

Open Report on behalf of the Richard Wills, Executive Director responsible for Democratic Services

Report to:	County Council
Date:	15 May 2015
Subject:	Amendments to the Council's Constitution arising from Legislative Changes

Summary:

The purpose of this report is to ask the Council to approve the changes as detailed at Appendices A, B, C and D to this Report

Recommendation(s):

That the Council

1. approves the amendments to the Council's Constitution detailed at Appendices A, B, C and D to this Report;
2. approves the appointment of one or more additional independent persons under section 28(7) of the Localism Act 2011; and
3. delegates to the Monitoring Officer authority to carry out the necessary recruitment process for such independent persons and report the outcome for decision to a future meeting of the Council.

1. Background

In accordance with the Council's Constitution, the Monitoring Officer shall review the Constitution annually with a view to recommending any such amendments to the Annual Meeting of the Council.

Since June 2013, the Council has received and approved reports from the work carried out by the Constitution Review Group and the Overview and Scrutiny Management Committee.

The Constitution has since been reviewed from the point of view of changes in legislation and the amendments contained in Appendices A, B, C, and D for Council's consideration are considered necessary to ensure compliance with the following Regulations:

- The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015;
- The LGPS (Transitional Provisions, Savings and Amendments) Regulations 2014; and
- The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2014.

Amendments as a result of The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015;

These Regulations amend the process which Councils must follow in relation to the dismissal of statutory officers – i.e. the Head of Paid Service, the Monitoring Officer and the Chief Finance Officer also known as the section 151 Officer.

Prior to these Regulations, which come into force on 11 May 2015, the Council, in pursuing any disciplinary action against such officers was required to appoint a designated independent person to investigate (DIP) and could only act in accordance with the recommendation of the DIP.

The changes made by the new Regulations can briefly be described as follows.

- The dismissal of the Head of Paid Service, the Monitoring Officer or the Chief Finance Officer must be approved by the full Council before any notice of dismissal is given. Previously this only applied to the Head of Paid Service
- There is no longer a requirement to appoint a DIP or act on its recommendations
- The Council must now establish a Panel of at least two independent persons and convene that Panel at least 20 working days prior to the meeting at which any proposal to dismiss is to be considered and
- The Council must, in reaching a decision on a proposal to dismiss, consider the views of the Panel alongside the results of any investigation and the representations of the officer concerned.

The Panel is to be an advisory committee of the Council and must be drawn in a certain priority order from the independent persons appointed by the Council (and in certain circumstances from outside the Council) to advise in relation to the standards regime for members. This has implications for the number of such independent persons retained at present by the Council which is returned to later in this Report.

In order for the new Regulations to be introduced the following parts of the Constitution have been amended:

Part 2

Paragraph 4.02 – Functions of the Full Council - has been amended to reflect the Standing Order Regulations.

Paragraph 7.04 – The Terms of Reference for the Appointments Committee has been duly amended to remove references to the DIP and to replace it with responsibility for overseeing the new Panel. The Committee would therefore have delegated authority to exercise the functions of the Council in relation to such a dismissal up to the point at which full Council would consider whether to approve it.

The new Regulations are now silent on the question of how the Council must exercise its functions in relation to disciplinary action against the Head of Paid Service, Monitoring Officer or Chief Finance Officer which falls short of dismissal. This was previously within the remit of the Appointments Committee through their oversight of the DIP process and the amendments at paragraph 7.04 would leave the Appointments Committee with delegated authority to exercise those functions without the need to refer to full Council for approval.

Paragraph 7.08 – The inclusion of the new Panel in the Regulatory and Other Committees, as the Regulations require it to be an advisory committee established under section 102(4) of the 1972 Act. The amendments to the Constitution provide for this Panel to be constituted as and when required as appears to be envisaged by the Regulations.

All the above changes are shown within Appendix A to the report.

Part 3

Table 1 – Matters which it is the Responsibility of the Full Council to Discharge – A slight amendment has been made to reflect the redrafting of the Standing Orders and make the paragraph consistent with Article 4.02 of Part 2 referred to above.

These changes are shown in Appendix B to the Report

Part 4

The Regulations operate by requiring the Council to adopt Standing Orders that meet the requirements of the Regulations. The relevant Standing Orders of the Council are contained in the Officer Employment Procedure Rules in Part 4.

These have therefore been amended as follows – Paragraph 1 – Definition, Paragraph 2 – Employment and Dismissal of Senior Officer; and Paragraph 4 – Disciplinary Action – Head of paid Service, Chief Finance Officer and Monitoring Officer. These changes directly reflect the drafting in the Regulations.

The Changes are shown within Appendix C to the report.

Amendments as a result of The LGPS (Transitional Provisions, Savings and Amendments) Regulations 2014

Part 6

Page 6/4 – Pensions for Councillors paragraph has been amended to reflect the 2014 Regulations which removed the right of Councillors to be members of the

Local Government Pension Scheme with effect from 1 April 2014 except for Councillors who were members of the Scheme prior to 31 March 2014 who are able to remain members of the Scheme until the end of their term of office.

This amendment is required to bring Part 6 of the Constitution into line with the law.

This amendment is shown at Appendix D to the report.

Amendments as a result of The Local Authorities Standing Orders) (England) (Amendment) Regulations 2014

Part 4

These Regulations introduced a requirement essentially for a recorded vote to be taken where the vote is taken on any decision related to the setting of Council tax. The Council is required by Regulations to amend its internal procedures to provide for this to happen. The wording reflects the wording of the Regulations.

This amendment is at paragraph 15(g) of the Council Procedure Rules and is shown in Appendix C to this Report.

Establishing the Statutory Officers' Employment Advisory Panel.

As referred to above the Statutory Officers' Employment Advisory Panel is required to be made up of independent persons appointed under section 28(7) of the Localism Act 2011 to advise on standards matters under the Members' Code of Conduct.

The Panel as convened must consist of at least two such independent persons and must be established in the following priority 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;
- an independent person who has been appointed by another local authority or authorities.

The Council currently has one such independent person. While it would in principle be possible to establish a Panel from that person and an independent person appointed by another authority the fact that the Council only has one such independent person presents two difficulties. Firstly, the priority in the Regulations is for independent persons appointed by the Council and as things stand the Council cannot appoint a Panel from such independent persons. Secondly, the reliance on other authorities introduces a lack of resilience in the arrangements.

Approval is therefore sought for the Council to initiate the process for appointing one or more additional independent persons under the Localism Act.

The Act requires the independent person to be appointed by a majority of the Council so the final decision will rest with full Council. Delegation is, however, sought to the Monitoring Officer to carry out the appointments process up to the point of approval by full Council.

Consideration has been given to issues of conflict of interest given the role of the independent person in the dismissal process for statutory officers including the Monitoring Officer. However, the appointment of one or more additional independent persons will be under the statutory provisions governing the standards regime for which the Monitoring Officer has particular responsibility. In addition the independent persons will be working with the Monitoring Officer on standards issues. The law has created the potential for conflict by giving the independent person a dual role but it is considered that this is sufficiently managed by the full Council having final approval.

2. Conclusion

Amendments to the Council's Constitution are the responsibility of Full Council. Councillors are therefore asked to consider the recommended amendments appended to the report.

3. Legal Comments:

The changes to the Constitution are required to bring the Constitution into line with changes in the law. The issues are rehearsed within the Report.

Changes to the Council's Constitution is a matter reserved for the full Council.

4. Resource Comments:

There should be no additional costs arising from the proposed changes and the new processes can be met from existing budgets.

5. Consultation

a) Has Local Member Been Consulted?

n/a

b) Has Executive Councillor Been Consulted?

Yes

c) Scrutiny Comments

n/a

d) Policy Proofing Actions Required

n/a

6. Appendices

These are listed below and attached at the back of the report	
Appendix A	Changes to Part 2 - Articles of the Constitution
Appendix B	Changes to Part 3 - Responsibility for Functions
Appendix C	Changes to Part 4 - Rules of Procedure
Appendix D	Changes to Part 6 - Members' Allowances Scheme

7. Background Papers

The following background papers as defined in the Local Government Act 1972 were relied upon in the writing of this report.

Document title	Where the document can be viewed
The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015	Legal Services Lincolnshire
The LGPS (Transitional Provisions, Savings and Amendments) Regulations 2014	Legal Services Lincolnshire
The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2014	Legal Services Lincolnshire

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