

ANGUS COUNCIL

20 MARCH 2025

SCOTTISH GOVERNMENT CONSULTATION - LOCAL AUTHORITY GENERAL POWER OF COMPETENCE

REPORT BY ALISON WATSON, ACTING DIRECTOR OF LEGAL, GOVERNANCE & CHANGE

1. ABSTRACT

This report provides information on a [Consultation on a Local Authority General Power of Competence](#) being undertaken by the Scottish Government seeking views on potential legislative changes that could enable local authorities to more effectively deliver public services. It also seeks Council approval of a proposed response to be submitted by Angus Council.

2. ALIGNMENT TO THE COUNCIL PLAN AND COUNCIL POLICIES

The contents of this Report contribute to the achievement of the priority that the Council is efficient and effective as detailed in our Council Plan for 2023 – 2028.

3. RECOMMENDATION(S)

It is recommended that Council: -

- (i) notes the Scottish Government Consultation currently being undertaken on a “Local Authority General Power of Competence” as attached for information at **Appendix 1**;
- (ii) reviews the proposed draft response to the Consultation as set out in **Appendix 2**, agrees any further comments to be added to the response and thereafter determines an agreed final response to be submitted to the Scottish Government in terms of the full consultation questions; and
- (iii) authorises the Acting Director of Legal, Governance & Change to submit Angus Council’s agreed final response by 31 March 2025, being the deadline for responses in terms of the consultation.

4. BACKGROUND

- 4.1 Currently, Scottish local authorities may only do those things which statute empowers them to do, anything else is considered to be “ultra vires”. A local authority in Scotland also has a power to advance wellbeing under the Local Government in Scotland Act 2003 – that is “to do anything which it considers is likely to promote or improve the well-being of its area and/or persons within that area.”
- 4.2 However, it is widely considered that this does not include the power for a local authority to enter into commercial agreements or agreements to provide services beyond existing statutory functions, which could theoretically be provided by another person or entity. This power also 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.
- 4.3 A General Power of Competence is commonly defined as a statutory power to do “anything that individuals may generally do”, enabling local authorities to “do things that are unlike anything they, or any other public body, have done before” and is currently available to local authorities in England and Wales since 2021, and in Northern Ireland since 2015. A number of representations have been made to the Scottish Government seeking the introduction of a similar General Power of Competence for local authorities in Scotland.

- 4.4 COSLA, through the Local Governance Review, expressed an ambition for a General Power of Competence to be secured, in law, for Local Government in Scotland, replacing the Power to Advance Well-being. COSLA officers have worked with Scottish Government to draft the consultation on a General Power of Competence in Scotland. This aligns with COSLA's stance that there is a need to empower Local Government, and to provide increased power to drive forward innovation.

## **5. CURRENT POSITION**

- 5.1 The consultation 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. Responses are sought in relation to: -
1. existing legislative powers in Scotland;
  2. the wider legislative powers in England, Wales and Northern Ireland;
  3. the barriers to using such powers;
  4. the concerns and perceived risks; and
  5. potential conflicts with other legislative provisions.
- 5.2 The Localism Act 2011 provides local authorities in England with a general power of competence, described as "power to do anything that individuals generally may do...even though they are in nature, extent or otherwise unlike anything the authority or other public bodies may otherwise do... in any way whatever, including: -
- a) power to do it anywhere in the United Kingdom or elsewhere,
  - b) power to do it for a commercial purpose or otherwise for a charge, or without charge, and
  - c) power to do it for, or otherwise than for, the benefit of the authority, its area or persons resident or present in its area.
- 5.3 In England, the General Power of Competence sits alongside local government's existing powers to trade and charge. Powers contained in the Localism Act also provide the ability to charge for discretionary services but only on a cost recovery basis. The Local Government and Elections (Wales) Act 2021 and The Local Government Act (Northern Ireland) 2014 provide similar powers to local authorities in those areas.
- 5.4 Scottish Government say there is a strong need to explore and outline examples of how local authorities in Scotland would utilise a General Power of Competence, providing examples of activities that local authorities would pursue with a General Power of Competence which they currently are unable to, due to legislative barriers or the absence of powers allowing them to do so. Current analysis and evidence on how the power has been used in other parts of the UK is limited, with it being understood that there exists a certain anxiety in relation to legal challenges and judicial interpretations that could arise.

## **6. PROPOSALS**

- 6.1 The deadline for responses to the Consultation is 31 March 2025. Council is asked to review the proposed draft response to the Consultation as set out in **Appendix 2**, and to provide any further comments and thereafter to determine an agreed final response to be submitted to the Scottish Government in terms of the full consultation questions.

## **7. FINANCIAL IMPLICATIONS**

- 7.1 There are no additional financial implications for the Council arising directly from the recommendations in this report. Legislative changes if implemented could have financial implications for the Council but those would need considered further once the basis of any legislative changes is confirmed.

## **8. RISK MANAGEMENT**

If statutory provision was introduced there may be a risk that local authorities will move into areas where expertise is lacking.

## **9. ENVIRONMENTAL IMPLICATIONS**

There are no direct environmental implications arising from the recommendations of this report.

## **10. EQUALITY IMPACT ASSESSMENT, HUMAN RIGHTS AND FAIRER SCOTLAND DUTY**

A screening assessment has been undertaken and a full Equality Impact Assessment is not required as the report is technical.

## **11. CHILDREN'S RIGHTS AND WELLBEING IMPACT ASSESSMENT**

A Children's Rights and Wellbeing Impact Assessment has been undertaken and a full assessment is not required as the "General Principles" do not apply to this proposal.

## **12. CONSULTATION (IF APPLICABLE)**

The Director of Finance and the Chief Executive have been consulted in the preparation of this report.

**NOTE:** The background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) which were relied on to any material extent in preparing the above report are: (list them below)

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List of Appendices:

**Appendix 1** - Scottish Government Consultation on a Local Authority General Power of Competence

**Appendix 2** – Proposed Consultation Response on a Local Authority General Power of Competence