

## HAMPSHIRE COUNTY COUNCIL

### Report

<b>Committee:</b>	Policy and Resources Select Committee
<b>Date:</b>	25 October 2012
<b>Title:</b>	Referral from County Council of Notice of Motion
<b>Reference:</b>	4385
<b>Report From:</b>	Chief Executive

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#### 1. Purpose of Report

1.1. The purpose of this report is to allow the Policy and Resources Select (Overview and Scrutiny) Committee (“P&R Select Committee”) to consider a Notice of Motion (“Motion”) submitted by Councillor Knight, and seconded by Councillor Beagley, to the County Council at its meeting on 20 September 2012, and referred by the County Council to the P&R Select Committee, so that the P&R Select Committee can make its recommendations thereon to the County Council.

#### 2. Contextual Information

2.1 The Motion submitted to the County Council referred to at Paragraph 1.1 of this report and set out an Annex 1 for ease of reference reads as follows:

That to make provision for Executive Members to be held to account for their decisions and to support the spirit of democracy the Constitution is altered to ensure that all non urgent decisions taken by the Executive are not implemented for seven calendar days which would then allow them to be “Called In”, by the relevant Select Committee.

2.2 The procedure to be followed in respect of Notices of Motion is set out within Standing Order 18 of Part 3, Chapter 1 of the County Council’s Constitution (‘the Constitution’). By virtue of Standing Order 18.4, a Motion after being moved and seconded, is to be debated by the County Council, unless the County Council resolves after moving and seconding of the Motion to refer the Motion to the Executive or a Committee of the County Council. In this case the Motion stands so referred without discussion to the Executive or Committee of the County Council, as the case may be, without discussion.

The Executive or Committee to which the Motion is referred is then required to consider the Motion and report to the next meeting of the County Council, unless circumstances necessitate a report to a later meeting. The Motion submitted by Cllr Knight was referred by the County Council to the P&R Select Committee. As Members will note the Motion submitted by Cllr Knight is suggesting a change to the County Council's Call-in procedures.

- 2.3 Call-in powers relate to the power of an Overview and Scrutiny Committee when reviewing or scrutinising decisions made by the Executive but not implemented to either ;
  - 2.3.1 Recommend that the decision be reconsidered by the Executive Member making it; or
  - 2.3.2 Arrange for its function in respect of review or scrutiny of the decision taken by the Executive Member to be exercised by the County Council.
- 2.4 Call-in powers therefore only apply where a decision has been taken by the Executive but not implemented. There is of course no reason why an Overview and Scrutiny Committee might not review or scrutinise any decision of the Executive, or make reports or recommendations on Executive functions, or of the County Council and its Committees generally.

### **3. Legal and Statutory Guidance**

- 3.1 Legal provisions in respect of Call-in and the operation of overview and scrutiny generally are set out at Section 9F of Part 1A of the Local Government Act 2000 ('the 2000 Act'), as amended by the Localism Act 2011. Subject to the statutory requirements, how Call-in provisions are set down in the County Council's Constitution are a matter of local choice for the County Council to determine.
- 3.2 However in determining provisions in its Constitution in respect of overview and scrutiny arrangements the County Council is required to have regard to statutory guidance issued by the Secretary of State. The (then) Department of the Environment, Transport and the Regions 'DETR' Guidance (New Council Constitutions; Local Government Act 2000 Guidance to English Local Authorities) ('the Statutory Guidance') has been issued in this regard. A number of provisions of the Statutory Guidance are mandatory in so much as they are required to be followed by the County Council.
- 3.3 So far as Call-in goes, the County Council is required to ensure that there is an appropriate balance between effectively holding the Executive to account, being able to question decisions before they are implemented and allowing effective and efficient decision making by the Executive within the policy framework and budget agreed by full Council. Day-to-day management and operational decisions taken by Officers under delegated powers should not be subject to any Call-in procedure.

- 3.4 In addition, the Statutory Guidance states that where the Executive wishes to take an urgent key decision the County Council's Call-in procedure should include provision preventing such urgent decisions being Called-in or in any other way delayed.

#### **4. Constitutional Position**

- 4.1 Provisions in respect of Call-in are set out within the Scrutiny Procedures contained at Part 3, Chapter 3A, Paragraphs 1.13 and 1.14 of the Constitution attached at Annex 2 to this report. As Members will note, a distinction is drawn in the Constitution between an Executive decision in line with the Budget, and Policy Framework, and other Executive decisions. As Members will be aware both the Budget and Policy Framework are functions reserved to the County Council. The Policy Framework includes the following plans and strategies, as set out at Part 1, Chapter 4, Paragraph 4.3 of the Constitution.

4.1.1 Corporate Strategy;

4.1.2 Sustainable Community Strategy;

4.1.3 Plans and Strategies that together comprise the Development Plan - these are the other Plans and Strategies that the County Council has agreed should be adopted as a matter of local choice;

4.1.4 Children and Young People's Plan; and the

4.1.5 Local Transport Plan;

- 4.2 Whilst it is possible to Call-in a decision in line with the Budget and Policy Framework, Call-in does not prevent such decision from being implemented. This is in line with advice contained in the Statutory Guidance.

- 4.3 Call-in Procedures are excluded in the Constitution in the case of urgent key decisions. Again provisions contained within the Constitution are in accordance with the Statutory Guidance.

#### **5. Notice of Motion**

- 5.1 The Motion submitted by Cllr Knight is asking that all non urgent decisions taken by the Executive are not implemented for seven calendar days, which would then allow all decisions (other than urgent decisions) to be Called-in by the relevant Select Committee. The Motion does not distinguish between decisions in line with the Budget and Policy Framework and other Executive decisions. It is therefore considered that should Members of the P&R Select Committee be minded to support the Motion, any amendment to Call-in provisions in respect of non urgent decisions should not prevent the implementation of any Executive decision in line with the Budget and Policy

Framework, as per the current position set out in the Constitution, and as per the Statutory Guidance.

- 5.2 It is also suggested that in considering the Motion, account is taken of Paragraph 4.8 of the Executive Procedure Rules set out at Part 3, Chapter 2 of the Constitution. This paragraph requires that records of Executive decisions taken are sent electronically to all Members of the County Council within five working days of an Executive decision having been made. The timescale for Call-in of decisions currently set out at Paragraph 1.13 of the Scrutiny Procedures is seven calendar days of the date the decision was notified to all Members of the appropriate Select (Overview and Scrutiny) Committee. This provides a clear 'window' for Call-in. It is suggested that for consistency and to avoid any confusion in operation of the County Council's business and governance arrangements this 'window' should remain, that is time for Call-in should continue to run from the date a decision is notified to Members.

## **6. Conclusions**

- 6.1 Members of the P&R Select Committee are asked to consider the Motion submitted to the County Council by Cllr Knight attached at Annex 1 to this report having regard to the information contained within this report, and to make its recommendations thereon to the County Council.

**6.2 CORPORATE OR LEGAL INFORMATION:**

**Links to the Corporate Strategy**

**This proposal does not link to the Corporate Strategy but, nevertheless, requires consideration in accordance with Standing Order 18.4 of the County Council’s Constitution.**

**Other Significant Links**

<b>Links to previous Member decisions:</b>		
<u>Title</u>	<u>Reference</u>	<u>Date</u>
Notice of Motion		20 September 2012
Item 14 County Council Meeting		
<b>Direct links to specific legislation or Government Directives</b>		
<u>Title</u>	<u>Date</u>	

**Section 100 D - Local Government Act 1972 - background documents**

**The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)**

<u>Document</u>	<u>Location</u>
None	

**IMPACT ASSESSMENTS:**

**1. Equalities Impact Assessment:**

1.1. Equality objectives are not considered to be adversely affected by the proposals in this report.

**2 Impact on Crime and Disorder:**

2.3 No significant impact.

**3 Climate Change:**

3.1 How does what is being proposed impact on our carbon footprint / energy consumption? No specific impact.

3.2 How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts? No specific impact.

COUNTY COUNCIL – 20 SEPTEMBER 2012

NOTICE OF MOTION

AGENDA ITEM 14

“ That to make provision for Executive Members to be held to account for their decisions and to support the spirit of democracy the Constitution is altered to ensure that all non urgent decisions taken by the Executive are not implemented for seven calendar days which would then allow them to be ‘Called In’ by the relevant Select Committee.”

**Proposed by: Councillor Tim Knight**

**Seconded by: Councillor Ian Beagley**

## STANDING ORDER 1.13 and 1.14

**1.13 Call-in**

- 1.13.1 Where a decision of the Executive has been made but not yet been implemented, a quorum of members of the relevant Select (Overview and Scrutiny) Committee(s) may require by way of notice in writing to the Chief Executive that a meeting of the Committee is held to consider whether or not to exercise the Committee's powers under Section 9 F (4) of Part 1A of the 2000 Act (referred to in this Constitution as 'call-in'). These powers are to arrange that the decision be reconsidered by the Executive, or arrange for its powers in respect of review or scrutiny of the decision to be exercised by the County Council. Where a decision materially affects more than one Select Committee (i.e. it is cross-cutting) a call-in must be made by at least two of the Select (Overview and Scrutiny) Committees;
- 1.13.2 A decision can only be called-in within 7 calendar days of the date the decision was notified to all members of the appropriate Select (Overview and Scrutiny) Committee(s).
- 1.13.3 When a valid call-in request is made, the Select (Overview and Scrutiny) Committee(s) must meet to consider the request, make a decision and communicate to the Executive any recommendations it wishes to make within 14 calendar days of the request being made. When it meets the Committee(s) must consider whether or not to recommend;
- i) that the decision be reconsidered by the relevant decision making body who made the decision; or
  - ii) that the County Council consider whether the relevant decision making body should reconsider the decision (this recommendation shall not be made when the decision is in line with the budget, the Policy Framework or the Forward Plan)
- 1.13.4 Any decision of the Executive which is not in line with the Budget, the Policy Framework, or the Forward Plan framework, if called-in, shall not be implemented until the request has been disposed of by;
- i) The withdrawal of the request
  - ii) The rejection of the request by the Select (Overview and Scrutiny) Committee(s) or by the County Council
  - iii) The relevant decision-making body rejecting the recommendation for reconsideration or;

iv) The relevant decision-making body reconsidering and confirming the original decision.

1.13.5 Call-in shall not prevent the decision from being acted on where the decision is in line with the Policy Framework and other policies approved by the County Council but when the views of the Select Committee differ from, or are critical of, the Executive decision, the facts shall be reported to the next County Council meeting and be debated without changing the previous decision although the County Council may request the Cabinet or relevant Executive Member(s) to review the decision in question.

#### **1.14 Call-in and urgency**

1.14.1 The call-in procedure set out above shall not apply where the decision being taken by the Executive is an urgent Key Decision (see Chapter 2, Paragraph 3.5 of this Part).

1.14.2 The record of the urgent Key Decision, and the notice by which it is made public, shall state whether (in the opinion of the decision-making person or body) and confirmed by the Chairman of the relevant Select (Overview and Scrutiny) Committee the decision is an urgent one. If it is considered urgent, the decision will not be subject to call-in. The Chief Executive, or his or her nominee, will have to advise on the issue of urgency in all cases.

1.14.3 Decisions taken as a matter of urgency must be reported by the Chief Executive to the members of the relevant Select (Overview and Scrutiny) Committee, together with the reasons for the urgency. If considered appropriate, the Select (Overview and Scrutiny) Committee may refer the matter to the next appropriate Meeting of the County Council.

1.14.4 The operation of the provisions relating to call-in and urgency shall be monitored by the Policy and Resources Select (Overview and Scrutiny) Committee and a report submitted to the County Council with proposals for review, if necessary.