

NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL

COUNCIL - 30 JUNE 2015

Title of report	AMENDMENT TO OFFICER EMPLOYMENT PROCEDURE RULES
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Purpose of report	To note the requirements of The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 and authorise the consequential amendments to the Constitution to ensure compliance with the legislative provisions.
Council Priorities	Value for Money
Implications:	
Financial/Staff	Amendments may be required to individual officers' employment contracts.
Link to relevant CAT	None.
Risk Management	Discussed in the report.
Equalities Impact Screening	Not Applicable.
Human Rights	Considered in drafting the primary legislation.
Transformational Government	No direct implications.
Comments of Deputy Section 151 Officer	The report is satisfactory.
Comments of Deputy Monitoring Officer	As author of the report is satisfactory.
Consultees	Statutory officers.
Background papers	The Local Authorities (Standing Orders) (England) (Amendment)

	Regulations 2015.
Recommendations	<ol style="list-style-type: none"> 1. TO NOTE THE LOCAL AUTHORITIES (STANDING ORDERS) (ENGLAND) (AMENDMENT) REGULATIONS 2015. 2. TO AMEND THE MEMBERSHIP OF THE INVESTIGATORY COMMITTEE TO FIVE MEMBERS WHEN CONSIDERING DISCIPLINARY MATTERS RELATING TO CHIEF OFFICERS WHO ARE NOT STATUTORY OFFICERS. 3(a). TO AMEND THE MEMBERSHIP OF THE INVESTIGATORY COMMITTEE TO SEVEN MEMBERS CONSISTING OF FIVE ELECTED MEMBERS AND TWO CO-OPTED INDEPENDENT PERSONS WHEN CONSIDERING MATTERS RELATING TO CHIEF OFFICERS WHO ARE STATUTORY OFFICERS (HEAD OF PAID SERVICE, MONITORING OFFICER AND SECTION 151 OFFICER). 3(b). THAT THE TWO INDEPENDENT PERSONS HAVE EQUAL VOTING RIGHTS WITH OTHER COMMITTEE MEMBERS. 4. TO AMEND THE TERMS OF REFERENCE OF THE COMMITTEE TO INCLUDE “AND TO ADVISE THE COUNCIL IN RELATION TO THE PROPOSED DISMISSAL OF THE HEAD OF PAID SERVICE, MONITORING OFFICER AND S151 OFFICER”. 5. TO AGREE TO REMUNERATE THE INDEPENDENT PERSONS FOR THE CONDUCT OF STANDARDS MATTERS. 6. TO APPOINT COUNCILLOR BLUNT AS CHAIRMAN OF THE INVESTIGATORY COMMITTEE FOR THE MUNICIPAL YEAR. 7. TO APPOINT COUNCILLOR A SMITH MBE AS DEPUTY CHAIRMAN OF THE INVESTIGATORY COMMITTEE FOR THE MUNICIPAL YEAR. 8. TO RECEIVE NOMINATIONS FROM THE CONSERVATIVE GROUP FOR THE TWO ADDITIONAL MEMBERS OF THE INVESTIGATORY COMMITTEE TO ENSURE THAT THE EXPANDED COMMITTEE IS PROPORTIONALLY CONSTITUTED.

	9. TO AUTHORISE THE MONITORING OFFICER TO MAKE THE CONSEQUENTIAL AMENDMENTS TO THE CONSTITUTION TO ENSURE COMPLIANCE WITH THE LEGISLATIVE PROVISIONS.
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1. BACKGROUND

- 1.1 The statutory officers, the Head of Paid Service and Monitoring Officer (appointed under the Local Government and Housing Act 1989) and the Section 151 Financial Officer (appointed under Section 151 of the Local Government Act 1972) are subject to a statutory disciplinary scheme contained within the Local Authorities (Standing Orders) (England) Regulations 2000 (the Regulations).
- 1.2 In brief, the Regulations whilst permitting the suspension of any one of the statutory officers prohibited any other disciplinary action except in accordance with a recommendation in a report made by a Designated Independent Person.
- 1.3 A Designated Independent Person must be a person who is agreed between the Council and the relevant officer or in default of such agreement a person appointed by the Secretary of State.

2. LEGISLATIVE CHANGES

- 2.1 On 11 May 2015 the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015, came into force which introduced a new procedure in relation to the dismissal of one of the statutory officers. These are the Head of Paid Service, the Monitoring Officer and the S151 Officer.
- 2.2 The 2015 Regulations:
 - require that the final decision to dismiss any of the statutory officers must be by resolution of full Council;
 - remove the requirement to appoint, or to act in accordance with the report and recommendations of, a DIP;
 - require Council to appoint a Committee (referred to in the Regulations as "the Panel") which must include at least 2 "Independent Persons";
 - 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.

- 2.3 The effect of the Regulations is to dispense with the requirement to appoint a Designated Independent Person and for the independent element it provided for in disciplinary proceedings to be provided by the Independent Persons appointed in relation to the Code of Conduct under the Localism Act 2011 as part of a committee of the Council. Although the Regulations only cover dismissals, members are advised that it would be sensible for the Panel to be the body which holds any disciplinary hearing in respect of a statutory officer as in practice it will not always be possible to determine in advance whether a particular disciplinary issue might lead to dismissal.
- 2.4 Every local authority affected by the change in Regulations must at its first ordinary meeting after 11 May 2015 incorporate the changes brought about by the new Regulations into its Constitution.
- 2.5 Members are advised that regardless of the Regulations, the 2008 JNC Conditions of Service for Local Authority Chief Executives / Chief Officers are incorporated into the terms and conditions of service of the Head of Paid Service, Monitoring Officer and Chief Finance Officer. The JNC Conditions of Service include as Appendix 6 a model disciplinary procedure which includes the requirement for the appointment of a DIP, a requirement for an Investigating and Disciplinary Committee comprising a recommended five members, and the limitation to disciplinary action in accordance with the report and recommendation of the DIP. Whilst this is a model disciplinary procedure, it has become incorporated into the relevant officers' terms and conditions of employment.
- 2.6 The enactment of the 2015 Regulations does not automatically remove these features from current terms and conditions of employment, so a dismissal conducted in accordance with the 2015 Regulations may be in breach of the statutory officer's contract of employment.
- 2.7 The Executive Objection Procedure, set out in Schedule 3 to the 2001 Regulations, remains in force. So, where the Disciplinary Panel resolves to recommend to Council that a statutory officer be dismissed, notice will still have to be given to all members of the Executive, and the Leader then has a prescribed period to submit any objections or representations, which must be considered by Council when it considers the recommendation of the Disciplinary Panel.

3. CONSTITUTIONAL AMENDMENTS

- 3.1 The amended Regulations set out the dismissal and disciplinary process for a relevant officer and require an authority to invite relevant Independent Persons to be considered for appointment to a Panel with a view to appointing at least two such persons to the Panel.

- 3.2 For the purposes of the Regulations:

“A Panel” means a committee appointed by the authority under section 102(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. As a committee of the authority such a panel will need to be politically proportionate, which relates to the size of the panel as a whole, including the two Independent persons.

“A relevant Independent Person” means any Independent Person who has been appointed by the authority under Section 28(7) of the Localism Act 2011 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.”

- 3.3 Members will recall that when the amended Code of Conduct was introduced under the Localism Act a joint recruitment exercise was undertaken by a number of authorities across the County as a result of which nine Independent Persons were appointed with one lead Independent Person nominated for the District.
- 3.4 The standing list of committees that the Council appoints each year includes the Investigatory Committee which currently consists of three members. Its remit is described as “to determine disciplinary cases involving chief officers”. Given the Regulations it is suggested that its terms of reference are amended to include "and to advise the Council in relation to any proposed dismissal of the Head of Paid Service, Monitoring Officer and S151 Officer".
- 3.5 It is proposed that in order to comply with the legislative amendments when dealing with the proposed dismissal of a relevant officer, the composition of the Investigatory Committee is expanded from three members to seven members consisting of five elected members plus two co-opted Independent Persons drawn from the Independent Persons appointed under the Localism Act. The quorum would be three elected members.
- 3.6 Where the Committee is dealing with a proposed dismissal of a Chief Officer who is not a statutory officer, such as the Directors or a Head of Service, the composition of the Committee will be five elected members only.
- 3.7 Whilst the Regulations are silent upon whether the Independent Persons must be voting members of the Panel, the purpose of their inclusion would appear to be negated if they did not have votes. Where the Independent Persons are appointed as co-opted voting members of the Panel, the majority party, if there is one, must still have a majority of votes on the Panel, so the inclusion of the Independent Persons as co-opted voting members serves to reduce the number of seats to be allocated to the minority party groups. Council may depart from proportionality by a vote of full Council in which no elected member votes against the alternative composition of the Panel.
- 3.8 The Regulations allow the Council to remunerate the Independent Persons appointed to the Panel but payment 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 when dealing with standards complaints under the Code of Conduct. The Council agree to remunerate the Independent Persons at the same rate as when dealing with standards complaints under the Code of Conduct.
- 3.9 Any decision to dismiss a statutory officer is a matter for full Council and before any vote is taken at a 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 statutory officer.

3.10 The proposed consequential changes to the Constitution are attached as track changed documents.

4. NOMINATIONS

4.1 At full Council on 26 May 2015 the following councillor's were appointed to the Investigatory Committee:

Councillor R Blunt
Councillor A V Smith
Councillor J Legrys

Council is requested to receive nominations and appoint two additional members from the Conservative Group to the Committee in accordance with the proportionality rules.

5. APPOINTMENT OF CHAIRMAN AND DEPUTY CHAIRMAN

5.1 In the interest of administering the meeting effectively it is proposed that a Chairman and Deputy Chairman is appointed for the municipal year in accordance with recommendations 7 and 8.

6. APPENDICES

6.1 Appendices 1 and 2 show the consequential changes to the Council's Constitution.