

CONSTITUTION COMMITTEE:

15 JANUARY 2015

REPORT OF THE COUNTY CLERK AND MONITORING OFFICER

AGENDA ITEM: 6

SCRUTINY CALL-IN

Reason for this Report

1. The Constitution Committee requested a review of the Council's current Call-in procedures as part of its work plan discussion and review of Governance at its June 2014 meeting. A Report was prepared for the December meeting but was deferred for consideration to January 2015.

Background

2. Under the Council's Constitution, Scrutiny Committees can exercise the right to 'call-in', for reconsideration, decisions made but not yet implemented by the Cabinet, Cabinet Members and designated senior officers, within their terms of reference. This enables Scrutiny to consider whether the decision is appropriate.
3. Call In is a key mechanism to hold the cabinet to account because a called-in decision cannot be implemented until it has been considered by the relevant Scrutiny committee which can examine the issue and question the decision-taker on the actions taken.
4. There are currently two methods by which this can take place. Where the Committee is of the opinion that a decision is outside the Council's Budget or Policy framework then it may seek advice from the Head of Paid Service, Monitoring Officer and/or Section 151 Officer, who will then report on the matter. Further details as set out in the Constitution are attached at **Appendix A**. No decisions have been called in under this procedure rule during the lifetime of this Council.
5. Alternatively, any non-Cabinet member of the Council, or a co-opted member of the Children and Young People Scrutiny Committee in the case of a decision relating to an education matter, may call in a decision by writing to the Operational Manager of Scrutiny Services within the call-in period (seven clear working days after the publication of the decision). The Scrutiny Procedure Rules in relation to this form of Call-in are attached at **Appendix B**. This form of Call-in is currently progressed via an electronic form available on the Council's website.¹ Guidance is available for Members considering whether to call in a decision and is attached at **Appendix C**.

6. During the lifetime of this Council the following seven call-ins have taken place:
- **2012 – 13 Municipal Year**
 - Families First Commissioning & Procurement – Officer Decisions CMB/12/007, CMB/12/008 and CMB/12/009 (3 August 2012).
 - Land at Callaghan Square – Cabinet Decision CAB/12/0037 (16 November 2012).
 - Economic Development Arrangements – Cabinet Decision CAB/12/0033 (29 November 2012).
 - **2013 – 14 Municipal Year**
 - Additional Welsh Medium School Places to Service the Canton, Grangetown and Riverside Areas – Cabinet Decision CAB/13/0020 (3 September 2013).
 - Land at Heath Park – Cabinet Decision CAB/13/00125 (8 May 2014).
 - Cardiff Strategic Cycle Network Route 6: Provision Of Segregated Cycle Lanes On Cardiff Bridge - Cabinet Decision Cab/13/0018 (22 July 2013).
 - **2014 – 15 Municipal Year**
 - County Hall Nursery - Cabinet Decision CAB/14/022 (3 September 2014).
7. One of the Call in meetings resulted in a decision being referred back for Cabinet reconsideration, and the Cabinet subsequently developed fresh proposals in response to the referral. At the other six call in meetings the scrutiny committee decided to allow the decision to stand, but subsequently wrote to the Cabinet Member with advice and suggestions on how to improve the implementation of the decision, or expressed concerns that they wished the Cabinet Member to bear in mind to manage risks associated with the decision.
8. A small additional number of provisional Call-in requests were subsequently withdrawn by the Member considering call-in following discussion and clarification from the Operational Manager (Scrutiny Services) and/or Monitoring Officer. A common factor linking these withdrawn requests was that the Member's concern may have related to the implementation of a previously agreed Cabinet or officer decision that was not called in at the time, or wider service delivery or policy concerns that were not directly pertinent to the specific decision that had just been made and published.

Issues

9. It is important that the call-in process is not abused, not used politically, nor causes unreasonable delay. The Welsh Audit office in its Corporate Assessment in 2014 did find that the council's decision making arrangements were inefficient in relation to co-ordination of business, management of meetings including agenda items and the outcome of meetings and time spent in meetings. Call-In request do require

¹<https://www.cardiff.gov.uk/ENG/Your-Council/Councillors-and-meetings/Scrutiny/Call-in-a-decision/Pages/default.aspx>

additional meetings to be arranged at short notice. The main tool for scrutiny committees to improve service delivery and policy development should be detailed reviews based on evidence rather than call-ins.

10. Because of the cost and delay implications of call-in, the Constitution needs to specify formal safeguards for the use of call in to prevent abuse or unreasonable delay. These would normally include rules about the number of members who can request a call-in and a restriction that prevents any decision on the matter being called-in on more than one occasion within a six month period. The Constitution should also state that call-in should be reserved for exceptional circumstances where the decision is :
 - Contrary to the normal requirements of decision making, lawful ;reasonable; rational and proportionate
 - Contrary to the council's policy or budgetary frameworks
11. In Cardiff there is particular emphasis on the value of early or pre decision scrutiny which requires all cabinet decisions to be rated Green, Amber or Red. Current practice is that a red rating requires the decision to be considered by Scrutiny before the cabinet recommendation is made. These requirements are set out in the Call In Guidance set out at Appendix C. However they do not currently form part of a written policy within the Cardiff Constitution.
12. The Cardiff Constitution allows any one member to require a call-in and specifies a 6 month safeguard constraint in relation to individual decisions. The operational Manager Scrutiny in consultation with the monitoring officer determines the validity of the Call In request.
13. It is suggested that the Constitution should be reviewed to consider the effectiveness of the current safeguards and to reflect the rating classification of cabinet decisions.
14. The Committee are asked to consider the following suggested amendments:
 - Involving the chair of the relevant Scrutiny committee in considering the validity of a call-in request.
 - Recognising the exceptional nature of a call in by only allowing call-in relation to cabinet decisions rated red
 - Avoiding any party political misuse of the rule by requiring a minimum of 3 members from more than 1 party

Legal Implications

15. There are no direct legal implications arising from the content of this report.

Financial Implications

16. There are no direct financial implications arising from this report.

RECOMMENDATION

The Committee is recommended to decide whether it wishes to commission further work to investigate potential changes to the Scrutiny Call-In procedures to report back to the next meeting of the Constitution Committee in March 2015.

Marie Rosenthal
County Clerk and Monitoring Officer
09 January 2015

Call-in of decisions outside the Budget or Policy Framework²

(a) Where a Scrutiny Committee is of the opinion that an Executive Decision is, or if made would be, contrary to the Policy Framework, or contrary to or not wholly in accordance with the Budget, then it shall seek advice from the Head of Paid Service, Monitoring Officer and/or Section 151 Officer, who will report on the matter.

(b) In respect of functions which are the responsibility of the Cabinet, the report of the Head of Paid Service, Monitoring Officer and/or Section 151 Officer shall be to the Cabinet with a copy to every Councillor. Regardless of whether the decision is delegated, the Cabinet must meet to decide what action to take in respect of the report and to prepare a report to Council in the event that the Head of Paid Service, Monitoring Officer or the Corporate Director with Section 151 Responsibilities conclude that the decision was a departure from the Budget or Policy Framework, and to the Scrutiny Committees if the Head of Paid Service, Monitoring Officer or the Section 151 Officer conclude that the decision was not a departure.

(c) If the decision has yet to be made, or has been made but not yet implemented, and the advice from the Head of Paid Service, Monitoring Officer and/or Section 151 Officer is that the decision is or would be contrary to the Policy Framework or contrary to or not wholly in accordance with the Budget or ultra vires the power of the Cabinet, the Cabinet or the relevant Scrutiny Committee may refer the matter to the Council. In such cases, no further action will be taken in respect of the decision or its implementation until the Council has met and considered the matter. The Council shall meet within ten clear working days of the request by the Cabinet or the Scrutiny Committee. At the meeting it will receive a report of the decision or proposals and the advice of the Chief Executive, Monitoring Officer and/or the Section 151 Officer. The Council may either:-

- (i) endorse a decision or proposal as falling within the existing Budget and Policy Framework. In this case no further action is required, save that the decision of the Council be minuted and circulated to all Councillors in the normal way; or
- (ii) amend the Authority's financial procedures or Policy Framework to encompass the decision or and agree to the decision with immediate effect. In this case, no further action is required save that the decision of the Council be minuted and circulated to all councillors in the normal way; or
- (iii) where the Council accepts that the decision or proposal is contrary to the Policy Framework or contrary to or not wholly in accordance with the Budget or ultra vires the power of the Cabinet, and does not amend the existing Policy Framework to accommodate it or ratify the ultra vires decision., the decision will be a nullity but the Council may require the Cabinet to reconsider the matter in accordance with the advice of either the Chief Executive, Monitoring Officer or Section 151 Officer.

² Cardiff Council Constitution 18 August 2014, Budget And Policy Framework Procedure Rules, Rule 7 (page 141)

Call-in Procedure³

- (a) When an Executive Decision is made by the Cabinet, a Committee of the Cabinet, the Leader, a Cabinet Member, the Chief Executive, a Corporate Director or a Director exercising a Corporate Director or a Director delegation, the decision shall be published on the Council's Intranet Site, and shall be available at the main offices of the Council, normally within two days of being made. Members of those Committees who request it (in respect of decisions falling within their Committee's terms of reference) and Chairpersons of all Scrutiny Committees will also be sent copies of the records of all such decisions within the same timescale by the proper officer.
- (b) The notice will bear the date on which it is published and will specify that the decision will be implemented on the expiry of seven clear working days after the publication of the decision ("the call-in period"), unless the decision is called in as set out below.
- (c) Any non Cabinet member of the Council (or a co-opted member of the Children and Young People Scrutiny Committee, in the case of a decision relating to an education matter) may call-in a decision of which notice has been given as set out above, by giving notice in writing to the Operational Manager of Scrutiny Services within the call-in period. The Operational Manager of Scrutiny Services shall then notify the Cabinet Office of the call-in. He/she shall call a meeting of the relevant committee on such date as he/she may determine, where possible after consultation with the Chairperson of the Committee, and in any case within five clear working days of the decision to call-in ("the scrutiny period"). At its meeting, the Scrutiny Committee may consider the called-in decision itself or decide to refer the issue to the Council for scrutiny, if the matter is of general significance and importance to the Council as a whole. A Council meeting to consider this issue must take place within ten clear working days of this referral ("the Council scrutiny period") unless otherwise agreed between the Leader and the Chairperson of the relevant Scrutiny Committee.
- (d) Having considered the decision, the Scrutiny Committee or the Council (if the decision has been referred to Council) may refer it back to the Cabinet or the decision maker for reconsideration, setting out in writing the nature of its concerns. The Cabinet or decision maker shall then reconsider the matter before adopting a final decision, arranging for the decision to be changed to reflect points made by the Scrutiny Committee, or formally deferring the matter for further consideration. The relevant Scrutiny Committee or Council as appropriate will be advised of the outcome at its next meeting.
- (e) If following a call-in, the matter is not referred back to the Cabinet or decision maker, the decision shall take effect on the date of the relevant Scrutiny Committee or Council meeting which considers the issue, or the expiry of the scrutiny period or the Council scrutiny period as appropriate, whichever is the later.
- (f) The role of Scrutiny Committees calling in a decision is:

³ Cardiff Council Constitution 18 August 2014, Scrutiny Procedure Rules, Rules 12 and 13 (page 151- 52)

- (i) To test the merits of the decision
 - (ii) To consider the process by which the decision has been formulated.
 - (iii) To make recommendations (to support the decision, change aspects of the decision, or to invite the decision making body to reconsider).
 - (iv) To suggest further steps before a decision is made (but not to try to carry out those steps in place of the decision making body).
 - (v) To come to a view in a relatively short time scale, so as not to compromise the speed and efficiency of the decision-making process.
- (g) In calling in a decision it is not sufficient for the Member requesting the call in to state that they wish to test the merits of the decision. A member requesting a call in shall specify precisely which aspects of the decision they wish to question or challenge.
- (h) The Operational Manager of Scrutiny Services may, in consultation with the Monitoring Officer, rule that a call in is not valid if:
- (i) The call in request has not been made within the seven working days allowed for call in;
 - (ii) It is not clear which Executive Decision is being called in;
 - (iii) The decision is exempt from call in on account of urgency provisions;
 - (iv) The call in request provides too little information to enable Committee members or the decision taker to adequately prepare for the call in meeting.
 - (v) The decision being called in, or broadly the same decision, has been called in during the last six months.

13. Exceptions: Call-in and Urgency

(a) The call-in procedure set out above shall not apply where the decision being taken is urgent. A decision will be urgent if either the Head of Paid Service, the Monitoring Officer or the S151 Officer certifies that any delay likely to be caused by the call-in process could seriously prejudice the Council, or the public interest, and the Chair of the relevant scrutiny committee or, in his/her absence, the Chair of the Council, or in both their absences, the Vice-Chair of the Council, agrees that the matter is urgent. The record of the decision and notice by which it is made public shall state whether the decision is an urgent one, and therefore not be subject to call-in. Decisions taken as a matter of urgency must be reported for information to the next available meeting of the Council, together with the reasons for urgency.

(b) 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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CALL IN - GUIDANCE FOR COUNCILLORS August 2014

Introduction

This short guidance note sets out some advice for non-Executive Councillors who may be considering “calling-in” a decision made by the Council’s Cabinet or by senior managers under delegated authority.

If – having read this document – you still have questions about Call-in, please contact Paul Keeping (Operational Manager, Scrutiny Services) on Cardiff 2087 2953, or at p.keeping@cardiff.gov.uk. Scrutiny Services will be pleased to advise and clarify any questions you might have about the Call-in process.

What is a Call-in?

A Call-in is a process by which a non-Executive Councillor of Cardiff Council can request that a recent official decision made by the Council’s Cabinet or by a senior officer under delegated authority is reconsidered.

What can be Called-in?

Any Executive Decision made by the Cabinet, a Committee of the Cabinet, the Leader, a Cabinet Member, the Chief Executive, Chief Operating Officer or any Corporate Chief Officer exercising a Corporate Chief Officer (or Corporate Director) delegation can be called-in, provided that the grounds for the call-in (please see below) are valid, and that the call-in request is submitted before seven clear working days have lapsed since the decision was formally published (known as the “Call-in Period”).

The Council Constitution sets out arrangements for publishing planned Cabinet decisions on the Cabinet Forward Plan. Each planned decision will carry a traffic light (RAG) rating, as follows:

- Green = Decisions of a non-contentious, day to day nature, unlikely to be the subject of call-in
- Amber = Decisions of a more sensitive nature, which could be potentially contentious or not of a routine nature. These would generally flow through to the Cabinet for

decision, without prior scrutiny, although a judgement will be made in each case regarding scrutiny consideration before decision, and the possibility of call-in.

- Red = Decisions relating to high level functions primarily relating to policy formulation within the Policy and Budgetary Framework where the Cabinet would usually make a proposal to Council. For such decisions, the engagement of scrutiny is required before the Cabinet recommendation is made.

Decisions made by officers do not bear the same RAG status.

Who can Call-in a decision?

Any non Cabinet member of the Council (or a co-opted member of the Children and Young People Scrutiny Committee, in the case of a decision relating to an education matter) may call-in a decision of the kind detailed above.

How do you Call-in a decision?

You can submit a Call-in Request by using the “Call in a Decision” form on the scrutiny section of the Council’s website (<https://www.cardiff.gov.uk/ENG/Your-Council/Councillors-and-meetings/Scrutiny/Call-in-a-decision/Pages/default.aspx>).

The form will ask you to specify the decision number that you are calling in. This number can be found on the official “Decision Register” that is published on the Council website after decisions have been made.

If the decision was made by Cabinet, it will bear the prefix ‘*CAB/14/*’ followed by a three digit number. If the decision was made by a Senior Officer under delegated authority, it will bear the prefix ‘*SMT/14/*’ followed by a three digit number.

The form will also ask you to specify the reasons for which you are calling-in the decision.

If you have any questions before filling in the form, it is advised that you contact the Operational Manager of Scrutiny Services (contact details at the foot of this document). Most call-ins that have been submitted in recent years have followed discussion with the Operational Manager (Scrutiny Services) and the Council’s Monitoring Officer.

What criteria does a Call-in Request have to satisfy?

The Council’s Constitution states that the Operational Manager of Scrutiny Services may, in consultation with the Monitoring Officer, rule that a call in is not valid if:

- The call in request has not been made within the seven working days allowed for call in
- It is not clear which Executive Decision is being called in
- The decision is exempt from call in on account of urgency provisions (specified in the Constitution – but summarised below).

- The call in request provides too little information to enable Committee members or the decision taker to adequately prepare for the call in meeting
- The decision being called in, or broadly the same decision, has been called in during the last six months.

The Council Constitution states that in calling in a decision it is not sufficient for the Member requesting the call in to state that they wish to test the merits of the decision. A member requesting a call in shall specify precisely which aspects of the decision they wish to question or challenge.

Call-in and Urgency

The call-in procedure will not apply where the decision being taken is urgent. A decision will be urgent if either the Head of Paid Service, the Monitoring Officer or the S151 Officer certifies that any delay likely to be caused by the call-in process could seriously prejudice the Council, or the public interest, and the Chair of the relevant scrutiny committee or, in his/her absence, the Chair of the Council, or in both their absences, the Vice-Chair of the Council, agrees that the matter is urgent.

The record of the decision and notice by which it is made public shall state whether the decision is an urgent one, and therefore not be subject to call-in.

What happens after you have submitted a Call-in Request?

You will receive an e-mail confirming that you have submitted a request to “Call-in” the decision in question.

The Operational Manager, Scrutiny Services will discuss as appropriate with officers and respond to you as quickly as possible.

If your Call-in request is agreed, Scrutiny Services will liaise with you and arrange a Call-in Committee meeting. The date of that Committee meeting will need to be published within five working days of the date that you submitted your call-in request. The actual meeting will be held as soon as can be arranged.

What happens at a Call-in?

The Council Constitution states that the role of Scrutiny Committees calling in a decision is:

- To test the merits of the decision
- To consider the process by which the decision has been formulated.
- To make recommendations (to support the decision, change aspects of the decision, or to invite the decision making body to reconsider)
- To suggest further steps before a decision is made (but not to try to carry out those steps in place of the decision making body)
- To come to a view in a relatively short time scale, so as not to compromise the speed and efficiency of the decision-making process.

A Call-in Committee meeting is similar to a standard Scrutiny Committee meeting, with a few exceptions.

The layout of the room will be familiar to people who have attended scrutiny meetings, with tables for Committee Members and a witness table. The meeting will be held in public, with a public gallery. Members of the public may under rare circumstances be asked to leave the room for a period of time during the meeting should matters deemed “exempt from publication” (“yellow paper”) be considered.

At the start of the meeting, the Committee Chair will establish whether the Members of the Committee wish to consider this matter themselves, or if there are any compelling grounds why the matter should be considered at a wider platform (ie Full Council) – for instance if the issues are deemed so significant that a wider view is needed. This step is rarely taken, but provision is made for it in the Constitution.

Assuming that Committee wish to consider the matter, you will be invited at the start of the meeting to join the Members’ tables to outline your reasons for calling-in the decision.

The Members of the appropriate Scrutiny Committee will then hear verbal evidence from the decision maker and other appropriate witnesses, and consider any appropriate written evidence.

At the end of the evidence session, you will be invited back to the Members’ tables to briefly comment on what you have heard.

The Members of the Committee will decide from one of two options what they wish to do next. They can either:

- refer the decision back to the decision maker, asking them to reconsider the decision (and setting out the grounds by which they feel the decision should be reconsidered, or
- allow the decision to stand.

If they take the first option, a meeting will be convened as quickly as possible to reconsider the decision. The decision maker may wish to amend the decision to take account of the points made at the Call-in. If the decision maker decides to stand by their decision, the decision will be published again, and will be implemented soon after. It will not be possible to call this decision in again for six months. The decision maker will inform the Committee of their decision as soon as possible, but by the time of the next Committee meeting at the latest.

If they take the second option, the decision will be upheld, and will be implemented as soon as possible after the meeting.

For Further Information

Please contact Paul Keeping (Operational Manager, Scrutiny Services) on Cardiff 2087 2953, or at p.keeping@cardiff.gov.uk.