



Department
for Work &
Pensions

Draft National Employment Savings Trust (Amendment) Order 2018

Public consultation

November 2017

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About this consultation

Purpose of the consultation

This consultation is seeking views on proposals to amend The National Employment Savings Trust (NEST) Order 2010¹. The amendments to the Order will facilitate the effective operation and development of the NEST pension scheme. The proposals will make some minor as well as technical changes to provide clarity to employers and members who use NEST. Specifically the changes will:

- allow participating employers to contractually enrol their employees in the NEST pension scheme
- clarify that individuals may join NEST in the event of a 'bulk transfer with consent' and require that any amount must be applied to a member's account as a result of a bulk transfer
- give NEST Corporation the ability to close members' pension accounts that have zero funds if certain conditions are met
- require NEST Corporation to carry out research with scheme members and participating employers and their representatives, in connection with the operation, development or amendment of the scheme

The draft Amendment Order is attached at **Annex A**. It is subject to the affirmative Parliamentary procedure so it must be approved by Parliament. The intention is that it will come into force on 1 April 2018.

Who this consultation is aimed at

- employers and representative organisations
- legal advisers
- pensions industry bodies and professionals
- trustees and scheme managers
- other interested stakeholder groups

Scope of consultation

This consultation applies to all of the United Kingdom.

¹ <https://www.legislation.gov.uk/ukxi/2010/917/contents/made>

Duration of the consultation

The consultation period begins on 7 November 2017 and ends on 27 November 2017.

How to respond to this consultation

Please send your consultation responses to:

Nicola Lloyd, NEST Policy Team
Level 1, Caxton House
Tothill Street
London
SW1H 9NA

Email: Nicola.lloyd@dwp.gsi.gov.uk

Please ensure your response reaches us by **27 November 2017**.

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 an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

Please direct any queries about the subject matter of this consultation to Nicola Lloyd.

How we consult

Consultation principles

This consultation is being conducted in line with the new [Cabinet Office Consultation Principles](#), published in January 2016. These principles give clear guidance to government departments on conducting consultations.

Feedback on the consultation process

We value your feedback on how well we consult. If you have any comments about the consultation process (as opposed to comments about the issues which are the subject of the consultation), including if you feel that the consultation does not adhere to the values expressed in the consultation principles or that the process could be improved, please address them to:

DWP Consultation Coordinator
2nd Floor
Caxton House
Tothill Street
London
SW1H 9NA

Email: Caxtonhouse.legislation@dwp.gsi.gov.uk

Freedom of information

The information you send us may need to be passed to colleagues within the Department for Work and Pensions, published in a summary of responses received and referred to in the published consultation report.

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 purposes 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 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.

To find out more about the general principles of Freedom of Information and how it is applied within DWP, please contact the Central Freedom of Information Team.

Email: Freedom-of-information-request@dwp.gsi.gov.uk

The Central Freedom of Team cannot advise on specific consultation exercises, only on Freedom of Information issues. More information about the Freedom of Information Act can be found at www.dwp.gov.uk/freedom-of-information.

Introduction

1. The National Employment Savings Trust (NEST) was established by the government in 2010 to support automatic enrolment. Automatic enrolment into workplace pensions started in July 2012 with implementation by the very largest employers and its roll out ends in February 2018. By that time, the government expects NEST will be one of the biggest pension schemes in the UK in terms of scheme members.
2. NEST Corporation is the Trustee of the NEST pension scheme, and is accountable to Parliament. The trustee members are collectively responsible for running the scheme in the interests of its members and for promoting the purpose of the scheme, namely 'to provide pensions and other benefits in relation to its members'. NEST currently has over 5 million members and over 500,000 participating employers.
3. On 2 March 2017, the government published its response to a DWP Call for Evidence on the policy framework underpinning NEST: *NEST: Evolving for the future*². The government indicated that it would consult on amendments to the NEST Order which would allow participating employers to contractually enrol their employees into the NEST Pension scheme. The proposal will allow the NEST Trustee to accept workers who have been contractually enrolled after their employers' staging date. It is important for employers to have a simple and easy way to meet their legal duties and making this change supports this.
4. There are four other amending measures that we also want to make. These are minor technical changes that will facilitate the effective operation of the NEST pension scheme and will provide clarity to employers and scheme members who use NEST.

Contractual enrolment

5. The NEST Order 2010 currently only allows individuals and employers to access the NEST pension scheme through automatic enrolment or in a limited number of other circumstances, for example if a person is self-employed. As an alternative to automatic enrolment, to meet their legal duties some employers contractually enrol their workers into a pension scheme under the terms of their employment contract or otherwise with the worker's consent and in accordance with the rules of the particular scheme.
6. The NEST Order currently allows the NEST Trustee to accept workers who have been contractually enrolled or have joined by another form of consent before their employers' staging date, but not afterwards. As we come to the end of staging in February 2018, this will mean that most existing employers cannot use contractual enrolment to enrol new workers into NEST. This restriction acts as a barrier for some employers who want to choose NEST for their entire workforce, as well as being a cause potential confusion for employers who do not realise that contractual

² <https://www.gov.uk/government/consultations/nest-evolving-for-the-future>

enrolment into NEST is not currently possible. To enable all contractually enrolled workers to join the NEST pension scheme, we propose to amend the NEST Order to make this possible.

Bulk transfers

7. The NEST Order was amended in 2015 to remove the restrictions on transfers into and out of NEST. This provided assurance to small and micro employers that NEST was a suitable scheme for all their workers and enabled NEST members to consolidate their pension savings. Since April 2017, individuals have been able to join NEST without consent, as part of a bulk transfer by participating employers using NEST for automatic enrolment.
8. We propose clarifying that individuals may join NEST in the event of a 'bulk transfer with consent' by participating employers using NEST for automatic enrolment - to complement the existing 'bulk transfer without consent' joining event that has been effective from 1 April 2017.
9. In addition, we are also proposing to make a minor technical amendment to the NEST Order to require the NEST Trustee to apply the sums transferred in as a result of a bulk transfer and more generally other sums to a scheme member's pension account where the individual has already been admitted as a member.

Closing empty pension accounts

10. We propose amending the Order to give NEST Corporation the ability to close members' pension accounts where they have been open for longer than 12 months and have never received contributions. This will reduce administrative burdens on the scheme and will not impact on individuals who may be automatically enrolled again in the future. We propose requiring NEST Corporation to write to members before closing any empty accounts. If the member starts contributing within a specified period NEST will take no further action.

General Data Protection Regulation

11. From 25 May 2018, The General Data Protection Regulation (GDPR) will apply in the UK. We propose placing a legal duty on NEST to carry out research from time to time on scheme members, participating employers and their representatives, in connection with the operation, development or amendment of the scheme. This means that NEST will be able to rely on this duty to demonstrate that it meets the GDPR requirements on lawful data processing when carrying out research.

The Draft Statutory Instrument

12. This consultation seeks views on the draft SI contained at **Annex A**.
13. The draft Amendment Order makes amendments to the National Employment Savings Trust Order 2010 relating to: (i) joining events for members and employers; (ii) placing a duty on the Trustee to carry out research; and (iii) members' accounts.
- Article 2(2) places a new duty on the Trustee to carry out research on NEST members, participating employers and their representatives.
 - Article 2(3) provides for a new joining event, by which the Trustee may admit an employer to participation in NEST.
 - Article 2(4) provides for new joining events, by which the Trustee may admit a member into NEST.
 - Article 2(5) clarifies what sums are to be applied to a member's pension account and
 - Article 2(6) sets out when the Trustee may remove a member from the scheme.
14. The amendments to the Order are UK wide.

Consultation question

Do the proposed changes to the NEST Order, achieve the policy aim of facilitating the effective operation of the NEST pension scheme?

Annex A: Draft National Employment Savings Trust (Amendment) Order 2018

Draft Order laid before Parliament under section 143(4) of the Pensions Act 2008, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2018 No.

PENSIONS

National Employment Savings Trust (Amendment) Order 2018

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	<i>1st April 2018</i>

The Secretary of State makes the following Order in exercise of the powers conferred by sections 67(1) and (8), 144(2) to (4) and 145(1) of the Pensions Act 2008⁽¹⁾.

A draft of this Order was laid before Parliament in accordance with section 143(4) of that Act and approved by a resolution of each House of Parliament.

Citation and commencement

1. This Order may be cited as the National Employment Savings Trust (Amendment) Order 2018 and comes into force on 1st April 2018.

Amendment of the National Employment Savings Trust Order 2010

2.—(1) The National Employment Savings Trust Order 2010⁽²⁾ is amended as follows.

(2) After article 6 (consultation of members and employers) insert—

“Research

6A The Trustee must carry out research from time to time, as it considers expedient, on—

(a) members of the Scheme;

⁽¹⁾ 2008 (c. 30).

⁽²⁾ S.I. 2010/917; relevant amending instruments are S.I. 2013/597 and S.I. 2015/178.

- (b) participating employers; and
- (c) any representatives of members of the Scheme and participating employers,

in connection with the operation, development or amendment of the Scheme.”.

(3) In article 18 (duty to admit employers), after paragraph (3) insert—

“(3A) Where an employer wishes to arrange for a worker to become a member of the Scheme other than in accordance with—

- (a) in relation to Great Britain, sections 2 to 9 of the Act; or
- (b) in relation to Northern Ireland, sections 2 to 9 of the NI Act,

the Trustee may admit the employer to participation in the Scheme, in the circumstances specified in paragraph (4).”.

(4) In article 19 (admittance of members)—

(a) after paragraph (2) insert—

“(2A) Subject to paragraph (6), where an employer wishes to arrange for a worker to become a member of the Scheme other than in accordance with—

- (a) in relation to Great Britain, sections 2 to 9 of the Act; or
- (b) in relation to Northern Ireland, sections 2 to 9 of the NI Act,

the Trustee may admit, as a member of the Scheme, a worker employed by the employer, in the circumstances specified in paragraph (3).”.

(b) after paragraph (4A) insert—

“(4B) Subject to paragraph (6), the Trustee may admit as a member of the Scheme a person if—

- (a) in relation to Great Britain, section 73(2)(a) of the Pension Schemes Act 1993; or
- (b) in relation to Northern Ireland, section 69(2)(a) of the Pension Schemes (Northern Ireland) Act 1993,

is satisfied in relation to that person, and the employer of persons, to which the receiving scheme relates, is a participating employer and is making contributions to the Scheme in respect or on behalf of a jobholder.”.

(5) In article 21 (members’ accounts), for paragraph (6) substitute—

“(6) Any amount received by the Trustee from, or in respect or on behalf of, the member in relation to—

- (a) the employment, or;
- (b) an instance described in article 19(4), (4A) or (4B),

must be applied to the relevant member’s pension account.”.

(6) After article 21 (members’ accounts) insert—

“Removal of members

21A The Trustee may remove a member from the Scheme in the following circumstances—

- (a) if the amount in the member’s pension account is zero;
- (b) if the period that sub-paragraph (a) applies for is at least twelve months, starting with the date on which the member is admitted to the Scheme;
- (c) once the period in sub-paragraph (b) expires, the Trustee notifies the member in writing of its proposal to close the member’s pension account; and
- (d) the member has not complied with the requirements in the sub-paragraph (c) notice, as provided for in the rules.”.

Signed by authority of the Secretary of State for Work and Pensions

Address
Date

Name
Minister of State
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes amendments to the National Employment Savings Trust Order 2010 relating to: (i) joining events for members and employers; (ii) placing a duty on the Trustee to carry out research; and (iii) members' accounts.

Article 2(2) places a new duty on the Trustee to carry out research on NEST members, participating employers and their representatives. Article 2(3) provides for a new joining event, by which the Trustee may admit an employer into NEST. Article 2(4) provides for new joining events, by which the Trustee may admit a member into NEST. Article 2(5) clarifies what sums are to be applied to a member's pension account and article 2(6) sets out when the Trustee may remove a member from the Scheme.

An impact assessment for this legislation has been carried out. The assessment is published at [insert url] and copies can be obtained from [insert physical address and hours].