

 <b>Overview &amp; Scrutiny Committee</b> <b>7 February 2017</b>		<b>Agenda Item No.</b> <b>8</b>
<b>Title</b>	Revised Call-in Procedure for Warwick District Council	
<b>For further information about this report please contact</b>	Graham Leach, Democratic Services Manager & Deputy Monitoring Officer 01926 456114 <a href="mailto:graham.leach@warwickdc.gov.uk">graham.leach@warwickdc.gov.uk</a>	
<b>Wards of the District directly affected</b>	None	
<b>Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006?</b>	No	
<b>Date and meeting when issue was last considered and relevant minute number</b>		
<b>Background Papers</b>		

<b>Contrary to the policy framework:</b>	No
<b>Contrary to the budgetary framework:</b>	No
<b>Key Decision?</b>	No
<b>Included within the Forward Plan? (If yes include reference number)</b>	No
<b>Equality Impact Assessment Undertaken</b>	No

<b>Officer/Councillor Approval</b>		
<b>Officer Approval</b>	<b>Date</b>	<b>Name</b>
Chief Executive/Deputy Chief Executive	20/12/2016 20/12/2016	Chris Elliott Bill Hunt
Head of Service		
CMT		
Section 151 Officer	20/12/2016	Mike Snow
Monitoring Officer	20/12/2016	Andrew Jones
Finance		
Portfolio Holder(s)	20/12/2016	Councillor Mobbs
<b>Consultation &amp; Community Engagement</b>		
<b>Final Decision?</b>	No	
<b>Suggested next steps (if not final decision please set out below)</b>		
If approved the report will be taken to Executive then on to Council for adoption.		

## 1. **Summary**

- 1.1 This report brings forward a revised proposal for the call-in procedure for Warwick District Council.

## 2. **Recommendations**

- 2.1 That the revised call-in procedure, as set out at Appendix 3 to the report, is supported.
- 2.2 That the Committee approves the submission of the revised call-in procedure, including call-in of decisions outside the budgetary framework to the Executive for recommendation to Council.

## 3. **Reasons for the Recommendations**

- 3.1 The Council adopted a revised call-in procedure in April 2015, as set out at Appendix 1 to the report. This procedure was not applied until December 2015 when the Leisure Development Programme was called-in. On reflection it became apparent that the procedure relied on the Monitoring Officer to determine how the decision fell within the policy framework and was therefore eligible to be called-in, a process which could be open to interpretation and challenge.
- 3.2 Consequently, Council, as part of the Annual Governance Statement, asked officers to review the current procedure and ensure that a more robust procedure is put in place.
- 3.3 As part of the review by officers it was noted that in addition to the issues identified in the Council Procedure Rules the procedure for call-in of decisions outside the budgetary framework as defined in the Budget or Policy Framework Procedure Rules should also be updated.
- 3.4 The call-in procedure has been considered by officers and it is recommended that the revised approach, set out at Appendix 2, is adopted. This is similar to the model used by Warwickshire County Council but has been revised to reflect the decision making arrangements for Warwick District Council.
- 3.5 The proposal provides a clear framework that can be followed for the call-in of decisions and removes the need for the Monitoring Officer to determine if a matter falls inside or outside of Policy or Budgetary Framework. It is considered that this aspect is not required because the Monitoring Officer is obliged under Article 12 of the Constitution to report to Council or Executive if a decision would give rise to unlawfulness or maladministration.

## 4. **Policy Framework**

- 4.1 **Policy Framework** –The report does not impact on the Policy Framework of the Council.
- 4.2 **Fit for the Future** – The report does not directly impact or seek to deliver in line with Fit for the Future. It does, however, contribute to ensuring that the decision making process of the Council is robust.

4.3 **Impact Assessments** – No impact assessment was undertaken because the proposals are to amend the Constitution of the Council and decision making process of the Council.

5. **Budgetary Framework**

5.1 The report does not impact on the Budgetary Framework of this Council or its budget.

6. **Risks**

6.1 The most significant risk associated with the report is for the current arrangements not to be amended. This is because it was clear from the item that was called in, that the current procedure was not sustainable and the guidance/flowcharts conflicted with the actual procedure.

7. **Alternative Option(s) considered**

7.1 The Council could retain its current procedure but seek amendments to the procedure and flow charts. However, this option was dismissed because at present the call-in procedure requires the determination of the Monitoring Officer before it can progress.

7.2 The Committee could ask officers to investigate other call-in procedures, but this was dismissed because the procedure proposed is based on the one already in place at WCC where it is regularly used to call matters in.

## Warwick District Council Current Council Procedure Rule

### 21. Decisions of the Executive

- (a) A summary of the decisions taken at meetings of the Executive will normally be published on the next working day following the meeting.
- (b) Subject to (d) below, decisions made under delegated powers at a meeting of the Executive will become effective at 5.00 pm on the fifth clear working day after the publication of the summary of decisions of that meeting. This five clear day period is known as the Call-in period.
- (c) If the Executive decision is made by a Portfolio Holder or is a Key Decision made by an officer, a summary of the decision will be published the day following the decision being made, and will become effective at 5.00 pm on the fifth clear working day after publication. The procedure from d) onwards will then apply.
- (d) If, during the Call-in period, the Chief Executive receives from three or more non-Executive members of the Council, an objection, including reasons, to a decision, as long as it meets the criteria (as defined at Appendix ? to these procedure rules) the decision then becomes a 'called-in' decision. The notification to the Chief Executive can be in the form of a letter or an email.
- (e) Any called-in decision will not become effective, but will be referred to the next meeting of the Overview and Scrutiny Committee.
- (f) The Overview & Scrutiny Committee can decide:
- to allow the decision to be implemented without further delay;
  - to refer the decision back to the Executive (irrespective of who the original decision-taker was) together with the observations of the Overview & Scrutiny Committee. The Executive will then take the final decision, and that decision may not be called-in;
  - to request the Executive to allow further time for the Overview and Scrutiny Committee to consider the issue and make observations at a later date;
  - to seek the advice of the Monitoring Officer and/or the Chief Finance Officer as to whether the decision is contrary to, or not wholly in accordance with, the policy framework or the budget and, if applicable, to refer the matter to the Full Council for a final decision.
- (g) If the decision is referred to the Executive by the Overview and Scrutiny Committee, there will be a separate report on the agenda with the heading 'Call-In Item '.
- (h) If for any reason the Executive are unable to reach a decision on the called-in item, and it is deferred, this 'Call-in Item' heading will then appear on every Executive agenda until the decision has either been confirmed or amended.
- (i) If the original decision is confirmed by the Executive, it cannot be subject to the call-in procedure again. If the decision or wording of the decision is changed by

the Executive in any way, then it becomes a new decision and can be subject to the call-in procedure.

- (j) If a called-in decision is referred to the Executive by the Overview and Scrutiny Committee, the Overview and Scrutiny Committee cannot pass comment on it again when commenting on Executive agenda items.
- (k) If a decision is referred to the next meeting of Council by the Overview and Scrutiny Committee, or the non-Executive members who called the decision in are dissatisfied with the decision of the Overview and Scrutiny Committee, it will appear under a separate agenda item of 'Call-In Item' and the procedure as set out in Councillor Procedure Rule 13 (16) will apply. It will also be followed by details of the item with an extract from the relevant Executive minute attached.
- (l) If for any reason Council are unable to refer the called-in decision back to the Executive, and it is deferred, this 'Call-in Item' heading will then appear on every Council agenda until it has done so.
- (m) Council does not have the power to change the decision of the called-in item. The only power Council has is to debate the Executive decision either pass comments, which will be taken into account by the Executive during the re-consideration of the original decision, or to take no further action.

If there is not a meeting of the Overview and Scrutiny Committee, Executive or Council scheduled within 8 weeks of the specified timeframe, a special meeting will be convened for consideration of this item only. If the decision is of particular urgency, a special meeting will be convened anyway so the decision can be dealt with as soon as possible.

The Called-in item will also continue to appear on the Forward Plan until the decision has either been confirmed or amended by the Executive.

## BUDGET OR POLICY FRAMEWORK PROCEDURE RULES

### 7. CALL-IN OF DECISIONS OUTSIDE THE BUDGET FRAMEWORK

- (a) Where an Overview and Scrutiny Committee is of the opinion that an Executive decision is, or if made would be, contrary to the Council's budget, then it shall seek advice from the Monitoring Officer and Chief Finance Officer.
- (b) In respect of functions which are the responsibility of the Executive, the Monitoring Officer's and/or Chief Finance Officer's report shall be sent to the Executive with a copy to every member of the Council. Regardless of whether the decision is delegated or not, the Executive 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 Monitoring Officer and/or Chief Finance officer conclude that the decision was a departure, and to the an Overview Scrutiny Committee if the Monitoring Officer and/or the Chief Finance 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 Monitoring Officer and/or the Chief Finance Officer is that the decision is contrary to the budget or policy framework, the Overview and Scrutiny Committee may refer the matter to 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 5 days of the request by the Overview and Scrutiny Committee. At the meeting it will receive a report of the decision or proposals and the advice of the monitoring officer and/or chief financial officer. The Council may either:
- (i) endorse a decision or proposal of the Executive decision taker as falling within the existing budget or 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 Council's budget or policy framework concerned to encompass the decision or proposal of the body or individual responsible for that Executive function 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 budget or policy framework, and does not amend the existing framework to accommodate it, require the Executive to reconsider the matter in accordance with the advice of the Monitoring Officer and/or Chief Finance Officer.

### **Proposed Call in procedure for Warwick District Council**

- 1 This call-in procedure can apply to any decision taken by the Executive which is not a recommendation to Council. It will not apply to:
  - a decision which has been defined as urgent under Council Procedure Rule 26;
  - a decision that has previously been called-in or is of the same subject matter of an item that has been called-in within the previous 6 months;
  - any decision relating to a non-Executive function, whether taken by a Committee or an officer under delegated powers; and
  - a decision made by the Council.
- 2 Any decision taken by Executive shall be published on the Council's website, normally, within 2 working days of the decision being made. Notification of the publication of the decision will be sent to all Warwick District Councillors via email.
- 3 The decision will come into force and may then be implemented after 5.00pm on the expiry of the 5<sup>th</sup> working day after the date of electronic publication of the decision, unless the Monitoring Officer receives a written request as set out in 4 below.
- 4 If, before the expiry of the period referred to in 3 above, the Monitoring Officer receives a written request from at least three non-Executive members of the Council to call-in an Executive decision, setting out the nature of their concern and the reasons for the call-in, then the matter shall be treated as "called-in"
- 5 Any such request must provide a reason for the call-in. This should specify why the decision:
  - is considered to be contrary to the normal requirements for decision-making; or
  - is considered to be contrary to the Council's agreed policy framework and/or budget; and/or
  - what further information needs to be provided by the Executive to explain why the decision was taken.
- 6 If an item is "called-in" the Monitoring Officer will notify all Councillors, the Corporate Management Team and relevant Head of Service(s) that the decision has been called-in.
- 7 Where it is cited that the decision is contrary to the Policy or Budget Framework the Monitoring Officer will consider this under Article 12 and will advise the Overview & Scrutiny Committee in the covering report for when they consider the called in item, that either:
  - (i) the decision complies with Policy & Budgetary Framework; or
  - (ii) the decision does not comply with Policy & Budgetary Framework and therefore should be recommended to Council for consideration.
- 8 The Overview & Scrutiny Committee will meet to consider a report on the called-in item within 10 working days of the item being called-in. The Committee will decide to either:
  - (i) refer it back to the Executive for reconsideration, setting out in writing the nature of its concern; or
  - (ii) refer the matter to Council for debate; or
  - (iii) decide to take no action.

- 9 The outcome of the Overview and Scrutiny Committee consideration will normally be published electronically within 2 working days of the meeting and all Councillors will be notified of this.
- 10 If the Overview and Scrutiny Committee decide to take no action, the original decision shall take effect at 5.00pm on the expiry of the 5<sup>th</sup> working day from the date of publication of the outcome, unless a request has been made as set out at 11 below.
- 11 Any six non-Executive members of the Council may, by written notice to the Monitoring Officer before 5.00pm on the 5<sup>th</sup> working day after the date of publication of the outcome of the Overview and Scrutiny Committee meeting, require the decision to be referred to a meeting of the Council. The Council will meet to consider the decision no later than 10 working days after the 5<sup>th</sup> working day following publication of the decision by the Overview & Scrutiny Committee. Any such request for a referral of the decision must set out the nature of the concern and the reasons for the referral.
- 12 The Council may, after considering the decision:
  - (i) refer the matter back to the Executive for reconsideration setting out in writing the nature of its concerns;
  - (ii) make the decision with or without amendment, if the Monitoring Officer has determined that it falls within the Council's power to do so; or
  - (iii) decide to take no action.
- 13 If the Council will meet to consider a report on the called-in item within 10 working days of the item being called-in and decides to
  - (i) take no action; or
  - (ii) refer the matter to the Executive with its views; or
  - (ii) where it is entitled by the Constitution to make the decision itself, the decision shall take effect from the day after the Council meeting.
- 14 When the matter is referred back to the Executive the decision will be reconsidered at a meeting of the Executive no later than 10 working days after receipt of the matter was referred to them. No further right of call-in may be exercised, even if the decision is amended. The decision shall then take effect on the day after that reconsideration.