

THE PRIVATE SECTOR PENSIONS ACT

WHEN DOES IT APPLY?

The Private Sector Pensions Act 2019 is designed to ensure that private sector workers in Gibraltar are entitled to have a choice, by law, as to whether they wish to make a contribution to a pension plan. If an employee does choose to participate in a pension plan, the law will require the employer to contribute towards that employee's pension plan. It will apply to every private company, including any unincorporated bodies and individuals registered in Gibraltar that employ an eligible worker.

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The Private Sector Pensions Act received assent on 23 July 2019 and, although (at the time of writing) it has not yet been brought into force, the dates for compliance by large businesses – turnover exceeding £36 million – are approaching fast. According to sources at the Chief Minister’s office, the Act will receive a start date well in time for businesses to comply with its requirements.

Some employers will consider the Act to be an additional cost burden, particularly after suffering through the pandemic and with the uncertainty of Brexit just around the corner. However, providing employees with better benefits generally assists in employee retention and it is widely recognised that the costs (both actual costs and the hidden costs of additional training etc.) of replacing an employee can exceed to cost of the employee benefit.

The legislation follows the introduction of workplace pensions in the UK in 2012. It was widely anticipated that Gibraltar would follow suit and the Act provides for broadly similar rules. The main difference is that pension entitlement in Gibraltar starts from age 15, rather than age 22 in the UK.

ELIGIBILITY

The principal provisions in the Bill are that a pension must be available for employees who:

- Earn more than £10,000 per year;
- Are at least 15 years of age; and
- Have been in continuous employment with the employer for one year.

For those employees that work for more than one employer, the criteria are considered separately for each employment.

Eligible employees may, of course, decide to opt out of the requirement to have a pension. Employers will therefore be required to make a return to the Commissioner of Income Tax setting out:

- Eligible employees who have opted out of joining a pension plan;
- Eligible employees who have joined a pension plan; and
- Employees who are not deemed eligible.

WHEN DO BUSINESSES HAVE TO COMPLY?

As a reminder, large businesses will

have to comply with the Act by July 2021. The full table of dates for businesses to comply is in the table below.

Provision (IORP). Spanish resident pension members can only claim tax relief in Spain on schemes that are

Type of Business/Employer	Latest date for complying with the Act
Large Businesses › Turnover exceeds £36m › Balance sheet exceeds £18m › Average number of employees exceeds 250	1 July 2021
Medium Businesses › Turnover between £10.2m & £36m › Balance sheet between £5.1m & £18m › Average number of employees between 50 and 250	1 July 2022
Small Businesses › Turnover between £632k and £10.2m › Balance sheet between £316k and £5.1m › Average number of employees between 10 and 50	1 July 2025
Micro Businesses › Turnover less than £632k › Balance sheet less than £316k › Average number of employees less than 10	1 July 2027

Businesses satisfying two of the three criteria fall in to that category. For instance, a company with a turnover of £40m and a balance sheet total of £15ml and an average of 240 employees is classed as a medium-sized business and has until July 2022 to comply with the Act.

HOW CAN BUSINESSES COMPLY WITH THE ACT?

Businesses have three main ways of complying with the Act:

1. Establish their own occupation pension scheme;
2. Become a member of a multi-employer occupational pension scheme; or
3. Contribute to each employees’ personal pension plan.

Each option suits Gibraltar resident pension members, while the first two options suit Spanish resident pension members (provided the scheme is registered with the Gibraltar Financial Services Commission (GFSC) as an Institution for Occupational Retirement

registered as IORPS, which excludes personal pension plans and Gibraltar government schemes.

Many businesses already have pension arrangements in place for their staff but they will need to ensure that they comply with the new Act. Changes to trust deeds do take time to organise, so it is recommended that existing arrangements are checked as soon as possible.

Businesses should allow at least three months to get their arrangements in place because there are various approvals to be obtained from the Gibraltar Income Tax office and, in the case of establishing a stand-alone occupational scheme, this must be registered with the GFSC if there are more than 15 members.

The new Act will be coming in to force soon and, to ensure compliance, employers will need to be aware of the dates that apply to them.