

<b>Title:</b> National Employment Savings Trust (Amendment) Order 2013  <b>IA No:</b> DWP0037  <b>Lead department or agency:</b> Department for Work and Pensions  <b>Other departments or agencies:</b> National Employment Savings Trust	<b>Impact Assessment (IA)</b>		
	<b>Date:</b> 28/11/2012		
	<b>Stage:</b> Final		
	<b>Source of intervention:</b> Domestic		
	<b>Type of measure:</b> Secondary Legislation		
<b>Contact for enquiries:</b> Jo Semmence: 020 7449 7226			
<b>Summary: Intervention and Options</b>		RPC Opinion: Green	

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
Nil	Nil	Nil	YES   Zero Net Cost

**What is the problem under consideration? Why is government intervention necessary?**  
 To address operational issues identified during live running of the scheme since July 2011 that will allow NEST to make refunds to third parties - a deregulatory measure, and several other minor, technical and consequential amendments that are needed to ensure NEST remains a simple and low cost scheme (consistent with its Public Service Obligation) and ensure alignment of the NEST Order with legislative changes to automatic enrolment.

**What are the policy objectives and the intended effects?**  
 Amendments are required to the National Employment Savings Trust (NEST) Order 2010, to:
 

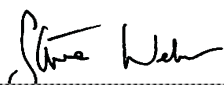
- align with recent changes to automatic enrolment regulations, and
- respond to operational issues identified during live running of the scheme since July 2011.

 The amendments will provide clarity and certainty to NEST, employers, and members who use the scheme. This will support NEST in its public service obligation to provide a simple, low-cost scheme to employers and members and will facilitate smooth administration as automatic enrolment rolls out.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**  
 Two options were considered - to do nothing or to make changes to the Order. In all cases to do nothing was not considered appropriate since that would leave a misalignment with automatic enrolment legislation and inefficiencies in the running of the scheme.  
  
 A non regulatory alternative has not been considered as the changes are amendments to existing legislation which needs to be retained. The legislation which is being amended is part of the regulatory framework to which NEST must adhere to ensure it is able to deliver against its public service obligation. The proposed amendments support this objective.

<b>Will the policy be reviewed?</b> It will be reviewed. <b>If applicable, set review date:</b> N/A					
<b>Does implementation go beyond minimum EU requirements?</b>				N/A	
<b>Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.</b>	Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
<b>What is the CO<sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO<sub>2</sub> equivalent)</b>			<b>Traded:</b> N/A		<b>Non-traded:</b> N/A

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister  Date 28/11/12

# Summary: Analysis and Evidence

Description: NEST Order Amendments

Price Base Year	PV Base Year 2012	Time Period Years 0	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: Nil

COSTS (£m)	Total (Constant Price)	Transition Years	Average (excl. Transition)	Annual (Constant)	Total (Present Value)	Cost
Low	Optional	0	Optional		Optional	
High	Optional		Optional		Optional	
Best Estimate	0		0		0	

## Description and scale of key monetised costs by 'main affected groups'

There are no or negligible costs for employers, public sector and NEST members as a consequence of making these minor, technical and consequential amendments to the NEST Order.

## Other key non-monetised costs by 'main affected groups'

BENEFITS (£m)	Total (Constant Price)	Transition Years	Average (excl. Transition)	Annual (Constant)	Total (Present Value)	Benefit
Low	Optional	0	Optional		Optional	
High	Optional		Optional		Optional	
Best Estimate	0		0		0	

## Description and scale of key monetised benefits by 'main affected groups'

Allowing NEST to make refunds to third parties is a deregulatory measure. The other minor, technical and consequential amendments to the NEST Order have no or negligible benefits for employers, public sector and NEST members.

## Other key non-monetised benefits by 'main affected groups'

Key assumptions/sensitivities/risks N/A	Discount	
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Direct impact on business (Equivalent Annual £m):	In scope of OIOO?	Measure qualifies as
Costs: Nil   Benefits: Nil   Net: Nil	YES	Zero Net Cost

# Evidence Base

## Issue under consideration

1. The National Employment Savings Trust (NEST) was established by the National Employment Savings Trust Order 2010 to support automatic enrolment. NEST is a trust-based, low-cost pension scheme designed to focus on low to moderate earners and smaller employers that the pensions market finds difficult to serve. Consequential, minor and technical amendments are required to the Order to align it with recent changes to automatic enrolment legislation and to provide clarity to NEST, employers and members who will use the scheme. The amendments will support NEST in its public service obligation to provide a simple, low-cost scheme to any employer who wishes to use it to meet their automatic enrolment duties, and will facilitate smooth administration of the scheme as automatic enrolment rolls out.

## Consultation

2. The Department's consultation "National Employment Savings Trust (NEST): Proposals for amendments to the NEST Order" published on 30<sup>th</sup> October 2012 set out proposals for a number of consequential, minor and technical amendments to the NEST Order 2010<sup>1</sup>. The proposals addressed operational issues identified during early operation of NEST which highlighted that some standard provisions in the NEST Order needed clarity and modification for operational effectiveness, and also recent changes to automatic enrolment legislation that required the statutory framework for NEST to be updated and aligned. The Department set out the rationale for change and accompanying background within the consultation document and requested further evidence from employers, employee representatives and pension industry professionals, workers and the general public to support an assessment to be made of the impact on the public sector, NEST members and employers.
3. Two responses were received from the consultation exercise; namely the Chartered Institute of Payroll Professionals and the National Association of Pension Funds. The latter represent around 16 million members. Both respondents were supportive of NEST's proposed amendments to the Order. This was endorsed by a member survey undertaken by one of the respondents. No evidence was presented that suggested a different view from our assessment.

## Policy Objective

4. The objective is to ensure that NEST is able to deliver against its public service obligation to provide a simple, low-cost scheme to any employer who wishes to use it to meet the new employer duties and with no price differentiation between members choosing the core service. NEST is targeted at low to moderate earners who the pensions industry have found difficult to serve. These amendments to the NEST Order are required to align it with recent changes to automatic enrolment legislation and to address issues identified following a period of live running to ensure that the scheme can operate efficiently as automatic enrolment is implemented.

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<sup>1</sup> The National Employment Savings Trust Order 2010 S.I. 2010/917

5. The legislation which is being amended is part of the regulatory framework to which NEST must adhere to ensure it is able to deliver against its public service obligation. The proposed amendments to the legislation support this objective.

### **Costs and benefits of each amendment**

6. Discussion of costs and benefits of making amendments to the NEST Order accompany each of the corresponding descriptions. Amendments are considered in the sequence they appear in the NEST Order. The amendments have no or a negligible impact on employers, pension providers or the pensions industry. The changes principally affect NEST and its members by enhancing the operational efficiency of the scheme.
7. Attempts have been made to collect quantitative and qualitative evidence from stakeholders via a public consultation, however, this has only served to re-inforce the conclusion that the amendments have no or a negligible impact and none of the consultation responses suggested a different view from our assessment. DWP is of the view that the scale of these amendments does not warrant bespoke qualitative research.

#### a) Transitory provision period

8. During the roll out of automatic enrolment, we want to ensure that NEST is focused on enabling employers to meet their new duties. NEST therefore has discretion to admit self-enrolling members – self-employed persons and single person directors - during the staging in of automatic enrolment.
9. The staging period for automatic enrolment has been extended<sup>2</sup> into 2018 to allow smaller employers more time to prepare for the reforms. As a consequence, this amendment extends NEST's discretion to admit self-enrolling members until 1<sup>st</sup> March 2018 to take account of the revised staging profile.
10. The impact of this change is nil. This is a consequential measure with no additional impact on business, the public sector or NEST members. The impact of a revised staging and phasing profile was included in the impact assessment<sup>3</sup> for Employers' Duties (Implementation) (Amendment) Regulations 2012.
11. Around 45,000<sup>4</sup> additional self-employed members may no longer be able to join NEST over a period of 18 months. However, to join NEST, such persons would need to make an active decision to save and would not be automatically enrolled. Consequently, such persons should be able to find an alternative retirement savings vehicle, in the event that access to NEST is not available.
12. This amendment has no net impact on NEST. NEST may use its discretion to address capacity issues during the automatic enrolment transition period. Under this scenario, NEST may choose to delay admittance to self-employed persons if admitting such

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<sup>2</sup>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)

<sup>3</sup> The Employers' Duties (Implementation) (Amendment) Regulations 2012, IA number DWP 0027, <http://www.dwp.gov.uk/docs/wpr-rev-implementation-ia-final.pdf>

<sup>4</sup> Source DWP modelling, July 2012

persons would hamper its ability to meet its Public Service Obligation. Therefore the net volume of members will remain the same, and the administrative cost impacts will be zero.

#### b) European employment

13. Regulations<sup>5</sup> have exempted employers from automatically enrolling a jobholder who is simultaneously a qualifying person as defined by the Occupational Pension Schemes (Cross-border Activities) Regulations 2005<sup>6</sup>. However, the exemption does not capture individuals who are self-employed or single person directors. Neither does it prevent continuing contributions where an existing member of NEST becomes a qualifying person or qualifying self-employed person<sup>7</sup>. Occupational pension schemes may incur additional cost where they accept contributions from qualifying persons or qualifying self-employed persons - this additional cost could pose a risk to NEST's low-cost model. These amendments therefore allow NEST to decide whether to accept contributions in respect of qualifying persons or qualifying self-employed persons.
14. The impact of the exemptions from automatic enrolment for certain types of European employment has been assessed in the impact assessment - Workplace Pension Reform: Cross Border Workers<sup>8</sup>. There are no additional direct impacts on business. The additional impact on individuals who are self-employed qualifying persons and single person directors who are European employers is nil. Departmental analysis of the Labour Force Survey suggests that there are no cross border workers who are self-employed or single person directors.

#### c) Employer participation

15. The Order envisages an employer being admitted to participation so that they may enrol members into the Scheme and pay contributions in respect of the member. But there is nothing which states or necessarily implies that an employer who participates can leave. In practice, an employer may cease to pay contributions in respect of a member and decide that they wish to leave.
16. This amendment ensures the Scheme and Order operate as intended by making clear that employers can voluntarily cease to participate in NEST by giving notice to the Trustee in accordance with the Scheme rules.
17. This amendment is enabling and there is no direct impact on business, the public sector or NEST members. The amendment allows employers to formally end participation in NEST according to NEST rules, and to cease using NEST in favour of another scheme to meet their duties. This amendment makes it clear that employers can voluntarily cease to participate in NEST by giving notice to the trustee according to the scheme rules. The amendment is a purely administrative process that provides clarity for employers, who choose to end participation in NEST, and has a negligible cost impact.

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<sup>5</sup> The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 – S.I.2010/772 – Regulation 5A

<sup>6</sup> S.I.2005/3381

<sup>7</sup> S.I.2005/3381 – Regulation 2

<sup>8</sup> Workplace Pension Reforms: Cross Border Workers, April 2012, IA number DWP0026

<http://www.dwp.gov.uk/docs/auto-enrol-european-employers-final-ia.pdf>

#### d) Member terms and conditions

18. NEST is required to accept self-enrolling members – self-employed persons, single person directors and persons entitled to a pension credit<sup>9</sup>. Unlike members admitted through an employer, the Order requires these people to agree to member terms and conditions to gain admittance. This requirement works against the obligation on NEST to admit them.
19. The amendment removes this conflict by removing the requirement for self-enrolling members to agree to member terms and conditions as, in practice, this is not necessary to gain admittance to NEST.
20. Savings to NEST and NEST members are expected to be low or zero as this is a minor administrative change. This amendment has no direct impacts on business as the amendment only applies to self-enrolling members. The total operational impact is to remove one page from the sign up process, saving an individual around five minutes of time.

#### e) Third party contributions

21. Contributions to NEST can be made by a member, by a member's employer or by a third party (for example, a relative can make a contribution on a member's behalf).
22. The current description of third party in the Order could be interpreted as not allowing third party contributions in some circumstances. In addition, on occasion contributions may need to be refunded from a member's account, for example, because of an error or overpayment. In these circumstances, the Order only provides that the Trustee may refund to a participating employer or the member. If NEST is unable to provide refunds direct to a third party, this could result in a refund of third party contributions being made to a participating employer who would then need to process a refund to the third party.
23. The amendment clarifies the description of third party to ensure the Scheme operates as intended and to allow the Trustee discretion to refund contributions to a third party from a member's account.
24. This amendment removes the current requirement whereby employers are required to process refunds due to a third party - this is a deregulatory measure. Retaining the current administrative process on refunds will leave inefficiencies in the running of the Scheme and impact on employers. The impact of this amendment is assessed to have no impacts on the public sector and NEST members, and any savings to the employer from removing their requirement to make refunds to third parties is likely to be negligible.
25. The number of refunds to third parties that employers would have to process is likely to be small – third party contributions would constitute a small percentage of total contributions and there are very few circumstances in which refunds are due. NEST has confirmed that it has not yet received any third party contributions that would be refundable via the employer. DWP has undertaken an informal consultation with the pensions industry who

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<sup>9</sup> NEST Order 2010/917 article 31(1)

have been unable to provide any data. Operational savings to employers would be low at £0.80<sup>10</sup> for every transaction. The savings for business from this amendment are likely to be negligible.

The table below shows savings per unit by firm size.

Table 1: Estimated savings per unit in administration costs by firm size arising from changes to third party refunds (£)				
	Micro firms (1-4)	Small firms (5-49)	Medium firms (50-249)	Large firms (250 or more)
Third party refunds	1.10	0.30	0.20	0.10

Notes:

- Figures are expressed in 2012/13 price terms.
- Figures have been rounded to the nearest £0.10.
- Data on unit costs/savings of third party refunds is from the DWP Administration Cost Model.

#### f) Minimum contributions

26. All contributions made to a member's account by a participating employer in order to fulfil their employer duty count towards the annual contribution limit. Where a member of NEST has multiple jobs, with more than one employer participating in the Scheme, the Trustee is able to accept all "minimum contributions" made by each participating employer of the member, even if this causes a breach of the annual contribution limit.

27. Section 12 of the Pensions Act 2011, together with regulations made under section 28 of the Pensions Act 2008, introduce alternative means for an employer to certify that a workplace pension scheme satisfies the requirements for automatic enrolment. The amendment makes clear that minimum contributions are those which enable the scheme to satisfy the relevant quality requirement for a money purchase Scheme<sup>11</sup>, which includes where an employer certifies that NEST satisfies those and the alternative quality requirements for automatic enrolment<sup>12</sup>.

28. This amendment has no direct impact on business, the public sector or NEST members. The policy of minimum contributions enables the scheme to satisfy the relevant quality requirements for a money purchase Scheme<sup>13</sup>. This includes circumstances where an employer certifies that NEST satisfies those and the alternative quality requirements for automatic enrolment<sup>14</sup>. The policy of minimum contributions was included in the Impact Assessment accompanying the Pensions Act 2008.

<sup>10</sup> A weighted average of the figures in Table 1

<sup>11</sup> The Pensions Act 2008(c.30) Part 1 and the Pensions (no.2) Act Northern Ireland) 2008 (c.13 (N.I.)) section 20

<sup>12</sup> The Occupational and Personal Pension Schemes (Automatic Enrolment)(Amendment) Regulations 2012 (S.I. 2012/1257)

<sup>13</sup> The Pensions Act 2008(c.30) Part 1 and the Pensions (no.2) Act Northern Ireland) 2008 (c.13 (N.I.)) section 20

<sup>14</sup> The Occupational and Personal Pension Schemes (Automatic Enrolment)(Amendment) Regulations 2012 (S.I. 2012/1257)

#### g) Survivor benefits

29. NEST may pay survivor benefits to the member's nominated beneficiary or personal representative. Where the member has no traceable beneficiary and the value of the account is under £5,000, the Order currently provides for NEST to be able to pay survivor benefits to the member's next of kin, defined in terms of the relevant UK intestacy legislation<sup>15</sup>. Having such a prescriptive reference in the Order creates an unintended administrative burden and cost for NEST and its members, for example where the member or survivors are domiciled abroad and next of kin may be defined differently.
30. This amendment removes the reference to next of kin and provides for the Trustee to determine – through its Rules - to whom it will distribute an account under £5,000 on the death of a member.
31. This amendment has no direct impact on business or NEST members. It removes the constraint of UK intestacy legislation in determining who NEST might pay death benefits to, and instead provides NEST with discretion to determine the beneficiary of a deceased member's account where the balance is under £5,000.
32. The impact of this amendment to the Order on the public sector depends on what NEST decides to do now and in the future in their Rules. Therefore, it is not possible to make an estimate of any impacts because these depend on the decisions taken by NEST.

#### h) Correction of cross-references

33. The amendment will make a number of minor corrective adjustments to cross-references in the Order in Articles 13, 18 and 22.
34. These amendments have no direct impact on business, the public sector or NEST members as they are minor technical amendments that correct legislative drafting.

#### **Impact on micro-businesses**

35. These amendments apply to all sizes of business and micro-businesses are not exempted. However, small and micro-businesses will benefit from the delayed implementation of the reforms whereby compliance will not be required until after May 2015.

#### **Summary of impacts and implementation plan**

36. These amendments are being introduced as a result of changes to automatic enrolment legislation which impact on the legislative framework for NEST and a period

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<sup>15</sup> 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 on Part II of the Administration of Estates Act (Northern Ireland) 1955 (c.24(N.I.)); In Scotland, the persons entitled to the moveable estate of the deceased on intestacy



of live running of the scheme which has identified a number of minor and technical amendments needed to ensure that the scheme can operate efficiently.

37. These amendments have a zero or negligible net impact. Some of these changes could result in very small financial savings to business, the public sector and NEST members.

38. The amending regulations will follow the affirmative process and be brought forward with a proposed implementation date of 1 April 2013.

 <b>Regulatory Policy Committee</b>	<b>Validation of the Net Direct Impact on Business</b>
<b>Title of the 'Validation' IA</b>	National Employment Savings Trust (Amendment) Order 2013
<b>Lead Department/Agency</b>	Department for Work and Pensions
<b>Expected date of implementation</b>	April 2013 (SNR5)
<b>Origin</b>	Domestic
<b>Date IA submitted to RPC</b>	28/11/ 2012
<b>Date of RPC Validation</b>	14/12/2012
<b>Date of RTA Confirmation</b>	07/09/2012
<b>RTA Confirmation reference</b>	RPC12-DWP-1531(2)
<b><i>Departmental Assessment</i></b>	
<b>Overall Direction of Impacts</b>	OUT
<b>Estimate of the Equivalent Annual Net Cost to Business claimed by the Department</b>	Zero Net Cost
<b><i>RPC Validation</i></b>	
<b>Direction of Impact</b>	OUT
<b>Estimate of the Equivalent Annual Net Cost to Business Validated by RPC</b>	Not quantified
<b>RPC Comments</b>	
<p>The IA says the proposal will allow the National Employment Savings Trust (NEST), <i>"to make refunds to third parties - a deregulatory measure, and several other minor, technical and consequential amendments that are needed to ensure NEST remains a simple and low cost scheme"</i>. Furthermore, it outlines that the amendments will <i>"have no or a negligible impact on employers, pension providers or the pensions industry. The changes principally affect NEST and its members by enhancing the operational efficiency of the scheme"</i>. The assessment that the measure will have a negligible net benefit to business appears to be reasonable, and as such the measure qualifies as an 'OUT'. The Equivalent Annual Net Cost to Business has not been scored as it is expected to be <i>"very small"</i> (page 9).</p>	
<b>Signed</b>	<b>Michael Gibbons, Chairman</b>
