

A briefing paper for town and parish councils -The General Power of Competence

1. Legislative background to the power

Parish 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, 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 28th March 2012.

2. What does the power allow councils to do?

The power is a central part of this Governments 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 new power will give local councils confidence in the legal capacity to act for their communities. The idea being that councils will 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 has to ask itself is an individual is allowed to do it, if the answer is yes then a council is normally permitted to act in the same way.

A council could:

- lend or invest money
- it could set up a company or co-operative society to trade and engage in commercial activity

- it could run a community shop or post office
- the power is not restricted to use within the parish it can be used anywhere.

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. 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 must have the support of the local community. While 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 councils 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.

Existing financial and procedural duties remain in place for regulating governance for example - no delegation 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.

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

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