

GUERNSEY STATUTORY INSTRUMENT

2023 No. 83

**The Secondary Pensions (Guernsey and Alderney)
Regulations, 2023**

<i>Made</i>	16 th October, 2023
<i>Coming into operation</i>	16 th October, 2023
<i>Laid before the States</i>	, 2023

THE COMMITTEE FOR EMPLOYMENT AND SOCIAL SECURITY, in exercise of the powers conferred on it by sections 2 and 20 of the Secondary Pensions (Guernsey and Alderney) Law, 2022¹ and section 20 of the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016² and all other powers enabling it in that behalf, hereby makes the following Regulations:-

Operative dates for duty to enrol.

1. (1) For the purpose of section 2(2)(a) of the Secondary Pensions (Guernsey and Alderney) Law, 2022 ("**the Law**"), there shall be different operative dates for employers, which are set out in the table below.

¹ Order in Council No. III of 2023.

² Order in Council No. V of 2018; this enactment has been amended.

<u>Number of employees</u>	<u>Operative date</u>
≥ 26	1 July 2024
11-25	1 October 2024
6-10	1 January 2025
2-5	1 July 2025
1	1 October 2025

(2) For the purposes of paragraph (1), the number of employees shall be determined as follows –

- (a) for existing employers as at 30 June 2024,
- (b) for employers established after 30 June 2024, the number of employees shall be determined on the relevant operative date.

(3) Section 5(2) of the Law shall not take effect in relation to any employer until the relevant operative date for that employer, as prescribed by paragraph (1).

Manner of enrolment.

2. (1) For the purpose of section 2 of the Law, an employee is immediately enrolled into a pension scheme by –

- (a) giving a notice in such form as may be required by Statement of Practice issued by the Director ('**Notice of Immediate Enrolment**') to the employee by the later of:

- (i) the relevant operative date for that employer (see regulation 1), or
 - (ii) commencement of that employee's employment with that employer, and
- (b) enrolling the employee into an approved pension scheme no later than 7 days after the relevant operative date or commencement of employment, whichever is the later, unless the employee opts out from enrolment in writing beforehand.

(2) Where an employer intends to defer the employee's enrolment pursuant to section 6 of the Law, a notice in such form as may be required by Statement of Practice issued by the Director ('**Notice of Deferred Enrolment**') must instead be given to the employee by the later of:

- (a) the relevant operative date for that employer (see regulation 1), or
- (b) commencement of that employee's employment with that employer.

(3) Where subparagraph (2) applies, unless the employee opts out of the enrolment in writing, an employee must be enrolled into an approved pension scheme no later than 3 months after the relevant operative date or commencement of employment, whichever is the later.

Manner of automatic re-enrolment.

3. For the purpose of section 4(3) of the Law, where an employee is to be automatically re-enrolled into a pension scheme this must be done by:

- (a) a notice in such form as may be required by Statement of Practice issued by the Director ('**Notice of Automatic Re-enrolment**') being given to the employee within 3 months of the third anniversary of the written decision to opt out, and
- (b) unless the employee opts out of the automatic re-enrolment in writing, the employee must be enrolled into an approved pension scheme within 3 months and 7 days of the third anniversary of the written decision to opt out.

Reference to point of Law to Ordinary Court

4 (1) A question of law arising on a reference to the Guernsey Revenue Service Tribunal under section 20 of the Law may, if the Guernsey Revenue Service Tribunal thinks fit, and with the consent of the appellant and the Director of the Revenue Service, be referred by the Guernsey Revenue Service Tribunal for decision to the Ordinary Court.

(2) The reference to the Ordinary Court shall be made in such manner and within such time (if any) as may be prescribed by Order of the Royal Court; and, subject to the provisions of any Order of the Royal Court made under this subsection, the Royal Court (Guernsey Tax Tribunal) Order, 2008 has effect for the purposes of this paragraph.

(3) The provisions of this paragraph are in addition to the provisions of regulation 6.

Determination of references.

5. (1) In disposing of a reference under section 20 of the Law, the Guernsey Revenue Service Tribunal may –

(a) confirm, annul or vary the determination of the Director of the Revenue Service which is the subject of the reference, or

(b) set aside the determination and order the Director to make a fresh determination after making such further enquiry as –

(i) the Director thinks fit, or

(ii) the Guernsey Revenue Service Tribunal may direct.

(2) Subject to regulation 6, the decision of the Guernsey Revenue Service Tribunal is final and conclusive.

Case for opinion of Ordinary Court

6. (1) Upon the determination of a reference by the Guernsey Revenue Service Tribunal under section 20 of the Law –

(a) the appellant, or

(b) the Director of the Revenue Service,

if dissatisfied with the determination as being erroneous in point of law, may require the Guernsey Revenue Service Tribunal to state and sign a case for submission to the Ordinary Court.

(2) Such a requirement shall be made by delivering, at any time within 21 days after the determination of the reference, a notice in writing to the President of the Guernsey Revenue Service Tribunal.

(3) The case shall set out the facts and the decision of the Guernsey Revenue Service Tribunal.

(4) The case when stated and signed shall be delivered by the President to the party who required it.

(5) The party to whom the case is delivered shall, within 21 days after that party received it –

(a) transmit the case to His Majesty's Greffier, and

(b) send to the other party a copy of the case, together with notice in writing that the case has been so transmitted.

(6) The Ordinary Court shall hear and determine any question of law arising on the case, and may –

(a) reverse, affirm, or amend the determination of the Guernsey Revenue Service Tribunal,

- (b) remit the matter to the Guernsey Revenue Service Tribunal, with the opinion of the Ordinary Court thereon, or
- (c) make such other order as the Ordinary Court may think fit.

(7) The Ordinary Court may cause the case to be sent back for amplification or clarification and thereupon the case shall be amplified or clarified accordingly and returned to the Ordinary Court and paragraph (6) shall thereupon apply.

- (8) The Royal Court may by Order make provision in respect of –
- (a) the preparation by the Guernsey Revenue Service Tribunal of, and the form and manner of, cases for submission to the Ordinary Court under this paragraph, and
 - (b) generally, the hearing of such cases by the Ordinary Court and of appeals therefrom to the Court of Appeal, including provision as to the form, manner, conduct and procedure of such hearings,

and, subject to the provisions of any Order of the Royal Court made under this subparagraph, the Royal Court (Guernsey Tax Tribunal) Order, 2008 has effect for the purposes of this subparagraph.

Appeals from Ordinary Court to Court of Appeal

7. (1) An appeal from a decision of the Ordinary Court made under regulation 4 or 6 lies, with leave of the Ordinary Court or Court of Appeal, to the Court of Appeal on a question of law.

(2) Section 21 of the Court of Appeal (Guernsey) Law, 1961 ("**powers of a single judge**") applies to the powers of the Court of Appeal to give leave to appeal under subparagraph (1) as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.

Supplemental amendments to the Income Tax Law.

8. (1) Section 150A of the Income Tax (Guernsey) Law, 1975 shall be amended as follows.

(2) After the words "pursuant to section 150(2)" insert "insofar as the scheme contains occupational pensions".

Supplemental amendments to the Law.

9. (1) In section 21 after "issue under" insert "sections 9, 16 or 17 of".

(2) In section 29, insert the following definitions in the appropriate places:

""**deferred benefits**" has the meaning given by section 150(2A) of the Income Tax Law, "

""**transfer payments**" has the meaning given by section 150(2A) of the Income Tax Law".

- (3) The Schedule to the Law shall be amended as follows -
- (a) at the end of paragraph 1(1)(b) delete "." and insert ", and",
 - (b) after paragraph 1(1)(b) insert -
 - "(c) in all cases must comply with the requirements of paragraph 3 below."
 - (c) for paragraph 1(8) of the Schedule to the Law, substitute the following -
 - "(8) Where -
 - (a) a scheme is established -
 - (i) in Jersey, or
 - (ii) in any other jurisdiction approved by the Director in a Statement of Practice, subject to whatever terms and conditions the Director thinks fit, provided any such terms and conditions are met, and

- (b) the employer participates in that scheme prior to commencement of this Law,

subparagraphs (2)(b) and (3)(a)(ii) do not apply."

- (d) after paragraph 2 insert -

"Refunds and triviality.

- 3. (1) This paragraph applies –

- (a) in respect of defined benefits schemes, only to benefits accrued in relation to service since the date on which the scheme became approbated, and

- (b) in respect of defined contribution schemes, only to funds in relation to contributions made since the date on which the scheme became approbated.

- (2) An approbated scheme must allow a member leaving service after 3 months from the date of enrolment to choose between -

(a) the making of a transfer payment into another approved scheme,
or

(b) deferred benefits,

regardless of the value thereof.

(3) An approved scheme must not allow a member after 3 months from the date of enrolment to -

(a) have any refund of that member's contributions unless the conditions of subparagraph (4)(b) are met,

(b) have any commutation of benefits under sections 153A or 157CA of the Income Tax Law unless the conditions of subparagraph (4)(a) or (b) are met, or

(c) transfer to a non approved scheme, unless the conditions of subparagraph (4)(b) are met

regardless of the value thereof.

(4) Where a member of an approved scheme -

(a) attains the age of 50 years, commutation of benefits may be permitted under the same conditions as set out in sections 153A or 157CA, as appropriate, of the Income Tax Law, or

(b) has not been resident in Guernsey or Alderney within the meaning of section 3 of the Income Tax Law for a consecutive period of 2 calendar years, and

(i) where the individual is still not resident, and

(ii) when the request for payment is made in the year immediately after a 2 year period of non-residence. "

Interpretation

10. In these Regulations, unless the context otherwise requires –

"**the Law**" means the Secondary Pensions (Guernsey and Alderney) Law, 2022,

"**the operative date**" has the same meaning as that given to it in section 2(2)(a) of the Law,

Citation.

11. These Regulations may be cited as the Secondary Pensions (Guernsey and Alderney) Regulations, 2023.

Commencement.

12. These Regulations shall come into force on the day they are made.

Dated this 16th day of October, 2023

A handwritten signature in black ink, appearing to read 'Peter Roffey', written in a cursive style.

Deputy Peter Roffey
President of the Committee for Employment and Social Security
For and on behalf of the Committee

EXPLANATORY NOTE

(This note is not part of the regulations)

These regulations prescribe the operative date on which an employer must enrol their designated employees (who are not active members of an approbated pension scheme provided by that employer) into an approbated pension scheme. They also confirm that the ability for an employee to opt in to an approbated pension scheme takes effect in relation to employers on the same day as the duty for enrolment, and limit the vesting and triviality rules for approbated schemes.

These regulations also contain provisions relating to the appeal process of a determination of a reference by the Guernsey Revenue Service Tribunal.

These Regulations come into force on 16th October, 2023.