

STONE TOWN COUNCIL

Town Clerk

Les Trigg

15 Station Road
STONE
ST15 8JP

Tel: 01785 619740

Fax: 01785 619741

1st August 2018

You are hereby summoned to attend a meeting of the **TOWN COUNCIL**, to be held in **St Michael's Suite at the Frank Jordan Centre, Lichfield Street, Stone** on **TUESDAY 7 AUGUST 2018** at **7.10pm**, or on the rising of the General Purposes Committee Meeting if later, when the following business will be transacted.

Les Trigg
Town Clerk

Agenda

1. **To receive apologies for absence**
2. **Declarations of Interest and Requests for Dispensations**
3. **Representations from Members of the Public**
4. **General Power of Competence**
To consider the report of the Town Clerk (attached)

Members of the public are welcome to attend the Council Meeting as observers.

Stone Town Council

7th August 2018

General Power of Competence

Report of Town Clerk

Introduction

1. The purpose of this report is to consider whether the Council would wish to adopt the General Power of Competence.

Background

2. The Town Council is currently constrained by the requirement to be able to identify a specific piece of legislation authorising everything that it does. Limited flexibility is, however, available through Section 137 of the Local Government Act 1972, which permits expenditure up to certain limits and within a number of constraints for “purposes not otherwise authorised”. The Town Council currently uses Section 137 only for the payment of grants.
3. These legal constraints mean that the Town Council is always at risk of being challenged, especially when undertaking an unusual activity, and the activities it can undertake are quite limited.
4. The Localism Act 2011, however, introduced a “general power of competence”, which was available only to a limited number of town and parish councils that met the eligibility criteria.
5. 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, and numerous activities which were not previously permitted to be undertaken by town/parish councils will now be open to them.
6. Under this 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 town/parish council is normally permitted to act in the same way.

Limitations

7. The only real limitation is that the general power of competence cannot be used to circumvent an existing restriction in an existing specific power. Existing duties remain in place, including procedural and financial duties for the regulation of governance. 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.

8. If another council has a statutory duty to provide a service, for example education services, social services, planning, etc, 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.
9. 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.

Eligibility

10. The conditions for eligibility are set out in the Statutory Instrument, Parish Councils (General Power of Competence) (Prescribed Conditions) Order 2012 . They are:
 - a. **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. The resolution can be passed at any meeting of the Council but a further resolution must be passed at every subsequent “relevant annual meeting” for the council to be able to continue to exercise the power. A “relevant annual meeting” is the annual meeting that takes place in a year of ordinary elections, once every four years.
 - b. **Electoral Mandate:** At the time the resolution is passed, at least two thirds of the members of the Council must hold office as a result of being declared elected. This means they should have stood for election, whether at an ordinary or by election, even if unopposed, rather than co-opted or appointed. If two thirds is not a whole number then it must be rounded up. For example, if the total number of councillors is 8, then two thirds is approximately 5.3, then the number of councillors that must be elected is 6.
 - c. **Qualified Clerk:** At the time the resolution is passed the clerk must hold the Certificate in local Council Administration, 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 (or successor qualifications) awarded by the University of Gloucestershire. The clerk must also have completed training in the exercise of this power as part of one of these qualifications or as separate exercise.
11. On the basis of the above, this Council would meet all of the eligibility criteria once it passes the appropriate resolution.
12. If the Council should cease to meet the above criteria at any time in the future (i.e. if it loses its qualified clerk or has insufficient elected councillors) then it must record its ineligibility at

the next 'relevant' annual meeting of the Council (after the ordinary election). If it has already started an activity it can finish that but not start anything new.

Recommendation

13. The Committee are asked to consider the information in this report and determine whether it wishes to adopt the general power of competence.

14. If the Council wishes to adopt the power, it should pass the following resolution:

“To adopt the General Power of Competence from 8th August 2018 until the next relevant Annual Meeting of the Council, 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.”