

3. Council responsibilities and executive responsibilities

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3.1 Council responsibilities and executive responsibilities

The law divides a Council's work into three categories:

- Council responsibilities – these must be the responsibility of Council.
- Executive responsibilities – these must be the responsibility of the Leader.
- Local choice responsibilities – it is up to individual Councils whether these are the responsibility of Council or the Leader.

Council responsibilities are listed in Part 5. Any responsibilities not listed in Part 5, including all local choice responsibilities, will be the Leader's responsibilities.

3.2 Summary of Council responsibilities and executive responsibilities

Council responsibilities	Executive responsibilities
the budget and policy framework regulatory work, for example planning and licensing elections and electoral registration collective terms and conditions other than pay all of the other matters in 5.8 to 5.15	everything else

3.3 Delegation of responsibilities

Council and the Leader delegate some of their responsibilities to committees, single members and officers. Details of this are in Part 4 and Part 5. Council and the Leader cannot delegate to each other.

3.4 How delegation works

(a) Delegation by Council and the Leader

Council and the Leader can at any time take back responsibilities they have delegated or decide to delegate them on certain conditions.

Council and the Leader can also decide to delegate further: responsibilities that the leader has not already delegated can be delegated to a committee of the Cabinet or a single member or officer; responsibilities that Council has not already delegated can be delegated to a committee of Council or to officers.

(b) Officers' use of powers delegated to them by Council and the Leader

Officers do not have to use their delegated powers: they can ask the body that delegated to them to decide (except the Head of Planning Services will ask the area planning committee to decide on planning functions delegated from Council).

Officers who have had something delegated to them (and those officers who manage them) can authorise officers they line manage or other officers with the relevant skills and responsibilities to do it on their behalf (unless it was delegated on condition that they do it themselves) but will remain responsible and accountable for the exercise of the delegated function.

3.5 Interpreting the rules on delegation

When a responsibility is delegated in the Constitution, so is the authority to do anything necessary to carry it out (unless it was forbidden when the responsibility was delegated).

3.6 Responsibilities are carried out on behalf of the Council

Council responsibilities and executive responsibilities are carried out on behalf of the Council and in the Council's name.

3.7 The Council's companies

(a) Company objects

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. 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 will be the responsibility of the company directors.

(b) Governance framework

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, so cannot be treated as an internal department of the Council.

A Council-owned company is required to comply with Company law, its Articles of Association and its Shareholder's Agreement. It is not governed by the Council's Constitution.

(c) Shareholding

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 a Shareholder and Joint Venture Group comprising all members of Cabinet.

The Shareholder and Joint Venture Group will meet the company's directors and representatives on a quarterly basis to monitor the company's progress, decide any matters falling within its reserved matters, 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 will act as advisors to the Shareholder and Joint Venture Group. The Chief Executive or an Executive Director nominated by the Chief Executive will advise the Shareholder and Joint Venture Group on matters of policy.

The activities of the Shareholder and Joint Venture Group will be subject to consideration by the Council's Scrutiny Committee. The individual companies will not be directly accountable to the Council's Scrutiny Committee.

(d) Company Board of Directors

The appointment of directors to the Board of a Company is the responsibility of the shareholder(s). The directors hold a fiduciary duty to their company, but at the same time are also accountable to the shareholder(s), and as such owe duties to both the Council and the company.

(e) Contracting

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. Where the company meets the requirements of the "Teckal exemption" such contracts may be awarded without the need to comply with the full requirements of the Public Contract Regulations 2015 but the Council will need to ensure it meets its duties as a best value authority (Part 19.11). Where contracting takes place, the Council will have formal agreements in place with the company setting out the terms of the agreed service levels and a procedure for dispute resolution.

(f) Conflicts

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 should be assigned to advise or represent one side or the other, but should not act for both.

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