

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

2013 No. []

PENSIONS

**The National Employment Savings Trust (Amendment) Order
2013**

Made - - - -

Coming into force - -

1st April 2013

The Secretary of State for Work and Pensions makes the following Order in exercise of the powers conferred by sections 67(1) and (8), 68(3) and (5) and 144(2) to (4) of the Pensions Act 2008(a).

In accordance with section 71(4) of that Act, the Trustee(b) has consulted the members' panel and the employers' panel, and in accordance with section 71(2) of that Act, the Secretary of State has obtained the consent of the Trustee before making this Order.

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

Citation and commencement

1. This Order may be cited as the National Employment Savings Trust (Amendment) Order 2013 and comes into force on 1st April 2013.

Amendment of the National Employment Savings Trust Order 2010

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

(2) In article 1(2) (citation and commencement) for “1st October 2016” substitute “1st March 2018”.

(3) In article 2 (interpretation)—

(a) for the definition of “participating employer” substitute—

““participating employer” means an employer that has been admitted to participation in the Scheme and, except in articles 8 and 19, may include an employer that was formerly participating in the Scheme;”;

(b) after the definition of “qualifying arrangement” insert—

(a) 2008 c. 30.

(b) The Trustee is the person appointed as trustee of the Scheme in accordance with section 75 of the Pensions Act 2008.

(c) S.I. 2010/917.

““qualifying person” and “qualifying self-employed person” have the same meanings as—

(a) in Great Britain, in regulation 2(1) of the Occupational Pension Schemes (Cross-border Activities) Regulations 2005(a); or

(b) in Northern Ireland, in regulation 2(1) of the Occupational Pension Schemes (Cross-border Activities) Regulations (Northern Ireland) 2005(b);

“quality requirement” means the quality requirement under—

(a) in relation to Great Britain, Part 1 of the Act; or

(b) in relation to Northern Ireland, Part 1 of the NI Act;”.

(4) In article 13(5) (protection) for “paragraph (6)” substitute “paragraph (7)”.

(5) In article 18 (duty to admit employers)—

(a) in paragraph (2), in both places where the words occur, for “regulation 3(4) or (5)” substitute “regulation 3(3) and (4)(c)”; and

(b) after paragraph (5) insert—

“(5A) A participating employer may, by giving notice to the Trustee, terminate its participation in the Scheme in accordance with rules.”.

(6) In article 19 (duty to admit members)—

(a) for paragraph (4) substitute—

“(4) Subject to paragraph (6), the Trustee must admit as a member a person who wishes to join the Scheme and who is—,

(a) a self-employed person aged at least 16 and under 75, who is working or ordinarily works in the United Kingdom and who is not a qualifying self-employed person;

(b) a single person director aged at least 16 and under 75, who is working or ordinarily works in the United Kingdom and who is not a qualifying person; or

(c) a person entitled to a pension credit as referred to in article 31(1)(a)(i).”;

(b) in paragraph (5)(a) after “is not employed” insert “in relation to that employment”; and

(c) omit paragraph (7).

(7) In article 20 (transitory provision) omit sub-paragraph (a) and the word “and” preceding sub-paragraph (b).

(8) In article 21 (members’ accounts)—

(a) in paragraph (2)—

(i) for “paragraph (3)” substitute “paragraphs (2A) and (3)”; and

(ii) for sub-paragraph (c) substitute—

“(c) any other person in respect of the member.”; and

(b) after paragraph (2) insert—

“(2A) The Trustee may refuse to accept contributions which relate to the employment of a member of the Scheme in which the member is—

(a) a qualifying person; or

(b) a qualifying self-employed person.”;

(c) in paragraph (4) omit the second “under” and sub-paragraphs (a) and (b);

(d) for paragraph (7)(a), substitute—

(a) S.I. 2005/3381. Relevant amendments were made to regulation 2(1) by S.I. 2007/3014.

(b) S.R. 2005 No. 581. Relevant amendments were made to regulation 2(1) by S.R. 2007 No. 457.

(c) Regulation 3 of the Employers’ Duties (Implementation) Regulations 2010 (S.I. 2010/4) was amended by S.I. 2012/215 and S.I. 2012/1813. Regulation 3 of the Employers’ Duties (Implementation) Regulations (Northern Ireland) 2010 (S.R. 2010 No. 123) was amended by S.R. 2012 No. 232 and S.R. 2012 No. 332.

- “(a) to the member, where the contributions were made by the member;”;
- (e) in paragraph (7)(b) for “in respect of the member” substitute “on behalf of or in respect of the member; or”;
- (f) after paragraph (7)(b) insert—
- “(c) to the person who made the contributions, where the contributions have been made in respect of the member by a person other than the member or a participating employer.”; and
- (g) for paragraph (8) substitute—
- “(8) In the case specified in paragraph (9)(a), the Trustee must provide a refund of contributions—
- (a) where the contributions were made by a participating employer in respect of or on behalf of the member, to the participating employer with respect to which the notice was given;
- (b) where the member has made contributions to the Scheme on the member’s own behalf, to the member; or
- (c) where the contributions have been made by a person other than the member or a participating employer, to the person who made the contributions.”.
- (9) In article 22(4)(a) (annual contribution limit) for “paragraph (2)” substitute “paragraph (3)”.
- (10) In article 23(1) (annual contribution limit: meaning of contributions) omit “and in particular” to the end.
- (11) In article 24 (annual contribution limit: refund of excess contributions)—
- (a) in paragraph (2) for sub-paragraph (c) substitute—
- “(c) any other person in respect of a member;”;
- (b) at the end of paragraph (2) insert “or, where the contributions were made in respect of a member by a person other than the member or a participating employer, to the person who made the contributions.”; and
- (c) in paragraph (3) for sub-paragraph (c) substitute—
- “(c) any other person in respect of the member.”.
- (d) In paragraph (5)—
- (i) at the end of sub-paragraph (b) omit “or”;
- (ii) in sub-paragraph (c) after “employer” insert “; or”; and
- (iii) after sub-paragraph (c) insert—
- “(d) refunded to the person who made the contributions in respect of the member.”
- (12) In article 26 (multiple employment)—
- (a) omit paragraph (4); and
- (b) for paragraph (5) substitute—
- “(5) In this article, “minimum contributions” means contributions made to the Scheme by a participating employer on behalf or in respect of a member of the Scheme which enable the Scheme to satisfy the quality requirement.”.
- (13) In article 32 (benefits)—
- (a) in paragraph (2)(b) for “of the next of kin of the member” substitute “persons to be determined by the Trustee in accordance with rules”; and
- (b) in paragraph (4)—
- (i) at the end of the definition of “charity lump sum death benefit” insert “and”;
- (ii) at the end of the definition of “lifetime annuity” omit “and”; and
- (iii) omit the definition of “next of kin”.

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

Date

Name
Minister of State,
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the National Employment Savings Trust Order 2010 (S.I. 2010/917) (“the Order”).

Paragraph (2) of article 2 amends the date when article 20 of the Order ceases to have effect. Paragraph (3) amends the definition of “participating employer” and inserts definitions of “qualifying person”, “qualifying self-employed person” and “quality requirement”. Paragraphs (4), (5), (7), (8)(c) to (g) and (9) to (12) make minor consequential, technical and corrective amendments to the Order.

Paragraph (6) amends article 19, substituting article 19(4): this amendment removes the requirement for the Trustee to admit as a member a person whose place of work is sufficiently located in an EEA state other than the United Kingdom so as to make that person subject to the social and labour law of that EEA state. Paragraph (8)(a) and (b) makes similar amendments to article 21, so as to allow the Trustee to refuse to accept contributions made in respect of a member’s employment that is subject to the social and labour law of another EEA state.

Paragraph (13) amends the provisions governing the payment of benefits on the death of a member of the Scheme.

An assessment of the impact of this Order on private sector and civil society organisations has been made. A copy of this assessment is available in the libraries of both Houses of Parliament and copies can also be obtained from the Better Regulation Unit of the Department for Work and Pensions, Caxton House, Tothill Street, London SW1H 9NA or from the DWP website: <http://www.dwp.gov.uk/resourcecentre/ria.asp>.

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