**The General Power of Competence – what is it and how is it being used?**

Local authorities now have the power to do anything that individuals may do, where previously they could only do what they had been authorised to by law. The General Power of Competence (GPC) gives authorities a new flexibility to act, but what does it mean in practice?

**Melanie Carter** considers the background to GPC, its scope, and its limitations

**Background**

Traditionally, while an individual may do anything that is not prohibited by law, the opposite is true for public bodies: they can only do what they have been authorised to by law. Any act or decision that goes beyond those powers is unlawful (or ‘ultra vires’).

Section 1(1) of the Localism Act 2011 (LA 2011) gives local authorities (LAs) the power to do anything that individuals may do – a ‘general power of competence’ (GPC). The GPC, therefore, reverses the presumption that any decision will be unlawful unless expressly permitted, and allows LAs to conduct their affairs with a greater degree of flexibility, providing them with new opportunities.

GPC is the most significant power of this kind for LAs, although a number of other measures already mitigate the rigidity of the ultra vires rule. Section 111(1) of the Local Government Act 1972 (LGA 1972) allows LAs to do anything that is calculated to facilitate, or is conducive or incidental to, the discharge of their functions.

Section 2 of the Local Government Act 2000 covers the promotion of well-being (‘the well-being power’), which gives LAs the power to do anything likely to achieve the promotion or improvement of the economic, social, or environmental well-being of their area (subject to certain restrictions). Clearly, GPC goes further than both of these provisions, although it too is qualified by certain limitations.

**Who does it apply to?**

GPC is conferred upon ‘local authorities’, which includes county councils in England, district councils, and London borough councils. It applies to parish councils where that council has resolved that it meets the relevant conditions (including a minimum number of elected members).

**Scope**

The provisions of section 1 LA 2011 confirm the wide scope of GPC: it applies to anything that an individual may do, even if it is completely unlike other things that LAs may already do (distinguishing it from the section 111(1) LGA 1972 power). GPC may be exercised in the UK or abroad, for a commercial purpose or otherwise, for a charge or for no charge. GPC may be, but need not be, exercised for the benefit of the LA or its area (unlike the well-being power). The power may be used in conjunction with other powers, which may be useful where the scope of those powers is uncertain.

“The general power of competence ‘allows LAs to conduct their affairs with a greater degree of flexibility, providing them with new opportunities’”

GPC is subject to some restrictions. Under section 2 LA 2011, any powers conferred on LAs before GPC was enacted remain subject to any existing limitations. Similarly, any restrictions on LAs’ power contained in legislation preceding the enactment of GPC cannot be circumvented by use of the power. However, legislation enacted after enactment will not limit the power unless this is explicitly mentioned. GPC may not be used to circumvent rules on the use of committees and other governance arrangements. Section 5 gives the Secretary of State wide powers to amend, repeal, revoke or disapply provisions that restrict LAs from using GPC.

While LAs may charge for services provided for non-commercial purposes, they may only do so for services that they are not already required to provide (section 3). Further, the income they receive from those services must not exceed the cost of their provision over the course of the year. Under section 4, the LA may only act for a commercial purpose through GPC where it is doing things that it may do for a non-commercial purpose. When acting for commercial purposes, LAs must act through a company.
How is it being used?

Although GPC is still relatively new, the Local Government Association (LGA) has said that it has given LAs the confidence to work in new ways and develop new services and partnerships. Equally, councils recognise the constraints on the use of GPC in practice, including:

■ the requirement of a company structure (precluding the use of community interest companies);
■ limitations on charges (discretionary services only, and no surplus permitted); and
■ the time taken to check for pre- and post-commencement limitations (whereby a specific power may be identified anyway).

Indeed, a survey by the *Local Government Lawyer* and Freeth Cartwright (December 2013) found only 6% of councils said GPC had made ‘a significant positive difference’. 45% said it made a ‘slight’ positive difference, and the remaining 49% said it made no difference.

Following an LGA and National Association of Local Councils conference in July 2013, the LGA published a paper on unlocking the potential of GPC, including an annex of case studies. For example, Oxford City Council used the power to develop a school improvement programme to address local issues, in circumstances where the county council has lead responsibility for educational attainment. The power gave the city council confidence to develop a service outside its normal area of responsibility.

There are few instances of litigation concerning GPC. In *Savage v Mansfield District Council* (2014), GPC was used to defend an LA planning decision. The claimant challenged outline planning permission granted for a development, which included an agreement between the LA and the developer that the latter would not seek compensation where planning permission was revoked or modified due to the presence of protected species on the site. The claimant argued this went beyond the terms of legislation that permits agreements relating to planning obligations. The court accepted that this was arguable, but the agreement could be made (and be enforceable) under GPC. As such, the challenge failed (on this and all other grounds).

A final example of GPC in action is Harrogate Borough Council hosting the Tour de France 2014. The finish of the first stage was to be in an area called ‘the Stray’: land managed by the council but owned by the Duchy of Lancaster and regulated by specific legislation. As a starting point, GPC would allow the council to host the race: an individual could host a cycle race on someone else’s land, provided they comply with relevant law and obtain consent. However, the infrastructure arrangements to host the race would have breached the council’s management obligations under the legislation (including maintaining and preserving the aspect of the Stray): GPC could not be used because of this pre-existing limitation. The Secretary of State granted the council’s request to temporarily disapply the legislation under section 5 LA 2011 so the council was able to use GPC to host the race.

Conclusion

GPC is still a new and relatively untested option for LAs, and has not revolutionised the use of local government power, nor is it likely to. However, it is encouraging some LAs to find innovative ways to deliver services by providing them with the confidence that they are able to act in the way they wish. Further, as with Harrogate hosting the Tour de France, it allows for outcomes that may have been harder or impossible to achieve previously. The *ultra vires* doctrine is important in keeping the powers of public bodies in check, but can be over-restrictive; GPC provides a useful tool in giving LAs the degree of freedom they sometimes need.

Find out more


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