

EXECUTIVE COUNCIL

CONFIDENTIAL

Title of Report: Immigration (Amendment) Bill and draft Immigration (Visa Exemption for Holders of Taiwanese Passports) Order
Paper No: 245/10
Date: 21 October 2010
Report of: Legislative Drafter

1.0 Purpose

The purpose of this paper is to seek Executive Council's approval for:

- (a) an Immigration (Amendment) Bill to deal with a technical issue that has arisen in relation to Executive Council's previous decision to remove the visa requirement for the holders of Taiwanese passports;
- (b) an order to implement that decision.

2.0 Recommendations

2.1 Executive Council is recommended to approve:

- (a) the publication in the *Gazette* of the Immigration (Amendment) Bill (a draft of which is attached);
- (b) the presentation of the Bill to the Legislative Assembly at its session in November 2010; and

2.2 Executive Council is also recommended to advise the Governor (subject to the Bill being passed) to make the Immigration (Visa Exemption for Holders of Taiwanese Passports) Order 2010 (a draft of which is attached).

3.0 Summary of Financial Implications

None

4.0 Background

4.1 At its meeting on 19 August 2010, Executive Council considered ExCo paper 202/10 and approved the addition of Taiwan to the list of countries whose persons are exempt from the requirement to possess a valid visa for the Falkland Islands

for entry purposes, as provided for by Part 1 of Schedule 1 of the Immigration Ordinance.

4.2 However, an unexpected difficulty arose because of the unusual relationship that the UK has with Taiwan. For historical, geo-political and diplomatic reasons, the UK does not recognise Taiwan as a state or a country but does recognise Taiwan for many practical purposes and does recognise passports issued by the Taiwanese authorities.

4.3 The difficulty arises from the fact that the provision in section 5(11) of the Immigration Ordinance currently refers to:

“persons travelling on a passport issued by an international organisation or national authority specified in Part 1 of Schedule 1” (*emphasis added*).

4.4 Section 5(12) allows for amendments to be made to Schedule 1 and the course of action that would otherwise have been taken would be to add Taiwan to the list of countries in Part 1 of Schedule 1. However, when adding to the list in Part 1 of Schedule 1, section 5(12) currently only allows for the addition of an international organisation or a national authority. However, as it stands, it does not allow for Taiwan to be added to list, not without raising issues relating to the status of Taiwan that are best avoided.

4.5 The solution proposed is for a technical amendment to be made to the Immigration Ordinance by means of the attached Bill to replace the reference to “an international organisation or national authority” with one to “a passport-issuing authority”.

4.6 Assuming the Bill is passed, an order to add Taiwan to the list of passport issuing authorities can then be made to implement Executive Council’s original decision.

5.0 Financial Implications

None

6.0 Legal Implications

As stated in section 4

7.0 Human Resources Implications

None

DRAFT: 7.10.2010 (11.10.10 BS)

Immigration (Amendment) Bill 2010

(No: of 2010)

ARRANGEMENT OF PROVISIONS

Clause

1. Title
2. Commencement
3. Section 5 of the Immigration Ordinance amended – General provisions for regulation and control

IMMIGRATION (AMENDMENT) BILL 2010

(No: of 2010)

(assented to: 2010)
(commencement: on publication)
(published: 2010)

A BILL

for

AN ORDINANCE

To amend the Immigration Ordinance (Title 52.2).

BE IT ENACTED by the Legislature of the Falkland Islands —

1. Title

This Ordinance is the Immigration (Amendment) Ordinance.

2. Commencement

This Ordinance comes into force on publication in the *Gazette*.

3. Section 5 of Immigration Ordinance amended – General provisions for regulation and control

Section 5(11)(b) of the Immigration Ordinance is amended by omitting “an international organisation or national authority” and substituting “a passport-issuing authority”.

OBJECTS AND REASONS

This Bill would amend section 5(11) of the Immigration Ordinance, which deals with the requirement for certain persons to hold a visa to enter the Falkland Islands.

Section 5(11)(b) currently provides that those travelling on passports from the international organisations and national authorities listed in Part 1 of Schedule 1 are exempt from the requirement to hold a visa.

Clause 3 would make a technical amendment to deal with passports issued by other passport-issuing authorities

The power under section 5(12) to amend Schedule 1 would not be affected.

SUBSIDIARY LEGISLATION

NATIONALITY AND IMMIGRATION

Immigration (Visa Exemption for Holders of Taiwanese Passports) Order 2010

S. R. & O. No: of 2010

Made: *November 2010*

Published: *November 2010*

Coming into force: *on publication*

I make this order under section 5(12) of the Immigration Ordinance (Title 52.2) on the advice of the Executive Council.

1. Title

This order is the Immigration (Visa Exemption for Holders of Taiwanese Passports) Order 2010.

2. Commencement

This order comes into force on publication in the *Gazette*.

3. Amendment of Schedule 1 to the Immigration Ordinance

(1) This article amends Schedule 1 to the Immigration Ordinance.

(2) Paragraph (b) of Part 1 is amended by —

(a) omitting “parts of countries” and substituting “territories”; and

(b) inserting “Taiwan” into the list after “Switzerland”.

Made November 2010

N. R. Haywood,
Governor.

EXPLANATORY NOTE
(not forming part of the order)

The holders of passports issued by the authorities listed in Part 1 of Schedule 1 to the Immigration Ordinance (Title 52.2) are exempt from the requirement under section 5(11) to hold a visa to enter the Falkland Islands.

Under section 5(12) of the Immigration Ordinance, the Governor has the power to amend Schedule 1 by order.

The effect of this order is that holders of Taiwanese passports will be able to enter the Falkland Islands without a visa but will still need to comply with the other requirements of the Immigration Ordinance.