

# Neighbourhoods Scrutiny

25<sup>th</sup> November 2016



**Report of:** Strategic Director, Neighbourhoods

**Title:** Urban Parishes - Scrutiny Information item

**Ward:** Citywide

**Officer Presenting Report:** Strategic Director, Neighbourhoods: Alison Comley

**Contact Telephone Number:** 0117 3574357

## Recommendation

To note the information contained in the Urban Parish Councils briefing note and Encyclopaedia of Local Government Law.

## Summary

The briefing note displays a summary of process in relation to the considerations prior to proceeding with the setting up of a parish council as well as displaying the Principal Powers and Duties of Parish and Community Councils.

## The significant issues in the report are:

The significant matter is to note the range of Powers and Duties available to Parish and Community Councils.



## Policy

1. *not applicable*

## Consultation

2. **Internal**  
*Directorate Leadership Team and Strategic Leadership Team*
3. **External**  
*not applicable*

## Context

To provide Commission members with background information on Urban Parish and Community Councils.

## Proposal

4. Neighbourhoods Scrutiny Commission is asked to note the contents of the briefing note.

## Other Options Considered

5. *n/a*

## Risk Assessment

6. *n/a*

## Public Sector Equality Duties

- 8a) Before making a decision, section 149 Equality Act 2010 requires that each decision-maker considers the need to promote equality for persons with the following “protected characteristics”: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. Each decision-maker must, therefore, have due regard to the need to:
  - i) Eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Equality Act 2010.
  - ii) Advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to --
    - remove or minimise disadvantage suffered by persons who share a relevant protected characteristic;
    - take steps to meet the needs of persons who share a relevant protected characteristic

that are different from the needs of people who do not share it (in relation to disabled people, this includes, in particular, steps to take account of disabled persons' disabilities);

- encourage persons who share a protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- iii) Foster good relations between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to –
- tackle prejudice; and
  - promote understanding.

### **Legal and Resource Implications**

**Legal**

n/a

**Financial**

**(a) Revenue**

n/a

**(b) Capital**

n/a

**Land**

n/a

**Personnel**

n/a

**Appendices:**

*None*

**LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985**

**Background Papers:**

*none*

## Urban Parish Councils briefing note

### Process

The pre-cursor to the creation of a parish council is a community governance review, which principal authorities are empowered to conduct<sup>1</sup>. As per the DCLG guidance, principal authorities should keep their community governance arrangements under review and consider on a regular basis whether a review is needed, with a review of the whole area being a preferable option where practicable<sup>2</sup>.

The community governance review takes the form of a consultation with the affected electorate and whether or not they are in favour of the establishment of a parish council. The principal authority must draw up and publish terms of reference, stating the matters and geographical area to be covered. Once the consultation period has finished, it is for the principal authority to review the responses and reach a decision having regard for the need to secure that community governance within the area under review reflects the identities and interests of the community in that area and is effective and convenient<sup>3</sup>. DCLG guidance also sets out impact on social cohesion, and size, population and boundaries as further factors for consideration<sup>4</sup>.

Should the principal authority decide to proceed with the setting up of a parish council, then it will need to:

- publish the decision and reasons<sup>5</sup>;
- draft and execute a reorganisation order ([model](#) provided by DCLG)<sup>6</sup>;
- inform the Secretary of State, Electoral Commission, ONS and Director General of the Ordnance Survey<sup>7</sup>;
- set the date for the first election (generally the reorganisation is stated to come into force in April with the local election in May).

The NALC has produced a 'lessons learned' [document](#) on community governance reviews which may be of interest. It notes that the work above is generally undertaken by a democratic services team with the key decisions being taken by Full Council.

### Precept

The only power of taxation available to parish councils is the precept. A demand for a specified sum is made of the unitary authority, as the Council Tax collecting body, which cannot refuse to levy it. There is currently no requirement on parish councils to hold a referendum on increases to the precept<sup>8</sup>, although this is a matter that is being kept under review by central government<sup>9</sup>.

14 September 2016  
JD5.550

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<sup>1</sup> [s.82 Local Government and Public Involvement in Health Act 2007](#)

<sup>2</sup> [paras 26 & 27 Guidance on community governance reviews](#)

<sup>3</sup> [s.93\(4\) Local Government and Public Involvement in Health Act 2007](#)

<sup>4</sup> [paras 66-85 Guidance on community governance reviews](#)

<sup>5</sup> [s.96\(2\) Local Government and Public Involvement in Health Act 2007](#)

<sup>6</sup> [s.96\(3\) Local Government and Public Involvement in Health Act 2007](#)

<sup>7</sup> [s.96\(7\) Local Government and Public Involvement in Health Act 2007](#)

<sup>8</sup> Each precepting authority has its own threshold and there currently isn't one for parish councils

<sup>9</sup> <http://www.bbc.co.uk/news/uk-england-35501990>

# Encyclopedia of Local Government Law

## Volume 5

### Part 5 - Appendices

#### Principal Powers and Duties of Parish and Community Councils

##### Section 5-02

Function	Powers & Duties	Statutory Provisions
Allotments	Power to provide allotments. Duty to provide allotment gardens if demand unsatisfied.	<a href="#">Small Holdings and Allotments Act 1908, ss.23–33</a>
Areas of outstanding natural beauty in England	Duty to have regard to purpose of enhancing natural beauty of area of outstanding natural beauty when performing functions in relation to or so as to affect land in such an area. Right to appoint members of Conservation Boards	<a href="#">Countryside and Rights of Way Act 2000, s.85</a>  <a href="#">Countryside and Rights of Way Act 2000, Sch.13, para.5</a>
Baths and washhouse	Power to provide public baths, washhouses and bathing places	<a href="#">Public Health Act 1936, ss.221, 222, 223 and 227</a>
Burial grounds, cemeteries and crematoria	Power to provide	<a href="#">Local Government Act 1972, ss.214 and 215. Parish Councils and Burial Authorities (Miscellaneous Provisions) Act 1970, s.1</a>
Bus shelters	Power to provide and maintain shelters	<a href="#">Local Government (Miscellaneous Provisions) Act 1953, s.4</a>
By-laws	Power to make by-laws in regard to— Pleasure grounds, etc.	<a href="#">Public Health Act 1875, s.164</a> , Public Health Act Amendment Act 1890, s.45. Local Government Act 1894, s.8
	Cycle parks	<a href="#">Road Traffic Regulation Act 1984, s.57</a>
	Baths and washhouses	<a href="#">Public Health Act 1936, s.223</a>
	Public Bathing	<a href="#">Public Health Act 1936, s.231</a>

	Open spaces	<a href="#">Open Spaces Act 1906, s.15</a>
	Mortuaries and post-mortem rooms	<a href="#">Public Health Act 1936, s.198</a>
	Power to enforce by-laws made by another authority as respects access land in its area	<a href="#">Countryside and Rights of Way Act 2000, s.17(8)</a>
Charities	Power to transfer property of parochial charity to parish council; power to appoint charity trustees	<a href="#">Charities Act 1993, s.79</a>
Clocks	Power to provide public clocks	<a href="#">Parish Councils Act 1957, s.2</a>
Closed churchyards	Powers as to maintenance	<a href="#">Local Government Act 1972, s.215</a>
Commons and common pastures	Powers in relation to inclosure and as to regulation and management	<a href="#">Inclosure Act 1845</a> Local Government Act 1894, s.8(4). <a href="#">Smallholdings and Allotments Act 1908, s.34</a>
Conference facilities	Power to provide and encourage the use of facilities	<a href="#">Local Government Act 1972, s.144</a>
Community centres	Power to provide and equip buildings for use of clubs having athletic, social or educational objects	<a href="#">Local Government (Miscellaneous Provisions) Act 1976, s.19</a>
Consultation	Right to be consulted in designated matters by country or district council	<a href="#">Local Government Act 1972, s.33A</a> , <a href="#">Local Government and Rating Act 1997, s.21</a>
Crime Prevention	Power to establish and maintain crime prevention equipment or scheme	<a href="#">Local Government and Rating Act 1997, s.31</a>
Drainage	Power to deal with ponds and ditches	<a href="#">Public Health Act 1936, s.260</a>
Education	Right to appoint school governors	School Standards and Framework Act 1998, Sch, 10, para. 15.
Entertainment and the arts	Provision of entertainment and the support of the arts	<a href="#">Local Government Act 1972, ss.144 and 145</a>
Gifts	Power to accept	<a href="#">Local Government Act 1972, s.139</a>
Highways	Public to repair and maintain public footpaths	<a href="#">Highways Act 1980, ss.30, 43, 50</a>
	Power to light roads and public places	<a href="#">Parish Councils Act 1957, s.3</a> <a href="#">Highways Act 1980, s.301</a>

	Power to provide parking places for bicycles, motorcycles and other vehicles	<a href="#">Road Traffic Regulation Act 1984, ss.57–60</a>
	Power to acquire rights of way	<a href="#">Highways Act 1980, ss.30, 72</a>
	Power to provide roadside seats and shelters, and omnibus shelters	<a href="#">Parish Councils Act 1957, s.1. Local Government (Miscellaneous Provisions) Act 1953, s.4</a>
	Consent of parish council required for stopping up or diversion of highway	<a href="#">Highways Act 1980, ss.47, 116</a>
	Power to complain to district council as to maintenance of highways or protection of rights of way and roadside wastes	<a href="#">Highways Act 1980, s.130</a>
	Power to prosecute unlawful ploughing of a footpath or bridleway	<a href="#">Highways Act 1980, s.134</a>
	Power to contribute to traffic calming works	<a href="#">Highways Act 1980, s.274A, inserted by the Local Government Rating Act 1997</a>
	Power to provide traffic signs and other notices	<a href="#">Road Traffic Regulation Act 1984, s.72</a>
	Power as to roadside verges	<a href="#">Highways Act, 1980, s.96</a>
	Right to be notified of order requiring operator to provide tunnel or bridge for footpath or bridleway over railway	<a href="#">Transport and Works Act 1992, s.48</a>
Investments	Power to participate in schemes of collective investment	<a href="#">Trustee Investments Act 1961, s.11, as amended</a>
Land	Acquisition	<a href="#">Local Government Act 1972, ss.124–127</a>
	Rights of way, over land (other than highways)	Local Government Act 1894, s.8(1)(g)
Litter	Provision of receptacles	<a href="#">Litter Act 1983, ss.5, 6</a>
Lotteries	Power to promote	<a href="#">Lotteries and Amusements Act 1976, s.7</a>
Mortuaries and post-mortem rooms	Power to provide mortuaries and post-mortem rooms	<a href="#">Public Health Act 1936, s.198</a>
National Park	Duty of Secretary of State to appoint parish	<a href="#">Environment Act 1995, Sch.7</a>

	members of National Park Authorities	
	Duty of parish council to have regard to purposes for which National Parks are designated	<a href="#">National Parks and Access to the Countryside Act 1949, s.11A</a>
Nuisances	Power to deal with offensive ponds, ditches and gutters	<a href="#">Public Health Act 1936, s.260</a>
Open spaces	Power to acquire land	<a href="#">Public Health Act 1875, s.164</a> , <a href="#">Open Spaces Act 1906, ss.9 and 10</a>
Parish and property and documents	Management and custody	<a href="#">Local Government Act 1972, s.227</a>
Postal and telecommunications facilities	Power to pay any public telecommunications operator any loss sustained in providing or continuing to provide telecommunications facilities	<a href="#">Telecommunications Act 1984, s.97</a>
Public buildings and village halls	Power to provide buildings for offices and for public meetings and assemblies	<a href="#">Local Government Act 1972, s.133</a> ; <a href="#">Local Government (Miscellaneous Provisions) Act 1976, s.19</a>
Public conveniences	Power to provide	<a href="#">Public Health Act 1936, s.87</a>
Recreation	Power to acquire land for recreation grounds, public walks and open spaces and to manage and control them	Local Government Act 1894, s.6. <a href="#">Public Health Act 1890, s.44</a> . <a href="#">Open Spaces Act 1906, ss.9 and 10</a>
	Power to provide gymnasiums, playing fields, holiday camps	<a href="#">Local Government (Miscellaneous Provisions) Act 1976, s.19</a>
	Provision of boating pools	<a href="#">Public Health Act 1961, s.54</a>
Town and County Planning	Right to be notified of planning applications	<a href="#">Town and Country Planning Act 1990, s.252, Sch.1, para. 8, Sch.14, para.1</a>
Tourism	Power to encourage	<a href="#">Local Government Act 1972, s.144</a>
Transport	Power to establish car-sharing scheme	<a href="#">Local Government and Rating Act 1997, s.26</a>
	Power to make grants for bus services	<a href="#">Transport Act 1985, s.106A</a> , inserted by the <a href="#">Local</a>



		<a href="#">Government and Rating Act 1997, s.27</a>
	Power to make arrangements for taxi fare concessions	<a href="#">Local Government and Rating Act 1997, s.28</a>
	Power to publicise information about public passenger transport services and to investigate such services, the use of roads and traffic control	<a href="#">Local Government and Rating Act 1997, s.29</a>
Village greens	Power to provide	<a href="#">Public Health Act 1875 s.164</a> , <a href="#">Local Government Act 1972, Sch.14, para.27</a>
War memorials	Power to maintain, repair, protect and adapt war memorials	<a href="#">War Memorials (Local Authorities' Powers) Act 1923</a> , as amended by <a href="#">Local Government Act 1948, s.133</a>
Water supply	Power to utilise well, spring or stream and to provide facilities for obtaining water therefrom	<a href="#">Public Health Act 1936, ss.125, 260</a>

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