

**Report of: Head of Service HR and Section Head Legal Services**

**Report to: General Purposes Committee**

**Date: 16 June 2015**

**Subject: Amendments to the Constitution following the introduction of the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015**

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

### Summary of main issues

The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 ("the Regulations") were made on 25 March 2015 and came into force on 11 May 2015. The Regulations amend the Local Authorities (Standing Orders) (England) Regulations 2001 in relation to the disciplinary process for relevant senior officers namely the Chief Executive (as the authority's head of paid service), the Deputy Chief Executive (as the council's chief finance officer) and the City Solicitor (monitoring officer).

The Regulations provide for new arrangements in the disciplinary process, in particular, reference to a panel comprising independent persons before a decision is made. Provision is made for councils to make modifications to their procedures no later than the first ordinary council meeting held after the 11 May 2015.

The Regulations require consequential amendments to the Employment Committee Terms of Reference; the Officer Employment Procedure Rules; and establishment of a panel to advise the authority on matters relating to the dismissal of relevant officers. At the same time, amendments are necessary to the Employment Committee Terms of Reference and Officer Employment Procedure Rules to give clarity on the recruitment and dismissal processes for senior officers.

## **Recommendations**

Members are asked to recommend to full Council for approval:

- 1 Amendments to the Employment Committee Terms of Reference as set out at Appendix A to this report.
- 2 Amendments to the Officer Employment Procedure Rules as set out at Appendix B to this report.
- 3 That a panel be established to comprise of a minimum of two Independent Persons with the Terms of Reference as set out in Appendix C to this report.

### **1 Purpose of this report**

- 1.1 The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 (“the Regulations”) were made on 25 March 2015 and came into force on 11 May 2015. The Regulations amend the Local Authorities (Standing Orders) (England) Regulations 2001 in relation to the disciplinary process for relevant officers, the most senior council officers, namely the Chief Executive (as the authority’s head of paid service), the Deputy Chief Executive (as the authority’s chief finance officer), and the City Solicitor (as monitoring officer).
- 1.2 The Regulations provide for new arrangements in the disciplinary process, in particular, reference to a panel comprising independent persons before a decision is made. Provision is made for councils to make modifications to their procedures no later than the first ordinary council meeting held after the 11 May 2015.
- 1.3 The Regulations require changes to the Employment Committee Terms of Reference and the Officer Employment Procedure Rules; and the establishment of a panel of independent persons.
- 1.4 At the same time, amendments are necessary to the Employment Committee Terms of Reference and Officer Employment Procedure Rules to provide clarity on the recruitment and dismissal process for senior officers.

### **2 Background information**

#### Disciplining Senior Officers

- 2.1 It is a statutory duty of relevant authorities, including this council, to designate officers to hold the statutory posts of head of paid service, chief finance officer and monitoring officer. In this council the Chief Executive is designated as head of paid service, the Deputy Chief Executive as chief finance officer and the City Solicitor as monitoring officer. The head of paid service, chief finance officer and monitoring officer statutory post holders discharge their statutory responsibilities in a political environment.

- 2.2 Statutory protection requiring an appointment of a designated independent person (DIP) to investigate any allegation of misconduct against these statutory post holders was introduced in the 2001 Regulations. Those Regulations provided that no disciplinary action in respect of these statutory post holders could be taken other than in accordance with the recommendation in a report made by a DIP.
- 2.3 The 2015 Regulations now simplify this process by removing the mandatory requirement that a DIP should be appointed. In place of the DIP process the decision will be taken by full council, which must consider any advice, views or recommendations from a panel comprising independent persons, the conclusions of any investigation into the proposed dismissal, and any representations from the officer concerned.

### **Recruitment of Senior Officers**

- 2.4 The Employment Committee of the council has the responsibility for the appointment of senior officers. It is necessary to give more clarity to the process and minor amendments are required to the Employment Committee Terms of Reference to reflect this.

## **3 Main Issues**

### **Disciplinary action**

- 3.1 The disciplinary action covered by the new procedure (and under the previous DIP procedure) is defined in the 2001 and 2015 regulations as “any action occasioned by alleged misconduct which, if proved, would, according to the usual practice of the authority be recorded on the member of staff’s personal file, and includes any proposal for dismissal of a member of staff for any reason other than redundancy, permanent ill-health or infirmity of mind or body, but does not include failure to renew a contract of employment for a fixed term unless the authority has undertaken to renew a contract of employment”.

### **Establishment of a panel**

- 3.2 In the case of potential disciplinary action (as referred to in 3.1 above) against those council officers designated as the statutory post holders as head of paid service, chief finance officer and monitoring officer, under the new Regulations the council is now required to form a panel comprising independent persons.
- 3.3 Schedule 3(e) of the new Regulations say “the Panel” means a committee appointed by the authority under s102(4) of the Local Government Act 1972 for the purposes of advising the authority on matters relating to the dismissal of relevant officers of the authority. However interim guidance from the Local Government Association (LGA), issued following the new Regulations coming into force, queries how this fits with the independent nature of the panel and the LGA is raising this question with the Department for Communities and Local Government (DCLG). This guidance, and any further clarification from

DCLG, will be kept under review by the Chief Officer (HR).

- 3.4 The new Regulations though are clear in saying that the local authority should invite independent persons who have been appointed for the purposes of the members' conduct regime under section 28(7) of the Localism Act 2011 to form a panel. These requirements are intended to allow local people to be involved in the disciplinary process in relation to senior officers and to make councils more accountable to their community. The membership of the panel being formed if two or more independent persons accept invitations to serve on the panel.
- 3.5 Although the establishment of a panel is only necessary in the event that disciplinary action is envisaged, if this does arise, a panel has to be formed 20 days in advance of a relevant disciplinary meeting. For this reason, and to also demonstrate that the arrangements have been put in place in accordance with the timescales set out in the Regulations, it is considered advisable for full Council to establish an independent panel now. The suggested terms of reference for this panel are set out in Appendix C.
- 3.6 The Regulations stipulate how, and in what order of priority, independent persons are approached to form the membership of the panel.

The provisions being as follows:

- a. a relevant independent person who has been appointed by the authority and who is a local government elector;
  - b. any other relevant independent person who has been appointed by the authority;
  - c. a relevant independent person who has been appointed by another authority or authorities.
- 3.7 So, in summary it is recommended that full Council establishes an independent panel, with the terms of reference set out in appendix C, and, for the time being, that Council notes that the membership of the Panel, as prescribed in the Regulations, be confirmed should the need for the Panel to advise full council arise.

#### Changes to the disciplinary process

- 3.8 The new Regulations do not prescribe how a council's procedure should work in practice including how an investigation should be handled. The LGA guidance suggests the setting up of an investigatory and disciplinary type committee as one option, or alternatively involving the Panel earlier on (although this seems a more problematic option given the role of the Panel as independent and given the small remuneration envisaged for independent persons.)
- 3.9 Leeds City Council already has an Employment Committee (similar to an investigatory and disciplinary committee as referred to in the LGA guidance). The Employment Committee has within its current term of reference to consider and deal with certain disciplinary issues and in the case of the head

of paid service to make referral to full council for a decision if dismissal is recommended. It is proposed that the role of the Employment Committee be maintained in its current form and that its terms of reference be widened in line with the Regulations to include consideration of appropriate issues relating to the other two senior posts referred to, the chief finance officer and monitoring officer. This means that there would be referrals by the Employment Committee to the Panel and full council for a decision where appropriate. In practice the referral to the Panel would take place when the matter is referred to full council so that the views of those independent persons on the Panel can be taken into account by full council before reaching a decision.

- 3.10 A straight forward reading of the Regulations suggests an appeal against dismissal would also go to full council as there is no higher decision making body.
- 3.11 As a consequence of the new Regulations it is necessary to alter the Employment Committee Terms of Reference to reflect the changes as set out in Appendix A and to alter the Officer Employment Procedure Rules as set out in Appendix B.

#### Impact on the senior officers concerned

- 3.12 The LGA interim guidance says that as some employment contracts of senior officers may still contain reference to the DIP procedure the impact of this has to be considered in individual cases. The LGA has asked authorities to note that they are seeking to amend through collective agreement the model procedures in the Joint Negotiating Committee's Conditions of Service for Chief Executives, thereby potentially removing any need to make changes at a local level.

#### Recruitment of Senior Officers

- 3.13 The Council's Employment Committee deals with recruitment of senior officers. The current Officer Employment Procedure Rules do not give sufficient clarity on the process to be followed when an appointment is under consideration. In particular the information to be provided by the Employment Committee (via the Proper Officer process) to members of the Executive to enable them to consider if they object to the appointment, and what full council or the Employment Committee, as the case may be, can then take into account to decide if the objections are well founded and/or material. The proposed amendments to the Officer Employment Procedure Rules at Appendix B now give examples of information to be passed on to members of the Executive and explain that the words "well founded" and "material" bear their normal dictionary meanings.
- 3.14 The Chief Officer HR has been asked to consider whether the current well founded and/or material objections process should be amended to allow any objections from an Executive Member to be considered at an Executive Board meeting. However, after careful consideration, this request has not been included due to the potential recruitment issues and/or delays that could arise. The proposal is that the members of the Executive are individually

contacted in line with current arrangements and that the Employment Committee will decide if any objection received from a member of the Executive is material and/or well- founded.

## **4 Corporate Considerations**

### **4.1 Consultation and Engagement**

The Government had consulted on the new Regulations before they were made. Leaders of the political groups have been consulted in relation to the suggested changes to the Employment Committee Terms of Reference and the Officer Employment Procedure Rules. The impact of the proposals and how they fit with the terms and conditions of employment of the senior officers concerned is not currently known as further guidance is awaited on this. There would be consultation with the senior officers if changes to terms and conditions of employment are proposed. It is also proposed to inform the council's recognised trade unions of these changes.

### **4.2 Equality and Diversity / Cohesion and Integration**

There are no implications for this report.

### **4.3 Council policies and the Best Council Plan**

The council includes within its values "being open, honest and trusted". The Regulations provide a simpler process for dismissal of the most senior officers and includes arrangements for considering representations from independent persons.

### **4.4 Resources and value for money**

The Regulations make provisions limiting the remuneration that should be paid to independent persons on the Panel to the level of the remuneration which they would normally receive as an independent person in the conduct regime. This remuneration is a modest annual allowance or small meeting fee and this approach is intended to ensure that the new process does not involve a high cost.

### **4.5 Legal Implications, Access to Information and Call In**

The Regulations require that the council changes its procedures.

### **4.6 Risk Management**

In amending the constitution to accommodate the Regulations, the risk of any failure to comply with the Regulations is minimised.

## **5 Conclusions**

The Regulations impose requirements in relation to the disciplinary procedure for the senior designated statutory post holders. Amendments to reflect this and to provide greater clarity in relation to the procedure for the recruitment of senior officers,

ensures compliance with legislation and transparency and consistency in how the legislation is applied.

## **6 Recommendations**

Members are asked to recommend to full Council for approval:

- 6.1 Amendments to the Employment Committee Terms of Reference as set out at Appendix A to this report.
- 6.2 Amendments to the Officer Employment Procedure Rules as set out at Appendix B to this report.
- 6.3 That a panel be established to comprise of a minimum of two Independent Persons with the Terms of Reference as set out in Appendix C to this report.

## **7 Background documents**

None