

**A COMPENDIUM OF
THE RPA GUIDING PRINCIPLES,
CODE OF PRACTICE AND
GUIDANCE NOTES**

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FOREWORD

The Review of Public Administration (RPA) is a major programme of reform and modernisation of administrative structures.

Formally launched by the Executive in June 2002, the reform is intended to transform the way in which public services in Northern Ireland are developed, organised and delivered; and to put in place modern, accountable and effective arrangements for public service delivery. The scale and complexity of the change process are unprecedented in the Northern Ireland public sector.

To safeguard the interests of staff and to ensure their smooth transfer to new organisations, the Government announced on 8th March 2006 the formation of the Public Service Commission (PSC). The terms of reference of the Commission are:

“To make recommendations to Government on the guiding principles and steps necessary to safeguard the interests of staff and to ensure their smooth transfer to new organisations established as a consequence of Government decisions on the review of public administration, taking into account statutory obligations, including those arising from section 75 of the Northern Ireland Act 1998.”

In establishing this independent Commission, the Government stated it is wholly committed to the implementation of the recommendations of the Commission consistently across the public sector. All Government Departments and public bodies are expected to co-operate with the Commission, in the provision of information and in the implementation of its advice and recommendations as approved by Government. This commitment has been endorsed by the Executive.

To date the Commission has produced 10 Guiding Principles and Associated Recommendations which have been accepted by the Executive. These Guiding Principles range from having a communication strategy in place, to legislating for staff transfers and including voluntary severance arrangements. Throughout this process, the Commission has sought the views of Government, Staff Commissions, Trade Unions and employers to ensure that the Guiding Principles and Associated Recommendations being proposed were achievable; realistic and at all times safeguard the interests of staff.

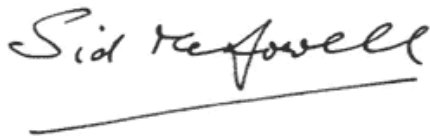
To assist the RPA transition and transformation, Government produced a Code of Practice on the Third Guiding Principle on Staff Transfers and a number of other Guidance Notes agreed across the affected sectors and in consultation with the Trade Unions. These offer practical guidance to the RPA Affected Employers on how to implement the Guiding Principles.

This compendium brings together the Guiding Principles, a Code of Practice on Staff Transfers and Guidance Notes.

Additionally, in September 2008 the PSC and OFMDFM published the outcomes of a Review which was commissioned to assess how RPA implementation has been

perceived by staff [within the health and social care sector]; to examine levels of communication about the RPA and to assess staff's understanding of the PSC and their guiding principles. The *Lessons Learned and Key Points for Consideration* identified from the review are also included as they are important learning points for every organisation going through a major programme of reform and modernisation.

We highly commend this compendium document to every organisation impacted by RPA and ask that it be brought to the attention of all affected staff. An electronic copy has also been produced and is available from both the PSC and OFMDFM RPA Central Unit websites (www.pscni.gov.uk and www.rpani.gov.uk respectively).

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**SID McDOWELL
CHAIRMAN
PUBLIC SERVICE COMMISSION**

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**NOEL LAVERY
DIRECTOR
OFMDFM**

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FIRST GUIDING PRINCIPLE AND ASSOCIATED RECOMMENDATIONS

AN EFFECTIVE COMMUNICATIONS STRATEGY

Introduction

1. The Public Service Commission's first guiding principle and associated recommendations, under its remit *"to make recommendations to government on the guiding principles and steps necessary to safeguard the interests of staff and to ensure their smooth transfer to new organisations established as a consequence of government decisions on the Review of Public Administration, taking into account statutory obligations, including those arising from Section 75 of the Northern Ireland Act 1998."*, deal with the absolute requirement for an effective communications strategy.

Context

2. The Public Service Commission welcomes the establishment of the Steering Group which will oversee the implementation phase of the Review of Public Administration. The Commission understands that the Steering Group will focus its attention on those significant, cross-cutting, themes which are central to delivering an extensive change programme. The indications are that more than 100,000 people, in central and local government and a host of other public sector organisations, will be affected by the changes announced by the Secretary of State in November 2005 and March 2006.

Guiding Principle

3. Government, and the Steering Group, should be guided by the principle that the support and involvement of staff, and their staff representatives, is required to give positive effect to change. The Commission considers that such cooperation will be readily forthcoming provided that people are treated with dignity and respect. Regular communication, particularly in relation to the personal and specific effects of change, will provide a large degree of comfort and reassurance to each individual person who is proud to serve in the public sector.

Recommendations

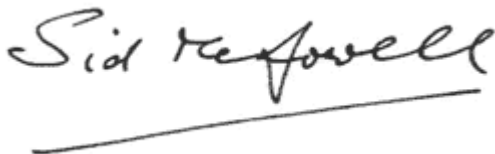
4. The Public Service Commission recommends that the Steering Group ensures that arrangements are put in place, as a matter of urgency, to ensure that all staff are informed, in a timely way, about how change is to be implemented and what arrangements are planned to safeguard the interests of staff and secure their cooperation during, and after, the period of change. Such arrangements

should be subject to industrial relations procedures to ensure staff representatives are properly involved in the processes.

5. The Commission further recommends that each organisation provides its staff with an identified contact point (or contact points) to which RPA specific queries might be directed, or from which staff might seek RPA specific information.
6. In relation to formal communications, the Public Service Commission recommends that electronic means of communication, including e-mails and websites, should be supplemented by the prudent use of regular newsletters, and direct contact through seminars, workshops, conferences and staff meetings.

Commentary

7. The Public Service Commission acknowledges that different sectors are working to different timeframes and that some organisations are already involved in the change process and may have embarked on their own communications strategies. Nevertheless, the Commission wishes to distinguish between communication and consultation in the context of safeguarding the interests of staff.
8. The Commission attaches a great deal of importance to the need for employers to have due regard to statutory obligations¹, or the application of good practice flowing from those statutory obligations, so that employees, and their staff representatives, are informed, and consulted, in a timely way. That being the case, the Commission calls on the Steering Group to ensure that any proposed actions should be subject to existing industrial relations arrangements, before formal communications are conveyed to staff. Where no appropriate industrial relations machinery exists, organisations should proceed, urgently, to establish suitable mechanisms.
9. The Commission regards the principal aim of the communications strategy to be *“to guarantee that timely, consistent and relevant information reaches all staff, in all of the organisations affected, and in such a way as to ensure that relevant queries are dealt with efficiently and effectively.”*



SID McDOWELL
CHAIRMAN
PUBLIC SERVICE COMMISSION
15 May 2006

¹ The Information and Consultation of Employees Regulations (Northern Ireland) 2005.

SECOND GUIDING PRINCIPLE AND ASSOCIATED RECOMMENDATIONS

MANAGING VACANCIES EFFECTIVELY IN EXISTING ORGANISATIONS

Note: This reissued Guiding Principle supersedes the previous Managing Vacancies Guiding Principle, dated the 19th July 2006, which was accepted by the direct rule administration on 31st August 2006.

Background

1. The Commission's role is to safeguard the interests of staff and to ensure their smooth transfer to new organisations established as a consequence of Executive decisions on the Review of Public Administration, taking into account statutory obligations, including those arising from Section 75 of the Northern Ireland Act 1998. In formulating this Guiding Principle and Associated Recommendations, the Commission has also had due regard to the previous administration's commitment, as set out in the statement of 22 November 2005, that "Every possible effort will be made to avoid redundancies." The Commission welcomes the Executive's commitment to this underlying objective.
2. The Public Service Commission has consulted the Executive, the sectoral Staff Commissions and representatives of NIC/ICTU about the most appropriate way to manage vacancies as part of a wider set of arrangements which will be required to achieve the Executive's commitment to make every possible effort to avoid redundancies in bodies affected by the RPA.
3. This revised Managing Vacancies Guiding Principle supersedes the previous Managing Vacancies Guiding Principle, dated the 19th of July 2006, which was accepted by the direct rule administration on 31st August 2006. This revision reflects experience from the implementation of RPA to date. It also refines the use of the RPA Affected Group in filling posts and focuses efforts on those staff designated to be at a clearly identified risk of compulsory redundancy ["at risk" staff].

Guiding Principle

4. The Public Service Commission recommends that, in order to minimise the risk of redundancies as a result of decisions arising from the Review of Public Administration, and recognising the need to keep open all possible means to redeploy staff, existing employers should, at the appropriate time, implement vacancy management schemes and avoid creating new posts.

Associated Recommendations

5. The Public Service Commission recommends, that in consultation with Trade Unions and employers, the Executive should publish an updated list of public sector organisations deemed to be affected by the direct rule administration's announcements and recent decisions taken by the Executive (the RPA Affected Group).
6. The Public Service Commission recommends that the Executive requires existing employers:
 - Through sponsoring Departments and the sectoral Staff Commissions, to develop and implement vacancy management schemes in consultation with appropriate Trade Unions and staff representatives. The Commission recognises the operational difficulties which might be faced by employers in immediately implementing vacancy management schemes given that the implementation of RPA may proceed over a much longer timeframe than initially envisaged. The Commission therefore recommends that employers consult with Trade Unions and other staff representatives on the timing of the introduction of the scheme so as to safeguard the interests of existing staff to the fullest possible extent, whilst balancing this with the business needs of the organisation.
 - In conjunction with relevant Trade Unions at local and other levels, to define, and publicise, those services which will be subject to vacancy management schemes.
 - To consult with Trade Unions and other staff representatives on the application of the Scheme in respect of any particular posts. The Schemes should provide that no new posts be created except where an existing employer can demonstrate an inescapable requirement for the post. Examples of new posts which might fall into this category include those required to ensure service delivery, where new responsibilities or requirements are imposed by legislation or Executive action, or in cases where there is exceptional stress or pressure of work on existing staff.
 - To identify staff who are at a clearly identified risk of compulsory redundancy and to advise staff whether they are, or are not, in the "at risk" group. Should an individual then consider themselves to be "at risk" they should be entitled to a response from their employer clarifying the position. Employers should consult on the designation of "at risk" staff with Trade Unions and staff representatives.
 - Should seek to fill a vacancy or new post in the following order of consideration:

- 1) By the use of an internal mechanism with the objective of dealing in the first instance with staff who have been identified as being “at risk”.
Examples of internal mechanisms are transfers, re-deployment, the offer of suitable alternative employment, temporary promotions, internal competition, delayed retirement etc. Where staff accept temporary promotion, acting up or secondment etc there will be an underlying guarantee to the employee in respect of continuity of employment rights in their previous substantive post for the purposes of RPA implementation.
- 2) By targeting “at risk” staff in that sector as a whole.
- 3) By targeting “at risk” staff across all the sectors in the RPA Affected Group.
- 4) By way of open competition.

A “clearing house” mechanism may be used to enable employers to collaborate in filling vacancies or new posts across the sectors thereby ensuring “at risk” staff have an opportunity to apply for positions/vacancies as might arise.

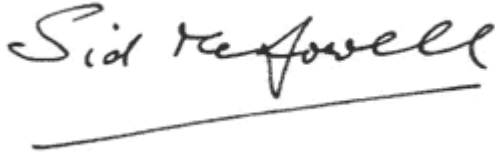
- To take account of employment law and equality considerations when considering the methods available for filling a vacancy or a new post and when determining the composition of the selection pool.
- To fully document decisions on creating new posts or filling vacancies.
- To ensure that appropriate training measures are in place throughout the RPA implementation process to support staff directly affected by this Guiding Principle and Associated Recommendations.
- Through sponsoring Departments and the sectoral Staff Commissions, to introduce and apply monitoring and review arrangements in relation to policies on managing vacancies. In keeping with the Public Service Commission’s recommendations in relation to effective communications, reports on how arrangements for managing vacancies effectively are working in practice should also be provided to staff and local trade unions and/or staff representatives on a regular basis.
- To take all reasonable steps, both pre and post transfer, to manage or accommodate surplus staff thereby meeting or exceeding their statutory obligations.

Commentary

7. The Public Service Commission recognises that decisions taken in relation to managing vacancies should represent a proportionate means of achieving the Executive’s aim to make every possible effort to avoid redundancies in a way which is compliant with statutory obligations, including Section 75 of the Northern Ireland Act 1998. The Commission also recognises that it would be inappropriate to apply constraints to the extent that they have a detrimental

effect on service delivery and has therefore recommended the order of consideration for filling vacancies.

8. The Commission considers that both existing and new employers should proactively take steps to alleviate staff anxiety, implement effective communication and minimise the possibility of compulsory redundancies.

A handwritten signature in cursive script that reads "Sid McDowell". The signature is written in black ink and is positioned above a solid horizontal line that serves as a separator.

SID McDOWELL
CHAIRMAN
PUBLIC SERVICE COMMISSION
25 January 2008

RPA GUIDANCE NOTE: 2nd GUIDING PRINCIPLE - MANAGING VACANCIES EFFECTIVELY IN EXISTING ORGANISATIONS

Introduction

1. This Guidance Note confirms that the Executive has accepted the Public Service Commission's re-issued 2nd Guiding Principle, Managing Vacancies Effectively and is issued to assist and provide clarification to Departments and public service employers in the RPA Affected Group in the practical implementation of the Guiding Principle.

Interpretation

2. This guidance note applies to vacancies in existing organisations within the RPA affected group. It does not apply to vacancies as a result of new posts created in new organisations which are covered by the guidance note to the PSC's 4th Guiding Principle. In implementing the PSC's 2nd Guiding Principle, employers are reminded that its purpose is to minimise the risk of redundancies. Therefore, in determining whether a particular course of action is appropriate, employers should consider whether it is consistent with this objective.
3. At the appropriate time, employers are required to develop and implement vacancy management schemes and avoid creating new posts unless there is an inescapable requirement for the post. The development and implementation of vacancy management schemes should be carried out through sponsoring Departments and the sectoral Staff Commissions and include consultation with appropriate trade unions and staff representatives. Employers should ensure that the defining and publicising of those services which will be subject to vacancy management schemes is carried out in conjunction with the relevant Trade Unions.
4. Vacancy management schemes should have the following characteristics:
 - the majority of vacancies in existing posts that will arise is likely to be as a result of natural wastage. In most of these cases, particularly in front-line positions, it is expected that such vacancies will be filled as in the normal course of business;
 - no new posts in RPA affected areas should be created unless there is considered to be an inescapable requirement for the post. The Guiding Principle is not intended to be prescriptive as regards what might constitute an inescapable requirement. Examples are set out in the attached Guiding Principle. The reasons for creating a new post must be fully documented; and
 - in line with the Guiding Principle Trade Unions and other staff representatives should be advised of the creation of new posts.

5. Through consultation with Trade Unions and staff representatives, employers are required to identify those staff at a clearly identified risk of compulsory redundancy (“at risk” staff) and to advise staff whether they are, or are not, in the “at risk” group. There may be an exceptional circumstance whereby, after identifying those “at risk”, a member of staff considers themselves to be “at risk”. It is important that employers take steps to clarify this for the individual concerned. Employers must ensure that arrangements in place for identifying “at risk” staff are robust and timely to allow for the “at risk” group to be updated as necessary.
6. The method of filling a vacancy or a new or substantially new post in an existing organisation will depend on the circumstances of each individual case and will require employers to take account of employment law, equality considerations and legal advice. The following illustrates the methods which are available to an employer and the order in which they must be considered:
 - i) internal mechanism within the organisation which will, in the first instance, deal with “at risk” staff;
 - ii) targeting “at risk” staff in the sector²;
 - iii) targeting “at risk” staff across all sectors in the RPA Affected Group³; and
 - iv) open competition.

Where staff accept temporary promotion or secondment, there would be a guarantee to the employee in respect of normal continuity of employment rights in their substantive posts.

7. When considering the methods available for filling a vacancy or a new post employers must:
 - take account of employment law, equality and good relations considerations and, where necessary, take legal advice; these are also important factors when determining the composition of the selection pool and when using restricted pools;
 - bear in mind that the aim of mechanisms i)-iii) above are to promote employment protection within the public sector and thus should normally only be open to broadly comparable grades or higher; and

² Should the employer deem it appropriate and justifiable in any given situation, “sector” in this instance may be refined to a sub-set of the main sector grouping; the decision must be taken in consultation, with a view to reaching agreement, with the appropriate Trade Union and staff representatives and the justification to do so must be fully documented.

³ Please see Annex 1 for additional guidance in this regard.

- document fully the justification for their decision on the means of filling a vacancy/post.
8. Employers must ensure that staff directly affected by this Guiding Principle have access to appropriate training measures to support them throughout the RPA implementation process.
 9. Through sponsoring Departments and the sectoral Staff Commissions, employers are required to monitor and review arrangements in relation to policies on managing vacancies. If a mechanism is not already in place, a mechanism should be established to provide regular reports to staff and to enable Trade Unions and/or staff representatives to monitor the implementation of vacancy management arrangements in practice.
 10. Whilst being aware of the need for acceptable use of public funds, in order to meet or exceed statutory obligations, employers must ensure that all reasonable steps, both pre and post transfer, are taken to manage or accommodate surplus staff.

Action required

11. Employers are required to:
 - implement vacancy management schemes at the appropriate time and as outlined above;
 - put in place a mechanism which will allow for the identification of “at risk” staff;
 - put in place a procedure to allow for vacancies and/or new posts to be filled in compliance with the requirements of this Guiding Principle; and
 - document and retain the justification for any decision on the means of filling a vacancy/post.

RPA CENTRAL UNIT
May 2009

Guidance: Targeting “at risk” employees across all sectors in the RPA Affected Group

Introduction

1. The aim of the following guidance is to encourage open communications between employers in the RPA affected group in order to minimise the risk of redundancy through collaboration in filling vacancies/new posts across the sectors/employers. This will thereby ensure that consideration is given to providing “at risk” employees with an opportunity to apply for positions/vacancies as might arise as per the recommendations in the PSC’s 2nd and 4th Guiding Principles.
2. This guidance applies to both existing and new organisations in the RPA affected group.

Steps

3. The following guidance details the steps that should be taken when an employer identifies “at risk” employees and, subsequently, when an employer has a vacancy/new post:

Employer in the RPA affected group with “at risk” employees:

- Employer, in consultation with TUS, identifies employees at a clearly identified risk of compulsory redundancy (“at risk” employees) in their organisation; and
- in addition to fulfilling their statutory obligations in a redundancy situation the employer should, as soon as is reasonably practical, notify all other employers in the RPA Affected Group of the “at risk” employees in their organisation and request consideration to the circulation of vacancies/new posts to their organisation in line with the provisions in the PSC’s 2nd and 4th Guiding Principles.

Employer in the RPA affected group with a vacancy/new post:

- Employer in the RPA Affected Group has a vacancy/new post;
- the employer should, having taken account of employment law, equality considerations and, where necessary, legal advice, consider the different methods available for filling the vacancy/new post as detailed in the PSC’s 2nd/4th Guiding Principle;
- where the employer decides that the method to be used is targeting employees “at risk” across all sectors then they should circulate the vacancy to RPA affected employers who have identified “at risk” employees in their organisation for onward submission to those “at risk”.

Background

4. Employers must ensure that they have in place robust and timely arrangements for identifying “at risk” employees in order to allow for the “at risk” group to be constantly refreshed and revised taking account of progress/updates. Employers should be aware that the implementation of this guidance does not replace their statutory obligations in a redundancy situation and that any arrangement with another employer in relation to finding suitable alternative employment is in addition to their statutory obligations.
5. The aim of this mechanism is to promote employment protection in the RPA Affected Group and thus should normally only be open to employees in broadly comparable grades or in higher grades. The receiving organisation should consider the terms and conditions under which they can offer a position.
6. Employers are reminded that it is important to document fully the justification for the decision on the means of filling a vacancy/post and are alerted, in particular, to the potential discrimination of advertising to a restricted pool.
7. Vacancies should be circulated amongst “at risk” employees as a recruitment aid; it will be for the organisation with the vacancy to decide, having taken account of employment law, equality considerations and, where necessary, legal advice, the mechanisms for assessment, selection and appointment to these posts.

Final

8. It is important that employers take the appropriate steps to implement the above guidance in order to facilitate placement and support amongst “at risk” employees, thereby helping to alleviate employee anxiety, implement effective communication and contribute to making every possible effort to avoid redundancies. In addition, it is also important that “at risk” employees take all reasonable steps to avail of the opportunities which occur for them as a result of this guidance.
9. Where an employer concludes, after having taken account of employment law, equality considerations and where necessary legal advice, that the method to fill the vacancy/new post should be open competition, steps should be taken to ensure that those “at risk” are made aware of the vacancy/new post.

THIRD GUIDING PRINCIPLE AND ASSOCIATED RECOMMENDATIONS

STAFF TRANSFERS

Introduction

1. The Commission's role is to safeguard the interests of staff and to ensure their smooth transfer to new organisations established as a consequence of Government decisions on the Review of Public Administration, taking into account statutory obligations, including those arising from Section 75 of the Northern Ireland Act 1998.
2. In pursuance of that role, the Commission's position in relation to staff transfers is represented in the Guiding Principle and associated recommendations described below. In formulating the Guiding Principle and associated recommendations, the Commission has also had due regard to the Secretary of State's commitment, as set out in his statement of 22 November 2005, that "Every possible effort will be made to avoid redundancies."
3. The Public Service Commission has consulted Government, employers in the RPA Affected Group, the sectoral Staff Commissions and NIC/ICTU about the most appropriate way to effect staff transfers. This is part of a wider set of arrangements which will be required to achieve the Secretary of State's commitment of making every possible effort to avoid redundancies in bodies affected by RPA, safeguard the interests of staff and ensure their smooth transfer into new organisations.

Guiding Principle

4. The Public Service Commission recommends that:
 - Government make statutory provision for staff transfers, which is fully consistent with domestic and European legislation, for all those employees, in the RPA Affected Group, who will move to a new or different organisation as a result of decisions following the Review of Public Administration. The wording of the statutory provision should be replicated consistently in all relevant legislation in order to ensure fair and equitable treatment for all staff in the RPA Affected Group.
 - The Transfer of Undertakings (Protection of Employment) Regulations 2006 shall apply to all transfers arising from the Review of Public Administration and, to ensure certainty, Government should declare that all such transfers are relevant transfers for the purposes of those regulations. The Government should ensure the statutory provision puts beyond doubt that

no employing authority will have the right to challenge or limit the determination by the Government that the transfer is a relevant transfer so as to prevent or restrict the protection of continuity of staff rights under such a transfer.

- Any pension scheme, into which an employee is transferred must, in the opinion of a professionally qualified actuary, provide benefits that are no less favourable taken as a whole than those provided by the pension scheme of which that employee was a member on the day before transfer. The actuarial assessment will include all benefits in respect of old age, invalidity and survivors' benefits arising from their occupational pension scheme membership.
- Government should make statutory provision for independent third party resolution processes for dealing with disputes arising uniquely from the implementation of the RPA. The effect of such provision will be to provide for compensation for actual loss where there is material detriment to existing terms and conditions.

Associated Recommendations

5. The Public Service Commission recommends the following actions be taken by Government:

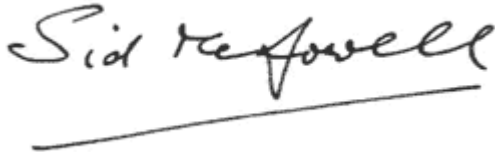
- The preparation, in consultation with the Public Service Commission, relevant public service employers and the relevant trade unions, of an RPA Code of Practice, which would establish the key principles for statutorily-based staff transfer schemes and transfer arrangements, including pensions provision and independent third party resolution processes. The RPA Code of Practice should reflect statutory provisions and be prepared and promulgated well in advance of the proposed transfer date.
- Ensure the development, well in advance of the proposed date of transfer, of written statutorily-based staff transfer schemes which are compliant with all relevant statutory obligations and the RPA Code of Practice, which should be the subject of established consultation and negotiation arrangements.
- The setting up of appropriate joint employers and trade union arrangements to ensure the effective management of HR issues following transfer and which would complement the already established Central Joint Forum.

6. The Public Service Commission also **recommends** that Government should require from employers:

- Implementation of the policies and practices as detailed in the written statutorily-based staff transfer scheme.

Commentary

7. While this Guiding Principle deals with a number of significant core issues in relation to safeguarding the interests of staff and ensuring their smooth transfer to new organisations, the Commission is mindful that there are a number of other HR issues, including for example redundancy provisions, which may be the subject of future Public Service Commission Guiding Principles and Recommendations.

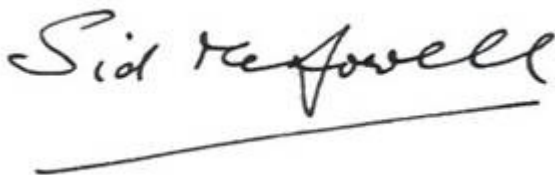
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**SID McDOWELL
CHAIRMAN
PUBLIC SERVICE COMMISSION
4 December 2006**

SELECTION OF STAFF FOR TRANSFER

ADDENDUM TO THIRD GUIDING PRINCIPLE - STAFF TRANSFERS

1. An employee should transfer to the organisation which is taking over the functions on which s/he is engaged immediately before the transfer of functions. Where, however, a decision on an assignment for transfer is required, a range of factors including the preferences and circumstances of the employee and the needs of the business will be taken into consideration. Any decision will be taken in consultation with the relevant trade union and the receiving organisation. Management should consult with the relevant trade unions and other representatives of staff before advising individuals of their designated employer.
2. If an individual member of staff wishes to appeal against his/her designated employer or a change in the location of his/her workplace, this should be made in accordance with the provisions for third party resolution of disputes.
3. The implementation of the Review of Public Administration decisions may provide an opportunity for management to consider personal preferences of staff in respect of location, working patterns etc. and to minimise hardship/domestic disruption for individual staff. Initially such consideration should be given within each sector, but Government should ensure that arrangements are set up for cross sector co-operation. Individual decisions will be dependent on business need. If staff take on new roles and or responsibilities, as a result of the transfer, adequate training and support should be provided.
4. Where the transfer gives rise to a surplus of staff, employers should deal with this, as appropriate, by using mechanisms such as the offer of suitable alternative employment, by internal competition, employment in another organisation, or voluntary severance schemes.



SID McDOWELL
CHAIRMAN
PUBLIC SERVICE COMMISSION
12 October 2007

RPA CODE OF PRACTICE: 3rd GUIDING PRINCIPLE - STAFF TRANSFERS

1. Introduction

- 1.1 Further to the acceptance of the Public Service Commission's 3rd and addendum to the 3rd Guiding Principle, Staff Transfers and Selection of Staff for Transfer respectively, this code of practice has been developed in response to the requirement in the 3rd Guiding Principle. This code of practice is issued to inform Departments and public sector employers in the RPA Affected Group about recommendations from the Commission *in its third and addendum to the third Guiding Principle*, which have been accepted. Its purpose is to assist in the practical implementation of the guiding principle. **Departments and public sector employers are expected to comply with this code of practice.**
- 1.2 The purpose of this code of practice is to ensure that arrangements are put in place to safeguard the interests of staff who transfer to a new or different organisation as a result of RPA decisions.
- 1.3 In particular the code of practice outlines:
- a) The Key Principles to be applied (paragraph 2);
 - b) A Model Legislative Framework (paragraph 3);
 - c) Transfer Schemes (paragraph 4);
 - d) RPA Independent Third Party Dispute Resolution: non-pension (paragraph 5)
 - e) RPA Independent Third Party Dispute Resolution: pensions (paragraph 6).

2. Key Principles

- 2.1 The following principles should be applied when staff transfer to new or different organisations:
- All staff in the RPA affected group who will move to a new or different organisation as a result of RPA decisions will have the statutory protections of the Transfer of Undertakings (Protection of Employment) Regulations 2006. All primary legislation being prepared to implement the RPA will provide that such transfers shall be relevant transfers for the purposes of those regulations.
 - Staff will transfer to the organisation which is taking over the functions on which s/he is assigned⁴ immediately before the transfer of functions. Employers should consult with the relevant trade union and other staff representatives and, where practicable, the receiving organisation before advising individuals of their designated employer.

⁴ This excludes those "temporarily assigned". Temporarily assigned under TUPE relates to a person (on a temporary contract or a permanent contract) who is temporarily moved to other duties e.g. to cover someone's summer holiday or maternity leave, but is expected to return to their own duties afterwards.

- Should a decision on assignment for transfer be required, where possible, employee preferences and circumstances (e.g. welfare, health etc) should be taken into account for all such decisions in addition to the primary consideration of the business need. Employers should take such a decision in consultation with the relevant trade union and the receiving organisation⁵. In order to minimise the instance of a decision on assignment being required, employers should consider, in consultation with the relevant trade union and where practicable the receiving organisation, whether to initiate the reorganisation of functions and posts prior to transfer. Where this cannot be achieved, a degree of flexibility should be retained.
- Employers should ensure that they put in place adequate training and support for staff who take on new roles and or responsibilities as a result of the transfer.
- Where a transfer gives rise to a surplus of staff, employers should, as appropriate, use a range of mechanisms to deal with this, for example suitable alternative employment, internal competition, voluntary severance schemes etc. This list is neither prescriptive nor exhaustive, for example the possibility of employment in another organisation should also be examined. Employers should have due regard to the provisions of the PSC 5th Guiding Principle as accepted by the Executive.
- Statutory provision must be made to ensure that any pension scheme into which an employee is transferred will, in the opinion of a professionally qualified actuary, provide benefits that are no less favourable taken as a whole than those provided by the pension scheme of which that employee was a member on the day before transfer. The actuarial assessment will include all benefits in respect of old age, invalidity and survivors' benefits arising from their occupational pension scheme membership. Further guidance is outlined in Fair Deal for Staff Pensions – the original guidance published by HM Treasury in June 1999⁶; and Fair Deal for Staff Pensions: Procurement of Bulk Transfer Agreement and Related Issues – Guidance Note by HM Treasury, June 2004⁷.
- RPA implementing legislation will require employers to develop a transfer scheme. Further details in this regard may be found in the model legislative framework which is referenced at paragraph 3.

⁵ Where the receiving organisation does not yet exist in law, arrangements should be made to consult with the Chief Executive Designate of that receiving organisation.

⁶ See Annex A of the Cabinet Office Statement of Practice *Staff Transfers in the Public Sector*.
<http://www.civilservice.gov.uk/documents/pdf/employment/stafftransfers2.pdf>

⁷ http://www.hm-treasury.gov.uk/media/E/B/pensions_bta_guidance_290604.pdf

- Statutory provision must also be made for independent third party resolution processes for dealing with disputes arising uniquely from the implementation of the RPA – the RPA Independent Third Party Dispute Resolution Procedure. The effect of such provision will be to resolve disputes, and where appropriate, provide for compensation for actual loss where there is material detriment to existing terms and conditions. Details of the procedures that will apply for disputes arising in relation to matters not including occupational pensions are outlined at paragraph 5 below. The procedures that will apply in respect of disputes on matters of pensions are detailed at paragraph 6 below.
- Employers should examine current consultation arrangements to ensure that they are adequate and, where necessary, take action to put in place appropriate joint employer and trade union arrangements to ensure the effective management of HR issues following transfer.

2.2 Employers should refer to the PSC 6th Guiding Principle to ensure that they comply with their obligations in relation to informing and consulting with employees, their representatives and trade unions both pre and post transfer. The importance of this is stressed, in particular, in relation to the measures in connection with the transfer which are envisaged to be taken in relation to any affected employees (Regulation 13 of the Transfer of Undertaking (Protection of Employment) Regulations 2006 refers).

3. Model Legislative Framework

3.1 An illustrative model legislative framework (the Libraries Act (NI) 2008, Schedule 2, paragraph 4), containing the provisions outlined at paragraph 2, can be found at the following link: www.opsi.gov.uk. This framework will be used as a guide when requesting legislation containing staff transfer arrangements.

4. Transfer Schemes

- 4.1 Written transfer schemes should be developed, *well* in advance of the transfer dates, in consultation with recognised trade unions, and should contain the following elements:
- a. identification of staff transferring from the existing organisation to the new or different organisation, either by business unit or, if appropriate, on an individual basis or otherwise;
 - b. the date of transfer, the grade and/or post into which the employee is to be placed and the location of the post within the new or different organisation on that date;
 - c. confirmation that contractual terms and conditions will be protected in accordance with the Transfer of Undertakings (Protection of Employment) Regulations 2006;

- d. where employees are not remaining as members of the pension scheme of which they were members before the date of transfer, up-to-date details of the arrangements by which occupational pensions are to be protected⁸;
 - e. details of the arrangements for dispute resolution in relation to the application of this Code of Practice which comply with the guidance as set out in paragraphs 5 and 6; and
 - f. provision for the payment of compensation where staff can demonstrate actual loss where there is a material detriment to their existing terms and conditions.
- 4.2 This list is not exhaustive; employers in consultation with employee representatives may also include in the staff transfer scheme supplementary, incidental, transitional and consequential provisions.

5. RPA Independent Third Party Dispute Resolution: non-pension matters

Interpretation

- 5.1 This guidance applies to all employees in the RPA Affected Group, who will move to new organisations or to a new employer as a result of decisions on the Review of Public Administration.
- 5.2 This guidance applies in cases where there is either a claim of non-adherence to the transfer scheme associated with the transfer of functions, a dispute against the designated employer or in the case of a dispute in relation to a change in workplace location which has been made as a result of the implementation of Review of Public Administration decisions.
- 5.3 This guidance does not apply to the handling of RPA disputes in respect of pension provision. The handling of such disputes is outlined separately at paragraph 6.
- 5.4 Individual employers are reminded that they are required to operate an **internal** dispute resolution procedure which complies with statutory obligations including the statutory right of accompaniment⁹. To facilitate a speedy resolution, employers are asked to ensure that RPA disputes relating to non-adherence to the transfer scheme associated with the transfer of functions, disputes against designated employer or disputes in relation to a change in workplace location which has been made as a result

⁸ “pension protection” is defined as follows: “pension protection “ is secured for a transferring employee (“T”) if after the change in T’s employer T has, as an employee of Y, rights to acquire pension benefits and those rights are the same as or (taken as a whole) not less favourable than those T had as an employee of X.

⁹ Subject to change following DEL review of dispute resolution procedures in NI.

of the implementation of RPA decisions are dealt with by a decision making authority¹⁰.

- 5.5 Employers are required to inform employees of their additional right of appeal to the RPA Independent Third Party Procedure as well as their right to be accompanied by a work colleague or represented by a trade union representative to the RPA third party procedure. **Employers are reminded that the RPA Independent Third Party Procedure does not replace internal dispute resolution and all of the principle requirements of the internal process must continue to be met. Internal dispute procedures are to be exhausted before appeal to the RPA independent procedure.**

In organisations where grievance/dispute resolution procedures include a final stage which is independent/external, this final stage would be replaced by the RPA Independent Third Party Dispute Resolution Procedure

- 5.6 Employees must be advised that the implementation of these procedures does not affect their right to lodge a claim with the Industrial Tribunal or Fair Employment Tribunal.
- 5.7 At the first stage of the internal dispute resolution procedure employees are required to indicate either:

A

- i) if and why they believe that their dispute relates to:
- a) non-adherence to the transfer scheme associated with the transfer of functions; or
 - b) a change in workplace location which has been made as a result of the implementation of Review of Public Administration decisions;
- ii) what they consider would resolve the dispute; and
- iii) what they consider their material detriment to their existing terms and conditions to be; and, give an indication of their actual loss.

or:

B

- i) if and why they believe their dispute relates to designated employer;
- ii) what they consider would resolve the dispute; and
- iii) whether they consider that there is material detriment to their existing terms and conditions, and if so, give an indication of their actual loss.

Employers must indicate to employees whether they consider a dispute fulfils the above criteria and thus can be taken to the RPA Independent Third Party Dispute Resolution. The employee may appeal an employer's decision, including appealing ultimately to the RPA Independent Third Party Dispute Resolution Procedure, in this regard.

¹⁰ This could be either an individual or panel within the organisation.

RPA Independent Third Party Dispute Resolution: non- pension matters

- 5.8 The model for the RPA Independent Third Party Procedure is drawn from the principles applying to the Procedural Arbitrations provided by the Labour Relations Agency (LRA) for a range of public sector bodies together with the good practice elements of the statutory arbitration schemes. The RPA Independent Third Party Dispute Resolution Procedure will be a three person panel procedure; the Chair will be provided by the LRA, wing members will be nominees from public service employers and trade unions who will be trained through the LRA. For further information please refer to Annex 1.
- 5.9 Where a complaint is upheld, the panel will make a determination to the employer to remedy any deficiencies found. If the deficiencies cannot be remedied, the panel will fix an amount of compensation which reflects actual loss incurred. Employers will implement the panel's determination.
- 5.10 Employers must make employees aware that the LRA must receive their appeal within six weeks from the date of conclusion of internal dispute resolution. If an appeal is received by the LRA which is outside this time limit, the matter will be referred to an arbitrator who may extend the time limit if it is concluded, in all the circumstances of the case, that it was not reasonably practicable to lodge the appeal in time. The appeal will follow the process set out at paragraph 5.11 below.

RPA Independent Third Party Dispute Resolution Procedure for non-pension matters

- 5.11 The key features of the RPA Independent Third Party Dispute Resolution Procedure for non-pension matters are outlined below:
- i) the employee notifies the LRA and the employer, in writing, of the decision to appeal to the RPA Independent Third Party Dispute Resolution Procedure within the time limit outlined at paragraph 5.10
 - ii) both parties send to the LRA Arbitration Secretary all relevant correspondence;
 - iii) the LRA appoints the panel who determines whether the appeal is within time, and that internal grievance/dispute resolution procedures have been exhausted;
 - iv) if the appeal fulfils the above criterion, the LRA Arbitration Secretary fixes a hearing date and the case is scheduled to be heard within six weeks from the date of conclusion of the internal dispute resolution;
 - v) if the appeal does not meet the criteria as set out in iii) above the LRA will notify both parties;

vi) written statements from both the employer and the employee must be submitted to the LRA Arbitration Secretary at least 2 weeks before the date of the hearing; and

vii) the case is heard and the panel's determination is sent to both parties within 10 working days of the hearing. This constitutes the end of the process and there is no further appeal through this mechanism.

6 RPA Independent Third Party Dispute Resolution: Pensions

Interpretation

- 6.1 This guidance applies to all employees in the RPA Affected Group, who will move to new organisations or to a new employer as a result of decisions on the Review of Public Administration and whose pension provision is transferred to another pension scheme as a result of that move.
- 6.2 This guidance applies in the handling of RPA appeals in respect of pension provision.
- 6.3 Individual employers are reminded that, by virtue of the Pensions (Northern Ireland) Order 1995, their pension schemes are required to operate an internal dispute resolution procedure for pensions – this is normally a two stage process. They should ask pension scheme trustees or managers to ensure that arrangements in place are capable of dealing with RPA related appeals and that scheme members have access to information on these arrangements.
- 6.4 Individual employers should ensure that arrangements are in place to provide for individual pension schemes to inform scheme members of their right of appeal to the RPA Independent Third Party Dispute Resolution Procedure for pension-related disputes as well as their right to be accompanied by a work colleague or represented by a trade union representative to the RPA third-party procedure by a work colleague or trade union representative. **The RPA Independent Third-Party Dispute Resolution Procedure is in addition to internal dispute resolution for pensions (see 6.3) and all the principle requirements of the internal process must continue to be met. Internal dispute procedures are to be exhausted before appeal to the RPA Independent Third Party Dispute Resolution Procedure**

Third-Party Dispute Resolution Procedure: Pensions

- 6.5 In line with current statutory provisions, claims of maladministration, if unresolved during internal dispute resolution, may be referred to third-party dispute resolution in the form of the Pensions Advisory Service. If it still remains unresolved the dispute can be further referred to the Pensions Ombudsman. This will therefore include claims in respect of maladministration where the claim has arisen as a result of RPA. **The procedure detailed at paragraph 6.11, therefore, provides for RPA**

Independent Third Party Dispute Resolution Procedure where claims do not meet the criteria as laid down by the Pensions Ombudsman.

- 6.6 Scheme members should be made aware that the Pensions Ombudsman will normally only investigate a complaint within three years of the relevant act or omission or within three years of the date the scheme member knew or reasonably ought to have known of the act or omission happening.

RPA Independent Third Party Dispute Resolution Procedure: Pensions

- 6.7 The model for the RPA Independent Third Party Procedure is drawn from the principles applying to the Procedural Arbitrations provided by the LRA for range of public sector bodies together with the good practice elements of the statutory arbitration schemes. The RPA Independent Third Party Dispute Resolution Procedure will be a three person panel procedure; the Chair will be provided by the LRA, wing members will be nominees from public service employers and trade unions who will be trained through the LRA. For further information please refer to Annex 2.
- 6.8 Where a complaint is upheld, the panel will make a determination to the employer to remedy any deficiencies found. If the deficiencies cannot be remedied, the panel will fix an amount of compensation which reflects actual loss incurred. Employers will implement the panel's determination.
- 6.9 Employers must make employees aware that to bring forward an appeal they must do so within three years of the relevant act or omission or within three years of the date the scheme member knew or reasonably ought to have known of the act or omission happening.

Employers must also make employees aware that the LRA must receive their appeal in writing within 6 weeks from the date of conclusion of internal dispute resolution. The parties will do all things necessary for the proper conduct of the appeal hearing. This includes complying with any orders or directions of the Panel and co-operating with the arrangements of the hearing.

- 6.10 The RPA Independent Third Party Process outlined at 6.11 does not cover disputes in respect of maladministration which are within the remit of the Pensions Advisory Service and the Pensions Ombudsman. For further information in relation to third party dispute resolution in this regard please see paragraphs 6.5 and 6.6 above.

The RPA Independent Third Party Dispute Resolution Procedure: Pensions

- 6.11 The key features of the RPA Independent Third Party Procedure for pensions are outlined below:

- i) the employee notifies the LRA and the employer, in writing, of the decision to appeal to the RPA Independent Third Party Dispute Resolution Procedure within the time limit outlined at paragraph 6.9;
- ii) both parties send to the LRA Arbitration Secretary all relevant correspondence;
- iii) the LRA appoints the panel who determines whether the appeal is within time, and that internal grievance/dispute resolution procedures for pensions have been exhausted;
- iv) if the appeal fulfils the above criterion, the LRA Arbitration Secretary fixes a hearing date and the case is scheduled to be heard within 6-8 weeks. Where necessary, the panel will appoint an actuary to independently assess the case and to provide them with a report and, where necessary, an assessment of the actions required. The cost of the actuary will be met by the respondent employer;
- v) if the appeal does not meet the criteria as set out in iii) above, the LRA will notify both parties;
- vi) written statements from both the employer and the employee must be submitted at least 2 weeks before the date of the hearing; and
- vii) the case is heard and the panel's determination is sent to both parties within 10 working days of the hearing. This constitutes the end of the process and there is no further appeal through this mechanism.

7. Action Required

- 7.1 All Departments preparing primary legislation should apply the key principles in paragraph 2 above in accordance with the provisions in the legislative framework the Libraries (NI) Act 2008 which can be found at the following link: www.opsi.gov.uk. All relevant organisations and employers, in consultation with recognised trade unions, are required to implement the provisions in paragraphs 5 and 6 at an appropriate stage in implementation plans.

RPA CENTRAL UNIT
May 2009

RPA Independent Third-Party Dispute Resolution Procedure: Non-Pensions

1. If having exhausted the employer's internal procedure the matter/s remain/s unresolved then the employee may exercise their right to an independent third party appeal.

To exercise this right the employee must lodge their appeal in writing to the Labour Relations Agency (LRA) no later than 6 weeks from the date of the conclusion of the internal dispute resolution. This is further explained at paragraph 4 below – Time Limits).

2. The RPA Independent Third Party Procedure will be applied by a panel. The RPA Independent Appeal Panel will consist of an independent Chairperson appointed by the LRA and 2 panel members will represent the employer and employee interests; one nominated from the RPA Appeal Panel list provided by the appropriate public service employers and the other from the RPA Central Joint Forum Trade Union Side.

Conflicts of Interest

3. Parties should satisfy themselves that there are no conflicts of interest with any of the persons appointed to the Panel. In the event that there are, they should be notified to the Arbitration Secretary.

Prior to the operation of this procedure all Panel members will have received a briefing from the Labour Relations Agency on the generic operation of this procedure including their role as Panel members. The Panel at all times shall:-

- (i) Act fairly and impartially as between the parties, giving each party a reasonable opportunity of putting his/her case and dealing with that of the other party; and*
- (ii) Adopt procedures suitable to the circumstances of the particular case, avoiding unnecessary delay or expense, so as to provide a fair means for the resolution of the matters to be determined.*

Time Limits

4. Employers must make the employee aware that the LRA and the employer must receive their appeal in writing within 6 weeks from the date of conclusion of internal dispute resolution.

The parties will do all things necessary for the proper conduct of the appeal hearing. This includes complying with any orders or directions of the Panel and co-operating with the arrangements of the hearing.

If an appeal is received by the LRA which is outside the time limit the matter will be referred to an Independent Panel Chairperson who may extend the time limit if it is concluded, in all the circumstances of the case, that it was not reasonably practicable to lodge the appeal in time. (The employee will need to set out in writing the reason/s for any delay). The Independent Panel Chairperson may seek the views of the other party and may call both parties to a hearing to establish the reasons for the delay. The appeal will follow the process set out at paragraph 5 below.

Withdrawal

5. The appellant can withdraw their appeal at any time by notifying in writing the Arbitration Secretary at the Labour Relations Agency.

RPA Third-Party Dispute Resolution Process: Non Pensions

6. The key features of the RPA Independent Third-Party Dispute Resolution process are outlined below:

Confidentiality and Privacy

- i) All processes under these procedures are strictly private and confidential to the parties concerned. The Panel, the parties and an officer of the LRA will attend the hearings;

Making the appeal application

- ii) the employee will notify the LRA and the employer, in writing, of the decision to appeal to the RPA Third-Party Dispute Resolution procedure within the time limit outlined in paragraph 4 above;
- iii) written submission; (see exchange of documents xi)
- iv) The LRA appoints the chairperson and constitutes the Panel in accordance with the procedure;
- v) The chairperson will determine whether the appeal is within time, and that internal dispute resolution procedures have been exhausted;
- vi) If the appeal fulfils the above criterion, the LRA Arbitration Secretary fixes a hearing date as soon as reasonably practicable and the case will be scheduled to be heard within six weeks.
- vii) if the appeal does not meet the criteria as set out in 5.11 of the RPA Code of Practice on Staff Transfers the LRA will notify both parties;

Venue

- viii) Hearings will be held in the LRA Head Office or Regional Office in the North West. If there are particular circumstances alternative venues may be considered and requests for a venue other than the LRA offices should be made in writing to the LRA Arbitration Secretary within 14 days of the date of the letter notifying of the hearing arrangements. Such requests will be determined by the LRA after all parties have received a copy of the appeal and been given a reasonable opportunity to respond;

Assistance

- ix) Where a party needs the services of an interpreter, signer or communicator at the hearing, the LRA should be so informed well in advance of the hearing;

Travelling expenses

- x) Every party shall meet its own travelling expenses and those of its representatives;

Exchange of Documents

- xi) At least 14 days before the date of the hearing each party will send to the LRA Arbitration Secretary (for forwarding to the Panel and the other party and for the retention of the LRA Arbitration Section) three copies of a **written** statement of case, together with three copies of:

Any supporting documentation or other material to be relied upon at the hearing; including witness statements, if any; and where appropriate;

A list of names and title/role of all those persons who will accompany each party to the hearing.

Written Statements

- xii) Written statements of case should be as clear and complete as the parties can make it with the resources available to them since good written evidence helps the Panel to form a clear picture of the situation and the problem in advance of the actual hearing itself. Appeal Panels can arrive at their outcomes only after considering all the facts and arguments submitted to them by the parties and they always study the written statements very carefully. It is, therefore, in the interests of each party to do themselves full justice by providing a clearly set out exposition of their case and to include in it all the important information and relevant points. It is also essential that all information given to the Panel is known to the other side;

- xiii) The Agency therefore arranges for the simultaneous exchange of the parties' written statements before the hearing;
- xiv) Written statements of case and documentary or other material that have not been provided to the Panel prior to the hearing may only be relied upon at the hearing with the Panel's permission;
- xv) When the case is heard the Panel's determination is sent in writing to both parties within 10 working days of the hearing. This constitutes the end of the process and there is **no** further appeal through this mechanism.

7. When the Independent Chairperson has prepared his report he/she submits it to the Labour Relations Agency which forwards copies to the parties. The report will set out:

- (i) The terms of reference;
- (ii) The date and place of hearing and names of those present;
- (iii) A short summary of the respective submissions of the parties;
- (iv) The Panel's findings of fact;
- (v) The award decision itself.

The award will be signed and dated. A copy of the report will be retained by the Labour Relations Agency.

RPA Independent Third-Party Dispute Resolution Procedure: Pensions

1. If having exhausted the employer's internal procedure the matter/s remain/s unresolved then the employee may exercise their right to an independent third party appeal.

To exercise this right the employee must lodge their appeal in writing to the Labour Relations Agency (LRA) no later than 6 weeks from the date of the conclusion of the internal dispute resolution. This is further explained at paragraph 4 below – Time Limits).

2. The RPA Independent Third Party Procedure will be applied by a panel. The RPA Independent Appeal Panel will consist of an independent Chairperson appointed by the LRA and 2 panel members will represent the employer and employee interests; one nominated from the RPA Appeal Panel list provided by the appropriate public service employers and the other from the RPA Central Joint Forum Trade Union Side.

Conflicts of Interest

3. Parties should satisfy themselves that there are no conflicts of interest with any of the persons appointed to the Panel. In the event that there are, they should be notified to the Arbitration Secretary.

Prior to the operation of this procedure all Panel members will have received a briefing from the Labour Relations Agency on the generic operation of this procedure including their role as Panel members. The Panel at all times shall:-

- (i) *Act fairly and impartially as between the parties, giving each party a reasonable opportunity of putting his/her case and dealing with that of the other party; and*
- (ii) *Adopt procedures suitable to the circumstances of the particular case, avoiding unnecessary delay or expense, so as to provide a fair means for the resolution of the matters to be determined.*

Time Limits

4. Employers must make the employee aware that to bring forward an appeal they must do so within three years of the relevant act or omission or within three years of the date the scheme member knew or reasonably ought to have known of the act or omission happening.

Employers must also make the employee aware that the LRA and the employer must receive their appeal in writing within 6 weeks from the date of conclusion of internal dispute resolution. The parties will do all things necessary for the proper conduct of the appeal hearing. This includes

complying with any orders or directions of the Panel and co-operating with the arrangements of the hearing.

Withdrawal

5. The appellant can withdraw their appeal at any time by notifying in writing the Arbitration Secretary at the Labour Relations Agency.

RPA Third-Party Dispute Resolution Process: Pensions

6. The key features of the RPA Independent Third-Party Dispute Resolution process are outlined below:

Confidentiality and Privacy

- i) All processes under these procedures are strictly private and confidential to the parties concerned. The Panel, the parties and an officer of the LRA will attend the hearings;

Making the appeal application

- ii) the **employee** will notify the LRA and the employer, in writing, of the decision to appeal to the RPA third party dispute resolution procedure within the time limit outlined in paragraph 4 above;
- iii) written submission; (see exchange of documents xi)
- iv) The LRA appoints the chairperson and constitutes the Panel in accordance with the procedure;
- v) The chairperson will determine whether the appeal is within time, and that internal dispute resolution procedures have been exhausted;
- vi) If the appeal fulfils the above criterion, the LRA Arbitration Secretary fixes a hearing date as soon as reasonably practicable and the case will be scheduled to be heard within 6-8 weeks. Where necessary the panel will appoint an actuary to independently assess the case and to provide them with a report and, where necessary, an assessment of the actions required;
- vii) if the appeal does not meet the criteria as set out in 6.11 and 6.12 of the RPA Code of Practice on Staff Transfers the LRA will notify both parties;

Venue

- viii) Hearings will be held in the LRA Head Office or Regional Office in the North West. If there are particular circumstances alternative venues may be considered and requests for a venue other than the LRA offices must be made, in writing with reasons, to the LRA Arbitration

Secretary within 14 days of the date of the letter notifying of the hearing arrangements. Such requests will be determined by the LRA after all parties have received a copy of the appeal and been given a reasonable opportunity to respond;

Assistance

- ix) Where a party needs the services of an interpreter, signer or communicator at the hearing, the LRA should be so informed well in advance of the hearing;

Travelling expenses

- x) Every party shall meet its own travelling expenses and those of its representatives;

Exchange of Documents

- xi) At least 14 days before the date of the hearing each party will send to the LRA Arbitration Secretary (for forwarding to the Panel and the other party and for the retention of the LRA Arbitration Section) three copies of a **written** statement of case, together with three copies of:

Any supporting documentation or other material to be relied upon at the hearing; including witness statements, if any; and where appropriate;

A list of names and title/role of all those persons who will accompany each party to the hearing.

Written Statements

- xii) Written statements of case should be as clear and complete as the parties can make it with the resources available to them since good written evidence helps the Panel to form a clear picture of the situation and the problem in advance of the actual hearing itself. Appeal Panels can arrive at their outcomes only after considering all the facts and arguments submitted to them by the parties and they always study the written statements very carefully. It is, therefore, in the interests of each party to do themselves full justice by providing a clearly set out exposition of their case and to include in it all the important information and relevant points. It is also essential that all information given to the Panel is known to the other side;
- xiii) The Agency therefore arranges for the simultaneous exchange of the parties' written statements before the hearing;
- xiv) Written statements of case and documentary or other material that have not been provided to the Panel prior to the hearing may only be relied upon at the hearing with the Panel's permission;

- xv) When the case is heard the Panel's determination is sent in writing to both parties within 10 working days of the hearing or within 10 working days of the receipt of the actuarial report. This constitutes the end of the process and there is **no** further appeal through this mechanism.
7. When the Independent Chairperson has prepared his report he/she submits it to the Labour Relations Agency which forwards copies to the parties. The report will set out:
- (vi) The terms of reference;
 - (vii) The date and place of hearing and names of those present;
 - (viii) A short summary of the respective submissions of the parties;
 - (ix) The Panel's findings of fact;
 - (x) The award decision itself.

The award will be signed and dated. A copy of the report will be retained by the Labour Relations Agency.

FOURTH GUIDING PRINCIPLE AND ASSOCIATED RECOMMENDATIONS

FILLING NEW OR SUBSTANTIALLY NEW POSTS IN NEW ORGANISATIONS BEING CREATED AS A RESULT OF THE REVIEW OF PUBLIC ADMINISTRATION.

Note: This reissued Guiding Principle supersedes the previous Filling New or Substantially New Posts in New Organisations Being Created as a Result of the Review of Public Administration dated 20th November 2006, which was accepted by the direct rule administration on 6th December 2006.

Introduction

1. The Commission's role is to safeguard the interests of staff and to ensure their smooth transfer to new organisations established as a consequence of Executive decisions on the Review of Public Administration, taking into account statutory obligations, including those arising from Section 75 of the Northern Ireland Act 1998.
2. In pursuance of that role, the Commission's position in relation to filling vacancies and new or substantially new posts in new organisations, which are not to be filled by staff transfer as covered by the Commission's third Guiding Principle, is represented in the Guiding Principle and Associated Recommendations described below. In formulating the Guiding Principle and Associated Recommendations, the Commission has also had due regard to the previous administration's commitment, as set out in the statement of 22 November 2005, that "Every possible effort will be made to avoid redundancies." The Commission welcomes the Executive's commitment to this underlying objective.
3. The Public Service Commission has consulted the Executive, the sectoral Staff Commissions and representatives of NIC/ICTU about the most appropriate way to fill vacancies and new or substantially new posts in new organisations. This is part of a wider set of arrangements which will be required to achieve the Executive's commitment to make every possible effort to avoid redundancies in bodies affected by RPA and to safeguard the interests of staff and ensure their smooth transfer into new organisations.
4. This revised Guiding Principle on Filling Vacancies and New or Substantially New Posts arising in New Organisations created as a result of the Review of Public Administration, supersedes the version dated 20th November 2006, which was accepted by the direct rule administration on the 6th December 2006. This revision reflects a redefinition of the concept of the RPA Affected Group and also experience from the implementation of RPA so far and focuses

on the practicalities associated with the fair and consistent handling of vacancies as well as new or substantially new posts in new organisations.

Guiding Principle

5. After the establishment of a new organisation created as a result of RPA, the Public Service Commission recommends that, where an organisation is considering taking action which may increase the risk of redundancy for staff, it should seek to fill vacancies and new or substantially new posts in the following order of consideration:

- By the use of a mechanism or competition internal to the new organisation with the objective of dealing in the first instance with staff who have been identified as being at a clearly identified risk of compulsory redundancy.
- By targeting “at risk” staff in that sector as a whole.
- By targeting “at risk” staff across all the sectors in the RPA Affected Group.
- By way of open competition.

A “clearing house” mechanism may be used to enable employers to collaborate in filling vacancies and new or substantially new posts across the sectors thereby ensuring that “at risk” staff have an opportunity to apply for positions/vacancies as might arise.

6. The Commission recognises that there will be instances when it will be necessary to fill a post in a new organisation which does not yet exist in law. In such instances, the Commission recommends that the Executive accepts that the principles of fairness, equality and consistency should apply. The Commission further recommends that the authority responsible for filling such posts considers the use of (ii) and (iii) above in advance of the use of (iv) above.

7. The Commission expects that, in keeping with good practice and having regard to statutory obligations, employers would consult with the relevant Trade Unions and staff representatives on the filling of vacancies and new or substantially new posts.

Associated Recommendations

8. The Commission also recommends that:

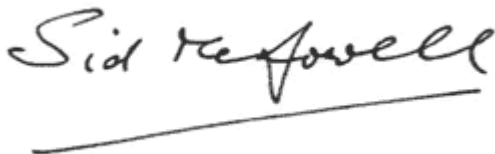
- In consultation with Trade Unions and employers, the Executive should publish an updated list of public sector organisations deemed to be affected by the direct rule administration’s announcements and recent decisions taken by the Executive.
- Employers should identify staff who are at a clearly identified risk of compulsory redundancy and should advise staff whether they are, or are not, in the “at risk” group. Should an individual consider themselves to be “at risk” they should be entitled to a response from their employer clarifying the

position. Employers should consult with Trade Unions and staff representatives on the designation of “at risk” staff.

- Employers should take all reasonable steps, both pre and post transfer, to manage or accommodate surplus staff thereby meeting or exceeding their statutory obligations.
- When considering the methods available for filling a vacancy or a new post and when determining the composition of the selection pool employers should take account of employment law and equality considerations.
- New organisations apply this Guiding Principle until a minimum of 12 months after their establishment or for a minimum of 12 months after the subsequent absorption of new functions into the new organisation

Commentary

9. The Commission’s view is that where there is a potential redundancy situation, external recruitment as a matter of first resort is unreasonable and frustrates the primary objective of safeguarding the interests of staff. Significantly, such an approach would fail to meet statutory obligations. Internal mechanisms being implemented in the first instance signal an intention to protect the interests of staff who are “at risk” within the sector. The next stage of consideration whereby the competition targets “at risk” staff across all sectors in the RPA Affected Group would have the effect of enabling relevant public sector employers to demonstrate a commitment to safeguarding the interests of employees and minimising the risk of redundancies across all of the sectors affected by decisions arising from the RPA process. The Commission would also expect employers to retain the justification explaining why it proved necessary, ultimately, to proceed with a fully open competition.
10. The Commission recommends that the Executive should provide periodic reports on the implementation of this Guiding Principle by employers.



A handwritten signature in cursive script that reads "Sid McDowell". Below the signature is a horizontal line.

SID McDOWELL
CHAIRMAN
PUBLIC SERVICE COMMISSION
25 January 2008

RPA GUIDANCE NOTE: 4th GUIDING PRINCIPLE - FILLING NEW OR SUBSTANTIALLY NEW POSTS IN NEW ORGANISATIONS BEING CREATED AS A RESULT OF THE REVIEW OF PUBLIC ADMINISTRATION

Introduction

1. This Guidance Note confirms that the Executive has accepted the Public Service Commission's re-issued 4th Guiding Principle, Filling Vacancies and New or Substantially New Posts in New Organisations and is issued to assist and provide clarification to Departments and public service employers in the RPA Affected Group in the practical implementation of the Guiding Principle.

Interpretation

2. This guidance note applies to vacancies and new posts or substantially new posts in new organisations being created as a result of the Review of Public Administration. It does not apply to vacancies in existing organisations, including those taking on new functions, which are covered by the guidance note to the PSC's 2nd Guiding Principle. It also does not apply to posts filled by staff transfer as covered by the Commission's 3rd Guiding Principle.
3. Through consultation with Trade Unions and staff representatives, employers are required to identify those staff at a clearly identified risk of compulsory redundancy ("at risk" staff) and to advise staff whether they are , or are not, in the "at risk" group. There may be an exceptional circumstance whereby, after identifying those "at risk", a member of staff considers themselves to be "at risk". It is important that employers take steps to clarify this for the individual concerned. Employers should ensure that arrangements in place for identifying "at risk" staff are robust and timely to allow for the "at risk" group to be updated as necessary.
4. The method of filling a vacancy or a new or substantially new post after the establishment of a new organisation created as a result of RPA will depend on the circumstances of each individual case and will require employers to take account of employment law, equality considerations and legal advice. In instances where the organisation is considering taking action which may increase the risk of redundancy for staff the following illustrates the methods which are available to an employer and the order in which they must be considered:
 - i) internal mechanism or competition internal to the new organisation which will, in the first instance, deal with "at risk" staff;
 - ii) targeting "at risk" staff in the sector¹¹;

¹¹ Should the employer deem it appropriate and justifiable in any given situation, "sector" in this instance may be refined to a sub-set of the main sector grouping; the decision must be taken in consultation, with a view to reaching agreement, with the appropriate Trade Union and staff representatives and the justification to do so must be fully documented.

- iii) targeting at risk” staff across all sectors in the RPA Affected Group¹²; and
- iv) open competition.
5. When considering the methods available for filling a vacancy or a new or substantially new post employers must:
- take account of employment law and equality considerations and, where necessary, take legal advice, these are also important factors when determining the composition of the selection pool and when using restricted pools;
 - bear in mind that the aim of mechanisms i)-iii) above are to promote employment protection within the public sector and thus should normally only be open to broadly comparable grades or higher; and
 - document fully the justification for their decision on the means of filling a vacancy/post.
6. When filling a new post in a new organisation which does not yet exist in law, the authority responsible for filling such posts should consider the use of methods ii) and iii) above before proceeding to iv). Employers once again are required to fully document the justification to explain why it proved necessary, ultimately, to proceed to open competition.
7. Employers are required to consult with the relevant Trade Unions and staff representatives on the filling of vacancies and new or substantially new posts.
8. Whilst being aware of the need for acceptable use of public funds, in order to meet or exceed statutory obligations, employers must ensure that all reasonable steps, both pre and post transfer, are taken to manage or accommodate surplus staff.
9. Whilst the timeframe for application of this Guiding Principle will be dependant on the circumstances prevailing in an organisation, employers must operate this Guiding Principle for a minimum of 12 months after their establishment or for a minimum of 12 months after the subsequent absorption of new functions into the new organisation.
10. Employers must maintain a record of how they have implemented this Guiding Principle to facilitate periodic reporting.

¹² Please see Annex 1 for additional guidance in this regard.

Action required

11. Sponsor organisations and employers are required to:

- put in place a mechanism which will allow for the identification of “at risk” staff;
- put in place a procedure to allow for vacancies and new or substantially new posts to be filled in compliance with the requirements in this Guiding Principle;
- document and retain the justification for the decision on the means of filling a vacancy/post; and
- during the period of RPA implementation, maintain a record of how they have implemented this Guiding Principle. Annex 2 shows the information required.

RPA CENTRAL UNIT
May 2009

Guidance: Targeting “at risk” employees across all sectors in the RPA Affected Group

Introduction

1. The aim of the following guidance is to encourage open communications between employers in the RPA affected group in order to minimise the risk of redundancy through collaboration in filling vacancies/new posts across the sectors/employers. This will thereby ensure that consideration is given to providing “at risk” employees with an opportunity to apply for positions/vacancies as might arise as per the recommendations in the PSC’s 2nd and 4th Guiding Principles.
2. This guidance applies to both existing and new organisations in the RPA affected group.

Steps

3. The following guidance details the steps that should be taken when an employer identifies “at risk” employees and, subsequently, when an employer has a vacancy/new post:

Employer in the RPA affected group with “at risk” employees:

- Employer, in consultation with TUS, identifies employees at a clearly identified risk of compulsory redundancy (“at risk” employees) in their organisation; and
- in addition to fulfilling their statutory obligations in a redundancy situation the employer should, as soon as is reasonably practical, notify all other employers in the RPA Affected Group of the “at risk” employees in their organisation and request consideration to the circulation of vacancies/new posts to their organisation in line with the provisions in the PSC’s 2nd and 4th Guiding Principles.

Employer in the RPA affected group with a vacancy/new post:

- Employer in the RPA Affected Group has a vacancy/new post;
- the employer should, having taken account of employment law, equality considerations and, where necessary, legal advice, consider the different methods available for filling the vacancy/new post as detailed in the PSC’s 2nd/4th Guiding Principle;
- where the employer decides that the method to be used is targeting employees “at risk” across all sectors then they should circulate the vacancy to RPA affected employers who have identified “at risk” employees in their organisation for onward submission to those “at risk”.

Background

4. Employers must ensure that they have in place robust and timely arrangements for identifying “at risk” employees in order to allow for the “at risk” group to be constantly refreshed and revised taking account of progress/updates. Employers should be aware that the implementation of this guidance does not replace their statutory obligations in a redundancy situation and that any arrangement with another employer in relation to finding suitable alternative employment is in addition to their statutory obligations.
5. The aim of this mechanism is to promote employment protection in the RPA Affected Group and thus should normally only be open to employees in broadly comparable grades or in higher grades. The receiving organisation should consider the terms and conditions under which they can offer a position.
6. Employers are reminded that it is important to document fully the justification for the decision on the means of filling a vacancy/post and are alerted, in particular, to the potential discrimination of advertising to a restricted pool.
7. Vacancies should be circulated amongst “at risk” employees as a recruitment aid; it will be for the organisation with the vacancy to decide, having taken account of employment law, equality considerations and, where necessary, legal advice, the mechanisms for assessment, selection and appointment to these posts.

Final

8. It is important that employers take the appropriate steps to implement the above guidance in order to facilitate placement and support amongst “at risk” employees, thereby helping to alleviate employee anxiety, implement effective communication and contribute to making every possible effort to avoid redundancies. In addition, it is also important that “at risk” employees take all reasonable steps to avail of the opportunities which occur for them as a result of this guidance.
9. Where an employer concludes, after having taken account of employment law, equality considerations and where necessary legal advice, that the method to fill the vacancy/new post should be open competition, steps should be taken to ensure that those “at risk” are made aware of the vacancy/new post.

ANNEX 2

Employing Authority:

Reporting Period:

Vacancy/Post Details (inc. new post, existing post etc)	Method of Filling Vacancy/Post				Reason for method chosen to fill vacancy/post
	Internal “at risk”	Sector “at risk”	All RPA Affected Sectors “at risk”	Open competition	

Summary

Total Vacancies/Posts	Number filled internally “at risk”	Number filled by sector “at risk”	Number filled by all RPA Affected Sectors “at risk”	Number filled by open competition

FIFTH GUIDING PRINCIPLE AND ASSOCIATED RECOMMENDATIONS

VOLUNTARY SEVERANCE ARRANGEMENTS

Introduction

1. The Commission's role is to safeguard the interests of staff and to ensure their smooth transfer to new organisations established as a consequence of Executive decisions on the Review of Public Administration, taking into account statutory obligations, including those arising from Section 75 of the Northern Ireland Act 1998.
2. In pursuance of that role, a core aspect of the Commission's approach to making preparations for the staffing structures required in new organisations is represented in the Guiding Principle and Associated Recommendations described below. In formulating the Guiding Principle and Associated Recommendations, the Commission has also had due regard to the previous administration's commitment, as set out in the statement of 22 November 2005, that "Every possible effort will be made to avoid redundancies." The Commission welcomes the Executive's commitment to this underpinning objective.
3. The Public Service Commission has consulted the Executive, the sectoral Staff Commissions and representatives of NIC/ICTU about the most appropriate way to make preparations for the staffing structure required in new organisations. This is part of a wider set of arrangements which will be required to achieve the Executive's commitment to make every possible effort to avoid redundancies in bodies affected by RPA and to safeguard the interests of staff and ensure their smooth transfer into new organisations.

Guiding Principle

4. While noting the Executive's commitment to make every possible effort to avoid redundancies, the Commission recognises that when the Review of Public Administration is fully implemented, there is expected to be an overall requirement for fewer staff than are currently employed in the organisations affected by RPA decisions. Where there is a justifiable need to reduce staff numbers and a willingness amongst staff to participate in such schemes, the Commission **recommends** that a core aspect of managing this position

should be by the application of voluntary severance arrangements¹³

Compulsory redundancy has the potential to frustrate the objective of securing maximum good will and co-operation from staff during any major change process. The Commission therefore considers that the avoidance of compulsory redundancy is a necessary requirement to ensure the smooth transfer of staff to new organisations. The Commission **recommends** that employers in the RPA Affected Group should identify staff who are at a clearly identified risk of compulsory redundancy. This will enable the Executive, employers and Trade Unions to focus their efforts on those staff who are "at risk" and to define the arrangements, such as a clearing house mechanism¹⁴, to be implemented as a means of avoiding compulsory redundancies.

5. The Commission also **recommends** that the arrangements for implementing this Guiding Principle and Associated Recommendations be the subject of consultation and negotiation with Trade Unions and other representatives of staff.

Associated Recommendations

6. The Commission **recommends** that:
 - Consideration be given to organisational structure and staffing requirements well in advance of the creation of the new organisations.
 - Where justified, voluntary severance arrangements should be applied by employers both before and after the appointed date of the transfer in order to deal with surplus staff.
 - In compliance with various contractual obligations voluntary severance arrangements should not necessarily be restricted to the RPA Affected Group when considering the unit of redundancy.
 - Staff should be provided with information on a personal basis to help them plan for the future and be advised as soon as possible if they have been approved for a voluntary severance package. Employers should also ensure that staff affected by the application of voluntary severance arrangements are provided with high quality support on matters such as careers advice, skills analysis, training for new careers and financial planning.

¹³ Voluntary severance is used as a generic term covering arrangements that enable staff to leave employment voluntarily

¹⁴ This may be used to enable employers to collaborate in filling posts across the sectors thereby ensuring "at risk" staff have an opportunity to apply for positions/vacancies

- In applying Voluntary Severance Schemes, the Commission recommends that the Executive and employers should confirm their commitment to apply Public Service Commission recommendations consistently across all sectors. If, on a case by case basis, it is found that there is no occupational scheme available to staff or where such a scheme is significantly limited when compared with the mainstream occupational schemes available to other staff in their organisation or in the organisation to which they will be transferred as a result of RPA, the Commission recommends that the Executive should encourage employers, as part of the normal industrial relations process, to consider any proposals to enhance these to the extent that this would be necessary to ensure consistency of treatment.
- In consultation with sponsoring departments, where applicable, employers should seek to ensure that appropriate funding is available to facilitate voluntary severance arrangements.

Commentary

7. The Commission recognises that the issue of aligning existing staff posts and numbers with those required in the new organisations could be highly complex. The Commission is aware, however, that staff have concerns about their future employment position. The application of this Guiding Principle and the Associated Recommendations will go some considerable way towards clarifying the position for staff and re-assuring them that every possible effort will be made to safeguard their interests.
8. The Commission also recognises that the introduction of voluntary severance arrangements is only one of a number of Human Resource mechanisms which will help employers in their efforts to avoid compulsory redundancies.
9. The Commission notes that in respect of some of the sectors, a number of changes have already been made to pension schemes and redundancy / compensation regulations and that changes in other sectors are planned. The Commission recommends that in respect of any future amendments, where possible¹⁵, employers should have regard for the impact, in consistency terms, to affected staff within their sector throughout the implementation of RPA.

¹⁵ Certain pension schemes and redundancy/compensation regulations must retain parity with scheme amendments in England and Wales

10. Continuous effective communications with all staff, especially those at a clearly identified risk of compulsory redundancy will be essential.

A handwritten signature in black ink that reads "Sid McDowell". The signature is written in a cursive style and is underlined with a single horizontal line.

SID McDOWELL
CHAIRMAN
PUBLIC SERVICE COMMISSION
6 March 2009

RPA GUIDANCE NOTE: 5th GUIDING PRINCIPLE - VOLUNTARY SEVERANCE ARRANGEMENTS

Introduction

1. This Guidance Note confirms that the Executive has accepted the Public Service Commission's 5th Guiding Principle, Voluntary Severance Arrangements and is issued to assist and provide clarification to Departments and public service Employers in the RPA Affected Group in the practical implementation of the Guiding Principle.

The Principles

2. When the Review of Public Administration is fully implemented there is expected to be an overall requirement for fewer staff than are currently employed in the RPA Affected Group. Voluntary severance arrangements should be a core aspect of what is to be used to manage a reduction in staff numbers.
3. Paragraph 4 of the PSC Guiding Principle states that the avoidance of compulsory redundancy is a necessary requirement to ensure the smooth transfer of staff to new organisations. Therefore when dealing with a staff surplus situation the individual Employer must make every possible effort to avoid redundancies. Employers must use every reasonable opportunity to manage a surplus position either on an organisational/Employer basis and where necessary on a collaborative basis with other organisations/Employers (including cross sector) in order to find staff suitable alternative employment. The operation of the above mechanisms will be kept under review and be subject to further consultations with Trade Unions This arrangement will be kept under review. Employers should ensure that where appropriate staff has access to re-skilling/re-training programmes.
4. Employers should note that compulsory redundancy must only be considered when all other practical options have been exhausted and only after full consultation with the relevant trade unions and specific legal advice has been obtained.
5. Employers are required to identify those staff at a clearly identified risk of compulsory redundancy ("at risk" staff) through consultation with Trade Unions and other staff representatives and advise staff whether they are, or are not, in the "at risk" group. There may be an exceptional circumstance whereby, after identifying those "at risk", a member of staff

- considers themselves to be “at risk”. It is important that Employers¹⁶ take steps to clarify this for the individual concerned and ensure that arrangements in place for identifying “at risk” staff are robust and timely to allow for the “at risk” group to be updated as necessary. Employers are reminded that staff can use the internal grievance process should they have a complaint in this regard.
6. It is important that existing Employers engage with trade union representatives and the new Employer at the earliest possible date with a view to considering the staffing requirements and structures of the new organisations, but normally within a timeframe within which meaningful dialogue can result.
 7. Voluntary severance arrangements, where justified, will depend on the circumstances facing Employers proposing to initiate such arrangements; taking into account the need to make every possible effort to avoid redundancies, while at the same time ensuring business continuity over the transitional period and having regard to skills retention and value for money considerations. In order to deal with surplus staff, individual Employers must consult their recognised trade unions when determining the most appropriate timing for severance arrangements as well when deciding the unit of redundancy. In addition, Employers must take into account existing contractual provisions and collective agreements in respect of the setting of the precise terms of any severance scheme.
 8. It is essential that draft voluntary severance arrangements developed by Employers are equality screened in order to assess any requirement for a full equality impact assessment (EQIA). Employers are reminded that in applying voluntary severance arrangements they must take into account their statutory obligations including those arising from Section 75 of the Northern Ireland Act 1998.
 9. Employers should provide staff with information on a personal basis to help them plan for the future and be advised as soon as possible if they have been approved for a voluntary severance package. In addition Employers, either at an Employer, sector or a more general level, should provide high quality support on a variety of issues to those staff affected by the application of severance schemes.
 10. It is recognised that a small number of staff have no occupational severance scheme or have one which is severely limited. While it is a matter for the Employer/sector involved to consider any proposal to

¹⁶ For guidance in relation to targeting “at risk” employees across all sectors in the RPA affected group please see Guiding Principles 2 and 4 as well as the associated Guidance Notes. Open communication and collaboration across sectors and Employers will be necessary

enhance the terms of a scheme to ensure consistency of treatment
Employers are encouraged to consider such proposals.

11. In line with current arrangements Employers are reminded that, in consultation with sponsoring departments where appropriate, they should seek to ensure that appropriate funding is available to facilitate any severance arrangements.
12. All NI Departments and public bodies within the RPA Affected Group will be expected to co-operate with the Public Service Commission in the provision of information and in the implementation of its advice and recommendations as approved by the Executive.
13. Employers should have regard for the impact on affected staff within the sector of changes to pension schemes and to redundancy/compensation regulations. However there are limits in this regard given that certain pension schemes and redundancy /compensation regulations must retain parity with scheme amendments in England and Wales.

Action Required

14. All Employers are required to implement the principles outlined in paragraphs 2 – 13 above at the appropriate point in implementation plans and consult and negotiate with Trade Unions and other representatives of staff on the arrangements for implementing this Guiding Principle and Associated Recommendations.

RPA CENTRAL UNIT
December 2009

SIXTH GUIDING PRINCIPLE AND ASSOCIATED RECOMMENDATIONS

EMPLOYER STATUTORY OBLIGATIONS

Introduction

1. The Commission's role is to safeguard the interests of staff and to ensure their smooth transfer to new organisations established as a consequence of Government decisions on the Review of Public Administration, taking into account statutory obligations, including those arising from Section 75 of the Northern Ireland Act 1998. In formulating the guiding principle and associated recommendation, the Commission has also had due regard to the Secretary of State's commitment, as set out in his statement of 22 November 2005, that "Every possible effort will be made to avoid redundancies."
2. Given the extent and complexity of the RPA, the number of individual employers involved and the large numbers of staff affected, the Commission considers that Government should ensure that employers are aware of, and act upon, their statutory obligations throughout the implementation process. As well as the equality obligations mentioned above these also include the requirement to inform and consult with employees, their representatives and trade unions. The Commission wishes to emphasise that the statutory obligations are the minimum requirements expected of employers. Employers can, of course, enhance these minimum requirements as a means of safeguarding the interests of staff.

Guiding Principle

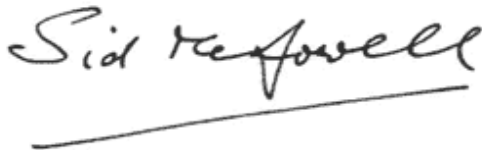
3. The Commission recommends that Government:
 - Consult public service employers and trade unions on drawing up a Code of Practice, providing employers with detailed information on the statutory obligations of employers relevant to the implementation of the Review of Public Administration, highlighting advice on best practice available from the Labour Relations Agency and providing signposts for employers to sources of further information such as the Industrial Court.

Associated Recommendations

4. The Commission recommends that employers:
- Familiarise themselves with their statutory obligations, their employees' statutory individual rights, the rights of trade unions, and if necessary seek legal opinion on any aspects about which they are unsure.
 - Take the necessary steps to communicate with employees, trade unions and other representatives (a duty which employers already have and which is accepted by Government in accordance with the Commission's 1st Guiding Principle on Communications).
 - Share key information and best practice across the sectors.

Commentary

5. The Commission wishes to re-emphasise the importance of informing and consulting staff and their representatives. In particular, the Commission wishes to draw the attention of employers to the Information and Consultation of Employees Regulations (Northern Ireland) 2005, the duty to consult and inform under the Transfer of Undertakings (Protection of Employment) Regulations 2006 and obligations under regulations relating to collective redundancies, health and safety at work, pensions, working time and parental leave. These legislative provisions should not be regarded as exhaustive.
6. The Commission considers that Trade Unions and other staff representatives can play an important role in facilitating change, acting as conduits for information and helping to make the transfer as smooth as possible.

A handwritten signature in black ink that reads "Sid McDowell". The signature is written in a cursive style and is positioned above a solid horizontal line.

SID McDOWELL
CHAIRMAN
PUBLIC SERVICE COMMISSION
13 December 2006

RPA GUIDANCE NOTE: 6th GUIDING PRINCIPLE - EMPLOYER STATUTORY OBLIGATIONS

Introduction

1. Further to Government's acceptance of the Public Service Commission's 6th Guiding Principle, Employer Statutory Obligations, this guidance note is issued to assist sponsor organisations and employers in the RPA Affected Group in the practical implementation of the guiding principle.
2. The purpose of this guidance note is to remind employers of the legal necessity to fulfil their statutory obligations in relation to informing and consulting with employees, their representatives and trade unions.

Key Principles

3. Government has already put in place arrangements for consultation at Cross-Sector level. However, in progressing the implementation of RPA, employers should be acutely aware of their responsibilities, and must put in place appropriate arrangements, for constructive engagement with trade unions at Sector and Employer-based levels.
4. In this guidance note it is not possible to provide an exhaustive list of references to relevant legislation to which employers are legally committed, however, employers must ensure that they comply fully with their obligations under the following key pieces:
 - the Information and Consultation of Employees Regulations (Northern Ireland) 2005;
 - the duty to consult and inform under the Transfer of Undertakings (Protection of Employment) Regulations 2006;
 - the Employment Rights (Northern Ireland) Order 1996; and,
 - various obligations under legislation relating to health and safety at work, pensions, working time and parental leave.

As stated above this is not an exhaustive list therefore in addition, employers must obtain detailed information on, and fulfil as a minimum, their statutory obligations, their employees' statutory individual rights and the rights of trade unions.

5. Employers are encouraged to seek legal advice for further information or for clarification on any aspects of their statutory obligations about which they are unsure and to ensure that they are meeting such obligations in full. Employers are reminded of the importance of consultation and of the legal consequences of not fulfilling their statutory obligations. For example,

if there is a failure to comply with the requirement to inform and consult as set out in the TUPE legislation, a complaint may be presented to the Employment Tribunal (ET) by or on behalf of the affected employees. The maximum compensation payable to each employee is such a sum (not exceeding 13 weeks' pay) as the Tribunal considers is just and equitable with regard to the seriousness of the breach of the duty.

Further Information

6. Employers should refer to sources of information and best practice on consultation. For example, advice on best practice is available from the Labour Relations Agency (<http://www.lra.org.uk/>). If parties have a dispute relating to trade union recognition or employee information and consultation rights, they should be directed to other sources of information such as the Industrial Court (<http://www.industrialcourt.gov.uk/>).
7. Employers are reminded of the value of sharing key information and best practice across sectors and should put in place appropriate arrangements to facilitate this through their RPA contacts, information and advice from the HR Cross Sector Forum and through membership of Departmental/Sectoral based forums.

Action Required

8. All Employers are required to implement the key principles outlined in paragraphs 3 – 5 above at the appropriate point in implementation plans.

RPA CENTRAL UNIT
April 2007

SEVENTH GUIDING PRINCIPLE AND ASSOCIATED RECOMMENDATIONS

LOCATION

Introduction

1. The Commission's role is to safeguard the interests of staff and to ensure their smooth transfer to new organisations established as a consequence of Government decisions on the Review of Public Administration, taking into account statutory obligations, including those arising from Section 75 of the Northern Ireland Act 1998.
2. In pursuance of that role, the Commission's approach to location is represented in the Guiding Principle and Associated Recommendations described below. In formulating the Guiding Principle and associated recommendations, the Commission has also had due regard to Government's commitment, as set out in the statement of 22 November 2005, that "Every possible effort will be made to avoid redundancies."
3. The Public Service Commission has consulted the Executive, the sectoral Staff Commissions and representatives of NIC/ICTU about the most appropriate way to safeguard the interests of staff and ensure their smooth transfer into new organisations with respect to changes in workplace location.

Guiding Principle

4. The Commission recognises that workplace location is of major importance to staff and that as the Review of Public Administration is implemented decisions will have to be taken on location. The Commission **recommends** that, in consultation with Trade Unions and other staff representatives, the Executive should develop an overarching location framework strategy for all public services. In developing such a strategy, full consideration should be given to safeguarding the interests of staff. The Commission considers that any decision on the location of a workplace must be objectively justified and reflect, as far as possible, an equitable distribution of Public Sector jobs.

Associated Recommendations

5. The Commission **recommends** that:
- Employers should aim to minimise hardship and domestic disruption as far as possible, within management needs, of those staff who face a change of workplace location. This should require ascertaining the personal preferences of staff, taking into account, for example, the domestic circumstances of employees, any relevant health factors or employee commitments such as caring for dependants.
 - The Executive should ensure the consistent and effective application of the overarching framework strategy across the public sector. The overarching framework and its detailed application at sectoral level should:
 - Be subject to consultation with trade unions and other staff representatives;
 - Stress equality considerations, Lifetime Opportunities - Northern Ireland Anti- Poverty and Social Inclusion Strategy, A Shared Future Policy Framework and Rural Proofing.
 - Require a business case to justify significant staff relocations;
 - Emphasise effective communication to ensure that all employees are made aware of the location strategy and policies;
 - Support the full use of technology e.g. video conferencing, E-Government initiatives to mitigate against workplace location disruptions;
 - Establish what constitute reasonable travel to work distances, taking account of, for example, access routes and the availability and frequency of public transport;
 - Offer flexible working practices and any other relevant HR policies which have regard to management needs and which would help to alleviate staff difficulties associated with a change in workplace location;
 - Detail the mechanism by which staff may appeal against a change of workplace location;¹⁷

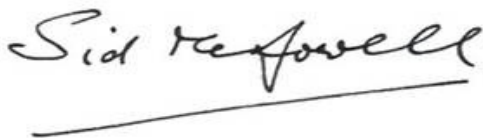
And in addition;

¹⁷ This mechanism will be contained in a Code of Practice on Staff Transfers.

- Where contractual entitlements do not provide for reimbursement of expenses in respect of re-location, employers should make provision for reimbursement of reasonably incurred additional travelling or other removal expenses as a consequence of a change of workplace location on a basis which is comparable to that provided by other employers in the RPA Affected Group.
- Employers should, on a case by case basis, provide for reimbursement of reasonably incurred expenses outside this where they consider that exceptional circumstances exist.
- In line with the 3rd Guiding Principle employers should in addition provide compensation for employees who suffer other material detriment as a consequence of a relocation outside the scope of any applicable mobility clause¹⁸.
- Ensure that employers, in consultation with Trade Unions, support those employees whose place of work, or work function changes. Such support should include, but not be limited to capacity building, retraining and career counselling as appropriate.

6. Commentary

Commissioners have already recognised the tensions which could arise between the range of principles contained in the document “A Policy and Guiding Principles for the Location of Public Sector Jobs”. Commissioners considered that any decision on location needed, in particular, to be consistent with established Government policies on equality, Regional Development and Sustainable Development and that compensation should be made to staff who suffer material detriment as a consequence of a relocation outside the scope of any applicable mobility clause¹⁸.



SID McDOWELL
PUBLIC SERVICE COMMISSION
CHAIRMAN
12 October 2007

¹⁸ A mobility clause is a term in a contract of employment that identifies the degree to which employees may be required to move from one workplace location to another. Alternatively this could be known as location/base arrangements.

RPA GUIDANCE NOTE: 7th GUIDING PRINCIPLE - LOCATION

Introduction

1. This Guidance Note confirms that the Executive has accepted the Public Service Commission's 7th Guiding Principle, Location and is issued to assist and provide clarification to Departments and public sector employers in the RPA Affected Group on the practical implementation of the Guiding Principle.

Key Principles

2. Employers must ensure that any decision on the location of a workplace must reflect, as far as possible, an equitable distribution of Public Sector jobs¹⁹ and be objectively justified, in particular, in terms of giving full consideration to safeguarding the interests of staff. Employers must seek to balance these factors as objectively as possible and be aware that there will be other additional factors that will need to be considered and balanced alongside these²⁰.
3. Where existing staff face a change of workplace location, employers must ensure that they carefully consider both the needs of business and staff's personal preferences, where possible, in the decision-making process and maintain an appropriate balance between these two factors. In doing so, employers should remain conscious of other factors that will need to be considered and balanced alongside these²⁰.
4. Employers should consistently and effectively apply the overarching "Framework to Underpin Decisions on the Location of Public Sector Jobs Resulting from the Review of Public Administration"²⁰ in their sector. **In applying the Framework, employers should pay particular attention to the Public Service Commission's 7th Guiding Principle on Location as agreed by the Executive** and ensure that the Framework's detailed application in their sector:
 - is subject to consultation with trade unions and other staff representatives;
 - gives due cognisance to equality and good relations;

¹⁹ The equitable distribution of Public Sector jobs needs to be viewed in sectoral and employer contexts reflective of the nature of the organisations involved.

²⁰ For further information please refer to the "Framework to Underpin Decisions on the Location of Public Sector Jobs Resulting from the Review of Public Administration" – http://www.rpani.gov.uk/estates_framework.pdf. Please note that a review of policy on the location of public sector jobs in Northern Ireland is currently underway. The framework will be considered as part of the policy review and therefore may change as a result of the final outcome. However, in the interim it should be applied to any decisions being made about the location of RPA-related bodies.

- requires a business case to justify significant staff relocations;
 - emphasises effective communication to ensure all employees are made aware of the location strategy and policies;
 - supports the full use of technology to mitigate against workplace disruptions;
 - establishes, if not already established in their organisation, what constitutes reasonable travel to work distances, taking account of, for example, access routes, the availability and frequency of public transport and personal circumstances; and,
 - offers and gives proper consideration to flexible working practices and other relevant HR policies which have regard to management needs and which would help to alleviate staff difficulties associated with a change in workplace location.
5. Appeals against a change of workplace location should be addressed through the existing internal grievance procedures and, if appropriate, through the third party dispute resolution procedures which will be developed in response to the PSC's 3rd Guiding Principle (Staff Transfers).
6. Where existing contractual entitlements do not provide for reimbursement of expenses in respect of re-location, employers must provide for reimbursement of reasonably and necessarily incurred additional travelling or other removal expenses as a consequence of a change of workplace location on a basis which is comparable to that provided by other employers in the RPA Affected group. As a matter of process, employers should look to other arrangements in place in their sector in the first instance. Employers should also, on a case by case basis, provide for reimbursement of reasonably incurred expenses outside this where they consider that exceptional circumstances exist. In addition, in line with the 3rd Guiding Principle, employers must provide compensation for employees who suffer other material detriment as a consequence of relocation outside the scope of any applicable mobility clause²¹ or who are transferred contrary to the terms of their Staff Transfer Scheme.
7. Efforts should be made within sectors to clarify for relevant employers the arrangements for implementation of paragraph 6 above. Such arrangements should include guidance on the duration and amount of any reimbursement or where appropriate compensation to be provided.

²¹ A mobility clause is a term in a contract of employment that identifies the degree to which employees may be required to move from one workplace location to another. Alternatively this could be known as location/base arrangements.

8. Employers should ensure that, in consultation with Trade Unions, support is provided for those employees whose place of work or work function changes. Such support should be appropriate to the particular circumstances of the employees concerned and could include, but not be limited to, capacity building, retraining and career counselling as appropriate.

Action Required

9. All Employers are required to implement the key principles outlined in paragraphs 2 – 8 above at the appropriate point in implementation plans.

RPA CENTRAL UNIT
11th July 2008

EIGHTH GUIDING PRINCIPLE AND ASSOCIATED RECOMMENDATIONS

EQUALITY

Introduction

1. The Commission's role is to safeguard the interests of staff and to ensure their smooth transfer to new organisations established as a consequence of Government decisions on the Review of Public Administration, taking into account statutory obligations, including those arising from Section 75 of the Northern Ireland Act 1998. In formulating the Guiding Principle and Associated Recommendations, the Commission has also taken account of Government's commitment, as set out in the statement of 22 November 2005, that "Every possible effort will be made to avoid redundancies."
2. Given the extent and complexity of the RPA, the number of individual employers involved and the large numbers of staff affected, the Commission considers that the Executive should remind employers to be aware of, and act upon, their duties under the equality legislation to promote, review and implement employment equality practices in compliance with the legislative requirements and best practice, as the RPA is implemented. The Commission wishes to emphasise that whilst Equality is a fundamental aspect of Employers' Statutory Obligations and is cited in the Commission's sixth Guiding Principle, the Commission believes it is necessary to further accentuate its importance with the development of a Guiding Principle.
3. The Public Service Commission has consulted the Executive, the sectoral Staff Commissions, NIC/ICTU and the Equality Commission about this Guiding Principle on Equality. This is part of a wider set of arrangements which will be required to achieve the Government's commitment to make every possible effort to avoid redundancies in bodies affected by RPA and to safeguard the interests of staff and ensure their smooth transfer into new organisations.

Guiding Principle

4. The Commission recommends that the Executive remind employers that equality of opportunity, the promotion of good relations and human rights must be visibly addressed in all decision-making affecting employees throughout the RPA implementation process.

Associated Recommendations

5. The Commission **recommends** that:


- Employers should pay due regard to the recommendations of the equality codes of practice and other guidance issued by the Equality Commission. A list of the main codes of practice and guidance publications is set out in Appendix 1. However, each organisation should consider its own sectoral codes and guidance as a first point of reference. The Commission's remit is focused on staff matters. Nevertheless it is conscious that the statutory equality responsibilities of employers stretch beyond these into areas such as equity of access to services and promotion of positive attitudes. This is a complex area and the Commission exhorts all employers to pay careful attention to how their decisions impact across the full ambit of their responsibilities.
- Employers should consult with their legal representatives and the Equality Commission for advice and guidance, where appropriate.
- The arrangements for implementing this Guiding Principle and Associated Recommendations should be the subject of consultation and negotiation with Trade Unions and other representatives of staff.
- Employers should share "best practice" information and guidance on the mainstreaming and promotion of equality of opportunity, good relations and human rights into the policies, practices and procedures affecting employees.
- The Commission recommends that the Executive reaffirm its view that the delivery of equality is a central objective of the RPA and that new organisations will not have any diminished responsibilities in this area whether in relation to the treatment of staff or other matters.

Commentary

6. The Commission re-emphasises the importance of Equality, the promotion of good relations and human rights as the RPA is implemented. The Commission also re-emphasises to employers the statutory equality duties arising from Section 75 of the Northern Ireland Act 1998 and the other equality laws and their specific significance in relation to employment and location issues.
7. The Commission is of the view that boards, senior managers, elected and appointed members in organisations, in particular, should demonstrate personal commitment in driving this Guiding Principle and Associated

Recommendations forward, by for example, delivering team briefs, bulletins, or participating in workshops.

8. The Commission considers that Trade Unions and other staff representatives have an important role in advocating Equality, good relations and human rights and in acting as conduits for information and contributing to the transition process. Equally, all staff have an obligation to embrace the Equality policies of their organisation.

A handwritten signature in black ink that reads "Sid McDowell". The signature is written in a cursive style and is underlined with a single horizontal line.

SID McDOWELL
PUBLIC SERVICE COMMISSION
CHAIRMAN
12 October 2007

Equality Codes of Practice and other important publications²²

1. The employment-related equality codes of practice are-

- *Fair Employment in Northern Ireland – Code of Practice*
- *Removing Sex Bias from Recruitment and Selection – A Code of Practice*
- *Code of Practice on Equal Pay*
- *Protecting the Dignity of Women and Men at Work – A Code of Practice on Measures to Combat Sexual Harassment*
- *Code of Practice for Employers for the Elimination of Racial Discrimination and the Promotion of Equality of Opportunity in Employment*
- *Disability Code of Practice – Employment and Occupation*
- *Code of Practice for all employers on the avoidance of race discrimination in recruitment while seeking to prevent illegal working [published by the Home Office]*

2. Other employment-related good practice guidance publications are-

- *Sexual Orientation Discrimination in Northern Ireland – The Law and Good Practice*
- *Age Discrimination in Northern Ireland – The Law and Good Practice for Employers*
- *Harassment & Bullying in the Workplace*
- *Equal Pay Review Kit*
- *Recruitment Advertising – A Good Practice Guide*
- *A Step by Step Guide to Monitoring – Monitoring your workforce and applicants in line with fair employment regulations*

²² Copies of these publications may be obtained from the Equality Commission.

- *Employment Equality Monitoring – A Guide*
- *Section 75 of the Northern Ireland Act 1998 – Guide to the Statutory Duties*
- *Promoting positive attitudes towards disabled people and encouraging participation of disabled people in public life – A Guide for Public Authorities.*
- *A Good Relations Framework - Community Relations Council*

RPA GUIDANCE NOTE: 8th GUIDING PRINCIPLE - EQUALITY

Introduction

1. This Guidance Note confirms that the Executive has accepted the Public Service Commission's 8th Guiding Principle, Equality and is issued to assist and provide clarification to Departments and public sector employers in the RPA Affected Group on the practical implementation of the Guiding Principle.
2. Whilst recognising the existing duties under equality legislation, this Guidance Note aims to remind employers that compliance with equality legislation is of fundamental importance and that the centrality of equality values at the heart of RPA reform cannot be stressed enough.
3. The content of this Guidance Note applies to existing and new organisations established by RPA alike and reaffirms the commitment that new organisations established by RPA have no less equality responsibilities than predecessor bodies.

Key Principles

4. As already set in statute and mainstreamed into public service decision-making processes, employers are reminded that they are required to visibly address equality of opportunity, the promotion of good relations and human rights in all decision-making affecting employees throughout the RPA implementation process.
5. Employers should fully consider the recommendations of the equality codes of practice and other guidance issued by the Equality Commission as well as their own sectoral codes and guidance as a first point of reference.
6. Employers should consult with their legal representatives or those tasked with responsibility for equality issues within the relevant public authority and/or the Equality Commission for advice and guidance, where appropriate.
7. In addition to the requirements of equality of opportunity, the promotion of good relations and human rights which are set in statute and which employers should have mainstreamed into their decision-making processes, employers must ensure that any new arrangements for implementing the 8th Guiding Principle on Equality at employer/sector level should be the subject of consultation and negotiation with Trade Unions and other staff representatives.

8. Employers should share “best practice” information and guidance on the mainstreaming and promotion of equality of opportunity, good relations and human rights into the policies, practices and procedures affecting employees.

Action Required

9. All Employers are required to implement the key principles outlined in paragraphs 4 – 8 above at the appropriate point in implementation plans.

RPA CENTRAL UNIT
11th July 2008

NINTH GUIDING PRINCIPLE AND ASSOCIATED RECOMMENDATION

CAPACITY BUILDING

Introduction

1. The Commission's role is to safeguard the interests of staff and to ensure their smooth transfer to new organisations established as a consequence of Government decisions on the Review of Public Administration, taking into account statutory obligations, including those arising from Section 75 of the Northern Ireland Act 1998. In formulating this Guiding Principle and Associated Recommendation, the Commission has also had due regard to Government's commitment, as set out in the statement of 22 November 2005, that "Every possible effort will be made to avoid redundancies."
2. The Commission recognises the need for staff to have a clear understanding of their role within the existing or new organisations arising as a result of the decisions of the RPA and how they can best contribute to the success of helping the organisation, in which they are placed, achieve its aims and objectives. Given the enormity of the change facing staff, and the Commission's remit in safeguarding the interests of staff and ensuring their smooth transfer, the Commission has given consideration to how this might best be achieved by building the capacity of staff.
3. The Public Service Commission has consulted the Executive, the sectoral Staff Commissions and NIC/ICTU about the most appropriate way to safeguard the interests of staff and ensure their smooth transfer into new organisations with respect to capacity building.

Guiding Principle

4. The Commission is mindful that some capacity building work has already commenced. However, the Commission **recommends** that the Executive require current and prospective employers, at the appropriate time, to:
 - a. Develop and implement a capacity building strategy, which will enable and support staff through the transition period, and
 - b. Co-operate and collaborate at both sectoral and cross-sectoral levels during the development and implementation of their capacity building strategies.

Associated Recommendation

5. A best practice capacity building strategy might include:
 - a. Clarity around staffing and skills requirements.
 - b. A plan to:
 - (i) make the most effective use of existing skills;
 - (ii) retain critical skills, experience and knowledge, and
 - (iii) reposition these as necessary by redeployment.
 - c. An identification of skills gaps, and a recruitment, training and development plan to fill identified gaps.
 - d. Provision for performance management and personal development plans with the aims of ensuring that staff have a clear understanding of how their role contributes to fulfilling customers' needs and promoting a shared sense of purpose.
 - e. Specific provision to enable and support staff who are:
 - i. at risk of redundancy;
 - ii. competing for posts pre and post transfer;
 - iii. facing substantial changes in employer, job function, responsibilities or location, and
 - iv. undergoing a major change of culture, for example moving from central to local government.Such provision might include, but not be limited, to career counselling, retraining, interview skills and techniques or other identified needs.
 - f. Provision for interchange including secondment, and the freer flow of staff between and within public services.

Commentary

6. The Commission wishes to emphasise to employers the importance of addressing the cultural shift which staff, may, as a direct result of the decisions arising from RPA, have to experience. Employers are advised to be mindful that employees may come from very different working environments and may experience difficulty in making the necessary adjustments to a new working environment. The more people are valued and involved, given opportunities to learn and develop, the better placed the organisation will be to deliver quality services. Employers should also be mindful that the promotion of work-life balance plays an important role in creating an environment where staff are best placed to contribute to the success of the organisation.
7. The Commission recognises the pivotal role played by senior management in building the capacity of staff during the transition period, until the new organisations, or those taking on new functions become "bedded in". The

Commission also recognises that there will be an inherent need for organisations to collaborate, co-operate and integrate throughout the process. The Commission therefore wishes to stress again that communication is a vital element in helping existing and new organisations face and successfully implement this challenging transition effectively.

A handwritten signature in cursive script that reads "Sid McDowell". The signature is written in black ink and is positioned above a solid horizontal line that extends across the width of the signature.

SID McDOWELL
CHAIRMAN
PUBLIC SERVICE COMMISSION
12 October 2007

RPA GUIDANCE NOTE: 9th GUIDING PRINCIPLE - CAPACITY BUILDING

Introduction

1. This Guidance Note confirms that the Executive has accepted the Public Service Commission's 9th Guiding Principle, Capacity Building and is issued to assist and provide clarification to Departments and public sector employers in the RPA Affected Group on the practical implementation of the Guiding Principle.

Key Principles

2. Whilst work may be already underway in this regard, employers are reminded that they are required to develop and implement a capacity building strategy, the precise detail of which will be dependent on the particular organisational needs. In order to do so effectively, they should co-operate and collaborate on both a sectoral and cross-sectoral basis. The capacity building strategy need not be a stand-alone document and may be incorporated into various organisational documents.
3. In responding to the Guiding Principle, the Executive indicated the need for employers to carefully balance the resource commitment required to build capacity with the primary need to deliver services.
4. Employers should incorporate the elements set out in the Guiding Principle in developing their capacity building strategy and engage with the Trade Unions and other staff representatives.

Action Required

5. All employers are required to implement the key principles outlined in paragraphs 2 - 4 above at the appropriate point in implementation plans.

RPA CENTRAL UNIT
11th July 2008

TENTH GUIDING PRINCIPLE AND ASSOCIATED RECOMMENDATIONS

REORGANISATION AND IMPLEMENTATION OF CHANGE

Introduction

1. The Commission's role is to safeguard the interests of staff and to ensure their smooth transfer to new organisations established as a consequence of Executive decisions on the Review of Public Administration, taking into account statutory obligations, including those arising from Section 75 of the Northern Ireland Act 1998. In formulating the Guiding Principle and Associated Recommendations, the Commission has also had due regard to the previous administration's commitment, as set out in the statement of 22 November 2005, that "Every possible effort will be made to avoid redundancies." The Commission welcomes the Executive's commitment to this underpinning objective.
2. The Commission considers that the reorganisation and change management challenges resulting from the implementation of the Review of Public Administration will require all stakeholders to play an active part in delivering the transformation envisaged by RPA. The Commission also considers it is essential that old (transferor) employers engage, collaborate and co-operate fully with new (transferee) employers to ensure compliance with the statutory obligations to notify and consult as set out in the TUPE 2006 Regulations. Given the extent and complexity of the RPA, the number of individual employers involved and the large numbers of staff affected, the Commission considers that the Executive should ensure that employers are reminded of their obligations to comply with collective agreements and, as appropriate, inform, consult and negotiate with all employees, their representatives and the trade unions, all of whom contribute to the establishment, development and maintenance of mutually effective working relationships and conditions.
3. The Public Service Commission has consulted the Executive, the sectoral Staff Commissions, NIC/ICTU and the Labour Relations Agency about this Guiding Principle on Reorganisation and Implementation of Change. This is part of a wider set of arrangements which will be required to achieve the Executive's commitment to make every possible effort to avoid redundancies in bodies affected by RPA and to safeguard the interests of staff and ensure their smooth transfer into new organisations.

Guiding principle

4. The Commission **recommends** that:

- Employers plan thoroughly for the implementation of the change process arising from RPA and adopt a collaborative approach, which actively engages staff, Trade Unions and other staff representatives and encourages their participation throughout the change process.
- All parties in the employment relationship comply with relevant human rights and employment rights legislation, taking into account relevant Codes of Practice and be committed to establishing, developing and maintaining a supportive and harmonious working environment.

Associated Recommendations

5. The Commission **recommends** that employers:

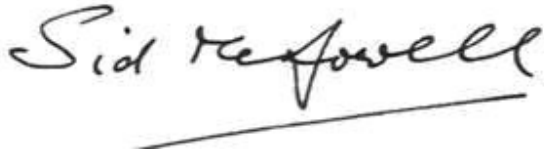
- Ensure, in conjunction with the Trade Unions, that there are appropriate and robust mechanisms and structures in place to facilitate effective employment relations at both central and local level.
- Develop effective and efficient organisational and staffing structures, in consultation, and with a view to reaching agreement, with trade unions and other staff representatives and take all reasonable steps to ensure a fully participative, inclusive and transparent process.
- Strive to minimise staff uncertainty by regular, effective communication. All possible opportunities should be taken to alleviate staff concern. Face-to-face communication should be the preferred approach when managing the sensitive aspects of organisational change and should be used where possible.
- Use the dispute resolution process as set out in the RPA Code of Practice to resolve individual and collective disputes.
- Maximise the development of leadership capacity within organisations in the realisation that competent leaders at all levels will drive the change process by effective articulation of their vision of the successful organisation.
- Invest in appropriate management training and development as managers at all levels are instrumental in interpreting, communicating, facilitating and enabling change.

- Establish at the earliest opportunity, a corporate culture to unite staff who may come from very different workplace cultures and who may have competing outlooks and values. The development of the corporate culture can be aided by, for example, staff induction, training sessions and team briefings.
- In consultation, as appropriate, with employees, their representatives and trade unions, develop, implement, monitor and evaluate good practice employment policies and procedures (All parties may refer to the services of the Labour Relations Agency for information, advice and guidance on good employment practice, as and when necessary).
- Fully implement the Commission's Guiding Principles and Associated Recommendations as accepted by the Executive.

Commentary

6. The Commission recognises that change can be difficult and that it is important, at an early stage, to enlist the support of staff at all levels in the organisation. It is essential that staff understand the need for change and the Commission considers that their co-operation will be readily forthcoming provided that they are fully engaged in the process and treated with dignity and respect.
7. Leadership, passion, accessibility and visibility of management teams are key elements in a successful workplace and in improving the performance of both staff and the organisation. Senior management teams should develop strategies that motivate and secure the commitment of staff during the change process.
8. The Commission acknowledges the shared corporate and individual responsibility required to develop and embed a successful workplace culture derived from and nurtured on respect, trust and fairness.

9. Employers should be aware that following the implementation of RPA decisions staff may regard future structural changes or reorganisation of services as arising from RPA decisions. Employers should ensure that in these circumstances there is appropriate consultation with trade unions, in order to clarify the situation, in line with good industrial relations practice.

A handwritten signature in black ink that reads "Sid McDowell". The signature is written in a cursive style and is underlined with a single horizontal line.

SID McDOWELL
CHAIRMAN
PUBLIC SERVICE COMMISSION
25 January 2008

RPA GUIDANCE NOTE: 10th GUIDING PRINCIPLE - REORGANISATION AND IMPLEMENTATION OF CHANGE

Introduction

1. This Guidance Note confirms that the Executive has accepted the Public Service Commission's 10th Guiding Principle, Reorganisation and Implementation of Change and is issued to assist and provide clarification to Departments and public sector employers in the RPA Affected Group on the practical implementation of the Guiding Principle.

Key Principles

2. The key principles from the Guiding Principle, in the main, represent best practice which would be anticipated from employers in any change management process. Employers must ensure that they engage, collaborate and encourage participation of staff, Trade Unions and other staff representatives throughout the change process. In addition, employers should ensure that they comply with and take into account relevant legislation and Codes of Practice.
3. When managing the reorganisation and implementation of change resulting from the implementation of decisions on the Review of Public Administration, employers are reminded to:
 - engage, collaborate and co-operate fully with new (transferee) employers, in line with their obligations under TUPE;
 - comply with collective agreements;
 - inform, consult and negotiate, in line with their obligations and as appropriate, with all employees their representatives and Trade Unions;
 - have in place arrangements to facilitate effective employment relations at local level;
 - develop organisational and staffing structures in consultation, and where possible, with a view to reaching agreement with Trade Unions and other staff representatives;
 - strive to minimise staff uncertainty with effective communication, including, where feasible, face-to-face communication in order to manage the sensitive aspects of organisational change;
 - utilise the dispute resolution procedure as prescribed by the 3rd Guiding Principle to resolve eligible individual and collective disputes;
 - maximise the development of leadership capacity and invest in appropriate management training and development;
 - develop a corporate culture;
 - develop, implement, monitor and evaluate good practice employment policies and procedures in consultation, as appropriate, with

employees, their representatives and Trade Unions. Employers are also reminded that they can refer to the services and seek the advice of the Labour Relations Agency, as necessary; and

- implement the PSC Guiding Principles and Associated Recommendations as accepted by the Executive.
4. Following the implementation of RPA decisions, should staff regard future structural changes or reorganisation of services as arising from RPA decisions, employers must clarify the situation, in consultation with Trade Unions

Action Required

5. All Employers are reminded of the need to ensure that they apply the key principles outlined in paragraphs 2 - 4 above.

RPA CENTRAL UNIT
11th July 2008

Review of the Effectiveness of Communication in relation to the Implementation of the Review of Public Administration (RPA); The Views, Attitudes and Experiences of Health and Social Care Staff Affected by the RPA; and Other Associated Issues

In September 2008 the PSC and OFMDFM published the outcomes of a Review which was commissioned to assess how RPA implementation has been perceived by staff [within the health and social care sector]; to examine levels of communication about the RPA and to assess staff's understanding of the PSC and their guiding principles. The *Lessons Learned and Key Points for Consideration* identified from the review are outlined below as they are important learning points for every organisation going through a major programme of reform and modernisation

SUMMARY OF LESSONS LEARNED & KEY POINTS FOR CONSIDERATION

The main lessons learned related to:

- The need for the boundaries of the change process to be clear from the outset since this has important implications for communication;
- The particular importance of face-to-face communication during a time of major change and the need to complement this with a range of other methods of communication;
- The need to address the 'people issues' and distil communications down into 'What does this mean for me?';
- The need for appropriate infrastructure to be in place to support e-communication;
- The potential risk that major change, and job insecurity in particular, can have on staffs' feeling confident to voice concerns;
- The level of change which is it feasible for an organisation and its staff to manage simultaneously;
- The potential risk to staff well-being if staff are trying to sustain significantly enhanced work loads during a period of transition;
- The importance of clarifying job roles across the organisation and promoting awareness of these so as to facilitate the development of new teams;

- The need for recruitment and selection processes to be, and to be seen to be, transparent, consistent and fair;
- The importance of examining the merits of different policies and practices in a collegiate manner before determining which would be the most appropriate to adopt within any new organisation;
- Being aware that many staff will not have experienced a change on this scale before and recognising their potential need for emotional as well as practical support;
- The Public Service Commission and its need to consider what profile would be appropriate to its role.

The key points for consideration included suggestions on:

- Ensuring that the boundaries of the change process are known;
- Increasing the extent of face-to-face communication;
- Addressing the key issue of 'What does this mean for me?' as far as possible;
- Aligning IT systems in advance of the change process;
- Creating guidelines for the cascading of information;
- Enhancing the change management skills of those leading the change process;
- Suspending, if possible, initiatives that would otherwise make the change process unduly complicated;
- Reviewing the resource requirements of a major change process;
- Clarifying job roles to reduce the risk of 'role drift';
- Involving staff in a more collaborative and inclusive manner regarding the decisions about the choice of new policies and practices; and,
- What type of profile would be most appropriate for the PSC.

