



ADVISORY
Industry Information

Guernsey's new secondary pensions law - key points and FAQs

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Guernsey's new secondary pension law will be coming into force on 1 July 2024. It will be implemented on a phased basis over a 15 month period, beginning with the largest employers (those with 26 or more employees). The minimum level of contributions will initially be 2% of earnings, with at least 1% paid by the employer. This will gradually rise to at least 10% of earnings with at least 3.5% paid by the employer after 8 years.

We are seeing an increase in questions from employers who have employees based in Guernsey about the new law, and how to introduce any necessary changes whilst minimising the employment law risks. We have set out below some frequently asked questions.

We already provide pension benefits. Do we need to set up a new scheme or can we continue to use our existing scheme?

Yes, you can continue to use your existing pension scheme, provided that the scheme meets the definition of an "approved scheme" under the new law. Traditional occupational pension schemes approved under section 150(2) of the Income Tax (Guernsey) Law, 1975 will be approved schemes, as will certain employer-facilitated retirement annuity trusts (RATS). A personal RAT will only be an approved scheme if the employee has consented to its use for auto-enrolment purposes.

We currently provide a pension allowance in lieu of a pension. Can we continue to do so?

No. When the new law comes into force employers will be required to contribute directly to an approved scheme. Whilst employees are free to opt out of the secondary pension regime, it is expected that employers will be prohibited from inducing employees to opt out, and any employer who continues to offer a pension allowance to employees who opt out could find themselves in breach of the new law.

Employers who currently offer a pensions allowance will be keen to ensure that employees do not end up entitled to both the allowance and additional pension contributions under the new regime. Such employers should review their existing employment contracts and consider taking legal advice on how best to implement the necessary changes.

Which employees will need to be automatically enrolled?

Employees will need to be automatically enrolled if they are: based in Guernsey, Alderney, Herm or Jethou; are between 16 and pensionable age; have earnings over the lower earnings limit for social security contribution purposes; and are not in full time education.

Employees who meet the above criteria can opt out of the pension scheme if they wish (unless their employment contract provides otherwise) but the employer would need to automatically re-enrol them every three years. Employees who are not eligible for automatic enrolment can choose to join the pension scheme (provided that they are under 75) but would have no right to employer contributions if they do.

Can we decide to just automatically enrol all employees?

Yes, but you would need a contractual right to do so and to make the necessary deductions. This would probably involve amending employees' existing contracts and consulting with employees to obtain their consent to the new terms.



Do contractors / consultants need to be automatically enrolled?

The law only applies to employees, and so it depends on the employment status of the contractor or consultant. Whether a person is considered to be an employee or self-employed depends on how their relationship with the company operates in practice, and not just the label given to the relationship by the parties.. If you are in any doubt as to whether your contractors or consultants are likely to fall within the scope of the new law, please feel free to contact us for further advice.

Do we need to enrol all employees into the same scheme and/or offer the same contribution level to all employees?

No. Employers will be free to use multiple schemes if they wish and/or offer different contribution rates to different employees. However, they would need to ensure that their proposals are not discriminatory, and do not otherwise breach the implied duty of trust and confidence.

Are there any exceptions for high earners?

No, although contributions do not need to be made in respect of earnings over the upper earnings limit for social security contributions.

Can we prevent employees from opting out?

Yes, but only if the employee has agreed, in the employment contract, that they will not be able to opt out. If you want to seek to prevent existing employees from opting out, this would probably involve amending their employment contracts and consulting with them to obtain their consent to the revised terms.

Do we need to make any changes to employees' contracts?

Employers should update their template contracts to reflect the new secondary pension regime. Some employers will also need to amend the contracts of existing employees. For example, this may be the case where the employer needs to remove or amend current pension arrangements, wants to prohibit employees from opting out, or where new pension arrangements are being implemented and the employer wants to go above and beyond the statutory requirements in some way (e.g. by automatically enrolling all employees, irrespective of whether they meet the criteria, or by implementing contribution levels above the statutory minimum). Amending the contracts of existing employees would involve consulting with the employees to obtain their consent. Changes can be implemented for new employees by simply updating template contracts of employment.

For advice on whether you should be amending your employment contracts, help drafting new pensions wording or any other queries regarding the new law, please speak to your usual Walkers contact.

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