

Backwell Parish Council
25th May 2023
Full Council meeting
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 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 S137 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, some of the expenditure on grants falls within S137. Since S137 must be to the benefit of the whole of the parish or part of it, grant aid to 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.

Localism Act 2011

SI 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 Councils" powers to undertake an activity or incur expenditure without the need to have to identify special powers.

"The Government's intention in providing eligible Councils with the General Power of Competence 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 the GPOC is not restricted to the boundary of the parish, it may be used anywhere.

The only real limitation is that the GPOC cannot be used to circumvent an existing restriction in an existing specific power. Neither is the GPOC relevant where an individual cannot act e.g. 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 and to grant aid to an individual.

Since it is the power of first resort it is incompatible with S137 LGA1972 and if the Council adopts the GPOC, S137 will no longer be used.

Eligibility

There are 3 conditions which must be met for a Parish Council to adopt the GPOC:

- a. It must pass a resolution that it meets all the criteria and adopts the 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 (10 existing Councillors were declared elected at the May 2019 elections, even though the election was uncontested).
- c. At the time of passing the resolution, the 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 an individual person (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 – May 2027.

Backwell Parish Council meets all three requirements.

Recommendation

Backwell Parish Council are recommended to pass the following resolution:

***“Backwell Parish Council hereby confirms it meets the criteria for eligibility for adoption of the 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. Backwell Parish Council further resolves to adopt the General Power of Competence.*”**