

**CYNGOR SIR POWYS COUNTY COUNCIL.**

**DEMOCRATIC SERVICES COMMITTEE – 4<sup>TH</sup> OCTOBER, 2014  
COUNTY COUNCIL - 22<sup>ND</sup> OCTOBER, 2014**

**REPORT BY:** Solicitor to the Council

**SUBJECT:** Revision to the Current Constitution – The Local Authorities (Standing Orders)(Wales)(Amendment) Regulations 2014.

---

**REPORT FOR:** Decision and Information

---

**1. Introduction.**

- 1.1 The Council is required by law to adopt Standing Orders to govern the recruitment, appointment and dismissal of its staff (and other matters) in accordance with the Local Authorities (Standing Orders)(Wales) Regulations 2006 (“the 2006 Regulations”). The County Council has included the provisions of the 2006 Regulations in the current version of the Constitution.
- 1.2 On the 1<sup>st</sup> July 2014 new requirements were imposed by the Local Authorities (Standing Orders) (Wales) (Amendment) Regulations 2014 (“the 2014 Regulations”) which must be incorporated into the Council’s Constitution, and the purpose of this report is to implement the required changes.
- 1.3 The report below explains the changes made by the 2014 Amendment Regulations and the consequential amendments required to the Council’s Constitution.

**2. Implications.**

- 2.1 The 2014 Regulations require certain provisions to be incorporated into the Council’s Constitution, and create a new function for Full Council, namely that of determining the level of remuneration (and changes to the level of remuneration) to be paid to chief officers. There is no power to delegate that function.

2.2 The 2014 Regulations also extends to the Head of Democratic Services the statutory protection afforded to certain other chief officers in relation to the disciplinary matters. The protection continues to apply even if the post holder is no longer in post, provided that the alleged act of misconduct took place whilst the officer was in a protected post.

2.3 The 2014 Regulations also amend the requirements governing the appointment and recruitment of chief officers. Public advertisements will be required for any chief officer posts where the remuneration to be paid is £100,000 or more (with an exception for interim appointments of up to 12 months in duration). The rationale for this is to ensure that able candidates from outside the organisation have the opportunity to gain the position if found to be the most suitable

**3. Amendments Required to the Constitution.**

3.1 The Amendments required to Part 4 Section 9 of the Constitution are set out in Appendix A to this report.

<b>Recommendation:</b>	<b>Reason for Recommendation:</b>
<p>(i) That the Council approves the amendments to Part 4 Section 9 of the Constitution as set out in Appendix A to the Report.</p> <p>(ii) That Council approves the amendment to Article 4 of the Constitution as set out in Appendix B</p>	<p>To update and make urgent revisions to the Council's current Constitution.</p>

<b>Person(s) To Action Decision:</b>	<b>Clive Pinney, Solicitor to the Council.</b>		
<b>Date By When Decision To Be Actioned:</b>	<b>May, 2014</b>		
<b>Relevant Policy (ies):</b>	Council's Constitution.		
<b>Within Policy:</b>	<b>Y</b>	<b>Within Budget:</b>	<b>Y</b>
<b>Contact Officer Name:</b>	<b>Tel:</b>	<b>Fax:</b>	<b>Email:</b>
Wyn Richards Scrutiny manager	01597 826375	01597 826220	<a href="mailto:wyn.richards@powys.gov.uk">wyn.richards@powys.gov.uk</a>

**APPENDIX A**

**Officer Employment Procedure Rules**

**SECTION A**

**Recruitment, Appointment and Dismissal of, and taking Disciplinary Action against staff generally**

1. Subject to the following provisions of these Procedure Rules providing otherwise the recruitment, appointment and dismissal of and disciplinary action against all officers will follow the policies and procedures detailed in the relevant employment policies of the Council contained on the Powys County Council Intranet and (where relevant) the Employment Act 2002.
2. Subject to Rules 3 and 5, the function of the recruitment, appointment and dismissal of, and taking disciplinary action against, a member of staff of the Council must be discharged, on behalf of the Council, by the officer designated under section 4(1) of the 1989 Act (designation and reports of head of paid service) as the head of the authority's paid service or by an officer nominated by the head of the authority's service.
3. Rule 2 does not apply to the appointment or dismissal of, or disciplinary action against:
  - (a) the officer designated as the head of the authority's paid service;
  - (b) a statutory chief officer within the meaning of section 2(6) of the 1989 Act (politically restricted posts);
  - (c) a non-statutory chief officer within the meaning of section 2(7) of the 1989 Act;
  - (d) a deputy chief officer within the meaning of section 2(8) of the 1989 Act;
  - (e) a person appointed in pursuance of section 9 of the 1989 Act (assistants for political groups); or
  - (f) a person to whom regulations made under section 35(4) and (5) (provision with respect to the appointment, discipline, suspension and dismissal of teachers and other staff of schools employed by the local education authority) of the Education Act 2002 apply.
- 4.

## **PART 4 – RULES OF PROCEDURE**

- (1) Where a committee, sub-committee or officer is discharging, on behalf of the Council, the function of the appointment or dismissal of an officer designated as the head of the authority's paid service, the Council must approve that appointment before an offer of appointment is made or, as the case may be, must approve that dismissal before notice of dismissal is given.
  - (2) Where a committee or a sub-committee of the relevant authority is discharging, on behalf of the relevant authority, the functions of the appointment or dismissal of any officer referred to in subparagraphs (a), (b), (c) or (d) of paragraph 3.
    - (a) at least one member of the executive must be a member of that committee or sub-committee; and
    - (b) not more than half the members of that committee or sub-committee are to be members of the executive of the relevant authority.
5. Nothing in Rule 2 prevents a person from serving as a member of any committee or sub-committee established by the Council to consider an appeal by a member of staff of the Council against any decision relating to the dismissal of, or taking disciplinary action against, that member of staff.

### **SECTION B**

#### **Recruitment and Appointment ( Including Shortlisting) of Head of Paid Service and other Chief Officers**

- 6.
- (1) The full Council will appoint the Head of Paid Service and any other chief officer from a shortlist of candidates prepared by the Employment and Appeals Committee or a Sub-Committee of that committee .
  - (2) The full Council will determine the level, and any change in the level, of remuneration of a chief officer.
  - (32) Subject to Rule 6(4) below, w~~h~~ere the Council proposes to appoint a chief officer and the remuneration it proposes to pay is £100,000 or more per annum and it is not proposed that the appointment be made exclusively from among its existing officers, the Council must–
    - (a) draw up a statement specifying:
      - (i) the duties of the officer concerned, and

## ***PART 4 – RULES OF PROCEDURE***

---

- (ii) any qualifications or qualities to be sought in the person to be appointed;
  - (b) make arrangements for the post to be publically 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 paragraph (a) to be sent to any person on request.
- (4) Rule 6(3)(b) above does not apply if the Council proposes to appoint the chief officer for a period of no longer than 12 months.

Formatted

## **PART 4 – RULES OF PROCEDURE**

---

7.

(1) Where a post has been advertised as provided in Rule 6 (32) (b), the Council must

interview all qualified candidates who have applied for the post or those qualified candidates included on a short list prepared by the Employment and Appeals Committee or a Sub-Committee of that committee as referred to in Rule 6 (1) above.

(22) Where no qualified person has applied, or if the Council decide to re-advertise the appointment, the Council may make further arrangements for advertisement in accordance with Rule 6 (32) (b)."

8. The power to approve the appointment of the head of the authority's paid service must be exercised by the Council itself and accordingly section 101 of the Local Government Act 1972 (arrangements for discharge of functions by local authorities) does not apply to the exercise of that power.

---

### **SECTION C**

#### **Recruitment and Appointment ( Including Shortlisting) of Heads of Service**

9. The function of the recruitment and appointment (including shortlisting) of Heads of Service shall be discharged by the Employment CommitteeEmployment and Appeals Committee or a Sub-Committee of that committee .

---

### **SECTION D**

#### **Recruitment and appointment ( Including Shortlisting) of staff below Head of Service**

10. The function of the recruitment and appointment (including shortlisting) of officers below Heads of Service are the responsibility of the relevant Head of Service or his/her nominee and members must not be involved.

---

### **SECTION E**

#### **Disciplinary action against Head of Paid Service, Monitoring Officer and, Chief Finance Officer and Head of Democratic Services**

## ***PART 4 – RULES OF PROCEDURE***

---

11. No disciplinary action (other than action to which Rule 12 applies) in respect of the head of the authority's paid service, its monitoring officer ~~or~~ its chief finance officer or Head of Democratic Services, may be taken by the Council, or by a committee, a sub-committee, a joint committee on which the Council is represented or any other person acting on behalf of the Council, other than in accordance with a recommendation in a report made by a designated independent person under regulation 9 of the Local Authorities (Standing Orders) (Wales) Regulations 2006 (investigation of alleged misconduct) and Rule 13(6)(d)(ii).
12. The action to which this paragraph applies is suspension of the officer for the purpose of investigating the alleged misconduct occasioning the action; provided such suspension is on full pay and terminates no later than the expiry of two months beginning on the day on which the suspension takes effect."

---

### **SECTION F**

#### **Investigation of alleged misconduct by Head of Paid Service, Monitoring Officer ~~and~~, Chief Finance Officer and Head of Democratic Services**

- 13.
- (1) Subject to paragraph (11) below, where it appears to the Council that an allegation of misconduct which may lead to disciplinary action has been made against:
- (a) the head of the authority's paid service;
  - (b) its monitoring officer; or
  - (c) its chief finance officer, or
  - (d) its Head of Democratic Services
- ("the relevant officer"), as the case may be, the Council must appoint a committee ("an investigation committee") to consider the alleged misconduct.
- (2) The investigation committee must:
- (a) consist of a minimum of 3 members of the relevant authority;
  - (b) be politically balanced in accordance with section 15 of the 1989 Act; and

## ***PART 4 – RULES OF PROCEDURE***

---

must, within 1 month of its appointment, consider the allegation of misconduct and decide whether it should be further investigated.

- (3) For the purpose of considering the allegation of misconduct, the investigation committee:
  - (a) may make such enquiries of the relevant officer or any other person it considers appropriate;
  - (b) may request the relevant officer or any other person it considers appropriate to provide it with such information, explanation or documents as it considers necessary within a specified time limit; and
  - (c) may receive written or oral representations from the relevant officer or any other person it considers appropriate.
- (4) Where it appears to the investigation committee that an allegation of misconduct by the relevant officer should be further investigated, it must appoint a person ("the designated independent person") for the purposes of the Rule 11 above.
- (5) The designated independent person who is appointed:
  - (a) must be such person as may be agreed between the Council and the relevant officer within 1 month of the date on which the requirement to appoint the designated independent person arose; or
  - (b) where there is no such agreement, must be such person as is nominated for the purpose by the National Assembly for Wales.
- (6) The designated independent person:
  - (a) may direct:
    - (i) that the Council terminate any suspension of the relevant officer;
    - (ii) that any such suspension is to continue after the expiry of the period referred to in Rule 12.
    - (iii) that the terms on which any such suspension has taken place are to be varied in accordance with the direction; or
    - (iv) that no steps (whether by the Council or any committee, sub-committee or officer acting on behalf



## **PART 4 – RULES OF PROCEDURE**

---

of the Council) by way of disciplinary action or further disciplinary action against the relevant officer, other than steps taken in the presence, or with the agreement, of the designated independent person, are to be taken before a report is made under sub-paragraph (d);

- (b) may inspect any documents relating to the conduct of the relevant officer which are in the possession of the Council, or which the Council has power to authorise the designated independent person to inspect;
- (c) may require any member or member of staff of the Council to answer questions concerning the conduct of the relevant officer;
- (d) must make a report to the Council:
  - (i) stating an opinion as to whether (and, if so, the extent to which) the evidence obtained supports any allegation of misconduct against the relevant officer; and
  - (ii) recommending any disciplinary action which appears appropriate for the Council to take against the relevant officer, and
  - (e) must no later than the time at which the report is made under sub-paragraph (d), send a copy of the report to the relevant officer.
- (7) Subject to paragraph (8) below, the relevant officer and Council must, after consulting the designated independent person, attempt to agree a timetable within which the designated independent person is to undertake the investigation.
- (8) Where there is no agreement under paragraph (7) above, the designated independent person must set a timetable as that person considers appropriate within which the investigation is to be undertaken.
- (9) The Council must consider the report prepared under paragraph (6) (d) above within 1 month of receipt of that report.
- (10) A Council must pay reasonable remuneration to a designated independent person appointed by the investigation committee and any costs incurred by, or in connection with, the discharge of functions under this regulation.

## **PART 4 – RULES OF PROCEDURE**

- ~~(11) This Rule does not apply in relation to the head of the authority's paid service if that person is also the council manager of the authority.~~

---

### **SECTION G**

#### **Disciplinary Action Against Chief Officers (other than Head of Paid Service)**

14. Disciplinary action against a Chief Officer (other than the Head of Paid Service, Monitoring Officer ~~or~~, Chief Finance Officer or Head of Democratic Services) shall be undertaken in accordance with the relevant employment policies of the Council contained on the Powys County Council Intranet.

---

### **SECTION H**

#### **Disciplinary action against Heads of Service and staff below them**

15. Disciplinary action against a Head of service or any officer below a Head of Service shall be undertaken in accordance with the relevant employment policies of the Council contained on the Powys County Council Intranet.

---

### **SECTION I**

#### **Interpretation**

17. In these Rules:

"the 1989 Act" means the Local Government and Housing Act 1989;

"the 2000 Act" means the Local Government Act 2000;

"the 1993 Regulations" means the Local Authorities (Standing Orders) Regulations 1993;

"chief officer" means:

- (a) the head of the Council's paid service;or
- (b) the Council's monitoring officer;or
- (c) a statutory chief officer within the meaning of paragraphs (a), (c) or (d) of section 2(6) of the 1989 Act ( ie Chief Education Officer, Director of Social Services and chief finance officer) , or

## ***PART 4 – RULES OF PROCEDURE***

---

- (d) a non-statutory chief officer within the meaning of section 2(7) of the 1989 Act (ie Strategic Director or Director);

and any reference to an appointment or purported appointment of a chief officer includes a reference to the engagement or purported engagement of such an officer under a contract of employment;

"chief finance officer" means the officer having responsibility, for the purposes of section 151 of the Local Government Act 1972 (financial administration) for the administration of the local authority's financial affairs;

~~"council manager" has the same meaning as in section 11(4)(b) of the 2000 Act;~~

"deputy chief officer" means an officer within the meaning of section 2(8) of the 1989 Act - Head of Service;

"designated independent person" means a person appointed in accordance with regulation 9 of the Local Authorities (Standing Orders) (Wales) Regulations 2006 and Standing Order 13;

"disciplinary action" in relation to a member of staff of the Council means any action occasioned by alleged misconduct which, if proved, would, according to the usual practice of the Council, be recorded on the member of staff's personal file, and includes any proposal for dismissal of a member of staff for any reason other than redundancy, permanent ill-health or infirmity of mind or body, but does not include failure to renew a contract of employment for a fixed term unless the Council has undertaken to renew such a contract;

"executive" and "executive leader" have the same meaning as in Part II of the 2000 Act.

"head of the authority's paid service" means the officer designated under section 4(1) of the 1989 Act (designation and reports of head of paid service) – Chief Executive;

"Head of Democratic Services" means the officer designated under section 8 of the Local Government (Wales) Measure 2011

Formatted

"joint committee", means a joint committee on which the Council is represented;

"member of staff" means a person appointed to or holding a paid office or employment, under the Council;

## **PART 4 – RULES OF PROCEDURE**

"monitoring officer" means the officer designated under section 5(1) of the 1989 Act (designation and reports of monitoring officer) – Strategic Director – Law and Governance;

~~"non-statutory chief officer" means an officer within the meaning of section 2(7) of the 1989 Act – Strategic Director or Director;—~~

"proper officer" means an officer appointed by the authority for the purposes of the provisions of these rules.

"remuneration" in relation to a chief officer has the same meaning as in section 43(3) of the Localism Act 2011 ie.

- (a) The chief officer's salary or, in the case of a chief officer engaged by the authority under a contract for services payments made by the authority to the chief officer for those services,
- (b) any bonuses payable by the authority to the chief officer
- (c) any charges, fees or allowances payable by the authority to the chief officer;
- (d) any benefits in kind to which the chief officer is entitled as a result of the chief officer's office or employment;
- (e) any increase in or enhancement of the chief officer's pension entitlement where the increase or enhancement is as a result of a resolution of the authority; and
- (f) any amounts payable by the authority to the chief officer on the chief officer ceasing to hold office under or be employed by the authority, other than amounts that may be payable by virtue of any enactment.

~~"statutory chief officer" means an officer mentioned in paragraph (a), (c) or (d) of section 2(6) of the 1989 Act;~~

~~Chief Education Officer  
Director of Social Services  
Chief Finance Officer~~

## Article 4 – The Full Council

### 4.1 Meanings

- (a) **Policy Framework.** The policy framework means the following plans and strategies:-

Plan, Scheme and Strategy	Reference
<ul style="list-style-type: none"> <li>Children and Young People's Plan;</li> </ul>	<ul style="list-style-type: none"> <li>Regulations made under Section 26 of the Children Act 2004 (c.31)</li> </ul>
<ul style="list-style-type: none"> <li>Best Value Performance Plan;</li> </ul>	<ul style="list-style-type: none"> <li>Section 6(1) of the Local Government Act 1999 9c.27)</li> </ul>
<ul style="list-style-type: none"> <li>Community Strategy;</li> </ul>	<ul style="list-style-type: none"> <li>Section 4 of the Local Government Act 2000 (c.22)</li> </ul>
<ul style="list-style-type: none"> <li>Crime and Disorder Reduction Strategy;</li> </ul>	<ul style="list-style-type: none"> <li>Sections 5 and 6 of the Crime and Disorder Act 1998 9c.37)</li> </ul>
<ul style="list-style-type: none"> <li>Health and Well-Being Strategy</li> </ul>	<ul style="list-style-type: none"> <li>Section 24 of the National Health Service Reform and Health Care professions Act 2002 9c.17)</li> </ul>
<ul style="list-style-type: none"> <li>Local Transport Plan;</li> </ul>	<ul style="list-style-type: none"> <li>Section 108 of the Transport Act 2000 (c.38)</li> </ul>
<ul style="list-style-type: none"> <li>Plans and alterations which together comprise the Development Plan;</li> </ul>	<ul style="list-style-type: none"> <li>Section 10A of the Town and Country Planning Act 1990 (c.8)</li> </ul>
<ul style="list-style-type: none"> <li>Welsh Language Scheme;</li> </ul>	<ul style="list-style-type: none"> <li>Section 5 of the Welsh Language Act 1993 (c.38)</li> </ul>
<ul style="list-style-type: none"> <li>Youth Justice Plan;</li> </ul>	<ul style="list-style-type: none"> <li>Section 40 of the Crime and Disorder Act 1998 (c.37)</li> </ul>
<ul style="list-style-type: none"> <li>Powers to approve a Young Peoples Partnership Strategic Plan and a Children and Young Peoples Framework Partnership</li> </ul>	<ul style="list-style-type: none"> <li>Section 123, 124 and 125 of the Learning and Skills Act 2000 (c.21)</li> </ul>
<ul style="list-style-type: none"> <li>Housing Strategy;</li> </ul>	<ul style="list-style-type: none"> <li>Section 87 of the Local Government Act 2003 (c.26)</li> </ul>
<ul style="list-style-type: none"> <li>Rights of Way Improvement Plan;</li> </ul>	<ul style="list-style-type: none"> <li>Section 60 of the Countryside and Rights of</li> </ul>

## PART 2 - ARTICLES OF THE CONSTITUTION

Way Act 2000 (c.37)

[The Local Authorities (Executive Arrangements)(Functions and Responsibilities)(Wales) Regulations 2007 as amended by The Local Authorities (Executive Arrangements)(Functions and Responsibilities)(Wales)(Amendment) Regulations 2009.]

- (b) **Other Policies, Strategies and Plans.** The Council has determined that the approval of all other Operational Plans, processes and procedures will be the responsibility of the Executive, an Individual Executive Member or a Head of Service in accordance with the Document Framework and Approval Process set out in Part 4, Section 10 of this Constitution.
- (c) **Budget.** The budget includes the allocation of financial resources to different services and projects, proposed contingency funds, the council tax base, setting the council tax and decisions relating to the control of the Council's borrowing requirement, the control of its capital expenditure and the setting of virement limits.
- (d) **Housing Land Transfer.** Housing Land Transfer means the approval or adoption of applications (whether in draft form or not) to the National Assembly for Wales for approval of a programme of disposal of 500 or more properties to a person under the Leasehold Reform, Housing and Urban Development Act 1993 or to dispose of land used for residential purposes where approval is required under sections 32 or 43 of the Housing Act 1985.

### 4.2 Functions of the full Council

Only the Council will exercise the following functions:

- (a) adopting and changing the Constitution;
- (b) approving or adopting the policy framework, the budget and any application to the National Assembly for Wales in respect of any Housing Land Transfer;
- (c) subject to the urgency procedure contained in the Budget and Policy Framework Procedure Rules in Part 4, Section 4 of this Constitution, making decisions about any matter which is covered by the policy framework or the budget where the Executive is minded to make it in a manner which would be contrary to the policy framework or contrary to/or not wholly in accordance with the budget.
- (d) appointing the Executive Leader;
- (e) making appointments to the committees of the Council (including Area (Shire) Committees and the Standards Committee)
- (f) allocate Chairs of scrutiny committees of the Council to the relevant political groups.

## ***PART 2 - ARTICLES OF THE CONSTITUTION***

---

- (g) agreeing and / or amending the terms of reference for committees, and deciding on their composition in accordance with the political balance regime where required;
- (h) appointing representatives to statutory and other outside bodies unless the appointment is an executive function or has been delegated by the Council;
- (i) produce and publish a Schedule of Members' Remuneration under Article 2.5;
- (j) changing the name of the area, conferring the title of honorary alderman or freedom of the county;
- (k) making or confirming the appointment of the Head of Paid Service and Chief Officers;
- (l) making, amending, revoking, re-enacting or adopting bylaws and promoting or opposing the making of local legislation or personal Bills; and
- (m) all local choice functions set out in Part 3 of the Constitution which the Council decides should be undertaken by itself (or one of its committees) rather than the Executive;
- (n) all other matters which by law must be reserved to Council.
- (o) [to determine the level, and any change in the level, of the remuneration to be paid to a chief officer.](#)

### **4.3 Council meetings**

There are three types of Council meeting:

- (a) the annual meeting;
- (b) ordinary meetings;
- (c) extraordinary meetings.

and they will be conducted in accordance with the Council Procedure Rules in Part 4, Section 1 of this Constitution.

### **4.4 Responsibility for functions**

The Council will maintain the tables in Part 3 of this Constitution setting out the responsibilities for the Council's functions which are not the responsibility of the Executive. Any functions not described by law, or in this Constitution, as a function of the Council or its committees, shall be a function of the Executive.

