

24 MARCH 2022

## **LTN 89 | SUSTAINABLE ENERGY AND ELECTRIC VEHICLE CHARGING**

### **Introduction**

1. The government currently has a climate change green agenda which has resulted in new powers and opportunities for local councils. This Note will consider the different powers and the issues for councils in respect of selling electricity and the provision of electrical vehicle (EV) charging point in England and in Wales.

### **What specific powers do local councils have regarding the generation or sale of electricity?**

2. Section 20 of the Climate Change and Sustainable Energy Act 2006 (the 2006 Act) gives a local council the power to encourage or promote any of:
  - a. electricity or heat microgeneration within their area;
  - b. the use within their area of electricity generated, or heat produced, by microgeneration;
  - c. efficiency in the use, by persons in their area, of electricity, heat, gas, fuel and other descriptions or sources of energy;
  - d. reductions in the amounts of such energy, or sources of energy, used by persons in their area
  - e. production in their area of:
    - i. biomass, or
    - ii. any fuel derived from biomass;
  - f. use in their area of, or of electricity generated, or heat produced, from biomass or any such fuel.
3. The power allows a local council to provide information, advice, and assistance (subject to any conditions set by the local council) but not to actually generate or sell electricity or power. Any expenditure on information, advice, and assistance under the 2006 Act must be counted as part of the limit in section 137 of the Local Government Act 1972 (the 1972 Act). N.B. the power to generate and sell electricity found in Section 11 (3) of the Local Government (Miscellaneous Provisions) Act 1976 and the Sale of Electricity by Local Authorities (England and Wales) Regulations 2010 applies only to principal authorities.
4. In any event, charging for electricity would be trading and a local council can only trade if it has the General Power of Competence (GPC).

5. Section 93 of the Local Government Act 2003 allows local councils to charge for discretionary services on a not-for-profit basis. However, the council must have an existing power to provide the service before the power to charge can be used and there is no underlying power to sell electricity.
6. The Electricity Act 1989 (the 1989 Act) requires all suppliers to be licenced unless covered by a specific exemption. The Electricity (Class Exemptions from the Requirement for a Licence) Order 2001 exempts from the need for a licence to supply electricity any persons who only supply any electricity which is supplied to their premises by a licensed supplier. This allows an individual that only supplies electricity that it had obtained from a licensed supplier and does so from its own premises to do so without a licence. Thus, a local council with the GPC can supply electricity in those circumstances without a licence.

#### **Can councils provide EV charging points in council car parks?**

7. Section 111 of the 1972 Act gives a local council the power to do anything “to facilitate, or is conducive or incidental to, the discharge of any of their functions”. Car parking is a function of a local council so it could use this power as incidental to that function in respect of parking it provides for electric vehicles. The section 111 power can be exercised “whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights”. This would allow a local council to purchase and install charging points. However, section 111 does not allow a local council to raise money and therefore it cannot charge for the supply of electricity, but it could lease the equipment to a suitable provider for the provider to supply and charge for the electricity.
8. Alternatively, a local council could use section 128 of the 1972 Act to lease, to a suitable provider, a strip of the car park wide enough for the installation of the charging points and then the charge for the supply of electricity would, again, be made by the electricity company.
9. The leases above could provide an income for the local council. Rent is incidental to the lease so this would not count as trading for councils without the GPC. As with any lease a council enters in to, the council should instruct solicitors to act for it in drawing up a lease.

#### **Can local councils contribute funds to car parks provided by the principal authority?**

10. A local council could contribute to the costs of the principal authority in providing any function that they can both provide such as car parking and

contributing to the charging points in car parks run by the principal authority. The power to do this exists in section 136 of the 1972 Act.

Can council use other premises they own to provide EV charging?

11. If a local council is the owner of other premises, such as a village hall or leisure facility, then it can install the charging points there without any further power as property owner. If a local council is the tenant of such premises then it must ensure that the installation does not breach the terms of the lease and that any relevant consent under the lease is obtained.
12. A local council should consider whether it is appropriate to seek funding from the government's On-Street Residential Charge Point Scheme (OZEV) The application process is open to relevant local authorities throughout the UK. OZEV defines 'local authority' using the 'public authority' definition as listed in Schedule 1 of the Freedom of Information Act 2000 which includes parish and community councils. Funding from this scheme could be used for car park provision or where a local council has provided relevant footway lighting. Further information can be found [here](#).

### **Can councils sell electricity generated via solar panels back to the National Grid?**

13. An individual can sell excess solar panel electricity back to their supplier so a council eligible to exercise the GPC could likewise do so. In our view councils without the GPC can also do this under the incidental power in section 111 of the 1972 Act to reduce the liability to their supplier.

Other Legal Topic Notes (LTNs) relevant to this subject:

<b>LTN</b>	<b>Title</b>	<b>Relevance</b>
31	Local council general powers	Sets out guidance on the scope and application of s.137 of the 1972 Act and the GPC.