



Guernsey Practice Notes

Requirements for Approved Schemes under Section 154A

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Contents

1.	General Information	3
2.	Definitions	3
3.	Membership	3
4.	Contributions	4
5.	Benefit Options	5
6.	Benefits on Withdrawal	6
Appendix 1	Application for and Consequences of Approval	7
Appendix 2	Definitions	8
Appendix 3	Relevant Person and Reporting Requirements	10
Appendix 4	Form 681	11
Appendix 5	Extra Statutory Concession	13

Readers are reminded that nothing stated in these notes should be treated as an authoritative statement of the **Law** on any particular aspect or in any specific case and action should not be taken as a result of these notes alone. Any further enquiries may be addressed to the States of Guernsey Income Tax Office, PO Box 37, St Peter Port, GY1 3AZ.

1. General Information

1.1 Introduction

These Practice Notes set out the requirements for pension schemes seeking approval under section 154A of the Income Tax (Guernsey) Law, 1975. These notes do not cover domestic pension schemes seeking approval under sections 150 and 157A of the **Law**. Nor do they cover end of service gratuity schemes, which are not considered to meet the requirements for pension schemes seeking approval under section 154A.

1.2 Application of these Practice Notes

These Practice Notes apply to the following schemes which have applied for approval under section 154A:-

- (a) a superannuation fund to which section 40(o) of the **Law** applies;
- (b) a **Retirement Annuity Contract** or **Retirement Annuity Trust Scheme** to which section 40(ee) of the **Law** applies;
- (c) such other fund, contract scheme or trust as may be prescribed under section 40 of the **Law**.

2. Definitions

The terms which appear in bold in these notes are defined in Appendix 2.

3. Membership

Membership of a scheme approved under section 154A must be restricted to:-

- individuals who upon becoming a member of the scheme were not resident in Guernsey (and, where the scheme is one to which section 40(ee) applies, Jersey) and who have not at any time since been so resident; or
- employees of employers participating in the scheme, in connection with the carrying on of business or exercise of functions wholly or mainly outside of Guernsey.

4. Contributions

4.1 Contributions by Employers

Contributions may be made as prescribed by the rules of the Scheme.

4.2 Contributions by Members

Contributions may be made as prescribed by the rules of the Scheme.

5. Benefits

5.1 Commencement of Benefits

Benefits may be paid at any time from **age 50**, unless retirement is due to **Incapacity**, or where the Director has agreed an earlier **Normal Retirement Age** due to the following:-

- because it would be normal in the particular occupation or in the country of employment for retirement to take place at an earlier age; or
- for occupational schemes where the employer agrees to the termination of the employment prior to **Normal Retirement Date** due to **Serious Ill Health**, or redundancy.

A member may defer commencement of benefits beyond **Normal Retirement Date**, which would normally be no later than age 75.

5.2 Benefits

A pension and/or lump sum may be paid as prescribed by the rules of the scheme.

5.3 Death Benefits

Death Benefits may be paid as prescribed by the rules of the scheme.

5.4 Triviality and Serious Ill Health

Where the **Fund Value** is **Trivial in Amount** or the retirement is due to **Serious Ill Health** the entire **Fund Value** may be paid as a lump sum.

It is permissible to commute a **Fund Value** which is **Trivial in Amount** at any age.

It is not necessary to seek prior approval from the **Director** before commuting a **Fund Value**. A **Fund Value** is considered **Trivial in Amount** where it does not exceed £30,000 or the equivalent in foreign currency based upon the exchange rate at the commutation date.

5.5 Taxation

Pension income and lump sums paid from a scheme approved under section 154A shall be exempt from Guernsey income tax under either section 40(p) or 40(ee) of the **Law**.

Income derived from the investments and deposits of a pension scheme approved under section 154A shall be exempt from Guernsey income tax under either section 40(o) or 40(b) of the **Law**.

6. Benefits on Withdrawal

6.1 Withdrawal from the Scheme

The benefit options which may be made available from an occupational scheme are as follows:-

- **Deferred Benefits**
- a refund of contributions which for defined benefit schemes may include reasonable interest on the member's contributions and for defined contribution schemes may allow for the actual investment return earned on the member's contributions
- a **Transfer Payment**

6.2 Taxation of Refunds and Transfer Payments

Refunds of contributions and Transfer payments from a scheme approved under section 154A shall be exempt from Guernsey income tax.

6.3 Transfer Reporting

A member may transfer his fund value as prescribed by the rules of the scheme which should be reported on the annual return of the scheme.

Appendix 1 Applications for and Consequences of Approval

Applications for Approval

Applications for approval should be made using form 681 and addressed to the Pension Schemes Supervisor. Scheme documentation does not need to be submitted with the application form but the **Director** may subsequently request additional information. Where a new employer adheres to a multi-employer scheme, the **Relevant Person** should inform the **Director** in writing.

Once an application for approval has been received it will be allocated a reference number which will be prefixed by the letter "R". This reference number should then be quoted on all further correspondence in connection with the scheme.

Any changes to the scheme documentation which affect or may affect continued approval must be advised to the **Director** within 30 days of the change or, if later, the date of implementation of the change. The instrument of amendment does not need to be submitted but a letter summarising the changes should be sent to the **Director**.

Any changes to the **Relevant Person** or the correspondence address for the scheme must be notified to the **Director** within 30 days of the effective date of the change.

Tax consequences of schemes approved under section 154A

Income derived from the investments and deposits of a scheme shall be exempt from Guernsey income tax under either section 40(0) or 40(b) of the Law.

Contributions will not qualify for Guernsey income tax relief.

A refund of contributions to a member will not be subject to Guernsey income tax.

A refund of contributions or any other payment from the pension fund to an employer will not be subject to Guernsey income tax.

Lump sum payments, including trivial commutations and lump sum payments on death will not be subject to Guernsey income tax.

Retirement lump sums, including lump sums paid due to Serious Ill Health, will not be subject to Guernsey income tax.

Transfer Payments may be made without deduction of Guernsey tax.

This appendix sets out the definitions of the terms which appear in bold type in these notes.

Actuary	A Fellow of the Institute and Faculty of Actuaries, or equivalent.
Deferred Benefits	Benefits payable at a later date which are of the same type as the benefits payable under the scheme in respect of a member who retires at his Normal Retirement Age
Director	The Director of Income Tax referred to in section 205 of the Law .
Fund Value	The member's accumulated fund, including contributions, investment returns and the proceeds from any insurance policies, or the value placed on the member's benefits (before any commutation option is exercised), as calculated by an Actuary .
Incapacity	Physical or mental deterioration which prevents an individual from following his or her normal employment, or which seriously impairs earning capacity.
Law	The Income Tax (Guernsey) Law, 1975, as amended.
Normal Retirement Age	The age at which the rules of the scheme concerned entitle that person to immediate benefits on his retirement, irrespective of his state of health. Normal retirement age may differ between categories of member and may be any age within the range 50 to 75. In certain circumstances the Director may allow a lower or a higher normal retirement age.
Normal Retirement Date	The date on which a member attains Normal Retirement Age .

Relevant Person	As defined in section 154A(6) of the Law
Retirement Annuity Trust Scheme	means a scheme approved under section 157A(4) of the Law
Serious Ill Health	A member will be deemed to be in serious ill-health if the scheme's trustees have received evidence from a registered medical practitioner that the life expectancy of the member is less than a year.
Transfer Payment	A payment representing some or all, but not exceeding the amount of, the member's Fund Value , at the time when the payment is made.
Trivial in Amount	A Fund Value not exceeding £30,000, or the equivalent in foreign currency based upon the exchange rate at the commutation date.

Appendix 3 Relevant Person and Reporting Requirements

This appendix sets out the conditions which will normally be imposed on an **Approved Scheme**.

Relevant Person

- The **Relevant Person** in relation to schemes applying for approval, or approved under, section 154A is defined at section 154A(6) as “the trustee, administrator, employer or other person having management of the fund, contract, scheme or trust or, as the case may be, the company referred to in section 40(ee) with whom the retirement annuity contract was effected”, and where the scheme is established under trust;
 - The scheme must have at least one trustee who is acceptable to the **Director**. A trustee regulated by the Guernsey Financial Services Commission for pensions business will automatically be acceptable to the Director. In other cases confirmation of acceptability should be sought from the Director. If a trustee retires and there is no other acceptable trustee continuing another trustee acceptable to the Director should be appointed. Unless there is another acceptable trustee continuing, no trustee should be removed from office unless another trustee acceptable to the Director is being appointed at the same time.
 - Trustees cannot undertake transactions in relation to the scheme with related parties except on an “arm’s length” basis.
 - The assets of the scheme must not be used for the personal benefit or enjoyment of the trustees.

Returns and Accounts

The following should be provided to the **Director** annually by the **Relevant Person**:-

- Signed accounts which clearly show the value of the scheme assets.
- Full details of the members in receipt of any pension or other payments must be reported annually together with the details of the payments made.

Application for Approval under the Income Tax (Guernsey) Law, 1975, as amended (“the Law”)

1. I/we hereby apply for approval under: *(delete as appropriate)*
 - (a) section 150(2) of the Law (Occupational Schemes)
 - (b) section 157A(2) of the Law (Retirement Annuity Contracts)
 - (c) section 157A(4) of the Law (Retirement Annuity Trust Schemes)
 - (d) section 154(A) of the Law (a superannuation fund to which section 40(o) applies)
 - (e) section 154(A) of the Law (a RAT/RAC to which section 40(ee) applies)
 - (f) section 154(A) of the Law (such other fund, contract scheme or trust exempt under section 40)

2. Name of Scheme/Contract _____

3. Names of the Relevant Person
(as defined in the Income Tax Law) _____

4. Name of sponsoring employer
(if applicable) _____

5. Details of any associated
Guernsey approved schemes for
employer named at 4. above _____

6. Address for correspondence _____

7. Date of establishment of
Scheme/Contract/Fund _____

8. Anticipated approximate
size of membership _____

9. Is the Scheme/Contract/Fund Licenced and Regulated
by the Guernsey Financial Services Commission? Yes NO

10. I/we confirm that:
 - (a) a copy of the Instrument establishing the Scheme/Contract/Fund is available to the Director of Income Tax on request (see Note 2 on next page);
 - (b) any changes to the Scheme, Deed, Rules or Contract of a material nature will be advised to the Director within 30 days of implementation (see Note 4 below);

- (c) any changes to the Trustees or Relevant Person or the correspondence address will be notified to the Director within 30 days;
- (d) the Trustees/Administrators/Relevant Person:
 - (i) are satisfied that the Scheme, Deed, Rules or Contract satisfies all of the conditions of the legislation under which approval is sought;
 - (ii) are aware of and have read the Practice/Guidance Notes/Codes of Practice published by the Director in respect of such arrangements (see Note 5 below);
 - (iii) undertake to ensure that the Scheme, Deed, Rules or Contract is administered so as to adhere to the relevant legislation, notes, guidance or codes, or to advise the Director immediately if this ceases to be the case;
 - (iv) undertake to supply the Director with such further information as the Director may reasonably require.

11. Declaration

I hereby declare that the information provided in this application is true and correct to the best of my knowledge and belief. I have taken professional advice in completing the application, as appropriate.

I am authorised to make the declaration above on behalf of the Trustees/Scheme Administrator/Relevant Person.

Signed _____

Date _____

**Capacity in which you are making
the application (if not
Trustee/Scheme
Administrator/Relevant Person)** _____

NOTES ON APPLICATION FOR APPROVAL

1. When completed, the application should be submitted to Guernsey Income Tax at PO Box 37, St Peter Port, Guernsey, GY1 3AZ.
2. Do NOT send Scheme or Contract documentation unless requested. For Retirement Annuity Trust Schemes, the document establishing the Scheme should be submitted if the trustees are not regulated by the GFSC.
3. A letter confirming approval will be sent as soon as possible after receipt of the application, which will contain the approval reference number.
4. A change to a Scheme, Deed, Rules or Contract will be regarded as material if it affects, or may affect, continued approval. There is no specific form for advising such changes.
5. All legislation, notes and codes are available at **www.gov.gg/taxationpensions**
6. The application should only be signed by a person authorised and able to provide the information and undertakings requested. This will obviously include the Trustees, Administrators or Relevant Person, but may also include a person holding a legal, actuarial or accountancy qualification.

<p>Data Protection statement: The information provided in this form will be processed in accordance with the Data Protection legislation and used to process this application, for tax compliance, to ensure that details held are accurate and up to date, and may also be used for the purposes of the Rolling Electronic Census. Full details of our Data Protection Policy can be found at www.gov.gg/tax. Government statistics may be compiled using information from this return; however, the Director provides this information in a format that does not allow identification of individual cases.</p>

This appendix summarises the extra statutory concessions relating to pensions which the Director may be prepared to allow in certain circumstances.

Divorce

When a husband and wife separate the **Director** may be prepared to allow a transfer of part of the pension rights of one of the parties. Each case would however need to be submitted to the **Director** for individual consideration and subject to agreement with the scheme trustees.

