

# **A briefing paper for 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 if 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.

## **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 2012.

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” (Annual Parish Council 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.

## **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.

If two thirds is not a whole number then it must be rounded up. For example, if the total number of councillors is 8, then two thirds is approx 5.3, then the number of councillors that must be 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 degree in Community Engagement and Governance (or successor qualifications) awarded by the University of Gloucestershire.

If the council loses its qualified Clerk or has insufficient elected councillors then 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 but not start anything new.