EXPLANATORY MEMORANDUM TO

THE AUTOMATIC ENROLMENT (EARNINGS TRIGGER AND QUALIFYING EARNINGS BAND) ORDER 2017

2017 No. 394

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument sets out revised amounts for the 2017/18 tax year for the upper and lower thresholds of the automatic enrolment qualifying earnings band and rounded figures for the earnings trigger and qualifying earnings band.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland.

4. Legislative Context

4.1 The amounts for the qualifying earnings band were set initially in the Pensions Act 2008[1] . The Pensions Act 2011[2] amended the 2008 Act, setting the automatic enrolment and re-enrolment trigger, amending the review provision and inserting the rounding provisions. The legislation requires the Secretary of State to review the automatic enrolment and re-enrolment earnings trigger and the qualifying earnings band each tax year and revise, by Order, if he considers that any of the amounts should be increased or decreased.

4.2 Following the review in 2015, revised amounts for 2016/17 were set out in The Automatic Enrolment (Earnings Trigger and Qualifying Earnings Band) Order 2016[3].

4.3 The Secretary of State has considered whether the amounts of the qualifying earnings band and the earnings trigger should be changed for the 2017/18 tax year. He has concluded that the amounts for the qualifying earnings band should continue to be aligned with the National Insurance Contributions Lower and Upper Earnings Limits for the tax year 2017/18 and that the automatic enrolment earnings trigger should remain at £10,000.

4.4 This Order therefore sets the new amounts for 2017/18 in respect of the National Insurance Contributions Lower and Upper Earnings Limits at their 2017/18 value and revokes the equivalent 2015 and 2016 Orders.

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[1] http://www.legislation.gov.uk/ukpga/2008/30/contents
[2] http://www.legislation.gov.uk/ukpga/2011/19/contents
[3] http://www.legislation.gov.uk/uksi/2016/435/article/2/made

5. Extent and Territorial Application

5.1 The extent of this instrument is Great Britain.

5.2 The territorial application of this instrument is Great Britain.

5.3 The Department for Communities in Northern Ireland will be producing its own legislation replicating this Order for Northern Ireland.

6. European Convention on Human Rights

6.1 Richard Harrington MP, Minister for Pensions, has made the following statement regarding Human Rights:

"In my view the provisions of The Automatic Enrolment (Earnings Trigger and Qualifying Earnings Band) Order 2017 are compatible with the Convention rights."

7. Policy background

What is being done and why

Background

7.1 The automatic enrolment and re-enrolment earnings trigger is the level of earnings at which employers are obliged to automatically enrol (and re-enrol) eligible jobholders into a qualifying workplace pension scheme.

7.2 Employers and employees are then obliged to pay overall contributions, which, including tax relief where eligible, are at least equal to 8 per cent of a band of qualifying earnings (by April 2019) made up of salary, wages, commission, bonuses, overtime and statutory sickness, maternity, paternity and adoption pay. The minimum contribution levels for all money purchase schemes are being phased in to help both employers and individuals adjust gradually to the additional costs of the reforms and are normally made up of both employer and individual contributions.

7.3 The Secretary of State has discretion to increase or decrease the amounts and may take into account the prevailing personal tax threshold; Class 1 National Insurance contributions limits and thresholds; the rate of basic state pension and the general level of prices and earnings, or any other factors he considers are relevant. He has the power to prescribe annual thresholds and proportionate amounts to match pay periods. He also has the power, in respect of the rounded figures, to specify the amount as a figure of whole pounds, a figure that is divisible by 10 pence or a figure that includes a whole number of pennies. It is for the Secretary of State to decide whether to round any particular amount up or down.

Earnings Trigger

7.4 The Secretary of State has re-considered all the review factors against the latest analytical evidence and policy objectives and decided that the current earnings trigger of £10,000 remains the right level and therefore will not change for 2017/18.

Qualifying Earnings Band

7.5 The qualifying earnings band determines those earnings on which the enrolled employee and their employer have to pay into a workplace pension. It is intended to ensure that those who are automatically enrolled pay contributions on a meaningful level of their earnings while managing burdens on employers in terms of the contributions they pay. The qualifying earnings band for 2016/17 is currently aligned with the Lower and Upper Earnings Limits for National Insurance Contributions at £5,824 and £43,000 respectively.

7.6 The Secretary of State considered all the review factors against the analytical evidence and the policy objectives and has concluded that the National Insurance Contributions Lower Earnings Limit remains the most relevant point to begin private savings for retirement. He has therefore decided to retain the link with the National Insurance Contributions Lower Earnings Limit at its 2017/18 value.

7.7 The Secretary of State has concluded that mandatory employer contributions should still be capped and decided that the National Insurance Contributions Upper Earnings Limit at its 2017/18 value is the factor that should determine the upper limit of the qualifying earnings band. Consequently, the Order provides for the lower and upper limits of the qualifying earnings band to be aligned with the Lower and Upper earnings Limits for 2017/18.

Consolidation

7.8 Informal consolidated text of instruments is available to the public free of charge via 'the National Archive' website legislation.gov.uk.

8. Consultation outcome

8.1 The Secretary of State decided not to consult on the amounts of the qualifying earnings band and earnings trigger for 2017/18. Under the Pensions Act 2008, the Secretary of State is required to review the earnings trigger and qualifying earnings band for each tax year but there is no statutory requirement to consult on the review. During the passage of the Pensions Act 2011, Ministers committed to publishing the analysis underpinning the review for each of the first five years of live running. As in previous years the analysis supporting the review for 2017/18 has been published and can be found at: https://www.gov.uk/government/publications/automatic-enrolment-review-of-the-earnings-trigger-and-qualifying-earnings-band-for-201718.

8.2 The Secretary of State's decision on the values of the qualifying earnings band and earnings trigger for 2017/18 was based on policy principles established through previous consultations. These are familiar to interested stakeholders and it was decided it was appropriate not to consult in this instance. This mirrors the position of the 2016/17 review whereby no consultation was carried out as the Secretary of State decided not to depart from the established policy principles and the position of the previous year.

8.3 In addition, the Government has undertaken to review automatic enrolment in 2017 and will look at the existing coverage of the policy, including the impact of the thresholds, as part of this Review.

9. Guidance

9.1 The Pensions Regulator has updated its online Guidance for employers and payroll providers with the new thresholds (subject to Parliamentary approval) and will confirm these once this annual order is brought into force.

10. Impact

10.1 The impact on business, charities or the voluntary sector is estimated to be £4.6 million in 2017/18 price terms as a result of an increase in contributions and one-off administration costs. Furthermore, we estimate that as a result of the increase in these direct costs to employers there is an Equivalent Annual Net Direct Cost to Business

(EANDCB) worth £4.1 million. Freezing the value of the automatic enrolment earnings trigger at £10,000 in 2017/18 results in a real terms decrease in the trigger which increases the number of people automatically enrolled. Although the absolute values of the Upper and Lower Earnings Limits have changed, they have remained aligned with the Upper and Lower Earnings Limits for National Insurance Contributions for 2017/18. The changes are therefore automatic in nature as they simply reflect the uprating of the NIC figures. They do not therefore fall within the definition of 'amendment' for the purposes of the Business Impact Target and are not considered to be regulatory provisions. However, the decision to retain the departure from Income Tax figures in the earnings trigger does not represent such an automatic decision and therefore represents a new regulatory provision.

10.2 The impact on the public sector is low. Freezing the earnings threshold in 2017/18 will have minimal cost to the Exchequer as there are now slightly more individuals saving and so an associated increase in tax relief on pension contributions. This cost is estimated to be £0.5 million in 2017/18 (in 2017/18 price terms).

10.3 An Impact Assessment is submitted with this memorandum and is published alongside the Explanatory Memorandum.

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses.

11.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to stage the implementation of the automatic enrolment duties to enrol eligible workers into a workplace pension arrangement gradually over six years between October 2012 and February 2018, starting with the largest employers. Small businesses started to become subject to the automatic enrolment duty in June 2015. Increased pension contributions are also being "phased" in to give employers chance to adjust to the costs of this reform. The employer contribution rate is currently 1% of an employee's band earnings, rising to 2% in April 2018 and 3% in April 2019.

11.3 The basis for applying this Order to small businesses is to maximise the number of people saving for their retirement. It is important that eligible workers of small employers are able to save for their later life in the same way as those working for larger employers.

12. Monitoring & review

12.1 The automatic enrolment thresholds are subject to statutory review each tax year.

13. Contact

13.1 Victoria Oliphant at the Department for Work and Pensions Telephone: 0207 245 3827 or e-mail: victoria.oliphant@dwp.gsi.gov.uk can answer any queries regarding the instrument.