

Briefing Note

General Power of Competence

1.0 Background

1.1 Parish councils are bound to work within the law and regulations when making their decisions. This means that sometimes there are restrictions on what you can do or how you can spend your money. Despite their wide range of powers, parish councils are always at risk of being challenged, especially if they undertake an unusual activity, which is why when your Clerk gives you advice, they will usually quote the appropriate piece of legislation or regulation that applies. For example, in May 2020 you set up a Covid-19 Community Grant fund, and that Briefing Note explained what the legal basis for that was.

1.2 In order to work around these restrictions, the government introduced a test for parish councils that would give them a wider range of powers if they met certain standards. If a parish council can demonstrate that it has reached these standards, it can use the extra powers. These powers are called the General Power of Competence

2.0 What are the standards?

2.1 Electoral mandate: the council must have at least two thirds of its members elected. So – this will not include co-opted councillors (even though they are equal to elected councillors in every other respect).

2.2 Qualified clerk: the Clerk must hold a recognised professional qualification e.g. Certificate in Local Council Administration, Certificate of Higher Education in Local Policy and pass the 2012 CiLCA module relating to the general power of competence.

3.0 Who decides if the standards have been met?

3.1 It's the responsibility of the parish council and its councillors to decide if it meets the standard. The Clerk will advise.

4.0 How is that decision made?

4.1 The decision is made after councillors have examined the supporting evidence, and that decision needs to be made at the Annual Meeting of the Parish Council in the same year that elections are held. This will take the form of a Resolution, *'that the parish council adopts the General Power of Competence as defined by the Localism Act 2011 s1(1) and s8 and defined further in statutory instrument Parish Councils (General Power of Competence) (Prescribed Conditions) Order 2012.'*

4.2 That decision needs to be endorsed at each Annual Meeting until the next election. The reason for this is so that councillors can confirm that it still meets to standards in 2.1 and 2.2 above. In this case, the council will Resolve to *'retain the General Power of Competence'*.

5.0 What happens if the council fails to meet the standard in subsequent years?

5.1 The council will lose the GPC. However, any projects which have started whilst it had the GPC can continue until completed.

6.0 What can the GPC be used for?

6.1 Under the legislation, eligible councils have 'the power to do anything that individuals generally may do' as long as they do not break other laws. The council has to ask itself if an

individual is allowed to do it. If the answer is 'yes' then the council is normally permitted to act in the same way.

6.2 Examples of the type of activities that the GPC permits:

- Running a community shop or post office
- Lend or invest money
- Establish a company or co-operative society to trade and engage in commercial activity
- Establish a company to provide services such as local transport
- Providing grants to individuals

6.3 Whilst councils are encouraged to be innovative in their use of the GPC, they should be aware of the risks of:

- Being challenged in their use of the Power.
- Their trading activities damaging other local enterprises
- Damage to the Council's reputation and public money if a project or investment goes wrong.

6.4 The only real limitation is that the General Power of Competence cannot be used to get round an existing restriction in an existing specific power and it cannot be used to raise the precept (the precept is charged to pay for the expenses of running the parish council and meetings its obligations). If there is a project that requires substantial funding, other sources must be used (for example, Community Infrastructure Levy, grant funding, sponsorship etc). The council can receive an income as a result of using the Power.

6.5 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 e.g. no delegation to a single councillor. 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.

6.6 If another council has a statutory duty to provide a service e.g. education, social service, highways footpaths rights of way, then it remains their duty to provide it. Nonetheless, eligible parish councils may assist. The eligible council would need to ask itself whether an individual private company or community trust could help. If the answer is 'yes' the council can assist.

6.7 There is no charge or ongoing to the parish council for adopting the GPC.

7.0 Can this parish council adopt the General Power of Competence?

7.1 Elected councillors: you will need to have elected two-thirds of councillors at the May 2021 elections. For St Keyne & Trewidland, this means 6 councillors. *If the elections are uncontested, councillors will be deemed to be 'elected' and satisfy the requirement.*

7.2 Qualified Clerk: Your current clerk obtained his CiLCA award in November 2019, so the parish council meets this criterion.

7.3 There is no requirement for members to be trained in the General Power of Competence

8.0 Conclusions

8.1 If May 2021 elections deliver a council with more than two-thirds of councillors elected, then the council can vote to adopt the General Power of Competence.

8.2 The list of potential uses for the GPC (6.2 above) is not exhaustive. If none of those is appropriate to the council's current operations, there may be other opportunities in the future.

8.3 There is no cost implication to adopting the GPC.

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Date: 11 May 2021