

**HERTFORDSHIRE COUNTY COUNCIL**

**COUNTY COUNCIL  
TUESDAY, 21 JULY 2015 AT 10.00AM**

Agenda Item No.

**10**

**CHANGES TO THE OFFICER EMPLOYMENT PROCEDURE RULES**

Report of the Chief Legal Officer

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Executive Member: Chris Hayward, Resources & Performance

**1. Purpose of report**

- 1.1 To advise Members of Regulations which came into force on 11 May 2015 and which introduce new arrangements for dealing with disciplinary cases involving the Head of Paid Service, the Chief Finance Officer and the Monitoring Officer (“the relevant officers”).
- 1.2 To seek Member approval to changes to the Officer Employment Procedure Rules (Annex 14 of the Constitution) to give effect to these new disciplinary arrangements.
- 1.3 To recommend the establishment of a Panel to consider potential dismissal of the relevant officers as required by the Regulations.
- 1.4 To authorise the Chief Legal Officer to make any further changes to the Officer Employment Procedure Rules to bring the Constitution fully into line with the relevant Regulations relating to senior officers of the Council.

**2. Summary**

- 2.1 On 11 May 2015, Regulations came into force making revisions to the arrangements for dismissing the Head of Paid Service, the Chief Finance Officer and the Monitoring Officer. The Regulations apply to all local authorities and provide that the final decision to dismiss any of these three officers must be taken by full Council. Before making that decision, Council must consider any advice, views or recommendations from a Panel established to advise the Council on matters relating to the dismissal of the relevant officers, the conclusions of any investigation and any representations from the officer concerned.

- 2.2 Authorities must incorporate the provisions set out in the Regulations (or provisions to the like effect) in their Standing Orders (in the Council's case the Officer Employment Procedure Rules) by the first ordinary meeting of Council after 11 May 2015.

### **3. Recommendations**

- 3.1 The Employment Committee considered a report on this item of business at its meeting on 15 June 2015. The Employment Committee agreed to recommend to Council:-

*"That Council agrees:-*

- (a) The provisions set out in the Schedule 3 to the Local Authorities (Standing Orders) (England) Regulations 2001 as amended by the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 ("the amended Regulations") be incorporated into Annex 14 of the County Council's Constitution (Officer Employment Procedure Rules);*
- (b) In accordance with the amended Regulations, a committee be established under Section 102(4) of the Local Government Act 1972 for the purposes of advising the Council on matters relating to the dismissal of the Council's Head of Paid Service, Chief Finance Officer and Monitoring Officer, such Committee to be known as the Disciplinary (Statutory Officers) Panel ("the Panel");*
- (c) The membership of the Panel to comprise the smallest number of County Councillors which, together with 2 independent persons (as defined in the amended Regulations) who have accepted an invitation to be considered for appointment to the Panel issued in accordance with the amended Regulations will achieve a politically proportionate panel; such County Councillors to include the Members, at the relevant time, of the Employment Committee and additional Members appointed in accordance with the Constitution;*
- (d) The Chief Legal Officer be authorised to issue invitations to relevant independent persons for consideration for appointment to the Panel and to appoint relevant independent persons to the Panel, provided that, where disciplinary action against the Chief Legal Officer will be the subject of consideration by the Panel, the invitation will be issued and any appointments made by one of the Assistant Chief Legal Officers;*
- (e) The Chief Legal Officer be authorised to make any consequential amendments as may be necessary to the Constitution to give effect to*

*the decisions at (a) to (d) above; and*

*(f) The Chief Legal Officer be authorised to make any further amendments to the Constitution to ensure that it is compliant with the amended Regulations and any other Regulations relating to the appointment and dismissal of officers.”*

#### **4. Background**

4.1 On 25 March 2015, the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 (*SI 2015/881*) were made. They amend the Local Authorities (Standing Orders) (England) Regulations 2001 (*SI 2001/3384*) insofar as they relate to disciplinary action against the Head of Paid Service, Chief Finance Officer and the Monitoring Officer and, in their amended form, they are referred to in this report as “the amended Regulations”.

4.2 The main changes made by the amended Regulations are:

- (a) There is no longer a requirement for a report from a designated independent person recommending disciplinary action against the Head of the Paid Service, the Chief Finance Officer or the Monitoring Officer before such action is taken.
- (b) Dismissals of the Head of Paid Service, Chief Finance Officer or the Monitoring Officer must be approved by full Council before notice of dismissal is given – previously it was only the dismissal of the Head of Paid Service that required approval of full Council.
- (c) In considering any decision to dismiss, full Council must consider any advice, views or recommendations from a Panel established to advise the Council on matters relating to the dismissal of the relevant officers (“the Panel”), the conclusions of any investigation into the proposed dismissal and any representations from the relevant officer concerned.

#### **5. Revised Disciplinary Procedure**

5.1 The amended Regulations provide that the Council may not dismiss any of the relevant officers unless it follows the procedure set out below.

5.2 The Council is required to invite at least 2 relevant independent persons, defined as independent persons who have been appointed for the purposes of the members’ conduct regime introduced under the Localism Act 2011, to be considered for appointment to the Panel. The independent persons who accept the invitation must be appointed to the Panel in the following priority order:

- (a) a relevant independent person who has been appointed by the Council and who is a local government elector;
  - (b) any other independent person who has been appointed by the Council; and
  - (c) an independent person who has been appointed by another Council or Councils.
- 5.3 The Council must appoint the Panel at least 20 working days before the meeting of the Council to consider whether to dismiss a relevant officer.
- 5.4 The Council has appointed only one independent person under the Localism Act 2011. Independent Persons appointed by another Council or Councils would, therefore, need to be invited to be considered for appointment to the Panel in addition to the Council's appointed Independent Person. Any independent persons who were appointed to the Panel would have the right to vote.
- 5.5 As a committee of the Council, the Panel is subject to the normal proportionality rules unless these are waived by full Council. On current numbers, in order for 2 Independent Persons to be members of the Panel, the lowest number that the Panel could comprise is 13 (7 Conservative, 2 Liberal Democrat, 2 Labour and 2 Independent Persons). It is proposed that the Panel should consist of the relevant Independent Persons; the members of the Employment Committee at the time the disciplinary action falls to be considered and the appropriate number of additional members to ensure a politically proportionate Panel.
- 5.6 In considering any proposal to dismiss, full Council must consider any advice, views or recommendations from the Panel, the conclusions of any investigation into the proposed dismissal and any representations from the relevant officer concerned.

## **6. Changes to the Constitution**

- 6.1 The provisions set out in the Regulations (or provisions to the like effect) must be incorporated in an authority's Standing Orders (in the Council's case, the Officer Employment Procedure Rules) by the first ordinary meeting of Council after 11 May 2015. The Appendix to this report sets out the wording required to be incorporated. This will be included in the Council's Officer Employment Procedure Rules, subject to appropriate presentational and editorial adjustment.
- 6.2 The changes to the law made by the amended Regulations only apply to the relevant officers. However, in reviewing the Officer Employment Rules

in the light of the amended Regulations, it appears that there may be some areas where some relatively minor amendments may be required to bring them into fully line with the provisions of Local Authorities (Standing Orders) (England) Regulations 2001 which were unaffected by the amendments, as well as with the earlier Local Authorities (Standing Orders) Regulations) 1993, some of which are still in force. The opportunity is, therefore, being taken of seeking Members' approval to authorising the Chief Legal Officer to make any necessary further changes to the Officer Employment Rules to make them fully compliant.

- 6.3 The Constitution provides that changes to the Constitution need approval by the full Council after consideration of a report from the Chief Legal Officer.

## **7. Financial Implications**

A relevant independent person appointed to the Panel may be paid remuneration, an allowance or fees which must not exceed the level of any remuneration, allowance or fees paid to that person in respect of their role under the Localism Act 2011.

### *Background Information*

<http://www.legislation.gov.uk/uksi/2001/3384/contents/made>

<http://www.legislation.gov.uk/uksi/2015/881/contents/made>

<http://www.legislation.gov.uk/ukpga/1972/70/section/102>

<http://www.legislation.gov.uk/ukpga/2011/20/contents/enacted>

<http://www.legislation.gov.uk/uksi/1993/202/made>

Report and Minutes, Employment Committee, June 2015



1. In the following paragraphs—

- (a) “the 2011 Act” means the Localism Act 2011;
- (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) “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 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.

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

2.3. 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.

2.4. In paragraph 2.3 “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.

2.5. Subject to paragraph 2.6, the authority must appoint to the Panel such relevant independent persons who have accepted an invitation issued in accordance with paragraph 2.3 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.

2.6. The authority is not required to appoint more than two relevant independent persons in accordance with paragraph 2.5 but may do so.

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

2.8. 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.

2.9. 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.