The use of call-in: guidance for English authorities

Centre for Governance and Scrutiny

This is one of three connected publications, all aiming to provide technical advice on the operation and review of critical elements of governance framework for local authorities in England. Between them, the three publications look at:

- Call-in;
- The operation of schemes of delegation to support decision-making;
- The review of Council constitutions

Contents

This paper aims to provide advice on the operation of the function of local authority scrutiny committees which provides for the scrutiny of decisions once they have been made but before they have been implemented. This function is better known as "call-in".

We mainly deal with the operation of call-in under "executive arrangements" – which applies in those councils with a Leader and Cabinet, or Mayor and Cabinet, form of governance.

Call-in is also a feature in combined authorities, and can be a feature in authorities operating under the committee system. These different forms of call-in are discussed, in brief, later in this paper.

The paper is based on:

- Desktop research into the approach taken on call-in by a range of councils;
- Three webinars organised by CfGS, attended by a total of 68 people;
- The results of recent CfGS annual surveys of overview and scrutiny in local government.

The paper also makes frequent reference to current legislation, and to the only comprehensive formal guidance in place on call-in, the statutory guidance "New council constitutions: guidance for English authorities" (DETR, 2000), which contained a mixture of statutory and non-statutory guidance and a distinct part entitled "Modular Constitutions for English Local Authorities". Councils are still legally obliged to have regard to this guidance but should note in doing so that, in relation to call-in as well as broader constitutional issues, the legislative framework, and good practice, have moved on in many areas. Critical analysis of the guidance and its ongoing applicability is therefore required.

Following on from a description of the law, the layout of this guidance contains sections headed as questions. These are the relevant questions an authority will wish to ask itself when establishing or revising its call-in provisions. In doing so, we have attempted to answer those questions by reference to the legislation and Guidance but also with examples and common practices that we have encountered, as well as our views as to what constitutes best practice. These questions are also something we will return to and continue to ask of colleagues over time to discover novel practices and good ideas.

Further to this paper CfGS will produce a list of illustrative examples of call-in procedures and protocols, and a further "example" protocol that puts into practice some of the principles that we set out. Both of these will be accessible at www.cfgs.org.uk/call-in in spring 2023.

This guide covers the law relating to call-in for English local authorities only. Call-in is also a feature of the governance framework for Welsh authorities, but the legal basis is different. Welsh members and officers should have regard to separate statutory guidance produced by the Welsh Government[1].

Call-in arrangements in combined authorities are different to those described in this paper. More information can be found in "Combined authority scrutiny: a plain English guide" (CfGS, 2021).

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[1] The Welsh Government issued draft statutory guidance on call-in in March 2022. It can be found at section 9 (p95) of "Local Government: Guidance for Principal Councils" (Welsh Government, 2022): accessible at https://www.gov.wales/sites/default/files/consultations/2022-03/consultation-document-wg44742.pdf.

1. Introduction: the purpose of call-in

(a) What is call-in?

Councils are democratic institutions in which elected councillors are the principal decision-makers.

Where councils operate under what are called "executive arrangements", only a comparatively small number of councillors are involved in day to day decision-making, through the body known as Cabinet. In order to bring rigour, scrutiny and accountability to this decision-making, a function called "call-in" exists.

Call-in is a safety valve to delay and interrogate important executive decisions. It provides a way for councillors who do not sit on Cabinet to ask that particular decisions are reconsidered by the person or people who originally made them.

Call-in also has a role in some authorities which operate using the committee system form of governance, but in those places it may look rather different. We explain this in more detail in section 1d 'What is call-in for in a committee system authority?'

(b) What are councils obliged to do?

The legal detail is provided in the Appendix – this section provides a general overview.

The phrase "call-in" is not used in legislation, but it is there that the central powers can be found. There is a two-step legal process for the establishment of call-in at law.

1. s9F(2) of the Local Government Act 2000, as amended. This provides the general power for overview and scrutiny committees to review or scrutinise executive decisions;
2. s9F(4) of the same Act, which provides a specific power to review or scrutinise a decision made, but not implemented.

This second power itself provides scrutiny with the basis for further powers:

1. To recommend that the decision be reconsidered by the person who made it;
2. To arrange for the call-in to be considered further by a meeting of full Council. Usually a reference to full Council will be made only where a scrutiny committee concludes that an executive decision has been made outside of the budget and policy framework, which we explain in more detail at section 5a) 'Referral to Full Council'.

In exercising these powers scrutiny committees can benefit from the other, general, powers available to scrutiny committees – namely, to require the attendance of Cabinet members and council officers, and to require that information relating to the decision be provided.

(c) What is call in for?

The legislation provides little direct advice on what call-in is "for".

Call-in cannot "overturn" a decision. A call-in can result in a recommendation that a decision be reconsidered or withdrawn, but nothing more. It is best regarded as an urgent and serious request from councillors to the executive decision maker that they should think again. That request should be seen as notable because it is a function that should only be used in exceptional circumstances and, such a request, if then made, will come from a review carried out by a cross-party committee.

In practice, call-in has been seen by councils as having a number of purposes, including:

- Highlighting the presence of public contention in respect of a particular decision;
- Highlighting / surfacing serious political disagreement and providing the opportunity for political accountability;
- Providing fuller information, with a view to assurance on certain decisions where that information may be absent in an officer report or background papers.

In all cases, call-in is about providing an opportunity for challenge as a long-stop – when other attempts to influence or challenge a decision have failed.

The use of call-in can also be seen to be embarrassing and frustrating to a local authority and its leadership. Delay is inconvenient, and frequently costly. The wish to avoid call-in is therefore also seen as an incentive for council leaderships to mitigate the risk through early engagement with overview and scrutiny, backbench members and opposition groups – especially where decisions are likely to be contentious.

CfGS does not, however, consider that the use of call-in, or the threat of its use, should be seen as a failure. Quite often its use – presenting as it does a risk for the executive, of embarrassment or delay – has been seen to serve to provide opportunities for earlier scrutiny involvement in decision-making. Pre-decision scrutiny, and/or early involvement in policy development by overview & scrutiny committees and members, is likely to be more productive than call-in. It is also for this reason that CfGS adds its voice to the Guidance and Modular Constitution (para 16 above/attached), that use of call-in should certainly be infrequent and should only be used in exceptional circumstances.

In the past CfGS has described call-in as a "blunt tool". There can be a perception among members that call-in can be used to reverse a decision. It is important to emphasise that this is not the case. More often the challenge is on the quality of the information accessed by the decision maker to arrive at what should be a robust and evidence-based decision. When used inappropriately or indiscriminately it may cause frustration (in particular to members who use it hoping or expecting that it will lead to a change in the decision in question).

Councils where call-in is a regular occurrence may need to reflect on members' understanding of the purpose of call-in and what other mechanisms are available to them to challenge decisions. This should not be about raising the bar for a call-in to be valid but reflecting on whether sufficient opportunities exist for a wider range of members to be involved in policy development and decision-making – feeding in and influencing at the right stages. The frequent use of call-in is not always evidence that there are weaknesses in the corporate governance framework, but conversely it can be a sign of the existence of those wider problems.

For this reason, the presence of clear rules around call-in's operation is important. Critically this is likely to include the use of criteria to determine whether a call-in is "valid". The use of criteria will make call-in more focused and reduce the risk that it will be used for exclusively party political reasons – criteria also frame the nature of a debate in committee in a way that makes it more likely that a reasoned, informed outcome will be reached.

At their heart, all of the call-in practices continually being developed and undertaken by local authorities that we have seen endeavour to best achieve that central aim of how best to achieve that balance between overview and scrutiny effectively holding the decision-maker to account, being able to question decisions before they are implemented and at the same time not impeding the effective, efficient and business like decision making required by the executive or the day-to-day management and operational decisions taken by officers. Colloquially put, this is a deal to be done between the executive cabinet or policy committee members and the overview and scrutiny committee members to allow for healthy debate and examination of the issues on important decisions whilst not getting in the way of the Council being able to go about its business and achieve the things that almost all Members universally agree needs to be done.

This 'deal' is, as reflected above, one where the executive decision makers agree to delay implementation of certain decisions to allow for review and, if necessary, referral back for re-consideration. This, in turn, is in exchange for the adoption of a set of criteria such that only decisions deemed worthy of review by the overview and scrutiny committee are called-in by the process and reviewed, as a matter of exception, and that the remainder of executive decisions made by members and officers, the ordinary, administrative or uncontroversial elements of the local authority's business, may continue to implementation unhindered.

The questions the authority will want to ask itself in setting that criteria out are explored below. This includes examples of practice in how differing local authorities have addressed those questions and how application of the Guidance and Model have moved on. We will say where those examples are at the extreme of things and where we consider those examples to be common or best practice.

(d) What is call-in for in a committee system authority?

Councils operating a committee form of governance do not have to have an overview and scrutiny committee, and as such do not need to have arrangements for call-in. However, if an overview and scrutiny committee *is* appointed, then call-in arrangements *must* form part of the way that it works.

Many of the "purposes" of call-in, set out in the section above, apply to an extent in committee system authorities. However, the decision-making dynamics are different.

Decisions in the committee system are made in committee, by cross-party groups of members. This makes call-in less obviously necessary, because a wider group of members and perspectives will arguably have played into the debate that precedes a decision being made. A call-in could, therefore, simply reproduce this earlier debate, while adding little practical value.

Call-in in committee system authorities will therefore need to focus on a rare set of circumstances – where some members feel that the earlier debate was deficient for want of critical information, or possibly that the committee did not have the power to make the decision because it was made outside the budget and policy framework. Councils can expect that the threshold for valid call-ins will be higher than they would be in an authority operating executive arrangements.

The section on criteria (section 3d, 'What will a "valid" call-in be') provides more insight to support thinking on this issue.

(e) How does call-in fit into the wider governance framework?

Call-in is one of several checks and balances present in the constitution to ensure effective decision-making.

Call-in can be seen as part of a balanced system by which effective, consistent decision-making is supported and strengthened by rigorous – and proportionate – member oversight. Call-in is a "longstop" – a process that can be relatively infrequently used because other constitutional systems work alongside it to ensure that decision-making overall is of a high quality. This safety valve is vital if serious issues emerge about a given decision which seem, in members' views, to demand that that decision be revisited.

In this way, members and officers should avoid thinking of call-in as a standalone feature of the governance framework.

This is backed up by the Statutory Guidance on Overview and Scrutiny in Local and Combined Authorities, which makes the point that call-in is not a substitute for early involvement in the decision-making process, nor is it a party political tool;

Call-in should be seen alongside other systems, which include. .

These systems include:

- The framing, and agreement, of the budget and policy framework (as determined by the authority) on an annual basis;
- The Annual Governance Statement, and the review that precedes it;
- The oversight provided by a Governance Committee, including audit committees, which "own" member oversight of governance issues, which can also be a useful way of monitoring the effectiveness of democratic processes and decision making and keeping related processes under review and addressing concerns;
- The general decision-making requirements and publicity relating to "key decisions";
- The work of scrutiny in general, and in particular the role of pre-decision scrutiny;
- The way that performance management, and risk management, is carried out and overseen by members;
- The council's finance systems, including the financial control environment and in-year financial monitoring as well as longer-term financial planning (which sets the framework within which decisions are made); and
- The decision making principles[2] and the legal and corporate requirements for the drafting of decision reports before any decision is made, including:
  - The requirement for legal and financial (and often other forms of) signoff for reports;
  - The requirement to present alternative options;
  - The requirement to consider equality, and human rights;
  - The requirement to present background papers.

All of these connected systems are essential to, and a reflection of, the authority's culture of decision-making and the nature of relations between members. Where a mature culture of decision-making exists, call-ins will be few and far between – not because rules are designed to make it difficult to call decisions in in the first place but because the need for that safety valve is less pressing. Members and officers all, therefore, need to take it seriously – seeing it not as a procedural annoyance to be managed away but an important, if sometimes poorly-used, tool to assure decision-making probity.

[2] These principles form part of the Modular Constitution, and as such have been adopted by most councils in either this form, or using very similar wording.

2. Where call-in rules should sit

There is no "right place" for call-in rules to sit in the constitution. In most authorities they reside in the overview and scrutiny procedure rules. In some authorities, however, they form part of executive/cabinet procedure rules, in others as part of the council procedure rules (standing orders) and in others they can reside in the overview and scrutiny procedure rules or in a separate protocol.

It is certainly the case that many authorities provide that the rules about publication, call-in criteria and exceptions are contained in the constitutional rules but that the procedure of the call-in meeting itself, and sometimes prior steps for resolution, mediation or the variation and agreement of that procedure, are set out in a separate protocol or procedure note. This separation allows for flexibility where needed in order to react to the requirements of the particular circumstances, including technical detail, evidence and witnesses and public participation and time management in controversial matters.

Following this pattern, enough detail is needed that councillors considering calling a decision in can be confident in the rules that will apply to that request and how the process will function. For this reason, it may be sensible for basic rules to be set out in the constitution but for more detail to be provided in written guidance provided to members, which should itself be published in the interests of transparency. Drafting should highlight the most critical elements. For example, the use of criteria to determine call-ins' validity, the person or people making a judgement about whether call-ins should go ahead, and the likely presence of restriction on a call-in's requestor being able to take part in the vote at the committee where the call-in is considered, although they may be able to contribute to discussion[3].

Additional written guidance allows for clarity and transparency and limits the extent to which officers have to provide advice on a case-by-case basis. Guidance cannot account for every circumstance, but it can explain key elements of the process and – importantly – provide justification for why they exist.

[3] Where a requestor is an ordinary member of the committee is question, procedure rules may require that they be substituted for the meeting.

3. Addressing what may be called in, how and why

a. What decisions should be subject to call-in?

This is a fundamental part of establishing the governance process of call-in. Strictly speaking, all executive decisions are subject to review and, in so doing, are subject to the risk of delayed implementation that comes with that whilst that review takes place.

In reality, it would be unreasonable for *all* executive decisions (which would include executive decisions delegated to officers) to be subject to call-in, and the power in legislation was never developed for this purpose. In fact that guidance explicitly says, "day to day management and operational decisions taken by officers should not be subject to any call-in procedures".

Instead, councils set out in the constitution which decisions may, or may not, be subject to call in – and the criteria which should apply to determining whether a call-in is valid, which we discuss later.

Key decisions

When it comes to what extent to exclude call-in from applying to operational decisions, most use the more straightforward approach that authorities are accustomed to for differentiating every day decisions from ones of potential importance, that of a 'key decision'. This is also helpful because with the making of a key decision also comes the requirements around it on publicity, setting out what it is to be about, who is to make it and what documents (including the report) on which the decision-maker is to consider when making the decision.

A "key decision" is defined by regulation 8 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, repeating the earlier 2000 regulation, which states that it

"means 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 having regard to the relevant local authority's budget for the service or function to which the decision relates; 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 in the area of the relevant local authority".

Of course, this begs the question of what "significant" then means for these purposes. Usefully, the Guidance does set out some suggestions, saying:

"In considering whether a decision is likely to be significant, a decision maker will need to consider the strategic nature of the decision and whether the outcome will have as impact, for better or worse, on the amenity of the community or quality of service provided by the authority to a significant number of people living or working in the locality affected."

At its most restrictive, some councils will use key decisions as the only criteria for what may be called in, applying it to cabinet and cabinet member decisions and excluding all decision made by an officer from being called in.

The most common approach, and that which we would consider best practice, is that all cabinet or cabinet member decisions are potentially subject to call-in, as are those key decisions made by an officer of the authority.

There are a class of such decisions that are considered especially urgent, and to which call-in should therefore not apply – this is discussed further below.

b. For how long should the implementation of a decision be delayed, to allow the time for a call-in to be requested?

Delay prior to implementation is fundamental to call-in working at all.

In addressing this question, the statutory Guidance states that the provisions of a local authority's executive arrangements "may include a standard period of delay before decisions are implemented", not must.

Once it has decided what decisions call-in may apply to therefore, each Council must decide the length of delay that is to apply to a decision before it is implemented, thus giving time for call-in to take place to trigger a review and the statutory delay provisions to take effect whilst the review meeting and any re-consideration takes place.

The delay suggested by the 2001 Guidance was to allow **2 clear working days** for the decision notice or minutes to be published and then **5 clear working days** from publication to allow for a call-in to be requested.

This 2 days to allow for publication is followed by most authorities as a standard target for both member or officer decision notices and draft minutes. The 5 days to allow for a call-in request following publication of the decision is by no means followed by all authorities. Whilst most do, many authorities find 3 or even 2 days post-publication to be a quite adequate time period to allow for call-ins to be requested – although this will depend on the number, and type, of councillors required to request a call-in for it to be valid. Authorities that allow for longer than 5 days are quite rare.

c. What exceptions should apply?

Not all decisions should be subject to delayed implementation so as to allow for a call-in to take place.

Exception 1: Urgency

As the Guidance put it, *"the executive will, from time to time, need to take decisions that need to be implemented quickly".* Under these circumstances the powers around call-in can be curtailed. Removal of call-in is usually couched in terms of it being for reasons that it would prejudice the interests of the Council, for safety reasons or because it is in the wider public interest to do so.

In some authorities, the provision for call-in is removed from a decision simply because the executive, be that cabinet, Leader or other cabinet member or an officer, decides that is to be the case and records that at the time of making the decision for the notice or minutes.

Most authorities still follow para 3.79 of the 2000 Guidance and the modular constitution and exclude a decision from call-in and delayed implementation by use of an urgency provision that requires the consent of the authority's chair/civic mayoralty to agree that must agree that *"both that the decision proposed is reasonable in all the circumstances and to it being treated as a matter of urgency".* Some councils refer to the chair of overview and scrutiny instead.

Other authorities are more restrictive and, in addition or in replacement, require the chief executive and/or monitoring officer to agree to that and also expressly define that a decision will only be urgent if any delay likely to be caused by the Call-In process would seriously prejudice the Council's or the public's interest.

Some councils operate a set of "general exception" urgency arrangements, "special urgency" arrangements and "emergency" arrangements, for decisions of different degrees of immediacy, processes for which affect call-in and member oversight in different ways. While potential complicated, this does mean that the right to call a decision in is wholly absent in only the most extreme of circumstances.

The decision to remove call in and the reasons why the delay to implementation of the decision should not be applied are usually required to be reported to a meeting of the full authority.

Alternatively or in addition, there is often an annual report and review on these matters.

Exception 2: Only one call-in per decision

Guidance says that *"the provisions should ensure that a decision maker could only be asked to reconsider a decision once."* This is almost universally the case, as the alternative is a potential merry-go-round of review and call-in being used as a means to so delay a decision that it is never implemented. When a decision is re-considered by the decision maker, that decision is then implemented whatever it may be. Nonetheless, it must be remembered that this provision must be expressly included in the constitution to be of effect.

Exception 3: A limit on the number of call-ins overall

A final exception might be that call-in is limited to a finite number of times per year or quarter, following which no further call-ins would be permitted of any decision within that period. This is an option operated by no authority to our knowledge, on the basis that it is seen as not being in accordance with the principles of engagement and, quite simply, there can be no accounting for what contentious decision might yet be made.

d. What will a "valid" call-in be?

We have already noted that call-in must be subject to some form of restriction – in keeping with the fact that it should be seen as a long-stop, used rarely.

In order for this principle to be upheld, call-in arrangements must, practically, place hurdles which have to be overcome for a call-in to be considered "valid". We should stress that putting such hurdles in place is not only legal, it is also a specific component of the legislation and formal guidance on this subject. Not to do so risks call-in being effective.

These hurdles should not be designed to thwart members' legitimate right to call-in decisions. It is likely that where a Monitoring Officer is able to give advice to councillors wishing to request a call-in, a request which might on the face of it appear invalid could, with revision, be refocused into one that is legitimate. But both members and officers will need to understand that requests need to be reasoned and justified, which brings with it the need for judgement and discretion.

Hurdles to clear for a call-in to be valid

There are three main hurdles that can form part of a council's call-in arrangements:

- Requiring a certain number of councillors to request a call-in for it to be valid;
- Requiring that certain criteria (in terms of the reasons for the call-in) to be met for the request to be valid;
- Requiring that councillors have not had a prior opportunity to consider and debate the decision.

Hurdle 1: Requiring a certain number of members to request a call-in for it to be valid

Almost every authority has adapted the only suggestion in this respect by the Guidance, which was that a *"safeguard which could be adopted in the executive arrangements could be to include provision requiring a certain number of committee (or local authority) members to call in a particular decision".*

This is where the consensus ends, however, as the adoption of this suggestion over the intervening twenty-plus years has produced the widest variety of approaches. Often, councils' approach has changed as political balance, and political Group dynamics, have changed. Requirements that may seem fair and proportionate with one particular balance of political representation may look less so when the numbers change after an election, which is why it is important to keep this under review.

The original drafting in the Modular Constitution suggested that 3 councillors (of any group, and sitting on any committee) would need to make a call-in request for its to be valid. This seemed a reasonable number as that number gave the request a certain legitimacy. That said, the size of the council in question does have an impact here – 3 out of 30 members requesting a call-in is of a different order to 3 out of 97.

Alongside that straight consideration of a number of members, several other potential requirements have been considered, including:

- Whether the councillors making the request need to sit on the same overview and scrutiny committee, so that two or three members of a ten or twelve seat committee need to request the call-in for example. This can be challenging where a council has multiple groups, or many independent members, with certain groups not being represented on every committee;
- Whether councillors making the request can all be from the same party, or need to represent different parties. This can help to ensure that call-ins reflect matters on which there is cross-party concern, although in councils with only one minority group, or none, this might not be reasonable.

As can be seen, the application of who may trigger a call-in varies according to local circumstance and is very much shaped by the experiences of each authority. That variety has now given us examples of:

- The signatures required to trigger a call-in is not members of the council but electors registered within the authority's area, in one case as low as 10 and in another 20, so as to allow for maximum engagement and consideration of significant issues where it is seen to matter by the electorate;
- a town or parish council or a recognised residents group that may submit a call-in request; through to the other extreme whereby
- the call-in mechanism is only triggered on a request submitted by half of the whole membership of the authority, which is seen as a response to a change in governance systems and their previous experiences.

It is the CfGS view is that these sort of requirements on numbers/types of members, bodies or persons requesting call-ins should be clearly justified, and reviewed following each election and after a change in political control to ensure their ongoing fairness and applicability as endorsed by the authority.

Hurdle 2: Requiring that the call-in request meets specific criteria, in terms of its substance

A widespread development has been not only requiring that there is a number of requestors needed to trigger a call-in but that request is then only valid when it is accompanied by the meeting of other tests and, in particular, the reasons for the request.

Why require criteria to be met?

As well as providing an additional safeguard to prevent abuse of the review and delay process, requiring that reasons be given satisfies four objectives in itself, to assist the processes and garner support for the legitimacy of the call-in process from members. We consider these to be:

1. It helps to ensure that call-ins are focused on those matters where they can add most value
2. It assists those requesting call-ins to marshal their ideas, and for others on the committee conducting the review to contribute productively to the debate;
3. Potentially it means that poorly thought-through call-ins can be avoided; and
4. It clarifies the grounds on which the decision is to be challenged by, for example, pointing to specific flaws in the process, which may be embarrassing to the decision maker and which they may want to correct, or it can point to flaws in the process such as poorly written reports or vague recommendations.

The over-arching object of requiring reasons is, however, to ensure that the call-in may be reasonably reviewed by an overview and scrutiny committee, often with regard to the legal principles that might apply to judicial review by the courts, but principally to return to that concept of the balance between reviewing decisions by exception, thus allowing scrutiny and the ability to question decisions before they are implemented whilst allowing effective and efficient decision making by the executive. A lack of criteria to frame the subsequent committee discussion means that the call-in exercise risks being unfocused and insufficiently directed towards what may, or may not be, the deficiencies of the decision.

The CfGS view is that there should be a requirement to give reasons for call-ins, for the reasons described above, but that authorities should ensure that they interpret this requirement permissively. It is also worth noting our view that, as reasons are likely to focus more on procedural issues, call-in is essentially a political process and it is entirely legitimate for the merits of a decision to be discussed as well.

Which criteria?

Members might have a range of reasons to want to call a decision, but we have found that these generally fall into three different categories:

- The process of decision-making. The question here is has there been some flaw or deficiency in how the decision has been reached? This might be
  - a lack of consultation with the public,
  - important evidence that has been disregarded
  - insufficient information being provided in support of the decision-making process, which may itself include[4]:
    - A lack of a clear recommended decision in the relevant officer report;
    - A lack of reasons for that recommendation, and/or for the final decision itself;
    - No details of other options, or consultation carried out;
    - No, or inadequate, consideration of legal and financial issues;
    - No, or an incomplete, list of relevant background papers;
    - Omission of key facts on which important aspects of the report are based.

Criteria here may include reference to the decision-making principles in the constitution (which we set out in the Introduction) – including clear evidence that there has been deviation from these principles.

- The merits of the decision itself. Members may disagree with the substance of the decision, because they feel it is the wrong political choice. This is a more overtly political reason to call a decision in, but it can allow for interrogation of the why, as in why was this decision not taken and not an alternative option? What might an alternative option be?
- It may also be that they consider a decision has been made outside the budget and policy framework, in which case a recommendation can be made to full Council on how to take the matter forward. This is, however, very rare (and is covered in more detail below). It may be that "process" issues are dealt with by reference to the decision-making principles in the council constitution – we set this out in more detail below.

Hurdle 3: Taking into account prior opportunities to "feed in" to a decision

Some authorities consider that, if members have already considered an issue at an overview and scrutiny committee, it is reasonable to take the approach that there should not be a further opportunity to use call-in to hold the decision-maker to account. Indeed, this is specifically provided for in the Guidance, which we highlighted in the introduction.

This is a matter of degree. Any previous consideration would need to have been in respect of the specific decision proposed to be called in, rather than any recent debate on the subject in general. Call-in procedures would also need to provide assurance that any previous consideration was substantive and meaningful, and that the call-in process could not add to it. In our view the presence of a pre-decision scrutiny process should not automatically remove the need for call-in later in the process.

[4] The following list derives from the Local Auhorities (Executive Arrangements) (Meeting and Access to Information) (England) Regulations 2012, which require that report contain this information "as a minimum".

If a council did want to restrict opportunities for call-in here, it would be likely to apply where the council operates some kind of "pre-decision" scrutiny process. This is where, for example, a draft cabinet report is brought to an overview and scrutiny committee some weeks before an executive meeting where a decision is proposed to be made, with councillors being given the opportunity to influence the content of that report. This may make call-in less likely but should not – in itself – be a factor in rejecting a call-in. Members may legitimately feel that pre-decision processes have not had due regard to their opinions, or that procedural and substantive flaws have been revealed later in the process.

Some councils simply make use of other informal processes to reduce the likelihood of call-in, such as regular all-member briefings on forthcoming issues, meetings for group leaders to discuss decisions which might cause contention, one-to-one meetings between representatives of groups not forming the cabinet and senior officers. Keeping lines of communication between the administration and backbenchers – taking a "no surprises" approach to decision-making – should necessarily reduce the sense that call-in is necessary.

In saying this, it is important that such "informal processes" do not take the place of necessary public scrutiny. Informal briefing is sensible under any circumstances, but it should not automatically preclude the use of call-in where justified.

Using a form

Many councils provide members with a "form" to use to request a call-in. The validity of a call-in should not rest on councillors' correct use of a form but it is a useful way to ensure that requests are focused (particularly where multiple criteria for validity to exist).

e. Who should determine that a call-in is valid?

A requirement for evidential, and other, criteria raises some challenges because it imposes on the person or body judging whether or not the call-in is valid the need to make a judgement as to whether the reason(s) given is/are "good enough".

Essentially, whether the reasons or other information or evidence submitted to support that a request for review is sufficient to meet the criteria to proceed is one for the overview and scrutiny committee. As a result, some councils divide the criteria above, with the proper officer (the person assigned to take responsibility on matters relating to democratic and committee business) calling the meeting on receipt of sufficient requests and the first agenda item for the overview and scrutiny committee being to consider whether it meets the criteria and whether or not to proceed to review.

In practice, however, this is rarely the case. Practicality dictates that this decision falls to a person to consider prior to the calling of the overview and scrutiny committee. This could be:

- the chair of the reviewing or over-arching strategic overview and scrutiny committee;
- the statutory scrutiny officer;
- the chief executive; or
- the monitoring officer.

Whoever makes that judgement, it would need to be clear and consistent. We would also suggest that the approach taken by the decision-maker is permissive.

This means that in cases where the "validity" of a call-in may be marginal (particularly where a subjective judgement is being made on the extent to which a request meets certain substantive criteria, as we set out in Hurdle 2), the approach should probably be to allow the call-in.

This is because the place for debate on the substance of the call-in is the meeting itself; the process for determining the validity of a call-in should not be about testing, and pre-empting, those arguments. This suggests that if members requesting a call-in are able to articulate a reason why, in their view, procedural or substantive reasons require it, it should be allowed to proceed if it complies with the council's own rules.

Given the process and legal concepts involved, as a matter of general principle it is the CfGS view that the decision on validity should be made by the Monitoring Officer.

Whatever criteria are applied by an authority, it is, in the CfGS view, key that it ensures that a call-in is an accessible tool while recognising that its use as a "long stop" means that call-ins should have wide support.

f. Should call-ins alleging that a decision was not within or contrary to the budget or policy framework be treated differently?

Requestors may consider that an executive decision is procedurally flawed because it has been made outside the budget and policy framework. On this point, the Monitoring Officer, and the s151 officer, will need to provide advice. The suggestion that a decision has been made which is flawed in this manner is a serious one, as it is potentially unlawful, and these two officers will have a central role to play in testing members' assertions.

It may be that that those assertions should be dealt with in committee, if it is not possible to provide the members in question with reassurance earlier in the process.

It is important to note that this is the only called in matter which the Guidance considers worthy of the overview and scrutiny committee referring to a full authority meeting. That reference is covered later in this guidance.

4. Process and the Meeting

(a) Outcome of mediation or round table discussions

Some councils include in the process a step between receiving a valid request for call-in and the meeting of the overview and scrutiny committee to hold the review. This may include a mediation process or a round table discussion between the lead requestor(s) of the review and the executive decision maker or chair of (and/or proposer of the resolution at) the decision-making meeting. Where a round table meeting is held, the chair of the overview and scrutiny committee may also be present for some or all of this discussion.

This sort of meeting has, on occasion, been found to have resolved the issues in advance, without then the need for the call-in review to be held – as long as it is not misused as an attempt to put pressure of requestor(s) to withdraw the request.

In any event, it has been found to be helpful for the chair and supporting officers in preparing the report and managing the process and timing at the overview and scrutiny committee conducting the review.

(b) How should more than one call-in on the same decision be approached?

It is possible that more than one valid call-in request is agreed in respect of a specific decision. This is particularly likely where the bar for a valid call-in is comparatively low, and/or in the case of an authority under no overall control.

It is not the case that once a valid request is received, the clock on the post-decision period stops in which a call-in might be received and no other call-ins can be accepted.

We have seen three possible solutions to this:

- A “first come first served” approach, whereby the first valid call-in is taken forward but any subsequent requests are denied.
  - This approach is considered likely to be unfair on members, and may well cause political difficulties;
- An approach which would see two or more call-ins on the same subject being considered sequentially at the same meeting
  - This approach could well be duplicative and potentially confusing, if not contradictory and disruptive;
- A “merged” approach, whereby liaison is undertaken with all requestors wishing to call-in a decision to try and ensure that the reviewing overview and scrutiny committee can consider concerns holistically
  - It is felt that the resulting procedure and decision making should, in most of these circumstances, be the fairest and most efficient in terms of good administration.

It is the CfGS view that, where two or more valid call-ins are requested on the same issue, the proper officer should liaise with those requesting (and with the relevant O&S Chair) to ensure that the matters can be considered together, without prejudicing either individual request or requesters.

If agreement cannot be reached – because the requestors disagree or for any other reason – the Monitoring Officer will need to find a fair solution that does not unreasonably disadvantage the council or any requestor. This might be to hold a single evidence-gathering session on the topic in committee, but to allow separate groups of requestors to make their case at the start, and for separate votes to be taken after. Readers will recognised that this, or another solution, is not optimal.

(c) How might timescales and the council calendar be best managed for call-in?

It is important that the process is as streamlined and efficient as it can be. This means setting sometimes challenging timescales for the convening of the call-in meeting itself and keeping to them. Usually, it will be necessary to convene a special meeting. Occasionally, in those authorities where call-ins are common, we have found that democratic services teams manage to keep aside committee dates to accommodate such meetings as this is easier than trying to agree new dates based on availability of members, officers and rooms. This is done by either placing reserve dates in the calendar for the use of committee to hold a review at short notice or place formal dates in the calendar with the understanding that these meetings will be cancelled when not required.

Generally, a meeting will need to be called to take place within 10 working days of the end of the call-in period, which is the timescale contained in the 2000 Guidance.

This is intended to provide enough time for a report to be drafted and then the meeting to be called with the requisite 5 clear days' notice. As said,. this is a very tight timetable, and officers putting forward key decisions where a call-in is likely will need to think about this earlier in the planning stage.

It is the CfGS view that a 10 working day period (beginning with the end of the call-in request period itself), within which a call-in should result in the matter being considered substantively by an overview and scrutiny committee, should be seen as standard and applied wherever practicable. Again, this seeks to balance the need for scrutiny and the need for efficient and effective decision making.

(d) Who drafts the report, and what should it say?

The minimum information presented to the reviewing overview and scrutiny committee should be copies of the decision itself, together with any accompanying reports for the decision maker at that time, and a copy of the request for call-in.

This will often then include a covering paper setting out the reasons for the call-in given by the requestor, together with any comments on validity made by the monitoring officer (or Chair).

Those requesting the call-in will not usually have the opportunity to add their own covering report or to expand at length and in writing their own reasons for calling the decision in (although a call-in "request form", which we covered briefly above, may provide some of that information).

The opportunity is likely to exist for members to request that more information be provided in respect of the decision. Background information and other data likely to be relevant can and should be provided, especially if part of the reason for the call-in is member concern over a lack of supporting information.

CfGS considers that an agenda for the reviewing overview and scrutiny committee should be fronted by a report(s) by officers and should, at the least, reflect the same material that has gone to decision-makers, but those requesting call-ins may reasonable expect additional information to be provided.

The report and agenda should also set out the procedure to be followed at the meeting.

A call-in review is not necessarily an adversarial matter but 'a review', and as such that the procedure may include additional information and attendees to be included that are considered by the Chair, committee members or officers to be useful and may not purely be that or those requested by the decision-maker or those requesting the call-in.

(e) What will the procedure be in the reviewing committee?

(i) Who is invited to participate?

Call-in meetings are held in public and provide an opportunity for the decision-maker, and others, to be held to account for given decisions. In certain matters, it may be the only time when there has been the opportunity to discuss the issue in public. It is important that there is an opportunity for issues to get a full airing, and for this to happen relevant witnesses need to be invited.

At a minimum this includes:

- Those requesting the call-in. This may be for a set time and from each or just by a lead requestor for review (or shared time if more than one call-in)

It is worth noting that many authorities do not normally allow those requesting the call-in to also be members of the reviewing overview and scrutiny committee conducting the review, in the same way that the decision-makers are not, on the basis of the natural justice principle that one may not be a judge in one's own cause. This means that, in practice, while requestors may be able to be present and even to participate in debate, they may not be able to vote;

- The decision-maker. The decision-maker will need to have the opportunity to speak to the issues involved and to respond to questions;
- A relevant senior officer. An executive decision submitted to members will have been the subject of a report written by an officer who should be present to answer questions.

It is common that the requestors and the decision-maker(s) are permitted to request 'witnesses' to attend the meeting to support their view. This may be relevant officers but may also be those considered experts on a matter or representatives of those members of the public or community affected by the matter. Likewise, the Chair and members of the committee may want to gather evidence from others likely to be affected by the decision, although with limited time at their disposal it might be challenging to do so in a way that is fair.

Where this is the case, considering who, how many and how long they may speak for is an essential part of the meeting procedure or protocol, which will need to be determined by the Chair, usually in consultation with representatives of members of the committee from other political groups and the monitoring officer, as part of the pre-meeting and agenda setting process.

Call-ins are likely to happen in respect of high-profile issues. Members of the public (and others with an interest) are likely to attend the meeting although they will have no formal right to address members or to participate otherwise. In addition to considering formal invitations as above, some authorities, under certain circumstances, consider it appropriate for the Chair to invite those attending, in addition to any other people from outside the authority invited to give evidence, to come forward at the meeting to assist the committee. This has been found to be useful,for example, to get a sense of:

- community needs or impacts;
- the community impact of a decision;
- the nature of a consultation exercise which may have informed the decision; or
- stakeholders' views on issues where requestors may feel the decision maker gave too little or too much weight.

In engaging the wider public, officers supporting the committee, and the committee itself, will need to have regard to the way it communicates the role and purpose of call-in. In particular, the fact that the committee cannot "strike down" a decision or force a change in direction is important. It is likely that in communicating its work on call-in, a scrutiny committee will need to engage with the council's corporate communications function. Expectations will therefore need to be managed.

CfGS considers that, whilst it is the case that only members of the committee have a right to address the committee, and an invitation to others is at the discretion of the chair, the chair and others should have regard to the likelihood that high profile and complex decisions are likely to have a range of stakeholders, who may deserve the opportunity to be heard, within the confines of what is a time-limited process.

(ii) The way discussion is conducted

Although detailed provisions about the conduct of call-in meetings probably do not need to form part of an authority's rules of procedure, it is common for there to be a set procedure contained in a protocol or other document and that this is known by members and agreed in final form and shared as part of the agenda setting process. At the very least it is the norm for there to be a guidance note for chairs and members of the overview and scrutiny committee, not least for reasons of consistency.

The level of formality with which call-in meetings are carried out will vary from authority to authority.

In some authorities the way the debate is "managed" is entirely a matter for the chair. Elsewhere the call-in provisions will set out certain requirements, including set strict time limits for a lead or secondary requestor, decision-maker and other presenters or witnesses to address the committee. This latter approach is common where the authority has a history of call-in that has proved to be fractious. Whatever happens, arrangements cannot be made up on the fly. Having a clear sense about how call-in meetings can be run fairly will require an agreed procedure. This may include:

- An introduction by the chair, setting out the reason for the call-in and reminding members of the purpose of call-in, running through the expected process of the meeting and providing a reminder for those present of the options that exist for the reviewing overview and scrutiny committee in terms of any recommendations they might make to the decision-maker;
- Providing an opportunity for those requesting the call-in to address the meeting and set out their arguments in more detail. As we have already noted, it is usual for requestors to be able to participate in the meeting, but it is likely that they will not be allowed to vote;
- Providing an opportunity for the decision-maker to respond. The decision-maker will be a witness – it will be for the chair to ensure fairness of time to address the committee between the requestor(s) for review and the decision-maker(s), whose contributions will be of central importance in allowing the committee to review their decision;
- Providing an opportunity for officers and other witnesses to contribute (see above);
- Questions from the committee members on the arguments and information put to the committee, which will have to be carefully managed by the chair to ensure there is no undue partiality, time-wasting or 'grandstanding' in the putting of questions and that replies are succinct and to the point (applying time limits if needs be);
- Debate amongst members. The chair is likely to need to ensure that debate focuses on the call-in and addressing only the decision itself, rather than ranging across into wider areas of council policy. An awareness of broader issues is important to provide context, but call-in should not be used as providing an opportunity for a wider critique of the organisation's priorities and direction;
- Taking a decision – considered in detail below.

Even where set process or standard agenda and timings may not be present in call-in protocols in the constitution, all authorities should have in place a published procedure that sets out in detail how call-in meetings will be carried out. The chair of the overview and scrutiny committee reviewing the called-in decision should be supported to ensure that this is used consistently, and participants (especially external participants) supported so that they understand their role and contribution.

(iii) Taking the decision

The chair will need to determine when the debate has reached a point that issues have been dealt with sufficiently to allow a resolution/decision to be made as to "what happens" with the call-in.

As with any decision, a scrutiny committee can pass a resolution on a matter by general consent or by a recorded vote. It is quite likely that votes will be necessary at a call-in meeting.

The Committee cannot substitute its own judgement for the original decision. The Committee may however make a decision across the following range:

(1) To uphold the original decision and allow it to be implemented unimpeded;

(2) To uphold the original decision and allow it to be implemented unimpeded, but to also make recommendations to the decision maker or others in respect of future actions and policy (including recommending a further or more in-depth review by a committee;

(3) To recommend that the decision be reconsidered by the original decision-maker;

(4) To recommend that the decision be reconsidered by the original decision-maker who made it, together with recommendations for steps to be taken by the decision-maker or preferred outcomes, which may or may not sit alongside further recommendations concerning policy or review; or

(5) To arrange for the call-in review, as conducted here so far as it relates to the decision, to be exercised instead by a meeting of the full authority, in which respect it must be noted that

- the meeting of the full authority has no further powers than the committee can exercise, or has exercised and
- the statutory Guidance, to which the committee must have regard, requires that the committee should *only* refer matters to the full council where the committee considers that the decision under review is contrary to the policy framework or contrary to or not wholly in accordance with the budget.

All of the above should be accompanied by the committee's reasons.

5. The Outcome

(a) Referral to full Council

A referral to a full authority meeting will be highly unusual for the reasons set out in the statutory guidance detailed above. In this circumstance, the original decision and the committee's papers (minutes) will be referred to a meeting of the full authority.

In having regard to the statutory guidance, the subject matter referred to full council for review should only ever concern itself with whether the decision-maker ever held the lawful authority to purport to make that decision or not. As such, it will always be accompanied by a briefing note and/or advice from the monitoring officer and, in the case of budgetary matters, from the s.151 officer. It may also be accompanied by external legal or governmental advice.

The full authority meeting may only hold a debate so far as it relates to the decision called-in for review. The resolution that is produced as a result of that full authority debate may at most, like the committee, only recommend in exercise of its powers under s9F(4) Local Government Act 2000 that the decision be reconsidered by the person who made it.

(b) Referring back to the original decision-maker

The Act refers to the decision being referred back to the person who made it and the Guidance describes it thus:

> *"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."*

If a single cabinet member or an officer made the decision that is being referred back, then they make go on to consider the referral, any recommendations and reasons and then make the decision anew. It is quite likely, however, that following the focus on the decision brought about by the call-in and the reviewing overview and scrutiny committee's disagreement with the decision that it is referred by the single cabinet member or officer who made the decision to the leader and full cabinet. This is entirely acceptable; any decision maker may refuse to exercise their delegation on the basis that it is no longer appropriate to do so and request that the higher authority (and in this case there is no higher than the meeting of full cabinet) makes the decision.

In practice, therefore, the decision will usually be referred back to Cabinet, at a meeting convened to follow shortly after the overview and scrutiny meeting. Here, scrutiny's recommendations will be considered and Cabinet will decide whether to accept, or reject, those recommendations and may either endorse the original decision, in which case it is implemented unaltered from the original, may make a new decision with amended elements or application, or determine to do something different altogether.

Whatever is determined by the decision-maker on re-consideration, the subsequent decision should not be open to further call-in, regardless of the outcome.

Reasons do not strictly need to be given by the decision-maker on reconsideration but it would be highly unusual not to. The CfGS view is that not only does this help to ensure that call-in is taken seriously but failure to do so may make the decision open to legal challenge.

Whilst the statutory guidance suggests that the original decision-maker would report their decision to a subsequent meeting of an overview and scrutiny committee, or to full Council, many councils do not and explain that this is because of the level of publicity and political scrutiny created by the call-in and referral back means that such further attendance and steps are usually unnecessary.

Legislation

The Local Government Act 2000 as originally drafted

The original drafting of the principal provisions relating to call-in were set out in sections 21 and 38 of the Local Government Act 2000. This was amended by the Localism Act 2011 so that those provisions now apply to Wales only and new sections 9F, 9FA and 9Q were inserted for England.

Readers unfamiliar with the legislation should ensure that they are looking at the right parts of the Act. The changes since 2011 mean that the parts relating to England, and the parts relating to Wales, are substantively very similar (particularly in respect of call-in) but do contain critical differences.

The current legislation

Call-in is established through a two-step legal process. The first is by use of the general power of review and scrutiny at section 9F(2), which states that:

> "E*xecutive 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"*

The specific element come to be known as 'call-in' is then an aspect of that wider ability to review or scrutinise any decision made by the executive provided for by Section 9F(4), which states that:

> *"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"*

To supplement this, section 9FA adds additional powers, including that:

> *"(8) An overview and scrutiny committee of a local authority or a sub-committee of such a committee*
>
> *(a) may require members of the executive, and officers of the authority, to attend before it to answer questions ..."*

In exercising this function the local authority must also apply the following requirements concerning statutory guidance. This is set out at section 9Q of the Local Government Act 2000, which states that:

> *"(1) A local authority must have regard to any guidance for the time being issued by the Secretary of State for the purposes of this Part.*
>
> *(2) Guidance under this section may make different provision for different cases or descriptions of local authority*

and is repeated more specifically in section 9FA, which states that:

> *"(11) In exercising, or deciding whether to exercise, any of its functions an overview and scrutiny committee of a local authority, or a sub-committee of such a committee, must have regard to any guidance for the time being issued by the Secretary of State."*

Statutory Guidance

The 2019 guidance aside, other statutory guidance on call-in is now over two decades old, and difficult to find online. The relevant sections are therefore presented in the section below in their entirety.

'Statutory Guidance on Overview and Scrutiny in Local and Combined Authorities Guidance'

This is the most recent statutory, issued for England in May 2019, refers to call-in at the following points.

At Section 2 (Culture), this guidance states:

> *"11. Authorities can establish a strong organisational culture by:*
>
> *"d) Managing disagreement*
>
> *...*
>
> *Scrutiny committees do have the power to 'call in' decisions, i.e. ask the executive to reconsider them before they are implemented, but should not view it as a substitute for early involvement in the decision-making process or as a party-political tool."*

and at Section 3 (Resourcing), it states:

> *"17 ... When deciding on the level of resource to allocate to the scrutiny function, the factors an authority should consider include:*
>
> *Effectively-resourced scrutiny can help policy formulation and so minimise the need for call-in of executive decisions"*

'Local Government Act 2000: Guidance to English Authorities'

The original 'Local Government Act 2000: Guidance to English Authorities', last updated 20th July 2001, is what established the considerations for local authorities' call-in arrangements in stating the following [updated where required].

"CALL-IN OF DECISIONS

3.77 Sections 21(2) and (3) [(Wales) and sections 9F(2) and (4) (England)] *of the Act mean that a local authority's executive arrangements must ensure that overview and scrutiny committees have the 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.

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 maybe) respond?*
- *what should the timescale for such a response be?*

3.81 Figure [below] provides an illustrative example of one possible procedure for call in.

ILLUSTRATIVE EXAMPLE OF ONE POSSIBLE PROCEDURE FOR CALL IN

- *The executive publishes decisions made either at an executive meeting or which has been taken by an individual member.*
- *The executive arrangements provide that decisions which can be subject to call-in will come into force within, say, 5 working days of 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.*
- *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 may meet to decide whether to exercise the powers in section [9F(4)] of the Act.*
- *If the committee decides it disagrees with the decision, it may exercise the powers in [9F(4)] 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 slowing down the process of decision making. In particular the executive will, from time to time, need to take decisions 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.

3.82A A call-in mechanism provides a process by which a decision made but not yet supplied implemented can be discussed at a meeting on an overview and scrutiny committee within a specified timescale during which implementation of the decision is suspended. A call-in mechanism cannot circumscribe the power in section [9FC] of the Act for an individual member of an overview and scrutiny committee to ensure that any matter of relevance to the remit of the committee be placed on the agenda and discussed at a meeting of the committee. However, the exercise of the power in section [9FC] does not have the effect of suspending implementation of a decision. Any call-in power for members to request a meeting and suspend implementation of a decision must therefore be in addition to the powers in section [9FC].

3.83 A safeguard which could be adopted in the executive arrangements could be to include provision requiring a certain number of committee (or local authority) members to call in a particular decision (although in the case of a church or parent governor representative they may be given an individual power to call in a decision).

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 [9F(4)(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 a clear timescale set out in the local authority's constitution within which the debate should take place and to avoid decisions being unnecessarily delayed."

Modular Constitutions for English Local Authorities: Overview and Scrutiny Procedure Rules – Excerpt

16. Call-in

Within executive forms of constitutions there are several mechanisms which can be used to resolve conflict between the executive and the Council/overview and scrutiny committees. So long as there is compliance with section 21(3) 9F(4) of the Local Government Act 2000, Councils have a choice about the chosen mechanism.

Call-in is also a feature of the alternative arrangements. However, because decisions will be made under delegation from the full Council, rather than a separately constituted executive, local authorities may wish to avoid use of call-in other than in exceptional circumstances. The text below provides a clause that Councils operating alternative arrangements may wish to adopt at the start of their procedure rules relating to call in.

Call-in should only be used in exceptional circumstances. These are where members of the appropriate overview and scrutiny committee have evidence which suggest that the policy committee did not take the decision in accordance with the principles set out in Article 13 (Decision Making).

Councils may wish to give examples here, or elaborate the conditions in the light of their local circumstances. For example, they could refer to inadequate consultation with stakeholders prior to a decision or an absence of evidence on which to take a decision.

Various call-in processes can be used. These examples provide that decisions are notified to the overview and scrutiny chairs and only become effective if there is no objection by an overview and scrutiny committee within x days.

(a) When a decision is made by [the executive, an individual member of the executive or a committee of the executive, or a key decision is made by an officer with delegated authority from the executive, — in executive arrangements] [a policy committee — under alternative arrangements] or an area committee or under joint arrangements, the decision shall be published, including where possible by electronic means, and shall be available at the main offices of the Council normally within 2 days of being made. Chairs of all overview and scrutiny committees will be sent copies of the records of all such decisions within the same timescale, by the person responsible for publishing the decision. Where the chairman is of the same party as the (majority of) the executive, Councils may wish to introduce a requirement for copies to be sent to all members of the committee.

(b) That notice will bear the date on which it is published and will specify that the decision will come into force, and may then be implemented, on the expiry of [x — say 5] working days after the publication of the decision, unless an overview and scrutiny committee objects to it and calls it in.

(c) During that period, the proper officer shall call-in a decision for scrutiny by the committee if so requested by the chair or any [three] members of the committee, and shall then notify the decision-taker of the call-in. He/she shall call a meeting of the committee on such date as he/she may determine, where possible after consultation with the chair of the committee, and in any case within 5 days of the decision to call-in.

(d) If, having considered the decision, the overview and scrutiny committee is still concerned about it, then it may refer it back to the decision making person or body for reconsideration, setting out in writing the nature of its concerns or refer the matter to full Council. If referred to the decision maker they shall then reconsider within a further [x] working days, amending the decision or not, before adopting a final decision.

(e) If following an objection to the decision, the overview and scrutiny committee does not meet in the period set out above, or does meet but does not refer the matter back to the decision making person or body, the decision shall take effect on the date of the overview and scrutiny meeting, or the expiry of that further [x] working day period, whichever is the earlier.

(f) If the matter was referred to full Council and the Council does not object to a decision which has been made, then no further action is necessary and the decision will be effective in accordance with the provision below. However, if the Council does object, [the following text applies only to executive forms of constitution — it has no locus to make decisions in respect of an executive decision unless it is contrary to the policy framework, or contrary to or not wholly consistent with the budget. Unless that is the case,] the Council will refer any decision to which it objects back to the decision making person or body, together with the Council's views on the decision. That decision making body or person shall choose whether to amend the decision or not before reaching a final decision and implementing it. Where the decision was taken by [the executive as a whole or a committee of it — in executive arrangements] [a policy committee — under alternative arrangements], a meeting will be convened to reconsider within [x] working days of the Council request. [This text applies to executive forms of constitution — Where the decision was made by an individual, the individual will reconsider within [x] working days of the Council request.]

(g) If the Council does not meet, or if it does but does not refer the decision back to the decision making body or person, the decision will become effective on the date of the Council meeting or expiry of the period in which the Council meeting should have been held, whichever is the earlier.

(h) Where a [n executive — in executive arrangements] decision has been taken by an area committee, then the right of call-in shall extend to any [x] members of another area committee if they are of the opinion that the decision made but not implemented will have an adverse effect on the area to which their committee relates. In such cases, those [x] members may request the proper officer to call-in the decision. He/she shall call a meeting of the relevant overview and scrutiny committee on such a date as he/she may determine, where possible after consultation with the chairman of the committee, and in any case within five days of the decision to call-in. All other provisions relating to call in shall apply as if the call in had been exercised by members of a relevant overview and scrutiny committee.

or

(i) Where a [n executive — in executive arrangements] decision has been taken by an area committee then the right of call-in shall extend to any other area committee which resolves to refer a decision which has been made but not implemented to a relevant overview and scrutiny committee for consideration in accordance with these provisions. An area committee may only request the proper officer to call-in the decision if it is of the opinion that the decision will have an adverse effect on the area to which it relates. All other provisions relating to call in shall apply as if the call in had been exercised by members of a relevant overview and scrutiny committee.

These provisions reflect some possibilities by which disputes between area committees may be dealt with and reviewed. Choices on area committee call in/resolution of disputes should be reflected here.

EXCEPTIONS

(j) In order to ensure that call-in is not abused, nor causes unreasonable delay, certain limitations are to be placed on its use. These are (the paragraphs below are examples):

i) that an overview and scrutiny committee may only call-in [y] decisions per [year] [three month period] [six month period];

ii) only decisions involving expenditure or reductions in service over a value of £[z] may be called in;

iii) five members of an overview and scrutiny committee [from at least two political parties] are needed for a decision to be called in;

iv) once a member has signed a request for call-in under paragraph 16 (call-in) above, he/she may not do so again until a period of [x months] has expired.

CALL-IN AND URGENCY

The operation of the urgency provisions in relation to call-in procedures and the timescales in them are to be determined by Councils. In executive forms of constitution, the Council and the executive might agree a definition of urgency or the chairs of the overview and scrutiny committees might agree the definition. The arbiter need not be the chairman. It could be the chair of an overview and scrutiny committee. Report to Council is optional.

(k) The call-in procedure set out above shall not apply where the decision being taken by the [executive — in executive arrangements] [policy committee — under alternative arrangements] is urgent. A decision will be urgent if any delay likely to be caused by the call in process would [for example — seriously prejudice the Council's or the public's interests]. The record of the decision, and 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 (mayor —in leader and cabinet and alternative arrangements) 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 (mayor — in leader and cabinet and alternative arrangements), the vice-chair's (deputy mayor's — in leader and cabinet and alternative arrangements) consent shall be required. In the absence of both, the head of paid service or his/her nominee's consent shall be required. Decisions taken as a matter of urgency must be reported to the next available meeting of the Council, together with the reasons for urgency.

(l) 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.

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