



**CABINET - 5 DECEMBER 2001**

## **NEW MANDATORY STANDING ORDERS**

### **1. INTRODUCTION**

- 1.1 The Local Authorities (Standing Orders) (England) Regulations 2001 came into force on 7 November 2001. They introduce mandatory Standing Orders on three separate issues that all Councils operating executive arrangements are required to adopt as soon as reasonably practicable. The Regulations lay down a form of (rather complicated) wording for the Standing Orders, and require Councils to adopt Standing Orders in those words, or "provisions to the like effect".

### **2. ISSUES TO BE DEALT WITH IN NEW STANDING ORDERS**

- 2.1 Government guidance has already forewarned Councils of the issues to be covered in the new Standing Orders. They are:
- (a) the dispute resolution procedure to be followed where the Council disagrees with the Executive's proposals for the budget or a plan within the strategic policy framework;
  - (b) the respective role of the Council, the Executive, and officers, in appointing and dismissing employees; and
  - (c) the extension of the statutory protection of employment currently enjoyed by the Head of the Paid Service (Chief Executive) to the Chief Finance Officer and the Monitoring Officer.

### **3. DISPUTE RESOLUTION PROCEDURE**

- 3.1 The new legislation requires the Council to adopt a Standing Order specifying procedures for resolving disputes between the Council and the Executive over the content of strategic plans and the budget. Many of the required provisions are consistent with the Council's existing procedure in Chapter 21 of the Constitution, which was prepared with knowledge of the content of Government guidance.

- 3.2 A minor amendment to Standing Order 25.1 (new text is shown in bold italics), and a re-drafting of Chapter 21 of the Constitution, is proposed, as shown in Appendix 1 to this report.

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- 3.3 The new requirements are very prescriptive (the relevant model Standing Order comprises one and a half pages of small print). This means that the procedures currently laid down in Chapter 21 of the Council's Constitution have had to be expanded to ensure there is no danger that any of the legislative requirements have been omitted. The wording of the model Standing Order is also extremely complex. So far as it is safe to do so, the requirements have been put into plainer English.

- 3.4 In summary, where the Council disagrees with any proposals for the budget, or part of the strategic policy framework, recommended to it by Cabinet, it must give the Executive a minimum of 5 working days either to amend its proposals, or explain why it does not agree with the Council's objection to it. After the Executive has had that opportunity, the full Council may make a final decision on the issue. While, legally, the Executive must be given a minimum 5 working days to consider the Council's objections, in a particular case it may in practice be possible to allow longer than this, depending on the urgency with which the plan or strategy in question has to be finally approved by Council.
- 3.5 There is one difference of principle between the legislation and the procedure the Council has previously adopted as Chapter 21 of the Constitution. This is that the Council's current procedures only give the Leader the right to object, on behalf of the Executive, to the Council's proposed decision. Under the mandatory Standing Order, the Executive has the right to put amended proposals to the Council. It should be noted that the mandatory Standing Order does not specifically require a formally convened meeting of the Executive to consider the Council's objections to the Cabinet's recommendations. It states that, within the period specified, "the Executive Leader may submit a revision of the draft plan or strategy as amended by the Executive, with the Executive's reasons for any amendments.....". However, it is considered that, in the majority of cases, a formal meeting of the Cabinet is desirable in these circumstances so that their discussions can be held in public. On the other hand, it is recognised that there may occasionally be situations where the Council's objections are minor and straightforward, and it is not practicable to convene a quorate Cabinet meeting in time. For example, changed circumstances since the original Cabinet recommendation may mean that the Cabinet is likely to accept the Council's objections. It is therefore suggested that, if the Monitoring Officer is satisfied:
- (a) that it would not be practicable to convene a formal Cabinet meeting within the specified time; and
  - (b) that the Council's objections are not major or strategic, and the nature of those objections makes such an approach practicable,

the Leader may contact the other members of the Executive on an informal basis and pass their collective view to the Chief Executive for transmission to Council.

#### **4. RESPONSIBILITY FOR APPOINTING AND DISMISSING EMPLOYEES**

- 4.1 The new Standing Order provides, broadly, that the Cabinet should be given the opportunity to object to appointments to, or dismissals from, the more senior politically restricted posts before a job offer is made or a dismissal notice issued. Additional Standing Orders have been drafted to comply with the legislative requirements. The new provision does not apply to the appointment of the Monitoring Officer.
- # 4.2 Amendments to Standing Orders for General Procedures are proposed, as set out in Appendix 2 to this report. (New text is shown in bold italic print, and text proposed for deletion is shown as struck through).

- 4.3 The new Standing Order also makes it clear that appointment or dismissal of the Chief Executive requires a final decision by full Council. Under this Council's procedures, appointment of the Chief Executive and Directors already has to be approved by full Council. Appointment of all other officers is for the Chief Executive or a Director. It is therefore extremely unlikely that the second paragraph of Standing Order 15A.2 or 15A.6 will ever come into play. However, as the legislation requires Councils to adopt Standing Orders specifying that if an appointment or dismissal is made by a Committee or Sub-Committee a member of the Executive must be a member of that Committee or Sub-Committee, it was thought wise to include this provision.
- 4.4 The new legislation prescribes that appointments, dismissals and disciplinary action below deputy chief officer level must be undertaken by the Chief Executive or another officer - that is, members must not be involved in decisions relating to more junior employees. This provision has therefore been formally embodied in the new Standing Orders. The right of members to hear appeals against officers' decisions to appoint, dismiss, or discipline employees is however specifically preserved.

## **5. CHIEF FINANCE OFFICER AND MONITORING OFFICER – PROTECTION FROM DISCIPLINARY ACTION**

- 5.1 Under previous legislation, certain protection was afforded to the Chief Executive in the event of an allegation of misconduct against him. The Council's right to take disciplinary action was limited to two months suspension on full pay. No other disciplinary action could be taken, except as recommended by a designated independent person. The new Regulations extend this protection to the Monitoring Officer and the Chief Finance Officer. In anticipation of the new Regulations, the Council's Standing Orders for General Procedures No 18 already provide for the same process to be followed in the event of alleged misconduct against all three "statutory" officers. Minor amendments to Standing Order 18 are needed solely to update the legislative references, as set out in Appendix 3 to this report. (New text is shown in bold italic print, and text proposed for deletion is struck through).
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## **6. FINANCIAL IMPLICATIONS**

- 6.1 None arising directly from this report.

## **7. ENVIRONMENTAL AND CRIME AND DISORDER IMPLICATIONS**

- 7.1 None arising directly from this report.

## **8. CONSULTATION**

- 8.1 No external consultation, or formal member consultation, has taken place as this report is concerned solely with ensuring that the Council's Constitution and Standing Orders comply with mandatory new legislation. The Employee Side has been informed as a matter of courtesy.

## 9. CONCLUSION

- 9.1 New legislation requires all Councils operating executive arrangements to adopt certain Standing Orders as soon as reasonably practicable. Approval by full Council on 17 December 2001 of the recommendations in this report will comply with the legislative requirements.

## 10. RECOMMENDATIONS

- 10.1 That Council be recommended to approve:
- (a) the amendment to Standing Order 25, and the revised Chapter 21 of the Constitution, attached as Appendix 1 to this report;
  - (b) the revised Standing Orders for General Procedures Nos 15 and 16, and the new Standing Orders Nos 15A, 15B and 18A, attached as Appendix 2 to this report;
  - (c) the revised Standing Orders for General Procedures No 18, attached as Appendix 3 to this report;
  - (d) that the Head of Personnel be appointed as the proper officer for the purpose of Schedule 1 to the Local Authorities (Standing Orders) (England) Regulations 2001 (duty to notify the Executive of proposed appointments to and dismissals from senior posts); and
  - (e) that the Head of Legal and Democratic Services be authorised to make any minor amendments to other parts of the Council's Constitution that she considers necessary to achieve consistency with the new Standing Orders.

### For Further Information:

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### Background Papers:

Published material only

## **STANDING ORDERS FOR MEETINGS**

### **1. Interpretation**

In these Standing Orders –

“the 1972 Act” means the Local Government Act 1972, as amended

“Cabinet” means the formal Council body defined as the executive under the Local Government Act 2000

“Chief Executive” means the Head of the Council’s Paid Service

“Committee” means any Committee appointed by the Council

“he”, “him”, “his” and “himself” includes “she”, “her” and “herself”

“Leader” means the Councillor appointed by the Council to be its principal political leader

“Monitoring Officer” means the person appointed under section 5 of the Local Government and Housing Act 1989

“opposition group” means any political group, excluding the political group which contains the largest number of Council members

“Panel” means Review Panel (except where the term “Appeals Panel” is used)

“political group” means a group of Councillors who:

wish to associate together for the allocation of Committee and Panel places; and

inform the Chief Executive of that fact in writing

“portfolio” means an activity which is the responsibility of a single cabinet member

“portfolio holder” means the Councillor responsible for a specific portfolio

“Sub-Committee” means any group, whether or not called a Sub-Committee, which is appointed by the Cabinet, a Committee or Panel for specified purposes. (\*See Note for Guidance below)

“working day” means Mondays to Fridays, excluding days of public holiday; and a working day ends when the Council’s offices at Appletree Court, Lyndhurst close for normal business on that day

## DISPUTES BETWEEN CABINET AND COUNCIL

### 25. Resolving Disputes between the Council and Cabinet

- 25.1 The mechanism for resolving disputes between the Council and Cabinet shall be as stated in **Chapter 21 of** the Council's Constitution. ***That Chapter shall comply with the requirements of The Local Authorities (Standing Orders) (England) Regulations 2001.***

## PROCEDURE FOR RESOLVING DISPUTES BETWEEN COUNCIL AND CABINET

### INTERPRETATION

1. In this Chapter, "plan or strategy" means a plan or strategy referred to in Annex 2 to Chapter 1 of the Constitution, and any other plans or strategies that full Council decide should be added to the list in Annex 2, (subject to the separate provisions relating to the statutory components of the budget in paragraph 10).
2. Where notification is required to be submitted to any Councillor or officer of the Council under the procedure in this Chapter, the notification may be transmitted electronically.

### PROCEDURE FOR DEALING WITH RECOMMENDATIONS FROM CABINET

3. The Cabinet is responsible for formulating or preparing plans or strategies, or alterations to plans or strategies, for submission to the full Council. In doing so, it shall undertake any consultations required under this Constitution.
4. The full Council is responsible for approving plans and strategies. In doing so, it shall in all cases consider a written recommendation from the Cabinet.
5. The procedure in this Chapter lays down the action that must be taken where the Cabinet has submitted a draft plan or strategy, or amendments to an existing plan or strategy, to full Council for consideration, and, following consideration of the draft plan or strategy, or the amendments, the Council has any objections to the Cabinet's proposals.
6. Before the Council adopts, approves, amends or modifies the plan or strategy, it must instruct the Chief Executive to take the action in paragraph 7.
7. As soon as reasonably practicable, and in all case within two working days, after the meeting at which the Council objected as in paragraph 5 above, the Chief Executive shall give written notification to the Leader of the Council in the following terms:

"[NAME OF PLAN OR STRATEGY]

At its meeting on [date] full Council objected to this plan or strategy as recommended to it by the Cabinet for [adoption][approval][amendment]. The objections agreed by Council were:

[ ].

Under legislation and the Council's Constitution, the Executive must reconsider the [name of plan or strategy] in the light of the Council's objections.



The Executive must either:

- (a) submit a revised [name of plan or strategy], with its reasons for any amendment, to the Council for its consideration; or
- (b) inform the Council of any disagreement it has with any of the Council's objections, and its reasons for the disagreement.

The Executive must take this action by [date (1)\*]

[It is proposed that this item is placed on the agenda for the Cabinet meeting already arranged for [date and time]]

OR

[I will contact you separately to arrange a date and time for a special Cabinet meeting]

OR

[As discussed, a special Cabinet meeting to consider this matter is being arranged for [date and time]]

OR

[\*\*Please notify me by [date] of any revisions the Executive proposes to the [name of plan or strategy], with reasons, and/or the Executive's reasons for any disagreement with the Council's objections]."

\* The date at (1) must be not less than 5 working days from and including the day after the Leader receives this notification.

\*\* This option may be used only where the Monitoring Officer is satisfied that (a) it would not be practicable to convene a formal Cabinet meeting within the specified time, and (b) the Council's objections are not major or strategic, and the nature of them makes it practicable for the Leader to respond without convening a formal Cabinet meeting.

8. When the Executive has reconsidered the matter in the light of the Council's objections, the Chief Executive shall arrange for the plan or strategy to be referred to the next full Council meeting or, if necessary, a special Council meeting. The reference to the Council meeting shall include all of the following information that has been received from the Executive by the date at (1) in paragraph 7 above:
  - a) any amendments to the draft plan or strategy proposed by the Executive;
  - b) the reasons for those amendments;
  - c) any disagreement the Executive has with the Council's objections to the plan or strategy; and
  - d) the reasons for that disagreement.
9. The Council shall take the information in 8 (a) to (d) into account when it adopts, approves, amends or modifies the plan or strategy. The Council's decision, whether it be to follow or to reject the views of the Executive, shall be implemented immediately.
10. Where, before 8 February in any financial year, the Cabinet submits to full Council for consideration in relation to the following financial year the statutory components of the budget (defined below\*), the procedure in paragraphs 5 to 9 above shall also apply before the Council makes a calculation, or issues a precept, under any of the legislation included in the definition. The Chief Executive's notification to the Leader shall be in similar terms to that in paragraph 7 of this Chapter.

\*The "statutory components of the budget" means:

- (a) estimates of the amounts to be aggregated in making a calculation (whether originally or by way of substitute) in accordance with any of sections 32 to 37 or 43 to 49, of the Local Government Finance Act 1992;
- (b) estimates of other amounts to be used for the purposes of such a calculation;
- (c) estimates of such a calculation; or
- (d) amounts required to be stated in a precept under Chapter IV of Part 1 of the Local Government Finance Act 1992

but not

- (a) calculations or substitute calculations which an authority is required to make in accordance with section 52I, 52J, 52T or 52U of the Local Government Finance Act 1992; or
- (b) amounts stated in a precept issued to give effect to calculations or substitute calculations made in accordance with section 52J or 52U of that Act.

## STANDING ORDERS FOR GENERAL PROCEDURES

(THESE STANDING ORDERS DO NOT RELATE TO PROCEEDINGS AT MEETINGS)

### 1. Interpretation

In these Standing Orders –

“the 1972 Act” means the Local Government Act 1972, as amended

“Cabinet” means the formal Council body defined as the executive under the Local Government Act 2000

“Chief Executive” means the Head of the Council’s Paid Service

“Chief Officer” means -

the Chief Executive;

the Monitoring Officer;

the officer responsible for the proper administration of the Council’s financial affairs under section 151 of the 1972 Act; and

any other person the Council designates as a Chief Officer, and whose name is entered as such in a list which may be inspected by the public.

“he”, “him”, “his” and “himself” includes “she”, “her” and “herself”

“Monitoring Officer” means the person appointed under section 5 of the Local Government and Housing Act 1989

“Sub-Committee” means any group, whether or not called a Sub-Committee, which is appointed by the Cabinet, a Committee or Panel for specified purposes.

**15. Appointment of Chief Officers and Monitoring Officer - Advertisement, Shortlist and Interview**

15.1 Where the Council proposes to appoint a Chief Officer, and does not propose that the appointment shall be made exclusively from among existing Council officers, it shall:

- (a) draw up a statement specifying:
  - (i) the duties of the officer concerned, and
  - (ii) any qualifications or qualities to be sought in the person to be appointed;
- (b) make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it; and
- (c) make arrangements for a copy of the statement mentioned in (a) to be sent to any person on request.

***The General Purposes and Licensing Committee shall take this action where the Chief Executive is to be appointed. The Chief Executive shall take this action where any other Chief Officer is to be appointed.***

- 15.2 (a) Where a post has been advertised as 15.1(b), the Council shall:
- (i) interview all qualified applicants for the post, or
  - (ii) select a short list of qualified applicants and interview those included on the short list.
- (b) Where no qualified person has applied, the Council shall make further arrangements for advertisement under 15.1(b).

***The Council may authorise a Committee, Sub-Committee or the Chief Executive to take this action on its behalf.***

**15.3 Standing Order 15A also applies when it is proposed to appoint a Chief Officer (except the Monitoring Officer).**

~~15.3 The General Purposes and Licensing Committee shall take action under 15.1 to appoint the Chief Executive.~~

~~The Chief Executive shall take action under 15.1 to appoint any other Chief Officer.~~

~~The Council shall take action under 15.2. Alternatively the Cabinet may authorise a Committee, Sub-Committee or the Chief Executive to take action on its behalf.~~

~~———— The Council shall appoint every Chief Officer.~~

~~15.4 The Council shall appoint a Monitoring Officer. The Monitoring Officer shall not be the Chief Executive.~~

(Note: The first 3 sub-paragraphs of 15.3 have been incorporated into 15.1 and 15.2. The fourth sub-paragraph has been incorporated into 15A.2. 15.4 has been incorporated into 15B).

**15A. Appointment and dismissal of Chief Officers and deputy chief officers, and notification of proposals to the Executive.**

**15A.1 This Standing Order applies to appointments to, and dismissals from, the following posts:**

**Chief Officers, as defined in Standing Order 1, but excluding the Monitoring Officer;**

**non-statutory chief officers within the meaning of section 2(7) of the Local Government and Housing Act 1989; and**

**deputy chief officers within the meaning of section 2(8) of the Local Government and Housing Act 1989.**

**The Chief Executive shall maintain a list of posts falling within the definition of non-statutory chief officer, and deputy chief officer.**

**Appointment**

**15A.2 The Council shall approve the appointment of every Chief Officer before an offer of appointment is made.**

**The Council, a Committee, Sub-Committee or officer, as appropriate, shall appoint other officers to whom this Standing Order relates. Normally, the appointment shall be made by an officer. If, exceptionally, the appointment is made by a Committee or Sub-Committee, at least one member of the Cabinet shall be a member of that Committee or Sub-Committee.**

**15A.3 When an officer (or the Council, a Committee or a Sub-Committee) wishes to make an offer of appointment to any of the posts to which this Standing Order applies, he shall inform the Head of Personnel of:**

- (a) the name of the person to whom he wishes to make the offer, and**
- (b) any other particulars which he considers relevant to the appointment.**

**15A.4 The Head of Personnel shall notify to every member of the Cabinet:**

- (a) the information in 15A.3 (a) and (b) above; and**
- (b) that the Leader of the Council, on behalf of the Cabinet, should inform the Head of Personnel of any objection to the making of the offer, and that any objection must be received by the Head of Personnel within 5 working days from the date of the notification.**

**15A.5 The offer of appointment in 15A.3 shall not be made until either:**

- (a) the Leader has notified the appointing person or body that no member of the Cabinet objects to the offer being made; or**
- (b) the Head of Personnel has notified the appointing body or person that no objection was received from the Leader within 5 working days of the notification to the Cabinet; or**
- (c) if an objection from the Leader has been received within the 5 working day period, the appointing person or body is satisfied that any objection is not material or not well-founded.**

**Dismissal**

**15A.6 The Council must approve the dismissal of every Chief Officer before notice of dismissal is given to him.**

**The Council, a Committee, Sub-Committee or officer, as appropriate, shall approve the dismissal of other officers to whom this Standing Order applies. Normally, the dismissal shall be made by an officer. If, exceptionally, the dismissal is made by a Committee or Sub-Committee, at least one member of the Cabinet shall be a member of that Committee or Sub-Committee.**

**15A.7 When an officer (or the Council, a Committee or a Sub-Committee) proposes to dismiss an employee from any of the posts to which this Standing Order applies, he shall inform the Head of Personnel of:**

- (a) the name of the officer he proposes to dismiss, and**
- (b) any other particulars which he considers relevant to the dismissal.**

**15A.8 The Head of Personnel shall notify to every member of the Cabinet:**

- (a) the information in 15A.7 above; and**
- (b) that the Leader of the Council, on behalf of the Cabinet, should inform the Head of Personnel of any objection to the dismissal, and that any objection must be received by the Head of Personnel within 5 working days from the date of the notification.**

**15A.9 Notice of dismissal shall not be given until either:**

- (a) the Leader has notified the appointing person or body that no member of the Cabinet objects to the dismissal; or**
- (b) the Head of Personnel has notified the appointing body or person that no objection was received from the Leader within 5 working days of the notification to the Cabinet; or**
- (c) if an objection from the Leader has been received within the 5 working day period, the dismissing person or body is satisfied that any objection is not material or not well-founded.**

**15B. Appointment of Monitoring Officer**

15B.1 The Council shall appoint a Monitoring Officer. The Monitoring Officer shall not be the Chief Executive. **Standing Order 15A shall not apply to the appointment or dismissal of the Monitoring Officer.**

**16. Other Officer Appointments and dismissals**

16.1 Appointments and dismissals which do not fall within Standing Order 15, **15A and 15B** shall be made in accordance with the procedures in the relevant Chapter of the Constitution ~~Employee Handbook~~ **Council's agreed procedures (as contained in the Management Advice Notes). Appointment and dismissal of persons whose posts do not fall within the definition in Standing Order 15A.1 shall be made by the Chief Executive or an officer nominated by him.**

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**18A Disciplinary action - officers below deputy chief officer level.**

18A.1 **Procedures for disciplinary action against officers other than the Chief Executive, Chief Finance Officer and Monitoring Officer shall be as set out in the Employee Handbook Council's agreed procedures (as contained in the Council's Management Advice Notes. Disciplinary action against any person other than one whose post is listed in Standing Order 15.1 must be undertaken by the Chief Executive or an officer nominated by him.**

(Extract from Standing Orders for General Procedures)

**18. Chief Executive, Monitoring Officer and Financial Officer – Disciplinary Action**

18.1 **Neither** the Council, Cabinet, a Committee, Sub-Committee, Joint Committee, Panel, nor any person acting on their behalf may take disciplinary action against

the Chief Executive;

the Monitoring Officer; or

the officer appointed for the proper administration of the Council's financial affairs under section 151 of the 1972 Act

except:

as described in Standing Order 18.2; or

in accordance with a recommendation in a report by a designated independent person under Regulation ~~3~~ **7** of the Local Authorities (Standing Orders) **(England)** Regulations ~~1993~~ **2001** (*investigation of alleged misconduct*).

“Disciplinary action” means action within the meaning of ~~Part II~~ **regulation 2** of the Local Authorities (Standing Orders) **(England)** Regulations ~~1993~~ **2001**.

18.2 The Council, a Committee, Sub-Committee, Joint Committee, or any person acting on their behalf may suspend the officer in order to investigate alleged misconduct. Any such suspension shall be on full pay, and shall end no later than the end of two months from and including the day on which the suspension starts.

18.3 The Council shall adopt disciplinary procedures for the officers mentioned in 18.1 for the purpose of 18.2.