



Council 13 July 2015

Changes to the Constitution – Article 9 and Officer Employment Procedure Rules

Purpose of report

To consider proposals for changes to the Constitution following the coming into force of the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015.

Attachment(s)

A – Proposed revised Articles 9.4 and 9.6 and proposed revised Part 4.7 – paragraph 10(b)

1.0 Background

- 1.1 The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 came into force on 11 May 2015. These Regulations, which apply to all principal Councils in England, change the disciplinary process for the Council's statutory officers (i.e. the Head of Paid Service, the Monitoring Officer and the Chief Finance Officer).
- 1.2 The Regulations remove the requirement that a Designated Independent Person (DIP) is appointed to investigate and make binding recommendations on any proposed dismissal on disciplinary grounds of statutory officers..
- 1.3 The Regulations provide that to replace the DIP process, decisions will be taken by full Council after the Council has considered:
 - any advice, views or recommendations from an Independent Panel
 - the conclusions of any investigation into the proposed disciplinary action
 - any representations from the officer concerned.

2.0 The Independent Panel

- 2.1 In the case of the proposed dismissal of a statutory officer, the Council is required to invite Independent Persons who have been appointed for the purposes of the councillors' conduct regime under section 28(7) of the Localism Act 2011 to form an Independent Panel. These invitations must include any of the Councils own Independent Persons who are electors for the Council's area. An Independent Panel will be formed if two or more Independent Persons accept the invitations and must be in place at least 20 working days before the meeting at which the decision whether to dismiss will be taken.
- 2.2 The invitations to Independent Persons need to be issued with the following order of priority:
 - i) an Independent Person who has been appointed by the Council and who is a local government elector for the Council's area;
 - ii) any other Independent Person who has been appointed by the Council; and
 - iii) an Independent Person who has been appointed by another Council or Councils.
- 2.3 Provision iii) permits Independent Persons appointed by other Councils as part of their conduct regime to be appointed as a member of an Independent Panel formed by this Council to advise and make recommendations on proposed disciplinary proceedings against statutory officers.

- 2.4 The Regulations also make a provision limiting the remuneration that may be paid to Independent Persons on the Panel to the level of the remuneration which they would normally receive as an Independent Person within the conduct regime. The Independent Person currently receives an annual allowance of £1094 (25% of the Basic Allowance for Councillors).
- 2.5 The Council has appointed Mrs Vivienne Barnard as its Independent Person and Mr Andrew Sortwell as the Reserve Independent Person. Both have been appointed under section 28(7) of the Localism Act 2011 and are therefore eligible for appointment to an Independent Panel established by this Council or, where invited, to join a Panel established by another Authority..
- 2.7 The Council will therefore need to consider if it wishes to include reference to the legal minimum of two Independent Persons in relation to the constitution of an Independent Panel or should a greater number be specified in this Council's Constitution? It should be noted that wording indicating a minimum of two Independent Persons would not prevent additional Independent Members being appointed to a Panel if required.

3.0 Investigation

- 3.1 There remains a need for a thorough and fair investigation to be carried out in order to satisfy employment regulations and the Regulations are silent on who should carry out such an investigation. A suitably qualified and independent investigator would therefore need to be appointed to undertake this aspect of the procedure. It is anticipated that any such investigator will also provide information/advice to the Independent Panel.

4.0 Constitution

- 4.1 The changes to the procedure for taking disciplinary action against the statutory officers of the Council required by the Regulations will need to be incorporated into the Council's Constitution. Article 9 and Part 4.7 (Officer Employment Procedure Rules) will therefore need to be revised and the amendments proposed are set out in Appendix A.

5.0 Equality and Diversity Implications

- 5.1 There are no equality and diversity implications arising from this report

6.0 Legal Implications

- 6.1 The legal implications of the Regulations are set out above.

7.0 Risk Management

- 7.1 Failure to revise the Council's Constitution to accord with the provisions of the Regulations would leave the Council with a flawed procedure for taking any disciplinary action against its statutory officers. There are no significant risks arising from the adoption of the proposed amendments.

8.0 Resource and Financial Implications

- 8.1 There are no immediate financial implications arising from this report. Should an Independent Panel need to be convened in the future, the Panel members will be remunerated up to the limit set out in paragraph 2.4.

9.0 Constitutional Implications

- 9.1 The Constitutional implications are set out in the body of the report and Appendix A.

10.0 Corporate Outcomes

10.1 This report and the recommended amendment to the Constitution impacts on the Effective Management outcome within the Corporate Plan.

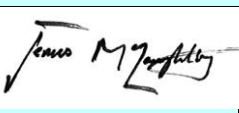
11.0 Recommendation

11.1 The Council is recommended to

- i) Adopt the amendments to the Constitution set out in Appendix A
- ii) Approve delegated authority being given to the Head of Resources and Organisational Development
 - a. to issue invitations to Independent Persons and make appointments to establish an Independent Panel to advise and make recommendations to Council on proposed disciplinary action against the Council’s statutory officers
 - b. to approve the remuneration to be paid to the members of an Independent Panel, up to the maximum amount permitted by the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015.
 - c. to appoint a suitably qualified person to carry out a full and thorough investigation into the allegations and submit a report on the findings of such an investigation to the Independent Panel.

Reason – to ensure that the Council’s Constitution is legally robust to manage any disciplinary matters affecting the Council’s statutory officers)

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Legal	Power: Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015. Local Government and Housing Act 1989			
	Other considerations:			
Background Papers:				
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Date: 29 June 2015				
CFO		DEP MO 3/7/15		CX

Proposed revision

Article 9

9.4 Role of the Independent Person

- a) The Localism Act 2011 provides that the Independent Person
- must be consulted by the authority before it makes a finding as to whether a member has failed to comply with the Code of Conduct or decides on action to be taken in respect of that member (this means on a decision to take no action where the investigation finds no evidence of breach or, where the investigation finds evidence that there has been a breach, on any local resolution of the complaint, or on any finding of breach and on any decision on action as a result of that finding);
 - may be consulted by the authority in respect of a standards complaint at any other stage; and
 - may be consulted by a member or co-opted member of the District Council or of a Parish Council against whom a complaint has been made.
- b) East Northamptonshire Council will appoint, by agreement of the majority of councillors at a (full) Council meeting, one person to carry out the duties of an Independent Person in relation to its adopted procedure for dealing with Complaints against Councillors. It will also appoint by the same process a reserve Independent Person to act if the Independent Person is unavailable to act due to illness or holiday or other circumstance (including conflict of interest in the case of appeals).
- c) The 'call to action' of the reserve Independent Person will be made by the Monitoring Officer and will be reported in their Quarterly Activity Report to the Joint Standards Complaints Committee.
- d) The Independent Person (and reserve) will be offered, and expect to undertake, appropriate training for their role.
- e) The Independent Person (and reserve), when acting in this role, and in the role of being a member of an Independent Panel as set out in f) below, is expected to abide by the Councillors Code of Conduct outlined in the East Northamptonshire Council Constitution and will sign an undertaking to that effect on appointment.
- f) The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 provides that the Independent Person (and reserve) may be invited to be a member of an Independent Panel to advise and make recommendations on the taking of disciplinary action against a Council's Head of Paid Service; Monitoring Officer or Chief Finance Officer.

9.6 Remuneration of the Independent Person

- a) As the Independent Person is not a member of the authority or of its committees or sub committees, the remuneration of the Independent Person does not fall within the scheme of members' allowances, and can therefore be determined without reference to the Independent Remuneration Panel.

b) In comparison to the current Chairman of the previous Standards Committee, the role of Independent Person is likely to be less onerous. The key activities will be:

- being available for consultation by the Monitoring Officer at the following stages of a complaint-
- initial assessment
- after production of an Investigation Report where the Monitoring Officer is considering 'other action'.
- Attendance by invitation at Hearing Panels in order to present their views (they will not be voting or co-opted members)
- Being available for consultation by members against whom a complaint has been made.

c) The Independent Person will be paid at 25% of the basic councillor's allowance (plus mileage) to reflect the above responsibilities. The reserve will be paid a retainer of 10% which would include:

- attendance by invitation at the quarterly meetings of the Joint Standards Complaints Committee (for training purposes only)
- carrying out the duties of the Independent Person for up to 4 calendar weeks in any 12 months

Duties for longer periods than 4 weeks would be paid pro-rata to the allowance for the Independent Person.

d) Any member of an Independent Panel established under the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 to consider disciplinary action against the Head of Paid Service; the Monitoring Officer or the Chief Finance Officer may be remunerated up to the amount of the annual allowance paid to the Council's Independent Person appointed under section 28(7) of the Localism Act 2011.

Part 4.7 - Officer Employment Procedure Rules

(b) Independent ~~person. Panel~~ No other disciplinary action may be taken in respect of any of those Officers except ~~in accordance with~~ by the full Council in accordance with The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015. These include consideration by full Council of

- any advice, views or recommendations from an Independent Panel
- the conclusions of any investigation into the proposed disciplinary action
- any representations from the officer concerned. ~~following a full and thorough investigation of the allegation.~~

(c) An Independent Panel established under the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 shall consist of
(Composition to be determined by Council)