

 <b>Employment Committee</b> <b>17 June 2015</b>		<b>Agenda Item No. 6</b>
<b>Title</b>	Amendments to Officer Employment Procedure Rules	
<b>For further information about this report please contact</b>	Graham Leach Democratic Services Manager & Deputy Monitoring Officer 01926 456114 <a href="mailto:graham.leach@warwickdc.gov.uk">graham.leach@warwickdc.gov.uk</a>	
<b>Wards of the District directly affected</b>	None	
<b>Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006?</b>	No	
<b>Date and meeting when issue was last considered and relevant minute number</b>	N/A	
<b>Background Papers</b>	Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015	

<b>Contrary to the policy framework:</b>	No
<b>Contrary to the budgetary framework:</b>	No
<b>Key Decision?</b>	No
<b>Included within the Forward Plan? (If yes include reference number)</b>	No
<b>Equality Impact Assessment Undertaken</b>	No
The report brings forward changes to the Council's Constitution that are required by legislation.	

<b>Officer/Councillor Approval</b>		
<b>Officer Approval</b>	<b>Date</b>	<b>Name</b>
Chief Executive/Deputy Chief Executive	9/6/2015	Chris Elliott
Head of Service		
CMT		
Section 151 Officer	9/6/2015	Mike Snow
Monitoring Officer	9/6/2015	Andrew Jones
Finance		
Portfolio Holder(s)	9/6/2015	Andrew Mobbs
<b>Consultation &amp; Community Engagement</b>		
HR Manager 9/6/2015		
<b>Final Decision?</b>	No	
<b>Suggested next steps (if not final decision please set out below)</b>		
The report makes proposals for the Committee to recommended changes to the Constitution by Council.		

## 1. **Summary**

- 1.1 The report brings forward proposals to amend parts of the Council's Constitution to ensure it is brought in line with the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015.

## 2. **Recommendation**

- 2.1 That the Employment Committee recommends to Council that it amends the Constitution to reflect:
- (i) the revised Responsibilities of Employment Committee, as set out at Appendix 1 to the report,;
  - (ii) the revised Officer Employment Procedure Rules, as set out at Appendix 2 to the report,; and
  - (iii) the revision to the Scheme of Delegation, as set out at Appendix 3 to the report,.
- 2.2 That subject to approval by Council of the above recommendations the Recruitment and Disciplinary Procedures relating to the Head of paid Service, Monitoring Officer and Chief Financial Officer be updated.

## 3. **Reasons for the Recommendation**

- 3.1 The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 were laid before parliament on 25 March 2015 and come into effect on 11 May 2015. Councils are required to make the changes to their standing orders as soon as possible after this date.
- 3.2 The changes relate to the processes required before notice of dismissal can be given for the posts of the Head of Paid Service, Monitoring Officer or the Chief Finance Officer. In essence the regulations -
- Require full Council approval before a notice of dismissal can be given to the Monitoring Officer or Chief Finance Officer
  - Abolish the requirement for a designated independent person (DIP) to investigate allegations of misconduct
  - Replace the DIP scheme with a requirement to have two independent persons on the disciplinary panel
  - Independent persons are those persons appointed for the purposes of the member code of conduct regime
  - Fixes the maximum amount of remuneration payable to independent persons
- 3.3 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. Provision is made for councils to make this modification no later than at the first ordinary Council meeting held after the 7 May 2015 elections (For Warwick District Council this would be 24 June 2015). The Regulations came into force on 11 May 2015.

## 4. **Policy Framework**

- 4.1 **Policy Framework** – The report does not impact on the Council's Policy Framework.

4.2 **Fit for the Future** – The report does not impact on Fit for the Future..

4.3 **Impact Assessments** – No Impact assessment has been undertaken about the recommendations in this report because it brings forward amendments required by legislation.

## 5. **Budgetary Framework**

5.1 The report does not impact on the Budgetary Framework for the Council. No specific budget was allocated each year for the Designated Independent Person and therefore the report does not bring forward any savings.

5.2 No budget will be allocated to make additional payments to the Independent Persons, should they be required to participate in a disciplinary matter. If they are required to participate in this matter the intention would be to fund this from within existing budgets.

## 6. **Risks**

6.1 The main risks associated with the proposal are associated with the cost of an investigation. It would be more than likely that any such disciplinary matter would still need to be investigated by a person independent of the Council and this would incur a cost. In addition the Council would be paying an Independent Person for their potential work on a disciplinary matter. At present there is no allocated budget for either of these matters. That said due diligence and good governance throughout the Council (including at Member level) would minimise the risk of any such disciplinary matter arising.

## 7. **Alternative Option(s) considered**

7.1 There are no alternative options considered for this report because it brings forward changes required by legislation.

## 8. **Background**

8.1 As part of the arrangements introduced in 2001, the head of paid service, the monitoring officer, and the chief finance officer were give statutory protection through the requirement to appoint a Designated Independent Person (DIP) to investigate any allegation of misconduct. The intention of this provision was to ensure that these officers could discharge their statutory duties without any fear of being influenced by elected members and being dismissed without good reason.

8.2 The DIP would have been appointed early in the procedure, when it appears to a council that an allegation of misconduct by the relevant officer requires investigation. No disciplinary action could have been taken other than in accordance with a recommendation in a report made by a DIP. In practice, often the DIP appointed by councils was a barrister with experience of employment law.

8.3 These Regulations remove the requirement to appoint a DIP. Instead the regulations require the council to invite at least two independent persons, who have been appointed for the purposes of the members' conduct regime under section 28(7) of the Localism Act 2011, to join a disciplinary panel where dismissal of any of these officers is potentially under consideration.

- 8.4 The Panel will not be quorate unless two or more independent persons accept the invitations, and the 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,
  - § an independent person who has been appointed by another council or councils.
- 8.5 The Panel must be appointed at least 20 working days before the scheduled disciplinary hearing. The final decision will be taken by full council, who must consider any advice, views or recommendations from the independent panel, the conclusions of any investigation into the proposed dismissal, and any representations from the officer concerned. Notice of dismissal can only be given with the approval of Council.
- 8.6 The Regulations also make a provision limiting the remuneration that should be paid to independent persons on the panel to the level of the remuneration which they would normally receive as an independent person in the code of conduct regime. The government intends that the new process should not involve high costs. Currently the Council makes a payment of £281 per annum to our independent persons.
- 8.7 The requirement for full Council approval before any offer of appointment or notice of dismissal is given to the head of paid service remains unchanged.

## Appendix 1

### Section 2 Council Functions

- I. **EMPLOYMENT COMMITTEE** (11 Members One of whom will be the Leader as a representative of their political group)

To exercise delegated powers as follows:

- vii. To appoint a person in relation to disciplinary investigations (including capability) involving the Head of Paid Service and Statutory Officers.
- viii. To organise a disciplinary hearing to receive the evidence of such a person and to decide the outcome of such a hearing in accordance with the Officer Employment Procedure Rules.
- ix. To appoint or dismiss chief officers as determined in accordance with the Officer Employment Procedure Rules.
- xi. To appoint a sub-committee that contains at least one member of each of the registered political groups to deal with employment related matters that fall within the jurisdiction of elected members.
- xii. The Committee (or sub-committee if acting on behalf of the Committee) to recommend to Council the appointment or dismissal of the Head of Paid Service, Monitoring Officer and Chief Finance Officer in line with the Officer Employment Procedure Rules.

Note: Where the committee or a sub-committee is involved in the appointment, discipline or dismissal of Statutory Officers (including the Head of Paid Service), the committee or sub-committee must include the Leader, along with two Independent Persons as defined under the Localism Act 2011.

## **OFFICER EMPLOYMENT PROCEDURE RULES**

### **1. Recruitment and Appointment**

- (a) Declarations
  - (i) The Council will draw up a statement requiring any candidate for appointment as an officer to state in writing whether they are the parent, grandparent, partner, child, stepchild, adopted child, grandchild, brother, sister, uncle, aunt, nephew or niece of an existing Councillor or Chief Officer of the Council, as defined in Article 12; or the partner of such persons.
  - (ii) No candidate so related to a Councillor or Chief Officer will be appointed without the authority of the relevant Chief Officer or the Head of Paid Service (especially if the identity of the related Chief Officer and relevant Chief Officer coincide).
- (b) Seeking support for appointment.
  - (i) The Council will disqualify any applicant who directly or indirectly seeks the support of any councillor for any appointment with the Council. The content of this paragraph will be included in any recruitment information.
  - (ii) No Councillor will seek support for any person for any appointment with the Council.

### **2. Recruitment of Head of Paid Service, Statutory Officers and Chief Officers**

Where the Council proposes to appoint such an officer, and it is not proposed that the appointment be made exclusively from among their existing officers, the Council will:

- (a) draw up a statement specifying:
  - (i) the duties of the officer concerned; and
  - (ii) any qualifications or qualities to be sought in the person to be appointed;
- (b) make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it; and
- (c) make arrangements for a copy of the statement mentioned in paragraph 1 and 2 to be sent to any person on request.

### **3. Appointment of the Head of Paid Service, Monitoring Officer and Chief Finance Officer**

- (a) The appointment of the Head of Paid Service will be recommended by the Employment Committee to Council and no offer will be made until Council has made this decision.
- (b) No appointment will be made to the post of the Head of Paid Service, Monitoring Officer or Chief Finance Officer where the Leader of the Executive advises the proper officer appointed for the purpose that the Executive have a well founded and material objection to the appointment of that person.

4. **Appointment of Chief Officers as defined in Article 12 (excluding the Head of Paid Service, Monitoring Officer and Chief Finance Officer)**

The appointment of Chief Officers will be made by an interviewing panel which will be the Employment Committee.

5. **Other Appointments**

Councillors will not be involved in the appointment of any officer below Chief Officer level. The responsibility for these appointments will be with the Head of Paid Service in liaison with the relevant Chief Officer.

6. **Disciplinary Action**

**(a) Head of Paid Service, Chief Finance Officer and Monitoring Officer**

A politically balanced group of no fewer than three members (along with two Independent Persons) will be appointed by the Employment Committee to consider any allegations of discipline. The Head of Paid Service may be suspended on full pay by the Employment Committee whilst an investigation takes place. The Statutory Officers may be suspended by the Head of Paid Service. In all cases the suspension will last no longer than two months.

**(b) Chief Officers**

Preliminary investigations into any disciplinary matters will be conducted by the Head of Paid Service. Where the preliminary investigation determines there is a potential case to answer, a Sub Committee of no fewer than three elected members will be established by the Employment Committee, as set out in the JNC Constitution conditions of service and salaries for Chief Officers.

**(c) Other Officers**

Councillors will not be involved in disciplinary action against any Officer below a Chief Officer.

7. **Dismissal**

**(a) Head of Paid Service, Monitoring Officer & Chief Finance Officer**

The dismissal of the Head of Paid Service, Monitoring Officer and Chief Finance Officer must be recommended by Employment Committee and ratified by Council.

Where a committee or sub-committee of the council is to consider the possible dismissal of the head of paid service, the monitoring officer or the chief finance officer it must include

- At least two independent members appointed in accordance with section 28(7) Localism Act 2011 and
- The Leader.

The committee or sub-committee must be appointed at least 20 working days in advance of the scheduled hearing.

If the committee or sub-committee is of the view that dismissal is appropriate the committee or sub-committee may only make a report to Council with its recommendation for dismissal. The committee or sub-committee is not empowered to give any notice of dismissal.

In cases where dismissal is recommended the final decision will be taken by council, who must consider any advice, views or recommendations from the committee or sub-committee, the conclusions of any investigation into the proposed dismissal, and any representations from the officer concerned.

Notice of dismissal of the head of paid service, the monitoring officer, or chief finance officer shall only be given where the Leader of the Executive advises the proper officer appointed for the purpose that the Executive have a well founded and material objection to the appointment of that person.

## **(b) Chief Officers**

The dismissal of Chief Officers will be made by a Sub Committee of Employment Committee, as set out in the JNC Constitution conditions of service and salaries for Chief Officers.



**(d) Other Officers**

Councillors will not be involved in the dismissal of any officer below Chief Officer except where such involvement is necessary for any investigation or inquiry into alleged misconduct.

**8. Appeals**

The Council's disciplinary capability and related procedures, as adopted from time to time, may allow a right of appeal to members in respect of disciplinary action and dismissals.

NB. Where a meeting of the Employment Committee is required under these terms the meeting will take place under Council Procedure rules with the press and public excluded as per the Access to Information procedure rules of the Constitution.

## **Section 4 Scheme of Delegation**

4. **Chief Executive** (and in their absence their Deputies) shall have authority to:

CE (23) The membership of the Panel(s) identified in the recruitment, disciplinary and grievance process for officers (excluding Statutory and Chief Officers) be appointed by the Chief Executive in consultation with the Chairman of the Employment Committee.