

**LOCAL AUTHORITIES (STANDING ORDERS) (ENGLAND) (AMENDMENT)
REGULATIONS 2015**

To: **Constitution and Ethics Committee**

Date: **23rd June 2015**

From: **LGSS Director Law, Property and Governance**

Electoral division(s): **All**

Purpose: **To consider proposed changes to the Council's Constitution.**

Recommendation: **That the Committee recommend to full Council that Part 4.7 of the Constitution (Officer Employment Rules) be amended as set out in Appendix A to this report.**

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1. BACKGROUND

- 1.1 Parliament has approved changes to the Local Authorities (Standing Orders) (England) Regulations 2001. The Regulations set out provisions the Council is required to have in its Constitution. Amending regulations means the Council has to make changes to the Officer Employment Procedure Rules in the Constitution. It must do so at the first ordinary meeting following the annual meeting, which for Cambridgeshire is 21st July 2015.
- 1.2 The changes are to the rules relating to the disciplinary action against, or the dismissal of, the head of paid service, chief financial officer and monitoring officer.

2. THE PREVIOUS RULES

- 2.1 The 2001 Regulations contained these provisions:
 - No disciplinary action could be taken against the head of paid service, chief financial officer or monitoring officer other than in accordance with a recommendation in a report made by a “designated independent person”.
 - The designated independent person was such person as may be agreed between the Council and the relevant officer. If there was no agreement, the designated independent person would be nominated by the Secretary of State.
 - The designated independent person had statutory investigative powers, including access to documents and a right to require members of staff to answer questions.
 - The Council could suspend relevant officers for the purpose of investigating alleged misconduct but only for a period of up to two months. The designated independent person had power to extend or to revoke periods of suspension.
 - The designated independent person was required to make a report stating whether (and, if so, to what extent) the evidence supported any allegation of misconduct, and recommending any disciplinary action that appeared to them to be appropriate.
 - A decision to dismiss the head of paid service could only be taken by full Council.

3. THE NEW RULES

- 3.1 The previous rules are revoked entirely, apart from the requirement that a decision to dismiss the head of paid service could only be taken by full Council. The new rules do the following:
 - They remove the role of the designated independent person.
 - They apply only to the dismissal of the head of paid service, chief financial officer and monitoring officer and not to disciplinary action short of dismissal.
 - They remove the restriction on suspension of these officers during investigation of misconduct.

- They extend the provision that only full Council can dismiss the head of paid service to include the dismissal of the head of paid service and monitoring officer. (In fact, the Council's current employment procedure rules already make this a Council decision for all three officers.)
- They state that, before Council considers whether to dismiss these officers, it must convene a panel made up at least two "independent persons" to offer advice to the Council. These are the same independent persons appointed under the Localism Act to advise on standards issues. If the Council cannot recruit two independent persons to the panel it has appointed, it may invite independent persons appointed by another council.
- The panel of independent persons would review any recommendation for dismissal made by the Staffing and Appeals Committee and its advice would be considered by full Council before a decision on the recommendation is made.
- The Council can appoint more than two independent persons to a panel.
- Although the Regulations are not clear on this point, the Department for Communities and Local Government has advised that the panel is to be made up solely of independent persons, with no councillor representation.

4. THE REASONS FOR THE CHANGES

- 4.1 An Explanatory Memorandum to the new Regulations sets out the policy justification for the changes. It states:

There have been for some time concerns that the DIP process in its application to councils is in practice complex and expensive. It has placed councils as the employer at a great disadvantage in comparison to the position of the employee, particularly given that the recommendation of the DIP must be followed. The Local Government Association Group has estimated that the minimum legal cost of the process is £100,000, excluding the cost of the investigation, preparing the case and briefing lawyers. The DIP process is time consuming particularly where the council and the senior officer concerned could not agree on a DIP, where the process can take over 15 months to reach completion.

In addition, where there are disciplinary actions against these most senior officers, there have been some suggestions that some councils prefer to negotiate severance payments rather than go through the formal DIP process. This is evidenced in the House of Commons Communities and Local Government Committee's report, which highlights the view of the Local Government Association witness that undertaking a performance management process for top staff can currently be "very damaging and timing consuming." The Government believes that such a process is not appropriate as it defeats the purpose of having the DIP process in place. Councils ought to act in the best interest of local taxpayers and not be paying inflated sums to senior officers in order to avoid taking the costly and bureaucratic DIP route.

These Regulations simplify, as well as localise, the disciplinary process for the most senior officers by removing the bureaucratic and mandatory requirement that a DIP should be appointed. In place of the DIP process, the decision will be taken

transparently by full council, who must consider any advice, views or recommendations from an independent panel, the conclusions of any investigation into the proposed dismissal, and any representations from the officer concerned. This means that councils can consider and decide the best disciplinary process that will deliver value for money for their local taxpayers, whilst retaining independent scrutiny.

5. PART 4 – RULES OF PROCEDURE

- 5.1. Details of the suggested revisions to Part 4.7 of the Constitution (Officer Employment Rules) are set out in **Appendix A**. Deletions are denoted by strike through text and additions/amendments are denoted by underlined text.

SOURCE DOCUMENTS	LOCATION
Constitution	http://www.cambridgeshire.gov.uk/info/20050/council_structure/288/councils_constitution
The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015	http://www.legislation.gov.uk/ukxi/2015/881/contents/made