

The Procedure for Call-In of Executive Key Decisions

RECOMMENDATION

1. To note the report.

SUPPORTING INFORMATION

- 2.1 This report sets out details of the procedure and associated protocol for the Call-In of an executive key decision decision.
- 2.2 Under Rule OS33 of the Council's Constitution the Overview and Scrutiny Commissions can 'call-in' executive key decisions that they consider have not been taken in accordance with the principles of decision making set out in Article 13 of the Council's Constitution. These principles relate to:
 - Proportionality (the decision must be proportional to the desired outcome)
 - Due consultation and the taking of professional advice from officers
 - Respect for human rights
 - A presumption in favour of openness
 - Clarity of aims and desired outcomes
 - Keeping a record of what options were considered and giving the reasons for the options
- 2.3 Decisions may also be called-in where relevant issues do not appear to have been taken into consideration.
- 2.4 The decision may be 'called-in' by any three members of the Council and the relevant Commission must review the decision within ten working days of the 'call-in' notice being received by the monitoring officer.
- 2.5 If having considered the decision the Commission is still concerned about it, they may refer it back, with their written recommendations, to Council Cabinet or full Council.
- 2.6 The protocol on Call-In is attached at Appendix 2. Appendix 3 contains a pro-forma 'Notice of Call-In' that can be used when making a call-in.

- 2.7 Members are advised that the procedure to be adopted when a decision is called-in can be found in part five of the Council's constitution in Codes and Protocols <http://cmis.derby.gov.uk/cm5/TheConstitution.aspx>

This report has been approved by the following officers:

Legal officer	
Financial officer	
Human Resources officer	
Service Director(s)	
Other(s)	

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Background papers:	Appendix 1 – Implications
List of appendices:	Appendix 2 – Protocol on Call-In of Executive Key Decisions
	Appendix 3 – Notice of Call-In

IMPLICATIONS

Financial and Value for Money

- 1.1 None arising directly from this report.

Legal

- 2.1 Section 21 (3) of the Local Government Act 2000 requires that the power of an overview and scrutiny committee to review or scrutinise a decision made but not implemented includes power to recommend that the decision be reconsidered by the person who made it.

Personnel

- 3.1 None arising directly from this report

Equalities Impact

- 4.1 Effective scrutiny benefits all Derby people.

Health and Safety

- 5.1 None arising directly from this report

Environmental Sustainability

- 6.1 None arising directly from this report

Asset Management

- 7.1 None arising directly from this report

Risk Management

- 8.1 None arising directly from this report

Corporate objectives and priorities for change

- 9.1 This report has the potential to link with all the Council's Priorities for 2011-12.



Protocol on Call-in of Executive Key Decisions

Introduction

1. The purpose of this protocol is to provide additional guidance on the procedures to be adopted when executive key decisions of the Council Cabinet or Neighbourhood Boards and Neighbourhood Forums are called-in for scrutiny by the appropriate overview and scrutiny commission.
2. The relevant provisions of the Constitution, contained in the Overview and Scrutiny Procedure Rules, are set out below.

“Call-in

OS33 Call-in should only be used in exceptional circumstances. These are where members of the Council are of the opinion that the Council Cabinet did not take the decision in accordance with the principles set out in Article 13 (Decision Making), namely,

- a. proportionality (i.e. the action must be proportionate to the desired outcome)*
- b. due consultation and the taking of professional advice from officers*
- c. respect for human rights*
- d. a presumption in favour of openness*
- e. clarity of aims and desired outcomes*
- f. a record of what options were considered and giving the reasons for the decision.*

or where relevant issues do not appear to have been taken into consideration.

Procedure for Call-in

- OS34 *When a Key Decision is made by the Council Cabinet or a committee of the Council Cabinet, a Council Cabinet Member or a Neighbourhood Board/Forum 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 two working days of being made. All Members of the Council will be sent copies of the records of all such decisions within the same timescale, by the Monitoring Officer.*
- OS35 *That notice will bear the date on which it is published and will specify that the Key Decision will come into force, and may then be implemented, on the expiry of five clear days after the publication of the decision, unless it is called in.*
- OS36 *During that period, the Monitoring Officer shall call-in a Key Decision for scrutiny by the appropriate commission if so requested by written notice by any three members of the Council. The written notice must specify which principle in Rule OS33 has allegedly been infringed. The Monitoring Officer must then notify the Council Cabinet of the call-in. S/he shall call a meeting of the commission on such date as s/he may determine, where possible after consultation with the chair of the commission, and in any case within ten working days of the decision to call-in.*
- OS37 *If, having considered the decision, the overview and scrutiny commission is still concerned about it, then it may refer it back to the Council Cabinet for reconsideration, setting out in writing the nature of its concerns. If the Commission concludes that the decision is outside the budget and policy framework it may refer the matter to full Council. If referred to the Council Cabinet, they shall then reconsider it at their next meeting, amending the decision or not, before adopting a final decision.*
- OS38 *If following an objection to the decision, the overview and scrutiny commission does not meet in the ten day period set out above, or does meet but does not refer the matter back to the Council Cabinet or to Council, the decision shall take effect on the date of the overview and scrutiny meeting, or the expiry of the ten day period, whichever is the earlier.*
- OS39 *If the matter is referred to full Council and the Council does not object to a decision that 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 and also concludes that the decision is outside the budget and policy framework, the provisions for this event in the Rules BPF 10-12.*
- OS40 *Where a Council Cabinet decision has been taken by a Ward Committee, then the right of call-in shall extend to:*

- *any three elected members of another Ward 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 panel relates; and/or*
- *any three members of the Council if they consider that the decision is contrary to the principles of decision-making set out in these rules.*

In either case, those three members may request the Monitoring Officer by written notice to call-in the decision. The written notice must specify which principle in Rule OS33 has allegedly been infringed. S/he shall call a meeting of the relevant overview and scrutiny commission on such a date as s/he may determine, where possible after consultation with the chair of the commission, and in any case within ten days of the decision to call-in.

OS41 All other provisions relating to call in shall apply as if the call in had been exercised in respect of a decision of the Council Cabinet.”

Procedure to be Adopted When a Decision is Called-In

1. The Constitutional Services Officer (CSO) will check that the call-in notice is signed by at least three Members. The call-in notice must identify which principle(s) of decision making in rule OS33 have allegedly been breached or what adverse effect on a neighbouring Neighbourhood Board/Forum is alleged, and give reasons. This requirement will be checked by the Strategic Director of Resources Services, the Assistant Director – Democratic Services or the Head of Democratic Services.
2. The CSO will arrange a meeting of the appropriate Commission, in consultation with the Chair, within 10 working days of the call-in notice. If a scheduled meeting of the Commission will be held during the 10 day period, the call-in will be considered at that meeting.
3. The CSO will acknowledge the call-in notice and notify all Council Cabinet members.
4. The CSO will invite the signatories to the call-in notice, the relevant Council Cabinet member(s) and the relevant Director to attend the call-in meeting. The call-in signatories and the relevant Council Cabinet member or a Cabinet member nominee would be expected to attend. The relevant Director may nominate a second or third tier officer to attend in his / her place. If none of the call-in signatories attend, the Commission will decide whether to proceed. If the Commission decides not to proceed, then the call-in will be decided on the basis that the Commission does not have any concerns it wishes to refer to the Council Cabinet, and Council Cabinet will not be required to reconsider the decision.
5. The CSO will send copies of the call-in notice, minute of Council Cabinet / Ward Committee and any associated reports to members of the

Commission with the agenda for the meeting, or as a late item if the agenda has already been issued.

6. The Overview and Scrutiny Co-ordination Officer (OSCer) will liaise with the Chair and Vice Chair(s) of Commission over any other appropriate arrangements for the call-in, eg additional information, witnesses etc. If the Chair or Vice Chair(s) have signed the call-in notice, the OSCer will liaise with another member of the Commission nominated by the Chair or Vice Chair(s).
7. The aim of the Commission meeting when the call-in is considered should be inquisitorial not adversarial. The following procedure will be adopted:
8. Up to three of the signatories to the call-in notice will be invited to address the Commission on the call-in. The relevant Cabinet Member will then be invited to address the Commission. Members of the Commission may ask questions of the signatories and the relevant Council Cabinet member or Director.
9. The OSCer will present any further information relevant to the call-in.
10. Any further witnesses invited by the chair / vice chair(s) to the call-in meeting will give their evidence to the Commission.
11. One nominated signatory of the first three signatories to the call-in will be allowed to make a further statement to the Commission, lasting no more than five minutes, in response to submissions and questions heard previously. He / she will not be allowed to question any person.
12. The relevant Council Cabinet member will be allowed to make a closing statement to the Commission, lasting no more than five minutes, in response to submissions and questions heard previously. He / she will not be allowed to question any person.
13. The Commission will then consider the call-in and decide what action it wishes to take. The Commission may decide...
 - a) that no principle under rule OS 33 has been breached or no adverse impact under rule OS 40 has been found,
 - b) that one or more principles under rule OS 33 were breached or adverse impacts under rule OS 40 did occur but do not warrant reference back to the Council Cabinet or Ward Committee,
 - c) that one or more principles under rule OS 33 were breached or adverse impacts under OS 40 did occur and that the decision be referred back to the Council Cabinet or Ward Committee for reconsideration, or
 - d) that one or more principles under rule OS 33 were breached or adverse impacts under rule OS 40 did occur, that the decision was outside the

budget and policy framework and that the decision be referred to full Council

14. In the case of a decision under paragraphs 15 c) or d), the Commission must agree its concerns about the decision, including which principles of decision taking it believes have been breached, and these must be set out in the minutes. The decision of the Commission will be taken in accordance with the Council Procedure Rules.
15. The CSO will produce a draft minute containing the decision and concerns and circulate it to the Chair and Vice Chair for comment within one working day of the Commission meeting.
16. In the case of a decision under paragraph 15 c) or d), the CSO will make sure that the resolution of the Commission is considered by the Council Cabinet, Neighbourhood Board or full Council, as appropriate, at its next meeting.

Notice of Call-In of an Executive Key Decision

In accordance with Rule OS36 of the Council's Constitution, we the undersigned hereby give notice that we wish to call-in the following executive key decision:

We believe that the following principles of decision making have been breached by

1. Decision

.....

2. Meeting at which the decision was made

.....

3. Date of the meeting

the making of this decision (tick relevant boxes):

a) Proportionality (i.e. the action must be proportionate to the desired outcome) ☐

b) Due consultation and the taking of professional advice from officers ☐

c) Respect for human rights ☐

d) A presumption in favour of openness ☐

e) Clarity of aims and desired outcomes ☐

f) A record of what options were considered and giving the reasons for the decision ☐

and/or that relevant issues do not appear to have been taken into consideration ☐

We believe these principles have been breached for the following reasons:

	Principle	Reasons why breached
a.	Proportionality	
b.	Due consultation and the taking of professional advice from officers	
c.	Respect for human rights	
d.	A presumption in favour of openness	
e.	Clarity of aims and desired outcomes	
f.	A record of what options were considered and giving the reasons for the decision	
	and/or that relevant issues do not appear to have been taken into consideration	

1. Signed

Name

2. Signed

Name

3. Signed

Name