

Government Response to Consultation

Policy on Entry Control

July 2022

Ascension Island Government



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Introduction

The UK government has in force a policy that there is no right of abode in Ascension. As such, there is no automatic right to remain in Ascension and the right of entry to Ascension is subject to certain conditions. This principle is established in Section 4(1) of the Entry Control Ordinance 2007.

The Entry Control Ordinance 2007 is in place to provide authorities with the powers necessary to manage entry to the territory in most instances. It does however exempt certain categories of individual from the requirement to seek permission prior to entry to Ascension, as does the Bahamas Agreement¹.

Context

A robust system of entry control is a core function of government and is necessary for the good governance of the territory. As there is no automatic right to entry to, or right to remain in, Ascension it is important that decisions are made in line with established principles and procedures, and that these are applied openly, fairly and consistently.

By establishing a published policy that details these, including on what grounds permission to enter or remain may be refused, such decisions will be clearly understandable and open to public scrutiny.

In doing so, the new draft policy seeks to balance the UK government's policy that there is no right of abode in Ascension with the principles of an open, fair and proportionate approach to entry control.

Whilst guidelines for the consideration of visa applications were put in place in 2017, these were not published. As such, the system applied by decision makers was not open to scrutiny, and was not open to interrogation by the people to which it applied. It is therefore not an appropriate system and required revision, less it be subjected to legal challenge or a judicial review process.

In order to ensure clarity and openness in decision making, a wider review and assessment of entry control policy was undertaken, the result of which was the draft policy.

Consultation process

The key question of whether or not reform of entry control policy was required had already been determined, for the reasons outlined above. The secondary question of what form this should take was determined by an analysis of the piecemeal system currently in place and scrutiny of issues experienced by officials and applicants during the preceding 24 months.

As such, during the consultation process specific questions were not posed for answer. Instead, the draft policy was made available and feedback was sought.

In seeking feedback on the policy AIG announced that a public consultation would begin on Friday 24 June and invited responses until the closing date of Monday 18 July.

The draft policy was also discussed at a meeting of the Island Council on Thursday 30 June 2022.

¹ Bahamas Long Range Proving Ground Agreement – 25 June 1956

Following completion of the consultation period on Monday 18 July, officials considered the responses provided and made a number of edits and adaptations to the draft policy.

Format of response

Due to the limited number of persons and organisations operating within Ascension and the consequent difficulty in being able to effectively anonymise complete responses, AIG has not made the responses available verbatim and in full to the public. This approach was decided upon prior to the commencement of the consultation to encourage honest and full feedback. However, a record of the responses received has been kept by AIG.

Instead, responses will be detailed in one of two ways.

Where they are specific and unique to an issue which has not already been addressed in the policy they will be anonymised and a government response provided.

Where they relate to a specific issue and the same, or sufficiently similar, to other responses received on that matter, they will be anonymised, grouped along thematic lines and a government response provided.

Reponses

Some people on tourist visas seek local employment during the three month visa period. This is true of people already in Ascension that have come to the end of a previous contract of employment, and of people that have recently turned 18 and are therefore no longer considered a child dependant. Bearing in mind the disruption to their lives in being required to leave the territory to then seek employment in Ascension from elsewhere, can it be clarified that seeking employment in Ascension whilst on a tourist visa is permitted, albeit that working itself is not?

Government response:

Although this is already provided for in the policy with the prior permission from the Administrator, the policy has been amended to reflect that the presumption for such requests is that they would ordinarily be approved.

In doing so this seeks to balance the fact that the UK government has in effect a policy that there is no right of abode in Ascension, with that of the considerations regarding disruptions to people's lives of having an disproportionately arbitrary system in place for those on tourist visas that might be seeking employment for the reasons noted.

The policy notes that it considers the principles of the Rehabilitations of Offenders Act 1974 when evaluating past offending against permission to enter or remain in Ascension. However, a number of offences have nonetheless been identified as ordinarily being considered to be automatic refusals when applications are made. Is this not inconsistent with these principles?

Government response

The Rehabilitation of Offenders Act 1974 provides that convictions for certain offences may become spent after a certain period of time has passed since the offence took place. This principle is designed to ensure that an offence committed many years ago does not impact a

person for the rest of their life. Although the rehabilitation period is determined by the sentence received for the offence, if after a certain period of time no further offending has been recorded, the offence can be considered spent and need not be disclosed in certain circumstances (such as when applying for a job). AIG has extended this principle to entry control matters.

However, some offences are so serious that they will never become spent. Equally, some offences against others will have a significant impact on the victim and the others of the rest of their lives and raise concerns about potentially for reoffending even after it may otherwise have become spent.

As the UK government has a policy that there is no right of abode in Ascension, nobody has an automatic right to enter or remain in the territory.

AIG needs to consider the nature of a person's offending against the realities of the island. Ascension has extremely limited government and law enforcement apparatus. Whilst safeguarding mechanisms are in place, these are limited by the fact that the island is so small and its resources are so limited.

Whilst there is no right of abode in Ascension, many people will live and work here for long periods of time. As a small community the impacts of certain offences are felt for many years, not just by the victim but by the wider public. It is also true that a victim, or those close to a victim, may therefore remain present in Ascension for many years after an offence has been committed.

Grounds for refusal whether an offence is spent or not have therefore only been reserved for the most serious acts of criminality, such as serious violent or sexual offences involving another person, or serious offences where a child or children have been involved. In doing so AIG has sought to balance the principles of the Rehabilitation of Offenders Act against the need to safeguard the public within the scope of the government's limited abilities as a remote island territory.

The policy outlines a number of criminal offences which are used as grounds for refusal. Some of these might be considered overly strict, such as a conviction for certain offences that do not necessarily directly involve a second party. Are you sure these are appropriate?

Government response:

Some grounds for refusal have been amended. Arson has now been differentiated from criminal damage of over £5,000, to note the seriousness of a conviction of arson. The amount of the criminal damage conviction has been amended to link it to what is considered more serious offending.

As noted, in determining grounds for refusal based on previous offending, AIG must ensure it is taking appropriate action to safeguard the public from potential offending.

Following consultation, guidance for decision-makers has been adapted to indicate a presumption in favour of taking certain decisions rather than an absolute direction to do so, based on certain evidence.

Where criminality grounds are identified as a relevant factor, the guidance has also been amended to direct decision-makers to consider the nature of the offending, the impact of the offending on the victim and the community, offending by the perpetrator before and since, and the possible impact on the wider community of that individual being granted permission to remain in, or enter, Ascension. This will then be communicated to the applicant so that they are made aware of the evidence used in considerations and what was, or was what, factored into that decision. They will also be instructed as to how to appeal decisions.

The policy states that if someone has been convicted of an offence for which they have been sentenced to a period of imprisonment of at least 12 months they will be automatically refused permission to enter Ascension, unless a period of 10 years has passed. Is 10 years not a long time for an offence which only carried a sentence of 12 months in prison?

Imprisonment for offending is generally rare and is reserved for those who commit serious offences or are serial offenders. Summary only offences (those that can only be heard in the Magistrates Court) carry maximum sentences of six months imprisonment. While Magistrates in St Helena and Ascension Island can hear more serious cases and give a custodial sentence of up to 18 months, in the UK a custodial sentence of 12 months or more for a single offence can only be given by the Crown Court (the equivalent of the Supreme Court of St Helena) reflecting the serious level of offending associated with such sentences. As such the types of crimes that attract such sentences ordinarily involve violence against another person, including things like sexual offences or robbery.

Although these are serious offences, and will therefore have a potentially lifelong impact on the victim of those crimes, in line with the principles of the Rehabilitation of Offenders Act 1974 it is reasonable to consider any offences committed by the individual in the period after their conviction. Doing so allows scope for individuals to be considered to have been rehabilitated assuming certain conditions are met.

Given the nature of offending that attracts a custodial sentence of 12 months or more, a period of 10 years after the offence has been considered as an appropriate threshold for the recommended guidelines.

The Entry Control Ordinance states that any person convicted of an offence in Ascension that is punishable by imprisonment of six months or more may have their entry control clearance revoked. This low threshold includes a lot of offences, such as having a spear gun in a prohibited area or walking a dog without a leash on a beach reserve before sunrise. Additionally, someone would not even have needed to be sentenced to six months or more, just convicted of an offence which carried such a sentence.

AIG recognises that the threshold for revocation under this part of the Ordinance is not that significant when compared to the punishments applicable for certain offences in particular pieces of legislation. However, this only provides that the power may be used and not that it must be applied in each instance.

As such, the policy seeks to establish a more proportionate baseline for considering removal in light of previous offending based on a threshold of actual convictions and sentences,

rather than the hypothetical maximum level of punishment available for certain offences. This is dealt with under the guidance regarding refusal on criminality grounds.

The policy therefore provides that if someone has been convicted of a criminal offence in the UK or overseas for which they have received a custodial sentence of 12 months or more where less than 10 years has elapsed since the end of the sentence they will be refused permission to enter or remain in Ascension.

The policy also provides that if someone has been convicted of a criminal offence in the UK or overseas for which they have received a custodial sentence of less than 12 months, they may be refused permission to enter or remain in Ascension unless a period of five years has passed since the end of the sentence.

This seeks to reflect that custodial sentencing is reserved for only the most serious or persistent offences, whilst also retaining and reflecting the principles of the Rehabilitation of Offenders Act 1974 within the policy.

In November 2020 a Gazette Notice was published indicating that an exemption from entry control restrictions was to be applied to adult dependent children of active Armed Forces personnel who are posted to Ascension so long as they are in full time education and are able to join their parents in line with UK Ministry of Defence (MOD) policy. The draft Entry Control policy does not reflect this. However, is it justifiable to treat the adult children of particular employing organisations, albeit those in full time higher education, differently to those of others?

On review, the exemption issued under the Ordinance will be removed. The purpose of the exemption was to align with internal MOD policy in place at that time to allow for adult children in full time education to visit parents posted to Ascension by the MOD. This was due to the fact that internal MOD policy considered an adult child up to the age of 24 as a dependant of their parents for MOD employee benefit purposes and formed part of the terms and conditions of their employment. As such, a request was made that AIG reflect this in entry control considerations, as otherwise those that met the definition for internal MOD purposes would be limited to a single visit in any 12 month period to family members deployed in Ascension, due to the previous limitations placed on tourist visas.

Given the purpose of this exemption was to allow for multiple visits during a 12 month period, which were otherwise restricted by the limitations of the tourist visa category, AIG has instead reviewed the former restrictions placed on tourist visas. Previously, tourist visas had limited a person to one tourist visa of three months in length during any 12 month period. On reflection this was considered to be overly restrictive.

Instead, the policy has been adapted to allow for multiple tourist visas of up to three months to be issued to the same individual, with the caveat that no individual will be permitted to remain in Ascension for a cumulative total of more than six months' duration in any 12 month period.

This will therefore allow for much broader scope for persons wishing to travel to Ascension on a tourist visa, including the friends and family of persons working in Ascension, regardless of that person's employing organisation.

As the specific previous exemption provided for MOD dependants related to those in full time education, the upper threshold of six months in any 12 month period will not place any limits on that category of individual given there are no higher education facilities in Ascension and they will therefore need to spend the majority of the year in the territory they are receiving such education.

In June 2020 AIG announced that Two Boats School would begin offering students the option of studying for A-Levels. However, at the time it was noted that if the standard two-year timetable for A-level (or other post-16) study were to be followed then a significant proportion of 16-18 year olds would celebrate their eighteenth birthday before the end of the academic year in which they are due to complete their studies. This would therefore pose a problem insofar as their immigration status is concerned. As there was no category of entry visa at that time which would permit a child to remain in Ascension for the purpose of full-time education after they turned 18, it was therefore announced that under the Entry Control Ordinance AIG would use the discretion available in exceptional cases to grant an entry visa outside of the current categories of entry visa. This power could be exercised to enable such a child to remain on island after their eighteenth birthday in order to complete their studies. Why has this not been reflected in the draft policy?

Due to the fact that decisions about immigration policy fall within the Governor's special responsibilities, at that time the Governor instructed the Administrator to give favourable consideration, on a case-by-case basis, to requests from parents / guardians to grant an entry visa to a child which permitted the child to remain in Ascension during the period between their eighteenth birthday and the end of the academic year in which they turn 18. This was to be limited to the purpose of completing A-level studies only.

It was directed that such applications must be supported by both the Headteacher of Two Boats School and by the relevant Employing Organisation, given that the employer of the primary contract holder to which the child was a dependant would need to assume mandatory welfare responsibilities for that child despite the fact they were now older than 18 years of age.

The omission of this provision from the policy was an error during the drafting stages and as such this has now been reflected in the updated policy document, with a new category of visa specific to these circumstances included.

Next steps

The government will now proceed with publishing a revised draft Policy on Entry Control. Once published, it will then be implemented and applied.