

FOI DOF/2024-0087

Request

In a previous FOI response FOI DOF/2020-0150 you confirmed that for the purposes of compliance with Health & Safety legislation individual departments are considered to be the employers.

Regarding your recently advertised “Deputy Principal Senior Health & Safety Advisor Northern Ireland Civil Service - IR298084” and “Staff Officer Health & Safety Advisor - IRC298083” and given that there are many trade union appointed Health and Safety Representatives employed across the various employing departments I would ask that you provide by return the following;

1. Copies of the confirmation from each of the nine employing departments, to include DoF, confirming that they each had no suitable individuals in their employment whom they might have appointed to these posts before these posts were advertised to the public. The Management of Health and Safety at Work Regulations 1999 in relation to the appointment of competent persons at sub paragraph 8 stipulates “Where there is a competent person in the employer’s employment, that person shall be appointed for the purposes of paragraph (1) in preference to a competent person not in his employment”, refer.
2. The basis upon which DoF NICSHR & HR Connect assert that they are legally entitled to act or consult centrally on the appointment of competent persons for employing departments other than their own when the law is clear that it is a legal requirement for employers (confirmed by DoF to be individual departments) to appoint “competent persons” having consulted with their trade union appointed Health & Safety Representatives.
3. Confirmation that consultation in respect of each of these intended competent persons appointments and the appropriate grading of the posts took place between the individual employing departments and their respective trade union appointed Health and Safety representatives.
4. Copies of the consultation, if any, which took place between the employing departments and their trade union appointed Health & Safety Representatives (not simply trade union representatives or officials) as is specifically required in legislation when an employer is considering the appointment of “competent persons” to assist in their compliance with Health & Safety legislation. The Safety Representatives and Safety Committees Regulations 1977 (4) refer along with the specific and clearly stated obligation to consult as per the HSE publication Consulting employees on health and safety, page 6 What must I consult about? in relation to these particular posts.

DoF Response

I can confirm the department holds some of the information requested.

1. No information held. DoF do not require confirmation or approval from NICS departments to run an external competition. DoF's decision to hold an open competition is in accordance with the principles of the Civil Service Commissioners (NI) Order 1999 and there are no applicable exemptions under regulation 3 of the General Regulations 2007 which permit appointments to be made other than in accordance with the Merit Principle
2. Article 4 of the Civil Service (Management Function) (Northern Ireland) Order 1994, provides DoF with the power to authorise exercise of functions without approval of other departments, including the appointment or management of members of the Northern Ireland Civil Service. Trade Union consultation was also carried out in line with agreed Central Whitley Structures and consultation arrangements for non-industrial staff.
3. No consultation took place between the individual employing departments and their respective trade union appointed Health and Safety representatives as DoF NICSHR consulted fully on both competitions via Central Trade Union Side, in line with agreed Central Whitley Structures and consultation arrangements for non-industrial staff. It is the responsibility of each department, when submitting a vacancy to DoF NICSHR, to ensure that the appropriate grading has been carried out.
4. No information held. The Management of Health and Safety at Work Regulations (Northern Ireland) 2000 state that, where there is a competent person in-house, they should be appointed in preference to someone from outside the company however, this is not mandatory requirement and is a consideration to be taken into account. DoF NICSHR consulted fully on both competitions via Central Trade Union Side, in line with agreed Central Whitley Structures and consultation arrangements for non-industrial staff.