

The Regulation of Employment in Ascension

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Ascension Island Government



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Introduction

1. Ascension is a working island. With the exception of a small number of tourists, everyone in Ascension is here because they are working, or because they are an *accompanying dependant* of a person who is working.
2. There is a small number of large *Employing Organisations* who make use of the island's strategic location, be that the US Space Force, the Royal Air Force supporting British Forces in the Falkland Islands, or the BBC's Atlantic Relay Station. There is a number of other, smaller employers providing services to the large *Employing Organisations* and to the community. Activity on the island is also supported by a flow of *contractors* who move on and off the island, providing specialist services.
3. Given the island's status as a working island, it is important that the Ascension Island Government provides a safe and stable environment which facilitates, supports and regulates the activities of the *Employing Organisations*, other *employers*, and their *workers*. Part of providing that environment means ensuring a stable and well regulated employment market that supports the bringing to Ascension of outside expertise as well as enabling *employers* to make best use of the individuals who are already on island.
4. Any policy concerned with regulating the employment market has to take account of Ascension's unique circumstances. It is an exceptionally remote and barren island. First and foremost therefore, it must ensure that *employers* are responsible for the basic welfare needs of their *employees* (and *accompanying dependants*) and *contractors*.
5. This policy also recognises that there is no right of abode in Ascension, and that consequentially *contracts of employment* must be limited in length. It seeks to recognise that individuals may be employed by the same *employer* on a series of separate but successive contracts, or may move between *employers*, thereby remaining employed on the island for a number of years.
6. In respect of dismissal and the expiry of contracts, the policy seeks to recognise the upheaval of being obliged to leave Ascension sooner than intended. In that regard the policy seeks to strike a balance between the interests of *employers* and the interests of their *employees*, ensuring that *employers* continue to have the ability to manage their workforces whilst obliging them to treat *employees* fairly in doing so.
7. Finally, no rights are meaningful without means by which they can be enforced, including access to an independent and impartial forum in which disputes can be resolved, and to effective remedies. This policy seeks to take an approach to enforcement and dispute resolution which recognises Ascension's unique circumstances. It does this by making best use of existing legal mechanisms to enable disputes to be resolved quickly, simply and cheaply.

Context

8. The Workman's Protection Ordinance, 1926 (WPO) regulates employment in Ascension. UK employment legislation does not apply in Ascension.¹ St Helena's Employment Rights Ordinance, 2010 does not apply in Ascension and was expressly disapplied in 2017.²
9. The WPO is outdated, no longer reflects the reality of employment in Ascension, and has a number of shortcomings. Taken in combination, this results in lack of clarity within the employment market, leading to undesirable outcomes for both *employees* and *employers*.
10. In order to seek to address this, officers from the Ascension Island Government (AIG) and the elected members of the Ascension Island Council sit on an Employment Reform Working Group (ERWG). The ERWG has been tasked with identifying key issues that require addressing and to propose policy options by which to address these. This policy is intended to give effect to the issues identified by the ERWG during 2020, and legislation will be brought forward to give effect to it. **The remainder of this policy is therefore drafted to reflect the law as it will be once the legislation has been enacted.**
11. Noting that the last significant update to employment legislation in Ascension was 1926, this policy is designed to be the first attempt at modernising the regulation of employment in Ascension, but certainly not the last. This policy – and any resulting changes to employment legislation – will be part of an iterative process which will seek to review and adapt regulation of employment in a timely and regular fashion based on the requirements of the market.

¹ See the St Helena Court of Appeal's decision in *Francis v Attorney General*

² Per the St Helena Law (Employment Rights Ordinance)(Disapplication) Order, 2017

Definitions

12. In this policy the following definitions apply:

“**Accompanied Status**” is a status under a *Primary Contract* which entitles the *employee* to be accompanied by one or more *dependants*, and which makes provision of 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 policy (e.g. *dependants* of members of Her Majesty’s Armed Forces).

“**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 of continuous employment, or for whatever period the *employee* was continuously employed if fewer than three months.

“**Casual worker**” means an individual engaged under a *contract of employment* which does not fix the *employee’s* hours of work, but under which the *employee* may be required to work up to 15 hours per week, but no more than 60 hours per rolling four-week period.

“**Child**” means a person who is under 18 years of age.

“**Contract of apprenticeship**” has the meaning given by the English common law, that is to say 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.³

“**Contract of employment**” means a contract of service between an individual *employee* and an *employer*, the hallmarks of which are that:

- 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).

A *contract of employment* 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* in like terms to assist in the provision of those services.

³ See *Dunk v George Waller & Son* [1970] 2QB 163

“Country or territory of return” means 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 (in respect of mid-contract return journeys and repatriation from Ascension) any other place where the individual has a right of abode or right to enter and remain.

“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*.

“Employing Organisation” has the same meaning as in the AIG Land and Business Policy.⁴

“Gratuity” is a lump sum paid by an *employer* to a *Primary Contract employee* at the completion of a *contract of employment*.

“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 welfare of the *employee*. This type of contract is therefore offered only to those who are already present in Ascension (e.g. as an *accompanying dependant* or as the holder of a *Primary Contract*).

“Part-time worker” means an individual who is employed under a *contract of employment* which fixes the *employee’s* hours of work and under which the *employee* may be required to work up to 15 hours per week and no more than 60 hours per rolling four-week period.

“Primary Contract” is a *contract of employment*, the hallmark of which is that it provides for transport to and repatriation from Ascension, and for welfare provisions; a *Primary Contract* may be either *Accompanied Status* or *Single Status*.

“Short-term worker” means an individual who is employed under one or more *contracts of employment*, each contract being of no more than 28 days in duration; where an individual has several short-term contracts with the same *employer*, then the combined term of all of the contracts must not be more than 56 days in a rolling twelve month period.

“Single Status” is a status under a *Primary Contract* which does not entitle the *employee* to be accompanied by *dependants*.

⁴ A copy of which may be accessed on the AIG web site: www.ascension.gov.ac

“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.⁵

“Mandatory welfare obligations” means provisions that require *employers* to provide for the basic welfare needs of *employees* (including any *eligible dependants*) and *contractors*, including 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.

⁵ In accordance with the Business Levy Ordinance, 2012

Purposes

13. The purpose of this policy is to achieve the following key objectives:
 - a. to set out the **mandatory welfare obligations** that *employers* must meet in respect of *employees* (and *accompanying dependants*) and *contractors*;
 - b. to formalise **Household Contracts** and clarify how they differ from *Primary Contracts*, thereby facilitating the employment of *accompanying dependants*, particularly as *casual workers* and *part-time workers*, and supporting local businesses;
 - c. to provide for a **minimum age of employment**, in line with Ascension's obligations under the United Nations Convention on the Rights of the Child;
 - d. to set out the requirement for *employers* to provide *workers* with a **written statement of particulars**, including the information that must be included in such a written statement;
 - e. to provide for **mandatory contractual terms** concerning the maximum permitted contract length and minimum notice periods, and to provide for *Primary Contract employees* to have a right to request paid time off for public duties in order to support the provision of essential public services;
 - f. to set out the eligibility of *employees* for, and the minimum requirements on *employers* in respect of, **gratuities**, including provisions concerning accrual across several separate but successive contracts with the same *employer*;
 - g. to set out the **policies and procedures for the management of employees** that *employers* must have in place, in particular concerning dismissal and the expiry of contracts and the offering of new contracts to existing *employees*.

Application and exemptions

14. This policy covers two main topics.
15. The first topic is the responsibility that *employers* are required to take for the welfare of those who work for them, whether as *employees* or as *contractors*, and any accompanying *dependants*. These are provided for in the form of *mandatory welfare obligations*.
16. The second topic is the regulation of the relationship between *employees* and their *employers*. The intention is to formalise and codify the employment practices that have developed in Ascension over time in the absence of statutory reform, and to bring clarity where there are areas of ambiguity or uncertainty.
17. In the application of provisions in both areas there is a need to recognise that there are many different kinds of employment and other contractual arrangements in Ascension. The intention is not necessarily to bring about any fundamental structural change, but to seek to accommodate the existing arrangements within a new legislative framework, and to use that opportunity to address areas of apparent ambiguity or uncertainty. For that reason, some aspects of this policy do not apply to all who work in Ascension.

Category A: exemption from all provisions

18. The follow classes of individuals are **exempt from all of the provisions** of this policy:
 - a. individuals employed directly by the UK or US Governments, including members of the armed forces of the governments of the UK or USA, who are posted to Ascension for a fixed period (including but not limited to FCDO, MOD, RAF and US Space Force and Air Force personnel);
 - b. individuals employed by other governments or by international or intergovernmental organisations who are working here on a short-term basis (including but not limited to the St Helena Government, or NATO);
19. The reasoning is as follows. The terms and conditions of those employed by governments and international / intergovernmental organisations who are posted to Ascension to work for a fixed period will be defined by an existing agreement regulated by the legal system of the jurisdiction in which they are employed. They therefore do not need the additional protection of local legislation.⁶

Category B: mandatory welfare obligations only

20. The following classes of individuals are covered by the ***mandatory welfare obligations*** only:
 - a. individuals employed by a non-governmental overseas employer under a contract which is enforceable in that jurisdiction (e.g. the UK or the USA) and who are posted to Ascension for a fixed period;

⁶ See *Lawson v Serco* [2006] UKHL 3

- 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 posted to the Ascension Island detachment.⁷
21. These individuals will already have a contractual relationship with either their overseas employer or with the individual or organisation on island to whom they are providing services as a *contractor*.
 22. Save for members of the St Helena Police Service, such individuals will generally be in Ascension on a Business or Contractor visa (or will be a contractor of the United States Government and therefore exempt from immigration control). AIG needs to be assured that the relevant *employer* is taking responsibility for the basic welfare needs of these individuals whilst they are in Ascension, but the terms on which they are employed or engaged are not a matter for local policy or legislation.
 23. The expression "*contractor*" as defined above includes a person who provides services whether *directly or indirectly*. This choice of words is deliberate: it is the intention of this policy that a subcontractor is treated the same as the head *contractor*, and that the Ascension-based *employer* is to be responsible for complying with the relevant obligations in respect of both. How this works in practice will depend upon the facts of the arrangement in question.

Category C: covered by all provisions

24. The following classes of individuals are **covered by all of the provisions** of this policy:
 - a. individuals who are recruited directly from overseas and employed under a *Primary Contract* (e.g. AIG employees);
 - b. individuals who initially came to Ascension on some other basis (including as an *accompanying dependant*), but who have since been recruited locally and employed under a *Primary Contract* or *Household Contract*.
25. These individuals will be employed under a local contract and so their employment relationship, as well as their basic welfare needs, is a matter of local legislation. To note that there are various exceptions in respect of individuals on *Household Contracts* but these are explained at the relevant points in the document.

⁷ See section 19 of the St Helena Police Service Ordinance, 1975

Employer's mandatory welfare obligations

26. Any *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 that individual (and any *accompanying dependants*) and must, at the *employer's* expense, comply with the following *mandatory welfare obligations* as a **minimum**:
- a. to arrange the *worker's* **transport to Ascension** from their *country or territory of return*;
 - b. once the *worker's* contract comes to an end, to arrange for the worker's prompt **repatriation from Ascension** to their *country or territory of return*;
 - c. where the contract is for a period exceeding 15 months, to arrange for a minimum of one **mid-contract return journey** to permit the *worker* to visit their *country or territory of return* (with provision for payment in lieu at the *worker's* request);
 - 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 required during the term of the contract;
 - e. to ensure the provision of **accommodation** that is suitable for the *worker*, including access to **utilities** (electricity, water supply and waste water services), and, as a minimum, either an adequate periodic water and electricity usage allowance, or payment in lieu;
 - f. to ensure the provision of **food and messing facilities** whilst the *worker* is in Ascension:
 - i. the provision of **food** may be substituted for an adequate payment in lieu (such as a food allowance);
 - ii. **messing facilities** must comprise either catered messing facilities (for example, as provided by the RAF and USAF), or self-catering facilities (including cold storage) by means of which the person can store, prepare and consume food in their accommodation.
27. These obligations apply from the start of the relevant contract until either (a) the *worker* departs Ascension in accordance with the *employer's* obligation to repatriate or (b) the obligation to repatriate ceases to apply, whichever occurs sooner.
28. To be clear, these obligations **do not** automatically cease to apply when an individual's contract comes to an end. *Employers* must ensure that they continue to comply with their obligations in respect of medical and dental care, accommodation and utilities, and food and messing facilities until such time as either the individual leaves Ascension or the obligation to repatriate ceases to apply.
29. Where the *worker* is an *employee* with *Accompanied Status*, the same provisions apply in respect of the *employee's* *accompanying dependants*.
30. These provisions are intended to set a minimum standard and are not intended to dissuade *employers* from making more favourable provisions (e.g. a greater number of mid-contract return journeys).

Country or territory of return

31. When an *employer* enters into a contract with a *worker*, the *employer* must establish, and the contract must state, the *worker's country or territory of return* (and that of any *accompanying dependants*).
32. Where the *worker* is recruited or engaged in Ascension then the *country or territory of return* will be the country or territory in which the *worker* was ordinarily resident immediately prior to beginning their initial journey to Ascension, or any other country or territory in which the *worker* (and any *accompanying dependants*) has a right of abode or a right to enter and remain.

Transport to Ascension

Principles

33. The *employer* is obliged to arrange (and pay for) the *worker's* transport to Ascension from their *country or territory of return*.
34. Where the *worker* is an *employee* with *Accompanied Status*, the *employer* must also, if so requested, arrange (and pay for) the transport of any *eligible dependants* to Ascension from their *country or territory of return*.
35. The obligation extends to the arrangement of travel to, and flights and / or voyages from, the port of departure to the individual's accommodation in Ascension, and includes the cost of accommodation and reasonable subsistence for any necessary overnight stay en route (e.g. in Johannesburg).
36. *Employers* must also provide or cover the cost of appropriate travel insurance for the *worker* and for any *eligible dependants*, including cover for delays and cancellations as well as medical cover.
37. The port of departure will usually be the nearest international air or seaport to the individual's home. Where direct flights to Ascension operate from the *country or territory of return* then the port of departure will be the nearest airport to the individual's home from which such flights operate. Where there are no direct flights, then the individual may nominate the most convenient port of departure within the *country or territory of return*.
38. If the contract does not expressly provide for this entitlement then a court may declare that it is an implied term.

Exceptions

39. The obligation to provide transport to Ascension does not extend to individuals on *Household Contracts*. This is because an *employee* on a *Household Contracts* can only be offered to those who are already in Ascension.
40. Where the *worker* (and any *eligible dependants*) is in Ascension immediately prior to the start of the relevant contract, there is no need for transport to Ascension and so the obligation does not apply. It is important to note that this does not affect the obligation on *employers* to repatriate *workers* (and any *accompanying dependants*).
41. It is **not** intended that this exemption should prevent individuals from taking leave off island at the completion of one contract and immediately before the commencement

of another (whether the relevant contract is with the same *employer* or two different *employers*). It is in the interests of an individual's welfare that they have the opportunity to take regular journeys off island, and *employers* are expected to facilitate this.

Enforcement

42. If an *employer* fails to provide transport to Ascension for a *worker* (and any *eligible dependants*), then the *worker* will have two options:
 - a. the *worker* may wish to 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 travel to Ascension (including appropriate travel insurance) and subsequently claim reimbursement from the *employer*.
43. Where the *worker* (or an *accompanying dependant*) pays for travel to Ascension because the *employer* has failed to do so, the law will provide that the individual is entitled to be reimbursed by the *employer* an amount that is double the actual cost incurred.
44. The enhanced amount of reimbursement is intended to give *employers* a proportionate economic incentive to comply with their obligation, as well as compensating the individual for any stress or inconvenience caused where the *employer* fails to do so.
45. The individual must make the request for reimbursement to the *employer* in writing, and *employers* are entitled to expect to see proof of the costs incurred. The amount claimed must be reasonable in the circumstances; that is to say for example that an individual should not expect to be reimbursed for travel by business class or via an unnecessarily indirect and more costly route. The reasonableness of the cost must also take into account the date on which the *worker* is required to begin work in Ascension.
46. The *employer* must reimburse the individual in full within 56 calendar days of receiving a written request supported by proof of the costs incurred. Any failure by the *employer* to reimburse the individual, or any difference between the amount to which the individual is entitled and the amount actually reimbursed by the *employer*, will be recoverable in civil proceedings as a debt on which the individual may also claim interest.
47. If the *employer* disputes the amount to which the individual claims to be entitled on grounds of reasonableness then it will be for the *employer* to show that the amount claimed is not reasonable.

Repatriation from Ascension (non-medical)

Principles

48. The *employer* is obliged to arrange (and pay for) the *worker's* prompt repatriation from Ascension to their *country or territory of return* at the end of the relevant

contract. The *worker* has a corresponding entitlement to be repatriated, even in circumstances in which the obligation to repatriate has ceased to apply.⁸

49. The *employer* is also obliged to arrange (and pay for) the repatriation of any *accompanying dependants* from Ascension to their *country or territory of return*. The *accompanying dependants* also have a corresponding entitlement to be repatriated, even in circumstances in which the obligation to repatriate has ceased to apply.⁹
50. The obligation extends to the arrangement of transport from the individual's accommodation in Ascension to the airhead or pierhead, flights and / or voyages to the *country or territory of return*, and then onward transport to the individual's nominated address. It includes the cost of accommodation and reasonable subsistence for any necessary overnight stay en route (e.g. in Johannesburg) and the cost of travel from the port of arrival to the individual's final destination.
51. *Employers* must also provide or cover the cost of appropriate travel insurance for the *worker* and for any *accompanying dependants*, including cover for delays and cancellations as well as medical cover.
52. If the contract does not expressly provide for this entitlement then a court may declare that it is an implied term.
53. To satisfy the requirement of promptness, the individual must usually depart from Ascension not later than the first available departure to their *country or territory of return* after the end of the relevant contract (but may depart sooner by mutual agreement). This will usually be the first available flight, but may in some cases be by ship. If the individual is to remain on Ascension after this then they are likely to need to apply for an entry visa in order to remain in Ascension lawfully.
54. Where an *employee* has *Accompanied Status*, the *employer* must also promptly repatriate any *accompanying dependants*.
55. The date of an individual's departure may lawfully be delayed if the individual is involved in criminal proceedings and is on bail the conditions of which require the individual to remain in the jurisdiction, or who is the defendant in criminal proceedings that are the subject of an on-going appeal. During this time, the *employer* remains responsible for the individual's welfare.
56. Similarly, the date of an individual's departure may lawfully be delayed if and whilst the individual is considered unfit to fly, or on compassionate grounds (e.g. where there has been bereavement). Any such delay is likely to need to be discussed with the immigration authorities in advance.
57. After the end of the relevant contract and whilst the obligation to repatriate applies, the *employer* must continue to fulfil the *mandatory welfare obligations* in respect of the *worker* and any *accompanying dependants*. In respect of off-island medical care, the AIG Senior Medical Officer will consider the necessity for an off-island referral in light of the individual's departure date; it is likely that an off-island referral will only be necessary during this period in cases of medical emergency.

⁸ As to which see paragraph 62

⁹ As to which see paragraph 62

58. Where a *worker* is contractually entitled to an allowance to ship personal effects and / or a vehicle to Ascension (including the personal effects of any *eligible dependants*), the *employer* is obliged to provide at least the same allowance (in volume terms) 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.
59. Where the *employer* provides for a shipping allowance, the *employer* must make provision for the timely repatriation of the *worker's* personal effects and / or vehicle (and those of any *accompanying dependants*). This will usually mean consigning the goods on the voyage closest to the date on which the *worker's* contract ends. The choice of voyage will be a matter to be discussed and agreed between *worker* and *employer*.

Exceptions

60. The obligation to repatriate does not extend to individuals on *Household Contracts*. This is because an *employee* on a *Household Contract* will already be entitled to repatriation either as a *Primary Contract employee*, as an *accompanying dependant*, or as a *contractor*.
61. The obligation to repatriate will normally apply only to those individuals who are in Ascension during the period between the end of the relevant contract and the first available departure to their *country of territory of return*. Individuals may depart before the end of the relevant contract by mutual agreement with the *employer*, e.g. where an *employee* has unused leave entitlement or an *accompanying dependant* wishes to travel ahead of their spouse / partner.
62. It may be mutually agreed between the individual and *employer* that the obligation to repatriate will cease to apply if the individual has, or obtains before the first available departure, an alternative entitlement to be repatriated, for example by being or becoming employed under a *Primary Contract*, or by being or becoming an *accompanying dependant* of another individual. However, whilst the *obligation* to repatriate will no longer apply, the individual will retain their entitlement to be repatriated and may wish to make use of this entitlement to take a break from the island. In the interests of welfare, *employers* should facilitate this.
63. The obligation to repatriate does not arise where an individual has left Ascension before the end of the relevant contract (e.g. in the circumstances envisaged in paragraph 61).

Enforcement

64. If an *employer* fails to provide prompt repatriation from Ascension for a an individual, then:
- a. the individual may pay for repatriation from Ascension (including appropriate travel insurance) and subsequently claim reimbursement from the *employer*;
 - b. AIG may arrange and pay for repatriation of the individual from Ascension and subsequently recover the full cost of doing so from the *employer*;
65. Where the individual is entitled to a shipping allowance, the provisions in paragraph 64 apply in respect of the shipping allowance.

66. Where an individual pays for repatriation from Ascension because the employer has failed to do so, the law will provide that the individual is entitled to be reimbursed by the *employer* an amount that is double the actual cost incurred.
67. The enhanced amount of reimbursement is intended to give *employers* a proportionate economic incentive to comply with their obligation, as well as compensating the individual for any stress or inconvenience caused where the *employer* fails to do so.
68. The individual must make the request for reimbursement to the *employer* in writing, and *employers* are entitled to expect to see proof of the costs incurred. The amount claimed must be reasonable in the circumstances; that is to say for example that an individual should not expect to be reimbursed for travel by business class or via an unnecessarily indirect and more costly route.
69. The *employer* must reimburse the individual in full within 56 calendar days of receiving a written request supported by proof of the costs incurred. Any failure by the *employer* to reimburse the individual, or any difference between the amount to which the individual is entitled and the amount actually reimbursed by the *employer*, will be recoverable in civil proceedings as a debt on which the individual may also claim interest.
70. If the *employer* disputes the amount to which the individual claims to be entitled on grounds of reasonableness then it will be for the *employer* to show that the amount claimed is not reasonable.

Mid-contract return journeys

Principles

71. In the interests of welfare, particularly that of *workers* who are unaccompanied, given the limited range of recreational opportunities in Ascension, it is reasonable to require *employers* to provide *workers* (and any *accompanying dependants*) with an opportunity to spend time off the island. This is primarily to enable individuals to visit friends and family in their *country or territory of return*.
72. Where a *worker's* contract exceeds 15 months, the *worker* (and any *accompanying dependants*) is entitled to a **minimum** of one return journey to the individual's *country or territory of return* during the term of the relevant contract. A mid-contract return journey should usually be taken during the middle third of the contract term.
73. The *employer* is obliged only to pay for flights / voyages to the individual's nominated port of arrival in the *country or territory of return*, and any necessary transit accommodation en route. There is no obligation on the *employer* to pay for subsistence, travel and accommodation during the individual's stay in the *country or territory of return* (or elsewhere, as the case may be).
74. *Employers* must also provide or cover the cost of appropriate travel insurance for the *worker* and for any *eligible dependants*, including cover for delays and cancellations as well as medical cover.
75. If the individual is a *Primary Contract employee* then the *employer* must provide the *employee* with sufficient paid leave to be able to take advantage of the mid-contract return journey with no loss of basic pay. In any event, a full-time *Primary Contract* employee must be entitled to not less than 30 days paid leave per year (with a pro rata allowance for part-time *employees*). This entitlement does not include public holidays.
76. If the contract does not expressly provide for these entitlements then a court may declare that they are an implied term.
77. If the individual is a *contractor* then the contract need not provide for paid leave but the *employer* must enable the *contractor* to take the necessary time off to be able to take advantage of the mid-contract return journey.
78. If the individual is an *accompanying dependant* employed on a *Household Contract* then the individual's *employer* is expected to facilitate the individual taking the mid-contract return journey to which they are entitled as an *accompanying dependant*, for example by allowing sufficient leave (paid or unpaid) for the individual to be able to do so.
79. *Employers* are encouraged to be flexible with regard to mid-contract return journeys and, where possible, facilitate alternative travel arrangements that still fulfil the purpose of enabling time to be spent off island. For example, *employers* may, at an individual's request, arrange travel to an alternative destination, or allow the individual to split their journey at a transit point in order to spend time there. However, the *employer* is not obliged to pay more than the cost of a return journey to the individual's *country or territory of return*, and the *employer* may require the individual to make up any difference in cost.

80. *Employers may permit accompanying dependants to take their mid-contract return journey separately from the employee and, where there is more than one accompanying dependant, separately from one another.*

Exceptions

81. The obligation to provide a mid-contract return journey does not extend to individuals on *Household Contracts*. This is because an *employee* on a *Household Contract* will already be entitled to a mid-contract return journey (if applicable) either as a *Primary Contract employee*, as an *accompanying dependant*, or as a *contractor*.
82. *Employers may permit a worker or an accompanying dependant, at the individual's request, to receive a payment in lieu of their mid-contract return journey. This must be agreed in writing, and the employer should have regard to the welfare of the individual and the proximity of their next opportunity for time off before deciding whether or not to agree to the request.*
83. Where 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 (for example, due to long-term disruption to available means of travel) then the *employer* may agree with the individual to make a payment in lieu. The *employer* should adopt a readily-available policy which makes clear the circumstances in which this may happen.

Enforcement

84. If an *employer* refuses to provide a mid-contract return journey for an individual (including failing to provide sufficient paid leave), then:
- a. where the individual is a *worker*, the individual will be entitled to claim from the *employer* a compensatory payment equal to double the notional cost of a return journey to the individual's original port of departure (i.e. the port from which the individual travelled to Ascension at the start of the relevant contract);
 - b. where the individual is an *employee*, the individual may also claim two months' basic pay;
 - c. where the individual is an *accompanying dependant*, the individual may either pay for the mid-contract return journey (including appropriate travel insurance) and claim reimbursement from the *employer* for an amount that is double the actual cost incurred, or claim a compensatory payment equal to double the notional cost of a return journey to the individual's original port of departure.
85. The compensatory payment and the enhanced amount of reimbursement are intended to give *employers* a proportionate economic incentive to comply with their obligation, as well as compensating the individual for any stress or inconvenience caused where the *employer* fails to do so. The compensatory payment reflects the leave that the *employee* would have used had the *employer* complied with the obligation.
86. Where making of a compensatory payment is sought, the individual must make the request to the *employer* in writing setting out the amount claimed and the basis on which it has been calculated. The calculations must be based on a reasonable

journey, e.g. 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.

87. Where reimbursement is sought, the individual must make the request for reimbursement to the *employer* in writing, and *employers* are entitled to expect to see proof of the costs incurred. The amount claimed must be reasonable in the circumstances; that is to say for example that an individual should not expect to be reimbursed for travel by business class or via an unnecessarily indirect and more costly route.
88. The *employer* must compensate or reimburse the individual in full within 56 calendar days of receiving a written request supported by either the basis on which it has been calculated (for a compensatory payment) or proof of the costs incurred (for reimbursement). Any 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.
89. If the *employer* disputes the amount to which the individual claims to be entitled on grounds of reasonableness then it will be for the *employer* to show that the amount claimed is not reasonable.

Medical and dental care

90. Ascension is a very remote location with limited medical facilities. As a result, there are medical conditions that are very difficult to treat effectively within Ascension. In medical emergencies evacuation from Ascension has to be by air which can take several hours or days to arrange and is very costly.

Principles

91. *Employers* are responsible for ensuring the provision of medical and dental care which is appropriate for the needs of each *worker* (and any *accompanying dependants*). This includes, where required, paying for medically necessary referrals to specialists outside of Ascension, and may include the funding of travel and accommodation overseas (e.g. to the UK, US or South Africa) for the *worker* and, in some instances, *accompanying dependants*.
92. Whereas the law provides that *employers* are responsible for ensuring the provision of medical and dental care, medical and dental services on island are provided by AIG. For those who are liable to pay income tax in Ascension, the services are provided free at the point of delivery. For those who are not liable to pay income tax, the services are not provided free at the point of delivery and payment is required. Payment may be arranged by means of *employer*-funded insurance cover, or by means of the *employer* either paying the fee directly or reimbursing the individual for fees paid.
93. Where a particular test, treatment or other medical / dental procedure is considered by the Senior Medical Officer or AIG Dentist to be necessary, *employers* are not to require individuals to contribute financially to the cost of it, and where an individual pays any fees for necessary medical or dental care then the *employer* is to reimburse them promptly and in full.
94. The question of whether treatment is necessary will be a matter for the Senior Medical Officer or AIG Dentist in their professional opinion. It maybe that, in some instances, an individual wishes to receive treatment which includes but goes beyond what is considered necessary. These instances will be dealt with on a case-by-case basis. In the event that there emerges evidence of disputes between individuals and employers as to what constitutes necessary medical treated, the law provides that the Governor may make regulations to prescribe what medical treatment will be automatically deemed necessary.
95. Where off island referrals are necessary the cost is not covered by general taxation and must be met by the *employer* in all cases. *Employers* may wish to insure against this risk but are not required to do so. The same applies to medical evacuation.
96. In order to ensure that the medical and dental services available in Ascension are appropriate to the individual, *employers* must carry out medical assessments in respect of their prospective *worker* and any potential *eligible dependants* before a contract is entered into. The purpose of the medical assessment is to ensure that any pre-existing health conditions the individual has are identified, and to assess the extent to which any such conditions will be, and are likely to remain, manageable whilst the individual is in Ascension.

97. In order to best manage risks associated with pre-existing medical conditions, *employers* are expected to share with AIG's Senior Medical Officer and Dentist any such medical assessment, and the law provides that regulations may be made to make this practice compulsory if necessary. This will enable the Senior Medical Officer and Dentist to provide advice to the *employer* about the extent to which any such conditions as the individual has will be, and are likely to remain, manageable whilst the individual is in Ascension, and about the risk associated with the individual being in Ascension in light of that advice. The ultimate decision as to whether an individual may come to, or remain in, Ascension rests with the *employer* on whom the obligation in respect of adequate medical and dental care falls.
98. This information also assists AIG in planning and managing the provision of adequate, cost-effective medical and dental services which reflect the risk profile of those present on island and ensure value for money.

Exceptions

99. The obligation to provide medical and dental care does not extend to individuals on *Household Contracts*. This is because an *employee* on a *Household Contract* will already have the benefit of medical and dental care either as a *Primary Contract employee*, as an *accompanying dependant*, or as a *contractor*.
100. Furthermore, given that *Household Contracts* tend to be used by smaller employers for short-term, part-time, or casual work, to impose an obligation to provide medical and dental care would be an unmanageable administrative and financial burden that might otherwise dissuade enterprising individuals from starting and carrying on a small business. In particular, there would likely be difficulty in managing the movement of responsibility between *employers* (especially if the individual has a chronic health condition).

Enforcement

101. Where an *employer* fails to ensure the provision of medical or dental care that the AIG Senior Medical Officer or Dentist consider necessary then AIG will take steps to provide the necessary care and will be entitled to recover the full cost of doing so from the *employer* as a civil debt on which interest may be claimed.

Accommodation and utilities

102. Save for a small number of guest rooms, there is no privately available housing accommodation in Ascension. The housing units that are available are allocated to *employers* under Housing Licences,¹⁰ and are not available to be rented privately by individuals. For that reason, *employers* are required to ensure the provision of suitable accommodation for *workers* and any *accompanying dependants*.

Principles

103. Accommodation must be allocated before the beginning of the relevant contract. *Employers* must ensure that allocated accommodation is suitable for the *worker* and any *accompanying dependants*. The accommodation must include access to electricity, water supply and waste water services. The employer must provide, as a minimum, either an adequate periodic water and electricity usage allowance, or payment in lieu.
104. In respect of *Primary Contract employees*, the employer must include in the *contract of employment* a brief description of the property in which the *employee* (and any *accompanying dependants*) will be accommodated. The contract must also contain details of any periodic electricity and / or water allowances, or the amount of payment in lieu and the frequency with which it is to be paid.

Suitability

105. What amounts to suitable accommodation will vary, so *employers* should have regard to the *worker's* personal circumstances, employment status and the location(s) at which they will work when allocating accommodation. An *employee* with *accompanying dependants* will need sufficient sleeping accommodation for everyone, whereas an *employee* with *Single Status* can be expected to need less space. An *employee* on a longer-term, *Primary Contract* is likely to need more living space than a *contractor* who is remaining in Ascension only for a short period (e.g. perhaps a few weeks).
106. When considering questions of suitability, the limited supply of housing units in a habitable condition may limit the extent to which an individual is able to be accommodated in their preferred location or type of accommodation. Where there are likely to be difficulties then *employers* are encouraged proactively to raise these with the *worker* and with AIG at the earliest opportunity and ideally before the *worker's* arrival in Ascension.
107. In all cases the accommodation must be safe, secure and in a good state of repair. It must have doors that are capable of being locked. It must provide adequate ventilation and, if possible, fans or air conditioning units. The *employer* should have in place some mechanism for the reporting and repairing of faults in a timely manner.
108. Where accommodation is shared it must afford privacy, including a sleeping area that is for the sole use of the individual or shared only with the individual's spouse / partner. Where a *worker* shares accommodation otherwise than with their *accompanying dependants* then the accommodation should be shared only with members of the same sex where possible.

¹⁰ A form of Land Occupancy Permit – see the Land and Business Policy on the AIG web site.

109. In the interests of hygiene, accommodation must include access to toilet and washing facilities (including hot water). If the toilet and washing facilities are shared then they should be shared only with members of the same sex where possible. 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*.
110. In order to ensure fairness and transparency in the allocation of accommodation, *employers* may wish to have a readily-available accommodation policy which sets out the basis on which accommodation is allocated and the standards to be expected. *Employers* should also have in place an open and transparent mechanism for receiving and resolving complaints as to the suitability or condition of accommodation.

Utilities

111. With regard to utilities, *employers* may wish to provide unmetered access to electricity, water or both, or to provide the *worker* with an uncapped allowance.
112. However, because of the challenges posed by Ascension's remote location, utility charges are relatively expensive in comparison to many other places. That being so, *employers* may wish to exercise a degree of control over their exposure to utility charges. *Employers* who wish to do so must provide, as a minimum, adequate periodic electricity and / or water allowances, or the equivalent payment in lieu. The allowances must take account of the size of the accommodation and the number of people living there, and be set at a level such that the allowances will cover an average level of usage over the relevant period.

Exceptions

113. The obligation to ensure the provision of suitable accommodation and utilities does not extend to individuals on *Household Contracts*. This is because an *employee* on a *Household Contract* will already have the benefit of suitable accommodation and utilities either as a *Primary Contract employee*, as an *accompanying dependant*, or as a *contractor*.

Enforcement

114. In respect of the suitability and condition of accommodation:
 - a. if the *employer* fails to provide accommodation **at all** then AIG may provide suitable accommodation and will be entitled to charge the *employer* at a commercial rate for doing so;
 - b. if the *employer* allocates accommodation which the *worker* considers to be unsuitable then the *worker* must make use of the *employer's* internal complaint resolution mechanism (if any);
 - c. similarly, if the *worker* has concerns about the condition of the accommodation then these should first be raised through the *employer's* mechanism for the reporting and repairing of faults and, if not satisfactorily resolved, through the *employer's* internal complaint resolution mechanism or grievance procedure;
 - d. if the *employer* has no internal complaint resolution mechanism, fails to respond to a complaint in accordance with its internal complaint resolution mechanism, or provides a response with which the *worker* is dissatisfied, then the *worker* may

raise the complaint in writing with the Administrator; the Administrator will then engage with the relevant *employer* to seek to resolve matters.

115. In respect of utilities:

- a. if the *employer* fails to provide a supply of electricity and / or water **at all** then AIG may take steps to ensure that a supply is provided (including arranging changes or repairs to local reticulation and / or the temporary provision of alternative accommodation) and will be entitled to charge the *employer* at a commercial rate for doing so;
- b. if the *worker* is liable for utility charges but the *employer* fails to provide the electricity and / or water allowance to which the *worker* is contractually entitled then the *worker* will be entitled to 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;
- c. if the *worker* is entitled to a payment in lieu but the *employer* fails to make payment in full when obliged to do so, then any shortfall will be recoverable in civil proceedings as a debt on which the *worker* may also claim interest.

Food and messing facilities

116. Given its remoteness and the lack of local agriculture, food security is an important concern in Ascension. The vast majority of food is imported. For those who do not have the benefit of catered messing facilities, there are private sector retail outlets on island that provide a limited range of mostly dried, tinned and frozen goods.

Principles

117. *Employers* are required to ensure the provision of food and messing facilities whilst the *worker* is in Ascension. This obligation also extends to any *accompanying dependants*.
118. There is considerable flexibility in how this obligation may be fulfilled. At one end of the scale, *employers* may wish to provide catered messing facilities whereby food is provided and prepared centrally. On the other hand, *employers* may prefer to provide *workers* with payment in lieu, such as a food allowance, so that they may buy food and prepare it themselves.
119. Where an *employer* chooses not to provide catered messing facilities then the *worker's* accommodation will be considered suitable only if it includes adequate self-catering facilities to enable the storage, preparation and consumption of food. This includes, as a minimum, a freezer, a fridge and a cooker (with oven and hob), as well as basic cooking utensils (including pans), cutlery and crockery.
120. *Employers* should have a mechanism for receiving and resolving complaints as to the adequacy of self-catering facilities and should address it as they would any other complaint about suitability.
121. *Employers* should advise in advance those who are recruited from overseas as to the facilities that will be available in their accommodation (e.g. by providing an inventory with the contract) so that they may bring additional items (e.g. microwave, bread maker, etc.) in any shipping allowance to which they may be entitled. If a *worker* is recruited from overseas but is not entitled to a shipping allowance then the *employer* should provide a more comprehensive set of cooking equipment.

Exceptions

122. The obligation to provide food and messing facilities does not extend to individuals on *Household Contracts*. This is because an *employee* on a *Household Contract* will already have an entitlement to food and messing facilities either as a *Primary Contract employee*, as an *accompanying dependant*, or as a *contractor*.

Enforcement

123. If an *employer's* food supply fails then AIG may take whatever steps are necessary to ensure that all individuals for whom the *employer* is responsible are adequately fed during any such failure, and will be entitled to charge the *employer* at a commercial rate for doing so.
124. If an *employer* fails to provide either food or a food allowance then the *worker* will be entitled to claim from the *employer* either an amount which is equal to double the food allowance to which the *worker* is entitled, or an amount to be determined by a court where there is no food allowance (including where the *employer* has agreed to provide catered messing facilities but has failed to do so).

125. The enhanced amount of reimbursement is intended to give *employers* a proportionate economic incentive to comply with their obligation, as well as compensating the individual for any stress or inconvenience caused where the *employer* fails to do so.
126. If an *employer* has agreed to provide a food allowance but has failed to provide adequate cooking equipment then the *worker* will be entitled to make good any deficit and to claim reimbursement from the *employer* the reasonable cost of doing so, including reasonable shipping costs. However, where the *employer* has in place a mechanism for receiving and resolving complaints about the adequacy of the self-catering facilities, then the *worker* will **not** be entitled to claim reimbursement unless they can show that they first raised a complaint through the *employer's* internal complaint resolution mechanism and that the complaint was rejected or remained unresolved. What amounts to "adequate cooking equipment" will be a matter for a court to decide in all the circumstances of the case.

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

127. In addition to *Primary Contracts* there is a form of contract which is referred to as a *Household Contract*. This is a term of general application that has been used historically to refer to contracts that are offered to individuals who are in Ascension by virtue of being an *accompanying dependant*. *Household Contracts* are normally used for short-term, part-time or casual work, but may be used for full-time work.
128. Where an individual on a *Household Contract* is an *accompanying dependant*, that person remains a *dependant* for immigration purposes. Their permission to remain in Ascension remains contingent on that of the *Primary Contract* holder of whom they are a *dependant*.
129. A *short-term worker* is an individual who is employed under a *Household Contract* and whose hours may or may not be fixed by that contract (so they may be full-time, part-time or casual) but who is employed on an occasional basis (i.e. for only a short period). Each contract must be no more than 28 days in duration. Where an individual has several short-term contracts with the same *employer*, then the combined term of all of the contracts must be not more than 56 days in a rolling twelve month period. These limits are intended to ensure that an individual who is employed as a *short-term worker* is genuinely working only on a short-term basis.
130. A *part-time worker* is an individual who is employed on a *Household Contract* and whose hours are fixed by that contract. A *part-time worker* must not usually be required to work more than 15 hours in any one week, and must not work more than 60 hours in any rolling four-week period. These limits are intended to ensure that an individual who is employed as a *part-time worker* is genuinely working only on a part-time basis.
131. A *casual worker* is an individual who is employed on a *Household Contract* but whose hours are not fixed by that contract. A *casual worker* must not usually be required to work more than 15 hours in any one week, and must not work more than 60 hours in any rolling four-week period. These limits are intended to ensure that an individual who is employed as a *casual worker* is genuinely working only on a casual basis.
132. The *mandatory welfare obligations* do not apply to *Household Contracts*, but some of the other provisions do. Given that *Household Contracts* tend to be used by smaller employers for short-term, part-time, or casual work, to impose the *mandatory welfare obligations* would be an unmanageable administrative and financial burden that might otherwise dissuade enterprising individuals from starting and carrying on a small business.
133. Furthermore, those who work on a short-term, part-time or casual basis fulfil important functions in Ascension, and that any employment policy should seek to facilitate this.

Minimum age of employment

134. Article 32 of the United Nations Convention of the Rights of the Child¹¹ creates an international legal obligation to prescribe a minimum age for admission to employment. There is currently limited provision in respect of the employment of children in section 51 of the Child Welfare Ordinance, 2011 but no lower age limit of general application.
135. It is not considered appropriate, in the interests of safeguarding, for a *child* to be employed on a *Primary Contract* or for a *child* to work on a full-time basis. However, the intention of this policy is not to prevent older children from benefitting from the experience of casual or part-time work so long as the work is not detrimental to their welfare. Fourteen years old is the minimum age in the UK at which a *child* is generally permitted to work, but a *child* of that age may only do light work and may only work limited hours.¹² In St Helena, a child may carry out light work from the age of 13, and all but hazardous work from the age of 16.¹³
136. This policy also seeks to make provision for *employers* to provide youth trainee schemes to enable children who have completed secondary education, but who do not wish to take part in further academic study, to take part in work-based vocational training to prepare them for the transition to employment.

Principles

137. An employer must not employ a *child* other than as a *casual worker* or *part-time worker* on a *Household Contract*.
138. An *employer* who employs a *child* as a *part-time worker* or *casual worker* may require the *child* only to do light work, that is to say work that is not likely to be detrimental to the child's health, education or development.¹⁴ The child may only be employed with the written permission of the child's parent or guardian.
139. An *employer* must not employ any *child* under the age of 14 years.

Exceptions

140. An *employer* may engage a *child* who has completed secondary education, and who is in Ascension as a *dependant*, in a Youth Trainee Agreement. This agreement must be in a form approved by the Administrator, and must include adequate safeguards for the *child's* welfare. The *youth trainee's* parent or guardian must also provide written consent to the agreement. A Youth Trainee Agreement is not a form of *contract of employment*.

Enforcement

141. Any *employer* found to have employed a *child* who is between the ages of 14 and 18, other than as a *casual worker* or a *part-time worker* on a *Household Contract*, and / or without written permission from the *child's* parent or guardian, will be subject to a maximum fine of £5,000 and a court may declare any such contract to be invalid.

¹¹ <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>, last accessed 16 June 2020

¹² See section 18 of the Children and Young Persons Act 1933; section 18(2) provides scope for byelaws permitting children of 13 years of age to work in specific, limited circumstances

¹³ See Part XVA of the St Helena Welfare of Children Ordinance, 2008

¹⁴ See section 51(1) of the Child Welfare Ordinance, 2011

142. Any *employer* found to have employed a *child* who is under 14 years of age will be subject to a maximum fine of £10,000 and a court may declare the contract to be invalid.
143. Any *employer* found to have required a child to perform work that is detrimental to the child's health, education or development (whether pursuant to a lawful contract or otherwise) commits a criminal offence and may be fined up to £5,000, sentenced to imprisonment for six months or both.¹⁵
144. The law will provide that the Governor may make regulations to further prescribe the conditions under which children can work. For example, it may become necessary to stipulate that children must not be required to work on a school day, and must not be required to start work very early in the morning or to finish work very late at night.

¹⁵ Child Welfare Ordinance, 2011, section 51(6)

Written statement of particulars

Principles

145. An *employer* must provide to a prospective *worker* a statement in writing setting out the particulars of their employment or engagement. The particulars need not necessarily be included in a contract, and may be included in a staff handbook or similar document and incorporated into the contract by reference.
146. Where the particulars are set out in a staff handbook or similar document then a copy of that document in a durable form (e.g. a hard copy or an electronic document) must accompany the contract.
147. Where the statement of particulars is separate from the contract, the *employer* must provide it to the prospective *worker* at the earliest opportunity and in any event before the *worker* is required to sign and return any contract.
148. 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. An electronic copy will be acceptable but the *employer* may ask the individual to bring the original with them, or to sign a further hard copy once they have arrived in Ascension.
149. 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*.

Particulars for workers (i.e. employees and contractors)

150. All contracts must include the following information (but note that items d to k are not required for a *Household Contract*):
 - 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 end;
 - d. the *worker's country or territory of return*;
 - e. the *worker's* 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), where applicable;
 - 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 the details of any electricity and / or water allowance or the amount of any payment in lieu;
 - j. the particulars of the *employer's* food and messing arrangements, including the amount of any food allowance that is payable;
 - k. the application of the above in respect of any *eligible dependants*.

Particulars for employees only

151. For *employees*, including those on *Household Contracts*, the statement of particulars must include the following:
- a. whether the contract is a *Primary Contract* or a *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;¹⁶
 - 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 holiday pay), including public holidays;¹⁷
 - 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. details of any contractual probation period;
 - k. the procedure for ending the contract (including the minimum notice period).

Particulars that apply only to Primary Contracts

152. Where the contract is a *Primary Contract*, the following must be included
- a. whether the contract is *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;
 - c. where applicable:
 - i. the names and dates of birth of all *eligible dependants*;
 - ii. the country of territory of return for all *eligible dependants* (if different from that of the *employee*);
 - d. the currency and amount of *gratuity* to be paid and arrangements for its payment;
 - e. where applicable:
 - i. the date on which the *employee's* period of successive employment began for the purposes of gratuity entitlement (i.e. the date of the first

¹⁶ In respect of which see the Sunday Observance (Ascension) Ordinance, 1849

¹⁷ In respect of which see the Public Holidays (Ascension) Ordinance, 1945

contract entered into between the *employer* and *employee* if the relevant contract will be a separate but successive contract);

- ii. 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.

Enforcement

153. In order to ensure that *employers* are complying with the requirements set out above, the law will provide that an *employee* may complain to the Supreme Court about any defect in the written statement of particulars.
154. Where the Supreme Court agrees that the written statement is defective then it may make a declaration to that effect, it may order that the employer remedy the defect within such period as the Supreme Court may determine, or it may remedy the defect itself where the necessary amendment is clear and obvious.
155. Where the Court orders the *employer* to remedy the defect within a set period, and the *employer* fails to do so or does so in a way that does not satisfactorily remedy the defect, the *employee* may bring the matter back to the Supreme Court. If the Supreme Court agrees that the *employer's* remedy is not satisfactory then the *employee* will be entitled to a compensatory payment equal to one month's basic pay.
156. This compensatory payment is intended to give *employers* a proportionate economic incentive to comply with their obligation to remedy the defect, as well as compensating the individual for any stress or inconvenience caused by the *employer's* failure to do so.
157. Where the Court remedies the defect itself, it may do so with retrospective effect.

Mandatory contractual terms

Maximum permitted contract length

158. Unlike the UK, St Helena and much of the rest of the world, those present on Ascension do not have a right of abode. This is a long-standing policy of Her Majesty's Government and reflects the fact that Ascension is, and always has been, primarily a working island. That being so, those who are here are generally on a time-limited entry visa, or have the benefit of an exemption from immigration control by virtue of their employment (for example, those employed in connection with the US government facilities and therefore exempt under the Bahamas Agreement).
159. One of the consequences of there being no right of abode is that contracts offered in Ascension must be for a fixed term. The Workmen's Protection Ordinance, 1926 previously provided that for St Helenians a contract must be no longer than three years, or two years if the individual is married and not accompanied by his wife; in all other cases, a contract can be for as long as the Governor approves. Successive practice over many years has been to offer contracts that are no longer than 30 months in length.
160. The different treatment that the Workmen's Protection Ordinance provides for St Helenians is no longer acceptable. There can be no difference in treatment based purely on national or territorial origin, gender or marital status.

Primary Contracts

161. A *Primary Contract* must not exceed 30 months in length, but an *employee* may enter into separate but successive contracts with the same *employer*.
162. However, an *employer* is entitled, where the *employee* agrees, to extend an *employee's* contract beyond 30 months in order to cover the period between the date on which the contract is stated to end and the date of the first available departure to the individual's *country or territory of return* after that date. This recognises Ascension's remote location, and the fact that transport from the island may not always be regular or reliable.
163. The Governor retains the right to permit contracts beyond 30 months' duration.

Household Contracts

164. A *Household Contract* must not extend beyond the date on which the *employee* is entitled to remain in Ascension under Ascension's immigration law. This date must be determined by the *employer* and reflected in the contract.
165. If the *employee* is also employed under a *Primary Contract* this will be the date on which the *employee's Primary Contract* is stated to end.
166. If the *employee* is an *accompanying dependant* then this date will depend on the contract of the *Primary Contract* holder of whom the individual is an *accompanying dependant*. If an *employer* fails to reflect this date in the contract then the contract will end when the *employee* ceases to be entitled to remain in Ascension as a matter of immigration law.
167. If the *employee* is also a *contractor*, then this will be the date on which the individual's entry visa expires.

Enforcement

168. In order to ensure that *employers* are not issuing *Primary Contracts* or *Household Contracts* which exceed the above maximum permitted contract length, the Administrator is entitled to require in writing any *employer* to provide copies of any *contract of employment* together with an affidavit confirming its authenticity. The *employer* must comply within 28 calendar days.
169. If the *employer* fails to provide the copies and affidavit when required to do so, then the Administrator may make an application to the Supreme Court for an order requiring the *employer* to deliver up the required copies within such period as the Supreme Court may direct. Any failure to comply with an order of the Supreme Court will be dealt with as contempt of Court and may be punished accordingly.
170. If the *employer* provides copies which do not comply with the maximum permitted contract length then 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, and / or (b) to make such changes to all extant non-compliant contracts and to any future contracts as are necessary to comply with the law, and to do so within such period as is reasonable in the circumstances.
171. An *employer* who fails without reasonable excuse to comply with a requirement imposed by the Administrator to provide information and / or to make changes to extant and future contracts commits a criminal offence and will be subject to a maximum fine of £10,000.
172. Furthermore, any contract which exceeds the maximum permitted contract length will be unenforceable as against the *employee*, but the *employee* (and any *accompanying dependants*) will remain entitled during its purported term to the benefit of the *mandatory welfare obligations*.

Minimum notice period

Principles

173. Except during a contractual probation period when a shorter period may apply, the following **minimum** notice periods apply:
 - a. *Primary Contracts*: two months;
 - b. *Household Contracts*: two weeks.
174. *Employers* must include a notice period in their *contracts of employment* which is not less than that set out above (but may be more). In the absence of a contractual provision as to notice, the law will imply a minimum notice period in line with those set out above.
175. A *Primary Contract employee* who has been dismissed without notice continues to be entitled to the *mandatory welfare obligations* for a period equal to their statutory notice period so that they may remain on island in order to make arrangements to leave Ascension. This applies even if the *employee* has been paid in lieu of notice. During this period the *employer* is responsible for ensuring that the *mandatory welfare obligations* are also met in respect of any *accompanying dependants* who

remain on island. The *employee* may waive the right to remain in Ascension by agreement with the *employer*.

176. For immigration purposes the *employee* will be deemed to have been granted an entry visa for a period equal to the statutory notice period, and any *accompanying dependants* will be treated accordingly. This does not affect the powers of the Administrator or Chief Immigration Officer, and does not prevent the removal from Ascension of an individual whose presence is considered undesirable in the public interest.

Exceptions

177. The statutory minimum notice periods do not apply in cases of summary dismissal for gross misconduct or similarly serious conduct. The *employer's* conduct and discipline policy must define what amounts to gross misconduct or similarly serious conduct.

Enforcement

178. In the event that an *employee* is dismissed without being given sufficient notice (or pay in lieu of notice) then, unless paragraph 177 applies, the *employee* will be entitled to bring a claim against the employer for an amount which is double the difference between the amount the *employer* has paid (if any) and the amount in basic pay that the *employee* would otherwise have been due. The *employee* is also entitled to claim any unpaid holiday pay to which they are contractually entitled.

Time off for public duties

179. The nature of Ascension means that many important roles (e.g. elected members of the Island Council, Justices of the Peace and lay advocates, etc.) are fulfilled by volunteers, including by *workers* in their own time. Given the important contribution that these people make to the continued good governance of the island, it is in the interests of all *employers* that the involvement of individuals in these roles be encouraged and supported.
180. Accordingly, all *Primary Contracts* must provide for *employees* to have a right to request paid time off for public duties and *employers* may wish to have a policy covering such requests. Paid time off is not an entitlement: time to be taken as paid time off for public duties must be agreed between the *employee* and *employer* in advance. *Employers* are entitled to decide how much time off is reasonable and may decline to agree to a request if they consider the time off requested to be excessive, or for reasons of business need.
181. Time off for public duties also extends to cover those who are reservists of Her Majesty's Armed Forces (e.g. members of the Army Reserve, Royal Navy or Royal Marines Reserve, or Royal Auxiliary Air Force).

Gratuities

182. A *gratuity* is a sum of money paid by an *employer* to an *employee* following the completion of their *contract of employment*. It provides a means by which *employees* can save money when other means of saving may not be open to them due to Ascension's limited banking facilities and/or to make pension contributions in their *country or territory of recruitment*. It may also have the effect of reducing turnover by incentivising *employees* to complete the full term of their contract.

Principles

183. *Employers* must provide a *gratuity* scheme to *Primary Contract employees* so that they receive a *gratuity* at the completion of their *contract of employment*.
184. *Employers* must set out in their *contracts of employment* the currency and amount (or basis for calculating the amount) of *gratuity* payable and the arrangements for its payment. When the *employee's* contract ends, the *employer* must pay the full amount of *gratuity* to the *employee* within 28 calendar days unless the *employee* has entered into a separate but successive contract with the same *employer*.
185. Where the *employee* has entered into a separate but successive contract with the same *employer*, the *employer* may, at the *employee's* written request, retain the *gratuity*. The obligation to pay the *gratuity* will then be deferred until the end of the subsequent contract, and the *gratuity* may be retained again if a further separate but successive contract is entered into.
186. Where an *employee* is continuously employed by the same *employer* on a series of separate but successive contracts, each contract after the first must record the date on which the *employee's* continuous period of employment began, and must state the amount of *gratuity* accrued over that period.
187. An *employer's* obligation to pay a *gratuity* accrued during previous separate but successive contracts is not affected by dismissal. In the event of the *employee's* dismissal, any previously accrued *gratuity* must be paid to the *employee* in full within 28 calendar days.
188. In the event that the *employee* dies during the term of the contract, any previously accrued *gratuity* must be paid either to the *employee's* next of kin (if nominated) or to the *employee's* estate. *Employees* are entitled to nominate a person as their next of kin for *gratuity* purposes.
189. *Employers* must ensure that adequate arrangements are in place to protect money that has been allocated to pay *gratuities*. Where an *employer* retains a *gratuity* at an *employee's* request, the money will be deemed in law to be held on trust by the *employer* for the benefit of the *employee*. This means that the *employer* cannot spend the money, and must account for it separately from its business accounts (ideally in a separate bank account maintained specifically for that purpose).

Exceptions

190. *Employers* are not obliged to provide a *gratuity* scheme to *employees* on *Household Contracts*, but may do so if they wish.

191. An *employer* may provide for their *employee* a pension scheme in lieu of a *gratuity* scheme. The obligation to provide a *gratuity* scheme will not apply if a suitable pension scheme is in place. In order for a pension scheme to be suitable:
- a. the scheme must be such that 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 (e.g. a right of abode);
 - b. the *employer's* contributions in any given period must be of at least an equivalent value to that which the *employer* would have been obliged to pay as a *gratuity* at the end of the same period.
 - c. the *employer* must arrange for the provision to the *employee* of details of the pension scheme, and with periodic statements (no less than annual) on the *employee's* entitlement under the pension scheme.

Enforcement

192. Where an *employer* fails to pay to an *employee* the full amount of *gratuity* (including accrued *gratuity*) to which they are entitled within 28 calendar days of the end of the relevant contract then the *employee* is entitled to claim the difference between the amount to which the *employee* is contractually entitled and the amount actually paid out by the *employer*. This will be recoverable in civil proceedings as a debt on which the *employee* may also claim interest. This does not apply if obligation to pay the *gratuity* has been waived in writing in accordance with paragraph 185.
193. In addition to the amount of *gratuity* owed, the *employee* may also claim a compensatory payment for any delay between the end of the 28-day period and the date on which payment is received in full. This compensatory payment accrues at the rate of two day's basic pay per full or part week until the payment is received in full.
194. For the purpose of ensuring that *employers* have in place either adequate arrangements to protect money that has been allocated to pay *gratuities*, or a suitable pension scheme, the Administrator is entitled to require in writing any *employer* to provide details of its *gratuity* scheme or pension scheme. The *employer* must comply within 28 calendar days.
195. If the *employer* fails to provide the details required, then the Administrator may make an application to the Supreme Court for an order requiring the *employer* to deliver up the necessary information within such period as the Supreme Court may direct. Any failure to comply with an order of the Supreme Court will be dealt with as contempt of Court and may be punished accordingly.
196. If the *employer* provides information which fails to demonstrate that it has in place either adequate arrangements to protect money that has been allocated to pay *gratuities*, or a suitable pension scheme (the burden of proof being on the *employer*) then the Administrator may require the employer to take such steps as are necessary to comply with the law, and to do so within such period as is reasonable in the circumstances.

197. An *employer* who fails without reasonable excuse to comply with a requirement imposed by the Administrator to take necessary steps commits a criminal offence and will be subject to a maximum fine of £150,000.
198. An *employer* that is discovered to have failed to make adequate arrangement to protect money that has been allocated to pay *gratuities*, otherwise than in accordance with the procedure above, commits a criminal offence and will be subject to a maximum fine of £150,000.
199. An *employer* that is discovered to have failed to provide both a *gratuity* scheme and a suitable pension scheme commits a criminal offence and will be subject to a maximum fine of £150,000.
200. Where there is evidence that an *employee* has had neither had the benefit of a *gratuity* nor a suitable pension scheme, then a court may of its own motion make a compensation order in favour of that *employee*. The amount of compensation will be equal to the value of the amount of *gratuity* that the *employer* would have been obliged to pay had it complied with its obligations in respect of *gratuities*, or where the *employer* has no *gratuity* scheme in place, such sum as the court considers appropriate in the circumstances.

Policies and procedures for the management of employees

201. *Employees* are entitled to expect that their *employer* will treat them fairly and that decisions made about their employment will be made in a manner that is open and consistent with how the *employer* treats other *employees*. In the interests of transparency, *employees* can expect their *employer's* policies about the terms and conditions of employment to be made readily available, and for their *employer* to communicate changes to those policies in a timely manner and prior to the changes being implemented.

Principles

202. All *employers* other than *small employers* are expected to have in place, and to make readily available to *employees*, policies concerning the management of their *employees*.

203. A policy will be readily available to *employees* if it is provided to them in hard copy or, if they have regular access to their employer's computer network, if it is stored in a shared drive to which the employee has access and to which they have been directed.

204. When a policy changes, that change must be communicated to all *employees* before it takes effect. Policies should not be changed retrospectively without good reason, particularly where this may have unfair consequences for *employees*.

205. The *employer's* policies must also be provided to *employees* prior to the commencement of their *contract of employment*.

Exceptions

206. This obligation does not apply to *small employers*. This is to ensure that *small employers* are not subject to unmanageable administrative burdens that might otherwise dissuade enterprising individuals from starting and carrying on a small business.

207. If an employer ceases to be a *small employer*, then the above will apply from that point unless the employer returns to being a *small employer* again.

Policies concerning dismissal

208. Dismissal without good reason is a particular concern for *employees* in Ascension. This is not surprising given the fact that dismissal, for an *employee* with a *Primary Contract*, will usually mean being required to leave the island sooner than intended. Where an employee has *Accompanied Status* this will also affect any *accompanying dependants*. Where those *accompanying dependants* include children, the *employee's* departure is likely to be accompanied by additional burdens such as the need to make arrangements concerning school admissions in the *country or territory of return*.

209. For that reason, *employers* must ensure that decisions to dismiss a *Primary Contract employee* are made in accordance with a relevant, readily-available policy, that any specified process is properly followed, and that the decision is based on reliable evidence.

Principles

210. *Employers* must have in place policies in respect of matters that may lead to a *Primary Contract employee* being dismissed, or to a *Primary Contract employee* resigning and claiming to have been constructively dismissed. This includes, but is not limited to, the following;
- 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), 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.
211. Where there are any other grounds on which an *employee* may be dismissed, the *employer* must set these out in a readily-available policy. The policy must set out and explain the grounds on which an *employee* may be dismissed, and explain the process that the *employer* will follow in such cases.
212. It is acceptable for an *employer* to include "Some Other Substantial Reason" ("SOSR") as grounds for dismissal. That is to say that the sole or main reason for dismissal may be "*some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held*". It is not possible to enumerate the grounds on which a SOSR dismissal would be considered valid, as the analysis will depend upon the facts of the case.
213. Any policy which includes the prospect of dismissal must include a right to be accompanied to any meeting, interview or hearing, and a right of appeal against the decision to dismiss. An *employee* may be accompanied by a friend or relative, a colleague, or a Lay Advocate, and must be given sufficient notice of meeting, interview or hearing to be able to prepare for it and to make arrangements to be accompanied.
214. At the point of dismissal, *employers* must provide the *employee* with a written explanation as to why they have been dismissed, including a reference to the relevant policy. Dismissal will only be in accordance with the *contract of employment* if it is for a reason which is set out in the relevant policy. The burden is on the *employer* to prove the reason for the dismissal. Furthermore, the *employer* must be able to demonstrate that the reason relied on is genuine, that any specified process has been properly followed, and that the decision is based on reliable evidence.

215.

Exceptions

216. **Small employers:** These requirements will not apply whilst an *employer* is a *small employer*. This is to ensure that *small employers* are not subject to unmanageable administrative burdens that might otherwise dissuade enterprising individuals from starting and carrying on a small business.
217. If an *employer* ceases to be a *small employer*, then the above will apply from that point unless the *employer* returns to being a *small employer* again. This means that an *employee* who is dismissed whilst the *employer* is not a *small employer* may be able to bring a claim in reliance on the obligations later, even if the *employer* has subsequently become a *small employer* again. This is because the events that give rise to the potential claim happened at a time when the *employer* was not a *small employer* and was therefore subject to the obligations above.
218. **Household Contracts:** these requirements do not apply to those on *Household Contracts*. *Household Contracts* are often used for short-term, part-time or casual work and extending these provisions to cover them would be likely to dissuade *employers* from offering them so readily. This would be disadvantageous to both *employers* and to prospective *Household Contract employees*. Furthermore, the consequences of being dismissed from a *Household Contract* are less disruptive than being dismissed from a *Primary Contract*, and so a lower level of protection is justified.

Enforcement

219. An *employee* who is dismissed otherwise than in accordance with a relevant, readily-available policy will have been dismissed in breach of contract and may bring a claim against the *employer* for compensation arising from their dismissal.
220. In any such claim it will fall to the *employer* to prove on balance of probabilities that the decision to dismiss was made in accordance with a relevant, readily-available policy, that any specified process was properly followed and was fair, and that the decision was a rational one based on evidence that the *employer* was entitled to consider to be reliable.
221. It will not be for a court to consider the merits of the *employer's* reason for dismissal, provided the reason is set out in a readily-available policy. A court will not be able to consider whether the *employer* acted reasonably in dismissing the *employee* unless the procedure was either not followed or was unfair, the evidence relied upon was unreliable, or the *employer* acted in a legally irrational way.
222. Compensation may be subject to a statutory cap calculated on the remaining term of the *employee's* contract.

The offering of new contracts to existing employees

223. Unlike the UK, St Helena and much of the rest of the world, those in Ascension do not have a right of abode. This is a long-standing policy of Her Majesty's Government and reflects the fact that Ascension is, and always has been, primarily a working island. That being so, those who are in Ascension are generally on a time-limited entry visa, or have the benefit of an exemption from immigration control by virtue of

their employment (for example, those employed in connection with the US facilities and exempt under the Bahamas Agreement).

224. One of the consequences of there being no right of abode is that contracts offered in Ascension must be for a fixed term. Successive practice over many years has been to offer contracts that are up to 30 months in length. When a contract is coming to an end, the *employee* may be offered a new contract separate to, but following on successively from, their current contract. In this way it is possible for individuals to remain on the island with the same *employer* beyond the term of their initial contract.
225. Unlike in the UK, the expiry of a fixed-term contract **does not** amount to a dismissal. No *employee* is entitled to be offered a new contract when their current contract expires. *Employers* are not required to follow the same policies in respect of the expiry of a contract as they are in respect of dismissal.
226. However, the expiry of an *employee's* contract can be a cause for some anxiety, especially if the individual has been in Ascension for many years and will need to make substantial arrangements in order to relocate to their *country or territory of return*.
227. For that reason, *employers* must have a policy concerning the offering of new contracts to existing *Primary Contract* employees. The policy must provide that:
 - a. where an *employee* is to be offered a new contract, the offer must not be made more than six months before the end of the *employee's* contract, or 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* contractual notice period; *employers* may wish to provide more notice to *employees* who have *Accompanied Status*, especially if they have children of, or approaching, school age.
228. 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 any health condition that the *employee* has is likely to continue for the duration of the proposed contract to be capable of being met within the framework of Ascension's limited medical facilities;
 - 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.

229. Where an *employee's* current role is changing, or the *employer* is planning on making changes that are likely to affect it, then the *employer* should consider whether it may be appropriate to offer a shorter contract to the existing *employee* (e.g. 12 months rather than 24 months).
230. If the requirements of the role are to change, then the *employer* should make a reasonable assessment as to whether the *employee* is capable of performing the role in its changed form.
231. If the *employee* is considered no longer capable of fulfilling the role, or if the role is to be eliminated as part of changes to the *employer's* business, then the *employer* should consider whether there are alternative roles that the *employee* can be offered, even if they are less well-paid.
232. To be clear, the obligations set out above are not intended to grant any *employee* an entitlement to a new contract.

Exceptions

233. These requirements do not apply to *small employers* or to employees on *Household Contracts* for the reasons given in the section above on policies concerning dismissal.

Enforcement

234. If an *employer* fails to give the *employee* a written decision by no later than the start of the *employee's* contractual notice period, the *employee* and any *accompanying dependants* will be entitled to remain on island until the first available departure to the individual's *country or territory of return* after the end of a period equal to the duration of the *employee's* contractual notice period but beginning on the date on which the *employer* provides the written notice to the *employee*. If an *employer* fails to provide a written notice by the end of the *employee's* contract then the contractual notice period will be deemed in law to begin on the date the contract comes to an end.
235. During this period the *employer* is responsible for ensuring that the *mandatory welfare obligations* are met in respect of the *employee* and any *accompanying dependants*. For immigration purposes the *employee* will be treated as remaining employed during this period, and any *accompanying dependants* will be treated accordingly.
236. If the *employer* provides a written notice which does not set out the reason for the *employer's* decision to not offer a new contract, or does not provide a written notice at all, then the *employee* is entitled to 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*.
237. The purpose of the compensatory payment is to punish the *employer* on the assumption that, in the absence of a reason the *employer* is willing to put in writing the decision to not offer a new contract is unfair or arbitrary. The purpose of basing the calculation of the award on the length of successive employment is to reflect the impact on the *employee*: an *employee* who has been successively employed on several separate but successive contracts with the same *employer* will be more affected by a decision not to offer a new contract than an *employee* who is coming to the end of their first contract.

238. The compensatory payment is not intended to compensate the *employee* for any future loss because as noted, no *employee* is entitled to a new contract. Nor is it intended to compensate the *employee* for the inconvenience associated with having to leave Ascension: given that there is no right of abode, the default position is that a *worker* and any *accompanying dependants* must be prepared to leave at the end of the relevant contract unless and until a new contract is offered and accepted.

Dispute resolution

239. In the UK, employment disputes are generally resolved by recourse to the specialist Employment Tribunal. This is a statutory tribunal with a Bench made up of two lay members and a legally-qualified Chair. The lay members are selected for their expertise and experience in respect of employment matters.
240. Ascension's small and constantly changing population, remote location and slow, unreliable and expensive internet connectivity would make setting up and operating such specialist dispute resolution machinery impractical and prohibitively expensive. For that reason, the approach taken to enforcement in this policy is to make use of the existing courts available in Ascension and in St Helena.
241. The remedies set out in this policy are generally based on the obligations on *employers* forming part of the contract with the *worker*. Where an obligation in a contract confers a benefit on a *dependant*, then the obligation will be enforceable by that *dependant* as a contractual right. Where a contract does not include an obligation which the law requires then it will be capable of being an implied term and the *employer* will be liable in any event.
242. The intention is to avoid complicated disputes that cost more to litigate than the value of any likely award. Such a system would incentivise speculative claims on the basis that *employers* would be more likely to settle than to run the risk of incurring substantial but likely irrecoverable costs. The focus therefore is on keeping claims simple so that disputes can be resolved quickly, simply and cheaply.
243. There is a focus on the resolution of disputes through internal dispute resolution mechanisms and pre-action correspondence. It is anticipated that Lay Advocates will continue to play a constructive role in this process by advising *workers* and *dependants* on their rights, and by assisting them in making representations to the *employer* before the need for matters to go to court.
244. Whilst the use of internal dispute resolution mechanisms may place some additional burden on *employers*, it is intended to avoid disputes escalating to the point where matters go to court. The law provides that individuals may not bring matters to court unless they have first raised the subject matter of the dispute in writing with the *employer* and allowed the *employer* a reasonable opportunity to resolve it.
245. One of the difficulties that *employers* in Ascension are likely to face when disputes do go to court is that of staff turnover and the consequent difficulties in gathering the necessary evidence. This could potentially provide an unfair advantage to an individual who is prepared to wait for several years before bringing a claim.
246. For that reason, the law modifies the law of limitation by requiring that any claim brought in relation to matters covered in this policy must be brought within 12 months of the events which are said to give rise to it. This will ensure that claims are brought whilst the facts are still sufficiently fresh in the minds of those concerned, and will help to ensure that any disputes can be resolved promptly and in a way that is fair to both parties.
247. Any claim which is brought after this time, unless there is good reason for the delay, will be time-barred.

Employer status and employment data

248. An individual or organisation that wishes, in the course of their business, to employ or engage individuals to provide services in Ascension (whether as an *employee* or as a *contractor*) must obtain “employer status” before doing so by notifying the Administrator. The prospective *employer* must provide information to identify the individual or organisation, a nominated contact person for employment-related matters and any other such information as the Administrator may reasonably require.
249. Any individual who, or organisation which, employs or engages any person (other than as a consumer of that person’s services, in a private / domestic capacity) without first having obtained “employer status” will commit a criminal offence and will be subject to a maximum fine of £1,000 per *worker* employed at the time the offence is discovered.
250. The law allows for the Governor to make regulations concerning the provision by *employers* (including *small employers*) of statistical information concerning their workforces. This statistical information will be used to ensure that AIG has a clear picture of the employment market in Ascension and that it is able to identify trends over time. This information will also be used to inform any future needs for reform.
251. The regulations may provide that any *employer* who fails without reasonable excuse to comply with a requirement to provide statistical data will commit a criminal offence and will be subject to a fine.