

# Policy & Sustainability Committee

10am, 11 March 2025

## General Power of Competency

Executive  
Wards: All

### 1. Recommendations

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- 1.1 It is recommended that Committee:
  - 1.1.1 Notes the timelines for the Scottish Government consultation to explore the introduction of general power of competence to Local Authorities;
  - 1.1.2 Notes that members have been invited to a workshop in March to give feedback on the consultation questions;
  - 1.1.3 Agrees that the consultation response will be brought to Full Council for approval on the 28<sup>th</sup> of March 2025.
  - 1.1.4 Notes the questions of the consultation from the Scottish Government as set out in Appendix 1.

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## General Power of competence – response to Scottish Government’s Consultation

### 2. Executive Summary

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- 2.1 This report outlines the approach to agreeing a consultation response to the Scottish Government’s consultation on the exploration of potential legislative changes to grant Local Authorities the general power of competence.

### 3. Background

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- 3.1 The Scottish Government has invited all Councils to respond to a consultation on a local authority General Power of Competence.
- 3.2 Scottish Government are taking forward this work with COSLA and Local Government and are asking Council’s views and perspectives on potential legislative changes with the aim to enable local authorities to more effectively deliver public services.
- 3.3 A General Power of Competence is commonly defined as a statutory power to do “anything that individuals may generally do”, and is currently available to local authorities in England, Wales, and Northern Ireland.
- 3.4 The consultation therefore seeks to establish what functions, beyond those already conferred by statute, local authorities in Scotland may wish to pursue and whether new legislation or amendments to existing legislation would be required to deliver those additional functions.
- 3.5 The consultation also seeks to explore how best to deliver a level of confidence and assurance to local authorities to ensure that any further powers are utilised effectively.
- 3.6 Responses are sought, in relation to both existing legislative powers in Scotland and the wider legislative powers in England, Wales and Northern Ireland, on the barriers to using such power, the concerns and perceived risks and potential conflict with other legislative provisions.

- 3.7 Views are also sought on how best to ensure that legislation contains the right balance of flexibility and control to mitigate risks arising from any greater statutory freedoms.

## **4. Main report**

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- 4.1 The Scottish Government launched a consultation on the general power of competence in January 2025. The closing date to submit a response is the 28<sup>th</sup> of March
- 4.2 To ensure we can meet the closing date, officers have invited Elected Members to attend workshops in March 2025 to gather feedback on the consultation questions. Following these workshops, officers will draft a response to the consultation. Depending on the closing date for the consultation, Member approval will be sought at full Council on 20<sup>th</sup> of March

## **5. Next Steps**

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- 5.1 Following the workshops in March 2025 officers will draft a response from the Council to Scottish Government for Elected Member consideration.
- 5.2 After the consultation on the general power of competence closes on the 28<sup>th</sup> of March Scottish Government will prepare a summary report outlining the main findings from the consultation exercise.
- 5.3 Subject to the findings of the consultation, Scottish Ministers will then make a decision on whether legislation is to be introduced in Scotland.
- 5.4 Officers will continue to work with officials in COSLA and the Scottish Government to develop these proposals at roundtables on the 26<sup>th</sup> of February.

## **6. Financial impact**

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- 6.1 The general power of competence would open opportunities for additional revenue raising for the Council. Each of these opportunities would need to be considered in line with the Council's strategy and the risk of the investments.

## **7. Equality and Poverty Impact**

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- 7.1 It is not envisaged that introducing legislation on the general power of competence for Edinburgh will have any direct equality or poverty implications, it would entirely depend on how the powers are used.

## **8. Climate and Nature Emergency Implications**

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- 8.1 The general power of competence would broaden City of Edinburgh's powers to invest which could contribute towards the Council's net zero targets.

## **9. Risk, policy, compliance, governance and community impact**

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### **Key Risks**

- 9.1 We do not know if, or when, local authorities will be given general powers of competence, or whether we will use them in Edinburgh.

### **Impact on Council policy**

- 9.2 There are no health and safety implications associated with the recommendations in this report.
- 9.3 There are no governance, compliance or regulatory implications associated with the recommendations in this report.

### **Community Impact**

- 9.4 There is no community impact assessed in association with the recommendations in this report. It is too early to tell at this stage. If any use of the powers for investment or changes were to be introduced or considered in Edinburgh and IIA would be carried out at the appropriate stage.

## **10. Background reading/external references**

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- 10.1 [Scottish Government – Consultation on General Power of Competence](#)
- 10.2 [Council Business Plan 2024-30](#)
- 10.3 [Edinburgh 2030 Tourism Strategy](#)

## **11. Appendices**

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Appendix 1 – Scottish Government consultation questions on general power of competence



## **Appendix 1 - Scottish Government consultation questions on general power of competence**

### **Power to Advance Wellbeing**

#### **Question 1**

What are the perceived barriers and risks to fully exploring the scope of the 'Power to Advance Wellbeing' contained in section 20 of the Local Government in Scotland Act 2003?

**Note:** Section 20 of the Local Government in Scotland Act 2003 provides a broad power for a local authority to "do anything which it considers is likely to promote or improve the well-being of its area and/or persons within that area".

#### **Question 2**

What are the limitations of the Power to Advance Wellbeing and how do these limitations restrict the aspirations of local authorities, for example, to explore new and innovative ways of delivering public services?

#### **Question 3**

Would the removal of the restriction imposed by paragraph 7 of section 22 of the Local Government in Scotland Act 2003 (see note below) facilitate the aspirations of local authorities to increase local revenue generating powers. Please provide examples.

**Note:** Paragraph 7 of section 22 of the Local Government in Scotland Act 2003 says expressly that the power under section 20 of the Act does not enable a local authority to do anything for the purposes of raising money, whether by levying or imposing any form of tax or charge, by borrowing or otherwise. Only the specific power in the 1970 Act can be relied upon to generate revenue through the supply of goods and services.

#### **Question 4**

Are there any further existing legislative barriers to the delivery of public services and to a broader range of activity that local authorities would wish to undertake?

## Question 5

### Expansion of wellbeing powers

Would a broadening of the scope and meaning of 'wellbeing' contained in the 2003 Act (see note below) provide an effective alternative to a General Power of Competence?

**Note:** The Local Government in Scotland Act 2003 contains a provision that allows the Scottish Ministers to widen the definition of wellbeing and therefore the scope of the power of local authorities to advance wellbeing, under section 20 of the 2003 Act. Given the continued reluctance in England, Wales and Northern Ireland to rely on the general power due to concerns over legal challenge, it may be more effective to either broaden the scope and meaning of 'wellbeing' within the 2003 Act or to create further specific statutory powers within the 2003 Act to explicitly permit the greater freedoms local authorities wish to have.

## Question 6

### Expansion of wellbeing powers

Would the provision of specific greater powers within the 2003 Act (see note below) provide an effective alternative to a General Power of Competence? If so, please provide examples of such specific powers and how they may be used.

**Note:** The Local Government in Scotland Act 2003 contains a provision that allows the Scottish Ministers to widen the definition of wellbeing and therefore the scope of the power of local authorities to advance wellbeing, under section 20 of the 2003 Act. Given the continued reluctance in England, Wales and Northern Ireland to rely on the general power due to concerns over legal challenge, it may be more effective to either broaden the scope and meaning of 'wellbeing' within the 2003 Act or to create further specific statutory powers within the 2003 Act to explicitly permit the greater freedoms local authorities wish to have.

### Duplication of Functions

## Question 7

Does the provision within the 2003 Act, which states that the Power to Advance Wellbeing cannot be used to unreasonably duplicate the functions of another person, restrict a local authority's pursuit of service transformation, other income generating activity or any other activity? Please provide examples.

**Note:** Paragraph 4 of section 22 of the Local Government in Scotland Act 2003 prevents local authorities from unreasonably duplicating the functions of other bodies or people. The subsection states that local authorities must consider whether any proposed action is reasonable. The subsection also makes it clear that the exercise of power would not be considered unreasonable if the other person had consented.

### Question 8

Would the removal of the restriction on duplication of functions, contained within section 22 of the Local Government in Scotland Act, provide an effective alternative to a General Power of Competence? If so, please explain.

### Powers to Trade

### Question 9

What **trading** activity would local authorities wish to pursue beyond the current power to provide goods and services, contained in the Local Authorities (Goods and Services) Act 1970?

### Question 10

Would the removal of the requirement to gain Ministerial consent to pursue income through the supply of goods and services deliver the aspirations of local authorities?

Please provide examples of how the removal of this limitation would be utilised and the benefit that would be envisaged such as value for money, better allocation of resources, transformation of public services, better local outcomes etc

**Note:** The provisions contained within section 1A of the Local Authorities (Goods and Services) Act 1970 requires that a local authority must gain Ministerial consent to pursue income through the supply of goods and



services. However, this restriction does not apply in respect of an agreement entered into by a local authority with either another local authority, a public body; or with a person providing functions of a public nature.

## **Goods and Services**

### **Question 11**

What further activity would local authorities wish to undertake, beyond providing goods and services to the local area and/or persons within that area?

### **Question 12**

Should the introduction of greater local authority legislative powers continue to constrain the types of goods and services a local authority can provide? If so, please provide examples.

## **Commercial Ventures**

### **Question 13**

What type of commercial activity would local authorities wish to pursue, utilising a General Power of Competence? Please provide examples.

### **Question 14**

Should greater legislative powers continue to constrain the types of commercial activity that a local authority can undertake? Please provide reasons.

### **Question 15**

Should greater legislative powers continue to constrain a local authority from engaging in commercial activity or any other activity beyond the local area. Please provide reasons.

## **Borrowing and Investment Powers**

### **Question 16**

What greater financial controls or limitations, particularly in relation to borrowing and investments, should accompany a General Power of Competence in Scotland to ensure such actions cannot be repeated or their impact limited to protect core services?

### **Question 17**

What further investment powers do local authorities envisage requiring beyond those already conferred by statute and statutory guidance? Please provide examples of how such powers would be utilised to benefit the local area and people living within the local area.

### **Question 18**

Should there be greater reporting/disclosure requirements to ensure transparency in the use of public funds for borrowing and investment purposes and how these activities directly benefit the local area? Please explain.

## **General Power of Competence**

### **Question 19**

How would a General Power of Competence be used to improve the delivery of public services, ensure greater efficiency in the use of available resources and maximise outcomes for the local area and persons within the local area. Please provide examples.

### **Question 20**

How could we better articulate a General Power of Competence in Scotland to mitigate concerns and provide greater assurance both for local authorities and those they engage with? Please explain.

### **Question 21**

Since the General Power was introduced in England, Wales and Northern Ireland how has this been used to benefit the local area? Please provide examples of use of the power and the resulting benefits.

**Note:** This question specifically relates to the general powers in operation in England, Wales and Northern Ireland. You may wish to refer to [Annex](#)

[B](#) of the consultation document which sets out the relevant legislative provisions for England, Wales and Northern Ireland in detail.

### **Question 22**

What are the perceived barriers and/or limitations of the General Power of Competence in place in England, Wales and Northern Ireland? Please explain.

**Note:** This question specifically relates to the general powers in operation in England, Wales and Northern Ireland. You may wish to refer to [Annex B](#) of the consultation document which sets out the relevant legislative provisions for England, Wales and Northern Ireland in detail.

### **Question 23**

Should a local authority's use of a General Power of Competence be required to align to local regeneration or other demonstrable local area well-being enhancement?

### **Islands (Scotland) Act 2018 - Devolution of functions/additional powers**

### **Question 24**

Would similar provisions for mainland authorities to those provided for island councils by the Island (Scotland) Act 2018 provide sufficient or greater scope for local authorities to explore further envisaged activity? Please explain.

You may wish to refer to [Annex A](#) of the consultation document which sets out the relevant legislative provisions in detail.