

COUNCIL BUSINESS COMMITTEE

Constitution – Issues of Urgency and Procedures for Urgent Business, Call-in and Waiver of Call-In

8 November 2012

Referral from the Overview and Scrutiny Budget and Performance Panel

PURPOSE OF REPORT

At the request of the Budget and Performance Panel, the Committee is requested to consider issues of urgency and the Council's procedures for urgent business, call-in and waiver of call-in.

This report is public

RECOMMENDATION

- (1) That, as requested by the Budget and Performance Panel, the Committee considers issues of urgency and the Council's Procedures for urgent business decisions normally taken by Cabinet, call-in and the waiver of call-in, currently set out in Part 4 of the Council's Constitution.

1.0 Introduction

- 1.1 At its meeting on 25 September 2012, the Overview and Scrutiny Budget and Performance Panel resolved:

"That the constitutional issues of urgent business decisions normally taken by Cabinet, call-in procedure, issues of urgency and of the waiver of call-in be referred to Council Business Committee for further consideration."

- 1.2 The procedure relating to the taking of urgent business decisions is currently set out in Part 4, Section 7 of the Council's Constitution (reproduced at Appendix A) The procedures for call-in and the waiver of call-in are set out in Overview and Scrutiny Procedure Rules 16 to 18 in Part 5, Section 5 of the Constitution. (attached at Appendix B). However Members are asked to note that new meetings regulations introduced in September 2012 have had an impact on Urgent Business procedure rules 1.3, 4.1, 4.2 and 4.3. Full information on the regulations and the amendments which will be required to the Council's Constitution are detailed in a separate report for Members' consideration elsewhere on this agenda.

2.0 Background – Issues of Urgency, Urgent Business Procedure, Call-in procedure and waiver of call-in.

2.1 Urgency in relation to local authority decisions is usually defined as a decision which cannot reasonably be delayed or deferred.

2.2 The Council must have mechanisms in place to:

- (a) take key decisions which cannot reasonably be delayed until the next scheduled meeting of Cabinet (and to take decisions that would normally be taken by Council or a Committee in cases where there is not an available meeting)
- (b) call-in key decisions
- (c) waive the call-in period for a decision which must be implemented more urgently than the five day call-in period would allow.

2.3 Variations to the current procedures are discussed in the options below.

3.0 Options

3.1 Whilst this Committee has the authority to agree amendments to the Procedure Rules in the Constitution which contain the rules pertaining to Urgent Business and Call-in, Members may think that the input of Overview and Scrutiny Members would be useful. The Committee could recommend that the Overview and Scrutiny Committee form a task group to examine the procedures more closely and make recommendations to this Committee or to Council, especially since this was a matter raised by the Members of an O&S Panel.

3.2 Alternatively, the Committee may wish to form a view from the information which has been gathered so far.

3.3 **Urgent Business Procedure** – The Democratic Services Manager has consulted with colleagues elsewhere to see the range of procedures in operation. Some Constitutions allow any Chief Officer (Chief Executive, Director, Service Head) to take an urgent Cabinet decision in-between Cabinet meetings after consulting with relevant Cabinet Member(s). One authority has reported that their Heads of Service can take any decision urgently on behalf of cabinet provided they have consulted with the Leader, Chief Executive, Chairman of O&S and Heads of Finance and Legal. Others, like this Council's own, restrict this to the Chief Executive, or a Service Head in the absence of the Chief Executive, in consultation with one or more Cabinet Members. Some Authorities require the consent of at least one Cabinet Member.

3.4 **Call-in Procedure** - A very wide range of call-in procedures exist which are suited to the needs of the Authority. The areas where procedures differ tend to be the number of Members required to request a call-in, the requirements that they must be from different political groups (or not) and who determines whether the grounds for the call-in are justified. The grounds for call-in are all based around the principles of good decision-making and vary very little.

3.5 **Waiver of Call-in** - Currently, this decision is one that this Council's Chief

Executive may take after consultation with just one Elected Member, the Chairman of the Overview and Scrutiny Committee. In the Chairman of Overview and Scrutiny's absence, the Vice-Chairman may be consulted; in their absence, the Mayor or, in the absence of all three, the Deputy Mayor. The Committee might feel it more appropriate to widen out the Chief Executive's consultation to all Members of the Overview and Scrutiny Committee or a sub-group of Overview and Scrutiny Members so that the Chairman does not have to shoulder the full weight of that responsibility.

- 3.6 The Democratic Services Manager has consulted with other authorities in Lancashire on their call-in waiver procedures and these cover a wide spectrum. There are Councils where the decision-maker (Cabinet) has complete authority to waive call-in. Other Councils require the Chairman of Overview and Scrutiny or the Mayor to agree that the decision is reasonable in all the circumstances and to it being treated as a matter of urgency before the call-in period can be waived.
- 3.7 The advantages of a simple system which places the decision with Cabinet are ease of operation and speed of implementation of urgent decisions. Obvious disadvantages are the lack of involvement of scrutiny Members in a 'safeguarding' role. Such a system allows a risk that a Cabinet could over-employ the urgency procedures to 'get around' the call-in of controversial decisions.
- 3.8 The advantage of a system which is heavily reliant on the agreement of O&S or other non-Cabinet Members is that it provides a more effective safeguard to ensure that all decisions are subject to call-in unless they truly are so urgent they must be implemented immediately. The disadvantages of obtaining agreement from several individuals are the time it takes to obtain the agreement and the difficulties if not all the parties agree. It is more time-consuming to administer and there may be a risk of delaying immediate implementation of urgent decisions.
- 3.9 A system which is somewhere between these two points might seem to provide the best solution, where several Overview and Scrutiny Members are involved in the decision to waive call-in, removing the full weight of this responsibility from the Chairman.
- 3.10 There are no officer preferred options regarding any of these procedures. It is up to Councils to decide on local arrangements which best suit them, within the legal boundaries that exist.

4.0 Conclusion

- 4.1 It should be pointed out that both the Urgent Business procedures and the waiver of call-in are seldom used. So far this year the Urgent Business procedures have not been used for any key decisions and the waiver of call-in has only been used on one occasion.

RELATIONSHIP TO POLICY FRAMEWORK

None.

CONCLUSION OF IMPACT ASSESSMENT

(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)

Human Rights issues are reflected in the principles of decision-making set out in Article 13 of the Council's Constitution. There are grounds to call-in any decision which is not made in accordance with the principles.

LEGAL IMPLICATIONS

Should the Committee wish to recommend changes to any aspect of the Procedure Rules for Urgent Business or call-in, the changes would need to be compliant with the Local Government Act 2000 and subsequent relevant legislation and the Council's Constitution would need to be amended accordingly.

FINANCIAL IMPLICATIONS

There are no significant financial implications as a result of this report.

OTHER RESOURCE IMPLICATIONS**Human Resources:**

None.

Information Services:

None.

Property:

None.

Open Spaces:

None.

SECTION 151 OFFICER'S COMMENTS

The Section 151 Officer has been consulted and has no further comments.

MONITORING OFFICER'S COMMENTS

The Monitoring Officer has been consulted and has no further comments.

BACKGROUND PAPERS

Constitution Part 4, Procedure Rules.

Contact Officer: Debbie Chambers

Telephone: 01524 582057

E-mail: dchambers@lancaster.gov.uk

Ref: