

Practice guide 4

Key decisions and powers of call-in



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This is one of a series of practice guides produced by the Centre for Public Scrutiny to assist those working in the overview and scrutiny functions of local authorities.

What is this guide about?

This guide is about call-in, the right for councillors sitting on scrutiny committees to delay the implementation of a decision which has been made (but has not yet been implemented) to allow a committee to consider the decision.

It focuses on the legal powers relating to call-in, and looks at approaches that some councils have taken to its use. In February 2014, CfPS contributed to a piece of research carried out by the Northern Ireland Assembly on the use of call-in by councils in England and Wales – the research can be found at <http://ow.ly/wzQnL>.

Why is call-in important?

Call-in provides a mechanism for councillors to intervene when they feel that a decision being made by the executive needs to be revisited (or possibly changed). It provides a key check and balance in the leader/cabinet system of governance – a long-stop that, in theory, prevents the overweening exercise of power by Cabinet.

It should, however, be regarded as a measure that is only needed in exceptional circumstances, rather than day-to-day. It sits in the context of a range of other tools at scrutiny's disposal to influence decision-making.

What are the legal provisions which determine how and when call-in can be used in England?

England: what are “key decisions”, and how can they be called in?

The law relating to call-in in England can be found in the **Local Government Act 2000**. Sections 9F(2)(a) and 9F(4) of that Act between them establish that scrutiny has a power to review or scrutinise decisions made but not implemented by the executive, which includes a power to recommend that the decision be reconsidered by the person who made it. The power in the Act also includes the power for an overview and scrutiny committee to refer the issue to Full Council for them to consider it substantively. “Decision” here should be interpreted as meaning a “key decision”, for which a definition is provided below.

Statutory guidance was issued in October 2000 by the then-Department of the Environment, Transport and the Regions which set out more detail on what particular issues councils would need to consider in establishing their call-in arrangements. This guidance is still active, and as such councils are bound to follow it. It forms part of wider guidance about council constitutions and should be read together with the Government's example constitution, issued at the same time. These are no longer available on Government websites, but can be downloaded from:

- (MC) “[Modular constitutions for English local authorities](http://ow.ly/wzVsM)” (DETR, 2000), <http://ow.ly/wzVsM>,
- (NCC) “[New council constitutions: guidance to English authorities](http://ow.ly/wzVGx)” (DETR, 2000), <http://ow.ly/wzVGx>

Generally only “key decisions” made by the authority are subject to call-in, although councils may decide in their constitutions to expand the scope of their call-in powers to allow other decisions to be scrutinised. Key decisions will for the most part be decisions made by Cabinet members as individuals (where a power for individual Cabinet members to make decisions is delegated from the Cabinet) or by Cabinet as a whole. However, NCC states (para 3.75) “it may be appropriate for key decisions made by officers to be subject to individual call-in”.

The current definition for key decisions derives, in England, from the [Local Authorities \(Executive Arrangements\) \(Meetings and Access to Information\) \(England\) Regulations 2012](#). This definition has not changed substantively since it was first established shortly after the passage of the 2000 Act.

This set of regulations establishes that a key decision is:

“an executive decision, which is likely a) to result in the relevant local authority incurring expenditure which is, or the making of savings which are, significant [...] or b) to be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions [...]”. Individual councils have adopted varying definitions for what a key decision is, but they all reflect these two broad requirements.”

Key decisions must be notified publicly. Until 2012, English councils were obliged to do this through a Forward Plan, which had to be published fourteen days before the end of every month, which set out planned key decisions for the subsequent four months. Since 2012, councils in England have been obliged only to give 28 days notice of planned key decisions (and there is also some provision for a shorter timescale in the case of urgency). In practice, however, most have chosen to retain a formal Forward Plan in some form.

Wales: Which decisions can be called in?

In Wales, the “key decision” wording and definition do not apply. This is because the judgment was made at the time of the introduction of executive arrangements in Welsh councils that all Cabinet meetings (and Cabinet decision-making) would occur in public, thereby negating the need for separate deposit and publication arrangements for certain decisions. The definition of “call-in” in Wales can be found at [s21\(3\)](#) of the Local Government Act – this definition is identical to that which applies in Wales, although it should be noted that the word “decision” has a broader meaning than in England by virtue of the above.

More detail about the scrutiny of decisions made but not implemented can be found in guidance issued by the Welsh Government (then the Welsh Assembly Government) in 2006, “[Guide for County and County Borough Councils on Executive and Alternative Arrangements in Wales](http://ow.ly/wMJ2h)” (<http://ow.ly/wMJ2h>) which covers call-in from [section 6.2 to 6.29](#). It suggests at 6.3 that council standing orders ought to establish when circumstances dictate that a decision can be called in, giving three (non-exclusive) examples – when there is:

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- a belief, following advice from the monitoring officer, that the decision or action was contrary to the policy framework or budget, or fell outside the functions of the executive;
 - a belief that the executive had not followed agreed procedures on consultation (as set out in standing orders or protocols adopted by the council) before reaching its decision; or
 - a belief that the executive had not followed, or had failed to take account of, any legal obligations, including regulations or statutory guidance governing the council's actions, or other guidance adopted by the council.

Who can exercise call-in powers?

The English "New council constitutions" guidance, and the Welsh guidance, suggest that two councillors on a given overview and scrutiny committee might be required to submit a request for a call-in, or that multiple scrutiny chairs may need to be involved in certain circumstances. Different councils have different requirements, however. **Basildon** and **Derby** requires three members of the Council to request a call-in for it to be valid. In **Bracknell Forest**, the Chairman and two additional members of an overview and scrutiny committee, or any five other members of the Council, are required for a valid call-in. In **Wigan**, six committee members are required to agree for there to be a call-in. There is no trend relating to these requirements when compared across urban or rural, district, county or unitary, Conservative, Labour or Liberal Democrat authorities. However, in some authorities, the requirements on who can and cannot exercise a call-in acts as a "de facto" bar to call-in being exercised at all. For example, a council's constitution may require that three councillors on a given committee must request a call-in where the maximum number of opposition councillors on any committee is two, or may require that the chair of a committee "sign off" a call-in request, when all of those chairs are members of the majority party. For more insight into the political management element of the scrutiny process, please see **Guide 11**

It should be pointed out that Government guidance in both England and Wales, which makes clear that call-in should be exercised only rarely and that councils should act to ensure that their local protocols and procedures meet this end. However, it should also be noted that the Welsh guidance suggests that committee chairs should not unreasonably veto call-in requests.

How does the process work?

The call-in process differs from authority to authority, but generally follows the form set out in the English modular constitution.

- Members and the public are notified of the planned decision 28 days before it is made;
 - The decision is submitted to the decision-maker; this submission, made by an officer, is sometimes placed on public deposit at this point;
 - The decision is made by the decision-maker, who in the case of an executive decision may be a Cabinet member or the whole Cabinet;
 - Notification is sent to the chair of the relevant overview and scrutiny committee (and sometimes to a wider group of members) that the decision has been made, usually within two days of the decision being made, advising of the timescale for the exercise of the call-in powers. There are usually five clear working days between the notification and the implementation of the decision. The implementation of the decision is essentially automatic, and no further notification needs to be given before it goes into effect;
 - If a valid request for a call-in is received, a meeting of the relevant overview and scrutiny committee is convened. There is usually a time limit for this – NCC suggests that the decision should be suspended for two weeks (CfPS surveys suggest that 45% of councils require a meeting to be convened within 10 days);
 - The meeting takes place. The committee takes evidence and decides on what action to take. They may agree that the decision may be implemented, or they may recommend that it be changed, or that it be withdrawn entirely;
 - The executive responds. An executive meeting will be convened to decide how to formally respond to scrutiny's recommendations. If the executive decides to continue to implement, there is no further right of
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delay. If it decides to withdraw the decision and place it back on the Forward Plan subject to resubmission at a later date, on this subsequent occasion councillors will still have the right to request a call-in.

Councillors have the right to request that an item is placed on an overview and scrutiny committee agenda. The call-in rights do not impinge upon that general right, but we should point out that placing items on the agenda will not serve to delay the implementation of a decision (NC, para 3.82).

In 2006, research carried out by CfPS found that a number of councils imposed restrictions on the number of call-ins that can be exercised in a given year. While we have not conducted a detailed, empirical analysis more recently, anecdotal evidence suggests that such restrictions are no longer nearly so widespread. The (mode) average number of call-ins per year has remained at one or two for many years (the mean and median averages are affected by several outliers at the top end of the scale, who have numbers of call-ins which go well into double figures, and by the large number of councils who have no call-ins at all).

What will happen at the meeting?

Different councils take different approaches to their management of call-in meetings. Many have protocols to define how call-ins will be carried out (**Cumbria's**, at <http://ow.ly/wzWUq>, is a typical example). Sometimes, call-ins are appended to the agendas of existing meetings, but it is more usual to convene a separate meeting for this purpose (and sometimes a separate "call-in committee" exists, like in **Brent** and **Dorset**). It is usual for the Cabinet member and the chief officer for the service involved to be invited to give evidence. However, it is at the discretion of the Chair how the meeting is run, and he/she may invite others to give evidence. This might include other council officers, members of the public directly affected by the decision or representatives of partner organisations.

There will also be variance in the information provided to members in advance of the meeting. Often, councils make the decision notice and the report underpinning the decision available, but some other authorities will also include relevant background papers. It is not common for wider evidence-gathering activities to be undertaken – there is usually no time to do so. While timing will be a significant constraint, ensuring that the panel have access to a carefully selected amount of relevant information, and early discussion between the chair and other members of the panel, will help to manage the session better.

At the end of the meeting, two approaches can be taken to reach a conclusion:

- The Chair and the committee can withdraw briefly to consider their recommendations in private. This would not be a breach of the 1972 Act. This can be a useful approach if the Chair feels that the committee might want to make recommendations other than that the decision should or should not be implemented;
- A vote can be taken immediately to decide whether the committee wish to recommend that the decision should be implemented or not.

How can call-in be carried out most effectively and how does it intersect with scrutiny's other powers?

The political dimension

Valid call ins – some councils have call-in arrangements which are designed in such a way that makes call-ins exceptionally unusual if not impossible. For example, call-in procedures requiring more than two councillors from a single committee to exercise the power can be a significant barrier in authorities with large majorities, where there may be very few opposition party members on a committee. Call-in

procedures requiring the approval of a committee chair can present particular challenges where all scrutiny committee chairs are from the majority party.

At meetings - where a vote is taken, the result can often split down party lines. There is also a perception that the focus at the meeting is on the vote itself, rather than the debate preceding the vote, which can be of a low quality as councillors only have access to limited information about the decision. Call-ins may be contentious. Managed well, that contention, and the vigour of debate, can make the process a productive one. Poorly managed call-ins, however, can damage the scrutiny function, and how it is perceived by others. Party politics can sometimes play a role here – although it should be noted that not all call-ins are party political in nature.

Aside from the power of delay, the power of a call-in is quite limited. Principally it acts as a means to draw attention to opposition to a decision, with the meeting providing a forum to allow that opposition to be voiced. Members, and others, need to manage their expectations accordingly.

How many is too many? – the number of call-ins varies hugely from council to council. A large number have none at all (and many have had none at all for several years); one council had 38 call-ins in 2012/13. There is no obvious correlation between councils with high (or low) numbers of call-ins and those with effective scrutiny functions; a larger number of call-ins has no direct effect on the proportion of those call-ins that lead to an amended decision.

Call-in's effectiveness, and scrutiny's wider powers

Since 2009, the proportion of decisions amended as a result of call-in has declined as a percentage of the total number of decisions called in. However, call-in should be seen in context – firstly, it is a means to provoke further debate on a topic of political contention, and acts as a democratic safeguard against the unconstrained exercise of executive power. Secondly, it is one of a number of tools available to scrutiny to influence decision-making. Members may, for example, carry out pre-decision scrutiny, which can lessen the need for call-in. Call-in can also be seen as part of a process whereby scrutiny can challenge the assumptions and evidence behind decisions.

Opinion about the general value of call-in is very mixed across councillors and officers around the country. Predominantly, councillors consider it to be ineffective, although in those authorities where it is used more, it is considered to be a useful tool.
