

WIRRAL COUNCIL

STANDARDS AND CONSTITUTIONAL OVERSIGHT COMMITTEE

1 July 2015

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| SUBJECT: | CONSTITUTIONAL AMENDMENTS REQUIRED UNDER THE LOCAL AUTHORITIES (Standing Order) (England) (Amendment) REGULATIONS 2015 |
| WARD AFFECTED: | N/A |
| REPORT OF: | MONITORING OFFICER |
| KEY DECISION? | NO |

1. EXECUTIVE SUMMARY

- 1.1 This report provides details of changes that must be made to the Council Constitution to give effect to The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 (SI2015/881) (“the Regulations”).
- 1.2 The Regulations came into force on 11 May 2015 and requires the Council to make certain changes to its Constitution relating to disciplinary action/arrangements relating to the Head of Paid Service, Monitoring Officer and Chief Finance Officer.
- 1.3 The changes to the Constitution must be made no later the first ordinary meeting of Council after 11 May 2015 (as prescribed by the Regulations).

2.0 BACKGROUND

- 2.1 The Council is required under the Regulations to review its Constitution and give effect to the Regulations which specifically relate to changes to the procedure for disciplining and dismissing statutory officers.
- 2.2 Statutory officers for these purposes are the Head of Paid Service, the Section 151 Officer and the Monitoring Officer (“Statutory Officers”).
- 2.3 There have been for some time concerns that the Designated Independent Person process (“DIP”) (required to be followed for the Statutory Officers) is in practice complex and expensive. It was suggested that it 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.
- 2.4 In 2013, the government conducted a consultation to remove the appointment of the DIP to investigate allegations of misconduct by the Statutory Officers.
- 2.5 The consultation resulted in the Regulations being enacted which provide that the final decision to dismiss any of the Statutory Officers must now be taken by Full Council;

and before taking such a 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.

- 2.6 The 'Panel' is defined under the Regulations as a committee appointed by the Council for the purposes of advising the Council on the dismissal of relevant officers of the Council – namely, the Council's Employment and Appointments Committee and the Chief Officers Employment Disciplinary Sub-Committee.
- 2.7 Under the Regulations, the Council is required to include a minimum of two Independent Persons on these Committees for the purposes of dealing with disciplinary action against any of the Statutory Officers. There is no maximum number of Independent Persons that has been prescribed under the Regulations.
- 2.8 The appointment of the Independent Persons must be made at least 20 working days before the meeting of Full Council convened to consider whether or not to approve a proposal to dismiss any of the Statutory Officers.
- 2.9 For the purposes of the Regulations, the Independent Persons appointed to the Standards and Constitutional Oversight Committee (pursuant to the Localism Act 2011) shall also be the Independent Persons capable of appointment to the Council's Employment and Appointments Committee and the Chief Officers Employment Disciplinary Sub-Committee.
- 2.10 To ensure there is no undue delay in appointments, procedure and practice in dealing with disciplinary matters, the Regulations do permit the use, in priority order, of other Independent Persons. The order is as follows:
 1. An Independent Person who has been appointed by the Council and who is a local government elector;
 2. Any other Independent Person who has been appointed by the Council, and
 3. Any Independent Person who has been appointed by another Council or Councils
- 2.11 The Council's current Independent Persons are
 - Brian Cummings;
 - Chris Jones; and
 - Ronald Samuel Jones.
- 2.12 Invitations to all the current Independent Persons appointed to the Standards and Constitutional Oversight Committee to be also appointed to the Council's Employment and Appointments Committee and the Chief Officers Employment Disciplinary Sub-Committee for the purposes of the Regulations shall be sent providing Council's approves the proposed changes/recommendations set out in this report.
- 2.13 All three current Independent Persons are local government electors.

- 2.14 Unless two or all of the current Independent Persons confirm they do not wish to be considered for the appointment (under the Regulations), the Council will not seek to make any more Independent Person appointments under the Regulations using the above mentioned priority order at this time.
- 2.15 It is therefore proposed that (subject to paragraph 2.12 and 2.14 above) all current (and any future) Independent Person appointments made under section 28(7) Localism Act 2011, be appointed to the Council's Employment and Appointments Committee and the Chief Officers Employment Disciplinary Sub-Committee for the purposes of the Regulations.
- 2.16 However to ensure legal and procedural efficacy, authority is sought from Council for an appropriate Chief Officer of the Council to invite another relevant Independent Person(s) (in priority order) for the purposes of the Regulations should the number of Independent Persons appointed fall below the minimum of two as prescribed by the Regulations. It is proposed that the Chairperson of the Employment and Appointments Committee, in consultation with the spokesperson of the other political groups, have delegated power to formally appoint and co-opt such Independent Person(s) to the Council's Employment and Appointments Committee and the Chief Officers Employment Disciplinary Sub-Committee. All such appointments shall be reported to the next Ordinary meeting of Council after the appointment is made.
- 2.17 Any remuneration, allowances or fees paid by the Council to an Independent Person appointed to the Council's Employment and Appointments Committee and the Chief Officers Employment Disciplinary Sub-Committee pursuant to the Regulations must not exceed the level of remuneration, allowances or fees payable to that Independent Person in respect of that their normal role with respect to standards and the Member Code of Conduct matters. Currently, the Council pays each Independent Person an allowance of £25 for each meeting of the Standards and Constitutional Oversight Committee attended, together with travel expenses only incurred in undertaking their role. It is proposed that this be extended to their role on the Council's Employment and Appointments Committee and the Chief Officers Employment Disciplinary Sub-Committee.
- 2.18 The Council's Employment and Appointments Committee and the Chief Officers Employment Disciplinary Sub-Committee remain committees of the Council and therefore the proportionality rules still apply. Any recommendations arising from these Committees considerations would include the views of the Independent Persons.
- 2.19 At the relevant meeting of Full Council, it would need to show before it took the decision to dismiss any of the Statutory Officers that it had taken into account of:
- Any advice, views or recommendations of the Council's Employment and Appointments Committee and the Chief Officers Employment Disciplinary Sub-Committee (as applicable);
 - The conclusions of any investigation into the proposed dismissal; and
 - Any representations from the relevant Statutory Officer.

2.20 The proposed changes required to the Constitution are set out at Appendix 1 to this report.

3.0 RELEVANT RISKS

3.1 The Council has a legal obligation to comply with the Regulations. Failure to comply would render any disciplinary decision/action considering/proposing the dismissal of any of the Statutory Officers challengeable.

4.0 OTHER OPTIONS CONSIDERED

4.1 No other options were considered. The changes proposed give effect to the Regulations.

5.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS

5.1 There are no implications for Voluntary, Community and Faith groups arising from this report.

6.0 RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS

6.1 The Regulations supersede and change the terms and conditions of the Statutory Officers in that it removes their previous entitlement to have disciplinary matters relating to dismissal addressed under the DIP process.

6.2 The Head of Human Resources and Occupational Development will formally advise the Statutory Officers of the changes once the changes are approved.

7.0 LEGAL IMPLICATIONS

7.1 The legal implications are set out within this report.

8.0 EQUALITIES IMPLICATIONS

8.1 There are no specific discrimination issues arising from this report.

9.0 CARBON REDUCTION IMPLICATIONS

9.1 There are no carbon reduction implications in this report.

10.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS

10.1 There are no planning and community safety implications in this report.

11.0 RECOMMENDATIONS

11.1 That the Committee recommends to Council:

- a) That the proposed changes to the Council's Constitution be approved.
- b) That the Monitoring Officer be authorised to invite the Council's current Independent Persons appointed under section 28(7) Localism Act 2011 to be considered for appointment to the Council's Employment and Appointments Committee and the Chief Officers Employment Sub-Committee where matters relating to the dismissal of the Head of Paid Service, Monitoring Officer or Chief Finance Officer are to be considered.
- c) Upon any of the said Independent Persons referred to in b) above confirming in writing to the Monitoring Officer their willingness to be considered for appointment to the Council's Employment and Appointments Committee and the Chief Officers Employment Sub-Committee pursuant to The Local Authority (Standing Order) (England) (Amendment) Regulations 2015, their appointment shall be deemed to take effect.
- d) Where the number of Independent Persons appointed to the Council's Employment and Appointments Committee and the Chief Officers Employment Sub-Committee under the Regulations falls below two and undue delay and/or a significant adverse impact is likely to arise in relation to the matter relating to the dismissal of the Head of Paid Service, Monitoring Officer or Chief Finance Officer:
 - i. a relevant Chief Officer of the Council shall be authorised to invite (in priority order) up to two Independent Person(s) as defined by The Local Authority (Standing Order) (England) (Amendment) Regulations 2015 to be considered for appointment to the Council's Employment and Appointments Committee and the Chief Officers Employment Sub-Committee; and
 - ii. the Chairperson of the Employment and Appointment Committee, in consultation with the relevant spokespersons of the other political groups, shall have delegated power to appoint and co-opt the Independent Person(s) duly invited under d)(i) above to the Council's Employment and Appointments Committee and the Chief Officers Employment Disciplinary Sub-Committee so as to give effect to The Local Authority (Standing Order) England) (Amendment) Regulations 2015.
- e) That the Head of Human Resources and Occupational Development shall have delegated power to make such changes considered necessary, in consultation with the Chairperson of the Employment and Appointments Committee, to any employment/disciplinary policies, arrangements and practices so as to give effect to The Local Authority (Standing Order) (England) (Amendment) Regulations 2015.

12.0 REASON FOR RECOMMENDATION

12.1 The recommendations are considered necessary to give effect to the Regulations.

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APPENDICES

Appendix 1 – Proposed changes to the Constitution – The Local Authority (Standing Order)(England)(Amendment) Regulations 2015

REFERENCE MATERIAL

The Local Authority (Standing Order)(England)(Amendment) Regulations 2015

Explanatory Note to the said Regulations