Impact Assessment	
Title of measure	National Employment Savings Trust (Amendment) Order 2018
Lead Department/Agency	Department for Work and Pensions
Expected date of implementation	6 April 2018
Origin	Domestic
Date	30 January 2017
Lead Departmental Contact	Craig Mitchell
Departmental Assessment	Negligible

Rationale for intervention and intended effects

The National Employment Savings Trust (NEST) is a pension scheme established under the Pensions Act 2008 to support Automatic Enrolment (AE) which addresses a market failure for low to moderate earners and smaller employers. NEST has a Public Service Obligation (PSO) to admit any worker regardless of profitability. There are certain criteria which determine whether a jobholder is eligible for AE or not[1]. The NEST Order 2010 provides the specific legislative framework within which NEST must operate, on top of wider pension legislation.

The NEST (Amendment) Order 2018 is intended to facilitate and improve the effective operation and development of the NEST Pension Scheme. The proposed changes will make it easier for employers to enrol their employees and will allow NEST to continue to operate and serve its target market efficiently.

There are four minor technical changes being made. These are intended to ensure that NEST can continue to operate efficiently. These changes are briefly detailed in the next section.

Viable policy options (including alternatives to regulation)

The policy changes being considered will:

- allow participating employers to contractually enrol their employees in the NEST pension scheme.
- require NEST Corporation to carry out research with scheme members and participating employers or their representatives, in connection with the operation, development or amendment of the Scheme
- give NEST Corporation the ability to close members' pension accounts that have zero funds if certain conditions are met
- clarify that individuals may join the NEST pension scheme in the event of a bulk transfer with consent and will require that any amount of funds must be applied to a member's account as a result of a bulk transfer.

Doing nothing would result in continued inefficiencies for participating employers and the NEST pension scheme, and is therefore not the preferred option. There are no other alternatives to regulation since current rules are prescribed in existing regulations.

Further details are provided in the Evidence Base.

[1] This includes being between the age of 22 and State Pension Age (SPA), and earning above £10,000 per annum.

Initial assessment of impact on business

These regulations are not expected to have a large impact due to the timing and scale of the changes. A brief summary of the impacts for each change is provided below. The changes are expected to be positive (deregulatory) but of negligible scale.

Change 1: allow NEST to accept members who have been contractually enrolled (contractual enrolment)

The reason for this change is that some employers want to contractually enrol all their workers into a single scheme, as an alternative to automatically enrolling only eligible workers. This is currently not possible into NEST if auto-enrolment duties apply to an employer. The amendment removes this restriction and allows wider contractual enrolment into NEST.

Allowing contractual enrolment to be used will simplify the compliance regulations and reduce the administrative burden on employers. There will be some impacts on NEST, employers and individuals but we expect these to be minimal.

NEST may benefit from the fact that employers would be able to use contractual enrolment for employees beyond their staging date[2]. This benefit for NEST would likely be a transfer from one pension provider to NEST rather than an economic benefit- as if employers wished to use contractual enrolment for their entire workforce they likely will have chosen another provider. Individual employers may benefit from having the ability to use NEST for contractual enrolment beyond their staging date; this will enable the consolidation of two pension schemes to one. However, the wider industry is unlikely to be greatly affected due to the timing of the changes – employers will have already staged and an Office for Fair Trading[3] market study suggests that employers are unlikely to switch pension providers; it also simply brings NEST in line with the rest of the market and so shouldn't have any strong effect on competition.

Change 2: require NEST Corporation to carry out research with scheme members and participating employers and their representatives, in connection with the operation, development or amendment of the Scheme (NEST research)

This change will require the NEST Trustee to carry out research from time to time on scheme members, participating employers and their representatives, in connection with the operation, development or amendment of the scheme. The introduction of a duty is designed to align this operation to changes in Data Protection law (as a result of implementing the General Data Protection Regulation).

This change is likely to benefit NEST. In addition to being able to carry out research it would ensure that NEST would not breach the changes in Data Protection law and risk a fine of up to £20 million or 4 per cent of global turnover. It will benefit employers and individuals from enabling research to improve the Scheme.

Change 3: allow NEST to close members' pension accounts that have zero funds and have no immediate prospect of having any contributions put into them (closing zero pots)

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[2] An employer's staging date is determined by the number of people in the largest PAYE scheme that they use, based on the data from HM Revenue and Customs held by us on 1 April 2012. An employer's staging date is set in law and is the date their automatic enrolment duties apply to them.

[3] http://webarchive.nationalarchives.gov.uk/20131101172428/http://oft.gov.uk/shared_oft/market-studies/oft1505

This will give NEST Corporation the ability to close member's pension accounts where they have been open for longer than 12 months and have never received contributions. Empty accounts are inefficient and create small long run costs for the scheme. These accounts are of no value to the member and incur administrative costs for other members. Making the change will reduce administrative burdens on the scheme and will not impact on individuals whose accounts are closed - they can still be automatically enrolled again in the future.

The ability to close inactive pension accounts will be a saving for NEST. The Scheme administration contract is based on the number of member accounts. Therefore reducing the number of redundant accounts will reduce this administration cost for NEST. An estimate of the impacts has shown that this change should have a negligible impact[4]. It is also possible that the scheme administration contract will not be designed on a per member basis and thus the potential savings could change.

There should be no effect on employers, the industry, or individuals.

Change 4: allow NEST to apply the sums transferred in as a result of a bulk transfer with consent to the member's pension account where the person has already been admitted as a member (bulk transfers with consent)

The fourth component in the package will clarify that individuals may join NEST in the event of a 'bulk transfer with consent' and require that any amount must be applied to a member's account as a result of a bulk transfer. The transfer restrictions into and out of NEST were removed on 1 April 2017. This measure will help employers to make an informed decision when selecting a suitable automatic enrolment pension scheme.

Allowing NEST to accept bulk transfers with consent and applying the funds to the member's account is likely to be beneficial to both NEST and employers. NEST could gain revenues from additional funds under management and ongoing contributions. However, this would be a transfer from one pension provider to NEST rather than an economic benefit.

This consolidation would also be a potential benefit to individuals as there is evidence that individuals may lose track of their pensions. Employers may benefit as a DWP Call for Evidence[5] revealed that not being able to initiate bulk transfers was a perceived barrier to using NEST. Therefore, allowing bulk transfers with consent would reduce the search costs for employers when choosing a pension provider. However, the scale of benefit to NEST, employers, and individuals is likely to be minimal as the number of employers that are likely to initiate a bulk transfer with consent is low. The number is expected to be low due to employers usually initiating bulk transfers without consent (due to the costs associated with gaining member consent) and that employers are unlikely to switch providers[6].

This measure will not be considered further in the evidence base. An impact assessment was carried out in 2015 on the same regulatory change. The analysis concluded that the change would be nil cost[7]. Since 2015 it is likely that the potential impact will have decreased as all existing employers have chosen pension schemes and this measure is for bulk transfers with consent only rather than all bulk transfers.

[4] The evidence used in this assessment is commercially sensitive. It is included in an internal document.

[5] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/596995/government-response-nest-evolving-for-the-future.pdf

[6] http://webarchive.nationalarchives.gov.uk/20131101172428/http://oft.gov.uk/shared_oft/market-studies/oft1505

[7] http://www.legislation.gov.uk/ukia/2014/415/pdfs/ukia_20140415_en.pdf

Departmental signoff (*SCS*):Laura Webster **Date:** 25 January 2018 **Economist signoff (*senior analyst*):** Andrea J.Lee **Date:** 25 January 2018 **Better Regulation Unit signoff:** Prabhavati Mistry **Date:** 23 Jan 2018

URN: BIS/16/178

Evidence Base

The policy issue and rationale for Government intervention

1. NEST is a pension scheme established under the Pensions Act 2008 to support Automatic Enrolment (AE) to address a market failure for low to moderate earners and smaller employers. NEST has a Public Service Obligation (PSO) to admit any worker regardless of profitability. However, there are certain criteria which determine whether a jobholder is eligible for AE or not. This includes being between the age of 22 and State Pension Age (SPA), and earning above £10,000 per annum; an employer must automatically enrol 'eligible' jobholders into an automatic enrolment pension scheme.

2. NEST operates within the wider pension's legal framework, but also an additional legal framework known as the NEST Order. This places further restrictions on the members that NEST can accept and the types of products that NEST can provide. This is to ensure that NEST continues to meet its PSO and serve its target market. But due to it being designed and legislated prior to the roll-out of Automatic Enrolment it is important to review how the Order affects NEST's ability to operate and update it accordingly. The changes highlighted below are intended to continue and build upon the smooth operation of NEST.

Policy objectives and intended effects

3. The policy objective is to simplify compliance and reduce business costs with regards to employers duties associated with Automatic Enrolment. The proposed changes are intended to simplify the use of NEST for employers and ensure that members can benefit from an efficiently run Scheme. This will aid the roll-out of Automatic Enrolment and its progression into steady-state functioning.

Policy options considered, including alternatives to regulation

Change 1: Contractual Enrolment

Do nothing

4. Maintaining the status quo and doing nothing would mean that employers would not be able to contractually enrol workers into NEST pensions after the employer duties apply to them. This is a relatively complex compliance requirement for firms to understand. The requirement may cause confusion as employer's duties take force. In order to comply, employers that want to use NEST and enrol all their staff would need to run multiple pension schemes.

Option 1: Alter the NEST Order to enable NEST to accept members contractually enrolled by participating employers

5. This would reduce the administrative burden on employers by simplifying the compliance requirements and benefit individuals by allowing a small number new access to a workplace pension.

6. The recent Call for Evidence[8] has shown that this can cause confusion and there is broad support for this change to happen. This measure has the effect of simplifying the current system to enable employers to use contractual enrolment into NEST. This is the preferred option.

Change 2: research

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[8] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/596995/government-response-nest-evolving-for-the-future.pdf

Do nothing

7. NEST currently carries out research on members, employers, and wider pensions industry to ensure that the Scheme is performing effectively. From May 2018 it may not be possible to carry out this research as there will be no clear legal basis for the associated use of data.

Option 1: Give NEST a duty to carry out research in order to conduct research and comply with new data protection regulations

8. The duty to carry out research would ensure that NEST meets the GDPR requirements on lawful data processing when carrying out research. This would mean that NEST can continue to produce research for the purposes of making improvements to the Scheme. This is the preferred option.

<u>Change 3: Closing zero pots</u>

Do nothing

9. The do nothing option means that NEST would continue to be unable to close pots that have no activity and zero contributions. This option results in NEST continuing to pay the Scheme administrator for these unused pots. The benefit of this option is that there is no risk of NEST accidentally closing a member's pot that may receive contributions in the future.

Option 1: Make an amendment to the order to allow NEST to close member accounts where zero contributions have been made after 12 months

10. The amendment to allow NEST to close the specific accounts where zero contributions have been made after 12 months would mean that NEST can save administration costs but also provides sufficient timescale to limit the potential for closing pots which would have contributions made in the future. This change would also require NEST to write to employers and members prior to closing the account to further mitigate this risk. This is the preferred option.

Expected level of business impact

11. These changes to the NEST Order are deregulatory, but not expected to have a material impact on the industry, employers, or individuals.

12. The change to contractual enrolment should have minimal effect due to the fact that employers will have already staged and are unlikely to change. The other changes are internal NEST changes that may result in some small benefits to individuals saving in NEST through reduced scheme costs.

13. There are no familiarisation costs because any communication of changes can be included as part of existing communications and there are no additional requirements for employers or NEST (excluding the duty to carry out research which purely allows a continuation of NEST's current activities).

Monetised and non-monetised costs and benefits

14. This section will look at the costs and benefits across four different areas: NEST, employers, industry, and individuals. The predominant reason contractual enrolment and bulk transfers with consent have minimal impact is due to employers will have already chosen a pension provider by the time these changes come into force and are unlikely to switch. The closing of inactive zero pots and a duty on NEST to carry out research are internal NEST changes not expected to have large impacts. The following table summarises the evidence used to support this assessment.

Table 1: Summary of impacts of changes on NEST, employers, industry and individuals

Regulatory Change	*Impacts on NEST*	*Impact on Employers*	*Impact on Industry*	*Impact on Individuals*
1: Contractual enrolment	The impact is likely to be limited as employers will have already chosen a pension provider and are unlikely to change[9]; employers most likely to choose NEST are least likely to use contractual enrolment. Further any impact on NEST of employers choosing to use NEST rather than another provider is a transfer rather than economic benefit.	Employers will have staged and are unlikely to switch provider[10]. Savings for employers could come from consolidating two pension schemes to one. The EPP 2013 shows few employers use multiple schemes[11]. It is not expected many would consolidate, rather it would allow those using contractual enrolment to choose NEST[12]. A DWP Call for Evidence showed that employers found this a complex regulation[13]. Therefore it may reduce the search cost for some employers.	Limited impact as employers will have chosen a pension provider and are unlikely to switch. This change simply brings NEST in line with the rest of the pensions industry.	It is not expected to impact individuals.
2: NEST research	In the absence of this change NEST may be successfully challenged on whether research carried out was compliant with GDPR. Applying this change could result in NEST saving on costs of gaining consent from employers in order to carry out research.	There should be no direct effect on employers.	There should be no direct effect on industry.	There should be no direct effect on individuals.

[9] http://webarchive.nationalarchives.gov.uk/20131101172428/http://oft.gov.uk/shared_oft/market-studies/oft1505
[10] http://webarchive.nationalarchives.gov.uk/20131101172428/http://oft.gov.uk/shared_oft/market-studies/oft1505
[11] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/330512/rr881-employers-pension-provision-survey-2013.pdf
[12] This would constitute a transfer rather than an economic benefit.
[13] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/596995/government-response-nest-evolving-for-the-future.pdf

3: Closing zero pots	This would allow NEST to close non-used pots after 12 months and result in an administrative saving. These savings would only be realised when NEST implemented the change – it is likely that this would be in 2023 when the new scheme administration contract is in place[14].	NEST would be obliged to write to employers prior to closing the account. There may be a small communication cost but this will be negligible.	There should be no impact on industry.	There should be no direct effect on individuals.

[14] This evidence is commercially sensitive. It has been considered and included in an internal document.

Summary

15. The evidence and thinking set out above suggests that these changes are deregulatory and positive for employers, but minimal. The predominant reason for contractual enrolment and bulk transfers with consent having minimal impact is due to the fact that employers will have already chosen a pension provider by the time these changes come into force and are unlikely to switch. In addition, any impact from transferring into NEST would be an economic transfer. The changes should give NEST the freedom to continue to serve its employers and members in a straightforward and efficient manner; the changes would also bring NEST in line with the rest of industry.

16. The closing of inactive zero pots and giving NEST a duty to carry out research are largely internal NEST concerns and are therefore unlikely to have noticeable impacts outside of NEST. The changes are proposed as sensible amendments to mitigate inefficiencies.

17. In summary, the impact of the measures is expected to be positive but negligible.