

**EXPLANATORY MEMORANDUM TO**  
**THE OCCUPATIONAL AND PERSONAL PENSION SCHEMES (TRANSFER VALUES)**  
**(AMENDMENT AND REVOCATION) REGULATIONS 2015**

**2015 No. 498**

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

2. **Purpose of the instrument**

2.1 This instrument makes a number of changes in connection with two matters.

- **New pensions flexibilities:** It makes consequential amendments to three sets of regulations to support the commencement of the Pension Schemes Act 2015 (c.8)<sup>1</sup> (“the 2015 Act”):
  - The Occupational Pension Schemes (Transfer Values) Regulations 1996 (S.I. 1996/1847) (“the 1996 Regulations”)<sup>2</sup>;
  - The Personal Pension Schemes (Transfer Values) Regulations 1987 (S.I. 1987/1112) (“the 1987 Regulations”)<sup>3</sup>; and
  - The Transfer Values (Disapplication) Regulations 2010 (S.I. 2010/6) (the “2010 Regulations”)<sup>4</sup>.

The 2015 Act gives scheme members greater flexibility to transfer pension rights and creates safeguards to ensure members are appropriately informed and protected before deciding to transfer their benefits.

- **Revocation of the 2010 Regulations:** It revokes the 2010 Regulations to remove the restrictions imposed on members of the National Employment Savings Trust (“NEST”) pension scheme to transfer their pension rights out of NEST from 1 April 2017.

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

3.1 None.

4. **Legislative Context**

**New pensions flexibilities**

4.1 Reforms to private pensions announced in the 2014 Budget give savers greater flexibility as to how they access their pension savings. The Taxation of Pensions Act

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<sup>1</sup> 2015 c.8.

<sup>2</sup> <http://lawvolumes.dwp.gov.uk/docs/a5-9131.pdf>

<sup>3</sup> <http://lawvolumes.dwp.gov.uk/docs/a5-9101.pdf>

<sup>4</sup> <http://www.legislation.gov.uk/ukxi/2010/6/contents/made>

2014 (c.30)<sup>5</sup> (“the 2014 Act”), which received Royal Assent on 17 December 2014, amends, with effect from 6 April 2015, the rules in Part 4 of the Finance Act 2004 (c.12)<sup>6</sup> in relation to taxation of pension payments. Payments in lump sum form are added to the list of authorised payments that can be made by a money purchase arrangement, significantly increasing the flexibility of an individual’s access to pension savings.

4.2 The 2015 Act introduces the concept of ‘flexible benefits’, which covers the pension arrangements to which the new flexibilities will apply and allows pension scheme members with such benefits a statutory right to transfer between schemes up to and beyond their scheme’s normal retirement age. It also gives pension scheme members a statutory right to transfer a category of benefit in circumstances where they are no longer accruing rights in that category. The 2015 Act also introduces a new requirement for scheme members with ‘safeguarded benefits’ (benefits which are not money purchase or cash balance) to take appropriate independent advice before trustees can process a transfer request.

4.3 This instrument makes a number of consequential amendments to ensure that the regulations continue to operate correctly following the coming into force of the 2015 Act. It also makes changes to ensure that the transfer provisions reflect the extension, under that Act, of the right to transfer to members of any age with rights to flexible benefits, and the right to transfer specific categories of benefit.

### **Revocation of the 2010 Regulations**

4.4 The Pensions Act 2008 (c.30) (“the 2008 Act”)<sup>7</sup>, 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 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 (S.I. 2010/917)<sup>8</sup> (“the NEST Order”) established the scheme, and provides that the National Employment Savings Trust Corporation is the trustee of the scheme (“the Trustee”).

4.5 The 2010 Regulations restrict a NEST member’s statutory right under the Pension Schemes Act 1993 (c.48) (“the 1993 Act”)<sup>9</sup> to transfer their pension funds out of NEST except where the scheme member is over normal minimum pension age (currently 55) or is suffering from incapacity. This instrument revokes the 2010 Regulations from 1 April 2017.

4.6 The revocation of the 2010 Regulations is linked to the National Employment Savings Trust (Amendment) Order 2015 (“the 2015 Amendment Order”) (S.I. 2015/178)

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<sup>5</sup> <http://www.legislation.gov.uk/ukpga/2014/30/contents>

<sup>6</sup> <http://www.legislation.gov.uk/ukpga/2004/12/contents>

<sup>7</sup> <http://lawvolumes.dwp.gov.uk/docs/a5-3761.pdf>

<sup>8</sup> <http://www.legislation.gov.uk/uksi/2010/917/made>

<sup>9</sup> <http://lawvolumes.dwp.gov.uk/docs/a5-1251.pdf>

made on 9 February 2015<sup>10</sup>, which removes the annual contribution limit and other transfer restrictions imposed on NEST from 1 April 2017. The explanatory memorandum for the 2015 Amendment Order included a working draft of regulations (the Transfer Values (Disapplication) (Revocation) Regulations 2015) to revoke the 2010 Regulations. The revocation of the 2010 Regulations is now included in this instrument.

## **5. Territorial Extent and Application**

5.1 This instrument applies to Great Britain. Northern Ireland has its own body of pension law and will be making separate parallel provisions.

## **6. European Convention on Human Rights**

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

- What is being done and why

### **New pensions flexibilities**

7.1 The 2015 Act introduces the concept of ‘flexible benefits’ and gives pension scheme members greater flexibility in how and when they access their pension savings. It is anticipated that some pension scheme members will seek to transfer their benefits to a different scheme to take advantage of the flexible arrangements. To ensure that the new flexibilities operate as intended the 2015 Act amends the 1993 Act, to give scheme members who have a statutory right to transfer their pension benefits the ability to specify which category of benefit they would like to transfer, where they have more than one category of benefit in their scheme. It also gives members with flexible benefits a statutory right to transfer up to and beyond their scheme’s normal retirement age.

7.2 The changes delivered by this instrument ensure that the regulations governing the process of transfer continue to operate as intended following the changes made by the 2015 Act. The 1996 Regulations, as amended by this instrument, provide additional detail on the transfer process that schemes must follow where a member wishes to exercise their statutory right to transfer out their accrued benefits. This includes the information that trustees must provide to scheme members, and the process for calculating a member’s cash equivalent transfer value.

7.3 These Regulations remove the existing requirement for a member to have ceased pensionable service before the transfer process takes place. This will ensure that members can exercise their right to transfer a specific category of benefit, whilst continuing to accrue rights to a different category of benefits under the scheme.

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<sup>10</sup> [http://www.legislation.gov.uk/ukxi/2015/178/pdfs/ukxi\\_20150178\\_en.pdf](http://www.legislation.gov.uk/ukxi/2015/178/pdfs/ukxi_20150178_en.pdf)

7.4 The Regulations also ensure that where a member makes an application for a statement of entitlement that they receive a cash equivalent value for each category of benefit that they hold within their scheme, unless they request a cash equivalent value for a particular category of benefit.

7.5 The 2015 Act introduces a requirement for trustees to check that members with safeguarded benefits have taken appropriate independent advice before processing a transfer request. These Regulations, in conjunction with provisions of the 2015 Act, ensure that where trustees are unable to action a transfer request because the member has failed to provide the trustees with proof that they have taken appropriate independent advice, trustees will not be penalised for not completing the member's request within the required timeframe.

#### Technical amendments

7.6 This instrument also makes technical amendments to the 1996 Regulations; the 1987 Regulations; and the 2010 Regulations to ensure that:

- references to legislation reflect the amendments made by the 2015 Act; and
- references in these regulations reflect the extension of the right to transfer benefit categories introduced by the 2015 Act.

7.7 These amendments will ensure that the transfer process continues to operate smoothly after the new pension flexibilities come into force on 6 April 2015. They will also ensure that the 1996 Regulations, as amended by this instrument, work in unison with the Pension Schemes (Appropriate Independent Advice) Regulations 2015.

#### **Revocation of the 2010 Regulations**

7.8 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.

7.9 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 on NEST, including: an annual contribution limit and restrictions on transfers into and out of the scheme. These two constraints are set out in the legislation that applies to NEST – the 2008 Act (s.70), the NEST Order and the 2010 Regulations.

7.10 The 2010 Regulations prevent individuals who are members of NEST initiating a transfer out of the scheme except in limited circumstances (where the scheme member is over the minimum pension age (currently 55) or is suffering from incapacity). Revoking

these regulations means that a NEST member's right to transfer their pot out of NEST to another pension scheme is reinstated (rather than limited to those circumstances).

7.11 Section 74 of the 2008 Act provides for an independent review of the transfer restrictions (and the annual contribution limit) 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 will not now complete until October 2018.

7.12 The transfer restrictions (and the annual contribution limit) were cited by the European Commission in their approval of State aid for NEST<sup>11</sup>. DWP has sought and obtained confirmation from the Commission that removing these constraints from 1 April 2017 remains consistent with State aid rules. The Commission has confirmed that removing these two constraints from 1 April 2017 is compatible with the State aid provided to NEST<sup>12</sup>. Legislating in 2015 to confirm that the transfer restrictions (and the annual contribution limit) will be removed in 2017 will provide clarity and will allow NEST to communicate to employers – in particular small and micro employers who are in NEST's target market and who will be automatically enrolling their workers from June 2015 – that these constraints are temporary. This will help smaller employers to make an informed decision when selecting a suitable automatic enrolment pension scheme.

- Consolidation

7.13 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 <http://www.legislation.gov.uk>. An explanation as to which instruments are maintained on each site is available [here](#).

## **8. Consultation outcome**

### **New pensions flexibilities**

8.1 The amendments made by this instrument were not subject to consultation, because in this case the Secretary of State considered that by reason of urgency consultation was inexpedient. The amendments made in these regulations are necessary to ensure that the changes to primary legislation made by the 2015 Act, which comes into force on 6 April 2015, operate as intended. The changes will extend individual rights to transfer pension benefits, enabling scheme members to take full advantage of the flexibilities.

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<sup>11</sup> [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_N158\\_2009](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_N158_2009)

<sup>12</sup> [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_36410](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_36410)

8.2 However, DWP did establish an Industry Working Group in September 2014 to ensure that the regulatory changes, that were required as a consequence of the changes delivered by the 2015 Act, were informed by stakeholder views and expert knowledge of potential unintended consequences. The Working Group consisted of approximately 20 members, and included arms length bodies, representatives of pension schemes, related associations, and pension lawyers. The Working Group met regularly to discuss the proposed changes to legislation as DWP's thinking on the policy evolved. The Group also commented on a draft version of this instrument.

### **Revocation of the 2010 Regulations**

8.3 DWP undertook a Call for Evidence<sup>13</sup> in 2012/13 to assess whether the transfer restrictions and annual contribution limit 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.

8.4 In July 2013, the Government published its response, *'Supporting automatic enrolment: The Government response to the call for evidence on the impact of the transfer restrictions and the annual contribution limit and on NEST'*<sup>14</sup>. This Command Paper set out the evidence which showed that the restrictions on transfers and the annual contribution limit 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 transfer restrictions and the annual contribution limit made NEST complex, and that this perception could complicate the process of choosing a pension scheme for smaller employers. 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.

8.5 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 transfer restrictions and the annual contribution limit from 1 April 2017 is compatible with the State aid measure.

8.6 The Department undertook a consultation on a draft set of regulations revoking the 2010 Regulations (the Transfer Values (Disapplication) (Revocation) Regulations 2015)

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<sup>13</sup> <https://www.gov.uk/government/consultations/supporting-automatic-enrolment-call-for-evidence-on-nect-constraints>

<sup>14</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/211063/nect-automatic-enrolment-call-for-evidence-response.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/211063/nect-automatic-enrolment-call-for-evidence-response.pdf)

and on the 2015 Amendment Order between 9 October 2014 and 29 October 2014. The consultation asked for views on whether the drafting achieved the policy aim of removing the transfer restrictions from 1 April 2017. In total eight responses were received. There were no specific comments on the drafting of the provisions revoking the 2010 Regulations and no changes have been made to the drafting as a result of the responses to the consultation. The Government's response to the consultation<sup>15</sup> is published on GOV.UK.

## 9. Guidance

### New pensions flexibilities

9.1 An overarching guidance document will be published by the Pensions Regulator to set out the major changes in place from April 2015 and highlight a number of important considerations and relevant existing technical guidance. This will assist defined benefit pension scheme trustees in managing transfer requests, including on guidance for trustees on:

- managing a potential increase in transfer volumes,
- reducing a member's cash equivalent transfer value to reflect the schemes current funding position, and
- seeking approval from the Pensions Regulator to delay making a transfer payment.

9.2 It will be available on the Pensions Regulator website and registered schemes will be directed to the guidance by email.

### Revocation of the 2010 Regulations

9.3 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 includes a power (at article 14) for the Trustee to increase awareness and understanding of the scheme in relation to employers and potential members.

9.4 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 **New pensions flexibilities:** this instrument makes a series of technical amendments to the transfer provisions as a consequence of the changes made by the 2015 Act, to give scheme members greater flexibility in how they transfer their pension rights. While some pension schemes may experience increased demand for member-initiated transfers, this will be as a consequence of the changes made by the 2015 Act, not these

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<sup>15</sup> <https://www.gov.uk/government/consultations/national-employment-savings-trust-removal-of-the-annual-contribution-limit-and-transfer-restrictions>

Regulations. Schemes who experience an increased demand for transfers may incur additional administration costs, but we expect these to be small. These Regulations will also apply to funded public sector pension schemes, but as set out above we expect any additional costs to be small. An impact assessment has not been prepared for the regulations that relate to the new pensions flexibilities.

**10.2 Revocation of the 2010 Regulations:** The impact on business or civil society organisations is assessed to be zero cost. An assessment of the impact of the 2015 Amendment Order and the revocation of the 2010 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](http://www.legislation.gov.uk).

## **11. Regulating small business**

**11.1 New pensions flexibilities:** As small businesses do not usually administer pension schemes the impact therefore on small businesses is expected to be negligible.

**11.2 Revocation of the 2010 Regulations:** It is expected that the removal of the 2010 Regulations will benefit NEST and members using NEST. The consultation did not highlight any specific issues about the effect of these changes on small businesses.

## **12. Monitoring & review**

### **New pensions flexibilities**

**12.1** No formal post-implementation review of these amendments is planned, but DWP monitor all new pensions legislation on an on-going basis by means of representation and feedback from the pensions community and the Pensions Regulator.

**12.2** DWP will monitor practices that may emerge around the transfer of safeguarded benefits to defined contribution schemes after April 2015. The Tax Information & Impact Note published at Budget 2014, and republished at Autumn Statement 2014<sup>16</sup>, commits the Government to continuing to monitor the tax flexibilities policy through tax data, and HMRC publishes significant amounts of data on tax receipts and liabilities annually.

### **Revocation of the 2010 Regulations**

**12.3** 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<sup>17</sup>.

**12.4** 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

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<sup>16</sup> <https://www.gov.uk/government/publications/pension-flexibility-2015#history>

<sup>17</sup> <http://www.nestpensions.org.uk/schemeweb/NestWeb/public/aboutUs/contents/library.html>



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**

13.1 **New pensions flexibilities:** Any queries are to be directed to Rosemary Tolhurst at the Department for Work and Pensions, 1st floor Caxton House, Tothill Street, London SW1H 9NA; Tel: 020 7449 5961; e-mail: [rosemary.tolhurst@dwp.gsi.gov.uk](mailto:rosemary.tolhurst@dwp.gsi.gov.uk).

13.2 **Revocation of the 2010 Regulations:** Any queries are to be directed to Nicola Lloyd at the Department for Work and Pensions, Tel: 020 7449 7276, email: [Nicola.Lloyd@dwp.gsi.gov.uk](mailto:Nicola.Lloyd@dwp.gsi.gov.uk).