

COUNCIL – 15TH MAY 2023

GENERAL POWER OF COMPETENCE

1.0 INTRODUCTION

The purpose of this report is to provide the Council with the information to enable it to consider a resolution to renew the General Power of Competence. The Council invoked the General Power of Competence in May 2016.

2.0 BACKGROUND TO THE GENERAL POWER OF COMPETENCE

- 2.1 Parish Councils are corporate bodies that have accumulated powers through legislation since 1894. Their powers were constrained to specific and appropriate legislation. This means that before undertaking anything, members must be satisfied that the council has the power (under a specified statute) to undertake that activity.
- 2.2 Parish councils have many specific powers (e.g. the provision of open spaces and recreational facilities) in addition to section 137 of the Local Government Act 1972, permitting the expenditure up to certain limits for “purposes not otherwise authorised”. Expenditure on grants and sponsorship is covered by section 137 of the Local Government Act, 1972.
- 2.3 Despite the wide range of powers, parish councils are always at risk of acting unlawfully if they undertake an unusual activity for their community that might not be covered under statutory powers.
- 2.4 Following consultation the Government enacted a “general power of competence” in the Localism Act 2011 (Part 1, Chapter 1, ss 1-8). It was brought into force by SI 965 The Parish Councils (General Power of Competence) (Prescribed Conditions) Order 2012 in April 2012.

3.0. WHAT THIS MEANS PRACTICALLY

- 3.1 Under the General Power of Competence this Council would no longer be required to identify specific powers to undertake an activity. It is stated in the above Statutory Instrument that: “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”.
- 3.2 Parish councils are provided with “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.

4.0 TYPES OF ACTIVITIES

- 4.1 Some new activities covered by the legislation include:
 - Running a community shop or post office
 - Lending or investing money locally

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- Establishing a company or co-operative society to trade and engage in commercial activity.
- Establishing a company to provide local services.
- Providing grants to individuals.

4.2 The power is not restricted to use within the Parish.

5.0 RESTRICTIONS AND RISKS

5.1 The only real limitation is that the general power of competence cannot be used to circumvent an existing restriction in an existing specific power; for example, it cannot be used to raise the precept.

5.2 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).

5.3 If another council has a statutory duty to provide a service (e.g., a support service such as a Children's Service), it remains their duty to provide it. Nonetheless, under the General Power of Competence the Parish council may assist.

5.4 Whilst the Council is encouraged to be innovative; councillors must be aware of the risks in particular the potential for being challenged and damage to the Council's reputation if a project goes wrong.

6.0 EXISTING GRANT FUNDING LEVELS

6.1 Expenditure under the Local Government Act (s137) is limited and has to be accounted 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. Section 137 is a power of last resort.

6.2 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.

6.3 For 2023 – 2024 grant funding under S137 by this Council must not exceed £9.33 per elector)

7.0. ELIGIBILITY FOR GENERAL POWER OF COMPETENCE

7.1 The three conditions for eligibility are set out in the Statutory Instrument (paragraph 1.4 above) as follows:

7.1.1 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.

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7.1.2 Electoral mandate: at the time the resolution is passed, at least two thirds of the council must hold office as a result of being declared elected (i.e., not co-opted).

7.1.3 Qualified clerk: At the time that the resolution is passed, the clerk must hold a recognised professional qualification (e.g., Certificate in Local Council Administration, Certificate of Higher Education in Local Policy) that includes the CiLCA module relating to the general power of competence.

7.2 Having met the criteria for eligibility full council must resolve to effect the General Power of Competence. The council must revisit the decision and make a new resolution at every 'relevant' annual meeting of the council to confirm that it still meets the criteria to enable the power to continue. A 'relevant' annual meeting is the annual meeting of the council after the next ordinary election has taken place.

7.3 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.

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

7.5 The Ivers Parish Council satisfies all the conditions as:

7.5.1 It has 12 out of 14 councillors elected.

7.5.2 The Clerk of the Council holds the Certificate in Local Council Administration (CiLCA)

7.5.3 The Clerk of the Council has passed the CiLCA module on the general power of competence.

NB: *The CiLCA certificate needs to be held by an employed member of staff who is the Proper Officer/Clerk.*

8.0. RECOMMENDATION

It is recommended that Council agrees it does not have the right to exercise the General Power of Competence.

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