



2014 CHAPTER 8

PART 11

GENERAL POWERS OF COUNCILS

Council's general power of competence

79.—(1) A council 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 council 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 council to do something, it confers power (subject to sections 80 and 81) to do it in any way whatever, including—

- (a) power to do it for a charge, or without charge; and
- (b) power to do it for, or otherwise than for, the benefit of the council, its district or persons resident or present in its district.

(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 council 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 82(2)).

Boundaries of the general power

80.—(1) If exercise of a pre-commencement power of a council 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 council to do—

- (a) anything which the council is unable to do by virtue of a pre-commencement limitation; or
- (b) anything which the council 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 council's powers; or
 - (iii) to all of the council'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 4;
- (b) make or alter arrangements of a kind which are made, or may be made, by or under Part 5 or Part 6;
- (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 council.

(4) In this section—

“post-commencement limitation” means a prohibition, restriction or other limitation expressly imposed by a statutory provision which comes into operation after the commencement of section 79;

“pre-commencement limitation” means a prohibition, restriction or other limitation expressly imposed by a statutory provision (including a provision of or made under this Act) which comes into operation on or before the commencement of section 79;

“pre-commencement power” means power conferred by a statutory provision which comes into operation before the commencement of section 79.

Limits on charging in exercise of general power

81.—(1) Subsection (2) applies where—

- (a) a council 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 council to provide to the person;
- (b) the person has agreed to its being provided; and
- (c) the council would not otherwise 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.

Powers to make supplemental provision

82.—(1) If the Department thinks that a statutory provision (whenever passed or made) prevents or restricts councils from exercising the general power, the Department may by order amend, repeal, revoke or disapply that provision.

(2) If the Department thinks that the general power is overlapped (to any extent) by another power it shall seek to remove or reduce that overlap, taking into account the views of the bodies exercising the overlapping powers.

(3) For the purposes of subsection (2) the Department may by order amend, repeal, revoke or disapply any statutory provision (whenever passed or made).

(4) The Department may by order make provision preventing councils from doing, in exercise of the general power, anything which is specified, or is of a description specified, in the order.

(5) The Department may by order provide for the exercise of the general power by councils to be subject to conditions, whether generally or in relation to doing anything specified, or of a description specified, in the order.

(6) Before the Department makes an order under this section it must consult—

- (a) such associations or bodies representative of councils;
- (b) such associations or bodies representative of officers of councils; and
- (c) such other persons or bodies,

as appear to the Department to be appropriate.

(7) If, following consultation under subsection (6), the Department proposes to make an order under this section it must lay before the Assembly a document explaining the proposals and, in particular—

- (a) setting them out in the form of a draft order; and
- (b) giving details of consultation under subsection (6).

(8) Where a document relating to proposals is laid before the Assembly under subsection (7), no draft of an order under this section to give effect to the proposals (with or without modification) is to be laid before the Assembly until after the expiry of the statutory period beginning with the day on which the document was laid.

(9) In preparing a draft order under this section the Department must consider any representations made during the period mentioned in subsection (8).

(10) A draft order laid before the Assembly in accordance with section 127(3) must be accompanied by a statement of the Department giving details of—

- (a) any representations considered in accordance with subsection (9); and
- (b) any changes made to the proposals contained in the document laid before the Assembly under subsection (7).

Limits on power conferred by section 82(1)

83.—(1) The Department may not make provision under section 82(1) unless the Department 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 82(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.