



Department  
for Work &  
Pensions

# The National Employment Savings Trust (Amendment) Order 2015

and

# The Transfer Values (Disapplication) (Revocation) Regulations 2015

**Public consultation**

**October 2014**

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## About this consultation

This consultation draws stakeholders' attention to two draft statutory instruments (the "draft SIs") that will remove the annual contribution limit and transfer restrictions on NEST from 1 April 2017:

- National Employment Savings Trust (Amendment) Order 2015 (the "draft Amendment Order"); and
- Transfer Values (Disapplication) (Revocation) Regulations 2015 (the "draft Regulations").

## Who this consultation is aimed at

We particularly welcome views on the package of draft SIs from legal advisers, pension industry professionals, trustees and scheme managers and from any other interested stakeholder group.

## Purpose of the consultation

This consultation seeks views on whether the draft SIs achieve the policy intent of removing NEST's annual contribution limit and transfer restrictions from 1 April 2017. The draft SIs are attached at Annexes A and B.

The intention is that the draft SIs will come into force on 1 April 2017. The draft Amendment Order is subject to the affirmative Parliamentary procedure so it must be approved by Parliament.

## Scope of consultation

This consultation applies to all of the United Kingdom apart from the draft Regulations which apply to Great Britain only. Northern Ireland has its own body of pensions law and references to Great Britain legislation are to be taken, where necessary, as including references to the corresponding Northern Ireland legislation.

## Duration of the consultation

The consultation period begins on 9 October 2014 and ends on 29 October 2014.

## How to respond to this consultation

Please send your consultation responses to:

Nicola Lloyd  
NEST Policy and Stewardship Team  
Level 1, Caxton House  
Tothill Street  
London  
SW1H 9NA  
Email: [nicola.lloyd@dwp.gsi.gov.uk](mailto:nicola.lloyd@dwp.gsi.gov.uk)

Please ensure your response reaches us by 29 October 2014.

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 an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

Please direct any queries about the subject matter of this consultation to Nicola Lloyd.

## How we consult

### 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 purposes 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 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.

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  
Caxton House  
6 -12 Tothill Street  
London  
SW1H 9NA

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

The Central FoI team cannot advise on specific consultation exercises, only on Freedom of Information issues. More information about the Freedom of Information Act can be found at [www.dwp.gov.uk/freedom-of-information](http://www.dwp.gov.uk/freedom-of-information)

### Consultation principles

This consultation is being conducted in line with the new [Cabinet Office Consultation Principles](#). The key principles are:

- departments will follow a range of timescales rather than defaulting to a 12-week period, particularly where extensive engagement has occurred before;

- departments will need to give more thought to how they engage with and consult with those who are affected;
- consultation should be ‘digital by default’, but other forms should be used where these are needed to reach the groups affected by a policy; and
- the principles of the Compact between government and the voluntary and community sector will continue to be respected.

## **Feedback on the consultation process**

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:

DWP Consultation Coordinator  
2<sup>nd</sup> Floor  
Caxton House  
Tothill Street  
London  
SW1H 9NA

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

In particular, please tell us if you feel that the consultation does not satisfy the consultation criteria. 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.

We will aim to publish the Government response to the consultation on <http://www.dwp.gov.uk/consultations>

The report will summarise the responses and the action that we will take as a result of them.

## Introduction

1. The National Employment Savings Trust (NEST) was established by the Government in 2010 to support automatic enrolment. It is a trust-based, occupational pension scheme, designed to provide a quality, low-cost pension scheme focused on a target market of low to moderate earners and smaller employers for whom the pensions market operated inefficiently.
2. NEST has a public service obligation to admit any employer who wishes to use it to meet their automatic enrolment duties and any worker automatically enrolled by their employer. To ensure NEST remained focused on its target market and to provide stability during the roll out of automatic enrolment, it has a number of policy constraints, including: an annual contribution limit (£4,600 for 2014/15) and restrictions on transfers into and out of the scheme. The Pensions Act 2008 provides for an independent review of these two constraints in 2017 prior to the end of automatic enrolment implementation.
3. NEST receives State aid approved by the European Commission as a consequence of its public service obligation. The annual contribution limit and restrictions on transfers were cited in the approved case for State aid as underpinning how the Government sought to minimise any distortion in the market.
4. Following concerns raised by the Work and Pensions Select Committee, DWP undertook a Call for Evidence<sup>1</sup>. This sought to assess whether there was evidence that the annual contribution limit and the transfer restrictions were preventing NEST, during the roll out of automatic enrolment, from serving the low to moderate earners and smaller employers it was designed for.
5. In July 2013, the Government published its response. This Command Paper<sup>2</sup> set out the evidence gathered and confirmed the Government's position that the annual contribution limit and restrictions on transfers should remain in place until April 2017. It also indicated that the restrictions on individual transfers should be removed to coincide with the introduction of automatic transfers if this was earlier than April 2017.

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<sup>1</sup> Supporting automatic enrolment: A call for evidence on the impact of the annual contribution limit and the restrictions on transfers on the National Employment Savings Trust  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/220474/nest-automatic-enrolment-call-for-evidence.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/220474/nest-automatic-enrolment-call-for-evidence.pdf)

<sup>2</sup> Supporting automatic enrolment: The Government response to the call for evidence on the impact of the annual contribution limit and the transfer restrictions on NEST, Cm 8668  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/211063/nest-automatic-enrolment-call-for-evidence-response.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/211063/nest-automatic-enrolment-call-for-evidence-response.pdf)

6. Although the evidence showed that these constraints were not preventing NEST from serving its target market, it did indicate there was a perception that they might. The Government therefore signalled in the 2013 Command Paper that, subject to approval from the European Commission that the policy was compatible with the State aid measure afforded to NEST, it intended to bring forward legislation at the earliest opportunity to remove these constraints from April 2017. This would enable NEST to continue to focus on supporting the successful implementation of automatic enrolment. At the same time it would send a clear message to smaller employers that these constraints will not have any bearing on them in the longer term, helping them to make an informed decision about which automatic enrolment pension scheme is suitable for them.
7. The European Commission has published confirmation that removal from 1 April 2017 of NEST's annual contribution limit and the restrictions on bulk transfers was compatible with the State aid measure<sup>3</sup>. The European Commission also confirmed that, subject to UK Parliamentary approval, the restrictions on individual transfers could be lifted as early as 1 October 2015. In line with the policy intention set out in the July 2013 Command Paper, this will allow the Government to bring forward the timing of removal of the individual transfer restrictions for NEST alongside regulations to introduce automatic transfers without further reference to the Commission, subject to the relevant Parliamentary procedures.
8. This document is therefore a consultation on draft SIs to remove the annual contribution limit and transfer restrictions on NEST from 1 April 2017. The draft Regulations are subject to the negative resolution and do not need Parliamentary approval before being made. The draft Amendment Order is subject to the affirmative Parliamentary procedure, so it must be approved by Parliament before being made.

## The draft Statutory Instruments

9. This consultation seeks views on the draft SIs contained at Annexes A and B.
10. The draft Amendment Order amends the National Employment Savings Trust Order 2010 (SI 2010/917) (the "Order") as amended by the NEST (Amendment) Order 2013 (SI 2013/597).
11. The draft Amendment Order:
  - (i) amends Article 19 of the Order to give discretion to the Trustee to admit as a member of NEST a person where (a) the conditions relating to bulk transfers in the Preservation of Benefit Regulations<sup>4</sup> are met; and (b) the

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<sup>3</sup> [http://ec.europa.eu/competition/state\\_aid/cases/251386/251386\\_1567249\\_105\\_2.pdf](http://ec.europa.eu/competition/state_aid/cases/251386/251386_1567249_105_2.pdf)

<sup>4</sup> The Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 (SI 1991/167); and The Occupational Pension Schemes (Preservation of Benefit) Regulations (Northern Ireland) 1991 (SR (NI) 1991 No 37)

- employer is a participating employer in NEST and is making contributions to NEST on behalf of or in respect of a jobholder (Article 2, Paragraph 5);
- (ii) removes Articles 22 to 26 from the Order (and references to these articles elsewhere in the Order) so that there is no annual contribution limit on contributions made by or on behalf of a scheme member (Article 2, Paragraph 7);
  - (iii) removes Article 30 from the Order which only allows the Trustee to accept transfers in of cash transfer sums, so that the Trustee can accept any transfers into the scheme from a member (Article 2, Paragraph 9);
  - (iv) amends Article 32 of the Order to remove the references to transfers out which only allow the Trustee to transfer a member's pot out where the conditions in the Transfer Values (Disapplication) Regulations 2010 (SI 2010/6)<sup>5</sup> are met. This will allow the Trustee to transfer a member's pot out, including in relation to bulk transfers of accrued rights out of the scheme without the consent of members, in line with the Preservation of Benefit Regulations (Article 2, Paragraph 11);
  - (v) repeals section 70 of the Pensions Act 2008 to remove the requirement to prescribe the maximum amount of contributions that may be made by or on behalf of a scheme member in any tax year (Article 3);
  - (vi) makes other consequential amendments to the Order in light of these changes.

12. The draft Regulations revoke the Transfer Values (Disapplication) Regulations 2010. Revoking those regulations means that a NEST member's right to transfer their pot out of NEST to another pension scheme under Chapter IV of Part IV (and Chapter II of Part IVA) of the Pension Schemes Act 1993 is reinstated (rather than the limited circumstances in which this right currently applies to members of NEST).

13. The draft Amendment Order makes no specific provisions allowing the Trustee to support transfers (either in or out). The current provisions in the Order (and the Transfer Values (Disapplication) Regulations 2010) impose transfer restrictions on NEST. Removing these restrictions gives the Trustee discretion to administer transfers (for individuals or bulk transfers) in the same way as any other trustee of an occupational pension scheme (within the framework of broader pensions legislation).

## Extent

14. The amendments to the Order and the repeal of section 70 of the Pensions Act 2008 are UK wide. The draft Regulations apply to Great Britain only. It is anticipated that Northern Ireland will make corresponding regulations.

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<sup>5</sup> <http://www.legislation.gov.uk/ukxi/2010/6/contents/made>

## **Consultation question**

Do the proposed changes to the NEST Order, together with the draft Transfer Values (Disapplication) (Revocation) Regulations, achieve the policy aim of removing NEST's annual contribution limit and transfer restrictions from 1 April 2017?

# Annex A: The National Employment Savings Trust (Amendment) Order 2015

*Draft Order laid before Parliament under section 143(4) and (5)(c) of the Pensions Act 2008, for approval by resolution of each House of Parliament.*

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## DRAFT STATUTORY INSTRUMENTS

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**2015 No.**

### **PENSIONS**

#### **The National Employment Savings Trust (Amendment) Order 2015**

<i>Made</i>	- - - -	***
<i>Coming into force</i>	- -	<i>1st April 2017</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), 70(4) and 144(2) and (4) of the Pensions Act 2008<sup>(6)</sup>.

In accordance with section 71(4) of that Act, the trustees<sup>(7)</sup> have consulted the members' panel and the employers' panel<sup>(8)</sup>, and in accordance with section 71(2) of that Act, the Secretary of State has obtained the consent of the trustees before making this Order.

In accordance with section 143(4) and (5)(c) 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 2015 and comes into force on 1st April 2017.

#### **Amendment of the National Employment Savings Trust Order 2010**

2.—(1) The National Employment Savings Trust Order 2010<sup>(9)</sup> is amended as follows.

(2) In article 2 (interpretation), after the definition of “the NI Act” insert—

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<sup>(6)</sup> 2008 c. 30.

<sup>(7)</sup> The term “trustees” is defined in section 78 of the Pensions Act 2008.

<sup>(8)</sup> The terms “members' panel” and “employers' panel” are defined in section 78 of the Pensions Act 2008.

<sup>(9)</sup> S.I. 2010/917, amended by S.I. 2013/597.

Consultation – National Employment Savings Trust (Amendment) Order 2015 and Transfer Values (Disapplication) (Revocation) Regulations 2015

““the NI Preservation Regulations” means the Occupational Pension Schemes (Preservation of Benefit) Regulations (Northern Ireland) 1991<sup>(10)</sup>;

“the Preservation Regulations” means the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991<sup>(11)</sup>”.

(3) In article 18 (duty to admit employers), in each place in which it occurs, for “article 19(6)” substitute “article 19(6A)”.

(4) For the heading to article 19 (duty to admit members) substitute “Admittance of members”.

(5) In article 19—

(a) after paragraph (4) insert—

“(4A) Subject to paragraph (6), the Trustee may admit as a member of the Scheme a person if—

(a) the conditions set out—

(i) in relation to Great Britain, in paragraphs (2) and (3) of regulation 12 of the Preservation Regulations<sup>(12)</sup> (transfer of member’s accrued rights without consent); or

(ii) in relation to Northern Ireland, in paragraphs (2) and (3) of regulation 12 of the NI Preservation Regulations<sup>(13)</sup> (transfer of member’s accrued rights without consent),

are satisfied in relation to that person; and

(b) the employer referred to—

(i) in relation to Great Britain, in regulation 12(2)(a) of the Preservation Regulations or in regulation 12(2)(b) of those Regulations as the employer of persons to which the receiving scheme relates; or

(ii) in relation to Northern Ireland, in regulation 12(2)(a) of the NI Preservation Regulations or in regulation 12(2)(b) of those Regulations as the employer of persons to which the receiving scheme relates,

is a participating employer and is making contributions to the Scheme in respect of or on behalf of a jobholder.”; and

(b) for paragraph (6) substitute—

“(6) Where a person has already been admitted as a member of the Scheme under this article, the Trustee must not admit the person afresh but instead must comply with paragraph (6A).

(6A) The duty referred to in paragraph (6) is to make arrangements for any amount received by the Trustee in respect of the member in relation to the new employment or a new instance described in paragraph (4) or (4A) to be applied to the member’s pension account.”.

(6) In article 21 (members’ accounts)—

(a) in paragraph (2) omit “articles 22 to 26 and”; and

(b) in paragraph (7) omit “and to articles 24 and 26”.

(7) Omit articles 22 to 26.

(8) In article 28(2)(b) (power to invest the Scheme’s assets), for “articles 30 and 31” substitute “article 31”.

(9) Omit article 30 (acceptance by trustee of cash transfer sums).

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<sup>(10)</sup> S.R. (NI) 1991 No 37.

<sup>(11)</sup> S.I. 1991/167.

<sup>(12)</sup> Regulation 12(2) was substituted by S.I. 1992/1531, regulation 35, and amended by S.I. 1996/2131, regulation 2(7)(a) and S.I. 2013/459, regulation 2(4). Regulation 12(3) was substituted by S.I. 2011/672, regulation 3(2)(a).

<sup>(13)</sup> Regulation 12(2) was substituted by S.R. (NI) 1992 No 304, regulation 35, and amended by S.R. (NI) 1996 No 620, regulation 2(7)(a) and S.R. (NI) 2013 No 72, regulation 2(4). Regulation 12(3) was substituted by S.R. (NI) 2011 No 89, regulation 3(2)(a).

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(10) For the heading to article 32 (benefits) substitute “Payment of benefits by the Trustee”.

(11) In article 32—

(a) for paragraph (2)(a) substitute—

“(a) where a member is alive, 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;” and

(b) omit paragraph (3).

**Repeal of section 70 of the Pensions Act 2008**

3. Section 70 of the Pensions Act 2008 (contribution limits) is repealed.

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”) and the Pensions Act 2008 (c. 30) (“the Act”).

Section 67(1) of the Act and article 3 of the Order established a pension scheme known as the National Employment Savings Trust (“the Scheme”). The National Employment Savings Trust Corporation established under section 75 of the Act was appointed as the trustee of the Scheme (“the Trustee”) under article 4 of the Order.

Paragraph (5) of article 2 amends article 19 of the Order so as to provide that the Trustee may admit a person as a member of the Scheme, unless the person has already been admitted as a member, if certain conditions are satisfied. These conditions are that—

- the conditions set out in regulations 12(2) and (3) of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 (S.I. 1991/167) (“the Regulations”) or of the Occupational Pension Schemes (Preservation of Benefit) Regulations (Northern Ireland) 1991 (S.R. (NI) 1991 No 37) (“the NI Regulations”), which relate to transfers of a member’s accrued rights without consent, are satisfied in relation to that person; and
- the employer referred to in regulation 12(2)(a), or the employer which uses the receiving scheme referred to in regulation 12(2)(b), of the Regulations or of the NI Regulations is a participating employer in the Scheme and is currently making contributions to the Scheme on behalf of or in respect of a jobholder.

Paragraph (7) of article 2 removes articles 22 to 26 from the Order so that there is no annual contribution limit for contributions made in each tax year by, or on behalf or in respect of, a member of the Scheme.

Paragraph (9) of article 2 removes article 30 from the Order, which limited the Trustee to accepting transfers in which were cash transfer sums.

Paragraph (11) of article 2 amends article 32 of the Order so as to lift the restrictions on transfers of a member’s pension account to another pension scheme. The restrictions limited such transfers to situations where the conditions in regulation 2(2) or (3) of the Transfer Values (Disapplication) Regulations 2010 (S.I. 2010/6) or, in Northern Ireland, of the Transfer Values (Disapplication) Regulations (Northern Ireland) 2010 (S.R. (NI) 2010 No 121) were met.

Paragraphs (2), (3), (4), (6), (8) and (10) of article 2 make consequential amendments to the Order.

Article 3 repeals section 70 of the Act to remove the requirement to prescribe the maximum amount of contributions that may be made by or in respect of a member in any tax year.

Consultation – National Employment Savings Trust (Amendment) Order 2015 and Transfer Values (Disapplication) (Revocation) Regulations 2015

An assessment of the impact of this Order on private sector and civil society organisations has been made. A copy of this assessment is available 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 Gov.UK website: [\*\*\*].

## Annex B: The Transfer Values (Disapplication) (Revocation) Regulations 2015

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STATUTORY INSTRUMENTS

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2015 No.

### PENSIONS

#### The Transfer Values (Disapplication) (Revocation) Regulations 2015

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- - -	1st April 2017

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 93(1B)(aa), 101F(6A), 181(1) and 182(2) of the Pension Schemes Act 1993<sup>(14)</sup>.

In accordance with section 185(1) of the Pension Schemes Act 1993<sup>(15)</sup>, the Secretary of State has consulted such persons as the Secretary of State considers appropriate.

#### Citation and commencement

1. These Regulations may be cited as the Transfer Values (Disapplication) (Revocation) Regulations 2015 and come into force on 1st April 2017.

#### Revocation of the Transfer Values (Disapplication) Regulations 2010

2. The Transfer Values (Disapplication) Regulations 2010<sup>(16)</sup> are revoked.

Signed by authority of the Secretary of State for Work and Pensions.

*Name*

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<sup>(14)</sup> 1993 c. 48. Section 93(1B) was inserted by the Pensions Act 1995 (c. 26), section 152(3). Section 93(1B)(aa) was inserted by the Pensions Act 2008 (c. 30), section 134(2). Section 101F was inserted by the Welfare Reform and Pensions Act 1999 (c. 30), section 37. Section 101F(6A) was inserted by the Pensions Act 2008, section 134(3). Section 181(1) is cited because of the meaning it gives to “prescribe” and “regulations”.

<sup>(15)</sup> Section 185(1) was amended by paragraph 46 of Schedule 3 and paragraph 80(a) of Schedule 5 to the Pensions Act 1995 (c. 26).

<sup>(16)</sup> S.I. 2010/6.

Date

Minister of State,  
Department for Work and Pensions

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations revoke the Transfer Values (Disapplication) Regulations 2010 (S.I. 2010/6) so as to provide that Chapter IV of Part IV and Chapter II of Part IVA of the Pension Schemes Act 1993 (c.48), which entitle members of occupational or personal pension schemes to acquire a right to a cash equivalent of any benefits which have accrued to or in respect of them, do apply to the pension scheme established by the Secretary of State under section 67(1) of the Pensions Act 2008 (c.30).

An assessment of the impact of these Regulations on private sector and civil society organisations has been made. A copy of this assessment is available 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 Gov.UK website: [\*\*\*].