



**DORSET & WILTSHIRE
FIRE AND RESCUE
AUTHORITY**

Item 21/41

MEETING	Dorset & Wiltshire Fire and Rescue Authority
DATE OF MEETING	30 September 2021
SUBJECT OF THE REPORT	Home Office consultation on giving greater powers of competence to Police and Crime Commissioners
STATUS OF REPORT	For open publication
PURPOSE OF REPORT	For approval
EXECUTIVE SUMMARY	<p>This paper seeks the support of the Fire and Rescue Authority (Authority) for a proposed response to a consultation being undertaken by the Home Office on giving Police and Crime Commissioners (PCCs) greater powers of competence.</p> <p>The proposed response supports extending a general power of competence to PCCs, a power that is already available to Councils. A general power of competence is considered to be preferable to the alternative of wider functional powers, also referred to in the consultation.</p> <p>Although not part of the consultation, this is also an opportunity to highlight to the Home Office the benefits of extending the general power of competence to Combined Fire and Rescue Authorities (Authorities) as well as to PCCs. Doing so would give Combined Authorities, PCCs and Councils the confidence of operating within a consistent statutory basis when working in partnership.</p>
RISK ASSESSMENT	None for the purposes of this report.
COMMUNITY IMPACT ASSESSMENT	None for the purposes of this report.

BUDGET IMPLICATIONS	There are no direct budget implications arising from this report. The two PCCs are important partners of the Authority and there may be indirect benefits as a result of greater freedom to work together to achieve shared objectives.
RECOMMENDATIONS	Members are asked to consider and approve the suggested response to the Home Office Consultation about giving PCCs greater powers of competence.
BACKGROUND PAPERS	None
APPENDIX	Appendix A - Giving Police and Crime Commissioners greater powers of competence - Government Consultation
REPORT ORIGINATOR AND CONTACT	Name: Jonathan Mair, Clerk and Monitoring Officer Email: jonathan.mair@dorsetcouncil.gov.uk Tel no: 01305 224181

1. Background

- 1.1 As part of a manifesto commitment to widen the legal powers of PCCs, the Home Office is consulting on giving PCCs a “general power of competence.” This report describes the background to the introduction in 2011 of a general power of competence for Councils, before going on to recommend that the Authority should support an extension of such powers to PCCs.

2. Legal context

- 2.1 PCCs, like Authorities and Councils are created by statute. As such they depend upon legislation to set out their functions and duties and to enable them to act. The decisions or actions of a statutory body outside of its powers may be struck down by the courts as having no lawful basis. The necessary starting point when considering whether an Authority may act in a particular way is therefore to look for the statutory basis for its actions.
- 2.2 Parliament cannot though identify in advance everything that an Authority might need or wish to do in connection with its statutory functions. Initially Parliament addressed this in the Local Government Act 1972 by giving Councils the power to undertake activities “incidental” to their main statutory functions.
- 2.3 Attempts by Councils to use the “incidental” power to act in innovative ways led to legal challenges about scope of the incidental power. In one case the court found that a Council had acted outside its powers when it sought to charge for pre-application planning advice. The court found that the provision of pre-application advice was itself an incidental function and that it was unlawful to make an incidental charge for something that was itself already incidental and not a core statutory function of a Council.
- 2.4 Parliament sought to address what was seen as the stifling effect of how use of the “incidental” power was being interpreted by replacing the incidental power with a more general power for a Council to act to promote the social, economic or environmental wellbeing of its inhabitants or its area. Again, limitations on the interpretation of these powers were thought to be stifling innovation and in 2011 the Localism Act gave Councils a “general power of competence.”

3. The general power of competence

- 3.1 In broad terms the general power of competence introduced by the Localism Act gave Councils the power to do anything that an ordinary individual can do within the law.

- 3.2 The general power of competence reverses the usual starting point that an Authority must be able to identify a specific statutory provision as permitting it to act in some way. Instead, the presumption is now that a Council can act unless the law says that it cannot or imposes some limitation on the extent to which it can act. There are some key limitations on use of the general power of competence and it cannot be used as a power to raise taxes. The general power of competence is nonetheless a wide ranging power.
- 3.3 The importance of the general power is not simply that it reverses the usual starting point of having to look for a specific statutory permission to act. The earlier “incidental” and “wellbeing” powers were all grounded in what were thought of as the usual functions and ways that Councils acted. The Localism Act reinforced just how widely the general power of competence was to be interpreted to enable Councils to act innovatively by providing that it applied so as to enable Councils to act in ways that were unlike those otherwise open to them and in ways unlike anything that other public bodies might do.

4. The consultation

- 4.1 The Home Office consultation describes the current powers of PCCs in this way:

PCCs must act within their statutory powers. These powers are set out in the Police Reform and Social Responsibility Act (PRORA) 2011 and are principally; the power to appoint, re-appoint and dismiss the chief constable; the power to set the force’s budget; and the power to establish local priorities for the force through the police and crime plan. PCCs also have the functional power to do anything which is calculated to facilitate, or is conducive or incidental to, the exercise of their functions. That includes entering into contracts and other agreements (whether legally binding or not), acquiring and disposing of property (including land) and borrowing money.

- 4.2 Having explained that the powers of a PCC are limited to things that are incidental to their narrow functional powers, the consultation explains the Government’s intention to give PCCs a general power of competence so that they have the tools and levers they need to prevent and tackle crime.
- 4.3 The consultation seeks views on the introduction of wider functional powers for PCCs, as an alternative to a general power of competence. The consultation also outlines the statutory roles of the Chief Finance Officer and the Monitoring Officer and seeks views on any further safeguards or limitations that might be necessary to ensure a proper use of any new powers granted to PCCs.
- 4.4 The consultation also refers to the powers of Authorities. At the same time as giving Councils a general power of competence the Localism Act amended the Fire and Rescue Services Act 2004 and gave Combined Authorities functional powers that are:

- wider than those currently available to PCCs but
- narrower than those available to Councils, including those Councils that undertake fire and rescue functions.

4.5 The consultation does not propose any changes to the functional powers of Combined Authorities. Whilst pointing out that giving PCCs greater powers of competence would give them the confidence to act where there might otherwise be doubt the consultation does not recognise that this same point applies to Combined Authorities.

5. A proposed response

5.1 The current range of powers available to Authorities, Councils and PCCs has evolved over time and presents an inconsistent picture.

5.2 Councils have the widest powers through the general power of competence. PCCs currently have narrow functional powers. Combined Authorities sit between Councils and PCCs. Combined Authorities have wider functional powers than PCCs but only those Fire and Rescue Services that are hosted by Councils are at present able to exercise the general power of competence.

5.3 At present PCCs are in the difficult position of operating under more restrictive functional powers when acting as PCCs than when they act as Fire Commissioners. The proposed general power of competence, whilst widening PCC powers, still leaves an inconsistency of approach.

5.4 It is suggested that in response to the consultation:

- The extension of a general power of competence for PCCs should be supported and welcomed.
- A general power of competence for PCCs is to be preferred over the option of wider functional powers as a general power will provide greater confidence to act whereas functional powers might leave doubt.
- Consistent with the position in Councils, the safeguards provided by the statutory roles of the Chief Finance Officer and the Monitoring Officer should be seen as sufficient to enable the extension of a general power of competence to PCCs.
- The Home Office should be asked to consider the question of consistency of approach and the opportunity to align PCC, Authorities and Council powers so that all have access to a general power of competence.

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