

**RPA CODE OF PRACTICE: EMPLOYER STATUTORY OBLIGATIONS**

**Introduction**

1. Further to Government's acceptance of the Public Service Commission's 6<sup>th</sup> Guiding Principle, Employer Statutory Obligations (copy attached at Annex 1), this Code of Practice is issued to assist sponsor organisations and employers in the RPA Affected Group (see RPA Circular 04/2006) in the practical implementation of the guiding principle.
2. The purpose of this Code of Practice 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 Code of Practice 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



## **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**

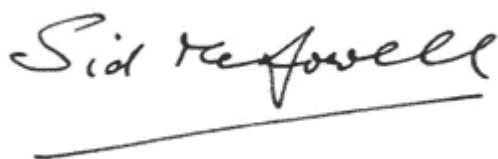
3. The Commission recommends that Government:
  - o Consult public service employers and trade unions on drawing up a Code of Practice, providing employers with detailed information on the statutory obligations of employers relevant to the implementation of the Review of Public Administration, highlighting 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**