



Localism Act 2011

2011 CHAPTER 20

PART 1

LOCAL GOVERNMENT

CHAPTER 1

GENERAL POWERS OF AUTHORITIES

1 Local authority's general power of competence

- (1) A local authority has power to do anything that individuals generally may do.
- (2) Subsection (1) applies to things that an individual may do even though they are in nature, extent or otherwise—
 - (a) unlike anything the authority may do apart from subsection (1), or
 - (b) unlike anything that other public bodies may do.
- (3) In this section “individual” means an individual with full capacity.
- (4) Where subsection (1) confers power on the authority to do something, it confers power (subject to sections 2 to 4) to do it in any way whatever, including—
 - (a) power to do it anywhere in the United Kingdom or elsewhere,
 - (b) power to do it for a commercial purpose or otherwise for a charge, or without charge, and
 - (c) power to do it for, or otherwise than for, the benefit of the authority, its area or persons resident or present in its area.
- (5) The generality of the power conferred by subsection (1) (“the general power”) is not limited by the existence of any other power of the authority which (to any extent) overlaps the general power.
- (6) Any such other power is not limited by the existence of the general power (but see section 5(2)).

Status: This is the original version (as it was originally enacted).

(7) Schedule 1 (consequential amendments) has effect.

2 Boundaries of the general power

(1) If exercise of a pre-commencement power of a local authority is subject to restrictions, those restrictions apply also to exercise of the general power so far as it is overlapped by the pre-commencement power.

(2) The general power does not enable a local authority to do—

- (a) anything which the authority is unable to do by virtue of a pre-commencement limitation, or
- (b) anything which the authority is unable to do by virtue of a post-commencement limitation which is expressed to apply—
 - (i) to the general power,
 - (ii) to all of the authority’s powers, or
 - (iii) to all of the authority’s powers but with exceptions that do not include the general power.

(3) The general power does not confer power to—

- (a) make or alter arrangements of a kind which may be made under Part 6 of the Local Government Act 1972 (arrangements for discharge of authority’s functions by committees, joint committees, officers etc);
- (b) make or alter arrangements of a kind which are made, or may be made, by or under Part 1A of the Local Government Act 2000 (arrangements for local authority governance in England);
- (c) make or alter any contracting-out arrangements, or other arrangements within neither of paragraphs (a) and (b), that authorise a person to exercise a function of a local authority.

(4) In this section—

“post-commencement limitation” means a prohibition, restriction or other limitation expressly imposed by a statutory provision that—

- (a) is contained in an Act passed after the end of the Session in which this Act is passed, or
- (b) is contained in an instrument made under an Act and comes into force on or after the commencement of section 1;

“pre-commencement limitation” means a prohibition, restriction or other limitation expressly imposed by a statutory provision that—

- (a) is contained in this Act, or in any other Act passed no later than the end of the Session in which this Act is passed, or
- (b) is contained in an instrument made under an Act and comes into force before the commencement of section 1;

“pre-commencement power” means power conferred by a statutory provision that—

- (a) is contained in this Act, or in any other Act passed no later than the end of the Session in which this Act is passed, or
- (b) is contained in an instrument made under an Act and comes into force before the commencement of section 1.

3 Limits on charging in exercise of general power

- (1) Subsection (2) applies where—
 - (a) a local authority provides a service to a person otherwise than for a commercial purpose, and
 - (b) its providing the service to the person is done, or could be done, in exercise of the general power.
- (2) The general power confers power to charge the person for providing the service to the person only if—
 - (a) the service is not one that a statutory provision requires the authority to provide to the person,
 - (b) the person has agreed to its being provided, and
 - (c) ignoring this section and section 93 of the Local Government Act 2003, the authority does not have power to charge for providing the service.
- (3) The general power is subject to a duty to secure that, taking one financial year with another, the income from charges allowed by subsection (2) does not exceed the costs of provision.
- (4) The duty under subsection (3) applies separately in relation to each kind of service.

4 Limits on doing things for commercial purpose in exercise of general power

- (1) The general power confers power on a local authority to do things for a commercial purpose only if they are things which the authority may, in exercise of the general power, do otherwise than for a commercial purpose.
- (2) Where, in exercise of the general power, a local authority does things for a commercial purpose, the authority must do them through a company.
- (3) A local authority may not, in exercise of the general power, do things for a commercial purpose in relation to a person if a statutory provision requires the authority to do those things in relation to the person.
- (4) In this section “company” means—
 - (a) a company within the meaning given by section 1(1) of the Companies Act 2006, or
 - (b) a society registered or deemed to be registered under the Co-operative and Community Benefit Societies and Credit Unions Act 1965 or the Industrial and Provident Societies Act (Northern Ireland) 1969.

5 Powers to make supplemental provision

- (1) If the Secretary of State thinks that a statutory provision (whenever passed or made) prevents or restricts local authorities from exercising the general power, the Secretary of State may by order amend, repeal, revoke or disapply that provision.
- (2) If the Secretary of State thinks that the general power is overlapped (to any extent) by another power then, for the purpose of removing or reducing that overlap, the Secretary of State may by order amend, repeal, revoke or disapply any statutory provision (whenever passed or made).

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- (3) The Secretary of State may by order make provision preventing local authorities from doing, in exercise of the general power, anything which is specified, or is of a description specified, in the order.
- (4) The Secretary of State may by order provide for the exercise of the general power by local authorities to be subject to conditions, whether generally or in relation to doing anything specified, or of a description specified, in the order.
- (5) The power under subsection (1), (2), (3) or (4) may be exercised in relation to—
 - (a) all local authorities,
 - (b) particular local authorities, or
 - (c) particular descriptions of local authority.
- (6) The power under subsection (1) or (2) to amend or disapply a statutory provision includes power to amend or disapply a statutory provision for a particular period.
- (7) Before making an order under subsection (1), (2), (3) or (4) the Secretary of State must consult—
 - (a) such local authorities,
 - (b) such representatives of local government, and
 - (c) such other persons (if any),
 as the Secretary of State considers appropriate.
- (8) Before making an order under subsection (1) that has effect in relation to Wales, the Secretary of State must consult the Welsh Ministers.

6 Limits on power under section 5(1)

- (1) The Secretary of State may not make provision under section 5(1) unless the Secretary of State considers that the conditions in subsection (2), where relevant, are satisfied in relation to that provision.
- (2) Those conditions are that—
 - (a) the effect of the provision is proportionate to the policy objective intended to be secured by the provision;
 - (b) the provision, taken as a whole, strikes a fair balance between the public interest and the interests of any person adversely affected by it;
 - (c) the provision does not remove any necessary protection;
 - (d) the provision does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise;
 - (e) the provision is not of constitutional significance.
- (3) An order under section 5(1) may not make provision for the delegation or transfer of any function of legislating.
- (4) For the purposes of subsection (3) a “function of legislating” is a function of legislating by order, rules, regulations or other subordinate instrument.
- (5) An order under section 5(1) may not make provision to abolish or vary any tax.

7 Procedure for orders under section 5

- (1) If, as a result of any consultation required by section 5(7) and (8) with respect to a proposed order under section 5(1), it appears to the Secretary of State that it is appropriate to change the whole or any part of the Secretary of State's proposals, the Secretary of State must undertake such further consultation with respect to the changes as the Secretary of State considers appropriate.
- (2) If, after the conclusion of the consultation required by section 5(7) and (8) and subsection (1), the Secretary of State considers it appropriate to proceed with the making of an order under section 5(1), the Secretary of State must lay before Parliament—
 - (a) a draft of the order, and
 - (b) an explanatory document explaining the proposals and giving details of—
 - (i) the Secretary of State's reasons for considering that the conditions in section 6(2), where relevant, are satisfied in relation to the proposals,
 - (ii) any consultation undertaken under section 5(7) and (8) and subsection (1),
 - (iii) any representations received as a result of the consultation, and
 - (iv) the changes (if any) made as a result of those representations.
- (3) Sections 15 to 19 of the Legislative and Regulatory Reform Act 2006 (choosing between negative, affirmative and super-affirmative parliamentary procedure) are to apply in relation to an explanatory document and draft order laid under subsection (2) but as if—
 - (a) section 18(11) of that Act were omitted,
 - (b) references to section 14 of that Act were references to subsection (2), and
 - (c) references to the Minister were references to the Secretary of State.
- (4) Provision under section 5(2) may be included in a draft order laid under subsection (2) and, if it is, the explanatory document laid with the draft order must also explain the proposals under section 5(2) and give details of any consultation undertaken under section 5(7) with respect to those proposals.
- (5) Section 5(7) does not apply to an order under section 5(3) or (4) which is made only for the purpose of amending an earlier such order—
 - (a) so as to extend the earlier order, or any provision of the earlier order, to a particular authority or to authorities of a particular description, or
 - (b) so that the earlier order, or any provision of the earlier order, ceases to apply to a particular authority or to authorities of a particular description.

8 Interpretation of Chapter

- (1) In this Chapter—
 - “the general power” means the power conferred by section 1(1);
 - “local authority” means—
 - (a) a county council in England,
 - (b) a district council,
 - (c) a London borough council,
 - (d) the Common Council of the City of London in its capacity as a local authority,

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- (e) the Council of the Isles of Scilly, or
- (f) an eligible parish council;

“statutory provision” means a provision of an Act or of an instrument made under an Act.

- (2) A parish council is “eligible” for the purposes of this Chapter if the council meets the conditions prescribed by the Secretary of State by order for the purposes of this section.