



New Fair Deal

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Important

The scope of this guidance is strictly limited to those employers who are employing staff who were previously employed by either:

- one of the following maintained schools:
 - a foundation school,
 - a foundation special school
 - voluntary aided schools, or an Academy

The staff concerned are being transferred under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) to an independent provider delivering public services.

It does **not** apply to staff directly employed by a local authority. There is a specific exception for best value authorities (listed in section 1 of the Local Government Act 1999). The new contracting employer under these circumstances must apply to Teachers' Pensions to become an 'eligible' employer by requesting to become an accepted Function Provider, there is a separate fact sheet for [Function Providers](#).

Throughout this guidance references to:

The ceding Public Sector employer will be referred to as the:

Contracting Scheme Employer.

The new independent provider who will be delivering the public service will be referred to as the:

Accepted Employer.

Key points

- Individuals will exclusively have the right to remain in their Public Sector pension scheme as long as they are wholly or mainly engaged on the outsourced contract. These rights are enforceable by the member on the new employer
- Any new hires to complement or replace previously transferred staff must not be enrolled in to Teachers' Pension Scheme. It is only the cohort of staff who were originally TUPE transferred from the Contracting Scheme employer who have the right to remain in the Teachers' Pension Scheme
- A Participation Agreement will be required to ensure that contractors fulfil their obligations
- A bond, guarantee or indemnity will be required to provide at least 3 months' worth of employer and employee contributions, to protect the Scheme from short term contribution deficiencies in the event of the employer becoming insolvent
- New employers will be required to provide information to confirm that employees are eligible for scheme membership on an ongoing basis
- All eligible employees will be required to be enrolled into the Teachers' Pension Scheme, including any that had previously opted out. This is to establish eligibility in the Scheme and meet contractual enrolment requirements. Members will be at liberty to opt-out at any time
- Additionally, employees who are members of a public service pension scheme and who move by way of a non-voluntary transfer to a public service mutual or another new model of public service delivery (regardless of whether TUPE applies), may be similarly covered.

What is it?

New Fair Deal allows employees who have transferred from the public sector to a non-public sector employer under TUPE terms, to continue to access their previous public sector pension scheme.

For members of staff who are subject to the Teachers' Pension Scheme, this means that where an employer decides to outsource services under the TUPE arrangements; all staff who are in or eligible to be in the Teachers' Pension Scheme at the point of transfer will be entitled to remain/become members of the Scheme.

The new employer will need to apply to become an 'accepted' employer to join the Teachers' Pension Scheme.

The New Fair Deal guidance was effective from 1 April 2015.

Further information and guidance from HMT can be found [here](#);

[HM Treasury- New Fair deal guidance](#)

The Department for Education included information specific to Teachers' Pensions in its New Fair Deal Consultation Response [here](#): [Consultation Response-New Fair Deal](#)



Eligibility

New Fair Deal is a non-statutory policy which maintains access to public sector pension schemes where employees are transferred from the public sector to a private sector employer under TUPE terms. Scheme regulations must allow for bodies that employ transferred employees to continue to

participate in the scheme. Additionally, employees who are members of a public service pension scheme and who move by way of a non-voluntary transfer to a public service mutual or another new model of public service delivery (regardless of whether TUPE applies), may be similarly covered.

Those in scope:

Eligibility to participate in New Fair Deal is determined by the employer:

Employer	Covered by	Types of School
Governing body	New Fair Deal (In scope)	Foundation, Foundation Special, Voluntary Aided Academies
Local Authority	The Local Government Best Value Pension Directions 2007 (not in scope)	Community, Community Special, Maintained Nursery, Voluntary Controlled

Academies are classified by the National Audit Office as public sector bodies and include:

- Single Academy Trusts
- Multi Academy Trusts
- Traditional Sponsored Academies
- Converter Academies
- Special School Academies
- Free Schools
- Studio Schools
- University Technical Colleges
- Sixth Form Academies

NB: Academies are required by their funding agreement to offer access to the Teachers' Pension Scheme to all teaching employees (including new employees). Where Academies outsource part of their education provision, in theory, the new employer would be able to access New Fair Deal; however it would only be in respect of transferring employees and not in respect of new employees. Academies are obliged to offer access to all employees, it would therefore be in contravention of its funding agreement, so in practice it would not be practical for Academies to utilise New Fair Deal.

Those not eligible to participate

In some types of school, employees are employed by the Local Authority. This means that employees are covered by the Local Government Best Value Pensions Direction 2007 (a Direction issued under sections 101 and 102 of the Local Government Act 2003 which applies to a school which is maintained by a best value authority). This provides similar cover to existing Fair Deal arrangements as the Direction currently requires that employees transferred from Local Government to external providers must be provided with a broadly comparable pension arrangement.

Other establishments not eligible to participate include:

- Independent schools - are not included in the New Fair Deal provision. However, we anticipate there may be a scenario where a governing body outsources a provision and an independent school sets up an organisation and successfully bids to provide that service. If employees TUPE transfer from the governing body to that new organisation they will be entitled to retain membership, but the independent school as such will not have access
- Universities
- Sixth Form Colleges
- Higher Education/Further Education establishments.
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Universities and Sixth Form Colleges are defined as private sector bodies, and therefore New Fair Deal does not apply.

HE/FE Exception

Following careful consideration, and consultation with trade unions and employers, the Government has decided not to extend New Fair Deal to Higher Education (HE) and Further Education (FE) bodies which participate in the Local Government or the Teachers' Pension Scheme. They have taken this decision because HE and FE institutions are private sector bodies. The Government is not involved in setting the terms of employment for employees in these bodies and is taking further steps to increase the level of autonomy they enjoy. It would therefore not be consistent with this policy to seek to impose conditions on the terms of employment of employees when they are transferred from these bodies.

However, HE and FE bodies can choose to apply the policy if they consider this appropriate.

Becoming an outsourced 'Eligible' employer

To support new employers joining the Teachers' Pension Scheme under New Fair Deal, the following acceptance criteria must be met.

Items to be provided by the Contracting Scheme Employer

- Notification from a ceding scheme employer that they are planning to outsource a service along with details of the main point of contact
- A description of the services to be outsourced
- Name of the new contractor (independent provider) who will apply to become an accepted employer
- A list from the ceding scheme employer of those employees* who will be transferred and their roles
- Parts relevant to them in the model Participation Agreement.

(*This should include current scheme members and members who have opted out).

Items to be provided by the accepted employer

- Parts relevant to them in the model Participation Agreement
- Signed copy of the model Participation Agreement
- A bond or guarantee covering at least 3 months' worth of both employer and employee contribution.
- Any contract cessation date.

Acceptance

Once we are satisfied that the criteria has been met, we will require that the Participation Agreement be signed by the contracting scheme employer and the accepted employer. New Fair Deal status cannot be granted until we have received the signed Participation Agreement and the new accepted scheme employer must agree to contractually enrol any transferring employees who are eligible to join the Teachers' Pension Scheme but have previously opted out. However, there is no absolute guarantee that the new employer will be accepted for New Fair Deal.

The following pointers may be useful to anticipate the outcome:

- Both the contracting scheme employer and the employer seeking accepted employer status are recognised for New Fair Deal
- The function is an educational one which is provided by the contracting scheme employer at the point of transfer

- The transfer list only includes people who are, or are eligible to be, members of the Teachers' Pension Scheme
- The model Participation Agreement is used and has not been altered
- The employer applying to be accepted has not previously had their participation in the Teachers' Pension Scheme withdrawn
- The accepted employer has managed to secure terms to provide a bond or guarantee.

Post-Acceptance action to be taken by the Teachers' Pension Scheme

Once we're in a position to progress the on boarding process, you'll be provided with all of the relevant information, including:

- Establishment Code
- Employer Portal Log in details
- Contribution information
- A copy of the Employer Guide is provided to the accepted scheme employer
- The ERM team will be alerted about the new accepted scheme employer.

Once you're set up, one of your first administrative duties will be to notify Teachers' Pensions via Monthly Data Collection the teachers' who are now attached to your establishment, to ensure that their service record is kept up to date and that the Department is aware of where the teachers are employed.

You will also be required to contractually enrol any TUPE staff who are eligible to join the Teachers' Pension Scheme but have previously opted out.

Please bear in mind that

- Once 'Accepted', no new employees can join the Teachers' Pension Scheme even if replacing a member who was part of the original transfer exercise
- Teachers' Pensions will review the number of employees monthly, after receipt of the monthly data collection return to ensure that no additional employees have been added.

Useful links:

[Best Value Pensions Direction 2007](#)

[Local Government Act 1999](#)

Contact: TPestabs@teacherspensions.co.uk

Where there is any difference between the legislation governing the Teachers' Pension Scheme and the information in this fact sheet the legislation will apply.