



City Research Online

City, University of London Institutional Repository

Citation: Stanton, J. ORCID: 0000-0001-5211-5617 and Bowes, A. (2014). The Localism Act 2011 and the general power of competence. Public Law, 2014, pp. 392-402.

This is the accepted version of the paper.

This version of the publication may differ from the final published version.

Permanent repository link: <https://openaccess.city.ac.uk/id/eprint/16358/>

Link to published version:

Copyright: City Research Online aims to make research outputs of City, University of London available to a wider audience. Copyright and Moral Rights remain with the author(s) and/or copyright holders. URLs from City Research Online may be freely distributed and linked to.

Reuse: Copies of full items can be used for personal research or study, educational, or not-for-profit purposes without prior permission or charge. Provided that the authors, title and full bibliographic details are credited, a hyperlink and/or URL is given for the original metadata page and the content is not changed in any way.

Public Law

2014

Legislative Comment

The Localism Act 2011 and the general power of competence

Ashley Bowes

John Stanton*

Subject: Local government. **Other related subjects:** Administrative law

Keywords: General power of competence; Judicial review; Local authorities' powers and duties

Legislation: Localism Act 2011 (c.20) s.1(7), s.2(1), s.3, s.4

Local Government Act 2000 (c.22) s.2(1)

Case: *Brent LBC v Risk Management Partners Ltd* [2009] EWCA Civ 490; [2010] P.T.S.R. 349 (CA (Civ Div))

***P.L. 392** The Localism Act 2011 (LA 2011) makes fundamental changes to the powers and arrangements of local authorities.¹ Amongst these is the introduction of a general power of competence replacing the well-being power, in the Local Government Act 2000 (LGA 2000). This analysis explores the nature of this new power and the extent to which it serves local authorities more effectively than its predecessor. Whilst we focus chiefly on the wording of the relevant provisions and the manner in which they have been interpreted, this analysis acknowledges that wider issues, not for discussion here, have and can impact on the use of these powers.²

The LGA 2000 provided, at s.2(1), that every local authority³ had the power to do anything which it considered likely to achieve the promotion or improvement of the economic, social and environmental well-being of the local area.⁴ The provision was welcomed as providing "councils with an important opportunity to develop a meaningful and substantive community leadership role".⁵ It is, at first glance, a broad power allowing scope for local authorities to act as they choose, so long as it is for the benefit of their local area. Indeed, following the occasion ***P.L. 393** of the power's first outing in the courts, Arden noted that "the scope of the provision is ... wide",⁶ a view that was echoed by others.⁷ In *R. (on the application of J (Ghanaian Citizen)) v Enfield LBC*,⁸ for example, Elias J. held that s.2 was "capable of extending to the grant of financial assistance for acquiring accommodation".⁹

A loss of confidence?

Despite the breadth of the well-being power, the judgment in *Brent LBC v Risk Management Partners*¹⁰ amounted to a significant limitation of local authorities' capabilities under that power. Moore-Bick L.J. held in the Court of Appeal that saving money (via participation in an insurance mutual) and distribution of the savings to provide community services was beyond the well-being power, as it might mean that a local authority could "lawfully embark on any scheme that [might] ... reduce its costs".¹¹ Indeed, Layard notes the extent to which the *Brent* judgment "significantly undermined" the credibility of the well-being power, limiting as it did, "further innovation" by local authorities¹²; whilst Dobson goes so far as to suggest that local authorities experienced a "massive loss of confidence" as a result of the judgment.¹³

Such a "loss of confidence" can have profound consequences for a local authority and might, in certain instances, cause them to act too cautiously in seeking to promote the well-being of a particular area and in contributing to the wider strength of local democracy. Dobson goes on to recount a Local Government Association meeting that took place in the aftermath of *Brent* at which it was suggested that:

"There is a pressing need ... for local government to be given a general power of competence ... All local and regional partnerships will demand—and benefit from—the greater clarity and certainty of powers that would flow from a general power of competence and help local governance to be fit for purpose for the 21st century. ***P.L. 394**"¹⁴

Well-being and sustainable development

Problems with the well-being power though are not restricted to issues of confidence. The language of LGA 2000 s.2 is consistent with wider policies relating to sustainable development, noting as it does the promotion of economic, social and environmental development as supporting any justification for exercise of that power.¹⁵ As Jenkins notes, "it was the Government's intention to introduce a statutory duty for local authorities to contribute to the achievement of sustainable development",¹⁶ and to ensure that they gave due regard to Sustainable Community Strategies in exercising the well-being power.¹⁷ Jenkins goes on to cite the 1998 *White Paper, Modern Local Government: In Touch with the People* in outlining that:

"This ... duty will ... enshrine in law the role of the council as the elected leader of their local community with a responsibility for the well-being and 'sustainable development' of its area ... It will put 'sustainable development' at the heart of council decision-making and will provide an overall framework within which councils must perform all their existing functions. So in taking decisions ... councils will have to weigh the likely effects of a decision against three objectives—economic, social and environmental—and if necessary strike a balance to ensure the overall well-being of their area is achieved." ¹⁸

Whilst notable and useful this perhaps had the effect of limiting the scope of an authority's use of the s.2 power and ensured that centralised authority retained a guiding role in how the well-being power was used. Sustainable development is an important part of local authority autonomy, as Jenkins illustrates.¹⁹ If local authorities were to be empowered to "develop ... meaningful and substantive community leadership role[s]",²⁰ however, then surely such a power should have been more broadly drafted. The wording served to limit the use of the power within certain fields, not to serve as a catch all, blanket power as was seemingly intended at the outset.

Repeal of the well-being power

It is perhaps of no surprise, therefore, that the LA 2011 moved to repeal LGA 2000 s.2 and the well-being power contained therein.²¹ It is replaced, in s.1(1) of the 2011 Act by a general power of competence, discussed further below. It is notable, ***P.L. 395** however, that whilst LGA 2000 s.2 was repealed, the LA 2011 did not touch Local Government Act 1972 s.111(1) which provides for a local authority to do "anything" which is "calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions"; or Greater London Authority Act 1999 s.30(1) which empowers the Greater London Authority to do anything which it considers will further the promotion of economic and social development, wealth creation and environmental improvement across London.

Whilst Local Government Act 1972 s.111(1) does not contain a standalone power but one that can only be operated after the "prior identification of the function to which the acts in issue are incidental"²²; Greater London Authority Act 1999 s.30 has no such limitation and, indeed, its wording echoes that of s.2 LGA 2000 in its emphasis on issues relating to sustainable development. Given both the tendency of the courts strictly to police authorities' use of the well-being power and the nature of its inherent limitation to areas relating to sustainable development, it is puzzling that Parliament saw fit to retain this power. Regardless; it is not for this article to delve into reasons why Parliament has sought to repeal certain provisions over others, but rather to explore the nature of the LA 2011's introduction of a general power of competence.

The general power of competence

The LA 2011 is "a complex piece of legislation",²³ introducing changes across a range of local issues. The general power of competence, contained within s.1(1), enables a local authority²⁴ to do "anything an individual may do", allowing it to be done anywhere in the United Kingdom or elsewhere, for a commercial purpose, with or without a charge, or for the benefit of the authority, its area or persons resident or present in its area, or otherwise. The Explanatory Notes to the Act, emphasizing the breadth and innovation underlying the new power, explain that it "may be used in innovative ways, that is, in doing things that are unlike anything that a local authority—or any other public body—has done before, or may currently do".²⁵

The LA 2011 restricts the general power, laying down a number of "boundaries", which essentially equate to five express inhibitions:

- First, under s.2(1), the power cannot be used to circumvent restrictions on a pre-existing power.
- Secondly, under s.2(2), the power cannot be used to avoid an express statutory restriction or one that is subsequently imposed by the Secretary of State.
- Thirdly, s.2(3) the power may not be used to alter the prescribed form of a local authority's constitutional and governance arrangements, the discharge of its functions, or contracting-out. ***P.L. 396**
- Fourthly, under s.3, the power cannot be used to impose a charge for a service if it does not meet prescribed requirements set out in s.3(2). Further, s.3(3) provides that the local authority cannot make a profit through the general power.
- Finally, (under s.4), the power may only be used for a "commercial purpose" if the power would also permit its use for a "non-commercial purpose".

"Anything an individual may do"

The general power of competence is more widely drafted than the well-being power that it replaces. Indeed, the wording of the provision demonstrates this breadth, not seeking to limit local authorities to issues concerning sustainable development or ensuring action within set centralised boundaries, but instead facilitating greater freedom and local autonomy. As Layard notes:

"this general power of competence ... represents [a] ... change in presumption. Local authorities are to consider themselves free to act, unless it is proven otherwise." ²⁶

The general power will, in effect, empower local authorities to exercise a species of residual power enjoyed by ministers on behalf of the Crown. Citing the advice of Parliamentary Counsel, Sir Granville Ram, ²⁷ Carnwath L.J. held in *Shrewsbury & Atcham BC v the Secretary of State for Communities and Local Government* ²⁸ that:

"The existence of a residual category of Ministerial power, not dependent on either statute or prerogative, is a matter of continuing academic controversy. One aspect is the so-called 'Ram doctrine', which has been interpreted as enabling Ministers, as representatives of the Crown, to do anything that a natural person may do except if prohibited by statute" ²⁹.

The position is best articulated by Wade, who was cited with approval by Lord Bridge in *R. v Tower Hamlets LBC Ex p. Chetnik Developments Ltd.* ³⁰ Wade there explains the breadth of an individual's powers, describing it as "unfettered discretion". ³¹ Whilst he there stresses that equally broad powers would be "wholly inappropriate to a public authority, which possesses powers solely in order that it may use them for the public good", ³² the argument here is that the wording of the s.1(1) general power and its emphasis on empowering local authorities to do "anything an individual may do" is such as to afford local authorities the unfettered ***P.L. 397** discretion enjoyed by individual persons, although with a series of limitations as this paper goes on to discuss.

Unfettered discretion?

The drafting of the Act might appear to oust implicitly the supervisory jurisdiction of the Administrative Court which, in turn, would leave significant power unchecked and unbalanced. The courts, however,

are highly suspicious of such wide powers and have, latterly, been quick to impose implied restrictions.³³ In *R. v Secretary of State for Health Ex p. C*,³⁴ for instance, the Court of Appeal construed an obligation upon the Department of Health and specifically, upon the Secretary of State as the accountable person, not to act unfairly or manifestly unreasonably when placing a social worker on a list of persons unsuitable to work with children. Hale L.J. (as she then was) concluded that discretion brought with it a "duty to act fairly in all the circumstances" notwithstanding the Department's power to act as an individual, as unfair or as unreasonable as that individual may be.³⁵ In *Shropshire*, Carnwath L.J. attempted to stretch Hale L.J.'s consideration of reasonableness to an obligation to act in the public benefit thus:

"As a matter of capacity, no doubt, it has power to do whatever a private person can do. But as an organ of government, it can only exercise those powers for the public benefit, and for identifiably 'governmental' purposes within limits set by the law."³⁶

According to Richards L.J. however, the inhibition conceived by Carnwath L.J. would serve "... no practical utility or would risk imposing an artificial and inappropriate restriction upon the work of government".³⁷ The question in construing the general power of competence in the LA 2011 is, what limits, if any at all, exist on its use, beyond those identified in the Act.

First, there was no suggestion during the passage of the Bill that the general power would not be subject to control of the courts. Indeed, the Equality Impact Assessment published to accompany the Bill identifies a number of particular legal constraints.³⁸ Chiefly, it confirms that exercise of the general power is intended to be subject to judicial review, although it suggests the standard of review may be ***P.L. 398** the high one of "[un]reasonableness".³⁹ It goes on to identify the comprehensive regime of controls of local government expenditure as another separate constraint.⁴⁰

Secondly, whilst the judgment in *Brent* was somewhat at odds with the then settled jurisprudence that the well-being power should be construed in wide terms,⁴¹ the words of Pill L.J. are notable in underlining the court's unwillingness to interpret LGA 2000 s.2 too broadly. He said:

"I do not consider Parliament was giving a carte blanche to make arrangements, subject only to section 3 of the 2000 Act and to the identification of some advantage, or potential advantage, to the local authority's financial position."⁴²

This, in effect, reserved to the courts a broader supervisory power beyond the words of statute. Indeed, this was further evident in *Gibb v Maidstone and Tunbridge Wells NHS Trust*⁴³ where Treacy J. held an overly generous compromise agreement ultra vires, only for the decision later to be reversed by the Court of Appeal with Sedley L.J. criticising the trial judge for acting as an auditor rather than a judge.⁴⁴ At the very least, the bands of rationality must still surely apply in respect of the operation of the general power and, therefore, manifestly risky schemes would still be liable to be quashed.

Thirdly, there has been a consistent reluctance to permit local authorities to engage in commercial activities. This appears to be based on an underlying concern to protect public funds from undue risk and that the money used is raised via mandatory taxation, rather than trade, where customers would have some discretion whether to invest or not in a given scheme. Indeed, the power, contained in LA 2011 s.1, to engage in activities for "commercial purposes" can only be used if they are activities which the authority may, in exercise of the general power of competence, do otherwise than for a commercial purpose. The question was addressed by the House of Lords in *Hazell v Hammersmith and Fulham LBC*⁴⁵ against the context of Local Government Act 1972 s.111(1). In *Hazell*, Lord Templeman stated that:

"Individual trading corporations and others may speculate as much as they please or consider prudent. But a local authority is not a trading or currency or commercial operator with no limit on the method or extent of its borrowing or with powers to speculate. The local authority is a public authority dealing with public moneys ..."⁴⁶

The position was followed by the Court of Appeal in *Credit Suisse v Waltham Forest LBC*⁴⁷ where Hobhouse L.J. held that the indemnity offered by the Council ***P.L. 399** to a private company amounted to "an [unlawful] exercise in property speculation on borrowed money".⁴⁸ Indeed, both Pill and Moore-Bick L.J.'s judgments in *Brent* reveal a fundamentally cautious approach by the courts when it comes to local authority commercial activity. This was plainly in evidence in *R. (on the application of Sainsbury's Supermarkets) v Wolverhampton CC*,⁴⁹ which concerned the operation of a Council's powers of compulsory purchase under Town and Country Planning Act 1990 s.227. In

resolving whether and how to use its powers in relation to a major site in Wolverhampton, the Council took account of one party's offer to regenerate a separate site. The majority found the Council's approach to be unlawful. Lord Walker, in giving reasons for his decision to quash the compulsory purchase order, held obiter that:

"The public purse is to be protected against improvidence, but the local authority should not be exercising its power in order to make a commercial profit." ⁵⁰

The wording of LA 2011 s.4(1) appears to give enough room for this argument still to apply in respect of future litigation, notwithstanding the presence of a general power of competence which explicitly provides for indulgence in activities for "commercial purposes". A purely "commercial" scheme with no conceivable non-commercial application therefore would be beyond the s.1 power.

Fourthly, s.2(2) of the Act seeks to limit the scope of the general power to the extent that an authority cannot do anything which it is unable to do by virtue of statute. Though, as Layard notes, "local authorities are free to act unless specifically restrained", ⁵¹ the purpose of this provision is to prevent use of the general power to justify otherwise unlawful action. In *Manydown Co Ltd v Basingstoke and Deane BC*, ⁵² for example, and with regards to pre-commencement provisions, Lindholm J. noted that

"[The general power of competence] is not available to rescue an authority from the consequences of unlawful actions taken before it came into effect. And in my judgment it would not be right for this new power to be relied upon to justify an authority's use or management of land inconsistently with the statutory purpose for which that land was acquired." ⁵³

Furthermore, and with specific regard to post commencement provisions, writing prior to the LA 2011's enactment, Leigh considers that the

"thorny question of restrictions imposed in legislation coming after the enactment of the general competence power is dealt with by a provision that **P.L. 400* seems to require an express parliamentary statement of intention to override the general power." ⁵⁴

Section 5(1) of the Act provides that the Secretary of State can "order, amend, repeal, revoke or disapply" a provision which "prevents or restricts local authorities from exercising the general power". It continues, at s.5(2), to give the Secretary of State the power to "order, amend, repeal, revoke or disapply" an incoming provision where that provision overlaps with the general power. These provisions give the Secretary of State the opportunity to prioritise the general power of competence over any subsequent and conflicting statutory provisions. As Leigh continues, the result is that the general power is constitutionally significant, equating to a "de facto suspension of the implied repeal rule". ⁵⁵

The question of "overlap" with pre-commencement provisions, in LA 2011 s.2(1), however, is perhaps a more difficult one for local authorities and potentially the field of most future litigation. Unless the scheme proposed by the authority is outlandish, it is highly likely the authority will possess existing powers, albeit which are subject to some statutory limitations. If, for example, an authority sought to acquire a land interest by agreement it might seek to use the general power rather than that contained within Town and Country Planning Act 1990 s.227(1), as a means of avoiding the necessity to demonstrate connected well-being benefits under s.226(1A) and so merely acquire land to produce an income stream for itself. The overlap restriction at s.2(1) would apply as an inhibition on the use of the general power to prevent such an interpretation. It is far from straightforward however where several potential pre-commencement powers might overlap to determine which is the proper fetter on the general power of competence.

Alternatively, it could be that the practice is one so mundane that it does not attract a statutory inhibition at all. In *R. (on the application of National Secular Society and Bone) v Bideford Town Council*, ⁵⁶ for example, the practice of including prayers on the Authority's agenda was not within the scope of s.111 of the 1972 Act. The Secretary of State, however, was swift to point-out that the new general power of competence would enable this practice to continue as it was not otherwise prohibited by law. ⁵⁷

Troubles with a limitless power

As demonstrated, the general power of competence should be open to judicial review. Local authorities' discretion is so potentially wide it quite possibly requires the threat of a quashing order to temper manifest abuses of power, with the courts retaining the final obligation to interpret statutory

powers and to consider the extent to which they have been lawfully exercised. Aside from the obvious breaches of good administration which would attract review, however, a decision *not* to exercise the power might well attract the same legal flack as a misconceived operation, as **P.L. 401* indeed has been the focus of many of the cases around LGA 2000 s.2(1). The most helpful guidance has been provided by Sedley L.J. in *R. (on the application of Morris) v Westminster City Council* ⁵⁸.

"The local authority (a) is not obliged but (b) is permitted to use its alternative powers [under s.2 LGA 2000], so as long as (c) it does not exercise them with the object simply circumventing restrictions ..."
⁵⁹

The "discretion", then, is plain. There is no duty to exercise the s.2(1) powers as indeed there will be no duty on the basis of current wording, to exercise the general power.

Conclusions on the general power

The policy behind this flagship part of the 2011 Act, therefore, appears to be an attempt to return to a simpler and more flexible, post-war local government framework. As Loughlin explains of the pre-1980s era of local government administration:

"while the procedures through which administrative decisions were made were often the subject of statutory regulation, the law did not attempt normative regulation of the objectives of these systems."
⁶⁰

The Coalition's "Localism Agenda", however, (of which the general power is a key plank) appears to alter little about the framework of governmental administration, instead making relatively minor alterations to the levels of government at which decisions are taken. The Act does little, for example, to dismantle what Loughlin categorises as the increasing "juridification" of local government functions from the 1980s.⁶¹ The legislative scheme retains strict limits on the exercise of the new discretionary power at s.1(1) of the Act and rationalises control via legal rather than administrative norms.

The general power, however, does perhaps encourage a system based less on centralised control. By repealing the requirement that the exercise of discretion be only to promote certain goals, such as sustainable development, local authorities potentially have greater freedom to use the power for broader purposes.

Whilst the superintendence of the general power by the Administrative Court will reveal whether the legislative change has been sufficient to alter judicial reasoning in local government, the ultimate test will be its relevance. It is not able to be deployed to cut through pre-existing regimes, and given that almost every aspect of local government administration is already regulated by statute, the **P.L. 402* compass of uses for which the general power will be of assistance is necessarily rather narrow.

Ashley Bowes

Pupil-Barrister

Guildford Chambers, Guildford, Surrey

John Stanton

Lecturer in Law

The City Law School, City University London

P.L. 2014, Jul, 392-402

^{*} We would like to express our thanks to anonymous reviewers for their comments on earlier drafts. Also to members of the Society of Legal Scholars Public Law Section for their feedback following presentation of an earlier draft at the 2011 Annual Conference, Downing College, University of Cambridge, and to friends and colleagues at Kingston Law School, Kingston University London following a similar presentation in November 2011.

^{1.} Alongside the general power of competence, the Act also introduces a number of provisions that focus on inter alia community empowerment (particularly through the development of key Community Rights), neighbourhood planning and housing.

2. Most notably, the increasing financial limitations imposed on local authorities.
3. LGA 2000 s.1 provides that such a local authority includes a county council, district council, a London borough council, the Common Council of the City of London in its capacity as a local authority, the Council of the Isles of Scilly, and in relation to Wales, a county council or a county borough council.
4. Local Government Public Involvement in Health Act 2007 s.77 later applied the power to parish councils.
5. P. Swann, "Local government: the modernizing agenda" [2000] Journal of Planning and Environmental Law Supplement 9, 13.
6. A. Arden, "Whose well-being: central or local government?" [2002] 5(3) Journal of Local Government Law 51, 52.
7. See S. Cirell, "The modernisation of local government and its impact on planning" [2003] Journal of Planning and Environmental Law Supplement (Occasional Papers No.31) 1, 11. Also see I. Leigh, "The changing nature of local and regional democracy" in J. Jowell and D. Oliver (eds), *The Changing Constitution*, 7th edn (Oxford: Oxford University Press, 2011), 237, pp244–245.
8. *R. (on the application of J (Ghanaian Citizen)) v Enfield LBC* [2002] EWHC 432 (Admin); [2002] H.L.R 38. Cited in I. Leigh, "The changing nature of local and regional democracy" in J. Jowell and D. Oliver (eds), *The Changing Constitution*, 7th edn (Oxford: Oxford University Press, 2011), p. 245.
9. *R. (on the application of J (Ghanaian Citizen)) v Enfield LBC* [2002] H.L.R 38 at [53].
10. *Brent LBC v Risk Management Partners* [2009] EWCA Civ 490. Whilst *Brent* was initially granted leave to appeal to the Supreme Court, following the coming into force of the Local Democracy, Economic Development and Construction Act 2009, the vires issue had become academic to the case resulting *Brent* withdrawing the appeal. 2009 Act s.34 gave local authorities the power "to enter into mutual insurance arrangements of the kind in issue in this case" (*Brent LBC v Risk Management Partners* [2011] UKSC 7 at [8]).
11. *Brent LBC v Risk Management Partners* [2009] EWCA Civ 490 at [178].
12. A. Layard, "The Localism Act 2011: what is 'local' and how do we (legally) construct it?" (2012) 14(2) Environmental Law Review 134, 136. Also see: J. Stanton, *Democratic Sustainability in a New Era of Localism* (Abingdon: Routledge-Earthscan, 2014), Ch.4.
13. N. Dobson, "General competence to restore vires confidence?" (2010) 107(12) Law Society Gazette 18.
14. Dobson, "General competence to restore vires confidence?" (2010) 107(12) Law Society Gazette 18. Also cited in Stanton, *Democratic Sustainability in a New Era of Localism* (2014), Ch.4.
15. The 2005 UK Sustainable Development Strategy notes that sustainable development includes the delivery of economic, social and environmental outcomes. (See: *Department for Environment, Food and Rural Affairs, Securing the Future: The UK Government Sustainable Development Strategy (2005)* Cm.6467, available at http://archive.defra.gov.uk/sustainable/government/publications/uk-strategy/documents/SecFut_complete.pdf [Accessed April 26, 2014] at p.3.
16. V. Jenkins, "Learning from the past: achieving sustainable development in the reform of local government" [2002] P.L. 130, 141.
17. See Jenkins, "Learning from the past: achieving sustainable development in the reform of local government" [2002] P.L. 130, 140.
18. *Department for Transport and the Regions, Modern Local Government: In Touch with the people* (1998), Cm.4014, cited in Jenkins, "Learning from the past: achieving sustainable development in the reform of local government" [2002] P.L. 130, 141.
19. See Jenkins, "Learning from the past: achieving sustainable development in the reform of local government" [2002] P.L. 130, generally.
20. Swann, "Local government: the modernizing agenda" [2000] Journal of Planning and Environmental Law Supplement 9, 13.
21. See LA 2011 s.1(7) and Sch.1; the provision remains in force in Wales.
22. Ouseley J. in *R.(on the application of National Secular Society and Bone) v Bideford Town Council* [2012] EWHC 175 (Admin); [2012] 2 All E.R. 1175 at [23].
23. A. Layard, "Law and localism: the case of multiple occupancy housing" [2012] 32(4) Legal Studies 551, 556.
24. Localism Act 2011 s.7(1) states that these include a: "county council in England"; "a district council"; "a London borough council"; "the Common Council of the City of London in its capacity as a local authority"; "the Council of the Isles of Scilly" and, "eligible parish councils"(which are those that meet criteria prescribed by the Secretary of State under s.7(2)).

25. Explanatory Notes to the Localism Act 2011 para.10.
26. Layard, "The Localism Act 2011: what is "local" and how do we (legally) construct it?" (2012) 14(2) Environmental Law Review 134, 136.
27. See generally: A. Lester and M. Weait, "The use of Ministerial powers without Parliamentary Authority: the Ram doctrine" [2003] P.L. 415.
28. *Shrewsbury & Atcham BC v the Secretary of State for Communities and Local Government* [2008] EWCA Civ 148; [2008] 3 All E.R. 548.
29. *Shrewsbury & Atcham BC v the Secretary of State for Communities and Local Government* [2008] EWCA Civ 148; [2008] 3 All E.R. 548 at [44].
30. *R. v Tower Hamlets LBC Ex p. Chetnik Developments Ltd* [1988] A.C. 858 at 872.
31. *H. W. R. Wade, Administrative Law, 5th edn* (Oxford: Oxford University Press, 1982), p.357 (cited by Lord Bridge in *R. v Tower Hamlets LBC Ex p. Chetnik Developments Ltd* [1988] A.C. 858 at 872).
32. *Wade, Administrative Law, (1982), p.357* (cited by Lord Bridge in *R. v Tower Hamlets LBC Ex p. Chetnik Developments Ltd* [1988] A.C. 858 at 872).
33. See specifically Lord Fraser's conclusions in *Council for Civil Service Unions v Minister for the Civil Service* [1985] A.C. 374 ("GCHQ") at 397–400 rejecting an immunity of the exercise of prerogative power from review. This has opened the door to a number of challenges of decisions made by public officials which might properly be said to be those "made by an individual generally", as indeed, GCHQ concerned the arguably wholly private law activity of altering terms of service.
34. *R. v Secretary of State for Health Ex p. C* [2000] 1 F.L.R. 627.
35. *R. v Secretary of State for Health Ex p. C* [2000] 1 F.L.R. 627 at [31].
36. *Shrewsbury & Atcham BC v the Secretary of State for Communities and Local Government* [2008] EWCA Civ 148; [2008] 3 All E.R. 548 at [48].
37. *Shrewsbury & Atcham BC v the Secretary of State for Communities and Local Government* [2008] EWCA Civ 148; [2008] 3 All E.R. 548 at [74].
38. See *Department of Communities and Local Government, Localism Bill: General Power of Competence—Impact Assessment* (2011), available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6025/1829750.pdf [Accessed April 26, 2014].
39. See *Department of Communities and Local Government, Localism Bill: General Power of Competence—Impact Assessment* (2011), p.11.
40. See *Department of Communities and Local Government, Localism Bill: General Power of Competence—Impact Assessment* (2011), p.11. See Local Government Finance Act 1988 Pt 8, Local Government and Housing Act 1989 Pt1 and Local Government Act 2003 Pt 1 and 2.
41. See Dyson L.J. in *R. (on the application of Khan) v Oxfordshire CC* [2004] EWCA Civ 309 and Elias J. in *R. (on the application of J (Ghanaian Citizen)) v Enfield LBC* [2002] EWHC 432 (Admin); [2002] H.L.R. 38.
42. *Brent* [2009] EWCA Civ 490 at [117].
43. *Gibb v Maidstone and Tunbridge Wells NHS Trust* [2009] EWHC 862 (QB).
44. *Gibb v Maidstone and Tunbridge Wells NHS Trust* [2010] EWCA Civ 678 at [58].
45. *Hazell v Hammersmith and Fulham LBC* [1992] 2 A.C. 1.
46. *Hazell v Hammersmith and Fulham LBC* [1992] 2 A.C. 1 at 31.
47. *Credit Suisse v Waltham Forest LBC* [1997] Q.B. 362.
48. *Credit Suisse v Waltham Forest LBC* [1997] Q.B. 362 at 379.
49. *R. (on the application of Sainsbury's Supermarkets) v Wolverhampton CC* [2010] UKSC 20; [2011] 1 Q.C. 437.
50. *R. (on the application of Sainsbury's Supermarkets) v Wolverhampton CC* [2010] UKSC 20; [2011] 1 Q.C. 437 at [82]. Also see A. Bowes, "To consider or not to consider: the materiality of off-site benefits in compulsory purchase law" [2011] 16(1) Judicial Review 60.
51. Layard, "The Localism Act 2011: what is 'local' and how do we (legally) construct it?" (2012) 14(2) Environmental Law

Review 134, 137.

- [52.](#) *Manydown Co Ltd v Basingstoke and Deane BC* [2012] EWHC 977 (Admin). The case concerned an application for judicial review in respect of a local authority's decision not to pursue the development of the *Manydown* site, west of Basingstoke (see [1], [4] and [6]).
- [53.](#) *Manydown Co Ltd v Basingstoke and Deane BC* [2012] EWHC 977 (Admin) at [145].
- [54.](#) I. Leigh, "The changing nature of local and regional democracy" in J. Jowell and D. Oliver (eds), *The Changing Constitution*, 7th edn (Oxford: Oxford University Press, 2011), pp.237, 245.
- [55.](#) Leigh, "The changing nature of local and regional democracy" in Jowell and Oliver (eds), *The Changing Constitution*, (2011), pp.237, 246.
- [56.](#) *R.(on the application of National Secular Society and Bone) v Bideford Town Council* [2012] EWHC 175 (Admin); [2012] 2 All E.R. 1175.
- [57.](#) See O. Bowcott and S. Morris, *Local councils have right to say their prayers* (February 10, 2012) *The Guardian*, at <http://www.guardian.co.uk/society/2012/feb/10/local-councils-prayers-eric-pickles> [Accessed April 26, 2014].
- [58.](#) *R. (on the application of Morris) v Westminster City Council (No.3)* [2005] EWCA Civ 1184; [2006] 1 W.L.R. 505.
- [59.](#) *R. (on the application of Morris) v Westminster City Council (No.3)* [2005] EWCA Civ 1184; [2006] 1 W.L.R. 505 at [70].
- [60.](#) M. Loughlin, "Law, ideologies and the political-administrative system" (1989) 16(1) *Journal of Law and Society* 21, 24.
- [61.](#) Loughlin, "Law, ideologies and the political-administrative system" (1989) 16(1) *Journal of Law and Society* 21, 33.

© 2015 Sweet & Maxwell and its Contributors

