



HM Treasury

Fair Deal for staff pensions:

staff transfer from central government

October 2013



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You can download this publication from www.gov.uk

ISBN 978-1-909790-36-0

PU1571

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1

Fair Deal for Staff Pensions: staff transfers from Central Government

Introduction and background

1.1 This paper sets out the revised Fair Deal guidance. The Fair Deal is a non-statutory policy setting 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 paper sets out the standard practice which the Government will follow when its own staff are compulsorily transferred to non-public sector employers.¹

1.2 The policy is needed because the Transfer of Undertakings (Protection of Employment) Regulations 2006 ('TUPE') do not apply to occupational pensions.² The objectives of the policy are to provide an appropriate level of protection to public sector employees' pension provision when the services they deliver are outsourced, while delivering value for money for the taxpayer and removing barriers to plurality of service provision.

1.3 The Fair Deal policy was introduced in 1999. "Staff Transfers from Central Government: A Fair Deal for Staff Pensions" was published by the Treasury in June 1999.³ The Treasury issued a further guidance note "Fair Deal for Staff Pensions: Procurement of Bulk Transfer Agreements and Related Issues" in June 2004.⁴ The approach taken was that where staff were compulsorily transferred from the public sector, their new employer was to give them access to an occupational pension scheme which was broadly comparable to the public service pension scheme they were leaving.⁵ Staff were also to be offered the choice of becoming a deferred member of the scheme they were leaving or transferring their accrued benefits to the new scheme, by way of a bulk transfer agreement. Staff who were compulsorily transferred from the public sector were also to have the same protections on subsequent compulsory transfers.

1.4 The interim report of the Independent Public Service Pensions Commission found that the provision of final salary pension schemes in the public sector, combined with the requirements of the Fair Deal, were a barrier to plurality of public service provision.

1.5 The Government announced on 4 July 2012 that the Fair Deal was to be reformed.⁶ In future staff who are compulsorily transferred from the public sector will be offered continued access to a public service pension scheme rather than being offered a broadly comparable private pension scheme. In broad terms, all staff whose employment is compulsorily transferred from the public sector under TUPE, including subsequent TUPE transfers, to independent providers of public services will retain access to their current employer's pension arrangements.

¹ Staff transfers within the public sector are outside of the scope of this guidance – such transfers are matter for the Cabinet Office Statement of Practice on Staff Transfers within the public sector (http://resources.civilservice.gov.uk/wp-content/uploads/2011/09/stafftransfers2_tcm6-2428.pdf).

² SI 2006/246, see regulation 10.

³ www.gov.uk/government/uploads/system/uploads/attachment_data/file/81339/staff_transfers_145.pdf.

⁴ www.gov.uk/government/uploads/system/uploads/attachment_data/file/81340/pensions_bta_guidance_290604.pdf.

⁵ On broad comparability under the old Fair Deal see especially paragraph 14 of the 1999 guidance (and the Statement of Practice by the Government Actuary dated 26 May 1999 which was annexed to that guidance).

⁶ Hansard, Commons Debates, 4 July 2012, Column 53WS, Written Ministerial Statements, Public Service Pensions.

1.6 This new guidance comes into effect immediately and should be reflected in procurement practice as soon as is practicable without disruption to projects which are already at an advanced stage. However the earlier guidance remains in force and applies in the circumstances outlined below.⁷

1.7 This guidance applies directly to central government departments, agencies, the NHS, maintained schools⁸ (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.⁹ It does not apply to best value authorities (listed in section 1 of the Local Government Act 1999) but alternative arrangements exist in respect of those bodies. The Local Government Act 2003 enables the Secretary of State to issue directions to best value authorities in England and Wales concerning how pension matters will be dealt with in the contracting out of services. In 2007 the Best Value Authorities Staff Transfers (Pensions) Direction 2007 was issued to best value authorities in England and Welsh police authorities.¹⁰ The Department for Communities and Local Government (DCLG) will consider what is needed in respect of directions or other arrangements to achieve the principles of new Fair Deal in local government.

Compulsory transfers from the public sector

1.8 The new policy applies when staff who are members of a public service pension scheme move from the public sector to an independent contractor by way of a transfer to which TUPE applies, and when staff who are members of a public service pension scheme move by way of a non-voluntary transfer to a public service mutual or to other new models of public service delivery¹¹ (regardless of whether or not TUPE applies). Such staff should continue to be members of the public service pension scheme they were in immediately prior to the transfer, subject to the eligibility criteria of the relevant scheme. Transferred staff will continue to be eligible to be members of the public service pension scheme and they should also continue to be eligible to be members of the public service pension scheme following any subsequent compulsory transfer. (The new policy with respect to staff who were eligible to be a member of a public service pension scheme prior to the transfer but were not in fact a member is that they should continue to be able to be a member after the transfer.)

1.9 Staff who are members of a public service pension scheme and who are compulsorily transferred out of the public sector, and who remain continuously employed on the delivery of the outsourced service or function, will remain eligible to be members of their public service pension scheme. The Fair Deal policy does not apply to other staff of the independent contractor, including any staff employed to deliver the outsourced service or function who were not compulsorily transferred from the public sector. Any proposals to allow these staff access to a public service pension scheme are out of the scope of this guidance.

1.10 Contracting authorities should ensure that when staff who were (eligible to be) members of a public service pension scheme are compulsorily transferred from the public sector to an independent contractor, the contractor provides them with access to the appropriate public service pension scheme in their new employment while they continue to be employed on the transferred service or function. The contract for the transferred service or function should specifically require the independent contractor to provide transferred staff with continued access

⁷ Paragraphs 46 and 47 of the 2004 guidance note are no longer relevant.

⁸ Except and to the extent that a direction issued under sections 101 and 102 of the Local Government Act 2003, or other arrangements put in place to meet the principles of this guidance, apply to a school which is maintained by a best value authority.

⁹ "Public service pension scheme" has the same meaning in this guidance as in section 1(1) of the Pension Schemes Act 1993.

¹⁰ Other public sector bodies participating in the Local Government Pension Scheme may however be subject to this guidance.

¹¹ See Open Public Services White Paper (CM 88145): <http://files.openpublicservices.cabinetoffice.gov.uk/OpenPublicServices-WhitePaper.pdf>.

to the relevant public service pension scheme while they remain employed on the public service contract.

1.11 The contracting authority should also ensure that the 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. These rights will therefore ultimately be enforceable by staff, although contracting authorities have a responsibility to ensure that independent contractors comply with those of their contractual responsibilities which give effect to the Fair Deal policy, as outlined below. Independent contractors, as scheme employers in the public service pension schemes, will also be subject to requirements of the scheme regulations and the jurisdiction of the Pensions Regulator and Pensions Ombudsman.

1.12 Contracting authorities should also ensure that staff who have been compulsorily transferred from the public sector under this policy are provided with continued access to the relevant public service pension scheme on any subsequent compulsory transfer, while they continue to be employed on the contracted-out service or function, including any transfer to a sub-contractor. Any subsequent contract for the transferred service or function should specifically deal with this requirement. The contracting authority should also ensure that the contracts of employment of staff who are compulsorily transferred in second or subsequent generation transfers continue to provide that they have a right to continued membership of their public service pension scheme, a right which will be enforceable against the new employer.

1.13 Contracting authorities that plan to award a contract which will involve the compulsory transfer of staff to which this guidance will apply should make that clear at an early stage in the procurement process. Pension issues should be dealt with as an integral part of the overall procurement exercise, and contracting authorities should make clear at an early stage what the pension protection must be, in both first generation exercises and subsequent generation exercises to appoint a successor contractor. Contracting authorities may also wish to confirm at an early stage in the procurement process that prospective bidders are willing to comply with the regulations that govern the scheme. The contracting authority should also notify the authority responsible for the relevant public service pension scheme at an early stage in the process that existing members may be being transferred to a new employer who will need to participate in the scheme.

1.14 A Participation Agreement between the independent contractor and the relevant public service pension scheme will be required for each public service contract requiring an independent contractor to participate in that scheme, unless the independent contractor's contract with the contracting authority and scheme regulations impose equivalent obligations upon the contractor, and the responsible authority agrees to this approach. The contracting authority should ensure that the contract for the transferred service or function specifically requires the contractor to comply with the Participation Agreement. The contractor must agree the Participation Agreement with the responsible authority for the scheme during the procurement process, before the transfer of staff takes place.

1.15 The contracting authority should ensure that there are effective mechanisms in the contract for the transferred service or function to ensure that a contractor complies with the Participation Agreement. Should a contractor breach any of the requirements of the Participation Agreement, the contracting authority should seek to ensure that the contractor complies with them.

1.16 The contracting authority may wish to enter an agreement with the responsible authority 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.

1.17 The contracting authority should ensure that the contract for the transferred service or function expressly provides that breach of the Participation Agreement entitles the contracting authority to terminate the contract.

1.18 The contracting authority (or the ceding employer if this is not the contracting authority) should provide the scheme manager with the names of the individuals transferring to the new employer who will retain (eligibility for) membership of the scheme in accordance with this guidance as soon as the list of transferring employees is finalised.

1.19 There may be exceptional circumstances where there are special reasons which mean that it would not be appropriate to provide continued access to a public service pension scheme to staff who are compulsorily transferred from the public sector. The strength of those reasons should be tested rigorously by the contracting authority. No decision should be taken not to provide continued access to a public service pension scheme to staff who are to be compulsorily transferred from the public sector unless any recognised trade union or, in the absence of such a body, the staff, have been consulted with a view to reaching agreement with them. If staff are compulsorily transferred from the public sector without being given continued access to a public service pension scheme, it would then be necessary to comply with the old Fair Deal policy (i.e. the 1999 and 2004 Guidance referred to in paragraph 1.3 above) and ensure that staff were provided with a broadly comparable pension scheme. In all cases the preference should be for the new employer to offer transferring staff access to a public service pension scheme and only in exceptional circumstances membership of a broadly comparable scheme as an alternative. In the event that it was not appropriate to offer either access to a public service pension scheme or a broadly comparable pension scheme under the old Fair Deal policy the contracting authority would need to consider whether compensation should be offered to transferring staff, in consultation with staff or staff representatives. Actuarial advice would need to be taken by the contracting authority on the calculation of any compensation in these exceptional circumstances. Only in exceptional cases should members of staff to whom this guidance applies not remain members of their public service pension scheme.

1.20 This new guidance should be followed where possible with immediate effect. The necessary changes to public service pension schemes will be made as soon as practicable. In some of the public service pension schemes the new arrangements will start immediately. In others, this will not be possible until the necessary changes to the scheme regulations and administrative procedures have taken place to allow transferred staff to participate in the scheme. The previous Fair Deal policy will continue to apply to transfers that take place before the relevant pension scheme has made the necessary changes to permit continued access. That is, where staff cannot be offered continued access to the relevant public service pension scheme they should be provided with a broadly comparable pension scheme and the option of bulk transfer arrangements when their employment is transferred, in accordance with the earlier guidance referred to above. The policy outlined below will apply in any subsequent retender. The new guidance set out in this paper must be followed in all cases from April 2015.

1.21 As noted, the new guidance set out in this paper should be reflected in procurement practice as soon as is practicable. However, where a procurement is already at an advanced stage, the contracting authority should consider whether it would be legitimate and desirable to adjust the terms of the procurement to take account of this new guidance. There is no requirement for an advanced procurement to be terminated or delayed in order to apply this new guidance. Where it is not practicable to apply this new policy, the previous policy, as set out in the previous Fair Deal guidance referred to above, should continue to be followed. That

is, in this situation transferring staff should be offered a broadly comparable pension scheme and the option of bulk transfer arrangements when their employment is transferred, in accordance with the earlier guidance. The policy outlined in the next section will apply in any subsequent retender.

1.22 As noted, this guidance sets out the standard practice which the Government will follow when its own staff are compulsorily transferred to non-public sector employers. It is of course open to contracting authorities in other parts of the public sector to adopt approaches comparable to those set out here. It is also open to private sector bodies whose members participate in a public service pension scheme to seek to adopt a comparable approach, subject to the independent contractor to whom staff are being compulsorily transferred meeting the relevant requirements to participate in the scheme.

Retenders of contracts involving staff who were transferred out of the public sector under the old Fair Deal guidance

1.23 The previous section outlined the policy regarding staff who are compulsorily transferred out of the public sector after this guidance comes into effect. There are, however, many staff who have already been transferred out of the public sector and to whom the old Fair Deal (i.e. the 1999 and 2004 Guidance referred to in paragraph 1.3 above) still applies. The guidance in this section applies to retenders of contracts involving compulsory transfers of staff who were transferred out of the public sector under the old Fair Deal.

1.24 Various approaches to pensions were taken where staff were compulsorily transferred from the public sector prior to the introduction of Fair Deal in 1999. Where a contract involving such staff is retendered in future the contracting authority should consider, on a case by case basis, whether the approach taken was equivalent with the old Fair Deal. In cases where the approach was equivalent, the contracting authority should, where this is compatible with the original contract, and the authority responsible for the pension scheme agrees, follow this guidance.

1.25 When a contract involving the compulsory transfer of employees already transferred out under the old Fair Deal is retendered, contracting authorities should (where this is compatible with their obligations under the Public Contracts Regulations 2006) require bidders to provide them with access to the appropriate public service scheme. The successful bidder should provide the relevant staff with access to the appropriate public service pension scheme in their new employment, while they continue to be employed on the contracted service or function. The appropriate scheme will normally be the scheme that staff would be in, had they remained in the public sector and not been transferred out.¹² For the purpose of the broad comparability assessment, the benefits in the relevant scheme are ordinarily those applicable at the date on which the new contract commences (see paragraph A.8 of Annex A). The new contract for the service or function should specifically require the independent contractor to provide transferred staff with access to the relevant public service pension scheme while they remain employed on the public service contract. The contracting authority should also comply with paragraphs 1.14 to 1.18 of this guidance.

1.26 If the contracting authority, in the particular circumstances of a specific retender, would be unable to comply with their obligations under procurement law to treat economic operators equally if they were to require the incumbent to provide access to a public service pension

¹² Where a public service scheme has been closed to future accrual and the staff would have been members of a new or an alternative public service pension scheme had they not been transferred to a new employer, transferred staff will instead be eligible to be members of that new or alternative scheme. Transferred staff will, however, be able to rejoin a scheme that is closed to new members if they would have remained in that scheme had they not been transferred out of the public sector. Transferred staff will also be subject to any future changes to the public service pension schemes to which they are admitted, in the same way as other members of the scheme are, including the introduction of new schemes from 1 April 2015 (1 April 2014 in the case of the Local Government Pension Scheme).

scheme, the incumbent should have the option of providing either access to a public service pension scheme or to a broadly comparable pension scheme. The contracting authority must ensure that the incumbent employer informs any recognised trades unions or, in the absence of such bodies, the staff, of any proposals which would allow for the continuation of broadly comparable schemes, before the retendering process is commenced.

1.27 Where an incumbent provider offers a broadly comparable scheme, this should wherever possible be broadly comparable to the scheme that staff would be in had they remained in the public sector and not been transferred out. In future, public service pensions will be calculated on a career average re-valued earnings (CARE) basis, rather than on a final salary basis. Where the relevant public service scheme for the purpose of the broad comparability assessment is a CARE scheme, the prospective employers' scheme should be a CARE scheme,¹³ with provision made to provide transitional protection to those staff that would have been eligible for this, had they remained in a public service scheme (see paragraph 2.21 of Section 2 below). Where this is not possible, for example due to existing employment contracts, or because it is not possible to amend the current scheme rules, the broadly comparable pension scheme offered by the incumbent should be broadly comparable to the public service pension scheme to which the staff had access when they left the public sector.

1.28 In exceptional cases it is conceivable that, even if the contracting authority allows the incumbent provider to provide either access to a public service pension scheme or a broadly comparable pension scheme, the authority would still be unable to comply with its obligation under procurement law to treat economic operators equally. In such exceptional circumstances, to ensure that appropriate pension protection can be secured, the contracting authority may require both the incumbent and new bidders to provide a broadly comparable scheme, rather than access to a public service scheme. In these circumstances the broadly comparable scheme should, wherever possible, be broadly comparable to the public service scheme staff would have been in had they remained in the public sector and not been transferred out. The incumbent and new bidders should be permitted to bid on the basis that they will provide a broadly comparable scheme only where it is not otherwise possible to comply with procurement law.

1.29 There may be cases in which an incumbent contractor has a contractual obligation to provide staff with a broadly comparable scheme, so that the incumbent is unable to provide access to a public service scheme instead. In such cases, the contracting authority should ensure that the incumbent seeks to re-negotiate the employment contracts to provide for access to the appropriate public service pension scheme following the retender. Where however the incumbent is unable to secure agreement to a change in employment contracts, it may provide ongoing access to the broadly comparable scheme. That is, where a contracting authority is satisfied that the incumbent contractor would be unable to provide access to a public service pension scheme were it to be successful in bidding for the retendered contract, they should allow the incumbent to continue to provide the broadly comparable scheme instead. In these circumstances, the contracting authority should consider whether it would be necessary to allow all bidders to compete on this basis where it would otherwise not be possible for the contracting authority to comply with their procurement duties.

1.30 Annex A to this guidance provides further details about how broad comparability assessments should be carried out.

¹³ There could be circumstances where the relevant public service scheme is subsequently changed to provide different benefits to those that were provided when the broad comparability test was carried out. In these circumstances, whether to make changes to the provider's scheme to reflect the changes in the public service scheme against which the provider's scheme was compared will be a matter for the relevant contracting authority and employer to consider on a case by case basis.

1.31 Employees who left their public service pension in deferment, rather than bulk transferring it to the new employer's scheme when they transferred from the public sector, will not have the option of maintaining their final salary link for any previous service accrued in the old final salary scheme, unless permitted by the scheme's rules. For example, such an option may be available if they are returning to the public service scheme within five years of leaving. This will apply whether or not they opted to join the employer's broadly comparable pension scheme. These employees will be subject to the same rules as other deferred members when returning to the public service scheme.

1.32 There may be circumstances apart from the retender of existing contracts where employers and/or contracting authorities consider there is an opportunity to return employees to a public service scheme. Such circumstances might include cases in which an existing employer is declared insolvent or where there is a change in ownership of the existing employer, or where employees are transferred to another employer as a result of the service or function being sub-contracted. Decisions on whether staff should be returned to a public service pension scheme in circumstances other than a retender should be made on a case by case basis.

2

Enabling participation in the public service pension schemes: further guidance

Access to the public service pension schemes

2.1 Staff who are members of a public service pension scheme and who are compulsorily transferred out of the public sector will normally participate in the relevant public service pension scheme in their new employment. They will continue to (be eligible to) accrue further pension benefits in that scheme in respect of their new employment and their pensionable service will be treated as though it were continuous.

2.2 The contracting authority must provide the scheme manager and the new employer with a list of the individuals that are covered by this guidance as soon as the list of transferring employees is finalised.

2.3 Staff who were eligible to participate in a public service pension scheme immediately prior to the transfer, but had opted that their service should not be pensionable, should be enrolled in the scheme on the day that the new employment commences.

2.4 If a transferred person ceases to be employed on the transferred service or function they will normally cease to be eligible to be a member of the public service pension scheme (subject to exceptions that may be made for staff moved to another transferred service or function – see paragraph 2.6 below – or where a person would otherwise be eligible to be a member in respect of that new employment). The employee will become a deferred member of the scheme as they will have ceased to be in a qualifying employment.

2.5 A person who remains wholly or mainly employed on a transferred service or function will remain eligible to be a member of the pension scheme in respect of that employment. Where a person moves from full-time to part-time employment, or otherwise reduces the proportion of their time employed on the transferred service or function so that they are no longer wholly or mainly employed on that service or function, they will continue to be eligible to be a member of the pension scheme to the extent that the transferred employment continues. The responsible authority for a public service pension scheme should set out how they will interpret this paragraph in guidance on how the Fair Deal policy will operate for that particular scheme. The responsible authority may also set out, within the scheme regulations, a Participation Agreement or elsewhere, the circumstances in which a person will be regarded as remaining wholly or mainly employed on a transferred service or function and when a person will be eligible to remain a member of the pension scheme in respect of a proportion of a whole time employment.

2.6 Where a person ceases to be employed on the transferred service or function, but is employed in another role where staff undertaking that service or function are eligible to be members of the same public service pension scheme, they may be permitted to remain a member of the scheme if they elect to do so, and the contracting authority and employer consent. This may be desirable to provide for greater labour mobility between transferred services or functions, or to allow employers to manage their workforce across different

contracts. Such arrangements may be made on a case by case basis, or the contracting authority and employer may consent to these arrangements generally.

2.7 The responsible authority, through scheme regulations, a Participation Agreement or any other means, should specify the information that participating employers are required to provide to the scheme manager or such other person as they determine. This is necessary to ensure that the pension scheme's internal controls can be operated effectively and to enable the scheme manager and pension board to manage and administer the scheme in compliance with their statutory responsibilities. This must include an obligation on the employer to notify the pension scheme when an individual is no longer eligible to be a member of the public service scheme in respect of some or all of their employment, and of any other matter determined by the scheme manager.

Employer and employee contributions to the scheme

2.8 Scheme regulations and internal controls must include provisions to manage the risk associated with allowing a wider range of employers and employees to participate in the public service pension schemes.

2.9 Both employees and employers will be required to pay contributions to the pension scheme. Employees will be required to pay employee contributions in line with those paid by members of the scheme working in the public sector. These will be determined under the scheme regulations and may change following an actuarial valuation of the scheme. The employer will be required to collect the appropriate employee contributions and to ensure that these are paid to the scheme in accordance with the requirements set out in the scheme regulations or by the scheme manager.

2.10 Employers will be required to pay employer contributions in respect of employees covered by the Fair Deal policy. The contributions will normally be set at the same level as the employer contribution rate paid by all other employers in the scheme.

2.11 Failure to pay contributions by the date they are due may require the scheme manager to notify the Pensions Regulator of the contravention.¹ The Pensions Regulator may in turn investigate and take enforcement action to recover the overdue payment from the employer.

2.12 The normal rate of employer contributions payable to the scheme may change from time to time following an actuarial valuation of the scheme. The contribution rate paid by employers participating in the scheme under the new Fair Deal policy will normally be adjusted to reflect the outcome of the scheme valuation.

2.13 The contracting authority and employer may wish to agree in advance that the contracting authority will provide additional funding or reduce funding as appropriate in the event of a change in the employer contribution arising from a valuation. This will enable contracting authorities to ensure value for money from contracts by removing the need for the employer to price for the risk of an increase in employer contributions, which may not materialise. Similarly, the contracting authority may wish to require that any saving in employer contributions made as a result of a reduction in the employer contribution rate(s) is to be paid to the contracting authority so as to prevent a windfall gain for the employer.

2.14 In addition, the contracting authority may also wish to require that any savings in employer contributions arising as a result of staff eligible for Fair Deal protection moving from the public

¹ Under section 70A of the Pensions Act 2004 (Duty to report late payment of employer contributions), to be inserted by Schedule 4, paragraph 7 of the Public Service Pensions Act 2013.

service contract or otherwise ceasing to participate in the scheme are to be paid to the contracting authority.

2.15 Alternatively, scheme regulations may provide for the charging of differential rates of employer contributions to employers participating in the scheme under the new Fair Deal policy. This may be appropriate to take account of any higher risk of default associated with an employer or to reflect the nature of an employer. Scheme regulations themselves may provide criteria for charging differential rates, or may provide the responsible authority with the power to issue a direction in respect of a body that is allowed to participate in a scheme. Where regulations allow for a direction to be issued, the direction may determine differential contribution rates where they are necessary to protect the pension scheme from incurring additional costs arising from the employer's participation in the scheme. The decision on whether to charge differential rates to an employer will be made by the relevant responsible authority or, if the regulations permit it, the scheme manager.

2.16 Scheme regulations or a direction issued by the responsible authority may also include provision to charge employers an exit payment where the scheme manager identifies that the liabilities attributable to the employer's participation in the scheme have not been met by the contributions paid up to that point. Where scheme regulations or a direction provide for an exit payment, the Participation Agreement should refer to the relevant regulations or direction (as amended or varied from time to time). The scheme actuary will carry out the assessment for the scheme manager, the costs of which will be recovered from the employer.

2.17 Scheme regulations or a direction issued by the responsible authority may also allow the scheme manager to require an additional payment from the employer, if the employer has breached any of the terms of the Participation Agreement in a way which leads to an increase in scheme liabilities. In these circumstances, the amount payable would be determined by the scheme manager, having taken advice on the cost of the additional liabilities from the scheme actuary.

2.18 In order to protect the scheme from incurring costs arising from the actions of the employer, scheme regulations or any direction may also provide for the charging of interest on employer and employee contributions when paid late to the pension scheme. The rate of interest to be charged will be set out in scheme regulations or any relevant responsible authority direction.

2.19 Scheme regulations or any responsible authority direction may provide for the scheme's administration costs arising from the employer's participation in the scheme to be met by the employer. Where scheme regulations provide for administration costs to be met by employers, the Participation Agreement should refer to the relevant regulations (as amended or varied from time to time).

2.20 Scheme employers may be required to provide indemnities, guarantees or bonds to protect the scheme from potential costs arising from their participation in the scheme. For example, a bond may be required that is sufficient to cover any contributions owed to the scheme in the event of the employer's insolvency. The amount of any indemnity, guarantee or bond provided will be subject to regular review. The employer may be required to provide additional funds if the potential liability to the pension scheme changes. For example, this may arise due to a change in the size of the pensionable paybill, or a change in the employer contribution rate.

2.21 There will be a large number of people covered by the new Fair Deal policy with final salary pension rights as a result of service prior to 2015. The Government's decision to provide

transitional protection to those closest to retirement,² and to maintain the final salary link for service in the existing public service pension schemes, means that pay in the final years of an employee's career will have a direct impact on the cost of providing their pension.

2.22 Some scheme regulations contain provisions to limit the pensionability of any large increases in salary in the final years of an employee's employment. In addition to these provisions (where they exist), scheme regulations or a direction may provide that an employer will be liable for the additional costs arising from increases in pensionable pay beyond any specified limits.

2.23 Finally, Participation Agreements may set out how additional costs arising from the early termination of employment, employer decisions and the exercise of employer discretions, and any other matter that may give rise to additional pension costs are to be paid for. Schemes may require employers to meet the additional costs arising in any such situations.

2.24 Contracts and Participation Agreements will need to provide effective methods of enforcing the controls that are to be imposed on participating employers.

Administration and monitoring

2.25 Employers with employees covered by the new Fair Deal policy will be required to provide such information to the scheme manager as is necessary to ensure the efficient running of the schemes, to meet the requirements placed on them by the pensions legislation³ and to provide for the effective monitoring of the new Fair Deal policy. Information requirements for each scheme will be set out in scheme regulations, which will reflect any requirements placed on schemes by a Treasury direction made under section 15 ('Information about schemes') and regulations made under section 16 ('Records') of the Public Service Pensions Act 2013. Further requirements may result from the making of a direction under section 25 ('Extension of schemes') of that Act.

2.26 There will be a duty on employers to report changes in employees' eligibility to the scheme as soon as the changes occur – for example, if employees leave the employer, reduce the proportion of time they are employed on the transferred service or function or move to another employment with the employer.

2.27 The scheme administrators will also be able to request any additional information that may be required for the good administration of the scheme or to monitor the implementation of the new Fair Deal policy.

2.28 Scheme managers will be required to submit information to the Treasury on the operation of the new Fair Deal policy to allow for cross-Government monitoring of the roll-out of the new policy. Schemes will be obliged to report:

- the number of transferred staff that are enrolled in a public service pension scheme on the day that their new employment commences;
- the number of employees covered by the new Fair Deal policy on the anniversary of the contract being awarded and at the end of the contract; and
- the contributions (employer and employee) paid in respect of these employees

² Workers in the main public service pension schemes who, as of 1 April 2012, had 10 years or less until they reach their Normal Pension Age (NPA) will see no change in when they can retire, and no decrease in the amount of pension they receive at their current NPA. In addition to this transitional provision, tapering provides some protection to those who were between 10-14 years from their current NPA on 1 April 2012.

³ That is, 'pensions legislation' within the meaning of section 13(7) of the Pensions Act 2004. This includes regulations issued by the Secretary of State for Work and Pensions that specify the records that must be kept by scheme managers.

- details of employers that have failed to meet their responsibilities as employers in the schemes.

The Treasury will monitor the length of time that employees covered by the Fair Deal policy work on outsourced public service contracts, and the rate at which protected staff cease to be covered by the Fair Deal policy.

2.29 Schemes will also be required to provide the scheme actuary with any data necessary to:

- conduct periodic valuations of the scheme as a whole; and
- value the liabilities accounted for by those employees and former employees that are covered by the Fair Deal policy.

Treasury directions on information, to be made under section 15 of the Public Service Pensions Act 2013, may incorporate these requirements for reporting on the operation of the new Fair Deal.

Bulk transfers for retendered contracts

2.30 Staff moving back into either a public service scheme or to a new provider's broadly comparable scheme will have the option of having their accrued pension rights protected via a bulk transfer arrangement. As with other types of transfers, this will require a transfer payment to be made by the transferor scheme to the receiving scheme which extinguishes the transferor scheme's liability to the person transferring their accrued benefits from the scheme. Deferred pensions of former staff who have left the employment of the employer prior to the retender are generally not expected to be included in bulk transfers back to public service pension schemes.

2.31 All contracts covering employees protected by the Fair Deal policy should include clear provisions about how staff pensions should be handled at the end of the contract.⁴ These provisions in contracts will need to be carefully considered where staff are returned to a public service scheme or transferred to a new provider's broadly comparable scheme. More detailed guidance for employers on managing bulk transfer arrangements is provided at Annex B. All existing contracts should include an enforceable obligation on the employer to allow for an onward bulk transfer agreement under which the onward terms are no less favourable than the inward terms (allowing for any shortfall terms) for the bulk transfer into the new employer's broadly comparable scheme. This no less favourable requirement applies in respect of benefits which arose in the employer's broadly comparable scheme as a consequence of the inward bulk transfer and applies only for those members who wish to transfer their accrued benefits under the onward bulk transfer agreement. In relation to such benefits each contract should tie the scheme receiving a bulk transfer into providing funds for an onward bulk transfer value sufficient, at least, to match the value which would be generated by replicating the terms of the agreement under which the scheme received the inward bulk transfer at the beginning of the contract. For this purpose, where the inward terms and/or the shortfall terms involve assumptions which are stated as being, for example, financial assumptions as at the vesting date or TUPE transfer date, the financial assumptions which should be used are those as at the vesting date or TUPE transfer date applicable to the contract re-let.

2.32 The contracting authority should provide details of the onward bulk transfer terms to each of the other bidders in the procurement, along with details of the service credits which each of their schemes will need to provide. The service credits will be on a day-for-day basis or actuarial

⁴ Where contracts do not contain such provisions, the agreement of exit terms from any broadly comparable scheme will be a matter for the employer and contracting authority to determine.

equivalent where there are benefit differences between the two schemes. Because financial and demographic conditions may evolve over the life of a contract, there may be a risk that the onward bulk transfer terms are considered insufficient to cover the liabilities that would arise in the pension scheme being offered by the bidder. Bidders should therefore indicate in their bid documentation if they agree to those bulk transfer terms or if any price adjustment (shortfall) is proposed on account of the acceptance of those terms. It will be for the contracting authority to cover the costs of the work that the scheme actuary undertakes in carrying out the bulk transfer action on behalf of a public service pension scheme where staff can elect to transfer their accrued benefits to that scheme.

2.33 Where staff elect to transfer their accrued benefits to either a public service scheme or a new provider's scheme, subject to the contracting authority being satisfied that the requirements of this guidance on bulk transfer arrangements have been met, the contracting authority is required to cover the costs of this shortfall but not to meet any other costs which may arise due to the termination of the existing pension arrangements. When assessing shortfall claims, it is important that contracting authorities ensure that the onward bulk transfer terms properly reflect the obligations on incumbent providers set out at Annex B, including allowance for the underpin and any shortfall terms in connection with the inward terms for the incumbent provider's scheme. When considering shortfall claims, the contracting authority must ensure adherence to the requirements set out in Annex B.

A Annex A: Broad comparability assessments

A.1 The Fair Deal guidance sets out certain circumstances in which employers may offer a broadly comparable scheme rather than providing access to a relevant public service scheme. This annex sets out how broad comparability assessments are to be carried out when an employer is providing a broadly comparable scheme. An assessment may be carried out by any qualified actuary.

Broad comparability

A.2 Central to the process is the requirement for an assessment of whether pension arrangements being offered to employees by their employer are broadly comparable to the relevant public service scheme. This requirement relates only to the period of employment after the new contract commences (future accrual).

A.3 A broadly comparable scheme will be one which, in the professional opinion of an actuary, satisfies the condition that there is no identifiable group of employees who would overall suffer material detriment in terms of their future accrual of pension benefits under the scheme compared with the relevant public service scheme assessed in accordance with this guidance. An identifiable group is a group which is identifiable by age, gender, salary level, service length or scheme membership category. Identifiable groups covers employees only, and not the dependants of those employees.

A.4 Pension arrangements which satisfy the broad comparability requirement will be certified as such. The onus will be on the relevant contracting authority to ensure that the pension promises made by the prospective employer are delivered for the staff concerned.

A.5 Broad comparability assessments may be commissioned by a public sector employer, by a contracting authority, or by a private sector employer. Where an assessment is being carried out with reference to transferring staff, the assessment should be carried out in relation to the group of staff entitled to Fair Deal protection, irrespective of whether they are currently members of the relevant scheme. Alternatively, the assessment may be carried out on a generic basis, not related to specific staff, with a view to obtaining a certificate confirming that the scheme is broadly comparable to the relevant public service scheme for a wide group of employees. Any such certificates must confirm the groups of employees that are covered and, where appropriate, highlight any material groups that are specifically excluded.

A.6 In either case, the principles are the same. Where no specific group of employees is identified, the assessment should be conducted using a range of employee profiles with different characteristics covering the various membership categories and affecting the value of pension rights, including age, gender, salary level and service length.

A.7 Broad comparability assessments do not cover the bulk transfer of accrued benefits earned before the transfer of employment – further details on these arrangements are set out in Annex B. However, broadly comparable schemes must include provisions to accept a bulk transfer value, or to pay a bulk transfer value to another broadly comparable scheme, in accordance with the requirements set out in Annex B.

Benefits against which assessment is made

A.8 A broad comparability assessment will be carried out by testing the proposed benefits and contributions in the alternative scheme to be provided by the relevant employer against those in the relevant public service scheme. For this purpose, the benefits and contributions in the relevant public service scheme are those applicable at the date on which the new contract commences except in those circumstances where an employer is providing a scheme which is broadly comparable to the relevant public service scheme from which staff originally transferred. In this case, the benefits and contributions in the relevant public service scheme against which the assessment is to be made, are those which were provided at the original date on which staff first transferred from the public service.

A.9 In either case, the assessment should take account of benefits and contributions under each scheme to which members have a right at the appropriate date, and should include allowance for any changes to those benefits and contributions which, before the appropriate date, had already been incorporated into scheme rules, regulations or other documentation, or which had been formally agreed and published in sufficient detail.

A.10 The broad comparability assessment will not take account of any benefits which are payable solely as a result of a member being declared redundant, either compulsorily or voluntarily, where those exceed the normal benefits available to an individual who resigns from employment at that time.¹

A.11 The broad comparability assessment will not take account of any injury benefits payable as a result of injury or death while in the service of the employer.

General Principles

A.12 The general principles on which the assessment of broad comparability should be made are set out below. It must be recognised that some flexibility may need to be applied in the practical implementation of these principles.

Value

A.12.1 The overall value of the scheme should be equal to or greater than that of the relevant public service scheme.

A.12.2 In addition to the test of overall value, assessments of value will be made separately for different categories of member and different types of individual, e.g. for different pay levels, for different ages, and for any other characteristics which could reasonably be expected to have a material impact on the value of pension benefits.

A.12.3 Value is assessed by calculating, on consistent actuarial assumptions and methods (see the section on 'actuarial assumptions') the underlying employer costs, in excess of the employee's share of the cost, of providing the benefits under the scheme which will accrue over the expected remaining working lifetimes. This approach to the assessment of cost is known as the 'Attained Age Method'.

A.12.4 Value is considered as that in the hands of the employee before any liability for tax or national insurance. No allowance is made for the possible impact of the annual allowance or lifetime allowance on the employee contributions payable, or on the benefits provided, or for

¹ The rights to redundancy benefits automatically transfer if TUPE is engaged.

any fixed or other forms of protection which employees may have against the effect of changes in those allowances.

Contributions

A.12.5 Schemes with higher rates of employee contributions than the relevant public service scheme will not be deemed broadly comparable because of the implied reduction in net pay unless the employer provides a compensating pay uplift. Pay uplifts should be expressed as a percentage of basic salary and should continue for the duration of contributory membership of the scheme.

A.12.6 Employers may offer eligible staff the option of joining a salary sacrifice arrangement, in which case the benefits available in the scheme must be the same as those which would have been available if there had been no salary sacrifice arrangement.

Benefits

A.12.7 The range of benefits provided under the scheme must at least match that provided by the relevant public service scheme.

A.12.8 Benefits must be available from the scheme in respect of the same events and at the same time as would arise in the relevant public service scheme, unless this would be prohibited by legislation or unauthorised in accordance with the Finance Act 2004.

A.12.9 Where the relevant public service scheme provides certain benefits without requiring employer or scheme manager consent, the scheme cannot require employer or trustee consent in respect of those benefits.

A.12.10 Member options which are available in the relevant public service scheme (for example, added pension facilities or the option to provide additional survivor benefits) do not need to be provided in the scheme.

A.12.11 In some cases, the amount of benefit may be lower on a particular contingency than under the relevant public service scheme, but this will need to be balanced by better benefits on other contingencies, or by a lower contribution rate. However, there should not be a material skew in the benefits or employee contributions payable, when compared with the public service scheme. However, when carrying out the assessment, the actuary should consider the extent to which it is appropriate to take account of benefit design features which might materially disadvantage certain employees whom are not considered identifiable groups, such as members that choose to commute more or less of the pension entitlement, or members eligible for ill-health benefits. This would not prevent the adoption of such benefit designs, if these are otherwise permissible under this guidance, but the assessment should limit the extent to which such other types of employees might be materially disadvantaged as a result. For example, the provision of a major 'feature A' at the expense of another major 'feature B', the detriments being introduced in 'feature B' may be limited so no material disadvantage results for those members unable to (or unlikely to) gain from 'feature A'. As outlined in 14.4, the actuary may wish to set assumptions to give effect to this requirement.

A.12.12 Normal retirement age – at which full unreduced retirement benefits are available as a right and at which deferred benefits are payable in the scheme – will be no higher than in the relevant public service scheme.

A.12.13 Benefits and contributions must be calculated on a definition of pensionable pay in the scheme of at least the value of that applying in the relevant public service scheme.

A.12.14 Where a previous transfer has occurred under Fair Deal, time spent with any previous employer (whether in the public or private sector) which would have counted towards qualification for benefits in the relevant scheme, will count in the employer's scheme as qualifying service, regardless of whether or not accrued rights are transferred to the scheme.

A.12.15 The scheme must provide some level of ill-health benefits, although the form and level of the benefit can differ. There is no requirement for the scheme to match different tiers of ill-health benefits provided by the relevant public service scheme. Employers may provide long term sickness and disability benefits to employees under contracts of employment, whether through a salary continuation arrangement, permanent health insurance or otherwise, provided employees have the option instead to apply for ill-health retirement under the scheme. Membership of the scheme should continue for any period during which such benefits are payable. Eligibility criteria for ill-health retirement should be no worse than those applicable in the relevant public service scheme. The scheme trustees will decide whether to permit ill-health retirement on such medical advice as they determine. Employer consent should not be required if no such consent is required in the relevant public service scheme.

A.12.16 The scheme must also provide death-in-service benefits which must be in the same form as those provided by the relevant public service scheme – e.g. both a lump sum and survivor's pension – although the level of benefits can differ. Survivors' pensions must be payable in the same circumstances to the same individuals who would have qualified for such a pension in the relevant public service scheme.

A.12.17 The broad comparability requirement does not impose any obligation on schemes to pay benefits which would be unauthorised in accordance with the Finance Act 2004. Alternative arrangements would need to be made by the employer to comply with any obligation which cannot be met by the scheme.

Membership

A.12.18 In circumstances where staff will no longer be eligible to remain in their existing scheme all staff who are eligible for Fair Deal protection will automatically become members of the scheme to which they have become eligible to join on the day immediately following that on which they are required to leave their existing scheme, without medical examination. This would not interfere with an employee exercising his/her right to choose to opt out of scheme membership, subject to the auto enrolment requirements. Staff must be eligible to continue accruing benefits in the scheme to which they have become eligible to join after normal retirement age, for at least as long as they would have been eligible to do so in the relevant public service scheme.

Security

A.12.19 It is recognised that the security of a private sector scheme cannot be provided in the same form as that applying in the relevant public service scheme, but the private sector scheme must offer specific safeguards in the following areas:

- protection of accrued rights, on an on-going basis (including any final salary link or a higher in-service revaluation rate), on any rule change; and
- changes inspired by the employer, including loss of the contract, involving cessation of membership of the current broadly comparable arrangements, will trigger the offer of a bulk transfer payment or enhancement of benefits within the arrangements, to a level commensurate with existing benefits, on an on-going basis (including any final salary link or a higher in-service revaluation rate).

Type of Scheme

A.12.20 Only defined benefit schemes can be certified as broadly comparable to defined benefit schemes. Only defined contribution schemes can be certified as broadly comparable to defined contribution schemes.

Actuarial assumptions

A.13 Broad comparability assessments depend on a number of actuarial assumptions. These cover financial and demographic factors for the period which continues until pension payments to the employee and to his or her dependants have ended.

A.14 In conducting broad comparability assessments, the actuary will be responsible for determining the assumptions in line with the general principles outlined in this annex, including the following principles:

A.14.1 Best estimate – the assumptions should broadly reflect a best estimate of the cost of providing the benefits in the public service scheme (for example, in line with assumptions that the actuary considers would be appropriate within the public sector for recommending an employer contribution rate in the relevant public service scheme), after allowing for employee contributions, where benefits and contributions are those defined in legislation.

A.14.2 Simplicity – a broad comparability assessment involves a comparison of two different benefit structures, so the focus should be on those assumptions which could have a more significant effect on the comparison. In particular, it is not necessary to adopt assumptions to value more minor features in a benefit structure, although due account should be taken where appropriate when a feature is present in one benefit structure but not in the other.

A.14.3 Stability – assumptions should be changed infrequently, so as not to unduly disrupt procurements which are in progress and minor changes in assumptions should be avoided wherever possible. There should be a reasonable expectation that a certificate of broad comparability would remain in force for a substantial part of its validity period, other things being equal.

A.14.4 Comparability – assumptions should not be adopted which allow a material skew in the benefits or employee contributions payable being assessed as broadly comparable to the public service scheme. For example, a reduction in the terms attaching to the benefits, so as to justify a reduction to employee contribution rates, should be limited in order not to materially disadvantage employees for whom a contribution reduction has less value than the corresponding reduction in benefits.

A.14.5 Transparency – the assumptions which have a material effect on the assessment should be published. The actuary must be available to answer questions or queries from employees involved in a staff transfer exercise, their trades unions or other recognised representatives, and from government departments and other contracting authorities conducting procurements involving a staff transfer exercise, about his/her broad comparability assessment, the assumptions he/she has adopted and the resulting certificate of broad comparability.

A.14.6 Fairness – the actuary should recognise that broad comparability underpins the protection of employees' future pension rights and that any assessment should fairly balance the employees' interests.

A.14.7 Independence - the actuary providing the broad comparability assessment for the design of benefit structures should be independent of the actuary advising the new employer on those structures. It is hard to envisage circumstances in which it would be appropriate for the same actuary to advise both the private sector employer whilst also providing a certificate of broad comparability.

B

Annex B: Bulk transfers

B.1 The Fair Deal guidance sets out the circumstances in which staff who are entitled to Fair Deal protection could be either given access to a relevant public service scheme or transferred to a new provider's broadly comparable scheme. This annex sets out how bulk transfer arrangements for eligible staff should be implemented in these circumstances.

B.2 In these circumstances, staff may have accrued rights in their current pension scheme which, immediately prior to transfer, are linked to future salary increases or active service revaluation (where this exceeds deferred revaluation for career average schemes) and which qualify for protection under the bulk transfer arrangements of the Fair Deal policy.

Certificate of broad comparability

B.3 Where a prospective provider competes for a contract on the basis that it will provide a broadly comparable scheme it must provide details of its broadly comparable scheme, together with a valid certificate of broad comparability. No certificate is required where a bidder will offer membership of an appropriate public service pension scheme to all the staff involved. The contracting authority should verify that the certificate of broad comparability covers all the staff involved and that there are no exclusions or exceptions in the certificate which apply to any of the staff involved.

Bulk transfer agreement

B.4 The incumbent provider's pension scheme should issue proposed terms for the bulk transfer agreement ('Letter A') in line with the exit provisions outlined in the existing contract, where appropriate. All actuarial assumptions stated in Letter A must be capable of independent determination/verification. Assumptions should not be accepted which are based on an in-house model, or are based on statistics which are not publicly available, or accessible. Letter A will only apply to those staff who elect to transfer their accrued benefits from the incumbent provider's pension scheme under the bulk transfer arrangements.

B.5 Bulk transfer terms offered by the incumbent provider's pension scheme should be on the basis that they are non-negotiable. These should be provided at an early stage of the procurement exercise to allow other bidders to take these terms into account in their bids. Compliant bids should be on the basis that the appropriate public service scheme (or provider's broadly comparable scheme) will accept those bulk transfer terms.

B.6 The contracting authority should separately issue details of the service credits which must be awarded in the public service scheme (or a broadly comparable scheme) for those members who consent to the transfer of their accrued benefits from the incumbent provider's pension scheme. The service credits will be on a day-for-day basis, or on a basis of actuarial equivalence where there are benefit differences between the two schemes. These details should specify if the service credits apply to a benefit structure that is different in any way to that reflected in the certificate of broad comparability for another bidder's scheme. The issue of these details may be delayed if a bidder is unable to confirm whether it will offer membership of the relevant public service

scheme; or to provide details of the broadly comparable scheme which it intends to offer (or if that scheme is yet to be certified as broadly comparable).

B.7 The incumbent provider's pension scheme should carry out the options exercise after the transfer of employment if staff are to be offered membership of a different pension scheme. Staff who are members of the incumbent provider's pension scheme will have three months from the date their option packs are sent out in which to consider whether or not to transfer their accrued benefits on the terms set out. After this three month period has expired, the option to transfer under the bulk transfer terms will lapse. Only staff who elect to transfer within this period by completing and returning the paperwork in the options pack can qualify for a transfer under the bulk transfer terms.

Price adjustments/shortfall requirements

B.8 In the circumstances where a bidder intends to offer a broadly comparable scheme, bidders should state in their bid documentation whether they are willing to accept the bulk transfer terms offered under Letter A without a price adjustment. If a price adjustment is sought, then bidders should provide details of the bulk transfer terms required ('Letter B') in order for their broadly comparable scheme to offer the required service credits, together with details of their calculations for the amount payable under Letter A and the amount required under Letter B. The contracting authority is required to liaise with the incumbent so that the contracting authority can pass on, to the bidder, the necessary information (e.g. member data and benefit structure of the incumbent provider's pension scheme) for the bidder to calculate the amount payable under Letter A.

B.9 Where access to the relevant public service scheme is proposed, the bulk transfer terms required by the public service scheme (Letter B) should be provided to bidders by the contracting authority.

B.10 The difference between the amount required under Letter B and the amount payable under Letter A is the price adjustment. This may be positive (if Letter A results in a lower figure than Letter B) or negative (if Letter A results in a higher figure than Letter B). A positive price adjustment is often described as a shortfall requirement.

B.11 In all cases, Letter B should apply to the same members as Letter A, and all actuarial assumptions stated in Letter B must be capable of independent determination/verification – assumptions should not be accepted which are based on an in-house model, or are based on statistics which are not publicly available, or accessible. The terms set out in Letters A and B should remain valid for the duration of the procurement exercise wherever possible. If for any reason the terms in either letter are to be amended before the procurement exercise is complete, the contracting authority should liaise with all parties involved in determining how these changes should be reflected in the procurement exercise.

B.12 Where a bidder intends to offer a broadly comparable pension scheme and a price adjustment is sought, the bidder should also provide a "Reasoned Statement of Need" in justification of why they consider that either more or less is required than the bulk transfer value produced by Letter A.¹ Contracting authorities should rigorously test the reasonableness of any price adjustment being sought and seek appropriate advice as required. Contracting authorities should check whether the reasons given for any price adjustment are the same as those already used to justify a shortfall payment in an earlier tender. However, where a bidder intends to offer membership of an appropriate public service scheme, no Reasoned Statement of Need will be

¹ In practice, Letter B and the Reasoned Statement of Need may be combined, as long as the required information is provided.

required. For the avoidance of doubt, an incumbent may also seek a price adjustment whether the incumbent provider proposes to offer membership of an appropriate public service scheme or continued membership of its broadly comparable scheme.

B.13 Any price adjustment that is agreed as part of this process will form part of, and be taken into account, as part of that contractor's bid for the contract. Subject to any contrary provision in existing contracts, where a shortfall requirement arises for a successful bidder, the contracting authority will make a payment to that bidder for prompt payment into the appropriate public service scheme (or bidder's broadly comparable scheme). The payment to the successful bidder may allow for adjustments for the effect of any differences in the tax treatment of the receipt of the payment by the successful bidder and the payment by the successful bidder into the appropriate public service scheme (or bidder's broadly comparable scheme) if this is provided for in the contract.

B.14 Although when submitting a Reasoned Statement of Need it will be open to bidders to make any observations or representations they wish about the bulk transfer terms on offer, the bulk transfer terms required ('Letter B') should be aligned to the funding requirements of the bidder's scheme. Reasoned Statements of Need which are aligned differently, for example to a bidder's accounting requirements, will not be acceptable.

Exit provisions

B.15 Where a bidder is proposing to offer a broadly comparable scheme, the contract should include clear pension provisions covering the position when the contract ends. Those provisions should give effect to the Fair Deal guidance in a subsequent re-tendering exercise by the contracting authority, whether or not the incumbent provider intends to bid to retain the contract. Incumbent providers must cooperate fully with contracting authorities to enable them to properly conduct a retendering exercise in compliance with all relevant legislation and guidance, and must ensure that they have arrangements in place to comply with any reasonable request from the contracting authority. In particular, incumbent providers must supply the contracting authority with all relevant employee data, including pension scheme membership data, if requested. Where relevant they must ensure that their existing broadly comparable scheme issues proposed terms for the bulk transfer agreement.

B.16 Contract provisions must include an enforceable obligation on a bidder to ensure that the bidder's broadly comparable scheme makes an onward bulk transfer agreement with a new provider's broadly comparable pension scheme or the relevant public service pension scheme (where access is granted to the provider) in the event that any employees are transferred compulsorily to other employment that is not pensionable under the bidder's broadly comparable scheme, or are denied continuing membership of the bidder's broadly comparable scheme, whether due to a reorganisation or otherwise. This may also include a requirement that the bidder pays into the bidder's broadly comparable scheme/public service pension scheme such amounts as the scheme requests in order for the scheme to be able to make such an agreement.

B.17 Moreover, the bulk transfer terms offered should be based on the offer of a 'Past Service Reserve', which should be calculated allowing for projected final salary at the assumed date of retirement, leaving service or death (in the case of final salary benefits), or allowing for the active service revaluation rate to be applied up to the assumed date of retirement, leaving service or death (in the case of career average salary benefits). The actuarial basis for the Past Service Reserve should be aligned to the funding requirements of the bidder's scheme, subject to an underpin. The underpin operates in relation to any service credits awarded in the bidder's scheme as a consequence of the bulk transfer/shortfall agreements when staff first transferred their past service benefits into the incumbent provider's broadly comparable scheme. The underpin is such that the element of the Past Service Reserve which relates to such service credits

can be no lower than that required by Letter A (or by Letter B if that exists and produces a higher figure) with the 'vesting date' used to determine the actuarial assumptions being the last day of employment of the staff by the incumbent under the bidder's contract. The service credits will be on a day-for-day basis or actuarial equivalent where there are benefit differences between the two schemes.

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ISBN 978-1-909790-36-0



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