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Suzie Cave

General Power of Competence in England

The following paper considers the General Power of Competence under the Localism Act 2011. As requested by the Environment Committee, it provides information on the use of the power by local authorities throughout England. The power came into force in 2012, therefore reviews and information on its implementation is relatively limited.

Introduction

A general power of competence (GPC) for local authorities in England and Wales was introduced by section 1 of the *Localism Act 2011*. It came into force on 18 February 2012 (via the [Localism Act \(Commencement no. 3\) Order 2012](#) – SI 2012/411). It gives local authorities “power to do anything that individuals generally may do” and is seen as a wider statement of their powers than the previous wellbeing powers (this is limited to the enhancement of wellbeing in a council’s district, whereas the GPC gives councils the same freedom as any individual provided the act is within the law). Another difference is the fact that with the power of wellbeing councils must find existing enabling legislation for the action they wish to take, whereas the GPC requires councils to check there is no legislation restricting them from carrying out the action. In other words, the GPC enables councils to assume they have the power to act unless they are specifically prevented from doing so.

However, there are boundaries to the GPC. It may not be used to raise taxes, though it can be used to raise charges for services or to do things for a commercial purpose. It also cannot be used to do something that local authorities are expressly forbidden to do in other legislation.

Use of the Power in England

In relation to information examining the use of the power the Local Government Association (covering England) published a paper in July 2013 entitled [*The general power of competence: empowering councils to make a difference*](#). The LGA paper looks in detail at the usage of the GPC by councils – the paper shows that councils are currently using the power to promote innovation in a number of areas:

Extending services and support into new areas

Allowing councils to do anything an individual can do (unless specifically prohibited) in legislation has given greater confidence to do new things and to use different approaches. A number of councils have used the power to give them the specific legal basis and confidence to extend their services beyond areas traditionally seen as their responsibilities. It is seen as power of first resort, rather than one of last resort such as the power of well-being.

Example: Oxford City

The GPC has given the district council of Oxford City the confidence to develop a school improvement support programme (previously regarded as the preserve of an upper tier council). Concern had been raised by major local employers that young people were not developing the necessary skills they require. Working with the two local universities, local schools and a specialist education consultancy, the city council has put in place a programme of improvement support for schools.¹

According to the LGA Clerks of town and parish councils have found it positive to be able to advise members that it is possible for their councils to do more in line with council and community priorities. It has been found that even when the power is not used it has saved time and resources in searching for more specific powers.

Another area that has been stimulated by the GPC is the number of councils now leading on energy switching schemes. Councils have been able to secure better energy deals, with energy switching companies, for domestic users by taking

¹ Local Government Authority (LGA) *The General Power of Competence: Empowering councils to make a difference* [*The general power of competence: empowering councils to make a difference*](#)

advantage of the buying power created by amalgamating residents from within their area and others. Estimates from some councils participating suggest savings of over £150 per household a year are possible. One example involves 12 councils across England, including Hertfordshire County Council and South Holland District Council and over 8,500 households.

Supporting regeneration and the local economy

A number of councils are finding the GPC helpful in building greater economic growth and resilience in their local communities.

Example: Newark and Sherwood “Think BIG” (to help local businesses grow)

Both councils used the GPC to help smaller businesses in their areas to grow. With finance as a key challenge for most small businesses, the council established a £2 million fund financed by the New Homes Bonus. The fund called “Think BIG” (Business Investment in Growth) provides loan finance to local businesses with growth potential, where they have been unsuccessful obtaining funding from other sources such as banks. To date, four loans have been granted worth £ 285,000 in total and have safeguarded 40 jobs with a potential for 43 more. The average turnover of the businesses supported is £672,500.²

Example: Local Authority Mortgage Scheme

Hertfordshire County Council has used the GPC to provide the basis for its participation in the Local Authority Mortgage Scheme (LAMS), working in partnership with most of the district councils in the county, Lloyds TSB and the Leeds Building Society.

The scheme offers help to first time buyers by giving access to a 75% mortgage with only a 5% deposit, the balance of the funding coming from the indemnity scheme. The indemnity lasts five years during which time the council earns interest on the amount of the indemnity. The funding plus interest accrued is returned to the county council. The scheme began in March 2012 and aims to help over 500 first time buyers. Other councils have reported that they have used the GPC as the basis of loans or grants to local employers to help secure jobs and support to the community.³

² ibid

³ ibid

A seminar held by the Local Government Information Unit (LGIU) on the GPC in 2011 identified examples which illustrated how councils used the power to set up social enterprises under the models available.⁴

A social enterprise:

- undertakes trading activities (50% > of income);
- has a social purpose;
- reinvests its profits (50% > reinvested);
- is independent;
- has an asset lock;
- is accountable for social goals

Social enterprises include 1) charities that trade, 2) community interest companies, 3) mutual, and 4) co-operatives.

Examples from the seminar of councils using the GPC include:

Lambeth's 'Cooperative Council' model

Lambeth was one of the councils originally involved in the Local Authorities' Mutual Ltd (LAML) judgement, which ruled that local authorities could not use the Power of Wellbeing to establish a mutual insurance company⁵. However using the GPC, the Council launched its 'Cooperative Council' vision using a wide range of service delivery models including mutual, shared services, federated services, joint ventures with 3rd Sector and social enterprise. It was stated that the General Power of Competence is important for councils in helping them to achieve their vision as it does not specify how councils should deliver services, but clarifies their freedom to do things their own way.⁶

Essex

The Post Office. The Post Office announced that it would be closing a number of its branches in Essex. The County Council looked into ways of delivering these services differently using the GPC. There were various models, which generally involved contracting the service to an existing sub-postmaster. Different levels of service were offered, from re-provision of the existing service, to pop-up services in the local pub or

⁴ Local Government Information Service (2011), *Ideas from our General Power of Competence seminar*
<http://www.lgiu.org.uk/2011/10/18/ideas-from-our-general-power-of-competence-seminar/>

⁵ In 2006 and 2007 a number of London local authorities entered into arrangements for mutual insurance against various classes of risk, including property, liability and terrorism. The aim of the arrangements that the London local authorities entered into was to reduce the cost of premiums to its members and to raise the standard of risk management. In pursuing these objectives they were acting solely in the public interest. For more detail see
<http://www.bailii.org/uk/cases/UKSC/2011/7.html>

⁶ Local Government Information Service (2011), *Ideas from our General Power of Competence seminar*
<http://www.lgiu.org.uk/2011/10/18/ideas-from-our-general-power-of-competence-seminar/>

other community centre and pay-point terminals providing basic postal services. The first Post Office reopened in 2008 and Essex has since been approached by 150 councils hoping to replicate the project.

Essex Cares. Essex was the first local authority to set up a traded service focusing on social care. 850 staff moved across from the council to the new organisation, which was set up as an independent company owned by its shareholders. It offers support in the home and the community. It made a profit of £3-3.5 million in 2010, which was reinvested in the service and has reduced the cost of services for self-funders. It has been very successful from an organisational perspective: absenteeism is down, the turnover of staff has slowed and user satisfaction is now at 99 per cent.⁷

Constraints to the power

While welcoming the GPC, the LGA noted that a number of councils mentioned some constraints which had or could present barriers to its wider use.⁸ The main issues identified were:

Limited company structures

Under clause 4 of the Localism Bill, only limited company structures are permitted for using the GPC for trading activities; these are companies limited by shares or guarantee or industrial or provident societies. For example, several councils and a Fire and Rescue Service have wanted to extend their services using more modern community interest company structures, to achieve greater community engagement or to develop governance structures less influenced by politics for commercial reasons. However the councils have used different powers to proceed as it is felt that the GPC could not be used as such structures do not fit the requirements of the Localism Act.

Limits to charging

Under clause 3 of the Localism Act charging is only permitted for a discretionary service (i.e. not one which it is required to provide by statute) and on a cost recovery basis where charges are not to exceed the costs of provision i.e. where no profit is to be made.

Limitations on the use of state aid

This is in terms of both undertaking trading activities and in supporting local business and employment. It is felt that the limits may have more bearing in regenerating deprived communities where more support is required to try and reduce the risks associated with development projects.

⁷ *ibid*

⁸ Local Government Authority (LGA) *The General Power of Competence: Empowering councils to make a difference* [The general power of competence: empowering councils to make a difference](#)

Checks for limitations

There is a requirement to check for pre- and post-commencement limitations i.e. any restriction/limitation imposed by existing statutory legislation. The drawback to this is the length of time it takes, and in some cases may lead to the identification of a more specific power which can be used in place of the GPC. However it has been suggested that where common barriers are identified it may be appropriate for the Secretary of State to use the powers under clause 5 of the Localism Bill to amend, repeal, revoke or disapply such provisions causing limitations.

Does not allow for creation of byelaws or enforcement activity

The power does not permit this as it simply extends councils' powers to do what individuals can normally do. This has caused misunderstanding amongst members of councils.

Timing

The GPC has been introduced at a time of great financial constraint, therefore the use of the GPC has been quite narrow; used mainly to minimise the impact of spending cuts or support improved efficiency. Therefore more creative use of the power may have been limited due to council priorities. Some councils have commented that other parts of the Localism Act have attracted more interest such as the Community Right to Build and the Community Right to bid for assets of community value.

Lessons learned

The LGA made the following recommendations based on the experience of councils using the GPC:

- Be clear about what it is that wants to be achieved and that it is in line with the priorities of the council and local community. It should be used as a tool to facilitate, and as an end in itself.
- Develop and support an environment which promotes an innovative and entrepreneurial approach.
- View the potential of the GPC as lever to tackle excessive caution or fixed ways of doing things.
- Check for any pre- and post-commencement limitations (and consider modifying the approach if needs be)
- Where used as a basis for charging, ensure that charges are not being made for a statutory service, that the recipient agrees to receive the discretionary service, and charges are on a cost recovery basis only.

The general findings from the seminar held by the Local Government Information Unit in 2011 include:

- The General Power of Competence won't automatically result in more innovative services, but it will offer policy officers leverage with other directorates. It could help to shift the debate from 'can we do this?' to 'how can we do this?'
- There may be winners and losers. Those councils that are already taking an innovative approach will be in a good position to take advantage of the new power. Some councils may not be interested, or may not have the capacity to invest in new models of service delivery. This is a concern for districts. The current financial context is also making it difficult for councils to take a long-term strategic approach. Finding space to innovate is a challenge.
- There is a danger that councils will use the challenge to run services in a different way as an opportunity to pass failing services over to the community. Mutuals/social enterprise should not be regarded as a panacea for dealing with unsuccessful services.
- Using the new power will be primarily down to the culture of the organisation, rather than the legislation itself. There are already tools available under the current powers and councils can use these immediately.
- For the sake of clarity, councils should refer to the new power in any decision paper that intends to make use of it.