

WISBECH TOWN COUNCIL

10 AND 13 MAY 2019

THE GENERAL POWER OF COMPETENCE

1. Legislative background to the power

Parish (and Town) Councils are corporate bodies; their powers have accumulated through legislation since 1894. Their powers being constrained to specific and appropriate legislation until 2008 when they could, if eligible, exercise the Power of Well-being 2008 Order made under Sec 1 (2) of Local Government Act 2000 for the benefit of their community.

The Localism Act 2011, Chapter 1 of Part 1, Sections 1-8 has provided local authorities with a general power of competence; this is a radical new power with wide ranging possibilities. The broader general power of competence replaces the power of well-being.

The general power of competence was brought into force by SI. 961, the Localism Act 2011 (Consequential Amendments) Order 2012 on 28 March 2012.

2. What does the power allow councils to do?

The power is a central part of the Government's move towards the decentralisation of powers down to the lowest practical level of local government. The Explanatory Memorandum to The Parish Councils (General Power of Competence) (Prescribed Conditions) Order 2012 no. 965 says that

"The Government's intention in providing eligible parish councils with the general power of competence is to better enable them to take on their enhanced role and allow them to do the things they have previously been unable to do under their existing powers"

The Government hopes that this power will give local councils confidence in the legal capacity to act for their communities. The idea is that councils would use this power to work with others to provide cost-effective services and facilities in new ways to meet the needs of local communities.

The General Power of Competence, Localism Act 2011 Sec 1 (1) gives local authorities, including eligible local councils, *"the power to do anything that individuals generally may do"* as long as they do not break other laws. It is intended to be a power of first, not last, resort.

The council should ask itself whether an individual is allowed to do it; if the answer is yes, a Parish Council would normally be permitted to act in the same way.

A council could:

- lend or invest money

- set up a company or co-operative society to trade and engage in commercial activity
- run a community shop or post office
- use this power anywhere; it is not restricted to use within the parish.

3. Risks and restrictions limiting the general power of competence

The general power of competence is a power; it cannot be used to raise the precept (which is a duty).

The council can seek other sources of funding such as Community Infrastructure Levy (CIL), sponsorship, commercial activity and agreements with other authorities. Councils can receive income as a consequence of using the power; they could lend money to support a local activity and earn interest on the loan, they could purchase shares in a struggling local enterprise.

However, to use this power the council should have the support of the local community. Although councils are being encouraged to be innovative, they should be aware of the risk of:

- being challenged
- their trading activities damaging other competing local enterprises
- damage to the council's reputation and public money if a project goes wrong.

Existing duties remain in place, such as having regard to the likely effect on crime and disorder, biodiversity and the duty to provide allotments when requested.

Existing financial and procedural duties remain in place for regulating governance; for example, there can be no delegation of decision-making to a single councillor.

Councils must continue to comply with relevant existing legislation - employment law, Health and Safety legislation, equality legislation and duties related to data protection and freedom of information.

If a council wishes to trade it must set up a company or co-operative society and abide by company law. The council can charge for services provided under the power.^{1, 2}

If the council wishes to invest in a local business which it hopes will support the local economy it should follow Government advice³. If it wishes to support a community enterprise, an economic development grant might be a sensible option.

If another authority has a statutory duty to provide a service (e.g. education) it remains the duty of that authority to provide it but the Parish Council may assist. The council needs to

¹ <http://www.communities.gov.uk/documents/localgovernment/pdf/133628.pdf>

² <http://www.communities.gov.uk/documents/localgovernment/pdf/323153.pdf>

³ <http://www.communities.gov.uk/documents/localgovernment/pdf/1501971.pdf>

ask itself whether an individual, private company or community trust could help; if the answer is yes, the council could assist. An appropriate delivery body may need to be set up.

If the action the council wishes to take is also covered by a specific power, then any restrictions that apply to the overlapping power remain in place. So if existing legislation requires the council to ask permission before acting, it must do so. For example, the council would need to ask permission of the Highways Authority before doing work on roadside verges.

4. How does the general power of competence relate to Section 137 expenditure?

Monies that can be spent under Section 137 of the Local Government Act 1972 are limited and have to be shown in accounts separately. They are restricted in that they cannot be used to give money to individuals and expenditure must be commensurate with the benefit. Section 137 is a power of last resort. A council that is eligible to use the general power of competence can no longer use Section 137 as a power for taking action for the benefit of the area or its community except Section 137 (3) which permits the council to contribute to UK charities, public sector funds and public appeals remains in place.

The general power of competence is a very broad ranging power, far wider than any power that has previously been available to town and parish councils, wider than Section 137 and the power of well-being.

5. How to become eligible to use the power of general competence

The conditions for eligibility are set out in the Statutory Instrument, Parish Councils (General Power of Competence) (Prescribed Conditions) Order 2012⁴. They are:

(1) Resolution.

The council must resolve at a meeting that it meets the criteria for eligibility relating to the electoral mandate and relevant training of the clerk. The resolution can be passed at any meeting of the council but a further resolution must be passed at every subsequent “relevant annual meeting” for the council to be able to continue to exercise the power. A “relevant annual meeting” is the annual meeting that takes place in a year of ordinary elections (once every four years).

(2) Electoral Mandate

At the time the resolution is passed, at least two thirds of the members of the council must hold office as a result of being declared elected. This means they should have stood for election, whether at an ordinary or by election, even if unopposed, rather than co-opted or appointed. For example, if the total number of councillors is 9, then the number of councillors that must have been elected is 6.

(3) Qualified clerk

At the time the resolution is passed the clerk must hold the Certificate in Local Council Administration, the Certificate of Higher Education in Local Policy, the Certificate of Higher Education in Local Council Administration or the first level of the foundation

⁴ <http://www.legislation.gov.uk/ukdsi/2012/9780111519868/body>

degree in Community Engagement and Governance (or successor qualifications) awarded by the University of Gloucestershire. The clerk must also have completed training in the exercise of this power as part of one of these qualifications or as separate exercise.

If the council loses its qualified clerk or has insufficient elected councillors, it must record its ineligibility at the next 'relevant' annual meeting of the council (after the ordinary election). If it has already started an activity, it can finish that one but is not able to start anything new.

6. Wisbech Town Council and the general power of competence

Wisbech Town Council adopted the general power of competence (GPC), for the first time, at the Annual Meeting in May 2015 (following the all-out local elections held earlier that month).

Wisbech Town Council will continue to meet, following the elections on 2 May 2019, the eligibility criteria for GPC which is set out at parts (2) and (3) of section 5 of this report.

Members are asked to consider adoption again, for the term of the new council, adoption of the GPC.

Report Author: Terry Jordan, Clerk to Wisbech Town Council

References/web links

Localism Act 2011

www.legislation.gov.uk/ukpga/2011/20/contents/enacted

Parish Councils (General Power of Competence) (Prescribed Conditions) Order 2012

<http://www.legislation.gov.uk/ukdsi/2012/9780111519868/body>

Localism Act 2011: Explanatory Notes

<http://www.legislation.gov.uk/ukpga/2011/20/notes/division/5/1/1>

Charging guidance

<http://www.communities.gov.uk/documents/localgovernment/pdf/151291.pdf>