

Appointments Board

18th March 2013

Local Authorities (Standing Orders) (England) Regulations 2001

1.0 Summary

- 1.1 All local authorities were required by law to insert the Local Authorities (Standing Orders) (England) Regulations 2001 into their standing orders. The primary purpose of the Regulations was to give effect to standing orders in relation to staffing matters, in particular regulation 6 in respect of disciplinary action. Regulation 6 required the council to incorporate provisions into standing orders to the like effect as the provisions set out in Schedule 3, or to modify any of its existing standing orders in so far as is necessary to conform with those provisions, or give like effect to the regulations.
- 1.2 The government are currently consulting on regulations to remove the need of a designated independent person process totally from the above regulations. The consultation in relation to these regulations was announced by the DCLG on the 14th February 2013.

Recommendation –

That Council amends the constitution at Part 4.6 6(a) by removing the term “Executive Directors” and give proper effect to the 2001 regulations as stated above.

2.0 Background

- 2.1 On the 14th March 2002 the Council resolved to amend the constitution, its delegations, and the Officer Employment Procedure Rules in accordance with the Employers Organisation Advisory Bulletin which reflected the 2001 Regulations which in part required that the designated independent person process be extended to cover the role of the Monitoring Officer and the Chief Finance Officer, in addition to the role of the Chief Executive. There has never been a resolution before council to extend the scope of this process further to any other officers, nor was it the intention of the Parliament to do so in passing the legislation.
- 2.2 The constitution was amended in or around June 2002 at 4.6 (a) to include the words “Strategic Executive Directors”. This proposed extension of the regulations was never put before council for resolution, and should never have been inserted in the constitution. It did not reflect the express purpose of the legislation, nor the will of council. This term was later changed to “Executive Directors”.
- 2.3 There is a duty to monitor and review the operation of the constitution to ensure that the aims and principles of the Constitution are given full effect. This duty predominantly falls to the Monitoring Officer, under Article 14.02 of the Council’s

constitution and the Monitoring Officer protocol to ensure that the council acts lawfully. In this case if the constitution is not amended in the terms proposed by the recommendation to this report there is a strong possibility that this may constitute an unlawful fettering of the council's discretion to deal with matters in accordance with the 2001 regulations. Therefore, it is important that the constitution is amended to avoid this happening and to prevent confusion regarding the power of the council to extend the designated independent person process

3.0 Council priorities

- 3.1 One of the council's priorities as set out in the Constitution is to act in accordance with the law and the council's constitution.

4.0 Equality implications

- 4.1 None arising from this report

5.0 Financial implications

- 5.1 None arising from this report.

6.0 Legal implications

- 6.1 This amendment if approved would reduce costs in dealing with relevant employment matters. It would also reflect proposed changes to the existing 2001 Regulations proposed by the government.
- 6.2. The 2001 Regulations never envisaged the extension of the designated independent person provisions wider than the three statutory officers specifically identified in the said Regulations. It is therefore likely the council would be acting unlawfully in fettering its discretion by extending the ambit of the Regulations, especially where the council was actually required to give like effect to the implementation of the Regulations.
- 6.3 It has never been the Council's intention to extend the above provisions to encompass other posts other than those required by statute when it resolved to implement the Regulations in March 2002, nor was any recommendation to this effect ever put before Council. Therefore, the council has never given proper consideration to the extension of the Regulations. It is not in the public interest for the ambit of the Regulations to be extended nor is it lawful for the council to fetter its discretion by doing so as stated above. It would also be contrary to proposed legislation further restricting the operation of these regulations being considered and consulted on by the government.
- 6.4 It is important that there is certainty in respect of contractual obligations offered to council officers by the council as part of their employment.

A handwritten signature in black ink that reads "Anthony Cox". The signature is written in a cursive style and is centered within a rectangular area that has a light gray dotted background.

Signed:

Anthony Cox
Head of Legal and Democratic Services

Date: 06.03.2013

Background Papers:

Local Authorities (Standing Orders) Regulations 2001.