

20 DECEMBER 2023

L02-23 | POWER TO FUND WORKS TO PROPERTY RELATING TO AFFAIRS OF THE CHURCH OR HELD FOR AN ECCLESIASTICAL CHARITY (ENGLAND ONLY)

Introduction

On 26 October 2023, the Levelling-up and Regeneration Act (the 2023 Act) received Royal Assent. Section 82 of the 2023 Act amends the Local Government Act 1894 (the 1894 Act) by inserting a new section 19A into the 1894 Act. Section 19A comes into force on 26 December 2023. The Appendix at the end of this briefing contains the wording of section 19A.

The government's view is that its amendment in the form of section 19A clarifies that the 1894 Act does not affect the discretionary powers of parish councils in England to fund church repairs or improvements or property held for an ecclesiastical charity. NALC recommends that its members adopt the government's view when they receive requests for funding. This means that councils can use their discretionary powers to fund such property, including that of other Christian denominations and non-Christian faiths. It applies in the case of:

- Specific powers to fund works - for example, repairs to clocks fixed to church property (section 2 of the Parish Councils Act 1957) and the maintenance of open churchyards (section 214 of the Local Government Act 1972 (the 1972 Act)).
- General powers to fund works where works are not covered by a specific power - section 137 of the 1972 Act and the general power of competence can also be used by councils to fund requests for works not covered by specific powers.

What will parish councils need to consider when receiving funding requests?

Councils need to consider requests in respect of church property or property held for an ecclesiastical charity as they would any other funding request. Funding powers further to section 19A of the 1894 Act coming into force are discretionary. Parish councils are not under any additional duties as a result of the 2023 Act and the insertion of section 19A to the 1894 Act.

The issues that councils would need to consider when seeking to rely on a general power are set out within our Legal Topic Note 31E. This includes the direct benefit

of expenditure accruing to a council's area or residents being commensurate with the expenditure incurred in respect of section 137.

NALC publications

NALC's view (as set out in Legal Briefing L01-18 – financial assistance to the church) was that only explicit local council powers could override the prohibition in the 1894 Act to fund churches. We will be withdrawing Legal Briefing L01-18 further to the Government's amendment as per section 19A coming into force on 26 December 2023. We will also update and reissue Legal Topic Note 31E to remove references to the prohibition, which will no longer apply when section 19A comes into force.

Appendix

19A Powers under other enactments

(1) Nothing in this Part affects any powers, duties or liabilities conferred on a parish council by or under any other enactment (whenever passed or made).

(2) This section does not apply in relation to community councils (see section 179

(4) of the Local Government Act 1972).

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