

Government Response to Consultation

Policy on the Regulation of Employment in Ascension

February 2021

Ascension Island Government



Contents

Introduction	3
Context.....	3
Consultation process.....	3
Format of response	5
Reponses	6
Next steps	9

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Introduction

Ascension is a working island. With the exception of a small number of tourists, everyone in Ascension is here for the reason that they are working, or because they are an *accompanying dependant* of a person who is working.

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.

Given the island's status as a working island, it is important that the Ascension Island Government (AIG) 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.

At present employment in Ascension is regulated through the Workman's Protection Ordinance, 1926 (WPO). UK employment legislation does not apply in Ascension.¹ St Helena's Employment Rights Ordinance, 2010 does not apply in Ascension and was expressly disappplied in 2017.²

The WPO is outdated, no longer reflects the reality of employment in Ascension, and has a number of shortcomings.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*.

Context

In order to seek to address the issues with the current employment regulation provision within Ascension, officers from AIG and the elected members of the Ascension Island Council formed the Employment Reform Working Group (ERWG) in the late part of 2019. The ERWG has been tasked with identifying key issues that require addressing and to propose policy options by which to address these.

Following work to identify, develop and refine instruments to address the issues identified, a new policy was drafted. In order to ensure this policy was appropriate for the purposes intended and could be applied to the market effectively, AIG consulted employers and the general public on the draft policy between August 2020 and February 2021.

Consultation process

The key question of whether or not reform of employment regulation was required had already been determined by the Island Council who unanimously identified this issue as a key legislative priority following the 2019 general election. The secondary question of what form this should take was determined through several rounds of policy development and refinement by the ERWG.

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

As such, during the consultation process specific questions were not posed for answer. Instead, the policy was made available and feedback was sought. To frame the feedback employers and the public were asked to consider the following:

- The proposed codification of certain established practices and customs within the employment market of Ascension, including efforts to address areas of ambiguity
- The need for employers to provide for the basic welfare needs of their employees (and dependants, in some cases) who, due to the UK government’s policy on no right of abode in Ascension, are only present in Ascension due to their relationship with their employer
- The balance of the interests of employers and the interests of their employees, specifically with regard to dismissal of employees

In seeking feedback on the policy AIG undertook the consultation took place in two main phases:

1. Consultation with organisations
2. Consultation with public

In the first stage AIG officials wrote to organisations to request views on the draft policy. The types of organisations that were consulted can be broken down into the following categories:

A	Organisations offering contracts of employment in Ascension	This includes organisations supporting, or providing services to, Category B organisations.
B	Organisation offering contracts of employment in territories other than Ascension and posting workers to Ascension	This includes the USA and UK governments.
C	St Helena based government and legal institutions	Given the UK government’s policy that there is no right of abode in Ascension, Ascension’s labour force is formed of workers from other territories. As of xx 2020, around 60% of the workforce was Saint Helenian nationals. Noting this, and the link between the legal systems of the territories of Ascension and Saint Helena, a number of government institutions in St Helena were also consulted.

Given this policy will be the first significant reform of employment governance in Ascension in nearly 100 years, AIG also offered organisations the opportunity to discuss the draft policy document with AIG officials prior to submitting a response. AIG felt this was important as any organisation operating within Ascension will be subject to some, or all, of the terms of the new policy, including certain new obligations.

This first stage of consultation was intended to last for six week, commencing on 20 August 2020 and ending on 05 October 2020. However, noting the significance of this policy and the

desire of AIG to ensure that views of employers were adequately considered, this deadline was extended to 12 October to accommodate late submissions by several organisations.

Although AIG officials offered to host meetings to discuss the draft policy in further detail, only one organisation chose to take up this offer.

The ERWG then met in December 2020 to consider the responses before agreeing to proceed to a wider consultation with the general public. The public consultation took place over four weeks, beginning on 19 January 2021 and ending on 15 February 2021.

The same draft of the policy was made available for both stages of consultation.

After two rounds of consultation the responses received can be broken down into the following categories:

Category		Written response	Meeting with officials
A	Organisations based in Ascension	5	1
B	Organisation offering contracts of employment in territories other than Ascension and posting workers to Ascension	1 ³	0
C	St Helena based government and legal institutions	0	0
D	Public	3	N/A

Format of response

Due to the limited number of 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, the responses were shared with the elected members of the Island Council who sat on the ERWG and will be kept on record.

As AIG is not making responses received from employing organisations available verbatim and in full, responses provided by members of the public will also not be made available in full.

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.

³ A joint written response was submitted by a Category B organization and the Category A organization whom which they contract to provide services. As such this figure is accounted for in both boxes.

Reponses

Why is a minimum wage not being introduced?

Government response

A minimum wage is usually introduced to guarantee that workers receive fair reimbursement for the use of their labour, ensuring that the wage they are paid adequately enables them to finance the basic real world cost of living. This policy primarily aims to address identified shortcomings in the current labour market. During discussions with elected members of the Council and employers on the initial rounds of drafting, it was not considered that the paying of wages below that which could be considered sufficient to enable a worker to finance the basic real world cost of living in Ascension was taking place.

Unlike other territories elsewhere in the world, due to the UK government's policy that there is no right of abode in Ascension the responsibility for accommodating workers whilst in Ascension falls on employers, not the individual concerned. Similarly, employers are responsible for ensuring that adequate utilities and food are provided for their employees whilst in Ascension. This is not something which is billed to the employee directly after they have received payment for their work (like a landlord would charge rent), but is instead something which is factored into their overall package of compensation.

Equally, due to the UK government's policy that there is no right of abode in Ascension the overall offer of remuneration must be suitably competitively attractive to draw workers from other jurisdictions. AIG has not been made aware that employers are unable to recruit from other jurisdictions or retain staff due to inadequate levels of compensation once present in Ascension. To some degree the internal Ascension employment market also self-regulates in this regard as employers are able to recruit workers from other organisation operating within the territory, ensuring that market forces dictate that employers must remain competitive in order to attract employees.

In requiring employers to offer employees the option of a payment in lieu of mid-contract travel does this not go against the principle of the importance for wellbeing with respect to taking leave if employees chose take the financial payment rather than travel outside of Ascension for leave? Will the level of payment to be offered be prescribed?

Government response

The duty on employers to provide mid-contract travel is with a view to ensuring that the welfare of their staff is adequately addressed during the term of their contract of employment. The option of a payment in lieu is intended to provide flexibility for both employers and employees, whilst still retaining the obligation on employers to ensure adequate provision exists to facilitate off island travel during what is considered a contract of reasonable length (>15months). This provides the ability for employers to make exceptions at the request of their employees if they so wish so that they don't fall foul of their obligations, with the inclusion of "may" so that internal policy can determine how it is applied.

AIG do not intend to prescribe the level of payment in lieu to be offered to employees, as it is assumed that employers will need to provide suitably attractive terms for their staff to consider the offer fair and satisfactory.

What would AIG define as reasonable costs for medical treatment, and what should be considered as “necessary” medical or dental treatment? Could employers meet the cost of initial treatment with the cost of further treatments met at their discretion?

Government response

At present it is not intended that AIG will seek to determine what might be considered a reasonable cost for medical treatment, or similarly seek to determine what treatments are considered cosmetic rather than essential. This would be overly burdensome to maintain and may be open to challenge. Rather AIG expect that employers and employees will act reasonably to determine this for themselves, on advice from the Senior Medical Officer specific to the circumstances of that case. It is important to note that people employed in Ascension are only present in Ascension due to their employment status, and in being present in Ascension they may no longer be able to access medical facilities in their territory of recruitment. Employers have a duty of care toward their employees and at present no evidence has been submitted to AIG which suggests that employers will not meet the reasonable costs for medical treatment of their staff.

If employers are required to provide or meet the cost of travel insurance for their employees and their dependents, does this extend to any travel beyond the immediate travel from the island?

Government response

Given an employee will only be present in Ascension due to their employment relationship with their employer it is reasonable for their employer to meet the costs of ensuring that their employee is not disadvantaged in their travel to and from Ascension, travel which they are undertaking in order to meet the terms of their contract with their employer. This is only intended to apply to travel directly to and from Ascension and their territory of recruitment. Similarly, due to Ascension’s remoteness and the limited availability of services within the territory, it is very difficult to secure travel insurance for many. As such it is reasonable to expect that their employer provide adequate protection for their employee during their period of travel.

Has consideration been given to including a clause to cover circumstances where a person becomes unemployed, or their main sponsor becomes unemployed (e.g. through death), that the person and / or their dependents should leave Ascension at the next possible travel opportunity? At present this is not prescribed in the policy and could lead to a prolonged responsibility for employers beyond employment.

Government response

A fixed timeframe for departure following the termination of employment has not been provided due to the nature of available travel to and from Ascension. Whilst civilian access should at best occur on a monthly basis this may not always be the case and could be subject to change in the future (for instance when the south Atlantic airbridge is reinstated). It also provides scope for employer discretion to prevent the law from operating in a harsh manner (e.g. if a death occurs only a few days before the next available conveyance this allows employers to be compassionate toward dependents and provide them the opportunity to make suitable arrangements for the deceased and their own goods/property). The Entry Control (Ascension) Ordinance 2007 requires individuals who no longer have permission to be in Ascension to leave at the next available opportunity, which prevents individuals

spending prolonged periods of time in the territory following the end of their contract, or the primary contract to which their permission to be in Ascension is associated.

Current practice dictates that the amount of annual leave offered to employees may be less than 30 days, but 30 days is prescribed as a minimum in the new policy.

Government response

In recognition of the unique circumstances of working in Ascension, that being the unusual conditions of life and the extremely limited opportunities to take leave outside of the territory, 30 days annual leave has been considered to be a fair minimum requirement. Noting that this requirement could lead to a burdensome administrative exercise for employers to amend existing contracts of their employees, if the Island Council recommend the introduction of a new Ordinance the introduction of this new requirement can be brought in for all contracts of employment which commence after the date at which an Ordinance is introduced. Given contracts of employment in Ascension are time limited this will allow for all employees to be brought onto the new terms within a relatively short period of time, whilst avoiding burdening employers.

Why is a mandatory work based pension scheme for all employees not being put in place as has recently been introduced in the UK?

Government response

The draft policy makes provision for a gratuity to be paid at the completion of each contract of employment. Organisations operating in Ascension are either entirely based in Ascension, or are based in jurisdictions outside of Ascension with a small operation existing within Ascension.

Similarly, due to the UK government's policy that there is no right of abode in Ascension, workers of firms within Ascension are considered to be based in territories outside of Ascension and only temporarily present in Ascension for the purpose of employment. As such workers in Ascension are drawn from a diverse range of territories.

Noting this it can be difficult for them to easily and effectively access international monetary markets, and as a result a pension. As such, gratuities paid at the completion of terms of employment have become a market norm in Ascension. In recognition of these issues AIG is proposing to codify the current practice to guarantee an employee's entitlement to a gratuity at the completion of a period of employment, with clear obligations placed on employers to adequately secure that gratuity. This includes the need to safeguard gratuity money appropriately so that it is protected until such time that the employee wants to access it.

Requiring employers to offer a work based pension instead of a gratuity may be considered in the future, but noting the above issues at this time AIG is not mandating that all employers must offer their employees a pension.

Where employers pay a pension contribution will there still be an expectation of gratuity payments to their employees?

Government response

Following consultation it was confirmed that some employers in Ascension provide access to pensions schemes for their employees. As such, provision will be made within the policy to

allow for a suitable pension scheme to be offered to employees in lieu of a gratuity. However, the obligation will remain for the employer to ensure that the employee is not disadvantaged as a result.

During the disciplinary process is it appropriate for an employee to be accompanied by a legal representative or a lay person who is not also an employee of that company?

Government response

Given the lack of organised labour unions in Ascension it is considered appropriate that the right to accompaniment is included in any future policy. Lay advocates are not trained legal officers, but do exist in Ascension and can play a similar role to trade union representatives. Given the possibility of dismissal and the implications of this for that person's permission to be in Ascension, it is important that a balance between employer and employee is struck, noting that the employer will be significantly better resourced to dispute any such issue which may arise.

Fees levied for non-compliance could be considered to be excessive for the region.

Government response

The fines proposed are designed to be punitive but proportionate. This is to encourage employers to act appropriately and within the law and in doing so avoid the need for costly legal proceedings to be brought (which have a cost for the individual in question, employers and the government and legal system,). Given the policy does not seek to apply fines for anything other than offences which would have a significant detrimental impact on the party concerned, these have been considered to be reasonable.

Many states include a "no lowering standards" provision in their Bilateral Investment Treaty (BIT) models. Whilst no such treaties apply to Ascension Island it indicates the approach and intention of states. In the United States 2012 BIT model the parties reaffirm "their respective obligations as members of the International Labor Organization". As such the USA government expects the host territory to not "waive or otherwise derogate from or offer to waive or otherwise derogate from its labor laws". Why therefore are exemptions included for USA nationals employed in service of the USA government presence in Ascension?

Government response

Individuals employed in another jurisdiction and posted to Ascension have an employment relationship which will be governed by the law of the jurisdiction in which they are employed, and they will have access to dispute resolution mechanisms in that jurisdiction. There is accordingly no purpose served by, and no evidence of a need to, extend local employment legislation to posted workers.

Next steps

The government will now proceed with bringing a revised draft policy on the Regulation of Employment in Ascension forward to the Island Council to seek a recommendation to the Governor.