



Call-In

Report to the Co-ordinating O&S Committee

1 Purpose

- 1.1 Following concerns and issues raised by call-ins held in the last municipal year, it is appropriate to remind members of the call-in process and the reasons behind it.
- 1.2 At the start of the municipal year, it is also an opportunity for members of this committee to review the call-in process and the guidance to ensure that it is still fit for purpose.

2 Background

- 2.1 Call-in is a statutory 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 (Local Government Act 2000, Sections 9F(2)(a) and 9F(4)).
- 2.2 The Centre for Public Scrutiny *Practice Guide Key Decisions and Powers of Call-in* (see Appendix 1) sets out why call-in is 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.

- 2.3 Whilst legislation sets out that members of scrutiny must have the power of call-in, it is for local authorities to determine their own procedure. As the Centre for Public Scrutiny *Practice Guide Key Decisions and Powers of Call-in* (Appendix 1) indicates, most local authorities follow a similar procedure to Birmingham, i.e.:
 - Notification of the decision is sent to all members, and members have a period of time (3 days in Birmingham's case) to lodge a call-in request;
 - 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 (15 days from the date of posting in Birmingham);



- The meeting takes place and the committee 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 They may agree that the decision may be implemented, or they may recommend that it be changed, or that it be withdrawn entirely;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 meets to re-consider the decision. If the executive decides to continue to implement, there is no further right of call-in.

3 Review of Birmingham Procedure

- 3.1 Appendix 2 sets out Birmingham's procedure as set out in the Constitution. It is proposed that the final criteria – originally inserted in 2012 to give District Committees a lever for call-in, with the wording amended when District Committees were disbanded – is removed as it is no longer relevant.
- 3.2 Appendix 3 sets out the more detailed procedure note on how to conduct a call-in. The following amendments are proposed:
- To add a section (Section 3) clarifying which decisions can be called-in;
 - To clarify who attends the call-in meeting (paragraph 6.3 and 6.4);
 - To clarify the procedure for Cabinet Members and officers during the committee's deliberation so that whether they are asked to leave or not is clearly at the Chair's discretion (paragraph 6.7);
 - To add a new section on roles in the call-in meeting (paragraph 6.9-6.12);
 - To add provision for what happens when an Executive decision is withdrawn following a call-in (paragraph 7.6).
- 3.3 In addition members are asked to confirm that the amount of information required from members requesting a call-in – as set out in paragraph 5.6 – should stand. There are often requests before a call-in meeting from officers and Cabinet Members for more information to enable them to better prepare for the call-in.

4 Recommendations

- 4.1 Members are asked
- To consider whether to recommend changes to the Constitution in relation to the call-in process as set out;
 - To agree the attached procedure note for call-in including amendments as marked;
 - To confirm if any changes are needed to paragraph 5.6 of the guidance.

Practice guide 4

Key decisions and powers of call-in



Issue 1

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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**” (DETR, 2000), <http://ow.ly/wzVsM>,
- (NCC) “**New council constitutions: guidance to English authorities**” (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>) 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.

Birmingham City Council Constitution (September 2018)

Pages 50-51

“Request for Call-In” and “Call-In”

- When an Executive decision is taken by the Cabinet, Cabinet Member(s) or Chief Officer jointly with Cabinet Members or Cabinet Committees, the decision shall be published by electronic means, and copies of it shall be available at the main offices of the Council, normally within three days of being made. All Members and Chief Officers will be sent a notification of all such decisions within the same timescale, by the Committee Services Officer responsible for publishing the decision.
- The relevant notice will bear the date on which it is published and will specify that the Executive decision may be implemented, after the expiry of three working days after the publication of the decision, unless a “Request for call-in” is made of the Executive decision, by at least two Councillors (who are not members of the Cabinet). The “Request for Call In” should state the reason for call-in.
- Once a “Request for Call In” has been received, the Chair of Co-ordinating O&S Committee will agree which Overview and Scrutiny Committee should hear the call-in. That Committee must meet to consider the request. The meeting should take place not later than 15 clear working days after the original publication of the decision.
- It is for the Committee to decide whether to Call In a decision or not. The council does not expect an Overview and Scrutiny Committee to Call In an Executive decision unless one or more of the following criteria applies.
- Where the Committee does decide to call in a decision, the “re-consideration” which is then required must take place at a meeting of the full Cabinet – irrespective of who made the original decision on behalf of the Executive.

Call-In Criteria

	<i>(a) Is the Executive decision within existing policy?</i>
1	<i>the decision appears to be contrary to the Budget or one of the ‘policy framework’ plans or strategies;</i>
2	<i>the decision appears to be inconsistent with any other form of policy approved by the full Council, the Executive or the Regulatory Committees;</i>
3	<i>the decision appears to be inconsistent with recommendations previously made by an Overview and Scrutiny body (and accepted by the full Council or the Executive);</i>
	<i>(b) Is the Executive Decision well-founded?</i>
4	<i>the Executive appears to have failed to consult relevant stakeholders or other</i>

	<i>interested persons before arriving at its decision;</i>
5	<i>the Executive appears to have overlooked some relevant consideration in arriving at its decision;</i>
6	<i>the decision has already generated particular controversy amongst those likely to be affected by it or, in the opinion of the Overview and Scrutiny Committee, it is likely so to do;</i>
7	<i>the decision appears to be particularly “novel” and therefore likely to set an important precedent;</i>
8	<i>there is a substantial lack of clarity, material inaccuracy or insufficient information provided in the report to allow the Overview and Scrutiny Committee to hold the Executive to account and/or add value to the work of the Council.</i>
	(c) Has the Executive decision been properly taken?
9	<i>the decision appears to give rise to significant legal, financial or propriety issues;</i>
10	<i>the notification of the decision does not appear to have been in accordance with council procedures;</i>
	(d) Does the Executive decision particularly affect a ward?
11	the decision appears to give rise to significant issues in relation to a particular ward.



DRAFT Note 4: Requests for Call-In

1 Introduction

- 1.1 On 4 December 2001 the City Council brought in full executive arrangements. Executive decisions may now be taken by
 - The Full Cabinet;
 - Cabinet Committees;
 - Cabinet Members and Chief Officers jointly.
 ... each acting as prescribed by the City Council's constitution.
- 1.2 Overview and Scrutiny Committees have the power to refer those decisions back to the Cabinet for reconsideration. This process is known as 'call in'. The Executive will not be able to implement their decision until the relevant Overview and Scrutiny Committee has decided whether or not to exercise their power of call in.
- 1.3 It should be noted that the individual, 'case' decisions of Regulatory Committees are not subject to the call-in process.
- 1.4 There are three stages to the process, described in **Appendix 1**.
- 1.5 This note incorporates any amendments to the call-in process agreed as part of the Annual Review of City Council's Constitution at each Annual General Meeting.

2 How will I find out when the Executive has taken a decision?

- 2.1 All Executive decisions, no matter who takes them, will be published on the City Council's website (through CMIS). This can be accessed through:
 - Email notification from Committee Services sent to all Councillors;
 - Through the Council's web page (www.birmingham.gov.uk).

3 Which Decisions can be called-in?

- 3.1 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.
- 3.2 "Decision" here should be interpreted as meaning a decision made by Cabinet or by a Cabinet Member and Chief Officer jointly.



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- 3.3 Following advice from the City Solicitor, decisions “to note” should not be subject to call-in (as there is no substantive decision for Cabinet to reconsider). However, the substance of what is being noted can be called to the next scrutiny meeting and the Cabinet Member will be expected to attend the next relevant scrutiny meeting to explain/give further details on the decision/policy.
- 3.4 Further clarification has been requested about Executive decisions that relate to proposals previously approved as part of the budget. These decisions enable the implementation of those proposals, containing detail not available at the time of the budget, and are therefore subject to call-in.
- 3.5 Where there is uncertainty or dispute about whether a decision can be the subject of call-in, the Monitoring Officer will determine whether the call-in can proceed, and will give reasons to the Scrutiny Chairs. His/her decision will be final.

4 Will I know in advance when a decision is due to be taken?

- 4.1 The Cabinet and Cabinet Committees publish their agenda and papers in advance of their meetings. These can be read on the City Council's website (through CMIS).
- 4.2 The most important matters – those which lead to “key decisions” – must be notified in advance, and you can find out about these by looking at the **Forward Plan**. This will list key decisions timetabled for the following four months. Specific dates as to when it is expected that the decisions may be taken will, if possible, be given. The Plan is available on the City Council's website (through CMIS).
- 4.3 However, the law does not say that all the other decisions – e.g. those taken jointly by Cabinet Members and Chief Officers – have to be flagged up in advance. Nor is there any specific day on which these Cabinet Members and Chief Officers have to take their decisions, so Members will not know about these decisions in advance. The best way to keep in touch is to check on the City Council's website (through CMIS) regularly. Members also receive an email containing a summary of **Cabinet and Cabinet Member and Chief Officer joint decisions** posted.

5 How do I lodge a request for call in?

- 5.1 If Members find that the Executive has taken a decision that concerns them, then their aim will be to ensure that a meeting of the relevant Overview and Scrutiny Committee is called, so that they can raise these concerns with other Members. A ‘request for call in’ is essentially the calling of a meeting of the appropriate Overview and Scrutiny Committee.
- 5.2 A ‘request for call in’ can be lodged by **at least two non-Executive Councillors**.
- 5.3 Members may do this (within the timescales specified in 5.4 below) in any one of three ways:



- By e-mail to LLESCommitteeServicesAll@birmingham.gov.uk, marked “for the attention of David Smith”. The email should identify the Members who are lodging the request, and the decision which is of concern to them;
- In writing, using the pro-forma in Appendix 2. This should be taken/sent to Committee Services, Room 315, Council House;
- By phone to David Smith, telephone 303-4465. In your phone call you will again have to identify the decision which you want discussed, and the Members who are lodging the request. It must be followed up as soon as possible with the written pro-forma.

5.4 It will be important to act quickly. If a request for call in is not lodged by 4 p.m. on the third of the **3 clear working days** following an Executive decision being posted, the opportunity for call in is lost. The decision can then be implemented. The CMIS system will tell you the deadline for lodging your request (see Table 1 below).

Table 1: Deadlines for making requests for Call-In

Decision posted on	Deadline for Request to Call In
Monday, Week 1	4 p.m. Thursday, Week 1
Tuesday, Week 1	4 p.m. Friday Week 1
Wednesday, Week 1	4 p.m. Monday, Week 2
Thursday, Week 1	4 p.m. Tuesday, Week 2
Friday, Week 1	4 p.m. Wednesday, Week 2

5.5 If a bank holiday occurs within the period, an additional working day must be added to the deadline.

5.6 The “Request for Call In” form should state which of the criteria set out in the Constitution applies. Members are not required to give any further information on the request for call-in ahead of the meeting, though to do so would enable both Cabinet Members and officers to prepare more effectively.

5.7 Where there is uncertainty or dispute about which is the relevant Overview and Scrutiny Committee for the purposes of the call in procedure, the Chair of the Co-ordinating O&S Committee will consult with the relevant Scrutiny Chairs, and agree which Overview & Scrutiny Committee will hear the request for call-in in conjunction with the Monitoring Officer. Their decision will be final.



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- 5.8 If more than one call-in request is received for the same decision, then the Chair will agree a way forward with the Members concerned, balancing the need for all views to be heard with the practicalities of managing the meeting.

6 What happens at the meeting of the O&S Committee?

The Committee Decision

- 6.1 First, it is important to understand that the power of “call in” lies with the O&S Committee, not with any individual Member. That is why a meeting has to be summoned and advance notice given for the same, unless there is already a meeting of the relevant O&S Committee scheduled to consider such matters.

Timing

- 6.2 The meeting must take place not later than **fifteen clear working days** after the original publication of the decision. If the meeting is not held within this time, then again the opportunity to “call in” is lost, and the Executive can implement the decision.

Attendance

- 6.3 The relevant Cabinet Member and Chief Officer will normally attend the meeting, with the Cabinet Member determining which other officers should attend. The Chair may also invite other members or officers to take part.

- 6.4 In exceptional circumstances, the Chair may also wish to gather evidence from other participants to give context to the decision. This could take the form of a briefing ahead of the meeting. *Care should be taken to ensure that the call-in is not a re-run of any consultation or dispute discussions.*

At the meeting

- All the reports and background papers on which the Executive’s decision was based will be available, together with any other relevant material;¹
 - The Members requesting the call-in should explain the reasons that they feel the decision should be called in, as stated on the request for call in form (see **Appendix 2**);
 - The relevant Cabinet Member and senior officer will attend to explain the reasons for taking the particular decision;
 - The officers who prepared the reports will also attend to provide relevant information and professional advice.
- 6.5 If the members who requested the call-in are not members of the O&S Committee then they should be invited to present their case, but will not be able to vote on the call-in decision.

¹ The Constitution sets out O&S members entitlement to information is set out in Part B Section 3.9



6.6 The Overview and Scrutiny Committee will consider the criteria for call in which were set down by full Council. These can be found in **Appendix 3**.

6.7 When the O&S Committee is satisfied that it has fully explored the case for call in and the Cabinet Member's reasoning for the decision that was taken, then it is at the Chair's discretion as to whether Cabinet Member, their officers and any councillors who are not members of the committee are asked to leave the room whilst the Committee comes to its conclusion. However this discretion is exercised, committee members should be able to deliberate without further input from non-committee members.

6.8 The conclusion of the deliberation will be relayed to the Cabinet Member and officers immediately after the Committee finishes its meeting, either by returning to the meeting or by contact following the meeting.

Member and Officer Roles in the Meeting

6.9 Members and officers should approach call-in in a positive, constructive and non-partisan manner which provides a good environment for the constructive challenge of decision-makers and enhances the image and reputation of the City Council.

6.10 In particular, committee members should:

- Be fair and open, not take a party political stance and not make party political points;
- Be independent minded and to not pre-judge issues coming to scrutiny nor use the meeting to promote narrow or parochial interests;
- Challenge the evidence by asking probing questions where necessary in order to get the information needed without being confrontational and to actively seek ideas and opinions.

6.11 Members' comments at Committee only relate to the relevant merits of the call-in before them and reference to matters which are not relevant should be disregarded for the purposes of making the decision to call-in or not.

6.12 Both Councillors and Officers are guided by Codes of Conduct. Birmingham's Code of Conduct for Members (Part B Section 6) provides standards and guidance for Councillors. Employees are subject to the Employees' Code of Conduct (Part B Section 17).

The Decision

6.13 Following the discussion, the Chair must then re-state the call-in criteria put forward for the call-in and the committee must then vote on whether or not to call the decision in.

6.14 Usually the Overview and Scrutiny Committee will make one of two choices:

- That there are good reasons why the Executive should be asked to think again; in this case the decision is referred back to the Cabinet, and cannot be implemented until the Cabinet has considered the matter at one of its meetings;



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- That there is no good reason to call in the decision; in this case this is the end of the matter and the decision can be implemented.

6.15 There are a number of possible variations:

- The Cabinet Member may, in the course of the discussion, come to accept that the original decision was in some way flawed and may withdraw it;
- The O&S Committee and the Cabinet Member may come to agree that, through working together, the decision could be improved without it being called in;
- The O&S Committee may defer its decision whilst further information is sought (though a final decision on call-in must still be made within the call-in period);
- The decision is not called in, but that the O&S Committee resolves to write to the Cabinet Member setting out its expectations for the future, either for the way that the decision should be implemented, or for how similar decisions should be taken in future.

6.16 Overview and Scrutiny Committees may, before concluding any request for call-in, request from the Executive any additional and / or relevant information that is not covered in an executive report and / or recommend to the Executive that any future executive report(s) contain specified information to substantiate executive decisions and / or, generally, make any other comments, suggestions or recommendations to improve executive decision-making and / or processes.

7 What happens if the decision is referred back?

- 7.1 Any decision which is referred back will then be reconsidered at a Cabinet meeting.² This is the case even when the original decision was taken by an individual Cabinet Member or Cabinet Committee. A report will be prepared on behalf of the Committee **ahead of the Cabinet meeting**.
- 7.2 There is no timescale laid down for how quickly the Cabinet must meet to reconsider the decision, but in the meantime they cannot implement the decision.
- 7.3 When the Cabinet meets to think again about the decision, then the Chair(man) of the relevant Overview and Scrutiny Committee and / or another Member of the same Committee will attend to give their side of the argument. The Cabinet may decide to stick to the same decision, or change its mind in some way.
- 7.4 The decision at this stage is final. There are no second or subsequent rounds of "call in" of the same or substantially the same Executive decision.
- 7.5 City Council Resolution 16376 (14 May 2002) adds that:

² As agreed by City Council on 4 December 2001, Introduction of Full Executive Arrangements, Report of the Council Business Management Committee



“In the event that Cabinet decides to confirm the Executive decision that has been ‘called in’, the Overview and Scrutiny Committee may, in extreme cases (such as where it believes that the Cabinet’s decision is seriously flawed in some way), submit a report to the full Council on the matter. Whilst the Council is **not** able to re-open or vary the Cabinet’s decision, it may **express a view** as to the appropriateness of the decision.”

7.6 If the Executive withdraws a report following a call-in, then the call-in report will fall alongside the original decision that will now not be implemented. In that case the call-in report should be included as an appendix to any future decision on that matter, and the O&S chair invited to Cabinet in order that the contribution of the O&S committee is fully recognised.

8 Immediate Implementation – No Call In

- 8.1 The whole of the call in procedure (as described above) rests on the premise that Executive decisions will not be implemented until (at the earliest) the expiry of three clear working days running from when the detailed record of the decision is “posted” on the City Council’s website (through CMIS).
- 8.2 In practice however there will be a few occasions when the interests of the Council may be jeopardised unless a decision of the Executive can be implemented immediately – i.e. without waiting for the expiry of the normal 3 working days period. In these exceptional circumstances, the Chief Executive in consultation with the Leader (or, in his/her absence, the Deputy Leader) may designate a decision as so urgent that its implementation cannot wait for the normal period. In any case the exercise of such power shall be clearly noted on the record of the decision which is “posted” and the decision in question will **NOT** be capable of being called in. The Leader can of course be called to account for the exercise of this power by way of questions/motions at a subsequent meeting of the full Council.



DRAFT Note 4: Requests for Call-In

Appendix 1: Stages in the Call In Process

<p>Stage 1: Lodging a request for call in</p>	<p>After the Executive has announced a decision, Members have three clear working days (after the posting of the decision) to look at that decision.</p> <p>If two non-Executive members (see section 4) think that the decision is for some reason questionable, then they should lodge a request for call in. This means that a meeting of the appropriate Overview and Scrutiny Committee will be called.</p> <p>If a request for call in is lodged within the three days' time limit, then the implementation of the decision is put on hold.</p>
<p>Stage 2: The meeting of the O&S Committee</p>	<p>If a request for call in is properly lodged, then a meeting of the relevant Overview and Scrutiny Committee must be summoned. The meeting must take place within fifteen clear working days after the publication of the original decision (this should include five clear working days' notice of such a meeting being given whenever possible).</p> <p>Throughout this time, the Executive cannot implement its decision, unless the 'special urgency' procedure mentioned above applies to the Executive decision.</p> <p>At the meeting of the Overview and Scrutiny Committee, Members will discuss the decision with the relevant Cabinet Member. If the Committee agrees that the decision should be reconsidered by the Executive, then it will refer the decision back to the full Cabinet for further consideration.</p> <p>The Committee will have to give clear reasons for asking the Cabinet to think again, using the Council's agreed set of criteria for call in which will help in doing this (Appendix 3).</p> <p>If the Overview and Scrutiny Committee refers the decision back to the Cabinet, then the decision still cannot be implemented. However, if the Committee decides not to refer it back, the Executive can then get on and implement.</p>
<p>Stage 3: The Cabinet Meeting</p>	<p>All decisions which are called in will be reconsidered by the full Cabinet. The Chair(man) and/or another Member of the relevant O&S Committee will attend and explain why they have referred the decision back for reconsideration.</p> <p>The Cabinet will then discuss whether to change the original decision or not.</p> <p>Where the Cabinet is minded to reaffirm its original decision without significant change, the relevant Chair(man) (or their nominee) has the right to request the Leader to delay implementation until the next Cabinet meeting.</p> <p>Whatever is decided at this point is the end of the matter, and will be implemented. There can be no further Call In of any such Executive decision.</p> <p>City Council Resolution 16376 (14 May 2002) adds that:</p> <p>"In the event that Cabinet decides to confirm the Executive decision that has been 'called in', the Overview and Scrutiny Committee may, in extreme cases (such as where it believes that the Cabinet's decision is seriously flawed in some way), submit a report to the full Council on the matter. Whilst the Council is not able to re-open or vary the Cabinet's decision, it may express a view as to the appropriateness of the decision."</p>



Appendix 2: Request for Call In – Pro-forma

To:

Committee Services, Room 315, Council House.

E-Mail: LESCommitteeServicesAll@birmingham.gov.uk (marked "For the attention of Dave Smith")

Date:

Please arrange for a meeting of the

O&S Committee

to be called to discuss the following executive decision:

Title:

Taken By:

On:

Reason for request:

(a) Is the Executive decision within existing policy?

1. the decision appears to be contrary to the Budget or one of the 'policy framework' plans or strategies; ☐
2. the decision appears to be inconsistent with any other form of policy approved by the full Council, the Executive or the Regulatory Committees; ☐
3. the decision appears to be inconsistent with recommendations previously made by an Overview and Scrutiny body (and accepted by the full Council or the Executive); ☐

(b) Is the Executive decision well-founded?

4. the Executive appears to have failed to consult relevant stakeholders or other interested persons before arriving at its decision; ☐
5. the Executive appears to have overlooked some relevant consideration in arriving at its decision; ☐
6. the decision has already generated particular controversy amongst those likely to be affected by it or, in the opinion of the Overview and Scrutiny Committee, it is likely so to do; ☐
7. the decision appears to be particularly "novel" and therefore likely to set an important precedent; ☐
8. there is a substantial lack of clarity, material inaccuracy or insufficient information provided in the report to allow the Overview and Scrutiny Committee to hold the Executive to account and/or add value to the work of the Council. ☐



DRAFT Note 4: Requests for Call-In

(c) Has the Executive decision been properly taken?

9. the decision appears to give rise to significant legal, financial or propriety issues; ☐

10. the notification of the decision does not appear to have been in accordance with council procedures; ☐

(d) Does the Executive decision particularly affect a Ward?

11. the decision appears to give rise to significant issues in relation to a particular Ward. ☐

Councillor

(Signed)

(Print Name)

Councillor

(Signed)

(Print Name)



Appendix 3: Criteria For ‘Call In’

These are the criteria against which the Council expects an O&S Committee to judge any “request for call in”. The Council does NOT expect an Overview and Scrutiny Committee to call in an Executive decision UNLESS one or more of the following circumstances applies –

	(a) Is the Executive decision within existing policy?
1	the decision appears to be contrary to the Budget or one of the ‘policy framework’ plans or strategies;
2	the decision appears to be inconsistent with any other form of policy approved by the full Council, the Executive or the Regulatory Committees;
3	the decision appears to be inconsistent with recommendations previously made by an Overview and Scrutiny body (and accepted by the full Council or the Executive);
	(b) Is the Executive Decision well-founded?
4	the Executive appears to have failed to consult relevant stakeholders or other interested persons before arriving at its decision;
5	the Executive appears to have overlooked some relevant consideration in arriving at its decision;
6	the decision has already generated particular controversy amongst those likely to be affected by it or, in the opinion of the Overview and Scrutiny Committee, it is likely so to do;
7	the decision appears to be particularly “novel” and therefore likely to set an important precedent;
8	there is a substantial lack of clarity, material inaccuracy or insufficient information provided in the report to allow the Overview and Scrutiny Committee to hold the Executive to account and/or add value to the work of the Council.
	(c) Has the Executive decision been properly taken?
9	the decision appears to give rise to significant legal, financial or propriety issues;
10	the notification of the decision does not appear to have been in accordance with council procedures;
	(d) Does the Executive decision particularly affect a Ward?
11	the decision appears to give rise to significant issues in relation to a particular Ward.