

**EXPLANATORY MEMORANDUM TO**  
**THE PARISH COUNCILS (GENERAL POWER OF COMPETENCE)**  
**(PRESCRIBED CONDITIONS) ORDER 2012**

**2012 No. 965**

**1.** This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

This Order prescribes the conditions that must be met by a parish council in order for it to be eligible to use the general power of competence for local authorities set out in section 1 of the Localism Act 2011 (“the 2011 Act”).

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

This is the first occasion on which the power conferred by section 8(2) of the 2011 Act has been exercised.

**4. Legislative Context**

4.1 Chapter 1 of Part 1 of the Localism Act 2011 (“the 2011 Act”)<sup>1</sup> provides local authorities in England with a general power of competence. It gives these authorities the same power to act that an individual has and provides that the power may be used in innovative ways, that is, in doing things that are unlike anything that a local authority has done before or may currently do. Schedule 1 to the 2011 Act amends section 2 of the Local Government Act 2000 (the power to promote well-being) so that it will no longer apply to English local authorities. The effect of this is that, for English local authorities, the power to promote well-being is being replaced by the broader general power of competence.

4.2 Section 8 defines “local authorities” for the purposes of Chapter 1 of the 2011 Act so as to include “eligible” parish councils. An eligible parish council is a parish council which meets conditions prescribed by the Secretary of State. The purpose of this Order is to prescribe such conditions.

4.3 Parish councils are the lowest tier of local authority in England and are established by or under section 9 of the Local Government Act 1972. They consist of a chairman and members, members being either elected, declared elected or co-opted. In addition to specific powers they have, since 2008, been able to exercise the power to promote well-being if they meet conditions specified by the Parish Councils (Power to Promote Well-being)(Prescribed Conditions) Order 2008 (“the 2008 Order”) made under section 1(2) of the Local Government Act 2000. Similarly, in order to exercise

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<sup>1</sup> Section 8(2) of the Localism Act 2011 was commenced by the Localism Act 2011 (Commencement No. 1 and Transitional Provisions) Order 2011 (S.I. 2011/2896).

the new power of general competence, parish councils will need to meet the conditions set out in this Order.

4.4 It is intended that this Order will come into force in April 2012, so as to coincide with the commencement of the provisions giving the general power of competence to other local authorities.

## **5. Territorial Extent and Application**

5.1 This instrument applies to England.

5.2 While the provisions of Chapter 1 of Part 1 of the 2011 Act technically extend to England and Wales, the general power of competence will only apply to the authorities listed in section 8, which are all English local authorities.

## **6. European Convention on Human Rights**

The Parliamentary Under Secretary of State has made the following statement regarding Human Rights:

In my view the provisions of the Parish Councils (General Power of Competence) (Prescribed Conditions) Order 2012 are compatible with the Convention rights.

## **7. Policy background**

### Policy

7.1 Parish councils have a vital role to play in improving local services and delivering the decentralising and localist agenda set out by the Government and enshrined in various provisions within the 2011 Act. The Government has worked closely with the parish council sector on the measures relating to parishes in the 2011 Act.

7.2 The general power of competence is an important part of the decentralisation process. It is intended to provide local authorities, including certain parish councils, with the confidence in their legal capacity to act both for their communities and in their own financial interest to generate efficiencies and savings, and provide them with more freedom to innovate and work together with others, manage assets and run new services.

7.3 The Government's intention in providing eligible parish councils with the general power of competence is to better enable them to take on their enhanced role and allow them to do things that they have previously been unable to do under their existing powers. The parish sector welcomes the extension of the power to eligible parish councils.

7.4 Parish councils vary in their ability and capacity to take on the enhanced role and responsibility of an authority with a general power of competence. As a

consequence, the 2011 Act makes extension of the power to parish councils conditional. The Government considers that accountability, in the form of an electoral mandate, and access to proper advice on the use of such a broad new power through a suitably qualified parish clerk are key. The Government has worked closely with the parish council sector in drawing up the conditions in the Order and, as with the 2008 Order that enabled certain parish councils to access the well-being power, has drawn on criteria used in the *Quality Parish Scheme*.<sup>2</sup>

7.5 If a council does not wish to exercise the general power of competence it is not obliged to do so, and would simply not pass a resolution under paragraph 1 of the schedule.

### The conditions

7.6 The conditions are set out in the Schedule to the Order:

#### *Resolution*

7.7 To become an eligible parish council, a parish council must resolve at a meeting that it meets the specified conditions relating to electoral mandate and relevant training for the clerk. The first such resolution can be passed at any meeting of the council but a further resolution must then be passed at every subsequent “relevant annual meeting” for the council to be able to continue to exercise the power. A “relevant annual meeting” is the annual meeting that takes place in a year of ordinary elections, once every 4 years.

#### *Electoral Mandate*

7.8 At the time a resolution is passed, at least two-thirds of the members of the council must hold office as a result of having been declared elected. This means that they must have stood for election, whether at ordinary elections or at a by-election (even if they have stood unopposed), rather than have been co-opted. This will ensure that the council will be representative of, and have a mandate to serve, its community.

#### *Qualified clerk*

7.9 The clerk to a parish council advises the council on the law and implements the decisions that the council takes. It is therefore essential that the clerk possesses the necessary knowledge, skills and competencies to carry out his or her duties correctly. This will ensure that a parish council is provided with appropriate advice in taking on the enhanced role that the general power of competence will enable.

7.10 At the time the resolution is passed, the clerk to the council must have obtained the Certificate in Local Council Administration, the Certificate of Higher Education in Local Policy, the Certificate of Higher Education in Local Council Administration or the first level of the foundation degree in Community Engagement and Governance (or successor qualifications) awarded by the University of Gloucestershire. The clerk must also have completed training in the exercise of the

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<sup>2</sup> [http://www.nalc.gov.uk/Toolkits/Quality\\_Status.aspx](http://www.nalc.gov.uk/Toolkits/Quality_Status.aspx)

general power of competence either as part of one of these qualifications, or as a separate exercise.

7.11 The Society of Local Council Clerks, in association with the National Association of Local Councils, are currently developing the general power training modules that clerks must undertake in order to meet the qualified clerk conditions. The Department is supporting the SLCC to produce the training so that it is available to clerks when the new power comes into effect.

#### Period of eligibility and transitional provision

7.12 Once a resolution has been passed, a parish council remains eligible up until its next relevant annual meeting, whether or not the conditions relating to electoral mandate and qualified clerk continue to be met (compliance with these conditions is judged at the time a resolution is passed). This provides certainty for councils undertaking activities in reliance on the general power, whilst ensuring that they do not lose the incentive to continue to meet the conditions once they have initially become eligible. It also provides certainty for third parties in their dealings with parish councils as to the extent of a particular council's powers.

7.13 The Government's expectation is that eligible parish councils will strive to fulfil the conditions at all times and not just on the day of the relevant annual meeting.

7.14 If a parish council has become eligible, but at the next relevant annual meeting it does not pass a further resolution (whether by choice or because of a change in circumstances) then it will cease to be eligible except in the circumstances described, in paragraph 3(3) of the Order. This provides that activity that has been begun but not completed may be continued. This transitional provision has been included to ensure that longer-term projects or arrangements made using the general power are not jeopardised by changes in the circumstances of the parish council.

## **8. Consultation**

8.1 During the development and passage of the Localism Act 2011, the Department consulted with representatives of the parish sector. This consultation process has continued throughout the development of this Order. The Department has worked closely with the following organisations:

- The Local Government Association
- The National Association of Local Councils
- The Society for Local Council Clerks

8.2 The organisations listed above are supportive of the policy content in this Order and welcome the extension of the general power of competence to eligible parish councils at the same time that it is being made available to other tiers of local government.

8.3 Consultees have also welcomed the reduction in the number of conditions that a parish council will have to meet to be eligible to exercise the new power in comparison with the existing power to promote well-being in the Local Government

Act 2000 (which the new power will replace). Unlike the 2008 Order, this order does not require a percentage of councillors to have been trained in use of the new power nor for councils to publish a statement of intent about how they intend to engage the community on decisions regarding the use of the general power of competence. It also allows by-elections to be taken into account in determining the proportion of councillors that have been declared elected. The Government considers that this additional flexibility will result in a greater number of parish councils making use of this new power as compared with the well-being power.

8.4 There was some debate as to whether there was a need for a clerk to undertake further training on use of the new power and how detailed that training should be. The Government wishes to be sure that parish councillors have access to robust advice on the use of such a broad new power and therefore feel that this condition is appropriate, especially as experienced clerks are required to do no more than update their current training.

8.5 During discussions, consultees were keen to ensure that the Order included a provision for circumstances where councils can no longer meet all of the conditions for the next period of eligibility and therefore are no longer eligible to exercise the general power. Appropriate transitional provisions have therefore been included.

## **9. Guidance**

The Department does not intend to issue guidance about use of the power, as part of its commitment to reduce the burden of regulations and guidance on local government by central government.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is likely to be positive. The general power of competence will provide parish councils with the legal capacity and greater confidence to work in partnership with private and third sector organisations. It will also enable parish councils to provide financial assistance.

10.2 This is a permissive power and therefore there is no compulsion on any tier of local government to make use of it. The impact on the public sector will be determined by how parish councils decide to use the power. The extension of the power to certain parish councils will enable those councils to do things that they have previously been unable to do under existing powers, and this may result in increases in the parish precept. As with the well-being power, there is no limit set on the amount that an authority may spend under the general power. Equally, as it allows them to act in their own financial self-interest, there is potential for efficiencies and savings to be made.

10.3 The Impact Assessment prepared for the general power of competence during the passage of the Localism Bill is relevant to this instrument.<sup>3</sup> A separate Impact Assessment has not therefore been prepared.

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<sup>3</sup> <http://www.communities.gov.uk/publications/localgovernment/localismcompetence>

**11. Regulating small business**

The legislation does not regulate small business.

**12. Monitoring & review**

The Department will work with the National Association of Local Councils and the Society of Local Council Clerks to monitor and from time to time review the suitability of the conditions prescribed by this Order and the use by parish councils of the general power. The Department's aim is to encourage all parish councils to strive to meet the conditions and to become eligible to use the power, which are likely to lead to the enhanced performance of parish councils and delivery of this Government's decentralisation agenda.

**13. Contact**

Alison Morris at the Department for Communities and Local Government Tel: 0303 444 2613 or email: [Alison.morris@communities.gsi.gov.uk](mailto:Alison.morris@communities.gsi.gov.uk), who can answer any queries regarding the instrument.