EXPLANATORY MEMORANDUM TO

THE NATIONAL EMPLOYMENT SAVINGS TRUST (AMENDMENT) ORDER 2015

2015 No. [XXXX]

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

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument amends the National Employment Savings Trust Order 2010[1] (as amended by the National Employment Savings Trust (Amendment) Order 2013[2]) and repeals section 70[3] of the Pensions Act 2008 ("the 2008 Act"). Its purpose is to remove the annual contribution limit and the transfer restrictions imposed on the National Employment Savings Trust ("NEST") pension scheme from 1 April 2017.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The National Employment Savings Trust (Amendment) Order 2015 ("the draft Order") is subject to the affirmative procedure and is directly related to a further instrument - The Transfer Values (Disapplication) (Revocation) Regulations 2015 ("the 2015 Regulations"). This instrument is available as a working draft and may be subject to further revision (see Annex A). The 2015 regulations will revoke the Transfer Values (Disapplication) Regulations 2010[4] ("the 2010 Regulations") and will reinstate a member's statutory right to transfer their pension funds out of NEST to another pension scheme (rather than the limited circumstances in which this right applies at the moment to members of NEST). The 2015 Regulations are subject to the negative resolution procedure and will be made and laid before Parliament in early 2015 if the draft Order is approved by Parliament.

4. Legislative Context

4.1 The 2008 Act, at section 67, imposed 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 ("the NEST Order") established the scheme, and provides that the National Employment Savings Trust Corporation is the trustee of the scheme ("the Trustee"). Section 70 of the 2008 Act provides that the NEST Order must prescribe the maximum amount of contributions that may be made by or in respect of a member in any tax year. Section 70 also provides that the Secretary of State may repeal section 70 by order.

4.2 The NEST Order sets out the broad framework for the scheme, including:

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[1] http://www.legislation.gov.uk/uksi/2010/917/contents/made
[2] http://www.legislation.gov.uk/ukdsi/2013/9780111533215/contents
[3] http://www.legislation.gov.uk/ukpga/2008/30/section/70
[4] http://www.legislation.gov.uk/uksi/2010/6/contents/made

- 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.

4.3 Under the 2008 Act, the Trustee is responsible for maintaining the scheme rules. The scheme rules are made under the 2008 Act but are not subject to Parliamentary procedure. The rules set out the lower level of detail about how the scheme will operate in practice. Nothing in the rules can contradict the NEST Order. A number of amendments in this instrument will allow the Trustee – in accordance with the requirements under section 72 of the 2008 Act - to amend the scheme rules as a consequence of the proposals.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Minister of State for Pensions, the Rt. Hon Steve Webb MP, has made the following statement regarding Human Rights:

"In my view the provisions of the National Employment Savings Trust (Amendment) Order 2015 are compatible with the Convention rights."

7. Policy background

- What is being done and why?

7.1 NEST was established under section 67 of the 2008 Act in 2010 to support automatic enrolment and to address a market failure for low to moderate earners and smaller employers. NEST was designed to be a quality, low-cost pension scheme and has a Public Service Obligation (PSO) to ensure that all employers have access to a scheme with which to meet their automatic enrolment duties regardless of the size of their workforce or profitability.

7.2 To focus NEST on its target market of low to moderate earners and smaller employers and to provide stability during the roll out of automatic enrolment, a number of constraints are currently in place, including: an annual contribution limit and restrictions on transfers into and out of the scheme. These constraints are set out in the legislation that applies to NEST – the 2008 Act (s.70) and the NEST Order (a.) and the 2010 Regulations.

7.3 The annual contribution limit is up-rated annually by earnings and for 2014/15 is £4,600. Removing the annual contribution limit will mean that contributions to a NEST member's account will no longer be limited by specific legislation only applicable to NEST. The transfer restrictions prevent individuals who are members of NEST initiating a transfer into or out of the scheme (except in very limited circumstances) to consolidate their pension pots. They also prevent employers who are using NEST from transferring members' rights in the employer's existing scheme to NEST or alternatively transferring rights out of NEST without the members' consent. Removing these transfer restrictions will establish a NEST member's right to transfer their pension funds out of NEST to another pension scheme or to consolidate their pension savings into NEST. It will also allow employers to initiate the transfer – without members' consent – of accrued rights into or out of NEST in line with The Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 and The Occupational Pension Schemes

(Preservation of Benefit) Regulations (Northern Ireland) 1991. This includes the transfer of deferred members accrued rights.

7.4 The annual contribution limit and transfer restrictions were cited as important measures by the European Commission in their approval of State aid for NEST. DWP has sought and obtained confirmation from the Commission that removing these constraints from 1 April 2017 remains consistent with State aid rules and has confirmed this is compatible with the State aid provided to NEST[5].

7.5 Section 74 of the 2008 Act provides for an independent review of these two constraints in 2017 prior to the end of automatic enrolment implementation. The original intention was to review these two constraints in 2017 when implementation of automatic enrolment was scheduled to complete. However, the timetable for completing the roll out of automatic enrolment has been extended and won't now complete until October 2018. Furthermore, as automatic enrolment started to roll out, concerns were raised that these two constraints were acting as a barrier to smaller employers and those employers with workers in NEST's target market accessing NEST.

7.6 Legislating in 2015 to confirm that the annual contribution limit and transfer restrictions will be removed in 2017 will, subject to Parliamentary approval, provide clarity and will allow NEST to communicate to employers – in particular small and micro employers who are in NEST's target market and begin staging in June 2015 – that these two constraints are temporary. It will enable NEST to focus on supporting automatic enrolment implementation but at the same time convey a clear message to smaller employers that these two constraints do not prevent them using NEST to meet their automatic enrolment duties. This will help smaller employers to make an informed decision when selecting a suitable automatic enrolment pension scheme and in the longer term enable employers and individuals using NEST to choose to contribute more than the minimum and consolidate their pension savings.

- Consolidation

7.7 Informal consolidated text of instruments is available to the public free of charge via 'The Law Relating to Social Security' (Blue Volumes) on the Department for Work and Pensions website at http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/ or the National Archive website legislation.gov.uk. An explanation as to which instruments are maintained on each site is available here.

8. Consultation outcome

8.1 DWP undertook a Call for Evidence[6] in 2012/13 to assess whether these two constraints were preventing NEST from delivering its PSO for its target market during the implementation of automatic enrolment. A wide range of views, evidence and information was gathered. This included information gathered through: over 50 formal written responses from a diverse range of organisations and individuals; detailed discussions at forums run by the Automatic Enrolment Programme with employers, trade bodies and pension intermediaries; and in-depth follow-up discussions with a range of stakeholders.

[5] 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

[6] https://www.gov.uk/government/consultations/supporting-automatic-enrolment-call-for-evidence-on-nest-constraints

8.2 In July 2013, the Government published its response, '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[7]'. This Command Paper set out the evidence which showed that the annual contribution limit and restrictions on transfers should not be a barrier for low to moderate earners and smaller employers accessing NEST. However, the evidence also showed that employers and other stakeholders held a perception that the annual contribution limit and transfer restrictions made NEST complex, and that this perception could complicate the process of choosing a pension scheme or make it difficult or impossible for smaller employers to use NEST. This is because smaller employers with 'higher' earners or an existing scheme believed that they could not use NEST as a single scheme solution for automatic enrolment or would face extra administrative costs in having to run two pension schemes.

8.3 The Government signalled in the 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 at the earliest opportunity to bring forward legislation to remove these constraints from April 2017. The European Commission has published its decision confirming that removal of NEST's annual contribution limit and the transfer restrictions from 1 April 2017 is compatible with the State aid measure.

8.4 The Department undertook a consultation on the draft legislation which would remove these two constraints between 9 October 2014 and 29 October 2014. The consultation asked for views on whether the proposed changes to the NEST Order and the 2010 regulations achieved the policy aim of removing NEST's annual contribution limit and the transfer restrictions from 1 April 2017. In total eight responses were received. There were no specific comments on the draft statutory instruments and no changes have been made to the draft Order as a result of the responses to the consultation. The Government's response to the consultation[8] is published on Gov.uk.

8.5 In accordance with the requirements of section 71 of the 2008 Act, we have received the formal consent of the Trustee to make the draft 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. 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. The 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 or civil society organisations is assessed to be zero cost.

10.2 An assessment of the impact of the draft Order and the 2015 Regulations on the private sector and civil society organisations has been made. A copy of the impact assessment is available alongside the instrument on www.legislation.gov.uk.

[7] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/211063/nest-automatic-enrolment-call-for-evidence-response.pdf
[8] https://www.gov.uk/government/publications?publication_filter_option=consultations

11. Regulating small business

11.1 It is expected that the amendments to the NEST Order will benefit NEST, employers (regardless of their size) and members using NEST.

11.2 The consultation on the draft Order did not highlight any specific issues about the effect of these changes on small businesses.

12. Monitoring & review

12.1 The Trustee is obliged under the 2008 Act 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 scheme, which is available on the internet[9].

12.2 The 2008 Act provides that the Secretary of State must appoint a person to review the NEST pension scheme on or after 1 January 2017; or the end of five years after the first contributions were paid into the scheme. The person appointed must prepare a report for the Secretary of State, and that report must be laid before Parliament.

13. Contact

Nicola Lloyd at the Department for Work and Pensions Tel: 020 7449 7276 or email: Nicola.Lloyd@dwp.gsi.gov.uk can answer any queries regarding the instrument.

[9] www.**nest**pensions.org.uk/schemeweb/**Nest**Web/includes/public/docs/...