

# National Employment Savings Trust (NEST): Proposals for amendments to the NEST Order

Consultation on draft articles

October 2012

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# 1 Introduction

This consultation seeks views on the Secretary of State's proposals to make a range of amendments to the National Employment Savings Trust (NEST) Order 2010<sup>1</sup>, to ensure that NEST operates efficiently and to align the statutory framework for NEST with recent changes to automatic enrolment legislation.

## Consultation arrangements

This consultation is aimed at employers, employee representatives and pension industry professionals, including occupational pension and workplace personal pension scheme administrators, payroll administrators, accountants, payroll bureaux, Independent Financial Advisors and Employee Benefit Consultants. Comments from workers and the general public are also welcome.

This consultation applies to all of the United Kingdom.

## Duration of the consultation

The consultation begins 30 October 2012 and runs until 26 November 2012.

These proposals are for a range of minor, technical and consequential amendments to the NEST Order to provide clarity and certainty to NEST, and the employers and members who will use it. Our Minister has therefore agreed that a consultation period of four weeks is appropriate.

The document is available on the Department's website at:  
<http://www.dwp.gov.uk/consultations/2012>

Please send your responses, preferably by email to: [Mira.Vyas@dwp.gsi.gov.uk](mailto:Mira.Vyas@dwp.gsi.gov.uk)

Or by post to:  
Mira Vyas  
Department for Work and Pensions  
Workplace Pension Reforms & NEST Policy  
1<sup>st</sup> Floor, Caxton House  
Tothill Street  
London SW1H 9NA

Please ensure your response reaches the Department by 26 November 2012.

When responding, please state whether you are doing so as an individual or representing the views of an organisation. If you are responding on behalf of a larger organisation, please make it clear who the organisation represents, and where applicable, how the views of members were assembled.

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

## Proposals for amendments to the NEST Order

Any queries about the subject matter of this consultation should be made to Mira Vyas at [Mira.Vyas@dwp.gsi.gov.uk](mailto:Mira.Vyas@dwp.gsi.gov.uk)

We have sent this consultation document to a number of people and organisations who have already been involved in this work or who have expressed an interest. Please do share this document with, or tell us about, anyone you think will want to be involved in this consultation.

## Freedom of information

The information you send us may need to be passed to colleagues within the Department for Work and Pensions, published in a summary of responses received and referred to in the published consultation report.

All information contained in your response, including personal information, may be subject to publication or disclosure if requested under the Freedom of Information Act 2000. By providing personal information for the purpose of the public consultation exercise, it is understood that you consent to its disclosure and publication. If this is not the case, you should limit any personal information which is provided, or remove it completely. If you want the information in your response to the consultation to be kept confidential, you should explain why as part of your response, although we cannot guarantee to do this. We cannot guarantee confidentiality of electronic responses even if your IT system claims it automatically.

If you want to find out more about the general principles of Freedom of Information and how it is applied within DWP, please contact:

Central Freedom of Information Team  
Department for Work and Pensions,  
4th Floor, Caxton House,  
Tothill Street,  
London,  
SW1H 9NA

Email: [freedom-of-information-request@dwp.gsi.gov.uk](mailto:freedom-of-information-request@dwp.gsi.gov.uk)

## Feedback on this consultation

We value your feedback on how well we consult. If you have any comments on the process of this consultation (as opposed to the issues raised) please contact our Consultation Coordinator:

Elias Koufou  
Department for Work and Pensions' Consultation Coordinator:  
2nd Floor, Caxton House,  
Tothill Street,  
London,  
SW1H 9NA  
Phone: 020 7449 7439  
Fax: 020 7449 5089

## Proposals for amendments to the NEST Order

Email: [caxtonhouse.legislation@dwp.gsi.gov.uk](mailto:caxtonhouse.legislation@dwp.gsi.gov.uk)

Please also make any suggestions as to how the process of consultation could be improved further.

If you have any requirements that we need to meet to enable you to comment, please let us know.

The responses to the consultation will be published in a report on the DWP website that will summarise the responses and the action that we will take as a result of them.

## 2 Policy background

### Workplace Pension Reforms

2.1 The National Employment Savings Trust (NEST) underpins automatic enrolment by providing a suitable, low-cost pension scheme for any employer who wants to use the Scheme to fulfil the new employer duty to automatically enrol eligible workers.

2.2 NEST has a key role to play in making the workplace pension reforms a success by focusing on a target group of low to moderate earners, smaller employers and employers with a high labour turnover. We estimate that 2-4 million people will be enrolled into NEST by the end of implementation.

2.3 NEST was established in July 2010 by the National Employment Savings Trust Order 2010 (SI 2010/917). NEST is a trust-based, occupational pension scheme set up by the Government to ensure that all employers are able to meet their new duties to automatically enrol eligible workers. Like other pension scheme trustees, the NEST Trustee must run the Scheme in the interests of its members.

### The NEST Order

2.4 NEST has been designed to operate broadly within the existing framework of pension legislation and other related law. In common with many other occupational pension schemes, which are established under trust deeds, the Scheme was established under the Order, as if set up under a trust instrument.

2.5 The NEST Order sets out the broad policy framework for the Scheme, including:

- establishment, constitution of the Scheme and appointments
- the role of the Trustee and the Secretary of State
- employer participation
- Scheme membership and contributions, and
- the Scheme fund.

2.6 The Order is secondary legislation and can only be amended by the Secretary of State (following consultation with the Trustee) subject to Parliamentary approval.

## The NEST Rules

2.7 The NEST Rules<sup>2</sup> are a legal document made under statute but are not subject to Parliamentary procedure. Nothing in the Rules can contradict the Order or existing pensions or other related law.

2.8 The NEST Rules set out the lower level detail about how the Scheme will operate in practice. The Trustee is able to make, revoke, amend or re-enact any Rules made by the Trustee or the Secretary of State.

2.9 Some of the proposals in this consultation will require changes to the NEST Rules. Amendments to the Rules are developed and consulted on by the Trustee. Proposed changes to the NEST Rules as a consequence of the proposals in this consultation are set out in NEST Corporation's "NEST Rule Change Consultation" – this can be found at [nestpensions.org.uk](http://nestpensions.org.uk)

## 3 Case for change

3.1 NEST has been operating since July 2011 with a number of volunteer employers and members. This early launch period has enabled NEST to test its key business processes and to understand the associated employer (particularly, smaller employers) and member behaviours.

3.2 This period of live operation has helped to identify that some of the more standard provisions in the Order - such as the processes around death - do not in practice operate as intended.

3.3 Additionally, since the NEST Order was made, there has been a number of changes to legislation relating to automatic enrolment, including regulations extending the staging profile. These changes impact on the NEST Order and it needs to be updated to reflect current automatic enrolment requirements.

3.4 We want to ensure that NEST is able to operate effectively as automatic enrolment rolls out, providing clarity and certainty to NEST, and the employers and members who will use it.

3.5 We are therefore proposing to make a range of minor, technical and consequential amendments to the NEST Order to provide operational efficiency and to align NEST's statutory framework with recent legislative changes affecting automatic enrolment.

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<sup>2</sup> The Pensions Act 2008 (c.30) sections 67 and 72, NEST Order 2010 Article 15, and <http://www.nestpensions.org.uk/Schemeweb/NestWeb/includes/public/docs/NEST-Order-and-Rules,PDF.pdf>

## 4 Proposals

### 4.1 Transitory provision period

4.1.1 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.

4.1.2 The staging period for automatic enrolment has been extended<sup>3</sup> into 2018 to allow smaller employers more time to prepare for the reforms. As a consequence, we are proposing to extend NEST's discretion to admit self-enrolling members in Article 1 until 1<sup>st</sup> March 2018 to take account of the revised staging profile.

### 4.2 European employment

4.2.1 The recent exemption from automatic enrolment for certain European employment was introduced to avoid an overlap between the qualifying conditions for automatic enrolment and pension rights for workers with employment rights in another European country<sup>4</sup> (qualifying persons<sup>5</sup>). Regulation 5A of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 (S.I. 2010/772) has exempted European employers from the employer duties under Part 1 of the Pensions Act 2008.

4.2.2 However, the exemption does not capture a person who is self-employed or a single person director. Neither does it prevent continuing contributions in respect of a qualifying person who has already become a member of NEST.

4.2.3 Occupational pension schemes may incur an additional cost where they accept contributions relating to a person who is a qualifying person. That additional cost could pose a risk to NEST's low-cost model.

4.2.4 We are therefore proposing an amendment to Articles 2, 19 and 21 to allow NEST to decide whether to accept contributions in respect of a person who is a 'qualifying self-employed person' or a 'qualifying person'.

4.2.5 It will be for the NEST Trustee to decide how to exercise the flexibility provided by this proposal.

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<sup>3</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>4</sup> Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision

<sup>5</sup> "Qualifying person" and "qualifying self-employed person" are defined in regulation 2 of the Occupational Pension Schemes (Cross-border Activities) Regulations 2005 (S.I. 2005/3381) and regulation 2 of the Occupational Pension Schemes (Cross-border Activities) Regulations (Northern Ireland) 2005 (S.R. 2005 No. 238)

### **4.3 Employer participation**

4.3.1 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.

4.3.2 We are therefore proposing amendments to Articles 2 and 18 to ensure 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.

4.3.3 This proposal should be read in conjunction with NEST's proposals for how the Trustee intends to exercise this flexibility in the NEST Rule Change Consultation.

### **4.4 Member terms and conditions**

4.4.1 NEST is required to accept self-enrolling members – self-employed persons, single person directors and persons entitled to a pension credit<sup>6</sup>.

4.4.2 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.

4.4.3 We are therefore proposing to remove this conflict by amending Article 19 to remove 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.

### **4.5 Third party contributions**

4.5.1 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). The current description of third party in the Order could be interpreted as not allowing third party contributions in some circumstances.

4.5.2 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.

4.5.3 We are therefore proposing to amend Articles 21 and 24 to clarify 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.

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<sup>6</sup> NEST Order 2010/917 article 31(1)

## 4.6 Minimum contributions

4.6.1 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.

4.6.2 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.

4.6.3 Minimum contributions are those which enable the scheme to satisfy the relevant quality requirement for a money purchase Scheme<sup>7</sup>, which includes where an employer certifies that NEST satisfies those and the alternative quality requirements for automatic enrolment<sup>8</sup>.

4.6.4 We are therefore proposing to amend Articles 2, 23 and 26. If NEST were to reject the statutory minimum contributions in cases where a member has multiple jobs, this would go against the bedrock of reforms.

## 4.7 Survivor benefits

4.7.1 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>9</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.

4.7.2 We propose to amend Article 32 by removing the reference to next of kin and providing for the Trustee to determine – through its Rules - to whom it will distribute an account under £5,000 on the death of a member.

4.7.3 This proposal should be read in conjunction with NEST's proposals for how the Trustee intends to exercise this flexibility in the NEST Rule Change Consultation.

## 4.8 Correction of cross-references

4.8.1 We are also proposing to make a number of minor corrective amendments to cross-references in the Order in Articles 13, 18 and 22.

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<sup>7</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>8</sup> The Occupational and Personal Pension Schemes (Automatic Enrolment)(Amendment) Regulations 2012 (S.I. 2012/1257)

<sup>9</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

## 5 Impact

5.1 The proposal to remove the current requirement whereby employers are required to process refunds due to a third party is a deregulatory measure. Retaining the current administrative process on refunds will leave inefficiencies in the running of the Scheme and impact on employers. An initial assessment of the impact of this proposal is that there are 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.

### ***Initial estimate of the impact***

5.2 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. Data on volumes of third party contributions are not available. NEST has confirmed, however, that it has not yet received any third party contributions that would be refundable via the employer. DWP has been unable to get any data from the industry despite undertaking informal consultation. Operational savings to employers would be low at 80 pence<sup>10</sup> for every transaction. The savings for business from this amendment are likely to be negligible.

5.3 The table below shows savings per unit by firm size.

<b>Table 1: Estimated savings per unit in administration costs by firm size arising from changes to third party refunds (£)</b>				
	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 10 pence.
- Data on unit costs/savings of third party refunds is from the DWP Administration Cost Model.

5.4 The other proposals in this consultation will have no direct impact on business. Annex B sets out the Department’s initial assessment of the impacts of these proposals.

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

## 6 Consultation questions

6.1 Do you consider the draft articles meet the aim of enabling NEST to operate more efficiently for its members and participating employers? It would be helpful if you could provide reasons for your answer.

6.2 Do you think the articles as drafted will ensure NEST's statutory framework will align with recent changes to automatic enrolment legislation? If not, why do you think that?

6.3 Do you agree with the Department's initial assessment of the impact of these proposals? If not, can you provide any additional information or evidence relating to the proposals that might affect the final stage Impact Assessment?

# Commentary on the draft National Employment Savings Trust (Amendment) Order 2013

The following summary explains the purpose of the draft regulations:

## **Article 1 – Citation and commencement**

This article gives the title and specifies the date on which the articles are proposed to come into force. It is suggested that the articles come into force on 1 April 2013.

## **Article 2 - Amendment of the National Employment Savings Trust Order 2010**

This article provides for an extension to the transitory provision period during which NEST has discretion to admit self-enrolling members. It also allows NEST to decide whether to accept contributions in respect of a person who is a 'qualifying self-employed person' or a 'qualifying person'. It enables employers to terminate their participation in the Scheme, clarifies definitions for participating employers and self-enrolling members, and removes the requirement for self-enrolling members to agree to member terms and conditions.

This article also clarifies who, apart from the member of the Scheme and the participating employer may contribute to the Scheme, and sets out when, and to whom, a refund of contributions may be made from a member's account by the Trustee. It also amends the definition of minimum contributions to make it clear that these are contributions which satisfy the relevant quality requirements for money purchase Schemes, and removes the definition of next of kin allowing the Trustee to determine – through its Rules - to whom it will distribute an account under £5,000 on the death of a member.

Finally, it makes a number of minor corrective amendments to cross-references.

# Annex A – Draft Articles

## The draft National Employment Savings Trust (Amendment) Order 2013

DRAFT STATUTORY INSTRUMENTS

2013 No. []

### PENSIONS

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

<i>Made</i>	- - - -	***
<i>Coming into force</i>	- -	***

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<sup>(11)</sup>.

In accordance with section 71(4) of that Act, the Trustee<sup>(12)</sup> 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<sup>(13)</sup> 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—

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(11) 2008 c. 30.  
 (12) The Trustee is the person appointed as trustee of the Scheme in accordance with section 75 of the Pensions Act 2008.  
 (13) S.I. 2010/917.

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- ““participating employer” means an employer<sup>(14)</sup> 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; ”; and
- (b) after the definition of “qualifying arrangement” insert—
- ““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<sup>(15)</sup>; or
- (b) in Northern Ireland, in regulation 2(1) of the Occupational Pension Schemes (Cross-border Activities) Regulations (Northern Ireland) 2005<sup>(16)</sup>;
- “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)<sup>(17)</sup>”; 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)”;
- (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

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<sup>(14)</sup> “Employer” is defined in section 88 of the Act and section 70 of the NI Act.

<sup>(15)</sup> S.I. 2005/3381. Relevant amendments were made to regulation 2(1) by S.I. 2007/3014.

<sup>(16)</sup> S.R. 2005 No. 581. Relevant amendments were made to regulation 2(1) by S.R. 2007 No. 457.

<sup>(17)</sup> 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.

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- (b) a qualifying self-employed person.”;
- (c) in paragraph (4) omit “under section 67” to the end;
- (d) for paragraph (7)(a), substitute—  
“(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.”.
- (12) In paragraph (5)—
  - (a) at the end of sub-paragraph (b) omit “or”;
  - (b) in sub-paragraph (c) after “employer” insert “; or”; and
  - (c) after sub-paragraph (c) insert—  
“(d) refunded to the person who made the contributions in respect of the member.”
- (13) 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.”.
- (14) 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”.

## Proposals for amendments to the NEST Order

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 requirements”. Paragraphs (4), (5), (7), (8)(c) to (g) and (9) to (13) 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. Paragraphs (9) and (10) make minor technical and corrective amendments.

Paragraph (14) amends the provisions governing the payment of benefits on the death of a member of the Scheme.

A full impact assessment has not been produced for this draft Order. An initial assessment of its impact is included in the consultation document and a full assessment of the impact of the Order on private sector and civil society organisations has been made. A copy of this assessment has been placed 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>.

# Annex B – Initial Assessment of Impacts

Proposal	Impact
<p><u>Transitory provision period</u></p> <p>Consequential to changes in the staging profile for automatic enrolment, the proposal extends NEST’s discretion to admit self-enrolling members until 1<sup>st</sup> March 2018.</p> <p>The impact of this change is nil. This is a consequential and discretionary 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>18</sup> for Employers’ Duties (Implementation) (Amendment) Regulations 2012.</p> <p>Approximately an additional 45,000<sup>19</sup> self employed members will no longer be able to join NEST over a period of 18 months. However, these members are active savers, and are not members through automatic enrolment. Therefore it is assumed all will join alternative pension Schemes during the transition period with zero net impact on these members.</p> <p>This amendment has a zero net impact on NEST. NEST may invoke this discretion in order to address capacity issues during the automatic enrolment transition period. Under this scenario, refusing self employed members will only allow NEST to accept more workers to whom an employer owed a duty. Therefore the net volume of members will remain the same, and the administrative cost impacts would be zero.</p>	<p>Technical and consequential</p> <p>No additional direct impact on business</p>
<p><u>European employment</u></p> <p>The impact of the exemptions from automatic enrolment for certain European employments has been assessed in the impact assessment; Workplace Pension Reform: Cross Border Workers<sup>20</sup>.</p> <p>There are no additional direct impacts on business.</p>	<p>Technical and consequential</p> <p>No additional direct impact on business</p>
<p><u>Employer participation</u></p> <p>The amendment aligns the Order with NEST Scheme rules to make clear that employers can voluntarily cease to participate in NEST by giving notice to the Trustee as provided for by the Scheme rules.</p> <p>This proposal is enabling and there is no direct impact on business, the public sector or NEST members.</p>	<p>Technical</p> <p>No direct impact on business</p>
<p><u>Member terms and conditions</u></p> <p>The amendment will remove the conflict between NEST’s obligation to admit such</p>	<p>No direct</p>

<sup>18</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>19</sup> Source DWP modelling, July 2012

<sup>20</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>

## Proposals for amendments to the NEST Order

Proposal	Impact
<p>members and redress the differential treatment between enrolling and self-enrolling members.</p> <p>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.</p>	<p>impact on business</p>
<p><u>Definition of third party</u></p> <p>This proposal to amend the description of third party has no direct impact on business, the public sector or NEST members.</p>	<p>Technical</p> <p>No direct impact on business</p>
<p><u>Minimum contributions</u></p> <p>This proposal has no direct impact on business, the public sector or NEST members. The policy of minimum contributions was implicitly included in the impact assessment accompanying the 2011 Pensions Act<sup>21</sup>.</p>	<p>Technical and consequential</p> <p>No direct impact on business</p>
<p><u>Survivor benefits</u></p> <p>This amendment will reduce NEST's administrative burden of finding next of kin to whom to pay benefits. It is not possible to make robust estimates on the level of savings because there is currently no robust evidence on the frequency and costs of finding next of kin in the NEST pension Scheme. In addition, costs will vary significantly on a case by case basis and it is not possible to make a generalised assumption on the level of these costs.</p> <p>This proposal has no direct impact on business, the public sector or NEST members.</p>	<p>Technical</p> <p>No direct impact on business</p>
<p><u>Correction of cross-references</u></p> <p>The proposals will correct a number of miscellaneous cross-references in the Order.</p> <p>This proposal has no direct impact on business, the public sector or NEST members.</p>	<p>Technical</p> <p>No direct impact on business</p>

<sup>21</sup> The Impact Assessment of the Pensions Bill, April 2008: <http://www.dwp.gov.uk/docs/impact-assessment-240408.pdf>