

Power and Duties of Local Councils

This guidance sheet outlines both mandatory and non-mandatory functions of a local council, including guidance on the new General Power of Competence.

A local council is appointed in perpetuity as a body corporate. It exists with or without its members being a separate legal entity. It is a democratically elected local authority.

Local councils were created by law and can only do those things which the law permits them to do which are known as **powers**. In addition, there are things stated in the law which local councils must do, known as **duties**.

Duties placed upon the council are limited. Many of these duties are procedural although there are some duties relating to functions. Powers conferred on a local council are wide and varied. There are functions laid down in various acts of Parliament which local councils are permitted to carry out if they so wish.

Many of the duties and powers of local councils are included in the Local Government Act (LGA) 1972. It is the first (but by no means the only) Act to consider when seeking information about local councils and the laws they must follow.

When a local council is considering offering a service, carrying out a function or providing facilities for its area it must ensure that it has the power to do it. In addition, in everyday operation, the council must be aware of any duties to which it must adhere.

Duties

The things that a local council must do are limited and many (but not all) of them are of a procedural nature.

The LGA 1972 outlines some of the procedural duties. These include:

- Electing a chairman
- Councillors completing a Declaration of Acceptance of Office
- Appoint officers necessary for the proper discharge of their functions (i.e. a "Proper Officer" or "Clerk")

Looking Further

The Good Councillor's Guide which is available to download from the internet contains a "Toolbox" at the end. This Toolbox is a table of council functions, the power or duty which enables the council to carry out this function and the statutory provision (or legal reference). It provides a quick (but not exhaustive) reference guide when you need to know if a council has permission to act.

Schedule 12 of the same Act covers more of the procedures which a council is obliged to follow, these include:

- Holding at least four meetings a year (including an annual meeting)
- Allowing three clear days notice for a parish council meeting to both members of the public and members of the council
- Including the business to be transacted (agenda) with the notice to councillors

Other procedural duties for a local council include:

Ensuring meetings of the council are open to the public (there is the power to exclude for agenda items where publicity would be prejudicial to the public interest by the fact it is of a confidential nature).

- Complying with its obligations under the Freedom of Information Act 2000 and the Data Protection Act 1998
- Complying with employment law

There are some duties which relate to functions of the council. When a council is considering exercising its powers to provide or contribute to services or facilities, it must consider the impact on its decisions of both:

- Crime and Disorder, and
- Biodiversity

When making decisions to carry out functions, the council must consider how these decisions may impact on Crime and Disorder. For example:

Where they might put a play park? Is the best location next to the dark wood?

Where they might site a bus shelter? Would it be better at the end of an alley known to encourage loitering or 100 metres down the road under a street light?

In addition, the Natural Environmental and Communities Act 2006, s40 imposes a duty on local councils to consider conserving biodiversity when exercising its functions.

Allotments

Another duty relating to functions of the council is duty surrounding the provision of allotments.

Under the Small Holdings and Allotments Act 1908, if a local council is *“of the opinion that there is a demand for allotments in the parish, the council shall provide a sufficient number of allotments”*.

Looking Further

See guidance sheet 4 on meetings and procedures for more detail.

In addition, under the same Act, *“on a representation in writing to the council of any parish, by any six... electors or [council tax payers] resident in the parish, that the circumstances of a parish are such that it is the duty of the council to take proceedings under this Part of this Act therein, the council shall take such representation into consideration.”*

In explanation of the above, if six electors formally write to the council demonstrating a need for allotments, the council has a duty to consider this request. If the council is of the opinion there is a demand, the council shall provide them.

Under the same Act, it is not essential that the allotments are provided within the locality (or parish).

Powers

Those functions that a local council is permitted but not obliged to carry out are known as powers and they are wide ranging and varied.

Many powers focus on community facilities and services and very often the council has not only the power to provide such facilities but also to contribute to them when provided by another organisation or council. This means that local councils can support community groups and community based service providers

Section 133 of the LGA 1972 provides for local councils to provide or support community buildings, whilst s.145 of the same Act allows councils to arrange or contribute towards anything relating to the provision of entertainment, including music, dancing and the arts. Section 144 of the LGA 1972 permits contributions to organisations encouraging tourism. Section 19 of the Local Government (Miscellaneous Provisions) Act permits the council to provide and support a wide range of recreational activities and facilities. There are also powers to provide, maintain and manage public walks, pleasure grounds and open spaces.

Local Councils have the power (with expressed permission from the Secretary of State via a prescribed form) to borrow money for capital expenditure in carrying out the above (and other) powers.

Section 111 of the LGA 1972 gives a local council:

“The power to do anything (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions.”

This power allows a local council to carry out actions and spend money to help it exercise its powers and duties. For example, in order to exercise the power of appointing a clerk; a council may have to spend money on recruitment.

Section 137 of the Local Government Act 1972

Whilst there are a large numbers of functions a local council can carry out, section 137 of the LGA 1972 gives permission (with certain restrictions), for local councils to spend money on things for which there is no other prescribed power.

If a council wishes to carry out a function or provide a service which is not covered by any other power (and thus statutory provision or law) it may turn to section 137 of the LGA 1972 (from herein referred to as "**section 137**").

Paragraph 1 of this section says that:

"A local authority may, subject to the provisions of this section, 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..."

This means that if the council believes that the expenditure is in the interests of all or some of the area or the area's inhabitants it may spend money. The law specifies all or some so the power may not be used for the benefit of individuals.

Section 137 goes on to express that the power may not be used if the action they wish to carry out is forbidden by another power.

Paragraph 4 of the same section refers to the fact that there is a limited sum per **elector** (person on the electoral roll) which may be spent under this Act. Each year, the section 137 allowance is set. The year 2014-2015 allows £7.20 per head. This means that a council may only spend the amount allowed per elector (e.g £7.20 p/h) multiplied by the number of electors on the electoral roll.

Section 137 defines that the direct benefit incurred by the Act will be, "*commensurate with the expenditure to be incurred*", meaning that the amount spent must be equal to the benefit. It would not be considered reasonable, for example, to spend the full allowance on something which benefited only very few inhabitants.

The General Power of Competence

The 2011 Localism Act introduced the General Power of Competence (GPC). For councils which meet the criteria for this power and which **resolve** to use it, it is the first port of call when considering carrying out a project or providing a service. Councils with the GPC do not need to think about whether they have a particular power to act. This power gives an eligible local council, "*the power to do anything that individuals generally may do*", as long as they don't break any other laws.

A council imposes taxes on people by raising the precept. An individual cannot do this, so for this purpose (and any similar that an individual is not permitted to do) it uses its original power. If there is no original power and an individual is not allowed to do it, then a local council cannot do it either.

In order to be entitled to use the GPC, a local council must meet certain criteria. When it does, the council must resolve and minute that it does at a meeting. It lasts until the Annual Meeting after the next election.

The prescribed criteria which need to be met are:

At the moment the council decides it is eligible, the number of councillors elected at the last election (or subsequent by-election) must equal or exceed two thirds of the total required number of councillors, and

The Clerk must hold one of two qualifications; either the higher education qualifications for clerks from the University of Gloucestershire or the Certificate in Local Council Administration (CiLCA). Whichever one is held, the clerk must pass section 7 of CiLCA 2012 which is focussed on GPC.

There are a number of risks and restrictions which apply to the GPC which councils should consider when planning to make use of it. They include attention to other laws and duties, the need to set up a company if they are planning to trade and whether or not another body has a duty to carry out the planned function.

The GPC can offer an opportunity for more unobstructed activity, innovation and achievement for local councils, allowing them to operate beyond their current powers.