



Reform of Spain's public pension system and other urgent measures (RD-Law 2/2023)

Legal Alert

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17 March 2023 saw the publication in the Official State Gazette of [Royal Decree-Law 2/2023 of 16 March 2023](#), on urgent measures to extend the rights of pensioners, reduce the gender gap and establish a **new framework for the sustainability of the public pension system** ("RD-Law 2/2023" or the "RD-Law"), which, with the **exception** of some of the provisions discussed below, will enter into force on the first day of the month following its publication, i.e. on **1 April 2023**. *Follow this [link](#) for the [spanish versión](#).*

The RD-Law **concludes the 2021 pension reform** with the introduction of a series of **urgent measures** and changes, the most salient of which are detailed below.

SWEEPING AMENDMENT OF THE GENERAL SOCIAL SECURITY LAW

By means of a single article divided into 44 sections, the RD-Law revises and adds to the provisions set out in the [Revised General Social Security Law of 2015](#) ("LGSS", per its Spanish acronym). Particularly noteworthy in this regard are:

✓ An increase in the maximum limit for social security contribution bases

Article 19.3 of the LGSS is amended to provide that the percentage **annual update to the maximum contribution base limit** (commonly referred to as "uncapping") for each of the different social security schemes per the relevant **General State Budget Law** (set at Euros 4,495.50 per month in the 2023 General State Budget Law), will be the **same as that established for the revaluation of contributory pensions** provided for in article 58.2 of the LGSS.

Articles 58.2 and 58.5 are also amended to provide that **all contributory social security pensions, including the supplement to reduce the gender gap, are to be revalued** at the beginning of each year by a percentage equal to the average year-on-year variation in the CPI for the 12 months running up to December of the previous year.

The same percentage update will be applied each year, via the relevant State Budget Law, to the maximum and minimum pension amounts referred to in articles 57 and 59, respectively.

This new wording is intended to ensure that all contributory pensions within the system (i.e., not

only the minimum pension, as was the case under the former wording) and the supplement to reduce the gender gap are revalued at the beginning of each year by the above percentage.

These amendments **will enter into force on 1 January 2024** and are supplemented by a **transitional provision for the application of the maximum contribution base limit** (new transitional provision 38 of the LGSS). Thus, successive General State Budget Laws approved **from 2024 until 2050** will set maximum contribution base limits for each of the different social security schemes in line with article 19.3, **albeit adding a fixed annual amount of 1.2% to the percentage referred to in such article**.

Every five years, the Government will assess the impact of this increase in the maximum contribution base in the framework of its social dialogue and submit a report to the temporary Committee for the Monitoring and Assessment of the Toledo Pact Agreements.

✓ Additional solidarity charge

The newly included article 19 *bis* introduces an **additional solidarity charge that will vary according to the amount of income earned by employees in excess of the maximum contribution base provided for in the GSB Law for the relevant year**. To this end, it establishes three salary bands that will be subject to progressive contribution rates.

In this regard, the **new transitional provision 42 of the LGSS envisages a transitional rule for application of the additional solidarity contribution**, whereby **this contribution will be progressively increased as of 2025 until the definitive rate is applied in 2045**. Thus:

- For persons with salaries subject to the maximum contribution base or exceeding the relevant threshold by up to 10%, the

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solidarity charge will be 0.92% in 2025, and will rise progressively until it reaches 5.5% in 2045;

- Persons with salaries exceeding the threshold for the maximum contribution base by between 10% and 50% will be subject to a solidarity charge starting at 1% and rising to 6%; and
- Those with salaries exceeding the maximum contribution base threshold by 50% or more will be subject to an initial solidarity charge of 1.17%, increasing to 7% in 2050.

✓ **Provisional decision on pensions recognised under international rules**

The newly included article 50 *bis* of the LGSS regulates the **provisional decision on pensions recognised under international rules** where i) it is confirmed that, factoring in contributions made in Spain alone, the applicant meets all of the requirements for entitlement to a pension; and ii) pensions are recognised on a *pro rata temporis* basis as a result of contribution periods provisionally certified by another State, thereby preventing unnecessary delays in access to pensions for affected recipients.

This recognition will be provisional until such time as certification is received from other affected States.

✓ **Cap on initial pensions**

The revised article 57 of the LGSS provides that, where the initial pension is capped at the maximum amount established for the year in which it becomes payable, successive annual revaluations applicable under article 58.2 will be applied on the basis of that capped amount in the first year, and on the basis of the revalued amount for the preceding year in all subsequent years. This rule will also apply to any other pensions received simultaneously.

This article will enter into force on **1 January 2025** and is supplemented by a [transitional rule for the calculation of the cap on initial pensions as of 1 January 2025](#) (new transitional provision 39 of the LGSS). In short, this rule provides that **maximum pensions will be revalued each year** in line with the annual CPI, together with a cumulative additional increase of 0.115 percentage points each year until 2050, when they will have been increased by 3%.

Further increments to be applied between 2025 and 2065 will take this increase in the maximum

pension to 20% in 2065.

✓ **Reduction of the gender gap**

The measures to reduce the gender gap as it affects pensions are reinforced with the amendment of article 60.1 and the inclusion of a new section 7, aimed at adapting application of the rule so that the supplement to reduce the gender gap may also be awarded to men where certain conditions are met.

The amendment to article 60.1.b) 3 of the LGSS is accompanied by a new transitional provision 44 that provides for its application to [scenarios arising prior to the entry into force of the RD-Law and as of the introduction of the supplement to reduce the gender gap](#). In this regard, it states that the provisions of the aforementioned article concerning non-inclusion of the contribution benefits established in article 237 in the calculation of the contribution periods and bases shall apply as of 4 February 2021 for the purposes of recognition of the contributory pension supplement to reduce the gender gap.

Similarly, transitional provision 1 of RD-Law 2/2023 states that the **amount of the supplement to reduce the gender gap** provided for in article 60 of the LGSS shall be [increased by a further 10% with respect to the annual revaluation in the two-year period comprising 2024 and 2025](#), with the relevant amount to be distributed between the two years as determined in the respective General State Budget Laws.

✓ **Supply of information to the social security authorities**

Article 71.1.k of the LGSS is partially corrected to state that by the end of March each year, the managers of employment pension schemes must provide the employment and social security inspectors and the Social Security General Treasury with **information (broken down by month) on the employer contributions to such instruments, for the purposes of comparison with the information provided by the companies themselves and monitoring of any reductions in contributions**.

✓ **Changes to the regulations regarding temporary incapacity benefits**

A number of changes to the regulations regarding temporary incapacity benefits are introduced via the modification of articles 82.4.b), 169.1.b), 170, 174 and additional provision 1.4 of the LGSS and the inclusion of a transitional

provision 37.

Among other things, **the possibility of mutual insurance companies having recourse to the Spanish National Social Security Institute in the event that the public health service rejects a proposed medical discharge is eliminated.** Elsewhere, the reference to 6 months is changed to **180 days**, so that the actual duration of the observation period in the event of an occupational illness may vary depending on the actual number of days in the specific months in which such illness occurs.

Competence to monitor temporary incapacity processes as of day 365 now lies with the relevant social security management entity, via its medical inspectors, as the need for intervention of incapacity assessment teams or like bodies is eliminated. Accordingly, **permanent disability cases commence with the issue of a medical discharge report with a proposal for permanent disability status.**

The reform also provides that **exhaustion of the 365-day period without the issue of a medical discharge report will entail automatic extension of temporary incapacity status, with no need for an express declaration in this regard.** This will both simplify and clarify the management of these scenarios. In the absence of an extension, the dispute procedure remains unchanged where the medical discharge report is issued upon expiry of the relevant 365-day period due to recovery, improvement or failure to appear at the medical examination.

The new regulations also provide for the **maintenance of the obligation to collaborate in the payment of the relevant benefit throughout the extended temporary incapacity period, until such time as the worker receives medical discharge due to recovery, improvement or failure to appear, up to the last day of the month in which the National Social Security Institute issues the medical discharge report due as a result of a permanent disability proposal, or until 545 days have elapsed, at which point the above obligation shall expire in all cases.** They also provide for the obligation on voluntary collaboration companies to bear the cost of the temporary incapacity benefit until such time as the right to the relevant benefit expires, including, as the case may be, in scenarios involving the extension of its financial effects.

Lastly, transitional provision 4 of RD-Law 2/2023 provides for the **temporary validity of the preceding temporary incapacity regulations,**

noting that the amendments to the LGSS introduced by this RD-Law **shall apply to both temporary incapacity procedures commencing after the date of its entry into force (1 April 2023) and those commencing before such date.**

Nonetheless, the relevant subsidy shall still be paid directly by the relevant social security management entity or cooperating mutual insurance entity where, **at the above date of entry into force, the resolution** provided for in article 170.2 of the LGSS (as worded formerly) has been issued.

✓ **Modification of the Social Security Reserve Fund and Intergenerational Equity Mechanism (MEI, per its Spanish acronym)**

Articles 117, 118, 119, 120, 121 and 127 *bis* have been amended with a view to modifying and implementing the MEI provided for in [Law 21/2021 of 28 December 2021](#), for which purpose a new transitional provision (43) has been incorporated into the LGSS.

This mechanism consists of a special-purpose contribution of 1.2%, which will be allocated to the Social Security Reserve Fund under the terms set forth in the above articles.

As of 2033, the Fund may make the necessary pay-outs to achieve its objective of balancing out the contributions made to the system and the various benefits provided for. The aforementioned articles also introduce amendments enabling the relevant reserves arising from the special-purpose contribution established for the MEI to be incorporated into the Social Security Reserve Fund.

New transitional provision 43 of the LGSS states that the special-purpose MEI contribution provided for in article 127 *bis* will be **phased in from 1 January 2023 until 31 December 2050**, starting at 0.6% in 2023 (of which 0.5% will be payable by the employer and 0.1% by the worker). In 2029 the rate will have risen to 1.2% (of which 1% will be payable by the employer and 0.2% by the worker).

The 1.2% rate will remain in place from 2030 until 2050, during which time the same proportions will be payable by the employer and the employee.

✓ **Dual system for determining the period to be taken into account in order to calculate the computation base**

As regards the extension of the period taken into account in order to calculate the computation

base and thus determine the amount of each worker's pension, article 209.1 of the LGSS is amended to set in place a **dual system for calculating the pension**.

In short, pensioners may opt to calculate their computation base on the basis of the last 25 years over which contributions have been made - as previously required- or on the basis of a 29-year contribution period, disregarding the worst two years of contributions, i.e. 27 years.

This new legislation is supplemented by a number of **transitional provisions regarding the retirement pension computation base** (new transitional provision 40 of the LGSS), whereby the new contribution period to be factored into the computation base is **gradually phased in**.

ENTRY INTO FORCE

Although the RD-Law is **generally** set to enter into force **on the first day of the month following that in which it was published in the Official State Gazette** -i.e. **1 April 2023**-, numerous **exceptions** - essentially regarding the reform of the LGSS- are provided for in respect of certain provisions, which will enter into force on the dates shown in the table below:

ENTRY INTO FORCE OF RD-Law 2/2023	
Generally, on 1 April 2023	
EXCEPTIONS	
(to the date on which RD-Law 2/2023 generally enters into force and concerning the reform of the LGSS)	
18 March 2023 (the day following the date of its publication in the Official State Gazette)	<p>The special-purpose contribution provided for in article 127 bis of the LGSS (regulated in section 16 of the sole article), effective from 1 January 2023, relating to the Intergenerational Equity Mechanism (MEI).</p> <p>Articles 58.5, 59, 60, 82.4.b), 237. 2 and 3, 248.1 c) and transitional provision 4 of the General Social Security Law (per the wording of sections 5, 6, 7, 10, 25, 27 and 44 of the sole article):</p> <ul style="list-style-type: none"> • Revaluation of pensions recognised under international rules and paid out by Spanish social security. • Supplements for pensions that fall below the minimum amount. • Contributory pension supplement to reduce the gender gap. • Management of the economic benefit for temporary incapacity arising from non-occupational contingencies for

	<p>workers employed by affiliated entrepreneurs and registered self-employed workers.</p> <ul style="list-style-type: none"> • Family allowance under a contribution regime; period of leave to care for family members. • Determination of the daily computation base for the temporary incapacity (TI) benefit.
17 May 2023 (two months following publication in the Official State Gazette)	<p>Articles 169.1 b), 170, 174, 248.1.b), additional provision one.4 and transitional provision 37 of the LGSS (per the respective wording of sections 17, 18, 19, 27, 30 and 37 of the sole article):</p> <ul style="list-style-type: none"> • Observation periods for occupational illnesses for which leave has been prescribed (up to a maximum of 180 days, extendable by a further 180 days where deemed necessary for the study and diagnosis of the illness) as a situation denoting TI. • New regulation of the TI benefit. • Determination of the daily computation base for the allowance for the birth of children and childcare.
17 June 2023 (three months following publication in the Official State Gazette)	<p>New article 50 bis of the LGSS (per section 3 of the sole article, providing for a provisional decision in respect of pensions recognised under international rules.</p>
1 October 2023	<p>Article 247 and new additional provision 52 of the LGSS (per the wording of sections 23 and 34 of the sole article):</p> <ul style="list-style-type: none"> • For the computation of the relevant contribution periods for the purpose of demonstrating that contributions have been made for the length of time required in order to access retirement, permanent disability, death, survivor or temporary incapacity benefits, or the allowance for the birth of children or childcare, regard will be had to the various periods during which the worker has been registered under a part-time contract, irrespective of their working hours in each period. • Inclusion in the social security system of students on internships or external training placements included in training programmes.
1 January 2024	<p>Articles 19.3 and 58.2 of the LGSS (per the respective wording of sections 1 and 5 of the sole article):</p> <ul style="list-style-type: none"> • An increase in the maximum limit for social security contribution bases. • Revaluation and guaranteed maintenance of the purchasing power of pensions.
1 January 2025	<p>Articles 19 bis and 57 of the LGSS (per the wording of sections 2 and 4 of the sole article):</p>

	<ul style="list-style-type: none"> • Additional solidarity contribution. • Cap on initial pensions.
1 January 2026	<p>Articles 209.1, 248.2, 322 and transitional provision 41 of the LGSS (per the wording of sections 23, 27, 28 and 41 of the sole article):</p> <ul style="list-style-type: none"> • Dual system for determination of the period to be taken into account in order to calculate the computation base. • Calculation of retirement pensions and benefits for permanent disability arising from non-occupational illness. The inclusion of periods in which contributions are not mandatory. • Amount of the retirement pension. • Inclusion of periods in which contributions are not mandatory for the purpose of calculating retirement pensions where the gender gap is higher than 5%.

- ✓ An additional provision (5) has been included in [RD-Law 1/2023 of 10 January 2023](#), on urgent measures on incentives for hiring employees and enhanced welfare protection of professional artists, to ensure that the compatibility of retirement pensions with activities involving artistic creation for which royalty income is received continues to be governed by the legislation prevailing prior to the entry into force of the RD-Law in question, and to clarify the consequences of the discontinuation of this group's artistic activities in the event that activities of this kind commence after its entry into force.

OTHER AMENDMENTS

Lastly, several final provisions of RD-Law 2/2023 amend other legislation, as described below:

- ✓ Article 37.6 of the [Revised Workers' Statute \(WS\) Law](#) is amended to broaden the scenarios in which working hours may be reduced to care for a child, or a person who has been fostered on a permanent basis with a view to adoption, during hospitalisation or ongoing treatment for cancer or any other serious illness, entailing a long-term hospital stay and requiring direct, ongoing and permanent care.
- ✓ Article 17.9 of [RD-Law 8/2020 of 17 March 2020](#), on extraordinary urgent measures to address the economic and social impact of COVID-19, is amended to allow the provisional benefit provided for in that article to be confirmed where, upon review, it transpires from the evidence on record that although the interested party has not demonstrated certain requirements laid down for one of the scenarios regulated therein, they do meet all of the requirements set forth for another scenario.
- ✓ Final provision 6 of [RD-Law 13/2022 of 26 July 2022](#), setting in place a new contribution system for self-employed or freelance workers and enhancing protection in the event of the discontinuation of their activities, is amended to set the minimum contribution base established at 31 December 2022, i.e. Euros 960.60, as the basis for applying the benefits regulated in the provisions to which final provision 6 refers. Accordingly, if the contribution base is modified while those benefits are in force, they will continue to apply under the terms established by law, although the amounts will be adjusted to the relevant circumstances.

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