

GUILDFORD BOROUGH COUNCIL - RESPONSIBILITY FOR FUNCTIONS

The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended) require that certain parts of the structure of the Council must be responsible for certain decisions. The Regulations specify:

- (a) functions which are not to be the responsibility of the Council's Executive;
- (b) functions which may but need not be the responsibility of the Executive ("local choice functions"); and
- (c) functions which are to some extent the responsibility of the Executive.

All other functions not so specified are to be the responsibility of the Executive.

Responsibility for Council (Non Executive) Functions

These functions, which are listed in Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended), may not be the responsibility of the Council's Executive. Appendix I identifies these functions and indicates where responsibility lies within the Council. In accordance with legislation, certain decisions on these matters must be taken by the full Council, whilst others may be taken by the full Council, a committee appointed by the Council, officers, or jointly with other bodies under separate joint arrangements, provided that they are within the budget and policy framework approved by the full Council.

Responsibility for Local Choice Functions

Appendix II to this part of the Constitution sets out which "local choice functions" are the responsibility of the Council and/or its committees and which are the responsibility of the Executive.

Responsibility for Executive Functions

"Executive functions" are all the statutory functions of the Borough Council except those listed or referred to in Appendices I and II. In accordance with the Local Government Act 2000, decisions on these matters may be taken by the Leader, the Executive collectively, an individual lead councillor, committee of the Executive, individual local ward councillors, officers or jointly with other bodies under separate joint arrangements, provided that they are within the budget and policy framework approved by the full Council.

Joint Responsibility for certain Council (Non-Executive) and Executive Functions

The Council's Taxi and Private Hire enforcement powers have been delegated jointly to the ten other licensing authorities in Surrey, without prejudice to the Council's ability to exercise those powers itself within the Borough.

The Council has also entered into collaborative working arrangements with Waverley Borough Council resulting in the creation of a single joint management board with Waverley Borough Council, comprised of statutory officers (Head of Paid Service; Chief Finance Officer; Monitoring Officer), joint strategic directors and joint executive heads of service.

Responsibilities Delegated to Officers

The extent to which the functions described above have been delegated to officers is shown in the Council's scheme of delegation in this Part of the Constitution.

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The Council's companies

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Where the Council uses the enabling legislation to create its own companies, either as the sole or as a joint owner, the broad terms of the objects of each Council company will be recorded in its Articles of Association, while its Shareholder Agreement will set out more detailed operational arrangements and the matters which are reserved for determination by the Council as the shareholder (known as 'reserved matters'). In general, these reserved matters will be key structural and high-level strategic matters rather than the "day-to-day" business and operations of the company, which shall be the responsibility of the Company Directors.

Each Council-owned Company is an independent legal entity which is entirely separate from the Council. The Company will have its own identity and responsibilities. A Council-owned company is required to comply with Company law, its Articles of Association and its Shareholder Agreement. It is not governed by the Council's Constitution.

The responsibility to represent the Council as shareholder of each Company is an executive function. The Leader of the Council may therefore determine the nature of such representation, currently operated through the Executive Shareholder and Trustee Committee.

The Executive Shareholder and Trustee Committee will meet with the Company's Directors and representatives at least twice annually to monitor the Company's **finances, performance and progress against business plan and** decide any matters falling within its reserved matters. **It will** protect the Council's interests and investments in the Company and determine the future direction of the Company. The Council's Chief Finance Officer and Monitoring Officer, or their Deputies, will act as advisors to the Executive Shareholder and Trustee Committee. The Chief Executive, or a Strategic Director nominated by the Chief Executive, will advise the Executive Shareholder and Trustee Committee on matters of Policy.

The activities of the Executive Shareholder and Trustee Committee will be subject to consideration by the Council's Overview & Scrutiny Resources Committee. The Executive Shareholder and Trustee Committee and Overview & Scrutiny Resources Committee may meet separately or simultaneously.

The appointment of **Directors** to the Board of a Company is the responsibility of the shareholder **and appointments will form part of the reserved matters**. The Directors hold a fiduciary duty to their Company, but at the same time are also accountable to the shareholder, and as such owe duties to both the Council and the Company.

The Council and its Companies may choose to contract with each other as separate entities. For example, the Council may appoint a Company as its supplier of certain services, while a Company may appoint the Council to supply its administrative services, including professional legal and financial services. Advice should be taken on a case by case basis as to the need to comply with procurement legislation and subsidy control issues, but in all cases the Council will need to ensure it meets its duties as a best value authority. Where contracting takes place, the Council will have a formal agreement in place with the Company setting out the terms of the agreed service levels and a procedure for dispute resolution.

As the Council and its Companies are separate legal entities, care must be taken to ensure that conflicts of interest are avoided. When Council officers are asked to provide advice in a situation where the interests of the Council and the Company are not entirely aligned, individual Officers

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should be assigned to advise or represent either the Council (as shareholder) or the Company, but should not act for both. The Joint Chief Executive or Joint Strategic Directors can authorise officers to act for one or other party, where a conflict of interest may arise.

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1. APPENDIX I: RESPONSIBILITY FOR COUNCIL (NON-EXECUTIVE) FUNCTIONS

“Council functions” are the statutory functions of the Borough Council which may not be exercised by the Executive.

RESPONSIBILITY FOR COUNCIL (NON-EXECUTIVE) FUNCTIONS			
Council/Committee	Membership	Functions	Delegation of Functions
Council	48 councillors	The Council is responsible for the functions (in so far as they are a Borough Council responsibility) set out in Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended), which have not been delegated to any other committee as described above.	Authority to undertake some of these functions has been delegated to officers in accordance with the Council's scheme of delegation set out in this Part of the Constitution.
Planning Committee	15 councillors appointed by the Council	All functions relating to town and country planning and development control in so far as they are the responsibility of the Borough Council as specified in Section A of Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended). All functions relating to: (a) the stopping up or diversion of footpaths, bridleways or restricted byways affected by development; (b) the extinguishment of public rights of way over land held for planning purposes; and (c) trees and hedgerows as specified in Section I of Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended).	Authority to undertake some of these functions has been delegated to officers in accordance with the Council's scheme of delegation set out in this Part of the Constitution.

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RESPONSIBILITY FOR COUNCIL (NON-EXECUTIVE) FUNCTIONS			
Council/Committee	Membership	Functions	Delegation of Functions
Licensing Committee	15 councillors appointed by the Council	<p>Except as otherwise provided in the Licensing Act 2003 and Gambling Act 2005, all functions of the licensing authority prescribed by those Acts.</p> <p>All other functions relating to licensing and registration in so far as they are the responsibility of the Borough Council as specified in Section B of Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended).</p> <p>All functions relating to health and safety at work in so far as they are the responsibility of the Borough Council as specified in Section C of Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended).</p>	<p>Authority to undertake some of these functions has been delegated to the Licensing Regulatory and Licensing Sub-Committees and officers in accordance with the Council's scheme of delegation set out in this Part of the Constitution.</p>
Corporate Governance and Standards Committee	7 councillors appointed by the Council, and up to 3 co-opted non voting independent members and up to 3 co-opted non voting parish members	<p>In accordance with the Committee's terms of reference, functions relating to:</p> <ul style="list-style-type: none"> (a) the Council's audit and accounts responsibilities and corporate governance activities; and (b) functions relating to ethical standards and the conduct of councillors. 	<p>Authority to undertake some of these functions has been delegated to officers in accordance with the Council's scheme of delegation set out in this Part of the Constitution.</p> <p>Authority to undertake some functions relating to the conduct of councillors has been delegated to the Monitoring Officer and to the Assessment Sub-Committee and Hearings Sub-Committee.</p>

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RESPONSIBILITY FOR COUNCIL (NON-EXECUTIVE) FUNCTIONS			
Council/Committee	Membership	Functions	Delegation of Functions
Joint Senior Staff Committee	Leader of the Council plus 2 councillors appointed by the Council; and the Leader of Waverley Borough Council plus 2 councillors appointed by that Council	Adopting and exercising such of the functions of Guildford Borough Council and Waverley Borough Council ("the Councils") as can be delegated by those Councils in respect of the appointment and disciplinary action relating to the Councils' Joint Chief Executive, Joint Chief Officers and Joint Deputy Chief Officers as provided for by the Local Authorities (Standing Orders) (England) Regulations 2001 (as amended) or any successor regulations.	None
Joint Governance Committee	Leader of the Council plus 5 councillors appointed by the Council; and the Leader of Waverley Borough Council plus 5 councillors appointed by that Council	Adopting and exercising such of the functions of the councils as may be delegated by those councils in respect of the governance arrangements for inter-authority working between Guildford Borough Council and Waverley Borough Council.	None

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2. APPENDIX II: RESPONSIBILITY FOR LOCAL CHOICE FUNCTIONS

“Local choice functions” are those statutory functions of the Borough Council which can be exercised by either the Council (or a committee or officer of the Council) or by the Leader/Executive.

RESPONSIBILITY FOR LOCAL CHOICE FUNCTIONS		
Function	Decision-Making Body	Delegation of Functions
Any function under a local act (other than that specified in Regulation 2 of the Local Authorities (Functions and Responsibilities) (England) Regulations (as amended) or Schedule 1 thereto.	Leader/Executive	Authority to undertake some of these functions has been delegated to officers in accordance with the Council's scheme of delegation set out in this Part of the Constitution.
The determination of any appeal against any decision made by or on behalf of the Council (other than staffing or licensing matters).	Leader/Executive	
The appointment of review boards under regulations under Section 34(4) (determination of claims and reviews) of the Social Security Act 1998.	Leader/Executive	
Any function relating to contaminated land.	Leader/Executive	
The discharge of any function relating to the control of pollution or the management of air quality.	Leader/Executive	
The service of an abatement notice in respect of a statutory nuisance.	Leader/Executive	
The passing of a resolution that Schedule 2 to the Noise and Statutory Nuisance Act 1993 should apply in the Borough.	Leader/Executive	
The inspection of the Borough to detect any statutory nuisance.	Leader/Executive	
The investigation of any complaint as to the existence of a statutory nuisance.	Leader/Executive	
The obtaining of information under Section 330 of the Town and Country Planning Act 1990 as to interests in land.	Leader/Executive	
The obtaining of particulars of persons interested in land under Section 16 of the Local Government (Miscellaneous Provisions) Act 1976.	Leader/Executive	

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RESPONSIBILITY FOR LOCAL CHOICE FUNCTIONS		
Function	Decision-Making Body	Delegation of Functions
<p>The making of agreements for the execution of highways works.</p> <p>The appointment of any individual:</p> <p>(a) to any office other than an office in which he is employed by the authority;</p> <p>(b) to any body other than:</p> <p style="padding-left: 20px;">(ii) the authority;</p> <p style="padding-left: 20px;">(iii) a joint committee of two or more authorities; or</p> <p>(c) to any committee or sub-committee of such a body,</p> <p>and the revocation of any such appointment.</p> <p>The making of agreements with other local authorities for the placing of staff at the disposal of those other authorities</p>	<p>Leader/Executive</p> <p>Council</p> <p>Leader/Executive</p>	<p>Authority to undertake some of these functions has been delegated to officers in accordance with the Council's scheme of delegation set out in this Part of the Constitution.</p>