

Briefing Note

Overview and Scrutiny Committee Meeting 4th November 2013

Call-In Procedure

1. I understand that the Chair of Overview and Scrutiny Committee has requested for a review of the Council's Call-In Procedure. This item is on the agenda of the next Overview and Scrutiny Committee Meeting on 4th November 2013. To assist with this Scrutiny review, I have been asked to prepare a briefing note on the legal background to the Call-In Procedure. This note considers the Council's Call-In Procedure Rules, its legislative background and whether the Procedures are in accordance with the law.

The Council's Call-In Procedures

2. The Council's Call-In Procedures at Part Four Section H of the Constitution provides that:
 1. When a decision is made by the Cabinet, an individual member of the Cabinet or a committee of the Cabinet, or an executive decision is made by an officer with delegated authority from the Cabinet, the decision shall be published.
 2. The notice of the decision will be dated and will specify that the decision will come into force, and may then be implemented, on the expiry of 5 working days after the publication of the decision, unless a valid request has been received objecting to the decision and asking for it to be called-in. This does not apply to "urgent" decisions.
 3. The Monitoring Officer will deem valid a request that fulfils all of the following 6 criteria:
 - (a) it is submitted by any five Members of the Council.
 - (b) it is received by the Proper Officer by 10am on the fifth day following publication.
 - (c) it specifies the decision to which it objects.
 - (d) it specifies whether the decision is claimed to be outside the policy or budget framework.
 - (e) it gives reasons for the call-in and outlines an alternative course of action.
 - (f) it is not made in relation to a decision taken in accordance with the urgency procedures in paragraph 18 below.
 4. The Proper Officer will forward all timely and proper call-in requests, once deemed valid by the Monitoring Officer, to the Chair of the Overview and Scrutiny Committee and the Overview and Scrutiny Manager and will notify all Cabinet Members including the decision maker and the relevant Chief Officer.
 5. A decision will be implemented immediately after a call-in request is deemed invalid by the Monitoring Officer or after the expiry of ten working days following the receipt of a valid call-in request by the Chair of the Overview and Scrutiny

Committee, unless a meeting of the Overview and Scrutiny Committee takes place during the 10-day period.

8. Subject to paragraph 5, when a request for call-in is deemed valid, all action to implement the decision is suspended until the Overview and Scrutiny Committee has met to decide what action to take. The Committee must meet no later than 10 working days after the Chair has received a valid call-in request.
9. Discussion of any called-in decisions shall precede all other substantive items on the agenda of the Overview and Scrutiny Committee. Any reports of the Monitoring Officer and Chief Financial Officer shall be part of that agenda.
10. The Committee shall consider any report of the Monitoring Officer / Chief Financial Officer as to whether a called-in decision is inside or outside the policy / budget framework. The Overview and Scrutiny Committee shall have regard to that report and any advice but Members shall determine whether the decision is inside or outside the policy / budget framework. If the Overview and Scrutiny Committee determine that the decision was within the policy / budget framework, the Committee has three options:
 - (a) The Overview and Scrutiny Committee may decide not to take any further action, in which case the decision is implemented immediately.
 - (b) The Overview and Scrutiny Committee may decide to refer the decision back to the decision maker, in which case the decision maker has 5 working days to reconsider the decision before taking a final decision.
 - (c) The Overview and Scrutiny Committee may decide to refer the decision to Full Council.

Further that

17. Abuse of Call-in
 - (a) Members are expected to ensure that call-in is not abused, or causes unreasonable delay to the functioning of the Cabinet.
 - (b) The call-in procedure is to be reviewed annually (see paragraph 18 g)....
18. Call-In and Urgency
 - (a) The call-in procedure set out above shall not apply when the action being taken is urgent or time-critical in terms of (b) below.
 - (b) A decision will be urgent if any delay in implementation likely to be caused by the call-in procedure would seriously prejudice the Council's or the public's interests.
 - (c)
 - (d) If a decision is urgent and therefore not subject to call-in, this will be stated on the record.
 - (e) In order for a decision to be deemed urgent, the Chair of the Overview and Scrutiny Committee must agree that the decision is both reasonable in all circumstances and that it should be treated as a matter of urgency. In the absence or unavailability of the Chair the consent of the Mayor is required. In the absence of both, the consent of the Deputy Mayor shall be required.

- (f)
- (g) The operation of the provisions relating to call-in and urgency shall be monitored annually and a report submitted to Council with proposals for review if necessary.

19. Call-In and the Forward Plan

- (a) The Overview and Scrutiny Committee should consider the Forward Plan as its chief source of information regarding forthcoming Cabinet decisions.
- (b) The Overview and Scrutiny Committee may select a forthcoming decision and examine the issues around it.
- (c) In order not to obstruct the Council in its business, the Overview and Scrutiny Committee may call-in a decision in advance of its actually being taken. In such a situation all the time-limits apply as above, except that a decision cannot actually be implemented any sooner than it would have been had the Overview and Scrutiny Committee not called it in.
- (d) Where the Overview and Scrutiny Committee has called-in a decision from the Forward Plan before its due date, the decision cannot be called-in again after the final decision has been taken.

20. Monitoring Arrangements

The operation of the provisions relating to call-in and urgency shall be monitored by the proper officer, and a report submitted to Council annually with proposals for review if necessary.

3. I understand that the Chair of the Committee is concerned that the 10 working days deadline for the Committee to convene a meeting to consider a called-in Cabinet decision is not sufficient, in particular, taking into account the other commitments of members of the Committee. The lack of annual reviews of the Call-In Procedure Rules as provided for in the Rules has also been commented upon.

Legislative Background

4. The source of the Call-In Procedure is the Local Government Act 2000 (as amended). Section 9F of the Act provides that

[9F Overview and scrutiny committees: functions]

[(1) Executive arrangements by a local authority must include provision for the appointment by the authority of one or more committees of the authority (referred to in this Chapter as overview and scrutiny committees).

(2) Executive arrangements by a local authority must ensure that its overview and scrutiny committee has power (or its overview and scrutiny committees, and any joint overview and scrutiny committees, have power between them)—

- (a) to review or scrutinise decisions made, or other action taken, in connection with the discharge of any functions which are the responsibility of the executive,

(b) to make reports or recommendations to the authority or the executive with respect to the discharge of any functions which are the responsibility of the executive,

(4) The power of an overview and scrutiny committee under subsection (2)(a) to review or scrutinise a decision made but not implemented includes power—

(a) to recommend that the decision be reconsidered by the person who made it, or

(b) to arrange for its function under subsection (2)(a), so far as it relates to the decision, to be exercised by the authority.

5. Section 9 F (2) and (4) gives Overview and Scrutiny Committees the power to review and scrutinise executive decisions made but not yet implemented. However, the Section and the Act is silent on the procedural arrangement for Overview and Scrutiny Committees to call-in for scrutiny such executive decisions. This gap is covered by the guidance issued under the Act on 26 October 2000 by the Secretary of State, "New Council Constitutions: Guidance to English Authorities" ("the 2000 guidance").¹ The guidance provides as follows

Call-in of Decisions

3.77 Sections 21(2)(a) and (3) of the Act² mean that a local authority's executive arrangements must ensure that overview and scrutiny committees have specific powers, in respect of functions which are the responsibility of the executive, to recommend that a decision made but not yet implemented be reconsidered by the person who made the decision or to recommend that the full council consider whether that person should reconsider the decision.

3.78 Local authorities should make provision in their executive arrangements and standing orders, for procedures by which members of the local authority can request that a meeting of an overview and scrutiny committee be held to consider whether or not to use these powers in respect of a decision made but not yet implemented (a so called call-in procedure). Such provisions may include a standard period of delay before decisions are implemented. Those provisions should ensure that there is an appropriate balance between effectively holding the executive to account, being able to question decisions before they are implemented and allowing effective and efficient decision making by the executive within the policy framework and budget agreed by the full council. The provisions should ensure that a decision maker could only be asked to reconsider a decision once. Day-to-day management and operational decisions taken by officers should not be subject to any call-in procedure.

¹ The Guidance was recently cited in the Court of Appeal decision [*R \(on the application of Buck\) v Doncaster Metropolitan Borough Council](#) [2013]

² These section have been amended and are now Section 9F

- 3.79** In addition, where the executive wishes to take an urgent key decision by seeking the agreement of the chair of a relevant overview and scrutiny committee (or where there is no chair of the overview and scrutiny committee with the chairman or vice chairman of the authority) that the matter is urgent the local authority's call-in procedure should include provisions which prevent such urgent decisions from being called-in or in any other way delayed.
- 3.80** Local authorities should also agree how called-in decisions are responded to. If an overview and scrutiny committee examines a decision and decides to recommend an alternative course of action, local authorities should set out how this should work. In particular local authorities should consider the following questions:
- how should the executive (or other body within the local authority as the case may be) respond?
 - what should the timescale for such a response be?

3.81 Figure 3.5 provides an illustrative example of one possible procedure for call-in.

Figure 3.5:

Illustrative Example of One Possible Procedure for Call-in

- ☐ The executive publishes decisions made either at an executive meeting or which have been taken by an individual member.
 - ☐ The executive arrangements provide that decisions which can be subject to call-in will come into force after, say, 5 working days have passed following the decision being published unless an overview and scrutiny committee calls it in.
 - ☐ Within that period any two or more members of an overview and scrutiny committee can request a meeting of the relevant overview and scrutiny committee to review the decision.
 - ☐ If a valid request for a meeting is made within the specified period, all action to implement the decision is suspended for up to two weeks from the date of the decision within which time the overview and scrutiny committee meets to decide whether to exercise the powers in section 21(3) of the Act.
 - ☐ If the committee decides it disagrees with the decision it may exercise the powers in section 21(3) having regard to this statutory guidance.
 - ☐ The decision maker reconsiders the decision and decides whether or not to change it explaining her or his reasons to the next meeting of overview and scrutiny or full council as appropriate. For example: the decision is re-examined at the next meeting of the executive with one or more representatives of the overview and scrutiny committee attending to put their case.
- 3.82** Local authorities should ensure that the executive arrangements ensure that any call-in procedure is not abused or used unduly to delay decisions

or slow down the process of decision making. In particular the executive will, from time to time, need to take decisions which need to be implemented quickly. Local authorities will need to develop local conventions and protocols to prevent abuse of an overview and scrutiny committee's power to recommend that a decision made, but not yet implemented, be reconsidered. Local authorities should keep the operation of any call-in arrangements under review to ensure that they are not abused with an associated negative effect on the efficiency of executive decision making.

3.85 Local authorities will need to consider, when designing such mechanisms, that under normal circumstances where a decision relates to a function which is the responsibility of the executive, ultimately only the executive can decide the matter.

3.86 To avoid the possibility of very many emergency council meetings the Secretary of State recommends that overview and scrutiny committees should only use the power in section 21(3)(b) to refer matters to the full council if they consider that the decision is contrary to the policy framework or contrary to or not wholly in accordance with the budget. Where an overview and scrutiny committee refers a decision to the full council there should be clear timescales set out in the local authority's constitution within which the debate should take place to avoid decisions being unnecessarily delayed.

6. The guidance provides that local authorities Call-In Procedures should strike the right balance between holding the executive to account for decision taken and effective and efficient decision making. Local authorities should ensure that the Call-In Procedure is not used unduly to slow down the process of executive decision making. The executive would need to make decision that needs to be implemented quickly. The example in the guidance of a Call-In Procedure (Fig 3.5 above) allows for 10 working days for Overview and Scrutiny to arrange a meeting to scrutinise the decision called-in.
7. For the reasons set out above, the Council's Call-In Procedures is in accordance with the Act and the statutory guidance. .

Stephen Lawrence-Orumwense
Deputy Monitoring Officer/
Assistant Head of Legal Services
Social Care and Contracts
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