

Command Paper on a draft Act to provide for pensions for the private sector, to establish the Pensions Commissioner.

Presented to Parliament by the Chief Minister

by Command of Her Majesty

27th April 2018

1. Draft Bill
2. Draft Explanatory Memorandum

Comments on this Command Paper should be sent by email to command.papers@gibraltar.gov.gi or delivered to

Command Papers Consultation c/o Kevin Warwick, Ministry of Health Care and Justice, Zone 1, Level 7, St Bernard's Hospital, Harbour Views Road, Gibraltar, no later than the 8th June 2018

Any comments received later than the 8th June 2018 may not be taken into account for the purposes of the relevant consultation

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BILL

FOR

AN ACT to make provision with respect to the provision of pension schemes to employees employed in the private sector, to establish a Pensions Commissioner, and for connected purposes.

ENACTED by the Legislature of Gibraltar

PART I

PRELIMINARY

Citation and commencement

1 This Act may be cited as the PRIVATE SECTOR PENSIONS ACT 2018 and shall come into operation on such date as the Minister may, by Notice published in the Gazette, appoint; and the Minister may appoint different days for the coming into operation of different provisions of this Act.

Interpretation

2 In this Act, unless the context otherwise requires—

“account balance” in respect of a member means the market value of all employer contributions and member contributions, if any, plus earnings thereon;

“actuary” means a person capable of appointment under the Financial Services (Insurance Companies) Act 1987;

“additional voluntary contribution” means a contribution to the pension fund by a member of the pension plan beyond any amount that the member is required to contribute;

“administrator” means the person or persons that administer the pension plan;

“Commissioner” means the Pensions Commissioner established by section 35;

“contributory benefit” means a pension benefit or part of a pension benefit to which a member is required to make contributions under the terms of the pension plan;

“deferred pension” means a pension benefit, payment of which is deferred until the beneficiary reaches pensionable age under the pension plan;

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- “defined benefit” means a benefit determined in advance with reference to various factors including level of earnings and length of employment and a “defined benefit pension plan” means a plan providing such a benefit;
- “defined contribution benefit” means a benefit that is determined solely with reference to, and is provided by, accumulated contributions made by or for the credit of a member together with the investment yield of such accumulated contributions and that is determined on an individual account basis; and “defined contribution pension plan” means a pension plan providing a defined contribution benefit;
- “disabled” in relation to a member means unable because of a physical or mental condition to perform most or all of the tasks related to that member’s employment;
- “document” includes any information held or kept by electronic means;
- “earnings” in relation to a person, means sums of any of the following descriptions that are payable to the person in connection with his employment-
- (a) salary, wages, commissions, bonuses and overtime;
 - (b) statutory sick pay under the Employment (Sick Pay) Order; and
 - (c) statutory maternity pay under the Social Security (Insurance) Act.
- “employee” means any individual who enters into or works under a contract of employment with an employer which is registered at the Department of Employment, and the term includes a person whose services have been interrupted by a suspension of work during a period of leave or temporary lay-off.
- “employer” means a person in Gibraltar who employs employees, and includes a self-employed person;
- “financial institution” means;
- (a) a body holding a Class VII licence issued under the Financial Services (Investment and Fiduciary Services) Act; or
 - (b) a body holding a Class XVI licence issued under the Financial Services (Investment and Fiduciary Services) Act; or
 - (c) any other company which is approved by the Commissioner for the purposes of this Act;
- “financial institution pension plan” means a pension plan established by a financial institution and approved by the Commissioner to offer defined-contribution or defined-benefit pension plans for individuals, whether employees or self-employed;
- “fiscal year” in relation to a pension plan or a pension fund means the fiscal year of that pension plan or, as the case may be, that pension fund;
- “former member” means a person who has terminated employment or membership in a pension plan and—
- (a) is entitled to a deferred pension payable from the pension fund;
 - (b) is in receipt of a pension payable from the pension fund; or
 - (c) is entitled to receive any other payment from the pension fund;
- “member” means a member of a pension plan;
- “multi-employer pension plan” means a pension plan established and maintained for employees of two or more employers who contribute or on whose behalf

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contributions are made to a pension fund in accordance with an agreement between the employers, but does not include a pension plan where such employers are affiliated or a financial institution pension plan;

“Minister” means the Minister with responsibility for Finance;

“pensionable age” means the age specified and agreed in a pension plan, but which shall not exceed 70;

“person” means an individual or a body corporate or unincorporated;

“pension” means a pension benefit that is in payment;

“pension benefit” means the periodic payment due to a person in accordance with the rules of a pension plan;

“pension fund” means the fund maintained to provide benefits under or related to the pension plan;

“pension plan” means an occupational pension organized and administered under the Financial Services (Occupational Pensions Institutions) Act 2006 and any regulations made thereunder to provide pensions for employees, or a financial institution pension plan;

“prescribed” means prescribed by regulations;

“Register” means the register of pensions to be kept by the Commissioner under section 36 of this Act;

“registration” means registration under this Act;

“regulations” means any regulations made under this Act;

“retirement product” means such pension plan other than a pension plan referred to in this Act as may from time to time be prescribed;

“self-employed person” means a person registered under the Businesses Trades and Professions (Registration) Act 1989 whose earnings (otherwise than in the capacity of an employee) derive from his production (in all or part) of goods or services in Gibraltar, or his trade in goods or services in or from Gibraltar;

“surplus” means the excess of assets over liabilities in a pension fund both calculated in the prescribed manner;

“termination” in relation to employment, includes retirement and death;

“transfer value” for the purpose of determining the lump sum amount that is equivalent to a pension or a benefit, means the value of the pension or benefit calculated in the manner provided in the rules of the pension plan and as of a fixed date;

“trustee” means a trustee of a pension plan;

“wind up” means in relation to a pension plan, the termination of a pension plan and the distribution of the assets of the pension fund.

Restrictions on application of Act

- 3 (1) This Act does not require a pension plan to be provided in respect of employment or service which constitutes a “public service” within the meaning of the Pensions Act; or

(2) This Act does not apply to pensions established under the Social Security (Insurance) Act and any regulations made thereunder.

(3) The requirements of this Act and the regulations shall not be construed to prevent the registration or administration of a pension plan and related pension fund that provide pension benefits or ancillary benefits more advantageous to members and former members than those required by this Act and the regulations.

PART II

REGISTRATION, ADMINISTRATION, AND MEMBERSHIP, OF PENSION PLANS

Obligation of employers to establish and maintain pension plans

4 (1) Subject to the provisions of this Act, every employer shall, in relation to all employees meeting the requirements of section 11—

- (a) if, immediately before the commencement of this Act there is in existence a pension plan, continue and maintain the pension plan in accordance with this Act;
- (b) if, immediately before the commencement of this Act there is no pension plan in existence, participate in a pension plan;
- (c) where he is so required under the provisions of this Act, make contributions to a pension fund of the pension plan.

(2) An employer shall comply with subsection (1) above —

- (a) where the employer is a large employer, on or before 1st July 2019;
- (b) where the employer is a medium employer, on or before 1st July 2021;
- (c) where the employer is a small employer, on or before 1st July 2025; and
- (d) where the employer is a micro employer, on or before 1st July 2027.

(3) For the purposes of subsection (2) whether an employer is a micro, small, medium or large employer on the date that this Act comes into operation, shall be determined in accordance with Schedule 9 of the Companies Act 2014, save that any reference to the words “company” and “entity” shall be substituted with the word “employer” and for the avoidance of doubt, this subsection shall apply regardless of whether the employer is an individual or a body corporate or unincorporate.

(4) Where a pension plan is in the process of being wound up, subsection (1) shall not be construed as prohibiting the administration of a pension plan for the purpose of winding up the plan, as the case may be.

(5) An employee may elect, by submitting the prescribed form to the Commissioner by agreement in writing with his employer, not to benefit from a pension plan provided under subsection (1). An employee shall be free at any time to elect, by notice in writing to the employer, to choose to benefit from a pension plan provided under subsection (1), despite having previously elected not to participate.

Applications for registration

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5 (1) Within the period of ninety days after the date applicable to that employer as detailed in section 4(2), all employers shall make an application for registration for each of his employees to the Commissioner in the prescribed form which shall contain—

- (a) Details of those employees participating in a pension plan together with:
 - (i) the documents establishing the pension plan and evidencing the participation by employees; and
 - (ii) the name, occupation, qualification and address of each person constituting the board of trustees or the name and address of the body that administers the pension plan.
- (b) Details of those employees who have elected not to participate in a pension plan, together with the prescribed form submitted under section 4(5); and
- (c) Details of those employees who do not satisfy the eligibility requirements in section 11 of this Act, together with an explanation as to why they do satisfy these requirements.

(2) The Commissioner, upon being satisfied that the application complies with this Act, shall enter the employer and employees on the Register and confirm in writing within 21 days that the employer complies with the requirements of this Act.

(3) Where the Commissioner refuses to register a pension plan it shall serve notice of the refusal, together with written reasons, on the applicant or the administrator of the plan.

(4) An employer shall submit in the prescribed form, details of any changes in the particulars to be submitted under section 5(1), including without limitation upon the following events:

- (a) Any new employee being employed by that employer;
- (b) Any termination or redundancy of the employment of any employee; and
- (c) Any material changes in the terms of employment of any employee.

Duty of employer to provide information to administrator

6 An employer shall provide the administrator of a pension plan with any information required by the administrator for the purpose of complying with the terms of the pension plan or this Act or the regulations.

Duty of administrator to provide information to members, etc.

7 Subject to any regulations for the purposes of this section, the administrator of a pension plan shall provide in writing to each person who is eligible or is required to become a member of the pension plan—

- (a) an explanation of the provisions of the pension plan that apply to that person;
- (b) an explanation of the person's rights and obligations in respect of the pension plan; and
- (c) any other information prescribed by the regulations.

Annual statement of pension benefits

8 (1) The administrator of a pension plan shall provide annually or at such shorter periods as are specified in a pension plan, to each member, a written statement containing the prescribed

information in respect of the pension plan, the member's pension benefits or account balance and any ancillary benefits.

(2) A person who contravenes section 8(1) is guilty of an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Statement of benefits on termination of employment or on ceasing to be a member

9 Where a member of a pension plan terminates employment with his employer or otherwise ceases to be a member, the administrator shall give to the member, or to any other person who as a result becomes entitled to a payment under the pension plan, a written statement setting out—

- (a) the prescribed information in respect of the pension plan;
- (b) in the case of a defined benefit plan, the member's expected benefits at his normal retirement date;
- (c) in the case of a defined contribution plan, the amount of money standing to the member's account;
- (d) in the case of a defined benefit plan, the transfer value of the expected benefits as determined by an actuary;
- (e) any ancillary benefits;
- (f) detailed information on the portability of the pension plan.

Access to documents in custody of administrator

10 (1) Subject to any applicable data protection laws, if any of the following persons makes a written request to the administrator for the inspection of any documents and information relating to a pension plan and the pension fund, namely—

- (a) a member;
- (b) a former member;
- (c) any other person entitled to benefits under the pension plan;
- (d) an agent authorised in writing by a person mentioned in paragraph (a), (b) or (c);
- (e) an employer who participates in the pension plan,

the administrator shall make those documents and information available to him without charge and permit that person to make extracts or to copy them at his own expense or, if a copy is made available to him by the administrator, upon the payment of such reasonable fee as the administrator may determine.

(2) The administrator may, before making available the requested information, require the person to provide information establishing his entitlement to see the information.

(3) Notwithstanding subsection (1), the administrator shall not make available personal information that relates to a member or former member without the consent of that member or former member, or that member's or former member's legal representative.

(4) A person shall not be permitted to inspect documents or personal information that relates to a member or former member without the consent of that member or former member, or that member's or former member's legal representative.

Eligibility for membership

11 (1) The obligation on employers in section 4 of this Act shall apply in respect of every employee who meets the requirements of subsection (2) below.

(2) Except as otherwise provided by or under this Act, an eligible employee shall, by virtue of this section alone, be a member in a pension plan if—

(a) he is twenty-three years old or more;

(b) he has completed months/years of employment with the employer to whom the pension plan relates in any year prior to membership in the pension plan; and

(c) in a period of 12 months the gross earnings payable to him exceeds or is equal to £10,000.

and, subject to the provisions of this Act, his membership in the pension plan shall continue until he attains the pensionable age.

(3) Where a person is employed by more than one employer, he shall be enrolled as a member of each pension plan for which he has met the criteria set out in subsection (2).

(4) A member of a pension plan does not cease to be a member by reason only that he ceases to be employed by his employer.

**PART III
CONTRIBUTIONS**

Contributions

12 (1) Subject to subsections (2) to (5)—

(a) a member of a defined contribution pension plan and his employer shall both contribute equally to the pension fund of the pension plan for the benefit of that member;

(b) a member of a multi-employer pension plan, under which the obligation of the member's employer to contribute is limited to a fixed sum, and his employer shall both contribute equally to the pension fund of the pension plan for the benefit of that member; and

(c) a member of a defined benefit plan and his employer shall 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 at a rate of 2% per annum of the employee's earnings.

(2) Notwithstanding subsection (1), an employer may, in respect of any or all of his employees, contribute to the pension fund amounts representing both the amount required to be contributed by the employer and a part or the whole of the amount required to be contributed by the employee.

(3) Notwithstanding subsection (1), a member may make additional voluntary contributions to the pension fund in accordance with the rules of the pension plan but no such additional contribution shall be construed as imposing an obligation on the employer to contribute to the pension fund an amount exceeding the amount specified in that subsection in respect of the employer's contribution.

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(4) Notwithstanding subsection (1), an employer may make contributions in respect of a member to the pension fund in accordance with the rules of the pension plan, that exceed the contributions required to be made under subsection (1), but no such additional contribution shall be construed as imposing an obligation on the member to contribute to the pension fund an amount exceeding the amount specified in that subsection in respect of the member's contribution.

(5) The employer shall, at least once in every month, withhold from the member's earnings the relevant amount of the member's contribution and pay the same within thirty days following the month in which the amount was withheld, together with the employer's contribution, directly into the pension fund.

(6) The administrator shall immediately give written notice to the employer and to the Commissioner of any contribution that is not paid to the pension fund when due.

(7) No administrator is in breach of any duty to which he is otherwise subject by reason of his communicating in good faith to the Commissioner, whether or not in response to a request made by it, or by reason of any obligation under subsection (6), any information or opinion on any matter of which he becomes aware and which may affect the fair and proper administration of a pension plan or pension fund.

(8) The Minister may, from time to time, by order vary the rate specified in subsection (1).

(9) The Minister may, by regulations, provide for—

- (a) the manner in which failure to comply with the provisions of this section is to be dealt with;
- (b) the procedure for the recovery of any contributions due under this section;
- (c) the rate of interest on contributions;
- (d) the recovery of contributions or other amounts erroneously paid, or paid in excess of or below the prescribed rates.

Civil proceedings

13 (1) All contributions due to the pension fund of a pension plan by an employer, including members' contributions withheld under section 12(5), are recoverable as a debt due to the pension fund, and without prejudice to any other remedy, may be recovered summarily as a civil debt by:

- (a) the Commissioner, on behalf of the pension fund;
- (b) a person, including an administrator, authorized in writing by the Commissioner;
or
- (c) where the pension plan permits, the member.

(2) Without prejudice to any other remedy for recovery of contributions that are due to be paid to a pension fund by an employer, including members' contributions withheld under section 12(5), the directors and officers of a company or other body corporate that, as an employer, owes contributions are liable jointly and severally for contributions that became due while they were directors or officers, and proceedings may be taken under this section against all or any of them for recovery of those contributions.

(3) For greater certainty, proceedings may be taken under this section against persons who were directors or officers after they cease to be directors or officers, including persons who ceased to be directors or officers before the coming into force of this section.

(4) A director or officer who has paid contributions pursuant to proceedings under this section has a right of contribution against any other directors and officers of the company or other body corporate who are liable under this section for the contributions paid by that director or officer, and a right to be indemnified by the company or body corporate in respect of those contributions.

(5) For the purposes of subsections (2) to (4), “officer” means—

- (a) in the case of a company as defined in section 2 of the Companies Act 2014, an individual appointed as a director or secretary of the company; and
- (b) in the case of other companies and bodies corporate, an individual who performs functions for a company or other body corporate similar to those normally performed by an individual appointed as a director or secretary.

PART IV

VESTING AND RETIREMENT

Pensionable age

14 (1) The normal retirement date under a pension plan registered under this Act shall be not later than one year after a member of the pension plan has attained the pensionable age unless the pension plan specifies an earlier normal retirement date.

(2) Subject to subsection (3), a member of a pension plan shall receive the first instalment of his pension on the first day of the month following his normal retirement date, and subsequent instalments on the first day of each succeeding month.

(3) Subject to the type of pension plan, a member of a pension plan who, after his normal retirement date, continues in employment may elect to continue accruing benefits under the pension plan, and shall receive the first instalment of his pension on the first day of the month following—

- (a) his actual retirement, or
- (b) the date of his electing to receive his pension, rather than continue to accrue benefits under the pension plan,

whichever is earlier, and subsequent instalments on the first day of each succeeding month.

(4) An election under subsection (3) shall be made in writing, signed by the member and delivered to the administrator of the pension plan.

Vesting

15 (1) Every pension plan which is to be registered shall provide for the full vesting of accrued benefits in each of its members within a period which does not exceed two years after the commencement of membership.

(2) Notwithstanding subsection (1), the accrued benefits of a member of a pension plan which is in existence immediately prior to the date on which this Act comes into operation, shall be fully vested on the date determined in accordance with the provisions of the plan or by the second anniversary of the commencement of this Act, whichever is earlier.

Portability

16 (1) A member of a pension plan who terminates employment shall be entitled to require the administrator to pay an amount equal to the transfer value of the member’s benefits in the case of a

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defined benefit pension plan or the account balance in the case of a defined contribution pension plan—

- (a) to the pension fund of a new employer;
- (b) to a prescribed retirement product; or
- (c) for the purchase for the member of a life annuity that will commence on a date not earlier than the earliest date on which the member would have been entitled to receive payment of pension benefits under the pension plan.

(2) A member may exercise his right under subsection (1) by delivering to the administrator within ninety days from his date of termination a direction in a form determined by the Commissioner.

(3) The administrator shall comply with the direction within thirty days after delivery of the direction.

(4) If a member who has a right under subsection (1) does not deliver a direction as required by subsection (2), the administrator may deal with the transfer value of the member's benefits or the member's account balance according to his fiduciary obligations or as otherwise required by law.

(5) The administrator is discharged on making the payment or transfer in accordance with subsection (2) if the payment or transfer complies with this Act and the regulations.

PART V

LOCKING-IN OF CONTRIBUTIONS AND BENEFITS

Void transactions

17 A transaction is void to the extent that it purports to convey, assign, charge, anticipate or give as security—

- (a) a right to receive money payable under a pension plan; or
- (b) assets being transferred from a pension fund.

Exemption from execution, seizure or attachment

18 (1) Money payable under a pension plan is exempt from execution, seizure or attachment or any other process taken by a creditor.

(2) Money transferred from a pension fund to a prescribed retirement product or for the purchase of a life annuity is exempt from execution, seizure, attachment or any other process taken by a creditor.

(3) Money payable from a prescribed retirement product or from a life annuity purchased with moneys transferred from a pension fund is exempt from execution, seizure, attachment or any other process taken by a creditor.

Commutation or surrender

19 Except as provided under this Act a pension or a benefit of a person under a pension plan shall not be transferred or surrendered during that person's life and any commutation or surrender is void.

Exceptions to general restrictions

20 Sections 18 and 19 do not apply to a transfer required by a court order or pursuant to a property settlement agreement relating to the transfer of assets on a divorce or to an order or settlement agreement for the maintenance of a spouse, whether the order for the transfer of assets or for maintenance was made before or after the commencement of this Act.

**PART VI
BENEFITS**

Ancillary benefits

21 A pension plan may provide the following ancillary benefits in relation to the pension benefit, that is to say,—

- (a) disability benefits;
- (b) survivor benefits;
- (c) early retirement options and benefits in excess of those provided by this Act;
- (d) benefits arising from additional voluntary contributions; or
- (e) any other ancillary benefits prescribed by regulations.

Survivor benefits on death after pension commences

22 (1) If a former member dies after payment of his pension benefit is due to commence, the benefit (“survivor benefit”) shall be paid to his beneficiary in accordance with the form of pension benefit provided for under the terms of the pension plan.

(2) Where no beneficiary has been appointed, or where the beneficiary predeceases the member, the survivor benefit shall be paid to the estate of the member.

(3) In this section “beneficiary” means the person who has been appointed in writing by the member as his beneficiary for the purposes of the pension plan.

Minimum aggregate benefits

23 (1) In respect of employment before the date this Act comes into operation—

- (a) the aggregate of benefits payable under a pension plan to a member shall not be less than the market value of the member’s vested account balance under defined contribution plans or the transfer value of the member’s vested benefit under defined benefit plans;
- (b) if the aggregate of benefits in paragraph (a) is less than the member’s contributions plus interest credited to the contributions, the member is entitled to have the transfer value under a defined benefit provision increased so that the transfer value is equal to the value of the member’s contributions plus interest.

(2) An increase in the value of the vested pension benefit in respect of employment before the date this Act comes into operation that results from an amendment to the pension plan on or after that date may be included in calculating the transfer value.

(3) A member’s contributions to a pension plan made on or after the date this Act comes into operation and the interest on the contributions shall not be used to provide more than 50% of

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the transfer value of contributory benefits accrued after that date to which the former member is entitled under the pension plan on termination of membership or employment.

(4) A member who is entitled to a vested pension benefit on termination of employment or membership is entitled to payment from the pension fund of a lump sum payment equal to the amount by which the member's contributions under the pension plan made on or after the date this Act comes into operation and the interest on the contributions exceeds 50% of the transfer value of the contributory benefit accrued after the date this Act comes into operation.

(5) The following may be excluded in determining that part of the transfer value to which subsections (3) and (4) apply, that is to say,—

- (a) defined contribution benefits;
- (b) benefits that result from additional voluntary contributions;
- (c) in the case of a multi-employer pension plan that permits a member who has not accrued maximum pension benefits permitted under the pension plan in a fiscal year of the pension plan to make contributions to increase the member's pension benefit to the maximum permitted for the fiscal year, benefits resulting from such contributions; and
- (d) any other benefits prescribed in the regulations for the purposes of this subsection.

(6) The following may be included by the administrator in calculating a member's contributory benefit for the purposes of subsection (3), that is to say,—

- (a) ancillary benefits related to employment on or after the date that this Act comes into operation;
- (b) increases to pension benefits and ancillary benefits related to employment before the date of the amendment resulting from an amendment to the pension plan made on or after the date that this Act comes into operation but which are not included in calculating the transfer value under subsection (3);
- (c) pension benefits and ancillary benefits related to employment before the date of the establishment of the pension plan, in the case of a pension plan established on or after the date that this Act comes into operation.

Effect of remarriage of widow or widower

24 Where the beneficiary of a deceased member of a pension plan who is receiving a pension under the plan is his widow or her widower, the beneficiary remains entitled to such pension notwithstanding his or her subsequent remarriage.

Variation of payment to disabled persons

25 A pension plan may permit variation in the terms of payment of a pension or other benefit under the pension plan to a member or former member by reason of his having a mental or physical disability which is likely to reduce considerably his life expectancy.

Small pensions

26 (1) A pension plan that provides defined benefits may provide for payment of the transfer value of the former member's benefits to the former member if the transfer value is not more than 5% of the average employment income as prescribed in the regulations in the year that the former member terminated his employment.

(2) A defined contribution pension plan may provide for payment of the former member's account balance to the former member if the account balance is not more than 5% of the average

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employment income as prescribed in the regulations in the year that the former member terminated his employment.

Information for payment of pension

27 (1) The administrator of a pension plan may, before paying a pension or other benefit, or the transfer value of such pension or other benefit, require the person entitled to such pension, benefit or transfer value, to provide any necessary or relevant information regarding the amount to be paid.

(2) The administrator of a pension plan is not liable in connection with the amount payable—

- (a) to the extent of his reasonable reliance on the information provided by the person entitled pursuant to subsection (1); or
- (b) where the person entitled fails to provide the information required pursuant to subsection (1), to the extent of his reliance on the information available in the records regarding the pension or benefit.

PART VII WINDING UP

Winding up

28 (1) The administrator may wind up a pension plan in whole or in part.

(2) Where the administrator proposes to wind up a pension plan, he shall give written notice of that proposal to—

- (a) the Commissioner;
- (b) each member of the pension plan;
- (c) each former member of the pension plan; and
- (d) any other person who he is required to notify by virtue of any other Act or any Regulations.

(3) The notice of a proposal to wind up shall contain such information as may be prescribed in regulations.

(4) Subject to subsection (5), in the case of a contributory pension plan, the effective date of the winding up shall not be earlier than the date on which notice of the winding up is given to the members.

(5) Notwithstanding subsection (4), the Commissioner may direct that a different date be taken as the effective date of winding up if it is satisfied that there are reasonable grounds for the change.

Notice of entitlements

29 On the winding up of a pension plan, the person winding up the pension plan shall give to each person entitled to a benefit in respect of the pension plan a statement setting out—

- (a) the person's entitlement under the pension plan; and
- (b) the options available to the person regarding the immediate payment of a pension benefit if he is eligible therefor or, if not so eligible, for the payment of

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a pension commencing on such future date and on such terms as may be prescribed; and

(c) any other information prescribed by regulations.

Determination of entitlement

30 For the purpose of determining the amount of pension benefits and any other rights, benefits and entitlements on the winding up of a pension plan in whole or in part—

- (a) the employment of each member affected by the winding up shall be deemed to have been terminated on the effective date of the winding up; and
- (b) each member's pension benefits at the commencement of the winding up shall be determined as if the member had satisfied all conditions for eligibility for a deferred pension benefit.

Pension fund continues subject to the Act and the regulations

31 (1) The pension fund of a pension plan that is wound up continues to be subject to this Act and the regulations until all the assets of the pension fund have been distributed.

(2) Where the money in a pension fund is not sufficient to pay all the pension on the winding up of the pension plan in whole or in part, the pension benefits and other benefits shall be reduced in the prescribed manner.

Surplus

32 No surplus may be paid out of a pension fund without the prior consent of the Commissioner.

PART VIII

ORDERS AND ADVICE BY COMMISSIONER

Orders by Commissioner

33 (1) The Commissioner may, in the circumstances mentioned in subsection (2), order an administrator or any other person to take or refrain from taking any action in respect of a pension plan or a pension fund.

(2) The Commissioner may make an order under this section if he is of the opinion—

- (a) that the pension plan or pension fund is not being administered in accordance with this Act, and the regulations or the pension plan; or
- (b) that the pension plan does not comply with this Act and the regulations; or
- (c) that the administrator of the pension plan, the employer or any other person dealing with a pension plan is contravening a requirement of this Act or the regulations.

(3) In an order made under this section the Commissioner may specify the time or times when or the periods of time within which the persons to whom the order is directed must comply with the order.

(4) An order under this section is not effective unless the reasons for the order are set out in the order.

Advice by Commissioner as to conformity

34 (1) The Commissioner may at any time, advise whether the rules of a pension plan do or do not conform with the requirements of this Act or the regulations.

(2) Where the Commissioner advises that the rules do not conform, he may indicate what steps it considers should be taken in order to achieve conformity.

PART IX

THE PENSIONS COMMISSIONER

Establishment of Office of Pensions Commissioner

35 (1) There is hereby established the Office of the Pensions Commissioner.

(2) The Commissioner shall be the Commissioner for Income Tax from time to time in appointment.

Register of Pensions

36 (1) The Commissioner shall keep a register in such parts and in such form as may be prescribed in which shall be entered the name (including every other name by which such person may have been known), address and date of registration of all:

- (a) Employers who have made an application under section 5;
- (b) The employees of the employer registered under subsection (a);
 - i. Who participate in a pension plan provided by that employer;
 - ii. Who have elected not to participate in a pension plan provided by that employer in accordance with section 4(5);
 - iii. Who do not qualify under section 11 for membership of a pension plan.

(2) The Commissioner may keep the register electronically and provide for receipt of the information to be contained on the register to be submitted in electronic form.

Functions of the Commissioner

37 The functions of the Commissioner are—

- (a) to keep and maintain the Register;
 - (b) to administer this Act and the regulations;
 - (c) to consider and determine applications for the registration of pension plans;
 - (d) to promote and ensure compliance, by pension plans, with the provisions of this Act and the regulations;
 - (e) to enforce the provisions of this Act and the regulations in respect of the administration of pension plans;
 - (f) to promote public education on pension plans and their benefits;
 - (g) to advise the Minister on any matter relating to pensions, including the development of laws relating to pension plans;
 - (h) to provide such information relating to its functions as the Minister may require;
- and

- (i) to investigate complaints relating to pension plans;
- (j) to perform any other functions provided for in or under this Act.

Officers of the Commissioner

38 (1) The Commissioner shall appoint such other officers as he may consider appropriate for the discharge of his functions under this Act.

Power to order information and reports

39 (1) For the purpose of ascertaining compliance with this Act and the regulations, the Commissioner may order an employer or an administrator of a pension plan to provide the Commissioner with such information or report and within such time limits as he may specify.

(2) An order under this section may include, but is not limited to, ordering the preparation of a new report and specifying the assumptions and methods or both, that shall be used in the preparation of the new report.

**PART X
GENERAL**

Power of entry, search, etc.

40 (1) For the purposes of the administration or enforcement of this Act and the regulations or any matter relating to the Act or the regulations, the Commissioner shall have such powers as are conferred on him under the Income Tax Act 2010, in respect of:

- (a) entering any premises where documents are kept;
- (b) examining, investigating or making inquiries or requiring the production of any document or thing relating to a pension plan or a pension fund; and
- (c) making, taking, removing or requiring the making, taking or removal of copies or extracts relating to an examination, investigation or inquiry.

Extension of time

41 The Commissioner may extend any time limit under this Act or the regulations, before or after the expiration of the time limit, if satisfied that there are reasonable grounds for granting the extension and may give such directions as the Commissioner considers proper consequent upon the extension.

Offences, penalties and orders for payment

42 (1) A person who contravenes a provision of this Act or the Regulations is guilty of an offence.

(2) A person who contravenes an order made under this Act is guilty of an offence.

(3) A person who hinders or obstructs another person lawfully carrying out a duty under this Act or the regulations is guilty of an offence.

(4) A person convicted of an offence under this Act is liable on summary conviction, to a fine not exceeding level 4 on the standard scale, or, in case of a second or subsequent offence, twice the amount at level 4 on the standard scale.

(5) Where a person is convicted of an offence relating to the failure to submit or make payment to a pension fund, the court may, in addition to any penalty, assess the amount not submitted or paid and order the person to pay the amount to the pension fund.

Offences by bodies corporate

43 (1) Where an offence under this Act or the regulations which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and be liable to be proceeded against accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

Regulations

44 (1) The Minister may, after consultation with the Commissioner, make regulations—

- (a) for the administration of pension plans, pension funds and benefits;
- (b) prescribing the method of calculating the transfer value of a pension or benefit in a pension plan;
- (c) prescribing the methods of calculating the values of assets and liabilities of pension funds; and the carrying out of periodic actuarial valuations of pension plans;
- (d) prescribing criteria to be complied with in connection with the paying of surplus out of pension funds;
- (e) regulating the investment of money from pension funds and prescribing the investments or categories of investment in which such money may be invested;
- (f) prescribing the requirements for life annuity contracts purchased from benefits paid or payable under this Act;
- (g) prescribing rates of interest and the method of calculating interest payable under this Act or the regulations;
- (h) prohibiting the investment of money from pension funds; and
- (i) requiring the audit of pension plans and pension funds and prescribing the persons who may perform, and the manner of performing, such audits;
- (j) governing the winding up or partial winding up of pension plans and prescribing priorities or the method of determining priorities on winding up, including priorities in the allocation of assets and related matters;
- (k) prescribing reports to be submitted to the Commissioner, the contents and method of preparation of such reports, the persons by whom such reports are to be prepared and the qualification, if any, required in respect of such persons;
- (l) prescribing forms and records required to be prescribed under the Act and time limits for retention of such records;
- (m) prescribing any fees payable under any provision of this Act or the Regulations;
- (n) prescribing retirement products and the requirement of such products;

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- (o) prescribing the information that shall be provided by an administrator of a pension plan to members and the period of time for which such information shall be provided; and
- (p) generally prescribing all other matters which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Rule against perpetuities

45 The rule of law relating to perpetuities shall not apply, and shall be deemed never to have applied, to the trusts of any pension fund held under a pension plan registered under this Act.

Explanatory Memorandum

The Bill proposes a new Private Sector Pensions Act.

Part 1 of the Bill includes provision as to the scope of the Bill, which will apply only to employers in the private sector.

Part 2 imposes an obligation on employers to either continue with any existing pension plans available to their employees, or if none are in place, to participate in a pension plan established by regulated pension providers. Employers will be under a duty to register such participation with the Commissioner, who shall be the Commissioner of Income Tax. Consultation is sought as to whether any exceptions for start-up business should apply.

Section 11 specifies which employees qualify for benefit under the obligation on employers to participate in a pension plan. Employees must be over 23 years of age, earn at least £10,000 per annum, and must have been employed by that employer for a minimum period. The Government is seeking consultation as to the length of this period.

Part 3 establishes the minimum contribution rate that employers and employees will make to the pension plans subject to the Bill, being 2% of the employees' annual earnings. Employers and employees may choose to make higher contributions at any time.

The restrictions and rules governing the pension plans to be provided under the Bill are detailed in Parts 4, 5 and 6. Part 4 deals with pensionable age and the portability of pension plans. Part 5 prevents pension plans from being used as security, or made subject to execution, seizure or attachments. Part 6 addresses benefits taken under a pension plan.

In Part 7 the rules on winding up pension plans are addressed, and the relevant notification of such to the Commissioner, to ensure entitlements and surplus is correctly distributed.

Part 8 details the types of advice and order than may be given by the Pensions Commissioner.

Part 9 of the Bill establishes the Pensions Commissioner. The Commissioner shall keep a register which will list all employers and their employees' status' under this Bill.

Section 37 lists the functions of the Commissioner which include to promote education on pension plans and their benefits, to verify payments made under pension plans, and to investigate complaints relating to a pension plan.

The Commissioner is provided with powers of entry and search to facilitate the enforcement and monitoring of compliance with the Bill, as per the powers granted under the Income Tax Act 2010.

The Bill creates offences for contravention of any provision of the Bill or orders or regulations made thereunder. Section 42 sets the fine payable for such offences at level 4 on the standard scale, which doubles in the case of a second or subsequent offence.