

Part 3

Responsibility for Functions

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Explanatory Introduction

[This note does not itself form part of the Constitution]

1. *This note provides a brief introduction to Part 3 of the Constitution, which deals with responsibility for functions: that is, what persons in the organisation have what powers of decision making. Part 3 sets out terms of reference/delegated powers for all bodies and persons except full Council (whose powers are contained in Article 4 of the Constitution) and Overview and Scrutiny Committees (whose powers are set out in Article 6)).*
2. *Prior to the Local Government Act 2000 (as amended), the legal framework in relation to delegation of powers was relatively simple. Legally, all powers were given to local authorities which had the power to delegate the exercise of these powers to committees, sub-committees or officers. Within this simple structure, was scope for sub-delegation (for example by a committee to an Officer), and also scope for powers to be delegated to other local authorities. All of this framework is based on Section 101 of the Local Government Act 1972.*
3. *The Local Government Act 2000 (as amended) allows for the operation of an executive structure, which the Council has chosen to operate. Now, the decision-making framework is not so simple. Instead of all functions being those of the Council, there is a fundamental division of functions between those which are the responsibility of the Executive, and those which are not. The functions which are not the responsibility of the Executive remain subject to the decision-making framework set out in the Local Government Act 1972, as explained in the previous paragraph. The functions which are the responsibility of the Executive will be covered in "Executive Arrangements", and which the Leader can either exercise personally or allocate to the Executive itself, committees of the Executive, individual Executive members, or Officers. Again, there is a structure of sub-delegation whereby, for example, an individual Executive member who is given powers by the Leader may (unless the Leader otherwise directs) delegate to an Officer.*
4. *The attached flowcharts set out the above framework.*
5. *Local authorities operating executive arrangements must divide all of their functions between those which are the responsibility of the Executive and those which are not. In large part, this is done by legislation. The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended) lists powers of local authorities which are not the responsibility of the Executive. A separate list in the same Regulations contains local authority powers which councils may decide either to give to the Executive or not: these are referred to as "local choice functions". It is open to local authorities to choose locally whether to allocate them to the Executive or not. The Government has provided detailed guidance to local authorities on the allocation of these powers. Paragraph 4 of Part 3 deals with local choice functions.*
6. *Apart from the specific matters referred to above, together with determination of the budget and Policy Framework, all local authority functions are the responsibility of the Executive.*

7. *The legislation in relation to delegation of powers is very complex, with many detailed and prescriptive rules. Part 3 of the Constitution observes these rules, whilst seeking to create a framework for decision making which is as manageable as possible. One example of this is that Area Committees may have delegated to them by the Council various functions which are not the responsibility of the Executive; and may have delegated to them through the executive arrangements functions which are the responsibility of the Executive. Area Committee agendas must distinguish between items which are the responsibility of the Executive and those which are not. Rather than have two separate lists of powers delegated to Area Committees, this is set out as a single list, with powers delegated by the Council marked with an asterisk.*

8. *The main text of Part 3 is contained in paragraphs 1-6. Schedule 1 then deals with the various committees established to perform non-executive functions. Schedule 3 uses the same format to set out the membership of Overview and Scrutiny Committees. The terms of reference of these committees are not contained in Part 3, because they are fully set out in Article 6. Schedule 2 to Part 3 deals with the Executive, and in particular with the delegation of Executive functions. Schedule 4 contains the Officers' Delegation Scheme, and Schedule 5 deals with appointments to outside bodies.*

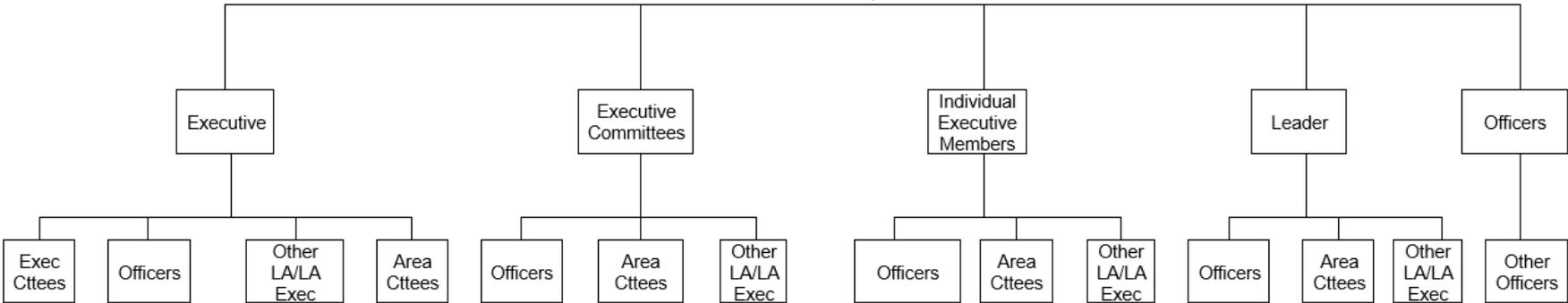
Executive Functions

Responsibility of Executive under Local Government Act 2000

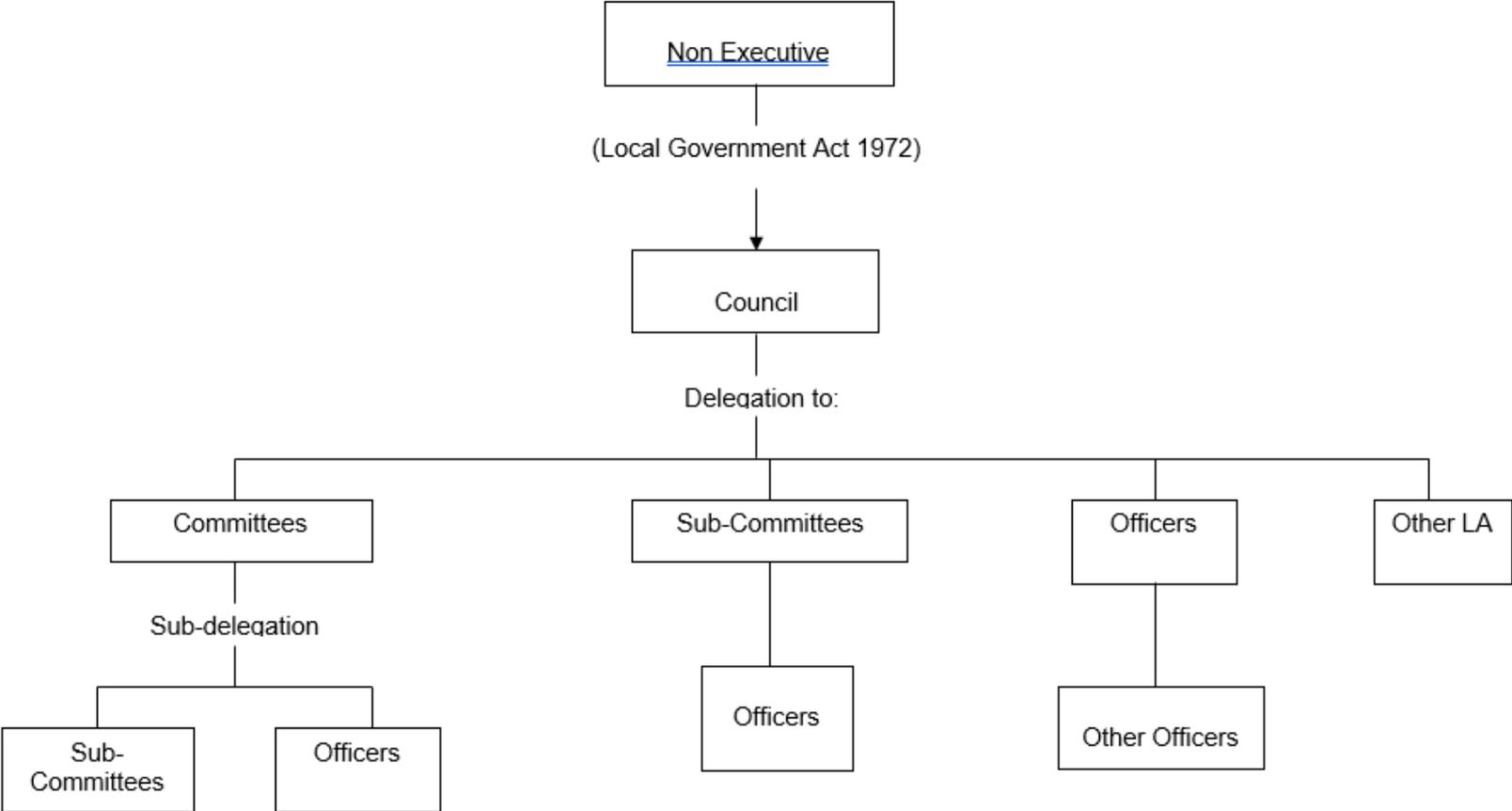
May be discharged by

Leader

or they may arrange for functions to be discharged by:



Non-Executive Functions



Responsibility for Functions

The North Yorkshire (Structural Changes) Order 2022 came into force on 18 March 2022 and facilitated the transition from the existing two-tier system of county council and district/borough councils in North Yorkshire to a single unitary council from 1 April 2023.

1. GENERAL

1.1 All of the Council's functions are the responsibility of either:

- ♦ Full Council; or
- ♦ The Executive

1.2 Functions which are the responsibility of full Council may be delegated to a committee, (including an Area Committee), a sub-committee, an Officer or another local authority, or to a member of the Council (to the extent that the function is exercisable in relation to the electoral division for which the member is elected), and in accordance with arrangements made by the Council.

1.3 Functions which are the responsibility of the Executive may be discharged by the Leader or allocated by the Leader to the Executive, a committee of the Executive, an individual member of the Executive, or an Officer. Executive functions may also be delegated to an Area Committee, to a member of the authority under arrangements made by the Leader (to the extent that the function is exercisable in relation to the electoral division for which the member is elected), or another local authority or its executive, or joint arrangements entered into, in accordance with the relevant statutory requirements.

1.4 The law provides a framework under which:

- ♦ some functions must be the responsibility of the Executive
- ♦ some functions must not be the responsibility of the Executive
- ♦ some functions may or may not be the responsibility of the Executive

The latter are known as "local choice functions", and it is a requirement that this Constitution sets out in detail who is responsible for them.

1.5 Any reference in this part of the Constitution to any function, and any delegation of power includes all action associated with that function or power and all related enforcement action.

1.6 This part of the Constitution defines the respective responsibilities of the Council and the Executive and explains the arrangements for delegation of these responsibilities.

2. FUNCTIONS OF THE FULL COUNCIL

2.1 The Council is responsible for determination of

- ♦ the budget, as defined in Article 4.01(b)
- ♦ the Policy Framework, as defined in Article 4.01(a)
- ♦ the constitutional and related functions set out in Article 4.02.

2.2 Under Article 6 of this Constitution, the Council's Overview and Scrutiny Committees have important roles in relation to review and scrutiny of decisions, call in of executive decisions, and scrutiny reviews. These roles are set out in Articles 6.02 and 6.03 and include assisting the Council and the Executive in the development of the budget and of the Policy Framework.

2.3 Functions which involve:

- ♦ determining applications for licences, approvals, consents, permissions or registration
- ♦ direct regulation of persons or activities
- ♦ enforcement action related to the above
- ♦ approving the Council's statement of accounts, income and expenditure and balance sheet

may not, by law, be the responsibility of the Executive. The Council delegates these functions to the relevant Committees as set out in Schedule 1. Responsibility for local choice functions is set out in section 4 below, under which some of these functions are the responsibility of full Council or a committee appointed by it.

2.4 Issues related to ethics, conduct, elections, community governance, making recommendations on Honorary Aldermen/women and residual powers in relation to consultation on personal Bills are matters for the Standards and Governance Committee. The terms of reference of the Standards and Governance Committee are set out in Part 3 Schedule 1.

2.5 In accordance with the Human Rights Act 1998, the Council has established an Appeals Committee (Home to School Transport) and an Employment Appeals Committee, with the functions set out in Schedule 1 in order to ensure that no one who was involved in making a decision is involved in the determination of an appeal against that decision.

2.6 The Council is administering authority for the North Yorkshire Pension Fund. The Council delegates these functions to the Pension Fund Committee, as set out in Schedule 1. The full Council will appoint the Chair and Vice-Chair of the Pension Fund Committee.

2.7 Appointment of Chief Officers is dealt with by the Chief Officers Appointments and Disciplinary Committee, as set out in Schedule 1 and appointment of other staff is dealt with as set out in the Staff Employment Procedure Rules.

2.8 Certain powers of the Council in relation to highways, common land and other environmental issues are delegated to Area Committees and the Area Planning Committees as set out in Schedule 1 (the powers in question are those marked *).

2.9 Functions of the Council relating to police accountability under the Police Reform and Social Responsibility Act 2011 including the establishment and maintenance of, and membership of, the police, fire and crime panel for the North Yorkshire police force area (as a joint committee of the Council and the City of York Council), as set out in Schedule 1.

2.10 Certain powers of the Council in relation to licensing and registration are delegated to the Statutory Licensing Committee and Sub-Committees and General Licensing and Registration Committee and Sub-Committees as set out in Schedule 1.

3. FUNCTIONS OF THE EXECUTIVE

3.1 All functions of North Yorkshire Council not referred to in paragraph 2 above or delegated to Officers by the Council under 5.3 below are the responsibility of the Executive. Such functions are not to be discharged (or delegated) by full Council.

3.2 Without limiting the scope of 3.1 above, the Executive (directly or by delegating its powers as described below) has the following functions and responsibilities:

- (a) proposing the budget to full Council, including preparation of estimates and the amount of the proposed precept, and any reconsideration or revision of those estimates and amounts
- (b) proposing to full Council new policies (or amendments to existing policies) which fall within the Policy Framework as defined in Article 4.01(a)
- (c) adopting on behalf of the Council any plans or strategies which do not form part of the Policy Framework
- (d) implementing and delivering the agreed budget and Policy Framework
- (e) taking all decisions other than those referred to in paragraph 2 above
- (f) responsibility for local choice functions to the extent indicated in the table below
- (g) discharging the Council's responsibilities as an employer for health and safety; and
- (h) making appointments to outside bodies in connection with functions which are the responsibility of the Executive

3.3 All plans and strategies falling within the Policy Framework shall be considered by the Executive, who shall make recommendations thereon to full Council. However, it is for full Council to:

- ♦ instruct the Executive to reconsider any draft plan or strategy
- ♦ amend any draft plan or strategy submitted by the Executive
- ♦ approve for public consultation proposals for alterations to, or the replacement of, the Development Plan
- ♦ approve any plan or strategy for submission to government (where required)
- ♦ adopt any plan or strategy with or without modification.

Apart from the above, all functions in relation to developing plans and strategies falling within the Policy Framework shall be performed by the Executive.

3.4 The function of amending, modifying, varying or revoking any plan or strategy falling within the Policy Framework shall be performed by the Executive:

- ♦ if it is required for giving effect to governmental requirement; or

- ♦ if it was authorised by full Council when approving or adopting the plan or strategy

but otherwise that function shall be performed by the Council.

4. TABLE: RESPONSIBILITY FOR LOCAL CHOICE FUNCTIONS

	Function	Decision making body	Extent of responsibility
1	Functions under the North Yorkshire County Council Act 1991.	General Licensing and Registration Committee The Executive	Functions which involve either determining an application for a licence, approval, consent, permission or registration; direct regulation of a person; or any related enforcement actions. All other functions.
2	Functions under the Harrogate Stray Act 1985	The Executive	All functions
3	Functions under the Harrogate Borough Council Act 1986	The Executive	All functions
4	Whitby Piers and Harbour Act 1827	The Executive	All functions
5	Whitby Improvement Act 1841	The Executive	All functions
6	Local Government Board's Provisional Orders Confirmation Act 1874 (No.3)	The Executive	All functions
7	Whitby Port and Harbour Act 1879	The Executive	All functions
8	Pier and Harbour Orders Confirmation Act 1881	The Executive	All functions
9	Pier and Harbour Orders Confirmation (No.2) Act 1883	The Executive	All functions
10	Whitby Urban District Council Act 1905	The Executive	All functions
11	Local Government Board's Provisional Orders Confirmation (No.12) Act 1914	The Executive	All functions
12	Scarborough Harbour Act 1843	The Executive	All functions
13	Scarborough Harbour Act 1846	The Executive	All functions

	Function	Decision making body	Extent of responsibility
14	Scarborough Improvement Act 1889	The Executive	All functions
15	Scarborough Corporation Act 1900	The Executive	All functions
16	Local Government Board's Provisional Orders Confirmation (No 8) Act 1905	The Executive	All functions
17	Pier and Harbour Orders Confirmation Act 1918	The Executive	All functions
18	Scarborough Corporation Act 1925	The Executive	All functions
19	Scarborough Corporation Act 1931	The Executive	All functions
20	Pier and Harbour Order (Scarborough) Confirmation Act 1935	The Executive	All functions
21	Scarborough Harbour Order 1952	The Executive	All functions
22	Scarborough Harbour Revision Order 1969	The Executive	All functions
23	Scarborough Borough Council Act 1985	The Executive	All functions
24	Filey Improvement Act 1904	The Executive	All functions
25	Filey Urban District Council Act 1920	The Executive	All functions
26	The determination of an appeal against any decision made by or on behalf of the Council.	Appeals Committee (Home to School Transport) Employment Appeals Committee The Executive	To the extent set out in the terms of reference of the Appeals Committee (Home to School Transport). To the extent set out in the terms of reference of the Employment Appeals Committee. All other appeals.
27	The making of arrangements for appeals against the exclusion of pupils from schools.	Appeals Committee (Home to School Transport)	NB that the appeals themselves are heard by independent panel members appointed by the Appeals Committee (Home to School Transport).

	Function	Decision making body	Extent of responsibility
28	The making of arrangements in relation to school admission appeals.	Appeals Committee (Home to School Transport)	NB that the appeals themselves are heard by independent panel members appointed by the Appeals Committee (Home to School Transport).
29	The making of arrangements in relation to appeals by Governing Bodies.	Appeals Committee (Home to School Transport) Employment Appeals Committee	To the extent set out in the terms of reference of the Employment Appeals Committee.
30	Any function relating to contaminated land.	Executive	All functions
31	The discharge of any function relating to the control of pollution or the management of air quality.	General Licensing and Registration Committee The Executive	Functions which involve determining an application for a licence, approval, consent, permission or registration, or direct regulation of a person, together with any related enforcement action. All other functions.
32	The service of an abatement notice in respect of a statutory nuisance.	Executive	All functions
33	The passing of a resolution that Schedule 2 to the Noise and Statutory Nuisance Act 1993 should apply in the authority's area	Executive	All functions
34	The inspection of the authority's area to detect any statutory nuisance.	Executive	All functions

	Function	Decision making body	Extent of responsibility
35	The investigation of any complaint as to the existence of a statutory nuisance.	Executive	All functions
36	The obtaining of information under Section 330 of the Town and Country Planning Act 1990 as to interests in land.	The Executive General Licensing and Registration Committee	To the extent that it is necessary to exercise these powers in respect of actions which are preliminary to the exercise of powers to make compulsory purchase orders. Exercise of the powers for all other purposes.
37	The obtaining of particulars of persons interested in land under Section 16 of the Local Government (Miscellaneous Provisions) Act 1976.	The Executive General Licensing and Registration Committee	} } Division of responsibility as for 36 above.
38	The making of agreements under Section 278 of the Highways Act 1980 for the execution of highway works.	The Executive	
39	The appointment (and the revocation of any such appointment) of any individual: (a) to any office other than employment by the authority; (b) to any body (or committee or sub-committee of such a body) other than the authority itself or a joint committee of two or more authorities.	The Executive Full Council	In connection with functions which are the responsibility of the Executive. All other appointments.
40	Making agreements with other local authorities for the placing of staff at the disposal of those other authorities.	The Executive Full Council	In connection with functions which are the responsibility of the Executive. In all other cases.

	Function	Decision making body	Extent of responsibility
41	Any function of a local authority in its capacity as a statutory Harbour Authority for Scarborough Harbour, the Port and Harbour of Whitby and Filey Coble Landing (to the extent that the function is not covered by a local act).	The Harbour Master The Executive	To the extent set out in the Officers' Delegation Scheme. All other functions.

5. DELEGATION OF FUNCTIONS BY THE COUNCIL

- 5.1 The Council delegates to the Strategic Planning Committee, the Area Planning Committees, the Statutory Licensing Committee and Sub-Committees, the General Licensing and Registration Committee and Sub-Committees, the Standards and Governance Committee, the Audit Committee, the Appeals Committee (Home to School Transport), the Employment Appeals Committee the Chief Officers Appointments and Disciplinary Committee and the Pension Fund Committee the powers set out as the delegated powers of those committees in Part 3 of this Constitution.
- 5.2 The Council delegates to the Area Committees named in Article 10 the non-executive functions which are contained in the delegated powers of Area Committees in Part 3 of this Constitution and marked *. (This marking is to distinguish executive and non-executive functions in the delegated powers of Area Committees).
- 5.3 The Council delegates to Officers the non-executive functions which are contained in the Officers Delegation Scheme and marked *. (This marking is to distinguish executive and non-executive functions in the Officers' Delegation Scheme).
- 5.4 The Council delegates its powers to create, stop up and divert footpaths, bridleways and byways open to all traffic, and those other powers specified in agreements between the Council and the Authorities concerned, to the North York Moors National Park Authority and the Yorkshire Dales National Park Authority within the respective geographical boundaries of those Authorities.
- 5.5 Functions of the Council relating to police accountability under the Police Reform and Social Responsibility Act 2011, including the functions of the police, fire and crime panel for the North Yorkshire police force area, are delegated to the North Yorkshire Police, Fire and Crime Panel (as a joint committee of the Council and the City of York Council), as set out in Schedule 1.
- 5.6 The delegation of these powers operates under Section 101 of the Local Government Act 1972 and all other powers enabling the Council.
- 5.7 Functions of health and wellbeing boards under the Health and Social Care Act 2012 and related regulations are undertaken by the Health and Wellbeing Board as set out in Schedule 1.
- 5.8 The non-executive powers delegated to Officers are subject to the general provisions in the Officers' Delegation Scheme.

5.9 Insofar as the making of appointments to outside bodies is a function of full Council, the Council agrees that those appointments should be made as set out in Schedule 5.

6. DELEGATION OF FUNCTIONS BY THE EXECUTIVE

6.1 The delegation of functions by the Executive is set out in Schedule 2 to this Part of the Constitution.