

**CHERWELL DISTRICT COUNCIL**

**COUNCIL**

**23 FEBRUARY 2009**

**REPORT OF THE CHIEF EXECUTIVE**

**CONSTITUTIONAL AMENDMENT: CALL IN ARRANGEMENTS**

**1 Introduction and Purpose of Report**

- 1.1 To consider the proposals arising from the Overview and Scrutiny Committee review of Call-in arrangements and, taking account of comments from the Executive meeting on 17 November 2008 and Standards Committee on 22 January 2009, to adopt the revision to the Constitution: Part 4 (e) 15 – 17 Overview and Scrutiny Procedure Rules.

**2 Wards Affected**

- 2.1 All wards.

**3 Effect on Policy**

- 3.1 Not applicable.

**4 Contact Officer(s)**

- 4.1 James Doble, Democratic, Scrutiny and Elections Manager, 01295 221587  
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**5**

- 5.1 In 2008 the Leader of the Council asked the Overview and Scrutiny Committee to review the Call-in process, in light of councillors' concerns about our current arrangements following the Call-in earlier in the year. The scrutiny review established that Call-in is currently ill-defined in the constitution which gives precise guidance on the timescales and criteria for Call-in but it is vague about the practicalities of preparing for and conducting the hearing. The fact that the Call-in process is used so infrequently has compounded the problem as our arrangements have not been reviewed and updated, unlike those in authorities where Call-ins are more frequent. The current Call In procedure is set out at Appendix 1.
- 5.2 The rest of this report lays out the Overview and Scrutiny Committee's recommendations and the amendments proposed by the Executive and Standards Committee.

- 5.3 Appendix 2 contains a full description of the model proposed by the Overview and Scrutiny Committee, amended in light of the recommendations from the Executive and Standards Committee. This includes a new section at paragraph 17: Call-in Protocol at Overview and Scrutiny Committee which sets out in detail the practical arrangements for a Call-in hearing.

## **6 Risk Assessment, Financial Effects and Contributions to Efficiency Savings**

- 6.1 The following details approved by Denise Westlake, Service Accountant 01295 221559 and Rosemary Watts, Risk and Insurance Manager 01295 221566
- 6.2 Risk assessment – An effective Call-in process will help minimise risks to the Council, through enabling effective challenge of the Council’s decisions, processes and policies. The proposals are in line with the Local Government Act 2000.
- 6.3 Financial effects – There are no financial implications arising from this report.
- 6.4 Efficiency savings – The revised Call-in procedure aims to improve the efficiency of the authority as a consequence of the faster and more streamlined administrative arrangements.

## **7 Recommendations**

- 7.1 It is **RECOMMENDED**:-
- (1) that the Council note the results of the consultation on the review of Call-in and the proposals from the Overview and Scrutiny Committee and Executive;
  - (2) that the Council adopts the revised Call-in model (Appendix 2) into the Constitution at Part 4 (e) 15 – 17 Overview and Scrutiny Procedure Rules.

## Background information

- 1.1 The Overview and Scrutiny Committee sent a questionnaire to all members of the Council and held a review meeting with scrutiny members (referred to in this document as the focus group). Input from both these exercises was used to inform the discussion at the Overview and Scrutiny Committee on 7 October 2008, which resulted in a series of recommendations which are laid out in this report.
- 1.2 The Overview and Scrutiny Committee review of Call-in procedures drew on the research conducted by the Centre for Public Scrutiny which looked at the Call-in arrangements in 288 local authorities in England. It identified 7 key variables for further consideration:
1. Length of time to call-in a decision
  2. Who can call-in a decision?
  3. Validity of a call-in request
  4. Length of time for scrutiny to consider call-in
  5. How the call-in hearing operates
  6. Length of time for reconsideration by decision maker
  7. Effective date for decision implementation

### 1. Length of time to call-in a decision

OSC Recommendation:

That the call-in period be extended from 2.5 to 5 days and that notification of decisions should take place by e-mail to all members and decisions should be published on the Council website.

Executive amendment:

That the period in which a decision is available for call-in be kept as at present and not extended.

Call In timeframe	
Monday	Executive Decision taken
Tuesday	Publication & despatch by 5pm
Wednesday	Notification Decision open to Call-In
Thursday	Decision open to Call-In
Friday	AM: Decision open to Call-in
	Call-in period closes at Noon.
	PM: Decision implemented
Saturday	Offices Closed
Sunday	Offices Closed

### 2. Who can call-in a decision?

OSC Recommendation:

That the following criteria be adopted:

‘That the Chief Executive shall call in a decision for scrutiny if so requested in

writing, by e-mail or by text from a known or recognised source by any six members of the Council.

However if at any point during a municipal year the total number of opposition councillors is six or less the total number of members required to call in a decision shall be the total number of opposition Councillors less two. This reduced number will apply to any Call-in, regardless of the political affiliation of the members concerned.

### **3. Validity of a Call-in request**

OSC Recommendation:

That the Chief Executive should call in a decision for scrutiny if requested to do so within the timescales and by the number of Councillors as set down in the constitution.

Executive amendment:

That paragraph 17 of Appendix 3 be amended to confirm that the Chief Executive will confirm the validity of the Call in.

### **4. Length of time for scrutiny to consider call-in**

OSC Recommendation:

That Call-in requests should be heard within 10 days of the Chief Executive confirming the validity of the request to Call-in.

### **5. How the call-in hearing operates**

OSC Recommendation:

That the draft protocol set out at paragraph 17 of Appendix 3 be adopted.

Executive amendment:

That paragraph 15(g) of Appendix 3 be amended to reflect that portfolio holders do not make decisions at scheduled meetings.

That paragraph 17 of Appendix 3 be amended to bring in 5 minute time limits on speakers.

Standards Committee amendment:

That the words "move in to" be deleted from Appendix 3, paragraph 17, The meeting, item 9).

### **6. Length of time for reconsideration by decision maker**

OSC Recommendation:

That reconsideration by the decision maker shall take place at the next scheduled meeting or earlier at the discretion of the relevant Portfolio holder in consultation with the Chief Executive and Leader of the Council. In the case of delegated decisions taken by officers, the decision shall be referred back to the Portfolio Holder in the first instance for reconsideration. Portfolio Holders have the option of referring any decision referred to them to the Executive for reconsideration.

## **7. Effective date for decision implementation**

OSC Recommendation:

That if Overview and Scrutiny decide not to refer a decision back to the decision maker, the decision may be implemented after the meeting.

If Overview and Scrutiny decide to refer the decision back to the decision maker, the decision may be implemented immediately after the decision maker has made their decision. The decision shall not be subject to a Call-in period subject to either the original decision being upheld or the recommendations of Overview and Scrutiny being accepted.

If for any reason either Overview and Scrutiny or the decision maker fails to meet and carry out their obligations under this process, the issue may be referred to Council for the process to be resolved. Implementation may not occur until Council has determined how it shall be resolved.

### EXTRACT FROM THE CONSTITUTION: Part 4 (e) 15 – 16

#### Overview and Scrutiny Procedure Rules

#### 15. Call-in of Executive and Other decisions

- (a) A summary sheet of the decisions taken at a meeting of the Executive or a Committee of the Executive shall generally be published on the next working day (or in any event as soon as possible) after such meeting, and shall be despatched to all Members of the Council
- (b) Such summary sheet (which may be published electronically) will bear the date on which it is published, and will distinguish between those matters that have been resolved and will come into force immediately on the expiry of the call-in procedure, and those that are recommendations to the Council.
- (c) Details of all decisions of individual portfolio holders, and any "key" decisions taken by Officers shall generally be published on the next working day (or in any event as soon as possible) after such decision has been taken, and shall be despatched to all Members of the Council. Such details (which may be published electronically) will bear the date on which they were published.
- (d) The date of notification of the decisions set out in the documents referred to in (a) and (c) above is deemed to be the day after despatch of the said document to Members
- (e) The Chief Executive shall call in a decision for scrutiny if so requested in writing by:-
  - (i) the Chairman of the relevant Select Committee; or
  - (ii) any five Members of the relevant Select Committee; or
  - (iii) any six Members of the Council, or the combined total number of Opposition Group members less two, whichever is the smaller number;

by noon on the third working day after and including the day of notification. The notice in writing must state the reason or reasons why 'call in' has been requested. The Chief Executive shall notify the decision taker if a valid call in notice is received. The decision will then be referred to the next scheduled meeting of the Select Committee and shall stand deferred until the Select Committee has considered it. The Select Committee shall meet specially to consider the matter if there is no convenient scheduled meeting at which it could be considered and which would otherwise cause unreasonable delay in resolving the matter. If the Select Committee does not meet within 4 weeks and consider the matter the decision shall take effect on the expiry of that period.

- (f) The Select Committee may refer the matter to the Council if it is of the view that a resolved matter is contrary to the Council or policy framework, or not wholly consistent with the budget, or
- (g) The Select Committee may refer it back to the decision taker for reconsideration setting out in writing the reasons for its concerns.
- (h) Where a matter is referred back to the decision taker, they must

reconsider the matter within one month and then either take the final decision as already proposed, take a final decision which incorporates amendments, or refer the matter to Council for decision.

- (i) If the Select Committee considers a called-in matter and does not then wish to refer the matter to the Council or decision taker, the decision shall take effect on the date of the Select Committee.
- (j) If the Select Committee is considering a matter which the decision taker is recommending to the Council it may formulate alternative proposals for the Council to consider.
- (k) Pending consideration of the called in decision, the decision shall not be implemented unless two or more of the Members who signed the notice sign a further notice to indicate that they no longer require the call-in procedure to be implemented in respect of the decision in question.
- (l) *If the Council consider a reference from a Select Committee in relation to a called in matter, but do not wish to object to the decision or make any representations about it, then the decision has effect on the date of the Council Meeting. Otherwise if the Council make representations to the decision maker as a result of the call in, the Council will submit its views in writing to the decision maker who shall consider the representations before finally deciding the matter. In these circumstances the decision will remain deferred until the decision maker has finally considered it but will then come into force immediately.*
- (m) If the Council concur that a called-in decision was contrary to the budget or policy framework it shall over-rule the decision in question.
- (n)
  - (i) Non-executive decisions taken by Committees or Sub-Committees of the Council may be subject to the procedure set out in Rules 12.3 to 12.9 (Rescission and or Variation of Resolutions of Committees and Sub-Committees) of the Council Procedure Rules.
  - (ii) Non-executive decisions taken by Committees and Sub-Committees (excluding decisions relating to individual planning applications, licensing applications and staffing matters) may, instead of being subjected to the procedure for rescission referred to in (i), be called in for scrutiny by the relevant Select Committee by any of the Members referred to in (d) (i) – (iii). In circumstances where such a reference of a decision to a Select Committee arises any procedure which has commenced separately for possible rescission of the decision will be nullified and the decision will be subject to the Select Committees scrutiny and report.
  - (iii) References to the Select Committee shall take place by any of the individuals or groups of members referred to in (d) (i) – (iii) above notifying the Chief Executive of the decision to be referred within 4 working days of the date on which the Committee or Sub-Committee made the decision. All members of the Council will be notified of the reference of such decision to the Select Committee.
  - (iv) It shall be in order for any two of the members in rule (d) (ii) or (iii) who may have requested a decision to be called in to indicate that they no longer wish the call in procedure to be implemented in respect of that decision.
  - (v) A decision properly called in will be referred to the next scheduled meeting of the Select Committee and shall stand deferred until the Select Committee has considered it. The Select Committee shall meet specially to consider the matter if there is no convenient

scheduled meeting at which it could be considered and which would otherwise cause unreasonable delay in resolving the matter.

- (vi) The Select Committee may refer the matter to the Council if it is of the view that it should be so referred, or it may refer it back to the Committee or Sub-Committee for reconsideration setting out in writing the reasons for its concerns.
- (vii) Where a matter is referred back it must be reconsidered at the next available Committee or Sub-Committee meeting and then either decided as already proposed or decided with any amendments as suggested by the Select Committee.
- (viii) If the Select Committee considers a called-in matter and does not then wish to refer the matter to the Council or back to the Committee or Sub-Committee, the decision shall take effect on the date of the Select Committee.
- (ix) If the Select Committee does not meet to consider the called in matter within 4 weeks of the request the decision shall take effect on the expiry of that period.
- (o) Day to day management or operational decisions taken by Officers under delegated authority are not subject to a call-in procedure.
- (p) The call-in procedure is not intended to be used to challenge decisions as a matter of course, and should not be abused in order, for example, simply to cause delay in implementing decisions.

## **16. Call-in and Urgency**

The call-in procedures set out above shall not apply where the decision taken by the Executive, individual portfolio holder, Committee or Sub-Committee is urgent. A decision is urgent if any delay is likely seriously to prejudice the Council's or the public's interest. The record of the decision and the notice by which it is made public shall state whether in the opinion of the decision-making person or body, the decision is an urgent one and therefore not subject to call-in. The Chairman of the Council must agree both that the decision proposed is reasonable in all the circumstances and to it being treated as a matter of urgency. In the absence of the Chairman, the Vice-Chairman's consent shall be required, and in the absence of the Vice-Chairman, the Chairman of Overview and Scrutiny Committee.



### PROPOSED CONSTITUTION TEXT

#### (e) Overview and Scrutiny Procedure Rules

##### 15. Call-in of Executive and Other decisions

- (a) Details of the decisions taken at meetings of the Executive or a Committee of the Executive, and any decisions taken by individual portfolio holders or “key” decisions taken by officers will normally be published by 5pm on the next working day after they have been made. This decision notice will be made publicly available and all Members of the Council will receive notification (normally by e-mail) of the decisions taken.
- (b) The notice will specify that the decision will come into force and take effect at noon on the third working day following publication of the decision, unless it is called-in.
- (c) The Chief Executive shall call in a decision for scrutiny if so requested in writing, by e-mail or by text from a known or recognised source by any 6 non-executive members of the Council within the specified timescale.

However if at any point during a municipal year the total number of opposition councillors is 6 or less the total number of non-executive members required to call in a decision shall be the total number of opposition Councillors less two. This reduced number will apply to any Call-in, regardless of the political affiliation of the members concerned.

In all cases the request for Call-in must set out the reasons for the request.

On receipt of a Call-in request, the Chief Executive shall call-in the decision and notify the decision taker and Chairman of the Overview and Scrutiny Committee of the Call-in.

- (d) The Overview and Scrutiny Committee must consider the decision within 10 days of the decision to Call-in, and if necessary, it may be dealt with as an item of urgent business at a scheduled meeting of the Overview and Scrutiny Committee within that period. If the Overview and Scrutiny Committee does not meet within 10 days and consider the matter the decision shall take effect on the expiry of that period.
- (e) The Overview and Scrutiny Committee upon hearing a Call-in may decide to let the decision stand, refer the decision back to the decision maker for reconsideration or exceptionally refer the decision to Council if it is of the view that the decision is contrary to the Council or policy framework, or not wholly consistent with the budget.
- (f) If the Overview and Scrutiny Committee refer a decision back to the decision maker for reconsideration they must set out in writing the reasons for their concerns and their preferred course of action.
- (g) Reconsideration by the decision maker shall take place at the next scheduled meeting of the Executive or a Committee of the Executive. In the case of decisions taken by individual portfolio holders the date of reconsideration will be set by the relevant portfolio holder in consultation with the Chief Executive and Leader of the Council. In the case of delegated decisions taken by

officers, the decision shall be referred back to the portfolio holder in the first instance for reconsideration. Portfolio holders have the option of forwarding any decision referred to them to the full Executive for reconsideration.

- (h) If on reconsideration by the decision maker the original decision is upheld or the recommendations of the Overview and Scrutiny Committee are accepted then the decision shall take effect immediately and shall not be subject to a further Call-in period.
- (i) If for any reason either Overview and Scrutiny or the decision maker fails to meet and carry out their obligations under this process or in the event of any situation not foreseen in this procedure the issue will be referred to Council for the process to be resolved. Implementation of the decision will be postponed until Council has determined how it shall be resolved.
- (j) If the Overview and Scrutiny Committee decide not to refer a decision back to the decision maker or to Council, the decision shall take effect immediately at the conclusion of the meeting at which the Call-in has been considered.
- (k) If the Overview and Scrutiny Committee is considering a called-in matter where the decision taker is recommending to the Council it may formulate alternative proposals for the Council to consider.
- (l) A request to Call-in a decision may only be nullified by agreement of all the Call-in signatories.

In the case of a Called-in decision being referred Council If the Council decide that the called-in decision was contrary to the policy framework or not wholly consistent with the budget it shall decide on the issue in question.

If the Council decide that the called-in decision was not contrary to the policy framework or consistent with the budget then no further action is necessary and the decision will take effect on the date of the Council meeting.

- (m) The call-in procedure is not intended to be used to challenge decisions as a matter of course, and should not be abused in order, for example, simply to cause delay in implementing decisions.

## **16. Call-in and Urgency**

The call-in procedures set out above shall not apply where the decision being taken by the Executive, individual portfolio holder, Committee or Sub-Committee is urgent. A decision is urgent if any delay is likely seriously to prejudice the Council's or the public's interest. The record of the decision and the notice by which it is made public shall state whether in the opinion of the decision-making person or body, the decision is an urgent one and therefore not subject to call-in. In all cases, the Chief Executive must agree both that the decision proposed is reasonable in all the circumstances and to it being treated as a matter of urgency and if agreed, shall circulate the decision electronically to members of Executive and Overview and Scrutiny.

The Chief Executive shall then ask the Chairman of the Overview and Scrutiny Committee to agree to Call-in being waived. In the absence of the Chairman, the Vice-Chairman's consent shall be required, and in the absence of the Vice-Chairman, the Chairman of Council.

## **17. Call-in Protocol at Overview and Scrutiny Committee**

In considering a Call-in decision the Overview and Scrutiny Committee will follow this protocol:

### **Before Receipt of Call-in**

Overview and scrutiny support officers will work with the Call-in signatories to complete the reasons for Call-in. Completed reasons for Call-in will be received by Chief Executive, who will then consider whether to Call-in the decision.

### **After Receipt of Call-in and before the meeting**

The Chief Executive will confirm the validity of the Call-in and advise all Councillors and Corporate Management Team members of the Call-in request. The Chief Executive will determine which portfolio holder or decision taking officer should attend the Call-in, which officer should accompany them and which officer they appoint to advise the Overview and Scrutiny Committee on the Call-in.

Overview and scrutiny support officers will meet with the Call-in signatories, to clarify the procedure, consider how they will present the Call-in and prevent duplication. Overview and scrutiny support officers will brief the Chairman on the Call-in.

### **Documents**

The agenda will contain:

- This Call In Protocol
- The Call-in request
- The Portfolio Holder decision statement or minutes\*
- The original report(s) upon which the decision was made

\* (In the case that either the minutes or report are exempt a public summary of information will be provided as far as is possible).

Any other document that the Chief Executive, Portfolio Holder or Call-in signatories feel would assist the Committee in considering the Call-in.

### **At the start of the meeting**

The Chairman will outline the procedure for the meeting, setting the tone and approach that will be taken.

### **The meeting**

1. The spokesperson(s) for the Councillors who have made the Call-in request (who shall be seated together) should outline the reasons for the Call-in. Each speaker will be time limited to 5 minutes.
2. The relevant Portfolio Holder or decision taking officer explains the rationale for the decision and may be supported by officers and the Leader of the Council as appropriate. They shall also be seated together. Each speaker will be time limited to 5 minutes.
3. Councillors who have made the Call-in request have the opportunity to question the Portfolio Holder or decision taking officer.
4. Other members of the Overview and Scrutiny Committee have the opportunity to question the Portfolio Holder or decision taking officer.
5. At the discretion of the Chairman, other members present may have the opportunity to question the Portfolio Holder or decision taking officer or make a brief statement.
6. At the discretion of the Chairman, anyone else present may have the opportunity to make a statement (limited to 5 minutes) on the issue.
7. The Portfolio Holder or decision taking officer will have a right of reply to any brief statement made on the issue.
8. Before forming a decision, the Chairman may decide to adjourn the meeting in order to allow the Call-in signatories to reflect on the

evidence received and to consider any proposals they wish the Committee to consider.

9. The Overview and Scrutiny Committee will debate on the issue, only members of the Committee and the officer appointed by the Chief Executive to advise the Overview and Scrutiny Committee on the Call-in may speak.
10. If there is no proposal the Chairman or another member may propose a motion which can be voted on in the normal way.

### **Options available to the Overview and Scrutiny Committee**

There are only three options available to the Overview and Scrutiny Committee when they are considering a call in:

- Let the decision stand
- Refer the decision back to the decision taker, stating their concerns and the decision that the Committee wish the decision taker to make.
- Refer the decision to full Council if the decision is contrary to the policy framework or contrary to or not wholly consistent with the budget.

Additionally the Overview and Scrutiny Committee may make other recommendations as a result of the Call-in to relevant bodies, which shall be considered after a decision has been reached on the Call-in.