

COUNCIL

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MODIFICATION TO PRESCRIBED STANDING ORDERS RELATING TO THE DISMISSAL OF STATUTORY OFFICERS

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Summary

This report advises the Council of changes required to statutory Standing Orders contained in the Employment Rules in the Constitution. These revisions are required under the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 and relate to the procedure for disciplinary action against, and the dismissal of, the Council's Head of Paid Service (Chief Executive), Monitoring Officer (Assistant Director, Legal and Corporate Services) and Chief Finance Officer.

1. Budget and Policy Framework

1.1 This is a matter for Full Council.

1.2 The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 require that at the first ordinary meeting after 11 May 2015, the Council must make changes to statutory standing orders contained in the Employment Rules relating to the dismissal of the Head of the Paid Service, Monitoring Officer or Chief Finance Officer.

2. New Regulations Relating to Dismissal of Senior Officers

2.1 The Council is required to include in its Constitution, Standing Orders which deal with the appointment and dismissal of staff. On 25 March 2015, the former Secretary of State for Communities and Local Government made the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015. The Regulations change the procedure which local authorities must follow before dismissing a Head of Paid Service, a Monitoring Officer or a Chief Finance Officer (the Statutory Officers).

2.2 The previous provisions required the appointment of a Designated Independent Person to undertake an investigation where disciplinary proceedings were contemplated against a Statutory Officer. The Council or a

relevant Committee was obliged to consider that report before making a decision involving disciplinary sanction or dismissal of a Statutory Officer. Under the previous rules, only Full Council could dismiss the Head of Paid Service. The Monitoring Officer and Chief Finance Officer could be dismissed by a Committee.

- 2.3 The 2015 Regulations have changed the procedure. The requirement to appoint a Designated Independent Person to undertake an investigation has been removed. The new Regulations now require that, before dismissing a Statutory Officer, the Council must appoint a Panel, which will be a Committee of the Council, for the purposes of advising on matters relating to the dismissal of the relevant officer. The Panel must be appointed at least 20 days before the relevant meeting of Full Council. The Council must invite Independent Persons (who have been appointed under Section 28(7) of the Localism Act 2011) to sit on the Panel and must appoint at least two such persons to the Panel. These Independent Persons (IPs) are those appointed to support the Councillor Conduct Committee to deal with alleged breaches of the Code of Conduct for Members. The regulations set out a priority order for sending out these invitations, which can include approaching an Independent Person who has been appointed by another Council or Councils.
- 2.4 The Panel, when it has concluded its deliberations, must report to Council and unlike the previous provisions, only the Council can agree to dismiss the three Statutory Officers (other than just the Chief Executive).
- 2.5 The Department for Communities and Local Government (within the explanatory memorandum to the 2015 Regulations) cites issues of complexity and expense associated with the previous regime as the reasons for bringing forward this legislative change. The new Regulations seek to introduce a new streamlined procedure while attempting to retain an independent check within the system by giving 'Independent Persons' (IP) appointed to support the Members' conduct framework a role in the disciplinary and dismissal process for these three officers.

Options

- 2.6 Whilst the Statutory Officers have been consulted, these are statutory procedures and the Council has no option other than to adopt them. Changes will be required to the contracts of employment for these three officers to reflect removal of the requirement to appoint an Independent Person to undertake an investigation before any decisions on disciplinary action or dismissal are taken. It will also be necessary to remove a right of appeal against dismissal to an Appeals Sub Committee of the Employment Matters Committee from the contracts of employment for these three officers as full Council will take any dismissal decisions in future thereby making it impossible for Member involvement in an appeals process.
- 2.7 The Council could choose to appoint a standing Panel as a Committee of the Council in pursuance of the new standing order or to take no action at this stage and appoint a Panel as and when required.

2.8 It is proposed to bring forward a recommendation to a future meeting of the Council on the establishment and composition of a Panel and associated procedures. This will provide time to consider the options and some related issues including:

- the identity of IPs who may be invited to sit on the Panel. Medway Council has appointed two IPs to support the Councillor Conduct Committee but it may be advisable to have designated reserves should either of them be unwilling or unavailable to participate
- the position of an Independent Person (IP) appointed to the Panel as it is arguable such a person would become disqualified from holding their position in relation to the Councillor Conduct regime under section 28(7) of the Localism Act if they become a voting co-opted member of a Council Committee. It may be necessary to make them non-voting Members of the Panel and to include Councillors with voting rights on the Committee
- the option of including an employment expert as a member of the Advisory Panel and
- whether or not an independent investigation should be commissioned and reported to the Panel to inform its deliberations before it makes recommendations to Full Council.

3. Revisions to the Employment Rules

3.1 Officers have taken this opportunity to review and revise the Employment Rules in their entirety to improve the flow of the text, correct typographical errors and reflect more closely the wording of the statutory standing orders on the appointment and dismissal of staff as set out in the Local Authorities (Standing Orders) (England) Regulations 2001. The revised text as set out in Appendix 1 does not change established arrangements and practice but does provide a better framed and more cohesive set of Employment Rules. The current Rules are set out in Appendix 2.

3.2 The changes required to comply with the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 are highlighted in bold in paragraphs 4.9, 4.10 and 4.15 of Appendix 1.

4. Financial, Legal and Risk Management Implications

4.1 The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 came into force on 11 May 2015. The Regulations introduce new arrangements for dealing with disciplinary cases involving three statutory officers: the Head of Paid Service, Monitoring Officer and Chief Finance Officer. The new Regulations contain requirements for councils to amend their Standing Orders.

4.2 Article 4 of Chapter 2 of the Council's Constitution provides that the Monitoring Officer has delegated authority to make minor changes to the Constitution, with copies of such changes being supplied to all Group Leaders

and Whips within 14 days. All other changes to the Constitution require the approval of Council. The changes proposed in this report require the approval of Council.

4.3 There are no financial implications arising from this report.

5. Recommendations

5.1 That the Council approves the revised Employment Rules, as set out in Appendix 1 to this report, to replace the current version in the Constitution, which includes the modifications highlighted in bold in paragraphs 4.9 , 4.10 and 4.15 which are required to comply with the Local Authorities (Standing Orders) England (Amendment) Regulations 2015.

5.2 That the Council designates the Chief Executive as the Proper Officer for the purposes of the executive notification procedure outlined in paragraphs 4.4, 4.6 and 4.12 of Appendix 1.

5.3 That the Council agrees to receive a report at a future meeting on arrangements to meet the requirement to establish an Advisory Panel, as a Committee of the Council, to advise the Council before any decision is taken to dismiss the Chief Executive, Monitoring Officer or Chief Finance Officer.

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Background papers

The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015
<http://www.legislation.gov.uk/ukxi/2015/881/contents/made>

The Department for Communities and Local Government *Explanatory memorandum to The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015* http://www.legislation.gov.uk/ukxi/2015/881/pdfs/ukxiem_20150881_en.pdf

Appendices

Appendix 1 – Revised Employment Rules

Appendix 2 – Current Employment Rules

APPENDIX 1 – REVISED EMPLOYMENT RULES

PART 8 - EMPLOYMENT RULES

1. Recruitment and appointment

1.1 Declarations

- (a) The Council will draw up a statement requiring any candidate for appointment as an officer to state in writing whether they are the parent, grandparent, partner, child, stepchild, adopted child, grandchild, brother, sister, uncle, aunt, nephew or niece of an existing Councillor or officer of the Council; or of the partner of such persons.
- (b) No candidate so related to a Councillor or an officer will be appointed without the authority of the relevant chief officer or an officer nominated by him/her.

1.2 Seeking support for appointment

- (a) The Council will disqualify any applicant who directly or indirectly seeks the support of any Councillor for any appointment with the Council. The content of this paragraph will be included in any recruitment information.
- (b) No Councillor will seek support for any person for any appointment with the Council.

2. Recruitment, appointment and dismissal of Director of Public Health

- 2.1 Where the Council proposes to recruit, appoint or dismiss the Director of Public Health the process will comply with the Council's employment rules, together with the requirements of the National Health Service Act 2006 and relevant statutory guidance.

3. Recruitment of Head of Paid Service and Chief Officers

- 3.1 Where the Council proposes to appoint a Chief Officer (within the meaning of the Local Authority (Standing Orders) Regulations 1993) and it is not proposed that the appointment be made exclusively from among their existing officers, the Council will:
 - (a) draw up a statement specifying:
 - (i) the duties of the officer concerned; and
 - (ii) any qualifications or qualities to be sought in the person to be appointed;

- (b) make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified for it; and
 - (c) make arrangements for a copy of the statement mentioned in paragraph (a) to be sent to any person on request.
- 3.2 Where a post has been advertised as provided in Rule 3.1(b), the authority shall:
- (a) interview all qualified applicants for the post, or
 - (b) select a short list of such qualified applicants and interview those included on the short list.
- 3.3 Where no qualified person has applied, the authority shall make further arrangements for advertisement in accordance with Rule 3.1(b).
- 3.4 The steps to be taken under paragraphs 3.1 – 3.3 may be taken by a committee, sub-committee or chief officer (within the meaning of the Local Authorities (Standing Orders) Regulations 1993) of the Council.
- 3.5 Every appointment of a person to a paid office or employment should be on merit, as set out in Section 7 of the Local Government and Housing Act 1989.

4. Appointment and dismissal of, and disciplinary action against, staff

- 4.1 Subject to paragraphs 4.2 and 4.14, appointment and dismissal of, and disciplinary action against, a member of staff must be done by the Head of Paid Service or by an officer nominated by the Head of Paid Service.
- 4.2 Paragraph 4.1 shall not apply to appointment or dismissal of, or disciplinary action against:
- (a) the officer designated as the Head of the authority's Paid Service;
 - (b) a statutory chief officer within the meaning of section 2 (6) of the Local Government and Housing Act 1989;
 - (c) a non-statutory chief officer within the meaning of section 2(7) of the Local Government and Housing Act 1989;
 - (d) a deputy chief officer within the meaning of section 2(8) of the Local Government and Housing Act 1989; or
 - (e) a person appointed in pursuance of section 9 of the 1989 Act (assistants for political groups).

A person whose duties are solely secretarial or clerical or are otherwise in the nature of support services shall not be regarded as a non-statutory chief officer or a deputy chief officer.

Appointment of Head of Paid Service

- 4.3 Where a committee, sub-committee or officer is discharging, on behalf of the authority, the function of the appointment of an officer designated as the Head of Paid Service, the Full Council must approve that appointment before an offer of appointment is made to that person. That committee or sub-committee must include at least one Member of the Cabinet.
- 4.4 The Full Council may only make or approve the appointment of the Head of Paid Service where no material or well-founded objection has been made by any member of the Cabinet in accordance with the provisions of Part II of Schedule 1 of the Local Authorities (Standing Orders)(England) Regulations 2001.

Other Appointments

- 4.5 Where a committee or a sub-committee of the authority is discharging, on behalf of the authority, the function of the appointment of any officer referred to in 4.2 (a), (b), (c) or (d), at least one member of the Cabinet must be a member of that committee or sub-committee.
- 4.6 An offer of employment to any officer referred to in sub paragraphs (b) (c) or (d) of paragraph 4.2 shall only be made where no material or well-founded objection from any member of the Cabinet has been received in accordance with the provisions of Part II of Schedule 1 of the Local Authorities (Standing Orders)(England) Regulations 2001.
- 4.7 Appointment of an assistant to a political group pursuant to Section 9 of the Local Government and Housing Act 1989 shall be made in accordance with the wishes of that political group.

Disciplinary Action and Dismissal

- 4.8 The Head of Paid Service, Monitoring Officer and Chief Finance Officer may be suspended whilst an investigation takes place into alleged misconduct. That suspension will be on full pay and last no longer than two months.
- 4.9 **Where a committee, sub-committee or officer is discharging, on behalf of the authority, the function of the dismissal of an officer designated as the Head of Paid Service, as the authority's Chief Finance Officer, or as the authority's Monitoring Officer, the Full Council must approve that dismissal before notice is given to that person.**
- 4.10 **The Head of Paid Service, Monitoring Officer and Chief Finance Officer may not be dismissed by the Council unless in accordance with the requirements of the Local Authorities (Standing Orders)(England)(Amendment) Regulations 2015:**
- (a) **At least 20 days before the relevant Council meeting a Panel has been established for the purpose of advising on matters relating**

to the dismissal and independent persons appointed under Section 28 (7) of the Localism Act 2011 have been invited to be appointed to the Panel and

- (b) any advice, views or recommendations of the Panel, the conclusions of any investigation into the proposed dismissal and any representations from the relevant officer have been taken into account before the taking of the vote on whether or not to approve such a dismissal.**

- 4.11 Subject to paragraph 4.9, where a committee or a sub-committee of the authority is discharging, on behalf of the authority, the function of dismissal of any officer referred to in paragraph 4.2 (a), (b), (c) or (d), at least one member of the Cabinet must be a member of that committee or sub-committee.
- 4.12 A notice of dismissal to any officer referred to in sub-paragraph (a), (b), (c) or (d) of paragraph 4.2 shall only be made where no material or well-founded objection from any member of the Cabinet has been received in accordance with the provisions of Part II of Schedule 1 of the Local Authorities (Standing Orders)(England) Regulations 2001.
- 4.13 Councillors will not be involved in the disciplinary action (as defined by the Local Authorities (Standing Orders) (England) Regulations 2001) against any employee below Head of Paid Service, Monitoring Officer and Chief Finance Officer, except where such involvement is necessary for any investigation or inquiry into alleged misconduct, although the Council's disciplinary, capability and related procedures, as adopted from time to time may allow a right of appeal to Members in respect of dismissals.
- 4.14 Nothing in paragraph 4.1 shall prevent a person from serving as a member of any Committee or Sub-Committee established by the Council to consider an appeal by:
- (a) another person against any decision relating to the appointment of that other person as a member of staff of the Council; or
 - (b) a member of staff of the Council against any decision relating to the dismissal of, or taking disciplinary action against, that member of staff.
- 4.15 All employees **(with the exception of the Head of Paid Service, Monitoring Officer and Chief Finance Officer)** have a right of appeal to the Sub-Committee of the Employment Matters Committee against dismissal or summary dismissal.

Reference:

Local Authorities (Standing Orders)(England) Regulations 1993
Local Authorities (Standing Orders)(England) Regulations 2001
Local Authorities (Standing Orders)(England) Regulations 2015
Local Government and Housing Act 1989
National Health Service Act 2006

APPENDIX 2 – CURRENT EMPLOYMENT RULES

PART 8 - EMPLOYMENT RULES

1. Recruitment and appointment

1.1 Declarations

- (a) Candidates for appointment are required to state in writing whether they are the parent, grandparent, partner, child, stepchild, adopted child, grandchild, brother, sister, uncle, aunt, nephew or niece of an existing Councillor, or employee of the Council; or of the partner of such persons.
- (b) No candidate so related to a Councillor or an employee will be appointed without the authority of the relevant director or an employee nominated by him/her.

1.2 Seeking support for appointment

The Council will disqualify any applicant who directly or indirectly seeks the support of any Councillor for any appointment with the Council. Candidates are informed of this in the recruitment information.

2. Recruitment, appointment and dismissal of Director of Public Health

- 2.1 Where the Council proposes to recruit, appoint or dismiss the Director of Public Health the process will comply with the Council's employment rules, together with the requirements of the Health and Social Care Act 2012 and relevant statutory guidance.

3. Recruitment of head of paid service and directors

- 3.1 Where the Council proposes to appoint a director and it is not proposed that the appointment be made exclusively from among their existing employees, the Council will:

- (a) Draw up a statement specifying:
 - (i) the duties of the employee concerned;
 - (ii) any qualifications or qualities to be sought in the person to be appointed;
- (b) Advertise the post in such a way as is likely to bring it to the attention of persons who are qualified to apply for it; and
- (c) Send a copy of the statement mentioned in paragraph 2.1 (a) to any person on request.

4. Appointment and dismissal of, and disciplinary action against, staff

- 4.1 Subject to paragraphs 3.2 and 3.6, appointment and dismissal of, and disciplinary action against, a member of staff must be done by the Head of Paid Service or by an officer nominated by the Head of Paid Service.
- 4.2 Paragraph 3.1 shall not apply to appointment and dismissal of, or disciplinary action against:
- (a) the Head of Paid Service;
 - (b) directors and their assistants
 - (c) assistants for political groups (appointment of an assistant to a political group will be made in accordance with the wishes of that political group).
- 4.3 (1) Where a Committee is appointing or dismissing the Head of Paid Service, the Full Council must approve that appointment before an offer of appointment is made or, as the case may be, must approve that dismissal before notice of dismissal is given.
- (2) An offer of employment to an officer referred to in 3.2(a) or (b) may only be made where no well founded objection has been made by any member of the Cabinet.
- (3) Where a Committee is appointing or dismissing an officer referred to in 3.2 (a) or (b), at least one member of the Cabinet must be a member of that Committee.

5. Offer of employment

- 5.1 An offer of an appointment referred to in 3.2(a) or (b) must not be made until:
- (a) the Head of Paid Service has been notified of the name of the person to whom it is desired to make the offer and any other particulars which the Committee considers are relevant to the appointment.
 - (b) the Head of Paid Service has notified every member of the Cabinet of:
 - (i) the name of the person to whom it is intended to make the offer;
 - (ii) any other particulars relevant to the appointment which the Committee has notified to the Head of Paid Service; and
 - (iii) the period within which any objection to the making of the offer is to be made by the Leader on behalf of the Cabinet to the Head of Paid Service; and

- (c) either:
 - (i) the Leader has, within the period specified in the notice under sub-paragraph (b)(iii), notified the Committee that neither he nor any other member of the Cabinet has any objection to the making of the offer;
 - (ii) the Head of Paid Service has notified the Committee that no objection was received by him/her within that period from the Leader; or
 - (iii) the Committee is satisfied that any objection received from the Leader within that period is not material or is not well-founded.

5.2 Appointment of employees below assistant director (other than assistants to political groups and an assistant to the mayor) is the responsibility of the Head of Paid Service or his/her nominee, and may not be made by Councillors.

6. Notice of dismissal

6.1 Notice of the dismissal of an officer referred to in 3.2(b) must not be given until:

- (a) the Committee has notified the Head of Paid Service of the name of the person who the Committee wishes to dismiss and any other particulars which the Committee considers are relevant to the dismissal;
- (b) the Head of Paid Service has notified every member of the Cabinet of:
 - (i) the name of the person who the Committee wishes to dismiss;
 - (ii) any other particulars relevant to the dismissal which the Committee has notified to the Head of Paid Service; and
 - (iii) the period within which any objection to the dismissal is to be made by the Leader on behalf of the Cabinet to the Head of Paid Service; and
- (c) either:
 - (i) the Leader has, within the period specified in the notice under sub-paragraph (b)(iii), notified the Committee that neither he or any other member of the Cabinet has any objection to the dismissal;
 - (ii) the Head of Paid Service has notified the Committee that no objection was received within that period from the Leader; or

- (iii) the Committee is satisfied that any objection received from the Leader within that period is not material or is not well-founded.

7. Other disciplinary action

- 7.1 The Head of Paid Service, Monitoring Officer and Chief Finance Officer may be suspended whilst an investigation takes place into alleged misconduct. That suspension will be on full pay and last no longer than two months.
- 7.2 No other disciplinary action may be taken in respect of any of those employees except in accordance with a recommendation in a report by a designated independent person.
- 7.3 Councillors will not be involved in the disciplinary action against any employee below Head of Paid Service, except where such involvement is necessary for any investigation or inquiry into alleged misconduct.
- 7.4 Nothing in paragraph 3.1 shall prevent a person from serving as a member of any Committee or Sub-Committee established by the Council to consider an appeal by:
 - (a) another person against any decision relating to the appointment of that other person as a member of staff of the Council; or
 - (b) a member of staff of the Council against any decision relating to the dismissal of, or taking disciplinary action against, that member of staff.
- 7.5 All employees have a right of appeal to the Employment Matters Committee against dismissal or summary dismissal.