

THIRD GUIDING PRINCIPLE AND ASSOCIATED RECOMMENDATIONS

STAFF TRANSFERS

Introduction

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 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."

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

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

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.

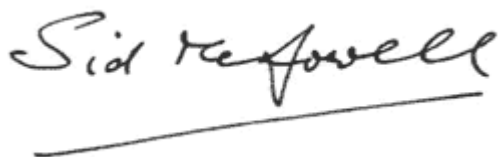
The setting up of appropriate joint employers and trade union arrangements to ensure the effective management of HR issues following transfer and which would complement the already established Central Joint Forum.

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

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.

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
04 12 2006