



Local authorities: the general power of competence

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The general power of competence is a new power available to local authorities in England that will allow them to do “anything that individuals generally may do”. It was provided for in the *Localism Act 2011* and will replace the well-being powers in the *Local Government Act 2000*. It was brought into force for local authorities on 18 February 2012 in response to a High Court judgment relating to prayers at the beginning of meetings of Bideford Town Council. Regulations to extend the power to parish councils that meet certain criteria too effect in April.

This note gives information on the policy background to the new power, and looks at some of the issues relating to its introduction.

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1 Background

1.1 Policy background

Historically, the idea of introducing a general power of competence (GPC) for local authorities goes back a number of years and indeed formed part of the 1983 Labour Party election manifesto:

... we will expand the scope for local democracy. Instead of local councillors never being completely sure what is permitted and what is *ultra vires*, we shall give a power of general competence to all local authorities to carry out whatever activities are not expressly forbidden by statute.¹

The introduction of the power was a Conservative Party policy while in Opposition. Concerns had been expressed that the wellbeing powers enshrined in the Local Government Act 2000 were not being used effectively. A report for the Communities and Local Government Department said

“Use of the Well-Being Power remained limited over the life of the evaluation as local authorities had a tendency to use more specific powers to achieve their goals. Early uses of the Power tended to emphasise economic and environmental goals. Social uses emerged later. There was no evidence of local authorities balancing the economic, social and environmental impacts and outcomes of a decision to use of the Well-Being Power in line with sustainable development principles.”²

The report also noted that “lawyers played a critical role in encouraging or discouraging use” of the power,³ and the general concern shown by many local authorities on the use of the power was highlighted by the then-Minister, John Healey, who felt that local government was not making full use of powers that it had.⁴

The publication of *Control shift: returning power to local communities*⁵ in February 2009 signalled the new policy as well as the Conservative party’s commitment to the decentralisation of responsibility and power. David Cameron, in an article in the Guardian when *Control Shift* was published, commented that:

It is both patronising and absurd that councils can only act on a local issue if they have a specific mandate to do so. We’re going to change that by trusting local authorities with a “general power of competence” that will free them to carry out any lawful activity on behalf of their community. That way, instead of endlessly looking up to Whitehall for permission, our councils will be looking to local people for direction.⁶

Control Shift expanded on this commitment:

One of the things that most contributes to English local government being seen as little more than a creature of central government is the fact that local councils are able to act only where empowered to do so by legislation. Parliament passes laws which confer specific powers, and these powers constitute the limit of what local authorities

¹ [The new hope for Britain](#), Labour Party Manifesto, 1983,

² [Evaluation of the take-up and use of the well-being power](#); Research summary; Dept for Communities and Local Government, 2008, p1

³ Ibid p2

⁴ Communities and Local Government Committee - Sixth Report, [The Balance of Power: Central and Local Government](#), HC 33, 2008-09

⁵ [Conservative Party](#), February 2009,

⁶ David Cameron, “A radical power shift”, [Guardian](#), 17 February 2009

can do. Any action that local councils take without specific statutory backing can be struck down by the courts on the grounds that it is 'beyond their powers' ('ultra vires'). The result is that, even if a local council – in response to local people – wants to take action to address a specific local problem, it may not be able to do so, simply because it has no specific statutory power to take the action in question. The Local Government Act 2000 tries to address this problem by giving local authorities a power to do anything which they consider likely to promote or improve the economic, social or environmental well-being of any part of their area. In defence of this approach, the current Government argue that the breadth of this well-being power "is such that councils can regard it as a 'power of first resort'".

However the scope of action permitted to councils under this power is not clear, and cautious legal departments in many local authorities are wary of using the power for fear of costly and time-consuming legal challenge. As a result the Government's own research shows that only a small number of authorities have used the power of wellbeing as a power of first resort; many local authorities have not used it at all. We will therefore introduce a new general power of competence which gives local authorities an explicit freedom to act in the best interests of their voters, unhindered by the absence of specific legislation supporting their actions. No action – except raising taxes, which requires specific parliamentary approval – will any longer be 'beyond the powers' of local government in England, unless the local authority is prevented from taking that action by the common law, specific legislation or statutory guidance.

We will give the general power of competence real meaning by allowing councils specifically to:

- **carry out any lawful activity;**
- **undertake any lawful works;**
- **operate any lawful business ; and**
- **enter into any lawful transaction.**

In addition, we will ensure that all these actions can be taken at the lowest possible level (i.e. by the councils nearest to the citizens) by including town and parish councils within the categories of local authority that are given the new power.

...

The implications of this new statutory presumption are (intentionally) vast. It will usher in a new attitude amongst both councillors and their voters. If something in your neighbourhood, town or village needs to be changed, the natural first port of call will no longer be central government and its bureaucrats but your own local authorities. The fact (and hence, increasingly, the perception) will be that they have the power to change things, to provide services that are missing, to correct market or public service failures – in short, to provide whatever it may be that local people want or lack and are prepared to pay for. We anticipate that this change will be reflected in the way the media operate, with reporters and commentators increasingly holding local governments, not Whitehall, responsible for the conduct and direction of local affairs.⁷

The Coalition Government announced in its programme for Government that "We will give councils a general power of competence";⁸ this commitment has been enacted in the *Localism Act 2011*.

⁷ Ibid

⁸ *The Coalition: our programme for Government*, HM Government, May 2010, p.12

1.2 Responses to the proposals

The Local Government Association showed its support for the measure when it published a draft *Local Government (Power of General Competence) Bill* in March 2010.⁹ The draft Bill sought to advance understanding of how a power of general competence would best be expressed in law, and whether such a power can be established in law in a way which could over-ride other legislation which conflicts with it, and ensure greater flexibility and certainty.¹⁰ The introduction to the draft Bill noted that:

Support for a power of general competence for local government has been a longstanding policy of the Liberal Democrats. It was a Labour government which introduced the well being power, taking steps to provide a clear, general power within the *Local Government Act 2000*. The Conservative Party's recent *Control Shift* policy paper advocates a general power of competence for local government.¹¹

More recently, the LGA and the Political and Constitutional Reform Committee have jointly published *Independence from the centre: does local government's freedom lie in a new constitutional settlement?* which gathers together a number of views about local government and draws up an illustrative draft code for central and local government draft code, which includes:

3. Councils are autonomous, democratically elected bodies which independently decide upon, administer and regulate the public affairs of and deal with all matters of concern within their boundaries which are not dealt with or attended to by other governmental bodies.

4. Councils operate within a framework of an irrevocable general power of competence with a full legal personality. Powers rest with councils, acting in accordance with the national legal framework, to pass local legislation on matters affecting the affairs and interests of their area.¹²

The proposal was supported by the Communities and Local Government Committee, which recommended the introduction of such a power but only if local authorities could show that they were unable to use the available well-being powers effectively. The Committee noted that the introduction of such a power was welcomed by a number of local authorities, including Warwickshire and Birmingham. The Committee added:

We urge more councils to test the strength of the assertion by the Secretary of State that "the power of well being is virtually a power of general competence" and her commitment to "look very closely at the power that exists, how much it is being used, what it is stopping people from doing, and if it is stopping people from doing things which would be beneficial and are proper things for them to do then obviously I want to examine whether any changes would be necessary." **We have considerable sympathy with the case for local government to be given a power of general competence, to provide greater recognition of the local leadership role that central government is asking it to play, and which we support. If local government is able to accumulate evidence that the well-being powers are falling short of a power of general competence to the extent that they are impeding its**

⁹ Local Government Association, *Draft Local Government (Power of General Competence) Bill*, 2010

¹⁰ Ibid p.4

¹¹ Ibid p.5

¹² LGA/ Political and Constitutional Reform Committee, *Independence from the centre: does local government's freedom lie in a new constitutional settlement?*,

local leadership role, then we recommend that the Government should introduce a power of general competence for local government.¹³

Tony Wilson and Chris Game, in *Local government in the United Kingdom*, have commented that giving the GPC to local authorities introduces into the UK a power that is available to local authorities in many other European countries:

Many countries do have something legitimately describable as local self-government, especially those formed historically by the coming together of several small communities, for mutual help and support – for example, Switzerland, the Netherlands, Italy and the Scandinavian countries. Local councils of municipalities in such countries have, on average much smaller populations than do UKL local authorities. Yet they have something British councils historically have not had: a power of general competence.¹⁴

2 The Localism Act 2011

The *Localism Bill 2010-12* was introduced on 13 December 2010 and was enacted on 15 November 2011. Further information on the GPC provisions in the Bill is available in the following Library papers:

- Research paper 11/02, [Local government and community empowerment](#), 11 January 2012
- Research paper 11/32, [Localism Bill: Committee stage report](#), 12 April 2011
- Standard note SN/PC/6006, [The Localism Act: update on Local government and community empowerment measures](#), 24 November 2011

The GPC provisions in the Bill were generally supported on all sides of the House. Section 1 of the Act provides for a GPC for local authorities in England, giving them the power to act in the same way as an individual can., and allowing for innovative thinking when doing so. The power extends to county councils in England, district councils, London borough councils, the Common Council of the City of London, the Council of the Isles of Scilly and eligible' parish councils; the eligibility of parish councils can be determined by the Secretary of State in a draft order to be approved by both Houses of parliament.

In doing so, Schedule 1 repeals the well-being powers in the Local Government Act 2000 as far as they relate to England. The power for local authorities equates to those of an 'individual with full capacity', and the only limits or restrictions placed on the power are statutory. The Act also allows authorities to charge for, and trade in, services offered under the general power, in line with the powers already available to them under sections 93 and 95 of the *Local Government Act 2003*. However, authorities cannot trade in services that they already have a statutory requirement to provide, but may charge enough to recover costs for discretionary services.

Section 5 gives a wider power to the Secretary of State to remove or change any statutory provisions that prevent or restrict the use of the general power, and to remove similar provisions that overlap with the general power. The clause also allows the Secretary of State to restrict what local authorities can do under the general power, or to provide conditions

¹³ Communities and Local Government Committee - Sixth Report, [The Balance of Power: Central and Local Government](#), HC 33, 2008-09

¹⁴ Palgrave macmillan, 2011, pp31-2

under which the power can be used. These powers can only be used following consultation (unless the power is used to amend a previous order under this clause) and any orders made under the this clause will be subject to legislative reform order procedure, which allows parliament to decide whether the procedure for the order should be negative, affirmative or super-affirmative.

Section 8 gives the Secretary of State the power to extend the provision to eligible parish councils. Sections 9 and 10 relate to fire and rescue authorities, and insert new sections into the Fire and Rescue Services Act 2004. Section 9 provides a broad power a GPC to fire and rescue authorities when in pursuance of their statutory duties, and section 10 allows fire and rescue authorities to charge for services, but with a number of restrictions: for example, the authority must consult before deciding on any such charges; the charges must not exceed the cost to the authority of the action they are taking; and charges cannot be imposed for extinguishing fires except at sea.¹⁵

The [Plain English Guide to the Localism Act](#) describes the power as follows:

Local authorities' powers and responsibilities are defined by legislation. In simple terms, they can only do what the law says they can. Sometimes councils are wary of doing something new - even if they think it might be a good idea - because they are not sure whether they are allowed to in law, and are concerned about the possibility of being challenged in the courts.

The Government has turned this assumption upside down. Instead of being able to act only where the law says they can, local authorities will be freed to do anything - provided they do not break other laws.

The Localism Act includes a 'general power of competence'. It gives local authorities the legal capacity to do anything that an individual can do that is not specifically prohibited; they will not, for example, be able to impose new taxes, as an individual has no power to tax.

The new, general power gives councils more freedom to work together with others in new ways to drive down costs. It gives them increased confidence to do creative, innovative things to meet local people's needs. Councils have asked for this power because it will help them get on with the job. The general power of competence does not remove any duties from local authorities - just like individuals they will continue to need to comply with duties placed on them. The Act does, however, give the Secretary of State the power to remove unnecessary restrictions and limitations where there is a good case to do so, subject to safeguards designed to protect vital services.

Similar powers have been given to Fire and Rescue Authorities, Integrated Transport Authorities, Passenger Transport Executives, Combined Authorities and Economic Prosperity Boards.¹⁶

The DCLG brought the GPC into force with effect from 18 February 2012 by means of the [Localism Act 2011 \(Commencement No.3\) Order 2012](#).¹⁷ The order for parish councils was laid before Parliament on 8 February and will come into force when it has been approved by both Houses (see below). Consequential amendments, including the repeal of wellbeing powers, are subject to draft legislation which also requires the approval of both Houses of parliament, in the form of the [Localism Act 2011 \(Consequential Amendments\) Order 2012](#).

¹⁵ Further information is available in the [Explanatory notes](#) to the Act

¹⁶ [A plain English guide to the Localism Act](#), DCLG, 2011

¹⁷ SI 2012/411

The order does not apply to local authorities in Wales.

3 Use and impact of the general power of competence

3.1 Prayers at council meetings

On 10 February 2012 the High Court ruled that Bideford Town Council were acting unlawfully by allowing prayers to be said at the beginning of formal council meetings. The judge ruled that "the saying of prayers as part of the formal meeting of a Council is not lawful under s111 of the Local Government Act 1972, and there is no statutory power permitting the practice to continue."¹⁸

The ruling generated controversy. Eric Pickles said:

"This ruling is surprising and disappointing.

"While welcoming and respecting fellow British citizens who belong to other faiths, we are a Christian country, with an established Church in England, governed by the Queen.

"Christianity plays an important part in the culture, heritage and fabric of our nation. Public authorities - be it Parliament or a parish council - should have the right to say prayers before meetings if they wish.

"The right to worship is a fundamental and hard-fought British liberty.

"The Localism Act now gives councils a general power of competence - which allows them to undertake any general action that an individual could do unless it is specifically prohibited by law. Logically, this includes prayers before meetings."¹⁹

Sir Merrick Cockell, Chairman of the Local Government Association, said "It is the LGA's view that this ruling will be overridden by the GPC as soon as the legislation comes into force and that it remains the decision of local authorities if they wish to hold prayers during formal meetings."²⁰

As a result of the controversy surrounding the issue, the DCLG brought the GPC into force with effect from 18 February 2012 by means of the [Localism Act 2011 \(Commencement No.3\) Order 2012](#). DCLG had originally intended to bring the GPC into effect in April 2012. On signing the commencement order, Mr Pickles said:

The High Court judgement has far wider significance than just the municipal agenda of Bideford Town Council. For too long, faith has been marginalised in public life, undermining the very foundations of the British nation.

As a matter of urgency I have personally signed a Parliamentary order to bring into force an important part of the new Localism Act - the general power of competence - that gives councils the vital legal standing that should allow them to continue to hold formal prayers at meetings where they wish to do so.

This should effectively overtake the ruling and it also shows that greater localism can give local councils the strength and freedom to act in their best interests.

¹⁸ The full judgment is available at <http://www.secularism.org.uk/uploads/bideford-judgment-final.pdf>. See <http://www.bbc.co.uk/news/uk-england-devon-16980025> for background to the story.

¹⁹ DCLG news release, Eric Pickles responds to high court judgement on council prayers, 10 February 2012

²⁰ LGA Media Release, [LGA statement on prayers at council meetings](#), 10 February 2012.

We will stand for freedom to worship, for Parliamentary sovereignty, and for long-standing British liberties.²¹

The National Secular Society, which brought the original court case, said it was consulting its lawyers as to whether the power would apply. A news release said:

Keith Porteous Wood, Executive Director of the National Secular Society, commented:

"A number of senior lawyers have expressed doubt whether the Localism Act will, as Mr Pickles hopes, make prayers lawful, and the Act was clearly not passed with that express intention. His powers to pass legislation are not, as he implies, untrammelled. Council prayers increasingly look set to become a battle between the Government and the courts at ever higher levels."²²

It is worth noting however that the GPC does not initially extend to parish councils – see next section.

3.2 Eligible parish councils

The GPC was extended to eligible parish councils by the *Parish Councils (General Power of Competence) (Prescribed Conditions) Order 2012*. The DCLG in a letter to parish councils said:

7. Once the power is in place, eligible parish councils will be able to include prayers as part of their formal business.

8. In the meantime, there was nothing in the High Court judgment that suggests that prayers or a time for reflection cannot be held before the formal start of a meeting of any parish council. Indeed, parish councils may even want to consider holding informal prayers at the time when the meeting would have normally started, and simply move back the formal commencement of the meeting by five minutes.

9. Ministers are currently considering what further steps may be taken to allow those parish councils, who chose not to qualify for the general power competence, to hold prayers during their formal meeting.²³

The order applies the GPC to parish councils as follows:

Under paragraph 1 of the Schedule to the order, the council must resolve that it meets the criteria specified in paragraph 2 of the Schedule, as follows:

- (1) At the time a resolution under paragraph 1 is passed —
 - (a) the number of members of the council that have been declared to be elected, whether at ordinary elections or at a by-election, is equal to or greater than two-thirds of the total number of members of the council;
 - (b) the clerk to the parish council holds—
 - (i) the Certificate in Local Council Administration;

²¹ DCLG news release, *Eric Pickles gives councils back the freedom to pray*, 17 February 2012. A series of letters has also been sent to relevant bodies; see <http://www.communities.gov.uk/publications/localgovernment/prayeradvice>.

²² National Secular Society News release, *Council prayers: doubts over Eric Pickles' "general power of competence"*, 18 February 2012

²³ DCLG, *Freedom to pray: advice to town councils*, February 2012

- (ii) the Certificate of Higher Education in Local Policy;
- (iii) the Certificate of Higher Education in Local Council Administration; or
- (iv) the first level of the foundation degree in Community Engagement and Governance awarded by the University of Gloucestershire or its successor qualifications; and

(c) the clerk to the parish council has completed the relevant training, unless such training was required for the purpose of obtaining a qualification of a description mentioned in paragraph (b).

(2) For the purposes of this paragraph “relevant training” means training—

- (a) in the exercise of the general power;
- (b) provided in accordance with the national training strategy for parish councils adopted by the National Association of Local Councils, as revised from time to time.²⁴

3.3 The extent of the power

The impact assessment on the GPC, published with the Bill, gives several indications of the direction the power might take:

Our proposals will not provide local authorities with any new power to raise tax or precepts, or to borrow. Neither will the proposals enable councils to set charges for mandatory services, impose fines or create offences or byelaws affecting the rights of others, over and above existing powers to do so. But it will be designed to allow councils to undertake innovative activity to drive efficiency and therefore will result in them – potentially – undertaking activity that presents some risk to the tax payer.

However, local authorities would continue to be obliged to follow the law of the land. As an example; our proposals will not enable local councillors to wage thermonuclear war due to existing preventative legislation including: the Nuclear Materials (Offences) Act 1983, the Nuclear Safeguards Act 2000 and the Environmental Permitting (England and Wales) Regulations 2010.

Finally, local authorities will also still need to abide by all relevant regulatory regimes – such as, for example, those governed by the Financial Services Authority if they were seeking to engage in financial services - as well as the specific rules applied to local government in relation to audit and related financial regimes mentioned above and, where trading is involved, company law. As stated above therefore, we believe that no separate competition or small business assessment is necessary.²⁵

An article in the *Local Government Lawyer* commenting on the issue said:

But it can be seen above that the judge's reasoning is really about the use of powers – the judgment says that powers should not be used “even to mark out” those who do not have certain beliefs. There will be limits on the general competence power – this case is a good example of the debates yet to come about the extent of those limits. Just because you have the power to do something (in a formal sense) that does not mean you have a right to do it. It may be that replacing narrow statutory powers with

²⁴ <http://www.legislation.gov.uk/ukdsi/2012/9780111519868/schedule>. The national training strategy is published by NTS, a partnership of stakeholders led by the National Association of Parish Councils, and may be obtained from the association website at www.nalc.gov.uk

²⁵ DCLG, *Localism Bill: general power of competence for local authorities Impact assessment*, January 2011

broad statutory powers will lead to a greater use of precedent to lay the boundary of legitimate local government action.²⁶

²⁶ [“The power of prayer or the power to pray”](#), *Local Government Lawyer*, 10 February 2012