Revised April 2015

SECTION 137 OF THE LOCAL GOVERNMENT ACT 1972

Introduction

1. Section 137 of the Local Government Act 1972 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. All community councils in Wales have the Power of Well-Being (see paragraph 21 below) but expenditure incurred in the exercise of that power is subject to the financial limit in section 137 (see paragraph 14 below). Although not possible with s.137, expenditure incurred by a community council exercising the power of well-being can be used to benefit an individual. Also section 137 cannot be used by a parish council in England that is eligible to exercise the General Power of Competence except to donate money to certain charities and appeals (Section 137(3)).

Scope and nature of the section

2. The basic power is for a local council to spend money (subject to the statutory limit – see paragraph 14 below) on purposes for the direct benefit of its area, or part of its area, or all or some of its inhabitants.

3. 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 grant or loan towards the expenses incurred or to be incurred by any voluntary organisation in providing recreational facilities.

4. Other important examples of unrestricted powers to spend money which are the power of well-being and the power of general competence. The power of well-being set out in section 2 of the Local Government Act 2000 is only available to local councils in Wales. The power of general competence is only available to certain parish councils in

England. The relationship between these two powers and section 137 is an important one and is explained further below.

5. 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 Local Government Act 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, 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. See also section 137(1A) which 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.

7. Provided that there is no alternative power whether limited or conditional or not, 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 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.

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 section 137 which amounted to £10,000 for the benefit of two people is unlikely to confer benefits commensurate to the expenditure incurred.

9. Expenditure incurred by a council under section 137 is open to challenge by the auditor, or by a local government elector objector at audit (pursuant to section 16 Audit Commission Act 1998), 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.

10. 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 Local Government Act 1972).

11. Under section 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. 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 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 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.

14. The relevant Government department (DCLG) usually notifies NALC of the agreed value for parish councils according to the indexation formula in the January preceding the relevant financial year. The Welsh Assembly Government (the Social Justice and Local Government Department) notifies community councils direct of the agreed value. The value for local councils in both countries for the financial year 2015/ 2016 is £7.36.

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 section 137 must be properly authorised by resolution.

18. Section 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 section 14 of the Audit Commission Act 1998 (England) or section 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 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.

Section 137 and the impact of the Power of Well-being – Wales only

20. 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. As stated above, expenditure incurred under section 137 cannot be used to directly benefit a single individual.

21. 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 section 137.

22. The Welsh Government published guidance on the use of the power of well-being at Easter 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

Section 137 and the impact of the General Power of Competence – England only

23. The prescribed criteria which a parish council is required to fulfil in order to become an *eligible* parish council is set out in the Parish Councils (General Power of Competence) (Prescribed Conditions) Order 2012/965 which came into force on 28 March 2012. It confirms that a parish council is eligible to use the general power of competence if it has passed a resolution at a meeting of full council which confirms:-

- it has a qualified clerk;
- a minimum of two-thirds of vacancies were filled at the last ordinary elections; and
- it has resolved at a meeting of the council and each subsequent relevant annual meeting that it meets these conditions.

24. Unlike expenditure incurred by a council under section 137, the general power of competence 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 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 as detailed in paragraphs 11 and 12 above.

25. Parish councils which are not *eligible* parish councils for the purposes of the general power of competence retain the power to incur expenditure under section 137.

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 s.137. Section 20 states:

(1) A parish council or community council may encourage or promote any of the following–

(a) 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.

(2) The power conferred by subsection (1) includes, in particular, power–

(a) on application, to provide information about goods or services available within their area (whether offered or provided by public authorities or by any other persons), or

(b) to provide advice or assistance,

for the purpose of encouraging or facilitating any of the matters mentioned in that subsection.

(3) Assistance provided under subsection (1) may, if the council giving the assistance think appropriate–

(a) be made subject to conditions, or

(b) otherwise be provided on such terms as the council think appropriate.

(4) For the purposes of subsections (4) to (7B) of section 137 of the Local Government Act 1972 (c. 70) (power of local authorities to incur expenditure for certain purposes not otherwise authorised)–

(a) any expenditure incurred by a parish council or community council under this section is to be treated as having been incurred under that section, and

(b) any purpose for which expenditure may be incurred under this section is to be treated as a purpose for which such a council are authorised by that section to incur expenditure.

(5) Subsection (4) applies to expenditure incurred by a parish council or community council under section 142 of the Local Government Act 1972 on information as to the services provided by them under this section, or otherwise relating to their functions under this section, as it applies to expenditure incurred under this section.

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