

1 MARCH 2021

## **LTN 31 | LOCAL COUNCIL GENERAL POWERS**

### **Introduction**

1. Local councils in England and Wales can rely on general powers to act and spend money unless they are restricted from doing so. This Note will look at the scope of the general powers and what councils can and cannot do. The powers are as follows:
  - (1) S.137 of the Local Government Act 1972
  - (2) The general power of competence (England, if eligible)
  - (3) The power of well-being (Wales only)

### **Overview of the powers**

2. S.137 of the Local Government Act 1972 (“the 1972 Act”) enables local councils to spend a limited amount of money for purposes for which they have no other specific statutory expenditure. It is however, limited in a number of ways. S.137 cannot be used by a local council in England that is eligible to exercise the General Power of Competence (“GPC”) except to donate money to certain charities and appeals (section 137(3)). In Wales all community councils have the power of well-being (see paragraph 27) but expenditure incurred in the exercise of that power is subject to the financial limit in s.137 (see paragraph 14). Expenditure incurred by a community council exercising the power of well-being can, unlike s.137, be used to benefit an individual. The relationship between s.137 and the GPC and power of well-being is an important one and is explained further below.

### **S.137 - scope and nature of the section**

3. The basic power is for a local council to spend money subject to the statutory limit on purposes for the direct benefit of its area, or part of its area, or all or some of its inhabitants.
4. Where the council has an unrestricted specific statutory power to spend money, s. 137 cannot be used. An example of such a power is section 19 of the Local Government (Miscellaneous Provisions) Act 1976 Act, which empowers a local council to contribute by way of grant or loan towards the expenses incurred or to be incurred by any voluntary organisation in

providing recreational facilities. Another example is s.145(1)(b) of the 1972 Act, which enables a local council to contribute towards the expenses of providing a theatre.

5. Where a council has a statutory power restricted by a limitation or condition, s. 137 cannot be used to get around the limitation or condition. An example of a limitation is contained in s. 127(2) of the 1972 Act in respect of a disposal of an interest in land for less than best consideration.
6. Where there is a statutory prohibition on a council carrying out a particular function, s. 137 cannot be used to avoid the prohibition. An example is s. 2(1) of the Local Government Act 1986, which prohibits a local authority from publishing or arranging for the publication of material which, in whole or in part, appears to be designed to effect support for a political party. Another example is s.8(1)(i) and (k) of the Local Government Act 1894, which prevent a council from spending money on property relating to affairs of the church or held for an ecclesiastical charity. S. 137(1A) also reinforces the prohibition on using s.137 to avoid a limitation or condition on some other power or for a function that they are prohibited from exercising.
7. Provided that there is no alternative power whether limited or conditional or not, and no statutory prohibition, a council may incur expenditure under s. 137. The council must first be satisfied that there is a direct benefit to the area or part of the area, or to some or all of the inhabitants. The council is the body to determine whether or not such benefit will accrue, and a decision by the council could only be challenged on the ground that it was wholly unreasonable. The use of "some" in relation to the inhabitants means that the council cannot use the power to benefit a single individual. It may be possible for the council to help an organisation to which the individual belongs, thus releasing funds for the organisation to help individuals. For example, a council could make a donation to a local organisation which provides grants to needy persons or to pay for individual's first aid courses where a council believes there would be demonstrable benefit to the area or its inhabitants.
8. The council must secondly ensure that the direct benefit accruing to its area or residents is commensurate with the expenditure incurred. This means that a council should not spend a disproportionately large amount on something which has no or very little direct benefit. For example, spending the whole of the council's allowance under s. 137 which amounted to £10,000 for the benefit of two people is unlikely to confer benefits commensurate to the

expenditure incurred, or to donate a council's entire annual s.137 allowance to a local campaign group where there is a contentious issue that divides local opinion.

9. Expenditure incurred by a council under s.137 is open to challenge by the auditor, or by a local government elector objector at audit (s.27 of the Local Audit and Accountability Act 2014), on the basis that the expenditure is larger than the direct benefit to the area or to residents would justify. Councils must therefore exercise care when considering the amounts of proposed expenditure under s.137 and, if in doubt, should seek advice before going ahead.
10. S.137 expenditure can only be incurred on publicity by way of assistance to a public body or voluntary body when it is incidental to the main purpose for which the council is giving financial assistance (s.137(2C)). Expenditure by a council on publishing information regarding the services it provides is also subject to the statutory limit (s.142 of the 1972 Act).
11. Under s.137(3) contributions may be made to charities and bodies providing a public service on a non-profit making basis, but only in furtherance of their work in the United Kingdom. It is unlawful for a council to contribute to a charity or a public service body operating overseas, or to a fund established to help persons outside the UK. Contributions to UK charities and bodies providing a public service do not have to bring any direct benefit to the council's area or to its inhabitants.
12. S. 137(3) may also be used to contribute to public appeals for funds in connection with particular events affecting UK residents only where the appeal is made by the Lord Mayor of London or the Chairman of a principal council or by a similar person in Scotland or by a committee of which such a person is a member.

### **Limit of expenditure**

13. The maximum amount which a council may spend under s.137 in any one fiscal year (i.e. 1 April to the following 31 March) is an index-linked amount per head of the relevant population, calculated as set out below.
14. The relevant Government department (Ministry of Housing, Communities and Local Government) usually notifies NALC of the agreed value for local councils according to the indexation formula a short time before the relevant financial year. The Welsh Government notifies community councils direct of

the agreed value. The value for local councils in both countries for the financial year 2021/ 2022 is £8.41.

15. The relevant population is the number of persons on the electoral roll for the town, parish or community as at 1 April. The electoral register is published and updated regularly. The electoral registration officer will be able to give details of numbers.
16. In calculating the expenditure incurred under this section, a council is entitled to deduct from its gross expenditure any grant payable by a Minister of the Crown (defined as “the holder of an office in Her Majesty’s Government in the United Kingdom, and includes the Treasury, the Board of Trade and the Defence Council”), or out of the European Regional Development Fund or the European Social Fund. In addition, any amount that has been funded by public subscription and any loan repayments can also be ignored.

#### **Authorisation of expenditure and accounts**

17. As Councillors are collectively expressing an opinion as to the commensurate local benefit, the expenditure under s. 137 must be properly authorised by resolution.
18. S. 137(7) requires a separate account to be kept of expenditure under the section. For many councils all that is necessary is to have a separate column in the cash book. Steps need to be taken with computerised book-keeping to see that a total of the money spent to date under this section is available on request. Rights of inspection under s. 25 of the Local Audit and Accountability Act 2014 (England) or s. 29 of the Public Audit (Wales) Act 2004 (Wales) apply to the separate account.

#### **Contributions to voluntary bodies, charities etc.**

19. Where a council provides financial assistance equal to or exceeding the relevant minimum to a body providing a public service, a charity or funds where the appeal is made by the Lord Mayor of London or the Chairman of a principal council within s. 137(3), must require the body or charity recipient to furnish a written statement of how the money has been spent, within 12 months after the assistance has been given (s. 137A). The “relevant minimum” is £2000 but a council should normally require some account from the recipient body of how the contribution is to be (and in the case of successive contributions has been) spent, whatever the amount. It is usually

prudent to require sight of a financial statement or account before a grant is given. In many cases the Grant is given in a form that will have to be treated as restricted funds by the receiving charity.

### **Other relevant legislation**

20. Expenditure incurred under s.20 of the Climate Change and Sustainable Energy Act 2006 is also subject to the statutory limit permitted by s.137. S.20 concerns powers in relation to local energy saving measures and allows local councils to encourage or promote the likes of microgeneration within their area.

### **The General Power of Competence – England only**

21. S.1(1) of the Localism Act 2011 (“the 2011 Act”) provides that a local authority has power to do anything that individuals generally may do. “Local authority” is defined in s.8 of the 2011 Act and includes an eligible parish council (see paragraph 22 below). S.2 sets out the boundaries of the general power. Subsection (2) provides that the general power does not enable an eligible local council to do (a) anything which the authority is unable to do by virtue of a pre-commencement limitation, or (b) anything which the authority is unable to do by virtue of a post-commencement limitation which is expressed to apply (i) to the general power, (ii) to all of the authority’s powers, or (iii) to all of the authority’s powers but with exceptions that do not include the general power. An example of a pre-commencement limitation is s.8(1)(i) and (k) of the Local Government Act 1894, which prevent a council from spending money on property relating to affairs of the church or held for an ecclesiastical charity.
22. The prescribed criteria which a local council is required to fulfil in order to become an eligible parish council are set out in the Parish Councils (General Power of Competence) (Prescribed Conditions) Order 2012. It confirms that a local council is eligible to use the general power of competence if:-
- it has a qualified clerk;
  - a minimum of two-thirds of the total number of councillors have been elected; and
  - it has resolved at a meeting of the council and each subsequent relevant annual meeting (that is, an annual meeting that takes place in a year of ordinary elections of parish councillors) that it meets these conditions.

23. Qualified clerk means one who has attained one of:

- the Certificate in Local Council Administration;
- the Certificate of Higher Education in Local Policy;
- the Certificate of Higher Education in Local Council Administration;
- or the first level of the foundation degree in Community Engagement and Governance awarded by the University of Gloucestershire or its successor qualifications;

and the clerk completed training on the General Power of Competence, unless such training was part of obtaining a qualification mentioned above.

24. Unlike expenditure incurred by a council under s.137 of the 1972 Act, the GPC imposes no statutory maximum limit to the level of expenditure which may be incurred by an eligible parish council. Paragraph 7 of Schedule 5 to Local Government and Public Involvement in Health Act 2007 means that an eligible parish council cannot incur expenditure under s.137 except under s. 137(3) to contribute to the funds of charities in furtherance of their work in the United Kingdom, not for profit bodies operating in the UK and mayoral appeals as detailed in paragraphs 11 and 12.

25. Local councils which are not eligible councils for the purposes of the GPC retain the power to incur expenditure under s. 137.

### **Exercise of the GPC - trading**

26. NALC's view is that the absence of a power enabling local councils to trade prior to the GPC coming into force does not constitute a pre-commencement limitation. In short, eligible councils can exercise the GPC for trading purposes.

### **The power of well-being - Wales only**

27. As discussed in paragraph 2 above all community councils in Wales have the power of well-being but expenditure incurred in the exercise of that power is subject to the financial limit in s.137 (see paragraph 14). Unlike s.137 expenditure incurred by a community council exercising the power of well-being can be used to benefit an individual.

28. The power of well-being gives all community councils the power to do anything they consider is likely to achieve any one or more of the following objects-
- a) the promotion or improvement of the economic well-being of their area,
  - b) the promotion or improvement of the social well-being of their area, and
  - c) the promotion or improvement of the environmental well-being of their area.

The power may be used in relation to or for the benefit of (i) the whole or any part of an community council's area or (ii) all or any persons resident or present in its area. Activity undertaken and or expenditure incurred by a community council under the power of well-being must fulfil one or more of the above objects. Section 2(5) of the Local Government Act 2000 also enables a community council to use the power of well-being 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 any one or more of the above objects. The use of the phrase "all or any persons resident or present" in the council's area and "any person" outside the council's area means activity undertaken and or expenditure incurred by a community council under the power of well-being may benefit a single individual. The power of well-being cannot be used to circumvent any existing limitation on the power of community councils. It is therefore the view of the Welsh Government that expenditure under the power of well-being is subject to the same limit as for s. 137.

29. The Welsh Government published guidance on the use of the power of well-being in March 2013. The guidance can be found:

In English at:

<http://wales.gov.uk/topics/localgovernment/publications/statutory-guidance-ese-la-act-2000/?lang=en>

In Welsh at:

<http://wales.gov.uk/topics/localgovernment/publications/statutory-guidance-ese-la-act-2000/?skip=1&lang=cy>