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Council	16 JUNE 2015	Matter for Decision
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Title: THE LOCAL AUTHORITIES (STANDING ORDERS) (ENGLAND) (AMENDMENT) REGULATIONS 2015 – Amendment to Officer Employment Procedure Rules

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1. Introduction

To note The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015, hereafter referred to as 'The Regulations' and authorise the consequential amendments to the Constitution to ensure compliance with the legislative provisions.

2. Recommendations

1. To note the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015
2. that the Officer Employment Procedures in Part 4 of the Constitution be modified to incorporate the provisions of the Regulations
3. that authority be given to the Change Management Committee to consider and approve more detailed disciplinary and dismissal procedures for the Head of Paid Service, Monitoring Officer and Chief Finance Officer, incorporating the requirements of the amended Officer Employment Procedures.

3. Information

3.1 The statutory officers being the Head of Paid Service (Chief Executive), the Monitoring Officer (Director of Services) and the Chief Finance Officer (part time post appointed under S151 of the Local Government Act 1972) are subject to a statutory disciplinary scheme contained within the Local Authorities (Standing Orders) (England) Regulations 2000 (the Regulations). These Regulations permitted the suspension of any one of the statutory officers but prohibited any other disciplinary action except in accordance with a recommendation in a report made by a Designated Independent Person (DIP). The DIP is a person who is agreed between the Council and the relevant officer or in default of such agreement a person appointed by the Secretary of State.

3.2 On 11 May 2015 amendments to these Regulations came into force (The Local Authorities (Standing Orders) (Amendment) (England) Regulations 2015 which introduced a new procedure in relation to the dismissal of statutory officers. The amendment Regulations require that, no later than the first ordinary meeting of the authority falling after 11th May 2015, the authority must, in respect of disciplinary action against any of the statutory officers incorporate in its standing orders certain provisions as set out in the Regulations or provisions to like effect, and to modify any other of its standing orders to conform with the provisions set out in the Regulations. The provisions within Part 4 of the Council's Constitution under Officer Employment Procedure Rules will be

amended accordingly to ensure that they comply with the provisions of the Regulations.

3.3 The 2015 Regulations:-

require that the final decision to dismiss any of the statutory officers must be by resolution of full Council;

Remove the requirement to appoint, or to act in accordance with the report and recommendations of, a DIP;

Require Council to appoint a Committee (referred to in the regulations as "the Panel") which must include at least 2 "Independent Persons";

Require that, before taking a vote on whether to approve such a dismissal, 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 statutory officer who is the subject of the proposed dismissal.

"A Panel" means a committee appointed by the authority under section 102(4) of the Local Government Act 1972 for the purposes of advising the authority on matters relating to the dismissal of relevant officers of the authority. As a committee of the authority such a panel will need to be politically proportionate. The Council has not previously provided for any form of staffing committee other than panels for appeals and interviews of senior officers. At the Annual General Meeting on 16 May 2015 a politically balanced Change Management Task Group was approved with the proposed Terms of Reference an item on this Council meeting agenda which includes the consideration of staffing matters. It is recommended that for the purposes of the regulations the required committee/panel be the Change Management Task Group.

- 3.4 There will be a need to produce a detailed procedure for the application of the new requirements in practice, and this report recommends that authority be given to the Change Management Committee to agree those detailed procedures in due course with advice from an external legal advisor.
- 3.5 The effect of the regulations is to dispense with the requirement to appoint a DIP and for the independent element it provided for in disciplinary proceedings to be provided by the Independent Persons appointed in relation to the Code of Conduct under the Localism Act 2011 as part of a committee (panel) of the Council. Although the regulations only cover dismissals, members are advised that it would be sensible for the Panel to be the body which holds any disciplinary hearing in respect of a statutory officer as in practice it will not always be possible to determine in advance whether a particular disciplinary issue might lead to dismissal.
- 3.6 Members will recall that when the amended Code of Conduct was introduced under the Localism Act a joint recruitment exercise was undertaken by a number of authorities across the County as a result of which 9 Independent Persons were appointed. For the purposes of the Regulations, the same pool of Independent Persons may be utilised. It is intended to send an expression of interest to the existing 9 appointed Persons for participation on any necessary panel.

3.7 Whilst at this stage the statutory requirements must be referenced in the Council's Standing Orders however it is right to say that the finer details of the dismissal procedures are yet to be worked out. The JNC terms and conditions for such Officers have not been re-negotiated nationally (they still make reference to the 'DIP') and the law fails to account for basic "legal" considerations such as the right to a fair and impartial investigation (which is likely to mean "external" investigation given the seniority of the Officers involved) and the right to an appeal procedure (made extremely difficult where Full Council is the first-line decision-maker/dismissor).

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Background Papers: The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015, and the relevant Explanatory Memorandum issued by the Department for Communities and Local Government
Local Government Association Advisory Bulletin No.624 – Workforce: Employment Relations

Implications	
Financial (JD)	A budget needs to be available to meet any incidental independent person's expenses
Risk (AC) (CR8)	Some elements of the procedural requirements specified within The Regulations do not appear to comply with accepted employment law or the principles of natural justice, and this may lead to a challenge should one of the statutory officers be put through a dismissal process. It is understood that the Local Government Association are liaising with the Government with regard to the potential problems within The Regulations, and if further guidance or amendments to the legislation are produced, officers will ensure that any required amendments to the specified processes are dealt with appropriately. CR8 – organisational/transformation change.
Equalities (AC)	None significant
Legal	The incorporation of the Regulations into Standing Orders is a statutory requirement.