

RPA GUIDANCE NOTE ON FILLING VACANCIES AND 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 (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 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 RPA Circular 2/2009 on Managing Vacancies Effectively. It also does not apply to posts filled by staff transfer as covered by the Commission's 3rd Guiding Principle (RPA Circular 01/2007).
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 sector¹;
 - iii) targeting “at risk” staff across all sectors in the RPA Affected Group²; 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

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.

- 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.

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.

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



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 6 December 2006.th

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

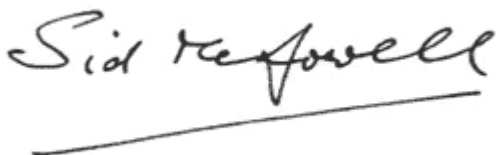
8. The Commission also recommends that:

- 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.



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