

THE LOCAL AUTHORITIES (STANDING ORDERS)(ENGLAND)(AMENDMENT) REGULATIONS 2015 – DISMISSAL OF STATUTORY OFFICERS

Governance Committee – 13 July 2015

Report of Chief Officer Legal and Governance

Status: For Decision

Also considered by: Council – 21 July 2015

Key Decision: No

This report supports the Key Aim of effective management of council resources

Portfolio Holder Cllr. Fleming

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Recommendation to Governance Committee:

That Full Council be recommended to approve the amendments to Officer Employment Procedure Rules (Appendix M of the Constitution) and paragraph 6 of the Constitution entitled “Functions of the Full Council” within Part 2 – The Council and District Council Members, in relation to the dismissal of statutory officers, attached as an Appendix to the report.

Recommendation to Full Council:

That the amendments to Officer Employment Procedure Rules (Appendix M of the Constitution) and paragraph 6 of the Constitution entitled “Functions of the Full Council” within Part 2 – The Council and District Council Members, in relation to the dismissal of statutory officers, attached as an Appendix to the report, be approved.

Reason for recommendation: To modify standing orders relating to the dismissal of statutory officers as required by the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 and to incorporate them within the Council’s Constitution.

Summary

- 1 The government has made legislative changes which require the Council to amend its standing orders insofar as they relate to the dismissal of the Council’s head of paid service, monitoring officer and the chief finance officer (which at Sevenoaks District Council is the head of paid service and s.151 officer, this being a dual

role). The report identifies the necessary changes and recommends that the Council approves them and incorporates them into the Council's Constitution.

Introduction and Background

- 2 Since the Council commenced operating executive arrangements it has been a requirement of the Local Authorities (Standing Orders) (England) Regulations 2001 ('the 2001 Regulations') that the Council makes or modifies standing orders so that they include certain provisions relating to staff and other matters. The Council's Constitution currently incorporates standing orders which comply with the requirements of the regulations.
- 3 The provisions required to be in the standing orders in relation to staff operated to require the council to appoint a "designated independent person" before it could discipline or dismiss its head of paid service, monitoring officer or chief finance officer (s.151 officer).
- 4 On 25 March, in furtherance of a long standing commitment to do so, the Secretary of State for Communities and Local Government made the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 which came into force on 11 May 2015 ('the 2015 Regulations'). The 2015 Regulations repeal the provisions of the 2001 Regulations insofar as they relate to the appointment of the "designated independent person" and make new provision about the procedure to be followed to dismiss a head of paid service, a monitoring officer or, a chief finance officer (s.151 officer). These provisions must be incorporated into the Council's standing orders "no later than the first ordinary meeting of the authority falling after 11 May 2015"
- 5 The 2015 Regulations require that before dismissing one of the officers identified above, the Council must appoint a "panel" for the purpose of advising on matters relating to the dismissal of the relevant officer. The Council must invite independent persons who have been appointed under section 28(7) of the Localism Act 2011 to be considered for appointment to the panel, with a view to appointing at least two such persons to the panel. These independent persons are those appointed by the Council in connection with the procedures for dealing with alleged breaches of the Code of Conduct for members.
- 6 The Department for Communities and Local Government have issued an explanatory memorandum to the 2015 Regulations which can be viewed at. http://www.legislation.gov.uk/uksi/2015/881/pdfs/uksiem_20150881_en.pdf

The section of the document headed "Policy background" cites issues of complexity and expense as the reasons for the legislative changes although guidance is still being sought on how the legislation is to be implemented.

Identification of Option

- 8 The requirements of the 2015 Regulations are mandatory insofar as they related to the adoption of the prescribed standing orders and therefore it is not possible to put options before the Council for consideration in this connection.

- 9 However, the Council does have a choice as to whether it appoints a standing panel or, whether it only appoints one if and when the need arises. The draft standing orders set out in the Appendix to this report envisages a panel being appointed if disciplinary action is envisaged.

Evaluation of Options

- 10 The circumstances giving rise to the need to appoint the panel are likely to occur very infrequently, if at all. It is therefore not proposed that the Council should appoint a standing panel. In the event that one was to be needed, this would be the subject of a report to Council at the time.
- 11 There is also a fundamental legal difficulty in attempting to appoint a standing panel and this lies in the need to ensure that the panel is comprised of members who are impartial. The nature of the positions to which the 2015 regulations apply is such that there could be a conflict of interest whereby one or more members may themselves be involved in the disciplinary action such as a witness to events. Clearly, any member involved in this capacity could not sit on the panel. Therefore, until a particular issue arises and the circumstances are known, it would not be possible to identify which members could and (more importantly) could not, sit on the panel.

Key Implications

Financial

There are no financial implications.

Legal Implications and Risk Assessment Statement.

It is a legal requirement that the Council has a Constitution that accords with statute.

Equality Assessment

The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

Appendices

Appendix	Amended paragraph 6 entitled “Functions of Full Council” Part 2 – The Council and District Council Members
	Amended Appendix M (Officer Employment Procedure Rules)

Background Papers:

See Appendix to Report

[The Constitution of Sevenoaks District Council](#)

[Local Authorities \(Standing Orders\)
\(England\)\(Amendment\) Regulations 2015](#)

[The Local Authorities \(Standing Orders\) \(England\) Regulations 2001](#)

[Briefing note Hoey Ainscough Associates Limited/Wilkin Chapman Goolden Solicitors](#)

[Explanatory Memorandum to The Local Authorities \(Standing Orders\) \(England\) \(Amendment\) Regulations 2015 - 2015 No.881](#)

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