

Divisions Affected - All

FULL COUNCIL

28 March 2023

AMENDMENTS TO THE COUNCIL'S CONSTITUTION

Report of the Director of Law and Governance and Monitoring Officer

RECOMMENDATION

1. Council is RECOMMENDED to approve:

- (a) The proposals for amendment to the Employment Procedure Rules Part 8.4 in the Councils Constitution – Annex 2.

Executive Summary

- 2. The recommendations contained in this report arise from the need to update the current Employment Procedure Rules set out in Part 8.4 of the Council's Constitution as there are delegations in Scheme of Delegations for the Head of Paid Service regarding the appointment and dismissal of Chief Officers that contravene legislation governing the appointment and dismissal of chief officers. So new delegations have been drafted to enable the Head of Paid Service to make Interim appointments of Chief Officers and appoint senior officers in the Council, who are for these purposes known as Deputy Chief Officers. In addition, the current version of the rules did not set out legislation that was introduced in 2015, and is now included in the JNC Handbook (The Joint Negotiating Committee (JNC) for Chief Executives of Local Authorities) regarding disciplinary and dismissal rules for the Head of Paid Service (HoPS), Monitoring Officer (MO), and S151 Officer.

Background

- 3. The purpose of the change is to update the rules in the Council's constitution relating to the appointment and dismissal of its statutory and non-statutory chief officers.

4. There is specific legislation concerning the appointment and dismissal of chief executives and chief officers and are part of mandatory standing orders, commonly referred to by local authorities as employment procedure rules.
5. These laws also establish mandatory rules giving effect to obligations or restrictions on the delegation of decision making relating to the appointment and dismissal of its statutory and non-statutory chief officers which must be included in a Council's constitution.
6. So, where there are executive arrangements in place (leader/cabinet model) in relation to chief officers, the legislation says that the appointment and dismissal, including terms and conditions on which they are appointed, is a function reserved to full council and these decisions can be delegated to a committee or a sub-committee of the Council.
7. The Council has delegated this function to its Remuneration Committee.
8. The appointment and dismissal including terms and conditions of employment for all other staff, is the responsibility of the Head of Paid Service (Chief Executive). Members are not permitted to be involved in matters for these staff save where there are arrangements for an appeals committee for staff matters.
9. Legislation also says whilst the Head of Paid Service (Chief Executive) has responsibility for all appointments and dismissals in respect of staff positions, it expressly says that they do not have authority for the appointment, disciplinary and dismissal of chief officers.
10. And in 2015, the law introduced new rules regarding disciplinary and dismissal rules relating to Head of Paid Service and the S151 Officer and the Monitoring Officer. These revised Employment Procedures now include the requirements of the updated rules together with specific procedure rules governing the dismissal of statutory officers.
11. So the current Head of Paid Service delegations contained in the current Employment Procedure Rules read as follows :

Appointment

*Para 4.3 **

The Head of Paid Service has delegated authority under the Scheme of Delegation to take any decision of a committee or sub-committee; notwithstanding that provision where a committee or a sub-committee of the authority is discharging, on behalf of the authority, the function of the appointment of any officer to whom this Rule applies, at least one member of the Cabinet must be a member of that committee or sub-committee.

1) Dismissal

Paragraph 10.6

The Head of Paid Service has delegated authority under the Scheme of Delegation to take any decision of a committee or sub-committee; notwithstanding that provision where a committee or a sub-committee of the authority is discharging, on behalf of the authority, the function of dismissal of any officer to whom Rule (4) applies, at least one member of the Cabinet must be a member of that committee or sub-committee.

12. These delegations as drafted, cannot apply in the light of the legislation which says that the Head of Paid Service does not have the authority to appoint and dismiss chief officers.
13. However, revised and specific delegations are proposed, as set out in the attached draft Employment Procedure Rules (Annex 2), and are set out at paragraph 4.2 (coloured blue) and paragraph 5 (coloured green).
14. Paragraph 4.2 (coloured blue) enables the Head of Paid Service to appoint to Interim posts for any chief officer to ensure that the statutory functions of the council are adequately fulfilled. Whilst paragraph 5 (coloured green) enables the Head of Paid Service to appoint senior officers of the council, known for these employment procedure rules as Deputy Chief Officers. Included in the delegations are various steps which are in line with the statutory rules for the appointment of chief officers, to validate these senior appointments.
15. The ability of the Head of Paid Service to affect a dismissal of a chief officer, has not been replicated in these draft rules, as mandatory legislation was introduced in 2015 regarding dismissal procedures for statutory chief officers which delegates this function to full council.
16. The Head of Paid Service and Interim Director HR and OD have been consulted on the matters discussed in this report and the proposed Employment Procedure Rules Part 8.4 Annex 2.
17. Audit and Governance Committee considered the revised Employment Procedure Rules at its meeting on 14th March 2023 and recommended approval to full council for approval.
18. A tracked change version of Part 8.4 incorporating the proposed amendments is found at Annex 1
19. A revised Employment Procedure Rules Part 8.4 is attached at Annex 2.
20. The current Employment Procedure Rules Part 8.4 is attached at Annex 3.

Financial Implications

28. The recommendations in this report have no direct financial implications for the Council.

Comments checked by:

Lorna Baxter, Director of Finance lorna.baxter@oxfordshire.gov.uk

Legal Implications

29. The recommendations in this report are consistent with the Council's duty under Section 9P of the Local Government Act 2000 to have a Constitution and keep it up to date.

30. The provisions of The Local Authorities (Standing Orders) (England) Regulations 1993 ('the 1993 Regulations') and The Local Authorities (Standing Orders) (England) Regulations 2001 ('the 2001 Regulations') as amended govern the selection of and appointing and dismissing of Chief Officers.

31. For the purposes of this report, Chief Officer(s) means:

- the Head of the Paid Service;
- a statutory chief officer within the meaning of section 2(6) of the Local Government and Housing Act 1989;
- a non-statutory chief officer within the meaning of section 2(7) of that Act; and
- a deputy chief officer within the meaning of section 2(8) of that Act.

Comments checked by:

Paul Grant Head of Legal and Deputy Monitoring Officer.

Staff Implications

32. There are no direct staff implications arising from this report.

33. The Joint Negotiating Committee (JNC) for Chief Executives of Local Authorities) is the national negotiating body for the pay and conditions of service of chief officers in England and Wales.

Equality & Inclusion Implications

31. Attempts have been made to use inclusive language in the proposed amendments and the new web presentation for the Constitution should make information more easily available to those with visual impairment.

Sustainability Implications

32. Loading up pdfs is energy inefficient and so fully integrating the Constitution onto the Council's website (rather than relying on PDF links) should save energy.

Risk Management

33. There are no direct risk management implications arising from this report.

ANITA BRADLEY

Director of Law and Governance and Monitoring Officer

Annexes:

- (1) A tracked change version of Part 8.4 incorporating the proposed amendments
- (2) Amendments to Part 8.4 (Employment Procedure Rules)
- (3) The current Employment Procedure Rules Part 8.4

Background papers: None

Contact Officer: Kate Charlton Solicitor, Legal Services
kate.charlton@oxfordshire.gov.uk

20 March 2023