

RPA GUIDANCE NOTE ON 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 (see appendix) and is issued to assist and provide clarification to Departments and public service employers in the RPA Affected Group (see RPA Circular 1/2009) 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 RPA Circular 3/2009. 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 sector¹;
- iii) targeting “at risk” staff across all sectors in the RPA Affected Group²; 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;

¹ 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.

² Please see Annex 1 for additional guidance in this regard.

- 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.
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.



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.

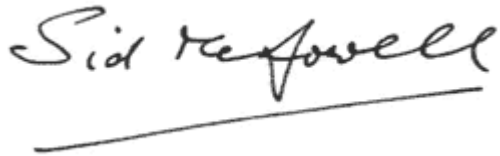
- To take account of employment law and equality considerations when considering the methods available for filling a vacancy or a new post and when determining the composition of the selection pool.
- To fully document decisions on creating new posts or filling vacancies.
- To ensure that appropriate 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 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