

CHESHIRE EAST COUNCIL

Constitution Committee

Date of Meeting: 18th June 2015

Report of: Head of Legal Services and Monitoring Officer

Subject/Title: The Staff Employment Procedure Rules – Legislative Changes

1.0 Report Summary

1.1 This report addresses the legislative changes introduced by the Local Authorities (Standing Orders)(England)(Amendment) Regulations 2015 and seeks authority to make the required constitutional changes.

1.2 Under the Local Authorities (Standing Orders)(England) Regulations 2001 (the 2001 regulations) councils must include certain standing orders in their constitutions, including certain provisions relating to staffing. The 2015 regulations remove the requirement for the involvement of a “designated independent person” in any proposed disciplinary action against the Chief Executive, Monitoring Officer or Chief Finance Officer. They also introduce new requirements for the procedure to be followed in such cases which councils must include in their constitutions.

2.0 Recommendations

2.1 That Council be recommended that

1. the amended Staff Employment Procedure Rules as set out in Appendix 1 to this report be included in the Constitution;
2. the Head of Legal Services be instructed to make the changes in the Constitution set out in appendix 1 of this report; and
3. the Head of Legal Services be instructed to make any minor corrections, amendments or contextual changes resulting from the above.

3.0 Reasons for Recommendations

3.1 The recommendations of this report are made in order to comply with Local Authorities (Standing Orders)(England)(Amendment) Regulations 2015 (the 2015 regulations). Under those regulations the council is required to make the changes at its first ordinary meeting after the 11th May 2015. Under the council’s constitution the proposed changes must first go to the Constitution Committee.

4.0 Wards Affected

4.1 Not directly applicable.

5.0 Local Ward Members

5.1 Not directly applicable.

6.0 Policy Implications

6.1 The changes required by the regulations affect the procedures set out in the 2001 regulations about disciplinary action that can be taken against the Head of Paid Service, Monitoring Officer and Chief Finance Officer only.

7.0 Financial Implications

7.1 The removal of the requirement to appoint a designated independent person before taking any disciplinary action against the Head of Paid Service, Monitoring Officer and Chief Finance Officer should reduce the cost of any such process if it is required.

8.0 Legal Implications

8.1 The 2015 regulations require the council to make the changes to its constitution that are set out in this report.

9.0 Risk Management

9.1 Not directly applicable.

10.0 Background

10.1 This report addresses the legislative changes introduced by the 2015 regulations and seeks authority to make the required constitutional changes. Under the 2001 regulations the council was required to incorporate certain standing orders into its constitution including standing orders about the procedures for considering disciplinary action against the Chief Executive, Monitoring Officer or Chief Finance Officer. Before doing so the council was required to appoint a designated independent person to report to it.

10.2 The 2015 regulations remove the requirement for the involvement of a “designated independent person” in any proposed disciplinary action against the Chief Executive, Monitoring Officer or Chief Finance Officer. They also introduce new requirements for the procedure to be followed in such cases which councils must include in their constitutions.

10.3 The 2015 regulations make it a requirement for the dismissal of the Chief Executive, Monitoring Officer or Chief Finance Officer to be approved by the full council before notice of dismissal is given. This is already the position under the council’s constitution where the terms of reference of the Staffing Committee include:

To undertake the recruitment and selection for the appointment of all members of the Corporate Leadership Board and formulating recommendations to the Council regarding the appointment and dismissal of the Head of Paid Service, Monitoring Officer and Chief Finance Officer.

- 10.4 The 2015 regulations remove the need to appoint a designated independent person before taking any disciplinary action against the 3 statutory officers referred to above. Instead the council must comply with a new procedure which is set out in the new standing orders the council is required to adopt. These have been incorporated into the revised version of the Staff Employment Procedure Rules attached as Appendix 1.
- 10.5 Under those rules the council must appoint at least two independent persons to the Staffing Committee or any sub-committee for when that committee or sub-committee considers the dismissal of any of the 3 statutory officers.
- 10.6 The regulations define “independent person” as those appointed by the council or another council as independent persons under the standards regime. Priority must be given to independent persons in a particular order. Firstly, those who are also local government electors. Although the regulations do not say that they must be a local government elector for the council concerned it is likely that this is what was meant. Secondly independent persons who have been appointed by the council. Thirdly, independent persons who have been appointed by any other authority.
- 10.7 Any decision-making body due to consider the dismissal of one of the 3 statutory officers must be appointed at least 20 working days before the date of the meeting at which the matter will be considered.
- 10.8 Before making a decision the full council must take into account any advice, views or recommendations of the decision-making body, the conclusions of any investigation into the proposed dismissal and any representations from the relevant officer.
- 10.9 Because a fair dismissal procedure must normally include the right of an internal appeal against dismissal it will be important to establish where in the disciplinary process the panel which includes the independent persons will be positioned. At this stage it is only changes required to the council’s constitution, including the Staff Employment Procedure Rules, which need to be implemented at the first ordinary meeting of the council following the May 2015 elections and upon which this committee needs to make recommendations. The precise disciplinary procedure can be evolved later by the Staffing Committee in consultation with affected staff.
- 10.10 Whatever process is chosen it will need to incorporate the legal right of the Cabinet members to object to a proposal to dismiss. A notice of dismissal cannot be given until either:
- the Leader has notified the dismissor that no member of the Cabinet has any objection to the dismissal;
 - no objection has been received within a prescribed period or

- the dismissor is satisfied that any objection received within that period is not material or is not well-founded.

11.0 Access to Information

11.1 The background papers relating to this report can be inspected by contacting the report writer:

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