

Consultation Document

The Application of Laws to South Georgia & the South Sandwich Islands

Summary

As part of its legislative review programme the Government of South Georgia & the South Sandwich Islands (GSGSSI) is reviewing the legal framework for the Territory. A key element of this is establishing a revised framework for the application of laws to South Georgia & the South Sandwich Islands (SGSSI).

This consultation document seeks your views on a draft ordinance that would amend the way in which English law applies to SGSSI so that instead of law from 1900 applying, the current English law applies where there are no local laws, other than areas where English law has been excluded.

The aim of the draft legislation is to provide greater certainty in relation to what law applies to SGSSI and make that law easier to identify and access.

These proposals have been developed by GSGSSI with advice from, and in consultation with, the local judiciary, Falkland Island Government, and the Foreign and Commonwealth Office. We have provided information on the key elements of the legislation together with some questions and answers, to help clarify what the new legislation will mean in practice.

Responses to the consultation should be sent to legal@gov.gs by 2nd January 2017.

Introduction

The law that applies to SGSSI comes from multiple sources including English legislation as it was in 1900. As a consequence it can be hard to identify what law applies in some circumstances and it can be hard to research and access laws dating back to 1900 and before. This means that for some areas of law there can be uncertainty as to what law applies and what the law actually is. Many aspects of law are also now irrelevant to South Georgia's circumstances.

We propose to bring in a new Application of Laws Ordinance that will repeal the existing legislative provision that applies English Law as at 1900 where no SGSSI specific legislation applies, and put in place a new system for the application of law which will keep the law current and up to date and give greater clarity and certainty as to what law applies to SGSSI.

The ability to know what law applies and to be able to access that law is fundamental to the good governance of SGSSI.

Current Position regarding the Application of Laws

The legislation that contains the provision that applies English law as at 22nd May 1900 is the Interpretation and General Clauses Ordinance 1977. Section 81A of that Ordinance provides that the Common Law and general statutes in force in England on the 22nd May 1900 shall be in force in SGSSI in so far as the circumstances permit and provided they are not inconsistent with or repugnant to any local laws.

This means that to establish the law applicable to SGSSI on a particular subject it would be necessary to:

- identify any legislation passed by GSGSSI since it became a Territory in 1985. If there is relevant legislation then that will be the law that applies;
- in the absence of GSGSSI legislation find out whether the Falkland Islands Government made and applied any legislation to SGSSI while SGSSI was a dependency of the Falkland Islands up until 1985. If there is relevant law then this will apply;
- check if there is any relevant legislation that the UK government has specifically applied to SGSSI. If there is relevant law then this will apply.
- if no relevant law has been found having looked at the above sources, then any relevant common law or statute law in force in England on the 22nd May 1900 would apply.

Proposed Application of Laws Legislation

The proposed Application of Laws Ordinance will repeal the existing provision in the Interpretation and General Clauses Ordinance for SGSSI as it relates to the application of English Law and will clarify the application of law to SGSSI more generally.

What will stay the same?

- Legislation made by GSGSSI since 1985 and legislation made by the Falkland Islands and applied to SGSSI when it was a dependency of the Falkland Islands will still apply (local law)
- Legislation made by the UK government, which is stated to expressly apply to SGSSI, will still apply.
- New legislation made by GSGSSI will still have precedence over English law (except for English legislation expressly applied to SGSSI)

What will change?

- Where there is no local law, or UK law which expressly applies to SGSSI, then English law as at 22nd May 1900 will no longer apply.
- The new Ordinance will apply the common law and legislation of England as it is in force at the time. However the legislation will exclude some areas of English law from applying to SGSSI where either SGSSI has its

own law or where SGSSI does not have any requirement for laws in a particular area. Examples of such areas include the regulation of fishing, where English law would not apply because SGSSI has its own legislation, and the area of forestry, where English law would not apply because SGSSI does not have any trees.

- In applying English law to SGSSI some modifications will be introduced to ensure appropriate and effective application. The key modifications are set out in Schedule 1 of the draft Ordinance. It includes things like references to parts of the UK government and to law making procedure. These modifications are in addition to, or replace and update some of the references in the Interpretation and General Clauses Ordinance 1977.
- The list of exclusions (set out in Schedule 2) can be amended by the Commissioner. As the circumstances of SGSSI change, or as English law changes, appropriate adjustments can be made to the list of English law that is excluded.
- Schedule 2 contains quite broad descriptions of the areas of law that are excluded. These are descriptions of areas of law that are used in standard legal texts so the judiciary and lawyers will be familiar with them. To provide greater clarity on GSGSSI's understanding of what is and is not included in the areas described in the second Schedule GSGSSI proposes to issue a policy document alongside the Ordinance. This document sets out expanded descriptions for each area listed in the second Schedule.

Conclusion

In summary the aim of the new legislation is to apply, where there are gaps in GSGSSI local laws and where it is appropriate to do so, current English law in the place of English law as at 22nd May 1900. To assist with that GSGSSI has drafted a policy note to provide clarity on the areas of English law that will not be applied to SGSSI.

Responding to Consultation

We encourage and welcome the engagement of our stakeholders in the development of these proposals. If having read the draft application of laws ordinance, the policy note and this consultation document you wish to comment on the proposals you should send your comments by email to legal@gov.gs. The deadline for comments is 2nd January 2017.

FAQs

Why does the way English law is applied to SGSSI need to change?

At the moment where there is no local law or expressly applied UK law then the law of SGSSI is the law of England as it was on the 22nd May 1900. This law is old and in many cases unfit for purpose. Many aspects of culture, society and business have moved on since then with new developments and technologies. It is also hard to find out what the law was at 22nd May 1900 and in some areas it can be uncertain what the law actually is.

Why does 'local' law take precedence over English law?

The laws made by GSGSSI since 1985 (and before that by the Falkland Islands for SGSSI) have been laws specifically passed for the Territory. In particular relatively recent legislation on fishing and conservation, wildlife and protected areas has been drafted to suit the specific circumstances of SGSSI. General English law has been drafted for application in England and has not taken into account the specific needs of SGSSI although in some areas it is appropriate that it is generally applied.

Why are so many areas of English law being excluded from application to SGSSI?

SGSSI has some significant differences from England which means that much of English law does not need to apply. Because there is no permanent population, it means that many activities for which you need laws do not take place. For example there is no financial services industry, very little commercial activity, no highways, trains or airport; this means that regulation in many areas is unnecessary. In areas that regulation is required such as fishing and protection of wildlife GSGSSI has put in place local laws.

What happens if English law changes or the circumstances of SGSSI change?

If English law changes or if the circumstances on SGSSI change then the Commissioner can amend the list of English law that is excluded either to include laws or to exclude laws. GSGSSI can at the same time amend the policy document that expands on the descriptions of the areas of laws excluded. This should enable GSGSSI to ensure that the laws that apply to SGSSI are fit for purpose. There will be consultation on any major changes to policy.