

SECTION 5

FILLING OF POSTS

- **Circular LGRJF/08 – July 2014** **5.1**
Procedure for the **Filling of Posts** in the New Council Structures and
Related Guidance

LGRJF

facilitating local government reorganisation

CIRCULAR LGRJF/08 – JULY 2014

Procedure for the Filling of Posts in the New Council Structures and Related Guidance

LGRJF

facilitating local government reorganisation

COVER LETTER TO: CIRCULAR LGRJF/08 – JULY 2014

To: Chief Executives of District Councils, arc21 & SWaMP 2008

Cc: DoE Local Government Division, Public Service Commission

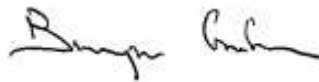
1. The attached circular on the Procedure for Filling Posts in the New Council Structures and Related Guidance within local government has been agreed by the Local Government Reform Joint Forum (LGRJF) and is promulgated under the authority of the Local Government Staff Commission under Section 40(4) (f) of the Local Government Act (NI) 1972.
2. It is therefore issued by the Local Government Staff Commission as a statutory recommendation for adoption by councils with immediate effect.
3. In accordance with the Northern Ireland Executive's Guiding Principles all employing authorities should immediately engage with their local NIJC recognised Trade Unions to consider application and implementation arrangements.
4. The Joint Forum has issued agreements on the related issues of:-
 - (i) vacancy controls; and
 - (ii) the operation of a Staff Severance Scheme.

Now that agreement has been reached on these matters it will be important to ensure that consideration is given to the totality of the issues as they have an interdependency.

5. In the event that interpretation matters arise or clarification is necessary contact should in the first instance be made with the Staff Commission, who will consult with the Joint Forum Side Leads, as appropriate.
6. The Joint Forum recognises that assessment and ringfencing are major issues and will convene a meeting with HR/TU representatives in order that real examples can be considered and the usefulness of the procedure in practice can be examined.



A KERR
LGSC



B GRAHAM
LGRJF TUS Lead



R WILSON
LGRJF Employers' Lead

02 July 2014

LGRJF

facilitating local government reorganisation

CIRCULAR LGRJF/08 – July 2014

**PROCEDURE FOR THE FILLING OF POSTS IN
THE NEW COUNCIL STRUCTURES
AND RELATED GUIDANCE**

CONTENTS

	<u>Page</u>
PART 1 CONTEXT	1
1.1 Status of the Procedure	1
1.2 Scope and Purpose of the Procedure and Equality	1
1.3 Compliance with the Procedure	3
PART 2 SYSTEM FOR FILLING POSTS	3
2.1 General Principles	3
2.2 Matching Staff to Posts in the New Structures	3
2.3 Assessing the Degree of Change in Posts	4
2.4 Ring Fencing	6
2.5 Suitable Alternative Employment	7
2.6 Appeals	8
2.7 Monitoring the Procedure	8
FLOWCHART - PRACTICAL APPLICATION	9
APPENDIX 1 - MONITORING FORM	10
APPENDIX 2 - SECONDMENT ARRANGEMENTS	11
APPENDIX 3 - RPA CIRCULAR 3/2009 – 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	13

PART 1 CONTEXT

1.1 Status of the Procedure

This Procedure has been agreed by the Local Government Reform Joint Forum (the Joint Forum) and is promulgated under the authority of the Local Government Staff Commission under Section 40(4) (f) of the Local Government Act (NI) 1972 as a statutory recommendation for adoption by councils from 09 July 2014.

Its implementation is in line with the Commission's statutory responsibilities under the Local Government (NI) Act 1972 to establish

"..... a code of procedure for securing fair and equal consideration of applications to councils by persons seeking to be employed by them as officers, and fair and equal treatment of persons who are so employed".

This Procedure is not intended to replace the Commission's Code of Procedures on Recruitment and Selection, but is specifically designed to address the filling of posts in the new organisations created as a result of the reform of local government strand of the RPA programme.

1.2 Scope and Purpose of the Procedure and Equality

Scope

This Procedure applies to the filling of all posts in the new local government structures arising out of the reform of local government including:

- direct transfers to unchanged or minimally altered/amended posts;
- vacancies; and
- new or substantially new posts.

The Procedure is designed to facilitate:

- the smooth transfer of staff in unchanged or minimally altered/amended posts who have acquired the individual private law rights of those already employed; and
- the application of a rigorous process to fill new or substantially new posts and vacancies in the new organisations.

It is recognised that, in some cases, councils may require to have interim staffing arrangements put in place until such times as new organisation structures are agreed. Guidance in this respect is contained in Appendix 2.

Purpose

The purpose of this Procedure is to ensure that the new councils have the most appropriate and best equipped employees to deliver its aims and objectives and enable the provision of excellent services.

The Procedure gives effect in local government to the provisions of the Guiding Principles and Associated Recommendations as recommended by the Public Service Commission and accepted by the NI Executive, and in particular:

3rd Guiding Principle - Staff Transfers which specifies that the Transfer of Undertakings (Protection of Employment) Regulations 2006 shall apply to all transfers arising from the Review of Public Administration to ensure the protection of continuity of staff rights under any RPA transfer.¹

and

4th Guiding Principle - Filling New or Substantially New Posts in New Organisations being Created as a Result of RPA which specifies 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 mechanisms 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 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.

The provisions of these Guiding Principles have been accepted by the NI Executive and apply across all the RPA affected bodies in NI, as defined in RPA Circular 1/2009.

This Procedure is underpinned by the ten Guiding Principles as recommended by the Public Service Commission and accepted by the NI Executive, employment law, legal advice and best human resource practice.

Equality

Councils have certain obligations under Section 75 of the Northern Ireland Act 1998 in relation to having due regard to the need to promote equality of opportunity and the desirability of the maintenance of good relations between various societal groupings. In terms of equality obligations and the use of restricted candidate pools as advocated in this document however, the Joint Forum has determined, based on legal advice, that:

Section 75 obligations cannot be interpreted in such a manner as to override the private law rights of individuals already in employment with a public service employer. Nor do discrimination law principles generally interfere with, compromise or override the private law rights of individuals already in employment. Those rights are unconditional and do not fall to be balanced against notional competitors who might be deprived of the opportunity to compete for a new post.

¹ This Procedure relies on the TUPE 2006 Regulations as applied at 04 June 2014.

It should be noted that this Procedure applies only to posts in the new council structures. Please refer to Circular LGRJF03 '*Vacancy Control System – Detailed Procedure*' which applies to existing organisations.

1.3 Compliance with the Procedure

Responsibility for ensuring compliance with the requirements of the Procedure rests with the individual Organisation and/or new Council.

The Commission will monitor compliance and provide composite reports for consideration by the Joint Forum.

PART 2 SYSTEM FOR FILLING POSTS

2.1 General Principles

Councils need to be committed to fair and equal treatment of all staff and should be fully aware of the relevant employment legislation.

The filling of posts should only commence when formal consultation has taken place at the Joint Forum or as delegated to Local Consultation and Negotiation Forums.

Determination of eligibility for posts for the purposes of this Procedure should be based on a postholder's current substantive contract of employment and job role (as distinct from a temporary secondment, or acting up arrangement) and the essential requirements of the post.²

Staff who are currently seconded elsewhere or otherwise absent from their substantive post due to acting up, career break, ill health or maternity/paternity/carer's leave/special leave etc., must be considered in respect of their substantive post at the same time as other staff.

2.2 Matching Staff to Posts in the New Structures

Since the introduction of CCT in the early 1990s local government has, with the agreement of the Trade Unions, operated a system for filling posts in new structures as an outcome of internal council organisation development and change processes.

The system is based on the employer's legal obligation to protect staff who may be potentially redundant as an outcome of any review or change by means of a stepped process.

The application of this stepped approach to the reorganisation of local government is as follows:

² Councils will however need to consider the factual position of those in acting up arrangements in relation to their substantive status in light of relevant case law. Fixed term appointments will need to be addressed in accordance with the Fixed Term Employees Regulations 2002 and relevant case law.

- Consultation via the Joint Forum and/or Local Consultation and Negotiating Forum and the staff affected
- Assessment of posts (i.e. determining the degree of difference in new posts as against existing posts)
- Matching staff to the new structures (including assimilation, ring fencing etc.)

The application of this process results in the creation of:

1. posts which will remain unchanged;
2. posts which are minimally altered/amended;
3. posts which are substantially altered; and
4. posts which are new.

2.3 Assessing the Degree of Change in Posts

This is a process used to assess the degree of difference between existing posts and those in the new organisation structures.

A managerial assessment of changes in posts (*i.e. comparing the job descriptions of the new and existing posts*) must be carried out in order that they may be assessed as either:

- unchanged;
- minimally altered/amended;
- substantially altered;
- new.

This assessment must be carried out in a reasonable, fair and consistent manner. The assessment should be documented and should be based upon a job to job, comparison only. The panel should comprise one manager and a trade union representative. Any disagreements are a matter for the Local Consultation and Negotiation Forum.

The Local Consultation and Negotiation Forum must be consulted on the method to be used for filling all posts.

In assessing posts councils must determine whether changes in posts are significant. However, it is unlikely that simply changing the name of a post, or altering the duties and responsibilities of a post in a very minor way would indicate that it was new.

Reasonable criteria must be developed for measuring the content of jobs and managerial discretion must be exercised in a manner which treats all posts/staff on an equal basis.

The following headings can be used in assessing the changes between existing posts and those in the new structure. The panel should agree what constitutes a new, substantially altered, minimally altered/amended or unchanged post.

Main Factors

- Job Purpose
- Job Duties and Responsibilities
- Person Specification for the post
- Place in Structure/Reporting Lines
- Responsibility for Financial or other Resources

2.3.1 Unchanged or Minimally Altered Posts

It is anticipated that in many cases the process will identify large groups of staff or whole sections/departments which are unchanged and can simply be confirmed in the new structure.

Where a post in the new structure is unchanged or minimally altered, ie, is exactly the same or has had only minor change as compared to *an* existing post, and *there is a* current postholder they should then be confirmed in post without recourse to interview. Where there is more than one current postholder a ring fence should be operated. The ring fence should be initially operated in respect of the postholders in a particular function. It is not considered practical that function is defined by reference to job category, for example all clerical positions. It is therefore recommended that it is defined and operated with individual departments. This point is dealt with further under paragraph 2.3.3 below. There is no reason to delay such appointments and this will mean that filling posts in the areas where there is no/minimal change (this is likely to be the case at operational level) will proceed more quickly than in other areas of greater change.

There will also be many posts in the new structures where the duties and responsibilities very closely match those of posts in the current structures and where there are no potential redundancies. Decisions should be based on a clear demonstration that the scope and functionality of the postholder's substantive role remains extensively the same, including level of responsibility.

Postholders who have been confirmed in post under this provision will no longer be deemed to be 'at risk' and should therefore not be included in any restricted pools when there are staff who are still deemed to be 'at risk' of redundancy.

2.3.2 Posts that are Substantially Altered

Posts which contain a large element of a current job description but also a substantial element of new duties or responsibilities should be treated as substantially altered.

Where a post is deemed to be substantially altered and suitable permanent staff are in a potential redundancy situation, these staff will be included in a 'ring fence' for the post. A ring fence is where the pool of applicants for a post is restricted to those whose posts have been compared to the new post as part of the matching exercise.

2.3.3 Posts that are New

Where a new post is created and there are suitable permanent staff whose posts have been compared to the new post as part of the exercise and who are in a potential redundancy situation, these staff will be included in a ring fence for the new post.

The order of consideration of the suitable pool of applicants for such ring fenced posts is as detailed in the 4th Guiding Principle as follows:

- 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.
 - Initially the pool will be restricted to the functional area (ref 2.3.1 above),
 - If the post remains unfilled the pool should then be extended to those at risk in the new council.
- 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.

Thereafter suitability for the post will need to be demonstrated in the same manner as any 'normal' recruitment exercise, ie, job related shortlisting, interviewing and selection processes. Only those who demonstrate that they meet the standards required will be confirmed in post.

2.4 Ring Fencing

2.4.1 Person Specifications for Posts

In the situation where the imperative is to avoid redundancies councils must take care when constructing the person specifications for posts that any criteria must represent the minimum requirements that are absolutely necessary to do the job and are able to be objectively justified. For example, when including academic qualifications for a post it is unlikely to be acceptable or justifiable to specify a general level of qualification when an existing employee with adequate and suitable experience or after a reasonable period of retraining could competently fulfil the requirements of the post.

Thereafter suitability for the post will need to be demonstrated in the same manner as any 'normal' recruitment exercise, ie, job related shortlisting, interviewing and selection processes. Only those who demonstrate that they meet the standards required will be confirmed in post.

2.4.2 Identifying the Pool of Candidates

Clearly the 'shortlist' of candidates which is obtained using ring-fencing is arrived at very differently from that generated by the normal recruitment process. As a guiding principle however, any member of staff considered for inclusion in the ring fence must be 'suitable', ie, must meet the person specification for the vacant post (see also comments at 2.5 Suitable Alternative Employment).

Determination of the appropriate recruitment pool must focus on the need to promote employment protection by targeting in the first instance those in the 'at risk' group in broadly comparable grades or higher. For business reasons there will also be a need to ensure that the pool includes candidates with the necessary skills, experience, knowledge, qualifications, etc. (see also comments in relation to 2.4.1 Person Specifications for Posts above)

The order of consideration of the suitable pool of applicants for such ring fenced posts is as detailed in the 4th Guiding Principle as follows:

By the use of mechanisms 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.

2.5 Suitable Alternative Employment

Every possible effort must be made to avoid redundancies therefore staff who are 'at risk' of compulsory redundancy are entitled to be offered suitable alternative employment where available. Loss of entitlement to a redundancy payment may occur if such employment is offered but unreasonably turned down.

Decisions based on the outcomes of the process will be considered by the employer to be offers of suitable alternative employment.

Staff are allowed to have a minimum four week trial period in the new job subject to the nature and requirements of the job without losing redundancy rights. Where retraining is required the trial period may be extended beyond four weeks by written agreement between the employer and employee and every reasonable measure should be taken to allow adequate time for retraining. If at the end of the trial period an employee is still in the job they will be considered to have accepted it.

If the employee feels that the new job is not a suitable alternative to the old one (because of differences in capacity, location or terms and conditions of the contract of employment) they should notify the employer in writing at the earliest opportunity and before the end of the trial period.

2.6 Appeals

Staff may appeal on the following grounds:

- They have been appointed to a post which does not constitute suitable alternative employment; or
- They have not been considered for appointment despite there being a post which constitutes suitable alternative employment; or
- In relation to a change in workplace location.

Staff should have access to a one stage internal appeal to be heard by managers at a sufficiently senior level to recommend a change to any decisions made. This internal appeal mechanism should be agreed with the Local Government Reform Joint Forum, which will produce guidance in this respect.

Thereafter staff will have access to the Independent Third Party RPA Dispute Resolution Process operated by the Labour Relations Agency.

Appeals should be carried out in line with the Labour Relations Agency guidance in relation to resolving disputes.

Staff who wish to appeal the decision made in respect of their particular circumstances should give notice of an appeal within a period of 10 working days (or by a specified date if so notified but not less than 10 working days). If requested an individual consultation session should be arranged with an appropriate manager and an HR representative and the individual may be represented by a work colleague or trade union official. Any reasonable adjustments must be taken into consideration.

2.7 Monitoring the Procedure

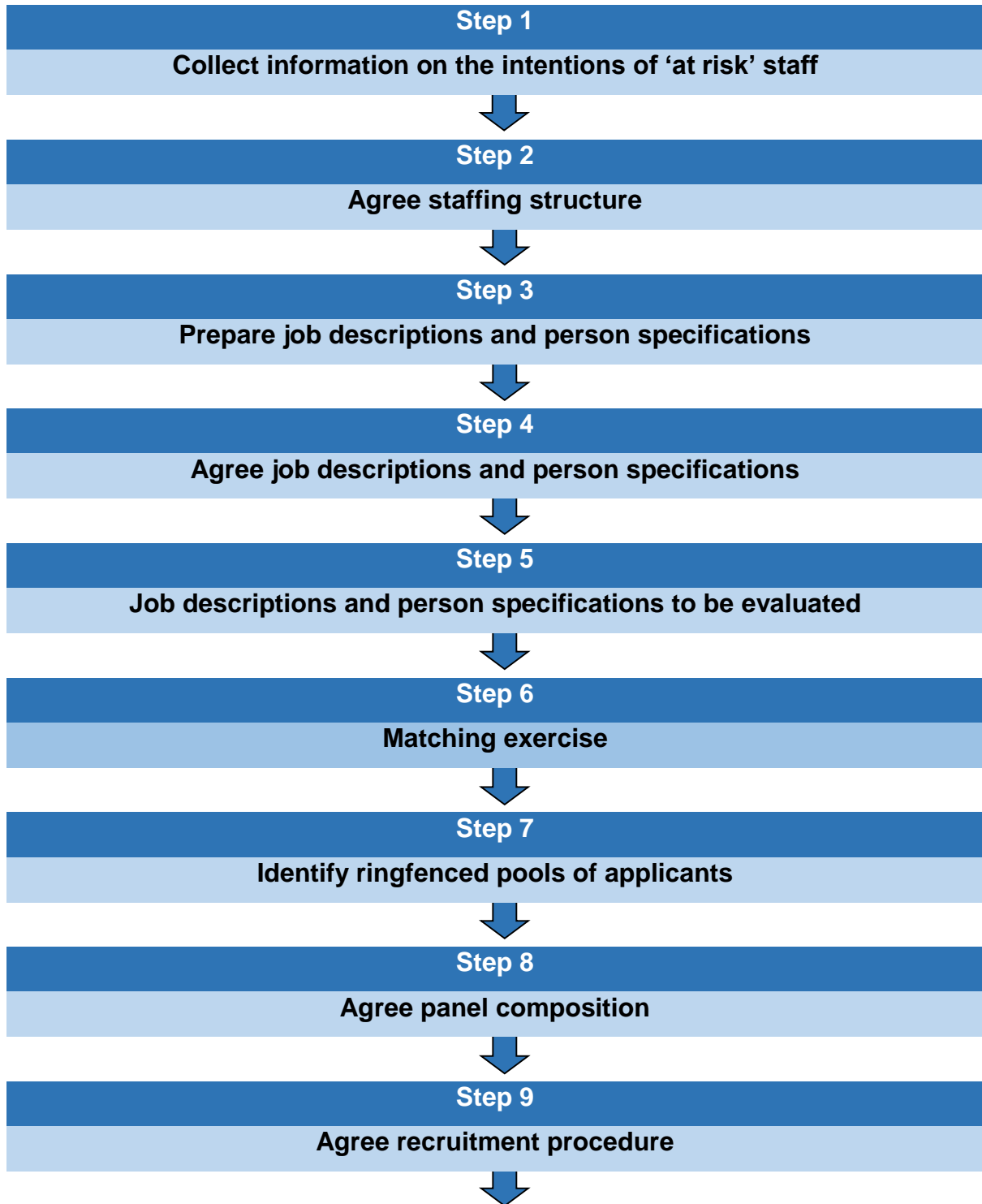
The impact of this Procedure will be monitored by the Joint Forum and any subsequent changes required will be consulted upon in the normal way.

Any disputes about the interpretation of the provisions of this Procedure will be considered jointly by the Joint Forum who will be the final arbiters.

FLOWCHART – PRACTICAL APPLICATION

SYSTEM FOR FILLING POSTS IN PRACTICE

The flowchart below outlines detailed stepped process to assist in the practical application of this procedure.



MONITORING FORM

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 RPA Affected Sectors "at risk"	Number filled by open competition

SECONDMENT ARRANGEMENTS

1.0 PURPOSE

It is recognised that, in some cases, councils may require to have interim staffing arrangements put in place until such times as new organisation structures are agreed. The Joint Forum has therefore agreed this guidance for councils on secondment of staff to cover such interim arrangements. It is expected however that efforts should be made to make decisions on permanent structures as early as is feasible, to ensure effective delivery of service and provide clarity for staff in respect of their employment status.

2.0 TERMS OF SECONDMENTS

2.1 Duration

- It is envisaged that none of these secondments will be in place for longer than 2 years after the new councils are established (unless the appointments are made permanent). The duration of secondments may vary between different posts depending on need.
- There can be an option for the secondments to be made permanent once new structures are confirmed and a continuing need for the role is clearly identified – if so this must be made clear to potential applicants.

2.2 Conditions of Service During a Secondment

- The work location will be determined in light of the business requirements of the post.
- The secondee will receive either the remuneration of the secondment post or the rate of remuneration of their substantive post, whichever is the greater.
- Throughout the secondment the secondee will maintain all the contractual terms and conditions of employment of their substantive post.
- The secondee's substantive post will be available on cessation of the secondment.
- The salary may be subsequently evaluated and a new substantive salary determined.

3.0 ELIGIBILITY

In line with the provisions of paragraph 1.2 (page 2) of the Procedure for Filling Posts in New Organisations, Secondment Positions councils should seek to fill secondment positions in the following order of consideration:-

- By the use of mechanisms 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 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.

4.0 CONSULTATION

Where secondment arrangements are to be used, these should be subject to discussion at the Local Consultation and Negotiation Forums.

RPA CIRCULAR 3/2009 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;

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.

- 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
 - 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 dependent 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.

² 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 and 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 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 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:
 - i. 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.
 - ii. By targeting “at risk” staff in that sector as a whole.
 - iii. By targeting “at risk” staff across all the sectors in the RPA Affected Group.
 - iv. 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 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
25 January 2008