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STATUTORY INSTRUMENTS

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**2010 No. 917**

**The National Employment Savings Trust Order 2010**

**PART 5**

**The Scheme Fund**

**Annual contribution limit**

**22.**—(1) Subject to the following paragraphs, the maximum amount of contributions which may be made by, or on behalf or in respect of, a member of the Scheme in a tax year **(1)** (“annual contribution limit”) is £3,600.

(2) The figure in paragraph (1) is based on the average earnings index for December 2005.

(3) The annual contribution limit must be adjusted by the Trustee in accordance with changes in the average earnings index—

- (a) on the first occasion, at any time before the first day on which contributions are paid to the Scheme by, or on behalf or in respect of, members of the Scheme; and
- (b) by the start of every subsequent tax year.

(4) The Trustee must—

- (a) pursuant to paragraph (2), calculate the annual contribution limit, following any relevant provision relating to calculation contained in rules where such provision is made; and
- (b) publish that limit in any document considered appropriate by the Trustee.

(5) The Trustee may determine that paragraph (1) does not apply to a member or class of member, in relation to a particular tax year.

(6) In this article, “average earnings index” means the general index of average earnings (for all employees: whole economy: seasonally adjusted) published by the Office for National Statistics or, if that general index is not published for a month for which it is relevant for the purposes of this article, any index or index figures published by that Office in substitution for that general index.

**Annual contribution limit: meaning of contributions**

**23.**—(1) For the purposes of counting towards the annual contribution limit in article 22, “contributions” means any contributions made by, or on behalf or in respect of, a member of the Scheme and in particular—

- (a) contributions made to the Scheme by a participating employer, on behalf or in respect of a member of the Scheme, which satisfy the quality requirement for a money purchase scheme (“minimum contributions”)—
  - (i) in Great Britain, under section 20 of the Act; or
  - (ii) in Northern Ireland, under section 20 of the NI Act; and

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**(1)** “Tax year” is defined in section 99 of the Act and in section 78 of the NI Act.

- (b) any additional contributions in excess of those made under sub-paragraph (a), made to the Scheme in relation to a member of the Scheme which are more than 8% of the amount of the member's qualifying earnings in the relevant pay reference period.
- (2) But for the same purposes "contributions" do not include—
- (a) a cash transfer sum—
- (i) in Great Britain, within the meaning of section 101AB(3) of the Pension Schemes Act 1993(2), used in the way described in section 101AE(2)(a) of that Act; or
  - (ii) in Northern Ireland, within the meaning of section 97AB(3) of the Pension Schemes (Northern Ireland) Act 1993(3), used in the way described in section 97AE(2)(a) of that Act;
- (b) the discharge by the trustees or managers of a scheme of their liability in respect of a pension credit—
- (i) in Great Britain, to which Schedule 5 to the 1999 Act applies; or
  - (ii) in Northern Ireland, to which Schedule 5 to the 1999 Order applies,
- by taking the action specified in paragraph (3);
- (c) any other transfer of any sum held for the purposes of, or representing accrued rights under, a pension scheme so as to become held for the purposes of, or to represent rights under, the Scheme;
- (d) any payment of contributions refunded—
- (i) in Great Britain, in accordance with requirements prescribed under section 8(2)(b) of the Act; or
  - (ii) in Northern Ireland, in accordance with requirements prescribed under section 8(2)(b) of the NI Act;
- (e) any payment of contributions made pursuant to a compliance notice issued to a person—
- (i) in Great Britain, under section 35 of the Act; or
  - (ii) in Northern Ireland, under section 35 of the NI Act,
- where the appropriate date to which that notice relates is not in the same tax year as that in which the payment of contributions pursuant to the notice takes place;
- (f) any payment of contributions made pursuant to an unpaid contributions notice—
- (i) in Great Britain, issued to an employer under section 37 of the Act; or
  - (ii) in Northern Ireland, issued to an employer under section 37 of the NI Act,
- where the appropriate date to which that notice relates is not in the same tax year as that in which the payment of contributions pursuant to the notice takes place;
- (g) any payment of contributions made pursuant to a third party compliance notice issued under—
- (i) in Great Britain, section 36 of the Act; or
  - (ii) in Northern Ireland, section 36 of the NI Act,
- where the payment of contributions under that notice is not in the same tax year in which those contributions were first payable;
- (h) any contributions payable by a participating employer under any provision of—
- (i) in Great Britain, Chapter 1 of Part 1 of the Act; or

(2) 1993 c.48. Sections 101AB and 101AE were inserted by the Pensions Act 2004 (c.35), section 264.

(3) 1993 c.49. Sections 97AB and 97AE were inserted by the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)), Article 241.

- (ii) in Northern Ireland, Chapter 1 of Part 1 of the NI Act, where the contributions are not paid in the same tax year in which those contributions were first payable;
  - (i) any contributions not made to the Scheme on or before the due date, where the tax year in which that due date falls has already ended, unless the Trustee determines otherwise;
  - (j) any payments made in error which are refunded by the Scheme;
  - (k) any contributions which are refunded under article 24 in respect of the same tax year in which those contributions were made; or
  - (l) any sum which exceeded the annual contribution limit as a result of the member of the Scheme being in multiple employment within the meaning of article 26, provided that such sum consists of contributions made by a participating employer either on behalf or in respect of that member of the Scheme.
- (3) For the purposes of paragraph (2)(b), the specified action is—
- (a) conferring appropriate rights under that scheme on a person entitled to the credit; or
  - (b) paying the amount of the credit to the person responsible for a qualifying arrangement with a view to acquiring rights under that arrangement for the person entitled to the credit.
- (4) In this article—
- (a) “appropriate date” has the same meaning—
    - (i) in Great Britain, as in section 38(5) of the Act; or
    - (ii) in Northern Ireland, as in section 38(5) of the NI Act;
  - (b) “due date” means the date on or before which payment of a contribution is to be made; and
  - (c) “relevant pay reference period” has the meaning given in regulations made under—
    - (i) in Great Britain, section 15(1) of the Act; or
    - (ii) in Northern Ireland, section 15(1) of the NI Act.

**Annual contribution limit: refund of excess contributions**

**24.—**(1) This article applies in relation to contributions made in any tax year in excess of the annual contribution limit for that year.

(2) Subject to paragraph (2) of article 26, contributions made to the Scheme in excess of the annual contribution limit by—

- (a) a member of the Scheme;
- (b) a participating employer on behalf of a member of the Scheme; or
- (c) a person other than a participating employer of a member of the Scheme, in respect of a member,

must not be applied to the member’s pension account in respect of that same tax year and may be refunded to the member.

(3) Contributions made to the Scheme (in excess of the annual contribution limit) by a participating employer in respect of a member of the Scheme may be refunded to the employer but only once contributions by—

- (a) the member;
- (b) a participating employer on behalf of the member; or
- (c) a person other than a participating employer of the member, in respect of the member,

have already been refunded under paragraph (2).

(4) The Trustee may determine not to refund contributions under this article if the annual contribution limit is exceeded by an amount determined by the Trustee to be disproportionate to the cost of making a refund.

(5) In the event that contributions have already been applied to a member's pension account (whether or not in error), the Trustee may determine that contributions be—

- (a) retained in the member's pension account;
- (b) refunded to the member; or
- (c) refunded to the participating employer.

### **Timing of contributions**

25. All contributions counting towards the annual contribution limit are to be treated as made to the Scheme when they are received by the Trustee.

### **Multiple employment**

26.—(1) A person is in multiple employment during a tax year if during that year—

- (a) they are a member of the Scheme;
- (b) they are in employment with more than one participating employer; and
- (c) more than one of those participating employers makes contributions to the Scheme on behalf or in respect of that person.

(2) Where a person is in multiple employment, the Trustee may continue to accept contributions (including minimum contributions) made by a participating employer on behalf or in respect of that person, even if such contributions are made in excess of the annual contribution limit.

(3) Where paragraph (2) applies, the Trustee—

- (a) must retain contributions of an amount equal to minimum contributions made by a participating employer on behalf or in respect of the member which exceed the annual contribution limit, and must apply those contributions to the member's pension account; and
- (b) may refund any contributions in excess of the amount referred to in sub-paragraph (a) to either a participating employer or the member.

(4) For the avoidance of doubt, nothing in this article affects the operation—

- (a) (i) of, in Great Britain, section 20 of the Act; or  
(ii) of, in Northern Ireland, section 20 of the NI Act; or
- (b) of paragraph (1)(a) of article 23.

(5) In this article, “minimum contributions” has the same meaning as in article 23(1)(a).

### **Deductions from members' accounts**

27.—(1) The Trustee must make deductions from members' pension accounts to contribute to the general costs of the setting up, administration and management of the Scheme.

(2) The Secretary of State must determine the method of calculating how to make deductions during an initial period and for how long that initial period applies.

(3) After the initial period, the Trustee may determine subsequent methods of calculating how to make deductions.

(4) The Trustee must determine the level of deductions to be made from members' pension accounts, using the method of calculation determined by the Secretary of State or the Trustee thereafter.

(5) Subject to paragraph (6), the Trustee must set the deductions at a level that—

- (a) meets the general costs of the setting up, administration and management of the Scheme; and
- (b) allows it to maintain such reserve as it reasonably considers is needed in order to ensure that the Trustee is able to meet its costs where there are unexpected changes in income to, or costs payable by, the Scheme.

(6) In determining the level, the Trustee must have regard to any other sources of income to, and costs payable from, the Scheme.

(7) The Trustee may make further deductions from members' pension accounts to meet the costs of providing a service with respect to members' pension accounts in a particular case or class of case.

(8) In determining a method of calculating how to make deductions, determining the level of deductions under paragraph (4) and making deductions under paragraph (7), the Secretary of State or the Trustee, as the case may be, must ensure that—

- (a) deductions will be applied on a consistent basis between members' pension accounts; and
- (b) a pension account of a member of the Scheme (A) will not be subject to a different level or amount of deduction to another member's pension account solely on the basis of—
  - (i) where A is a worker, the number of persons who are or may in the future become members of the Scheme and workers in relation to A's employer;
  - (ii) the amount of time during which contributions may be made by, or on behalf or in respect of, A;
  - (iii) where A is a worker, the amount of time during which contributions may be made by, or on behalf or in respect of, other persons who are or may in the future become members of the Scheme and workers in relation to A's employer;
  - (iv) the income that is, or may in the future be, earned by A; or
  - (v) where A is a worker, the income that is or may be earned by other persons, as referred to in paragraph (9),or solely on the basis of more than one of paragraphs (i) to (v) above, in any combination.

(9) The income referred to is income that —

- (a) is, or may in the future be, earned by other members of the Scheme who are workers in relation to A's employer; or
- (b) may in the future be earned by other persons who may become members of the Scheme and workers in relation to A's employer,

(10) Where the Secretary of State—

- (a) has given financial assistance in the form of a loan to the Trustee pursuant to paragraph 18 of Schedule 1 to the Act for the purposes of setting up, administering and managing the Scheme and such assistance is still ongoing; and
- (b) is of the opinion that the level of deductions under paragraph (4) is, or the deductions under paragraph (7) are, unreasonably high in the circumstances, having regard in particular to the principle that the cost of participation in the Scheme to members should be minimised,

the Secretary of State may determine an upper limit to the level of deductions under paragraph (4) or deductions under paragraph (7) that may be made from members' pension accounts.

(11) Where the Secretary of State—

- (a) has given financial assistance in the form of a loan to the Trustee pursuant to paragraph 18 of Schedule 1 to the Act for the purposes of setting up, administering and managing the scheme and such assistance is still ongoing; and
  - (b) is of the opinion that the trustee is in breach of any condition of the loan,
- the Secretary of State may determine a lower limit to the level of deductions under paragraph (4) or deductions under paragraph (7) that may be made from members' pension accounts.
- (12) Where the Secretary of State determines an upper limit, the Trustee may not exceed that limit in the level of deductions it determines or the deductions which it makes.
- (13) Where the Secretary of State determines a lower limit, the Trustee must determine a level of deductions, or make deductions, at or above that limit.
- (14) Where the Secretary of State determines an upper or lower limit—
- (a) the Secretary of State may make a further determination removing that limit; and
  - (b) on the date any financial assistance given or ongoing for the purposes of paragraphs (10) and (11) is repaid to the Secretary of State, such a further determination shall be deemed to have been made removing that limit.
- (15) The Trustee must consult with the members' panel before—
- (a) determining subsequent methods of calculating how to make deductions, as referred to in paragraph (3); or
  - (b) making changes to the level of deductions from members' pension accounts under paragraph (4) or to deductions under paragraph (7).
- (16) The Trustee must make available the information specified in paragraph (17) by placing it on the internet.
- (17) The specified information is information about—
- (a) the method of calculating how to make deductions, determined under paragraph (2), and any subsequent method of calculating how to make deductions, determined under paragraph (3); and
  - (b) the level of deductions determined under paragraph (4) and any deductions made or to be made under paragraph (7), as they have effect from time to time.

### **Power to invest the Scheme's assets**

- 28.**—(1) The Trustee has the power to invest all the assets of the Scheme.
- (2) Subject to paragraph (3), for the purposes of this power, the assets of the Scheme include—
- (a) contributions as referred to in article 21(2);
  - (b) any other monies received by the Trustee, including under articles 30 and 31; and
  - (c) returns from any investments of assets referred to in sub-paragraph (a) or (b).
- (3) For the purposes of this power, the assets of the Scheme do not include any financial assistance given to the Trustee pursuant to paragraph 18 of Schedule 1 to the Act.
- (4) Without prejudice to the generality of the power conferred on the trustees of a trust scheme—
- (a) in Great Britain, under section 34 of the Pensions Act 1995 (4); or
  - (b) in Northern Ireland, under Article 34 of the Pensions (Northern Ireland) Order 1995(5),
- the power in paragraph (1) includes power to take the action specified in paragraph (5).

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(4) 1995 c.26.

(5) S.I. 1995/3213 (N.I. 22).

- (5) The specified action is to—
- (a) underwrite or sub-underwrite the subscription, offer or issue of any stocks, shares or other securities or investments, as the Trustee may determine;
  - (b) give any warranty or indemnity the Trustee determines as appropriate in connection with the exercise of that power (or any other power conferred on it by law), to any person;
  - (c) participate in stock lending arrangements within the meaning of section 263B of the Taxation of Chargeable Gains Act 1992<sup>(6)</sup>; and
  - (d) invest in derivative instruments—
    - (i) in Great Britain, as defined by regulation 4(11) of the Occupational Pension Schemes (Investment) Regulations 2005<sup>(7)</sup>; or
    - (ii) in Northern Ireland, as defined by regulation 4(11) of the Occupational Pension Schemes (Investment) Regulations (Northern Ireland) 2005<sup>(8)</sup>.

### **Investment and default investment funds**

**29.**—(1) The Trustee may establish any number of notional funds, by reference to such investment principles and criteria as the Trustee determines (“investment funds”).

(2) Subject to the following paragraphs, investment funds may be arranged by the Trustee in such number, combination or type as the Trustee determines.

(3) From time to time, the Trustee may make different arrangements (including closing, withdrawing or terminating the availability of any investment funds).

(4) The Trustee must, subject to the provisions in the following paragraphs, direct assets of the Scheme to at least one investment fund.

(5) Where a member of the Scheme does not express a choice as to where assets of the Scheme attributable to their pension account are to be directed, the investment funds to which those assets of the Scheme are directed shall be known as default investment funds.

(6) Any assets of the Scheme which the Trustee has the power to invest are to be invested by the Trustee in at least one default investment fund, except where—

- (a) the member of the Scheme expresses a choice that assets of the Scheme attributable to their pension account be directed to an investment fund other than a default investment fund, in which case paragraph (7) applies;
- (b) contributions are made to the member’s pension account during the period prescribed in regulations—
  - (i) in Great Britain, made by virtue of section 8(5)(b) of the Act; or
  - (ii) in Northern Ireland, made by virtue of section 8(5)(b) of the NI Act;
- (c) assets of the Scheme are not attributable to a member’s pension account; or
- (d) the Trustee decides to invest the assets of the Scheme in cash or on deposit in circumstances where liquid reserves are required for the purposes of the Scheme,

and where sub-paragraph (b), (c) or (d) applies, assets of the Scheme are to be invested as the Trustee determines.

(7) Where a member of the Scheme expresses a choice as to where assets of the Scheme attributable to their pension account are to be directed—

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(6) [1992 c.12](#). Section 263B was inserted, in relation to, and to transfers under, any arrangement made on or after 1 July 1997, by the Finance Act 1997 ([c.16](#)), section 76 (and paragraphs 5(1) and 7(1) of Schedule 10 to that Act). Subsection (2) of that section was amended by the Finance Act 2009 ([2009 c.10](#)), section 32 (and paragraphs 1 and 2(1) of Schedule 13 to that Act).

(7) [S.I. 2005/3378](#).

(8) [S.R. 2005 No. 569](#).

- (a) the Trustee may determine—
  - (i) the form in, and method by, which a member expresses that choice;
  - (ii) any limits on the number of occasions on which a member may express that choice; and
  - (iii) the number of investment funds to which assets of the Scheme may be directed, having regard to the value of the assets of the Scheme attributable to a member's pension account; and
- (b) subject to the member's choice complying with any determination made by the Trustee for the purposes of sub-paragraph (a), the Trustee must accept that choice unless the Trustee is of the opinion that in doing so it would breach any of its legal obligations, including those imposed—
  - (i) in Great Britain, by regulation 4 of the Occupational Pension Schemes (Investment) Regulations 2005; or
  - (ii) in Northern Ireland, by regulation 4 of the Occupational Pension Schemes (Investment) Regulations (Northern Ireland) 2005.

#### **Acceptance by trustee of cash transfer sums**

**30.** The Trustee may accept, in relation to a member of the Scheme, a cash transfer sum within the meaning of—

- (a) in Great Britain, section 101AB(3) of the Pension Schemes Act 1993<sup>(9)</sup>, used in the way described in section 101AE(2)(a) of that Act; or
- (b) in Northern Ireland, section 97AB(3) of the Pension Schemes (Northern Ireland) Act 1993<sup>(10)</sup>, used in the way described in section 97AE(2)(a) of that Act.

#### **Pension sharing**

**31.**—(1) Where a pension credit derives—

- (a) from the Scheme, the Trustee may—
  - (i) confer appropriate rights on the person entitled to the pension credit; or
  - (ii) pay the amount of the credit to the person responsible for a qualifying arrangement with a view to acquiring rights under that arrangement for the person entitled to the credit, in accordance with paragraph 1(3) of Schedule 5 to the 1999 Act (in Great Britain) or to the 1999 Order (in Northern Ireland); or
- (b) from another scheme, the Trustee may accept a payment of the amount of the pension credit by the trustees or managers of the scheme from which the pension credit derives, provided that the person to whom that pension credit relates is already a member of the Scheme.

(2) In this article, “appropriate rights” has the same meaning—

- (a) in Great Britain, as in paragraph 5 of Schedule 5 to the 1999 Act; or
- (b) in Northern Ireland, as in paragraph 5 of Schedule 5 to the 1999 Order.

<sup>(9)</sup> 1993 c.48. Sections 101AB and 101AE were inserted by the Pensions Act 2004 (c.35), section 264.

<sup>(10)</sup> 1993 c.49. Sections 97AB and 97AE were inserted by the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)), Article 241.



## Benefits

**32.**—(1) Without prejudice to article 31, the Trustee may, in the circumstances set out in rules, use a member’s pension account in order to provide the benefits described in paragraph (2) (and only those benefits).

(2) The benefits are—

(a) where a member is alive—

- (i) the payment to the member of a lump sum or the purchase of a lifetime annuity policy in the name of the member, or both; or
- (ii) the transfer of the cash equivalent of the member’s pension account to another pension scheme, where the member meets the conditions specified in paragraph (3);

(b) where a member has died—

- (i) the payment of a lump sum to a person nominated by the member or to the personal representatives of that member;
- (ii) the payment of a lump sum to any one or more of the next of kin of the member;
- (iii) the payment of a charity lump sum death benefit; or
- (iv) the purchase of a dependants’ annuity.

(3) The specified conditions are those—

- (a) in Great Britain, in regulation 2(2) or (3) of the Transfer Values (Disapplication) Regulations 2010<sup>(11)</sup>; or
- (b) in Northern Ireland, in regulation 2(2) or (3) of the Transfer Values (Disapplication) Regulations (Northern Ireland) 2010<sup>(12)</sup>.

(4) In this article—

“dependants’ annuity” has the same meaning as in paragraph 17 of Schedule 28 to the Finance Act 2004<sup>(13)</sup>;

“charity lump sum death benefit” has the same meaning as in paragraph 18 of Schedule 29 to the Finance Act 2004<sup>(14)</sup>;

“lifetime annuity” has the same meaning as in paragraph 3 of Schedule 28 to the Finance Act 2004<sup>(15)</sup>; and

“next of kin” means—

- (a) 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<sup>(16)</sup>;
- (b) in Northern Ireland, the persons who would take beneficially on an intestacy under the provisions of Part II of the Administration of Estates Act (Northern Ireland) 1955<sup>(17)</sup>; and
- (c) in Scotland, the persons entitled to the moveable estate of the deceased on intestacy.

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<sup>(11)</sup> S.I. 2010/6.

<sup>(12)</sup> S.R. 2010 No. 121.

<sup>(13)</sup> 2004 c.12; paragraph 17 of Schedule 28 was amended by the Finance Act 2005 (c. 7), Schedule 10, paragraphs 1, 15(1) to (3) and 29(1) and (2).

<sup>(14)</sup> Paragraph 18 of Schedule 29 was amended by the Finance Act 2007 (c. 11), Schedule 19, paragraphs 1, 16(1) and (2).

<sup>(15)</sup> Paragraph 3 of Schedule 28 has been amended but not in a way material to this Order.

<sup>(16)</sup> 1925 c.23.

<sup>(17)</sup> 1955 c.24 (N.I.)