



# YORKSHIRE LOCAL COUNCILS ASSOCIATIONS

<b>ADVICE NOTE:</b>	<b>Number 3</b>
<b>SUBJECT:</b>	<b>What gives a local council the legal power to act?</b>

If a local council has acquired the General Power of Competence (GPC), this would be its first point of reference as the GPC is a power of first resort and enables the council 'to do anything individuals of full age can legally do'. Under the Localism Act 2011, the GPC is available to councils who qualify ie, two-thirds of councillors elected and having a 'qualified' clerk (who holds the Certificate in Local Council Administration).

However, if a local council does not have the General Power of Competence, it is then required to consider whether there is any specific statutory power it can utilise in order to act (in absolutely everything that it does). If a local council acts without the requisite legal power, its actions will be ultra vires which means it will be acting outside of the law and could be subject to challenge in a court of law – hence the necessity to think about what power the council is using.

Here are some examples – if you are in any doubt, which power to use or whether a power exists, please contact YLCA:

S = Section

<b>Local Council Activity:</b>	<b>Statutory Power:</b>
<b>Allotments:</b> Provision and maintenance for cultivation.	Small Holdings and Allotments Act 1908, S23
<b>Arts:</b> Developing and improving knowledge of the arts and the crafts which serve the arts.	Local Government Act 1972, S145
<b>Baths:</b> Provision of baths and wash-houses (which in modern terms may mean a launderette).	Public Health Act 1936, S221(a)
<b>Cemeteries:</b> Provision and maintenance of burial grounds, or cemeteries, or crematoria.	Local Government Act 1972, S214
<b>Churchyards:</b> Contribute to the costs of a churchyard in use and a duty to maintain any closed churchyard where the duty has been transferred by the Church.	Local Government Act 1972, S215
<b>Clocks:</b> Provision and maintenance of public clocks.	Parish Councils Act 1957, S2
<b>Commons:</b> Protect any finally registered common which has no registered owner.	Able to bring prosecutions under various Acts of Parliament
<b>Crime Prevention:</b> Support schemes for the prevention and detection of crime.	Local Government and Rating Act 1997, S31
<b>Dogs:</b> Make a Dog Control Order and take enforcement action.	No power for a local council to make control orders but principal authorities can make a Public Spaces Protection Order. Anti-Social Behaviour, Crime and Policing Act 2014.

<b>Entertainments:</b> Provision of any form of public entertainment and any premises for giving entertainments. (This includes maintaining bands or orchestras and providing for dancing).	Local Government Act 1972, S145
<b>Fly Posting and Graffiti:</b> Take enforcement action	Cleaner Neighbourhoods and Environment Act 2005
<b>Gifts:</b> Accept gifts, including land.	Local Government Act 1972, S139
<b>Footpaths:</b> Maintenance of public footpaths and bridleways.	Highways Act 1980, S43
<b>Halls:</b> Provision of building for public meetings and functions, for indoor sports or physical recreation, or for the use of clubs or societies having recreational, social or athletic objects	Local Government (Miscellaneous Provisions) Act 1976, S19
<b>Investment:</b> Participate in a scheme of collective investment.	Trustee Investment Act 1961, S11
<b>Land:</b> Acquire by agreement and dispose of.	Local Government Act 1972, Ss 124, 127 and,139
<b>Legal Proceedings:</b> Prosecute and defend any legal proceedings in the interests of the inhabitants. Take part in any public local inquiry.	Local Government Act 1972, S222
<b>Lighting:</b> Provision and maintenance of any footway lighting which lights roads or pavements	Parish Councils Act 1957, S3 and Local Government Act 1972, Sch14, para 34
<b>Litter:</b> Provision of litter-bins in streets and support for anti-litter campaigns.	Litter Act 1983, Ss 5 and 10
<b>Lotteries:</b> To promote.	Lotteries and Amusement Act 1976, S7
<b>Memorials:</b> Maintenance of war memorials.	War Memorials (Local Authorities' Powers) Act 1923, S1
<b>Mortuaries:</b> Provision of mortuaries and post mortem rooms.	Public Health Act 1936, S198
<b>Open Spaces:</b> Provision and maintenance of public open spaces, pleasure grounds and public walks.	Public Health Act 1875, S164, Open Spaces Act 1906, and Local Government Act 1972, Sch14, para 27
<b>Parking Places:</b> Provision and management of car and cycle parks.	Road Traffic Act 1984, S57
<b>Parks:</b> Provision and maintenance of public parks and appropriate facilities	Public Health Act 1875, S164 and Local Government Act 1972, Sch14, para 27
<b>Playing Fields:</b> Provision & maintenance of land for any kind of outdoor recreation including boating pools.	Local Government (Miscellaneous Provisions) Act 1976, S19

<b>Ponds:</b> Deal with ponds, pools, or other places containing filth or matter prejudicial to health.	Public Health Act 1936, S260
<b>Public Lavatories:</b> Provision and maintenance of public lavatories.	Local Government Act 1972, Sch14 para 9
<b>Roadside Verges:</b> Plant and maintain roadside verges.	Highways Act 1980, S116
<b>Seats:</b> Provision and maintenance of public seats on the highway.	Parish Councils Act 1957, S1
<b>Shelters:</b> Provision and maintenance of shelters for general public use and also particularly for bus passengers.	Parish Councils Act 1957, S1
<b>Swimming:</b> Provision of indoor or outdoor swimming pools or bathing places.	Local Government (Miscellaneous Provisions) Act 1976, S19
<b>Town and Country Planning:</b> To be notified of planning applications.	Town & Country Planning Act 1990, Sch 1, para 8
<b>Tourism:</b> Provision of facilities for conferences and encouragement of recreational and business tourism.	Local Government Act 1972, S144 as amended by Local Government (Miscellaneous Provisions) Act 1976, S19
<b>Traffic:</b> Carry out surveys and assist the highway authority to provide traffic calming. Support community transport schemes.	Local Government & Rating Act 1997, Ss 26-30
<b>Village Greens:</b> Power to acquire and maintain land for village or town greens.	Village Green – Public Health Act 1875, S164 and Local Government Act 1972, Sch14, para 27
<b>Water Supply:</b> To utilise a well, spring or stream and to provide facilities for obtaining water from them	Public Health Act 1936, S125
<b>Defibrillator and other life saving equipment:</b> Power to provide	Public Health Act 1936, S234

### What if a council can't find statutory power to act?

The list above is not exhaustive. In a situation not covered by a specific power a council **may** spend money on any purpose which in its opinion is of benefit to its area or to all or some of its inhabitants This is a power of last resort provided by Section 137 of the Local Government Act 1972 (as amended by Local Government and Housing Act 1989, s36). Please see Advice Note 5 for the current year spending limit for section 137.

A good source of information about Section 137 expenditure can be found on the YLCA website in the Advice Notes section. Go to: [www.yorkshirelca.gov.uk](http://www.yorkshirelca.gov.uk)

Yorkshire Local Councils Associations  
Suite 8, York House, Station Road, Tadcaster, LS24 9JF.  
Tel: 01937 228602  
E-mail: [admin@yorkshirelca.gov.uk](mailto:admin@yorkshirelca.gov.uk)

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