

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.
2. The texts of section 137 (as amended by the Local Government and Housing Act 1989 and the Public Audit (Wales) Act 1994 and the Local Government and Public Involvement in Health Act 2007) and section 137A (added by the 1989 Act) form an appendix to this Note.

Scope and nature of the section

3. Apart from a council in England which has satisfied the prescribed statutory conditions and is eligible to exercise the power to promote well-being set out in s. 2 of the Local Government Act 2000 (see also paragraph 12 below) , a local council has the basic power 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.
4. 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 any recreational facilities.
5. Where a council has a statutory power restricted by a limitation or condition, section 137 cannot be used to get round 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 (as amended by the Communications Act 2003), 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.
7. s.137 (1A) 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.
8. Provided that there is no alternative power, whether limited or conditional or not, and no statutory prohibition, the 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.
9. 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 the section 137 which amounted to £10,000 for the benefit of two people would be unlikely to be confer commensurate benefit to the expenditure incurred.
10. It will be open for expenditure to be challenged by the auditor, or by a local government elector objector at audit (pursuant to s.16 Audit Commission Act 1998), on the basis that the expenditure is larger than the direct benefit to the area or 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.

11. Pursuant to s. 137 (2C) 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. Expenditure by a council on publishing information regarding the services it provides, pursuant to section 142 of the Local Government Act 1972, is also subject to the statutory limit (see paragraph 14 below)
12. Under s.137 (3) a local council, including a council in England which has satisfied the prescribed statutory conditions and is eligible to exercise the power to promote well-being set out in s. 2 of the Local Government Act 2000 Act, may make contributions 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. Importantly, under s.137(3), expenditure incurred in making contributions to UK charities and bodies providing a public service does not require there to be a direct benefit to the council's area or to its inhabitants. A council in England which is eligible to exercise the power to promote well-being may use the power to promote well-being to make donations or grants to bodies which include charities and not for profit making public bodies and this expenditure is not subject to a statutory limit as is the case with expenditure incurred under s. 137(3) (see paragraph 14 below). However expenditure incurred in exercise of the power to promote well-being may only be incurred if it is likely to promote or improve the economic and or social and or environmental well-being of the whole or part of their area or all or any persons resident or present in their area. Further information relating to the power to promote well-being which applies only to "eligible" local councils in England is available from NALC legal briefings issued in 2008 and 2009.
13. s.137 (3) may also be used to contribute to public appeals for funds in connection with particular events affecting the 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

14. The maximum amount which a council may spend under section 137 in any one year (e.g. from 1 April to the following 31 March) is an index-linked amount per head of the “relevant population”, calculated as set out in paragraph 15 below.
15. The relevant Government department (CLG) usually notifies NALC of the agreed value for parish councils according to the indexation formula in the January preceding the relevant financial year. The National Assembly for Wales (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 2009/2010 is £6.15.
16. 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.
17. In calculating the expenditure incurred under this section, a council is entitled to deduct from its gross expenditure any amount in respect of which there has been a 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, so much of any amount that has been funded by public subscription and any loan repayments can also be ignored.

Authorisation of expenditure and accounts

18. As Councillors are collectively expressing an opinion as to the commensurate local benefit, the expenditure under section 137 must be properly authorised by resolution.
19. Pursuant to s.137 (7), a separate account must 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 spend to date under this section is available on request.

Contributions to voluntary bodies, charities etc.

20. Pursuant to Section 137A a council which 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. 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

21. 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,
 - (c) 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.

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

LTN	Title	Relevance
5	Parish, Town and Community Council meetings	Details procedures for decision making and resolutions.

© NALC 2009

APPENDIX (referred to in paragraph 2 above) - Full text of sections 137 and 137(A) Local Government Act 1972

137.— Power of local authorities to incur expenditure for certain purposes not otherwise.

1. A local authority may, subject to the provisions of this section, incur expenditure which in their opinion is in the interests of, [and will bring direct benefit to], their area or any part of it or all or some of its inhabitants, but a local authority shall not, by virtue of this subsection, incur any expenditure –

- (a) for a purpose for which they are, either unconditionally or subject to any limitation or to the satisfaction of any condition, authorised or required to make any payment by or by virtue of any other enactment; [nor]
- (b) unless the direct benefit accruing to their area or any part of it or to all or some of the inhabitants of their area will be commensurate with the expenditure to be incurred.

1A. In any case where -

- (a) by virtue of paragraph (a) of subsection (1) above, a local authority are prohibited from incurring expenditure for a particular purpose, and
- (b) the power or duty of the authority to incur expenditure for that purpose is in any respect limited or conditional (whether by being restricted to a particular group of persons or in any other way),

the prohibition in that paragraph shall extend to all expenditure to which that power or duty would apply if it were not subject to any limitation or condition.

2. It is hereby declared that the power of a local authority to incur expenditure under subsection (1) above includes power to do so by contributing towards the defraying of expenditure by another local authority in or in connection with the exercise of that other authority's functions.

2C. A local authority may incur expenditure under subsection (1) above on publicity only by way of assistance to a public body or voluntary organisation where the publicity is incidental to the main purpose for which the assistance is given; but the following provisions of this section apply to expenditure incurred by a local authority under [section 142](#) below on information as to the services provided by them under this section, or otherwise relating to their functions under this section, as they apply to expenditure incurred under this section.

2D. In subsection (2C) above—

“publicity” means any communication, in whatever form, addressed to the public at large or to a section of the public; and

“voluntary organisation” means a body which is not a public body but whose activities are carried on otherwise than for profit.

3. A local authority may, subject [, in the case of a parish or community council,] [to

- the following provisions of this section], incur expenditure on contributions to any of the following funds, that is to say—
- (a) the funds of any charitable body in furtherance of its work in the United Kingdom; or
 - (b) the funds of any body which provides any public service [(whether to the public at large or to any section of it)] in the United Kingdom otherwise than for the purposes of gain; or
 - (c) any fund which is raised in connection with a particular event directly affecting persons resident in the United Kingdom on behalf of whom a public appeal for contributions has been made by the Lord Mayor of London or the chairman of a principal council or by a committee of which the Lord Mayor of London or the chairman of a principal council is a member [or by such a person or body as is referred to in [section 83\(3\)\(c\)](#) of the [Local Government \(Scotland\) Act 1973](#).]
4. The expenditure of a local authority under this section in any financial year shall not exceed the amount produced by multiplying
- (a) such sum as is for the time being appropriate to the authority under [\[Schedule 12B to this Act\]](#) , by
 - (b) the relevant population of the authority's area.
- 4AB. For the purposes of subsection (4)(b) above the relevant population of a local authority's area shall be determined in accordance with regulations made by the Secretary of State; and a statutory instrument containing such regulations shall be subject to annulment in pursuance of a resolution of the House of Commons.
- 4A. For the purpose of determining whether a local authority have exceeded the limit set out in subsection (4) above, their expenditure in any financial year under this section shall be taken to be the difference between their gross expenditure under this section for that year and the aggregate of the amounts specified in subsection (4B) below.
- 4B. The amounts mentioned in subsection (4A) above are—
- (a) the amount of any expenditure which forms part of the authority's gross expenditure for that year under this section and in respect of which any grant has been or is to be paid under any enactment by a Minister of the Crown, within the meaning of the [Minister of the Crown Act 1975](#) (whether or not the grant covers the whole of the expenditure);
 - (b) the amount of any repayment in that year of the principal of a loan for the purpose of financing expenditure under this section in any year;
 - (c) so much of any amount raised by public subscription as is spent in that year for a purpose for which the authority are authorised by this section to incur expenditure;

- (d) any grant received by the authority for that year out of the European Regional Development Fund or the Social Fund of the European Economic Community, in so far as the grant is in respect of an activity in relation to which the authority incurred expenditure in that year under this section;
 - (e) the amount of any repayment in that year of a loan under this section made by the authority in any year; and
 - (f) the amount of any expenditure—
 - (i) which is incurred by the authority in that year in circumstances specified in an order made by the Secretary of State; or
 - (ii) which is incurred by the authority in that year and is of a description so specified; or
 - (iii) which is defrayed by any grant or other payment to the authority which is made in or in respect of that year and is of a description so specified.
5. A statutory instrument containing an order under this section may apply to all local authorities or may make different provision in relation to local authorities of different descriptions.
 6. Any such instrument shall be subject to annulment in pursuance of a resolution of either House of Parliament.
 7. The accounts of a local authority by whom expenditure is incurred under this section shall include a separate account of that expenditure
 - 7A. In relation to England, [section 14](#) of the [Audit Commission Act 1998](#) (rights of inspection) applies in relation to a separate account included in a local authority's accounts by virtue of subsection (7) above as it applies in relation to a statement of accounts prepared by the authority pursuant to regulations under [section 27](#) of that Act.
 - 7B. In relation to Wales, [section 29](#) of the [Public Audit \(Wales\) Act 2004](#) (rights of inspection) applies in relation to a separate account included in a local authority's accounts by virtue of subsection (7) above as it applies in relation to a statement of accounts prepared by the authority pursuant to regulations under [section 39](#) of that Act.
 9. Subject to subsection (10) below, in this section [“ local authority” means—
 - (a) a parish council which is not an eligible parish council for the purposes of [Part 1](#) of the [Local Government Act 2000](#), or
 - (b) a community council.
 10. In subsection (3) above “ local authority” means—
 - (a) in relation to England, a county council, a district council, a London borough council, the Common Council or a parish council,
 - (b) in relation to Wales, a county council, a county borough council or a community council.

137A.— Financial assistance to be conditional on provision of information.

1. If in any financial year a local authority provides financial assistance—
 - (a) to a voluntary organisation, as defined in subsection (2D) of section 137 above, or
 - (b) to a body or fund falling within subsection (3) of that section, and the total amount so provided to that organisation, body or fund in that year equals or exceeds the relevant minimum, then, as a condition of the assistance, the authority shall require the organisation, body or fund, within the period of twelve months beginning on the date when the assistance is provided, to furnish to the authority a statement in writing of the use to which that amount has been put.

2. In this section “financial assistance” means assistance by way of grant or loan or by entering into a guarantee to secure any money borrowed and, in relation to any financial assistance,—
 - (a) any reference to the amount of the assistance is a reference to the amount of money granted or lent by the local authority or borrowed in reliance on the local authority's guarantee; and
 - (b) any reference to the date when the assistance is provided is a reference to the date on which the grant or loan is made or, as the case maybe, on which the guarantee is entered into.

3. The relevant minimum referred to in subsection (1) above is £2,000 or such higher sum as the Secretary of State may by order specify.

4. It shall be a sufficient compliance with a requirement imposed by virtue of subsection (1) above that there is furnished to the local authority concerned an annual report or accounts which contain the information required to be in the statement.

5. A statement (or any report or accounts) provided to a local authority in pursuance of such a requirement shall be deposited with the proper officer of the authority.

6. In this section “local authority” includes the Common Council.