

EXPLANATORY MEMORANDUM TO

THE NATIONAL EMPLOYMENT SAVINGS TRUST (AMENDMENT) ORDER 2018

2018. No. 368

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument further amends the National Employment Savings Trust (NEST) Order 2010¹ to facilitate the effective operation and development of the NEST Pension Scheme. The instrument gives the NEST Trustee discretion to allow contractual enrolment into NEST.²
- 2.2 It also gives the NEST Trustee discretion to remove members with empty accounts from the scheme in certain circumstances, as well as some other minor and technical changes that will provide clarity to employers and members who use NEST.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland and Northern Ireland.

4. Legislative Context

- 4.1 Section 67 of The Pensions Act 2008³ imposes a duty on the Secretary of State to establish, by Order, an occupational pension scheme to be treated as if established under an irrevocable trust. The scheme's function is to support automatic enrolment into workplace pensions by ensuring that all employers have access to a suitable, low-cost workplace pension in order to meet their duty to automatically enrol all eligible workers. The National Employment Savings Trust Order 2010 established the scheme, and provides that the National Employment Savings Trust Corporation is the Trustee of the scheme.
- 4.2 The National Employment Savings Trust (NEST) Order 2010 sets out the broad framework for the scheme, including:
- establishment, constitution of the scheme and appointment of members
 - the role of the Trustee and the Secretary of State

¹ <https://www.legislation.gov.uk/ukdsi/2010/9780111490495/contents;>

² Contractual enrolment is a process by which the NEST Trustee can admit as a scheme member any worker who has been enrolled into the scheme by their employer through contractual agreement (usually via their employment contract), when they first start work.

³ <https://www.legislation.gov.uk/ukpga/2008/30/contents;>

- employer participation in the scheme
 - scheme membership
 - members' accounts and the investment of members' funds
- 4.3 Under the Pensions Act 2008, the Trustee is responsible for maintaining the scheme rules. The Act provides for the making of scheme rules but they are not subject to parliamentary procedure. The rules set out a further level of detail about how the scheme will operate in practice and are subject to the National Employment Savings Trust (NEST) Order 2010.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is the whole of the United Kingdom.
- 5.2 The territorial application of this instrument is all of the United Kingdom.

6. European Convention on Human Rights

- 6.1 The Minister for Pensions and Financial Inclusion, Guy Opperman MP, has made the following statement regarding Human Rights:
- “In my view the provisions of the National Employment Savings Trust (Amendment) Order 2018 are compatible with the Convention rights”.

7. Policy background

What is being done and why

- 7.1 NEST was established in 2010 under Part 1 of the Pensions Act 2008 to support automatic enrolment and to address a market failure for low to moderate earners and smaller employers. It is subject to a Public Service Obligation (PSO) to ensure that all employers have access to a low-cost scheme to meet their automatic enrolment duties. All the measures in this Amendment Order seek to improve the way the scheme can operate for participating employers and members. Specifically the changes will:
- allow participating employers to contractually enrol their employees in the NEST pension scheme. Contractual enrolment will enable employers to consolidate their pension provision at the outset with one scheme;
 - require NEST Corporation to carry out research about the administration and management of the Scheme on scheme members and participating employers or their representatives, in connection with the operation, development or amendment of the Scheme;
 - give NEST Corporation the ability to remove a member with an empty account from the scheme if certain conditions are met. This is because the number of empty accounts is creating inefficiencies and long run costs for the scheme; and
 - clarify that individuals may join the NEST pension scheme in the event of a bulk transfer with consent and will require that any amount received in relation to a member's employment (and in certain other circumstances) are applied to a member's account.
- 7.2 The reason for the first amendment is that some employers want to contractually enrol all their workers into a single scheme, as an alternative to enrolling workers only through the automatic enrolment route. This is currently not possible for employers

using the National Employment Savings Trust (NEST), if auto-enrolment duties apply to an employer. Contractual enrolment is simply a different mechanism of joining a pension scheme. It is commonly used by employers that wish to enrol new employees in a pension scheme as part of their contract of employment. This amendment removes current restrictions that prevent NEST from allowing contractual enrolment into the scheme.

- 7.3 The second component in this instrument will require the NEST Trustee to carry out research from time to time about the administration and management of the Scheme on members, participating employers and their representatives, in connection with the operation, development or amendment of the scheme. Research is an integral feature of the administration and management of any pension scheme, including NEST, in relation to such areas as its operations, development, investment decisions, charges, retirement benefits etc. Major pension schemes all have insight or research teams that reach out to employers and savers to improve their service and inform management and administrative decisions on product development, investment etc. NEST's research will focus on hitherto under-researched groups, such as NEST members on low to moderate incomes. The introduction of a duty is designed to align NEST's operation to changes in data protection law (as a result of implementing the General Data Protection Regulation (GDPR)) and provide it with a clear basis (Article 6(1)(c) of the GDPR) on which to lawfully process data going forward.
- 7.4 The third component in this instrument will give NEST Corporation the ability to remove a member with an empty account from the scheme in certain circumstances. These accounts are of no value to the member and incur administrative costs for other members. In April 2017 NEST had around 60,000 members with accounts that had been empty for 12 months. Making the change will reduce administrative burdens on the scheme and will not impact on individuals whose accounts are closed - they can still be automatically enrolled again in the future.
- 7.5 The fourth component in this instrument will clarify that individuals may join NEST in the event of a 'bulk transfer with consent' and require that any amount received in relation to a member's employment (and in certain other circumstances) are applied to a member's account. Wider restrictions on transfers into and out of NEST were removed on 1 April 2017 by the National Employment Savings Trust (Amendment) Order 2015⁴ and by the Occupational and Personal Pension Schemes (Transfer Values) (Amendment and Revocation) Regulations 2015⁵. In 2014, the Department for Work and Pensions obtained confirmation from the European Commission that allowing bulk transfers into NEST from 1 April 2017 remained consistent with State aid rules and compatible with the State aid provided to NEST⁶. This complements an individual NEST member's own right to consolidate their pension savings into NEST.

Consolidation

- 7.6 Informal consolidated text of instruments is available to the public free of charge via 'The National Archive' website www.legislation.gov.uk.

⁴ <https://www.legislation.gov.uk/ukdsi/2015/9780111125274>;

⁵ <https://www.legislation.gov.uk/ukdsi/2015/498/contents/made>;

⁶ http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_36410;
http://ec.europa.eu/competition/state_aid/cases/251386/251386_1567249_105_2.pdf;

8. Consultation outcome

- 8.1 The Department for Work and Pensions consulted on the National Employment Savings Trust (Amendment) Order 2018 from 7 November 2017 to 27 November 2017. It received five responses. There were no comments on the drafting of the statutory instrument and the majority of respondents agreed that the proposals achieved the policy aim of facilitating the effective operation of the scheme.
- 8.2 The Government's view is that the measures in the instrument are consistent with the purpose of the scheme and will help smaller employers when selecting a suitable automatic enrolment pension scheme. The Government informed the European Commission of its intention to amend the National Employment Savings Trust (NEST) Order 2010 and the Government considers that the changes in this instrument support the delivery of the Service of General Economic Interest (SGEI) as defined in the State aid approval granted to NEST. The Government's response to the consultation will be published on www.gov.uk/government/publications;
- 8.3 NEST Corporation has consulted on the scheme rule changes which will align the NEST rules with the proposed changes to the Order.⁷
- 8.4 There were no specific comments on the draft Amendment Order. In accordance with the requirements in the Pensions Act 2008, DWP has sought the formal consent of the NEST Trustee before making the Order, subject to its approval by Parliament.

9. Guidance

- 9.1 NEST Corporation publishes the NEST Order and scheme rules on its website - <http://www.nestpensions.org.uk>⁸. Paper copies are available on request from NEST. The NEST Order and scheme rules will be updated following the introduction of these changes to the NEST Order.
- 9.2 The NEST Order includes a power (at article 14) for the Trustee to increase awareness and understanding of the scheme in relation to employers and potential members. NEST Corporation publishes a range of guides for members and employers which summarise the NEST Order and scheme rules, providing key information about NEST in a more accessible format.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is less than £5 million. The changes are deregulatory and positive for employers. The changes are not expected to have a large impact due to the timing and scale of the changes.
- 10.2 There is no impact on the public sector.
- 10.3 An Impact Assessment has been prepared for this instrument and will be made available alongside the legislation on www.legislation.gov.uk.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses. The consultation on the draft Order did not highlight any specific issues.

⁷ <https://www.nestpensions.org.uk/schemeweb/nest/nestcorporation/news-press-and-policy/thought-leadership-and-consultations/consultations.html>

⁸ <https://www.nestpensions.org.uk/schemeweb/nest.html>

12. Monitoring & review

- 12.1 The Trustee is obliged under the Pensions Act 2008 to provide an annual report and accounts on the exercise of its functions to the Secretary of State, who must lay these before Parliament. The Trustee must also prepare a separate annual report and accounts for the NEST Pension Scheme, which is available on the NEST website.

13. Contact

- 13.1 Nicola Lloyd at the Department for Work and Pensions can answer any queries regarding the instrument; email: Nicola.Lloyd@dwp.gsi.gov.uk; Tel. 0207 449 7276