EXPLANATORY MEMORANDUM TO

THE AUTOMATIC ENROLMENT (EARNINGS TRIGGER AND QUALIFYING EARNINGS BAND) ORDER 2016

2016 No. 435

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 2016/17 tax year for the upper threshold 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 (http://www.legislation.gov.uk/ukpga/2008/30/contents). The Pensions Act 2011 (http://www.legislation.gov.uk/ukpga/2011/19/contents) amended the 2008 Act, setting the automatic 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 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.

4.3 Following the review in 2014, revised amounts for 2015/16 were set out in The Automatic Enrolment (Earnings Trigger and Qualifying Earnings Band) Order 2015 http://www.legislation.gov.uk/id/ukdsi/2015/9780111127124.

4.4 The Secretary of State has considered whether the amounts of the qualifying earnings band and the earnings trigger should be changed for the tax year 2016/17. He has concluded that the bottom and top of the qualifying earnings band on which pension contributions are payable should continue to be aligned with the National Insurance Contributions Lower and Upper Earnings Limits for the tax year 2016/17 and that the automatic enrolment earnings trigger should remain at £10,000.

4.5 This Order therefore sets a new amount for the top of the automatic enrolment qualifying earnings band for 2016/17 to align it with the National Insurance Contributions Upper Earnings Limit at its 2016/17 value and revokes article 3 of the 2015 Order. No changes to the automatic enrolment earnings trigger or the bottom of the qualifying earnings band are being made as these will remain fixed at their current level.

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 Subject to the agreement of the Northern Ireland Assembly, the Department of Social Development in Northern Ireland will be making corresponding provision for Northern Ireland.

6. European Convention on Human Rights

6.1 The Minister of State for Pensions, the Baroness Altmann, has made the following statement regarding Human Rights:

"In my view the provisions of The Automatic Enrolment (Earnings Trigger and Qualifying Earnings Band) Order 2016 are compatible with the Convention Rights"

7. Policy Background

What is being done and why

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. Contributions 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 are then required to be paid into the qualifying pension scheme. These 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.

7.2 The Secretary of State has re-considered all the review factors referred to in paragraph 4.2 above against the latest analytical evidence. This review also considered the policy objectives of making sure that the right people are brought in to pension saving, the appropriate minimum level of saving for people who are automatically enrolled, and that the costs and benefits to individuals and employers are appropriately balanced. He decided that the current automatic enrolment earnings trigger of £10,000 remains at the right level and therefore will not change for 2016/17. Freezing the value of the automatic enrolment threshold at £10,000 in 2016/17 results in a real terms decrease in the trigger. This brings an additional 130,000 individuals into the target population for automatic enrolment and an associated increase in pension saving of £6 million in 2016/17.

7.3 The Secretary of State considered all the review factors against the analytical evidence as well as the policy objectives referred to in paragraph 7.2 above 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 2016/17 value, which is the same as for 2015/16.

7.4 The Secretary of State has concluded that mandatory employer contributions should continue to be capped and decided that the National Insurance Contributions Upper Earnings Limit at its 2016/17 value is the factor that should determine the upper limit of the qualifying earnings band. Consequently, the Order provides for the upper limit of the qualifying earnings band to be aligned with the upper earnings limit for 2016/17.

Consolidation

7.5 Informal consolidated text of instruments is available to the public free of charge via ‘The Law Relating to Social Security’ (Blue Volumes) on the Department for Work and Pensions website at http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security or the National Archive website legislation.gov.uk. An explanation as to which instruments are maintained on each site is available from http://www.dwp.gov.uk/docs/lawvolnews.pdf.

8. Consultation outcome

8.1 The Secretary of State has decided not to consult on the amounts of the qualifying earnings band and earnings trigger for 2016/17. 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 and as in previous years the analysis supporting the review for 2016/17 was published on 15 December 2015 and is available at: https://www.gov.uk/government/statistics/automatic-enrolment-review-of-the-earnings-trigger-and-qualifying-earnings-band-for-201617.

8.2 The Secretary of State’s decision on the values of the qualifying earnings band and earnings trigger for 2016/17, is based on policy principles established over a number of years which were consulted upon, it was decided it was appropriate not to consult in this instance.

9. Guidance

9.1 The Pensions Regulator will update its Business Advisers information with the new thresholds once the Order has been tabled. It will also update its detailed on-line Guidance for employers and payroll providers with the new thresholds that will take effect from 6 April 2016.

10. Impact

10.1 The impact on business, charities or voluntary bodies is low. It is estimated that the total cost to employers through higher contributions will be around £12 million in 2016/17[1].

10.2 The impact on the public sector is low. It is estimated that the total cost through increased tax relief on individual contributions will be around £3 million in 2016/17[2].

10.3 An Impact Assessment has not been prepared for this instrument as this is a regular update to an existing regulatory regime. The Secretary of State has considered the impact of the various options for each of the thresholds and an analysis of volumes and costs was published on 15 December and is available at:

https://www.gov.uk/government/statistics/automatic-enrolment-review-of-the-earnings-trigger-and-qualifying-earnings-band-for-201617.

10.4 The analysis shows that a decision to freeze the earnings trigger has a clear trade-off attached to it in terms of increasing the eligible target group for automatic enrolment but also increasing the burden on employers. Adjustments to the qualifying earnings band must also balance ensuring individuals save a meaningful proportion of their income against the cost of additional contributions for employers.

11. Regulating small business

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

11.2 The automatic enrolment legislation places a duty on all employers, whatever their size, to automatically enrol eligible workers into a workplace pension arrangement. Implementation has been staged and smaller employers started to become subject to the automatic enrolment duty in June 2015.

12. Monitoring & review

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

13. Contact

13.1 James Calverley at the Department for Work and Pensions Telephone: 0207 245 3827 or e-mail: james.calverley@dwp.gsi.gov.uk can answer any queries regarding the instrument.

[1] https://www.gov.uk/government/statistics/automatic-enrolment-review-of-the-earnings-trigger-and-qualifying-earnings-band-for-201617
[2] https://www.gov.uk/government/statistics/automatic-enrolment-review-of-the-earnings-trigger-and-qualifying-earnings-band-for-201617