What is general Power of Competence?

A local council is eligible to use the General Power of Competence (GPC) if it meets all of the following conditions (as set out in the Parish Councils (General Power of Competence) (Prescribed Conditions) Order 2012):

1. **Qualified clerk – the council has a clerk holding a specified sector qualification (having a qualified deputy clerk or RFO alone is not sufficient).**

2. **Elected councillors – at least two-thirds of the total number of council seats are filled by councillors who were elected (or stood unopposed), not co-opted or appointed.**

3. **Formal resolution – the council has resolved at a council meeting, and at each subsequent relevant annual meeting (the annual meeting held in a year of ordinary parish elections), that it meets these conditions.**

Note on timing: eligibility is assessed at the annual meeting in a year of ordinary elections. If a council temporarily loses its qualified clerk or dips below the two-thirds threshold between those relevant annual meetings, it remains eligible until the next one falls due.

Source: Local council general powers (England) (page 4)

Local council general powers (England)

This advice note was written by our in-house solicitors and last updated on 19 December 2023.

The information and commentary in the note do not constitute legal advice for any individual case or matter. For specific advice on your circumstances, we strongly encourage you to seek tailored legal advice.

Introduction

Local councils in England 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:

Section 137 of the Local Government Act 1972

The general power of competence (if eligible)

Overview of the powers

Section 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. However, it is limited in a number of ways. Section 137 cannot be used by a local council that is eligible to exercise the General Power of Competence (GPC) except to donate money to certain charities and appeals (section 137(3)). The relationship between section 137 and the GPC is an important one and is explained further below.

Section 137 — scope and nature of the section

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.

Where the council has an unrestricted specific statutory power to spend money, section 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 a grant or loan towards the expenses incurred or to be incurred by any voluntary organisation in providing recreational facilities. Another example is section 145(1)(b) of the 1972 Act, which enables a local council to contribute towards the expenses of providing a theatre.

Where a council has a statutory power restricted by a limitation or condition, section 137 cannot be used to get around the limitation or condition. An example of a limitation is contained in section 127(2) of the 1972 Act with respect to the disposal of an interest in land for less than best consideration.

Where there is a statutory prohibition on a council carrying out a particular function, section 137 cannot be used to avoid the prohibition. An example is section 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. Section 137(1A) also reinforces the prohibition on using section 137 to avoid a limitation or condition on some other power or for a function that they are prohibited from exercising.
Provided that there is no alternative power, whether limited or conditional and no statutory prohibition, a council may incur expenditure under section 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 that determines whether or not such benefits will accrue, and a decision by the council could only be challenged on the grounds 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.

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 section 137 for the benefit of two people is unlikely to confer benefits commensurate to the expenditure incurred or to donate a council's entire annual section 137 allowance to a local campaign group where there is a contentious issue that divides local opinion.

Expenditure incurred by a council under section 137 is open to challenge by the auditor, or by a local government elector objector at audit (section 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 section 137 and, if in doubt, should seek advice before going ahead.

Section 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 (section 137(2C)). Expenditure by a council on publishing information regarding the services it provides is also subject to the statutory limit (section 142 of the 1972 Act).

Under Section 137 (3), contributions may be made to charities and bodies providing public service on a non-profit 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.

Section 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 Chair 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

The maximum amount which a council may spend under section 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.

The relevant government department usually notifies NALC of the agreed value for local councils according to the indexation formula a short time before the relevant financial year.
The relevant population is the number of persons on the electoral roll for the parish or town as of 1 April. The electoral register is published and updated regularly. The electoral registration officer will be able to give details of the numbers.

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

As councillors are collectively expressing an opinion as to the commensurate local benefit, the expenditure under section 137 must be properly authorised by resolution.

Section 137(7) requires a separate account of expenditure to be kept 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 the computerised bookkeeping to see that a total of the money spent to date under this section is available on request. Rights of inspection under section 25 of the Local Audit and Accountability Act 2014 apply to the separate account.

Contributions to voluntary bodies, charities, etc.

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 chair of a principal council within section 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 (section 137A). The “relevant minimum” is £2,000 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

Expenditure incurred under section 20 of the Climate Change and Sustainable Energy Act 2006 is also subject to the statutory limit permitted by section 137. Section 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

Section 1(1) of the Localism Act 2011 (the 2011 Act) provides that a local authority has the power to do anything that individuals generally may do. “Local authority” is defined in section 8 of the 2011 Act and includes an eligible parish council. Section 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.
The prescribed criteria that 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.

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.

The relevant date for eligibility purposes is the annual meeting in a year of ordinary elections. As such, if a council loses a qualified clerk or does not have two-thirds of elected councillors in the intervening period between relevant annual meetings, the council will remain eligible until the next annual meeting in a year of ordinary elections. Having a qualified deputy clerk or responsible financial officer is not sufficient if the clerk is not qualified.

A qualified clerk means one who has attained one of the:

Certificate in Local Council Administration

Certificate of Higher Education in Local Policy

Certificate of Higher Education in Local Council Administration

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.

Unlike expenditure incurred by a council under section 137 of the 1972 Act, the GPC imposes no statutory maximum limit to the level of expenditure that 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 section 137 except under section 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.

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

Exercise of the GPC — Trading

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. However, section 4 of the 2011 Act requires that anything done under GPC for a commercial purpose must be done through a separate company.