**EXPLANATORY MEMORANDUM TO**

# THE AUTOMATIC ENROLMENT (EARNINGS TRIGGER AND QUALIFYING EARNINGS BAND) ORDER 2018

**2018 No. 367**

## 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 2018/19 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 the amounts set out in legislation, by Order, if she considers that any of the relevant amounts should be increased or decreased.

4.2 Following the review in 2016, revised amounts in respect of the Lower and Upper Limits of the qualifying earnings band for 2017/18 were set out in The Automatic Enrolment (Earnings Trigger and Qualifying Earnings Band) Order 2017. The earnings trigger remained at £10,000.

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 2018/19 tax year. She 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 2018/19 and that the automatic enrolment earnings trigger should remain at £10,000.

---

[1] http://www.legislation.gov.uk/ukpga/2008/30/contents
[2] http://www.legislation.gov.uk/ukpga/2011/19/contents

4.4 This instrument therefore sets the new amounts for the qualifying earnings band in 2018/19, aligning these with the National Insurance Contributions Lower and Upper Earnings Limits at their 2018/19 value and revokes the equivalent 2017 Order.

## 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 instrument for Northern Ireland.

## 6. European Convention on Human Rights

6.1 Guy Opperman MP, Minister for Pensions and Financial Inclusion, 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, will be (by April 2019) at least equal to 8 per cent of a band of qualifying earnings 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 of the earnings trigger and the qualifying earning band and must review the level of these each year. In doing this, the Secretary of State 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. She has the power to prescribe annual thresholds and proportionate amounts to match pay periods. She also has the power in respect of the rounded figures, to by order 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 statutory 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 2018/19.

*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 2017/18 is aligned with the Lower and Upper Earnings Limits for National Insurance Contributions at £5,876 and £45,000 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. She has therefore decided to retain the link with the National Insurance Contributions Lower Earnings Limit at its 2018/19 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 2018/19 value is the factor that should determine the upper limit of the qualifying earnings band. Consequently, the instrument provides for the lower and upper limits of the qualifying earnings band to be aligned with the Lower and Upper earnings Limits for National Insurance Contributions for 2018/19 which, subject to parliamentary approval, are proposed to be £6,032 and £46,350 respectively.

***Consolidation***

7.8 Informal consolidated text of instruments is available to the public free of charge via 'the National Archives' 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 2018/19. 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 2018/19 has been published[3]. This also provides links to previous outcomes of the annual threshold reviews.

8.2 The Secretary of State's decision on the values of the qualifying earnings band and earnings trigger for 2018/19 is based on policy principles established through previous consultations[4]. 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 2017/18 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 While the government has not formally consulted on the 2018/19 review of the automatic enrolment earnings threshold, evidence gathered from stakeholders as part

[3] https://www.gov.uk/government/publications/automatic-enrolment-review-of-the-earnings-trigger-and-qualifying-earnings-band-for-201819

[4] https://www.gov.uk/government/collections/automatic-enrolment-earnings-trigger-and-qualifying-earnings-band

of the wider Automatic Enrolment Review 2017: Maintaining the Momentum[5], has been used to inform the conduct of this year's statutory review.

## 9. Guidance

9.1 The Pensions Regulator has updated its online Guidance[6] 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 This instrument will affect business, charities or voluntary bodies because employers will have to pay an estimated £19 million in higher employer pension contributions in 2018/19. This is relatively low in the context of total annual employer pension contributions of £5.4 billion attributable to automatic enrolment

10.2 This instrument will also affect the public sector as a result of increased tax relief paid on higher individual pension contributions. This is estimated to cost an additional £7m, which is very low in the context of annual £4.5 billion spent on tax relief on employee pension contributions.

10.3 The Secretary of State has considered the impact of the various options for each of the thresholds and a full analysis of volumes and costs was published[7] on 18 December 2017. An Impact Assessment has not been prepared for this instrument.

## 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 was 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 enable employers to adjust to the costs of this reform.

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 Amanda Brookes at the Department for Work and Pensions Telephone: 0207 449 5137 or e-mail: amanda.brookes@dwp.gsi.gov.uk can answer any queries regarding the instrument.

---

[5] https://www.gov.uk/government/publications/automatic-enrolment-review-2017-maintaining-the-momentum
[6] http://www.thepensionsregulator.gov.uk/automatic-enrolment-earnings-threshold.aspx
[7] https://www.gov.uk/government/publications/automatic-enrolment-review-of-the-earnings-trigger-and-qualifying-earnings-band-for-201819