

Central Bedfordshire Council

GENERAL PURPOSES COMMITTEE

25 June 2015

THE LOCAL AUTHORITIES (STANDING ORDERS)(ENGLAND) (AMENDMENT) REGULATIONS 2015

Advising Officers:

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Purpose of this report

To advise the council of the legislative changes to the Standing Orders relating to dismissal of statutory officers which come in to effect on 11 May 2015 and to make the necessary changes to the Council's constitution to effect their implementation as far as is currently feasible.

RECOMMENDATIONS

General Purposes Committee is asked to recommend to Full Council:

1. The Independent Panel designated to deal with the dismissal of statutory officers will be the Appointments Sub-Committee;
2. The Officer Employment Procedure Rules contained at H4 of the Constitution and the General Purposes Committee terms of reference be amended as set out in Appendices A and B respectively to reflect the requirements set out in the Local Authorities (Standing Orders)(England)(Amendment) Regulations 2015;
3. The current relevant Independent Persons appointed to the Council be invited to join the Appointments Sub-Committee when dealing with the dismissal of the Chief Executive (Head of Paid Service) , Chief Finance Officer (Section 151 Officer) and Chief Legal and Democratic Services Officer (Monitoring Officer);
4. The composition and remit of the Appointments Sub-Committee remain as currently constituted save that in the case of dismissal of the Chief Executive(Head of Paid Service), Chief Finance Officer (Section 151 Officer) and Chief Legal and Democratic Services

Officer (Monitoring Officer) the Sub-Committee may only make a recommendation to Council.

Overview and Scrutiny Comments/Recommendations

Not applicable

Background

1. Previous legislation provides that the Head of Paid Service, Monitoring Officer and Section 151 Officer cannot be dismissed unless a Designated Independent Person has first been appointed to investigate and make a binding recommendation on disciplinary action.
2. DCLG wrote to a limited number of stakeholders in 2013 seeking views on draft amendment regulations which would remove the requirement for a Designated Independent Person (DIP).
3. Respondents raised concerns about the dilution of the protection of Statutory Officers, who may be required to make unpopular statutory reports, about the skill set of panel members, and about how the panel might operate.
4. The Secretary of State at the time regarded the DIP process as expensive and cumbersome and rationalised the proposed changes suggesting that the new process would make it easier and less expensive for authorities to deal with senior officer performance and conduct issues.

Issues and options

5. New disciplinary regulations were introduced in the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 No 881, by which the existing statutory requirements for a designated independent person (DIP) to consider and advise on disciplinary matters relating to Heads of Paid Service, Monitoring Officers (MOs) and Chief Finance Officers (CFOs) (statutory officers) of local authorities in England were revoked and replaced with a new requirement with effect from 11 May 2015.
6. The Regulations removed the requirement for a DIP and provide that any decision to dismiss the relevant Statutory Officer must be taken by full Council.
7. The Regulations introduce new mandatory Standing Orders which all councils have to put into their constitution as a replacement for the current arrangements. From now on only full Council can dismiss one of the three Statutory Officers.

8. The Council must consider any advice, views or recommendations of the independent panel, the conclusions of any investigation into the proposed dismissal and any representations from the Statutory Officer concerned.
9. The regulations go on to provide that, in consulting the Independent Panel, the Council “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”.
10. “Relevant Independent Persons” are defined as an independent person who has been appointed to the authority or, where there are fewer than two such persons then an independent person appointed by another authority.
11. Invitations are to be made in the following priority order:
 1. An independent person appointed to the authority living inside the authority’s area
 2. An independent person appointed to the authority living outside the authority’s area
 3. Where the authority has appointed fewer than two independent persons ,an independent person appointed by another authority
12. The panel must be appointed at least 20 working days before the date of the Council meeting at which the decision to dismiss will take place (the regulations are silent as to when the panel must meet).
13. It is expressly provided that the panel constitutes an advisory committee under s102(4) of the local Government Act 1972 which provides:

“may consist of such person (whether members of the appointing authority or authorities or not) appointed for such term as may be determined by the appointing authority or authorities”.
14. The Council therefore has the option to constitute a panel comprising wholly independent persons or a panel comprising a mix of independent persons and elected members of the Council.
15. The General Purposes Committee already contains within its Terms of Reference arrangements for the dismissal of the Head of Paid Service via the Appointments Sub-Committee. It is proposed that these Terms of Reference be extended to include the Chief Finance Officer and the Monitoring Officer and to provide for the inclusion of independent persons.
16. In the case of the Head of Paid Service there is a right for a Designated Independent Person to be appointed, preserved through the JNC terms and conditions of employment for Chief Executives, notwithstanding the introduction of these regulations. This apparent contradiction

between the Council's constitution as amended by this report and the terms and conditions of the Chief Executive has yet to be resolved by DCLG.

17. The regulations specifically state that any remuneration allowances or fees paid to any independent person must not exceed that which they already receive in respect of their role as an independent person under the Localism Act 2011.

Corporate Implications

Legal Implications

18. There is a legal requirement to incorporate the provisions as set out in Schedule 3 to The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015
19. However these new regulations do not appear at first sight to have been fully thought through in terms of their legal implications;
 - a. Even though the new IP is only needed where there is a proposal for dismissal, since dismissal will often be one of a number of available sanctions, this process will need to be used every time dismissal might arise
 - b. It is not clear whether the IP comprises only the independent members or is a Committee of the Council in which case it will include Councillors and the political proportion rules will apply
 - c. Because of the existing contractual position, if councils wish to remove the current procedures from an officer's contract, they would need to dismiss him/her and reengage them on new terms – and the dismissal would require the involvement of a DIP under the present rules

Financial Implications

20. It seems clear that there will still be the need for a DIP due to the preserved JNC terms and conditions in respect of the Head of Paid Service but this cost cannot be estimated at this stage.

Equalities Implications

21. There are no equalities implications at this stage and as such no impact assessment made. Any potential equalities implications need to form part of any hearings that take place under these amendments to the council constitution.

Conclusion and next Steps

If the recommendations in this report are agreed this matter needs to proceed to the next full Council.

Officers will keep a watching brief on developments as both the LGA and ALACE (the organisation representing Chief Executives) have given detailed written feedback setting out their concerns to the DCLG and it seems inevitable that there will be further developments.

Appendices

The following Appendices are attached:

22. Appendix A – Extract showing proposed amendments to H4 Officer Employment Procedure Rules and The General Purposes Committee Terms of Reference.

Appendix B – Extract showing proposed amendments to Part E2 General Purposes Committee Terms of Reference.

Background Papers

23. The following background paper:

(i) The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 and Explanatory Note
<http://www.legislation.gov.uk/uksi/2015/881/contents/made>