National Employment Savings Trust (NEST):

Amendments to the NEST Order

Government response to the consultation

January 2013

DWP Department for Work and Pensions

Contents

1 Introduction

The National Employment Savings Trust (NEST) was established in July 2010 by the National Employment Savings Trust Order 2010.[1] NEST is a trust-based, occupational pension scheme set up by Government to support automatic enrolment.

On 30 October 2012, DWP published a consultation document - *National Employment Savings Trust (NEST): Proposals for amendments to the NEST Order*. This was accompanied by an initial impact assessment of the proposals. The consultation closed on 26 November 2012.

The consultation sought views on a range of consequential, minor and technical amendments to the NEST Order that would align the NEST Order with recent changes to automatic enrolment legislation and provide clarity to NEST and to the employers and members who use it.

This document summarises the responses to the consultation and sets out the Government's response.

This document is available on the DWP website at:

http://www.dwp.gov.uk/consultations/2012

[1] The National Employment Savings Trust Order- S.I. 2010/917

2 Background and summary of changes

What the Consultation said

NEST has been operating since July 2011 with volunteer employers and members. This period of live running has enabled NEST to test its key business processes and gain some understanding of associated employer and member behaviours, and this has identified that some of the more standard provisions in the Order do not, in practice, operate as intended.

In addition, since the NEST Order was made there have been a number of changes to legislation relating to automatic enrolment which impact on the provisions in the NEST Order.

The consultation said that like any other pension scheme, the operating framework for NEST needed to be kept up to date to ensure that the scheme continues to operate effectively as automatic enrolment rolls out, and to provide clarity and certainty to NEST and the employers and members who will use it.

The consultation therefore set out a range of proposals to amend the NEST Order:

- An extension to the Trustee discretion to admit self-enrolling members (self-employed persons and single person directors) until 1st March 2018 to align with revised legislation[2] which extends the staging period for automatic enrolment. This will help NEST to focus on enabling employers to meet their new duties during the implementation of automatic enrolment.

- A discretionary power to allow the Trustee to decide whether to accept contributions relating to individuals defined as 'qualifying persons' or 'qualifying self-employed persons'[3] to align with regulations[4] that exempt

[2] The Employers' Duties (Implementation) (Amendment) Regulations 2012 (S.I. 2012/1813) and the Employers Duties (Implementation) (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012 No.332)

[3] Qualifying person "and "qualifying self-employed person" are defined in regulation 2 of the Occupational Pension Schemes (Cross-border Activities) Regulations 2005 (S. I. 2005/3381) and regulation 2 of the Occupational Pension Schemes (Cross-border Activities) Regulations (Northern Ireland) 2005 (S.R. 2005 No.581)

[4] Regulation 5A of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 (S.I. 2010/772) and regulation 5A of the occupational and Personal Pension Schemes (Automatic Enrolment) Regulations (Northern Ireland) 2010 (S.R. 2010 No.122)

certain European employments from automatic enrolment. This will enable NEST to remain a low-cost proposition for its target market of low to moderate earners.

- A technical amendment to allow employers to voluntarily terminate their participation in NEST by giving notice to the Trustee in accordance with the scheme rules, as in practice, employers may wish to cease to participate in the scheme if they no longer pay contributions in respect of any members. This includes a consequential amendment to the definition of participating employer.

- A technical amendment removing the requirement for self-enrolling members (self-employed and single person directors) to agree to Member Terms and Conditions to gain admittance to NEST as this works against the obligation in the NEST Order for the Trustee to admit them.

- A minor change to the description of who can contribute to a member's account to make clear that a third party (for example a relative) can make contributions to a member's account - the current description could be interpreted as not allowing third party contributions in some circumstances.

- A technical change to the provisions which set out when, and to whom, a refund of contributions may be made from a member's account to allow the Trustee to make refunds directly to third parties or members as well as employers.

- A technical change to clarify the definition of minimum contributions in relation to a member who has more than one employment, making clear that the Trustee must accept all statutory minimum contributions[5] made by each employer of the member even if this causes a breach of the annual contribution limit.

- A technical change removing the requirement for the Trustee to consider next of kin - as defined by rules applicable in England & Wales, Northern Ireland and Scotland[6] - when determining who lump sum benefits may be paid to on the death of a member and instead, allowing the Trustee - in accordance with the Rules - to determine to whom it will distribute death benefits when an account is under £5,000.

- A number of minor drafting corrections to cross-references.

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[5] The Pensions Act 2008 (c.30) Part 1 and, the Pensions (no.2) Act Northern Ireland 2008 (c.13 (N. I.)) section 20 and section 28

[6] In England and Wales, the persons who would take beneficially on an intestacy under the provisions of Part IV of the Administration of Estates Act 1925 (c.23); In Northern Ireland, the persons who would take beneficially on an intestacy under the provisions of Part II of the Administration of Estate Act (Northern Ireland) 1955 (c.24 (N.I.)); In Scotland, the persons entitled to moveable estate of the deceased on intestacy.

Consultation questions

We asked whether the draft Order met the aim of enabling NEST to operate more efficiently for its members and participating employers.

In particular, we asked whether the draft Order would ensure NEST's statutory framework will align with recent changes to automatic enrolment legislation.

We asked for any additional information or evidence relating to the proposals that might affect the final stage Impact Assessment.

3 Stakeholders’ response to the consultation and the Government’s response.

Responses to the consultation

The Department received two responses to the consultation and these were from:

- Chartered Institute of Payroll Professionals (CIPP)
- National Association of Pension Funds (NAPF)

Both supported the proposals for amendments to the NEST Order, commenting that the proposals were sensible as it was essential for NEST to work efficiently and also important that NEST’s statutory framework fitted with changes made to automatic enrolment legislation since 2010**.**

Neither respondent provided any new or additional evidence on the impact of the proposals.

Government response to the consultation

We are grateful to the organisations that responded to this consultation.

Like the respondents, we believe that these amendments to the NEST Order are necessary to ensure that NEST continues to operate effectively as automatic enrolment rolls out, providing clarity and certainty to NEST and the employers and members who will use it.

No additional evidence was provided in response to the consultation questions and this has been noted in the final impact assessment, but has not resulted in a revision any of the estimates.

Some minor technical changes have been made to the draft Order, but the main provisions have not been amended. As the instrument is subject to the affirmative resolution procedure, the National Employment Savings Trust (Amendment) Order 2013, laid before Parliament in January, will come into force on 1 April, subject to the approval of both Houses.