

Clerks report on General Power of Competence

Background

Parish councils are legal entities established by statute and as such have powers and duties also enshrined in statutes. Until the localism Act of 2011 parish councils were only permitted to do those things where they had the powers spelt out in statute. Most of the powers conferred by statute are specific, such as the power to provide allotments or burial grounds.

In addition to specific powers there is also a wider power under section 137 of the Local Government Act, to permit expenditure, up to certain limits, for purposes not otherwise authorised, provided it is to the benefit of the area or part of it, or all or some, of the inhabitants. S137 is a power of last resort and where other powers exist they should be used

Typically the expenditure on grants usually falls within S137. Since S137 has to be to the benefit of the whole of the parish or part of it, grant aid an individual is not permitted.

It follows from the above that Parish council activities are subject to legal challenge for stepping outside the powers or in excess of the limitations

Recent Legislation – Localism Act 2011

Statutory instrument 965, “Parish Councils (General Power of Competence) (Prescribed Conditions) Order 2012, issued under the localism act introduced a “General Power of Competence” (GPoC). The intention being to allow “Eligible council” powers to undertake an activity or incur expenditure without the need to have to identify specific powers.

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

Eligible councils have “the power to do anything that individuals generally may do” as long as they do not break other laws. **It is intended to be the power of first, not last, resort.** The eligible council has to ask itself if an individual is allowed to do it. If the answer is “yes”, then a parish council is normally permitted to act in the same way.

Use of a GPoC is not restricted to the boundary of the parish it may be used anywhere.

The only real limitation is that the general power of competence cannot be used to circumvent an existing restriction in an existing specific power. Neither is a GPoC relevant where an individual cannot act eg issuing a precept relies on specific powers conferred elsewhere.

GPoC is a power and does not replace “Duties” imposed on councils, such as those concerned with Governance and Finance.

Typically GPoC has been used to run community shops, establish a company to provide services, Grant aid an individual.

Since it is the power of first resort it is incompatible with the powers conferred by S137 LGA 1972 and if the parish adopts a GPoC then that part of S137 which supplements other powers will no longer be used.

Eligibility

There are 3 conditions which have to be met for a parish to adopt a GPoC

- a. It must pass a resolution that it meets all the criteria and adopts a GPoC. The resolution can be passed at **any time** at an ordinary meeting of the council
- b. At the time of passing the resolution at least two thirds of the council are there by virtue of being declared elected even though the election can be uncontested.
- c. At the time of passing the resolution , the parish clerk must hold a recognised professional qualification:-
 - The Certificate in Local Council Administration (CiLCA);
 - ☐ 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 awarded by the University of Gloucestershire or its successor qualifications

Once the resolution has been passed the parish council has the freedom to Act with the same powers as individual persons (except where prohibited by law). The GPoC stays in existence until the next “relevant” meeting where the GPoC lapses unless a repeat resolution is passed and all three criteria are still met. The next “relevant” meeting is the annual meeting following the four yearly elections.

Castor Parish council meets all three requirements

Recommendation

Parish Council is recommended to pass the following resolution

***“The Parish Council hereby confirms we meet the eligibility criteria for adoption of a General Power of Competence as defined in the Localism Act 2011 and SI 965 The Parish Councils (General Power of Competence)(Prescribed Conditions) Order 2012. We further resolve to adopt a General Power of Competence.*”**

As long as the Parish Clerk remains “qualified” as set out above and if the GPoC is adopted by resolution, the GPoC will remain in place until the annual meeting to be held in 2026, immediately after Parish council elections are concluded. If then, again approved, it will remain in force until the annual meeting immediately following the next elections for the parish council

John Haste
4th May 2022