

FREEDOM TO PRAY: ADVICE TO PARISH COUNCILS

1. A recent High Court judgement against Bideford Town Council has ruled that prayers cannot be said as part of formal business at council meetings. Ministers have stated that it is their intention that the long-standing practice of town hall prayers should be allowed to continue for councils which wish to hold them, and the Government will take all necessary steps to facilitate this.
2. The Secretary of State for Communities and Local Government has decided to bring forward the enactment of the general power of competence that should provide sufficient legal powers for local authorities (including from April 2012, eligible parish councils) to include prayers as part of the formal business at council meetings. This note provides further advice to parish councils.
3. Chapter 1 of Part 1 of the Localism Act 2011¹ provides local authorities in England with a general power of competence. It provides councils with the same power to act that an individual has and provides that the power may be used in innovative ways, that is, in doing things that are unlike anything that a local authority has done before or may currently do. Schedule 1 to the 2011 Act amends section 2 of the Local Government Act 2000 (the power to promote well-being) so that it will no longer apply to English local authorities. The effect of this is that, once schedule 1 has been commenced, for English local authorities, the power to promote well-being will be replaced by the broader general power of competence. The intention is for schedule 1 to be commenced once the parish council Order referred to below is in place.
4. Section 8 of the 2011 Act defines “local authorities” to include “eligible” parish councils. An eligible parish council is a parish council which meets conditions prescribed by the Secretary of State. These conditions are set out in *The Parish Councils (General Power of Competence) (Prescribed Conditions) Order 2012*². The Order was laid on 7 February and will be subject to debate in both Houses before it can come into effect (under the so-called Affirmative Resolution procedure). The intention is for the Order to be in place by April 2012, subject to Parliamentary ratification.
5. On 17 February, the Secretary of State signed a Commencement Order³ that brings into effect the general power of competence for local authorities. The Order also brings into effect the wider powers for English Fire and Rescue Authorities, Integrated Transport Authorities, Passenger Transport Executives Combined Authorities and Economic Prosperity Boards. The powers for Welsh fire and rescue authorities will be commenced separately by the Welsh Assembly Government in due course. And until the Order mentioned above comes into effect, the power will not be available to parish councils that would otherwise meet the eligibility conditions set out in the Order, which are that:

¹ Link to Plain English guide:

<http://www.communities.gov.uk/publications/localgovernment/localismplainenglishupdate>

² Link to draft order: <http://www.legislation.gov.uk/ukdsi/2012/9780111519868/introduction>

³ Link to commencement order: <http://www.legislation.gov.uk/ukdsi/2012/4111/contents/made>

- a. two thirds of councillors must have been elected (whether at an ordinary election or a by-election) rather than co-opted – in accordance with the preference that democratic accountability should be the most important factor in use of the power.
 - b. the Clerk to the parish should have undertaken suitable training – so that he/she understands and is able to advise members on how to apply the power.
6. These conditions have been reduced from the number of conditions currently required for parishes to use the well being power, and it is of course within the power of any parish council to meet these eligibility requirements.
7. Once the power is in place, eligible parish councils will be able to include prayers as part of their formal business.
8. In the meantime, there was nothing in the High Court judgment that suggests that prayers or a time for reflection cannot be held before the formal start of a meeting of any parish council. Indeed, parish councils may even want to consider holding informal prayers at the time when the meeting would have normally started, and simply move back the formal commencement of the meeting by five minutes.
9. Ministers are currently considering what further steps may be taken to allow those parish councils, who chose not to qualify for the general power competence, to hold prayers during their formal meeting.

Department for Communities and Local Government
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