

The General Power of Competence.

1. The general power of competence is a statutory power of first resort¹ that enables Local Councils² to do anything that individuals³ generally may do and is found in the Localism Act 2011 S 1-8⁴.

2. To be eligible two criteria⁵ must be met:

- Have an electoral mandate⁶ of at least two thirds.
- Have a qualified⁷ clerk.

The council must confirm⁸ and minute it remains eligible at a relevant annual council meeting⁹.

3. Four restrictions to actions under the general power of competence to consider, are:

- The council must set up a company¹⁰ if it wishes to trade¹¹.
- If the action is covered by a specific power then restrictions that apply to the overlapping power remain in force.
- If another authority has a statutory duty for the action then it stays their duty to provide that service.
- If the council wants to invest in a local business it should follow Government advice on investment.

4. Three activities the council might undertake, with relevant restrictions to consider, are:

- Open an internet cafe, but would need to form a company/ co-operative and abide by company law to trade.
- Support a farm shop, but before investing in a local business to follow Government advice on investment.
- Construct a wildlife pond, but statutory duties such as conserving biodiversity¹² have to be observed.

¹ i.e. would be one of the first powers one would consider using.

² The Localism Act 2011 Part 1 Chapter 1 Section 8 defines an eligible parish council as a local council for the purposes of the act if it meets conditions set out by the secretary of state.

³ An individual is defined as being "an individual with full capacity" in the Localism Act 2011 P1, C1, S1 (3)

⁴ The full reference is the Localism Act 2011 Part 1, Chapter 1, sections 1 - 8

⁵ The criteria are referenced in the Localism Act 2011 S8 and are set out for Parish Councils in a Statutory Instrument "The Parish Councils (General Power of Competence) (Prescribed Conditions) Order 2012.

⁶ To qualify for the electoral mandate, at the time of voting to confirm eligibility for the general power of competence, the council must have two thirds of its total number of councillors counted as being elected (i.e. stood, whether contested or not) at the ordinary election or by-election. Co-opted or appointed councillors do not count.

⁷ "The Parish Councils (General Power of Competence) (Prescribed Conditions) Order 2012 schedule 2(b) sets the clerks qualifications needed (at the time of passing a resolution to confirm eligibility) as a Certificate in Local Council Administration or any of three Higher education qualifications for clerks as awarded by the University of Gloucestershire. NB If CiCA has been previously awarded then section 7 of CiCA 2012 will need to need completed and passed before the Council can be deemed eligible.

⁸ or if not eligible, to confirm its ineligibility to use the power and to minute the fact.

⁹ a relevant annual meeting is the annual meeting of the council after the ordinary election that normally takes place every four years. Eligibility may be initially confirmed at any full council meeting but must be minuted.

¹⁰ or co-operative society.

¹¹ and hence abide by company law.

¹² The Natural Environment and Communities Act 2006 S40.