

ASCENSION

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EMPLOYMENT AND COMMERCE

EMPLOYMENT ORDINANCE, 2022

Ordinance A3 of 2022
In force 20 June 2022

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EMPLOYMENT ORDINANCE, 2022

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AN ORDINANCE To regulate employment in Ascension; and for connected or incidental matters.

PART 1 PRELIMINARY

Short title and commencement

1. (1) This Ordinance may be cited as the Employment Ordinance, 2022.
- (2) The provisions of this Ordinance come into force on 20th June 2022.

Interpretation

2. In this Ordinance—
“**contractor**” means an individual engaged directly or indirectly by an individual or organisation in Ascension, other than under a contract of employment, and includes any sub-contractor engaged by a contractor to assist in the provision of those services;
“**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;“**employee**” means, subject as prescribed, a person who provides services to an employer under a contract of employment;
“**employer**” means, subject as prescribed, a person who employs a person pursuant to a contract of employment, or engages a contractor;
“**prescribed**” means specified in, or determined in accordance with, regulations;
“**statement of particulars**” means the particulars prescribed to be provided in respect of employment as part of the settling of a contract of employment.

Minimum age of employment

3. (1) The minimum age of employment is 14 years of age.
- (2) Notwithstanding subsection (1) a person who is between 14 and 18 years of age must not be employed—
- (a) in any capacity other than that prescribed; and
 - (b) without the written permission of a parent or guardian consenting to—
 - (i) the employment of the person; and
 - (ii) the terms and conditions of the employment.

Exempted persons

4. (1) A person specified in the Schedule is exempt from the application of this Ordinance.
- (2) The Schedule may be amended by Order published in the *Gazette* by the Governor after consultation with the Island Council.

Contracts of employment

5. (1) Any employer, employee or contractor is, unless exempted—
- (a) entitled to the benefits specified under this Ordinance; and
 - (b) required to satisfy the obligations specified under this Ordinance.
- (2) A contract of employment is required to include the mandatory provisions prescribed unless the contract was executed or completed prior to the commencement of this Ordinance.
- (3) Subsection (2) does not prevent an employer, employee, or contractor from settling the terms and conditions of a contract of employment but an employer, employee or contractor must not settle such terms and conditions that would or would have the effect of negating or nullifying a prescribed obligation or benefit to which an employer, employee or contractor is entitled pursuant to this Ordinance.
- (4) Different types of contracts of employment may be prescribed in regulations and such regulations may specify the obligations and benefits in respect of such contracts of employment.

PART 2 OBLIGATIONS AND BENEFITS

Obligations

6. (1) Unless otherwise prescribed, an employer must, at the employer's expense and in the manner prescribed, make provision and payment for—
- (a) the transportation of an employee or contractor to Ascension at the commencement of a term of employment;
 - (b) transport of an employee or contractor from Ascension at the end of the term of employment;

- (c) transport of an employee or contractor from, and their return to, Ascension before the end of the term of employment, if the employee is entitled to off island leave and as agreed between the employer and employee;
- (d) medical and dental care of an employee or contractor;
- (e) accommodation and utilities for an employee or contractor; and
- (f) food and messing facilities for an employee or contractor.

(2) In addition to the obligations specified in subsection (1) an employer may, at the employer's expense and in the manner prescribed, make provision and payment for—

- (a) annual leave and leave in respect of the performance of public duties for an employee;
- (b) the payment of gratuity to an employee; and
- (c) establish employment or place of employment policies

(3) Where any employee or contractor in Ascension has a contractual entitlement to be accompanied by their dependants the obligations of the employer specified in subsection (1) applies to those dependants, unless otherwise prescribed.

(4) Subject to section 5(4), the obligations of the employer specified in subsection (1) are considered to be mandatory obligations that an employer is required to perform in respect of an employee.

Statement of particulars

7. (1) An employer must, in respect of a position of employment offered by the employer, provide in respect of each position offered, a statement of particulars.

(2) A statement of particulars provided by an employer must be prepared in the manner prescribed and contain the particulars prescribed.

Annual leave

8. An employee is entitled to a minimum of 30 days paid annual leave per year, in addition to public holidays, which may be pro-rated if a period of employment is less than or exceeds 1 year.

Leave for public duties

9. (1) In addition to the entitlement of annual leave an employee is entitled to request leave to perform public duties.

(2) Leave pursuant to subsection (1) must be agreed between the employee and employer and prior to the approval of such leave the employer may have regard to the public duty to be performed and the employment duties of the employee.

(3) An employer is not entitled to make any deductions from the remuneration of an employee in respect of leave approved in accordance with this section.

Notice of termination

- 10. (1)** If a contract of employment is to be terminated, an employer must—
- (a) in respect of a contract of employment for which the employer is required to satisfy the obligations specified in section 6(1), provide an employee with not less than 2 months' notice of termination;
 - (b) in respect of the engagement of a contractor for which the employer is required to satisfy the obligations specified in section 6(1), provide a contractor with not less than 2 weeks' notice of termination; and
 - (c) in respect of a contract of employment for which the employer is not required to satisfy the obligations specified in section 6(1), provide an employee with not less than 2 weeks' notice of termination.
- (2) Subsection (1) does not apply to the probationary period of a term of employment.

Gratuity and pension

11. (1) Subject to subsection (4), an employee for whom an employer is required to satisfy the obligations specified in section 6(1), is entitled, in the manner prescribed, to be paid a gratuity on completion of the employee's term of employment.

(2) An employer may at the discretion of the employer pay a gratuity to an employee for whom the employer is not required to satisfy the obligations specified in section 6(1).

(3) If an employer is required to pay a gratuity to an employee the employer must, in the manner prescribed, establish a regime for the payment of such gratuity.

(4) An employer may, in lieu of the payments of a gratuity, make contributions to a prescribed pension scheme in the manner prescribed.

Policies

12. An employer must establish policies to facilitate matters relating to or in respect of the management of issues arising from employment offered by the employer in the manner prescribed and which must be made available to an employee in the manner prescribed.

Status

13. (1) An employer must, as prescribed, pursuant to any Ordinance making provision for any permission required to be obtained or obligations to be satisfied in respect of offering employment to a person or employing a person, obtain all such prescribed permission or satisfy all such prescribed obligations.

(2) For the purpose of establishing compliance with subsection (1) the Administrator may in the manner prescribed—

- (a) request any information from an employer relevant to the foregoing purpose and the employer must comply with such request; and
- (b) impose any relevant conditions in respect of a contract of employment or term of employment.

PART 3 ENFORCEMENT

Offences

14. (1) An employer who employs a person who is less than 14 years of age commits an offence.

Penalty: A fine of £5,000.

(2) An employer who employs a person who is between 14 and 18 years of age without complying as specified in section 3(2) commits an offence.

Penalty: A fine of £10,000.

(3) An employer who employs an employee pursuant to a contract of employment which is in contravention of this Ordinance commits an offence.

Penalty: A fine of £150,000.

(4) An employer who fails to satisfy an obligation specified in section 6(1) commits an offence.

Penalty: A fine of £150,000.

(5) An employer who is required to satisfy an obligation pursuant to section 6(2) and who fails to satisfy such obligation commits an offence.

Penalty: A fine of £150,000.

(6) An employer who is required to satisfy an obligation pursuant to section 11(1) and who fails to satisfy such obligation commits an offence.

Penalty: A fine of £150,000.

(7) An employer who is required to satisfy an obligation pursuant to section 11(3) and who fails to satisfy such obligation commits an offence.

Penalty: A fine of £150,000.

(8) An employer who offers employment to a person or who employs a person in contravention of section 13(1) or who fails to comply with section 13(2) commits an offence.

Penalty: A fine of £1,000 for each person to whom the offence relates.

(9) An employer who fails to comply with a request made pursuant to section 13(2) commits an offence.

Penalty: A fine of £150,000.

Appeal

15. An employee may in the manner prescribed appeal any decision of an employer in respect of—

(a) the performance of an obligation to be satisfied by the employer with regard to the employee; and

(b) the termination of the employee.

Alternative dispute resolution

16. Notwithstanding section 15, the parties to a contract of employment may agree to resolve any matter arising from a contract of employment in the manner and period prescribed.

**PART 4
MISCELLANEOUS**

Regulations

17. (1) The Governor may make regulations generally for carrying into effect the provisions of this Ordinance.

(2) Without prejudice to the generality of subsection (1), regulations may prescribe anything which may be prescribed under this Ordinance including any matter related to—

- (a) the employment of a person who is between 14 and 18 years of age;
- (b) a contract of employment;
- (c) an obligation to be performed or satisfied by an employer;
- (d) a benefit to be received by an employee;
- (e) the status of an employee;
- (f) information to be provided to the Administrator;
- (g) conditions to be imposed by the Administrator;
- (h) civil remedies against the employer;
- (i) appeal; and
- (j) alternative dispute resolution.

Transition and repeal

18. (1) A contract of employment entered into in accordance with the Workmen's Protection Ordinance, 1926 is not considered terminated upon the repeal of the Workmen's Protection Ordinance, 1926 and any responsibilities of an employer, obligations to be satisfied by an employer or benefits to which an employee is entitled continue until the completion or termination of such contract of employment.

(2) The Workmen's Protection Ordinance, 1926 is repealed.

SCHEDULE

Exempt persons

(Section 4(1))

- (a) a person employed directly by the government of the United Kingdom or the United States of America, including members of the armed forces of the government of the United Kingdom or the United States of America, who are posted to Ascension for a fixed period (including but not limited to the Foreign Commonwealth and Development Office, Ministry of Defence, Royal Air Force of the United Kingdom and the Space Force and Air Force personnel of the United States of America); and

- (b) a person employed by any other government or by an international or intergovernmental organisation who is employed on a short-term basis (including but not limited to the St Helena Government, or the North Atlantic Treaty Organisation (NATO)).

EMPLOYMENT ORDINANCE, 2022

EMPLOYMENT (END OF CONTRACT) REGULATIONS, 2022

(Sections 5(4), 6(2), 7, 10, 12, and 17)

Citation and commencement

1. These Regulations may be cited as the Employment (End of Contract) Regulations, 2022, and come into force on 20th June 2022.

Interpretation

2. In these Regulations—
- “**basic pay**” means an employee’s basic rate of pay as provided for in the contract of employment, and where the employee is a casual worker 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;
- “**Household Contract**” means a contract of employment which does not satisfy the mandatory obligations set out in section 6 of the Employment Ordinance, 2022;
- “**lay advocate**” means a person appointed as a lay advocate under the Lay Advocates (Ascension) Ordinance, 2007;
- “**obligation to repatriate**” means the employer’s statutory requirement to provide transport arrangements to the territory of return at the end of the contract;
- “**Primary Contract**” means a contract of employment which satisfies the mandatory obligations set out in section 6 of the Employment Ordinance, 2022;
- “**small employer**” means an employer that employs the equivalent of fewer than nine full-time employees, but does not include any employer that is liable to pay the business levy under the Business Levy Ordinance, 2012.

Maximum permitted contract length

3. (1) A Primary Contract must not have a duration of over 30 months, except—
- (a) with prior written permission from the Governor; or
- (b) where by mutual agreement between all parties to the contract, the contract will notionally extend to include the dates between—
- (i) the end of the Primary Contract; and
- (ii) the date of the obligation to repatriate is satisfied or ceases to apply.
- (2) A Primary Contract which exceeds 30 months will—
- (a) be unenforceable against the employee; and
- (b) require the employer to continue to comply with the mandatory obligations of the contract for the stated duration of the contract.

(3) A Household Contract may not extend beyond the date the employee is permitted to remain in Ascension under the Entry Control (Ascension) Ordinance, 2007.

Notice Periods

4. (1) If a Primary Contract employee is dismissed without notice, or is paid in lieu of notice, the employee and any accompanying dependants may remain in Ascension, and the employer's obligation to repatriate will not arise, until—

- (a) the first available departure to their territory of return after a period equal to the employee's notice period from—
 - (i) the date on which the employer provides notice to the employee; or
 - (ii) if the employer fails to provide notice before the expiry of the contract or at all, the date that the Primary Contract expires;
- or
- (b) a date the employee and any accompanying dependants may mutually agree with the employer.

(2) If an employee is dismissed without sufficient notice, or pay in lieu of notice, 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; and
 - (ii) the amount in basic pay that the employee would otherwise have received during their notice period; and
- (b) any unpaid holiday pay to which the employee is entitled.

(3) Where an employee remains in Ascension under this regulation, for the purposes of the Entry Control (Ascension) Ordinance, 2007—

- (a) any entry visa issued to the employee or contractor and to any accompanying dependants before the expiry of the employee's contract will remain valid;
- (b) where an employee or accompanying dependant was exempt from the need to obtain an entry visa, they will be deemed to have been granted an entry visa from the expiry of their contract until the end of the relevant period.

(4) The provisions of this section—

- (a) do not apply in cases of summary dismissal of an employee for gross misconduct 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.

Offering new contracts to existing employees

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

- (a) the employer consider—
 - (i) the employee's performance over the duration of the current contract;
 - (ii) the employee's continued capacity to fulfil the requirements of the role;
 - (iii) the employee's disciplinary record over the duration of the current contract;
 - (iv) the employee's continued fitness to work;
 - (v) the continued need for the employee's current role;

- (b) where an employee is to be offered a new contract, the offer must not be made earlier than either—
 - (i) six months before the end of the contract; or
 - (ii) three quarters of the way through the contract;
 whichever is sooner; and
- (c) where an employee is not to be offered a new contract, the employer must—
 - (i) notify the employee by a written decision before the first day of the employee’s notice period; and
 - (ii) on request, give the employee further details of their assessment of each of the requirements within this regulation within 28 days.

(2) If an employer does not provide the employee with a written decision, the employee and any accompanying dependants may remain in Ascension, and the employer’s obligation to repatriate will not arise, until—

- (a) the first available departure to their territory of return after a period equal to the employee’s notice period from—
 - (i) the date on which the employer provides the written decision to the employee; or
 - (ii) if the employer fails to provide a written decision before the expiry of the contract, the date that the Primary Contract expires;
 or
- (b) a date the employee and any accompanying dependant may mutually agree with the employer.

(3) Where an employer fails to provide—

- (a) a written decision before the end of the Primary Contract; or
- (b) further details of their assessment of each of the requirements in the policy regarding the offering of new contracts within 28 days of request;

the employee may bring a claim for damages against the employer of an amount equivalent to one month’s basic pay per year of successive employment with that employer.

(4) Where an employee remains in Ascension under this regulation, for the purposes of the Entry Control (Ascension) Ordinance, 2007—

- (a) any entry visa issued to the employee or contractor and to any accompanying dependants before the expiry of the employee’s contract will remain valid;
- (b) where an employee or accompanying dependant was exempt from the need to obtain an entry visa, they will be deemed to have been granted an entry visa from the expiry of their contract until the end of the relevant period.

(5) The requirements of this regulation do not—

- (a) affect the exercise of any powers under the Entry Control (Ascension) Ordinance, 2007;
- (b) apply to an employer that qualifies as a small employer; or
- (c) grant an employee an entitlement to a new contract.

Termination of a Primary Contract

6. (1) Employers must have in place policies concerning an employee’s ability to perform the duties of their Primary Contract, including—

- (a) capability and performance management;
- (b) conduct and discipline;
- (c) requirements and assessments of fitness to work;
- (d) the reporting, investigation, and resolution of grievances; and
- (e) circumstances in which—
 - (i) poor performance;
 - (ii) misconduct;
 - (iii) inability to physically perform the role; or
 - (iv) any other matter;
 may lead to the Primary Contract being terminated;

which forms part of the statement of the particulars of the Primary Contract.

- (2)** Employer’s policies concerning the Primary Contract must establish—
 - (a) the grounds on which a Primary Contract can be terminated;
 - (b) the procedure to be followed prior to any termination, including—
 - (i) any requirement to give written or verbal warnings;
 - (ii) the right to be accompanied to meetings, interviews or hearings by a person of the employee’s choice (including a lay advocate); and
 - (iii) 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; and
 - (c) in the event of the termination of the Primary Contract—
 - (i) the right to be given reasons in writing, including a reference to the relevant policy;
 - (ii) the right to appeal the decision through the employer’s internal appeal system; and
 - (iii) the employees right to appeal the decision externally.

(3) 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.

7. (1) A person who has their Primary Contract terminated not in accordance with a policy which applies to them—

- (a) will be considered unlawfully dismissed;
- (b) be considered subject to a breach of contract; and
- (c) may bring a claim for damages against the employer.

(2) A decision to terminate a person’s Primary Contract will not be unlawful if the employer can show the decision was—

- (a) made in accordance with a relevant policy that applied to that person;
- (b) related to a relevant policy that applied to that person;
- (c) made following a fair process; and
- (d) based on evidence the employer considered to be reliable.

(3) When considering a claim of unlawful dismissal, the court may not consider—

- (a) the merits of the employer’s policy; or
- (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
 - (iii) the employer acted in a legally irrational way.

EMPLOYMENT ORDINANCE, 2022

EMPLOYMENT (STATEMENT OF PARTICULARS) REGULATIONS, 2022

(Sections 5(4), 6(2), 7, 12, and 17)

Citation and commencement

1. These Regulations may be cited as the Employment (Statement of Particulars) Regulations, 2022, and come into force on 20th June 2022.

Interpretation

2. In these Regulations—
- “Accompanied Status”** means a contractual entitlement to be accompanied by dependants;
- “basic pay”** means an employee’s basic rate of pay as provided for in the contract of employment, and where the employee is a casual worker 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;
- “Household Contract”** means a contract of employment which does not satisfy the mandatory obligations set out in section 6 of the Employment Ordinance, 2022;
- “Primary Contract”** means a contract of employment which satisfies the mandatory obligations set out in section 6 of the Employment Ordinance, 2022.

Contents of statement of particulars

3. (1) A statement of particulars must include—
- (a) for all employees—
- (i) the name and address of the employer;
 - (ii) the name and date of birth of the employee;
 - (iii) the date on which the relevant contract begins and the date on which it is to expire;
 - (iv) whether the employee’s contract is a Primary Contract or Household Contract;
 - (v) the job title and a brief description of the work required;
 - (vi) the place or places where the employee will be required to work;
 - (vii) details of the days and hours of work;
 - (viii) the employee’s entitlement to breaks and rest days;
 - (ix) the level of remuneration, including overtime pay (where applicable);
 - (x) the frequency with which remuneration is to be paid;
 - (xi) the employee’s entitlement to holiday, including public holidays, and details of holiday pay;
 - (xii) any entitlement to sick pay;
 - (xiii) any entitlement to maternity, paternity, or other similar leave concerning parenthood or adoption;
 - (xiv) any terms and conditions relating to unpaid time off in the event of a personal emergency; and
 - (xv) the procedure for ending the contract, including the minimum notice period.

- (b) for Primary Contract employees—
- (i) the employee’s country or territory of return;
 - (ii) any entitlement to transport to and repatriation from Ascension;
 - (iii) any shipping allowance for personal effects or a vehicle to which the employee is entitled;
 - (iv) the employee’s entitlement to a mid-contract return journey (where applicable);
 - (v) the employer’s arrangements in respect of medical and dental cover;
 - (vi) details of the employee’s allocated accommodation;
 - (vii) the details of any utility allowances or the amount of any payment in lieu thereof;
 - (viii) the particulars of the employer’s food and messing arrangements, including (where applicable) the amount of any food stipend that is payable;
 - (ix) a statement whether the employee has Accompanied Status;
 - (x) the application of the above in respect of any eligible dependants;
 - (xi) 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;
 - (xii) details of the employer’s gratuity scheme or relevant pension scheme;
 - (xiii) the date on which the employee’s period of successive employment began for the purposes of gratuity entitlement (where applicable);
 - (xiv) the amount of any gratuity accrued during the period of successive employment (where applicable);
 - (xv) the employer’s policy relating to the employee’s right to request paid time off for public duties;
 - (xvi) copies of the employer’s policies which may lead to the Primary Contract being terminated;
 - (xvii) the employer’s internal dispute resolution procedure; and
 - (xviii) the employer’s internal dispute appeals procedure.
- (c) for all contractors—
- (i) name and address of employer;
 - (ii) name and date of birth of contractor;
 - (iii) the date on which the contract begins and the date on which it is to expire;
 - (iv) the contractor’s country or territory of return;
 - (v) any entitlement to transport to and repatriation from Ascension;
 - (vi) any shipping allowance for personal effects or a vehicle to which the contractor is entitled;
 - (vii) the contractor’s entitlement to a mid-contract return journey (where applicable);
 - (viii) the employer’s arrangements in respect of medical and dental cover;
 - (ix) details of the contractor’s allocated accommodation,
 - (x) the details of any utility allowances or the amount of any payment in lieu thereof;
 - (xi) the particulars of the employer’s food and messing arrangements, including (where applicable) the amount of any food stipend that is payable;
 - (xii) a statement whether the contractor has Accompanied Status;
 - (xiii) the application of the above in respect of any eligible dependants; and

- (xiv) 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 contractor.

Provision of the Statement of Particulars

- 4. (1)** The employer may provide the statement of particulars—
 - (a) in the relevant contract;
 - (b) in a document identifying itself as the statement of particulars;
 - (c) in a staff handbook or similar documents which is incorporated by reference into the relevant contract; or
 - (d) a combination of the above.
- (2)** The employer must provide to the prospective employee or contractor all documents which—
 - (a) identify themselves as the statement of particulars; and
 - (b) are incorporated by reference into the relevant contract;a reasonable time before the employee or contractor is required to sign and return the relevant contract for the statement of particulars to apply to the employee or contractor.
- (3)** The employer must—
 - (a) ensure that a current version of the statement of particulars is readily available to the employee or contractor by—
 - (i) providing a written copy to them at the start of their contract; or
 - (ii) storing the documents in a shared computer network to which the employee or contractor has regular access, and has been directed to in writing;and
 - (b) where there are any amendments to the statement of particulars provided to the employee at the start of their contract;
 - (i) communicate the specifics of the change to the employee or contractor immediately in writing; and
 - (ii) keep a record of the receipt of this communication to the employee or contractor;for the employer to apply that policy to an employee or contractor.
- (4)** An employer may not apply a policy to an employee retrospectively.

Failure to provide compliant statement of particulars

- 5. (1)** If an employer fails to provide a statement of particulars—
 - (a) in full; or
 - (b) at all;the worker may lodge a complaint with the Supreme Court.
- (2)** If the Supreme Court finds that the employer has failed to provide a compliant statement of particulars, 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 applied with retrospective effect.

- (3) If the employer fails to comply with the order of the Supreme Court, the Court may—
 - (a) make a further order that the employer remedy the defect; and
 - (b) order the employer to pay the worker compensation equivalent to one month’s basic pay.

EMPLOYMENT ORDINANCE, 2022

EMPLOYMENT (GRATUITIES) REGULATIONS, 2022

(Sections 5(4), 6(2), 11, 13, and 17)

Citation and commencement

1. These Regulations may be cited as the Employment (Gratuities) Regulations, 2022, and come into force on 20th June 2022.

Interpretation

2. In these Regulations—
- “**basic pay**” means an employee’s basic rate of pay as provided for in the contract of employment, and where the employee is a casual worker 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;
- “**Household Contract**” means a contract of employment which does not satisfy the mandatory obligations set out in section 6 of the Employment Ordinance, 2022;
- “**Primary Contract**” means a contract of employment which satisfies the mandatory obligations set out in section 6 of the Employment Ordinance, 2022.

Gratuity schemes

3. (1) An employer with one or more employees on a Primary Contract must establish a gratuity scheme, and state in each contract—
- (a) the amount of the gratuity payable (or the basis for calculating the amount);
 - (b) the arrangements for payment of the gratuity;
 - (c) the currency in which the gratuity is payable; and
 - (d) any further requirements the Administrator may require.
- (2) As part of establishing a gratuity scheme, the employer must make adequate arrangements to protect—
- (a) the prospective gratuity payments for all active Primary Contracts;
 - (b) the prospective gratuity payments for any Household Contracts, where contractually agreed; and
 - (b) all accrued gratuity payments held in trust;
- from the employer’s insolvency, fraud, or any other financial difficulty.

(3) On completion of the relevant contract the employer must pay the employee any gratuity owed—

- (a) into a bank account nominated by the employee; and
- (b) within 28 days.

(4) Where the employee enters into a successive contract with the same employer—

- (a) the employer may, at the employee's request in writing—
 - (i) retain the gratuity at the end of the contract; and
 - (ii) defer the obligation to pay the gratuity until the end of the successive contract;
- (b) the employer must, when deferring the obligation to pay the gratuity—
 - (i) record the date on which the employee's successive period of employment began;
 - (ii) state the amount of gratuity owed over that period; and
 - (iii) hold the accrued gratuity in trust for the employee;and
- (c) the employee's right to all previously accrued gratuity is unaffected by early termination of the final contract.

(5) (1) If the employee dies during the term of the contract, the employer must pay any previously accrued gratuity to—

- (a) the employee's next of kin, if known; or
- (b) the employee's estate.

Exemption to requirement to establish a gratuity scheme

4. (1) An employer may choose to provide a suitable pension scheme rather than a gratuity scheme.

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

- (a) it is accessible by the contract holder in their territory of return or a territory in which the employee has nominated and has a connection;
- (b) where the employer offers either a gratuity or a pension scheme, that the employer's pension contributions are at least equal to the value of the gratuity payable;
- (c) the employer provides details of the pension scheme to the contract holder; and
- (d) the employer provides statements on an annual basis detailing the contract holder's entitlement.

Failure to pay gratuity

5. (1) Failure by the employer to pay the employee all gratuities owed within 28 days of the end of the contract will—

- (a) be recoverable in civil proceedings as a debt;
- (b) incur a compensatory payment of two days basic pay per week, or part thereof, in which payment is not made; and
- (c) incur interest.

Administrator's Powers

6. (1) The Administrator may, in writing, require—

- (a) that an employer provide details of—

- (i) a suitable gratuity scheme;
 - (ii) adequate arrangements to protect employees gratuities that are held in trust; or
 - (iii) any exemption relied upon to the requirement to provide a gratuity scheme; within 28 days;
- (b) where the Administrator is not satisfied the employer is complying with these regulations—
- (i) that the employer takes reasonable steps to comply with these regulations within a timeframe set by the Administrator.
- (2) If the employer fails to comply with a requirement from the Administrator under this regulation—
- (a) the Administrator may—
 - (i) refer the matter to the Supreme Court to obtain an order requiring the employer disclose any relevant information.
- (3) This regulation does not apply to the Government.
7. (1) Where an employer commits a criminal offence under the Ordinance in relation to matters prescribed in these Regulations, in addition to any sentence imposed the court may order the employer pay any or all affected employees compensation of—
- (a) an amount equal to all gratuities owed to that employee at the end of their current Primary Contract; and
 - (b) such an amount the court considers appropriate in the circumstances.

EMPLOYMENT ORDINANCE, 2022

EMPLOYMENT (EMPLOYER’S OBLIGATIONS) REGULATIONS, 2022

(Sections 5(4), 6, 13, and 17)

Citation and commencement

1. These Regulations may be cited as the Employment (Employer’s Obligations) Regulations, 2022, and come into force on 20th June 2022.

Interpretation

2. In these Regulations—
- “**Accompanied Status**” means a contractual entitlement to be accompanied by dependants;
- “**basic pay**” means an employee’s basic rate of pay as provided for in the contract of employment, and where the employee is a casual worker 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;
- “**Dentist**” means—
- (a) any person appointed to practise dentistry in Ascension under the Dentists Ordinance, 1955;
 - (b) where no such person has been appointed, the Senior Medical Officer;

“Household Contract” means a contract of employment which does not satisfy the mandatory obligations set out in section 6 of the Employment Ordinance, 2022;

“mid-contract journey” means the transport arrangements to which a worker is entitled during the term of the relevant contract;

“obligation to repatriate” means the employer’s statutory requirement to provide transport arrangements to the territory of return at the end of the contract; and

“Primary Contract” means a contract of employment which satisfies the mandatory obligations set out in section 6 of the Employment Ordinance, 2022;

“relevant contract” means the Primary Contract giving rise to the relevant obligations;

“worker” means—

- (a) an employee;
- (b) a contractor; and
- (c) any accompanying dependants of the employee or contractor.

Application

3. If the worker is an employee or contractor with accompanied status, the same provisions apply in respect of—

- (a) the employee or contractor’s accompanying dependants;
- (b) any child to which a worker gives birth during the term of the contract and in respect of which the employee has parental responsibility;

as they apply to the employee or contractor.

4. The employer’s obligations detailed in these regulations apply from the start of the relevant contract until the earlier of when—

- (a) the worker departs Ascension in accordance with the employer’s obligation to repatriate;
- (b) the employer’s obligation to repatriate the worker ceases to apply; or
- (c) the worker would otherwise depart Ascension, but elects to remain in Ascension in accordance with the Entry Control (Ascension) Ordinance, 2007.

Territory of return

5. A worker’s territory of return is—

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

Obligation to provide transport arrangements to and from Ascension

6. (1) An employer who engages an employee or contractor to work mainly in Ascension on a Primary Contract must arrange and pay for the worker’s transport arrangements to and from their territory of return—

- (a) at the start of the relevant contract;
- (b) at the end of the relevant contract; and
- (c) where the worker’s contract exceeds 15 months, at least once during the term of the relevant contract.

- (2)** The transport arrangements must include—
- (a)* transport to the port of departure;
 - (b)* air or sea travel to Ascension;
 - (c)* transport from the airhead or pierhead to the worker’s accommodation in Ascension;
 - (d)* the cost of accommodation and reasonable subsistence for any necessary overnight stay during such travel; and
 - (e)* appropriate travel insurance.

- (3)** Transport arrangements at the start of the contract include—
- (a)* all initial journeys to Ascension;
 - (b)* for each worker; and
 - (c)* may take place at any point during the term of the relevant contract.

- (4)** The obligation to repatriate—
- (a)* must take place no later than the first available departure to the worker’s territory of return after—
 - (i)* the completion of the notice period as detailed in the terms of the Primary Contract;
 - (ii)* the completion of the period of time detailed in regulations 4(1) or 5(2) of the Employment (End of Contract) Regulations, 2022; or
 - (iii)* two weeks in all other cases;
 - (b)* may not take place before—
 - (i)* the completion of the notice period as detailed in the terms of the Primary Contract;
 - (ii)* the completion of the period of time detailed in regulations 4(1) or 5(2) of the Employment (End of Contract) Regulations, 2022; or
 - (iii)* two weeks in all other cases;
- unless mutually agreed in writing between the worker and the employer.

- (5)** The obligation to repatriate may lawfully be delayed—
- (a)* if the worker 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 worker is considered by a medical professional to be unfit to fly; or
 - (c)* in exceptional circumstances, with the prior written consent of the Administrator.

- (6)** If, before the first available departure, the worker—
- (a)* becomes subject to a new Primary Contract; and
 - (b)* agrees in writing with the employer;
- the employer’s obligation to repatriate ceases to apply.

- (7)** If the worker is—
- (a)* in Ascension immediately prior to the start of the relevant contract; or
 - (b)* not in Ascension between the end of the relevant contract and the date on which the obligation to repatriate applies;
- the requirement for the employer to provide the corresponding transport arrangements ceases to apply.

- (8)** Where a worker is entitled to a mid-contract journey, the employer must allow—
- (a)* Primary Contract employees to take sufficient paid leave, subject to their remaining

leave entitlement;
(b) contractors to take sufficient unpaid leave, as required; and
(c) Household Contract employees to take sufficient paid or unpaid leave;
to take the journey to which they are entitled.

(9) If—
(a) there are reasonable grounds to believe that—
(i) the employer cannot provide a mid-contract journey before the last quarter of the relevant contract; and
(ii) the journey cannot be provided for reasons beyond the control of the worker and employer;
or
(b) it is requested by the worker;
the employer may pay the worker in lieu of providing a mid-contract journey.

7. (1) If a worker is contractually entitled to an allowance to ship personal effects to Ascension, at the end of the relevant contract the employer must provide—
(a) at least a corresponding allowance to the territory of return, even if it is not the territory from which the worker was transported from at the start of the contract; and
(b) that the effects are shipped within a reasonable time.

8. (1) The port of departure is—
(a) where direct flights to Ascension operate from the territory of return, the nearest airport to the employee's home from which such flights operate; or
(b) where no direct flights to Ascension operate from the territory of return, the employee's most convenient airport or seaport within the territory of return.

(2) Appropriate travel insurance must include policies covering—
(a) medical treatment (including for pre-existing medical conditions);
(b) delay or cancellation;
(c) baggage lost, stolen or damaged in transit.

Failure to provide appropriate transport

9. (1) If an employer fails to provide appropriate transport arrangements for a worker—
(a) at the start of their relevant contract;
(b) at the end of their relevant contract; or
(c) for their mid-contract journey;

the worker may pay for their transport arrangements, and claim reimbursement from the employer of an amount equal to two times the costs incurred.

(2) If an employer fails to provide transport arrangements to Ascension at the start of the relevant contract—
(a) the worker may terminate the contract before departing for Ascension; and
(b) claim from the employer any damages associated with that breach.

(3) If an employer fails to provide transport arrangements from Ascension at the end of the relevant contract—

- (a) the Government may—
 - (i) provide travel arrangements to the worker’s territory of return; and
 - (ii) recover the full cost from the employer.

(4) If an employer fails to provide or allow a mid-contract return journey for a worker, including failing to provide sufficient leave—

- (a) 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 worker originally travelled to Ascension at the start of the relevant contract; and
 - (ii) in the case of an employee or contractor, an amount equal to two months’ basic pay.

- (5) If an employer has agreed to ship the workers personal effects, and fails to do so—
 - (a) at the start of the relevant contract; or
 - (b) within a reasonable period of time at the end of the relevant contract;

the worker may pay for their shipping, and claim reimbursement from the employer of an amount equal to two times the costs incurred.

(6) Claims by the worker for compensation or reimbursement from the employer under this regulation must—

- (a) be made in writing;
- (b) provide—
 - (i) the basis on which the notional costs were calculated; or
 - (ii) proof of the costs actually incurred; and
- (c) where related to travel, be reasonable with regard to the route and class travelled.

10. (1) An employer that receives a claim for compensation or reimbursement must within 56 days of receipt of the claim—

- (a) pay the amount claimed in full; or
- (b) if the claim is disputed, provide written evidence of—
 - (i) why the claim is invalid; or
 - (ii) why the amount claimed is not reasonable.

(2) Failure to compensate or reimburse the worker the full amount claimed within 56 days will—

- (a) be recoverable in civil proceedings as a debt; and
- (b) incur interest.

Obligation to ensure the provision of necessary medical and dental care

11. (1) Employers must ensure the provision of medical and dental care as considered necessary and appropriate for the worker by the Senior Medical Officer or Dentist.

(2) In addition to care received in Ascension, necessary and appropriate medical and dental care includes, but is not limited to—

- (a) medical referrals to a specialist outside of Ascension;
- (b) travel and accommodation outside of Ascension for the worker to receive the relevant treatment; and
- (c) where necessary for the welfare of the worker, the cost of the worker being

accompanied.

(3) An employer must not require a worker to contribute financially to any medical or dental care deemed necessary and appropriate by the Senior Medical Officer or Dentist.

Failure to ensure the provision of necessary medical or dental care

12. (1) If the employer fails to ensure the provision of necessary medical or dental care—

(a) the Government—

(i) must provide the necessary medical or dental care; and

(ii) may recover the full cost from the employer;

or,

(b) the worker, or third party on behalf of the worker, who contributes to the cost of any necessary and appropriate medical or dental care—

(i) must be reimbursed in full by the employer.

(2) Claims for recovery or reimbursement from the employer must—

(a) be made in writing; and

(b) provide—

(i) details of the treatment received; and

(ii) proof of the costs incurred.

(3) An employer who receives a claim for reimbursement must within 28 days of receipt of the claim—

(a) pay the amount claimed in full; or

(b) if the claim is disputed, provide written evidence of—

(i) why the claim is invalid; or

(ii) the amount claimed as being inaccurate.

(4) Failure to reimburse the worker the full amount claimed within 28 days will—

(a) be recoverable in civil proceedings as a debt; and

(b) incur interest.

Pre-employment medical assessments

13. (1) Employers must—

(a) arrange a pre-employment medical assessment for every prospective worker; and

(b) pay for the assessment in full;

before entering into a contact with the worker.

(2) If—

(a) the worker has a pre-existing medical condition; and

(b) the employer considers it appropriate to determine whether the condition can be adequately cared for in Ascension;

the employer must share the pre-medical assessment with the Senior Medical Officer.

Obligation to provide suitable accommodation and utilities

14. (1) Employers must—

- (a) provide suitable accommodation for each worker; and
 - (b) allocate accommodation to the worker before the start of the relevant contract.
- (2) To be considered suitable, the accommodation must—
- (a) be safe, secure and in a good state of repair;
 - (b) include a supply of electricity and water;
 - (c) include access to waste water services;
 - (d) provide adequate ventilation;
 - (e) if the accommodation is shared, afford sufficient privacy to the individual;
 - (f) include access to toilet and washing facilities, including hot water;
 - (g) if a worker shares accommodation or toilet and washing facilities with persons other than those in Ascension on the same Primary Contract, be shared only with members of the same sex, where possible;
 - (h) include a washing machine and drying area, communal laundry facilities, or a laundry service provided by the employer; and
 - (i) where no catered messing facilities are available to the worker, include adequate self-catering facilities to enable the storage, preparation and consumption of food.
- (3) The employer must provide the worker with—
- (a) a reasonable periodic allowance of electricity and water;
 - (b) a reasonable payment in lieu of an allowance of electricity and water; or
 - (c) electricity and water at no cost to the worker.
- (4) If the worker is a Primary Contract employee, the relevant contract must—
- (a) identify the accommodation allocated; and
 - (b) provide details of the employee’s utility allowance.
- (5) The employer must have in place a suitable mechanism for the—
- (a) reporting of complaints regarding the suitability of the accommodation by the worker;
 - (b) reporting faults in the accommodation; and
 - (c) repairing of faults in a timely manner.

Failure to provide suitable accommodation

15. (1) If the employer fails to provide—
- (a) a suitable mechanism for reporting or repairing faults;
 - (b) a response to a request from a worker for a repair in a timely manner; or
 - (c) a response to a complaint with which the worker is dissatisfied;
- the worker may raise a complaint in writing with the Administrator.
- (2) If the Administrator considers the accommodation to be unsuitable, the Government may—
- (a) (i) take steps to make the accommodation suitable; or
 - (ii) provide suitable accommodation for the worker;
 - and
 - (b) charge the employer at a commercial rate for doing so.
- (3) If the employer fails to provide adequate facilities for self-catered accommodation,

the worker may—

- (a) purchase appropriate facilities for their accommodation; and
- (b) claim reimbursement of reasonable costs from the employer, including shipping costs.

(4) Any payment for utilities not made by the employer in accordance with the relevant contract will—

- (a) be recoverable in civil proceedings as a debt by the worker; and
- (b) incur interest.

Obligation to provide food and messing facilities

16. (1) Employers must provide—

- (a) catered messing facilities;
- (b) a reasonable periodic food stipend; or
- (c) some other arrangement of like effect;

for a worker while they are in Ascension.

Failure to provide food and messing facilities

17. (1) If an employer who has agreed to provide a worker with catered messing facilities fails to do so—

- (a) the Government may—
 - (i) take steps to ensure all workers are provided with food; and
 - (ii) charge the employer at a commercial rate for doing so;or
- (b) if no alternative provision of food is available to the worker, any reasonable amount the worker pays on food will—
 - (i) be recoverable in civil proceedings as a debt by the worker; and
 - (ii) incur interest.

(2) Any payment for a food stipend not made by the employer in accordance with the relevant contract will—

- (a) be recoverable in civil proceedings as a debt by the worker at the rate of two times the agreed amount; and
- (b) incur interest.

Crown Application

18. The following provisions do not apply to the Government—

- (a) regulation 9(3);
- (b) regulation 12(1)(a)
- (c) regulation 13(2);
- (d) regulation 15(2); and
- (e) regulation 17(1)(a).

EMPLOYMENT ORDINANCE, 2022

EMPLOYMENT (ALTERNATIVE CONTRACTUAL ARRANGEMENTS) REGULATIONS, 2022

(Sections 3(2), 5(4), 13 and 17)

Citation and commencement

1. These Regulations may be cited as the Employment (Alternative Contractual Arrangements) Regulations, 2022, and come into force on 20th June 2022.

Interpretation

2. In these Regulations—
- “**accompanying dependant**” means the dependant of an employee or contractor in Ascension on a Primary Contract;
- “**Household Contract**” means a contract of employment which does not satisfy the mandatory obligations set out in section 6 of the Employment Ordinance, 2022;
- “**Primary Contract**” means a contract of employment which satisfies the mandatory obligations set out in section 6 of the Employment Ordinance, 2022;

Household Contracts

3. (1) An employer may offer a Household Contract to—
- a Primary Contract employee;
 - a contractor; or
 - an accompanying dependant;
- who is already in Ascension with an entitlement to work in accordance with the Entry Control (Ascension) Ordinance, 2007.
4. (1) An employer may engage a short term employee on the basis that the contract—
- must be a Household Contract;
 - may not exceed 28 days in duration.
- (2) An employer—
- may engage the same employee in more than one short term contract;
 - may not engage the same employee for more than 56 days in a rolling 12 month period on short term contracts.
5. (1) An employer may engage a part time employee on the basis that the contract—
- must be a Household Contract;
 - must give the employee fixed hours;
 - may not require the employee to work—
 - more than 15 hours in any one week; or
 - more than 60 hours in any rolling four week period.
6. (1) An employer may engage a casual employee on the basis that the contract—
- must be a Household Contract;

- (b) may not require the employee to work—
 - (i) more than 15 hours in any one week; or
 - (ii) more than 60 hours in any rolling four week period.

7. (1) An employer may engage a full time employee on a Household Contract.

8. A contract of employment which does not comply with the provisions of these regulations is unenforceable as against the employee.

Engagement of a person under 18

9. (1) An employer may employ a person between 14 and 18 years of age—
- (a) on a part time basis; or
 - (b) on a casual basis.

10. (1) An employer may engage a person—

- (a) between the age of 14 and 18;
- (b) who has completed secondary education; and
- (c) who is in Ascension as an accompanying dependant;

under a youth trainee agreement.

- (2) Each youth trainee agreement must—
- (a) be approved by the Administrator;
 - (b) include adequate welfare safeguards;
 - (c) obtain the written permission of a parent or guardian consenting to—
 - (i) the employment of the person; and
 - (ii) the terms and conditions of the employment.

(3) A youth trainee agreement is not a contract of employment.
