

## **HAMBLETON DISTRICT COUNCIL**

**Report To:** Council

**From:** Chief Executive

**Subject: THE LOCAL AUTHORITIES (STANDING ORDERS) (ENGLAND) (AMENDMENT) REGULATIONS 2015 – APPOINTMENT AND DISMISSAL OF SENIOR OFFICERS**

All Wards  
Scrutiny Committee

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### **1.0 BACKGROUND:**

- 1.1 The purpose of the report is to bring to Members' attention the implications of the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 (the "2015 Regulations"). It also recommends to Council the appointment of a new Disciplinary Committee and seeks approval for amendments to the Council's Officer Employment Procedure Rules.

### **2.0 CURRENT POSITION:**

- 2.1 The Council is required by law to adopt Standing Orders governing the recruitment, appointment and dismissal of its staff (and other matters) in accordance the Standing Orders Regulations. The Officer Employment Procedure Rules (set out in Part 4 of the Council's Constitution) are the Standing Orders adopted by the Council for this purpose.
- 2.2 As far as is relevant they provide that, amongst other things, no disciplinary action in respect of the Council's Head of Paid Service, its Chief Financial Officer, or its Monitoring Officer may be taken by the Council other than in accordance with a recommendation in a report made by a Designated Independent Person appointed for that purpose under the Local Authorities (Standing Orders) (England) Regulations 2001.
- 2.3 The 2015 Regulations, which come into force on 11 May 2015, amend the current position.

### **3.0 THE 2015 REGULATIONS:**

- 3.1 The 2015 Regulations simplify and localise the disciplinary process for Statutory Officers (i.e. the Head of Paid Service, the Chief Finance Officer and the Monitoring Officer). They remove the current requirement that a Designated Independent Person be appointed to investigate and make a binding recommendation on disciplinary action against these Statutory Officers.
- 3.2 The 2015 Regulations provide that any decision to dismiss a Statutory Officer must be taken transparently by Full Council, which in reaching its decision 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.
- 3.3 In the case of a proposed disciplinary action against a Statutory Officer the Council is required to invite Independent Persons who have been appointed under the Members' Code of Conduct regime (Section 28 (7) of the Localism Act 2011) to join an Independent Panel. The Council currently has 3 Independent Persons. An Independent Panel will be formed if 2 or more independent persons accept the invitation, and the Council should issue invitations in the following order:-

- 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
- An Independent Person who has been appointed by another Council or councils.

3.4 The 2015 Regulations provide that the Independent Panel is to be a committee of the Council and so it is subject to all the legal requirements for committees, including the proportionality rules. There is currently no committee with specific responsibility for advising the Council on matters relating to the dismissal of a Statutory Officer.

3.5 It is proposed that a new committee is appointed comprising seven Members and two Independent Persons. The terms of reference of the Committee could be:-

Matters which may be determined by the Committee:

- To advise and make recommendations to the Council on matters relating to the proposed dismissal of a Statutory Officer

#### **4.0 MEMBERS' ALLOWANCES:**

4.1 It is normal practice for the Chairmen of Committees to have a Special Responsibility Allowance. However, the Scheme of Allowances cannot be altered without consideration of a report from the Council's Remuneration Panel.

4.2 It is therefore recommended that the Council's Remuneration Panel be asked to consider whether an allowance is appropriate.

#### **5.0 FINANCIAL IMPLICATIONS:**

5.1 Having an extra Committee will have minimal financial implications unless a Special Responsibility Allowance is approved. However, the three Independent Persons would each be entitled to an annual allowance, which is currently £233 per annum, together with travel expenses for attending any Committee. This can be met from within the Members' Allowances budget.

#### **6.0 LEGAL IMPLICATIONS:**

6.1 The appointment of the Committee is a legal requirement of the 2015 Regulations. It is also a requirement that the Council's Standing Orders are amended to reflect the 2015 Regulations. A copy of the Council's amended Officer Employment Procedure Rules is attached. These incorporate the necessary legislative changes.

#### **7.0 RISK ASSESSMENT:**

7.1 Failure to appoint the Committee would mean the Council acting in breach of the 2015 regulations.

## **8.0     RECOMMENDATIONS:**

8.1     It is recommended that:-

- (1)   a Disciplinary Committee be appointed with the membership and terms of reference set out in Section 3;
- (2)   Members of the Committee be appointed in accordance with the wishes of the political groups;
- (3)   the Remuneration Panel be asked to advise on whether a Special Responsibility Allowance should be paid to the Chairman of the Committee;
- (4)   the amended Officer Employment Procedure Rules be approved and the Head of Legal and Information be given authority to make further consequential changes to the Constitution.

PHILLIP MORTON

**Background papers:**        The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015

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## Officer Employment Procedure Rules

1. In these Rules
  - “the 1989 Act “ means the Local Government and Housing Act 1989;
  - “the 2000 Act” means the Local Government Act 2000;
  - “disciplinary action” has the same meaning as in the Local Authorities(Standing Orders) (England) Regulations 2001;
  - “executive” and “executive leader” have the same meaning as in Part II of the 2000 Act;
  - “member of staff” means a person appointed to or holding a paid office or employment under the Council; and
  - “proper officer” means an officer appointed by the Council for the purposes of the provisions in this Part.
2. Subject to paragraphs 3 and 7, the function of appointment and dismissal of, and taking disciplinary action against, a member of staff of the Council must be discharged, on behalf of the Council, by the officer designated under section 4(1) of the 1989 Act (designation and reports of head of paid service) as the head of the Council's paid service or by an officer nominated by him.
3. Paragraph 2 shall not apply to the appointment or dismissal of, or disciplinary action against –
  - (a) the officer designated as the head of the Council's paid service;
  - (b) a statutory Director within the meaning of section 296) of the 1989 Act (politically restricted posts);
  - (c) a non-statutory Director within the mean of section 2(7) of the 1989 Act;
  - (d) a deputy Director within the meaning of section 2(8) of the 1989 Act; or
  - (e) a person appointed in pursuance of section 9 of the 1989 Act (assistants for political groups).

The full Council will appoint the Head of Paid Service. A Committee of the Council will appoint Directors. All other appointments will be made by the Head of Paid Service or his/her nominee.

4.
  - (1) Where a committee, sub-committee or officer is discharging, on behalf of the Council, the function of the appointment of an officer designated as the head of the Council's paid service, the Council must approve that appointment before an offer of appointment is made to that person.
  - (1A) Where a committee, sub-committee or officer is discharging, on behalf of the Council, the function of the dismissal of an officer designated as the head of the Council's paid service, as the Council's chief finance officer, or as the Council's monitoring officer, the Council must approve that dismissal before notice of dismissal is given to that person.
  - (2) Where a committee or a sub-committee of the Council is discharging, on behalf of the Council, the function of the appointment or dismissal of any officer referred to in sub-paragraph (a),(b), (c) or (d) of paragraph 3, at least one member of the Cabinet must be a member of that committee or sub-committee.
5.
  - (1) In this paragraph, “appointor” means, in relation to the appointment of a person as an officer of the Council, the authority or, where a committee, sub-committee or officer is discharging the function of appointment on behalf of the Council, that committee, sub-committee or officer, as the case may be.
  - (2) An offer of an appointment as an officer referred to in sub-paragraph (a), (b), (c) or (d) of paragraph 3 must not be made by the appointor until

- (a) the appointor has notified the Proper Officer of the name of the person to whom the appointor wishes to make the offer and any other particulars which the appointor considers are relevant to the appointment;
  - (b) the Proper Officer has notified every member of the Cabinet of the Council of-
    - (i) the name of the person to whom the appointor wishes to make the offer;
    - (ii) any other particulars relevant to the appointment which the appointor has notified to the Proper Officer; and
    - (iii) the period within which any objection to the making of the offer is to be made by the executive leader on behalf of the Cabinet to the Proper Officer; and
  - (c) either –
    - (i) the Leader has, within the period specified in the notice under sub-paragraph (b)(iii), notified the appointor that neither he nor any other member of the Cabinet has any objection to the making of the offer;
    - (ii) the Proper Officer has notified the appointor that no objection was received by him within that period from the Leader; or
    - (iii) the appointor is satisfied that any objection received from the Leader within that period is not material or is not well-founded.
6. (1) In this paragraph, “dismissor” means, in relation to the dismissal of an officer of the Council, the Council or, where a committee, sub-committee or another officer is discharging the function of dismissal on behalf of the Council, that committee, sub-committee or other officer, as the case may be.
- (2) Notice of the dismissal of an officer referred to in sub-paragraph (a),(b),(c) or (d) of paragraph 3 must not be given by the dismissor until –
- (a) the dismissor has notified the Proper Officer of the name of the person who the dismissor wishes to dismiss and any other particulars which the dismissor considers are relevant to the dismissal;
  - (b) the Proper Officer has notified every member of the Cabinet of the Council of –
    - (i) the name of the person who the dismissor wishes to dismiss;
    - (ii) any other particulars relevant to the dismissal which the dismissor has notified to the Proper Officer; and
    - (iii) the period within which any objection to the dismissal is to be made by the Leader on behalf of the executive to the Proper Officer; and
  - (c) either –
    - (i) the Leader has, within the period specified in the notice under sub-paragraph (b)(iii), notified the dismissor that neither he nor any other member of the Cabinet has any objection to the dismissal;
    - (ii) the Proper Officer has notified the dismissor that no objection was received by him within that period from the executive leader; or
    - (iii) the dismissor is satisfied that any objection received from the Leader within that period is not material or is not well-founded.
7. Nothing in paragraph 2 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.

8. In paragraphs 9 to 16:-

- (a) "the 2011 Act" means the Localism Act 2011;
- (b) "chief finance officer", "disciplinary action", "head of the authority's paid service" and "monitoring officer" have the same meaning as in regulation 2 of the Local Authorities (Standing Orders) (England) Regulations 2001;
- (c) "independent person" means a person appointed under section 28(7) of the 2011 Act;
- (d) "local government elector" means a person registered as a local government elector in the register of electors in the Council's area in accordance with the Representation of the People Acts;
- (e) "the Panel" means a committee appointed by the Council under section 102(4) of the Local Government Act 1972 for the purposes of advising the Council on matters relating to the dismissal of relevant officers of the Council;
- (f) "relevant meeting" means a meeting of the Council to consider whether or not to approve a proposal to dismiss a relevant officer; and
- (g) "relevant officer" means the chief finance officer, the head of the authority's paid service or monitoring officer, as the case may be.

9. A relevant officer may not be dismissed by the Council unless the procedure set out in paragraphs 10 to 16 is complied with.

10. The Council must invite relevant independent persons to be considered for appointment to the Panel, with a view to appointing at least two such persons to the Panel.

11. In paragraph 10 "relevant independent person" means any independent person who has been appointed by the Council or, where there are fewer than that two such persons, such independent persons as have been appointed by another authority or authorities as the Council considers appropriate.

12. Subject to paragraph 13, the Council must appoint to the Panel such relevant independent persons who have accepted an invitation issued in accordance with paragraph 10 in accordance with the following priority order:-

- (a) a relevant independent person who has been appointed by the Council and who is a local government elector;
- (b) any other relevant independent person who has been appointed by the Council;
- (c) a relevant independent person who has been appointed by another authority or authorities.

13. A Council is not required to appoint more than two relevant independent persons in accordance with paragraph 12 but may do so.

14. The Council must appoint any Panel at least 20 working days before the relevant meeting.

15. Before the taking of a vote at the relevant meeting on whether or not to approve such a dismissal, the Council must take into account, in particular:-

- (a) any advice, views or recommendations of the Panel;
- (b) the conclusions of any investigation into the proposed dismissal; and

(c) any representations from the relevant officer.

16. Any remuneration, allowances or fees paid by the Council to any independent person appointed to the Panel must not exceed the level of remuneration, allowances and fees payable to that independent person in respect of that person's role as independent person under the 2011 Act.

17. (a) The Council will draw up a statement requiring any candidate for appointment as an officer to state in writing whether they are related to or a partner of a Member or officer of the Council.
- (b) No candidate so related to a Councillor or an officer will be appointed without the authority of the relevant Director or an officer nominated by him/her.
- (c) Subject to paragraph (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.
- (d) Subject to paragraph (a), no Councillor will seek support for any person for any appointment with the Council.
18. Where the Council proposes to appoint a Director and it is not proposed that the appointment be made exclusively from among the 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 to apply for it; and
- (c) make arrangements for a copy of the statement mentioned in paragraph a) to be sent to any person on request.