

THE GENERAL POWER OF COMPETENCE

BACKGROUND

Parish and Town councils are corporate bodies that have accumulated powers through legislation since 1894. These powers are constrained by specific and appropriate legislation. This means that before undertaking anything, members must be satisfied that the parish council has the power (under a specified statute) to undertake that activity (e.g. the provision of open spaces and recreational facilities).

SECTION 137 LOCAL GOVERNMENT ACT 1972

Section 137 of the Local Government Act 1972, permits through a 'power of last resort' expenditure up to certain limits for 'purposes not otherwise authorised'. Expenditure under the Local Government Act (s137) is limited and has to be budgeted for separately. Expenditure is restricted in that it cannot be used to give money to individuals and the amounts must be commensurate with the benefit. The limit is set annually and for 2024-25 the Department for Levelling Up has set it at £10.81 per parish electorate.

THE GENERAL POWER OF COMPETENCE

The General Power of Competence (GPC) was introduced by the Localism Act 2011 and took effect in February 2012. In simple terms, it gives councils the power to do anything an individual can do provided it is not prohibited by other legislation. It applies to all principal councils (district, county and unitary councils etc). It also applies to eligible parish and town councils. An eligible council is one which has:

- resolved to adopt the GPC.
- at least two thirds of its members being declared elected (not co-opted).
- Clerk must hold an appropriate qualification (e.g. Certificate in Local Council Administration, Certificate of Higher Education in Local Policy).

The scope, and some of the limitations of the General Power are set out in sections 1 to 6 of the Localism Act 2011.

In summary, the General Power of Competence enables councils to do things:

- an individual may generally do anywhere in the UK or elsewhere
- for a commercial purpose or otherwise, for a charge or without a charge
- without the need to demonstrate that it will benefit the authority, its area or persons resident or present in its area. However, in practice councils will want to demonstrate benefit.

There are some limitations on the General Power. The General Power of Competence cannot be used to circumvent an existing restriction in an existing specific power. It is a power; it cannot be used to raise the precept for example.

Existing duties remain in place, such as having regard to the likely effect on crime/disorder and biodiversity. There are also many existing procedural and financial duties that remain in place for the regulation of governance.

Furthermore, councils must comply with relevant existing legislation (e.g. employment law, health and safety, equality legislation and duties relating to data protection and freedom of information).

If a council has a statutory duty to provide a service (e.g. education, social service, highways, footpaths, rights of way), it remains their duty to provide it.

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. However, Section 137 (3) which permits the council to contribute to UK charities, public sector funds and public appeals remains in place.

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.

Having decided at a full meeting of the council that it meets the criteria for eligibility at that particular time, a resolution to this effect must be clearly written in the minutes.

The council is then required to revisit that decision and make a new resolution at every 'relevant' annual meeting of the council to confirm that it still meets the criteria (if it does). A 'relevant' annual meeting is the annual meeting of the council after the next ordinary election has taken place.

In consequence, eligibility remains in place until the 'relevant' annual meeting even if the conditions of the eligibility criteria have changed. If the council loses its qualified clerk or has insufficient elected councillors it must also record its ineligibility at the next 'relevant' meeting.

There is no requirement for members to be trained in the general power of competence.

Much Marcle Parish Council satisfies all the conditions as:

1. It has 8 out of 9 councillors elected
2. The Clerk of the Council has passed the CiLCA qualification (attached).

It is recommended that the members consider this report and pass the following resolution:

“The Parish Council resolves from the 8th May 2024 until the next relevant Annual Meeting of the Council, that having met the conditions of eligibility as defined in the Localism Act 2011 s.1 to adopt the General Power of Competence. “