EXPLANATORY MEMORANDUM TO

THE AUTOMATIC ENROLMENT (OFFSHORE EMPLOYMENT) (AMENDMENT) ORDER 2020

2020 No. [XXXX]

AND

THE OCCUPATIONAL AND PERSONAL PENSION SCHEMES (AUTOMATIC ENROLMENT) (AMENDMENT) REGULATIONS 2020

2020 No. [XXXX]

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.

1.2 It should be read in conjunction with the Explanatory Memorandum prepared for the Regulations which will expire on 1st July 2020 (included at the end of the document and available at: http://www.legislation.gov.uk/uksi/2012/1257/pdfs/uksiem_20121257_en.pdf).

2. Purpose of the instruments

2.1 These affirmative instruments amend secondary legislation which came into force in 2012 to which "sunset provisions" apply meaning that the provisions relating to pensions for workers in the maritime industries would expire on 1st July 2020. These instruments remove the sunset provisions so that automatic enrolment duties (under the Pensions Act 2008 and the Pensions (No. 2) Act (Northern Ireland) 2008) continue to apply to employers in those industries.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments.

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 The territorial application of these instruments includes Great Britain and Northern Ireland.

4. Extent and Territorial Application

4.1 The Order and Regulations extend to the whole of the United Kingdom and make provision by reference to the United Kingdom sector of the continental shelf.

5. European Convention on Human Rights

5.1 The Minister for Pensions and Financial Inclusion, Guy Opperman, has made the following statement regarding Human Rights:

"In my view the provisions of the Automatic Enrolment (Offshore Employment) (Amendment) Order 2020 and the Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 Seafarers and offshore workers were excluded from automatic enrolment under Sections 96 and 97 respectively of the Pensions Act 2008. This exclusion was to allow time for full consideration of a series of complex issues surrounding those groups.

6.2 The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2012 amended the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010, and the Automatic Enrolment (Offshore Employment) Order 2012 made freestanding provision, the effect of which was to extend the scope of automatic enrolment to include seafarers and offshore workers if they are working, or ordinarily working, in the United Kingdom.

6.3 A "sunset clause" was included in domestic legislation which came into force on or after April 2011, where there was a net burden (or cost) on business or civil society organisations. The inclusion of a sunset clause means that the provisions which extend the duty to automatically enrol eligible seafarers and offshore workers into a workplace pension expire on 1st July 2020.

7. Policy background

What is being done and why?

7.1 The Pensions Act 2008 requires employers to automatically enrol eligible jobholders into a qualifying workplace pension scheme and pay contributions at least a minimum level. Individuals who do not want to participate in pension saving have the right to opt out and be treated as having never been a member of the scheme. This requirement was extended to employers of offshore workers and seafarers via the 2012 regulations and Order.

7.2 The Department for Work and Pensions undertook the Automatic Enrolment Review 2017: Maintaining the Momentum.[1] Within this review the department examined the case to exclude certain sectors from automatic enrolment. However, it was concluded that the employer duties should continue regardless of industry sector and size of the employer.

7.3 In 2018 the department undertook a Post Implementation Review[2] (PIR) of the 2012 legislation that extended the scope of automatic enrolment to offshore workers and seafarers. The PIR considered to what extent the objectives of the regulatory system established by the 2012 regulations and Order had been achieved. During this review, Ministers considered again whether it was appropriate for seafarers and offshore workers to remain within the scope of automatic enrolment. They concluded that there was no significant evidence to indicate that a different legislative approach would

[1] Automatic Enrolment Review 2017: Maintaining the momentum https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/668971/automatic-enrolment-review-2017-maintaining-the-momentum.PDF

[2] Automatic enrolment into workplace pensions: seafarers and offshore workers Post Implementation Review http://www.legislation.gov.uk/uksi/2012/1388/pdfs/uksiod_20121388_en.pdf

deliver better outcomes for the majority of seafarers and offshore workers and as such it was considered the policy approach was correct and that therefore the legislation should be renewed before it expired on 1st July 2020.

7.4 Therefore, it is necessary for the department to legislate to ensure that both eligible seafarers and offshore workers remain within the scope of automatic enrolment into a workplace pension.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 The amendments made to the existing legislation by these instruments are trivial and it is not considered desirable to consolidate at this time.

10. Consultation outcome

10.1 As part of the PIR process, DWP published a 'call for evidence' on 19th July 2017[3]. This sought views from representatives of industry, employer bodies, and workers affected by the legislation covering the maritime industries.

10.2 Overall the concerns raised by stakeholders were similar to those from the 2011 consultation prior to the introduction of the legislation, including the desire of some respondents to see the 'ordinarily working' test be made more specific for this group of workers.

10.3 The department concluded that the 'ordinarily working' test remained the most suitable for seafarers and offshore workers, and for automatic enrolment generally, so as to continue to capture the greatest number of the target population of workers, without creating undue administrative complexity, or loopholes in the regulatory framework that could be used by those seeking to evade their automatic enrolment duties.

10.4 Consideration was given to whether it might be possible to achieve the policy objective with a reduced level of regulatory burden for maritime employers. However, it was clear that any move to weaken the compliance regime would undermine the policy intention that all employers are subject to automatic enrolment duties if they employ qualifying workers, and would lead to industry-specific carve-outs which have already been rejected as damaging to the coherence of the workplace pension reforms.

11. Guidance

11.1 The Pensions Regulator produces detailed guidance on all aspects of automatic enrolment which can be accessed through its public website: http://www.thepensionsregulator.gov.uk/automatic-enrolment.aspx .

[3] Automatic enrolment: defined benefit alternative quality requirements and provisions for seafarers and offshore workers Call for Evidence
https://www.gov.uk/government/consultations/automatic-enrolment-defined-benefit-alternative-quality-requirements-and-provisions-for-seafarers-and-offshore-workers

12. Impact

12.1 The impact on business, charities or voluntary bodies will affect employers of eligible seafarers and offshore workers. They will incur the cost of making minimum contributions for their eligible workers and the administrative cost of enrolling their eligible workers into a qualifying pension scheme. The total Equivalent Annual Net Direct Cost to Business is £22m. This burden will only affect employers of maritime workers commencing employment on or after 1st July 2020, or those with existing workers who opted out of being automatically enrolled into a qualifying workplace pension before this date.

12.2 Individuals working in the maritime industries will incur costs on take-home pay from pension contributions, and benefits from greater savings in their pensions. The total annual net benefit to all individuals is £38m.

12.3 The impact on the public sector is related to the costs of extending the workplace pension reforms to seafarers and offshore workers. The average annual cost of tax relief on additional pension contributions as a result of renewing the regulations is £13m.

12.4 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

13. Regulating small business

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

13.2 Small businesses will benefit from the easements specially designed in order to help them manage the administrative burdens around complying with automatic enrolment. This includes an optional three-month postponement period, which allows employers to delay automatically enrolling new workers to help them manage costs during the probationary period, while ensuring that those workers will have access to a workplace pension within a reasonable period of time. Workers also have the right to opt in to pension saving during the postponement period if they inform their employer they wish to do so.

14. Monitoring & review

14.1 The Automatic Enrolment (Offshore Employment) (Amendment) Order 2020 is made by Her Majesty in Council and no review clause is required under the Small Business, Enterprise and Employment Act 2015.

14.2 Guy Opperman MP, Parliamentary Under-Secretary of State for the Department for Work and Pensions, has made the following statement under section 28(2)(b) of the Small Business, Enterprise and Employment Act 2015.

14.3 "Having had regard to the Statutory Review Guidance for Departments published under section 31(3) of the Small Business, Enterprise and Employment Act 2015, in my view, it is not appropriate to make provision for review in the Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2020."

14.4 Further to this, Guy Opperman MP, Parliamentary Under-Secretary of State for the Department for Work and Pensions made a Written Ministerial Statement (WMS) on 16th March 2020 announcing the legislation. The WMS states his decision, as outlined in this Explanatory Memorandum, to not include a review clause in the regulations,

invoking section 28(2)(b) of the Small Business, Enterprise and Employment Act 2015.

14.5 The success of automatic enrolment is based on behavioural analysis which makes pension saving the default option for working people who meet the qualifying criteria across all sectors of the labour market. A review requirement for the legislation covering seafarers and offshore workers would run counter to the clear policy positon confirmed by successive governments since 2012 that automatic enrolment should apply to all employers with qualifying workers throughout the whole UK economy. A specific review clause would also cause uncertainty for the maritime industries and burdens for businesses needing to future-proof their administrative systems to be ready to respond to a further review of their legal obligations.

14.6 The issue of policy scope and impact has been considered at regular intervals since the introduction of automatic enrolment in 2012, most recently in the Automatic Enrolment Review 2017: Maintaining the Momentum[1], which considered whether automatic enrolment should continue for all workers regardless of the sector of they worked in; Ministers concluded that the duties should continue regardless of sector or employer size.

14.7 The Department for Work and Pensions will, however, continue to work closely with stakeholders, including industry bodies and employer organisations, to keep this policy under review and should any issues arise, it will assess the evidence and, if appropriate, consider whether any changes may be necessary.

15. Contact

15.1 Tom Davies at the Department for Work and Pensions (telephone: 0203 193 5518 or by email: automatic.enrolmentpolicyteam@dwp.gov.uk) can be contacted with any queries regarding these legislative instruments.

15.2 Hilda Massey, Deputy Director for Private Pensions Policy, at the Department for Work and Pensions has confirmed that this Explanatory Memorandum meets the required standard.

15.3 Guy Opperman, Parliamentary Under-Secretary of State for the Department for Work and Pensions has confirmed that this Explanatory Memorandum meets the required standard.