

# CRITERIA SIMPLIFIED

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GIBRALTAR MAKES  
'LAST MINUTE'  
ADJUSTMENTS TO  
PRIVATE SECTOR  
PENSIONS REGIME.



With the initial deadline for Gibraltar’s mandatory employer-sponsored pension regime fast approaching, the Gibraltar government has issued the Private Sector Pensions (Amendment) Act 2021 to introduce a number of changes, which include:

- Amending the criteria by which employers are required to provide a pension option.
- Changing the Pension Commissioner from the Income Tax Commissioner to the Financial Services Commission.
- Making allowance for the Pension Commissioner to charge fees.
- Establishing a ‘Register of Employers Maintaining Pension Plans’.
- Providing a complaints procedure overseen by the Financial Services Ombudsman.

Previously, many workers missed out on valuable pension benefits, either because their employer didn’t offer them a pension or they didn’t apply to join their company’s pension scheme. Gibraltar’s Private Sector Pensions Act 2019 changed this by mandating that private sector workers are entitled to have a choice, by law, on whether they wish to make a contribution to a pension plan.

The Act provides that, should an employee choose to participate in a pension plan, the law will require the employer to both provide, and contribute towards, a pension plan. The aim is to ensure that every member of the community, even those in the private sector, are protected financially in their later years.

Implementation of the law was deliberately phased to give smaller employers more time to deal with the requirements and have a longer period to make the requisite adjustments. To classify businesses, the original Act used criteria set out in the Companies Act in respect of employee numbers, turnover and balance sheet size.

The Amendment Act removes the turnover and balance sheet size criteria, such that the Act will now only apply to businesses based on their employee numbers. A further size classification for employers has also been added. The

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revised classifications are as follows:

Employer Classification	Number of Employees	Deadline for Compliance
Enterprise	251 or more	1 July 2021
Large	101 to 250 (inclusive)	1 July 2022
Medium	51 to 100 (inclusive)	1 July 2025
Small	15 to 50 (inclusive)	1 July 2026
Micro	14 or less	1 July 2027

The first applicable date is 1 July 2021, when ‘Enterprise’ employers (those with over 250 employees) will be required to provide a pension plan to any employee who requests it. Interestingly, if employees are split between several operating companies, each individual company is looked at separately for the purposes of the Act. If, for example, a business has 280 employees that are split into seven companies employing 40 staff in each, then each of these companies will be classified as a ‘Small’ business and will consequently have until 1 July 2026 to comply with the Act.

Fewer than 15 businesses in Gibraltar are likely to be impacted by the first implementation deadline on 1 July 2021 and the regulator, the Gibraltar Financial Services Commission (GFSC), has already written to these businesses advising them of the requirements of the Act. The GFSC will be responsible for establishing and maintaining a ‘Register of Employers Maintaining Pension Plans’. Administrators of Enterprise pension plans will have to advise the GFSC before 30 September 2021 of all eligible employees splitting them between:

- a) pension members;
- b) ineligible employees; and
- c) employees who have opted out.

After 30 September 2021, administrators will have to advise the GFSC of pension joiners and leavers although details of when and how this work is done is still to be decided

## FINANCIAL SERVICES OMBUDSMAN

The new Act appoints the Financial Services Ombudsman to deal with any complaints and he/she is empowered to:

*“...investigate, facilitate, mediate, propose or determine solutions to a dispute arising from the provisions of this Act and submitted by or on behalf of an employee or other beneficiary of a pension provided pursuant to this Act.”*

This is a welcome development and will speed up dispute resolution, although we note that the Act does provide immunity from sanctions for the government of Gibraltar in cases where the government itself is acting as a pension provider or pension administrator!

Those employees who choose not to join a company’s pension plan will be required to sign an annual waiver stating that they do not require a pension.

Careful planning will be required when dealing with Spanish-resident employees because personal pensions and Gibraltar government pension schemes are not recognised in Spain and could lead to additional tax bills.

It is positive that many small to medium-sized businesses (SMEs) are already making enquiries about pension provision for their employees rather than leaving matters to the last minute. Conversely, it has been disappointing to hear a minority of businesses saying that they will get their employees to sign

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a waiver saying that they do not want a pension.

We think this is a blinkered approach because provision for retirement should not simply be left to the government; not least because government coffers worldwide have been so depleted by the Covid pandemic and, with an ever-ageing population, will simply not be able to

make adequate pension provision for everyone. Since the introduction of ‘auto-enrolment’ in the UK in 2012, annual pension saving in the UK has increased by more than £7 billion and more than 10 million more people are now saving into a pension scheme.

But it is also the case that corporate pensions or savings provision are a vital

consideration for any employer that wishes to attract and retain the best talent, as well as maintain a loyal and committed workforce. Most employees now regard retirement provision as a key part of their remuneration package. Private sector employers should take responsibility and we believe that those businesses that plan now will ultimately win out in the long term.

