

Executive

Review of Call-in Arrangements

17 November 2008

Report of Chief Executive

PURPOSE OF REPORT

To consider the proposals arising from the Overview and Scrutiny Committee review of Call-in arrangements and to make recommendations to Council (via the Executive and Standards Committee).

This report is public

Recommendations

- (1) that the Executive note the results of the consultation on the review of Call-in and the proposals from the Overview and Scrutiny Committee;
- (2) that the Executive consider the Overview & Scrutiny Committee's preferred Call-in model and decide what recommendations to put to Council.

Introduction

- 1.1 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 this year. This made it clear 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 Call-in 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 in the Constitution (Part 4 (e) 15 – 16) and is reproduced at Appendix 1 for reference.
- 1.2 The Overview and Scrutiny Committee sent a questionnaire to all members of the Council and a review meeting was held 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 document.
- 1.3 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

The rest of this paper lays out the Overview and Scrutiny Committee's recommendations for each of these. The more detailed comment which arose from the questionnaires and focus group is reproduced in Appendix 2.

Appendix 3 contains a full description of the model proposed by Overview and Scrutiny. This is a draft document only and will be amended in light of recommendations from the Executive before it is considered further.

1. Length of time to call-in a decision

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.

Monday	Executive Decisions taken
Tuesday	Publication by 5pm
Wednesday	Decisions open to Call-In
Thursday	
Friday	
Saturday	Offices Closed
Sunday	Offices Closed
Monday	Decisions open to Call-In
Tuesday	Call-in period closes 5 pm

2. Who can call-in a decision?

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

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.

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

Recommendation:

That Call-ins should be heard within 10 days of the decision to call in being made by the Chief Executive.

5. How the call-in hearing operates

Recommendation:

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

6. Length of time for reconsideration by decision maker

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

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.

Key Issues for Consideration/Reasons for Decision and Options

The following options have been identified. The approach in the recommendations is believed to be the best way forward

- Option One** To adopt the proposals set out above and recommend these to Standards Committee and Council.
- Option Two** Not to adopt the proposals set out above.
- Option Three** To amend the proposals set out above and recommend these to Standards Committee and Council.

Implications

- Financial:** There are no financial implications arising from this report.
Comments checked by Denise Westlake, Service Accountant 01295 221559
- Legal:** The proposals are in line with Local Government Act 2000
Comments checked by Pam Wilkinson, Assistant Solicitor 01295 221688
- Risk Management:** An effective Call-in process will help minimise risks to the Council, through enabling effective scrutiny of the Council's decisions, processes and policies.
Comments checked by Rosemary Watts, Risk and Insurance Manager 01295 221566

Wards Affected

All

Corporate Plan Themes

Not applicable

Executive Portfolio

Councillor Barry Wood, Policy and Community Planning

Document Information

Appendix No	Title
Appendix 1	Current Call In procedures: Constitution (Part 4 (e) 15 – 16)
Appendix 2	Comments from Questionnaire and Focus Group
Appendix 3	Overview and Scrutiny Committee Preferred Call-in model

Background Papers	
None	
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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.

Appendix 2

Comments from Questionnaire and Focus Group

1. Length of time to call-in a decision

Comments from Questionnaires

As most decisions are notified by post to Councillors if there is a problem with the post or if the decision is not sent out immediately there is the possibility of missing the deadline

Extend the call in period from three to seven days

Comments from Focus Group

The focus group considered the issue of the length of time to call in a decision, noting that currently the Executive met on a Monday, decisions were published by post on a Tuesday, mostly received by members on Wednesday at a Councillor's home address, with the deadline as 12 noon on Friday, equating to a maximum of 2.5 days. It was felt that the current time period was too short and did not realistically provide an opportunity for Councillors wanting to call in a decision to liaise with other Councillors and create clear and concise reasons for calling in the decision. However, the focus group also noted that the Call-in period should not unreasonably delay the implementation of decisions which could in turn increase the number of urgent decisions. It was also noted that this should be the same time period for Portfolio Holder decisions.

2. Who can call-in a decision?

Comments from Questionnaires

If Cherwell were to limit the call in procedure to Overview and Scrutiny Councillors only there would be a large number of Councillors unable to take part. This would mean that at present there would be 2/3 members available from opposition parties.

I feel that allowing the call in to be in the power of an individual could invite concerns – what if the Chairman had an interest?

Comments from Focus Group

The focus group felt this needed to be as open as possible in order to enfranchise as many Councillors as possible. It was noted that the law prohibited members of the Executive from Call-in. There was also agreement that this needed to be as simple as possible. It was noted whilst the current wording had been intended to make Call-in accessible to as many Councillors as possible, there could be some ambiguity in the interpretation of the wording.

3. Validity of a call-in request

Comments from Questionnaires

I would not like to see the number of Call-ins limited as there may be some contentious issues which arise in a period and the Council may be unable to call in the most important due to the use already made. This could be used politically to take up the allocated number of Call-ins so that potential Call-ins later on cannot be looked at.

Why should Councillors be limited to a number? I feel that this would seriously undermine Councillors powers. Not all Call-ins can be stated in a financial manner ~ i.e. to quantify financial costs can be difficult. The Council should trust its Councillors ~ by imposing these limits I feel that Councillors who are not executive members may feel even more distanced from the decision making process.

Anyone who has serious doubts about a decision should be able to call it in with some process built in. For example prior to call in they should call the scrutiny committee together to briefly meet and have full support from the chair, officers and other committee members . During this meeting if strong evidence is provided for or against the call in then this should be given full support by all. This brief meeting should not be part of the call in timeframe.

Comments from Focus Group

The focus group believed that the Call-in process should be kept as simple as possible and that the decision of the Chief Executive should be limited to considering matters of procedure to do with the Call-in.

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

Comments from Questionnaires

I think that 4 weeks is appropriate as Councillors do have other duties beyond Cherwell ~ family, work, other councils

When gathering evidence this can take even longer to arrange for witnesses to be able to attend at the same time as council meetings etc, shorten the consideration time from 4 weeks to possibly 3 or less dependant on how complex the issue is. Also widen the scope for urgency provisions (will this mean altering the constitution)?

Comments from Focus Group

The focus group felt that the period should not be too long so as to adversely effect the Council through delays to implementation but needed to allow a reasonable time scheme.

5. How the call-in hearing operates

Comments from Questionnaires

It would be a good idea for a protocol to be written ~ nothing expansive but simple and concise. Both sides do need to state cases in order to understand (there may be underlying issues which have not been considered by the other parties). There should be an allocated time limit to each speaker and perhaps the number of speakers should be agreed at the outset of each case as some Call-ins may require more evidence than others.

I would like to see a simplistic formal procedure written up with a flow chart process that could be followed by officers/councillors old and new.

Comments from Focus Group

The focus group agreed there should be a clearly laid down process that was inclusive.

6. Length of time for reconsideration by decision maker

Comments from Questionnaires

10 days would be appropriate. Officer delegated decisions should perhaps go to CMT

The decision maker's reconsideration time should be no longer than that of the select committees consideration time if it is shortened to three or less weeks

Comments from Focus Group

It was felt that this should not unnecessarily delay any decision making process but should be flexible and that the relevant portfolio holder would be best placed to consider whether an extra meeting of the Executive was required or whether it could go to the next scheduled meeting.

7. Effective date for decision implementation

Comments from Questionnaires

This could be used politically to force a decision through. Careful thought should be given to ensure that it does not happen.

Comments from Focus Group

The focus group considered the effect dates for implementation and agreed these should be as soon as practically possible in order to ensure that the process does not delay implementation unnecessarily.

(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, a Committee of the Executive, individual portfolio holders, and any key decisions taken by officers will normally be published by 5pm on the next working day after they have been made. This 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 5pm on the fifth 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 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 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 decisions 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 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. All Councillors and Corporate Management Team members will be advised of the Call-in Request.

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 form
- 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.
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.
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 any brief statement 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 move in to 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 a decision on the Call-in.