

A CiLCA qualified officer understands the general power of competence.

THE EVIDENCE

Submit notes explaining what the general power of competence is and where it is found. Identify the criteria that councils must meet to be eligible to use the power (with the legal reference) and the process of confirming and reaffirming eligibility. Identify three activities that a named council might undertake using the power and explain any risks and restrictions that might apply in each case. Make clear the difference between risks and restrictions.

GUIDANCE

You specify the relevant legislation as a substantive part of the answer and explain what the general power of competence allows a council to do. The legal reference for the two eligibility criteria is also a substantive part of the response. It is not necessary to provide the details of relevant qualifications as long as both qualifications are recognised. The process by which the council regularly confirms eligibility is specified in law. Identified activities could be innovative or unusual but the general power of competence is a power of first resort so an eligible council can use it for most of its activities. The named council does not have to be very active or eligible to use the power. This evidence includes activities that it might undertake if circumstances were different. For each of the three activities any risks or restrictions that might apply are identified. It is not essential to identify all the risks and/or restrictions in each case although the difference between risks and restrictions must be recognised. There are 250 words available for the explanation (maximum 275). To submit documents press the upload file button below. The maximum file size for each file is 10MB.

ACHIEVEMENT CRITERIA

The assessors check that you can...

7.1 explain

- a) the general power of competence providing legal references
- b) the criteria for eligibility
- c) the process for confirming and reaffirming eligibility

7.2 explain activities that a council might undertake using the general power of competence

7.3 identify any relevant risks and restrictions.

The General Power of Competence (GPC)¹, replaced the Well-being power² and was introduced through the Localism Act in 2011, (Part 1, c1, s1 – 8), to enhance the role of Local Authorities, enabling a greater degree of flexibility, providing opportunities to be innovative,³

Subject to prescribed conditions the act gives Councils **the power to do anything lawful an individual can do**. It is a first power.

The conditions of eligibility are detailed under article 2 of The Parish Councils (General Power of Competence) (Prescribed Conditions) Order 2012. An explanatory note states the order the Order prescribes the conditions to be met by a parish council

Criteria

- Councils must hold a **minimum of two-thirds of elected Councillors** filled at the last ordinary elections.
- A **clerk** holds the national **qualification** and has completed **relevant training** i.e. Certificate in Local Council Management (CiLCA) including the 2015 Unit 3, L007.

Process

- The Council must **resolve at a full parish council meeting** that **it meets the above criteria** at that time.
- A further **resolution must be passed at every annual meeting** of the **Council after the ordinary elections**; which normally takes place **every four years**.

Example activities:

- Running a community shop or post office
- Investing in a local co-operative society
- Setting up a Company to provide a service, egg local transport
- Provide loans to finance local businesses
- Provide a grant to an individual

Section 137 expenditure is limited and has to be budgeted separately. Qualifying Councils no longer need to use s137 as a power.⁴

Restrictions:

- The Council remains subject to:
 - statutory duties ⁵
 - regulations ⁶
 - limitation ⁷
 - restrictions ⁸
 - prohibitions ⁹that were place before adopting GPC or implemented after.

Risks:

- Being legally challenged ¹⁰
- Potentially trading activities could damage other local enterprises
- Damage to Council's reputation
- Financial issues incurred if a project or investment goes wrong

¹ <https://www.legislation.gov.uk/ukdsi/2012/9780111519868/contents> - The Parish Councils (General Power of Competence) (Prescribed Conditions) Order 2012

² <https://www.legislation.gov.uk/ukpga/2000/22/section/2> - Local Government Act 2000, c22, Part 1 Promotion of well-being. See 1 -2 of page 4 of DCLG's evaluation report - <http://researchbriefings.files.parliament.uk/documents/SN05687/SN05687.pdf>

³ http://www.legislation.gov.uk/uksi/2012/965/pdfs/uksiem_20120965_en.pdf - (see Policy background, 7)

⁴ **A council that is eligible to use the general power of competence can no longer use Section 137 as a power for taking action for the benefit of the area. However, Section 137 (3) which permits the council to contribute to UK charities, public sector funds and public appeals remains in place.**

⁵ **The Council has a duty to:**

- Act with regard to Crime & Disorder - [Crime & Disorder Act 2006, s17](#)
- Consider conserving biodiversity in exercising its functions, [The National Environment and Communities Act 2006, s40](#)
- If there is a demand, to provide allotments, [The Smallholding and Allotments Act 1908 s23\(1\)](#)

⁶ **The Council must still comply with Employment Law, Health & Safety Regulations, Data Protection (GDPR), the Equal Opportunities Act 2010 and Freedom of Information Act 2000,**

⁷ **In considering disposing of land held by parishes and communities Council must refer to the [Local Government Act 1927, c70, Part VII – Land transactions – parish and community councils – Section 127](#) and the [Town and Country Planning Act 1990, c8, Part XV, s336\(1\)](#)**

⁸ **where an authority uses GPC for a commercial purpose, it must do so through a company as defined by section 1(1) of the Companies Act 2006.**

⁹ **GPC does not override the statutory prohibitions on a local council discharging the functions of other local authorities, eg planning, highways, housing, traffic regulations.**

¹⁰ <https://www.bwbllp.com/file/p-r-spring-2015-general-power-of-competence-article-pdf> - The article 'The General Power of Competence – what it is and how it is used?' refers to two legal challenges (i) *Savage v Mansfield DC (2014)* regarding a planning decision (ii) Harrogate Borough Council hosting the Tour de France 2014.