

## **Dronfield Town Council - The General Power of Competence**

### **Report of the Town Clerk**

1. Local authorities, including Parish and Town councils, are bound by statute and so can only do what they are allowed to do by statute. This means that before undertaking any activity, and in particular before spending money, members must be satisfied that the town council has the power under some statute to undertake the activity. Parish and Town councils have many specific powers, for example to provide open spaces and recreational facilities, and there is also the general power in section 137 Local Government Act 1972 to spend up to a certain limit for 'purposes not otherwise authorised'. Since 2007 Parish and Town councils satisfying certain conditions have also had a 'power to promote wellbeing'.

2. Despite the wide range of powers local authorities are always at risk of being challenged, especially if they undertake unusual activity. Most recently a number of local authorities set up a mutual insurance consortium, citing the power of well-being. The Court held this was unlawful. As a result the Government included a 'General Power of Competence' in the Localism Act 2011 section 1 - 8. The intention was that local authorities would no longer have to identify a specific power, and that the risk of challenge would be further reduced.

3. The General Power of Competence is the 'power to do anything that individuals generally may do'. It is specifically stated that this includes things that are unlike anything else the local authority does, or unlike anything that other public bodies do. The authority can use the General Power of Competence inside or outside the parish and it need not show that the action benefits the authority or its area or its residents. There is no limit on expenditure under the General Power of Competence. The intention of all this is to reduce the risk of actions taken under the general power being challenged. The General Power of Competence has replaced the power of well-being, which is no longer available to local authorities in England.

4. The only real limitation is that the General Power of Competence cannot be used to get round a restriction or limitation in an existing specific power. So the general power cannot be used to pay allowances to members because there is already specific legislation restricting what allowances may be paid. The general power cannot be used where the primary purpose of an activity is to raise money but it could be used to invest (subject to government guidance) in a company or a co-operative society where there may be an investment return.

5. The Government has not given any guidance on what sort of activities might be undertaken under the general power but some examples could be:

- Running a community shop or post office
- Investing in a local co-operative society
- Setting up a company to provide a service such as a bus service
- Providing a grant to an individual, e.g. an Olympic athlete

6. As with the power of well-being the general power is available automatically to principal councils but only to 'eligible' Parish and Town councils. The conditions for eligibility are:

- The Parish Council must pass a resolution stating that it is eligible to use the general power.
- When the council passes the resolution at least two thirds of the membership of the council must have been elected (i.e. not co-opted).
- The clerk must hold the Certificate in Local Council Administration (the recognised qualification for clerks) and must also pass the CiLCA module on the general power.

7. There is no requirement for councillors to be trained in the general power or for the council to have a statement of intent on community engagement, nor is there a requirement for a Parish Council to have regard to the principal council's community strategy when exercising the power.

8. Eligibility lasts until the annual meeting of the council immediately after the next ordinary elections (May 2027 for this council) but can be renewed at that meeting provided the conditions are still satisfied. Parish and Town councils which are eligible to use the general power are no longer within the scope of section 137 so no separate record of section 137 expenditure need be kept.

9. Dronfield Town Council satisfies all the conditions as:

- All Councillors are elected
- The Clerk holds the CiLCA qualification
- The Clerk has passed the appropriate CiLCA module on the general power

10. The Council is INVITED to pass a resolution stating that it is eligible to use the General Power of Competence.