

Government response to consultation – The Application of Pension Legislation to the National Employment Savings Trust Corporation Regulations 2011

March 2011

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Introduction

Between 9 December 2010 and 3 February 2011, the Department for Work and Pensions (DWP) undertook a consultation exercise on the application of pension legislation to the National Employment Savings Trust Corporation (NEST) Regulations. The consultation document was made available on the DWP website and notified to stakeholders.

The document set out and invited comments on the Secretary of State's proposal to amend the Pension Schemes (Investment) Regulations 2005 ("The Investment Regulations") for the avoidance of doubt and to clarify that the borrowing necessary to establish the NEST Scheme is consistent with the intention of the regulations.

This document sets out the main points made by respondents generally and provides the Government response. Five responses were received to the consultation. A list of respondents is included at Annex A. Whilst we have not been able to include every point raised, we have read and considered every response to ensure that this report provides a fair representation of the comments that we received.

This document is available on the DWP website at:

<http://www.dwp.gov.uk/consultations/2010/nest-regs-2011-consultation.shtml>

If you have any queries or comments that you would like to make the point of contact is:

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Context

1. The Department for Work and Pensions (DWP) estimates that around 7 million people are not saving enough to deliver the pension income they are likely to want, or expect, in retirement. As part of a programme of State and workplace pension reforms to increase individuals' income in retirement, measures to help provide security in retirement for tomorrow's pensioners are contained in the Pensions Act 2008 and consist of:
 - (a) new duties on all employers to automatically enrol their eligible jobholders into a qualifying workplace pension scheme and to make contributions;
 - (b) a compliance regime to support the new duties;
 - (c) a low-cost pension scheme to ensure all employers have access to a suitable pension scheme.
2. The report of the recent 'Making Automatic Enrolment Work' review published in October 2010 – www.dwp.gov.uk/policy/pensions-reform/workplace-pension-reforms/automatic-enrolment – concluded that the National Employment Savings Trust (NEST) is a necessary element of the reform package.
3. The scheme will be managed by the NEST Corporation, the corporate trustee who will be responsible for running it in the best interests of its members and beneficiaries.
4. The scheme will operate in a similar way to any other trust-based, multi-employer, occupational pension scheme. For example, in common with all other occupational pension schemes, it will be regulated by the Pensions Regulator (tPR).
5. However, as a result of its unique scale and design there will be certain differences. The main differences are:
 - the scheme is established in legislation and is sponsored by the Secretary of State for Work and Pensions, rather than set up and sponsored by one employer or a number of employers or an existing financial organisation;
 - the scheme will have a public service obligation to accept any employer that wishes to use the scheme to fulfil their employer duties;
 - once an employer is participating in the scheme, the scheme will accept any jobholder enrolled by that employer; and
 - to ensure the scheme is established at nil cost to the taxpayer the costs of its set-up and early administration will be met by borrowing made by the NEST Corporation.

6. The scheme has been designed to operate broadly within the existing framework of pensions regulation and other trust-related law. It is, however, necessary to make some modifications to current legislation.

Overview of proposal

7. A guiding principle for the creation of NEST is that it will be created at nil cost to taxpayers. Unlike other pension schemes, NEST does not have a sponsoring employer to fund the set-up costs or access to group capital like an insurance provider.
8. Therefore Government has decided to fund the costs of set-up and initial administration through a loan from Government.
9. The European Community Directive on the Activities and Supervision of Institutions for Occupational Retirement Provision (the IORP Directive) restricts the circumstances in which pension schemes with more than 100 members can borrow to ensure that pension scheme members' funds are protected from liability for any imprudent borrowing by the scheme, in particular borrowing in order to invest the monies borrowed on behalf of members.
10. The domestic legislation that transposes the Directive – (the Occupational Pension Schemes (Investment) Regulations 2005 (“The Investment Regulations”)) – prohibits all borrowing by large, occupational pension schemes, save for liquidity purposes and on a temporary basis.
11. Therefore, to ensure that NEST Corporation will be able to borrow in order to set up the scheme, this amendment to the Investment Regulations makes it clear that the prohibition does not apply to the proposed borrowing by the NEST Corporation.
12. Comments were invited on any aspect of this proposal.

Responses to consultation

Stakeholder view:

13. The consultation received five responses: one supporting the proposal; two stating they had no comments; one broadly against the amendment; and one expressing concern and proposing a clarification. This last response accepted that it is in the public interest to allow NEST to borrow to meet set-up costs. However, it proposed that an additional condition should be added requiring differential interest rates be chargeable on particular elements of a loan.

Our response:

14. As the Investment Regulations do not pertain to the rates of interest chargeable on any borrowing by pension schemes, the proposal that an additional condition should be added requiring differential interest rates be chargeable on particular elements of any loan, is out of scope and not appropriate to the Government's proposal.

Stakeholder view:

15. One response stated that it did not want the Investment Regulations changed and did not believe an extension in the ability or scope of any trustees to borrow would be welcome. Instead, the Government as the quasi-sponsoring employer should bear the set-up costs rather than costs falling on members.

Our response:

16. In passing the Pensions Act 2008 that established the NEST scheme, Parliament agreed that it must be established and run at nil overall cost to the taxpayer. In addition, such funding is likely to contravene European directives on competition and state aid. Because of this, the Government cannot meet the cost as suggested in the response. In recognition of this and the requirement to create a low-cost scheme, a loan from Government was considered the most appropriate option.

Other issues raised in the consultation

Stakeholder view:

17. One response expressed an interest in the arrangements for NEST's borrowing and whether these might give NEST and its contractors an advantage in the pensions market.

Our response:

18. The Government believes that it is necessary to establish NEST to ensure that all employers have access to a suitable low cost scheme with which to meet the new automatic enrolment duties. The Government does not believe that the loans provided to NEST will give it an unfair advantage over other providers of pension schemes in the market.

Stakeholder view:

19. One response stated that it would not be acceptable if NEST, as a public sector scheme, needed to be wound up and for the cost of protecting the scheme members against loss to fall on a private sector compensation scheme.

Our response:

20. While NEST has been set up by legislation, it is not a public sector scheme. It will operate in the same way as any other trust-based defined contribution pension schemes and members' pension savings will be subject to similar risks as exist in other money purchase pension arrangements. It is right, therefore, that members of NEST receive the same protection as members of other defined contribution schemes.

Annex A – Respondents to the consultation

Association of British Insurers
The Actuarial Profession
B and C E Benefit Schemes
The Institute of Chartered Accounts of Scotland
The Society of Pension Consultants

Annex B – Link to regulations

The Application of Pension Legislation to the National Employment Savings Trust Corporation Regulations 2011 and its Explanatory Memorandum is available on the Office of Public Sector Information's website at:

<http://www.legislation.gov.uk/uksi/2011>

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