
STATUTORY INSTRUMENTS

2010 No. 917

The National Employment Savings Trust Order 2010

PART 4

Scheme membership and employer participation

Duty to admit employers

18.—(1) Subject to paragraph (2), the Trustee must admit to participation in the Scheme, on condition that the employer agrees to employer terms and conditions—

- (a) an employer of a jobholder that wishes to comply with its duty in relation to the jobholder under—
 - (i) in relation to Great Britain, section 3(2), 5(2) or 7(3) of the Act; or
 - (ii) in relation to Northern Ireland, section 3(2), 5(2) or 7(3) of the NI Act,by arranging for the jobholder to become a member of the Scheme or by making arrangements in relation to the jobholder as referred to in [^{F1}article 19(6A)];
- (b) an employer of a jobholder that wishes to arrange for the jobholder to become a member of the Scheme or to make arrangements in relation to the jobholder as referred to in [^{F1}article 19(6A)], for the purposes of—
 - (i) in relation to Great Britain, section 2(3) of the Act (in connection with the duty under section 2(1) of the Act); or
 - (ii) in relation to Northern Ireland, section 2(3) of the NI Act (in connection with the duty under section 2(1) of the NI Act); and
- (c) an employer of a worker⁽¹⁾ that wishes to comply with its duty in relation to the worker under—
 - (i) in relation to Great Britain, section 9(2) of the Act; or
 - (ii) in relation to Northern Ireland, section 9(2) of the NI Act,by arranging for the worker to become a member of the Scheme or by making arrangements in relation to the worker as referred to in [^{F1}article 19(6A)].

(2) Where paragraph (1)(a), (b) or (c) applies and the relevant duty arises by virtue of the employer satisfying the conditions in [^{F2}regulation 3(3) and (4)] of the Employers' Duties (Implementation) Regulations 2010⁽²⁾ (or, in Northern Ireland, the conditions in [^{F2}regulation 3(3) and (4)] of the Employers' Duties (Implementation) Regulations (Northern Ireland) 2010⁽³⁾), then paragraph (1) applies as if—

- (a) for “must admit” there were substituted “may admit”; and
- (b) “on condition that the employer agrees to employer terms and conditions” were omitted.

⁽¹⁾ “Worker” is defined in section 88 of the Act and section 70 of the NI Act.

⁽²⁾ S.I. 2010/4.

⁽³⁾ S.R. 2010 No. 123.

(3) Where—

- (a) in relation to Great Britain, sections 2 to 9 of the Act; or
- (b) in relation to Northern Ireland, sections 2 to 9 of the NI Act,

do not yet apply in relation to an employer, the Trustee may admit the employer to participation in the Scheme in the circumstances specified in paragraph (4).

[^{F3}(3A) Where an employer wishes to arrange for a worker to become a member of the Scheme other than in accordance with—

- (a) in relation to Great Britain, sections 2 to 9 of the Act; or
- (b) in relation to Northern Ireland, sections 2 to 9 of the NI Act,

the Trustee may admit the employer to participation in the Scheme in the circumstances specified in paragraph (4).]

(4) The specified circumstances are where—

- (a) the employer is an employer of a worker who—
 - (i) works or ordinarily works in the United Kingdom under the worker’s contract; and
 - (ii) is aged at least 16 and under 75; and
- (b) the employer wishes to arrange for the worker to become a member of the Scheme or wishes to make arrangements in relation to the worker as referred to in [^{F1}article 19(6A)].

(5) Where an employer is admitted to participation in the Scheme under this article, it is admitted with respect to any jobholder or worker of the employer who may at any time be admitted as a member of the Scheme, or with respect to whom arrangements may at any time be made as referred to in [^{F1}article 19(6A)].

[^{F4}(5A) A participating employer may, by giving notice to the Trustee, terminate its participation in the Scheme in accordance with rules.]

(6) In this article, “employer terms and conditions” means terms and conditions, provided for by rules, for admittance of employers to participation in the Scheme.

Textual Amendments

- F1** Words in [art. 18](#) substituted (1.4.2017) by [The National Employment Savings Trust \(Amendment\) Order 2015 \(S.I. 2015/178\)](#), arts. 1, **2(3)**
- F2** Words in [art. 18\(2\)](#) substituted (1.4.2013) by [The National Employment Savings Trust \(Amendment\) Order 2013 \(S.I. 2013/597\)](#), arts. 1, **2(5)(a)**
- F3** [Art. 18\(3A\)](#) inserted (6.4.2018) by [The National Employment Savings Trust \(Amendment\) Order 2018 \(S.I. 2018/368\)](#), arts. 1, **2(3)**
- F4** [Art. 18\(5A\)](#) inserted (1.4.2013) by [The National Employment Savings Trust \(Amendment\) Order 2013 \(S.I. 2013/597\)](#), arts. 1, **2(5)(b)**

Commencement Information

- I1** [Art. 18](#) in force at 5.7.2010, see [art. 1\(3\)](#)

[^{F5}Admittance of members]

19.—(1) Subject to paragraph (6), the Trustee must admit as a member of the Scheme—

- (a) a jobholder employed by a participating employer, where the employer wishes to comply with its duty in relation to the jobholder under—
 - (i) in relation to Great Britain, section 3(2), 5(2) or 7(3) of the Act; or

- (ii) in relation to Northern Ireland, section 3(2), 5(2) or 7(3) of the NI Act, by arranging for the jobholder to become a member of the Scheme;
 - (b) a jobholder employed by a participating employer, where the employer wishes to make arrangements for the jobholder to become a member of the Scheme for the purposes of—
 - (i) in relation to Great Britain, section 2(3) of the Act (in connection with the duty in section 2(1) of the Act); or
 - (ii) in relation to Northern Ireland, section 2(3) of the NI Act (in connection with the duty in section 2(1) of the NI Act); and
 - (c) a worker employed by a participating employer, where the employer wishes to comply with its duty in relation to the worker under—
 - (i) in relation to Great Britain, section 9(2) of the Act;
 - (ii) in relation to Northern Ireland, section 9(2) of the NI Act,by arranging for the worker to become a member of the Scheme.
- (2) Subject to paragraph (6), where—
- (a) in relation to Great Britain, sections 2 to 9 of the Act; or
 - (b) in relation to Northern Ireland, sections 2 to 9 of the NI Act,
- do not yet apply in relation to a participating employer, the Trustee may admit as a member of the Scheme a worker employed by the employer in the circumstances specified in paragraph (3).
- [^{F6}(2A) Subject to paragraph (6), where an employer wishes to arrange for a worker to become a member of the Scheme other than in accordance with—
- (a) in relation to Great Britain, sections 2 to 9 of the Act; or
 - (b) in relation to Northern Ireland, sections 2 to 9 of the NI Act,
- the Trustee may admit as a member of the Scheme a worker employed by the employer in the circumstances specified in paragraph (3).]
- (3) The specified circumstances are where—
- (a) the worker is a worker who—
 - (i) is working or ordinarily works in the United Kingdom under the worker’s contract; and
 - (ii) is aged at least 16 and under 75; and
 - (b) the employer and the worker wish the worker to become a member of the Scheme.
- [^{F7}(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).]

[^{F8}(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 (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 (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) of the Preservation Regulations as the employer of persons to which the receiving scheme relates; or
 - (ii) in relation to Northern Ireland, in regulation 12(2) of the NI Preservation 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.]

[^{F9}(4B) Subject to paragraph (6), the Trustee may admit as a member of the Scheme a person if—

- (a) in relation to Great Britain, a scheme provides for a transfer of accrued rights in accordance with section 73(2)(a) of the Pension Schemes Act 1993; or
- (b) in relation to Northern Ireland, a scheme provides for a transfer of accrued rights in accordance with section 69(2)(a) of the Pension Schemes (Northern Ireland) Act 1993,

in relation to that person, and 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.]

(5) In this article—

- (a) a person is self-employed if the person is in employment but is not employed [^{F10}in relation to that employment] by someone else;
- (b) in sub-paragraph (a), “employment” includes any trade, business, profession, office or vocation;
- (c) a “single person director” means a person who is—
 - (i) a director of a company; and
 - (ii) employed by the company under a contract of employment,
 where the company does not employ any other persons under a contract of employment;
- (d) in sub-paragraph (c), a company includes any body corporate.

[^{F11}(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) Where paragraph (6) applies, the Trustee must make arrangements for any amount received by the Trustee from, or in respect of or on behalf 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.]

^{F12}(7)

Textual Amendments

- F5** Art. 19 heading substituted (1.4.2017) by [The National Employment Savings Trust \(Amendment\) Order 2015 \(S.I. 2015/178\)](#), arts. 1, **2(4)**
- F6** Art. 19(2A) inserted (6.4.2018) by [The National Employment Savings Trust \(Amendment\) Order 2018 \(S.I. 2018/368\)](#), arts. 1, **2(4)(a)**
- F7** Art. 19(4) substituted (1.4.2013) by [The National Employment Savings Trust \(Amendment\) Order 2013 \(S.I. 2013/597\)](#), arts. 1, **2(6)(a)**
- F8** Art. 19(4A) inserted (1.4.2017) by [The National Employment Savings Trust \(Amendment\) Order 2015 \(S.I. 2015/178\)](#), arts. 1, **2(5)(a)**

- F9** Art. 19(4B) inserted (6.4.2018) by The National Employment Savings Trust (Amendment) Order 2018 (S.I. 2018/368), arts. 1, **2(4)(b)**
- F10** Words in art. 19(5)(a) inserted (1.4.2013) by The National Employment Savings Trust (Amendment) Order 2013 (S.I. 2013/597), arts. 1, **2(6)(b)**
- F11** Art. 19(6)(6A) substituted for art. 19(6) (1.4.2017) by The National Employment Savings Trust (Amendment) Order 2015 (S.I. 2015/178), arts. 1, **2(5)(b)**
- F12** Art. 19(7) omitted (1.4.2013) by virtue of The National Employment Savings Trust (Amendment) Order 2013 (S.I. 2013/597), arts. 1, **2(6)(c)**

Commencement Information

- I2** Art. 19 in force at 5.7.2010, see **art. 1(3)**

Transitory provision

20. Article 19(4) shall apply as if—

- ^{F13}(a)
- (b) for “the Trustee must” there were substituted “the Trustee may”.

Textual Amendments

- F13** Art. 20(a) and word omitted (1.4.2013) by virtue of The National Employment Savings Trust (Amendment) Order 2013 (S.I. 2013/597), arts. 1, **2(7)**

Commencement Information

- I3** Art. 20 in force at 5.7.2010, see **art. 1(2)**

Members’ accounts

21.—(1) When a person is admitted as a member of the Scheme, the Trustee must allocate a member’s pension account to that person.

(2) Subject to ^{F14}... [^{F15}paragraphs (2A) and (3)], the Trustee must accept all contributions made by—

- (a) a member of the Scheme;
- (b) a participating employer of a member of the Scheme, on behalf or in respect of the member, where the member is working or ordinarily works in the United Kingdom; or
- [^{F16}(c) any other person in respect of the member.]

[^{F17}(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
- (b) a qualifying self-employed person.]

(3) The Trustee may determine—

- (a) the form in which or the method by which the contributions referred to in paragraph (2) are to be made; or
- (b) subject to paragraphs (4) and (5), that, in such cases as are determined by the Trustee, the Trustee may on any occasion refuse to accept a contribution from any of the persons specified in paragraph (2) where the contribution is below such amount as the Trustee determines.

(4) The Trustee must ensure that any determination that it makes under paragraph (3)(b) does not prevent the Scheme from satisfying the quality requirement ^{F18} ...

^{F18}(a)

^{F19}(b)

in relation to a jobholder.

(5) Where the Trustee makes a determination under paragraph (3)(b), it must have regard to the cost of administering contributions.

^{F20}(6) Any amount received by the Trustee from, or in respect of or on behalf of, a member in relation to—

- (a) the member’s employment, or
- (b) an instance described in article 19(4), (4A) or (4B),

must be applied to the relevant member’s pension account.]

(7) Subject to paragraph (8) ^{F21} ..., in the cases specified in paragraph (9) the Trustee may provide a refund of contributions from a member’s pension account—

- ^{F22}(a) to the member, where the contributions were made by the member;]
- (b) to a participating employer of the member, where the contributions were made by the employer [^{F23}on behalf of or in respect of the member; or] .
- ^{F24}(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.]

^{F25}(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) The specified cases are where—

- (a) the member has given notice under—
 - (i) in Great Britain, section 8 of the Act(4); or
 - (ii) in Northern Ireland, section 8 of the NI Act(5);
- (b) the Trustee determines that the contributions have been paid in error; or
- (c) the Trustee otherwise determines that a refund is appropriate in all the circumstances.

Textual Amendments

- F14** Words in art. 21(2) omitted (1.4.2017) by virtue of [The National Employment Savings Trust \(Amendment\) Order 2015 \(S.I. 2015/178\)](#), arts. 1, **2(6)(a)**
- F15** Words in art. 21(2) substituted (1.4.2013) by [The National Employment Savings Trust \(Amendment\) Order 2013 \(S.I. 2013/597\)](#), arts. 1, **2(8)(a)(i)**

(4) Regulations made under section 8 of the Act are regulations 9 to 11 of [S.I. 2010/772](#).
 (5) Regulations made under section 8 of the NI Act are regulations 9 to 11 of [S.R. 2010 No. 122](#).

- F16** Art. 21(2)(c) substituted (1.4.2013) by The National Employment Savings Trust (Amendment) Order 2013 (S.I. 2013/597), arts. 1, **2(8)(a)(ii)**
- F17** Art. 21(2A) inserted (1.4.2013) by The National Employment Savings Trust (Amendment) Order 2013 (S.I. 2013/597), arts. 1, **2(8)(b)**
- F18** Art. 21(4)(a) and word omitted (1.4.2013) by The National Employment Savings Trust (Amendment) Order 2013 (S.I. 2013/597), arts. 1, **2(8)(c)**
- F19** Art. 21(4)(b) omitted (1.4.2013) by The National Employment Savings Trust (Amendment) Order 2013 (S.I. 2013/597), arts. 1, **2(8)(c)**
- F20** Art. 21(6) substituted (6.4.2018) by The National Employment Savings Trust (Amendment) Order 2018 (S.I. 2018/368), arts. 1, **2(5)**
- F21** Words in art. 21(7) omitted (1.4.2017) by virtue of The National Employment Savings Trust (Amendment) Order 2015 (S.I. 2015/178), arts. 1, **2(6)(b)**
- F22** Art. 21(7)(a) substituted (1.4.2013) by The National Employment Savings Trust (Amendment) Order 2013 (S.I. 2013/597), arts. 1, **2(8)(d)**
- F23** Words in art. 21(7)(b) substituted (1.4.2013) by The National Employment Savings Trust (Amendment) Order 2013 (S.I. 2013/597), arts. 1, **2(8)(e)**
- F24** Art. 21(7)(c) inserted (1.4.2013) by The National Employment Savings Trust (Amendment) Order 2013 (S.I. 2013/597), arts. 1, **2(8)(f)**
- F25** Art. 21(8) substituted (1.4.2013) by The National Employment Savings Trust (Amendment) Order 2013 (S.I. 2013/597), arts. 1, **2(8)(g)**

Commencement Information

- I4** Art. 21 in force at 5.7.2010, see **art. 1(3)**

[^{F26}Removal of members

- 21A.** The Trustee may remove a member from the Scheme if—
- the amount in the member's pension account is zero;
 - the period for which sub-paragraph (a) applies has been at least twelve months, starting with the date on which the member was admitted to the Scheme;
 - once the period in sub-paragraph (b) has expired, the Trustee has notified the member in writing of the proposal to close the member's pension account; and
 - the member has not complied with the requirements in the notice given under sub-paragraph (c), as provided for in the rules.]

Textual Amendments

- F26** Art. 21A inserted (6.4.2018) by The National Employment Savings Trust (Amendment) Order 2018 (S.I. 2018/368), arts. 1, **2(6)**

Changes to legislation:

There are currently no known outstanding effects for the The National Employment Savings Trust Order 2010, PART 4.