

# **PENSIONS (EXTENSION OF AUTOMATIC ENROLMENT) (NO. 2) BILL**

## **Memorandum concerning the Delegated Powers in the Bill for the Delegated Powers and Regulatory Reform Committee**

### **A. INTRODUCTION**

1. This is a Private Members' Bill supported by government. The Bill gives regulation making powers to the Secretary of State to lower the age at which qualifying workers are automatically enrolled into a workplace pension and reduce or abolish the lower earnings limit of the qualifying earnings band contained in the Pensions Act 2008.
2. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Pensions (Extension of Automatic Enrolment) (No. 2) Bill ("the Bill"). The Bill was introduced in the House of Commons on Monday 27 February 2023. This memorandum identifies the provisions of the Bill that confer powers to make delegated legislation. It explains in each case why the power has been taken and explains the nature of, and the reason for, the procedure selected.

### **B. SUMMARY OF THE BILL**

3. The principal elements of this Bill are to confer powers on the government to implement reforms to automatic enrolment into workplace pensions by amending the Pensions Act 2008, to decrease the age limit at which qualifying workers are automatically enrolled into a workplace pension, and to reduce or remove the lower earnings limit of the qualifying earnings band. The government has publicly committed to extend automatic enrolment to younger workers and to give lower earners, including those in part-time employment, greater opportunity to build retirement savings, consistent with the recommendations made in the

Department for Work and Pensions Automatic Enrolment Review 2017:  
Maintaining the Momentum<sup>1</sup>.

## **Clause [1] Automatic enrolment: persons and earnings affected**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations made by Statutory Instrument*

*Parliamentary Procedure: Affirmative resolution procedure*

### *Context and purpose*

4. Clause [1] amends the Pensions Act 2008 to insert three new regulation making powers in sections 3 (automatic enrolment), 5 (automatic re-enrolment) and a new section 13A (qualifying earnings: reduction or removal of lower limit).
5. Subsection (2) inserts a regulation making power into section 3 of the Pensions Act 2008 enabling the Secretary of State to amend section 3(1)(a) in order to decrease the age upon which an employer has an obligation to automatically enrol jobholders into a scheme that fulfils the criteria for an “automatic enrolment scheme”.
6. Subsection (3) inserts a regulation making power into section 5 of the Pensions Act 2008 to enable the Secretary of State to amend sections 5(1)(a) and 5(1A)(a) to decrease the age upon which an employer has an obligation to automatically re-enrol jobholders into a scheme that fulfils the criteria for an “automatic enrolment scheme”.
7. Currently it is specified in sections 3 and 5 that a jobholder must be aged at least 22 in order to be automatically enrolled or re-enrolled.

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<sup>1</sup> [Automatic Enrolment Review 2017: Maintaining the Momentum \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

8. Subsection (4) inserts a new section 13A into the Pensions Act 2008 which includes a regulation making power to enable the Secretary of State to reduce the amount of or repeal the lower earnings limit of the qualifying earnings band (section 13(1)(a) of the Pensions Act 2008). It would also enable the Secretary of State to make regulations to repeal section 9 of the Pensions Act 2008 (workers without qualifying earnings), necessary because this category would no longer exist if the lower earnings limit is abolished.
9. The new section 13A would also enable the Secretary of State to modify, by regulations, the requirements as to the timing and subject matter of the annual statutory review of the earnings trigger and qualifying earnings band required under section 14 of the Pensions Act 2008, but only as the review relates to the lower earnings limit in section 13(1)(a).
10. Any regulations made under the new power in section 13A may also include amendments, repeals or revocations to other Acts as appear to the Secretary of State to be expedient in consequence of the repeal of sections 9 and 13(1)(a) or amendments to section 14.
11. Under subsection (5) regulations made under any of the above powers in the Bill will be subject to the affirmative resolution procedure. The regulations will also be subject to a statutory requirement to consult before the powers may be exercised, with an obligation on the Secretary of State make a report about the consultation which must accompany any draft regulations laid in Parliament.

**Clause [2] Extent, commencement and short title**

*Power conferred on: Secretary of State*

*Power exercised by: Statutory Instrument*

*Parliamentary procedure: none*

*Context and purpose*

12. Clause [2] subsection (3) contains a standard power for the Secretary of State to bring clause [1] (automatic enrolment: persons and earnings affected) into force by statutory instrument.

### **Justification for delegation**

13. The purpose of these new powers is to enable reforms to be made to automatic enrolment, following consultation with employers, workers and other interested parties. Delegating these powers to regulations will provide the government with the ability to consult before introduction of the reforms and respond to changing circumstances as they emerge, including operational experience from employers and pension providers and delivery agents throughout the supply chain. This would also enable automatic enrolment to be adapted to meet new market conditions insofar as this relates to the lower age limit and the lower earnings limit of the qualifying earnings band for the purposes of pension contributions.

### **Justification for procedure**

14. As regulations made under clause [1] would amend primary legislation, it is considered appropriate for those regulations to be subject to the affirmative resolution procedure to allow Parliamentary scrutiny. As is usual with commencement provisions, statutory instruments made under clause [2] are not subject to any Parliamentary procedure. The use of affirmative powers will ensure that Parliament can scrutinise the design of the detailed implementation of automatic enrolment expansion, including the proposed timetable, before the regulations come into force.

15. An obligation to consult will be imposed in relation to any regulations made under the new powers. This must be carried out and a report about the consultation laid in Parliament prior to secondary legislation being made.