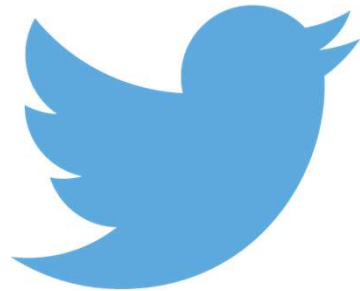




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Mo Baines

APSE Scotland

Commercialisation Roundtable

Tuesday 11 March 2025



The Power of General Competence Scottish Government Consultation

- Opened 6 January 2025
- Closes 28 March 2025



Power of General Competence

- The UK position
- European Municipalities
- Fiscal dynamics



Localism Act 2011

- Introduced GPC for English councils
- Cited as Power of First Resort..... Not quite the case.....
- But provided a degree of clarity

General Power of Competence

- Allow local authorities to do anything which is not specifically prohibited by law, allowing innovation in response to local need.
- Anywhere in the UK or elsewhere;
- For a commercial purpose with or without charge; and
- For the benefit of the Authority, its area or persons resident or present or otherwise

Additional to older powers to trade and charge

- GPC removes uncertainty
- Widens charging provisions – The S.93 provisions of the 2003 Act ‘power to charge where there is a power to provide’ but new GPC not limited in that way
- Trading for commercial purpose must be through a company but.. Arguably wider than existing Trading powers

Restraints on GPC?

- Reserve powers to Secretary of State
- Governed by public law principles
- Express restraints – equalities legislation
- General misuse of public funds
- No thermonuclear warfare.....



Northern Ireland Local Government Act 2014

Mirror image of GPC for Northern Ireland Councils introduced in 2014 as part of reorganisation

Wales: New General Power of Competence

- A general power of competence for principal councils and eligible community councils – provisions covered in Part II Chapter 1 and Chapter 2
- Found in Section 24 of the Local Government and Elections (Wales) Act 2021



24. The General Power of Competence

- (1) A qualifying local authority has power to do anything *that individuals generally may do*, even if that thing is, in nature or extent or otherwise—
- (a) unlike anything a qualifying local authority may do apart from this section;
 - (b) unlike anything that other public bodies may do.
- (2) Where subsection (1) confers power on an authority to do something, it confers power to do it in any way whatsoever, including—
- (a) power to do it anywhere in Wales *or elsewhere*;
 - (b) power to do it for a commercial purpose or otherwise for a charge, or without charge;
 - (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.
- (3) The generality of the power conferred by subsection (1) on a qualifying local authority is not limited by the existence of any other power of the authority; and any other power of the authority is not limited by the existence of the general power.



Why was GPC needed?

- LAML Case
- Previous limits under 'well-being' removed
- Clarifies right to charge and trade outside of local area
- 'Grey' areas for charging and trading



Limitations

- GPC – subject to checks.
- Falls short of ‘saddle up the horses, arm your citizens and invade France’

Boundaries of the general power

(1) The general power does not enable a qualifying local authority to do anything that the authority is unable to do by virtue of a pre-commencement limitation.

(2) Nor does the general power enable a qualifying local authority to do anything that the authority is unable to do by virtue of a post-commencement limitation that is expressed to apply—

Note: Reserve powers to Ministers



Charging provisions

Limits on charging in exercise of general power

Generally where it has been introduced the general power confers power on a 'qualifying local authority' to charge for providing a service to a person only if the following conditions are met.

Don't charge for statutory services! -in other the service is not one that any enactment requires the authority to provide to the person.

The second 'condition' is that the person has agreed to the service being provided. In other words they know about and agree to the charges.

Ensuring charging is more akin to cost recovery - "Except in relation to a service provided for a commercial purpose, to the extent that the general power confers a power on a qualifying local authority to charge for the provision of a service, the power is subject to a duty to secure that, ***taking one financial year with another, the income from charges imposed under it does not exceed the costs of provision***".



Charging provisions cont.

- Not about aggregation – “The duty under (one year with the other) applies separately in relation to each kind of service.
- When exercising the power conferred by the general power to charge for providing a service, a qualifying local authority may set its charges as it considers appropriate, and may among other things—
 - (a) charge only some persons for providing a service;
 - (b) charge different persons, or different descriptions of persons, different amounts for the provision of a service.

In other words it usually permits ‘welfare’ pricing



'Trading' provisions

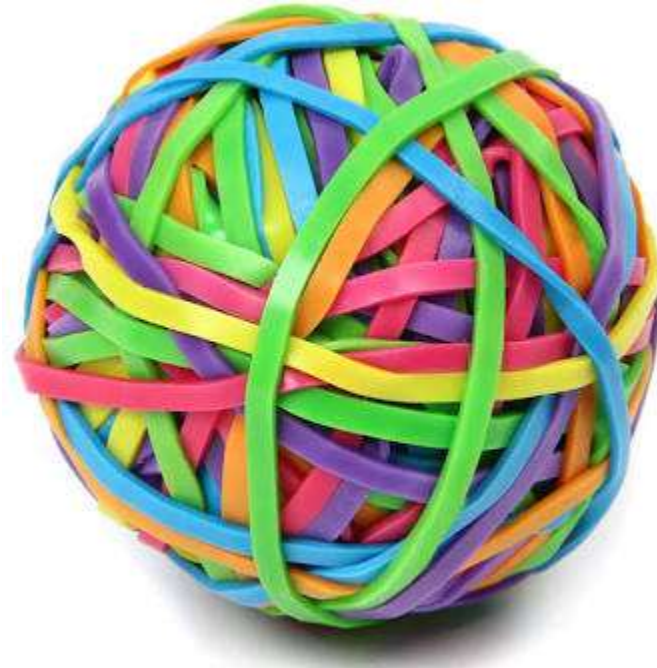
Limits on doing things for commercial purpose in exercise of general power

Across the UK using the power to 'Trade' brings in a new requirement to do so through a company

- (1) The general power confers power on a qualifying local authority to do things for a commercial purpose only if they are things that 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 qualifying local authority does things for a commercial purpose, ***the authority must do them through a company.***
- (3) A qualifying local authority may not, in exercise of the general power, do things for a commercial purpose in relation to a person if any enactment requires the authority to do those things in relation to the person.
- (4) In this section, "company" means—
 - (a) a company within the meaning of section 1(1) of the Companies Act 2006 (c. 46), or
 - (b) a registered society within the meaning of the Co-operative and Community Benefit Societies Act 2014 (c. 14) or the Co-operative and Community Benefit Societies Act (Northern Ireland) 1969 (c. 24 (NI)).
- (5) A qualifying local authority must have regard to any guidance issued by the [Welsh] Ministers about doing things, in the exercise of the general power, for a commercial purpose.

Charging parameters

‘taking one financial year with another, the income from charges imposed under it does not exceed the costs of provision’



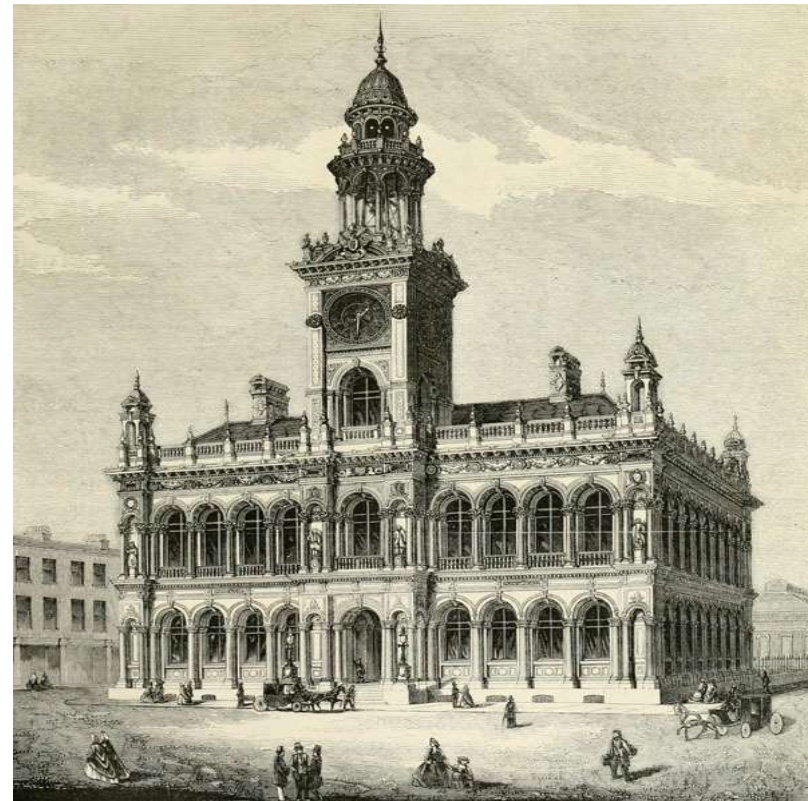
True cost of provision

- Labour costs – operatives, supervisors, managers, training
- Materials
- Vehicles – hire, lease or purchase costs
- Fuel, maintenance, tax, insurance
- Invoicing, back office HR support, health and safety
- Assets – depots? Office buildings?
- Marketing, advertising, website?



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Local authority companies



Disadvantages

- Taxation – always get a proper analysis
- Speed – not a quick process
- Markets – testing your market
- Immaturity of the company and its' finances
- TUPE?
- Equal Pay and comparator employer



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Who wants to be the customer?





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The Local Authorities Goods and Services Act 1970

- The 'public market' – no restriction
- Otherwise – income subject to a financial limit
- Provides for consent to exceed these limits
- Not limited to cost recovery
- Must relate to a function of local government



Will it help local authorities in Scotland? Issues of consent

- S. 1C of the Local Authorities (Goods and Services) Act 1970.
- *Ministers have not made an order under s.1(1D) of the Act to set the statutory limit for a trading operation, so the restriction on local authorities' power to enter into agreements in relation to trading operations contained in s.1(1A) is not in force and there is no need for an authority to seek consent under s.1(1C) for entering into any agreement covered by section 1...*

Advantages

- Not necessarily a power of first resort but a reference point?
- May remove uncertainty – e.g. a large-scale district heating scheme?
- Still protects residents if drafted with the same statutory restrictions (not charging for statutory services
- Unlikely to allow for tax raising powers



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Any Questions?



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Contact details

Mo Baines, Chief Executive

Visiting Professor Staffordshire University

Email: mbaines@apse.org.uk



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