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A GUIDE TO

SECONDARY PENSIONS

The information contained within this Guide is intended to act as a guide to secondary pensions and has been taken from publically sourced information. This guide should be used for information purposes only.

What is the secondary pension scheme?

The secondary pension scheme is a policy which requires employers to provide occupational pensions for their employees. Employers will be required to enrol their staff into these pensions and contributions should be made from both the employer and employee.

A new, secondary pension scheme, open to all Bailiwick employers and workers, will be established to enable employers who do not currently offer a workplace pension to provide access to a scheme that is compatible with these requirements, and to ensure that everyone can access an affordable pension product. This scheme will be called 'Your Island Pension', or 'YIP' for short.

This pension scheme will be obliged to take contributions from all Bailiwick residents. This means that everyone will have access to an affordable pension scheme. Your Island Pension will be separate from other States functions and governed independently.

Where not already in place, employers will be required to establish suitable pension arrangements for their employees. Under these arrangements, all employers will be obliged to pay at least a minimum contribution towards a secondary pension for their enrolled employees.

Why do we need a Secondary Pensions Scheme?

Guernsey's current pension arrangements are not considered sufficient to enable all individuals to have a comfortable retirement. There is an over-reliance on the States old age pension (soon to be formally renamed 'States pension', the term used hereafter), and many individuals in lower-earning brackets are unable to access workplace or private pensions. This means that they are solely reliant on one source of income during their retirement. The States pension is a contributory benefit. The amount that an individual will receive is linked to the number of weekly contributions they have made or been credited. In order to receive the full States pension, an individual must have made or been credited an average of 50 contributions per year over a period of 45 years. Because the total value of the final pension received is dependent on the number of contributions made, not on the value of the funds paid in, the States pension cannot be used to enable people to save more money for their retirement if they wished to.

At present, the Guernsey Insurance Fund ("The Fund") is insufficiently funded to meet the projected demand. In recent years, steps have been taken to slow the decline. This includes the staggered increase of pension age from 65 to 70, between 2020 and 2049, and a revision to the uprating policy. Despite these changes, the Fund is still due to deplete unless action is taken. It seems likely that the necessary solution would be to increase contribution rates in order to maintain benefits at their current level.

When will the scheme start?

Given the need to provide employers and pension providers with adequate lead-in time to prepare, October 2023 is now being targeted for implementation.

The secondary pension's obligations are being phased in over a period of 15 months, starting with the largest employers first as set out below.

Duty commencement date	Number of Employees at launch date
Launch Date	26+
Launch Date + 3 months	11-25
Launch Date + 6 months	6-10
Launch Date + 12 months	2-5
Launch Date + 15 months	1

How much do we have to Contribution?

All employers, including those who offer a qualifying pension scheme, will also be required to make an appropriate contribution on behalf of their enrolled employees. In the first year of the policy, the statutory minimum contribution (by employer and employee) will be an amount equivalent to 2% of an employee's earnings, of which not less than 1% must come from the employer. This figure will gradually increase over the following seven years. The final statutory minimum figure will be a contribution equivalent to 10% of an employee's earnings, of which not less than 3.5% must come from the employer.

Category	Statutory minimum contributions for the applicable year							
	Launch Year	+1	+2	+3	+4	+5	+6	+7
Employee	1%	1.5%	2%	3%	4%	5%	6%	6.5%
Employer	1%	1%	2%	2%	3%	3%	3%	3.5%
Total	2%	2.5%	4%	5%	7%	8%	9%	10%

Employers may contribute more than their statutory minimum contribution levels if they wish. Indeed, many employers with existing schemes that could qualify as a qualifying pension scheme already contribute at a rate above the minimum. Contributions in excess of the applicable minimum made by the employer can be used to offset the minimum contribution made by the employee, but not vice-versa. For instance, if an employer chose to contribute an amount equal to 10% of earnings, the employee could pay nothing. But if an employee contributed an amount equivalent to 9% of their earnings, the employer would still be required to make their 3.5% contribution.

An employer, through a contract of employment, can also arrange for an employee's contribution to be higher than the minimum. For instance, where an employer contributes 6% they could deduct 6% from their employee, generating a total combined contribution of 12%.

All Employers must offer their pension scheme to employees at the minimum contribution rate at the time, initially 1% and 1% or if enrolment to their preferred scheme is not compulsory within their contract of employment they must also offer their employee's access to the YIP Scheme.

Can we use a "QUALIFYING PENSION SCHEME"?

Every employee should be automatically enrolled in a secondary pension scheme: either one which is already provided by their employer, or the new "YIP" scheme.

It is vital that the schemes which eligible employees are enrolled into are of a good quality and enrolment is facilitated by the employer. Certain kinds of workplace pension approaches run counter to this objective. For instance, requiring an employee to find or establish their own scheme, which removes the automatic part of auto-enrolment. There will need to be rules about which schemes will qualify from a structural standpoint as well as a quality standpoint.

Qualifying schemes will have to be an 'approved scheme' for the purposes of section 150(1) of The Income Tax (Guernsey) Law, 1975. A scheme which is approved under Section 150(2) of that Law will always be a qualifying scheme provided appropriate contributions are made into it. These schemes are traditional occupational pension schemes, established by one employer to benefit their employees. The employer must be a contributor to the scheme, and the employee may also contribute, depending on the arrangements.

Retirement annuity trust schemes (RATS) which are approved schemes under section 157A of The Income Tax (Guernsey) Law, 1975 could be qualifying schemes subject to certain conditions. In order to qualify, the RAT would have to be employer-facilitated, i.e. a RATS selected or established by the employer into which all employees, or all employees of a given category, are auto-enrolled. There would be no requirement for the RATS to be exclusive to one employer, so a multi-employer group RATS would be permissible.

As well as meeting the criteria above, the qualifying scheme rules must facilitate the auto-enrolment process by allowing for eligible employees to be enrolled with minimal requirements personally to provide any information to the pension scheme administrator or trustee, or make any decisions. This means that there should be default investment strategies, and that employers must be able to provide relevant personal details to the pension scheme administrator or trustee, on behalf of their employees. Amending legislation will need to be drafted so that the sharing of data for this purpose will be permissible under GDPR rules.

For clarity, where an employer already has a pension scheme which meets the qualifying scheme test there will be no requirement for the employer to set up an alternative, provided that the scheme can be adapted to comply with general auto-enrolment duties.

The States are aware that there are a significant number of less formal pension arrangements already in place. Employers may pay their contribution directly into a RATS which the employee has either established or joined in a personal capacity. It is not proposed to undermine existing good practice by employers seeking to provide workplace pensions for their employees, provided that such good practice can be demonstrated and compliance enforced.

The States intend to make arrangements, whereby an employer would be able to contribute to an employee's existing 'personal' RATS in lieu of enrolling them in a qualifying scheme. In order to take advantage of this provision the employers' and employees' contributions would need to be made directly to the RATS and the contributions would need to be at least in line with the minimum statutory contribution rate. There would also be a requirement for both parties to consent to the arrangement; if either party did not consent then the employer would be obliged to enrol the employee into a qualifying scheme.

A further requirement would be that all qualifying schemes must be regulated by the appropriate financial services regulator. In many cases this would mean the Guernsey Financial Services Commission (GFSC).

All employers will be required to find and contribute to a qualifying pension scheme for their employees. However, they are not obliged to use a "one size fits all" solution. Employers will be free to use multiple qualifying schemes if they wish, or offer different qualifying pension schemes to different eligible employees so long as all arrangements meet the minimum requirements set out in these proposals.

These proposals require employees to be auto-enrolled into a pension scheme by their employer. This means the employer is responsible for setting the level of their own contribution, but also the level of contribution to be deducted from their employee's salary, in order to ensure that the minimum combined contribution rate is met or exceeded.

It is now proposed that employers be obliged to pay into schemes directly, with the scheme providers taking responsibility for collection and ensuring the funds are transferred into the appropriate investments promptly. A benefit of this arrangement is a clear separation between the States pension and individuals' secondary pensions. Money paid by an individual under the Secondary Pensions Scheme is their own money, which will become their retirement income, and it is important that this is recognised.

Where a Qualifying Scheme is used all standard drawdown provisions will apply, there will be no restriction on benefit rules that currently govern Section 157A schemes.

Qualifying Schemes with provision for Loans

For Qualifying schemes to continue as such, any NEW loans that are made to a member where employer contributions are received must limit the purpose of the loan to improvements to the member's primary residence only. This loan requirement would need to be documented as such.

Rules on Auto-Enrolment

One of the most important elements of the States proposal is the requirement on employers to automatically enrol their eligible employees (subject to certain criteria, and the ability to opt-out, as discussed further below) into a qualifying secondary pension scheme. Auto-enrolment is considered to be key in encouraging a sufficient number of people to save, at a sufficient level, to result in decent replacement rates (which the States pension alone cannot secure) for many people in retirement.

The two most significant criteria for determining who an employer must auto-enrol are age and earnings. If an employee is 16 or older (but below **pensionable age**) and earning in excess of the social security lower earnings limit in a given pay period (£144 per week or £7,488 per annum), the employer will generally be required to auto-enrol its eligible employees.

For the sake of clarity, an 'eligible employee' is generally an employee who is resident in Guernsey, earns in excess of the social security lower earnings limit and is not a member of an excluded category of employee. Employers will not be obliged to conform to these requirements for employees located outside of Guernsey. The location of the employer will be immaterial. In certain circumstances an individual who is off island for a short period due to a secondment might still be deemed Guernsey resident. This will be in line with the existing practice for social security contribution liability.

An employer will have to enrol an employee into a qualifying pension scheme once the employee's earnings have exceeded the lower earnings limit. Like social security contributions, this is a cliff edge: should an employee's salary exceed the lower limit, all their salary is subject to the contribution requirement, not just the earnings in excess of the limit.

If an enrolled employee earns less than the lower earnings limit in a given pay period, there will be no requirement for either the employer or the employee to make a contribution for that pay period. Of course, if an employer chooses to, it will be permitted to make a contribution on behalf of the employee.

'Pensionable Age' is the defined age at which a person can claim a States pension. It is presently 65, but from 2020 will increase by two months every ten months between 2020 until reaching 70 in 2049. 12 Or Alderney, should the States of Alderney wish to extend this policy.

The definition of earnings will also be subject to the social security upper earnings limit, which in 2020 is £2,880.00 per week (£149,760 per annum). There will be no requirement for employees or employers to make contributions in respect of earnings above this limit. Once again, there is nothing to prevent contributions being made above this threshold, on a voluntary basis, should the two parties make those arrangements.

Employers will be permitted to defer enrolling a qualifying employee for a maximum period of 3 months. But to do so they will be required to provide notice to the employee of their intention to do so. There will also be provisions to ensure that employers cannot abuse this provision by employing people on consecutive short term contracts.

Finally, employers will not be obliged to automatically-enrol an employee into a pension scheme if the employee is in full-time education, including higher education.

The right to opt-out

It is proposed that, subject to any contractual arrangement between the employer and employee, every qualifying employee will have the right to opt-out of the qualifying pension scheme which they are auto-enrolled into. They do not have to give a reason why, and provided that they opt-out within 6 weeks of being enrolled, they will be entitled to a full refund of their contributions, as will their employer in relation to its contributions for that employee.

Once the right to opt-out and claim a refund has expired, all outstanding contributions (which may have been held by the employer up to that point) must then be paid by the employer to the scheme administrator. It is recommended for administrators and employers to agree their preferred approach to handling contributions within this 6 week period between themselves.

The refund of contributions must equal the contributions initially made. In other words, if the scheme collected the funds and invested them, any money gained would be the schemes to retain and any money lost would need to be made up by the scheme.

The States expect that, because of this complication, schemes that collect contributions will retain them as cash for the first 6 weeks.

If an employee opts-out, their employer will no longer be obliged to contribute to the scheme on that person's behalf. There will not be any obligation on the employer to pay an equivalent sum directly to their employee in lieu of making a contribution.

In order to opt-out, individuals will be required to contact the administrator of the pension scheme or their employer, in line with whatever procedures their scheme applies. The employer would be required to keep records of opt-outs for inspection, though in practice the employer may choose for the administrator to keep these records on their behalf. Opt-out records could not be a note of a verbal conversation, there would need to be a record of an active decision by the employee, whether that is written or digital.

Finally, it is proposed that employers will be permitted to make it a contractual condition that contributions must be made to a pension scheme, with no right to opt-out. This is the case for the great majority of public sector employees, who pay into the Public Servants' Pension Scheme, and that is expected to continue under these proposals.

Where an individual has opted out, their employer will be obliged to re-enrol them after a period of 3 years. If the employee continues to wish to opt-out they will have to complete the opt-out process again. Over the course of three years many people see a significant change in circumstances. Those who may have opted out for perfectly sensible reasons may find they are now able to contribute to their fund.

In order to minimise the burden on the employer, there will be some leeway with regard to the re-enrolment date. The employer will have to re-enrol the employee within 3 months, commencing on the third anniversary of their original enrolment. This means that larger employers can re-enrol employees in batches on a quarterly basis.

The right to opt-in

In addition to those who are obliged to be auto-enrolled, it is proposed to include a right to opt-in for certain individuals. Employers would be legally obliged to enrol these individuals if the individual requested. This would include the following four categories:

- Individuals of pensionable age, who would be eligible but for their age,

- Individuals who would be eligible, except for the fact that they earn less than the lower earnings limit,

- Individuals who are in full time education, who would be eligible but for their full time education status, and

- Individuals who are entitled to be auto-enrolled but who have previously opted out.

A restriction is placed at 75 years old because the limit for income tax relief is 75. The reason for this limit is to avoid pension schemes becoming tax-free inheritance vehicles. Without the benefit of tax relief on contributions, and given that payments from a pension are themselves taxable as income, it would be a rare set of circumstances for this to be a prudent financial decision for any individual.

In many cases it may not be financially viable for an individual to save if they are earning less than the lower earnings limit. However, there may be cases where the individual wishes to. In these circumstances they would have a right to opt-in, though there would be no duty for the employer to make employer contributions on their behalf.

It is also proposed that the right to opt-in is extended to those who are excluded from auto-enrolment due to being in full time education. Though it is expected that relatively few would choose to opt-in under these circumstances, there may be circumstances in which the employee is keen to save and it makes good financial sense.

In the case of the three categories mentioned above, the right to opt-in would carry no obligation for the employer to make an employer's contribution on behalf of the employee. The employer would only be obliged to deduct the applicable contribution from the individual's salary and pay it into a qualifying scheme.

Individuals who have opted out will also have a right to opt back in. However, their employer will not be obliged to enrol them until 6 months have elapsed since the employee opted out. This is to ensure that an individual does not put an undue burden on their employer and the scheme administrator by fluctuating between enrolled and unenrolled at whim.

If an employer were to receive a valid request to opt-in, they would be obliged to enrol the eligible employee in time for the end of the next full pay period unless they defer enrolment. An employer would be able to defer an opt-in request as if that employee had just become eligible for auto-enrolment (i.e. they could delay enrolment for a period of up to 3 months). The process of deferral and why deferral is permitted is explained below.

Deferring enrolment

An employer will have a right to defer the enrolment of an employee or any group of their employees for a period of up to 3 months. This period will commence either from the date that the employer is obliged to auto-enrol the employee, or in the case of a new employee, from the date on which the employee is hired.

In order to defer enrolment, the employer will have to provide notice to their eligible employees that they are deferring the employee's enrolment and inform them of the date that they will be enrolled. This ensures that employees are aware of what is happening and confirms that the employer has understood their duties.

The purpose of the deferment is twofold. Firstly, it allows the employer to process enrolments in batches if needed. Secondly it means that the employer does not need to enrol those who are unlikely to gain any significant benefit from enrolment (for instance, those on very short contracts of less than 3 months).

If an employer defers enrolment, they must enrol the employee at the expiration of that deferment period, unless that employee no longer meets the auto-enrolment requirements. After the deferment period has expired, employers would be required to enrol employees who have opted in, even if employees do not meet the auto-enrolment criteria.

Monitoring compliance

Under existing Revenue Service legislation, the majority of employers have to submit quarterly returns setting out details of their employees and the level of tax and social security contributions that have been paid on their behalf. Employers are familiar with the process of submitting this information to the Revenue Service, either directly or through their payroll provider. It is being proposed that this quarterly return be extended so that employers also have to provide details of the pension arrangements they have in place for their employees.

Details to be provided regarding pension arrangements will include confirmation of the status of the scheme being used, the amount of pension contributions being paid into that scheme by and on behalf of each employee and whether any employees have opted out.

Once this information has been submitted each quarter, automated checks will be carried out to identify any anomalies that may indicate non-compliance. These will be flagged to the compliance team at the Revenue Service for investigation. For example, an employer may submit information in their quarterly return that suggests they are paying pension contributions that are below the statutory minimum specified in the legislation.

The Revenue Service will develop internal procedures for assessing the returns that are brought to their attention. In addition, guidance documents for employers may be issued from time to time to support them with the completion of their pension returns.

The Revenue Service will also carry out spot checks and act on information provided to them by employees and third-parties. Employees may also raise concerns with the Employment Relations

Service about employers not complying with their obligations and concerns regarding the behaviour of a regulated entity can be raised with the GFSC. Data sharing between the relevant entities will be legislated for.

Enforcement

In order to ensure that employers are not able to encourage employees to opt out by offering unattractive or expensive schemes, the States propose that employers will be required to offer their employees membership of YIP as an alternative to their chosen scheme, if different. This provision would not apply if membership of the employer's chosen pension scheme is a condition of employment under the employee's contract of employment.

If employees do not make an active choice regarding which scheme to join, the default position will be for them to be enrolled into the employer's chosen scheme.

Under the legislation that will bring the Secondary Pensions scheme into effect, a number of offences will be created. Such an offence would be where an employer does not enrol an eligible employee when they are newly employed, are due for re-enrolment, or exercise a right to opt-in. Another example would be submitting fraudulent documentation in relation to auto-enrolment compliance.

There will be legislative requirements to ensure that the employer and employee cannot conspire to make alternative arrangements in lieu of pension contributions, except where the alternative arrangement is a payment made directly by the employer into another pension scheme which the employee had enrolled into privately. This would include circumstances where an employer offers an incentive, financial or otherwise, to opt-out.

It is anticipated that compliance reporting would be a duty of the employer not of the scheme administrator/trustees.

Application in Alderney

The intention is that the secondary pension's obligations will apply equally in Alderney as they will in Guernsey. In preparing their Policy Letter, the States has consulted with Alderney States Members and the Alderney Chamber of Commerce. Following this engagement, the Chair of the States of Alderney's Policy & Finance Committee has confirmed that the Committee is unanimous in its support for the inclusion of Alderney in the proposed Secondary Pensions Scheme and is scheduled to be endorsed by the Policy & Finance Committee in the near future. The States of Alderney will also need to consider this formally once the proposals have been approved by the States of Guernsey and separately approve the necessary legislation. The States of Alderney has agreed that the primary legislation be drafted on the basis that it will be a Guernsey and Alderney Law.

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