
Report to:	Council	Date of Meeting:	21 May 2105
Subject:	Constitutional Amendments – Statutory Officers	Wards Affected:	All
Report of:	Head of Corporate Legal Services		
Is this a Key Decision?	No	Is it included in the Forward Plan?	No
Exempt/Confidential	No		

Purpose/Summary

The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 (SI 2015/881) came into force on 11 May 2015. These regulations require the Council to make certain changes to their constitution. These changes are detailed below.

Recommendation(s)

That the constitutional changes detailed in paragraphs 1.10 - 18 below be agreed.

How does the decision contribute to the Council's Corporate Objectives?

	<u>Corporate Objective</u>	<u>Positive Impact</u>	<u>Neutral Impact</u>	<u>Negative Impact</u>
1	Creating a Learning Community		✓	
2	Jobs and Prosperity		✓	
3	Environmental Sustainability		✓	
4	Health and Well-Being		✓	
5	Children and Young People		✓	
6	Creating Safe Communities		✓	
7	Creating Inclusive Communities		✓	
8	Improving the Quality of Council Services and Strengthening Local Democracy		✓	

Reasons for the Recommendation:

To comply with the new regulations cited above.

Alternative Options Considered and Rejected:

To not comply with the regulations

What will it cost and how will it be financed?

(A) Revenue Costs

Nil

(B) Capital Costs

Nil

Implications:

The following implications of this proposal have been considered and where there are specific implications, these are set out below:

Financial: Nil
Legal: These are contained within the contents of the report.
Human Resources: Appropriate notification will be provided to affected individuals which will be reflected in changes to Personnel policy.
Equality 1. No Equality Implication <input checked="" type="checkbox"/>
2. Equality Implications identified and mitigated <input type="checkbox"/>
3. Equality Implication identified and risk remains <input type="checkbox"/>

Impact of the Proposals on Service Delivery:

Nil

What consultations have taken place on the proposals and when?

The Head of Corporate Finance and ICT (FD 3556/15) and Head of Corporate Legal Services (LD 2848/15) have been consulted and any comments have been incorporated into the report.

Implementation Date for the Decision

Immediately following the Council meeting.

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Background Papers:

There are no background papers

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1. Introduction/Background

- 1.1 The Council is obliged by virtue of these new regulations to review its constitution, to accommodate changes to the procedure for disciplining and dismissing statutory officers. Statutory officers for these purposes are the Head of Paid Service (Chief Executive), the Section 151 Officer (Head of Corporate Finance and ICT) and the Monitoring Officer (Head of Corporate Legal Services).
- 1.2 This modification must be made by the first ordinary council meeting held after the 7 May 2015 elections. Hence this matter has not previously been considered by the Audit and Governance Committee as it would be in the normal course of events.
- 1.3 In 2013, the government conducted a consultation to remove the appointment of the Designated Independent Person (DIP) to investigate allegations of misconduct by these statutory local government officers in England.
- 1.4 The finalised regulations now provide that the final decision to dismiss any statutory officer must now be taken by full Council. Before taking that decision, the Council must invite at least two Independent Persons to be members of a Panel, and take into account any recommendation of that Panel.
- 1.5 For these purposes, the Council's equivalent to 'the Panel' are the Employment Procedure Committee and Appeal Committee. The Council would now be required to include a minimum of two Independent Persons onto these Committees. The invitations for the Independent Persons should be sent in accordance with the following priority:
 - 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, and
 - Any Independent Person who has been appointed by another Council or Councils
- 1.6 Currently the Council appoints two Independent Persons under the Localism Act 2011 (Section 28(7) refers) for the purposes of its standards administration with respect to Members and the Member Code of Conduct. The two current Independent Persons are both currently local government electors.
- 1.7 These Committees remain committees of the Council and therefore the proportionality rules would still apply. Any recommendation arising from the Committee's considerations would include the views of the Independent Person.
- 1.8 When the matter came to be considered at full Council, it would need to show before it took the decision to dismiss a statutory officer that it had taken into account:
 - Any advice, views or recommendations of the Panel
 - The conclusions of any investigation into the proposed dismissal
 - Any representations from the relevant statutory officer

- 1.9 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 normal role with respect to standards and the Member Code of Conduct. Currently this Council does not pay any such allowance.

Proposed Changes to the Constitution

- 1.10 It is proposed that the Terms of Reference for these two Committees (Chapter 7) and associated paragraphs in Chapter 10 of the constitution are amended by replacing the current text with the information below:
- 1.11 Chapter 7 paragraph 1(5&6) General Terms of Reference and Membership of Regulatory and Non- Executive Committees – Appeals Committee & Employment Procedure Committee

Membership

Functions

Appeals Committee

All Members of the Council to form a Panel from which 3 Members are selected to form a politically balanced Committee.

Where the matter to be considered is disciplinary and/or dismissal (not dealt with elsewhere) of a statutory officer, the Committee will invite a minimum of two Independent Persons onto the Committee in accordance with the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 (SI 2015/881) or as may be amended from time to time.

Employment Procedure Committee

All Members of the Council to form a Panel from which 3 Members are selected to form a politically balanced Committee.

At least one Member of the Cabinet to be included on the Committee.

Where the matter to be considered is disciplinary and/or dismissal (not dealt with elsewhere) of a statutory officer, the Committee will invite a minimum of

The appointment, discipline and dismissal of Chief Officers (as defined in Section 2 of the Local Government and Housing Act 1989).

The appointment of Chief Executive as the Head of Paid Service for submission to the Council.

Recommendations as to dismissal for the Chief Executive, the Section 151 Officer and the Monitoring Officer and

two Independent Persons onto the Committee in accordance with the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 (SI 2015/881) or as may be amended from time to time.

appropriate action in relation to alleged misconduct.

1.12 Chapter 7 paragraph 48 - Appeals Committee:

“To consider any appeal from the Chief Executive, Monitoring Officer or S151 Officer against the decision of any Committee or Sub-Committee to make recommendations to Council thereon.”

1.13 Chapter 7 paragraphs 63– Employment Procedure Committee:

“To consider and make recommendations to Council as to the appropriate action to be taken in respect of any report submitted in relation to the alleged misconduct by the Chief Executive, the Council’s Section 151 Officer or the Monitoring Officer”

1.14 Delete Chapter 7 paragraph 64

1.15 Chapter 10 paragraph 180 – Disciplinary Action

“The Chief Executive, Monitoring Officer and Chief Finance Officer may be suspended as a precaution whilst an investigation takes place into alleged misconduct. The suspension will be on full pay and last no longer than two months, unless otherwise agreed by the Employment Procedure Committee or Appeals Committee as appropriate”

1.16 Delete Chapter 10 paragraphs 180-1

1.17 Chapter 10 paragraph 192 – Redundancy, Capability and Ill Health

Any issues relating to capability, ill-health or redundancy in respect of the Chief Executive or a Chief Officer will be dealt with in accordance with the local procedures contained within the Council’s Personnel Manual.

1.18 The above paragraphs are the tailored amendments to suit the Council’s constitution. The regulations prescribe a number of additional matters which the Council must incorporate into its constitution as follows:

It is proposed that these further amendments be incorporated into Chapter 10 Section J - Employment - of the Constitution.

- “For the purposes of this section a “relevant officer” means the chief finance officer, head of the authority’s paid service or monitoring officer, as the case may be.
- A relevant officer may not be dismissed by an authority unless the procedure set out in this constitution is complied with.

- The authority must appoint to either the Employment Procedure Committee or the Appeals Committee (as necessary) two or more independent persons in accordance with the following priority order—
 - a relevant independent person who has been appointed by the authority and who is a local government elector;
 - any other relevant independent person who has been appointed by the authority;
 - a relevant independent person who has been appointed by another authority or authorities.

- The authority must appoint any Independent Members to either the Employment Procedure Committee or the Appeals Committee at least 20 working days before the relevant meeting.

- 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—
 - any advice, views or recommendations of the Committee;
 - the conclusions of any investigation into the proposed dismissal; and
 - any representations from the relevant officer.

- Any remuneration, allowances or fees paid by the authority to an independent person appointed to either the Employment Procedure Committee or the Appeals Committee 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 Localism Act 2011.”