

IMMIGRATION CONTROL ORDINANCE

(Ordinance 9 of 2008)

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.

[Extract only]

PART 6 LANDHOLDING BY IMMIGRANTS

Interpretation of this Part

- 25. (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.
- “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.
- (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 either case) the structure and control of the body corporate is such that:

(i) the total number of votes capable of being cast by 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 would become payable or due to immigrants.

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

(a) a lease, periodic tenancy, or a licence, in relation to land comprising residential accommodation, held by an immigrant who holds an entry permit or a residence permit, and where the lease, tenancy, or licence is incapable of continuing beyond the period of validity of the entry permit or residence permit;

(b) a lease, periodic tenancy, or a licence, in relation to land comprising residential accommodation, held by an immigrant who is exempt from entry control under section 17(2)(a), (b), or (d), and where the lease, tenancy, or licence is incapable of continuing beyond the period that the immigrant is lawfully in St. Helena;

(c) a lease, periodic tenancy, or licence, in relation to any land used or to be used by an immigrant for the purposes of any business activity in which he is authorised to participate by a work permit, where the lease, tenancy, or licence is incapable of continuing beyond the period of validity of the work permit;

(d) a mortgage or similar charge upon land granted as bona fide security for a loan;

(e) 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

(f) 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.

Controlled immigrants require licences to hold land

26. (1) Save as provided in this Part, no land in St. Helena may be acquired or held by a controlled immigrant except under the authority of a licence.

(2) A controlled immigrant who acquires or holds land in contravention of subsection (1) is guilty of an offence and liable to the penalties provided for in section 36.

(3) A person who, as grantor, lessor, transferor, or in any similar capacity, executes any instrument whereby he grants or transfers land to a controlled immigrant who is not authorised to acquire or hold that land, or purports to do so, is guilty of an offence and liable on summary conviction to a fine not exceeding whichever is the higher of the amounts mentioned in subsection (4), or to imprisonment for a term not exceed in 12 months, or to both such fine and imprisonment.

(4) The amounts mentioned in subsection (3) are:

(a) £5,000; and

(b) the amount or value of any consideration received or to be received by that person for his executing the relevant instrument.

(5) A person is guilty of an offence, and liable to the penalties provided for in section 36, if (by any voluntary act of his, other than applying for probate or letters of administrator in the estate of a deceased person) he holds any land in St. Helena in trust for a controlled immigrant who is not authorised to have an interest in that land under the provisions of this Part.

(6) For the avoidance of doubt, the parties to any instrument are not guilty of an offence under subsection (2) or subsection (3) if the instrument is so expressed that the granting of a licence to the controlled immigrant is a condition precedent to the instrument taking effect.

Deemed permission in certain circumstances

27. (1) Subject to subsection (2), a controlled immigrant shall be deemed to hold a licence in relation to any land which he owns where—

(a) he succeeds to the land under a will or on an intestacy;

(b) having previously been an exempt body corporate, the body corporate has ceased to be exempt; or

(c) having been a spouse or life partner of a person having St. Helenian status, he ceases to have that relationship.

(2) A deemed permission under subsection (1) is valid for a period of 12 months from the grant of probate or letters of administration, or from the date the body corporate ceased to be exempt, or from the date of the end of the relationship, as the case may be.

(3) Every director, secretary or other similar officer of an exempt body corporate which owns land, and every person who holds land and becomes the holder of a deemed permit under subsection (1)(c), shall, within 21 days of any event which causes the body corporate to cease to be exempt, give written notice to the Attorney General of such event.

(4) A person who fails to comply with subsection (3) is guilty of an offence and liable on summary conviction to a fine not exceeding £5,000, or to imprisonment for a term not exceed in 12 months, or to both such fine and imprisonment:

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 (3).

Applications for licences

28. (1) Every application for a licence shall be in writing, in such form as may be prescribed, and shall be delivered to the public officer designated to receive it by regulations, accompanied by—

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

(2) Regulations made under section 41 shall provide for—

- (a) enquiries to be made by the designated public officer before submitting the application to the Chief Secretary;
- (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.

(3) On receipt of an application in accordance with the Regulations, the Chief Secretary shall cause the same to be considered by the Governor in Council.

Determination of applications

29. (1) The Governor in Council may, if he thinks fit, grant a licence authorising a controlled immigrant to hold land or authorising 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.

Matters to be considered

30. (1) The Governor in Council shall not grant a licence unless he is satisfied that it is in the public interest to do so.

(2) Without prejudice to subsection (1), the matters to be considered by the Governor in Council when deciding whether or not to grant a licence, include—

- (a) the general state of the land market in St. Helena and the implications thereof for the availability of land in the foreseeable future;
- (b) the location, area, and physical state of the relevant land, and the economic and social implications of permitting that land to pass into the ownership of a controlled immigrant;
- (c) the use to which the controlled immigrant proposes to put the land, and the social and economic implications of that proposal for St. Helena; and
- (d) in the case of a proposed business development, whether the Governor in Council is satisfied that the business proposal is economically viable in the short term and sustainable in the longer term.

Breach of conditions

31. (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) A person who commits an offence under subsection (1) is liable to the penalties prescribed in section 36.

Offence of supplying false information

32. (1) A person is guilty of an offence if he wilfully or recklessly makes any false statement in support of, or for the purposes of, an application for a licence.

(2) A person who commits an offence under subsection (1) is liable to the penalties prescribed in section 36.

(3) A court before which the holder of a licence is convicted for an offence under subsection (1) shall (unless satisfied that the false statement made by him was of no consequence in the decision to grant the licence, the proof whereof shall lie on the defendant) order that the licence shall be for all purposes void *ab initio*:

Provided that—

- (a)** a person shall not thereby become liable to prosecution for an offence under section 26 by reason of anything done prior to the date of the order under this subsection; and
- (b)** the person who was granted the licence shall be deemed to hold a deemed permit under section 27 for a period of six months from the date of the order.

Investigation and Discovery

33. (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'..

(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 other than criminal proceedings; and

(b) in criminal proceedings for an offence of perjury or for an offence contrary to subsection (2).

(4) A person who commits an offence against subsection (2) is liable on summary conviction to a fine not exceeding £5,000 or imprisonment not exceeding 12 months, or both such fine and imprisonment.

Duties of Registrar of Lands

34. (1) Where any application is made to the Registrar of Lands for the registration of any transfer, lease, charge, or other instrument of land, and the Registrar has reason to suspect that the transaction sought to be registered is of a type which is forbidden by, or requires a licence under, this Ordinance, 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.

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[#] 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[#] 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.

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

SCHEDULE II
(Section 15(3))

REQUIREMENTS FOR ST. HELENIAN STATUS

1. Subject to the provisions of paragraphs 2 to 4, the requirements for the grant of St. Helenian status are—

- (1) that the applicant-
 - (a) is of good character; and
 - (b) has a sufficient knowledge of the English language; and
 - (c) 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
 - (d) was in St. Helena at the beginning of a period of seven 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 700;
 - (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;
 - (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
- (2) that the Governor in Council has granted a dispensation under paragraph 4.

2. The requirements for the grant of St. Helenian status in the case of a person who is married to a person having St. Helenian status are—

- (1) that the applicant-
 - (a) has been so married and not separated under a Court Order or a Deed of Separation for a period of 5 years; and
 - (b) is of good character; and
 - (c) 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 250;
 - (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
- (2) that the Governor in Council has granted a dispensation under paragraph 4.
- 3. Regulations made under section 41 may provide-
 - (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) if he is satisfied-

- (i) that that the applicant for the dispensation has a substantial economic, social or historical connection with St. Helena; or
- (ii) that, despite not strictly complying with the requirements of the appropriate paragraph, the applicant has established a significant association with St. Helena;

and, in either case, that it would not be against the public interest to grant the dispensation.