



<u>Committee and Date</u>
Council
23 July 2015
10.00 am

<u>Item</u>
20

STATUTORY REQUIREMENT TO AMEND THE COUNCIL'S STANDING ORDERS

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1. Summary

The Local Authorities (Standing Orders) (England) Regulations 2001 make provision for the standing orders in relation to staff and disciplinary procedures. Within these orders there is a provision to appoint a Designated Independent Person (DIP) to investigate any allegation of misconduct against senior officers with statutory responsibilities (Head of Paid Service, Monitoring Officer and S151 Officer (Chief Finance Officer)).

The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015, which came into force on 11 May 2015, simplify localise the disciplinary process for these most senior officers by removing the mandatory requirement that a DIP be appointed and replacing it instead an independent panel.

This report outlines the new requirements and recommends the changes to be made to the Standing Orders relating to staff.

2. Recommendations

Council agree to amend the Council Standing Orders relating to the Dismissal of Statutory Officers as required by the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 and detailed in 6.0.

REPORT

3. Risk Assessment and Opportunities Appraisal

- 3.1 Failure to implement the changes to the Standing Orders, by the first council meeting following the election, would result in a breach of the Regulations.

4. Financial Implications

- 4.1 The Regulations limit the remuneration that should be paid to independent persons on the panel to the level of remuneration which they would normally receive as an independent person in the conduct regime.

Background

- 5.1 The Local Authorities (Standing Orders) (England) Regulations 2001 make provision for the standing orders in relation to staff and disciplinary procedures. Within these orders there is a provision to appoint a Designated Independent Person (DIP) to investigate any allegation of misconduct against senior officers with statutory responsibilities (Head of Paid Service, Monitoring Officer and S151 Officer (Chief Finance Officer)). No disciplinary action in respect of these most senior officers may be taken, other than in accordance with a recommendation in a report made by a DIP.
- 5.2 The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 simplify came into force on 11 May 2015 and localise the disciplinary process for these most senior officers by removing the mandatory requirement that a DIP be appointed.
- 5.3 In place of the DIP process, the decision will be taken transparently by full council who must consider any advice, views or recommendations from an independent panel, the conclusions of any investigation into the proposed dismissal, and any representations from the officer concerned.
- 5.4 The council is required to 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 an independent panel. An independent panel will be formed if two or more independent persons accept the invitations, and council should issue invitations in accordance with the following priority order:
- an independent person who has been appointed by the council and who is a local government elector,
 - any other independent person who has been appointed by the council, and

- an independent person who has been appointed by another council or councils.
- 5.5 The Regulations provide that the panel is to be a committee of the authority and so it is subject to all the legal requirements for committees, including the proportionality rules.
- 5.6 The Regulations also make a provision limiting the remuneration that should be paid to independent persons on the panel to the level of remuneration which they would normally receive as an independent person in the conduct regime.
- 5.7 The Regulations provide for the new arrangements for taking disciplinary action against the most senior council staff to be given effect by councils modifying their standing orders. The Regulations require that this be done at the first ordinary meeting held after the 7 May 2015 elections.

6.0 Recommendations

- 6.1 Part 4 – Standing Orders relating to Staff (Appendix 1) shall be replaced with the following:

Paragraph 4 (1) be replaced with:

Where a committee, sub-committee or officer is discharging, on behalf of the authority, the function of the appointment of an officer designated as the Head of the authority's Paid Service, the authority must approve that appointment before an offer of appointment is made to that person.

Paragraph 4 (2) be replaced with:

Where a committee, sub-committee or officer is discharging, on behalf of the authority, the function of the dismissal of an officer designated as the Head of the authority's Paid Service, as the authority's Chief Finance Officer, or as the authority's Monitoring Officer, the authority must approve that dismissal before notice of dismissal is given to that person.

Standing Orders in relation to Disciplinary Action

Paragraphs 8-10 be replaced with:

1. In the following paragraphs -

- (a) "the 2011 Act" means the Localism Act 2011(b);
- (b) "Chief Finance Officer", "disciplinary action", "Head of the authority's Paid Service" and "Monitoring Officer" have the same meaning as in regulation 2 of the Local Authorities (Standing Orders) (England) Regulations 2001(c);

- (c) "independent person" means a person appointed under section 28(7) of the 2011 Act;
- (d) "local government elector" means a person registered as a local government elector in the register of electors in the authority's area in accordance with the Representation of the People Acts;
- (e) "the Panel" means a committee appointed by the authority under section 102(4) of the Local Government Act 1972(d) for the purposes of advising the authority on matters relating to the dismissal of relevant officers of the authority;
- (f) "relevant meeting" means a meeting of the authority to consider whether or not to approve a proposal to dismiss a relevant officer; and
- (g) "relevant officer" means the Chief Finance Officer, Head of the authority's Paid Service or Monitoring Officer, as the case may be.

2. A relevant officer may not be dismissed by an authority unless the procedure set out in the following paragraphs is complied with.

3. The authority must invite relevant independent persons to be considered for appointment to the Panel, with a view to appointing at least two such persons to the Panel.

4. In paragraph 3 "relevant independent person" means any independent person who has been appointed by the authority or, where there are fewer than two such persons, such independent persons as have been appointed by another authority or authorities as the authority considers appropriate.

5. Subject to paragraph 6, the authority must appoint to the Panel such relevant independent persons who have accepted an invitation issued in accordance with paragraph 3 in accordance with the following priority order -

(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.

6. An authority is not required to appoint more than two relevant independent persons in accordance with paragraph 5 but may do so.

7. The authority must appoint any Panel at least 20 working days before the relevant meeting.

8. Before the taking of a vote at the relevant meeting on whether or not to approve such a dismissal, the authority 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 relevant officer.

9. Any remuneration, allowances or fees paid by the authority to an independent person appointed to the Panel must not exceed the level of remuneration, allowances or fees payable to that independent person in respect of that person's role as independent person under the 2011 Act."

6.2 The employment contracts of the statutory officers will need to be varied to incorporate the new Regulations.

Appendices

Appendix 1 Part 4 – Standing Orders relating to staff (current)

List of background papers (This MUST be completed for all reports but does not include items containing exempt or confidential information) – None
Cabinet Member (Portfolio Holder) Mike Owen, Portfolio Holder for Resources, Finance & Support
Local Member- N/A