HOUSE OF COMMONS LIBRARY

BRIEFING PAPER

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Pensions: automatic enrolment - current issues

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Summary

Provisions in the *Pensions Act 2008* placed a duty on employers to automatically enrol jobholders into, and to contribute to, either a "qualifying pension scheme" or a new personal accounts scheme, a "simple low-cost pension scheme", also established by the Act, now the National Employment Savings Trust (NEST). The plan was to introduce these requirements from 2012.

Following the 2010 general election, the Coalition Government set up a review to look at whether the policy was still appropriate. The core aspects of the policy were confirmed: for example, the new duties would still apply to all employers regardless of size. To help employers, the *Pensions Act 2011* introduced an optional waiting period of up to three months before an employee must be automatically enrolled and an increase in the earnings trigger for auto-enrolment.

The auto-enrolment duties were phased-in by employer size, starting in October 2012 with large employers. Small and micro employers were brought into the reforms between June 2015 and February 2018. Minimum contribution rates were phased-in, reaching their full amount (8% in total: including 3% from employers; 4% from employees and 1% tax relief) in April 2019.

The policy has reversed the decline in workplace pension saving. The rollout of automatic enrolment from 2012 onwards has led to a tenfold increase in total membership of defined contribution (DC) occupational schemes, from 2.1 million in 2011 to 21 million in 2019. Actively contributing membership rose from a low point of 0.9 million active members in 2011 to 10.6 million members in 2019. Note that an individual can have more than one pension scheme membership – as people move from job to job, they may accumulate several pension pots in different occupational schemes.

Employers' auto-enrolment duties have continued to apply during the Coronavirus outbreak. Employers applying for grants under the Coronavirus Job Retention Scheme for periods of furlough before 1 August 2020 could claim the cost of the statutory minimum employer pension contributions on furlough pay. From that date they have had to meet these costs themselves, both on furloughed hours and hours worked (TPR guidance, updated December 2020).

A report from the National Employment and Savings Trust (NEST) in February 2021 looked at the impact of the COVID-19 outbreak on its 9.5 million members. It found no significant changes in average contribution levels: the majority had continued to save, with around one fifth contributing more than the minimum contribution rate. There had been a small increase in opt-out rates (from 8% to 11% between April and September 2020). That the overall story so far was one of continuity "owed much to the buffering effect of the UK government's Coronavirus Job Retention Scheme."

Although auto-enrolment is widely agreed to have been a success, there are concerns that many (an estimated 12 million) are still under-saving for retirement. A review of the policy in 2017 recommended lowering the age threshold for auto-enrolment from 22 years to 18 and removing the lower limit of the 'qualifying earnings band,' so that contributions are paid from the first pound earned. The Government said its ambition was to implement these changes in the mid-2020s (Cm 9546, December 2017, p4). On 5 November 2020, Pensions Minister, Guy Opperman said "our intention is that [these changes] should take place in the mid-2020s "(PBC Deb 5 November 2020 c119). Some argue that this should be brought forward (e.g. PLSA 2019; TUC Feb 2019).

Other issues include:

- The need for changes to enable low earners to benefit from tax relief regardless of how their scheme administers tax relief. The Government issued a call for evidence on pension tax relief administration in July 2020 and is analysing feedback.
- The judgment of the UK Supreme Court in the case of *Uber BV v Aslam*, gave rise to debate about whether it would open the doors to auto-enrolment for all gig workers.
- Supporting self-employed people to save for retirement, given that auto-enrolment is not an option.
- When and how contribution rates should increase above the 8% minimum (e.g. HC Deb 28 Feb 2018, c401WH ff; PBC Deb 5 November 2020 c110).

The draft *Automatic Enrolment (Earnings Trigger and Qualifying Earnings Band) Regulations 2021* are due to be debated on 1 March 2021. These regulations set the thresholds for auto-enrolment and are an annual event. Under the regulations, the 'earnings trigger' for auto-enrolment remains frozen at £10,000 and the lower and upper limits of the 'qualifying earnings band' (on which minimum contributions are calculated) remain linked to the National Insurance lower earnings limits at £6,240 and £50,270 (DWP, Review of the AE earnings trigger and qualifying earnings band for 2021/22, Jan 2021).

The background to the reforms is covered in more detail in Library Standard Note SN 4847 Pensions: auto-enrolment – background (September 2012).

1. Introduction

1.1 Overview

From October 2012, the Government started to phase-in the "work-place pension reforms". These were new duties on employers to automatically enrol workers into, and contribute to, a workplace pension saving scheme. Workers covered by the rule are those who:

- are not already in a workplace pension scheme;
- are between age 22 and State Pension age; and
- earn more than a minimum earnings threshold (£10,000 since 2015/16).[1]

Employers have to enrol them into a qualifying pension scheme that meets specified criteria. A new pension scheme, NEST (National Employment Savings Trust) was established to support them, available to any employer who chooses to use it.[2]

Workers can choose to opt out. Where they remain in the scheme, minimum contributions must be made on a band of "qualifying earnings."

The reforms were phased-in by employer size (number of employees) between October 2012 and February 2018. Minimum contribution rates were also phased-in, reaching their full rate (4% employee, 1% tax relief and 3% employer) in April 2019.[3]

Guidance for employers is on the website of the Pensions Regulator.

There is information for employees on Gov.UK

1.2 Expected impact on pension incomes

In September 2013, the Coalition Government estimated that its reforms (auto-enrolment, the introduction of the new state pension in April 2016 and increases in the State Pension age) would:

> - Reduce the number of people facing inadequate retirement incomes by 1 million;
> - Increase the incomes (and replacement rates) of 73 per cent of those facing inadequate retirement income, bringing them closer to their target income; and
> - Halve the proportion of future pensioners who will retire with no private income at all from 27 per cent to 12 per cent in 2050.
>
> With the Government's reforms in place, over half of people currently of working age considered in our analysis are expected to build adequate retirement incomes and maintain their living standards during their retirement. However, this leaves an estimated 12.2 million people facing inadequate retirement

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1 *Pensions Act 2008*, s1 and 3
2 DWP, Automatic enrolment and workplace pension saving reform – factsheet, May 2011
3 Impact Assessment – Employers' Duties (Implementation) (Amendment) Regulation 2012, p18

> incomes. Roughly half of these are within 20 per cent of their target amount, with the remainder facing a more significant challenge. This is a particular issue for moderate and higher earners.[4]

In December 2016, the Government estimated that once fully implemented, 10 million workers would be newly saving or saving more in a workplace pension due to auto-enrolment and annual saving in workplace pensions would have increased by £17 billion by 2019/20.[5]

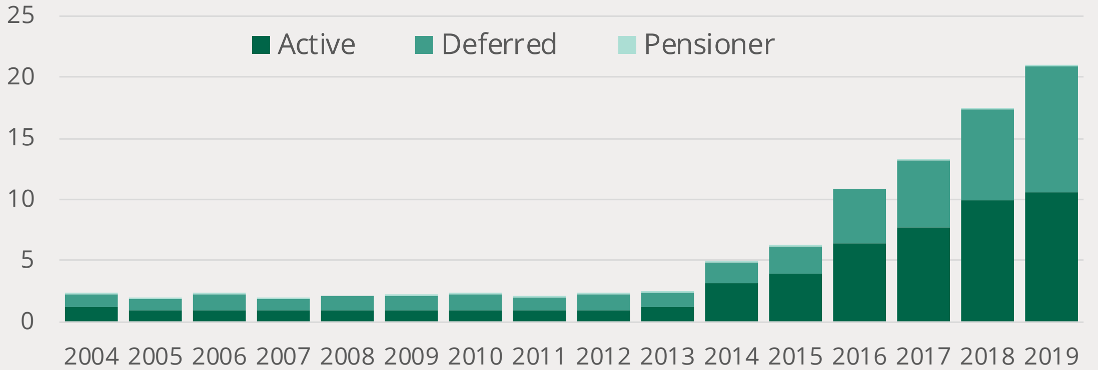
Progress to date

The 2019 evaluation of auto-enrolment found that since the start of automatic enrolment in 2012, more than 10.2 million workers had been automatically enrolled.[6]

The rollout of automatic enrolment from 2012 onwards has led to a tenfold increase in total membership of DC occupational schemes, from 2.1 million in 2011 to 21 million in 2019. Actively contributing membership rose from a low point of 0.9 million active members in 2011 to 10.6 million members in 2019. Note that an individual can have more than one pension scheme membership – as people move from job to job, they may accumulate several pension pots in different occupational schemes.

Defined contribution occupational pension scheme memberships, UK

Millions of memberships



Note: Includes occupational money purchase DC schemes but not group personal pensions.

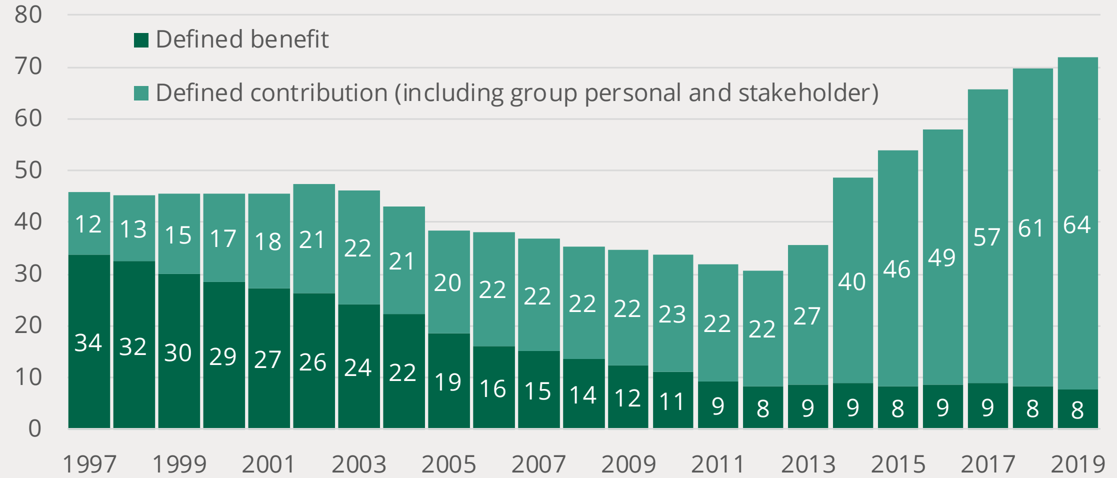
Source: ONS Occupational Pension Scheme Survey 2019, table 3.

The policy has resulted in a significant increase in membership of defined contribution (DC) schemes. Expressed as a share of the total private-sector employee workforce, the proportion of employee jobs covered by a DC pension arrangement (including group personal and stakeholder pensions as well as occupational schemes) was stable at just a fifth during the decade to 2012 but then started to rise in 2013 due to automatic enrolment and reached 64% in 2019. Conversely just 8% of private-sector employee jobs were covered by a DB arrangement in 2019.

4 DWP, Framework for the analysis of future pension incomes, September 2013; See also DWP, Scenario analysis of future pension incomes, August 2014
5 DWP, Automatic Enrolment evaluation report 2016, December 2016
6 DWP, Automatic Enrolment evaluation report 2019, Feb 2020

Private-sector employee jobs with pension plans, by scheme type

Percentage of employee jobs, UK, as of April of each year



Source: ONS Employee workplace pensions in the UK (formerly Annual Survey of Hours and Earnings pension tables), table P2 pension type by industry and gross weekly earnings bands, various editions

The 2019 evaluation found that the annual total amount saved on behalf of eligible employees across both public and private sectors had increased: to £90.4 billion in 2018, an increase of £7 billion from 2017.

Although during the roll-out of the policy, median contribution rates had fallen, they had started to rise as minimum contribution rates increased.[7]

Impact of COVID-19

In February 2021, NEST reported on the behaviour of its 9.5 million members (nearly half are aged under 35 and more than half have annual earnings of less than £20,000) between April 2019 and September 2020.[8] It found that, although it was too early to tell the full story of how the Covid-19 crisis would impact pension saving, auto-enrolment had so far remained resilient:

- There had been a small increase in opt-out rates: from 8% to 11% between April and September 2020.
- There had been no significant changes in average contribution levels. The majority had continued to save, with around one fifth contributing more than the minimum contribution rate.

This continuity owed much to the buffering effect of the UK government's Coronavirus Job Retention Scheme (CJRS). New enrolments had noticeably slowed in the first six months of 2020/21, suggesting that although employers may be holding up, they have not been taking on new employees at the rates seen in the recent past. As at 30 September 2020, overall job numbers had been stable. However, this might be due to job-protection interventions such as the CJRS.[9]

7 DWP, Automatic Enrolment evaluation report 2019, Feb 2020
8 Retirement saving in the UK 2020, NEST Insight, Feb 2020
9 Ibid, p17

1.3 Implementation timetable

The Labour Government's intention was to start to introduce the new duties from 2012.[10] The 2008 Act provided for a "staged" introduction of employer duties, so that different groups of employers become subject to the duties at different times.[11] It also allowed the minimum contribution to be phased-in.[12]

Delay in staging employers

In June 2008, the Labour Government said that the reforms might be introduced over three years.[13] However, it reviewed the timetable in the light of the economic circumstances following the 2007-08 financial crisis.[14] In January 2010, it said the policy would be implemented over the period October 2012 to April 2017.[15]

In July 2011, the Conservative-Liberal Democrat Coalition Government announced a further change, to ensure no micro employer (with fewer than 10 employees) was brought into auto-enrolment before April 2014.[16] Then in November 2011, Pensions Minister Steve Webb announced that no small businesses (with fewer than 50 employees) would be affected before 2015. The rate of pension contributions would remain unchanged until all businesses had started auto-enrolment.[17] On 26 January 2012, DWP provided details of the revised timetable.[18] To summarise, under the revised timetable the new duties would apply:

- From October 2012, for employers with 250 + employees;
- From April 2014, for employers with 50 + employees;
- From June 2015, for employers with fewer than 50 employees.

All existing firms would auto-enrol by April 2017, followed by new firms (set up from April 2012) by February 2018.[19]

Responses

The delay was welcomed by employer representatives. The CBI said the longer timetable would "help small firms cope with costs they would have incurred if they'd been brought in during 2014 and 2015." The British Chambers of Commerce said the delay was good news but said the Government must clarify when employers would be affected.[20]

10 HC Deb, 6 Feb 2007, c872W
11 Pensions Act 2008, s11
12 Pensions Act 2008, ss11, 29 and 30; House of Commons, Deposited Paper, 2008-0167
13 HL Deb, 23 June 2008, c1323-4 [Lord Tunnicliffe]
14 Pre-Budget Report 2009 ,para 5.47
15 DWP Press Release, 12 January 2010 – Millions to get first pension – employers to pay in
16 DWP, Workplace Pension Reform – Completing the legislative framework for Automatic Enrolment, July 2011, p7; HM Treasury, Budget 2011, para 1.81 and page 12
17 DWP press release, 28 November 2011 – Government announces changes for small business to the automatic enrolment timetable
18 HC Deb, 31 January 2012, c31-2WS; DWP Press Release, New timetable clarifies automatic enrolment starting dates, 25 January 2012
19 (SI 2012/1813); Impact Assessment
20 Business Today, Experts react to delay for small firms on auto-enrolment, 29 November 2011

On the other hand, there was concern that the momentum behind the reforms should be maintained. The Association of British Insurers stressed the need for a firm timetable so that employers were clear what was expected of them.[21] The Pension and Lifetime Savings Association (PLSA) was disappointed by the further delay, given that the reforms had been "a decade in the making."[22] Age UK described the decision as "extremely disappointing".[23]

Delay in increasing minimum contributions

In the Autumn Statement 2015 the Chancellor announced that to simplify administration for employers, the next two contribution rate increases would take place in April rather than October, so that they were aligned to the tax year.[24] This meant a delay of six months:

- The increase planned for October 2017 (from 2% to 5%) would be postponed until April 2018; and
- The increase planned for October 2018 (from 5% to 8%) would be postponed until April 2019.[25]

This decision was welcomed by the Federation of Small Businesses but described as a disappointment by the TUC.[26]

21 Ibid
22 NAPF press release, Government changes auto-enrolment timetable, 8 December 2011
23 Business Today, Experts react to delay for small firms on auto-enrolment, 29 November 2011
24 HM Treasury, Autumn Statement 2015, November 2015, para 1.137
25 HM Treasury, Autumn Statement – policy costings, November 2015
26 Evidence to the Work and Pensions Select Committee from The Federation of Small Businesses and Trades Union Congress, the February 2016

2. Policy development

2.1 Origins

For more on the background, see Library Briefing Paper Pensions: auto-enrolment – background (CBP 4847, Sept 2012).

The Labour Government established the Pensions Commission in 2002 with the remit of:

> […] keeping under review the adequacy of private pension saving in the UK, and advising on appropriate policy changes, including on whether there is a need to "move beyond the voluntary approach."[27]

In its first report, published in October 2004, the Commission said society and individuals faced a challenge:

> Over nine million working people will face pensions they may consider inadequate, unless they save more or retire much later than their parents.[28]

The way forward would need to involve some mix of:

- A major revitalisation of the voluntary system;
- Changes to the state system;
- Increased compulsion beyond that already implied by the State Second Pension and contracting-out arrangements.[29]

In its Second Report, published in December 2005, it recommended requiring employers to automatically enrol workers into a workplace pension saving scheme. This was necessary because the "overwhelming evidence is that many people do not make rational long-term decisions in their own self-interest without encouragement and advice."[30] To encourage participation, employers would be required to make a minimum contribution. The Commission said there were three reasons why this was important:

- First, employer contributions contingent on employee enrolment, even if relatively small, would be likely to produce a major increase in employee participation rates…
- Second, a compulsory matching contribution may be required to ensure that all members of the scheme can achieve a reasonable return on investment, even if subject to some means-testing. It will thus make it safe to auto-enroll people without the expensive cost of regulated advice…
- Third, it could also be argued that a compulsory employer contribution would be justified as creating a more "level playing field" between those employers who already make pension contributions and those who do not…[31]

The Commission also recommended the creation of a low cost, national, funded pension savings scheme, available to any employer who chose to use it. This was needed because there was:

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27 The first report of the Pensions Commission, *October 2004,* Foreword
28 Independent Pensions Commission: First Report, Press Release, 12 October 2004
29 Ibid
30 Ibid, p154-6
31 Ibid, p158-160

> a segment of the market, employees of average and lower earnings working in small and medium companies, plus many self-employed, which the retail financial services industry cannot serve profitably except at Annual Management Charges (AMCs) which are disincentives to saving and which substantially reduce pensions available in retirement. [32]

The new scheme would be able to offer low charges by using a national payment collection system and investment in low cost funds bulk-bought from the fund management industry.[33] It is now called the National Employment Savings Trust (NEST).

The Labour Government legislated for these reforms – with some modifications - in the *Pensions Act 2008*.

2.2 2010 Review

Following the general election in May 2010, the Conservative Liberal Democrat Coalition Government said it would set up a review to look at the scope of the auto-enrolment provisions and the delivery model for the National Employment Savings Trust (NEST).[34]

Consumer groups wrote to the Secretary of State for Work and Pensions arguing that it would be a mistake to "extend the review in a way that reopens the consensus reached about how best to implement the main recommendations of the Pensions Commission."[35]

On 24 June, the then Pensions Minister, Steve Webb, said the review would consider whether the policy struck "the right balance between cost and benefits to individuals, employers and for the taxpayer, particularly in the light of current economic and fiscal conditions."[36] It would be conducted by an independent team, led by Paul Johnson, Frontier Economics, David Yeandle OBE, Engineering Employers Federation and Adrian Boulding, Legal and General.[37]

Recommendations

Publishing its report in October 2010, the review team said it had looked at four broad questions:

- First, is there a case for excluding a substantial additional tranche of workers from automatic enrolment, for example those earning below a particular threshold or those above a certain age?

- Second, is there a case for excluding any group of employers, in particular the very smallest employers, from the additional responsibilities implied by the policy?

32 Ibid p6
33 Ibid
34 'Pension plans for lower paid staff in review', *Financial Times,* 28 May 2010
35 TUC Press Release, Consumers warn ministers over 2012 pension review, 22 June 2010
36 HC Deb, 24 June 2010, c21-2 WS
37 HC Deb, 24 June 2010, c21-2 WS

- Third, would any changes to the proposed regulations, implementation and details surrounding automatic enrolment enhance the policy?

- Fourth, under what circumstances is NEST necessary for the successful implementation of automatic enrolment and are there changes to the rules surrounding NEST which would be helpful? [38]

It had decided that in recommending any change to auto-enrolment, there were two core issues:

> For most people, pension saving will be beneficial. However, there are some low earners who would achieve little or no welfare benefit in "consumption smoothing" over their lifetime. We need to ensure that the scope of automatic enrolment correctly balances the risk of being over-inclusive against the risk of excluding some people for whom it would genuinely pay to save.
>
> Whether the burdens on employers and, particularly smaller employers, are proportionate and whether greater regulatory simplicity can be achieved without jeopardising the aims of the reforms.[39]

Its main recommendations for change were that:

- The earning threshold for automatic enrolment should be aligned with the personal allowance for income tax and the threshold from which pension contributions become payable should be aligned with the national insurance primary threshold. Workers may opt in to saving and receive an employer contribution if they earn between these two thresholds.

- There should be an optional "waiting period" of up to three months before a worker needs to be automatically enrolled. Workers may opt in during the waiting period.

- There should be a simple system for employers to certify their money purchase pension scheme meets the required contribution levels.[40]

These recommendations would result in reduced eligibility for enrolment and therefore lower costs to employers. However, the review team said this had "modest implications for the scope and impacts of automatic enrolment":

> One million fewer people eligible for automatic enrolment (-10 per cent against the baseline), with a reduction in total individuals contributions of £180m (-4 per cent). An increase in private pension income in 2050 against a non-reform scenario of £15.3bn (in 2010/11 prices); this is slightly lower than under the status quo policy (£16.3bn).[41]

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38 'Making automatic enrolment work. A review for the Department for Work and Pensions', October 2010, p2
39 Ibid, p153
40 HC Deb, 27 October 2010, c12WS
41 Making automatic enrolment work. A review for the Department for Work and Pensions', October 2010, p 165

This would feed through into lower pension contributions and higher eligibility for means-tested benefits. However, this was:

> […] balanced against lower costs for employers and also reduced costs for the Exchequer in terms of tax revenue forgone as tax relief on pension savings.[42]

The review team confirmed other aspects of the policy. It should apply to all employers regardless of size, as previously proposed. It said it could not have come this decision had it not been convinced that NEST would provide a "pension scheme that will be appropriate to most small employers, and one that will be very easy for them to use." [43]

The review team also decided that older workers should continue to be included in the scope of the policy:

> While it is true that some older workers face potentially lower returns from pension saving, there are many that could see real benefits from saving – for example, because they can build on earlier savings, because they will be able to 'trivially commute' their savings pot into a lump sum at retirement or because they intend to continue to work and save beyond the State Pension age. Our judgement here was that the detriment of potentially excluding such older works from saving outweighed any potential benefits of a lower age threshold.[44]

It also looked at a long-standing concern regarding whether the policy would result in a "levelling down" of contributions among those employers already providing pensions for their employees.[45] It said the evidence suggested only limited reductions in pension contributions as a result of the reforms:

> From a purely economic standpoint, this is surprising. However, the majority of employers offering high quality pension provision are ideologically committed to maintaining this, either for paternalistic reasons, or as a crucial tool in recruiting and retaining employees. And whilst we should be cautious in interpreting how far stated intentions will translate into real behaviour, what little evidence there is generally suggests a reasonable degree of correlation between employers' given views and their actions59. At the same time, employers' stated preference for maintaining their pension provision will be tempered by pragmatic considerations of economic circumstances at the time and the feasibility of absorbing costs in other ways.[46]

Responses

The then Pensions Minister, Steve Webb, said the Government would proceed with implementation of the reforms on the basis of the review's recommendations:

> Today, I am pleased to be able to publish the report of the independent review into making automatic enrolment work. The recommendations of the review team are a sensible and balanced

[42] Ibid
[43] Ibid, p5
[44] 'Making automatic enrolment work. A review for the Department for Work and Pensions', October 2010, p 5 and p111
[45] E.g. Providing for Pensions, Theresa May, Politeia, 2010
[46] Making automatic enrolment work. A review for the Department for Work and Pensions, chapter 3, p63

> package of proposals. In particular, the changes in scope and the deregulatory measures proposed will ensure the introduction of automatic enrolment is stable and proportionate. Therefore, I am pleased to announce that the Government will now proceed with implementation of the reforms on this basis.[47]

The CBI said the recommendations would "make the new auto-enrolment system simpler for employers, while meeting all of Lord Turner's original aims and recommendations." It welcomed the inclusion of all employers in the scope of the reforms and the option of a three-month waiting period before auto-enrolment.[48] The British Chamber of Commerce also welcomed the three-month waiting period. It recommended a communications drive to inform employers of their new obligations.[49] The Federation of Small Businesses, on the other hand, was "severely disappointed" that small firms were not to be excluded from the reforms.[50]

The Pension and Lifetime Savings Association welcomed the Government's adoption of a "common-sense approach that will widen pension provision, whilst still keeping existing good schemes open."[51] Age UK had "some concerns about the increase in the threshold and the introduction of a waiting period" but was relieved that there would be no exemption for small firms.[52]

2.3 2017 Review

The 2008 Act made provision for aspects of the policy to be reviewed in 2017.[53] In May 2016, the Work and Pensions Select Committee recommended that the review should consider:

- removing the lower qualifying earnings band for contributions and lowering the earnings trigger threshold in order to bring more low paid people, including many more women, into AE;
- mechanisms for automatically enrolling self-employed workers, including how the income tax self-assessment system might be used;
- approaches to increasing contributions beyond the statutory minimum of 8% of qualifying earnings, including mandatory increases in employee and employer contribution rates and means of encouraging greater voluntary contributions;

47 HC Deb, 27 October 2010, c12WS
48 CBI press release, 'CBI responds to Government review of 2012 reforms', 27 October 2010;
49 BCC Press Release, 27 October 2010, 'BCC welcomes simplification of 2012 private pension reforms'
50 See, for example, Personell Today, 'FSB severely disappointed small firms not excluded from auto-enrolment.'
51 NAPF Press Release, Wednesday 27 October 2010, 'Green light for pensions auto-enrolment welcomed by NAPF'
52 Age UK Press Release, 27 October 2010, 'Age UK response to auto-enrolment review'
53 Pensions Act 2008, s74

- steps necessary to create a single, comprehensive pensions dashboard by 2019 and the degree of Government intervention necessary to deliver on its pledge.[54]

On 12 December 2016, the Government announced that the review would look at coverage of the policy – including people with earnings below the trigger, with multiple jobs and the self-employed. It would be an opportunity to strengthen the evidence around appropriate level of future contributions but the Government did not expect to make policy decisions on those areas in 2017.[55] On 8 February 2017, the Government said the review would be carried by an expert advisory group.[56]

The review published its report in December 2017.[57] It confirmed that auto-enrolment should continue to be available to all eligible workers regardless of who their employer was. Key recommendations were to:

- Lower the age for automatic enrolment from 22 to 18. This would bring an extra 900,000 people into workplace pension saving;
- Remove the lower earnings limit so that contributions were calculated from the first pound of earnings. This would support all those who are automatically enrolled, particularly those with low earnings and multiple jobs, to save more for retirement.[58]

It intended to implement its proposed changes in the mid-2020s, subject to consultation and the introduction of legislation.[59] The reason was to "ensure that the April 2018 and April 2019 [contribution rate] increases and without a hitch."[60] Organisations such as the TUC and the Pension and Lifetime Savings Association called for the lower earnings limit on contributions to be removed as soon as possible.[61] The Government remains committed to implementing review by the mid-2020s, with a further Pensions Bill to be expected in this Parliament.[62]

The recommendations of the review fell into three themes: coverage – see section 3.2 below; contribution rates – see section 3.3 below; and engagement.- see section 3.4 below. Alongside it, DWP published an evaluation strategy for the policy beyond 2017.[63]

54 Work and Pensions Committee, Automatic enrolment, 11th report of 2015-16, HC 579, May 2016, para 61
55 HCWS339 12 December 2016
56 DWP press release, Expert advisory group appointed to the automatic enrolment review, 8 February 2017; Review of Automatic Enrolment – Advisory Group Terms of Reference
57 DWP, Automatic enrolment review 2017: Maintaining the momentum, Cm 9547, December 2017
58 HC Deb 18 December 2017 c39WS
59 Ibid
60 HC Deb 28 February 2018 c416WH
61 PLSA Pensions Manifesto 2019; 'Government delays to pension reform could cost poorest workers up to £12,000', TUC, 5 Feb 2019
62 PBC Deb 5 November 2020 c118 [Guy Opperman]
63 DWP, Automatic enrolment review – evaluation strategy, December 2017

3. Individuals in scope of AE

The employer duties apply differently in respect of three different categories of worker: 'eligible jobholders', 'non-eligible jobholders' and 'entitled workers.' The category into which a worker falls is determined by their age and whether they have qualifying earnings.[64]

Jobholder is defined in section 1 of the Act as a person who "is working or ordinarily works in Great Britain under the workers' contract," is aged between 16 and 75 and has "qualifying earnings" (between £6,240 and £50,270 in 2021/22).

Under section 3, a jobholder is eligible for auto-enrolment if they:

- Are aged at least 22 but under State Pension age.
- Are working or ordinarily work in the UK under their contract.
- Earn above the earnings trigger for auto-enrolment (£10,000 in 2021/22) in the 'relevant pay reference period'.[65]

A 'non-eligible jobholder' is not eligible for auto-enrolment because they do not meet one of the three criteria above - for example, if they are under 22 or over State Pension age, or if they have qualifying earnings (above £6,240) but do not earn above the earnings trigger (£10,000 in any one job). They have the right to opt-in to a pension and receive the minimum employer contribution on qualifying earnings.[66]

The third category – 'entitled worker' - is aged between 16 and 74 and is working or ordinarily works in the UK but does not have 'qualifying earnings'. They also have the right to opt in, but the employer is not required to contribute.[67]

3.1 Employment status

The definition of jobholder in section 1 of the 2008 Act needs to be read in conjunction with sections 88 to 98. Section 88, for example, provides that:

> "Worker" means an individual who has entered into or works under:
>
> a) a contract of service or apprenticeship whether express or implied, whether oral or in writing; or
>
> b) any other contract by which he undertakes to work or perform services personally for another party to the contract.

Under section 98, the Secretary of State has power to bring individuals of a prescribed description into the definition of worker.

The Labour Government which legislated for auto-enrolment said its intention was to "align the eligibility for automatic enrolment into

64 TPR, Detailed guidance for employers, Employer duties and defining the workforce, April 2017, p13
65 *Pensions Act 2008*, s1-3
66 TPR, Detailed guidance for employers, Employer duties and defining the workforce, April 2017, para 48 and 68
67 Ibid, para 50 and 76

private pension saving with coverage of the Working Time Directive and the National Minimum Wage Act."[68]

In response to a question about how the reforms would apply to agency workers, the then Pensions Minister, Mike O'Brien, explained that the aim was to ensure they were auto-enrolled:

> As far as agency workers are concerned, where a person is employed is a matter of fact in law, and our view is that the primary obligation should lie with the agency. We want people to be automatically enrolled, and I think that the broad view in the Committee is that that is the right approach […] We need to ensure that, provided that they comply with all the other rules, the person doing the work can get their pension, become automatically enrolled and have their opt-out, if they want it. Primarily, the position should be that they are in a pension scheme. The obligation will lie first of all with the agency. If there is an agreement, it can then be passed elsewhere, but the employee must be enrolled.[69]

The then Work and Pensions Minister, Lord McKenzie of Luton said it was important to ensure that individuals, such as agency workers, who were "not being served by the existing pensions market should have the opportunity to start or continue saving towards their retirement, with the benefit of a minimum employer contribution."[70]

In *Uber BV v Aslam* [2021] UKSC 5, the UK Supreme Court found that Uber drivers were 'workers' for the purpose of the section 54 of the *National Minimum Wage Act 1998*. Following the judgment, commentators questioned whether it would "open the doors to auto-enrolment for all gig workers" and, if so, whether minimum employer contributions might need to be paid retrospectively.[71]

See Commons Library Insight, Uber at the Supreme Court: Who is a worker?, 21 February 2021

Self-employed people

The duty to auto-enrol applies to employers in relation to workers, not to self-employed people.[72]

The self-employed were identified by the Pensions Commission as a group where pension provision had always been deficient and for whom levels of saving were not increasing.[73] The Labour Government considered how to respond but decided that the self-employed were best placed to decide how much they should save. They would be able to make contributions to NEST at a level of their choosing.[74]

A series of reports since then have highlighted concerns about declining rates of pension saving for this group and proposed solutions.[75]

68 DWP, Pensions Bill – Impact Assessment, 5 December 2007, para 2.10 to 2.11
69 PBC Deb 22 January 2008 c134-5
70 HL Deb 17 June 2008 c928
71 Supreme Court Uber ruling a step towards 'opening the doors' to AE for all gig workers, Pensions Age, 19 Feb 2021
72 *Pensions Act 2008*, s1 and 3
73 Pensions: Challenges and Choices – the First Report of the Pensions Commission, October 2004, p165
74 DWP, Personal accounts: a new way to save, CM 6975, Dec 2006, para 1.25-7
75 Pensions Policy Institute, The under-pensioned 2016, March 2016; Royal London, Britain's forgotten army, April 2016

The 2017 review of auto-enrolment said that a large proportion of the self-employed experienced significant gaps in pension coverage. [76]

Research by the Institute for Fiscal Studies in October 2020 found that the proportion of self-employed workers contributing to a private pension has been steadily declining (from 48% in 1998 to 16% in 2018), in sharp contrast to the position of private sector employees under auto-enrolment. This decline had taken place at the same time as the number of self-employed workers had risen (from 13.4 million or 12.9% of the workforce in 1998 to 4.8 million or 15.1% of the workforces in 2017). Affordability remained the main reason most gave for not saving in a pension. It did not appear that other forms of savings (such as ISAs) were acting as a substitute for pension saving.[77]

Policy options

In May 2016, the Work and Pensions Committee suggested auto-enrolling them through the tax system. DWP said it had had discussions with HMRC about "some sort of way we could encourage the self-employed through their tax-returns" but added that they were "a few years away from having an option."[78]

Following the 2017 review of auto-enrolment, DWP said it would test targeted interventions, with trials focusing on three key areas:

- Movements between self-employment and employment;
- Maximising the existing communications and systems used by self-employed people to facilitate or create nudges towards saving;
- The accessibility of savings products.[79]

NEST is leading a programme of research, supported by DWP, to understand the low levels of pension saving among unemployed people and test a range of approaches to encourage and enable this.[80]
In a report published in December 2020, it found that the income of many self-employed people had been negatively impacted by the COVID-19 outbreak. Confidence in retirement preparedness had been affected, although openness to guidance about how to save had stayed consistent:

> Although 60% of self-employed people said that their income has been negatively impacted by the pandemic, with around 30% reporting that their income had stayed broadly the same and just under 10% saying that it had increased, over 70% said that they're still able to save now or in the next year.
>
> Around half of self-employed people say that the amount they are saving, for any reason, has not changed. While 19% say they have reduced emergency saving, and a similar proportion have

[76] DWP, Automatic Enrolment Review 2017: Maintaining the Momentum, Cm 9546, December 2017, p7

[77] Retirement saving of the self-employed, Crawford R and Karjalainen H, IFS, October 2020

[78] Work and Pensions Committee, Automatic enrolment, HC 579, May 2016, para 8

[79] DWP, Automatic Enrolment Review 2017: Maintaining the Momentum, Cm 9546, December 2017, p7; DWP, Enabling pension savings for the self-employed: pensions and long-term savings trials, December 2018

[80] Supporting self-employed people to save for retirement, NEST insight, updated December 2020

> reduced retirement saving, 15% and 9% respectively have started saving or increased the amount they save for these reasons.
>
> Belief in the importance of retirement saving doesn't seem to have been affected by the pandemic (2020: 75% vs 2019: 74%) and openness to guidance about how best to save for later life has also stayed consistent (2020: 53% vs 2019: 55%).
>
> But confidence in retirement preparedness has been affected, with 37% of self-employed people vs 22% of employed people reporting that their confidence that they will be able to financially provide for retirement has decreased since Covid-19.[81]

NEST plans to continue in 2021 to test tools and automated approaches to encourage retirement saving.[82]

Seafarers and offshore workers

Persons working on vessels and offshore workers were initially excluded from automatic enrolment under the 2008 Act, with provision for them to be included by Statutory Instrument.[83] The Labour Government of the time explained that the intention was to include them but that there were complex and difficult issues of international and European law to consider first.[84]

In June 2011, the Coalition Government announced that "seafarers and offshore workers should be covered by auto-enrolment if they work, or ordinarily work, in Great Britain." It would continue to exclude share fishermen as they are self-employed and thus outside the scope of these reforms."[85] This was provided for in the *Automatic Enrolment (Offshore Employment) Order 2012*.

These provisions were subject to a "sunset clause", it being practice at the time to do this when there was a net burden (or cost) on business or civil society organisations. Following a post-implementation review in 2018, the sunset clause was lifted by regulations so that auto-enrolment could continue to apply to eligible seafarers and offshore workers from July 2020. In debate on the regulations in May 2020, Work and Pensions Minister, Baroness Stedman-Scott stressed the importance of the workplace pension reforms in helping employees save for retirement, including "an estimated additional 26,000 seafarers and offshore workers saving into a workplace pension in 2019 as a result of automatic enrolment.[86]

81 Appetite for self-employed savings solutions remains high despite the impact of COVID-19, NEST insight, December 2020
82 Ibid
83 Sections 96-7; Explanatory Notes
84 HL Deb, 10 July 2008, c 953-4 [Lord McKenzie}
85 Workplace Pension Reform – Completing the legislative framework for Automatic Enrolment; HL Deb, 13 March 2012, c44GC
86 *Automatic Enrolment (Offshore Employment) (Amendment) Order 2020 (SI 2020/634)*; HL Deb 19 May 2020 c1002

Multiple jobs

Concerns have been expressed about those working in several jobs with earnings, which do not exceed the earnings trigger for auto-enrolment in any one job but would if taken cumulatively.[87]

When the 2008 Act was before Parliament, the then Pensions Minister, Mike O'Brien said the Government had not been able to find an easy way to resolve this issue:

> Our view is that it would create more complexity and difficulty if a series of new obligations were imposed, and it would provide a level of deterrence on employing people.[88]

However, in debate on the *Pensions Bill 2013-14,* Baroness Hollis of Heigham argued that things had moved on:

> Given the real-time information built into [universal credit] we now know who gets what without burdening employers. In other words, the old obstacles to aggregation have gone.[89]

For the Government, Lord Freud responded that requiring wages to be aggregated would be an additional burden for employers:

> Aggregating earnings would have significant consequences for employers, including those people who would not now consider themselves to be employers. Take, for instance, the position of a woman whose job it is to clean private houses for a few hours each day of the week. The nature of the work would mean that she is likely to be employed and could have a number of jobs with different households. Under aggregation, each of those households would need to operate a Pay As You Earn scheme. They would need to contact HMRC to open such a scheme. They would then need to obtain and familiarise themselves with payroll software and use it to report earnings under real-time information to HMRC every time they pay their cleaner.[90]

The 2017 review was asked to consider the the needs of those not currently benefiting from automatic enrolment, including employees with multiple jobs who do not meet the criteria for automatic enrolment.[91] At March 2017, there were 975,000 multiple job-holders (MJH) between 22 and State Pension age. Overall, 632,000 (65%) were women and around 421,000 (67%) were already eligible for auto-enrolment in at least one job.[92]

In its 2017 review, DWP estimated that its proposal to remove the lower limit of the qualifying earnings band would increase incentives for people in multiple jobs to opt-in because they would "get an employer contribution for every pound they earn in every job."[93]

87 TUC, Evidence to the Work and Pensions Select Committee, February 2016; PPI, The Under-pensioned 2016, February 2016
88 PBC Deb, 22 January 2008, c136
89 HL Deb 24 February 2014 c713
90 HL Deb 24 February 2014 c725
91 HCWS339, 12 December 2016
92 DWP, Automatic Enrolment Review 2017 –analytical findings, December 2017; DWP, Automatic Enrolment Review 2017: Maintaining the Momentum, December 2017, p44
93 DWP, Automatic Enrolment Review 2017: Maintaining the Momentum, December 2017, p41

3.2 Age limits

The duty to auto-enrol applies in respect of 'jobholders' i.e. working between age 22 and State Pension age.[94] People aged between 16 and 22, or between State Pension age and 75 have the right to "opt in" to pension saving and get the employer contribution on 'qualifying earnings' (above £6,240 in 2021/22).[95]

Lower age limit

Questions were raised about the minimum age when the legislation was before Parliament, the then Opposition spokesperson Andrew Selous suggested that a person could have "six wasted years between ages 16 and 22, when they have started their working lives but are not in the personal accounts scheme."[96] The then Pensions Minister, Mike O'Brien, explained that 16-22 year-olds tended to change employment regularly and many of whom were students employed for quite short periods. An obligation for automatic enrolment of this age group "create a greater administrative burden for 16 to 22-year-olds than it would do for the majority of people over that age."[97]

The 2017 review recommended lowering the age threshold for auto-enrolment from 22 to18. It found was widespread support for reducing the age limit although not consensus on what the age limit should be:

> Almost all of the written responses to the published initial questions mentioned age in some way. While there was no consensus on what the precise lower age limit should be, there was a strong view shared by almost all groups that the lower age limit should be reduced. Employer representatives, in particular, expressed the view that any changes should take place after the phased increases in contribution levels have been completed.[98]

Employers and their representatives recognized that lowering the lower age limit would reduce the administrative burden and cost. The initial lower age limit of 22 had been based on National Minimum Wage (NMW) criteria which were superseded in 2010.[99]

The review considered that

> Reducing the age to 18 would re-align the lower age with the NMW age brackets (18 to 20) thereby providing consistency, removing the arbitrary age 22 assessment and simplifying processes for most employers who would not have 16 to 17 year olds as part of their workforce.[100]

94 Pensions Act 2008, s3
95 TPR guidance, Assessing the workforce, vol 3, para 33
96 Pensions Bill Deb, 22 January 2008, c168
97 Ibid, c171
98 Ibid, p37
99 Ibid p37; National Minimum Wage – rates and enforcement, Commons Library Briefing Paper CBP 6898, p5
100 Ibid p37

This would bring a further 900,000 young people into automatic enrolment.[101] The Government intends to implement this by the mid-2020s.[102]

Upper age limit

The Government's review of auto-enrolment in 2017 decided that the upper age limit for auto-enrolment should remain aligned to the State Pension age (SPA), with individuals able to opt in to continue contributing.[103]

3.3 Earnings trigger

The original idea – as proposed by the Pensions Commission – was that the level of earnings at which people are automatically enrolled should be aligned with the primary threshold for National Insurance (NI). People would pay minimum contributions on a band of qualifying earnings between this level and the upper earnings limit for NI.[104] The Labour Government said it would adopt broadly this approach.[105] Accordingly the *Pensions Act 2008*, set the lower and upper limits of the qualifying earnings band at £5,035 to £33,540. It also provided for both limits to be increased in line with the general level of earnings.[106] However, because different arrangements applied to the NI thresholds, the two moved out of alignment over time.[107]

The Coalition Government's MAEWR recommended that:

> The earnings threshold for automatic enrolment should be aligned with the personal allowance for income tax and the threshold from which pension contributions become payable should be aligned with the national insurance primary threshold. Workers may opt in to saving and receive an employer contribution if they earn between these two bands.[108]

Aligning auto-enrolment thresholds with the existing thresholds for tax or NI would simplify administration for employers and ensure that only those that earned enough to accrue a basic State Pension were automatically enrolled.[109] Although this would result in some low earners being excluded from the policy, it would:

> […] avoid automatically enrolling those not earning enough to pay income tax, will ensure that the very tiny levels of pension contribution possible under the current proposals are avoided.[110]

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101 Ibid, p17 and 35-8;National Minimum Wage – rates and enforcement, Commons Library Briefing Paper CBP 6898, April 2018, p5
102 PBC Deb 5 November 2020 c118 [Guy Opperman]
103 DWP, Automatic enrolment Review 2017: maintaining the momentum, Cm 9546, p40
104 The Second Report of the Pensions Commission, Nov 2005, p355 and p276
105 DWP, Security in retirement: towards a new pensions system, Cm 6841, May 2006, para 1.103
106 Section 14
107 Making automatic enrolment work review, Cm 7954, October 2010, para 5.2.1
108 HC Deb 27 October 2010 c12WS
109 Making automatic enrolment work, Cm 7954, October 2010, p4
110 Ibid, Executive Summary and chapter 5

The review team decided against recommending a significant increase in the annual earnings trigger for auto-enrolment, for example, somewhere in the £10,000 – £15,000 range:

> There are several considerations which militate against such a conclusion. These include the existence of working tax credits, which provide a big incentive for many low earners to save in pensions, and the fact that earnings fluctuate such that most low earners go on to earn more at some point and only through saving year on year can they accumulate a pot of reasonable value. But much the most important consideration is the fact that in the real world, for most people, it makes little sense to look at individual replacement rates like those quoted. Most of us live in households with others. And most very low earners are women living with men who earn rather more. It may well be desirable for them to be accumulating a pension pot of their own.[111]

The review team recommended that the point at which contributions were deducted (the lower threshold of the qualifying earnings band) should be set at a lower level – aligned with the primary threshold for NI. This would ensure that individuals who were automatically enrolled would have their pension contributions calculated "on a significant portion of their income."[112]

Pensions Act 2011

The *Pensions Act 2011* provided for an 'earnings trigger' for automatic enrolment, to be set separate to the 'qualifying earnings band' on which contributions would be paid.[113] It also required the Secretary of State to consider each year whether these thresholds should be increased or decreased.[114]

When the legislation was before Parliament, concerns were expressed about the disproportionate effect of these increases on women. Labour Peer, Baroness Drake, a former member of the Pensions Commission, objected that most people were not persistent low earners:

> Their aspirations on their replacement rates will not be determined by the low earnings they may have at a particular point in time; and those low earnings should not interrupt their persistency of savings. [115]

The late Baroness Hollis argued that "even small sums started early enough will be valuable and increase persistency of saving and the savings habit." Furthermore, even if an individual did only accrue a small pension pot, this could mean going into retirement "with a modest but useful capital sum, perhaps for the first time ever." [116]

However, the Government argued that its approach struck the right balance and that the threshold in the 2008 Act had been set too low. In July 2011, Mr Webb explained that:

111 Ibid, p3
112 Ibid para 5.2.3
113 Section 5
114 Section 8
115 HL Deb, 30 March 2011, c1295-1304
116 HL Deb, 30 March 2011, c1298-9; See also PBC Deb, 12 July 2011, c172-3

> Socially mobile people who move up the income scale will be auto-enrolled—the second they go over the threshold, they are in. All we are doing in the measure is taking out of auto-enrolment people who would be putting in tiny amounts of money.[…] In the depressing scenario that people are persistently on a low income throughout their lives, the replacement rate is very high without auto-enrolment. If they generally have a decent wage but have a spell of low wages, that low-wage period will make very little difference to their final pension outcome.[…] At least for now, alignment with the tax threshold gives employers simplicity and removes some very heavy burdens on firms who employ low-paid people.[117]

The Opposition had also expressed concerns at the flexibility being given to the Secretary of State to increase the auto-enrolment threshold in the future, potentially reducing even further the numbers who would be auto-enrolled.[118] Under clause 8, the Secretary of State would be required to consider whether they should be increased or decreased, taking into account factors such as the NI earnings limits and thresholds, the income tax personal allowances, the level of basic state pension for single adults, and the general level of prices and earnings.[119] Steve Webb said the Government believed flexibility was important regarding future increases in the earnings trigger.

> The basis on which tax allowances are set, national insurance thresholds are set and pensions are set are constantly moving feasts and if we tie the auto-enrolment thresholds to a single feature of the system that is doing something else, there is a danger that we will have the wrong number—the number that does not best serve our purposes. The Johnson review suggested that the trigger should be in line with the PAYE tax threshold. We argued that there was a good reason for that, but that the lower limit of qualifying earnings should link to the primary threshold for national insurance and that the upper limit should rise in line with average earnings. Although we welcome those recommendations and recognise that there is a lot of sense in them, we do not want to be bound by them rigidly from one year to the next.[120]

These provisions are now in sections 5 and 8 of the *Pensions Act 2011*.

117 PBC Deb 12 July 2011 c203; *Pensions Act 2008*, section 13
118 See for example, HL Deb, 30 March 2011, c1295
119 Bill 183-EN, para 81
120 PBC Deb, 12 July 2011, c237

4. Annual review of earnings thresholds

Under section 14 of the *Pensions Act 2008* as amended by the 2011 Act, the Secretary of State is required to review and revise the automatic enrolment earnings trigger and qualifying earnings bands each year. In doing so, they can take into account National Insurance earnings limits and thresholds, income tax personal allowances, the level of basic state pension for single adults, the general level of prices and earnings and any other factors that they consider relevant.[121]

Annual reviews have been conducted in each year since the 2011 Act got Royal Assent (see the Appendix). In summary:

- The **upper and lower limits of the qualifying earning band** (on which minimum contributions are paid) have been aligned with the lower and upper earnings limits for National Insurance since 2011/12.[122]
- The **earnings trigger** was aligned with the PAYE income tax threshold in 2012/13, 2013/14 and 2014/15. However, since 2015/16, it has remained frozen at £10,000, rather than following the personal tax allowance upwards.[123]

The earnings trigger and qualifying earnings band in each year since 2011/12 is set out in the table below:

	Earnings trigger for auto-enrolment	Qualifying earnings band	
		Lower Limit	Upper Limit
2011/12	£7,475		
2012/13	£8,105	£5,564	£42,474
2013/14	£9,440	£5,720	£41,450
2014/15	£10,000	£5,772	£41,865
2015/16	£10,000	£5,824	£42,385
2016/17	£10,000	£5,824	£43,000
2017/18	£10,000	£5,876	£45,000
2018/19	£10,000	£6,032	£46,350
2019/20	£10,000	£6,136	£50,000
2020/21	£10,000	£6,240	£50,000
2021/22	£10,000	£6,240	£50,270

Increases in the earnings-trigger between 2011/12 and 2014/15 reduced the eligible target population for auto-enrolment by around

121 *Pensions Act 2011 – Explanatory Notes*, para 83
122 HCWS131 17 December 2014; DWP, Review of the automatic enrolment earnings trigger and qualifying earnings band for 2021/22: supporting analysis, 20 January 2020
123 Gov.UK, Income tax: rates and allowances

1.29 million people. Keeping it frozen at £10,000 since 2015/16 has brought around 448,000 people back into its scope:[124]

Impact of increases in the earnings trigger for auto-enrolment on the number of individuals in the eligible target population for auto-enrolment

Earnings trigger for auto-enrolment	Change in the number of individuals in the eligible target population for auto-enrolment
Raising the 2011/12 value of the earnings trigger from £5,035 (2006/07 terms) to £7,457	600,000 excluded (78% of them women)
Raising the 2012/13 value of the trigger from £7,457 in 2012/13 to £8,105	100,000 excluded (82% of them women)
Raising the 2013/14 value of the trigger from £8,105 to £9,400	420,000 excluded of whom 320,000 (76%) are women
Raising the 2014/15 value of the trigger from £9,400 to £10,000	170,000 excluded of whom 120,000 (69%) are women
Freezing the trigger at *£10,000 in 2015/16*	20,000 extra included of whom 14,000 (70%) are women
Freezing the trigger at £10,000 in 2016/17	130,000 extra included of whom 91,000 (71%) are women
Freezing the trigger at £10,000 in 2017/18	70,000 extra included of whom 50,000 (75%) are women
Freezing the trigger at £10,000 in 2018/19	100,000 extra included of whom 72,000 (72%) are women
Freezing the trigger at £10,000 in 2019/20	40,000 extra included of whom 30,000 (75%) are women
Freezing the trigger at £10,000 in 2020/21	80,000 extra included of whom 60,000 (75%) are women
Freezing the trigger at £10,000 in 2021/22	8,000 extra included of whom 5,760 (72%) are women

Source: DWP, Review of automatic enrolment trigger and qualifying earnings bands for 2021/22: supporting analysis, Jan 2021. NB. Figures for earlier years are not directly comparable with those for 2015/16 onwards, which are based on updated information about the pension landscape, prices and earnings.

2017 review

The 2017 review said that, despite gains in participation levels, some workers saw limited benefits from auto-enrolment:

- Workers who earn more than £10,000 a year in a job are automatically enrolled, but because their contributions are calculated from the bottom of the qualifying earnings band (£5,876) in each job, they will miss out on a potentially significant contribution, and possibly more than once.
- Non-eligible jobholders who earn £10,000 a year or less in each of their jobs do not qualify for automatic enrolment, even if their combined earnings exceed £10,000.
- Entitled workers who earn at or below the Lower Earnings Limit (LEL) in each of their jobs are not necessarily entitled to an employer contribution even if they opt-in.
- Younger workers aged 18 to 21 currently miss out on automatic enrolment because the lower age limit of 22 was

[124] Reports of DWP's reviews of the earnings thresholds from successive years, starting with: DWP, Automatic enrolment earnings thresholds review and revision 2015/16, Oct 2014; DWP, Automatic enrolment earnings threshold review and revision 2015/16 – Government response to the consultation on revision proposals for the automatic enrolment earnings trigger and the qualifying earnings band, Dec 2014, Annex B

based on previous National Minimum Wage (NMW) criteria which were subsequently superseded in 2010.[125]

To address this, the Government proposed changing the framework so that pension contributions would be paid from the first pound earned:

- We want to help lower earners build their resilience for retirement; to support individuals, predominantly women, in multiple part-time jobs; and to further simplify automatic enrolment for employers. We propose to change the framework for automatic enrolment so that pension contributions would be calculated from the first pound earned, rather than from the lower earnings limit, currently set at £5,876.
- Removing the lower earnings limit simplifies messaging: everyone earning over £10,000 and under £45,000 a year (who meet the other eligibility rules) would be automatically enrolled by their employer and get pension contributions on 8 per cent of all their earnings. Those earning at or below £10,000 would not be automatically enrolled, however if they opt in they would also benefit from pensions contributions on 8 per cent of all their earnings. The change to how contributions are calculated would also improve the incentives for those in multiple jobs to opt-in to their workplace pension scheme, as they would benefit from an employer contribution for every pound they earn in every job, up to the upper earnings limit (currently set at £45,000).[126]

Its ambition was to implement its proposed changes in the mid-2020s, subject to consultation.[127]

[125] DWP, Automatic enrolment review 2017 – maintaining the momentum, December 2017
[126] DWP, Automatic Enrolment Review 2017: Maintaining the Momentum, Cm 9546, December 2017
[127] Ibid

5. Contributions

5.1 Rates

Minimum contribution rates are payable on a band of qualifying earnings (between £6,240 and £50,270 in 2021/22).[128] They were phased-in, with full contributions payable from April 2019:[129]

Phasing period	Minimum employer contribution % of qualifying earnings	Worker contribution % of qualifying earnings (incl. employee tax relief)	Total contribution % of qualifying earnings
October 2012 to March 2018	1	1	2
April 2018 to March 2019	2	3	5
April 2019 onwards	3	5	8

5.2 During COVID-19

Employers' automatic enrolment duties have continued to apply as normal during the COVID-19 outbreak, whether or not staff are furloughed under the Coronavirus Job Retention Scheme (CJRS).[130] Employers applying for grants under the CJRS for periods of furlough before 1 August 2020, could claim the cost of the statutory minimum employer pension contributions on furlough pay. For applications after that, employers had to meet those costs themselves, both for hours worked and hours furloughed.[131] The Government explained that it had "asked employers to share the costs of paying the wages of furloughed workers" and that "starting with the costs of employer national insurance and pension contributions is a simple and fair way to do that."[132]

For more detail, see FAQs: Coronavirus Job Retention Scheme Commons Library Briefing Paper, CBP 8880, 15 Feb 2021

TPR's approach

In March 2020, TPR extended the maximum period defined contribution (DC) pension schemes and trustees had to report late contribution payments from 90 to 150 days. This was to give "struggling employers more time to work with pension providers to bring late or missing payments up to date before enforcement action was taken."[133]

[128] DWP, Review of auto-enrolment earnings trigger and qualifying earnings band for 2021/22, December 2020

[129] The Automatic Enrolment (Earnings Trigger and Qualifying Earnings Band) Order 2018 (SI 2018/367); *Pensions Act 2008*, s20; *The Occupational and Personal Pension Schemes (Automatic Enrolment) 2010 (SI 2010/772)*, reg 32E

[130] Automatic enrolment and DC pension contributions. COVID-19 – guidance for employers, The Pensions Regulator, May 2020, updated December 2020

[131] For an overview of CJRS changes over time, see NEST insight, Retirement saving in the UK 2020, Feb 2021, p14

[132] PQ 51612, 9 June 2020;

[133] TPR updates COVID 19 guidance, 16 September 2020

TPR guidance reminded employers that, while employees could choose to reduce their contribution levels, they must not encourage or induce them to do so and must pay statutory minimum contributions for those who remained opted in. Those with concerns about their ability to afford minimum pension contributions should "contact their provider in the first instance to explore whether there is flexibility to change the due date for payment of employer contributions to a future date or, whether they may be able to help you plan to pay contributions over a longer period." They should also consider whether there was other government support they could apply for.[134]

In September 2020, TPR said that from January 2021 DC schemes would be asked to resume reporting late contribution payments no later than 90 days after the due date. It said that, with businesses and schemes adjusting to a new normal, now was the right time to return to return to its usual reporting and enforcement.[135]

In February 2021, TPR said that between October and December 2020, it had used its powers for automatic enrolment breaches 24,799 times, compared with 16,599 in the previous quarter. It said the vast majority of employers were meeting their duties towards staff.[136]

5.3 Tax relief on contributions

The principle of the current system of tax relief is that contributions to pensions are exempt from tax when they are made, but taxed when they are paid out to the individual. Pension contributions made by individual employees are usually paid out of pre-salary, so tax relief is received at the individual's marginal tax rate. There are two ways to administer tax relief on pension contributions:

- "Net Pay" takes pension contributions before tax has been paid, so people automatically receive tax relief at their correct marginal rate;
- "Relief at Source" where contributions are deemed to have had tax at the basic rate deducted and the pension scheme then claims the relief from HMRC.

Non-taxpayers can benefit from tax relief but only if their pension scheme operates 'relief at source' arrangements.[137]

In October 2019, the Office of Tax Simplification recommended that the Government should "consider the potential for reducing or removing the differences in outcomes between net pay and relief at source schemes for people whose income is below the personal allowance, without making it more complicated for those affected."

In their manifesto for the 2019 election, the Conservative Party said it would conduct a comprehensive review to fix this issue.

134 Automatic enrolment and DC pension contributions. COVID-19 – guidance for employers, The Pensions Regulator, May 2020, updated December 2020
135 TPR updates COVID 19 guidance, 16 September 2020
136 Enforcement activity rises as expected to protect savers, TPR press release, 18 Feb 2021
137 Gov.UK, tax on your private pension

In advance of the March 2020 Budget, the Net Pay Action Group called on the Government to "provide a firm timeline for its pledged review of the system and commit to implementing a solution."

A call for evidence was announced in the Budget on 11 March, although not published until 21 July 2020 due to the COVID-19 outbreak.[138] This explained that the two methods of pension tax relief (net pay and relief at source) provided different results for people who do not pay income tax (broadly, those whose total earnings are below, at or close to the tax free personal allowance):

> 3.3 The RAS method of pensions tax relief assumes that contributions are made from income that has been taxed. Those in a RAS pension scheme and who do not pay tax on their take home pay (because their taxable income is below the personal allowance) still receive a payment into their pension equivalent to tax relief at the basic rate, like all other savers in RAS pension schemes. As they do not pay tax, this is effectively a government top-up paid into their pension.
>
> 3.4 Lower earners who are in a net pay scheme have their contributions taken out of their pay before tax is calculated. If their remaining pay after their pension contribution is below the personal allowance, then they do not receive the same top-up that lower earners in RAS schemes receive. The RAS scheme assumes that the individual will have paid at least basic rate tax on all of their pension contribution, whereas this individual in the net pay scheme would only have paid basic rate on part (or even none) of their pension contribution had it been taxed as income. Lower earners in a net pay scheme do not receive the top-up that lower earners in RAS schemes receive. This creates a difference in tax treatment depending on the method of tax relief used in the pension scheme of someone who does not pay income tax.[139]

This discrepancy in outcomes had led to some "calls to reform the system so that the 1.5m lower earners in net pay schemes have the same outcomes as the 1.3m lower earners in RAS schemes."[140] An estimated 75% are women.[141]

The Government asked for views on four main approaches:

- Paying a bonus based on Real Time Information (RTI) data.
- A standalone charge on Relief at Source schemes.
- Employers operating multiple schemes.
- Mandating the use of Relief at Source for defined contribution schemes.[142]

It noted that the last of these options would "be a significant change for providers who currently operate net pay" but had the "strong attraction of introducing a single method of tax relief for some or all DC savers."[143]

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138 HM Treasury, Budget 2020, HC 121, 11 March 2020, para 2.182
139 HM Treasury, Tax relief administration: call for evidence, 21 July 2020
140 Ibid, para 3.9
141 PQHL 2729, 31 March 2020
142 Ibid para 5.8
143 Ibid para 5.39-42

5.4 Contributions on fluctuating earnings

Guidance for employers produced by the Pensions Regulator (TPR) explains that the duty to automatically enrol applies to "eligible jobholders" (i.e. jobholders with earnings above the earnings trigger.[144] It explains that, in deciding whether an employee needs to be auto-enrolled, the first step should be to assess "whether qualifying earnings are payable in the relevant pay reference period." There is flexibility to use different 'pay reference periods' for people in with different payment arrangements (including within the same company).[145] This will be "less straightforward" for workers with fluctuating earnings.[146]

In September 2014, Pensions Minister, Steve Webb, explained that the provisions are intended to work "as smoothly as possible for the whole diversity of employment scenarios":

> The point about automatic enrolment is that where someone who is paid weekly exceeds the threshold once, they should be automatically enrolled. If in a subsequent week they earn below the threshold, nothing happens—no payment is due and no payment is made. If they go above the threshold again, payment is made, but there is no re-enrolment, disenrolment or leaving of the scheme. The complexity is often in perception, rather than in reality. If she is aware of individual employers who have particular problems, I would be pleased, as always, to receive details.[147]

5.5 Concerns about 'levelling down'

One of the concerns raised when the proposals were under development was whether employers might 'level-down' i.e. faced with the cost of auto-enrolling employees, review their pension arrangements and opt to reduce their contribution levels.

The Pensions Commission, in its final report, acknowledged that a risk of "levelling down" existed but argued that this could not justify rejecting automatic enrolment or the minimum matching employer contribution. The priority should be to increase pension saving among those who had no private pension provision.[148] The Labour Government acknowledged that such a risk existed and said it had taken a number of steps to mitigate it, for example allowing a deferral period for employers offering higher contributions and simple qualifying tests for existing schemes. [149]

Research to support the 2017 review said emerging evidence was that employers were primarily absorbing contribution costs:

> Employers were adopting levelling down strategies for ten per cent of eligible employees in 2016 - up from six per cent in 2012.

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[144] TPR, Detailed guidance for employers: Employer duties and defining the workforce, April 2014
[145] *Pensions Act 2008*, section 13; PBC Deb, 24 January 2008 para 221-2 [James Plaskitt]
[146] The Pensions Regulator, Detailed guidance for employers. Assessing the workforce: How to identify the different categories of worker, April 2014
[147] HC Deb 1 September 2014 c5
[148] Pensions Commission, Implementing an integrated package of pension reforms: The Final Report of the Pensions Commission, p37-8
[149] DWP, *Pensions Bill – Impact Assessment,* 5 December 2007, para 2.107-8

> However, there is no evidence that this is a result of automatic enrolment and it is likely that other factors have driven employers to try and make savings on their pension costs. Emerging findings from EPP 2017 suggest that employers are primarily absorbing increased contribution costs as part of their 'other overheads' (cited by 70 per cent of employers).[150]

Evaluation in 2020 found that median contribution rates had fallen when auto-enrolment was first introduced but started to increase as minimum contribution rates rose.[151]

5.6 Adequacy of minimum contributions

The Pensions Policy Institute (PPI) published research in October 2013, looking at the likelihood of an individual achieving an adequate income in retirement, assuming contributions at the minimum auto-enrolment rate from 22 to State Pension age. As there is no standard definition of what is meant by an adequate income in retirement, PPI looked at 'replacement rates' (retirement income as a ratio of earnings in working life) to assess whether pensioners would be able to replicate their living standards. Like the Pensions Commission, it suggested a replacement of around 80% for low earners, 67% for median earners and 50% for higher earners. The Pension Commission had concluded that it was a "reasonable aim of public policy to seek to ensure that the median earner achieves an income replacement rate of at least 45%" and had set the minimum contribution rate at 8% with this in mind. Beyond this, it thought the state should 'enable' additional low cost saving of 15-18%.[152] It found that:

> Under the baseline scenario of starting to save at age 22, retiring at SPA and following a traditional lifestyle investment approach, a lower earner has a 63% probability of achieving their target replacement income, compared to 49% for a median earner and 40% for a higher earner. Lower earners have a higher probability of achieving their target replacement rate because the single-tier state pension introduced from 2016 will represent a higher proportion of lower earners' pre-retirement earnings than for median or higher earners.[153]

The contribution rate needed to achieve an adequate income in retirement depended on a number of factors, including whether they take career breaks, started to save later in life or decided to retire some years after SPA. The indexation arrangements for the single-tier (such as whether the triple lock is used) were also important.[154]

PPI said that, while the Government could try encouraging people to save more than the auto-enrolment minimum, as such efforts had not succeeded in the past. It therefore recommended the consideration of 'inertia mechanisms', such as auto-escalation.[155]

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[150] DWP, Automatic enrolment review 2017 – analytical findings, December 2017
[151] DWP, Automatic enrolment evaluation 2019, Feb 2020, para 4.4.5
[152] Pensions: Challenges and Choices: The First Report of the Pensions Commission, October 2004, p142
[153] PPI, What level of pension contribution is needed to obtain an adequate retirement income?, 20 October 2013
[154] Ibid, p6
[155] Ibid

In September 2013, DWP said there was a limit on exactly how much the Government can prescribe additional saving as this will depend on each individual's circumstances [156] In August 2014, it published further analysis showing that almost half of adults below State Pension age were not saving enough for their retirement. The key reasons were not having a full work history and not contributing enough to private pensions. It expected its reforms to improve pension adequacy for most of the working age population. However, there were many who needed to do more. Those in the middle incomes groups could see huge improvements to their pension adequacy by increasing contribution rates.[157]

In its May 2016 report on auto-enrolment, the Work and Pensions Committee recommended that the Government consider approaches to increasing contributions beyond 8% of qualifying earnings, including mandatory increases in employee and employer contribution rates and means of encouraging greater voluntary contributions.[158] In February 2017, the then chair of the Committee, Frank Field, described the Government's decision not to propose contribution rate increases in its 2017 review as a "missed opportunity to help millions of workers save properly for their retirement."[159]

In the event, the Government proposed removing the lower earnings limit from which contributions are paid:

> Removing the LEL would create an additional £2.6 billion in annual pension savings through an additional £1 billion in employer contributions, £1.2 billion in employee contributions and £0.4 billion in income tax relief on individuals' pension contributions in 2020/21.[160]

It would look again at contribution rates once it had evidence of the increases already planned:

> We recognise that an estimated 12 million individuals will be under-saving for their retirement even when we reach the 8 per cent contribution rate in 2019. We will continue to monitor and evaluate the impact of the legislated increases in contributions and will carry out further analysis to inform a longer-term debate on the right balance between statutory and voluntary pension contributions, and the optional overall savings rate.[161]

In February 2018, Pensions Minister Guy Opperman accepted that contribution rates would need to increase:

> […] there is an acceptance in all parts of Government that 8% is not sufficient for a long-term retirement. There are various examples from around the world. Australia is several years ahead

[156] DWP, Framework for the analysis of future pension incomes, September 2013
[157] DWP, Scenario analysis of future pension incomes, August 2014, Executive Summary
[158] Work and Pensions Committee, Automatic enrolment, HC 579, May 2016, para 81
[159] Work and Pensions Committee, Pensions automatic enrolment review: Government incorporates Committee's work, 8 February 2017
[160] DWP, Automatic enrolment review 2017 –analytical findings, December 2017
[161] DWP, Automatic enrolment review 2017 – maintaining the momentum, December 2017, p35

> of us, and has pushed into double figures. That is clearly the direction of travel in which we will go at some stage.[162]

The Financial Conduct Authority states that in the pension and retirement income sector, "the prospect that consumers may not get a retirement income that meets their needs or expectations remains the central challenge." It highlighted, in particular, the position of Generation X (born 1966-1980), who:

> find themselves supporting ageing parents while also facing increased costs bringing up their own children. Generation X faces challenges from not having benefited from auto-enrolment for as long as millennials will have, and conversely not having benefitted from defined benefit pensions to the extent that Baby Boomers (born 1946-1965) have.[163]

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162 HC Deb 28 February 2018 c416WH

163 FCA, Sector Views 2020, Feb 2020, chapter 5

6. The implications for employers

6.1 The Labour Government's approach

In drawing up its proposals for reform, the Pensions Commission acknowledged that there were legitimate concerns among the business lobby regarding the compulsory employer contribution. However, it considered this "an essential part of its reform package" and that without this, it was likely employee participation rates would be "significantly reduced."[164] The key argument against compulsion was that it would impose additional costs on companies not already making contributions. However, economic theory suggested that over time some or all of these costs would be offset by reductions in cash wages.[165]

It recommended that employers should be compelled to make matching contributions where an employee stayed enrolled but that these should be modest and phased-in.[166]

In its 2006 Pensions White Paper, DWP said there would be support for all employers during the introduction of compulsory contributions:

> – their contributions will be phased in over a three-year period, at the rate of 1 per cent each year;
>
> – the contribution rate will be set out in primary legislation to create stability;
>
> – the priority is to design the scheme and the transition phase so that burdens on employers are minimised; and
>
> – we will consult on transitional support for the smallest businesses and whether a longer phasing period is needed.[167]

In evidence to the Work and Pensions Committee in 2007/08, the CBI said that, although its members had expressed concern about employer compulsion, it considered the reforms were the "best way of security a long-term settlement on pensions."[168] The Federation of Small Businesses accepted compulsion as a "political reality" but said its focus was on ensuring implementation was as simple as possible. It also argued that small employers should be given some form of financial assistance to overcome the initial difficulties they would face.[169] The Committee recommended that the Government invest in making the scheme as simple and cheap for businesses to administer as possible rather than subsidising employer contributions.[170]

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164 Pensions Commission, Implementing an integrated package of pension reforms: The Final Report of the Pensions Commission; April 2006

165 Pensions Commission Second Report, December 2005, p158-160

166 Ibid

167 DWP, Security in retirement: towards a new pensions system, December 2006, Executive Summary; See also, DWP, Personal Accounts: a new way to save, December 2006

168 Work and Pensions Committee, *Personal Accounts,* 21 March 2007, HC 200-II, 2006-07, Ev 100

169 Ibid para 302-4 and Ev75

170 Ibid para 305

The Government said it would focus on ensuring the design of the scheme was appropriate. Whether financial support was appropriate would be a matter for a future government:

> We recognise that small employers have limited capacity to respond to regulatory change and that fixed administrative costs per firm affect them disproportionately. Our analysis reflects that. This strengthens our resolve to design the reforms with them in mind, but it does not automatically point to a package of compensation. Until operational systems are more fully developed we cannot predict reliably the final costs of potential administrative burdens. There is no evidence at this stage that financial support would be appropriate for small employers. It would therefore be unwise to commit future Governments to spending taxpayers' money in this way. [171]

6.2 The Coalition Government's approach

Following the 2010 general election, the Coalition Government set up a Making Automatic Enrolment Work Review (MAEWR). This acknowledged that the reforms would impose a range of new obligations on small employers, few of which had any experience with pension provision. Furthermore, the cost per employee enrolled would be "much higher for smaller employers." [172] It considered whether micro employers (with fewer than five employees) should be exempt but decided against, for three main reasons:

> To do so would exclude 1.2 million employees from automatic enrolment.
>
> There would be substantial practical problems in enforcing boundaries. Identifying those employers with five employees at any one time is almost certainly beyond the capacity of current systems. In addition, incentives to hide or distort the number of employees could be considerable.
>
> A significant disincentive to business growth would be created. The pension costs alone of moving from four employees to five could come to more than £1,500. In addition, some competitive distortions might be created between employers either side of the size cut off. [173]

It said it would not have come to this conclusion had it not been convinced that NEST would provide a pension scheme that would be appropriate to most small employers and very easy for them to use.[174]

The MAEWR said it wanted to minimise the administrative costs of auto-enrolment as far as possible.[175] With the aim of reducing administrative costs, the MAEWR recommended, it recommending aligning the auto-enrolment thresholds with those for National Insurance or tax - see below.[176] In addition, it proposed two changes to assist employers: an optional waiting period for employers before they have to auto-enrol

171 HL Deb, 23 June 2008, c1325 [Lord Tunnicliffe]; DWP, *Pensions Bill – Impact Assessment,* 5 December 2007, para 2.102
172 Chapter 3
173 Paul Johnson et al, Making automatic enrolment work, October 2010, Executive summary
174 Ibid
175 Ibid, chapter 3, summary
176 Ibid p94

people; and a simplified certification process for employers wanting to use existing schemes for auto-enrolment.[177] It also recommended that a way should be found to assure small employers that they would not be held liable for their scheme choice should something go wrong.[178]

Responding to the review, the Federation of Small Businesses was "severely disappointed" that small firms were not to be excluded from the reforms.[179] However, the decision was welcomed by organisations such as Age UK, the National Association of Pension Funds and by other employer representative groups. The CBI said the Government had "rightly chosen to simplify the rules for all employers, rather than carve some out and leave others to cope with a high regulatory burden."[180]

Pensions Act 2011 – optional waiting period

The Labour Government had decided that that there should not be a waiting period, except for those employers already using higher quality pension schemes:

> Our general approach is for immediate enrolment so that people who change jobs frequently, together with casual and seasonal workers, have the best possible access to pension saving and the prospect of building a sufficient pension pot. However, we recognise that some employers voluntarily pay higher contributions, or provide defined benefit schemes and that in the longer term this benefits their workers. In order to encourage such employers to maintain their generous offers, once automatic enrolment is introduced, we intend to allow them to defer automatic enrolment by a short period.[181]

However, the MAEWR recommended that employers be allowed to use a waiting period of up to three months, with individuals able to opt-in during that time. This would replace the existing postponement arrangement for employers using higher quality schemes. It said this struck a "reasonable balance between regulatory easement, particularly for smaller employers, and the risks to individuals' savings."[182]

The Coalition Government legislated for this in section 6 of the *Pensions Act 2011*. It estimated that the optional waiting period would "reduce the number of individuals automatically enrolled on any particular day by up to 0.5 million individuals" and that it will "particularly affect young people, who are likely to move jobs relatively frequently".[183] The impact on an individual would depend on how frequently they changed jobs.[184] The waiting period was expected to benefit employers with high

177 Ibid and Chapter 6
178 Ibid, Executive Summary
179 See, for example, Personnel Today, 'FSB severely disappointed small firms not excluded from auto-enrolment.'
180 CBI press release, 'CBI responds to Government review of 2012 reforms', 27 October 2010; See also, Age UK Press Release 27 October 2010; NAPF press release, 27 October 2010, Green light for pensions auto-enrolment welcomed by NAPF;BCC Press Release, 27 October 2010, 'BCC welcomes simplification of 2012 private pension reforms'
181 HL Deb, 17 June 2008, c965-6 [Lord McKenzie]
182 Johnson et al, Making automatic enrolment work. A review for the Department for Work and Pensions, October 2010, p 160
183 Pensions Bill 2011 – Impact Assessment. Annex B: Workplace pension reform, para 2.34
184 Ibid

staff turnover (for example, in the construction, distribution and hotel industries) and employment agencies.[185] The Exchequer was expected to make savings because "at any point in time there will be slightly fewer individuals saving."[186]

When the legislation was before Parliament, the Opposition expressed concerns that it would mean fewer people being automatically enrolled and reduce lifetime pension savings, particularly among those in a perpetual cycle of short-term employment.[187] At Public Bill Committee stage, the then Shadow Pensions Minister, Rachel Reeves proposed that the optional waiting period before auto-enrolment should be one month rather than three.[188] She said this was in keeping with the consensus that the Pensions Commission had arrived at. It had suggested that new employees should have to inform the national pension saving scheme in the first four weeks if they wished to opt out, with payments commencing at the end of the second month.[189]

Responding, the then Pensions Minister, Steve Webb, said it had been important for the Government to respond to the concerns of business.[190] The waiting period would be optional, so employers could auto-enrol from day one if they wished to do so.[191] A reduction in the waiting period to one month would, he said place a "significant burden on the nation's employers, while creating negligible benefit for individuals' pensions."[192]

Pensions Act 2011 **- Certification requirements**

For people not already covered by adequate pension arrangements, the Pensions Commission proposed the establishment of a low-cost national pension saving scheme (NPSS), capable of being used by any employer. This is now called the National Employment Savings Trust, or NEST.[193]

Where an employer had existing arrangements, they should be able to continue to use these, provided the benefits provided were at least as favourable.[194] For most defined benefit schemes, this would be the case. For defined contribution schemes, the test should be whether "total employee and employer contributions, net of all costs and fees" where at least equal to the minimum for NPSS.[195]

The Labour Government decided that the test for qualifying workplace pension saving schemes would focus just on contribution rates in the

185 Ibid, para 2.42
186 Ibid, para 2.52
187 See, for example, HL Deb, 3 March 2011, c209 GC [Lord McKenzie]
188 PBC Deb,12 July 2011, c211;
189 Ibid; Pensions Commission, A New Pension Settlement for the Twenty-First Century; The Second Report of the Pensions Commission, November 2005, p369
190 Ibid, c226
191 Ibid, c226-7
192 Ibid, c229
193 The Pensions Commission gave this the name of National Pension Saving Scheme. The scheme put in place under the 2008 Act is now called the National Employment Savings Trust (NEST)
194 Pensions Commission, A New Pension Settlement for the Twenty-First Century; The Second Report of the Pensions Commission, November 2005, chapter 10, p362
195 Ibid, p363

first instance.[196] Under the *Pensions Act 2008,* the quality requirement for a DC scheme is that the employer must make minimum contributions of three per cent of qualifying earnings and total contributions (including tax relief) must be equivalent to at least 8%.[197]

Section 13 of the *Pensions Act 2008* defines "qualifying earnings" by reference to a band with upper and lower limits. The definition of "earnings" includes wages/salary, commissions, bonuses, overtime and certain statutory benefits.[198] This is different to the practice of many private sector money purchase schemes, which pay contributions based on basic pay, with no limit or band. There were concerns, when the legislation was before Parliament, that the difference would cause complexity for employers.[199] Following debate on the issue, the Labour Government amended the legislation to enable employers to "certify that their scheme meets the forthcoming quality standard".[200]

The MAEWR reported that DWP had been working with employers to develop a certification process.[201]

Alternative self-certification arrangements were provided for under the *Pensions Act 2011*.[202] Before publishing regulations under this section, the Secretary of State must be confident that at least 90 per cent of jobholders will receive the same level of contributions under the certification test that they would have received if their scheme had satisfied the relevant quality requirement. In addition, the Secretary of State must periodically review the evidence base of the test and intervene to strengthen or repeal the test if necessary.[203]

The details are in the *Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2012 (SI 2012/1257).* In debate in Parliament, Lord De Mauley explained the three-tier structure for self-certification:

> Under this, an employer will be able to self-certify that their scheme meets the alternative quality requirements if it requires one of the following: first, contributions of at least 9 per cent of basic pay, including at least 4 per cent from the employer; secondly, contributions of at least 8 per cent of basic pay, including at least 3 per cent from the employer-and in addition, basic pay taken in aggregate must be at least 85 per cent of total pay; or thirdly, contributions of at least 7 per cent of total earnings, including at least 3 per cent from the employer.[204]

Changes made following consultation included a change to the definition of basic pay (to explicitly exclude certain allowances) and an extension of the proposed one-year certification period to 18 months.

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196 DWP, Personal accounts: a new way to save, Cm 6975, Dec 2006, para 6.10-11
197 *Pensions Act 2008*, sections 16 and 17 and 20 to 27; Pensions Act 2008 – Explanatory Notes, para 61
198 Ibid, para 50-51
199 See, for example, PBC Deb, 24 January 2008, c214 [Andrew Selous]; and HL Deb, 23 June 2008, c1292 [Baroness Noakes]
200 HL Deb, 19 November 2008, c1142-3 [Lord McKenzie]; This is now in Pensions Act 2008, section 28
201 Making automatic enrolment work, Oct 2010, para 6.5.2
202 Section 12, Pensions Act 2011 – Explanatory Notes
203 HL Deb, 27 April 2011 c124-5
204 HL Deb 13 March 2012 c33GC

An assessment certifying that the conditions of the "90 per cent test" (referred to by Lord Freud above) were still being met, would be published in 2017.[205]

Pensions Act 2014

Measures to simplify the auto-enrolment process for employers were introduced under the *Pensions Act 2014*. This included a general power to create exceptions to the employer duties.[206] This was proceeded by a consultation in which the Government said that it did not envisage that there would be many situations where the employer duties would need to be dis-applied.[207] An example of where it might be was in relation to people with enhanced or fixed tax protection status, who could face a tax surcharge if they make any further contributions into a pension.[208] The regulations cannot be used to exclude an employer from their automatic enrolment duties on the basis of size.[209]

The Government consulted on regulations allowing exceptions to the employer duties, publishing its response in October 2014.[210] The detailed exceptions are in regulations.[211]

The *Pensions Act 2014* also provided for simpler alternative tests for hybrid schemes (i.e. ones that offer both money purchase and defined benefit pensions).[212]

For more on the debate on these provisions, see Library Research Papers: Pensions Bill (June 2013), Pensions Bill 2013/14 – House of Commons stages (Nov 2013) and Pensions Bill 2013/14 – House of Lords stages (March 2014).

In December 2014, the Government launched a consultation on a range of issues designed to simplify the auto-enrolment process for employers. This included introducing an "alternative quality requirement for defined benefits (DB) pension schemes."[213] It published its response in March 2015.[214]

Introduction of the charge cap

As stated above, the Pensions Commission had recommended that, when considering whether a DC scheme can be used for auto-enrolment, account should be taken of minimum contributions required, net of costs and fees. When auto-enrolment was first introduced, account was taken of contributions only. However, a charge cap for the default arrangements of qualifying DC workplace pension schemes was introduced in April 2015. The annual cap is set at 0.75 per

205 Ibid, c43GC
206 Section 38. Section 37 provides for exceptions where auto-enrolment is deferred
207 Workplace pensions: exceptions to employer duties – government response (October 2013); DWP, Pensions Bill Delegated Powers Memorandum from DWP to the Delegated Powers and Regulatory Reform Committee, May 2013, para 210-17
208 HL Deb 20 January 2014 c262GC
209 HL Deb 26 February 2013 c953
210 Workplace pensions: exceptions to the employer duties – government response
211 See, for example, Occupational and Personal Pension Schemes (Automatic enrolment) (Amendment) Regulations 2015 (SI 2015/501)
212 Explanatory Notes; HL Deb 20 January 2014 c267-8GCSee also HC Deb, 19 December 2012, c120WS
213 Gov.UK, Workplace pensions automatic enrolment: simplifying the process and reducing burdens on employers, 1 December 2014. See DWP, Technical changes to automatic enrolment: consultation on draft regulations, December 2014
214 DWP, Technical Changes to Automatic Enrolment. Government response to the consultation on draft regulations, March 2015

cent of funds under management or an equivalent combination charge.[215]

6.3 Help for small employers

In a report published in July 2015, the Work and Pensions Committee noted that the challenges associated with the roll-out of automatic enrolment to smaller employers were "significant" and recommended that the Government "take the lead in ensuring that support for smaller employers continues to be coordinated across regulators and providers."[216] In its response, the Government explained that the Pensions Regulator (TPR) had worked to improve the information and tools on its website.[217] In February 2016, it explained the steps it was taking to raise awareness and simplify processes.Together with TPR, it was working to "raise awareness and understanding with intermediaries, to reinforce the importance of their role in supporting smaller employers to implement automatic enrolment."[218]

TPR's step-by-step guide to automatic enrolment is on its website, as is detailed guidance a series of FAQs, if these do not answer the question, there are contact details for automatic enrolment enquiries.

In a 2016 report, the Work and Pensions Committee made a number of recommendations regarding small employers:

- **Adapt communications to focus on the financial consequences of non-compliance and emphasise that AE cannot be ignored.**"[219] The Government responded that it would "develop and test messaging about the consequences of non-compliance, including the financial penalties that may be incurred, and the most appropriate channels to deliver these messages."[220]
- **Confirm where liability would fall if an AE scheme performs badly or fails**.[221] The Government responded that, provided an employer could evidence that they had due regard to their choice of qualifying scheme and had acted in good faith in selecting it, it was "difficult to envisage that someone would have a strong claim against an employer in regards to this."[222]
- **Work with HMRC to expand PAYE tools to support small businesses in meeting their auto-enrolment obligations.**[223] In response, the Government said it did not plan to develop or

[215] Occupational Pension Schemes (Charges and Governance) Regulations 2015 (SI 2015/879); For more on the background, see Library Briefing Paper Pension Scheme Charges (CBP 6209)
[216] Work and Pensions Committee, *Progress with automatic enrolment and pension reforms*, HC 668, 4 March 2015, para 37-8
[217] Work and Pensions Committee, First Special Report – Progress with automatic enrolment and pension reforms. Government response to the Fourth Report of the Work and Pensions Committee, 20 July 2015
[218] DWP, Written evidence to the Work and Pensions Committee, March 2016
[219] Work and Pensions Committee, Auto-enrolment, ch 4, HC 579, May 2016, para 30
[220] Auto-enrolment: Government response to the Committee's 11th report of session 2015-16,
[221] Work and Pensions Committee, Auto-enrolment, ch 4, HC 579, May 2016, para 36
[222] Auto-enrolment: Government response, July 2016, para 19
[223] Work and Pensions Committee, Auto-enrolment, ch 4, HC 579, May 2016, para 42

> expand the Basic PAYE tool to include auto-enrolment because it was developing an alternative.[224]

Implementation

The roll-out of the new duties to 30,000 medium-sized employers (with between 50 and 249 employees) in 2014 was expected to bring new challenges, as many employers appeared not to have started thinking in depth about what they needed to do or how long it would take.[225] In 2015, NEST said 2014 had in fact gone relatively smoothly, with payroll providers and IFAs playing a vital part in implementation for mid-sized employers. However, smaller employers – who would start to auto-enrol from June 2015 - would increasingly turn to accountants and it was unclear that they were as "prepared as they may want to be for an increase in demand."[226]

In February 2016, DWP said employer compliance levels had been high to date. However, the vast majority of employers were yet to start implementing the policy.[227]

In a report published in November 2015, the National Audit Office noted that opt-out rates had been lower and employer compliance higher than had been expected:

> 12 **Opt-out rates have been much lower than expected.** The Department originally estimated that around 28% of people would opt out of workplace pensions. Various estimates of actual opt-out rates show they have been between 8% and 14%. The Department has now lowered its overall estimate of opt-out rates for the programme to 15%. It initially expected 7 million people to be newly saving or saving more in workplace pensions as a result of automatic enrolment. It has now increased its estimate to 9 million (Paragraphs 1.14, 1.15 and Figure 1).
>
> 13 **Employer compliance has also been higher than expected.** Of those employers expected to declare their compliance with automatic enrolment duties by 1 September 2015, 99% have done so. Very few cases have proceeded to later stages of enforcement. Of those that have, 77% of employers become compliant following interventions by The Pensions Regulator (Paragraph 1.16 and Figure 15).[228]

In 2020, DWP said most employers had found the cost and time burdens lower than anticipated:

> Levels of awareness and understanding of automatic enrolment are high. In particular, at least 91 per cent of micro, small and medium-sized employers were aware of each individual ongoing duty in relation to automatic enrolment.
>
> Whilst there were some concerns (mainly in 2013) amongst large employers that ongoing administration tasks relating to automatic enrolment could become a burden, attitudes became increasingly positive as rollout progressed and employers became used to the new processes. Most employers interviewed in 2016 and 2018 found the cost and time burden involved with implementing

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224 Auto-enrolment: Government response, July 2016, para 23
225 NEST insight, Taking the temperature of auto enrolment, January 2014
226 NEST insight, Taking the temperature of auto enrolment, January 2015
227 DWP, Evidence to the Work and Pensions Committee, February 2016
228 NAO, Automatic enrolment to workplace pensions, Summary, November 2015

> automatic enrolment to be lower than they had initially anticipated.
>
> Employers were typically aware of both the April 2018 and April 2019 increases in contributions. Generally, employers said that they were confident about being able to pay these new rates which they perceived as a small proportion of their overall costs.[229]

6.4 Support for employers during COVID 19

For more detail, see Coronavirus: support for businesses, Commons Library Briefing Paper 8847, January 2021

As discussed above, employers' auto enrolment duties have continued to apply as normal during the COVID-19 outbreak. This is the case whether staff were still working, being furloughed as part of the Coronavirus Job Retention Scheme (CJRS) or had placements with government funding as part of the Kickstart scheme.[230] TPR guidance said that employers with concerns about their ability to afford statutory minimum pension contributions, should explore the potential for flexibility in dates with their provider. They should also explore whether there was government support they could apply for.[231]

Between March and September 2020, TPR extended the maximum period within which defined contribution (DC) pension schemes and trustees had to report late contribution payments from 90 to 150 days. This was to give "struggling employers more time to work with pension providers to bring late or missing payments up to date before enforcement action was taken."[232]

229 DWP, Automatic enrolment evaluation 2019, Feb 2020
230 Automatic enrolment and DC pension contributions. COVID-19 – guidance for employers, The Pensions Regulator, May 2020, updated December 2020
231 Ibid
232 TPR updates COVID 19 guidance, 16 September 2020

7. Appendix – annual reviews of the earnings trigger and qualifying earnings band

Under section 14 of the *Pensions Act 2008* as amended by the 2011 Act, the Secretary of State is required to review and revise the automatic enrolment earnings trigger and qualifying earnings bands each year. They may take into account:

> national insurance earnings limits and thresholds, the income tax personal allowances, the level of basic state pension for single adults, or the general level of prices and earnings. The Secretary of State may also consider any other factors that are considered relevant.[233]

Review – 2012/13

DWP published a consultation document for the first such review in December 2011.[234] In its response to the consultation, published in March 2012, the Government said:

> The majority of the responses favoured alignment with the PAYE threshold for the automatic enrolment trigger and alignment with the National Insurance contributions lower and upper limits for the qualifying earnings band. We, therefore, propose to lay an Order before Parliament as follows:
>
> £8,105 for the automatic enrolment earnings trigger;
>
> £5,564 for the lower limit of the qualifying earnings band;
>
> £42,475 for the upper limit of the qualifying earnings band.[235]

This was provided for in the *Automatic Enrolment (Earnings Trigger and Qualifying Earnings Band) Order 2012 (SI 2012/1506).*

The Government estimated that the increase in the earnings trigger to £8,105 excluded some 100,000 people from the scope of automatic enrolment, 82 per cent of them women.[236]

The Government produced two sets of figures showing the estimated impact on employers and the Exchequer of the above changes. One related to the position when the policy has been fully implemented. [237] The other related to the position in 2012, when the reforms have started to be introduced.[238]

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[233] *Pensions Act 2011 – Explanatory Notes*, para 83
[234] DWP, Automatic enrolment earnings thresholds review and revision 2012/2013, December 2011
[235] DWP, Automatic enrolment earnings thresholds review and revision 2012/2013 Government response to the consultation on revision proposals for the automatic enrolment earnings trigger and the qualifying earnings band, March 2012.
[236] DWP, Automatic enrolment earnings thresholds review and revision 2013/2014, September 2012, Annex C; Explanatory Memorandum to the (draft) Automatic Enrolment (Earnings Trigger and Qualifying Earnings Band) Order 2013 (SI 2013 No…)
[237] DWP, Automatic enrolment earnings thresholds review and revision 2012/2013, December 2011, Annex D, Tables A1-3
[238] DWP, Automatic enrolment earnings thresholds review and revision 2012/2013, March 2012

Review – 2013/14

In September 2012, the Government published a consultation document for the review of the earnings trigger and the qualifying earnings band for 2013/14. It proposed that:

- The **earnings trigger for automatic enrolment** should be set at the announced PAYE threshold for 2013/14 - £9,205. It estimated that this would exclude some 340,000 people from the scope of automatic enrolment, some 75% of them women.
- The **qualifying earnings band** should be aligned with the NI contributions lower and upper limits. The estimated Lower Earnings Limit in 2013/14 is £5,720 and the announced Upper Earnings Limit is £41,450. [239]

However in the 2012 Autumn Statement, the Chancellor of the Exchequer announced a further increase in the PAYE threshold for 2013/14, to £9,440.[240]

On 13 December 2012, Pensions Minister, Steve Webb, made a statement publishing a response to the consultation and announcing that he would lay an Order before Parliament in the New Year setting out the new thresholds.[241] These would be

- £9,440 for the automatic enrolment earnings trigger (in line with the PAYE threshold for 2013/14);
- £5,668 for the lower limit of the qualifying earnings band (in line with the NI lower earnings limit for National Insurance in 2013/14);
- £41,450 for the upper limit of the qualifying earnings band (in line with the NI upper earnings limit).

This earnings trigger and qualifying earnings band for 2013/14 are provided for in the (draft) *The Automatic Enrolment (Earnings Trigger and Qualifying Earnings Band) Order 2013 (SI 2013/No.667)*. Increasing the earnings trigger to £9,440, was expected to exclude around 420,000 individuals of whom 300,000 (72 per cent) are women.[242] DWP said that, in making decisions on the thresholds, the challenge was to balance "coverage, pension savings and employer costs".[243]

Review - 2014/15

The then Pensions Minister, Steve Webb, announced the auto-enrolment thresholds for 2014/15 on 17 December 2013:

> It is intended to lay an order before Parliament in the new year which will include the following:
>
> £10,000 for the automatic enrolment earnings trigger;
>
> £5,772 for the lower limit of the qualifying earnings band;

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[239] DWP, Automatic enrolment earnings thresholds review and revision 2013/2014, September 2012
[240] For more details, see Library Standard Note SN 6485 The 2012 Autumn Statement (December 2012)
[241] WMS, 13 December 2012
[242] Annex A of the Explanatory Memorandum
[243] Explanatory Memorandum, paragraphs 8.1-8.7

> £41,865 for the upper limit of the qualifying earnings band.[244]

This meant the earnings trigger was set at the level of the PAYE personal tax allowance (£10,000). The lower level of the qualifying earnings band was set at the level of the National Insurance Contributions Lower Earnings Limit (£5,772). The upper limit of the qualifying earnings band was at the National Insurance Contributions Upper Earnings Limit (£41,865). [245]

Increasing the earnings trigger to £10,000 would exclude 170,000 of whom around 120,000 (69 per cent) are women.[246]

These limits were provided for in the *Automatic Enrolment (Earnings Trigger and Qualifying Earnings Band) 2014 (SI 2014 No 623).* In debate in the House of Lords on 10 February 2014, Lord Bates explained that:

> Our overall aim in setting the figures in this instrument is to maximise the number of people saving who can afford it, while excluding those who cannot. It also needs to cap minimum employer contributions for higher-paid staff and let existing arrangements cater for this market. The Government still believe that the automatic enrolment trigger should exclude workers who do not earn enough to pay tax and it makes sense to align the existing payroll thresholds.[…] We aimed to set the trigger and the qualifying earnings band so that they work in harmony to deliver three objectives: to bring the right people into pension saving; for them to save at least a reasonable but affordable minimum starting amount; and to balance the costs and benefits to individuals and employers.[247]

Baroness Drake was concerned that this further increase would result in "several thousand more women being disadvantaged and excluded from the UK pension system." She said:

> I find it quite extraordinary that the coalition Government are so determined to carve out so many women from the UK private pension system. If women and men who earn below £10,000 are not automatically enrolled and do not, because of inertia, voluntarily opt in to their employer's workplace scheme, many of them will experience several disadvantages. When automatic enrolment is phased in to their employer, they will not be in the pension scheme. Those excluded—mostly women—will suffer a loss in lifetime pay, albeit deferred pay, because they do not have access to the employer's 3%—for some, where the employer contribution is above 3%, the loss is even greater. However, they will still lose out from any reduction in wage levels that flows from the cost to the employer of automatic enrolment.[…] With the exclusion of 1.25 million women—and rising, because I am sure that the earnings trigger will go up again—we are designing a private pension system that does not work for women who work part-time. We know that in five or 10 years' time the absolute failure of that decision will be exposed, as previously when women who work part-time were excluded from pensions. But by that time millions of women will have lost the advantage of being auto-enrolled into a private pension. The Government are simply

244 HC Deb 17 December 2013 c94WS
245 DWP, Review of the automatic enrolment earnings trigger and qualifying earnings band for 2014/15: supporting analysis, December 2013
246 DWP, Review of the automatic enrolment earnings trigger and qualifying earnings band for 2014/15: supporting analysis, December 2013
247 HL Deb 10 February 2014 c197-8GC

> wrong to say that simplicity for employers is worth the price of excluding 1.25 million women—and rising—from the benefits of auto-enrolment..[248]

Opposition spokesperson, Baroness Sherlock, asked a number of questions: including how the Government had reached the conclusion that "that excluding another 170,000 low-paid workers from the benefits of auto-enrolment met the condition that the right people are being brought into pension saving"; whether the Government was satisfied that its approach was "serving women workers well"; and whether an individual earning just below £10,000 should opt in.[249]

For the Government, Lord Bates said that there had to be a threshold somewhere because, below a certain level, the benefits of saving would not be as acute. He said there was a strong argument that there was a:

> synergy there between personal tax allowances at the £10,000 level, helping employers and employees to understand where that mark falls, but in no way does that guarantee what the policy will be going forward.

He made the point that people earning above £5,772 could opt in and receive the employer contribution and tax relief. Whether they should do so, would depend on individual circumstances and would be a personal choice.[250]

Review - 2015/16

The rates for 2015/16 were announced on 17 December 2014. The Government said it would lay an Order before Parliament which would include:

> - £5,824 for the lower limit of the qualifying earnings band;
>
> - £42,385 for the upper limit of the qualifying earnings band.
>
> The automatic enrolment earnings trigger will be frozen at £10,000.[251]

The consultation on these thresholds was launched in October 2014.[252] The Government's response published in December 2015 explained that the lower limit of the qualifying earnings band would increase to £5,824 in line with the National Insurance Lower Earnings Limit. The upper limit would increase to £42,285, in line with the National Insurance contributions Upper Earnings Limit (UEL). [253]

The earnings trigger for auto-enrolment would be frozen at £10,000, rather than increasing to £10,600 in line with the income tax threshold. The reason was that:

248 Ibid c198GC
249 Ibid c202GC
250 Ibid c203-7GC
251 HCWS131 [Automatic enrolment annual thresholds review] 17 December 2014
252 DWP, Automatic enrolment earnings thresholds review and revision 2015/16, October 2014; DWP, Automatic enrolment earnings threshold review and revision 2015/16 – Government response to the consultation on revision proposals for the automatic enrolment earnings trigger and the qualifying earnings band, December 2014
253 Ibid

> […] a number of additional factors for consideration were raised this year including affordability of contributions for both individuals and employers. The Government is sensitive to this issue, indeed it is a key function of the earnings trigger and earnings band. However the Government's considered view is that the overriding factor should be ensuring that people have sufficient income in retirement by having regard to the Pension Commission's replacement rate.
>
> In light of this aim and the responses to the review, the Government's final proposal is that the earnings trigger for 2015/16 is frozen at £10,000. This strikes the right balance between ensuring that the people brought into pensions saving are likely to benefit and administrative simplicity. This would achieve the best mitigation of any impact upon protected groups. It is also very close to the Pension's Commission replacement rate of 80%. Using 2015/16 State Pension rates, we calculate that those earning £10,073 or less will meet the Pension Commission's benchmark replacement rate 9 at 2015/16 rates.[254]

The Government said that freezing the earnings trigger amounted to a real terms decrease, thus including more individuals:

> This increase in the target population has been estimated at 20,000 (of which 70 per cent are women).
>
> As women are more likely to work part-time, or earn less than men, there will be a higher proportion of them represented in the group included in automatic enrolment by a downward revision of the trigger.
>
> (Note: Raising the 2014/15 value of the automatic enrolment trigger from £9,440 to £10,000 excluded around 170,000 people, of whom 120,000 (69 per cent) are women. Raising the 2013/14 value of the automatic enrolment trigger from £8,105 to £9,400 excluded around 420,000 individuals, of whom 320,000 (76 per cent) are women. Raising the 2012/13 value of the automatic enrolment trigger from £7,475 to £8,105 excluded around 100,000 people, 82 per cent of whom were women. Raising the 2011/12 value of the automatic enrolment trigger from £5,035 (in 2006/07 terms) to £7,475 excluded 600,000 individuals, 78 per cent of whom were women. These figures are not directly comparable with the 2015/16 estimates that are based on updated information on the pensions landscape, prices and earnings.)[255]

Review - 2016/17

In December 2015, the Government published supporting analysis for its review of the earnings trigger and qualifying earnings band for 2016/17. It proposed to freeze the auto-enrolment thresholds as follows:

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[254] DWP, Automatic enrolment earnings threshold review and revision 2015/16 – Government response to the consultation on revision proposals for the automatic enrolment earnings trigger and the qualifying earnings band, December 2014

[255] Ibid, Annex B

Table 2 – Current and proposed automatic enrolment thresholds

	Trigger	Lower limit qualifying earnings band	Upper limit qualifying earnings band
Current (2015/16)	£10,000	£5,824	£42,385
Proposed (2016/17)	£10,000	£5,824	£43,000

As this explains, the limits of the qualifying earnings band will remain pegged to the NI lower earnings limit (£5,824 in 2016/17) and upper earnings limit (£43,000).[256] The earnings trigger remains frozen at £10,000, below the PAYE income tax threshold. The Government said it had received representations about the affordability of contributions for individuals and employers but had decided that the overriding factor should be ensuring people had "sufficient retirement income savings":

> In light of this aim and the responses to last year's review, the Government decided that the earnings trigger for 2015/16 should be frozen at £10,000. It was felt that this struck the right balance between administrative simplicity and ensuring that the people brought into pensions saving are likely to benefit.[257]

Regarding the impact of this, it said:

> With an earnings trigger of £10,000, around 10 million individuals are estimated to be in the eligible target population for automatic enrolment, of which around 38 per cent are women.
>
> Freezing the value of the automatic enrolment trigger 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 (of whom around 91,000 (71 per cent) are women and an associated increase in pension saving of £6 million in 2016/17.
>
> Raising the value of the automatic enrolment trigger from £10,000 to £11,000 (in line with the income tax personal allowance for 2016/17) would exclude around 180,000 individuals, of whom around 130,000 (71 per cent) would be women; and would reduce pension saving by £12 million compared with the baseline.
>
> Statistics published by the Office for National Statistics show that women are more likely to work part-time and earn less than men, so they will be disproportionately represented in the group excluded from automatic enrolment by an upward revision of the earnings trigger and conversely in any group brought into pension saving by a decrease in the trigger.
>
> Setting the earnings trigger at the value of the 2016/17 National Insurance Contributions Primary Threshold of £8,060, would add around 950,000 individuals to the eligible target population and increase pension saving by around £30 million in 2016/17.[258]

It acknowledged that individuals earning between the earnings trigger and the income tax threshold would only get tax relief on their contributions if their employer operate 'relief at source' arrangements:

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[256] HMRC rates and thresholds for employers 2016/17
[257] DWP, Review of the automatic enrolment earnings trigger and qualifying earnings band for 2016/17: supporting analysis, December 2015
[258] Ibid

> Retaining the figure of £10,000 in 2016/17 will help to ensure that low earners that are likely to benefit from saving for their retirement are appropriately included in automatic enrolment. In reaching this view, the Government has considered in particular the fact that around 180,000 workers earn between £10-11,000 and the fact that where these workers are automatically enrolled into a workplace pension that uses a Net Pay tax relief arrangement, these workers won't benefit from tax relief on their contributions. Small and micro employers should ask their provider about the tax implications before making a decision on the scheme they choose. The Pensions Regulator has published information online for employers on how to obtain tax relief and the implications for staff depending on the method used.[259]

Review 2017/18

In December 2016, the Government published supporting analysis for its review of the earnings trigger and qualifying earnings band for 2017/18. It proposed the following thresholds for 2017/18:

	Trigger	**Lower limit qualifying earnings band**	**Upper limit qualifying earnings band**
Current (2016/17)	£10,000	£5,824	£43,000
Proposed (2017/18)	£10,000	£5,876	£45,000

Regarding the decision to freeze the earnings trigger at £10,000, it said:

> Freezing the value of the automatic enrolment trigger at £10,000 in 2017/18 results in a real terms decrease in the trigger. This brings an additional 70,000 individuals into the target population (of whom around 50,000 (75 per cent) are women) and an associated increase in pension saving of £9 million in 2017/18.[260]

It had decided to set the lower limit of the qualifying earnings band at the 2017/18 NI lower earnings limit:

> Setting the lower limit of the qualifying earnings band at the level of the 2017/18 National Insurance Contributions Lower Earnings Limit of £5,876 and the trigger at £10,000 would produce a de-minimis gap of £4,124 and thus an overall minimum contribution for someone earning just above the trigger of around £82.48 a year.[261]

And the upper limit at the NI upper earnings limit:

> The Secretary of State concluded that mandatory employer contributions should still be capped and decided that the National Insurance Contributions Upper Earnings Limit at its 2017/18 value of £45,000 (up from its 2016/17 value of £43,000) is the factor that should determine the upper limit of the qualifying earnings band.[262]

Review 2018-19

In December 2017, the Government announced that for 2018/19 it would:

259 Ibid
260 DWP, Review of the automatic enrolment earnings trigger and qualifying earnings band for 2017/18: supporting analysis, December 2016
261 Ibid
262 Ibid

- Freeze the earnings trigger at £10,000;
- Continue to align the lower and upper limits of the qualifying earnings band with the National Insurance Contributions Lower and Upper Earnings Limits for the tax year 2018/19 at £6,032 and £45,350 respectively.[263]

This was provided for in the *Automatic Enrolment (Earnings Trigger and Qualifying Earnings Band) Order 2018 (SI 2018/367).*

Regarding the decision to freeze the earnings trigger at £10,000, the Government said:

> This represents a real terms decrease in the value of the trigger when combined with assumed wage growth and will bring in an additional 0.10 m individuals into the target population with total pension savings increasing by an estimated £41 m in 2018/19. The decision reflects the key balance that needs to be struck between affordability for employers and individuals and the policy objective of giving those who are most able to save the opportunity to accrue a meaningful level of savings with which to enter their retirement. It also reflects the need for stability at this point of the programme roll out with the first phased increase in contributions due to take place in the 2018/19 tax year.[264]

Review 2019-20

The review conducted in 2018 continued the policy of recent years, i.e:

- The upper and lower limits of the qualifying earnings band remain aligned with the lower and upper earnings limits for National Insurance;
- The earnings trigger for auto-enrolment remains frozen at £10,000. It said this represented a "real terms decrease int eh value of the trigger when combined with assumed wage growth and will bring in an additional 40,000 individuals" into the scope of the policy.[265]

The reason for freezing the earnings trigger at £10,000 was that:

> The Secretary of State has considered the latest analytical evidence and the policy objectives and has concluded that the existing threshold of £10,000 remains the correct level at this point in the establishment of automatic enrolment and will not change for 2019/20. This represents a real terms decrease in the value of the trigger when combined with assumed wage growth and will bring in an additional 40,000 individuals into the target population. The decision reflects the key balance that needs to be struck between affordability for employers and individuals and the policy objective of giving those who are most able to save the opportunity to accrue a meaningful level of savings with which to enter their retirement. It also reflects the need for a level of stability at this point with the second phased increase in contributions due to take place at the start of the 2019/20 tax year and continues to provide consistency of messaging for both employers and jobholders against this wider change.

[263] *Auto-enrolment: review of the earnings trigger and qualifying earnings band for 2018/19*; Explanatory Memorandum to SI 2018/367
[264] DWP, Review of the Automatic Enrolment Earnings Trigger and Qualifying Earnings Band for 2019/20: Supporting Analysis, December 2018
[265] Ibid, p7-8

> The Secretary of State has also assessed the equality impacts associated with this decision which are detailed later in this report. The Secretary of State remains of the view that voluntary opt-in provides the most appropriate option for those earning less than the earnings trigger who wish to save. Research published by the IFS in 20166 showed that automatic enrolment had increased workplace pension membership by 29 percentage points among those earning under £10,000 per year (compared to a baseline of 18 per cent prior to the reform). Feedback from stakeholders also continues to suggest that many employers are contractually enrolling their noneligible and entitled jobholders (e.g. those earning at a level below that set by the earnings trigger) anyway.[266]

The Government had decided to keep the lower and upper limits of the qualifying earnings band aligned to the lower and upper earnings limits for National Insurance. It remained committed to removing the lower limit in the mid-2020s, subject to discussions with stakeholders; finding ways to make the changes affordable, and learning from the statutory contribution increases this year and from April 2019.[267]

The draft *Automatic Enrolment (Earnings Trigger and Qualifying Earnings Band) Order 2019* sets out revised amounts for the 2019/20 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.

Review 2020/21

DWP's review of the automatic enrolment earnings trigger and qualifying earnings band for 2020/21 set out the three principles it uses when reviewing the auto-enrolment thresholds: whether the right people will be brought into pension saving; what is the appropriate minimum level of saving for people who are automatically enrolled; and whether the costs and benefits to individuals and employers are appropriately balanced.[268]

For 2020/21, the Government proposed freezing the earnings trigger at £10,000. It said:

> This represents a real terms decrease in the value of the trigger when combined with assumed wage growth and will bring in an additional 80,000 individuals into the target population. The decision reflects the key balance that needs to be struck between affordability for employers and individuals and the policy objective of giving those, who are most able to save, the opportunity to accrue a meaningful level of savings with which to use for their retirement. It also reflects the need for stability at this point whilst we continue to learn from the increases in minimum contribution rates in April 2018 and April 2019 and provides consistency of messaging for both employers and jobholders.[269]

It decided that the lower and upper limits of the qualifying earnings band, on which contributions are paid, should remain aligned with the lower and upper earnings limits for National Insurance contributions – at

[266] Ibid p7
[267] Ibid p8
[268] DWP, Review of the Automatic Enrolment Earnings Trigger and Qualifying Earnings Band for 2020/21: Supporting Analysis, 27 Feb 2020
[269] Ibid

£6,240 and £50,000 respectively. This would provide "an important element of consistency for employers, the pensions industry and payroll services."[270]

These thresholds were implemented in the *Automatic Enrolment (Earnings Trigger and Qualifying Earnings Band) Order 2020 (SI 2020/372).* Information is on the Pensions Regulator's website.

Review 2021/22

DWP published its review of the automatic enrolment earnings trigger and qualifying earnings bands for 2021/22 on 21 January 2021.[271]

It had concluded that the earnings trigger should remain frozen at £10,000:

> This represents a real-terms decrease in the value of the trigger when combined with assumed wage growth and will result in an estimated additional 8,000 savers. The decision reflects the key balance that needs to be struck between affordability for employers and individuals and the policy objective of giving those, who are most able to save, the opportunity to accrue a meaningful level of savings to use for their retirement. It also reflects the need for stability at this point in the light of the challenging economic circumstances arising from the Covid-19 pandemic and whilst we continue to learn from the increases in minimum contribution rates in April 2018 and April 2019.[272]

The lower and upper limits of the qualifying earnings band (on which minimum contributions are calculated) would remain aligned to the lower and upper earnings limits for National Insurance (i.e. at £6,240 and £50,270 in 2021/22).[273]

These will be legislated for in the draft *Automatic Enrolment (Earnings Trigger and Qualifying Earnings Band) Order 2021* which is due to be debated on 1 March 2021.

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270 Ibid
271 DWP, Review of the automatic enrolment earnings trigger and qualifying earnings band for 2021/22: supporting analysis, 20 January 2021
272 Ibid
273 Ibid

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