

# Council



St Edmundsbury  
BOROUGH COUNCIL

<b>Title of Report:</b>	<b>Changes to the constitution – appointment and dismissal of statutory officers</b>	
<b>Report No:</b>	<b>COU/SE/15/024</b> [to be completed by Democratic Services]	
<b>Report to and date/s:</b>	<b>Council</b>	7 July 2015
<b>Portfolio holder:</b>	Ian Houlder Portfolio Holder for Resources and Performance <b>Tel:</b> 01284 810074 <b>Email:</b> <a href="mailto:ian.houlder@stedsbc.gov.uk">ian.houlder@stedsbc.gov.uk</a>	
<b>Lead officer:</b>	Joy Bowes Service Manager (Legal Services) <b>Tel:</b> 01284 757141 <b>Email:</b> <a href="mailto:joy.bowes@westsuffolk.gov.uk">joy.bowes@westsuffolk.gov.uk</a>	
<b>Purpose of report:</b>	To approve changes to the constitution which are required by new regulations relating to the appointment of the Head of Paid Service (the Chief Executive) and the disciplinary process for the Head of Paid Service, Chief Finance (s151) Officer and Monitoring Officer.	
<b>Recommendation:</b>	<b>It is <u>RECOMMENDED</u> that:</b>  <b>(1) members note the contents of this report; and</b>  <b>(2) approve the changes to the Employment Procedure Rules set out in Appendix 1.</b>	
<b>Key Decision:</b>  <i>(Check the appropriate box and delete all those that <b>do not</b> apply.)</i>	<i>Is this a Key Decision and, if so, under which definition?</i> Yes, it is a Key Decision - <input type="checkbox"/> No, it is not a Key Decision - <input checked="" type="checkbox"/>	
<i>The decisions made as a result of this report will usually be published within <b>48 hours</b> and cannot be actioned until <b>five clear working days of the publication of the decision</b> have elapsed. This item is included on the Decisions Plan.</i>		
<b>Consultation:</b>	•	
<b>Alternative option(s):</b>	• None, as this is a statutory requirement	

<b>Implications:</b>			
Are there any <b>financial</b> implications? <i>If yes, please give details</i>		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
Are there any <b>staffing</b> implications? <i>If yes, please give details</i>		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
Are there any <b>ICT</b> implications? <i>If yes, please give details</i>		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
Are there any <b>legal and/or policy</b> implications? <i>If yes, please give details</i>		Yes <input type="checkbox"/> No <input type="checkbox"/> • These are as set out in the report	
Are there any <b>equality</b> implications? <i>If yes, please give details</i>		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
<b>Risk/opportunity assessment:</b>		<i>(potential hazards or opportunities affecting corporate, service or project objectives)</i>	
<b>Risk area</b>	<b>Inherent level of risk</b> (before controls)	<b>Controls</b>	<b>Residual risk</b> (after controls)
Failure to amend standing orders in accordance with the Regulations	Low	Paper brought forward for decision at correct time	Low
<b>Ward(s) affected:</b>		N/A	
<b>Background papers:</b> <i>(all background papers are to be published on the website and a link included)</i>		New Regulations, explanatory memorandum and letter	
<b>Documents attached:</b>		<i>(Please list any appendices.)</i> Appendix 1 – Officer Employment Rules with proposed amendments.	

## **1. Key issues and reasons for recommendation(s)**

### **1.1 Background**

1.1.1 The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 ("the Regulations") came into force on 11 May 2015. The Regulations require the Council, no later than its first ordinary meeting after its Annual Meeting, to amend its standing orders to give effect to the provisions they contain. The relevant section of the constitution is the Officer Employment Procedure Rules.

1.1.2 The letter from the DCLG announcing these changes includes the following:

*"These Regulations, which apply to all principal councils in England, simplify and localise the disciplinary process for the most senior officers of a council i.e. the Head of Paid Service, the monitoring officer and the chief finance officer. They remove the requirement that a Designated Independent Person (DIP) be appointed to investigate and make a binding recommendation on disciplinary action against these senior staff.*

*The Regulations provide that, in place of the DIP process, the decision will be taken transparently by full council, who 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.*

*In the case of a proposed disciplinary action against one of these most senior officers, the council is required to invite independent persons who have been appointed for the purposes of the members' conduct regime under section 28 (7) of the Localism Act 2011 to form an independent panel, and must include in that invitation any of its independent persons who are electors for that council's area."*

### **1.2 Proposals**

1.2.1 The proposals contained within this paper are intended to ensure that the Council meets the legal requirements of the new Regulations by building on the arrangements already in place. Chief Executives are employed under JNC conditions of service which will need to be reviewed to bring them in line with the new Regulations.

1.2.2 As is the procedure now, the appointment of a new Chief Executive will still require a recommendation from the Joint Officer Appointments Committee (appointed for that purpose) to Council. The difference is that Council will now need to agree the offer before it is formally made, rather than simply being asked to confirm the appointment. This will require the timing of any appointment process to align to Council dates, or for an extraordinary Council to be called.

1.2.3 Only the Council can approve the dismissal for disciplinary reasons of the Head of Paid Service, Chief Finance Officer or Monitoring Officer following the recommendation of such action by the Joint Officer Appointments Committee which may be specifically appointed for that purpose. This Committee will be the standing committee which serves as the 'Panel' referred to in the legislation and will include at least one Member of the Cabinet.

- 1.2.4 Having considered all of the information provided, the Joint Officer Appointments Committee would make any recommendation to Council to dismiss as part of a disciplinary process any of the three postholders. For the avoidance of doubt, the legislation does not allow any decision to dismiss to be delegated from Council to the Joint Officer Appointments Committee.
- In future, when considering dismissal as detailed above, the Joint Officer Appointments Committee will need to include the participation of two Independent Persons appointed by the Council for the purposes of advising the Monitoring Officer in the consideration of complaints about the conduct of councillors. They will not be voting members. However, the opinion of the Independent Persons must be recorded in any report to Full Council.
- 1.2.5
- 1.2.6 As there are only two Independent Persons appointed to serve West Suffolk at present, if either or both is unable or unwilling to participate then the provisions of the Regulations will be followed and Independent Persons sought from another local authority.
- 1.2.7 There is no reference to an appeal stage for dismissals of the statutory officers. As it would be a Council decision then a further independent panel from a suitable organisation would be the final course of action.