

Council

21 July 2015

Joint report of the Monitoring Officer and Head of Resources**AMENDMENT TO STANDING ORDERS – STATUTORY OFFICERS****1 Purpose of report**

To advise members of revised regulations which require the Council to amend its Standing Orders at the first ordinary meeting of the Council following 11 May 2015. These regulations relate to the procedure for dismissing Statutory Officers (i.e. the Head of Paid Service, the Monitoring Officer and the Chief Finance Officer (Section 151 Officer)).

2 Executive summary

The Local Authorities (Standing Orders) (England) Regulations 2001 required the use of a Designated Independent Person (DIP) in relation to the discipline and dismissal of Statutory Officers. The new 2015 Regulations remove the requirement for a Designated Independent Person and replace this with the requirement that the final decision to dismiss any of the statutory officers is by resolution of full Council, having taken in to account the views of an appointed Panel.

3 Appendices

Appendix A – 5.5 Officer Employment Procedure Rules.

4 Proposed action:

Council is invited to RESOLVE to:

- i) note the introduction of the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 with effect from 11 May 2015; and**
- ii) amend the Constitution and the Officer Employment Procedure Rules as set out in Appendix A to this report.**

5 Background

- 5.1 The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 (the “2015 Regulations”) came into force on 11 May 2015 and amend the Local Authorities (Standing Orders) (England) Regulations 2001 (the “2001 Regulations”) and the procedure for dismissing Statutory Officers.
- 5.2 The 2001 Regulations introduced a degree of statutory protection for the Head of Paid Service, the Monitoring Officer and the Chief Finance Officer in relation to disciplinary and dismissal action, due to the statutory obligations to discharge their duties. This change has been introduced in order to simplify the process for the dismissal process and reduce the level of severance payments.

5.3 The key features of the DIP process were as follows:

- a) The DIP had to be a person agreed between the protected officer and the Council (or where agreement could not be reached, a person nominated by the Secretary of State).
- b) No disciplinary action could take place other than in accordance with a recommendation in a report made by a DIP. (Disciplinary action in this context had a broad definition and included disciplinary action short of dismissal).
- c) Any suspension for the purposes of investigating the alleged misconduct had to be on full pay and be for no longer than two months, unless specifically extended following a recommendation from the DIP.
- d) The dismissal of the Head of Paid Service (but not the Monitoring Officer or Chief Finance Officer) needed to be approved by the Council itself.

5.4 The 2015 Regulations are ambiguous and remain silent on a number of key areas, for example the impact and the interrelationship between the Regulations and the Statutory Officers' contracts of employment. There has been and continues to be a lot of national comment on the 2015 Regulations and clarity is being sought from the relevant government department on key aspects. This report, however, does consider the main elements required for implementation and compliance.

6 Discussion

6.1 The new 2015 Regulations:

- i) require that the final decision to dismiss any of the statutory officers must be by resolution of Full Council;
- ii) remove the requirement to appoint, or to act in accordance with the report and recommendations of, a DIP;
- iii) require Council to appoint a Committee (referred to in the regulations as "the Panel") which must include at least two "Independent Persons" who are defined in the 2015 Regulations as persons who have been appointed by the Council (or another authority) pursuant to the Localism Act 2011 in relation to the Member Code of Conduct regime;
- iv) require that, before taking a vote on whether to approve such a dismissal, Council must take into account, in particular:
 - (a) any advice, views or recommendations of the Panel;
 - (b) the conclusions of any investigation into the proposed dismissal; and
 - (c) any representations from the statutory officer who is the subject of the proposed dismissal.

6.2 The Council's Independent Person(s) will now be asked to perform two separate functions; one will be to sit on the Panel dealing with any proposed dismissal of a protected officer, when required. The other function will be continued involvement in the Councillor Code of Conduct regime, pursuant to the Localism Act 2011.

- 6.3 Whilst there is still discussion at a national level about the precise nature of the panel and its relationship to wider local authority governance, the Department for Communities and Local Government has provided some informal advice that local authorities may consider the panel as an advisory committee and, as such, can include both members of the council and independent advisors. This is an aspect that may develop further and reports will be brought back to Council as necessary.
- 6.4 The Council is required to include Standing Orders in its Constitution which deal with the appointment and dismissal of staff. The Standing Orders relating specifically to disciplinary and dismissal procedures in relation to senior officers are in the Council's Constitution in the Officer Employment Procedure Rules.
- 6.5 Appendix 1 sets out the amendments to the Standing Orders required by the 2015 Regulations.
- 6.6 Whilst at this stage the statutory requirements must be referenced in the Council's Standing Orders, it is right to say that the finer details of the dismissal procedures are yet to be worked out. The JNC terms and conditions for such officers have not been re-negotiated nationally (they still make reference to the 'DIP') and the law fails to account for basic "legal" considerations such as the right to a fair and impartial investigation (which is likely to mean "external" investigation given the seniority of the Officers involved) and the right to an appeal procedure (made extremely difficult where Full Council is the first-line decision-maker/dismissing body). There has been and continues to be a lot of national comment on the Regulations and clarity is being sought from the relevant government department on key aspects. This report, however, does consider the main elements required for implementation and compliance.

7 Legal powers

Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015

8 Financial and value for money implications

The 2015 Regulations state that the remuneration, fees or allowances paid by the Council to an Independent Person appointed to the Panel must not exceed the level payable to that person in respect of their role under the Localism Act 2011. This aspect of the Regulations is to ensure that the new arrangements will not involve additional costs to the Authority.

9 Risk analysis

The Council is legally obliged to comply with the new Regulations.

10 Implications for equalities

The new regulations apply to all statutory officers, irrespective of protected characteristics. Where dismissal may be necessary by reason of disability leading to incapability to perform the functions of the job satisfactorily, the authority will remain under a duty to take account of such disability and to consider whether it is possible to make reasonable adjustments to enable the post-holder to perform the role satisfactorily.

11 Author and contact officer

Karen Denton, Principal Organisational Development Manager

12 Consultees

Bridget Lawrence, Head of Resources
Sue Lyons, Monitoring Officer
John Campbell, Chief Executive

13 Background papers

There are no additional background papers, other than those referred to in the report.

Appendix A

5.5 Officer Employment Procedure Rules

5.5.1 Recruitment and Appointment

(a) Declarations:

- i The Council will draw up a statement requiring any candidate for appointment as an Officer to state in writing whether they are the parent, grandparent, spouse, partner, child, stepchild, adopted child, grandchild, brother, sister, uncle, aunt, nephew or niece of an existing Councillor or Officer of the Council; or of the partner of such persons.
- ii No candidate so related to a Councillor or an Officer will be appointed without the authority of the Head of Paid Service or relevant Chief officer or an Officer nominated by him/her.

(b) Seeking support for appointment

- i. The Council will disqualify any applicant who directly or indirectly seeks the support of any Councillor or Officer for any appointment with the Council. The content of this paragraph will be included in any recruitment information.
- ii. No Councillor or Officer will seek support for any person for any appointment with the Council.

5.5.2 Recruitment of Head of Paid Service Chief Officers ~~and Deputy Chief Officers~~

- (a) Where the Council proposes to appoint a Head of Paid Service or a Chief Officer ~~or a Deputy Chief Officer~~ and it is not proposed that the appointment be made exclusively from among their existing Officers, the Council will:
- i. draw up a statement specifying:
 1. the duties of the Officer concerned; and
 2. any qualifications or qualities to be sought in the person to be appointed;
 - ii. make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it; and
 - iii. make arrangements for a copy of the statement mentioned in paragraph (i) above to be sent to any person on request.

- (b) Where a post has been advertised as provided in 5.5.2 (a), the Council shall:
 - i. interview all qualified applicants for the post, or
 - ii. select a short list of such qualified applicants and interview those included on the short list.
- (c) Where no qualified person has applied, the authority shall make further arrangements for advertisement in accordance with 5.5.2 (a) (ii)

5.5.3 Appointment of Head of Paid Service

- (a) The full Council will appoint the Head of Paid Service following consideration of any recommendation of the Appointment Panel as to the person to be appointed.

5.5.4 Appointment of Chief Officers ~~and Deputy Chief Officers~~

- (a) An Appointment Panel will appoint Chief Officers ~~and Deputy Chief Officers~~.

5.5.5 Appointment Procedure for appointment of Chief Officers ~~and Deputy Chief Officers~~

- (a) Prior to advertisement
 - i. The Head of Paid Service and/or relevant Chief Officer, and the recruitment advisers (if any) will meet to agree details of the recruitment process to be followed, including the use of assessment tests etc.
- (b) Following advertisement:
 - i. The Head of Paid Service and/or relevant Chief Officer, and the recruitment advisers (if any) will meet to consider all the applications that have been received, to consider any recommendations of the recruitment advisers and agree a longlist. At this meeting, details of the interview process to be followed, including the particular assessment tools such as in-tray and other testing, the use of presentations etc. will also be agreed.
 - ii. Longlisted candidates undergo the assessment process which may include an interview with the Head of Paid Service and/or relevant Chief Officer
 - iii. The Appointment Panel will then meet to consider the results of the longlisting process, the officers' recommendations; and agree a shortlist of candidates for interview.

- iv. The Appointment Panel will then meet again to interview the shortlisted candidates and decide whom to appoint. Officers and Members will table suggestions for questions at the start of the meeting, and the Panel will decide which questions to ask and who will ask them.

5.5.6 Other appointments

- (a) **Officers below ~~Deputy~~ Chief Officer.** Appointment of Officers below ~~Deputy~~ Chief Officer (other than assistants to political groups) may be made only by the Head of Paid Service or his/her nominee.
- (b) **Assistants to political groups.** Appointment of an assistant to a political group shall be made in accordance with the wishes of that political group.

5.5.7 Disciplinary Action

~~(a) **Suspension** – The Head of Paid Service, Monitoring Officer and Chief Finance Officer may be suspended whilst an investigation takes place into alleged misconduct. That suspension will be on full pay and last no longer than two months.~~

(a) **Dismissal of the Head of Paid Service, Monitoring Officer or Chief Finance Officer**

In respect of disciplinary action (as defined in the Local Authorities (Standing Orders) (England) Regulations 2001 (as amended), the following provisions apply:

- i. The Head of Paid Service, Chief Finance Officer and Monitoring Officer may not be dismissed by the Council unless the procedure set out in the following Rules is complied with.
- ii. The Council must appoint a Panel for the purposes of advising the Full Council on matters relating to the dismissal of the Head of Paid Service, Monitoring Officer or Chief Finance Officer. The Panel must be a committee of the authority. The Council must appoint the Panel at least 20 working days before the meeting of Full Council to consider whether or not to approve a proposal to dismiss the Head of Paid Service, Monitoring Officer or Chief Finance Officer.
- iii. The Council must invite relevant Independent Persons as defined in Rules iv. a. and b. to be considered for appointment to the Panel, with a view to appointing at least two Independent Persons to the Panel.
- iv. a. An Independent Person means an Independent Person who has been appointed under section 28(7) of the Localism Act 2011 (in relation to the Members' Code of Conduct);
b. A relevant Independent Person is an Independent Person who has been appointed by the Council or where there are fewer than two such persons appointed by the Council,

such Independent Persons as have been appointed by another authority or authorities as the Council considers appropriate.

- v. The Council must appoint to the Panel such Independent Persons who have accepted an invitation issued in accordance with Rule iii., in accordance with the following priority order:
 - a. a relevant Independent Person who has been appointed by the Council and who is a local government elector;
 - b. any other relevant Independent Person who has been appointed by the Council;
 - c. a relevant Independent Person who has been appointed by another authority or authorities
- vi. The Council may appoint more than two relevant Independent Persons in accordance with Rule IV. but is not required to do so.
- vii. Before Full Council takes a vote on whether or not to approve a dismissal of the Head of Paid Service, Monitoring Officer or Chief Finance Officer, the Council must take into account, in particular:
 - a. any advice, views or recommendations of the Panel;
 - b. the conclusions of any investigation into the proposed dismissal; and
 - c. any representations from the Officer in question.

~~(b) **Independent person** – No other disciplinary action may be taken in respect of any of those Officers except in accordance with a recommendation in a report made by a designated independent person under regulation 7 of the Local Authorities (Standing Orders) (England) Regulations 2001.~~

~~(c) – Councillors will not be involved in the disciplinary action against any Officer below Deputy Chief Officer except where such involvement is necessary for any investigation or inquiry into alleged misconduct, though the Council's disciplinary, capability and related procedures, as adopted from time to time may allow a right of appeal to Councillors in respect of disciplinary action.~~

5.5.8 **Dismissal**

- (a) Councillors will not be involved in the dismissal of any Officer below ~~Deputy~~ Chief Officer except where such involvement is necessary for any investigation or inquiry into alleged misconduct, though the Council's disciplinary, capability and related procedures, as adopted from time to time may allow a right of appeal to Councillors in respect of dismissals.

Comment [KJD1]: There is a potential gap in this process in terms of Deputy Chief Officers, ie Head of Resources & Head of Planning and Local Development in that they are not covered by the process above. I am seeking advice from EMC on this aspect as well as the whole report in the absence of Sue Lyons.

5.5.9 Definition of Chief Officer ~~and Deputy Chief Officer~~

For the purpose of this Section 5 “Chief Officer” ~~and “Deputy Chief Officer”~~ shall be as defined in Section 2 (6), (7) and (8) respectively of the Local Government Act 1989.

