



Rule Change Consultation



Foreword.....	3
Background.....	4
The consultation process.....	5
Chapter 1	
Amending the Grant of Representation threshold.....	7
Chapter 2	
Deductions from members' accounts where legally required	9
Technical Appendix	
Proposed Rule Change 1	11
Proposed Rule Change 2	13

Foreword

Nest is proposing to make two amendments to the rules, both of which are set out in this consultation. Nest's governing documentation comprises the Nest order and Nest rules. The Nest order sets out Nest's legal structure, and gives the Trustee a number of powers, while the scheme rules (where these two rule changes fit in) provide further powers and more detail about how Nest works in practice.

We would welcome your views as to whether the changes we're proposing achieve their goal or may have unforeseen consequences. We'd also welcome opinions on whether the drafting of the rule changes generally achieves the desired outcome, as articulated in this document. We have also set out specific questions throughout this consultation and would appreciate any responses.

First Proposed Change – Amending the Grant of Representation Threshold

The first proposed change is to amend Rule 18 (Death Benefits) to remove the £5,000 limit that we refer to as the "Grant of Representation Threshold." The £5,000 limit would be replaced with a new definition of "relevant amount" in Rule 1, which would be "such amount as shall be determined by the Trustee from time to time".

The Grant of Representation Threshold is currently set at £5,000. It applies to a deceased member's Nest pot. If the pot value exceeds this threshold, certain rules apply. These rules come into play when no nominated beneficiary or Expression of Wish (EoW) exists for the deceased member. They also apply if listed beneficiaries set out in a pre-determined list have pre-deceased the member, are untraceable, or if the Trustee declines payment to any EoW beneficiary. Under such conditions, the funds must be transferred to the member's personal representatives. These representatives must have obtained a Grant of Representation.

The term 'Grant of Representation' is a catch-all generic term for a court-obtained grant of probate, grant of letters of administration, or grant of confirmation. Generally speaking these provide the person/people obtaining it with the power to collect in a deceased person's assets and deal with their estate on their death. This term is used for the purpose of simplicity in this consultation to refer to any and all of these permutations. Where the deceased member's Nest pot is paid out to the

person with the Grant of Representation (the personal representative), it becomes part of the member's estate and is then paid out in line with the Will or intestacy law.

The rationale for the proposed rule change is to enable operational flexibility by allowing the Grant of Representation Threshold to be amended by the Trustee to what is considered to be the appropriate amount. This will allow the scheme to operate efficiently without recourse to future rule changes, which can take a number of months to complete.

The Trustee will always act in the members' best interests when setting the Grant of Representation Threshold and in line with its general fiduciary duties. This rule change is intended to be member-focused - to create operational efficiencies that get money into the hands of beneficiaries faster, while still properly administering member assets by setting the correct Grant of Representation Threshold taking into account all relevant factors. For the avoidance of any doubt, the same Grant of Representation Threshold will be applied to all members.

Second Proposed Change – Deductions from Member Accounts Where Legally Required

The second proposed change is to amend Rule 11.2 (Pension accounts, general account and excess contributions account) to expressly provide for additional circumstances in which deductions can be made from members' accounts where the scheme is already legally required to make deductions. This is considered to be helpful in terms of ensuring there is a clear basis within the Scheme Rules on which the Trustee can act. In addition, the Rule will then marry up with the law and the Trustee will be able to refer affected members to a provision in the Rules which would apply in respect of a deduction which can lawfully be made.

We'd like to thank all respondents in advance for their continued engagement with Nest and for helping us continue to develop a scheme which we hope will help millions enjoy a better retirement.

Background

The Legal Structure of Nest

The National Employment Savings Trust ('Nest') was established by a piece of legislation known as an order. Nest is a trust-based occupational pension scheme and the Nest order is the equivalent of a trust deed, the legal document which is used to establish trust based schemes.

The order sets out Nest's legal structure and can only be amended by Parliament. It defines the role and powers of the Trustee and includes details about how the scheme works, such as who's eligible to join and how employers can use the scheme. The order is supported by a set of scheme rules. The Nest rules provide more detail about the Trustee's powers and how the administration of Nest works in practice¹.

As the Nest rules aren't a statutory instrument, they don't need to be amended by Parliament if any changes have to be made.

Power to change the rules

Article 15 of the Nest order gives Nest Corporation (the trustee of Nest) the power to make, cancel, change or re-introduce any rules made by it or the Secretary of State. The procedure for publishing and consulting on proposed changes to the scheme rules, which this consultation will follow, is set out in section 72 of the Pensions Act 2008.

This section of the Pensions Act 2008 also says that the Trustee of Nest must consult its Members' Panel and Employers' Panel before making, cancelling or re-introducing any rules.

The Members' Panel and Employers' Panel have been advised of these proposed rule changes and will be formally consulted during this public consultation. To find out more about how the panels work, please go to [Nestpensions.org.uk/panels](https://www.nestpensions.org.uk/panels).

¹ The Nest Order and Rules can be found here <https://www.nestpensions.org.uk/schemeweb/nest/nestcorporation/how-nest-is-run/order-and-rules.html>

The consultation process

Structure of the consultation document

This consultation is arranged into two chapters. The first chapter outlines the proposed removal of the £5,000 Grant of Representation Threshold in Rule 18 (Death Benefits). The replacement wording will instead refer to a threshold to be determined by the Trustee.

In the second chapter we detail the amendment of Rule 11.2 (Pension accounts, general account and excess contributions account) to expressly provide for additional circumstances in which deductions can be made from members' accounts where the scheme is legally required to make such deductions.

The proposed drafting to give effect to the changes can be found in the marked up version of the Nest rules, included as a technical annex to this document.

How to respond

This consultation will begin on 16th November 2023 and run until 16th January 2024.

You can submit your response by email or by post.

Email:

rulesconsultation2023@nestcorporation.org.uk

Post:

Michael Hames
Director of Pensions and Tax Law
Nest Corporation
1st Floor, 10 South Colonnade
London E14 4PU

When you respond, please let us know whether you're doing so as an individual or as the representative of an organisation.

If you're responding on behalf of an organisation, then please make it clear who the organisation represents.

How we deal with consultation responses

In line with section 72 of the Pensions Act 2008 we'll carefully consider your responses before deciding how we amend the Nest rules.

We'll publish a summary of respondents' comments together with our response to them within three months of the end of the consultation period.

If the amendments we make are different from the amendments proposed, we'll publish details of any significant differences.

Confidentiality

Please be aware that we may share the information you send us with the Department for Work and Pensions (DWP). Under the Freedom of Information Act 2000, we could publish or disclose all of the information contained in your response, including personal information. We accept the information you provide for this public consultation exercise on the understanding that you consent to it being disclosed and published.

If you want us to keep the information in your response to the consultation confidential you should explain why as part of your response. However, we can't guarantee that it will be possible to do this.

Further questions and feedback

If you have any comments on the consultation process in general or if you want clarification on any of the issues raised, you can get in contact through the email or postal address on the previous page.

We have paper copies of this consultation available on request and will also consider any requests for alternative formats. Please send your request to the postal address on the previous page. You can download a copy from nestpensions.org.uk



Amending the Grant of Representation threshold

The first proposed change is to amend Rule 18 (Death Benefits) to remove the £5,000 limit which we refer to as the “Grant of Representation Threshold.” The proposal is to replace this with a value to be determined by the trustee, meaning the trustee of Nest would set this figure going forward.

The Grant of Representation Threshold is currently set at £5,000. It applies to a deceased member's Nest pot. If the pot value exceeds this threshold, certain rules apply. These rules come into play when no nominated beneficiary or Expression of Wish (EoW) exists. They also apply if listed beneficiaries have pre-deceased the member, are untraceable, or if the Trustee declines payment to any EoW beneficiary. Under such conditions, the funds must be transferred to the member's personal representatives. These representatives must have obtained a Grant of Representation.²

‘Grant of Representation’ is a catch-all generic term for a court-obtained grant of probate, grant of letters of administration, or grant of confirmation. It is used for the purpose of simplicity in this consultation to refer to any and all of these permutations. Where a deceased member's Nest pot is paid to the personal representative, then it becomes part of their estate and is paid out in line with the Will or intestacy law, along with the rest of their estate.

For context, the following process is followed by the scheme.

- › Upon being notified of a member's death, Nest initiates a review of the member's account to identify an Expression of Wish (EOW) or a Nominated Beneficiary (NB).
- › If either an EOW or NB is found, Nest will establish contact and proceed with processing the necessary payment(s).
- › In cases where:
 - No EOW or NB is identified,
 - The nominated or listed beneficiaries have either pre-deceased the member or are untraceable,
 - Or the Trustee opts not to disburse funds to any EoW beneficiary,
 - Nest will then reach out to the individual who notified them and/or the next of kin (NOK), if known.
- › Among other inquiries, Nest will ascertain whether a Grant of Representation has been secured or is in the process of being obtained.³

As per the wording in Rule 18 of the Nest Rules (included in full in the Technical Appendix), the following scenarios are then possible:

1. If Nest are informed that a Grant of Representation has been or is being obtained then Nest must await its receipt and are only able to pay the personal representative(s) named within it, regardless of the value of the associated pot.
2. In scenarios where no Grant of Representation has been or is being obtained and the value of the pot is at or below the Grant of Representation Threshold of £5,000 then Nest can proceed to make the payment in line with the subsequent categories in the a pre-defined ‘payee priority list’ set out in a separate Trustee Determination as required by the rules. The first category is the personal representative (if there is one) in respect of the deceased member.
3. In scenarios where no Grant of Representation has been or is being obtained and the value of the pot is above the Grant of Representation Threshold of £5,000 then we inform the claimant that a Grant of Representation is required and that we are only able to make payment to the named personal representative(s).

² Plain English explanations of all these terms can be found here - <https://www.nestpensions.org.uk/schemeweb/dam/nestlibrary/Order-and-rules-summary.pdf>

The proposed rule change will allow the Trustee to increase or decrease this £5,000 limit, meaning there could be more or fewer payments made in line with the subsequent categories on the priority list of beneficiaries where no Grant of Representation is provided.

The rationale for the proposed rule change is to enable operational flexibility by allowing the Grant of Representation Threshold to be amended by the Trustee to what is considered to be an appropriate amount without recourse to a full rule change. The Trustee, when considering whether to change the threshold in future, would take into account a range of factors and set the level at what they believe to be in the members' best interests and in line with its fiduciary duty.

The Trustee will always act in the members' best interests when setting the Grant of Representation Threshold and in line with its general fiduciary duties. This rule change is intended to be member-focused - to create operational efficiencies that gets money into the hands of beneficiaries faster, while still properly administering member assets by setting the correct Grant of Representation Threshold taking into account all relevant factors. For the avoidance of any doubt, the same Grant of Representation Threshold will be applied to all members.

Question 1

Do you agree or disagree with the Trustee setting the Grant of Representation Threshold rather than having this threshold set in the Rules? If you disagree please explain why

Question 2

Do you have any other observations or comments?

Deductions from members' accounts where legally required

The second proposed rule change is to amend Rule 11.2 (Pension accounts, general account and excess contributions account) to expressly provide for additional circumstances in which legally required deductions can be made from members' accounts. Although the Nest Rules make provision for amounts to be deducted from members' pension accounts where there has been an error, the Rules do not expressly provide for payments to be made from pension accounts where there is a legal requirement to do so.

It is proposed that an amendment is made to the Nest rules to expressly provide for additional circumstances in which legally required deductions can be made from members' accounts. This would include:

- › where the payment of the contributions to Nest is a void transaction (whether under insolvency legislation or otherwise);
- › where the deduction can be made in connection with an insolvency of an employer; and
- › where the deduction would be made in compliance with a court order or similar.

In each such case, the Trustee would still require the relevant party, whether the employer or an insolvency practitioner for example, to prove that the amount(s) in question should be refunded/paid from the pension accounts of the members concerned. If insufficient evidence is provided or if the relevant court order cannot be obtained (or it is not clear cut that such an Order would be obtained if the relevant proceedings were implemented), the Trustee would not be required to exercise the power to make deductions from the relevant member's account. The Trustee would act in the best interests of its members at all times.

However, if the conditions are satisfied in the particular circumstances, the additional provision in the Scheme Rules would provide an express power for the Trustee to make the relevant deduction(s). This is considered to be helpful both in terms of ensuring there is a clear basis within the Scheme Rules on which the Trustee can act and being able to refer affected members to a provision in the Rules which would apply in respect of a deduction which can lawfully be made.

Question 1

Do you think this rule change covers all legally required deductions from members pots or is anything missing?

Question 2

Do you have any other observations or comments?

Technical Appendix

Proposed Rule Change 1

The draft proposed change to Rule 1 (Definitions) is to add the following new definition of “relevant amount” –
“**relevant amount**” means such amount as shall be determined by the Trustee from time to time for the purposes of the payment of death benefits under rule 18”

The draft proposed change to Rule 18 (Death Benefits) are tracked and underlined below.

18. Death benefits

18.1 Death of a member

This rule 18.1 shall apply on the death of a member unless the member has completed, and submitted to the Trustee, an expression of wish form for the purposes of rule 18.2. A member may not nominate a nominated beneficiary under this rule 18.1 at any time after having submitted an expression of wish form for the purposes of rule 18.2, whether or not such expression of wish form is later modified or revoked by the member.

18.1.1

On the death of a member the Trustee shall pay a lump sum equal to the value of the member’s pension account to the member’s nominated beneficiary or nominated beneficiaries in accordance with rule 18.1.3 or, if applicable, in accordance with rule 18.1.4 or 18.1.5.

18.1.2

A member may only nominate a nominated beneficiary by completing such nomination form as the Trustee may prescribe. A member may revoke a nomination by notifying the Trustee in such form as the Trustee may prescribe at any time prior to the member’s death. A nomination under this rule 18.1 shall also be treated for all purposes as having been revoked if the member completes and submits to the Trustee either

- a. a new nomination form in accordance with this rule 18.1; or
- b. an expression of wish form in accordance with rule 18.2 below.

18.1.3

The lump sum referred to in rule 18.1.1 shall be paid to such nominated beneficiary or nominated beneficiaries that the member most recently notified to the Trustee in accordance with rule 18.1.2. If the member’s most recent nomination is of more than one nominated beneficiary but the member has not indicated in the nomination form how the lump sum should be shared between them, the lump sum shall be paid to the nominated beneficiaries in equal shares.

18.1.4

If:

- a. the member does not notify the Trustee of any nominated beneficiary; or
- b. any nominated beneficiary cannot be identified or traced by the Trustee, having taken reasonable steps to do so; or
- c. a nominated beneficiary has predeceased the member or, in the case of a body corporate, trust, charity, club or society has ceased to exist before the member’s death, then, the lump sum payable under rule 18.1.1 (or the share of it payable to the nominated beneficiary who cannot be traced or who has predeceased the member, or which has ceased to exist) shall, if not more than ~~£5000~~ **the relevant amount** be paid in accordance with rule 18.1.5, and if more than ~~£5000~~ **the relevant amount** be paid to the deceased member’s personal representatives.

18.1.5

If the circumstances in rule 18.1.4 apply after the application of rule 18.1.3 and the remaining value of the member’s pension account due from the Scheme under rule 18.1.1 is not more than ~~£5,000~~ **the relevant amount**

then the Trustee shall pay or apply the remaining value of the member's pension account in accordance with such order of priority which the Trustee has determined shall apply for the purposes of the distribution of any amount under this rule 18.1.5.

18.2

This rule 18.2 shall apply on the death of a member who has completed, and submitted to the Trustee, an expression of wish form in such format as the Trustee shall prescribe. An expression of wish form under this rule 18.2 shall be treated for all purposes as having been revoked if the member completes and submits to the Trustee a new expression of wish form in accordance with this rule 18.2.

18.2.1

On the death of a member where this rule 18.2 applies, an amount equal to the value of the member's pension account on death will be applied by the Trustee to provide a lump sum which will be payable on the terms set out in rule 18.2.2.

18.2.2

Subject to rule 18.2.3, the Trustee may pay any lump sum benefit which is payable from the Scheme on the death of any person to or for the benefit of one or more of that person's beneficiaries in such shares as are stated in the expression of wish form, or, if no shares are specified, and the Trustee determines to pay the lump sum to the person's beneficiaries, the lump sum shall be paid to the beneficiaries in equal shares.

If:

- a. a beneficiary has died or, in the case of a body corporate, trust, charity, club or society has ceased to exist, either prior to the death of the member, or otherwise prior to any decision of the Trustee regarding the distribution of the lump sum benefit under this rule 18.2; or
- b. a beneficiary cannot be identified or traced by the Trustee, having taken reasonable steps to do so; or
- c. the Trustee determines not to pay an amount to or for the benefit of one or more of the beneficiaries; the amount which would otherwise have been paid to or for the benefit of such individual(s), shall be applied for the benefit of the other beneficiaries who the Trustee determines shall receive a payment under this rule 18.2 in proportion to the shares set out in the expression of wish form (or divided equally if no shares have been specified).

18.2.3

If the Trustee determines that the lump sum benefit payable under this rule 18.2 shall not be paid to or for the benefit of any of the beneficiaries, the lump sum benefit shall instead, if not more than ~~£5,000~~ **the relevant amount** be paid in accordance with rule 18.2.4, and if more than ~~£5,000~~ **the relevant amount** be paid to the deceased member's personal representatives.

To the extent that the lump sum death benefit would be paid under this rule 18.2 to the deceased member's personal representatives, and there are no persons with an interest in the member's estate other than the Crown, the Duchy of Lancaster or the Duchy of Cornwall, such amount shall not be payable. In that event, the lump sum otherwise payable will instead be transferred to the general account.

18.2.4

Where the Trustee determines that the lump sum payable under this rule 18.2 shall not be paid to or for the benefit of any of the beneficiaries, and the lump sum is not more than ~~£5,000~~ **the relevant amount** the Trustee shall pay or apply the remaining value of the member's pension account in accordance with such order of priority as the Trustee has determined shall apply for the purposes of the distribution of any amount under this rule 18.2.4.

Proposed Rule Change 2

The draft proposed change to Rule 11.2 of the Nest Rules (which is the existing Rule that refers to changes being made to members' accounts) are tracked and underlined below -

11.2

The Trustee may make any other entry or deduction in respect of the pension account of any member as it may consider necessary or desirable in order to account for any other change in the value of the Scheme assets which is attributable to the member's interest in the Scheme. This shall include ~~(including~~, for the avoidance of doubt, but without limitation:

- a. any deduction under article 27 of the Order;
- b. any deduction which the Trustee determines is required to be made as a result of or in connection with:
 - i. a void transaction (including under the Insolvency Act 1986 (as amended from time to time));
 - ii. the insolvency of the employer or other party which has paid contributions in respect of the member;
 - iii. compliance with any order of a court of competent jurisdiction or the rules of any governmental or regulatory body; and
- c. any entry or deduction (as applicable) to correct any error relating to a member's pension account."



Nest Corporation
10 South Colonnade
Canary Wharf
London, E14 4PZ

nestpensions.org.uk

© 2023 National Employment Savings Trust Corporation. All rights reserved.

Reproduction of all or any part of the content, use of the Nest trademarks and trade names is not allowed without the written permission of Nest. Nest does not warrant nor accept any responsibility for any loss caused as a result of any error, inaccuracy or incompleteness herein. This content is provided for information purposes only and should not be construed as financial, investment or professional advice or recommendation by Nest. Data may be obtained from third party weblinks, but these may not be error free and cannot be verified.