Draft Order laid before Parliament under section 143(4) of the Pensions Act 2008, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2010 No.

PENSIONS

The National Employment Savings Trust Order 2010

Made - - - - [ ]

Coming into force in accordance with article 1

The Secretary of State makes the following Order in exercise of the powers conferred by sections 67(1) and (8), 68(1) to (3) and (5), 69(1) to (3) and (5), 70(1) and (2), 144(2) to (4) and 145(1) of the Pensions Act 2008(**1**).

In accordance with section 143(4) of that Act, a draft of this instrument was laid before Parliament and approved by resolution of each House of Parliament.

PART 1

General

Citation and commencement

1.—(1) This Order may be cited as the National Employment Savings Trust Order 2010.

(2) Article 20 shall come into force on 5th July 2010 and cease to have effect on 1st October 2016.

(3) The remaining provisions of this Order shall come into force on 5th July 2010.

Interpretation

2. In this Order—

"the 1999 Act" means the Welfare Reform and Pensions Act 1999(**2**);

"the 1999 Order" means the Welfare Reform and Pensions (Northern Ireland) Order 1999(**3**);

"the Act" means the Pensions Act 2008;

(**1**) 2008 c.30.
(**2**) 1999 c.30.
(**3**) S.I. 1999/3147 (N.I. 11).

"the NI Act" means the Pensions (No. 2) Act (Northern Ireland) 2008(**4**);

"the corporation" means the National Employment Savings Trust Corporation established under section 75 of the Act(**5**);

"data" and "personal data" have the same meanings as in section 1 of the Data Protection Act 1998(**6**);

"employers' panel" means the panel referred to in article 6(2)(b);

"jobholder" has the meaning given by –

(a) in relation to Great Britain, section 1(1) of the Act; or

(b) in relation to Northern Ireland, section 1(1) of the NI Act;

"member of the Scheme" means a person who has been admitted as a member of the Scheme under article 19 and whose pension account has not yet been fully discharged through the provision of one or more benefits under article 32;

"members' panel" means the panel referred to in article 6(2)(a);

"member's pension account" means an account maintained by the Trustee for a member of the Scheme comprising–

(a) the member's contributions;

(b) contributions made by any participating employer;

(c) any sums transferred into the Scheme in respect of the member;

(d) investment returns; and

(e) any other amounts paid to the Trustee to be applied to the member's pension account,

less any expenses and outgoings properly deducted by the Trustee;

"the panels" means the members' panel and the employers' panel;

"participating employer" means an employer(**7**) that has been admitted to participation in the Scheme under article 18*;*

"pension credit" means a credit–

(a) in relation to Great Britain, under section 29 of the 1999 Act; or

(b) in relation to Northern Ireland, under Article 26 of the 1999 Order;

"qualifying arrangement" has the same meaning–

(a) in relation to Great Britain, as in paragraph 6(1) of Schedule 5 to the 1999 Act; or

(b) in relation to Northern Ireland, as in paragraph 6(1) of Schedule 5 to the 1999 Order;

"rules" means rules made under section 67 of the Act;

"the Scheme" means the pension scheme established by article 3(1); and

"the Trustee" means the person appointed as trustee of the Scheme.

(**4**) 2008 c.13 (N.I.).
(**5**) The corporation was so named by S.I. 2010/3.
(**6**) 1998 c.29. The definition of "data" in section 1 was amended by the Freedom of Information Act 2000 (c. 36), sections 68 and 86 and Schedule 8, Part III.
(**7**) "Employer" is defined in section 88 of the Act and section 70 of the NI Act.

PART 2

Establishment, Constitution of the Scheme and Appointments

Establishment of the National Employment Savings Trust

3.—(1) There is to be a pension scheme known as the National Employment Savings Trust.

(2) The purpose of the Scheme is the provision of pensions and other benefits in relation to its members.

Trustee

4. The corporation is appointed as trustee of the Scheme.

Appointment of members of the corporation

5. Where the members' panel has been established, then, in relation to the appointment by the corporation of an individual as a member of the corporation, or a member of the corporation as chair of the corporation—

(a) the corporation must consult the members' panel with respect to any job description or selection criteria that the corporation proposes to use;

(b) the members' panel must nominate one of their members to participate in any meeting or other discussion that is to be held by the corporation with respect to the creation of a shortlist of candidates, and in any interview of a candidate; and

(c) the corporation must supply that member with a copy of any documents that the corporation is to consider when it decides who should be included in the shortlist, or who should be appointed, and must take into account any views expressed by that member before it makes its decision.

Consultation of members and employers

6.—(1) The Trustee must make and maintain such arrangements as the Trustee considers expedient for consulting members of the Scheme and participating employers about the operation, development or amendment of the Scheme.

(2) Those arrangements must include the establishment and maintenance of—

(a) a panel to represent members of the Scheme (the members' panel); and

(b) a panel to represent participating employers (the employers' panel).

Establishment of the panels

7. The Trustee must take all reasonable steps to establish the panels as soon as practicable and, in any event, within 12 months after the first day on which a contribution is made to the Scheme by, or on behalf or in respect of, a member of the Scheme.

Composition and functions of the panels

8.—(1) The Trustee must make provision in relation to—

(a) the composition of the panels;

(b) the selection, appointment and removal of their members; and

(c) the functions of the panels.

(2) Such provision must—

(a) ensure that, in relation to each panel, the minimum number of members of the panel is 9 and the maximum number is 15;

(b) ensure that the members' panel cannot be comprised entirely of individuals who are not members of the Scheme;

(c) ensure that the employers' panel cannot be comprised entirely of individuals who are not a participating employer or connected with such an employer;

(d) provide for the functions of the employers' panel to include–

(i) without prejudice to the generality of paragraph (ii), providing comments to the Trustee where the employers' panel is consulted by the Trustee on the preparation or revision of a statement of investment principles; and

(ii) giving any assistance or advice that the Trustee may require or that the panel may consider expedient, in connection with the operation, development or amendment of the Scheme.

(e) provide for the functions of the members' panel to include–

(i) in relation to each financial year, making a report on the extent to which the Trustee has taken into account the views of members of the Scheme and the views of the members' panel (with respect to views which the panel is able to express pursuant to its functions), when the Trustee makes decisions about the operation, development or amendment of the Scheme;

(ii) participating in the process for the appointment of an individual as a member or chair of the corporation, as set out in article 5;

(iii) without prejudice to the generality of paragraph (iv), providing comments to the Trustee where the panel is consulted by it on the preparation or revision of a statement of investment principles; and

(iv) giving any assistance or advice which the Trustee may require or which the panel may consider expedient, in connection with the operation, development or amendment of the Scheme.

(3) In relation to the report referred to in paragraph (2)(e)(i)—

(a) the Trustee must make provision for the members' panel to send a copy of it to the Secretary of State and the Trustee;

(b) the Trustee must make it available by–

(i) placing a copy of it on the internet; and

(ii) subject to sub-paragraph (c), sending a copy of it to any person who requests a copy; and

(c) where the Trustee makes a charge in connection with the sending under sub-paragraph (b)(ii) of a copy of the report, the Trustee is not obliged to send the copy until the Trustee has received payment of the charge(**8**).

(4) Where the members' panel has been established, the Trustee must, before it prepares or revises a statement of investment principles, consult that panel.

(5) In this article—

(a) "financial year" means the 12 months ending on 31st March in each year; and

(b) "statement of investment principles"–

(**8**) *See* Schedule 1, paragraph 19, to the Act, for the power of the corporation to make charges.

(i) in Great Britain, has the same meaning as in section 35 of the Pensions Act 1995(**9**); and

(ii) in Northern Ireland, has the same meaning as in Article 35 of the Pensions (Northern Ireland) Order 1995(**10**).

Payments to members of the panels

9.—(1) The Trustee may make provision for reasonable payments to be made to members of the panels.

(2) Any payments made under paragraph (1) shall be regarded as part of the general costs of administration and management of the Scheme for the purposes of article 27.

PART 3

Functions of the Trustee

Disclosure of requested data to the Secretary of State

10.—(1) This article applies where the Secretary of State (S) requests the disclosure of data held by the Trustee ("requested data") which are—

(a) not personal data; and

(b) in any event, anonymised.

(2) The Trustee must disclose requested data to S if those data are necessary for S or the Trustee—

(a) to comply with any–

(i) legal obligation (in particular the duty of S to establish a pension scheme, contained in section 67 of the Act); or

(ii) requirement to notify or otherwise inform another person,

which, if S did not receive those data, would result in a breach of that obligation or requirement; or

(b) to comply with any request made by a person appointed by S under section 74 of the Act to review any of the matters listed in subsection (1) of that section.

(3) The Trustee must disclose requested data to S for the purpose of the matters listed in paragraph (5) where the Trustee considers that to comply with S's request would not involve disproportionate cost, time or effort.

(4) Where the Trustee—

(a) considers that to comply with S's request would involve disproportionate cost, time or effort; and

(b) gives to S its reasons for considering that this is the case,

it need disclose to S only so much of the requested data as is agreed with S.

(5) The matters are —

(a) the assessment by S of the performance, administration or management of the Scheme; or

(b) the use by S for functions relating to private pensions policy or retirement planning.

(**9**) 1995 c.26; section 35 was substituted by the Pensions Act 2004 (c.35), section 244.
(**10**) S.I. 1995/3213 (N.I. 22); Article 35 was substituted by the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)), Article 221.