

LOCAL GOVERNMENT AND ELECTIONS (WALES) ACT 2021

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: General Power Of Competence

Chapter 1: The General Power

Section 24 - Local authority's general power of competence

162. [Section 24](#) provides a general power of competence to qualifying local authorities in Wales. The term “general power” is used throughout these notes to refer to the general power of competence.
163. The general power gives all principal councils and certain community councils (see Chapter 2), referred to in this Part as “qualifying local authorities”, the same powers to act that an individual generally has, thus enabling them to do things that are unlike anything they, or any other public body, have done before. “Individual” is defined in subsection (5) so as to avoid any doubt that it means an individual with full powers and does not include individuals with reduced capacity; for example, a child.
164. Subsections (2) and (3) further define the extent of the power. It is not necessary for activities undertaken using the general power to benefit the qualifying local authority itself, its area or residents; however, there is no restriction on the activities doing so. In using the general power a qualifying local authority may undertake activities anywhere, including both in and outside of Wales.
165. The general power can be used by qualifying local authorities to, for example, act in their own financial interests with subsection (2)(b) stating that the general power may be used to do things for a commercial purpose, or for a charge.
166. The exercise of the general power is subject to the restrictions provided for in sections 25 (general boundaries of the power), 26 (limits on charging) and 27 (limits on doing things for a commercial purpose), and any regulations made by the Welsh Ministers under section 28(3) or (4).
167. Amendments to the 2000 Act, provided for in Schedule 3 to the Act, mean that the well-being power provided in section 2 of that Act will no longer apply to Welsh local authorities once the general power is commenced.

Section 25 – Boundaries of the general power

168. This section sets out the boundaries of the general power.
169. The general power does not provide qualifying local authorities with the ability to bypass existing prohibitions, limitations or restrictions in legislation passed by the Senedd or UK Parliament on, or before, the day on which this section comes into force.

170. Nor will the general power provide qualifying local authorities with the ability to bypass prohibitions, limitations or restrictions in legislation passed by the Senedd or UK Parliament after this section comes into force, if that legislation states that it applies to:
- the general power;
 - all of the qualifying local authority's powers; or
 - all of the qualifying local authority's powers except for certain powers, and the general power is not listed as one of the excepted powers.
171. Subsection (3) prevents a qualifying local authority from using the general power to delegate or contract out any of its functions or to alter its governance arrangements. These matters remain subject to separate statutory provision.

Section 26 – Limits on charging in exercise of general power

172. This section restricts the ability of a qualifying local authority to charge for providing a service to a person using the general power. It provides that where a qualifying local authority is using the general power to provide a service, it may only charge for that service if:
- that service is discretionary, i.e. not a service the authority is under a statutory duty to provide; and
 - the recipient has agreed to the provision of the service.
173. Subsection (4) prevents a qualifying local authority from making a profit in any financial year when using the general power to charge for a service, unless the service is provided for a commercial purpose. However, subject to that limitation of not making a profit, subsection (6) enables a qualifying local authority to set charges as it sees fit, including only charging some people for the service or charging different people, or groups of people, different amounts.
174. Section 93 of the Local Government Act 2003 deals with the powers of qualifying local authorities (and other bodies) to charge for things done other than in the exercise of the general power.

Section 27 – Limits on doing things for commercial purpose in exercise of general power

175. This section provides that a qualifying local authority may use the general power to carry out an activity for a commercial purpose only if the activity is one the authority could also rely on the general power to carry out for a non-commercial purpose.
176. The effect of subsection (3) is that a qualifying local authority cannot carry out an activity in respect of someone for a commercial purpose, if the authority is required by legislation to carry out that activity.
177. Also, if a qualifying local authority wishes to use the general power to do something for a commercial purpose, it must do so through a company, as defined in section 1(1) of the Companies Act 2006, or a registered society as defined in the Co-operative and Community Benefit Societies Act 2014, or registered under the Co-operative and Community Benefit Societies Act (Northern Ireland) 1969.
178. Subsection (5) imposes a duty on principal councils and eligible community councils to have regard to guidance issued by the Welsh Ministers about exercising the general power of competence to do anything for a commercial purpose.
179. Section 95 of the Local Government Act 2003 deals with the powers of qualifying local authorities (and other bodies) to do things for a commercial purpose other than in the exercise of the general power.

Section 28 – Power to make supplementary provision

180. **Section 28(1)** provides the Welsh Ministers with a power to make regulations removing or changing statutory provisions that they think prevent qualifying local authorities from using the general power, or obstruct them when using the general power.
181. Subsection (2) enables the Welsh Ministers to make regulations removing overlaps between the general power and other powers (although the effect of subsection (9)(a) is that they cannot achieve this by revising or cutting back the general power itself).
182. Subsections (3) and (4) allow the Welsh Ministers to make regulations restricting what a qualifying local authority may do under the general power, or making its use subject to conditions.
183. The Welsh Ministers may make regulations under this section in respect of all qualifying local authorities, specific qualifying local authorities, or a type of qualifying local authority.
184. The effect of subsections (7) and (8) is that before exercising any of these powers, the Welsh Ministers must consult with whichever qualifying local authorities they consider appropriate, any representatives of principal councils and community councils they consider appropriate, and any other persons they consider appropriate.
185. The duty to consult does not apply in respect of any regulations which merely amend earlier regulations so as to:
- extend their application to a specific authority or group of authorities;
 - reduce their application so they stop applying to a specific authority or group of authorities.

Section 29 and Part 1 of Schedule 3 – Amendments relating to Chapter 1 of Part 2: the general power

186. **Schedule 3** provides for consequential amendments in relation to the general power of competence (also see the notes in respect of section 37).
187. The Schedule is divided into two parts to accommodate a phased commencement of the general power of competence. This phased commencement recognises the need to make regulations specifying a qualified clerk and also to prepare and issue guidance under Chapter 2.
188. **Part 1** makes provision related to the creation of the general power in its application to principal councils whilst Part 2 makes provision in relation to the application of the general power to eligible community councils.
189. **Part 1** of Schedule 3 makes amendments to this Act and other legislation relating to this Chapter, including removing the well-being power for principal councils.
190. Generally speaking, the amendments in this Part of the Schedule relate to the creation of the general power of competence for:
- all qualifying local authorities, or
 - in its application to principal councils