BURGHILL PARISH COUNCIL

THE GENERAL POWER OF COMPETENCE

1. BACKGROUND

1.1 Parish Councils are corporate bodies that have accumulated powers through legislation since 1894. Their powers were constrained to specific and appropriate legislation. This means that before undertaking anything, members must be satisfied that the Council has the power (under a specified statute) to undertake that activity.

1.2 Parish councils have many specific powers in addition to section 137 of the Local Government Act 1972. Section 137 permits expenditure up to certain limits for "purposes not otherwise authorised". Typically, the expenditure on grants and sponsorship is covered by section 137 of the Local Government Act, 1972.

1.3 Despite the wide range of powers, parish councils are always at risk of being challenged, especially if they undertake an unusual activity.

1.4 In consequence, the Government included a "general power of competence" in the Localism Act 2011 (Part 1, Chapter 1, ss 1-8). It was brought into force by SI 965 the Parish Councils (General Power of Competence) (Prescribed Conditions) Order 2012 in April 2012.

2. LEGISLATIVE BACKGROUND

2.1 The intention of the general power of competence legislation is that eligible local authorities will no longer have to identify specific powers to undertake an activity. As a result, the risk of legal challenge will be reduced. It is stated in the above Statutory Instrument that:

> *"The Government's intention in providing eligible parish councils with the general power of competency is to better enable them to take on their enhanced role and allow them to do things they have previously been unable to do under existing powers".*

2.2 Under the new legislation, eligible councils have "the power to do anything that individuals generally may do" as long as they do not break other laws. It is intended to be the power of first, not last, resort. The eligible council has to ask itself if an individual is allowed to do it. If the answer is "yes", then a parish council is normally permitted to act in the same way.

3. TYPES OF ACTIVITIES

3.1 Although the Government has given scant guidance on the operation of the new power, some new activities covered by the legislation include:

Running a community shop or post office

Lending or investing money

Establishing a company or co-operative society to trade and engage in commercial activity

Establishing a company to provide services such as local transport

Providing grants to individuals.

3.2 The power is not restricted to use within the Parish, an eligible council can use it anywhere.

4. RESTRICTIONS AND RISKS

4.1 The only real limitation is that the general power of competence cannot be used to circumvent an existing restriction in an existing specific power. The general power of competence is a power; it cannot be used to raise the precept.

4.2 All existing duties remain in place for example the duty to have regard to the likely effect on crime, disorder and biodiversity. There are also many existing procedural and financial duties that remain in place for the regulation of governance, for example there can be no delegation to a single councillor. Furthermore, councils must comply with relevant existing legislation such as employment law, health and safety, equality legislation and duties relating to data protection and freedom of information.

4.3 If another council has a statutory duty to provide a service for example education services, social service, highways, footpaths and rights of way, it remains their duty to provide it. Nonetheless, eligible councils may assist. The eligible council would need to ask itself whether an individual, private company or community trust could help. If the answer is “yes”, the council can assist.

4.4 Whist councils are encouraged to be innovative, they should be aware of the risks of:

Being challenged;

Their trading activities damaging other local enterprises;

Damage to the council’s reputation and public money if a project or investment goes wrong.

5. LOCAL GOVERNMENT ACT 1972 – Section 137

5.1 Expenditure under the Local Government Act (s137) is limited and has to be budgeted for separately. Expenditure is restricted in that it cannot be used to give money to individuals and the amounts must be commensurate with the benefit. Section 137 is therefore often referred to as a power of last resort.

5.2 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.

6. ELIGIBILITY

6.1 There are three conditions for eligibility that are set out in the Statutory Instrument:

Resolution:

The Council must resolve at a meeting that it meets the criteria for eligibility relating to the electoral mandate and relevant training of the clerk.

Electoral Mandate:

At the time the resolution is passed, at least two thirds of the council must hold office as a result of being declared elected (i.e. not co-opted). For Burghill Parish Council 10 of the 15 Councillors must have been elected.

Qualified Clerk

At the time that the resolution is passed, the Parish Clerk must hold a recognised professional qualification:

- The Certificate in Local Council Administration (CiLCA);
- 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 awarded by the University of Gloucestershire or its successor qualifications

6.2 At the Annual Meeting immediately following a Parish Council election the council must determine whether it meets the criteria for eligibility. If it does a resolution to adopt the General Power of Competence must be clearly written in the minutes. The Council is then only required to revisit this decision and make a new resolution at the next 'relevant' annual meeting of the Council. The 'relevant' annual meeting is the annual meeting of the Council following the next election.

6.3 In consequence, eligibility remains in place until the 'relevant' annual meeting even if the conditions of the eligibility criteria have changed.

6.4 There is no requirement for members to be trained in the general power of competence.

6.5 Burghill Parish Council satisfies all the conditions as:

- Of the 15 Councillors – 12 have been elected and 3 have been co-opted;
- The Parish Clerk holds the CiLCA Qualification.

7. RECOMMENDATION

7.1 It is recommended that Parish Councillors consider this report and pass the following resolution:

"Burghill Parish Council resolves from 23rd May 2023, until the next relevant Annual Meeting of the Council, that having met the conditions of eligibility as defined in the Localism Act 2011 and SI 965 The Parish Councils (General Power of Competence) (Prescribed Conditions) Order 2012, to adopt the General Power of Competence".