

Technical Bulletin

New Fair Deal guidance

9 October 2013

On 4 October 2013, HM Treasury (HMT) published new [guidance](#) setting out a reformed Fair Deal policy. Fair Deal is a non-statutory policy which sets out how pensions' issues are to be dealt with when staff are compulsorily transferred from the public sector to independent providers delivering public services. This Bulletin provides an overview of some of the measures announced.

New Fair Deal guidance

Following two consultation exercises (see GAD's November 2012 [Technical Bulletin](#)) HMT has now published guidance setting out a reformed Fair Deal policy, as well as the government's [response](#) to its November 2012 [consultation](#).

The November 2012 consultation announced that, under the reformed policy, staff whose employment is compulsorily transferred from the public sector to independent providers of public services will generally have a right to continued access to relevant public service pension arrangements. These continued access arrangements will replace the current broad comparability and bulk transfer approach under the existing Fair Deal policy.

The new guidance also confirms that where contracts involving staff covered by the existing Fair Deal policy are retendered there will be a presumption that staff should be offered access to the appropriate public service pension scheme.

Coverage

The new Fair Deal policy covers staff transfers from central government, so applies to central government departments, agencies, the NHS, certain maintained schools (including academies) and any other parts of the public sector under the control of government ministers, where staff are eligible to be members of a public service pension scheme. The new policy applies when such staff move from the public sector to an independent contractor by way of a transfer to which TUPE¹ applies or when such staff move by way of a non-voluntary transfer to a public service mutual or to other new models of public service delivery.

The new Fair Deal policy does not apply to staff transfers within the public sector ('machinery of government' transfers) which are covered under a Cabinet Office Statement of Practice². The reformed policy also generally does not apply to staff transfers from local authorities and other best value authorities (as listed in section 1 of the [Local Government Act 1999](#)). The guidance states that the Department for Communities and Local Government (DCLG) will be considering what is needed to achieve the principles of new Fair Deal in local government.

¹ The Transfer of Undertakings (Protection of Employment) Regulations 2006 ([SI 2006/246](#))

² [Cabinet Office: Staff Transfers in the public sector - Statement of Practice](#)

Terms of access to public service schemes

Contractors will generally be required to obtain a Participation Agreement with the relevant public service pension scheme in respect of each transfer of employment, before any transfer of staff takes place.

The employer contribution rate for contractors participating in public service pension schemes will normally be set at the same level as for other employers in the scheme, although scheme regulations may provide for differential rates to be charged - for example to take account of a higher risk of default associated with that employer.

Scheme regulations may also include provisions to charge an exit payment if a contractor ceases to be a scheme employer and the liabilities attributable to their participation in the scheme have not been met by the contributions paid up to that point. The policy also enables schemes to make provisions to protect themselves from the risks and associated costs arising from contractors' participation.

Employees will generally be granted access to the public service schemes on the same terms as employees who remain in the public sector.

Second and subsequent generation transfers

The new guidance confirms that when contracts are retendered, staff covered by the existing Fair Deal policy should now generally be offered access to the appropriate public service pension scheme for future accrual, returning to the section of the scheme that they would have been in had they remained in the public sector and not been transferred out. In these circumstances, staff will have the option to transfer accrued rights into the public service scheme via a bulk transfer. Special arrangements apply where exceptional circumstances, such as requirements under procurement law, would prevent the application of the new Fair Deal policy.

Timing

The new Fair Deal policy comes into effect immediately, although the new guidance contains specific provisions to allow:

- > contracting authorities that are already at an advanced stage of a procurement exercise to proceed on the basis of the existing Fair Deal policy where following the new guidance would not be practicable
- > additional time, where necessary, for departments responsible for the public service pension schemes to implement changes needed to allow continued access for transferred staff

In practice this means that, until the relevant public service scheme is in a position to allow continued access to its scheme, the provisions of the existing Fair Deal policy continue to apply in respect of staff transfers involving that scheme, although the new Fair Deal policy must be followed in all cases from April 2015.

Compliance

Contracting authorities are responsible for ensuring compliance with the new Fair Deal policy, and these rights will ultimately be enforceable by staff. Independent providers, as scheme employers, will also be subject to the requirements of the scheme regulations and the jurisdiction of the Pensions Regulator and the Pensions Ombudsman.

Further information

If you require further information on the Fair Deal policy, the principles of the new Fair Deal policy in local government or machinery of government staff changes, please contact HM Treasury, DCLG or Cabinet Office respectively. For further information on GAD passports and certificates, please get in touch with your usual GAD contact.

