

BARNSLEY METROPOLITAN BOROUGH COUNCIL

**REPORT OF THE DIRECTOR OF
LEGAL AND GOVERNANCE**

PROCEDURE FOR CALLING IN CABINET DECISIONS

1. PURPOSE OF REPORT

- 1.1 To consider revisions to the Procedure for the Call-in of Cabinet Decisions.

2. RECOMMENDATIONS

- 2.1 That the revised Procedure for the Call-in of Cabinet Decisions, set out at Appendix 1, be approved and the Constitution be amended accordingly.**

3. BACKGROUND

- 3.1 Section 21(3) of the Local Government Act 2000 makes provision for Overview and Scrutiny Committees to have the power to review or scrutinise Executive decisions that have not been implemented. The procedure to allow this to happen is known as Call-in and the statutory guidance to the 2000 Act requires that local authorities put in place procedures to allow Call-in to operate. This is expected to include the period of delay of implementation of decisions to allow Call-in to operate, information on the type of decisions that can be called-in and the number of Members who need to agree that a specific item should be called-in under this process. Section 21 of the Localism Act 2011 replaced the relevant Section of the 2000 Act, but the provisions that relate to Call-in remains un-amended.
- 3.2 This Council established its procedure for Call-in in 2001 when the Executive arrangements under the 2000 Act were implemented. This established that the implementation of Cabinet decisions would be delayed for 4 working days and that half the voting Members of the (then) Scrutiny Commissions would be needed to Call-in any specific item. The power of Call-in was supplemented by Section 119 of the Local Government and Public Health Act 2007, which gave individual councillors the right to raise through the Scrutiny process any issues that are of concern to their communities (so called Councillor Calls for Action). However, other than to reflect the 2007 Act and to make updates in names and terminology, the Call-in procedure has been little changed since 2001.
- 3.3 Further consideration of the current Call-in procedure has identified the need to make some revisions.

4. ISSUES FOR CONSIDERATION

- 4.1 The current Call-in procedure makes specific reference to members of the Overview and Scrutiny Committee being able to call-in matters for review. This stems largely from the fact that, in 2001, all Elected Members who were not Cabinet members sat on at least one Scrutiny Commission, so were able to call-in a decision. However, the governance changes that took place in 2013 resulted in only 29 of the 55 Elected Members who were not Cabinet members having this role, with the establishment of an Overview and Scrutiny Committee and Children's Services Scrutiny Committee. The current procedure effectively limits to the power of call-in to those 29 Members.
- 4.2 There is also a need to consider whether the current threshold for matters to be called-in, in terms of the number of Members who need to support any request, remains appropriate. As it currently stands, at least 13 Members of the Overview and Scrutiny Committee would need to agree to the Call-in of an item for this to progress. As this represents over a sixth of the Council's membership, this is perhaps excessive compared to other authorities, and clearly places a restriction on the ability of the Overview and Scrutiny Committee to hold the Council's Executive to account.
- 4.3 At the time the Call-in procedure was established, all Executive Decisions not delegated to officers were taken by the Cabinet collectively. When the arrangements for Delegated Decisions by Cabinet Spokespersons were introduced, it was understood that any of those decisions not implemented could be called in for Scrutiny. However, the current Call-in procedure does not refer to this explicitly. In addition, whilst the Councillor Call for Action procedure is acknowledged to supplement the power of Call-in, again there is no reference to it in the Call-in procedure.

5. PROPOSAL

- 5.1 It is proposed to revise the Call-in procedure with the following effect:-
- To allow any Elected Member, or voting Co-opted Member in the case of an Education matter, to request that a decision be Called-in;
 - Reduce thresholds for Call-in so that one Elected/Co-opted Member supported by four other Members can request a Call-in;
 - To clarify that decisions taken by Cabinet Spokespersons under Delegated Powers can be Called-in on a similar basis;
 - To incorporate information about the complementary Councillor Call for Action procedure.
- 5.2 The revised Call-in procedure, incorporating the necessary revisions is attached at Appendix 1.

- 5.3 Although reducing the number of Members that are required to agree to a Call-in request might arguably increase the number of decisions Called-in, it is intended that the same criteria for considering Call-in requests will be maintained. This means that Elected Members will still need to set out the reasons for seeking a review of the decision and give a proposed alternative course of action. This will then be considered by the Chair of the Overview and Scrutiny Committee or Children's Services Scrutiny Committee, as appropriate, in considering the Call-in request.

6. FINANCIAL IMPLICATIONS

- 6.1 There are no direct financial implications arising from this report.

7. EMPLOYEE IMPLICATIONS

- 7.1 There are no employee implications arising directly from this report.

8. COMMUNICATIONS IMPLICATIONS

- 8.1 Elected Members will be made aware of the changes to the procedure in the course of the normal decision making process, as the revised procedure will require Full Council approval.

9. CONSULTATIONS

- 9.1 The Senior Management Team have been consulted on the operational implications of the revised procedure, although it is not anticipated that these changes will result in an increase in Call-in requests.

10. LIST OF APPENDICES

Appendix 1: Revised Procedure for Call-in of Cabinet Decisions.

11. BACKGROUND PAPERS

- Current Procedure for Call-in of Cabinet Decisions (Appendix N to the Council's Constitution).
- Local Government Act 2000.
- Local Government and Public Involvement in Health Act 2007.
- Localism Act 2011.
- New Councils Constitutions – Guidance to English Authorities (Statutory Guidance to the Local Government Act 2000).

Available for inspection in the Legal and Governance Directorate, Town Hall, Barnsley.
Contact (01226) 773421 for further information.

Officer Contact: Ian Turner **Telephone No:** 773421 **Date:** 31 March 2015

REVISED PROCEDURE FOR CALL-IN OF CABINET DECISIONS

Appendix 'N'

1. Introduction

- 1.1 The Localism Act 2011 requires Councils that operate executive arrangements to introduce procedures that allow Elected Members, through the Scrutiny Committees, to hold the Executive (~~i.e. the Cabinet~~) to account for the discharge of its functions.
- 1.2 The Council's Constitution provides for certain functions of the Executive to be discharged only on the approval at Full Council of recommendations made on those matters by the Cabinet. The Constitution prevents these matters being implemented without Full Council approval and allows Scrutiny Committees to refer them back once only for reconsideration by Cabinet. However, Cabinet and Cabinet Spokespersons have power to determine many other matters without reference to Full Council and a call-in facility has been established that allows for the scrutiny of these **Cabinet** decisions, prior to their implementation. The implementation of any decisions called-in under this procedure will be delayed until the issue has been considered by the relevant Scrutiny Committee or Full Council.

2. What decisions can be "called-in"?

- 2.1 The call-in procedure applies only to decisions of the Executive (i.e. Cabinet and Spokesperson Delegated decisions) as provided for in the Localism Act 2011. Decisions of a quasi-judicial nature taken by the Regulatory Boards, relating to statutory and individual case matters, cannot be called-in under this procedure.
- 2.2 ~~Although Neither can~~ day-to-day management and operational decisions taken by officers cannot be subject to call-in, ~~although~~ officers may be required to give evidence to Scrutiny Committees on such matters in the course of investigations into the performance of Council services. ~~Elected Members can also use their right to make Councillor Calls for Action to raise with scrutiny any issues that are of concern to their communities but have not been the subject of a recent Executive decision.~~
- 2.32 In order to protect the interests of the authority, any Executive decision which cannot wait until the next meeting of the relevant Scrutiny Committee due, for example, to a risk of financial loss, the failure to meet any legal liability, or a threat to public safety, or would result in missing an externally imposed deadline (e.g. by Central Government), will not be subject to call-in. However, in such circumstances, the Council Governance Unit on behalf of the relevant Cabinet Spokesperson must consult the Chair of the relevant Scrutiny Committee to explain the position in advance of the matter being referred to Cabinet. The outcome of these consultations must be reported when the matter is considered by Cabinet.
- 2.43 If warranted and time allows, the Scrutiny Committee Chair may seek a special meeting of the Committee to deal with an urgent item. In the event that an urgent matter is not called-in on the above basis, the relevant Scrutiny Committee will still be able to review the decision at its next available meeting and make comments to the Cabinet.
- 2.54 In view of the need for time to allow call-in to operate, Executive Directors must make their staff aware of the importance of matters being brought forward in good time.

3. Procedure for Calling-In Cabinet Decisions

- 3.1 The fortnightly Cabinet agenda will be emailed to all Members of the Council, together with Co-opted Members of Scrutiny Committees, five clear days before the relevant Cabinet meeting. This will indicate which items are likely to be approved by Cabinet without reference to Full Council. ~~Within two working~~ By the afternoon of the days of the any Cabinet meeting, a List of Decisions will be made available to all Members, but these decisions will not be implemented until the expiry of the call-in deadline.
- 3.2 Delegated decisions by Cabinet Spokespersons will be notified to Elected Members on an item-by-item basis. Elected Members will have three working days to initiate a call-in for these items.
- 3.23 Any Elected Member, who is not a Cabinet Member, and ~~Half of the Voting Members of a relevant~~ Scrutiny Committee voting co-opted members (on an issue relating to education), ~~who may include Elected and Voting Co-opted Members,~~ may give notice that they wish to call-in a particular decision. The request for call-in must be supported by four other Members and be received in the Chief Executive's office by 4.30 p.m. on the fourth working day after Cabinet has taken the decision (normally Tuesday). ~~This will enable the call-in to be reported to Cabinet before it confirms the accuracy of the minutes of the previous week's meeting.~~ Any decisions not called-in may be implemented on the expiry of this deadline.
- 3.43 The Chief Executive will ensure that the call-in request is copied to the relevant Executive Director or Director, and in every case to the Director of Legal and Governance.
- 3.54 The attached form must be used to notify requests for an item to be called-in. This must state reasons why those Members wish to review the decision, and propose an alternative solution. The Director of Legal and Governance will arrange for liaison with the Chair of the relevant Scrutiny Committee. On advice from the Director of Legal and Governance, the Chair will have the discretion to refuse the request for call-in if, for example, it contains defamatory material. The Chair will normally take this decision within 5 working days of the receipt of the call-in request. Instances where the Chair refuses the call-in request will be reported by the Director of Legal and Governance to the next available Cabinet meeting, and the decision may be implemented immediately.
- 3.56 Any call-in request which is refused by the Chair will be reported to the next available meeting of the relevant Scrutiny Committee, in order that the circumstances may be recorded in the minutes.
- 3.67 Where the Scrutiny Chair agrees to the call-in of a decision, the Members who have made the request will have the opportunity to give evidence at the meeting of the Scrutiny Committee on why their alternative proposal should be adopted. The relevant Cabinet Spokesperson(s), Executive Director(s), and Director(s) will also be invited to give evidence, together with any other witnesses considered relevant by the Chair. If the Scrutiny Committee supports the Cabinet's original decision, then that decision stands and can be implemented from the date of the Scrutiny Committee concerned.
- 3.87 If the Scrutiny Committee supports the Members' request, it can :
- (i) refer the matter back to Cabinet with a recommendation for an alternative solution; or
 - (ii) refer the matter to the Full Council for debate at its next available meeting, which may agree to refer the matter back to Cabinet for reconsideration.

3.98 If the matter is referred back to the Cabinet, the Scrutiny Committee or Full Council will submit a report to Cabinet in line with the Protocol on Scrutiny References. Cabinet must reconsider the decision, on the basis of the Scrutiny report, and may or may not amend it before adopting a final decision. Once a decision has been determined following a call-in it can be implemented from the date of the Cabinet meeting and cannot be subject to any further call-ins.

BARNSELY METROPOLITAN BOROUGH COUNCIL

**Request to the Chair of the [] Scrutiny Committee to
Call-In a Decision of the Cabinet / Spokesperson taken on
[]**

Title of Report:

Report Ref. No.
Cab.

Call-In Requested by:

Date

Call-In Request supported by:

Reasons for seeking a Review of the Decision

(Please continue on a separate sheet, if necessary)

Proposed Alternative Course of Action

(Please continue on a separate sheet, if necessary)

Notes:

1. Please insert title of relevant Scrutiny Committee and date of Cabinet meeting. A relevant Scrutiny Committee is one which includes the subject matter of the decision in question within its Terms of Reference.
2. Call-In can be requested by any Elected Member who is not a Cabinet Member and a voting Co-opted Member for an education matter. The request must be supported by four other Members.
3. This form must be returned to the Chief Executive by 4.30 p.m. on the fourth working day after Cabinet has taken the decision in question (normally Tuesday). For delegated decisions by Cabinet Spokespersons, the form should be returned by 4.30 p.m. on the third working day after any notification.

