

## BROMSGROVE DISTRICT COUNCIL

# **SCRUTINY BOARD**

10th June 2010

### **CALL IN PROCEDURE REVIEW (Update)**

Relevant Portfolio Holder	Councillor G. N. Denaro – Portfolio Holder for Finance and Resources
Relevant Head of Service	Mrs. Claire Felton, Head of Legal, Equalities and Democratic Services
Non-Key Decision	

#### **1. SUMMARY OF PROPOSALS**

1.1 Leading on from consideration by Members of the Scrutiny Board of the Call-in procedure on 22 April, this report sets out the legal team's comments on the points identified by Members together with details of suggested amendments that would have to be approved by Full Council as part of the next review of the Constitution.

#### **2. RECOMMENDATIONS**

2.1 That the points raised by the Scrutiny Board in relation to changes to the Call-in procedure be referred to the Monitoring Officer for consideration as part of the next review of the Council's Constitution.

#### **3. BACKGROUND**

3.1 The Call-in procedure is set out in section 17 of the Overview and Scrutiny Procedure Rules (Part 8 of the Constitution). Members discussed and reviewed the current wording of section 17 when they considered the report on Call-ins at the Scrutiny Board meeting on 22 April. A number of inconsistencies and observations were identified by Members as minuted at 88/09. Members resolved that these points should be referred to the legal team for further advice.

#### **4. KEY ISSUES**

4.1 The Legal team have now had an opportunity to review the points identified by Members and would comments as follows:-

Issue raised by Members	Comment by Members	Response	Proposed Action
17.1 – Wording “when Members of the Scrutiny Board	This is technically incorrect as the ability to seek a	Members were correct to identify that any five	Officers would propose removal of the

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have evidence”	call-in is not limited to Members of the Scrutiny Board.	members can issue a call-in	words “ of the Scrutiny Board”.
17.1 – Grounds for Call-in; 17.9c – Referral of certain matters to Council;17.10 – Grounds for referral to Council	Members identified a number of issues relating to the ability to call-in decisions generally under 17.1 and the exceptional circumstances defined in 17.10 which would trigger a referral of the call-in back to Council rather than Cabinet.	The aim of section 17.10 was to allow the Scrutiny Board where appropriate the option of referring a decision back to Council rather than Cabinet. This power would only arise where the decision itself should have been taken by Council rather than Cabinet. Hence the need to refer the decision back to Council. Officers agree that this point should also be reflected in the general criteria for a Call-in as set out in 17.1	Amend 17.1 to add an extra ground for triggering a Call-in i.e. that Cabinet did not have the power to make the decision in questions. This will then incorporate 17.10 into 17.1.  On the issue of a decision made by Cabinet outside the policy and budgetary framework, officer would advise that these decisions must be referred to Council who should have taken them in the first place; there is no ability to refer back to Cabinet.
17.7 – “ The Scrutiny Board will determine the Call-in in such	How does this link to the criteria at 17.1	For clarification, this section is more to do with the practicalities of	No action required.

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manner as it considered appropriate”.		holding meetings and the ability to hold extra ones than the points in relation to which any call-in would be considered	
17.9 b – “ require reconsideration of the decision setting out it’s reasons in a report”.	How would there be time for a report to be written if the item was urgent?	The wording needs to allow for two different possibilities. In the case of an urgent matter then Members are correct to point out that there would not be time to write a report. In that instance then the decision which was the subject matter of the call-in would have to go back to Cabinet based on the reasons recorded in the minutes of the Scrutiny meeting. Cabinet would also have available to it the report prepared for the Call-in meeting. There may be occasions when there is more time and the call-in process leads to a more drawn out investigation by the Board. In that instance there would be time and	Amend 17.9 to give clarification of this issue.

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		it would be appropriate for the reasons to be set out in a report from the Board to Cabinet.	
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4.2 As requested officers have produced an updated draft of the Scrutiny Procedure Rules to cover the above changes which are shown as track changes (attached at Appendix 1). Members of the Scrutiny Board need to be aware that changes to the Constitution have to be approved by Full Council; it is not open to the Board to approve these changes itself. The Council's Constitution is reviewed on a regular basis and the Monitoring Officer is next due to draft a report covering updates to the Constitution in July 2010. Members may wish to consider making a recommendation that their comments on the Call-in provision and the officers comments in this report are included by the Monitoring Officer in the next review of the Constitution.

**5. FINANCIAL IMPLICATIONS**

5.1 There are no financial implications arising out of this report.

**6. LEGAL IMPLICATIONS**

6.1 The procedure for call-ins currently must comply with the legislative requirements of the Local Government Act 2000.

**7. POLICY IMPLICATIONS**

7.1 None except that as detailed above Members may wish to ask the Monitoring Officer to consider updating the Constitution.

**8. COUNCIL OBJECTIVES**

8.1 This report does not link directly to Council objectives. However, sound ethical governance is the foundation of the Council's ability to make lawful decisions and perform its functions.

**9. RISK MANAGEMENT INCLUDING HEALTH & SAFETY CONSIDERATIONS**

9.1 None

**10. CUSTOMER IMPLICATIONS**

10.1 The Call-in process is one which can only be activated by elected Members. There are therefore no direct customer implications. The Council's constitution can be viewed by members of the public on line at the Council's website.

**11. EQUALITIES AND DIVERSITY IMPLICATIONS**

11.1 There are no Equalities and Diversity implications arising out of this report.

**12. VALUE FOR MONEY IMPLICATIONS, PROCUREMENT AND ASSET MANAGEMENT**

12.1 None for the purpose of this report.

**13. CLIMATE CHANGE, CARBON IMPLICATIONS AND BIODIVERSITY**

13.1 None for the purpose of this report.

**14. HUMAN RESOURCES IMPLICATIONS**

14.1 None for the purpose of this report.

**15. GOVERNANCE/PERFORMANCE MANAGEMENT IMPLICATIONS**

15.1 As referred to above the procedure for Call-ins must comply with the Local Government Act 2000. To make any changes to the Call-in procedure an amended version of the Overview and Scrutiny Procedure Rules will have to be approved by Full Council.

**16. COMMUNITY SAFETY IMPLICATIONS INCLUDING SECTION 17 OF CRIME AND DISORDER ACT 1998**

16.1 None

**17. HEALTH INEQUALITIES IMPLICATIONS**

17.1 None for the purpose of this report.

**18. LESSONS LEARNT**

18.1 None

**19. COMMUNITY AND STAKEHOLDER ENGAGEMENT**

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19.1 None for the purpose of this report.

**20. OTHERS CONSULTED ON THE REPORT**

Portfolio Holder	Yes
Chief Executive	No
Executive Director (S151 Officer)	No
Executive Director – Leisure, Cultural, Environmental and Community Services	No
Executive Director – Planning & Regeneration, Regulatory and Housing Services	No
Director of Policy, Performance and Partnerships	No
Head of Service	Yes
Head of Resources	No
Head of Legal, Equalities & Democratic Services	Yes
Corporate Procurement Team	No

**21. WARDS AFFECTED**

All wards

**22. APPENDICES**

Appendix 1 – Section 17 Part 8 of the Constitution: Procedure for Call-ins with track changes.

**23. BACKGROUND PAPERS**

23.1 Report of the Head of Legal Services on the Review of the Constitution dated 19th March 2008.

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24. **KEY**

None

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