



ARTICLE NO: 1C

**CORPORATE & ENVIRONMENTAL
OVERVIEW & SCRUTINY COMMITTEE**

**MEMBERS UPDATE 2013/14
ISSUE: 1**

Article of: Transformation Manager

Relevant Managing Director: Managing Director (Transformation)

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**SUBJECT: DRAFT REGULATIONS TO AMEND THE LOCAL AUTHORITIES
(STANDING ORDERS) (ENGLAND) REGULATIONS 2001 – CONSULTATION
RESPONSE**

Wards affected: Borough wide

1.0 PURPOSE OF ARTICLE

1.1 To notify members that the Borough Council has responded to a consultation exercise issued by the Department of Communities and Local Government (DCLG) in relation to (“the 2001 Regulations”), which require certain local authorities in England to make or modify standing orders so that they include certain provisions relating to staff and other matters.

2.0 BACKGROUND

2.1 In November 2012 DCLG announced that, prior to laying regulations before parliament, they would consult on their proposal to remove the requirement to appoint a Designated Independent Person (DIP) prior to taking formal disciplinary action or dismissing a Head of Paid Service, Monitoring Officer or Chief Finance Officer (section 151).

2.2 A letter encouraging comments on the draft amendments has been received by the relevant officers through their professional bodies. North West Employers Organisation has also forwarded this directly to Leaders/Mayors, Chief Executives and local authorities and offered to co ordinate a regional response to be forwarded to the Local Government Association (LGA).

- 2.3 The 4 week consultation period has a **deadline of 14 March 2013** for comments to be received, and in view of this time frame North West Employers have asked colleagues at to provide comments by **11 March 2013**.

3.0 CURRENT POSITION

- 3.1 On 1 March 2013, the Council's Human Resources Advisor, on behalf of the Transformation Manager, alerted all Councillors to the DCLG's consultation exercise and provided an opportunity for Members to contribute to the Council's overall response to the consultation exercise.
- 3.2 Responses on behalf of the Council have now been collated and the Transformation Manager following consultation with the HR Portfolio holder provided a response to North West Employers in advance of the closing date, in accordance with the Scheme of Delegation. The amendments and Council responses are appended as Appendix A for information.

4.0 SUSTAINABILITY IMPLICATIONS/COMMUNITY STRATEGY

- 4.1 There are no significant sustainability impacts associated with this article and, in particular, no significant impact on crime and disorder. The article has no significant links with the Sustainable Community Strategy.

5.0 FINANCIAL AND RESOURCE IMPLICATIONS

- 5.1 There are no significant financial or resource implications arising from this article.

6.0 RISK ASSESSMENT

- 6.1 This item is for information only and makes no recommendations. It therefore does not require a formal risk assessment and no changes have been made to risk registers as a result of this article.
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Background Documents

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this Article.

Equality Impact Assessment

The Article is for information only and does not have any direct impact on members of the public, employees, elected members and / or stakeholders. Therefore no Equality Impact Assessment is required.

Appendices

Appendix A – copy of DCLG amendments and Council responses to the consultation

Appendix A

The Proposed Amendments

These draft Regulations amend the Local Authorities (Standing Orders) (England) Regulations 2001 (“the 2001 Regulations”), which require certain local authorities in England to make or modify standing orders so that they include certain provisions relating to staff and other matters.

Regulation 2 removes regulations 6 and 7 of, and Schedule 3 to, the 2001 Regulations. Those required the standing orders of county, district, and London borough councils, the Common Council of the City of London and the Isles of Scilly to include certain steps before such a council could dismiss or discipline its head of paid service, monitoring officer or chief finance officer. Regulation 3 also removes the transitional provisions in regulation 10 of the 2001 Regulations.

Amendments relating to designated independent persons

1. Subject to regulation 5, the following provisions in the 2001 Regulations are revoked—
 - (a) regulation 6 (standing orders in respect of disciplinary action);
 - (b) regulation 7 (investigation of alleged misconduct);
 - (c) regulation 10 (transitional and consequential provisions); and
 - (d) Schedule 3 (provisions to be incorporated in respect of disciplinary action).

Council's Response

The Council does not support the removal of the requirement for a Designated Independent Person from the disciplinary and dismissal process involved in Chief Officer Terms and Conditions. It is considered by the Council that this is a very important role, which provides a level of independence, objectivity and unbiased input to these sensitive procedures. This serves to protect the probity and integrity of any investigation or dismissal process. This protection is provided to the individual officer at the heart of the process, but also protection for Council members in relation to ensuring that a fair and just process has been used that can be defended in an employment tribunal etc should the need arise.

Regulation 3 amends Schedule 1 to the 2001 Regulations to require that the dismissal of an authority’s monitoring officer or chief finance officer, as well as that of their head of paid service, must first be approved by the full council of the authority.

Amendments relating to approval of dismissal

- 1.(1) Schedule 1 to the 2001 Regulations (provisions to be incorporated in standing orders

relating to staff) is amended as follows.

(2) For paragraph 4(1) of—

- (a) Part I (authority with mayor and cabinet executive); and
- (b) Part II (authority with leader and cabinet executive),

in each case substitute—

(1) Where a committee, sub-committee or officer is discharging, on behalf of the authority, the function of—

(a) the appointment of an officer designated as the head of the authority's paid service; or

(b) the dismissal of an officer designated as the head of the authority's paid service, as the authority's chief finance officer, or as the authority's monitoring officer, the authority must approve that appointment before an offer of appointment is made to that person or, as the case may be, must approve that dismissal before notice of dismissal is given to that person.

(3) For paragraph 4 of Part IV (authority operating alternative arrangements), substitute—

4. Where a committee, sub-committee or officer is discharging, on behalf of the authority, the function of—

(a) the appointment of an officer designated as the head of the authority's paid service; or

(b) the dismissal of an officer designated as the head of the authority's paid service, as the authority's chief finance officer, or as the authority's monitoring officer, the authority must approve that appointment before an offer of appointment is made to that person or, as the case may be, must approve that dismissal before notice of dismissal is given to that person.

Council Response

The Council is satisfied with this amendment.

Regulation 4 makes amendments to the 2001 Regulations consequential on Part 3 of the Local Government and Public Involvement in Health Act 2007, which provided for the discontinuance of the mayor and council manager form of executive, and Part 1 of the Localism Act 2011, which provided for local authorities to adopt either executive arrangements or the committee system.

Amendments consequential on the Local Government and Public Involvement in Health Act 2007 and the Localism Act 2011

1.—(1) The 2001 Regulations are amended as follows.

(2) In regulation 2 (interpretation)—

- (a) omit the definitions of “alternative arrangements” and “council manager”;
 - (b) after the definition of “chief finance officer” insert—
 - “committee system” has the same meaning as in Part 1A of the 2000 Act;
 - (c) in the definition of “elected mayor”, “executive”, “executive arrangements” and “executive leader” for “Part II” substitute “Part 1A”.
- (3) In regulation 3 (executive arrangements – standing orders relating to staff, proceedings and business)—
- (a) in paragraph (1)—
 - (i) for “Part II” substitute “Part 1A”;
 - (ii) in sub-paragraph (a) for “11(2)” substitute “9C(2)”;
 - (iii) in sub-paragraph (b) for “11(3)” substitute “9C(3)” and at the end of the sub-paragraph insert “and”;
 - (iv) omit sub-paragraph (c);
 - (v) in sub-paragraph (d) for “(a), (b) and (c)” substitute “(a) and (b)”; and
 - (b) in paragraph (2) omit “(c)”.
- (4) In regulation 4 (alternative arrangements – standing orders relating to staff)—
- (a) in the heading for “Alternative arrangements” substitute “Committee system”; and
 - (b) for “committee system under Part II” substitute “alternative arrangements under Part 1A”.
- (5) In Schedule 1—
- (a) in Part 1—
 - (i) in paragraph 1 in the definition of “elected mayor” and “executive” for “Part II” substitute “Part 1A”;
 - (ii) in paragraph 3(f) for “paragraph 6 of Schedule 1” substitute “paragraph 5 of Schedule A1”;
 - (b) in Part II in paragraph 1 in the definition of “elected mayor” and “executive” for “Part II” substitute “Part 1A”;
 - (c) omit Part III; and
 - (d) in Part IV in the heading for “Alternative Arrangements” substitute “Committee System”.
- (6) In Schedule 2—
- (a) in Part 1—
 - (i) in the heading omit “or Mayor and Council Manager Executive”;
 - (ii) in paragraph 1 in the definition of “elected mayor” and “executive” for “Part II” substitute “Part 1A”; and

(b) in Part II in paragraph 1 in the definition of “executive” and “executive leader” for “Part II” substitute “Part 1A”.

Council Response

The Council is satisfied with this amendment.

Regulation 5 makes transitional provisions in relation to regulations 2 and 3.

No impact has been prepared in relation to these Regulations because no impact on the private or voluntary sectors is foreseen.

Transitional provision relating to designated independent persons and approval of dismissal

1.—(1) Where, before the date on which these Regulations come into force, anything was being done in respect of an allegation of misconduct in accordance with—

(a) regulation 7 of the 2001 Regulations, including that regulation as applied by regulation 10(1)(b) of the 2001 Regulations; or

(b) the provisions set out in—

(i) paragraph 4 of Part 1 of Schedule 1 to the 1993 Regulations; or

(ii) Schedule 3 to the 2001 Regulations,

(or provisions to the like effect) incorporated in the local authority’s standing orders, the provisions mentioned in paragraphs (a) and (b) shall continue to apply in respect of the allegation of misconduct in question.

(2) A local authority must modify its standing orders in accordance with the amendments made to Schedule 1 to the 2001 Regulations by regulation 3 no later than the first ordinary meeting of the local authority falling after the day on which these Regulations come into force.

(3) Anything which, before the date on which the local authority incorporated or modified provisions in standing orders in accordance with regulation 3, was being done by, to or in relation to an officer in accordance with a provision mentioned in regulation 3, may be continued after that date by, to or in relation to that officer in accordance with that provision.

Council Response

As the Council does not support the removal of the Designated Independent Person, it does not support the amendments to the transitional provisions.