apply to a decision of the Chief Immigration Officer made in respect of a matter related to asylum.”.

#### **Amendment of section 14 - appeals: supplemental**

**13.** The principal Ordinance is amended in section 14 as follows—

- (a) by repealing subsection (2) and substituting the following subsection—

“(2) On an appeal from administrative review under section 12, the initial decision in a matter may be confirmed or substituted by the Immigration Officer assigned to review the matter”; and

- (b) by repealing subsection (3) and substituting the following subsection—

“(3) On an appeal under section 13, the court may either confirm a decision of an Immigration Officer or the Board, or substitute any decision which an Immigration Officer or the Board could lawfully have made.”.

#### **Amendment of section 15 - persons having by right or by grant St Helenian status**

14. The principal Ordinance is amended in section 15 as follows—
- (a) in subsection (3) by repealing the word “Board” and substituting the words “Chief Immigration Officer”;
  - (b) in subsection (3A) by repealing the word “Board” and substituting the words “Chief Immigration Officer”; and
  - (c) in subsection (4) by repealing the word “Board” wherever this word appears and substituting the words “Chief Immigration Officer”.

#### **Amendment of section 16 - deprivation and loss of status**

15. The principal Ordinance is amended in section 16 as follows—
- (a) in subsection (1) by repealing the word “Board” wherever this word appears and substituting the words “Chief Immigration Officer”; and
  - (b) in subsection (2) by repealing the word “Board” wherever this word appears and substituting the words “Chief Immigration Officer”.

#### **Amendment of section 16A - visa requirement to travel to St Helena**

16. The principal Ordinance is amended in section 16A as follows—
- (a) in subsection (2) in paragraph (c) by inserting after the words “travelling to St Helena” the words “and will be leaving St Helena on the same or another vessel”; and
  - (b) in subsection (4) by repealing “£5000” and substituting “£8000”.

#### **Amendment of section 17 - general provisions for control of immigrants**

17. The principal Ordinance is amended in section 17 as follows—
- (a) in subsection (1) by repealing paragraph (c) and substituting the following paragraph—
    - “(c) discretionary leave granted in accordance with regulations made under section 43 and subsection (1A).”;
  - (b) in subsection (1A) as follows—
    - (i) by repealing the words “special leave” and substituting the words “discretionary leave”; and
    - (ii) by repealing the words “though not authorised to do so by either an entry permit or a landing permission”;
  - (c) in subsection (2) by repealing paragraph (b) and (c);
  - (d) by repealing subsection (2A) and substituting the following subsection—
    - “(2A) In respect of a person to whom subsection (2) applies, such persons are deemed to have permission to enter St Helena and if they no longer for any reason fall into the categories listed under subsection (2), such permission will be regarded as automatically revoked one month after the date upon which the person no longer falls into such categories unless the person applies for and obtains a holiday permit or a permission to stay and work permit.”;
  - (e) in subsection (4) by repealing “£5000” and substituting “£8000”; and
  - (f) in subsection (6)—

- (i) by repealing the word “only”;
- (ii) by repealing the words “who is outside” and substituting the words “who is inside or outside” and
- (iii) by repealing the words “, and that a person who has entered the territorial waters or airspace is (in prescribed circumstances) to be treated as outside St Helena for the purposes of those regulations”.

#### **Amendment of section 18 - entry permits**

- 18.** The principal Ordinance is amended in section 18 as follows—
- (a) by repealing subsection (1A);
  - (b) by inserting after subsection (2) the following subsection—
 

“(2A) In an emergency situation or where a person is unable to leave St Helena upon the expiration of an entry permit issued to such person and the Chief Immigration Officer considers it impractical to issue a further entry permit to such person, the Chief Immigration Officer may issue such person with discretionary leave to remain in St Helena for the duration of the emergency or until it is practicable for such person to leave St Helena but such discretionary leave must comply with regulations made in respect of discretionary leave under section 43.”;
  - (c) repealing paragraph 4(b); and
  - (d) by repealing subsection (5).

#### **Amendment of section 19 - short term entry permits**

- 19.** The principal Ordinance is amended in section 19 as follows—
- (a) by repealing the heading “short term entry permits” and substituting the words “holiday permit”;
  - (b) in subsection (1) as follows—
    - (i) in paragraph (a) by repealing the words “not exceeding 183 days” and substituting the word “of 183 days or for extension of the initial permit to a period not exceeding 365 days”;
    - (ii) by repealing the words “183 days” and substituting the words “183 days or 365 days if an extension was granted”
  - (c) in subsection (2) by repealing the words “(not exceeding 183 days)” and substituting the words “(of 183 days initially but may be extended to 365 days);
  - (d) in subsection (3) by repealing the words “183 days” and substituting the words “365 days”; and
  - (e) by inserting after subsection (3) the following subsections—
 

“(4) A person who is granted a holiday permit—

    - (a) may not work or be employed in St Helena but may at any stage before the expiration of the holiday permit apply for a permission to stay and work permit in accordance with section 20; and
    - (b) if granted a permission to stay and work permit pursuant to paragraph (a) may work or be employed in St Helena as provided in respect of a permission to stay and work permit and in accordance with such conditions as may be attached to such permit.”.

#### **Amendment of section 20 - long term entry permits**

- 20.** The principal Ordinance is amended in section 20 as follows—
- (a) by the repealing the heading “long term entry permits” and substituting the words “permission to stay and work permit”;

- (b) in subsection (1) as follows—
  - (i) by repealing the word “The Board” and substituting the words “An Immigration Officer”; and
  - (ii) in paragraph (a) by repealing the words “for a period exceeding 183 days” and substituting the words “for a period of up to 5 years and may be extended thereafter”;
  - (iii) in paragraph (c) by repealing the words “the Board” and substituting the words “the Immigration Officer”;
- (c) by inserting after subsection (1) the following subsection—
 

“(1A) A person may not work or be employed in St Helena unless the person has been granted a permission to stay and work permit.”; and
- (d) in subsection (2) as follows—
  - (i) by repealing the words “apply to the Board” and substituting the words “apply to an Immigration Officer”; and
  - (ii) by repealing the words “permit and the Board (after such enquiries in the matter as it thinks fit to make)” and substituting the words “permit and the Immigration Officer (after such enquiries in the matter as the Immigration Officer considers fit to make)”.

#### **Amendment of section 21 - landing permission**

21. The principal Ordinance is amended in section 21 as follows—
- (a) in subsection (2)(b) by deleting the words “for less than 24 hours” and substituting the words “for less than 72 hours”;
  - (b) in subsection (3) by repealing the words “persons authorised to enter St Helena by that permission” and substituting the words “passengers on board the vessel”;
  - (c) in subsection (4) by repealing “£5000” and substituting “£8000”; and
  - (d) in subsection (5) by inserting after the words “A fine” the words “of £15,000”.

#### **Amendment of section 22 - revocation of entry permits**

22. The principal Ordinance is amended in section 22 as follows—
- (a) in subsection (1) by repealing the words “the Board if it is satisfied” and substituting the words “the Chief Immigration Officer if the Chief Immigration Officer is satisfied”; and
  - (b) in subsection (2) by repealing the word “Secretary” and substituting the words “Chief Immigration Officer”.

#### **Insertion of section 22A - material change in circumstances**

23. The principal Ordinance is amended by inserting after section 22 the following section—

##### **“Material change in circumstances**

**22A. (1)** For the purpose of this section a “material change” in circumstances includes—

- (a) a change in personal finances that renders a person unable to satisfy the person’s financial requirements;
- (b) a change in employment; or
- (c) any change in circumstance wherever such circumstance may be that may hinder a person from leaving St Helena or present any form of

impediment to a person returning to the person's place of origin, citizenship or similar status.

(2) Subject to subsection (5) where there is a material change in the circumstances of a person granted an entry permit, such person must as soon as is reasonably possible notify the Chief Immigration Officer of such change.

(3) Where a notification is made to the Chief Immigration Officer under subsection (2) the Chief Immigration Officer—

- (a) may investigate the basis of the notification;
- (b) may require any documentation which for such investigation may reasonably be required;
- (c) is only entitled to request such information necessary for the investigation;
- (d) must notify the person from whom the information is being requested of the reason that the information is being requested and provide such period of time that the Chief Immigration Officer considers reasonable in which to provide the information being requested; and
- (e) for the avoidance of doubt is bound by the duty of confidentiality specified in section 11 in respect of such information.

(4) A person in possession of documentation required pursuant to subsection (3) must when requested provide such documentation to the Chief Immigration Officer.

(5) A person to whom subsection (2) applies may, instead of making a notification to the Chief Immigration Officer under this section, within 7 days of the person becoming aware of the material change in the person's circumstances, of the person's own volition, leave St Helena.

(6) A person who leaves St Helena pursuant to subsection (5) is deemed not to be in violation of subsection (2).

(7) The Chief Immigration Officer, upon the investigation of a notification made pursuant to this section may reassess the basis upon which an entry permit was granted to a person and may—

- (a) revise the conditions upon which the entry permit was granted;
- (b) revise the type of entry permit granted; or
- (c) revoke the entry permit.

(8) The Chief Immigration Officer must as soon as reasonable possible notify a person making a notification under this section of the outcome of the Chief Immigration Officer's investigation and decision pursuant to subsection (7).

(9) A person may in accordance with section 13 appeal a decision of the Chief Immigration Officer made under this section.”.

#### **Amendment of section 23 - restrictions on employment of immigrants**

24. The principal Ordinance is amended in section 23 as follows—

- (a) in subsection (1) as follows—
  - (i) by repealing paragraph (a); and



- (ii) by repealing paragraph (b) and substituting the following paragraph—  
“(b) who is employed by the Government of the United Kingdom and who is on duty in St Helena”; and
- (iii) by repealing paragraph (c) and substituting the following paragraph—  
“(c) who is required to be present in St Helena as a matter of urgency and such urgency is to be determined by the Chief Immigration Officer”;
- (iv) by inserting the word “and” at the end of paragraph (c); and
- (v) by inserting after paragraph (c) the following paragraph—  
“(d) a consular officer within the meaning of the Vienna Convention on Consular Relations 1963, and as recognized by St Helena.”; and
- (b) by repealing subsection (2) and substituting the following subsection—  
“(2) No immigrant, other than a dependant of a person who has St Helenian status, may lawfully work in St Helena unless his or her presence in St Helena is authorised by an entry permit (or the person is not required to have an entry permit by virtue of his or her falling within section 17(1)(c) or 17(2)(c)).”;
- (c) in subsection (5) as follows—
  - (i) in paragraph (a) by repealing “£2500” and substituting “£4000”; and
  - (ii) in paragraph (b) by repealing “£10000” and substituting “£15000”; and
- (d) by repealing subsection (6).

#### **Amendment of section 24 - work permits**

25. The principal Ordinance is amended by repealing section 24.

#### **Amendment of section 25 - immigrant employment certificate**

26. The principal Ordinance is amended by repealing section 25.

#### **Amendment of section 26 - effect of non-compliance with conditions**

27. The principal Ordinance is amended by repealing section 26.

#### **Amendment of section 29 - prohibited transactions**

28. The principal Ordinance is amended in section 29 as follows—
- (a) in subsection (1) by inserting after the words “A fine” the words “of £8000”; and
  - (b) in subsection (5) by repealing the words “in Council” and substituting the words “on the advice of the Executive Council”.

#### **Amendment of section 30 - prohibited trusts**

29. The principal Ordinance is amended in section 30(1) by inserting after the words “A fine” the words “of £8000”.

#### **Amendment of section 32 - change of status**

30. The principal Ordinance is amended in section 32(3) by repealing “£5000” and substituting “£8000”.

### **Amendment of section 35 - breach of conditions**

31. The principal Ordinance is amended in section 35(2) by repealing “£5000” and substituting “£8000”.

### **Amendment of section 36 - investigation and discovery**

32. The principal Ordinance is amended in section 36(2A) by repealing “£5000” and substituting “£8000”.

### **Amendment of section 38 - general offences**

33. The principal Ordinance is amended in section 38 as follows—
- (a) in subsection (1) by repealing “£5000” and substituting “£8000”; and
  - (b) in subsection (2) by inserting after the words “A fine” the words “of £15000”.

### **Amendment of section 41 - policy directions**

34. The principal Ordinance is amended in section 41 as follows—
- (a) in subsection (1) by repealing the words “acting in his or her discretion” and substituting the words “acting on the advice of the Executive Council”; and
  - (b) in subsection (2) by repealing the words “in Council.” and substituting the words “on the advice of the Executive Council”.

### **Amendment of section 42 - prohibited immigrants**

35. The principal Ordinance is amended by repealing section 42(2) and substituting the following subsection—

“(2) Notice of a declaration under subsection (1) must be served on the person named in the declaration as soon as practicable after the declaration is made.”.

### **Amendment of section 43 - regulations**

36. The principal Ordinance is amended in section 43 as follows—
- (a) by repealing the words “in Council” and substituting the words “on the advice of the Executive Council”; and
  - (b) in paragraph (1) by repealing the words “work permit.”.

### **Amendment of section 44 - asylum rules**

37. The principal Ordinance is amended by repealing section 44 by and substituting the following section—

“(44) (1) The Governor, acting in his or her discretion but after consulting the Executive Council, may make rules for securing St Helena’s obligations under—

- (a) the Refugee Convention;
- (b) Article 3 of the Human Rights Convention; and
- (c) section 7 of the Constitution protecting a person from being subject to torture or to inhuman or degrading treatment or punishment.

- (2) Rules made under subsection (1) may modify the provisions of this Ordinance in their application to the matters specified at paragraphs (1)(a), (b) or (c).

(3) The Chief Immigration Officer is responsible for the implementation and application of rules made pursuant to this section.”.

#### **Amendment of section 45 - repeals and transitional provisions**

38. The principal Ordinance is amended in section 45 by inserting after subsection (6) the following subsection—

“(7) An entry permit issued to a person who was issued with a work permit or immigrant employment certificate which was valid prior to the repeal of provisions relating to work permits or immigrant employment certificates is not to be considered invalid or revoked as a consequence of such repeal and any such person or a person who is validly employed but was not required to be issued with a work permit or immigrant employment certificate is deemed to have been granted a permission to stay and work permit and may remain in St Helena for the duration of the period that the person is employed at the time of the repeal of the provisions relating to work permits or immigrant employment certificates and under such applicable conditions of such employment.”.

#### **Amendment of Schedule I - definition of “islander” in the immigration ordinance, 1972**

39. The principal Ordinance is amended in Schedule I in paragraph (e) by inserting after the words “foregoing paragraphs applies” the words “and where such a child becomes a person who is eighteen years of age, such person’s status as an Islander remains and is not affected by the child’s attainment of adulthood”.

---

#### **EXPLANATORY NOTE**

*(This note is not part of the Ordinance)*

This Bill would increase penalties, remove the authority to make decision regarding entry into and employment in St Helena from the Board, remove the requirement for a work permit and an immigrant employment certificate, require immigrants employed by the Government to be issued with a permission to stay and work permit, permit the Chief Immigration officer to reassess an entry permit where there is a material change in the circumstances of a person to whom an entry permit was issued and grant discretionary leave in specified circumstances. The Bill would also make the Chief Immigration Officer responsible for matters related to asylum.