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Immigration Ordinance 2016

(No. of 2016)

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SCHEDULE

Immigration Ordinance 2016

(No. of 2016)

(assented to: [])

(commencement: [])

(published: [])

AN ORDINANCE

To make provision for the control of entry and stay in the South Georgia and the South Sandwich Islands.

ENACTED by the Commissioner for South Georgia and the South Sandwich Islands as follows -

Part 1 — Introduction

1. Title

This is the Immigration Ordinance 2016.

2. Commencement

This Ordinance comes into force when it is published in the *Gazette*.

3. Interpretation

In this Ordinance –

“immigration officer” means a person appointed by the Commissioner under section 4;

“permission” or “permission to enter” means an approval granted by an Immigration Officer under section 7;

“Principal Immigration Officer” means a person appointed by the Commissioner under section 4;

“the Territory” means the Territory of South Georgia and the South Sandwich Islands;

“work permit” means a permit to work in the Territory granted by the Principal Immigration Officer under section 10.

Part 2 — Administration

4. Appointment of Principal Immigration Officer

(1) The Commissioner must appoint a Principal Immigration Officer and may appoint other persons to be immigration officers for the purposes of this Ordinance.

(2) Any appointment made under subsection (1) must be published by notice in the *Gazette*.

5. Functions of Principal Immigration Officer and Immigration Officers

The Principal Immigration Officer and any immigration officer must carry out all the functions required under this Ordinance and in particular —

(a) carry out any functions or comply with any directions that the Commissioner may give in respect of anything or matter to be done under this Ordinance;

(b) conduct any other duties as may be required of them for the purposes of administering and enforcing this Ordinance.

Part 3

Entry into the Territory — Visitors

6. Visitors — application for permission to enter

(1) It is an offence for any person to enter the Territory without permission.

(2) Subject to subsection (3) and section 7, any person who wishes to enter into the Territory to visit must make an application to the Immigration Officer at least 3 days before the intended date of arrival into the Territory in such form as may be specified by the Immigration Officer.

(3) The Immigration Officer may allow an application under this section to be made within a shorter period than specified under subsection (2).

(4) An application under subsection (2) must contain the following information relating to the applicant —

(a) full names;

(b) nationality;

(c) passport details (including date of expiry);

(d) intended length of stay;

(e) details as to the places to be visited within the Territory;

(f) details of travel and medical insurance; and

(g) any other information as may be required by the Immigration Officer.

7. Exemptions

(1) The Commissioner may exempt any person or class of persons from the requirements of section 6.

(2) The Commissioner must publish the list of exempted people by notice in the *Gazette*.

8. Permission to enter as a visitor

(1) Where an application under section 6 meets all the requirements, the Immigration Officer may —

(a) grant the applicant permission to enter the Territory for any period not exceeding 30 days;

(b) require the applicant to pay a specified fee; or

(c) impose any conditions as may be necessary.

(2) Where an application is made by a person outside the Territory the Immigration Officer may first grant a provisional approval and grant permission to enter upon the person's arrival into the Territory.

(3) Permission to enter granted under this section may be for multiple entries with different durations and may be in such form as may be specified by the Principal Immigration Officer.

9. Refusal of permission to enter as a visitor

(1) The Immigration Officer may refuse to grant permission to enter the Territory where an application does not meet the requirements of section 6 or where proper or reasonable grounds exist to justify the refusal.

(2) The Immigration Officer must inform the applicant of the refusal within 3 days or as soon as possible after making the decision and where the applicant is within the Territory the decision must also include a requirement for the applicant to leave the Territory.

(3) The proper or reasonable grounds referred to under subsection (1) may include a prior refusal or revocation of a permission to enter or a work permit as a result of —

(a) the applicant's inability to comply with any conditions imposed on the permission to enter or on the work permit; or

(b) any criminal offence the applicant committed in the Territory.

(4) A person may appeal the decision of an immigration officer in writing to the Principal Immigration Officer within 3 days from receipt of the refusal, setting out the reasons for the appeal and may include any relevant documents.

(5) An appeal under subsection (4) automatically suspends any requirement made by the immigration officer for the applicant to leave the Territory.

(6) The Principal Immigration Officer must inform the appellant of his or her decision on the appeal as soon as possible after making it and where the Principal Immigration Officer makes a decision to grant the permission to enter he or she must direct an

immigration officer to grant the appellant with permission to enter as soon as possible.

(7) In the event that the Principal Immigration Officer upholds the decision of an immigration officer to refuse to grant permission to enter and for the person to leave the Territory, the person must leave the Territory as soon as possible unless the person applies to the Commissioner for a review of the decision of the Principal Immigration Officer.

(8) The Commissioner must as soon as is reasonably possible after receipt of any application for a review made under subsection (7), review the decision of the Principal Immigration Officer and inform the person of his or her decision and may give any directions to the Immigration Officer as necessary.

Part 4 **Entry into the Territory — Workers**

10. Workers — applications to enter and work

(1) It is an offence for any person to enter and work in the Territory without a work permit granted by the Immigration Officer under this Part.

(2) Subject to subsection (3) and section 11, any person who wishes to enter into the Territory to work must make an application to the Immigration Officer 14 days before the intended date of arrival into the Territory in such form as may be specified by the Principal Immigration Officer.

(3) The Immigration Officer may allow an application under this section to be made within a shorter period than that specified in subsection (2).

(4) An application for a work permit under this section must contain the following information relating to the applicant —

- (a) full names;
- (b) nationality;
- (c) passport details (including date of expiry);
- (d) intended length of stay;
- (e) details of the contract of employment including duration;
- (f) details of travel and medical insurance;
- (g) disclosure of any criminal convictions as specified in the Schedule;
- (h) details of the applicant's medical fitness to work; and

(i) any other information as may be required by the Principal Immigration Officer.

11. Exemptions

(1) The Commissioner may exempt any person or class of persons from the requirements of section 10.

(2) The Commissioner must publish the list of exempted people by notice in the *Gazette*.

12. Grant of work permit

(1) Where an application under section 10 meets all the requirements, the Immigration Officer may —

(a) grant a work permit to the applicant for the duration of the applicant's contract of employment;

(b) require the applicant to pay a specified fee; or

(c) impose any conditions as may be necessary.

(2) The Immigration Officer may first grant a provisional approval and grant the work permit upon the person's arrival into the Territory.

(3) The work permit must be in such form as may be specified by the Principal Immigration Officer.

13. Refusal to grant work permit

(1) The Immigration Officer may refuse to grant a work permit where an application does not meet the requirements of section 10 or where proper or reasonable grounds exist to justify the refusal.

(2) The Immigration Officer must inform the applicant of the refusal within days 3 days or as soon as possible after making the decision and where the applicant is within the Territory the decision must also include a requirement for the applicant to leave the Territory.

(3) The proper or reasonable grounds referred to under subsection (1) may include a prior refusal or revocation of a work permit or a permission to enter as a result of —

(a) the applicant's inability to comply with any conditions imposed on the work permit or on the permission to enter; or

(b) any criminal offence the applicant committed in the Territory.

(4) A person may appeal the decision of an immigration officer may in writing to the Principal Immigration Officer within 3 days from receipt of the refusal, setting out the reasons for the appeal and may include any relevant documents.

(5) An appeal under subsection (4) automatically suspends any requirement made by the immigration officer for the person to leave the Territory.

(6) The Principal Immigration Officer must inform the appellant of his or her decision on the appeal as soon as possible after making it and where the Principal Immigration Officer makes a decision to allow for the granting of a work permit he or she must direct an immigration officer to grant the appellant with a work permit as soon as possible.

(7) In the event that the Principal Immigration Officer upholds the decision of an immigration officer to refuse to grant a work permit and for the person to leave the Territory, the person must leave the Territory as soon as possible unless the person applies to the Commissioner for a review of the decision of the Principal Immigration Officer.

(8) The Commissioner must as soon as is reasonably possible after receipt of any application for a review made under subsection (7), review the decision of the Principal Immigration Officer and inform the person of his or her decision and may give any directions to the Immigration Officer as necessary.

Part 5

General — Revocations, Deportations, etc.

14. Revocation

(1) The Immigration Officer may revoke the permission granted under section 6 or a work permit granted under section 10 where —

(a) the holder breaches the requirements of any conditions imposed by an immigration Officer on the permission or the work permit;

(b) the holder knowingly gave false information to the Immigration Officer;

(c) the holder behaves in such a way that it becomes undesirable for the person to continue to be allowed to stay in the Territory and as a result a deportation order is issued to the person under section; or

(d) it is necessary in the national or public interest of the Territory.

(2) The Immigration Officer must notify the holder as soon as reasonably possible where he or she makes a decision to revoke the permission to enter or a work permit and the decision must also include a requirement for the person to leave the Territory.

15. Review against revocation

(1) A person may make an application for the review of the decision of the Immigration Officer under section 14 to revoke the permission to enter or the work permit within 3 days from the date of notification by the Immigration Officer.

(2) The application for a review must be accompanied by written representations from the person whose permission or work permit is to be revoked.

(3) An application for review under subsection (1) automatically suspends any requirement made by the immigration officer under section 14 for the person to leave the Territory.

(4) The Principal Immigration Officer must as soon as is reasonably possible review the Immigration Officer's decision and inform the person of his or her decision.

(5) Where the Principal Immigration Officer's decision is to disallow the revocation of the permission to enter or the work permit he or she must direct an immigration officer as to the reinstatement of the permission to enter or work permit.

(6) In the event that the Principal Immigration Officer upholds the decision of an immigration officer to revoke the permission to enter or the work permit, the person must leave the Territory as soon as possible unless the person applies to the Commissioner for a further review of the decision of the Principal Immigration Officer.

(7) The Commissioner must as soon as is reasonably possible after receipt of any request under subsection (6) consider the request and inform the person of his or her decision and may give directions to the Immigration Officer.

(8) The Immigration Officer must comply with any directions the Commissioner gives under subsection (7).

16. Deportation – recommendation to Commissioner

(1) The Immigration Officer or the Principal Immigration Officer may make a recommendation to the Commissioner for the deportation of a person who —

(a) enters the Territory unlawfully and refuses to leave after being directed to do so;

(b) fails to leave —

(i) after the person's permission or work permit has expired or been revoked;
or

(ii) where the person's permission to enter or work permit has been revoked and the person's application for review has not been successful.

(2) The Immigration Officer or the Principal Immigration Officer must inform a person who is the subject of a recommendation for a deportation order as soon as possible after making such recommendation.

17. Deportation orders

(1) The Commissioner must as soon as is reasonably possible after receipt, consider the Immigration Officer or the Principal Immigration Officer's recommendation

under section 16 and inform the Immigration Officer or the Principal Immigration Officer of his or her decision.

(2) A decision by the Commissioner for a deportation order to be issued to the person must include directions to the Immigration Officer or the Principal Immigration Officer for the removal of the person from the Territory and these may include the power to arrest or detain the person pending the deportation.

(3) The Principal Immigration Officer or an immigration officer must comply with any directions the Commissioner gives under subsection (2) and must make the necessary arrangements to ensure the person leaves the Territory.

(5) A deportation order may be in such form as the Principal Immigration Officer may designate.

(6) Any appeal against a deportation order must be made to the courts.

18. Asylum seekers and refugees

(1) Subject to subsection (2) any person who makes a claim for asylum must not be deported or sent out of the Territory until the Commissioner makes a decision as to the person's claim.

(2) The Commissioner may put in place arrangements with different jurisdictions to which any person who has made a claim for asylum may be sent and the arrangements may include directions to assist the person seeking asylum to make a claim.

19. Prohibited persons

(1) The Commissioner may designate any person or class of persons as prohibited persons who are not allowed to enter into the Territory where it is necessary in the interest of defence, internal security, public safety or public interest.

(2) The Commissioner must publish the name of any prohibited person by notice in the *Gazette*.

(3) Any person who is designated as a prohibited person may appeal the Commissioner's designation to the Magistrate's court.

20. Offences and penalties

(1) It is an offence for a person to —

(a) assist any person to commit an offence under this Ordinance;

(b) obstruct the Principal Immigration Officer or any other immigration officer lawfully acting in accordance with this Ordinance;

(c) breach any condition specified in the permission or work permit; or

(d) provide any false or misleading information.

(2) It is an offence for the Principal Immigration Officer or an immigration officer to disclose information submitted by an applicant to any person other than as required —

- (a) in the course of his or her role as an immigration officer;
- (b) by a court; or
- (c) as a legal requirement under any law.

(3) A person who commits an offence under this Ordinance is liable on conviction to a fine not exceeding £10,000.

21. Repeal of Immigration Ordinance 1965

The Immigration Ordinance 1965 (No. 10 of 1965) (*in its application to the Territory then as a Falkland Islands Dependency*) is repealed.

SCHEDULE CONVICTIONS TO DISCLOSE (*section 10(4)(g)*)

For purposes of section 10(4)(g) a person who applies for a work permit must disclose the following —

- (a) any offence that resulted in a sentence of imprisonment of over 4 years;
- (b) any offence that resulted in a sentence of imprisonment of 2½ years up to 4 years but only if the offence was committed in the last 7 years;
- (c) any offence that resulted in a sentence of imprisonment 6 months to 2½ years but only if the offence was committed in the last 4 years; or
- (d) any offence that resulted in a sentence of imprisonment up to 6 months but only if the offence was committed in the last 2 years.