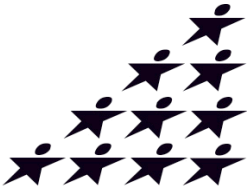

Local Government Association

Draft Local Government (Power of General Competence) Bill

March 2010

Presented to Parliament
by the Local Government Association

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Draft Local Government (Power of General Competence) Bill

Introduction

We set out in this publication a draft Local Government (Power of General Competence) Bill. This is published as a contribution to the debate about local democracy and the powers which councils need to innovate and to meet the needs of local communities.

This draft Bill has been discussed by a roundtable of eminent local government lawyers and academics. The publication of the draft Bill seeks to advance understanding of how a power of general competence would best be expressed in law, and whether such a power can be established in law in a way which could over-ride other legislation which conflicts with it, and ensure greater flexibility and certainty.

The draft Bill would create power for a council to do anything it considers likely to benefit its area and people who live there. This would only be restricted where there is explicit limitation created by statute. There is also provision for review of existing legislation to identify where it may create a barrier to actions councils want to take. More detail on the content of the Bill is given in the Explanatory Notes at the end of this publication.

The legal framework for local government

There is wide consensus about the need for strong local government as part of a healthy democracy. Local government law needs to underpin arrangements where councillors can, in dialogue with local people, make decisions about local services and the place where they live. There is widespread agreement that the current legal arrangements provide an unsatisfactory combination of detailed legal prescription about specific services, and uncertainly about a general power. We need a clear power of first resort, and a framework to simplify and remove restrictions from existing statute, where these create a barrier. We need, as far as possible, to create a power which will not be interpreted in the courts in restrictive way.

English local government is unusual among modern democracies in not having a written constitution or framework of basic law within which the role and powers of local government are defined. Seeking to provide a clear general power to strengthen local government within the English legal framework, parliament created the ‘well being power’.

The Local Government Act 2000 introduced a new, flexible power, the well being power, which enabled councils to do anything which was likely to improve the economic, social, and/or environmental well being of the area or its inhabitants. The Act also provided an order-making power to remove conflicting elements of other statutes. This was intended to provide flexibility for new, innovative services and initiatives and the development of new service delivery architectures.

The need for a power of general competence

The well being power was intended to provide a power of first resort for councils, not simply to create an addition to the existing list of specific powers. Councils were encouraged to see this as underpinning a community leadership role, responsive to local citizens and places. It was at the heart of the government’s claim to be strengthening local democracy and empowering communities. Many councils acted in this spirit, insofar as they were able in a wider climate where they had much other prescription from government, and were too often seen not as providing local government, but as the bottom of the delivery chain for central government departments.

On 9 June 2009, the Court of Appeal handed down its judgment in Brent LBC v Risk Management Partners. It upheld the position of the High Court, that the London Borough of Brent did not have the power to participate in the Local Authorities Mutual Limited (LAML), a jointly owned company, set up to provide insurance and risk management services to London borough councils. The judgement has created wide concern within local government about the scope of the well being power, Section 2 Local Government Act 2000, and Section 111 Local Government Act 1972.

At a time of recession and public spending pressures, where it is vital councils have the confidence to innovate, the LAML judgement seriously undermined council confidence in the well being power as a wide, general power of first resort.

The government responded to the LAML judgement by introducing an amendment to the Local Democracy, Economic Development and Construction Bill, in October 2009. This was passed, and creates specific powers to enable councils to establish mutual insurance arrangements. This does not resolve the uncertainty which has been created about the limits of the well being power.

Although the well being power has encouraged some councils to introduce new activities, there has been uncertainty about its exact scope. This concern has been very much amplified by the recent judgement. This has increased interest in the idea of a power of general competence for local government, which would be broader and create greater certainty.

Making the case for a power of general competence

A power of general competence for local government has longstanding support from the Local Government Association (LGA). This would support the role of councils as government and not simply administration, taking distinctive decisions to provide for the needs of the place the council represents, and not simply administering the decisions of central government.

The LGA's publication on the powers and constitutional position of local government, One Country, Two Systems, expressed interest in the option to "legislate along the lines of Article 118 of the Italian constitution, providing that councils should be presumed to have the powers to provide any public service not explicitly reserved as the unique responsibility of a national body in the interests of assuring uniformity of service."

We went on to suggest "Such a provision would either require a very large schedule of consequential repeals and amendments, or need to be phrased so as to have the quasi-constitutional force to override other statutes limiting the powers of local government. There is a precedent for such a quasi-constitutional provision in the Human Rights Act, which simply allows other statutes to be challenged if they appear to be in conflict with it."

In May 2009, the House of Commons Communities and Local Government Select Committee reported: The balance of power: central and local government. The Committee said in its conclusions and recommendations: "We are clear that local authorities need both sufficient formal powers and more general autonomy to pursue a leading local leadership role. We have considerable sympathy with the case for local government to be given a power of general competence, to provide greater recognition of the local leadership role that central government is asking it to play and which we support. If local government is able to accumulate evidence that the well-being powers are falling short of a power of general competence to the extent that they are impeding its local leadership role, then we recommend that the government should introduce a power of general competence for local government." We believe the uncertainty subsequently created by the Court of Appeal in the LAML judgement shows the need for action.

Benefits of change

The Draft Bill would provide a wide, permissive power of general competence. It would be wider than the well being power, create greater certainty for councils and encourage innovation. The idea of a power of general competence has been supported in the past by all the main political parties. Support for a power of general competence for local government has been a longstanding policy of the Liberal Democrats. It was a Labour government which introduced the well being power, taking steps to provide a clear, general power within the Local Government Act 2000. The Conservative Party's recent Control Shift policy paper advocates a general power of competence for local government.

Public spending is under pressure in the aftermath of the banking crisis. Well before that, councils were extensively involved in finding more economical ways to provide services through shared arrangements, particularly for back office and support services. Regional Improvement and Efficiency Partnerships had put particular emphasis on this work. The LAML initiative of London councils to create shared insurance arrangements, which were able to provide for their insurance needs more economically, were typical of this approach. It was therefore a particular blow to have confidence in the well-being power undermined as a means of underpinning efficiency savings.

In the LAML judgment, Lord Justice Moore-Bick argued that section two of the well being power cannot be used to empower any scheme expected to reduce an authority's costs (paras 174 – 182) "taking steps to improve the authority's general financial position is not to be treated as something that will of itself promote or improve the well-being of its area". The argument was put by Lord Justice Pill that "Promotion of well-being is not an expression one would normally associate with a somewhat complex arrangement to save money . . . rather than with action directly to promote or improve a healthy or prosperous condition."

It is vital that councils are given renewed confidence in their powers to continue this work to improve efficiency, for example through joint arrangements, in particular to provide back office and support services which may be defined as 'incidental' in law to their primary functions. Challenges such as climate change and energy security, changes in the make up of the population, economic change, and technological developments, make it vital councils can take reasonable risks, and provide new services.

Legislating to create a power of general competence for local government would contribute to councils' confidence in their powers to tackle in new ways the challenges their communities face.

Local Government (Power of General Competence) Bill

CONTENTS

A

BILL

TO

provide a power of general competence for local authorities; and for connected purposes.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

The power of general competence

1 The power of general competence

(1) A local authority shall have power to do anything which it considers is likely to be of benefit (whether directly or indirectly) to—

(a) the whole or any part of its area, or

(b) all or any persons resident or present in its area.

(2) The power shall be referred to as "the power of general competence".

(3) The power does not enable a local authority to do anything which it is unable to do by virtue of any express prohibition, restriction or limitation on its powers which is contained in any enactment (whenever passed or made).

(4) The power does not include a power to make laws.

(5) The power does not enable a local authority to raise money by taxation or precepts.

(6) The power includes power for a local authority to do anything in relation to, or for the benefit of, any person or area situated outside its area if it considers that it is likely to achieve either or both of the objects in subsection (1).

(7) The power is an overarching power that may be exercised—

(a) together with other powers; or

(b) on its own.

2 Orders limiting the scope of section 1

(1) The appropriate national authority may by order make provision preventing local authorities from doing, by virtue of section 1, anything which is specified, or is of a description specified, in the order.

(2) The power under subsection (1) may be exercised in relation to—

(a) all local authorities,

(b) particular local authorities, or

(c) particular descriptions of local authority.

(3) Subject to subsection (4), before making an order under subsection (1), the appropriate national authority must consult such representatives of local government and such other persons (if any) as he considers appropriate.

(4) Subsection (3) does not apply to an order under this section which is made only for the purpose of amending an earlier order under this section—

(a) so as to extend the earlier order, or any provision of the earlier order, to a particular authority or to authorities of a particular description, or

(b) so that the earlier order, or any provision of the earlier order, ceases to apply to a particular authority or to authorities of a particular description.

(5) In this section "appropriate national authority" in relation to local authorities in Wales means the Welsh Ministers and in relation to other local authorities means the Secretary of State.

Legislation

3 Interpretation of legislation

(1) So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the power of general competence.

(2) This section—

(a) applies to primary legislation and subordinate legislation whenever enacted,

(b) does not affect the validity, continuing operation or enforcement of any incompatible primary legislation, and

(c) does not affect the validity, continuing operation or enforcement of any incompatible subordinate legislation if (disregarding any possibility of revocation) primary legislation prevents removal of the incompatibility.

4 Declaration of incompatibility

(1) Subsection (2) applies in any proceedings in which a court determines whether a provision of primary legislation is compatible with the power of general competence.

(2) If the court is satisfied that the provision is incompatible with the power of general competence, it may make a declaration of that incompatibility.

(3) Subsection (4) applies in any proceedings in which a court determines whether a provision of subordinate legislation, made in the exercise of a power conferred by primary legislation, is compatible with the power of general competence.

(4) If the court is satisfied—

(a) that the provision is incompatible with the power of general competence, and

(b) that (disregarding any possibility of revocation) the primary legislation concerned prevents removal of the incompatibility,

it may make a declaration of that incompatibility.

(5) In this section "court" means—

(a) the Supreme Court,

(b) the High Court or the Court of Appeal,

(c) the Upper Tribunal, in any matter dealt with under section 15 of the Tribunals, Courts and Enforcement Act 2007, (c. 15) (Upper Tribunal's “judicial review” jurisdiction) in relation to cases arising under the law of England and Wales,

(d) the Court of Protection, in any matter being dealt with by the President of the Family Division, the Vice-Chancellor or a puisne judge of the High Court.

(6) A declaration under this section—

(a) does not affect the validity, continuing operation or enforcement of the provision in respect of which it is given, and

(b) is not binding on the parties to the proceedings in which it is made.

5 Right of Crown to intervene

(1) Where a court is considering whether to make a declaration of incompatibility, the Crown is entitled to notice in accordance with rules of court.

(2) In any case to which subsection (1) applies, a Minister of the Crown (or a person nominated by him) is entitled, on giving notice in accordance with rules of court, to be joined as a party to the proceedings.

(3) Notice under subsection (2) may be given at any time during the proceedings.

(4) In respect of any proceedings to which subsection (5) applies, the function of a Minister of the Crown under subsection (2) shall be exercisable by the Welsh Ministers concurrently with any Minister of the Crown by whom it is exercisable.

(5) This subsection applies to any proceedings in which a court is considering whether to make a declaration of incompatibility in respect of—

(a) subordinate legislation made by the National Assembly; and

(b) subordinate legislation made, in relation to Wales, by a Minister of the Crown in the exercise of a function which is exercisable by the National Assembly.

Remedial action and review of legislation

6 Power to take remedial action

(1) This section applies if a provision of legislation has been declared under section 5 to be incompatible with the power of general competence and, if an appeal lies—

(a) all persons who may appeal have stated in writing that they do not intend to do so,

(b) the time for bringing an appeal has expired and no appeal has been brought within that time, or

(c) an appeal brought within that time has been determined or abandoned.

(2) If the appropriate national authority considers that there are compelling reasons for proceeding under this section, the appropriate national authority may by order make such amendments to the legislation as the appropriate national authority considers necessary to remove the incompatibility.

(3) If, in the case of subordinate legislation, the appropriate national authority considers—

(a) that it is necessary to amend the primary legislation under which the subordinate legislation in question was made, in order to enable the incompatibility to be removed, and

(b) that there are compelling reasons for proceeding under this section,

the appropriate national authority may by order make such amendments to the primary legislation as the appropriate national authority considers necessary.

(4) This section also applies where the provision in question is in subordinate legislation and has been quashed, or declared invalid, by reason of incompatibility with the power of general competence and the appropriate national authority proposes to proceed under paragraph 2(b) of the Schedule.

(5) If the legislation is an Order in Council, the power conferred by subsection (2) or (3) is exercisable by Her Majesty in Council.

(6) The Schedule makes further provision about orders under this section.

7 Other powers to remedy legislation

(1) The appropriate national authority may by order under this section make any provision which he considers would serve either of the purposes in subsection (2).

(2) Those purposes are—

(a) to remove from any primary or subordinate legislation any incompatibility with the power of general competence, and

(b) to repeal, revoke or amend any primary or subordinate legislation that is unnecessary as a result of this Act.

(3) The Schedule makes further provision about orders under this section.

8 Duty to review and amend legislation

(1) The appropriate national authority shall conduct a review of primary and subordinate legislation with a view to removing any provision which is—

(a) incompatible with the power of general competence, or

(b) unnecessary as a result of this Act.

(2) The review shall be concluded no later than the end of 2015.

(3) Where the appropriate national authority, as a result of conducting a review (or otherwise) determine that a provision is incompatible with the power of general competence, the appropriate national authority must make an order under section 7.

(4) Any express prohibition, restriction or limitation on the powers of a local authority which is contained in any enactment (whenever passed or made) and which is incompatible with the power of general competence shall be deemed to have ceased to have effect at the end of 2016.

(5) The appropriate national authority may by order exempt any enactment from subsection (4).

(6) The secretary of state may by order postpone either of the dates mentioned in

subsections (2) and (4).

(7) The appropriate national authority may by order make such consequential modifications of any provision contained in any enactment as are necessary because of subsection (4).

Supplemental

9 Orders, etc under this Act

(1) Orders under this Act must be made by statutory instrument.

(2) A power of the appropriate national authority to make an order under this Act includes power—

(a) to make different provision for different purposes (including different areas),

(b) to make provision generally or in relation to specific cases,

(c) to make incidental, consequential, supplementary, transitional, transitory or saving provision.

(3) A statutory instrument containing (whether alone or with other provision) an order mentioned in subsection (7) is subject to the affirmative procedure.

(4) The orders referred to in subsection (3) are—

(a) orders under section 2 (orders limiting the scope of section 1),

(b) orders under section 8 (duty to review and amend legislation).

(5) If a statutory instrument is subject to the affirmative procedure, the order it contains may not be made unless a draft of the instrument—

(a) is laid before, and approved by a resolution of, each House of Parliament (if the order is to be made by the Secretary of State),

(b) is laid before and approved by a resolution of the National Assembly for Wales (if the order is to be made by the Welsh Ministers).

(6) If a draft of a statutory instrument mentioned in subsection (2) or (4) would, apart from this subsection, be treated for the purposes of the Standing Orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not a hybrid instrument.

(7) The Schedule makes provision about orders under sections 6 and 7.

10 Interpretation, etc

In this Act—

"amend" includes repeal and apply (with or without modifications);

“appropriate national authority” means (except in section 2)—

(a) the Welsh Ministers, as regards Acts of the National Assembly for Wales and Measures of the National Assembly for Wales, and

(b) the Secretary of State as regards all other kinds of primary and subordinate legislation;

"declaration of incompatibility" means a declaration under section 4;

"local authority" means—

(a) in relation to England—

(i) a county council,

(ii) a district council,

(iii) a London borough council,

(iv) the Common Council of the City of London in its capacity as a local authority,

(v) the Council of the Isles of Scilly,

(b) in relation to Wales, a county council or a county borough council;

"Minister of the Crown" has the same meaning as in the Ministers of the Crown Act 1975;

"primary legislation" means any—

(a) public general Act,

(b) local and personal Act,

(c) private Act,

(d) Order in Council—

(i) made in exercise of Her Majesty's Royal Prerogative,

(ii) amending an Act of a kind mentioned in paragraph (a), (b) or (c),

and includes an order or other instrument made under primary legislation (otherwise than by the Welsh Ministers, the First Minister for Wales, or the Counsel General to the Welsh Assembly Government) to the extent to which it operates to bring one or more provisions of that legislation into force or amends any primary legislation;

"remedial order" means an order under section 6 or 7;

"subordinate legislation" means any—

(a) Order in Council other than one—

(i) made in exercise of Her Majesty's Royal Prerogative,

(ii) made under section 38(1)(a) of the Northern Ireland Constitution Act 1973 or the corresponding provision of the Northern Ireland Act 1998, or

(iii) amending an Act of a kind mentioned in the definition of primary legislation,

(b) Measure of the National Assembly for Wales,

(c) Act of the National Assembly for Wales,

(d) order, rules, regulations, scheme, warrant, byelaw or other instrument made under primary legislation (except to the extent to which it operates to bring one or more provisions of that legislation into force or amends any primary legislation),

(e) order, rules, regulations, scheme, warrant, byelaw or other instrument made under legislation mentioned in paragraph (b) or (c),

(f) order, rules, regulations, scheme, warrant, byelaw or other instrument made by Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government.

11 Short title, commencement, application and extent

(1) This Act may be cited as the Local Government (Power of General Competence) Act 2010.

(2) Sections 9, 10 and this section come into force on the passing of this Act.

(3) The other provisions of this Act come into force on such day as the Secretary of State may by order appoint; and different days may be appointed for different purposes.

(4) This Act extends to England and Wales only.

SCHEDULE Sections 6 and 7

Remedial Orders

Orders

1 (1) A remedial order may—

(a) contain such incidental, supplemental, consequential or transitional provision as the appropriate national authority considers appropriate,

(b) be made so as to have effect from a date earlier than that on which it is made,

(c) make provision for the delegation of specific functions,

(d) make different provision for different cases.

(2) The power conferred by sub-paragraph (1) (a) includes—

(a) power to amend primary legislation (including primary legislation other than that which contains the incompatible or unnecessary provision), and

(b) power to amend or revoke subordinate legislation (including subordinate legislation other than that which contains the incompatible or unnecessary provision).

(3) A remedial order may be made so as to have the same extent as the legislation which it affects.

(4) No person is to be guilty of an offence solely as a result of the retrospective effect of a remedial order.

Procedure

2 No remedial order may be made unless—

(a) in the case of an order to be made by the Secretary of State, a draft of the order has been approved by a resolution of each House of Parliament made after the end of the period of 60 days beginning with the day on which the draft was laid, or

(b) in the case of an order to be made by the Welsh Ministers, a draft of the order has been approved by a resolution of the National Assembly for Wales after the end of the period of 60 days beginning with the day on which the draft was laid, or

(c) it is declared in the order that it appears to the person making it that, because of the urgency of the matter, it is necessary to make the order without a draft being so approved.

Orders laid in draft

3 (1) No draft may be laid under paragraph 2(a) unless—

(a) the Secretary of State has laid before Parliament a document which contains a draft of the proposed order and the required information, and

(b) the period of 60 days, beginning with the day on which the document required by this sub-paragraph was laid, has ended.

(2) If representations have been made during that period, the draft laid under paragraph 2(a) must be accompanied by a statement containing—

(a) a summary of the representations, and

(b) if, as a result of the representations, the proposed order has been changed, details of the changes.

Urgent cases

4 (1) If a remedial order ("the original order") is made by the Secretary of State without being approved in draft, the Secretary of State must lay it before Parliament, accompanied by the required information, after it is made.

(2) If representations have been made during the period of 60 days beginning with the day on which the original order was made, the Secretary of State must (after the end of that period) lay before Parliament a statement containing—

(a) a summary of the representations, and

(b) if, as a result of the representations, he considers it appropriate to make changes to the original order, details of the changes.

(3) If sub-paragraph (2) (b) applies, the person making the statement must—

(a) make a further remedial order replacing the original order, and

(b) lay the replacement order before Parliament.

(4) If, at the end of the period of 120 days beginning with the day on which the original order was made, a resolution has not been passed by each House approving the original or replacement order, the order ceases to have effect (but without that affecting anything previously done under either order or the power to make a fresh remedial order).

Urgent cases: Welsh Ministers

4 (1) If a remedial order ("the original order") is made by the Welsh Ministers without being approved in draft they must lay it before the National Assembly for Wales, accompanied by the required information, after it is made.

(2) If representations have been made during the period of 60 days beginning with the day on which the original order was made, the Welsh Ministers must (after the end of that period) lay before the National Assembly for Wales a statement containing—

(a) a summary of the representations, and

(b) if, as a result of the representations, he considers it appropriate to make changes to the original order, details of the changes.

(3) If sub-paragraph (2) (b) applies, the person making the statement must—

(a) make a further remedial order replacing the original order, and

(b) lay the replacement order before the National Assembly for Wales.

(4) If, at the end of the period of 120 days beginning with the day on which the original order was made, a resolution has not been passed by the National Assembly for Wales approving the original or replacement order, the order ceases to have effect (but without that affecting anything previously done under either order or the power to make a fresh remedial order).

Definitions

5 In this Schedule—

"representations" means representations about a remedial order (or proposed remedial order) made to the appropriate national authority and includes any relevant Parliamentary report or resolution and any report or resolution of the National Assembly for Wales, and

"required information" means—

(a) in the case of a remedial order made under section 6 or under section 7 for the purpose of subsection (2)(a) of that section, an explanation of the incompatibility which the order (or proposed order) seeks to remove, including (in the case of a remedial order made under section 6) particulars of the relevant declaration, finding or order, and

(b) in the case of a remedial order made under section 7 for the purpose of subsection (2)(b) of that section, an explanation of why the provision proposed to be amended or repealed is unnecessary, and

(c) a statement of the reasons for proceeding under section 6 or 7 and for making an order in those terms.

Calculating periods

6 In calculating any period for the purposes of this Schedule, no account is to be taken of any time during which—

(a) in the case of orders to be made by the Secretary of State—

(i) Parliament is dissolved or prorogued, or

(ii) both Houses are adjourned for more than four days, or

(b) in the case of an order made by the Welsh Ministers, the Assembly is dissolved or is in recess for more than 4 days.

LOCAL GOVERNMENT (POWER OF GENERAL COMPETENCE) BILL

EXPLANATORY NOTES

INTRODUCTION

These explanatory notes relate to the Local Government (Power of General Competence) Bill. The notes have been prepared by the Local Government Association, in order to assist the reader in understanding the Bill. They do not form part of the Bill.

The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

Summary

The Bill, which extends to England and Wales, gives to a local authority a power of general competence to do anything which it considers is likely to be of benefit to their area or to any people who are resident in, or present in, the authority's area.

Background

Local authorities are statutory corporations and operate within a framework laid down by statute. They have no powers to act other than where they are expressly authorised by law to do so. There is a wide range of statutory duties which authorities are required to fulfil, and an even wider range of permissive powers enabling them to undertake defined activities if they so wish.

In addition, local authorities have a number of general powers. One of the most significant of these is section 111 of the Local Government Act 1972, which permits authorities to do anything (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions.

More recently, Part 1 of the Local Government Act 2000 gave local authorities powers to take steps which in their view would promote the economic, social and environmental well-being of those who live in, work in or visit the local area.

There have been a number of legal challenges over the years in relation to the *vires* of local authorities. The most recent of these was the case of *Risk Management Partners v Brent London Borough Council and others* in 2009, in which the Court of Appeal upheld the judgment of the Administrative Court that it was outside the powers of London Borough Councils to set up a mutual insurance company, and in particular that doing so was outside the powers under section 111 of the 1972 Act and Part 1 of the 2000 Act, mentioned above. As a result, the government introduced amendments to the Local Democracy, Economic Development and Construction Bill, to provide a specific power to set up mutual insurance companies.

Rather than deal with *vires* issues in such a piecemeal way, this Bill would provide a new general power of competence, with some restrictions.

Commentary on clauses

The drafting of *Clause 1* is different from that used for the well-being powers in sections 2 and 3 of the Local Government Act 2000. *Clause 1* seeks to tackle the problems in the Local Government Act 2000, and subsequently highlighted by the LAML judgement by providing for a power of general competence which allows a local authority to do anything it considers is likely to be of benefit to its area, or to persons resident or present in its area. The power of general competence does not allow a local authority to do anything which it is unable to do by virtue of any express statutory prohibition, restriction or limitation and it does not include a power to make laws or to raise money by taxation or precepts.

The power of general competence also allows a local authority to do anything in relation to, or for the benefit of, any person or area situated outside its area if it considers that it is likely that doing so will benefit its area or the people in its area.

The power can be exercised together with other powers, or on its own.

Clause 2 enables the appropriate national authority (the Secretary of State, in relation to England, and the Welsh ministers, in relation to Wales) to limit the scope of section 1 by making an order preventing authorities from doing anything specified in the order. Before making an order, the appropriate national authority would have to consult representative bodies of local government. The drafting of *clause 2* is based on section 3 of the Local Government Act 2000 which provides a similar ability to restrict well being powers.

Clause 3 requires legislation to be interpreted as far as possible in a way which is compatible with the power of general competence. This applies to all legislation, whenever enacted. *Clause 3* does not affect the validity, operation or enforcement of any incompatible primary legislation or of any incompatible subordinate legislation, if primary legislation prevents removal of its incompatibility. The drafting of *clause 3* is based on section 3 of the Human Rights Act 1998.

Clause 4 allows the courts to make a declaration of incompatibility where they find that primary legislation is incompatible with the power of general competence. The continuing validity and enforcement of the legislation is not affected by such a declaration, and a declaration is not binding on the parties in the proceedings in which it is made. The drafting of *clause 4* is based on section 4 of the Human Rights Act 1998.

Clause 5 provides that when a court is considering making a declaration of incompatibility, the Crown is entitled to notice and to be joined as party to the proceedings. This would enable a Minister (or his nominee) to provide the court with information which may be relevant to the issue in question. These powers are set out in subsections (1) to (3) of *clause 5* and the drafting is based on section 5 of the Human Rights Act 1998.

Subsections (4) and (5) of *clause 5* provide that where a court is considering making a declaration of incompatibility in relation to subordinate legislation made by the National Assembly for Wales, or made by a Minister of the Crown under a power that is also exercisable by the National Assembly, the Welsh Ministers as well as the Minister of the Crown, will be entitled to be joined as a party to those court proceedings.

Clause 6 provides that the appropriate national authority may, by order, amend legislation which has been declared incompatible with the power of general competence if they are satisfied that there is a compelling reason to do so. The drafting of *clause 6* is based on section 10 of the Human Rights Act 1998.

Clause 7 provides the appropriate national authority with further more general powers to remedy existing legislation. It enables the appropriate national authority to make orders for the purpose of removing from any legislation any incompatibility with the power of general competence or repealing, revoking or amending legislation that is unnecessary as a result of the Bill.

The *Schedule* makes detailed provision about orders made under clauses 6 and 7, which are described as "remedial orders". The *Schedule* provides that, amongst other things, a remedial order may contain such incidental, supplemental, consequential or transitional provisions as the appropriate national authority considers appropriate. This includes a power to amend primary legislation and a power to amend or revoke subordinate legislation.

The *Schedule* also provides that a remedial order may be made so as to have effect from a date earlier than that on which it was made, and it may make provision for the delegation of specific functions. It provides that no person will be guilty of an offence solely as a result of the retrospective effect of a remedial order, and it sets out the procedure for making a remedial order, which is based closely on the procedure for making remedial orders under the Human Rights Act 1998. The procedure is modelled on the affirmative instrument procedure, but requires a 60 day period after laying of the instrument, before which an affirmative resolution may not be passed by either House.

Clause 8 provides that the appropriate national authority must conduct a review of legislation with a view to removing any provision which is incompatible with the power of general competence, or which, as a result of the Bill, is unnecessary. The review must be completed by the end of 2015. By the end of 2016, any prohibition, restriction or limitation of a local authority in any legislation and which is incompatible with the power of general competence will cease to have effect. The appropriate national authorities would be able, by order, to exempt any legislation from that provision.

Clause 9 provides that any orders made under the Bill must be made by statutory instrument and makes further detailed provisions about orders, including parliamentary scrutiny (except in relation to remedial orders, which are dealt with in the *Schedule*).

Clause 10 is the interpretation clause, providing definitions of certain expressions used in the Bill.

Clause 11 sets out the Bill's short title and it provides that *clauses 9* and *10* will come into operation on Royal Assent. The other clauses would come into force on a day or on days to be appointed, by order, by the Secretary of State.

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