

EMPLOYMENT ORDINANCE, 2021

ARRANGEMENT OF SECTIONS

PART 1 PRELIMINARY

1. Short title and commencement
2. Interpretation
3. Application

PART 2 MANDATORY WELFARE OBLIGATIONS

Chapter 1 General

4. Mandatory welfare obligations
5. Country or territory of return

Chapter 2 Transport, repatriation and mid-contract return journeys

6. Appropriate travel insurance

Transport to Ascension

7. Obligation to arrange transport to Ascension
8. Failure to arrange transport to Ascension

Repatriation from Ascension

9. Obligation to arrange prompt repatriation from Ascension
10. Failure to arrange prompt repatriation

Mid-contract return journeys

11. Obligation to provide mid-contract return journey
12. Failure to provide mid-contract return journey

Compensation and reimbursement

13. Claims for compensation or reimbursement under this Chapter

Chapter 3 Medical and dental care

14. Obligation to ensure the provision of necessary medical and dental care
15. Failure to ensure provisions of necessary medical or dental care
16. Pre-employment medical assessments

Chapter 4 Accommodation and utilities

17. Obligation to provide suitable accommodation and utilities
18. Suitability of accommodation
19. Adequacy of utility allowance or payment in lieu
20. Failure to provide suitable accommodation

21. Failure to provide utilities etc.

Chapter 5
Food and messing facilities

22. Obligation to provide food and messing facilities
23. Failure to provide food and / or messing facilities

PART 3
THE EMPLOYMENT RELATIONSHIP

Chapter 1
Household Contracts, short-term, part-time and casual workers

24. Household Contracts
25. Short-term workers
26. Part-time workers
27. Casual workers
28. Non-compliant contracts

Chapter 2
Employment of children

29. Employment of children
30. Youth trainee agreement
31. Failure to comply with restriction on employment of children

Chapter 3
Written statement of particulars

32. Obligation to provide a written statement of particulars
33. Requirements for written statements of particulars
34. Failure to provide compliant written statement of particulars

Chapter 4
Mandatory contract terms

35. Minimum paid annual leave entitlement
36. Maximum permitted contract length
37. Failure to comply with maximum permitted contract length
38. Minimum notice period
39. Failure to comply with minimum notice period
40. Right to request paid time off for public duties

Chapter 5
Gratuities and pensions

41. Obligation to provide gratuity scheme
42. Protection of gratuities
43. Pension schemes
44. Failure to pay gratuity
45. Gratuities and pensions: Administrator's powers
46. Gratuities and pensions: offences

47. Court's power to award compensation for employer's failure

Chapter 6
Policies and procedures for management of employees

Dismissal

48. Dismissal: policies and decision-making
49. Failure to comply with policies concerning dismissal

Contract expiry

50. Offering new contracts to existing employees
51. Expiry of contract: failure to give notice or written decision

Chapter 7
Dispute resolution

52. Internal dispute resolution

Chapter 8
Employer status and employment data

53. Employer status
54. Employment data

PART 4
MISCELLANEOUS

55. Regulations
56. Crown application
57. Repeal

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Dr Philip Rushbrook
Governor of Ascension



**ASCENSION
No. 4 of 2021**

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AN ORDINANCE

to regulate employment on Ascension; and for connected or incidental matters.

Enacted by the Governor of Ascension after consultation with the Island Council of Ascension.

**PART 1
PRELIMINARY**

Short title and commencement

1. (1) This Ordinance may be cited as the Employment Ordinance, 2021.
- (2) The provisions of this Ordinance come into force on such date or dates as the Governor may appoint by regulations.
- (3) Regulations under subsection (2) may—
 - (a) appoint different dates for different purposes;
 - (b) make such consequential, supplementary, incidental, transitional, transitory or savings provisions as are necessary in connection with the coming into force of the provisions of this Ordinance.

Interpretation

2. In this Ordinance—

“Accompanied Status” means a status under a Primary Contract which entitles the employee to be accompanied by one or more dependants, and which makes provision for the welfare

of those dependants in addition to that of the employee;

“accompanying dependant” means an eligible dependant who is in Ascension otherwise than as a tourist, and includes dependants where the individual of whom they are a dependant is exempt from the provisions of this Ordinance;

“basic pay” means an employee’s basic rate of pay, without overtime, as provided for in the contract of employment; where the employee is a casual worker, then the amount will be based on the employee’s average wages over the preceding three months, or for whatever period the employee was employed if fewer than three months;

“casual worker” has the meaning assigned in section 27;

“child” means a person who is under 18 years of age;

“contract of apprenticeship” has the meaning given by the English common law, being a contract which is primarily concerned with the training of the apprentice in a trade, profession or business for the purpose of the apprentice acquiring recognised qualifications in that trade, profession or business;

“contract of employment” means a contract of service between an individual employee and an employer under which—

- (a) the employee is required to provide the service personally to the employer;
 - (b) the employer has control over the employee in respect of the performance of the service;
 - (c) there is a mutuality of obligation between the employer and the employee;
 - (d) the service is provided wholly or mainly in Ascension, including work which takes place mainly in the territorial waters of Ascension,
- and includes a contract of apprenticeship, but does not include any form of youth trainee scheme or internship;

“contractor” means an individual engaged directly or indirectly by an individual or organisation in Ascension, otherwise than under a contract of employment, to provide services which are wholly or mainly provided in Ascension, and includes any sub-contractor engaged by a contractor to assist in the provision of those services;

“country or territory of return” means—

- (a) the country or territory in which the individual was ordinarily resident immediately prior to beginning their initial journey to Ascension as an employee, accompanying dependant or contractor; or
- (b) in respect of mid-contract return journeys and repatriation from Ascension, where the individual no longer has a right of abode or right to enter or remain in the original country or territory, such other place where the individual has a right of abode or right to enter and remain as may be agreed between the individual and the employer;

“Dentist” means—

- (a) any person appointed to practise dentistry in Ascension under St Helena’s Dentists Ordinance, 1955;
- (b) where no such person has been appointed, the Senior Medical Officer;

“dependant” means—

- (a) a spouse or civil partner of an employee, or a person with whom the employee is in a subsisting relationship akin to marriage or civil partnership;
- (b) any child for whom the employee or their spouse / partner has parental responsibility, whether under the law of Ascension or otherwise;

“eligible dependant” means a dependant by whom an Accompanied Status employee is

- contractually entitled to be accompanied to Ascension;
- “employee”** means an individual who provides services to an employer under a contract of employment;
- “employer”** means an individual who, or an organisation which, employs employees or engages contractors (but does not include a contractor who engages a sub-contractor);
- “gratuity”** means a lump sum paid by an employer to a Primary Contract employee at the completion of a contract of employment;
- “Household Contract”** has the meaning assigned in section 24;
- “lay advocate”** means a person appointed as a lay advocate under the Lay Advocates (Ascension) Ordinance, 2007;
- “part-time worker”** has the meaning as assigned in section 26;
- “Primary Contract”** means a contract of employment which provides for transport to and repatriation from Ascension and for welfare provisions, and which may have either Accompanied Status or Single Status;
- “short-term worker”** has the meaning assigned in section 25;
- “Single Status”** is a status under a Primary Contract which does not entitle the employee to be accompanied by dependants;
- “small employer”** means an employer that employs the equivalent of fewer than nine full-time employees (excluding casual workers and short-term workers, but including part-time workers), but does not include any employer that is liable to pay the business levy under the Business Levy Ordinance, 2012;
- “mandatory welfare obligations”** means the obligations set out in Part 2 of this Ordinance that require employers to provide for the basic welfare needs of employees (including any eligible dependants) and contractors, including necessary medical and dental care, accommodation, utilities, and food and messing facilities;
- “worker”** means an employee or a contractor;
- “youth trainee agreement”** means an agreement between an individual who is between the ages of 16 and 18 at the start of the agreement (**“the youth trainee”**) and an employer in Ascension, whereby the employer agrees to provide full-time, work-based vocational training to the youth trainee but which does not necessarily result in the youth trainee acquiring recognised qualifications.

Application

- 3. (1)** Subject to subsections (2) and (3), the Ordinance applies to all employees and contractors, regardless of whether the individual—
- (a) was recruited directly from overseas and employed under a Primary Contract; or
 - (b) initially came to Ascension on some other basis (including as an accompanying dependant), but who has since been recruited locally and employed under a Primary Contract or Household Contract, or engaged as a contractor.
- (2)** The following classes of individuals are covered by the mandatory welfare obligations and the provisions of Chapter 3 of Part 3 only—
- (a) individuals employed by a non-governmental overseas employer under a contract which is enforceable in that jurisdiction and who are posted to Ascension for a fixed period;

- (b) contractors who are in Ascension for a fixed period to provide services to an individual or organisation in Ascension as part of a trade, profession or business undertaking;
 - (c) members of the St Helena Police Service serving on Ascension under section 19 of St Helena's Police Service Ordinance, 1975.
- (3) Save where otherwise indicated, the employer of—
- (a) an employee on a Household Contract;
 - (b) a contractor who is also —
 - (i) a Primary Contract employee (whether of that employer or another), or
 - (ii) an accompanying dependant of a Primary Contract employee,
- is not obliged comply with the mandatory welfare obligations in respect of that individual.
- (4) This Ordinance does not apply in respect of any individual who—
- (a) is employed directly by the United Kingdom Government, including members of Her Majesty's armed forces, and who is posted to Ascension for a fixed period;
 - (b) is employed directly by the United States Government, including members of the United States Air Force and Space Force;
 - (c) is employed by other governments (including the St Helena Government) or intergovernmental organisations (including the North Atlantic Treaty Organisation (NATO)), and who is working on Ascension on a short-term basis.

PART 2 MANDATORY WELFARE OBLIGATIONS

Chapter 1 General

Mandatory welfare obligations

4. (1) Subject to section 3, an employer that contracts an individual to work wholly or mainly in Ascension, whether as an employee or as a contractor, is responsible for the welfare of the individual and any accompanying dependants and must, at the employer's expense, comply with the mandatory welfare obligations set out in this Part.

- (2) The mandatory welfare obligations are—
- (a) to arrange the worker's transport to Ascension from their country or territory of return (as provided in section 7);
 - (b) to arrange for the worker's prompt repatriation from Ascension to their country or territory of return once the worker's contract ends (as provided in section 9);
 - (c) if the term of the contract is to exceed 15 months—
 - (i) to provide for a minimum of one mid-contract return journey to permit the worker to visit their country or territory of return, or
 - (ii) at the worker's request make provision for payment in lieu thereof, (as provided in section 11);

- (d) to ensure the provision of necessary medical and dental care which is appropriate to the needs of the worker, including the reasonable costs of any off-island treatment that may be necessary during the term of the contract (as provided in section 14);
- (e) to ensure the provision of accommodation on Ascension that is suitable for the worker, including—
 - (i) a supply of electricity and water and access to waste water services, and
 - (ii) an adequate periodic water and electricity usage allowance, or payment in lieu thereof,(as provided in sections 17, 18 and 19);
- (f) whilst the worker is in Ascension, to ensure—
 - (i) the provision of food, or adequate payment in lieu thereof,
 - (ii) the provision of messing facilities which may comprise catered messing facilities, self-catering facilities by means of which the person can store, prepare and consume food in their accommodation, or some other arrangement of like effect,(as provided in section 22).

(3) If the worker is an employee with Accompanied Status, the same provisions apply in respect of—

- (a) the employee's accompanying dependants,
- (b) any child to which an employee or accompanying dependant gives birth during the term of the contract and in respect of which the employee has parental responsibility, as they apply to the employee.

(4) The mandatory welfare obligations apply from the start of the relevant contract and continue, regardless of the fact that the relevant contract may have ended, until the earlier of—

- (a) the time when the individual departs Ascension in accordance with the employer's obligation to repatriate; or
- (b) when the employer's obligation to repatriate the individual ceases to apply.

(5) For the purposes of this Part the "**relevant contract**" means the contract which gives rise to the relevant mandatory welfare obligation whether or not the individual to whom the obligation is owed is a party to that contract.

Country or territory of return

5. When an employer enters into a contract with a worker, the employer must establish, and the contract must state, the country or territory of return of the worker and that of any accompanying dependants.

Chapter 2 Transport, repatriation and mid-contract return journeys

Appropriate travel insurance

6 Where an obligation arises in this Chapter to provide or cover the cost of appropriate travel insurance, the travel insurance will be considered appropriate if it provides as a minimum—

- (a) medical cover for each individual in respect of whom the obligation applies (including cover for pre-existing medical conditions);
- (b) cover in the event that any part of the journey or journeys to which it relates is subject to delay or cancellation;
- (c) cover for baggage lost, stolen or damaged in transit.

Transport to Ascension

Obligation to arrange transport to Ascension

7. (1) Subject to subsection (6), an employer that contracts an individual to work wholly or mainly in Ascension, whether as an employee or as a contractor, must arrange and pay for the worker's transport to Ascension from their country or territory of return.

(2) If the worker is an employee with Accompanied Status, the employer must, if the employee so requests, arrange and pay for the transport of any eligible dependants to Ascension from their country or territory of return.

(3) The obligation under subsections (1) and (2) includes the requirement to arrange transport to the port of departure, air or sea travel to Ascension, and transport from the airhead or pierhead to the individual's accommodation in Ascension, and includes the cost of accommodation and reasonable subsistence for any necessary overnight stay during such travel.

(4) The employer must provide, or cover the cost of, appropriate travel insurance for the worker and any eligible dependants.

(5) For purposes of subsection (3)—

- (a) where direct flights to Ascension operate from the country or territory of return, the port of departure will be the nearest airport to the individual's home from which such flights operate; or
- (b) if no direct flights to Ascension operate from the country or territory of return, the individual may nominate the most convenient port of departure within the country or territory of return.

(6) The obligations under this section do not apply to an individual who is in Ascension immediately prior to the start of the relevant contract.

(7) The obligations under this section must be included in the contract of employment or contract for service and if the contract does not expressly provide for this, the court may declare that it is an implied term.

Failure to arrange transport to Ascension

8. (1) If an employer fails to arrange transport to Ascension for a worker and any eligible dependants as required by section 7—

- (a) the worker may terminate the contract before departing for Ascension on the basis that the employer is in breach of contract, and may claim from the employer any damages associated with that breach; or
- (b) the worker and any eligible dependants may pay for their travel to Ascension, including appropriate travel insurance, and claim reimbursement from the employer of an amount equal to two times the costs actually incurred, in accordance with section 13.

(2) The costs on which the claim for reimbursement is based must be reasonable in the circumstances having regard to the route and class travelled, and the date on which the worker is required to commence work in Ascension.

(3) If the individual is entitled under the contract to an allowance to ship personal effects or a vehicle to Ascension, then subsection (1)(b) applies in respect of that allowance.

Repatriation from Ascension

Obligation to arrange prompt repatriation from Ascension

9. (1) Employers must arrange and pay for a worker's prompt repatriation from Ascension to their country or territory of return at the end of the relevant contract.

(2) If the worker is an employee with Accompanied Status, the obligation under subsection (1) also applies to any accompanying dependant as it applies to the employee.

(3) The obligation under subsection (1) includes the requirement to arrange transport from the individual's accommodation in Ascension to the airhead or pierhead, air or sea travel to the country or territory of return, and transport from the relevant port to the individual's nominated address, and includes cost of accommodation and reasonable subsistence for any necessary overnight stay during such travel.

(4) The employer must provide, or cover the cost of, appropriate travel insurance for the worker and any accompanying dependants.

(5) For purposes of subsection (1), the requirement of promptness will be satisfied if the individual departs from Ascension no later than the first available departure to the individual's country or territory of return after the end of the relevant contract.

(6) The date of an individual's departure may lawfully be delayed—

- (a) if the individual is involved in criminal proceedings and is required to remain in the jurisdiction, or where the proceedings are the subject of an ongoing appeal,
- (b) if the individual is considered by a medical professional to be unfit to fly, or
- (c) in exceptional circumstances, with the prior written consent of the Administrator,

and during this time the employer remains responsible for the individual's welfare.

(7) If a worker is contractually entitled to an allowance to ship personal effects or a vehicle to Ascension, including the personal effects of any eligible dependants, the employer must—

- (a) provide at least a corresponding allowance on repatriation, even if the country or territory of return is not the country or territory from which the worker was transported at the start of the contract; and
- (b) make provision for the repatriation of the worker's personal effects (and, where applicable, a vehicle) and those of any accompanying dependants within a reasonable time.

(8) The obligation of an employer to repatriate an individual under this section applies only if the individual is in Ascension during the period between the end of the relevant contract and the first available departure to the individual's country of territory of return.

(9) An employer may agree with an individual that the obligation to repatriate under this section ceases to apply if, before the first available departure, the individual becomes otherwise entitled to be repatriated, whether under a Primary Contract or by being or becoming an accompanying dependant or otherwise.

(10) The obligation under this section must be included in the contract of employment or contract for service and if the contract does not expressly provide for this, the court may declare that it is an implied term.

Failure to arrange prompt repatriation

10. (1) If an employer fails promptly to repatriate an individual from Ascension as required by section 9—

- (a) the individual may pay for their travel, including appropriate travel insurance, and claim reimbursement from the employer of an amount equal to two times the costs actually incurred, in accordance with section 13; or
- (b) the Government may arrange and pay for repatriation of the individual from Ascension, including appropriate travel insurance, and recover the full cost thereof from the employer.

(2) The costs on which the claim for reimbursement is based must be reasonable in the circumstances having regard to the route and class travelled.

(3) If the individual is entitled to an allowance to ship personal effects or a vehicle on repatriation, then subsection (1)(a) applies in respect of that allowance.

*Mid-contract return journeys***Obligation to provide mid-contract return journey**

11. (1) If a worker's contract exceeds 15 months, the worker is entitled to, and the employer must provide, a minimum of one return journey to the worker's country or territory of return during the term of that contract.

(2) If the worker is an employee with Accompanied Status, the entitlement under subsection (1) also applies to any accompanying dependant as it applies to the employee.

(3) The obligation under subsection (1)—

- (a)** includes a requirement to arrange and pay for a return travel between Ascension and the individual's nominated port of arrival in the country or territory of return, and any necessary transit accommodation during such travel;
- (b)** does not include a requirement to pay for any subsistence, travel or other accommodation during the individual's stay in the country or territory of return or elsewhere.

(4) The employer must provide, or cover the cost of, appropriate travel insurance for the worker and any accompanying dependants.

(5) In the case of an individual who is—

- (a)** a Primary Contract employee, and subject to the employee's remaining leave entitlement, the employer must allow the employee to take sufficient paid leave to enable P to take the mid-contract return journey;
- (b)** a contractor, the contract need not provide for paid leave but the employer must enable the contractor to take sufficient time off to enable P to take the mid-contract return journey;
- (c)** an accompanying dependant employed on a Household Contract, the individual's employer must allow sufficient leave, whether paid or unpaid, to enable the individual to take the mid-contract return journey to which he or she is entitled as an accompanying dependant.

(6) An employer may, at the worker's request, agree in writing to pay the worker in lieu of such worker or any accompanying dependant taking the mid-contract return journey.

(7) If there are reasonable grounds to believe that, for reasons beyond the control of both the employer and the individual, it is not going to be possible for an individual to begin their mid-contract return journey before the start of the last quarter of the term of the relevant contract, the employer may agree with the individual to make a payment in lieu of such journey.

(8) The entitlement under this section must be included in the contract of employment or contract for service and if the contract does not expressly provide for this, the court may declare that it is an implied term.

Failure to provide mid-contract return journey

12. (1) If an employer refuses to provide a mid-contract return journey for an individual, including failing to provide sufficient leave or time off in accordance with section 11(5)—

- (a) where the individual is a worker, the individual may claim from the employer compensation of an amount equal to—
 - (i) two times the notional cost of a return journey to the port of departure from which the individual originally travelled to Ascension at the start of the relevant contract; and
 - (ii) in the case of an employee, additionally claim as compensation an amount equal to two months' basic pay;
- (b) where the individual is an accompanying dependant, the individual may either—
 - (i) claim from the employer compensation of an amount equal to two times the notional cost of a return journey to the port of departure from which the individual originally travelled to Ascension at the start of the relevant contract; or
 - (ii) pay for the mid-contract return journey, including appropriate travel insurance if necessary, and claim reimbursement from the employer for an amount equal to two times the costs actually incurred, in accordance with section 13.

(2) The notional costs claimed under subsection (1)(a)(i) or (b)(i) must be based on the most direct route to the relevant port of arrival on a standard economy class ticket and at the cost applicable at the time of intended travel.

(3) The costs on which the claim for reimbursement under subsection (1)(b)(ii) is based must be reasonable in the circumstances having regard to the route and class travelled.

*Compensation and reimbursement***Claims for compensation or reimbursement under this Chapter**

- 13. (1)** This section applies where an individual is entitled to claim—
- (a) reimbursement under section 8(1)(b) in respect of transport to Ascension;
 - (b) reimbursement under section 10(1)(a) in respect of prompt repatriation from Ascension;
 - (c) in respect of mid-contract return journeys—
 - (i) compensation under section 12(1)(a)(i) and (ii) and 12 (1)(b)(i);
 - (ii) reimbursement under section 12 (1)(b)(ii).

(2) The individual must make the request for compensation or reimbursement to the employer in writing and provide—

- (a) the basis on which the notional costs were calculated, or
- (b) proof of the costs actually incurred,

as the case may be.

(3) The employer must compensate or reimburse the individual in full within 56 calendar days of receiving a written request in accordance with subsection (2).

(4) Failure by the employer to compensate or reimburse the individual, or any difference between the amount to which the individual is entitled and the amount actually paid by the employer, will be recoverable in civil proceedings as a debt on which the individual may also claim interest.

(5) If the employer disputes the amount to which the individual claims to be entitled on grounds of reasonableness, it will be for the employer to show that the amount claimed is not reasonable.

Chapter 3 Medical and dental care

Obligation to ensure the provision of necessary medical and dental care

14. (1) Employers must ensure the provision of such medical and dental care as the Senior Medical Officer or Dentist consider necessary and which is appropriate for the needs of each worker and any accompanying dependants.

(2) The obligation under subsection (1) includes an obligation to pay for the medically necessary referral of an individual to a specialist outside of Ascension including the funding of travel and accommodation overseas for the individual and, where necessary for the welfare of the individual, the cost of the individual being accompanied.

(3) An employer must not to require an individual to whom the obligation in subsection (1) is owed to contribute financially to the cost of any necessary medical or dental care, including any test, treatment or procedure, and if an individual pays for any such necessary medical or dental care, the employer must reimburse the individual promptly and in full.

(4) The Governor may, by regulations under section 55, prescribe the circumstances (including by reference to specified test, treatments, procedures or diagnoses) in which medical or dental treatment will be deemed necessary for the purposes of this section.

Failure to ensure provision of necessary medical or dental care

15. (1) If an employer fails to ensure the provision of necessary medical or dental care as required by section 14(1), the Government must provide the necessary care and may recover the full cost thereof from the employer as a civil debt on which interest may be claimed.

(2) If an employer fails to reimburse an individual promptly and in full in accordance with section 14(3) after having received from the individual a written request supported by evidence of the amount due, the individual may recover from the employer the full amount as a civil debt on which the individual may also claim interest.

Pre-employment medical assessments

16. (1) In order to ensure that the medical and dental services available in Ascension are appropriate to an individual, employers must make arrangements for the carrying out of pre-employment medical assessments at the employer's expense in respect of any prospective worker and potential eligible dependants before entering into a contract with such worker.

(2) For the purpose of enabling the Government to—

- (a)** effectively manage risks associated with individuals with pre-existing medical conditions; and
- (b)** determine the extent to which any such pre-existing medical condition will be, and is likely to remain, manageable whilst the individual is in Ascension;

employers may or, if regulations so provide, must make arrangements for any pre-employment medical assessment referred to in subsection (1) to be shared with the Senior Medical Officer and Dentist before the individual to which the assessment relates is permitted or required to travel to Ascension.

(3) The Governor may, by regulations under section 55,—

- (a)** prescribe the minimum requirements for a pre-employment medical assessment under subsection (1);
- (b)** prescribe the circumstances in which an employer is obliged to provide a pre-employment medical assessment to the Senior Medical Officer or Dentist under subsection (2);
- (c)** provide that any employer who fails without reasonable excuse to comply with the provisions of this Chapter, or any provisions of the regulations made under this section, will commit an offence and may be subject to a fine not exceeding £10,000.

Chapter 4**Accommodation and utilities****Obligation to provide suitable accommodation and utilities**

17. (1) Employers must ensure the provision of suitable accommodation for each of its workers and accompanying dependants, which must be allocated to the worker before the beginning of the relevant contract.

(2) The accommodation referred to in subsection (1) must include a supply of electricity and water, and access to waste water services.

(3) Where access to water and / or electricity is metered, the employer must provide to the worker either an adequate periodic water or electricity allowance, as the case may be, or payment in lieu thereof, otherwise the supply must be provided at no cost.

(4) In the case of a Primary Contract employee, the contract must identify the accommodation allocated and, where applicable, set out details of the utility allowance or amount of payment in lieu thereof as provided in section 19.

Suitability of accommodation

18. (1) Accommodation provided under section 17 will not be considered suitable unless it meets the following standards—

- (a) the accommodation must be safe, secure and in a good state of repair;
- (b) the accommodation must provide adequate ventilation;
- (c) if the accommodation is shared, it must afford sufficient privacy to the individual;
- (d) the accommodation must include access to toilet and washing facilities, including hot water;
- (e) if a worker shares accommodation or toilet and washing facilities with persons other than their accompanying dependants, the accommodation must be shared only with members of the same sex, where possible;
- (f) the accommodation must include a washing machine and drying area, or access to either communal laundry facilities or a laundry service provided by the employer.

(2) If the employer does not provide catered messing facilities in accordance with section 22, then the accommodation must include adequate self-catering facilities to enable the storage (including cold storage), preparation and consumption of food.

(3) The employer must have in place a mechanism for the reporting and repairing of faults in a timely manner.

(4) The Governor may, by regulations under section 55, make further provisions concerning—

- (a) the suitability of accommodation including minimum standards to be met which exceed those set out in subsection (1), and
- (b) the obligation on employers to have in place a mechanism for the reporting and repairing faults in a timely manner as provided in subsection (3).

Adequacy of utility allowance or payment in lieu

19. In order to be considered adequate, the utility allowance or payment in lieu under section 17(3) must be sufficient to cover an average level of usage over the relevant period taking into account the size of the accommodation and the number of people living there.

Failure to provide suitable accommodation

20. (1) If an employer fails to provide suitable accommodation as required by section 17(1), the Government may provide suitable accommodation for the worker and any accompanying dependants and may charge the employer at a commercial rate for providing such accommodation.

(2) If the employer allocates accommodation which the worker considers to be unsuitable, the worker must make use of the employer's internal complaint resolution mechanism, if any.

(3) If a worker has concerns about the condition of the accommodation the worker must address this through the employer's mechanism for the reporting and repairing of faults referred to in section 18(3) and, if not satisfactorily resolved, through the employer's internal complaint resolution mechanism, if any, or other applicable procedure for the resolution of complaints about the condition of a worker's accommodation.

- (4) If the employer—
- (a) has no internal complaint resolution mechanism or other applicable procedure in place for the resolution of complaints about the condition of a worker's accommodation;
 - (b) fails to respond to a complaint made in accordance with its internal complaint resolution mechanism or other applicable procedure; or
 - (c) provides a response to a complaint with which the worker is dissatisfied,
- the worker may raise the complaint in writing with the Administrator.

Failure to provide utilities etc.

21. (1) If an employer fails to provide a supply of electricity and / or water, or access to waste water services, as required by section 17(2) the Government may take steps to ensure that a supply or access is provided, including arranging changes or repairs to local reticulation and / or the temporary provision of alternative accommodation, and may charge the employer at a commercial rate for doing so.

(2) If a worker is liable for utility charges but the employer fails to provide a utility allowance to which the worker is entitled under section 17(3), the worker may recover from the employer the full amount of any utility bills paid by the worker as a civil debt on which the worker may also claim interest.

(3) If a worker is entitled to a payment in lieu of an allowance as provided in section 17(3) and the employer fails to make full payment thereof when required to do so, any shortfall is recoverable in civil proceedings as a debt on which the worker may also claim interest.

Chapter 5

Food and messing facilities

Obligation to provide food and messing facilities

22 (1) Employers must ensure provision of food and messing facilities for its worker and any accompanying dependants while they are in Ascension.

(2) The obligation under subsection (1) will be considered to be met by the employer providing either—

- (a) catered messing facilities for the worker and any accompanying dependants, or
 - (b) a food allowance and self-catering facilities in accordance with section 18(2),
- but that does not prevent the obligation from being met by some other arrangement of like effect.

Failure to provide food and / or messing facilities

23. (1) If an employer providing catered messing facilities fails, during any period, to provide such facilities, the Government may take steps to ensure that all individuals for whom the employer is responsible are provided with food during such period and may charge the employer at a commercial rate for doing so.

(2) If an employer fails to provide either food or a food allowance, the worker may claim from the employer either—

- (a)* an amount which is equal to two times the food allowance to which the worker is entitled under section 22; or
- (b)* subject to subsection (1) in the case where the employer agreed to provide catered messing facilities but has failed to do so, an amount to be determined by a court.

(3) If an employer has agreed to provide the worker with a food allowance, but has failed to provide adequate cooking equipment as required by section 18(2)—

- (a)* the worker must address this by means of the mechanism set out in section 20(3) and (4);
- (b)* if the matter remains not satisfactorily resolved, the worker may make good any deficit and claim reimbursement from the employer of the reasonable cost thereof, including reasonable shipping costs.

**PART 3
THE EMPLOYMENT RELATIONSHIP**

Chapter 1

Household Contracts, short-term, part-time and casual workers

Household Contracts

24. (1) A Household Contract is a contract of employment, the hallmark of which is that it does not provide for transport to, or repatriation from, Ascension, or for the fulfilment of the other mandatory welfare obligations set out in Part 2.

(2) An employer may only offer a Household Contract to an individual who is in Ascension at the time the offer is made either as a Primary Contract employee, a contractor, or an accompanying dependant.

Short-term workers

25. (1) A short-term worker is an individual who is employed on a Household Contract and whose hours may or may not be fixed by that contract, but who is employed on an occasional basis for only a short period.

(2) A short-term contract must not exceed 28 days in duration and if an individual has several short-term contracts with the same employer, the combined term of all of the contracts must not exceed 56 days in a rolling 12-month period.

Part-time workers

26. (1) A part-time worker is an individual who is employed on a Household Contract and whose hours are fixed by that contract.

(2) A part-time worker must not be required to work more than 15 hours in any one week, or more than 60 hours in any rolling four-week period.

Casual workers

27. (1) A casual worker is an individual who is employed on a Household Contract but whose hours are not fixed by that contract.

(2) A casual worker must not be required to work more than 15 hours in any one week, or more than 60 hours in any rolling four-week period.

Non-compliant contracts

28. A contract of employment which does not comply with the provisions of this Chapter is unenforceable as against the employee.

Chapter 2 Employment of children

Employment of children

29. (1) An employer must not employ any child under the age of 14 years.

(2) An employer must not employ a child who is 14 years or older but under 18 years otherwise than as a casual worker or part-time worker on a Household Contract and must obtain the written permission of the child's parent or guardian beforehand.

Youth trainee agreements

30. (1) An employer may engage a child who has completed secondary education, and who is in Ascension as an accompanying dependant, under a youth trainee agreement.

(2) The youth trainee agreement must be in a form approved by the Administrator and must include adequate safeguards for the child's welfare.

(3) The child's parent or guardian must provide written consent to the agreement.

(4) A youth trainee agreement does not constitute a contract of employment for the purposes of this Ordinance.

Failure to comply with restriction on employment of children

31. (1) An employer who employs a child who is 14 years or older but under 18 years—

(a) otherwise than as a casual worker or a part-time worker on a Household Contract, or
(b) without written permission from the child's parent or guardian,
commits an offence and a court may declare any such contract to be void.
Maximum penalty: A fine of £5,000

(2) An employer who employs a child who is under 14 years of age commits an offence and a court may declare the contract to be void.

Maximum penalty: A fine of £10,000.

(3) The Governor may by regulations under section 55 further prescribe the conditions under which children may work (including but not limited to the times of day and days of the week that children may be required work, and the types of work for which they may be employed).

(4) Regulations made pursuant to subsection (3) may make provision for offences, the penalty for which must not exceed £5,000.

Chapter 3

Written statement of particulars

Obligation to provide a written statement of particulars

32. (1) An employer must provide to a prospective worker a statement in writing setting out the particulars of their employment or engagement which satisfies the requirements set out in section 33 (“**written statement of particulars**”).

(2) The obligation to provide a written statement of particulars may be satisfied by an employer—

(a) setting the required particulars out in a document which identifies itself as the written statement of particulars required by this section;
(b) including the required particulars in a contract;
(c) where appropriate, setting out the required particulars in a staff handbook or similar document which is incorporated into the contract by reference,
or a combination of the above.

(3) To the extent that the required particulars are set out in a staff handbook or similar document as provided in subsection (2)(c), the employer must provide a copy of that document either in written or electronic form together with the contract.

(4) To the extent that the written statement of particulars is separate from the contract the employer must provide a copy of it to the prospective worker at the earliest opportunity and in any event before the worker is required to sign and return the contract.

(5) Any subsequent changes to the particulars set out in the written statement, or to any document incorporated into the contract by reference, must be communicated to the worker promptly and receipt of this communication recorded by the employer.

(6) In respect of an individual who is recruited or engaged from overseas, the individual must sign and return the contract to the employer before the beginning of their journey to Ascension, and if so returned electronically, the employer may require the individual to bring the original to Ascension, or to sign a further hard copy once the individual arrives in Ascension.

Requirements for written statements of particulars

33. (1) Subject to subsection (2), all written statements of particulars must include the following particulars—

- (a) name of employer and address of employer;
- (b) name and date of birth of worker;
- (c) the date on which the contract begins and the date on which it is to expire (which, in the case of a Household Contract, must comply with section 36(3));
- (d) the worker's country or territory of return;
- (e) any entitlement to transport to and repatriation from Ascension;
- (f) any shipping allowance for personal effects and / or a vehicle to which the worker is entitled (including the return allowance provision);
- (g) the worker's entitlement to a mid-contract return journey (where applicable);
- (h) the employer's arrangements in respect of medical and dental cover;
- (i) the particulars of the worker's allocated accommodation, including where applicable the details of any utility allowances or the amount of any payment in lieu thereof;
- (j) the particulars of the employer's food and messing arrangements, including where applicable the amount of any food allowance that is payable;
- (k) the application of the above in respect of any eligible dependants.

(2) Subsection (1)(d) to (k) do not apply to Household Contracts.

(3) In addition to the particulars listed in subsection (1), for employees the written statement of particulars must additionally include—

- (a) a statement whether the employee's contract is a Primary Contract or Household Contract;
- (b) the job title and a brief description of the work required;
- (c) the place or places where the employee will be required to work;
- (d) details of the days and hours of work, and the employee's entitlement to breaks and rest days;
- (e) the level of remuneration including overtime pay, where applicable, and the frequency with which it is to be paid;
- (f) the employee's entitlement to holiday, including public holidays, and include details of holiday pay;

- (g) any entitlement to sick pay;
- (h) any entitlement to maternity, paternity, or other similar leave concerning parenthood or adoption;
- (i) any terms and conditions relating to unpaid time off in the event of a personal emergency;
- (j) the procedure for ending the contract, including a minimum notice period which complies with section 38.

(4) In the case of a Primary Contract, the written statement of particulars must include the following in addition to the particulars listed in subsections (1) and (3)—

- (a) a statement whether the employee has Accompanied Status or Single Status;
- (b) the employee's right to request paid time off for public duties and a reference to any policy that employer may have concerning such requests in accordance with section 40(1);
- (c) where applicable, the names and dates of birth of all eligible dependants and the country of territory of return for all eligible dependants, if different from that of the employee;
- (d) details of the employer's gratuity scheme or, where applicable, the employer's pension scheme as required by section 41(5);
- (e) where applicable, the date on which the employee's period of successive employment began for the purposes of gratuity entitlement and the amount of any gratuity accrued during the period of successive employment;
- (f) copies of the employer's policies concerning capability and performance management, conduct and disciplinary, fitness to work, and grievances, and any other policies pursuant to which an employee may be dismissed.

Failure to provide compliant written statement of particulars

34. (1) If an employer fails to comply with section 32(1), whether by failing to provide particulars that meets the requirements of section 33 or by failing to provide a written statement of particulars at all, the worker may lodge a complaint with the Supreme Court.

(2) If the Supreme Court finds that the employer has failed to comply with section 32, the Court may make a declaration to that effect and—

- (a) order the employer to remedy the defect within such period as the Court determines; or
- (b) remedy the defect where the necessary amendment is clear and obvious, which may be done with retrospective effect.

(3) If the Supreme Court orders the employer to remedy the defect under subsection (2)(a) and—

- (a) the employer fails to do so before the end of the period determined by the Court, or
- (b) the employer does so in a way that does not satisfactorily remedy the defect,

the employee may refer the matter back to the Supreme Court.

(4) If the court is satisfied on a reference under subsection (3) that an employer has failed to remedy the defect, whether satisfactorily or at all, then the court may make a further order under subsection (2) and order the employer to pay to the employee a compensatory payment equal to one month's basic pay.

Chapter 4

Mandatory contract terms

Minimum paid annual leave entitlement

35. (1) A full-time Primary Contract employee is entitled to a minimum of 30 days paid annual leave per year, with a pro-rata allowance for part-time Primary Contract employees.

(2) The leave entitlement in subsection (1) does not include public holidays.

(3) The employee's entitlement under this section must be included in the contract of employment and if the contract does not expressly provide for this, the court may declare that it is an implied term.

Maximum permitted contract length

36. (1) Subject to subsection (2), a Primary Contract must not, without prior written permission of the Governor, exceed 30 months but an employer may—

- (a) enter into separate but successive contracts with the same employee;
- (b) where the employee so agrees, extend an employee's contract beyond 30 months to cover the period between the date on which the contract is stated to expire and the date of the first available departure to the individual's country or territory of return after that date.

(2) A Household Contract must not extend beyond the date on which the individual is permitted to remain in Ascension which is, in the case of an individual who is also—

- (a) employed under a Primary Contract, the date on which such Primary Contract is stated to expire;
- (b) an accompanying dependant, the date on which the contract of the Primary Contract employee, of whom the individual is an accompanying dependant, is stated to expire;
- (c) a contractor, the date on which the individual's entry visa under the Entry Control (Ascension) Ordinance, 2007, expires.

(3) The date referred to in subsection (2) must be determined by the employer and reflected in the Household Contract and, if the employer fails to reflect this date in the contract, the Household Contract ends when the employee ceases to be entitled to remain in Ascension under the Entry Control (Ascension) Ordinance 2007.

(4) A contract which exceeds the maximum permitted contract length is unenforceable as against the employee, but where the contract is a Primary Contract, the employee and any accompanying dependants remain entitled during its purported term to the benefit of the mandatory welfare obligations.

Failure to comply with maximum permitted contract length

37. (1) The Administrator may require an employer in writing to provide copies of a contract of employment together with an affidavit confirming its authenticity and the employer must comply with the request within 28 days.

(2) If an employer fails to provide copies of a contract or an affidavit when required to do so under subsection (1), the Administrator may apply to the Supreme Court for an order requiring the employer to deliver the required documents within such period as the Supreme Court directs.

(3) If an employer provides a contract which exceeds the maximum permitted contract length, the Administrator may require the employer—

- (a) to provide information concerning the number of extant non-compliant contracts and such other ancillary information as may be necessary in the circumstances;
- (b) to make changes, within such period as is reasonable in the circumstances, to all extant non-compliant contracts and any future contracts as are necessary to comply with this Ordinance.

(4) An employer who fails without reasonable excuse to comply with a requirement imposed by the Administrator under subsection (3) commits an offence.

Maximum penalty: A fine of £10,000.

Minimum notice period

38. (1) Except during a contractual probation period, the minimum notice period for—

- (a) a Primary Contract is two months;
- (b) a Household Contract is two weeks.

(2) An employer must include a notice period in each contract of employment which must not be less than the minimum notice period in subsection (1), and where no such notice period is included in the contract, or the period is less than such minimum notice period, the notice period in subsection (1) applies in respect of that contract.

(3) Subject to subsection (4), if a Primary Contract employee is dismissed without notice or is paid in lieu of notice—

- (a) the employer's obligation to repatriate in accordance with section 9 does not arise until the end of the notice period referred to in subsection (2), although the employee and any accompanying dependants may depart Ascension sooner by mutual agreement with the employer;

- (b) the employer's mandatory welfare obligations continue to apply during the notice period referred to in subsection (2) in respect of the employee and any accompanying dependants who remain on Ascension during that period; and
 - (c) for purposes of the Entry Control (Ascension) Ordinance, 2007—
 - (i) any entry visa issued to the employee and to any accompanying dependants before the employee's dismissal will remain valid for duration of the notice period referred to in subsection (2);
 - (ii) where an employee or accompanying dependant was exempt from the need to obtain an entry visa, the employee or accompanying dependant will be deemed to have been granted an entry visa for the duration of the notice period referred to in subsection (2).
- (4) The provisions of this section—
- (a) do not apply in cases of summary dismissal of an employee for gross misconduct or similarly serious conduct, as defined in the employer's conduct and discipline policy;
 - (b) do not affect the exercise of any powers under the Entry Control (Ascension) Ordinance, 2007 and, in particular, do not prevent the removal from Ascension of an individual whose presence is considered undesirable in the public interest.

Failure to comply with minimum notice period

39. If an employee is dismissed without being given the minimum period of notice or pay in lieu of notice (save in cases of summary dismissal for gross misconduct or similarly serious conduct), the employee may bring a claim against the employer for—

- (a) an amount equal to two times the difference between—
 - (i) the amount the employer paid the employee in lieu of notice, if any, and
 - (ii) the amount in basic pay that the employee would otherwise have received during the minimum period of notice; and
- (b) any unpaid holiday pay to which the employee is entitled.

Right to request paid time off for public duties

40. (1) A Primary Contract must make provision for the employee to have a right to request paid time off to perform public duties.

(2) Any period of paid time taken must be agreed between the employee and employer in advance and the employer may determine how much time is reasonable, having regard to the public duties to be performed and the business needs of the employer.

Chapter 5 Gratuities and pensions

Obligation to provide gratuity scheme

41. (1) Subject to section 43, employers employing one or more individuals on a Primary Contract must provide a scheme the purpose of which is to make provision for the

payment of a gratuity to each Primary Contract employee immediately following the expiry of the employee's contract of employment.

(2) Where the employer is obliged to provide such a gratuity scheme, the Primary Contract must set out —

- (a) the currency in which the gratuity is payable,
- (b) the amount of gratuity payable (or the basis for calculating the amount), and
- (c) the arrangements for payment of the gratuity.

(3) When an employee's contract expires, the employer must pay the full amount of gratuity to which the employee is contractually entitled into a bank account nominated by the employee, and must do so within 28 calendar days unless the employer has retained the gratuity at the employee's request in accordance with subsection (4).

(4) If an employee whose contract has expired enters into a successive contract with the same employer, the employer may, at the employee's request, retain the gratuity at the end of the expired contract and the employer's obligation to pay the gratuity is deferred until the end of the successive contract.

(5) Subsection (4) applies in respect of any number of successive contracts between the employer and employee and each contract after the first must—

- (a) record the date on which the employee's successive period of employment began, and
- (b) state the amount of gratuity accrued over that period.

Protection of gratuities

42. (1) Where an employer retains a gratuity at an employee's request in accordance with section 41(4), the money owed is a "**previously accrued gratuity**" for the purposes of this section and section 44 and is deemed to be held on trust by the employer for the benefit of the employee.

(2) An employer that provides a gratuity scheme in accordance with 41 must ensure that adequate arrangements are in place to protect money that has been allocated to pay gratuities against the employer's insolvency or such other circumstances in which the employer may be unable to fulfil its obligation to pay gratuities including previously accrued gratuities.

(3) An employee's right to previously accrued gratuity is not affected by the ending of an employee's contract before its expiry, including in consequence of the employee's dismissal, and any such previously accrued gratuity must be paid to the employee in full within 28 calendar days of the end of the contract.

(4) If an employee dies during the term of the contract, any previously accrued gratuity must be paid either to the employee's next of kin, if known, or to the employee's estate.

Pension schemes

43. (1) An employer may provide for a suitable pension scheme for its employees in lieu of the obligation under section 41 to provide a scheme for the payment of gratuities.

(2) A pension scheme will be considered suitable only if—

- (a)* the pension benefits will be accessible by the employee within the country or territory of return, or in a country or territory nominated by the employee and with which the employee has a connection;
- (b)* where the employer also provides a gratuity scheme and allows employees to choose between the two, the employer's contributions in any given period are at least equivalent in value to that which the employer would have been obliged to pay as a gratuity during the same period; and
- (c)* the employer is required to provide to the employee with details of the pension scheme and annual or more frequent periodic statements on the employee's entitlement under the pension scheme.

Failure to pay gratuity

44. (1) If an employer fails to pay to an employee the full amount of the gratuity to which the employee is entitled (including any previously accrued gratuity) in accordance with section 41(3), the employee is entitled to claim the difference between that amount and the amount actually paid out by the employer.

(2) The amount due to the employee under subsection (1) is recoverable in civil proceedings as a debt on which the employee may also claim interest.

(3) In addition to the amount that the employee is entitled to claim under section 44(1), the employee may also claim a compensatory payment for any delay between the end of the 28-day period set out in section 41(3) and the date on which payment is received in full, such payment being equal to two day's basic pay per week, or part thereof, until the payment is received in full.

Gratuities and pensions: Administrator's powers

45. (1) For the purpose of ensuring that employers have in place either—

- (a)* a gratuity scheme as required by section 41, including adequate arrangements to protect money that has been allocated to pay gratuities as required by 42,
- (b)* or a suitable pension scheme in accordance with section 43,

the Administrator may in writing require an employer to provide details of its gratuity or pension scheme and the employer must comply with such request within 28 calendar days.

(2) If an employer fails to provide the details required under subsection (1), the Administrator may make an application to the Supreme Court for an order requiring the employer to deliver up the required details within such period as the Supreme Court directs.

(3) If, having received the details required under subsection (1), the Administrator is not satisfied that the employer is compliant with the obligations set out in sections 41 and 42 or 43 as the case may be, the Administrator may require the employer to take such steps as are necessary to comply with those obligations within such period as is reasonable in the circumstances.

(4) An employer who fails without reasonable excuse to comply with a requirement imposed by the Administrator under subsection (3) commits an offence.
Maximum penalty: A fine of £150,000.

Gratuities and pensions: offences

46. (1) An employer who provides neither a gratuity scheme in accordance with section 41 nor a suitable pension scheme in accordance with section 43 commits an offence.
Maximum penalty: A fine of £150,000.

(2) An employer who fails to make adequate arrangement to protect money that has been allocated to pay gratuities in accordance with section 42, commits an offence.
Maximum penalty: A fine of £150,000.

Court's power to award compensation for employer's failure

47. (1) If an employee has not had the benefit of either a gratuity scheme under section 41 or a suitable pension scheme under section 43, then a court may make a compensation order in favour of the employee.

(2) An order under subsection (1) may be made by the court—

- (a) of its own motion in criminal proceedings for offences under section 46,
- (b) on the application of the employee.

(3) The compensation payable under subsection (1) will—

- (a) where the employer has a gratuity scheme at the material time, be an amount equal to the amount of the gratuity that the employer would have been obliged to pay had the employer complied with its obligations under section 42;
- (b) in all other circumstances, be of such amount as the court considers appropriate in the circumstances.

Chapter 6

Policies and procedures for management of employees

Dismissal

Dismissal: policies and decision-making

48. (1) Subject to subsection (5), employers must have in place policies concerning matters that may lead to a Primary Contract employee being dismissed or resigning and claiming to have been constructively dismissed, including but not limited to—

- (a) a policy concerning capability and performance management, including circumstances in which an employee may be dismissed because of persistent poor performance, and the process that the employer will follow in such cases;
- (b) a policy concerning conduct and discipline, including the standards of behaviour to be met, the circumstances in which an employee may be dismissed on grounds of misconduct (including gross misconduct or similarly serious conduct), and the process that the employer will follow in such cases;
- (c) a policy concerning fitness to work, including how the employer will assess the employee's fitness for their role, how the employer will handle either enduring changes to the employee's fitness or changes to the requirements of the employee's role, the circumstances in which an employee's contract may be terminated on grounds of ill-health, and the process that the employer will follow in such cases;
- (d) a policy concerning the handling of grievances, including an appropriate mechanism for the reporting of grievances and for their investigation and resolution, and the process that the employer will follow in such cases;
- (e) any other policy pursuant to which an employee may be dismissed.

(2) A policy to which subsection (1) applies must set out—

- (a) the grounds on which an employee can be dismissed, and
- (b) the procedure to be followed in respect of proceedings which entail a prospect of dismissal, including—
 - (i) the right to be accompanied to meetings, interviews or hearings by a person of the employee's choice (including a lay advocate);
 - (ii) the right to be given sufficient notice of any meeting, interview or hearing to be able to prepare for it and to make arrangements to be accompanied;
- (c) in the event of dismissal—
 - (i) the right to be given reasons in writing, including a reference to the relevant policy;
 - (ii) any right to appeal the decision and how to exercise it.

(3) In respect of the policies to which subsection (1) applies, employers must—

- (a) provide copies of the relevant policies to employees prior to the commencement of their contract of employment;
- (b) thereafter ensure that relevant policies are readily available to its employees; and
- (c) communicate policy changes to all employees before they take effect.

(4) A policy is readily available to employees for the purposes of this section if—

- (a) a written copy is provided to the employee; or
- (b) where employees have regular access to their employer's computer network, it is stored in a shared drive to which the employee has access and to which the employee has been directed.

(5) The requirements of this section do not apply to an employer in respect of any period during which the employer qualifies as a small employer.

Failure to comply with policies concerning dismissal

49. (1) A Primary Contract employee who is dismissed otherwise than in accordance with a relevant, readily available policy, will be deemed to have been unlawfully dismissed in breach of contract and may bring a claim against the employer for damages arising from the dismissal.

(2) In any claim under subsection (1), a decision to dismiss will not be unlawful if the employer can show that the decision to dismiss—

- (a) was made in accordance with a relevant, readily available policy and for a reason set out in that policy;
- (b) was made following a fair process;
- (c) was based on evidence that the employer was entitled to consider to be reliable.

(3) When considering a claim brought under subsection (1), the court is not entitled to consider—

- (a) the merits of the employer's reason for dismissal, provided the reason on which the employer relied is set out in a readily available policy;
- (b) whether the employer acted reasonably in dismissing the employee, unless—
 - (i) the procedure followed by the employer was unfair,
 - (ii) the facts relied upon were plainly wrong, or
 - (ii) the employer acted in a legally irrational way.

(4) The Governor may, by regulations under section 55, make regulations to cap the damages that may be awarded by the court on a claim under subsection (1), or to prescribe the basis on which they may be calculated.

Contract expiry

Offering new contracts to existing employees

50. (1) Employers must have a policy concerning the offering of new contracts to existing Primary Contract employees which must provide that—

- (a) where an employee is to be offered a new contract, the offer must be made not earlier than either—
 - (i) six months before the end of the employee's contract, or
 - (ii) three quarters of the way through the employee's contract, whichever is sooner;
- (b) where an employee is not to be offered a new contract, the employee must be informed in writing of that decision no later than the start of the employee's notice period.

(2) In deciding whether or not to offer a new contract to an existing employee, and the terms on which such a contract may be offered, the employer's policy must provide that the employer consider the following criteria—

- (a) the employee's performance over the duration of the current contract;

- (b) the employee's continued capacity to fulfil the requirements of the role;
- (c) the employee's disciplinary record over the duration of the current contract;
- (d) the employee's continued fitness to work, including whether the employer will continue to be able to meet its obligations under section 14 in respect of any medical condition that the employee has and that is likely to continue for the duration of the proposed contract;
- (e) the continued need for the employee's current role, including any changes to the requirements of the role, or any planned changes to the employer's business that are likely to affect the requirements or existence of the employee's current role.

(3) The requirements of this section do not grant an employee an entitlement to a new contract.

(4) The requirements of this section do not apply to an employer in respect of any period that the employer qualifies as a small employer.

Expiry of contract: failure by employer to give notice or written decision

51. (1) If an employer fails to give a Primary Contract employee a written decision as mandated under section 50(1)(b) by the start of the employee's contractual notice period, the employee and any accompanying dependants may remain on Ascension until the first available departure to the individual's country or territory of return after the end of a period equal to the employee's contractual notice period, beginning on—

- (a) the date on which the employer provides the written decision to the employee; or
- (b) if the employer fails to provide a written decision before the expiry of the employee's contract or at all, the date that the contract expires.

(2) During the period that the employee and any accompanying dependants remain on Ascension as provided the subsection (1)—

- (a) the employer's obligation to repatriate does not arise, although the employee and any accompanying dependants may depart Ascension sooner by mutual agreement with the employer;
- (b) the employer's mandatory welfare obligations continue to apply in respect of the employee and any accompanying dependants who remain on Ascension during that period; and
- (c) for purposes of the Entry Control (Ascension) Ordinance, 2007—
 - (i) any entry visa issued to the employee and to any accompanying dependants before the expiry of the employee's contract will remain valid for duration of the period referred to in subsection (1);
 - (ii) where an employee or accompanying dependant was exempt from the need to obtain an entry visa, the employee or accompanying dependant will be deemed to have been granted an entry visa from the expiry of their contract until the end of period referred to in subsection (1).

- (3) In addition to the provisions of subsection (2) if the employer—
- (a) fails to provide the Primary Contract employee with a written decision before the expiry of the employee's contract, or
 - (b) provides a written decision which does not set out the employer's reason for not offering a new contract,
- the employee may bring a claim against the employer for a compensatory payment of an amount equivalent to one month's basic pay per year of successive employment with that employer.

(4) Subsection (2)(c) does not affect the exercise of any powers under the Entry Control (Ascension) Ordinance, 2007 and, in particular, do not prevent the removal from Ascension of an individual whose presence is considered undesirable in the public interest.

Chapter 7 Dispute resolution

Internal dispute resolution

52. (1) Employers must have an internal dispute resolution procedure for purpose of resolving employee disputes and which must be set out in the contract of employment or incorporated by reference.

(2) An employee may not bring any claim or application before any court in respect of the rights or obligations set out in this Ordinance unless that employee has first raised the subject matter of any potential claim or application in writing with the employer and allowed the employer a reasonable opportunity to resolve it through its internal dispute resolution procedure.

(3) If Where a dispute remains unresolved after the employee has complied with subsection (2), the employee may make a claim or application to a court, but any such claim or application must be brought within 12 months of the event giving rise to it.

(4) Any claim or application made in accordance with subsection (3) which is not made within 12 months of the events giving rise to it will be time barred unless the court considers that there is good reason for the delay.

(5) The Governor may, by regulations under section 55, make further provision concerning internal dispute resolution procedures.

Chapter 8 Employer status and employment data

Employer status

53. (1) Any individual or organisation who wishes to employ or engage any person to provide services in Ascension, whether as an employee or a contractor, in the course of the

business of such individual or organisation, must notify the Administrator of their intention and provide—

- (a) information to identify the individual or organisation;
- (b) details of a nominated contact person in Ascension for employment-related matters; and
- (c) such other information as the Administrator may reasonably require.

(2) The Administrator must on receipt of the information under subsection (1) register the individual or organisation as an employer.

(3) Any individual or organisation that employs or engages a person without first having obtained employer status commits an offence:

Maximum penalty: A fine of £1,000 per worker so employed or engaged.

(4) Subsection (3) does not apply to the employment or engagement of a person by the individual or organisation as a consumer of the person's services in a private or domestic capacity.

Employment data

54. (1) The Governor may, by regulations under section 55, prescribe requirements relating to the provision by employers of statistical information concerning their workforces.

(2) The regulations may provide that any employer who fails without reasonable excuse to comply with a requirement to provide statistical data will commit an offence and will be subject to a fine not exceeding £10,000.

PART 3 MISCELLANEOUS

Regulations

55. The Governor may make regulations prescribing anything necessary or convenient to be prescribed for the purposes of this Ordinance.

Crown application

56. (1) Subject to the provisions of this section, this Ordinance applies to employees and contractors employed or engaged by the Government, but does not render the Government liable to prosecution for any offence.

- (2) The provisions of this Ordinance do not apply to—
 - (a) any judicial officer;
 - (b) any lay advocate.

- (3) The following provisions of this Ordinance do not apply in respect of employees and contractors employed or engaged by the Government—

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- (a) section 15 (failure to ensure provision of necessary medical or dental care);
 - (b) subsection (2) of section 16 (pre-employment medical assessments);
 - (c) subsection (1) and (4) of section 20 (failure to provide suitable accommodation);
 - (d) subsection (1) of section 21 (failure to provide utilities etc.);
 - (e) subsection (1) of section 23 (failure to provide food and / or messing facilities);
 - (f) section 37 (failure to comply with maximum permitted contract length);
 - (g) section 45 (gratuities and pensions: Administrator's powers);
 - (h) section 46 (gratuities and pensions: offences);
 - (i) Chapter 8 of Part 3 (employer status and employment data).

Repeal

57. The Workmen's Protection Ordinance, 1926 is repealed.

EXPLANATORY NOTE

(This note does not form part of the Ordinance)

The purpose of this Ordinance is to give legislative effect to the reforms and updates to employment law in Ascension identified in the Government's published "Regulation of Employment in Ascension" policy. It replaces the Workmen's Protection Ordinance, 1926.

Part 1 (Preliminary) deals with administrative matters. In particular, this Part sets out to whom the subsequent provisions of the Ordinance apply and to whom they do not. This section also contains a power to commence the Ordinance by regulations; such regulations may make the transitional provisions necessary to ensure an orderly implementation of the Ordinance.

Part 2 (Mandatory Welfare Obligations) deals with the mandatory welfare obligations that employers owe to their employees and to contractors, and is of general application save where specific exemptions apply (as set out in section 3). The Part is split into a number of chapters, each chapter dealing with a particular obligation. This Part is intended to codify and to clarify existing welfare obligations and to set standards e.g. in respect of accommodation. This Part contains powers that enable the Governor to make provision by way of regulations in respect of: when medical and dental treatment will be deemed necessary (section 14(4)); concerning pre-employment medical assessments (section 16(3)); and concerning the suitability of accommodation (section 18(4)).

Part 3 (The Employment Relationship) is concerned primarily with the relationship between employer and employee. It introduces several mandatory contract terms, puts gratuities on a statutory footing, and makes provision in respect of dismissal and the offering of new contracts to existing employees in a manner that is compatible with the UK Government's policy on right of abode. The provisions in Chapter 2 of this part must be read alongside section 51 of the Child Welfare Ordinance, 2011. This Part contains powers that enable the Governor to make provision by way of regulations in respect of: the conditions under which children may work (section 31(4)); the calculation of damages in respect of a claim concerning dismissal (section 49(4)); concerning employers' internal dispute resolution procedures (section 52(5)); and concerning the provision of employment data (section 54(1)).

Part 4 (Miscellaneous) deals with powers to make regulations as well as the application of this Ordinance to the Government.