

# City of Edinburgh Council

10.00am, Thursday, 20<sup>th</sup> March 2025

## General Power of Competence – Council’s Consultation Response

Executive/routine  
Wards ALL

### 1. Recommendations

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It is recommended that Council

- 1.1 Agree that the consultation response will be submitted to Scottish Government.

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## 2. General Power of Competency - Executive Summary

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- 2.1 This report outlines the Council's consultation response to the Scottish Government's consultation on the exploration of potential legislative changes to grant Local Authorities the general power of competence.
- 2.2 Officers have undertaken engagement with members via an all-member briefing on the 14<sup>th</sup> of March to gather views and feedback on the Council's proposed response. Appendix 1 of this report sets out the Council's proposed responses to the Scottish Government's consultation questions.

## 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 (GPC).
- 3.2 Scottish Government are taking forward this work with COSLA and Local Government and are asking councils' 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.

## 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. This initiative aims to assess whether granting such powers would enable local councils to deliver public services more effectively.
- 4.2 Presently, Scottish local authorities operate under the “Power to Advance Wellbeing,” as outlined in Section 20 of the Local Government in Scotland Act 2003. This provision allows councils to undertake actions deemed likely to promote or improve the wellbeing of their area or its residents. However, this power is often viewed as restrictive, limiting councils’ ability to innovate in service delivery and revenue generation.
- 4.3 In contrast, local authorities in England, Wales, and Northern Ireland have been endowed with a GPC, permitting them to do “anything that individuals may generally do,” unless explicitly prohibited by law. This broader authority has facilitated more entrepreneurial approaches to local governance in these regions however noting that the use of the power has led to introduction of risk into councils’ finances where appropriate governance has been weak.
- 4.4 The consultation seeks to gather insights on several key aspects:
- Perceived Barriers:** Identifying obstacles that currently hinder the full utilisation of the existing wellbeing powers.
  - Limitations:** Understanding how current legislative constraints restrict local authorities’ aspirations to innovate in public service delivery.
  - Potential Benefits:** Exploring how a GPC could enhance the efficiency and effectiveness of local councils in Scotland.
  - Safeguards:** Determining necessary checks and balances to ensure responsible use of any expanded powers.
- 4.5 The Scottish Government is actively encouraging participation from various stakeholders, including local councils, community organisations, and the public, to ensure a comprehensive understanding of the potential impacts of introducing a GPC. The consultation period is open until March 28, 2025, and responses are submitted through the official Scottish Government consultation hub.
- 4.6 To ensure we can meet the closing date, officers have delivered an Elected Member workshop on the 14<sup>th</sup> of March 2025 to gather feedback on the consultation questions.
- 4.7 Following this workshop, officers have engaged members’ views across all parties and feedback on the proposed response and this report seeks approval to submit the consultation response to Scottish Government.

## 5. Next Steps

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- 5.1 Subject to approval at the Council meeting of the 20<sup>th</sup> of March 2025, the proposed response will be submitted to the Scottish Government.

## 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 would 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 an 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](#)

## **11. Appendices**

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Appendix 1 – Consultation Response

## **Appendix 1 - Consultation on the General Power of Competence for Scottish Local Authorities**

### **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?**

The power to advance wellbeing, as outlined in section 20 of the 2003 Act, provides councils with the ability to take action that promotes or improves the wellbeing of individuals and communities within their jurisdiction. However, several barriers prevent local authorities from fully utilising this power.

One of the primary barriers is legal uncertainty. Many local authorities remain cautious due to a lack of clear case law and concerns about how judicial interpretation might shape the application of this power. This legal ambiguity creates hesitation in fully utilising the power, as councils fear potential legal challenges that could lead to costly litigation. Financial constraints further limit the ability of councils to explore initiatives under this power. Budget pressures mean that many councils are focused on core service delivery rather than on innovative projects that might require additional investment.

Risk aversion is another significant factor. Many local authorities operate within a culture of caution, wary of engaging in activities that could lead to non-compliance with procurement regulations or conflicts with existing legislative provisions. Furthermore, the broad nature of the power creates uncertainty about overlapping responsibilities, especially when multiple agencies or levels of government are involved in service provision.

The risks associated with exercising the power include challenges by judicial review, as ambiguous wording in the legislation may lead to disputes over its correct application. Political constraints may also deter councils from fully exploring the power due to potential opposition, particularly regarding revenue generation or significant service transformation. Additionally, operational risks arise when councils invest in new initiatives that require partnerships or long-term financial commitments, which could expose them to financial or reputational harm.

Having the power of competence removes these barriers with a clear legal power.

#### **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?**

The most significant limitation of the Power to Advance Wellbeing is the restriction on revenue generation imposed by section 22(7) of the 2003 Act. This provision prevents local authorities from using the power to raise money, effectively limiting opportunities for financial sustainability and investment in new services. Without the ability to generate revenue independently, councils find themselves reliant on central government funding, which restricts their ability to innovate.

A further limitation is the lack of clarity surrounding the scope of 'wellbeing'. The absence of a precise definition creates inconsistencies in how councils interpret and apply the power. This can lead to uncertainty when developing policies or initiatives that might be challenged by other public bodies or stakeholders.

Conflict with other statutes also poses a challenge. If another statute expressly prohibits or regulates an activity, the Power to Advance Wellbeing cannot override it. This creates a regulatory maze that councils must navigate before they can proceed with new initiatives. Even where innovative service delivery mechanisms are identified, councils often face resource limitations, both in terms of financial capacity and workforce expertise, which further hinder their ability to implement forward-thinking strategies.

These limitations significantly restrict the aspirations of local authorities to explore new and innovative ways of delivering public services. The inability to generate revenue means that councils cannot easily invest in community energy schemes, commercial partnerships, or local business support initiatives. Moreover, without a broader interpretation of 'wellbeing', councils may find themselves unable to develop holistic social policies that address economic disparity, housing needs, or digital transformation in the way they envision.

**Question 3: Would the removal of the restriction imposed by paragraph 7 of section 22 of the Local Government in Scotland Act 2003 facilitate the aspirations of local authorities to increase local revenue-generating powers? Please provide examples.**

The removal of the restriction imposed by section 22(7) would be a positive change for local authorities, enabling them to generate revenue through innovative commercial ventures to support the on-going demands on services. This would create greater fiscal autonomy and allow councils to invest in community-led initiatives, infrastructure projects, and sustainable service models.

One example of how this power could be beneficial is demonstrated by the London Borough of Richmond, which leveraged the General Power of Competence to generate local business investment and encourage entrepreneurship. Similarly, Stoke-on-Trent used similar powers to establish council-owned energy initiatives, with the objective that profits were reinvested into local services rather than being lost to private enterprises.

**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?**

Several additional legislative barriers hinder local authorities' ability to fully deliver public services and engage in innovative activities. Public procurement rules can create constraints, making it difficult for councils to act commercially when commissioning services or entering public-private partnerships. These rules often slow down decision-making processes and increase costs.

Subsidiary control regulations further limit the ability of councils to provide financial support to local businesses or community initiatives. While intended to prevent unfair market

advantages, these rules can prevent councils from offering necessary incentives to stimulate local economies. =

## **Expansion of Wellbeing Powers**

### **Question 5: Would a broadening of the scope and meaning of ‘wellbeing’ contained in the 2003 Act provide an effective alternative to a General Power of Competence?**

Broadening the definition of ‘wellbeing’ could provide an alternative to a General Power of Competence by allowing councils to address a wider range of issues affecting their communities. If ‘wellbeing’ were redefined to explicitly include economic prosperity, environmental sustainability, and digital inclusion, councils would be better positioned to create policies and initiatives that support these areas.

However, broadening the scope of wellbeing alone may not be sufficient without accompanying financial and legislative flexibility. While a broader definition might provide councils with a clearer mandate, it would not necessarily provide them with the ability to raise revenue or make investments in new service areas without further legal adjustments.

### **Question 6: Would the provision of specific greater powers within the 2003 Act 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.**

Providing specific greater powers within the 2003 Act could be an effective alternative by clearly defining the areas where councils can operate without ambiguity. For example, granting explicit statutory authority for councils to establish municipal energy companies, commercial property portfolios, or digital infrastructure projects would provide certainty and avoid the risks associated with legal challenges.

These powers could be used to support economic regeneration, such as allowing councils to take a direct role in developing local business hubs or investing in transport networks. Without such defined powers, councils remain at risk of legal disputes and financial uncertainty when trying to implement innovative solutions.

### **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.**

The restriction on the unreasonable duplication of functions limits local authorities’ ability to innovate and expand their service provision, particularly where there is a need to fill gaps left by other providers. While the intention behind this restriction is to prevent inefficiencies and overlap, in practice, it can prevent councils from intervening where market failure exists or where the private sector is unable or unwilling to provide essential services.



For example, local authorities seeking to establish municipally owned bus services to address gaps in public transport provision have often encountered resistance due to concerns over duplication. Similarly, attempts to establish publicly run broadband initiatives in areas with inadequate commercial provision have been constrained by fears of competing with existing providers. Removing or amending this restriction could enable councils to respond more effectively to local needs and provide services where they are most required.

Removing this restriction would allow councils to innovate, meet local needs, and ensure that critical services are available where market-driven solutions fall short. By refining the legal framework, local authorities could be granted the flexibility to intervene in a way that enhances service delivery without unnecessary constraints.

**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.**

The removal of this restriction would provide councils with more flexibility to address gaps in service provision and deliver innovative solutions to community needs. While it would not be a complete substitute for a General Power of Competence, it would remove one of the major legal barriers that prevent councils from acting in areas where private or third-sector provision is insufficient.

For instance, councils could expand into energy provision, establishing community-owned energy companies that offer competitive, sustainable alternatives to private firms. It could also allow for greater collaboration between public and private sectors to provide social care services, particularly in areas where private provision is patchy or costly.

By removing the restriction on duplication, local authorities could also invest in and develop new forms of public infrastructure that are tailored to the needs of their residents. For example, public transport systems, waste management initiatives, and public health services could all benefit from a more responsive and proactive approach facilitated by local councils.

**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?**

Expanding trading powers would allow local authorities to develop commercial ventures that generate revenue while providing vital services. Many councils have expressed interest in expanding into areas such as shared professional services, property development, and digital infrastructure. The ability to trade freely could help councils become more financially self-sufficient and support essential services.

For example, some councils in England have established solar farms that generate energy for the community while providing a revenue stream. Similarly, allowing councils to invest

in property and commercial real estate could help address local housing shortages while generating sustainable income.

Beyond property and energy, local authorities could explore digital enterprises, cybersecurity services, and data management solutions for the public and private sectors, with the correct investment in capability at a local level or by leveraging their existing expertise in infrastructure management (where available) and public service delivery, councils could create commercial ventures that provide financial sustainability while simultaneously benefiting the local economy.

**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.**

Removing the requirement for Ministerial consent would streamline decision-making and empower councils to take advantage of commercial opportunities more efficiently. The current system introduces delays and bureaucracy, limiting councils' ability to act quickly in response to market opportunities.

For instance, a council wishing to establish a municipally owned transport provider to serve rural areas should not have to wait for central government approval before proceeding. Similarly, councils could enter joint ventures with private sector partners without having to seek external permission, allowing them to operate with greater agility and responsiveness.

Without Ministerial consent, councils would also be able to explore new revenue streams in the hospitality, tourism, and cultural sectors. Many councils manage assets such as historic sites, museums, and parks that could be better leveraged to generate income. Under the current system, red tape often slows down innovation in these areas, preventing councils from optimising their resources to benefit both residents and visitors.

By removing this requirement, councils would have greater autonomy to make strategic financial decisions, increasing their ability to develop revenue-generating enterprises that align with local priorities. This would ultimately contribute to stronger, more resilient local economies and more sustainable public service delivery.

**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?**

Beyond providing traditional goods and services, councils could expand into areas such as banking and financial services, digital infrastructure, and public health initiatives. A municipally owned bank, for example, could offer affordable lending to small businesses and residents, reducing financial exclusion. Similarly, councils could establish community-owned healthcare services to provide more locally tailored support.

**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.**

While some level of oversight is necessary to ensure responsible financial management, excessive constraints limit councils' ability to respond effectively to community needs. Restrictions should be relaxed in areas where councils can provide services that improve economic resilience, such as affordable housing developments and renewable energy projects.

**Question 13: What type of commercial activity would local authorities wish to pursue, utilising a General Power of Competence? Please provide examples.**

A General Power of Competence would enable councils to engage in diverse commercial activities that align with community interests. Examples include:

- Investing in commercial property to generate rental income within the confines of the Prudential Code.
- Exploring opportunities for renewable energy investments to provide lower-cost electricity
- Opportunities for transport infrastructure investment.
- Developing tourism-related ventures to enhance local economic growth
- Shared Local authority services – where recruitment is challenging in competitive economic environments i.e. Educational Psychology

**Question 14: Should greater legislative powers continue to constrain the types of commercial activity that a local authority can undertake? Please provide reasons.**

While some oversight is needed to prevent excessive financial risk-taking, overly stringent constraints hinder innovation. Councils should have the freedom to engage in commercial activities that benefit the community, provided they adhere to principles of financial sustainability and transparency.

**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.**

Local authorities should be allowed to engage in commercial activity beyond their immediate area where there is a demonstrable benefit to their residents. Councils such as City of Edinburgh are at the centres of regional economies and would benefit from not having the restrictions to collaborate with other neighbouring authorities.

**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?**

Strong financial oversight mechanisms are in place, including independent audits, reporting requirements, and clear risk management protocols to ensure councils do not overextend financially. Also strengthening provisions made in the Prudential Code, which while being a self-regulating code, are clear that authorities should not invest primarily for income generation and should be aligned with strategic or national objectives.

**Question 17: What further investment powers do local authorities envisage requiring beyond those already conferred by statute and statutory guidance?**

Councils would benefit from the ability to invest in long-term infrastructure projects, housing developments, and technology initiatives, which could provide, long-term financial returns while addressing community needs.

**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.**

Clear, publicly accessible financial reports on borrowing and investment activities are prescribed by the CIPFA Prudential code and Treasury Management code of practice which require the disclosure of such activities.

However, the social impact of such investments and a consistent reporting framework for them would be beneficial.

**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.**

A General Power of Competence would allow councils to develop tailored solutions to local challenges. Examples of this have been setting up cooperatives for social care, investing in community energy schemes, and providing new transport services.

**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?**

A clearer articulation of the General Power of Competence in Scotland should focus on providing a robust legal framework, clear guidance, and strong accountability measures. Defining the scope of the power explicitly within legislation would help mitigate concerns

about overreach or misinterpretation. Establishing a structured system of checks and balances, such as independent oversight or enhanced audit procedures, would provide reassurance to both councils and the public that the power is being exercised responsibly.

Furthermore, the provision of training and legal guidance to local authority officers and elected members would be essential in ensuring that councils have the necessary expertise to use the power effectively. Case studies from England, Wales, and Northern Ireland, where similar powers exist, should be used to demonstrate best practices and highlight potential risks. Engaging with stakeholders, including businesses, community groups, and public sector partners, to co-develop guidelines for the responsible use of the power would also help foster confidence in its implementation.

**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.**

Since the introduction of the General Power of Competence in England, Wales, and Northern Ireland, local authorities have successfully leveraged it to drive economic growth, improve public services, and foster innovation. One notable example is the London Borough of Bexley, which used the power to establish a municipal energy company that supplies affordable and renewable energy to residents while generating revenue for reinvestment in community projects.

Another example is Peterborough City Council, which set up a local authority-owned housing company to address housing shortages and provide affordable homes. This initiative has helped reduce homelessness and provided stable housing for low-income families while ensuring financial returns for the council.

In Cornwall, the council has used the General Power of Competence to develop and implement a local transport initiative that improves connectivity for rural communities. This has led to enhanced public transport access and economic opportunities for residents. These examples demonstrate that when local authorities are given the flexibility to act in the best interests of their communities, they can deliver meaningful and tangible improvements in service provision and economic resilience.

**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.**

Despite the advantages offered by the General Power of Competence, several barriers and limitations have been identified in its application across England, Wales, and Northern Ireland. A key issue is the legal uncertainty surrounding the power's scope, with some councils hesitant to use it due to fears of legal challenges. In some cases, courts have interpreted the power restrictively, leading to ambiguity and inconsistency in its application.

Additionally, financial constraints remain a significant limitation. While the power provides councils with greater operational flexibility, it does not inherently provide additional funding,

meaning that councils often struggle to implement large-scale projects without external financial support. In some areas, local authorities have been unable to fully utilise the power due to concerns over competing statutory obligations and the potential overlap with existing legal frameworks.

Another perceived barrier is the risk of central government intervention. Some councils have found that, despite the legislative intent behind the General Power of Competence, national policies or ministerial directives can still restrict their ability to act autonomously. Addressing these barriers requires clearer statutory guidance, improved financial mechanisms, and a commitment to reducing central government interference in local decision-making.

**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?**

Requiring a local authority's use of a General Power of Competence to align with local regeneration or demonstrable well-being enhancement would ensure that the power is used in a way that directly benefits communities. This would provide accountability and a strategic focus for councils, ensuring that initiatives undertaken align with broader social and economic goals.

However, imposing too rigid a requirement could also limit the flexibility that the General Power of Competence is designed to provide. Instead of imposing strict conditions, a balanced approach could be adopted, where councils must demonstrate how their use of the power contributes to local priorities while still allowing room for innovation. Requiring councils to publish impact assessments and annual reviews of projects undertaken under this power could ensure transparency and public confidence.

For instance, if a council seeks to establish a local authority trading company, it should be able to demonstrate how this contributes to job creation, economic resilience, or service improvements. Likewise, if a council invests in infrastructure, it should show how the investment aligns with sustainability and community well-being objectives. Such an approach would ensure that the power is used responsibly while allowing councils the necessary autonomy to make locally relevant decisions.