

The Application of Pension Legislation to the National Employment Savings Trust Corporation Regulations 2011 – Consultation

Consultation on a draft amendment

December 2010

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Part one: Foreword and consultation arrangements

Who this document is aimed at

1. The intention of this document is to provide information and invite responses from all those with an interest in the legal framework for the pension scheme established under section 67 of the Pensions Act 2008 (“the 2008 Act”). The scheme {the National Employment Savings Trust (NEST)} will enable those employers who choose it, to use it to fulfil the new duties in relation to the provision of workplace pensions introduced by that Act. In particular, we invite responses from the pensions industry, employers and organisations representing employers’ interests as well as potential members of the scheme and organisations representing their interests.

Subject of consultation

2. This document sets out the Secretary of State’s proposal to amend the Pension Schemes (Investment) Regulations 2005 (“The Investment Regulations”) for the avoidance of doubt and to clarify that the borrowing necessary to establish the NEST Scheme is consistent with the intention of the regulations.

Purpose of consultation

3. This consultation seeks views on the effect of amending regulation 5 of The Pension Schemes (Investment) Regulations 2005¹ (“The Investment Regulations”) to exempt NEST Corporation’s borrowing in relation to the costs of set up and administration of the scheme from the restrictions imposed by that regulation.

Scope of consultation

4. This consultation applies to England, Wales, Scotland and Northern Ireland. Northern Ireland has its own body of pension law and references to Great Britain legislation are to be taken, where necessary, as including references to the corresponding Northern Ireland legislation.

Duration of consultation

5. The consultation period begins on 9 December 2010 and runs until 3 February 2011.
6. The Government Code of Practice on Consultation recommends a minimum 12-week consultation period for public consultations, unless there are good reasons for a limited consultation period. In this case the proposed change is a technical amendment that only affects NEST and therefore a limited consultation is appropriate.
7. This document is available on the Department’s website at:

¹ Statutory Instrument 2005/3378

<http://www.dwp.gov.uk/consultations/2010/>

How can you respond to this consultation?

8. Please send your responses, preferably by email to.

Investmentreg.clarification@dwp.gsi.gov.uk

or by post to:

Niall MacMahon
NEST Consultation
Enabling Retirement Savings Programme
Department for Work and Pensions
Caxton House (7th floor)
Tothill Street
London
SW1H 9NA

Please ensure your response reaches us by 3 February 2011.

9. When responding, please state whether you are doing so as an individual or representing the views of an organisation. If you are responding on behalf of a larger organisation, please make it clear who the organisation represents, and where applicable, how the views of members were assembled.

Queries about the content of this document

10. Any queries about the subject matter of this consultation should be made to Niall MacMahon at the above address, or telephone 0207 449 7271.
11. We have notified this consultation to a large number of people and organisations who have already been involved in this work, or who have expressed an interest. Please do share this document with, or tell us about, anyone you think will want to be involved in this consultation.
12. We will publish the responses to the consultation within three months of the consultation closing in a report on the consultations section of our website <http://www.dwp.gov.uk/consultations/>. The report will summarise the responses and the action that we will take as a result of them.

Freedom of information

13. The information you send us may need to be passed to colleagues within the Department for Work and Pensions and published in a summary of responses received, and referred to in the published consultation report.
14. All information contained in your response, including personal information, may be subject to publication or disclosure if requested under the Freedom of Information Act 2000. By providing personal information for the purpose of the public consultation exercise, it is understood that you consent to its disclosure and publication. If this is not the case, you should limit any personal information which is provided, or remove it completely. If you want the information in your response to the consultation to be kept confidential, you

should explain why as part of your response, although we cannot guarantee to do this. We cannot guarantee confidentiality of electronic responses even if your IT system claims it automatically.

15. If you want more information about the Freedom of Information Act can be found on the Ministry of Justice website: [Ministry of Justice: FoI Guidance](#)

The consultation criteria

16. The consultation is being conducted in line with the Code of Practice on Consultation – <http://www.berr.gov.uk/files/file47158.pdf> – and its seven consultation criteria which are as follows:
- **When to Consult.** Formal consultation should take place at a stage when there is scope to influence the outcome.
 - **Duration of consultation exercises.** Consultations should normally last for at least 12 weeks, with consideration given to longer timescales where feasible and sensible.
 - **Clarity of scope and impact.** Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence, and the expected costs and benefits of the proposals.
 - **Accessibility of consultation exercises.** Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is designed to reach.
 - **The burden of consultation.** Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
 - **Responsiveness of consultation exercises.** Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
 - **Capacity to consult.** Officials running consultation exercises should seek guidance in how to run an effective consultation exercise, and share what they have learned from the experience.

Feedback on this consultation

17. We value your feedback on how well we consult. If you have any comments on the process of this consultation (as opposed to the issues raised) please contact our Consultation Coordinator:

Roger Pugh
DWP Consultation Coordinator
1st floor, Crown House
2, Ferensway, Hull HU2 8NF

roger.pugh@dwp.gsi.gov.uk

18. In particular, please tell us if you feel that the consultation does not satisfy these criteria. Please also make any suggestions as to how the process of consultation could be improved further.

19. If you have any requirements that we need to meet to enable you to comment, please let us know.

Regulatory impact assessment

20. An impact assessment has not been produced for this amendment to the Occupational Pension Schemes (Investment) Regulations 2005 (“The Investment Regulations”) because it does not impose additional burdens on the private or voluntary sectors or individuals. An impact assessment was prepared for the Pensions Act 2008 which set out the impact of establishing the personal accounts scheme. The ‘Making Automatic Enrolment Work’ review, which reported in October 2010, also considered the potential impact on the pensions industry, employers and individuals before making its recommendation for NEST to go ahead as planned.

21. An equality impact assessment was also prepared for the 2008 Act.

Part two: Policy and legislative background

Background

1. The Department for Work and Pensions (DWP) estimates that around 7 million people are not saving enough to deliver the pension income they are likely to want, or expect, in retirement. As part of a programme of State and workplace pension reforms to increase individuals' income in retirement, measures to help provide security in retirement for tomorrow's pensioners are contained in the Pensions Act 2008 and consist of:
 - new duties on all employers to automatically enrol their eligible jobholders into a qualifying workplace pension scheme;
 - a robust compliance regime to support the new duties;
 - a new low cost simple pension scheme to ensure all employers have access to a suitable pension scheme.
2. The report of the recent 'Making Automatic Enrolment Work' review published in October 2010 – www.dwp.gov.uk/policy/pensions-reform/workplace-pension-reforms/automatic-enrolment – concluded that NEST should go ahead as planned.
3. The scheme will be managed by the NEST Corporation, the corporate trustee who will be responsible for running it in the best interests of its members and beneficiaries.
4. The scheme will operate as much as possible like any other trust-based, multi-employer, occupational pension scheme. For example, in common with all other occupational pension schemes, it will be regulated by the Pensions Regulator (tPR).
5. However, as a result of its unique scale and design there will be certain differences. The main differences are:
 - the scheme is established in legislation and is sponsored by the Secretary of State for Work and Pensions, rather than set up and sponsored by one employer or a number of employers or an existing financial organisation;
 - the scheme will have a public service obligation to accept any employer that wishes to use the scheme to fulfil their employer duties;
 - once an employer is participating in the scheme, the scheme will accept any worker enrolled by that employer; and
 - to ensure the scheme is established at nil cost to the taxpayer the costs of its set up and early administration will be met entirely by borrowing made by the NEST Corporation.
6. The scheme has been designed to operate broadly within the existing framework of pensions regulation and other trust-related law. It will, however, be necessary to make some minor modifications to current legislation.

Part three: Overview of proposals

1. A guiding principle for the creation of NEST is that it will be created at nil cost to taxpayers. Unlike other pension schemes, NEST does not have a sponsoring employer to fund the set-up costs or access to group capital like an insurance provider.
2. Therefore Government has decided to fund the costs of set-up and initial administration through a loan from Government.
3. The European Community Directive on the Activities and Supervision of Institutions for Occupational Retirement Provision (the IORP Directive) prevents pension schemes with more than 100 members from borrowing apart for temporary and liquidity purposes. The purpose of this Directive is to ensure that pension scheme members' funds are protected from liability for any imprudent borrowing by the scheme. However, DWP has discussed this requirement with the European Commission and understands that the intention of the Directive is not meant to prevent borrowing in these circumstances.
4. The domestic legislation that transposes the Directive – (the Occupational Pension Schemes (Investment) Regulations 2005 (“The Investment Regulations”) – prohibits all borrowing by large, occupational pension schemes, save for liquidity purposes and on a temporary basis.
5. Therefore, to ensure that NEST Corporation will be able to borrow in order to set up the scheme, this amendment to the Investment Regulations makes it clear that the prohibition does not apply to the proposed borrowing by NEST Corporation.

Comments are invited on any aspect of this proposal.

Part four: Commentary on draft Regulations

Article 1: Citation, commencement and interpretation

The Secretary of State for Work and Pensions exercising the powers conferred by section 77 of the Pensions Act 2008⁽²⁾ to amend the Occupational Pension Schemes (Investment) Regulations 2005⁽³⁾.

These Regulations may be cited as the Application of Pension Legislation to the National Employment Savings Trust Corporation Regulations 2011 and shall come into force on [] 2011.

Article 2: Application of the 2005 Regulations with respect to the National Employment Savings Trust Corporation

This Article is to permit NEST to borrow only for the specific purposes of meeting costs of establishing, administering or managing the NEST pension scheme and, should it be necessary, for the purpose of providing liquidity for the NEST pension scheme on a temporary basis.

Because this amendment will have to align with the tax on borrowing provisions in the Finance Bill 2011 there may be minor changes made to the wording to mirror that provision.

⁽²⁾ 2008 c. 30.

⁽³⁾ S.I. 2005/3378.

Annex A: The draft amended Regulation

STATUTORY INSTRUMENTS

2011 No.

PENSIONS

The Application of Pension Legislation to the National Employment Savings Trust Corporation Regulations 2011

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Secretary of State for Work and Pensions, in exercise of the powers conferred by section 77 of the Pensions Act 2008⁽⁴⁾, makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Application of Pension Legislation to the National Employment Savings Trust Corporation Regulations 2011 and shall come into force on [] 2011.

(2) In these Regulations, “the 2005 Regulations” means the Occupational Pension Schemes (Investment) Regulations 2005⁽⁵⁾.

Application of the 2005 Regulations with respect to the National Employment Savings Trust Corporation

2.—(1) The 2005 Regulations shall apply in relation to the National Employment Savings Trust Corporation ⁽⁶⁾ with the modifications set out in paragraph (2).

- (2) In regulation 5 of the 2005 Regulations, for paragraph (2) of that regulation, substitute -
- “(2) Paragraph (1) does not preclude borrowing made by the National Employment Savings Trust Corporation for the purpose of -
- (a) providing liquidity for a pension scheme established under section 67 of the Pensions Act 2008 and on a temporary basis; or
 - (b) meeting costs of establishing, administering or managing such a pension scheme, or for both of those purposes.”.

⁽⁴⁾ 2008 c. 30.

⁽⁵⁾ S.I. 2005/3378.

⁽⁶⁾ The corporation was established under section 75 of the Pensions Act 2008 (c. 30) and so named by S.I. 2010/3.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide that regulation 5 of the Occupational Pension Schemes (Investment) Regulations 2005 (S.I. 2005/3378) applies in relation to the National Employment Savings Trust Corporation, which has a function of acting as trustee of the National Employment Savings Trust established under section 67 of the Pensions Act 2008 (c. 30), with prescribed modifications.

Annex B: List of abbreviations

DWP	Department for Work and Pensions
tPR	The Pensions Regulator
2007 Act	The Pensions Act 2007
2008 Act	The Pensions Act 2008
The Investment Regulations	The Occupational Pension Schemes (Investment) Regulations 2005 – S.I.2005/3378

Annex C: List of organisations consulted

AEGON

Advocate General for Scotland

Age Concern

Association of British Insurers

Association of Chartered Certified Accountants

Association of Consulting Actuaries

Association of Corporate Trustees

Association of Independent Financial Advisors

Association of Pension Lawyers

Aviva (Norwich Union)

British and Civil Engineering Benefit Scheme

Better Regulation Executive

Business Application Software Developers' Association

British Computer Society Payroll Group

British Chambers of Commerce

Citizens Advice Bureau

Confederation of British Industry

Confederation of British Industry, Northern Ireland

Department for Business, Enterprise and Regulatory Reform

Department for Social Development Northern Ireland

Engineering Employers' Federation

Equality and Human Rights Commission

The Faculty of Actuaries

Financial Services Authority

Federation of Small Businesses

Forum of Private Business

GMB Union

Help the Aged

HM Courts Service

HM Revenue and Customs

HM Treasury

Investment Managers Association

National Employment Savings Trust Corporation Regulations 2011

Institute of Actuaries and
Institute of Chartered Accountants England and Wales
Institute of Chartered Accountants in Ireland
Institute of Chartered Accountants of Scotland
Institute of Chartered Secretaries and Administrators
Institute of Directors
Institute of Payroll Professionals
Irish Congress of Trade Unions
Law Society of England and Wales
Law Society of Northern Ireland
Law Society of Scotland
Legal and General
Ministry of Justice
National Assembly of Wales
National Association of Pension Funds
Northern Ireland Court Service
The Office of Fair Trading
The Pensions Advisory Service
Pensions Management Institute
Pensions Ombudsman
Pensions Policy Institute
Pension Protection Fund
The Pensions Regulator
Recruitment and Employment Confederation
Resolution, the Family Lawyers Association
Scottish Executive
Society of Pension Consultants
Standard Life
UNITE
Trades Union Congress
Wales Office
Watson Wyatt
Which?

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