

Committee	FULL COUNCIL
Date	15 February 2021
Agenda Item	14

General Power of Competence (GPC)

HTC has been eligible for the General Power of Competence since late 2017, when the clerk became qualified, but has never ratified its use in Council.

Criteria for eligibility The freedom of the GPC is available to local councils that meet two criteria for eligibility (LA 2011 s8) set out in a statutory instrument known as the Parish Councils (General Power of Competence) (Prescribed Conditions) Order 2012 that came into force in April 2012.

A local council must decide, at a full meeting of the council, that it meets the criteria for eligibility at that particular point in time. A resolution to this effect must be written clearly in the minutes of that meeting. 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). This means that eligibility remains in place until the first annual meeting of the council after the ordinary election even if the condition of the eligibility criteria has changed. The two criteria are:

Elected councillors At the precise moment that the council resolves that it meets the criteria, the number of councillors elected at the last ordinary election, or at a subsequent by-election, must equal or exceed two thirds of its total number of councillors. Elected councillors include all councillors who stood for election whether or not the election was contested. Co-opted or appointed councillors do not count as they are not elected.

Qualified Clerk The clerk must hold at least one of the sector-specific qualifications and should have completed the relevant training designed as part of the National Training Strategy for local councils. From April 2012, this training is undertaken as part of a clerk's preparation for one of the recognised sector-specific qualifications. The Certificate in Local Council Administration (CiLCA) awarded by the Monitoring and Verification Board (or previously by the AQA), is one of these, among others.

It is important that the council pays attention to the advice of its trained and qualified clerk when taking decisions to ensure that it acts lawfully.

The money that can be spent under the Local Government Act 1972 s137 is limited, for example, councils must keep specific accounts for s137, they cannot use the power to give money to individuals and spending must be commensurate with the benefit gained. In addition, a council can't use s137 if another specific power exists. A council that is eligible to use the GPC can no longer use s137 as a power for taking action for the benefit of the area or its community (Sch 1(1))⁵.

Powers

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. It replaces the wellbeing powers in England that were provided under the Local Government Act 2000. The scope – and some limitations – of the General Power are set out in sections 1 to 6 of the Localism Act 2011. In summary, the GPC 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 (although in practice councils will want to realise such benefits).

As part of the Government's wider localism agenda, the GPC is intended not only to increase local authority powers but to give greater confidence in the scope of those powers and to signal that how those powers are used is a matter for local authorities (Department for Communities and Local Government, November 2011). It should encourage more managed risk taking by councils.

The GPC is much simpler than the earlier powers under s137 of the Local Government Act 1972, which covered activities 'incidental to their functions'. This stated that 'councils may incur expenditure which, in their opinion, is in the interests of and will bring direct benefit to, their area or any part of it or all or some of its inhabitants'. Moreover, such expenditure 'had to be commensurate to the benefit arising'. For town and parish councils, there was a maximum amount for such spending which does not apply to the GPC

It has also been recommended to HTC by EALC that for the Gold award we should use the General Power of Competence, and by the internal auditor that we should use the General Power of Competence rather than S137.

Recommendation: that HTC approves the use of the General Power of Competence to replace the powers used under S137, as it meets the criteria of having more than 2 thirds of elected councillors, and a qualified clerk.



Sarah Greateorex

Town Clerk