

# GIBRALTAR LEGISLATES FOR PRIVATE SECTOR WORKPLACE PENSIONS

In April, the Government of Gibraltar introduced a Bill for Pensions in the Private Sector, which will ensure 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 Bill was passed in to law in July 2019 (although we are still waiting on an effective date for it to be applicable). 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.

Feature by Gerry Kelly

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The Private Sector Pensions Act is designed to remedy the discrepancy that exists between private sector workers and public sector workers in respect of pension provision, and will apply to every private company, including unincorporated bodies and individuals registered in Gibraltar that employ an eligible worker.

The legislation follows the introduction of workplace pensions in the UK in 2012. It was widely anticipated that Gibraltar would follow suit and the Private Sector Pensions 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 Act 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
- Employees who are not deemed eligible.

## CONTRIBUTIONS

The Act sets out that a member of a pension plan and their employer

must contribute in accordance with the provisions of the pension plan and the regulations "such amounts as are required to fund the benefits accruing under the pension plan, from the date of membership in the pension plan, a sum equal to 2% per annum of the employee's earnings".

Chief Minister Fabian Picardo subsequently clarified, in a speech in July, that: "The employer and the employee will each have to contribute 2% to the pension scheme". Employers and

employees may choose to make higher contributions at any time and may each make different contributions, as long as a 2% minimum is met.

## IMPLEMENTATION

Implementation of the Act is to be phased so that smaller employers have more time to deal with the requirements and have a longer period to make the requisite adjustments.

Large employers will be required to comply with the provisions of the Act by July 2021, medium employers by July 2022, small employers by July 2025 and micro employers by July 2027.

The definitions of whether the employer is small, medium or large will follow the definition in the Companies Act 2014, with the requisite changes so that the definitions also apply to employers who are not companies.

## COMPLIANCE

The Act establishes a Pensions Commissioner in Gibraltar, who will keep a register of all employers and their employees' status. The Commissioner will verify payments made under pension plans and investigate complaints. The Commissioner is provided with powers to facilitate the enforcement and monitoring of compliance with the Act, as well as powers to be able to fine anyone found in breach of the Act.

## EXISTING PENSION PLANS

The Act places an obligation on employers to continue with existing pension plans, but employers should ensure that the minimum criteria of any existing plans are in compliance with

**“The employer and the employee will each have to contribute 2% to the pension scheme.”**







“ 5% will generate a pension pot of £167,000. ”

the new requirements. For instance, I'm aware that some employers have a minimum employment period of two years before an employee can join their scheme. If this is the case, then the minimum employment period will need to be reduced to one year.

### PENSIONS ADVICE

Gibraltar introduced legislation for the provision of pension advice for individuals in 2017. This covers the joining of personal or occupational (employer-operated) pension schemes.

Currently, there are nine companies specifically authorised by the Gibraltar Financial Services Commission (GFSC) to provide pensions advice in Gibraltar. This list can be accessed at [www.fsc.gi/regulated-entities/pension-advisers-36](http://www.fsc.gi/regulated-entities/pension-advisers-36). However, lawyers and accountants are not required to be licensed by the GFSC and may also be able to provide advice in this area.

Some pensions advisors have expressed concerns about advising employees who are under the age of 18. In such cases, it may be necessary for their parents to countersign relevant documentation.

The Spanish tax system does not view contributions to all Gibraltar pension schemes in the same way, so advice should be taken when dealing with Spanish resident workers as to the best type of pension scheme to establish.

### LOW-INCOME EMPLOYEES

In the Chief Minister's statement, he

envisaged that employees who earn less than £18,500 per year would be able to contribute to a pension plan established by the Government – the Provident Trust (Number 3) Pension Scheme.

The investment performance of the Government pension schemes has rarely been impressive, and a quick look at the average return of the Number 3 pension scheme over the last five years shows it to be over 1% lower per annum than the industry average, as shown by the performance benchmarks published by the Society of Trust and Estate Practitioners (STEP) – the Managed Portfolio Indices (MPI).

A 1% differential may not seem a great deal, but a quick example can show the long-term impact. Saving £200 per month for 30 years at an annual return of 4% will generate a pension pot of £139,000, while saving £200 per month for 30 years at an annual return of 5% will generate a pension pot of £167,000. That's a difference of £28,000 for two employees saving the same amount.

It is recommended that the Government should review the managers of their pension schemes at least every five years and make changes if the performance is below average.

Overall, the legislation is welcomed as an important development for the Gibraltar labour force, which should boost the level of saving and encourage more employees to start a pension plan. ■