

General Power of Competence: what does this mean for Wales?

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In England, the GPoC was introduced by the Localism Act 2011, giving English local authorities the flexibility and power to do anything an individual can do, provided the law does not prohibit it. This has largely been replicated in Wales.

The intention of the powers under the Act is to allow Qualifying Local Authorities to "act in their communities' financial interests to generate efficiencies and secure value for money outcomes and to take on financial risk. It would also enable authorities to have greater confidence in pursuing innovative policy solutions than relying on the well-being power".

The Act also aims to reduce concerns surrounding whether they have the requisite authority when taking decisions, and instead creates the position that Qualifying Local Authorities have assumed power, unless there is legislative restriction.

When combined with the [Well-being of Future Generations Act 2015](#), which imposes a duty on public bodies to consider the long-term impact their decisions have on future generations in Wales, the Welsh Government believes that the new GPoC demonstrates its foremost goal of community benefit and sustainability on social, cultural, environmental and economic levels in Wales.

Welsh Qualifying Local Authorities

Qualifying Local Authorities in Wales are split, under s.24 of the Act, into qualifying local authorities (principal councils) and eligible community councils. These councils will be able to use GPoC so long as they meet certain requirements. Community councils may also be considered eligible should regulations be made by the Welsh Ministers under s.35 of the Act, once the council in question passes a resolution stating it meets the criteria and is therefore an eligible community council.

Main benefits of GPoC to local authorities

There are specific benefits of GPoC for Qualifying Local Authorities (rather than relying on the old well-being powers), which are key in ensuring uninterrupted local leadership, accessible community services and local public support:

Simplicity and confidence to local authorities in their decision making

The case of Brent London Borough Council v Risk Management Partners Limited outlined the problems of local authorities relying on their powers under s.2 of the Localism Act 2000 and was the deciding case for the UK Government in awarding broader GPoC powers to authorities in England. This case identified the complexities of well-being decisions being made, which needed to be addressed.

Essentially, the Act replaces the well-being power in Local Government Act 2000, with a broader GPoC, which, it is hoped, will limit Welsh Qualifying Local Authorities' susceptibility to legal challenges and simplify Qualifying Local Authorities' abilities to make decisions to lessen Brent style claims in the future. While the well-being powers were by no means negative and in most situations it would appear, have allowed local authorities to work effectively, the new GPoC should install confidence in the decision making of Qualifying Local Authorities due to the simplicity of its application; as long as Qualifying Local Authorities first consider the restrictions of GPoC, the power should be lawful, which we expand on below.

The potential for more robust and innovative decision making is therefore possible for Welsh Qualifying Local Authorities by broadening and simplifying the powers they already had prior to the Act.

Improved performance of local authorities through collaboration and self-assessment

Part 6, Chapter 1 of the Act imposes a duty of self-assessment on Qualifying Local Authorities' performance. This duty means that Qualifying Local Authorities must audit their own performance internally and also set up a panel to review their performance at least once during the period between two consecutive ordinary elections of councillors to the council; a report to which Qualifying Local Authorities must answer.

The Act also includes the Welsh Ministers' support and intervention powers. This allows Qualifying Local Authorities to monitor their actions, ensuring their responsibilities are met, and any shortcomings are learned from for future GPoC reliance. The Welsh Ministers can also ask the Auditor General for Wales to carry out inspections regarding Qualifying Local Authorities performance. These powers ensure performance is scrutinised where necessary and to assist Qualifying Local Authorities in improving their use of GPoC.

Part 3, Chapter 2 of the Act also introduces a duty on Qualifying Local Authorities to encourage local people to participate in local authorities decision making with the purpose of promoting access to local government. Not only will this hopefully lessen potential Judicial Review claims by getting local people on board with GPoC decisions, but also by increasing public collaboration to assist Qualifying Local Authorities in understanding what local people want in their area and using inventive methods of delivering these services.

What are the limits to GPoC?

Aside from Qualifying Local Authorities not being able to act in a way which is contrary to legislation as per s.26 of the Act, there are various other restrictions imposed by the Act on Qualifying Local Authorities use of GPoC.

To reiterate the above, the key restriction that should be borne in mind when exercising functions is that the GPoC cannot be used to override an express restriction contained elsewhere in legislation. The Act does not alter the presumption that a general power does not operate to override a specific power/limitation in another provision.

Allied to this point, and one which should also be carefully considered is the position where, whilst there is an express power, it doesn't extend to cover the desired action. In this scenario, there isn't an express restriction, but it may not be the most appropriate use of the GPoC to be solely reliant on it. We question whether this will result in more express restrictions being placed in legislation and is an area to watch as the Act is implemented.

While the Act allows Qualifying Local Authorities to use GPoC to do something which has a commercial purpose through a company, there is the condition that such a decision must also use the GPoC to perform a non-commercial purpose. In essence, and similar to the English GPoC, the GPoC for Welsh Qualifying Local Authorities cannot be relied on for solely achieving a commercial purpose. To assist the Qualifying Local Authorities in their use of GPoC for commercial purposes, the Welsh Ministers must issue guidance on the exercise of GPoC for a commercial purpose, which when released, must be regarded under s.27 of the Act, by Qualifying Local Authorities.

How can we help?

Our public law team has considerable experience advising local authorities on GPoC ranging from general GPoC advice and training, to advising on Judicial Review claims, which infrequently, yet still may arise from the exercising of these powers.

With the new Welsh GPoC coming into force in the near future, please do not hesitate to contact one of our team with any queries you may have regarding GPoC, including if you require any training on the exercise and limitations of GPoC.

Also, if you have any queries specifically regarding various delivery models in which local authorities can provide services to its local population through innovative means, a member of our government and infrastructure team would be happy to assist you.

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