

## **Consultation Document**

### **New Immigration Legislation for South Georgia & the South Sandwich Islands (SGSSI)**

#### **Summary**

The Government of South Georgia & the South Sandwich Islands (GSGSSI) is reviewing some of its key laws including its legislation on immigration.

This consultation document seeks your views on the draft immigration legislation for GSGSSI.

The aim of the draft legislation is to introduce a new, proportionate and manageable immigration system to replace immigration law that is archaic and no longer fit for purpose.

These proposals have been developed by GSGSSI with advice from a UK immigration expert and reviewed by relevant officials within the Falkland Islands Government (FIG) and the FCO. The proposals are intended to work alongside existing visitor management practice and should not result in a significantly increased bureaucratic burden for the government, visitors to SGSSI and workers on SGSSI.

Responses to the consultation should be sent to [legal@gov.gs](mailto:legal@gov.gs) by 1<sup>st</sup> July 2016

All responses received by the above date will be carefully considered and taken into account in formulating the final legislation.

#### **Introduction**

The existing Immigration Ordinance dates back to 1965. Whilst immigration checks are carried out on those visiting SGSSI they are carried out in a pragmatic way and many of the requirements of the existing Ordinance are not applied. The language of the Ordinance is not in current use and it provides for administration and structures that no longer exist on SGSSI.

The draft Immigration Ordinance would bring in new immigration legislation. This legislation will utilise the current immigration practice and at the same time introduce provisions to ensure that GSGSSI has appropriate immigration controls over individuals who fail to comply with immigration requirements or are undesirable; and that immigration officers have appropriate powers and duties.

If adopted the proposals should not result in a significantly increased administrative burden for the tourist industry or visitors. There will be a slightly increased administrative burden for workers and employers of workers, who currently have few immigration requirements placed on them.

## **Current Immigration System**

The current immigration practice on SGSSI does not reflect the requirements of the existing Ordinance. Current practice is limited to checking passports against passenger lists supplied by the cruise ship industry and dealing with ad hoc arrivals as and when necessary. There are no express limitations or conditions imposed on visitors as part of the immigration process. There are more limited immigration checks for workers and no formal permission to stay on SGSSI and work is granted. There are provisions in the existing Ordinance that can be used to prohibit and deport individuals who are undesirable and not conducive to the national interest of the Territory, but these are in need of updating and revision.

## **Proposed Immigration Legislation**

The proposed Immigration Ordinance will repeal the existing immigration legislation for SGSSI.

Given that the existing immigration is not capable of being effectively applied it has not been used as a reference point for new legislation. The proposed Ordinance has been drafted on the basis of a policy proposal developed by GSGSSI in consultation with FIG, the FCO and a Home Office Immigration expert.

### How will the new Immigration legislation work?

#### **Administration**

The new immigration system will be administered from South Georgia by the Government Officers, acting in their capacity as Immigration Officers and from Stanley by an officer based in Government House who will be acting in the capacity of Principal Immigration Officer with overall responsibility for immigration matters.

#### **Categories of Visitors**

The draft legislation recognises two categories of person visiting SGSSI. These are Visitors and Workers.

Both categories require permission to enter SGSSI. Persons will make an application to visit or work on SGSSI. The detailed practical arrangements for making/receiving an application are not set out in the draft legislation but will be determined by the GSGSSI and published. The intention is to implement the immigration system in a manner so that, where possible and appropriate, it fits in with existing practices.

#### **Visitors**

All persons visiting SGSSI will need permission. To get permission a visitor will need to provide some basic information commonly required for immigration

purposes. It is proposed that the following information be required: full name, nationality, passport details, intended length of stay, places to be visited, and confirmation that the person has adequate travel/medical insurance. The Immigration Officer will have the power to require other information as deemed necessary.

Applications should be made at least three days before the visit but there is discretion to provide for applications to be made within a shorter period.

The Principal Immigration Officer will have discretion in the way that permission to enter is granted. The intention is to implement this system with regard to existing practice. For example this means that GSGSSI will be able to reflect existing practice for tourist ships by accepting a 'bulk application' made in advance on behalf of all the passengers and crew who will be visiting SGSSI on a cruise ship. The grant of permission will normally be evidenced by a stamp in the person's passport.

Permission to enter as a visitor will be granted for a maximum of 30 days. There is no limit on the number of permissions that may be applied for or granted.

The proposed legislation provides for the possibility of a fee to be paid for a grant of permission. There is currently no intention to introduce a fee separate from that already charged for visitor landings and regulated activity permit applications. GSGSSI will periodically review its fees and charges in the context of its administration of immigration. Any changes to the administration will be subject to consultation.

Permission can be refused where the application does not meet the requirements set out above or on any other reasonable grounds. There will be a right to have a decision to refuse permission reviewed. A review would first be considered by the Principal Immigration Officer and then, if a person is still aggrieved, it can be considered by the Commissioner. The aim would be to deal with any reviews as promptly as reasonably possible.

## **Workers**

All persons coming to work on SGSSI will need permission to do so. The requirements for an application for a work permit are similar to those for a visitor. The main differences are that details of the contract of employment, the workers medical fitness and disclosure of certain criminal convictions are required.

A work permit will normally be granted for the anticipated duration of the contract for work on SGSSI.

The proposed legislation provides for the possibility of a fee to be paid for a grant of a work permit. There is currently no intention to introduce a fee. GSGSSI will periodically review its fees and charges in the context of its administration

of immigration. Any changes to the administration will be subject to consultation.

An application for a work permit may be refused where the application does not meet the requirements set out above or on any other reasonable grounds. There is a right to have this decision reviewed. A review would first be considered by the Principal Immigration Officer and then, if a person is still aggrieved it can be considered by the Commissioner. The aim would be to deal with any reviews as promptly as reasonably possible.

GSGSSI welcomes views on the terminology used for the permission given to workers. The term 'work permit' has been used to indicate the difference from a visitor permission and is a recognised term for the permission given to workers to work in a country in which they are not resident. It is proposed that the work permit will normally be evidenced by a stamp in a person's passport.

### **Revoking Visitor Permissions and Work Permits**

An Immigration Officer will be able to revoke permission to visit and to work. This may happen where a person fails to comply with any conditions on the permission, has given false information to the Immigration Officer, it is undesirable for the person to continue to stay in the Territory due to their behaviour or for some other reason in the national or public interest.

There will be a right to have a decision to revoke a permission reviewed. A review would first be considered by the Principal Immigration Officer and then, if the person is still aggrieved it can be considered by the Commissioner. The aim would be to deal with any review as promptly as reasonably possible.

### **Deportation**

There may be occasions where a person enters SGSSI unlawfully or their permission expires or is revoked and they do not leave voluntarily. Deportation can only take place by order of the Commissioner. The Immigration Officer or Principal Immigration Officer may make a recommendation to the Commissioner that a person should be deported and must inform the person concerned at the same time.

If a deportation order is made the Immigration Officers will then make arrangements for the deportation order to be implemented.

There is a right of appeal against a deportation order to the courts.

### **Asylum Seekers**

In the unlikely event that a person seeks asylum whilst present on SGSSI the legislation provides that the Commissioner will consider the claim and the

person concerned may be conveyed to the Falkland Islands from where a claim may be made.

### **Prohibited Persons**

There may be circumstances where it is considered that a person or class of person should not be permitted to visit SGSSI. The draft legislation provides that the Commissioner may designate such persons as being prohibited from entering SGSSI. Any such designation must be published in the Gazette. In practice the persons will, where possible, be notified that they have been designated as a prohibited person and the Gazette will be published on the website.

A person may be designated as a prohibited person in the interests of defence, internal security, public safety or in the public interest.

There is a right of appeal against designation as a prohibited person to the courts.

### **Immigration Offences**

The proposed legislation sets out a limited number of criminal offences concerned with immigration.

The proposed offences are:

- Entering the territory without permission
- Working in the territory without permission
- Obstructing an immigration officer
- Failing to comply with a condition imposed on a permission
- Providing false or misleading information
- Disclosure by an immigration officer of personal information obtained for immigration purposes except where necessary to carry out immigration functions, or authorised by law or required by a court

In each case the offence is punishable by a fine not exceeding £10,000.

### Next Steps

### **Responding to Consultation**

We encourage and welcome the engagement of our stakeholders. If having read the draft immigration ordinance and this consultation document you wish to comment on the proposals you should send your comments by email to [legal@gov.gs](mailto:legal@gov.gs). The deadline for comments is 1<sup>st</sup> July 2016.

Any comments received will be carefully considered and a final draft of the legislation will be prepared.

It is hoped to enact the legislation and bring it into force for the 2016 visitor season.

## **FAQs**

### Do I need permission to visit SGSSI?

Everybody visiting SGSSI will need permission. If they are just visiting then they will need a visitor permission; if coming to work they will need a work permit. There may be some people exempt from these requirements and these will be set out in a notice published by GSGSSI.

### Is there a fee?

Currently there are no plans to charge a fee for the grant of permission to visit or work. The draft ordinance allows for the possibility of a fee to be introduced if it is considered appropriate to do so in the future.

### How will the application and grant of permissions work in practice?

The detail of the practical administration of the immigration system is not set out in the draft legislation. The Principal Immigration Officer will determine the practical arrangements which will need to provide to GSGSSI the information required under the legislation. It is intended that as far as possible the immigration requirements for visitors will be assimilated into the current arrangements for visits by cruise ships and yachts. For work permits a separate process will be required. Where an employer has more than one employee engaged on South Georgia it is intended that this process will provide for them to make a single application for work permits covering all their employees.

Guidance notes will be issued setting out how the arrangements will work together with any necessary forms.

### Can I be refused immigration permission?

Permission may be refused if an applicant fails to provide the required information or if there are other proper and reasonable grounds to refuse permission. For example permission may be refused where a person does not have travel and health insurance or adequate alternative arrangements.

### What criminal convictions would need to be declared?

The draft legislation would require the following to be declared:

- (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.

#### Who will be exempt from Immigration requirements?

It is likely that the Commissioner will exempt certain classes of people. Classes of people currently under consideration are; members of HM armed forces, GSGSSI employees, and police officers appointed by or working on behalf of GSGSSI.

#### Can permission to enter the territory be revoked?

Permission to enter and work permits can be revoked but only in certain circumstances. If the person to whom the permission was granted breaks any conditions imposed on the permission, knowingly gave false information to the immigration officer, behaves in such a way that it becomes undesirable for them to remain in the territory or it is necessary in the national or public interest, then their permission may be revoked.

#### Can a person be deported from SGSSI?

A person can be deported by order of the Commissioner on recommendation of an immigration officer. The grounds on which a person can be deported are that they entered the territory unlawfully and failed to leave when directed to do so, or failed to leave after the expiry or revocation of permission and any review has been unsuccessful.

#### Can a person seek asylum on SGSSI?

If a person enters the territory and makes a claim for asylum then that person will not be deported until the Commissioner has considered the claim. The Commissioner may if satisfied that it is appropriate assist the person to make a claim from the Falkland Islands. It is not possible to claim asylum to reside on SGSSI.

#### Can a person be prohibited from entering SGSSI?

A person can be prohibited from entering SGSSI. The Commissioner can designate a person or class of persons as a prohibited person where it is necessary in the interest of defence, internal security, public safety or the public interest. The name of a prohibited person will be published by GSGSSI.

#### Is there a right of review or appeal against a decision of an Immigration Officer or the Commissioner?

There will be a right to ask for a review of the decisions of an Immigration Officer in relation to the refusal and revocation of permission to visit and work.

There is also a right of appeal to the courts in relation to the decision of the Commissioner in respect of deportation and designation as a prohibited person.

Are there any criminal offences in the proposed Ordinance?

There are a small number of offences set out in the Ordinance.

The offences are:

- Entering SGSSI unlawfully – that is without a visitor permission or a work permit (this will also include entry as a prohibited person)
- Obstructing an immigration officer acting lawfully in accordance with the Ordinance
- Breaching a condition on permission to enter
- Providing false or misleading information
- Unauthorised disclosure by an Immigration Officer of information submitted by a person applying for permission
- Assisting a person to commit any of the above offences.

The maximum penalty for all offences is £10,000.