

LGRJF

facilitating local government reorganisation

CIRCULAR LGRJF/03 – OCTOBER 2012
Vacancy Control System – Detailed Procedure

This circular supercedes Circular LGRJF/01 – September 2009.

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COVER LETTER TO: CIRCULAR LGRJF/03 - OCTOBER 2012

To: Chief Executives of District Councils, arc21, SWaMP 2008, North West Region Waste Management Group and Local Government Staff Commission

Cc: DoE Local Government Division, Public Service Commission

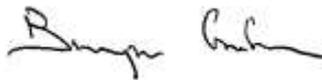
Dear Colleague

1. The attached circular on the application of Vacancy Control Procedures 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 all 26 councils (including Environmental Health and Building Control Group Committees), arc21, SWAMP 2008, the North West Region Waste Management Group and the Staff Commission from 1 November 2012.
3. In the interim period when filling vacancies councils will be expected to operate within the spirit and intent of this Vacancy Control -Detailed Procedure.
4. From 1 November 2012 the vacancy control system will apply to vacancies within the existing 26 councils for the posts of:
 - Chief Executive
 - 2nd Tier Posts, for example Directors, and Group Chief Posts
 - Heads of Service
 - PAs to the above posts
 - Member Services Staff
5. Councils should seek to fill a vacancy from “at risk” staff in the following order of consideration:
 - “at risk” staff in the individual council
 - “at risk” staff in the amalgamated cluster
 - “at risk” staff across all the 26 councils
 - “at risk” staff across all the sectors in the RPA Affected Group

6. This circular replaces Circular LGRJF/01 issued in September 2009.
7. 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.
8. The Joint Forum will reissue the agreed Model Terms of Reference and Operating Arrangements for the establishment of Local Consultation and Negotiation Forums at Transition Committee Level as Circular LGRJF/04. Once established all local government reform matters that require local consultation and negotiation, including application of the Vacancy Control Procedure, will fall within the scope of the Local Forum.
9. Until the formal establishment of the Local Forum all local government Employers must consult/negotiate with their local NIJC recognised Trade Unions on application of the Vacancy Control measures.
10. The Joint Forum in liaison with the Staff Commission will issue further detailed procedures and guidance on the application of Vacancy Controls to the "at risk" group of employees. The Joint Forum is currently examining the phasing and structure of the "at risk" group.
11. In order for the Independent Secretariat to make progress reports to the Joint Forum as outlined in paragraph 3.4 of the Detailed Procedure, councils will be required to submit copies of all completed Vacancy Control System Proformas (Appendix 3 of the Detailed Procedure) to the Commission. Further advice on the first monitoring period will be issued in due course.
12. In the event that interpretation matters arise or clarification is necessary contact should in the first instance be made with the Independent Secretariat at the Staff Commission.



A KERR
LGSC



B GRAHAM
LGRJF TUS Lead



M TAGGART
LGRJF Employers' Lead

10 OCTOBER 2012

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CIRCULAR LGRJF/03 – OCTOBER 2012

Vacancy Control System

Detailed Procedure

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1. INTRODUCTION AND BACKGROUND

1.1 Rationale

The primary rationale for the introduction of the vacancy control system is in order to safeguard the employment of existing council staff as a result of the decisions arising from the Review of Public Administration (RPA).

Furthermore, the Northern Ireland Executive re-issued Second Guiding Principle and Associated Recommendations as recommended by the Public Service Commission on Managing Vacancies Effectively in Existing Organisations (RPA Circular 1/2008 - copy attached at **Appendix 1 – RPA Circular 2/2009**) states 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”.

The view of the Public Service Commission that the implementation of vacancy control mechanisms is a proportionate means of achieving a legitimate aim, ie, a mechanism for avoiding redundancies resulting from RPA decisions, is also accepted by Government.

It should be noted that this Vacancy Control System – Detailed Procedures applies to current and existing organisations and will not apply to posts in the new council structures. A Local Government Reform Joint Forum Agreement on filling posts in the new council structures will be issued in the coming months to provide detailed guidance to councils and Transition Committees. Section 4 – Stepped Process on pages 7-9, details the stepped process for the operation of the Vacancy Control System.

1.2 Consultation Exercise

In order to facilitate the interpretation of this Guiding Principle for local government, the Local Government Staff Commission has:

- considered the equality dimensions of introducing a Vacancy Control System including the potential for indirect discrimination in restricting applicant pools along with the rights safeguarding the employment of existing staff
- issued a policy paper for consultation purposes in August 2006 seeking views on the context, practical and legal considerations in respect of the introduction of a Vacancy Control System
- considered the responses to the consultation at meetings in November 2006 and January 2007
- agreed a Detailed Procedure Paper for the implementation of a Vacancy Control System in local government in May 2007

- reviewed the Detailed Procedure Paper in January 2009 following the Ministerial announcement in March 2008 on the reorganisation of local government
- issued a draft Detailed Procedure Paper for consultation purposes in January 2009
- considered the consultation responses at Commission meetings between March and June 2009
- met with the Public Service Commission in July 2009 to discuss the implementation of the vacancy control system
- issued a draft for decision by the Local Government Reform Joint Forum in 2009
- re-issued a draft for decision by the Local Government Reform Joint Forum in 2012

This document provides the Detailed Procedure for the operation of a Vacancy Control System within local government and takes into consideration the comments made by councils and other consultees throughout the consultation process. The Procedure also includes:

- a **schematic chart** on the Stepped Process to be followed in implementing the vacancy control system (**Appendix 2**)
- a **pro forma document** to assist in the decision making process (**Appendix 3**)

The Vacancy Control System first operated in local government from 01 October 2009 until 23 June 2010, when it was temporarily suspended pending the issue of a definitive time line for the Reform of Local Government. Now that this time line has been clarified by the Minister, it is appropriate to reinstate the Vacancy Control System as detailed in 1.3 below.

1.3 Recommendation for Adoption from 01 November 2012

This Procedure has been agreed by the Local Government Reform Joint Forum and the Local Government Staff Commission and is issued by the Staff Commission under Section 40(4) (f) of the Local Government Act (NI) 1972. In this respect the Procedure is issued by the Staff Commission as a statutory recommendation for adoption from 01 November 2012.

2. APPLICATION

All 26 councils, (including Environmental Health and Building Control Group Committees), arc21, SWaMP 2008, North West Region Waste Management Group and the Local Government Staff Commission will implement the Vacancy Control System uniformly across local government, commencing on the scheduled implementation date of 01 November 2012.

With effect from 01 November 2012, the vacancy control system will apply to vacancies within the existing 26 councils for the posts of:

- Chief Executive
- 2nd tier posts, for example, Directors, and Group Chief posts
- Heads of Service
- PAs to the above posts
- Member Services Staff

Other posts will be phased in to the vacancy control system as more information becomes available on “staff designated to be at a clearly identified risk of compulsory redundancy [“at risk” staff] (This wording is taken from the NI Executive Second Guiding Principle and Associated Recommendations as recommended by the Public Service Commission on Managing Vacancies Effectively in Existing Organisations, RPA Circular 1/2008 – attached at the end of Appendix 1).

It does not apply to vacancies which will occur as a result of the creation of new posts in new councils’ staffing structures, as determined by the Statutory Transition Committees/Shadow Councils. These posts will be the subject of the specific Guidance on Filling Posts in the New Organisations.

It should also be noted that the vacancy control system should not be unilaterally applied to all posts; exceptions might include:

- posts in which the staff are not “at risk”, and which, following full consideration of the options available including detailed examination of retraining, would not be suitable for redeployment
- posts for which the necessary skills and experience do not exist within the system

These posts should be publicly advertised in the normal way, as outlined in the Local Government Staff Commission’s Code of Procedures on Recruitment and Selection.

2.1 Agency Workers

The Agency Workers’ Regulations (NI) came into operation on 05 December 2011. Councils must ensure the entitlements of agency workers are adhered to as set out in the regulations in the application of the vacancy control system.

Guidance on the Agency Workers’ Regulations (NI) 2011 is available from the Department of Employment and Learning at

<http://www.delni.gov.uk/index/publications/pubs-employment-rights/other-employment-rights-publications/awrniguide.htm>

DETAILED PROCEDURE

3. OVERARCHING ARRANGEMENTS

3.1 Trade Union Involvement and Employee Consultation

The RPA Guidance Note on Managing Vacancies Effectively in Existing Organisations” (RPA Circular 02/2009 – Appendix 1) states that:

“.....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”.

Councils are required to formally consult with trade unions in relation to their vacancy management schemes and involve them in local consultation and negotiation arrangements, as outlined in the protocol on local negotiations for RPA issues, issued by the Local Government Reform Joint Forum.

3.2 Transferring Functions

Information on the implications of the additional functions transferring to councils, particularly the numbers and levels of staff that might transfer with the additional functions, should be factored into the deliberations and decisions made in relation to vacancy controls in individual councils as soon as it becomes available.

3.3 Communication

The Northern Ireland Executive First Guiding Principle and Associated Recommendation as recommended by the Public Service Commission on An Effective Communication Strategy (RPA Circular 1/2006), deals with:

“the absolute requirement for an effective communication strategy”.

This Guiding Principle further states:

“In relation to formal communications, the Public Service Commission recommends that electronic means of communication, including e-mails and websites, should be supplemented by the prudent use of regular newsletters, and direct contact through seminars, workshops, conferences and staff meetings”.

In addition, the Northern Ireland Executive re-issued Second Guiding Principle on Managing Vacancies Effectively in Existing Organisations (RPA Circular 1/2008) states:

“The Commission considers that both existing and new employers should pro-actively take steps to alleviate staff anxiety, implement effective communication and minimise the possibility of compulsory redundancies”.

It is recommended that councils in conjunction with trade unions should immediately implement an effective communication strategy for staff and, in particular, regular newsletters advising staff of developments over the course of the reorganisation process. This is a crucial means of ensuring the development of individual consultation. It is essential that such a publication detailing progress is circulated regularly.

A document outlining the key tasks and action points for all those involved in communicating with employees during the implementation period is attached in **Appendix 4**. This document is an extract from a Commission publication “Scoping Paper on a Best Practice Model for Communication in Local Government” which is available on the Commission’s website at www.lgsc.org.uk and includes key tasks and action points for Chief Executives and senior managers, elected members, HR professionals and other managers.

3.4 Contact Officers

The Northern Ireland Executive First Guiding Principle on An Effective Communication Strategy (RPA Circular 1/2006):

“...recommends that each organisation provides its staff with an identified contact point (or contact points) to which RPA specific queries might be directed, or from which staff might seek RPA specific information”.

Contact officers should be designated in each council to deal with concerns from staff in order that these issues can be fed into agenda items for the consultative groups and disseminated via the internal communication system. This will also allow for early identification of problems and potential inconsistency of treatment, which might lead to particular difficulties in the transfer to new councils.

3.5 Monitoring and Review

The Northern Ireland Executive re-issued Second Guiding Principle and Associated Recommendations as recommended by the Public Service Commission on Managing Vacancies Effectively in Existing Organisations (RPA Circular 1/2008) states:

“The PSC recommends that the Executive requires existing employers: . . .

- *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”.*

Councils are advised to keep all of the measures introduced under review and, where required, to alter within the scope of this agreement the measures to deal with relevant developments. The Staff Commission will also keep the overall policy aspect of this Procedure under review.

The Independent Secretariat of Local Government Reform Joint Forum (Joint Forum) will prepare progress reports which will be made available to both Sides of the Joint Forum.

Summary

Prior to the operation of the Stepped Process as detailed in this document, all councils should:

- Formally notify trade unions of the intention to introduce the Vacancy Control System and agree local consultation and negotiation arrangements
- Initiate an effective reorganisation communication strategy and designate suitable contact officers to deal with staff concerns
- Ensure that monitoring and review arrangements are in place to provide data on the operation of the Vacancy Control System

4. STEPPED PROCESS

This section outlines in detail a system for the operation of vacancy controls in local government within the context of the general advice outlined in the Northern Ireland Executive re-issued Second Guiding Principle and Associated Recommendations as recommended by the Public Service Commission (RPA Circular 1/2008).

It takes into account the particular situation in local government and the legal and equality obligations on local government employers.

In order to implement the Vacancy Control System in local government a **Stepped Process** is recommended as detailed below.

It should be noted that, as the reorganisation implementation progresses, the circumstances in each organisation may change and the data and information requirements will also evolve and change. Councils should keep all of the measures introduced under review and, where required, alter the measures to deal with relevant developments. The Staff Commission will also keep the overall policy aspect of this Guidance under review and liaise with the Local Government Reform Joint Forum as to any proposed amendments to the Procedure.

STEP 1 **AVOID CREATING NEW POSTS**

The Northern Ireland Executive re-issued Second Guiding Principle and Associated Recommendations as recommended by the Public Service Commission on Managing Vacancies Effectively in Existing Organisations states that:

“The schemes should provide that no new posts be created except where an existing employing authority 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”.

Councils should therefore avoid creating new posts except where there is an inescapable need or requirement for the post, eg, posts required to ensure service delivery, where new responsibilities or requirements are imposed by legislation or Executive action.

Where a council determines that there is an inescapable need to create a new post consideration must be given to filling the post by the mechanisms outlined in Step 3 below before resorting to public advertisement.

STEP 2

AVOID FILLING VACANCIES

Where possible, councils should avoid filling vacancies in “at risk” posts where the need for the work to continue cannot be justified.

It should be noted that this step is not designed to downsize or suppress posts which are necessary for the effective implementation of the councils’ functions, such posts will be filled by application of the process as set out in Step 3 below.

STEP 3

FILLING VACANCIES USING RESTRICTED POOLS

Where staff have been formally identified as being “at risk” a council must first consider retraining and re-skilling the existing staff who are “at risk” in order to mitigate against any potential redundancies before widening the pool beyond the “at risk” staff. In terms of timing, it may not be possible to utilise this sub-step until nearer the transfer deadline when the situation regarding redundancies is clearer.

An open and transparent system for re-training and re-allocating “at risk” staff to suitable alternative posts should be utilised. The process outlined in the Commission’s document, *“Guidance on the Staffing Implications of Organisation Development and Change”* (September 2002), providing detail on the ring-fencing of vacancies in a redundancy situation, may be of use in such situations.

Where staff are “at risk” a council in filling posts should use restricted pools as outlined below.

- Permanently - where the post may continue to exist beyond the transfer date

Or where there is a question over whether the post will continue to exist beyond the transfer date by means of:

- temporary acting up (including rotational)
- delaying retirements (by agreement)
- secondments
- having examined all internal options consider the use of temporary or fixed term contracts

The method of filling a post will depend on the circumstances of each individual case and will require councils to take account of employment law, equality considerations and legal advice.

In this respect, councils should give careful consideration to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE). The PSC and the Commission have sought legal advice which is available on the PSC's website www.pscni.org.uk or by contacting the Commission on (028) 9031 3200. This should assist Councils with their decision making. However Councils should take their own legal advice if necessary.

If individuals are appointed to temporary and/or fixed term posts where the post is likely to continue to exist in the new council and are then dismissed because of the transfer, the dismissal will be regarded as automatically unfair unless it was for an economic, technical or organisational reason entailing changes in the workforce.

For justification purposes, councils should seek to fill a vacancy from "at risk" staff in the following order of consideration:

(cross reference to paragraph 2. **Application** on page 2)

- "at risk" staff in the individual council
- "at risk" staff in the amalgamated council cluster
- "at risk" staff across all the 26 councils
- "at risk" staff across all the sectors in the RPA Affected Group

Having compared the restricted pools, councils should decide on the most appropriate pool to use to fill the vacant post, and record the reasons for this decision.

STEP 4

PUBLICLY ADVERTISE VACANCIES

Councils should use public advertising only where a vacancy must be filled and there is no suitable appointee to fill the post within any restricted pools identified above.

Councils should consider whether to fill the post on a permanent, temporary or fixed term basis depending on the nature of the job and the likelihood of it continuing to exist in the new council following RPA implementation.

STEP 5

RECORD ISSUES CONSIDERED AND DECISION MADE

Councils should record the issues considered at each stage in the above process and the decisions made at each stage.

Councils are also required to provide regular reports to staff and trade unions to enable the trade unions to monitor the implementation of vacancy management arrangements in practice.

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;
 - 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.

¹Should 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.

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.

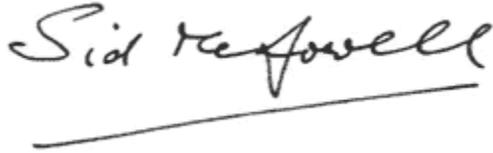
A “clearing house” mechanism may be used to enable employers to collaborate in filling vacancies or new posts across the sectors thereby ensuring “at risk” staff have an opportunity to apply for positions/vacancies as might arise.

- 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

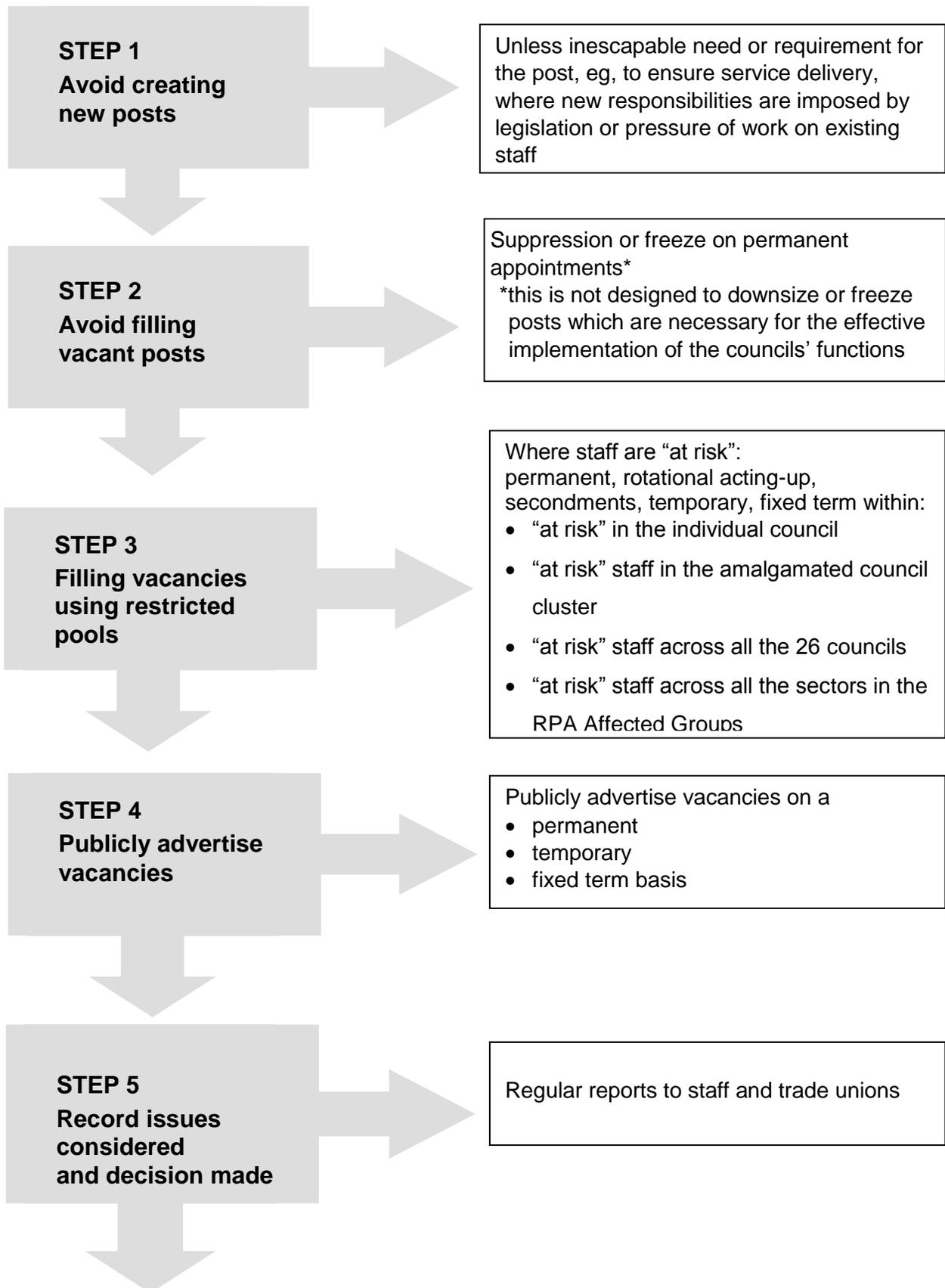
7. The Public Service Commission recognises that decisions taken in relation to managing vacancies should represent a proportionate means of achieving the Executive’s aim to make every possible effort to avoid redundancies in a way which is compliant with statutory obligations, including Section 75 of 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 pro-actively 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

Vacancy Control Schematic Chart



4. WHAT IS THE CURRENT STATUS OF THIS POST?

(permanent, fixed term, temporary)

Are there any special considerations to be taken in to account with regard to the current status of this post?

(eg, the rights of employees in fixed term posts under the fixed term contract regulations)

5. IS IT ESSENTIAL THAT THIS VACANCY IS FILLED?

Consultation/Negotiation Forum to consider:

- Written submissions from line managers

- If duties of post are critical to the ongoing work of the council until RPA

- Could duties be distributed among existing staff?

- Could post be filled on a temporary, acting up or secondment basis by existing staff?

After due consideration, is it deemed necessary for the vacancy to be filled?

IF YES:

Proceed to question 6

IF NO:

Proceed to question 9

6. IS POST HELD BY AN OFFICER WHO IS DUE TO RETIRE AND COULD RETIREMENT BE DELAYED WITH AGREEMENT OF OFFICER?

IF NO:

Proceed to Question 7

IF YES:

Proceed to Question 9

7. IS THIS POST TEMPORARY/FIXED TERM?

IF NO:

Go to Question 8

IF YES:

If temporary

Can post be extended on a temporary basis?

What are the implications of this?

If fixed term

Can fixed term post be extended?

What are the implications of this?

Is it possible for post to be extended?

IF YES:

Proceed to Question 9

IF NO:

Proceed to Question 8

8. CAN WE FILL THE VACANCY USING RESTRICTED POOLS?

Could training be provided to enable internal candidates to apply?

IF NO:

Externally advertise and go to Question 9

IF YES:

Consider equality implications and decide course of action.

Do we offer as a temporary, fixed or secondment opportunity? Consider the implications of TUPE.

Consider restricted pools and decide whether to trawl either:

- “at risk” in the individual council
- “at risk” staff in the amalgamated council cluster
- “at risk” staff across all the 26 councils
- the “at risk” staff across all the sectors in the RPA Affected Groups

9. DECISION MADE WITH REGARD TO THIS VACANCY WITH DETAILED EXPLANATION OF DECISION REACHED.

For each vacancy or new post created, an individual decision will be made based on the circumstances and the data available at the time.

10. HAS FORMAL CONSULTATION TAKEN PLACE WITH TRADE UNIONS ON THIS PROCESS?

COMMENTS

11. APPROVAL AND ACTIONS.

Proforma completed by: _____ **date:** _____

Actions approved by: _____ **date:** _____
Chief Executive or Director

Communication Tasks and Action Points

NB This document is extracted from a Commission publication "Scoping Paper on a Best Practice Model for Communication in Local Government" which is available on the Commission's website at www.lgsc.org.uk.

Tasks for Key Influencers

The Employers' Organisation for Local Government has produced a checklist of tasks based on that developed by the Local Government Employers Organisation for all those who will be involved in communicating with employees during the implementation period. This deals with senior management, HR personnel and elected members. This list is not definitive and can be adapted to each organisation.

1. Key Tasks for the Chief Executive/Senior Management

- Ensure that there is an internal communication strategy for informing and consulting with all employees.
- Nominate a senior person to be responsible for your communication strategy and provide adequate resources and support for the role.
- Ensure that all managers have the information they need.

Action Points for the Chief Executive/Senior Management:

- Ensure that information from all people involved (project groups, working parties etc) is pooled and that systems exist for those involved to be kept up to date with relevant progress.
- Establish a programme of meetings for all staff, with a suitable frequency.
- 'Walk the job' in order to keep in touch with the level of staff motivation, concerns and related work problems.
- Ensure that line managers have the information they need to be able to inform their own teams.
- Give full and prompt responses to staff enquiries.
- Monitor communication channels and monitor their effectiveness.

2. Key Tasks for all Managers

- Talk to employees about key management decisions.
- Listen to staff concerns.
- Liaise with personnel/HR staff about staffing issues - managers are likely to be the first person that employees will approach for an answer.
- Be clear and consistent about information given to staff. If managers are ill-informed they will lose the credibility of their staff.
- Maintain the motivation of staff - the continuing delivery of effective services is dependent on managers' ability to keep their staff motivated.
- Take responsibility for keeping informed and updated, and regularly disseminate this information to employees.

Action Points for all Managers:

- Listen to staff queries.
- Find answers for employees and ensure that they have the necessary information to answer enquiries they may receive from the public.
- Maintain the morale and the quality of service delivery by making the required standards and expectations clear to staff.
- Establish a programme of one-to-one meetings with team members.

3. Key Tasks for HR Professionals

- Take the lead in setting up staff/union consultation arrangements.
- Brief line managers on personnel policy.
- Keep informed about developments.
- Ensure that staff are kept informed about changes happening in the organisation.

Action Points for HR Professionals:

- Regularly update staff lists, telephone lists, circulation lists, and information about people moves, secondments, departures and new appointments.
- Ensure that systems are created (and procedures publicised) for staff secondments to other jobs within the authority.
- Ensure that the potential implications of the EU Information and Consultation Directive are taken into account.
- Include training on communication skills in management training and development programmes.

4. Key Tasks for Elected Members

- Ensure that there is an internal communication strategy and that it is followed through in spite of any possible changes in management as a result of the Review process.
- Be aware of the work involved in gathering information. Do not ask for more information than is required.
- If Chief Officers are removed by restructuring, make sure that decisions continue to be communicated to staff and that their morale is maintained as far as possible.

Action Points for Elected Members:

- Be clear at the end of every formal meeting what decisions need to be communicated and to whom.
- Ensure that employees receive information and views from members at the same time as or sooner than members of the public. This may mean attending staff meetings, briefing trades unions and writing articles for the staff magazine or newsletter.