

# THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4853 GIBRALTAR Friday 14th May 2021

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B. 10/21

## BILL

FOR

**AN ACT** to amend the Private Sector Pensions Act 2019 to replace the Pensions Commissioner, to make consequential amendments arising from the enactment of the Financial Services Act 2019, and to make provision for sizes of employers and for connected purposes.

**ENACTED** by the Legislature of Gibraltar.

### **Title.**

1. This Act may be cited as the Private Sector Pensions (Amendment) Act 2021.

### **Commencement.**

2. This Act comes into operation on the day the Minister appoints by notice in the Gazette, and the Minister may appoint different days for different provisions or purposes.

### **Amendment of the Private Sector Pensions Act 2019.**

3.(1) The Private Sector Pensions Act 2019 is amended in accordance with the provisions of this Act.

(2) In section 2—

(a) delete the definitions of “actuary”, “Class VII License”, “Class XVI License”, “financial institution”, and “financial institution pension plan” in their entirety;

(b) after the definition of “employer”, insert—

“ “Financial Services Act” means the Financial Services Act 2019;

“Financial Services Ombudsman” has the meaning given in Part 14 of the Financial Services Act;”;

(c) after the definition of “former member”, insert—

“ “GFSC” means the Gibraltar Financial Services Commission established under the Financial Services Commission Act 2007, and continued in accordance with Part 3 of the Financial Services Act;” ;

(d) In the definition of “Minister” for “Finance” substitute with “Financial Services”;

(e) After the definition of “Minister, insert—

“ “regulated firm pension plan” means a pension plan provided by a regulated firm and approved by the Income Tax Commissioner to offer defined-benefit pension plans or defined contribution pension plans for individuals, whether employees or self-employed;”;

(f) In the definition of “pensionable age”, after “but which shall”, insert “not be less than 55 and shall”, and after “not exceed 70” insert “, subject to any exception contained in any enactment”;

(g) In the definition of “pension plan”—

(i) in paragraph (a), for “the Financial Services (Occupational Pensions Institutions) Act 2006” substitute with “Part 26 of the Financial Services Act”;

(ii) in paragraph (b), for “financial institution pension plan” substitute “regulated firm pension plan”;

(h) After the definition of “regulations” insert—

“ “regulated firm” means a person with permission under Part 7 of the Financial Services Act to carry on regulated activities (within the meaning of that Act).”.

(3) In section 4—

(a) For subsections (2) and (3) substitute with—

“(2) An employer shall comply with subsection (1) above, where the employer is—

(a) an enterprise employer, on or before 1 July 2021;

(b) a large employer, on or before 1st July 2022;

(c) a medium employer, on or before 1st July 2025;

(d) a small employer, on or before 1st July 2026; and

- (e) a micro employer, on or before 1st July 2027.
- (3) For the purposes of subsection (2) an employer is —
- (a) an enterprise employer if it employs 251 or more persons;
  - (b) a large employer if it employs between 101 and 250 (inclusive) persons;
  - (c) a medium employer if it employs between 51 and 100 (inclusive) persons;
  - (d) a small employer if it employs between 15 and 50 (inclusive) persons;
  - (e) a micro employer if it employs 14 or less (inclusive) persons.”;
- (b) After subsection (5), insert—
- “(5A) The obligation under subsection (1) shall not apply to an employer during any period in which all its employees meeting the requirements of section 10 have made an election under subsection (5)(a).”.
- (4) In section 11—
- (a) at the end of subsection (1)(a) insert “and”, and at the end of subsection (1)(b), delete “and”;
  - (b) delete subsection (1)(c) in its entirety;
  - (c) after subsection (1) insert —
- “(1A) 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.”;
- (d) in subsections (2), (3) and (4), for each instance in which the words “subsection (1)” appear, substitute with “subsections (1) and (1A)”;
  - (e) in subsection (6), for “when due”, substitute “within 14 days after it becomes due”.
- (5) In section 13, for subsection (1) substitute with —
- “13.(1) The Commissioner may, in the circumstances mentioned in subsection (2), order an administrator or any other person to—

- (a) take or refrain from taking any action in respect of a pension plan or a pension fund;
- (b) cease and desist any conduct or repetition of conduct which constitutes a contravention of this Act or regulations; or
- (c) take any action where failure to take such action constitutes a contravention of this Act or regulations.”.

(6) In section 14(2), for “Commissioner for Income Tax from time to time in appointment” substitute with “GFSC”.

(7) For the title of section 15, substitute with “Register of Employers Maintaining Pension Plans”.

(8) In section 16, at the end of subsection (h), insert “and”, and delete subsection (i) in its entirety.

(9) In section 17—

- (a) for the title, substitute with “Delegation of functions and cooperation with other authorities”;
- (b) substitute the entirety of section 17 with —

**“Officers of the Commissioner.**

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

(2) The Commissioner may delegate the discharge of any functions to—

- (a) any officers appointed under subsection (1);
- (b) any employee of the GFSC;
- (c) with the consent of the Minister, any department or office of the Government; or
- (d) with the consent of the Minister, any other person as the Commissioner may propose.

(3) The delegation by the Commissioner of any of its functions does not affect the exercise by the Commissioner of those functions.

(4) The Commissioner may assist, exchange information or cooperate with any department of the Government, statutory body or other authority exercising public functions for the purposes of discharging any of its functions.

- (5) The Commissioner must only use information received under subsection (4) for the purposes for which it was provided, other than in justified circumstances, of which it must immediately inform the disclosing department, authority or body.
- (6) When providing information under subsection (4), the Commissioner may require the recipient of any information to use the information only for the purposes for which the Commissioner has provided it and not to disclose it without the Commissioner's express consent.
- (7) The Commissioner may conclude cooperation agreements with any department of the Government, statutory body or other authority exercising public functions, establishing procedures for the exchange of information in accordance with this section."

(10) After section 18, insert —

**“Immunity.**

18A.(1)The Commissioner is not liable in damages for anything done or omitted in the discharge or purported discharge of any powers or functions conferred on the Commissioner by this or any other Act.

- (2) Any person who is a member, officer, employee or delegate of the Commissioner is not liable in damages for anything done or omitted in the discharge or purported discharge of any powers or functions conferred on the Commissioner by this or any other Act.
- (3) Subsections (1) and (2) do not apply to an act or omission which is shown to have been in bad faith.
- (4) The Commissioner must (unless bad faith is definitively found to have existed) indemnify any of its existing and former members, officers or employees for the costs of defending any action brought by a third party in respect of anything they are alleged to have done or omitted in the discharge or purported discharge of any powers or functions conferred on the Commissioner by this or any other Act.

**Professional secrecy.**

18B.(1)Any person who works or has worked for the Commissioner, as well as any auditor or expert acting on its behalf, is bound by the obligation of professional secrecy.

- (2) A person to whom subsection (1) applies must not divulge confidential information received by them in the course of their duties to any person or authority, except in summary or aggregate form which ensures that individual pension plans cannot be identified.

- (3) Nothing in this section prohibits the disclosure of information for the purpose of—
- (a) any criminal investigation or prosecution; or
  - (b) any civil or commercial proceedings in respect of the winding up of a pension scheme.

**Exemption from Income Tax.**

18C. The income of the Commissioner is exempt from income tax under the Income Tax Act 2010.”.

- (11) For section 19, substitute—

**“Power of entry, search, etc.**

19.(1) A magistrate may issue a warrant authorising the Commissioner to enter and search premises if the magistrate is satisfied, on information on oath, that—

- (a) there are reasonable grounds for suspecting that a person has contravened a provision of this Act or regulations; and
- (b) there are on the premises specified in the application for a warrant, or in the knowledge or possession of any person identified in the application for a warrant, information or documents relevant to whether that contravention has been or is being committed.

(2) An application for a warrant under this section—

- (a) may be made by a person acting under the authority of the Commissioner or a constable; and
- (b) must specify the premises to which it relates.

(3) A warrant issued under this section—

- (a) continues in force for one month beginning with the date on which it was issued; and
- (b) authorises a person acting under the authority of the Commissioner or a constable—
  - (i) to enter the premises specified in the warrant;
  - (ii) to search the premises and inspect any relevant information found on the premises;

- (iii) to take copies of or seize and remove any relevant information found on the premises or take any other steps which may appear to be necessary for preserving or preventing interference with any relevant information;
  - (iv) to require any person on the premises to provide an explanation of any relevant information or to state where it may be found; and
  - (v) to use such force as may be reasonably necessary.
- (6) Any relevant information of which possession is taken under this section may be retained for up to six months.
- (7) In this section, “relevant information” means any document or information which a person acting under a warrant issued under this section reasonably believes may be required as evidence for the purposes of enforcing the provisions of this Act or regulations; and
- (8) A person who wilfully obstructs another person in the exercise of any power under this section commits an offence and is liable—
- (a) on summary conviction, to the statutory maximum fine; or
  - (b) on conviction on indictment, to a fine.”.
- (12) After section 20, insert—
- “Complaints.**
- 20A.(1)The Financial Services Ombudsman shall investigate, facilitate, mediate, propose or determine solutions to a dispute arising from the provisions of this Act and submitted by or on behalf of an employee or other beneficiary of a pension provided pursuant to this Act.
- (2) Part 14 of the Financial Services Act shall apply to disputes referred to under subsection (1) save that for the purposes of this Act, a reference in that Part to—
- (a) a “consumer” shall include an employee or other beneficiary of a pension provided pursuant to this Act; and
  - (b) a “Financial Services Provider” shall include any provider of a pension plan, and for the avoidance of doubt, includes but is not limited to an employer.”.
- (13) In section 22(2), after “in connection with the functions of management as if”, for “he” substitute “the member”.

(14) In section 23—

- (a) delete subsection (1)(m) in its entirety;
- (b) at the end of subsection (1)(t), for “.” substitute with “; and”;
- (c) after subsection (1)(t), insert—
  - “(u) exempting, in the public interest, specific pension plans and their administrators from the provisions of this Act.”.
- (d) after subsection (1), insert—
  - “(2) The Minister may make regulations providing for the payment to the Commissioner of such fees as may be specified in the regulations in connection with the exercise of any of the Commissioner’s functions under or as a result of this Act or any other enactment.
  - (3) Regulations under subsection (2) may in particular—
    - (a) provide for the determination of any fee in accordance with a specified scale or other specified factors;
    - (b) make provision as to the persons by whom, and the time or intervals at which any fee is to be payable; or
    - (c) provide for the fee not to be charged, or to be waived in whole or in part, in prescribed cases or circumstances.
  - (4) Anything made or done in respect of which a fee is payable by virtue of regulations made under subsection (2) is not to be regarded as duly made or done if the fee is not paid as required by the regulations.
  - (5) Any fee which is owed to the Commissioner under any provision made payable under this section may be enforced as a civil debt owed to the Commissioner.”.



## **EXPLANATORY MEMORANDUM**

This Act amends the Private Sector Pensions Act 2019 in order to appoint the Gibraltar Financial Services Commission as the Pensions Commissioner in place of the Income Tax Commissioner, to make consequential amendments arising from the enactment of the Financial Services Act 2019, to make provision for sizes of employers and to extend the date by which small employers are subject to obligations under the Act. Section 17 extends the provisions for cooperation with Government departments, public bodies or others for the purposes of better carrying out the requirements of the Act. Sections 18A and 18B provide immunity for the officers and employees of the Pensions Commissioner and subject them to professional secrecy obligations. This Act introduces a power to make regulations to provide for fees to be charged by the Pensions Commissioner and section 18C exempts the Pensions Commissioner from income tax. Any disputes arising from this Act will be capable of referral to the Financial Services Ombudsman under section 20A. Finally, this Act provides for immunity from the sanctions available under the Act for the Government in cases where the Government acts as a pension provider or pension administrator.

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