



Department  
for Work &  
Pensions

# Government response to the consultation on the draft National Employment Savings Trust (Amendment) Order 2015 and the draft Transfer Values (Disapplication) (Revocation) Regulations 2015

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December 2014

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# Introduction

1. In the Command Paper ‘Supporting automatic enrolment: The Government response to the call for evidence on the impact of the annual contribution limit and the transfer restrictions on NEST’<sup>1</sup>, published in July 2013, the Government signalled its intention to bring forward legislation at the earliest opportunity to remove the annual contribution limit and transfer restrictions imposed on the National Employment Savings Trust (NEST) from April 2017. This commitment was subject to approval from the European Commission that the policy was compatible with the State aid measure afforded to NEST. The European Commission has now provided confirmation<sup>2</sup> that removal of NEST’s annual contribution limit and the transfer restrictions from 1 April 2017 is compatible with the State aid provided to NEST. The Commission also agreed that the restrictions on individuals making transfers into and out of NEST could be brought forward – subject to Parliamentary approval – to coincide with the introduction of automatic transfers if this were earlier than April 2017.
2. Between 9 October 2014 and 29 October 2014, the Department for Work and Pensions sought views on whether the following two draft statutory instruments relating to NEST achieved the policy intent of removing NEST’s annual contribution limit and transfer restrictions from 1 April 2017:
  - The National Employment Savings Trust (Amendment) Order 2015; and
  - The Transfer Values (Disapplication) (Revocation) Regulations 2015.
3. The consultation document was made available on:  
<http://www.dwp.gov.uk/consultations>
4. The consultation asked: Do the proposed changes to the NEST Order, together with the Transfer Values (Disapplication) (Revocation) Regulations, achieve the policy aim of removing NEST’s annual contribution limit and transfer restrictions from 1 April 2017?
5. This document sets out the main points made by respondents and provides the Government’s response. A list of organisations that responded is included at Annex A.

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<sup>1</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/211063/nest-automatic-enrolment-call-for-evidence-response.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/211063/nest-automatic-enrolment-call-for-evidence-response.pdf)

<sup>2</sup> [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_36410](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_36410)  
[http://ec.europa.eu/competition/state\\_aid/cases/251386/251386\\_1567249\\_105\\_2.pdf](http://ec.europa.eu/competition/state_aid/cases/251386/251386_1567249_105_2.pdf).

# Summary of responses to the consultation

6. Eight responses were received to the consultation from pension providers, trade unions and pension professionals. There were no comments on the drafting of the statutory instruments and a majority of respondents agreed that they achieved the policy aim of removing the annual contribution limit and transfer restrictions from 1 April 2017.
7. Some respondents raised issues that were outside the scope of the consultation question. Two respondents suggested the restrictions should be removed earlier than April 2017. One respondent welcomed the European Commission's agreement that the removal of the restrictions on individual transfers could be brought forward to coincide with the introduction of automatic transfers. A different respondent was concerned that allowing the individual transfer restrictions to be lifted earlier than April 2017 would introduce an accelerated shift in the pensions landscape and would fundamentally alter the competitive environment, potentially crowding out other pension providers in the small and medium employer market. Two respondents wanted to know whether NEST's contribution charge would be levied on transfers into NEST.
8. Two respondents drew attention to some of the practical aspects of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 (S.I. 1991/167) that may present an obstacle to the efficient functioning of transfers of money purchase benefits. Two respondents commented that the governance arrangements for NEST should be the same as for other master trusts. One respondent suggested that the levy to meet the costs for the Government's guidance service (the guidance guarantee) should be applied to all pension providers, including NEST, and not just firms regulated by Financial Conduct Authority (FCA).
9. The Government is grateful to all those who responded.

# Government response

10. The proposed amendments to the NEST Order and the draft Transfer Values (Disapplication) (Revocation) Regulations 2015 achieve the policy aim of removing the annual contribution limit and transfer restrictions from 1 April 2017. The Government therefore intends to lay before Parliament the draft National Employment Savings Trust (Amendment) Order 2015 on 16 December 2014. The draft Transfer Values (Disapplication)(Revocation) Regulations are subject to negative resolution and do not need Parliamentary approval, subject to approval of the amendment Order, these will be made in spring 2015.
11. While outside the scope of the consultation question, the Government makes the following observations on some of the wider pension issues raised by respondents.
12. The Command Paper ‘Supporting automatic enrolment: The Government response to the call for evidence on the impact of the annual contribution limit and the transfer restrictions on NEST’ (published in July 2013) sets out the Government’s rationale for the timing of removing these two constraints. The Government concluded that the constraints were working to ensure NEST focused on its target market during the roll out of automatic enrolment and – while signalling now that NEST would be put on a similar footing to other providers – April 2017 was the right time to remove them.
13. The Government is committed to introducing a system of automatic transfers and will consult in due course on any further changes needed to allow automatic transfers, including whether NEST’s charge structure needs to be adapted as a result of allowing transfers into and out of NEST.
14. The Government recognises that there are a number of issues relating to the broader regulatory environment for pensions that will need to be considered in due course. This includes the certification requirements in relation to the Occupational Pensions Schemes (Preservation of Benefit) Regulations 1991.
15. This Government has been the first to propose minimum governance standards for workplace pension schemes. Following a consultation in March 2014, in October 2014 the Government published a Command Paper, ‘Better workplace pensions: Putting savers’ interests first’<sup>3</sup>. The October document included draft regulations on minimum governance standards for certain occupational pension schemes that provide money purchase benefits and the Government will respond to this consultation in early 2015. These regulations will come into force in April 2015, subject to Parliamentary approval. In parallel, the Financial Conduct

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<sup>3</sup> <https://www.gov.uk/government/consultations/better-workplace-pensions-putting-savers-interests-first>

Authority is also making rules on improving governance in workplace personal pension schemes.

16. As set out in the October document, these proposed governance requirements include requiring a chair of trustees, assessing charges and transaction costs, reviewing the default strategy, ensuring core scheme transactions are processed promptly and accurately and requiring an annual chair's statement on how the minimum governance standards have been met. For master trusts, there are proposed additional requirements, including:

- to appoint a minimum of three trustees (the majority of whom including the chair should be independent of providers of advisory, administration, investment or other services to the master trust);
- to limit terms for independent trustees;
- to conduct an open and transparent recruitment process for independent trustees; and
- to make arrangements to ensure members' views are directly represented.

17. NEST differs to other master trusts as it has existing statutory requirements relating to how it is governed<sup>4</sup>. NEST does not have control over the appointment of its trustee members as these are public appointments made by the Secretary of State for the Department of Work and Pensions. As NEST is already subject to these higher governance standards, the intention is that the additional requirements for master trusts will not apply to NEST. However, the other proposed governance standards and charges measures, which broadly come into force in April 2015 (subject to Parliamentary approval), will apply to NEST.

18. The Government has given careful consideration to the most appropriate way of funding the guidance guarantee and has asked the Financial Conduct Authority (FCA) to determine how the levy is allocated. The FCA is consulting separately on the levy framework for the guidance service as part of their annual consultation on FCA fees. This consultation closes on 2 February 2015.

<http://www.fca.org.uk/news/cp14-26-regulatory-fees-and-levies-policy-proposals-for-2015-16>

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<sup>4</sup> <http://www.legislation.gov.uk/ukpga/2008/30/schedule/1/>

# Annex A: Respondents to the consultation

Aviva  
B&CE and The People's Pension  
Elston Consulting Limited  
GMB  
Mercer  
NOW: Pensions  
The Society of Pension Professionals  
TUC