
STATUTORY INSTRUMENTS

2010 No. 917

The National Employment Savings Trust Order 2010

PART 5

The Scheme Fund

Annual contribution limit

^{F1}**22.**

F1 Arts. 22-26 omitted (1.4.2017) by virtue of [The National Employment Savings Trust \(Amendment\) Order 2015 \(S.I. 2015/178\)](#), arts. 1, **2(7)**

Annual contribution limit: meaning of contributions

^{F1}**23.**

F1 Arts. 22-26 omitted (1.4.2017) by virtue of [The National Employment Savings Trust \(Amendment\) Order 2015 \(S.I. 2015/178\)](#), arts. 1, **2(7)**

Annual contribution limit: refund of excess contributions

^{F1}**24.**

F1 Arts. 22-26 omitted (1.4.2017) by virtue of [The National Employment Savings Trust \(Amendment\) Order 2015 \(S.I. 2015/178\)](#), arts. 1, **2(7)**

Timing of contributions

^{F1}**25.**

F1 Arts. 22-26 omitted (1.4.2017) by virtue of [The National Employment Savings Trust \(Amendment\) Order 2015 \(S.I. 2015/178\)](#), arts. 1, **2(7)**

Multiple employment

^{F1}**26.**

F1 Arts. 22-26 omitted (1.4.2017) by virtue of [The National Employment Savings Trust \(Amendment\) Order 2015 \(S.I. 2015/178\)](#), arts. 1, **2(7)**

Deductions from members' accounts

27.—(1) The Trustee must make deductions from members' pension accounts to contribute to the general costs of the setting up, administration and management of the Scheme.

(2) The Secretary of State must determine the method of calculating how to make deductions during an initial period and for how long that initial period applies.

(3) After the initial period, the Trustee may determine subsequent methods of calculating how to make deductions.

(4) The Trustee must determine the level of deductions to be made from members' pension accounts, using the method of calculation determined by the Secretary of State or the Trustee thereafter.

(5) Subject to paragraph (6), the Trustee must set the deductions at a level that—

- (a) meets the general costs of the setting up, administration and management of the Scheme; and
- (b) allows it to maintain such reserve as it reasonably considers is needed in order to ensure that the Trustee is able to meet its costs where there are unexpected changes in income to, or costs payable by, the Scheme.

(6) In determining the level, the Trustee must have regard to any other sources of income to, and costs payable from, the Scheme.

(7) The Trustee may make further deductions from members' pension accounts to meet the costs of providing a service with respect to members' pension accounts in a particular case or class of case.

(8) In determining a method of calculating how to make deductions, determining the level of deductions under paragraph (4) and making deductions under paragraph (7), the Secretary of State or the Trustee, as the case may be, must ensure that—

- (a) deductions will be applied on a consistent basis between members' pension accounts; and
- (b) a pension account of a member of the Scheme (A) will not be subject to a different level or amount of deduction to another member's pension account solely on the basis of—
 - (i) where A is a worker, the number of persons who are or may in the future become members of the Scheme and workers in relation to A's employer;
 - (ii) the amount of time during which contributions may be made by, or on behalf or in respect of, A;
 - (iii) where A is a worker, the amount of time during which contributions may be made by, or on behalf or in respect of, other persons who are or may in the future become members of the Scheme and workers in relation to A's employer;
 - (iv) the income that is, or may in the future be, earned by A; or
 - (v) where A is a worker, the income that is or may be earned by other persons, as referred to in paragraph (9),
 or solely on the basis of more than one of paragraphs (i) to (v) above, in any combination.

(9) The income referred to is income that —

- (a) is, or may in the future be, earned by other members of the Scheme who are workers in relation to A's employer; or
- (b) may in the future be earned by other persons who may become members of the Scheme and workers in relation to A's employer,

(10) Where the Secretary of State—

(a) has given financial assistance in the form of a loan to the Trustee pursuant to paragraph 18 of Schedule 1 to the Act for the purposes of setting up, administering and managing the Scheme and such assistance is still ongoing; and

(b) is of the opinion that the level of deductions under paragraph (4) is, or the deductions under paragraph (7) are, unreasonably high in the circumstances, having regard in particular to the principle that the cost of participation in the Scheme to members should be minimised,

the Secretary of State may determine an upper limit to the level of deductions under paragraph (4) or deductions under paragraph (7) that may be made from members' pension accounts.

(11) Where the Secretary of State—

(a) has given financial assistance in the form of a loan to the Trustee pursuant to paragraph 18 of Schedule 1 to the Act for the purposes of setting up, administering and managing the scheme and such assistance is still ongoing; and

(b) is of the opinion that the trustee is in breach of any condition of the loan,

the Secretary of State may determine a lower limit to the level of deductions under paragraph (4) or deductions under paragraph (7) that may be made from members' pension accounts.

(12) Where the Secretary of State determines an upper limit, the Trustee may not exceed that limit in the level of deductions it determines or the deductions which it makes.

(13) Where the Secretary of State determines a lower limit, the Trustee must determine a level of deductions, or make deductions, at or above that limit.

(14) Where the Secretary of State determines an upper or lower limit—

(a) the Secretary of State may make a further determination removing that limit; and

(b) on the date any financial assistance given or ongoing for the purposes of paragraphs (10) and (11) is repaid to the Secretary of State, such a further determination shall be deemed to have been made removing that limit.

(15) The Trustee must consult with the members' panel before—

(a) determining subsequent methods of calculating how to make deductions, as referred to in paragraph (3); or

(b) making changes to the level of deductions from members' pension accounts under paragraph (4) or to deductions under paragraph (7).

(16) The Trustee must make available the information specified in paragraph (17) by placing it on the internet.

(17) The specified information is information about—

(a) the method of calculating how to make deductions, determined under paragraph (2), and any subsequent method of calculating how to make deductions, determined under paragraph (3); and

(b) the level of deductions determined under paragraph (4) and any deductions made or to be made under paragraph (7), as they have effect from time to time.

Commencement Information

II [Art. 27](#) in force at 5.7.2010, see [art. 1\(3\)](#)

Power to invest the Scheme's assets

28.—(1) The Trustee has the power to invest all the assets of the Scheme.

(2) Subject to paragraph (3), for the purposes of this power, the assets of the Scheme include—

- (a) contributions as referred to in article 21(2);
 - (b) any other monies received by the Trustee, including under [^{F2}article 31]; and
 - (c) returns from any investments of assets referred to in sub-paragraph (a) or (b).
- (3) For the purposes of this power, the assets of the Scheme do not include any financial assistance given to the Trustee pursuant to paragraph 18 of Schedule 1 to the Act.
- (4) Without prejudice to the generality of the power conferred on the trustees of a trust scheme—
- (a) in Great Britain, under section 34 of the Pensions Act 1995 (1); or
 - (b) in Northern Ireland, under Article 34 of the Pensions (Northern Ireland) Order 1995(2),
- the power in paragraph (1) includes power to take the action specified in paragraph (5).
- (5) The specified action is to—
- (a) underwrite or sub-underwrite the subscription, offer or issue of any stocks, shares or other securities or investments, as the Trustee may determine;
 - (b) give any warranty or indemnity the Trustee determines as appropriate in connection with the exercise of that power (or any other power conferred on it by law), to any person;
 - (c) participate in stock lending arrangements within the meaning of section 263B of the Taxation of Chargeable Gains Act 1992(3); and
 - (d) invest in derivative instruments—
 - (i) in Great Britain, as defined by regulation 4(11) of the Occupational Pension Schemes (Investment) Regulations 2005(4); or
 - (ii) in Northern Ireland, as defined by regulation 4(11) of the Occupational Pension Schemes (Investment) Regulations (Northern Ireland) 2005(5).

F2 Words in art. 28(2)(b) substituted (1.4.2017) by [The National Employment Savings Trust \(Amendment\) Order 2015 \(S.I. 2015/178\)](#), arts. 1, 2(8)

Commencement Information

I2 [Art. 28](#) in force at 5.7.2010, see [art. 1\(3\)](#)

Investment and default investment funds

29.—(1) The Trustee may establish any number of notional funds, by reference to such investment principles and criteria as the Trustee determines (“investment funds”).

(2) Subject to the following paragraphs, investment funds may be arranged by the Trustee in such number, combination or type as the Trustee determines.

(3) From time to time, the Trustee may make different arrangements (including closing, withdrawing or terminating the availability of any investment funds).

(4) The Trustee must, subject to the provisions in the following paragraphs, direct assets of the Scheme to at least one investment fund.

(1) [1995 c.26](#).

(2) [S.I. 1995/3213 \(N.I. 22\)](#).

(3) [1992 c.12](#). Section 263B was inserted, in relation to, and to transfers under, any arrangement made on or after 1 July 1997, by the Finance Act 1997 ([c.16](#)), section 76 (and paragraphs 5(1) and 7(1) of Schedule 10 to that Act). Subsection (2) of that section was amended by the Finance Act 2009 ([2009 c.10](#)), section 32 (and paragraphs 1 and 2(1) of Schedule 13 to that Act).

(4) [S.I. 2005/3378](#).

(5) [S.R. 2005 No. 569](#).

(5) Where a member of the Scheme does not express a choice as to where assets of the Scheme attributable to their pension account are to be directed, the investment funds to which those assets of the Scheme are directed shall be known as default investment funds.

(6) Any assets of the Scheme which the Trustee has the power to invest are to be invested by the Trustee in at least one default investment fund, except where—

- (a) the member of the Scheme expresses a choice that assets of the Scheme attributable to their pension account be directed to an investment fund other than a default investment fund, in which case paragraph (7) applies;
- (b) contributions are made to the member’s pension account during the period prescribed in regulations—
 - (i) in Great Britain, made by virtue of section 8(5)(b) of the Act; or
 - (ii) in Northern Ireland, made by virtue of section 8(5)(b) of the NI Act;
- (c) assets of the Scheme are not attributable to a member’s pension account; or
- (d) the Trustee decides to invest the assets of the Scheme in cash or on deposit in circumstances where liquid reserves are required for the purposes of the Scheme,

and where sub-paragraph (b), (c) or (d) applies, assets of the Scheme are to be invested as the Trustee determines.

(7) Where a member of the Scheme expresses a choice as to where assets of the Scheme attributable to their pension account are to be directed—

- (a) the Trustee may determine—
 - (i) the form in, and method by, which a member expresses that choice;
 - (ii) any limits on the number of occasions on which a member may express that choice; and
 - (iii) the number of investment funds to which assets of the Scheme may be directed, having regard to the value of the assets of the Scheme attributable to a member’s pension account; and
- (b) subject to the member’s choice complying with any determination made by the Trustee for the purposes of sub-paragraph (a), the Trustee must accept that choice unless the Trustee is of the opinion that in doing so it would breach any of its legal obligations, including those imposed—
 - (i) in Great Britain, by regulation 4 of the Occupational Pension Schemes (Investment) Regulations 2005; or
 - (ii) in Northern Ireland, by regulation 4 of the Occupational Pension Schemes (Investment) Regulations (Northern Ireland) 2005.

Commencement Information

I3 [Art. 29](#) in force at 5.7.2010, see [art. 1\(3\)](#)

Acceptance by trustee of cash transfer sums

F3³⁰.

F3 [Art. 30](#) omitted (1.4.2017) by virtue of [The National Employment Savings Trust \(Amendment\) Order 2015 \(S.I. 2015/178\)](#), arts. 1, **2(9)**

Pension sharing

- 31.—(1) Where a pension credit derives—
 - (a) from the Scheme, the Trustee may—
 - (i) confer appropriate rights on the person entitled to the pension credit; or
 - (ii) pay the amount of the credit to the person responsible for a qualifying arrangement with a view to acquiring rights under that arrangement for the person entitled to the credit, in accordance with paragraph 1(3) of Schedule 5 to the 1999 Act (in Great Britain) or to the 1999 Order (in Northern Ireland); or
 - (b) from another scheme, the Trustee may accept a payment of the amount of the pension credit by the trustees or managers of the scheme from which the pension credit derives, provided that the person to whom that pension credit relates is already a member of the Scheme.
- (2) In this article, “appropriate rights” has the same meaning—
 - (a) in Great Britain, as in paragraph 5 of Schedule 5 to the 1999 Act; or
 - (b) in Northern Ireland, as in paragraph 5 of Schedule 5 to the 1999 Order.

Commencement Information
 I4 Art. 31 in force at 5.7.2010, see art. 1(3)

[^{F4}Payment of benefits by the Trustee]

32.—(1) Without prejudice to article 31, the Trustee may, in the circumstances set out in rules, use a member’s pension account in order to provide the benefits described in paragraph (2) (and only those benefits).

- (2) The benefits are—
 - [^{F5}(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;]
 - (b) where a member has died—
 - (i) the payment of a lump sum to a person nominated by the member or to the personal representatives of that member;
 - (ii) the payment of a lump sum to any one or more [^{F6}persons to be determined by the Trustee in accordance with rules];
 - (iii) the payment of a charity lump sum death benefit; or
 - (iv) the purchase of a dependants’ annuity.

^{F7}(3)

- (4) In this article—
 - “dependants’ annuity” has the same meaning as in paragraph 17 of Schedule 28 to the Finance Act 2004(6);
 - “charity lump sum death benefit” has the same meaning as in paragraph 18 of Schedule 29 to the Finance Act 2004(7); [^{F8}and]

(6) 2004 c.12; paragraph 17 of Schedule 28 was amended by the Finance Act 2005 (c. 7), Schedule 10, paragraphs 1, 15(1) to (3) and 29(1) and (2).
 (7) Paragraph 18 of Schedule 29 was amended by the Finance Act 2007 (c. 11), Schedule 19, paragraphs 1, 16(1) and (2).

“lifetime annuity” has the same meaning as in paragraph 3 of Schedule 28 to the Finance Act 2004(8); F9...

F10
...

- F4 Art. 32 heading substituted (1.4.2017) by The National Employment Savings Trust (Amendment) Order 2015 (S.I. 2015/178), arts. 1, **2(10)**
- F5 Art. 32(2)(a) substituted (1.4.2017) by The National Employment Savings Trust (Amendment) Order 2015 (S.I. 2015/178), arts. 1, **2(11)(a)**
- F6 Words in art. 32(2)(b) substituted (1.4.2013) by The National Employment Savings Trust (Amendment) Order 2013 (S.I. 2013/597), arts. 1, **2(13)(a)**
- F7 Art. 32(3) omitted (1.4.2017) by virtue of The National Employment Savings Trust (Amendment) Order 2015 (S.I. 2015/178), arts. 1, **2(11)(b)**
- F8 Word in art. 32(4) inserted (1.4.2013) by The National Employment Savings Trust (Amendment) Order 2013 (S.I. 2013/597), arts. 1, **2(13)(b)(i)**
- F9 Word in Art. 32(4) omitted (1.4.2013) by virtue of The National Employment Savings Trust (Amendment) Order 2013 (S.I. 2013/597), arts. 1, **2(13)(b)(ii)**
- F10 Words in Art. 32(4) omitted (1.4.2013) by virtue of The National Employment Savings Trust (Amendment) Order 2013 (S.I. 2013/597), arts. 1, **2(13)(b)(iii)**

Commencement Information

- I5 Art. 32 in force at 5.7.2010, see **art. 1(3)**

(8) Paragraph 3 of Schedule 28 has been amended but not in a way material to this Order.

Changes to legislation:

There are currently no known outstanding effects for the The National Employment Savings Trust Order 2010, PART 5.