

FOR PUBLICATION

DERBYSHIRE COUNTY COUNCIL

GOVERNANCE ETHICS AND STANDARDS COMMITTEE

14 July 2022

Report of the Director of Legal & Democratic Services and Monitoring Officer and Director of Organisation Development and Policy

Revisions to the Council's Constitution: Amendments to the terms of reference of the Appointments and Conditions of Service Committee and Officer Employment Procedure Rules

1. Purpose

- 1.1 To consider the proposed changes to the terms of reference of the Appointments and Conditions of Service Committee and Officer Employment Procedure Rules contained in the Council's Constitution and to refer these changes to full Council for approval.

2. Information and Analysis

- 2.1 It is a statutory duty under Section 9P of the Local Government Act 2000 for the Council to maintain and keep its Constitution up to date. A number of amendments are now required to the Constitution, the detail of which is set out in Appendix 2 and 3 to this report.
- 2.2 The amendments are required to deal with the following matters:
- 2.3 Aligned to the new operating model approved by Council on 15 September 2021 under which a Managing Director (acting as Head of Paid Service) was subsequently appointed, Appendix 2 proposes revisions to Appendix 9 Officer Employment Rules included in the Constitution. The revisions will ensure the appointments and dismissals processes for chief officers are appropriate and clearly defined and comply with legislative requirements. The main changes proposed are:

- To provide that the appointment of Executive Directors and Directors will be made by a politically balanced panel. There is no change in respect of Director appointments, however it is proposed that a panel can agree an appointment without the need to refer the decision to full Council. Members will recall that decisions on recent appointments to Executive Director roles have been delegated to a panel on a case by case basis in order to avoid delay and ensure the role is filled as soon as is practicably possible. The panel will comprise of at least three members formed of the Cabinet Member or Members holding the relevant portfolio or portfolios, the Shadow Cabinet Member(s) and additional Member(s) from the Appointments and Conditions of Service Committee as necessary to balance the Panel. The appointment to the Head of Paid Service will remain as per the current constitution. Any appointment of an Executive Director will be reported to the next meeting of Council for information.
- To make it clear that the Council will act jointly with the Secretary of State to appoint the Director of Public Health, as required in relevant legislation.
- To enable the appointment of Executive Directors and Directors on a temporary basis to be approved by the Head of Paid Service in consultation with the Chair and Vice-Chair of the Appointments and Conditions of Service Committee for a period of no more than 12 months and whereby the annual salary does not total £100,000 or more or has been approved by Council.
- To clarify that the appointment of Deputy Chief Officers who hold an Assistant Director role will be the responsibility of the Head of Paid Service or an officer nominated by him/her.
- To make it clear that Chief Officers listed in Rule 8 may be suspended whilst an investigation takes place into alleged misconduct.
- Other than the Head of Paid Service, Chief Financial Officer and Monitoring Officer that are subject to specific statutory procedures, in order to ensure consistency with decisions regarding appointments, a Panel formed from the Appointments and Conditions of Service Committee will discharge the function of the dismissal of Executive Directors and Directors. The dismissal of Deputy Chief Officers who are Assistant Directors will be the responsibility of the Head of Paid Service or an officer nominated by him/her.

- Disciplinary action against other Statutory Chief Officers, Non-Statutory Chief Officers and Deputy Chief Officers will be the responsibility of the Head of Paid Service or an officer nominated by him/her as detailed within Appendix 9.
- Annexes 1, 2 and 3 outline the required processes to be followed prior the appointment or dismissal of Executive Directors and Directors, as required in relevant legislation.

2.4 Appendix 3 outlines proposed revisions to Article 13 amending the terms of reference for the Appointments and Conditions of Service Committee (ACOS) to ensure the staffing functions outlined in legislation as being non-executive are effectively incorporated. These changes will enable the ACOS committee to have authority to support future changes to HR delegations and staffing conditions. The main changes proposed are:

- Amendment to the number of Independent Persons eligible to sit on this Committee from 3 to 2, to reflect the recent decisions of Governance, Ethics and Standards Committee and Council to reduce the number of Independent Persons to 2.
- To incorporate an appropriate frequency for the Committee to meet.
- Clarity of the role and function of the Committee:
 - o Inclusion of approval of recruitment and retention payments to address recruitment and retention difficulties where these arise as appropriate.
 - o Inclusion of the following:
 - To be responsible for appointing the Returning Officer for local government elections.
 - To be responsible for designating an officer as the Chief Financial Officer.
 - To be responsible for appointing proper officers other than where such appointment is reserved to full Council.
 - To be responsible for designating an officer as the Monitoring Officer and to ensure the provision of sufficient staff and other resources.
 - To be responsible for providing staff and other resources to a person nominated by the Monitoring Officer.
- Clarity of the role and function of the Panel and alignment with the revised Officer Employment Rules giving approval to:

- Conduct the process of appointment, dismissal or taking disciplinary action in respect of the Head of Paid Service and make recommendations to full Council in relation to appointment and dismissal.
- Suspend the Head of Paid Service pending an investigation and to appoint an independent investigator to conduct an investigation in relation to allegations concerning the Head of Paid Service.
- Determine appropriate disciplinary action, short of dismissal, in respect of the Head of Paid Service.
- Dismiss or take disciplinary action in respect of Chief Officers, other than the Head of Paid Service, Monitoring Officer or Chief Financial Officer.
- Conduct the process of dismissal or taking disciplinary action in respect of the Monitoring Officer or Chief Financial Officer. To determine appropriate disciplinary action, short of dismissal, and make recommendations to full Council in relation to dismissal.

3. Consultation

- 3.1 The Head of Paid Service, Executive Directors and relevant Elected Members have been engaged in the proposed revisions.

4. Alternative Options Considered

- 4.1 Do nothing – this option is not appropriate as the Constitution will be out of date and not aligned with legislation if these changes are not adopted.

5. Implications

- 5.1 Appendix 1 sets out the relevant implications considered in the preparation of the report.

6. Background Papers

- 6.1 Not applicable.

7. Appendices

- 7.1 Appendix 1 – Implications.
- 7.2 Appendix 2 – Proposed changes to Appendix 9 Officer Employment Rules.
- 7.3 Appendix 3 – Proposed changes to Article 13 Appointments and Conditions of Service Committee.

8. Recommendation(s)

That Committee:

- a) agrees the proposed changes to the terms of reference of the Appointments and Conditions of Service Committee and Officer Employment Procedure Rules contained in the Council's Constitution as set out in Appendix 2 and 3 to this report and refers them to full Council for approval.

9. Reasons for Recommendation(s)

- 9.1 To enable the Council's Constitution to be kept up to date and reflect the legislative, operational and policy changes set out in the report.
- 9.2 To support effective, efficient and streamlined decision making.

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Appendix 1

Implications

Financial

1.1 None.

Legal

- 2.1 The Council is required to prepare and keep up to date its Constitution as set out in Section 9P of the Local Government Act 2000 as amended. Approval by full Council of the recommendations in this report will enable the compliance with this duty.
- 2.2 Section 20 of the Local Government and Housing Act 1989 empower the Secretary of State to make regulations requiring Councils to adopt certain procedural standing orders. The Secretary of State has exercised this power to make the Local Authorities (Standing Orders) Regulations 1993 and the Local Authorities (Standing Orders) (England) Regulations 2001, which require the adoption of certain standing orders relating to Chief Officers. Specific provisions regarding the appointment of the Director of Public Health are included in these Regulations, National Health Service Act 2006 and guidance on Directors of Public Health in Local Government issued by the Department of Health & Social Care and Public Health England. The proposed Officer Employment Procedure Rules comply with these legislative requirements.
- 2.3 Article 22 of the Constitution makes it clear that changes to the Constitution will only be approved by the full Council after consideration of the proposal by the Governance Ethics & Standards Committee. This report discharges that constitutional requirement.
- 2.4 The functions proposed to be included in the terms of reference for Appointments and Conditions of Service Committee are non-executive functions and can therefore be delegated to the committee.

Human Resources

3.1 None.

Information Technology

4.1 None.

Equalities Impact

5.1 Not applicable.

Corporate objectives and priorities for change

6.1 This report links to the Council priority of High Performing, Value for Money and Resident Focused Services. The changes proposed will enable efficient and up to date functioning of the Council as a corporate body.

Other (for example, Health and Safety, Environmental Sustainability, Property and Asset Management, Risk Management and Safeguarding)

7.1 None.