



Procurement Policy Note – Fair Deal for staff pensions – staff transfers from Central Government

Action Note 05/14 11 March 2014

Issue

1. The Fair Deal policy sets out how pensions issues are to be dealt with when staff are compulsorily transferred from the public sector to independent contractors delivering public services. The Fair Deal policy allows newly transferring staff continued access to a public service pension scheme. It replaces the previous policy which required employers to provide transferring staff access to a broadly comparable pension scheme and the option of a transfer of their accrued pension rights.
2. The new Fair Deal policy also sets out how pensions issues are to be handled when contracts involving staff previously transferred out under the old policy are retendered. In these circumstances, there will be a presumption that staff will be returned to the public service pension scheme to which they previously had access. Broadly comparable pension schemes will be allowed to continue only where this is necessary for legal reasons.
3. HM Treasury published guidance implementing the new Fair Deal policy on 7 October 2013. The guidance is available at <https://www.gov.uk/government/publications/fair-deal-guidance>.

Action

4. Contracting authorities planning to award a contract which will involve the compulsory transfer of staff should make clear to potential bidders as early as possible, and ideally at the pre-procurement stage of the process, that the new guidance will apply.
5. Where a procurement exercise is already underway (i.e. at any stage after publication of an OJEU Notice) it is unlikely to be lawful to adjust the terms of the procurement to reflect the new Fair Deal policy. There is no requirement for a procurement exercise underway (and especially not those at an advanced stage) to be terminated or delayed. Contracting authorities should in each case seek legal advice on the permissibility and desirability of adjusting the pension requirements once the procurement exercise has commenced.
6. Full details of the policy and steps required to be taken by contracting authorities are detailed in the link at paragraph 3 above. A summary of some key points to be covered is provided at paragraph 12 of this note.

Timing

7. The new policy applies immediately for the transfer of any staff eligible to participate in the Principal Civil Service Pension Scheme. In other public service pension schemes, including the NHS Pension Scheme and the Teachers' Pension Scheme, work is underway to change scheme regulations and



administrative procedures to allow transferred staff, and their new employers, to participate in the scheme. These changes will be complete by April 2014.

Dissemination and Scope

8. This PPN is directly applicable to Central Government Departments, Executive Agencies, the NHS, maintained schools (including academies but excluding those covered by other arrangements for Local Government) 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. Please circulate this document within your organisation, its Executive Agencies and Non Departmental Public Bodies and to all Contracting Authorities for which you are responsible, drawing it to the attention of those with a purchasing role.

Contact

9. Contracting Authorities managing any procurement in which a transfer of staff out of the public sector is anticipated should contact the relevant public service pension scheme at the earliest opportunity. Relevant contact details for the main schemes are as follows:

Scheme	Contact details
NHS Pension Scheme	Julie.Badon@dh.gsi.gov.uk Saurabh.Das@dh.gsi.gov.uk
Principal Civil Service Pension Scheme	Kevin.Hughes@cabinet-office.gsi.gov.uk
Teachers' Pension Scheme	Karen.Cammack@education.gov.uk

10. Contracting authorities with general queries about the new policy should contact Sarah.Deacon@hmtreasury.gsi.gov.uk or Tom.Hubberstey@hmtreasury.gsi.gov.uk.

11. Any other enquiries about this PPN should be should be directed to the Service Desk 0845 000 4999 servicedesk@cabinet-office.gsi.gov.uk.

Background

12. Contracting Authorities should refer to the guidance for details of the required actions relevant to the negotiation of the contract in each case. In summary, the following are some key points which contracting authorities should ensure are covered:

- a. the contract for the transferred service or function should specifically require the contractor to provide transferred staff with continued access to the relevant public service pension scheme while they remain employed on the public service contract;
- b. contracts of employment of staff who are compulsorily transferred to an independent contractor as a result of an outsourcing of a service or function provide that they have a right to continued membership of their public service pension scheme on any subsequent compulsory transfer, while they continue to be employed on the contracted-out service or function;
- c. there are effective mechanisms in the contract for the transferred service or function to ensure that the independent contractor complies with the Participation Agreement (which sets out the terms of the contractor's participation in the relevant pension scheme);



- d. consider entering into an agreement with the authority responsible for the relevant public service pension scheme, requiring the scheme to notify the contracting authority if the independent contractor fails to comply with any of the requirements for their participation in the scheme, e.g. by failing to pay the necessary employer or employee contributions; and
 - e. the contract for the transferred service or function expressly provides that breach of the Participation Agreement entitles the contracting authority to terminate the contract.
13. Prior to reform, the Fair Deal policy required that when staff were transferred out of the public sector, their new employer was to provide them with access to a pension scheme which was broadly comparable to the public service pension scheme which was previously available to them.
14. On the recommendation of the Independent Public Service Pensions Commission, HM Treasury reviewed the Fair Deal policy. The Chief Secretary to the Treasury announced in 2012 that the policy would be retained, but in future staff compulsorily transferred from the public sector would be offered continued access to a public service pension scheme rather than requiring new employer to provide a broadly comparable scheme. The new policy will ensure that staff compulsorily transferred out of the public sector will continue to have access to good quality pensions. It will also achieve better value for money for the taxpayer by removing the costs and risks to employers associated with the provision of broadly comparable pension schemes, and will open up public service contracts to greater competition.
15. When existing contracts involving staff covered by the Fair Deal policy are retendered, there will be a presumption that staff covered by the Fair Deal policy should be offered access to a public service scheme. However, the new policy provides flexibility for employers to provide a broadly comparable scheme where legal requirements are a bar to providing access to a public service scheme.
16. Where it is not possible or practicable to apply the new policy, the previous Fair Deal policy, as set out in earlier guidance, should be followed in all cases. In this situation any transferring staff should be offered a broadly comparable pension scheme and the option of a transfer of any accrued pension rights when their employment is transferred.
17. Copies of the Government's response to previous consultations on the Fair Deal policy and copies of the guidance containing details of the old Fair Deal policy are available at:

<https://www.gov.uk/government/consultations/the-fair-deal-policy-treatment-of-pensions-on-compulsory-transfer-of-staff-from-the-public-sector>.