EXPLANATORY MEMORANDUM TO

THE EMPLOYERS' DUTIES (IMPLEMENTATION) (AMENDMENT) REGULATIONS 2016

2016 No. 719

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 Employers have a duty to automatically enrol their workers into a qualifying workplace pension scheme (an automatic enrolment scheme) which must meet certain quality requirements and depending on the type of scheme a requirement that the employer and the workers pay minimum level contributions.

2.2 This instrument amends the scheduled dates for planned increases in the minimum required level of contributions. It postpones the increases by six months. The scheduled increases are now aligned with the beginning of the relevant tax years to reduce burdens on employers, individuals and the taxpayer.

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 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 Current legislation [1] gradually phases in rises in minimum contribution rates. The minimum contribution rate is currently at or equivalent to 2 per cent of a band of qualifying earnings[2] (of which at least 1 per cent must be paid by the employer). This is due to rise to 5 per cent in October 2017 (with a minimum employer contribution of 2 per cent) and by October 2018 it would rise to 8 per cent (with a minimum employer contribution of 3 per cent).

4.2 This instrument implements the Chancellor's announcement at the 2015 Spending Review (see Hansard[3] below) to amend the scheduled dates for increases, aligning

[1] **Section 29 of the Pensions Act 2008** and regulation 5 of the Employers Duties (Implementation) (Amendment) Regulations 2010 SI 2010/04, as amended by S.I. 2012/1813.

[2] **The qualifying earnings** band is defined as the upper earnings limit (£43,000 in 2016/17) minus the lower earnings limit (£5,824 in 2016/17) for individuals with gross annual earnings at or above the upper earnings limit; and an individual's gross annual earnings minus the lower earnings limit for individuals earning below the upper earnings limit

[3] "A civilised and prosperous society such as ours should support its most vulnerable and elderly citizens. That includes a decent income in retirement. More than 5 million people have already been auto-enrolled into a

them with the start of the relevant tax year and the period in which the minimum contribution applies. In effect this means that the planned increase in October 2017 will be postponed until April 2018, and the planned increase in October 2018 will be postponed until April 2019. The changes are intended to reduce burdens on employers and their workers and deliver tax relief savings for the Exchequer over the period October 2017 to April 2019.

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 for Communities in Northern Ireland will be making corresponding provisions for Northern Ireland.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.

7. Policy background

What is being done and why

7.1 People are living longer and not saving enough towards their retirement. The Government has intervened through a series of legislative interventions to address the consequences of increasing longevity coupled with widespread under-saving for retirement. The Pensions Acts of 2008, 2011 and 2014 establish the high level legal framework for automatic enrolment.

7.2 There is a requirement on employers to enrol all eligible workers into a qualifying workplace pension. This is known as the "employer duty". Automatic enrolment duties began in October 2012, with largest employers, and has been successfully extended to medium sized employers. Small and micro employers started their duties from June 2015 and it is estimated that 1.8 million employers will have been through automatic enrolment by the end of 2018. It is further estimated that around 10 million people are in the eligible target group for automatic enrolment and 9 million people will be newly saving or saving more into a workplace pension by 2018.

7.3 A workplace pension scheme qualifies to be used for automatic enrolment if it meets certain criteria. For money purchase schemes[4], and personal pension schemes[5] the scheme must require a total contribution equivalent to 8 per cent of qualifying earnings of which at least 3 per cent must come from the employer, 4 per cent from the worker and the Government pays around 1 per cent in tax relief.

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pension thanks to our reforms in the last Parliament. To help businesses with the administration of that important boost to our nation's savings, we will align the next two phases of contribution rate increases with the tax years." 25 November **Column 1364**

[4] **Money purchase scheme** means an occupational pension scheme under which all the benefits that may be provided are money purchase benefits

[5] **Personal pension scheme** is defined in section 19 of the Pensions Act 2008;

7.4 To help employers and their workers adjust to the cost of automatic enrolment, the minimum contributions were phased in over two transitional periods. Under the current legislation –

- the first transitional period is five years and three months beginning with date that section 20 of the Pensions Act 2008 came into force (30 June 2012) and ending on 29 September 2017;and
- the second transitional period is one year, beginning with the end of the first period (30 September 2017 to 29 September 2018).

7.5 At present the contribution rate is equivalent to 2 per cent of a band of qualifying earnings (of which at least 1 per cent must be paid by the employer). This is due to rise to 5 per cent in October 2017 (with a minimum employer contribution of 2 per cent) and by October 2018 it will rise to 8 per cent (with a minimum employer contribution of 3 per cent).

7.6 The first scheduled rise in contributions occurs when automatic enrolment is still rolling out to employers, many of whom will be engaging with workplace pensions for the first time. There is a risk that the increased contribution rates will prove overly burdensome and put off employers from engaging with automatic enrolment.

7.7 Furthermore, individuals typically expect changes to their take home pay at the start of the tax year, whereas contribution rate increases are currently legislated to increase half way through the tax year. This means that increasing pension contribution rates are therefore more likely to be visibly felt by individuals which may discourage them from saving into a workplace pension and result in an increase in the opt-out rate.

7.8 To mitigate the impact on: employers, workers and the tax payer, this instrument amends the scheduled increases in the contribution levels so that the two phased increases are aligned with the start of the tax years, when employers are used to making payroll changes and individuals expect changes in their pay packet. The first increase to 5 per cent will now take place on 6 April 2018 and the second increase to 8 per cent on 6 April 2019. The table below summarises the changes.

Current Policy Phasing Period	**New Policy Phasing Period**	**Employer Contribution % of qualifying earnings**	**Employee Contribution % of qualifying earnings (including employee tax relief)**	**Total Contribution % of qualifying earnings**
June 2012 Sept 2017	June 2012 April 2018	1	1	2
Oct 2017 to Sept 2018	April 2018 April 2019	2	3	5
Oct 2018 onwards	April 2019 onwards	3	5	8

7.9 Aligning the increase in minimum contributions with the beginning of the tax year will simplify automatic enrolment for all employers, and smaller employers in particular. Both employers and workers will have more time to prepare for and pay increased contributions. There will also be tax relief savings on pension contributions from this change.

7.10 There is a purely textual amendment to regulation 6 of the Employers Duties (Implementation) Regulations 2010 to reflect the policy intention more accurately. Regulation 6 establishes the transitional period for the employers of defined benefits[6] and hybrid pension schemes[7] over which they can phase in automatic enrolment. There is no substantive change: the period starts on 30 June 2012 and ends on 30 September 2017. The amendment ensures that the text in regulation 6 is clear beyond doubt.

Consolidation

7.11 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 ***here***.

8. Consultation outcome

8.1 The changes, introduced through the instrument, are not subject to a formal consultation as the proposal was announced in the 2015 Autumn Statement. Therefore, it would not have been appropriate to consult.

8.2 However, the Department informed key stakeholders of the change through the usual channels of engagement with providers, payroll professionals and others. It has been largely welcomed. To give the businesses affected enough time to make preparations, the regulation will come into force a year before the first scheduled increase in minimum contributions.

9. Guidance

9.1 The Pensions Regulator has produced updated guidance on the practical effect of these changes to automatic enrolment which can be accessed at (Employers | pension contributions funding | The Pensions Regulator)

10. Impact

10.1 There is an impact on business. It is estimated that the proposed change will produce savings for employers in terms of reduced pension contributions in 2017/18 and 2018/19 worth £1,128.1 million (2016/17 prices); as well as some small administrative savings from having simplified payroll systems. These are estimated to more than offset a one-off administrative cost for employers who would have been through automatic enrolment by the start of October 2016 of £14.8 million in 2017/18 (2016/17 prices). An Impact Assessment setting out the changes has been produced and estimates a savings Equivalent Annual Net Direct Cost to Business (EANDCB) of around £512.5 million as a result of the outlined policy change in 2017/18 and 2018/19 (2014 prices). There is no impact on charities or voluntary bodies.

[6] "**defined benefits scheme**" means an occupational pension scheme under which all the benefits that may be provided are defined benefits;

[7] **hybrid scheme**" means an occupational pension scheme which is neither a defined benefits scheme nor a money purchase scheme

10.2 There is an impact on the public sector. The Exchequer will benefit from paying £524.6 million less in tax relief on pension contributions in 2017/18 and 2018/19 (2016/17 prices).

10.3 An impact assessment is submitted with this memorandum and is published alongside the Explanatory Memorandum on the legislation.gov.uk website. The proposed change creates costs for individuals in terms of total reduced pension savings worth £3,333.2 million (2016/17 prices) and the receipt of marginally less in-work benefits. However, the change will only impact on individuals on individuals' pension savings for a period of one and a half years, after which minimum total contribution rates will return to their pre-policy change rate of 8%.

11. Regulating small business

11.1 The regulation simplifies the operation of the legislation for all employers, and small businesses in particular, and gives them more time to prepare for the increase in contributions. Small and mirco employers started to take up their automatic enrolment duties from June 2015 and we expect roll out to be completed by 1 April 2017. Employers taking up their duties from October 2017 will benefit from the first phased increased in contributions being delayed to 6April 2018. The roll out to employers is expected to have been completed by 1 February 2018.

12. Monitoring & review

12.1 It is not appropriate, in these circumstances, to make statutory provision to review this regulation as it implements a deregulatory measure which will be in place over the period October 2017 to April 2019. Furthermore, this instrument achieves the original policy intention to reach a minimum contribution rate of 8% of qualifying earnings, but at a later date. A 2012 Impact Assessment[8] fully accounted for the on-going impacts of the minimum contribution level being 8%. On that basis, the Department's view is that it is not necessary to conduct a review.

12.2 The Government plans to undertake a broad and strategic review of automatic enrolment policy in 2017. The Department will consult with interested parties to determine the scope of the review, and contribution levels may included in the review.

13. Contact

13.1 Ade Awoyinka at the Department for Work and Pensions Ade.Awoyinka@dwp.gsi.gov.uk can answer any queries regarding the instrument.

[8] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/220500/wpr-rev-implementation-ia-final.pdf