
EXPLANATORY NOTE

(This note is not part of the Regulations)

Part II of the Local Government Act 2000 provides for the discharge of a local authority's functions by an executive of the authority (which must take one of the forms specified in section 11(2) to (5) of the Act), unless those functions are specified as functions that are not to be the responsibility of the authority's executive.

These Regulations specify functions that are not to be the responsibility of an authority's executive or are to be the responsibility of such an executive only to a limited extent or only in specified circumstances.

Regulation 2(1) of these Regulations provides that the functions listed in Schedule 1 ("Schedule 1 functions") are not to be the responsibility of an authority's executive.

Regulation 2(2) provides that the function of imposing conditions, limitations, restrictions or other terms on any approval, consent, licence, permission or registration granted in the exercise of Schedule 1 functions, or functions under a local Act (unless in that case the approval, consent, licence, permission or registration was granted by an authority's executive), is not to be the responsibility of an authority's executive.

Regulation 2(3) provides that the function of determining whether, and in what manner, to enforce contraventions of approvals, consents, licences, permissions or registrations granted in the exercise of Schedule 1 functions, or functions under a local Act (unless in that case the approval, consent, licence, permission or registration was granted by an authority's executive), is not to be the responsibility of an authority's executive. It also provides that the function of determining whether, and in what manner, to enforce other contraventions, in relation to matters for which an approval, consent, licence, permission or registration should have been sought, is not to be the responsibility of an authority's executive where the approval, consent, licence, permission or registration could have been granted in the exercise of Schedule 1 functions.

Regulation 2(4) provides that the function of amending, modifying, varying or revoking any approval, consent, licence, permission or registration to which regulation 2(2) applies is not to be the responsibility of an authority's executive.

Regulation 2(5) provides that the function of making any scheme authorised or required by regulations under section 18 of the Local Government and Housing Act 1989 (schemes for basic, attendance and special responsibility allowances for local authority members) or of amending, revoking or replacing any such scheme, is not to be the responsibility of an authority's executive.

Regulation 2(6) provides that the functions of determining the amount of various allowances payable to members of local authorities under the Local Government Act 1972 ("the 1972 Act"), the rates at which certain payments under that Act by way of allowances are to be made, the amounts payable under schemes under section 18 of the Local Government and Housing Act 1989 and the rates of payments under such schemes, are not to be the responsibility of an authority's executive. It also provides that the function of determining whether a charge should be made for any approval, consent, licence, permit or registration granted or issued in the exercise of Schedule 1 functions, and the amount of any such charge, are not to be the responsibility of an authority's executive.

The effect of regulation 2(7) is to prevent an authority from arranging for the discharge of the functions specified in regulation 2(5) or (6)(a) to (c) by a committee, sub-committee or officer. (Other functions referred to in regulation 2 which are not the responsibility of an authority's executive may

be discharged by a committee, sub-committee or officer of the authority under arrangements under section 101 of the 1972 Act.)

Regulation 2(8) provides, within one exception, that the making of arrangements for the discharge of functions under section 101(5) of the 1972 Act and the appointment of committees under section 102 of the 1972 Act is not to be the responsibility of an authority's executive. The exception relates to provision made in regulations under section 20 of the Local Government Act 2000, which may allow the executive of an authority to make appointments under section 102 of the 1972 Act.

Regulation 2(9) and (10) makes special provision in relation to York City Council's functions relating to the management of the Yorkshire Museum and Gardens and to South Lakeland District Council's functions relating to the management of land at Lake Windermere. None of the functions referred to in those paragraphs is to be the responsibility of the relevant Council's executive.

Regulation 2(11) and (12) precludes an authority's executive from discharging functions which, in accordance with any public or local Act, or any subordinate legislation, must be discharged by the authority themselves, unless the discharge of the function by the executive is authorised by any other provision of these Regulations.

Regulation 3(1) provides that the functions mentioned in Schedule 2 may be (but need not be) the responsibility of an authority's executive.

Regulation 3(2) provides that Hastings Borough Council's functions relating to the management of the Hastings and Saint Leonard's Museum may be (but need not be) the responsibility of an authority's executive, and paragraphs (3) and (4) of that regulation make consequential and supplementary provision where those functions are the responsibility of the Council's executive.

Paragraphs (1) to (3) of regulation 4 allocate responsibility for various aspects of functions relating to the formulation and preparation of plans and strategies of the descriptions specified in Schedule 3 between an authority and their executive. They also apply to other plans and strategies whose adoption or approval is a matter for determination by the authority themselves in accordance with regulation 5(1). Paragraph (4) of regulation (4) allocates responsibility for the amendment, modification, variation or revocation of the plans and strategies specified in Schedule 3. Paragraphs (5) to (7) of regulation 4 make similar provision in relation to functions concerned with the disposal of an authority's housing land.

Where an aspect of a function referred to in paragraph (1), (4) or (5) of regulation 4 is not to be the responsibility of an authority's executive, paragraph (8) of that regulation has the effect that the authority may not arrange for it to be discharged by any of their committees, sub-committees or officers.

Paragraphs (9) to (11) of regulation 4 allocate responsibility for various aspects of functions relating to council tax, precepts and other calculations under the Local Government Finance Act 1992. To the extent that the function relates to the preparation and revision of estimates and other amounts for consideration by an authority it is to be the responsibility of an authority's executive. Other aspects of the function, such as the setting of an amount of council tax for a financial year, are to be the responsibility of the authority.

Regulation 5(1) and Schedule 4 specify the circumstances in which certain functions, that would otherwise be the responsibility of an authority's executive, are not to be the responsibility of such an executive. The circumstances are listed in column (2) of Schedule 4, and the functions to which they relate are listed in column (1). An exception is provided in regulation 5(2) for certain determinations that need to be made as a matter of urgency. In those cases, the determination can be made by the authority's executive only with the prior written agreement of a chairman of a relevant overview and scrutiny committee (defined in regulation 5(3)) or, in specified circumstances, of the chairman or vice-chairman of the authority. Regulation 5(4) requires the individual or body by whom the determination is made to submit a report to the authority of the action taken.

The effect of regulation 5(5) is to prevent an authority from arranging for the discharge by a committee, sub-committee or officer of functions which, in accordance with regulation 5(1), are the responsibility of the authority.