

EXPLANATORY MEMORANDUM TO
THE LOCAL GOVERNMENT (TRANSPARENCY) (DESCRIPTIONS OF
INFORMATION) (ENGLAND) ORDER 2014

2014 No. 2060

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 The purpose of this Order is to expand the descriptions of information about which the Secretary of State may require authorities to publish information more frequently than annually.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Context**
 - 4.1 Section 2 of the Local Government, Planning and Land Act 1980 (“the 1980 Act”) enables the Secretary of State to issue a code of recommended practice on the publication of information by local authorities. Under section 3 of the 1980 Act, the Secretary of State may by regulations require authorities to publish the information specified in such a code, in the manner and form and on the occasions specified in that code. The Secretary of State may only require authorities to publish information on occasions recurring more than once a year if the information falls within a description of information to which section 3(4) of the 1980 Act applies. Section 3(4) applies to the descriptions of information listed in section 3(5) of the 1980 Act and also to any further categories which the Secretary of State has directed by order it should apply. This Order directs that section 3(4) will apply to the further descriptions of information listed in article 2 of the Order.
 - 4.2 This is the first exercise of the enabling power.
5. **Territorial Extent and Application**
 - 5.1 This instrument applies to England.

6. European Convention on Human Rights

- 6.1 The Parliamentary Under Secretary of State for Communities and Local Government, Baroness Stowell of Beeston, has made the following statement regarding Human Rights:

“In my view the provisions of the Local Government (Transparency) (Descriptions of Information) (England) Order 2014 are compatible with the Convention rights.”

7. Policy background

- 7.1 This Order is the culmination of over three years discussion and experience of local authorities implementing the Code of Recommended Practice for Local Authorities on Data Transparency, issued by the Secretary of State for Communities and Local Government in exercise of his powers under section 2 of the Local Government, Planning and Land Act 1980.
- 7.2 Following consultation between February and March 2011, the Government issued the Code of Recommended Practice for Local Authorities on Data Transparency¹ in September 2011 to meet the Government’s desire to place more power into citizens’ hands to increase democratic accountability and make it easier for local people to contribute to the local decision making process and help shape public services. This followed a consultation on the recommended Code on local data transparency² and publication of the Government’s response to that consultation³. The Government believes that transparency is the foundation of local accountability and the key that gives people the tools and information they need to enable them to play a bigger role in society. The availability of data could also open new markets for running services and managing public assets to local businesses, the voluntary and community sectors and social enterprises.
- 7.3 The Government committed to review the contents and scope of the Code within 18 months of the date it was issued. The Government ran a consultation from October to December 2012 on updating the Code and making the publication of information contained in it a legal requirement by regulations⁴. The Government

¹ The Code of Recommended Practice for Local Authorities on Data Transparency, September 2011, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/5967/1997468.pdf

² Code of recommended practice for local authorities on data transparency consultation, February 2011, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/8500/1829193.pdf

³ Code of recommended practice for local authorities on data transparency, Government response to consultation and summary of responses, September 2011, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/8501/1985219.pdf

⁴ Improving Local Government Transparency: Making ‘The Code of Recommended Practice for Local Authorities on Data Transparency’ enforceable by regulations consultation document, October 2012,

published its response to this consultation in December 2013⁵ and ran a further consultation between December 2013 and January 2014 on a draft revised Code for local transparency which was included in the Government response.

7.4 In preparing this Order, the Government has considered the responses to both consultations and evidence relating to the value of information, what local people want and current practice within local authorities in respect of publishing key data.

7.5 Analysis by Deloitte⁶ for the Shakespeare Review of Public Sector Information estimates the economic benefits of public sector information in the United Kingdom as £1.8 billion, with social benefits amounting to £5 billion. The study highlights the significant potential benefits from the publication of public data. This is supported by other research set out in the impact assessment published alongside the Order⁷.

7.6 Local agencies and people want to see published open data:

- 80 per cent of those responding to a transparency survey⁸ by the Local Government Association (LGA) in September 2012 cited external accountability as a benefit with 56 per cent citing better local decision making and democracy as a benefit;
- A survey of 800 members of Bedford's Citizens Panel⁹ showed that 64 per cent of respondents thought it was very important that the council makes data available to the public. Over half of respondents said that they were, at least, "fairly likely" to look at transparency data in the next 12 months and they were most interested in seeing data made available about council spending and budgets (66 per cent); and,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/14855/Making_the_Code_of_Recommended_Practice_mandatory_-_consultation.pdf

⁵ Code of Recommended Practice for Local Authorities on Data Transparency: Government response to Consultation was published in December 2013,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/266815/Transparency_Code_Government_Response.pdf

⁶ "Market Assessment of Public Sector Information", Deloitte, May 2013,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/198905/bis-13-743-market-assessment-of-public-sector-information.pdf

⁷ <https://www.gov.uk/government/government/publications/local-government-transparency-code-2014-impact-assessment>

⁸ "Local Government Transparency Survey 2012", LGA, December 2012,

http://www.local.gov.uk/documents/10180/11541/Local_Government_Transparency_Survey_2012.pdf/dd4c24ed-20ba-4feb-b6eb-fea21e4af049

⁹ "Citizens Panel Summer 2011 Survey Results Data Transparency" Bedford Borough Council, August 2011 (unpublished)

- Research by Ipsos MORI¹⁰ found that the more citizens feel informed, the more they tend to be satisfied with public services and their local authorities.

7.7 Adherence to the Code, published in September 2011, by local authorities has been inconsistent:

- Whilst there has been a good response to publishing spending transactions over £500, a review by the National Audit Office¹¹ found that of 202 local authorities, 71 per cent published some information about contracts entered into by the authority with only 4 per cent publishing information on land and assets;
- The Local Government Association’s survey found that only 52 per cent of respondents published contract and tender information in line with the Code.

7.8 The Government wants, therefore, to ensure that key information is published by all local authorities in a timely manner by extending the scope of the Code and making it a legal requirement to publish certain data contained in the Local Government Transparency Code 2014¹².

7.9 Central to local people being able to hold their local authority to account is having timely access to data and information about how the authority spends its money and the goods and services it buys and provides. And, timely publishing information about local authority contracts and tenders can open up local markets to a wider range of organisations, stimulate competition and increase local economic growth, particularly for voluntary, community and social enterprise organisations. This is consistent with Lord Young’s report¹³ which called for a “single market” where small and medium-sized enterprises can gain better and more direct access to contract opportunities.

7.10 Annual publication of this information is too infrequent to enable local people to properly hold local authorities to account and open up local markets. Therefore, this Order introduces two new descriptions of information about which the Secretary of State may require authorities to publish information more frequently than annually:

¹⁰ “What do people want, need and expect from public services?”, Ipsos MORI, 2010, http://www.ipsos-mori.com/DownloadPublication/1345_sri_what_do_people_want_need_and_expect_from_public_services_110310.pdf

¹¹ Implementing Transparency was published by the National Audit Office in 2012, <http://www.nao.org.uk/wp-content/uploads/2012/04/10121833.pdf>

¹² Local government transparency code 2014, May 2014, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/308185/Local_Government_Transparency_Code_2014_Final.pdf

¹³ Lord Young’s report: Growing Your Business, A Report on Growing Micro Businesses, May 2013, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/197726/bis-13-729-growing-your-business-a-report-on-growing-micro-businesses.pdf

- information about any expenditure incurred by authorities; and
 - information about any legally enforceable agreement entered into by authorities and any invitations to tender for such agreements.
- 7.11 No objections were received during the most recent consultation to the Government's proposal that these broad areas of information should be published quarterly.
- 7.12 Subject to Parliamentary approval of this instrument, the Government intends to produce regulations under section 3 to require authorities to publish specific categories of information contained in the Local Government Transparency Code 2014 on the occasions and in the manner specified in that Code.
- Consolidation
- 7.13 This is the first exercise of the enabling power and so there is no consolidation of other relevant legislation.

8. Consultation outcome

- 8.1 The Department for Communities and Local Government has had a regular dialogue with local government over the last three years about transparency and the publication of key datasets.
- 8.2 There have been three consultations:
- Between 7 February and 14 March 2011, concerning making data generated by authorities available and accessible to the public. There were 229 respondents. The Government published its response and summary of responses on 29 September 2011.
 - Between 25 October and 20 December 2012, exploring questions about updating the Code and making it mandatory through regulations. There were 219 respondents. The Government published its analysis of the responses and its response to them on 12 December 2013.
 - Between 12 December 2013 and 17 January 2014 about a draft revised Code for local transparency to ensure that it properly gave effect to the policy set out in the previous Government response and that the obligations, definitions and timings contained in the draft were clear and understood by those to whom the Code would apply. The Government received 58 responses. The Department for Communities and Local Government ran three workshops, attended by 63 different organisations, to discuss the technical content of the Code. Also, the Department held several meetings with the Local Government Association about the draft Code. The Government has published a Frequently Asked

Questions document¹⁴ which addresses the points raised through these channels.

- 8.3 Some respondents, to the most recent consultation, said that it was unnecessary to extend the scope of the local government transparency Code and make it a legal requirement for local authorities to publish certain data. The Government believes that evidence points to the value and importance of local authorities publishing key information, particularly about how they spend money, and that too many local authorities are not publishing sufficient information.
- 8.4 The vast majority of comments received sought clarification on points of detail or definitions included in the draft revised local government transparency Code. The Frequently Asked Questions document provides the Government's response to these, which seeks to aid local authorities' understanding of the Code.
- 8.5 No comments were received specifically opposing the proposal that information about spending and legally enforceable contracts entered into by local authorities, should be published more frequently than annually.

9. Guidance

- 9.1 The Department for Communities and Local Government will work with sector led organisations such as the Local Government Association and the Local eGovernment Standards Body and the Local Public Data Panel to ensure that technical guidance on how to implement the Code, including best practice examples and case studies is available to local authorities. The Department has also compiled and published answers to Frequently Asked Questions to address some of the technical issues that have been brought to the Department's attention.

10. Impact

- 10.1 An impact assessment has not been prepared for this Order as the Order itself is non-regulatory and has no direct impact on the private, voluntary or public sectors.
- 10.2 An impact assessment has been published in relation to the Local Government Transparency Code 2014¹⁵. This sets out, among other things, the impact of requiring local authorities to publish information on spending and legally enforceable contracts on a quarterly basis.

11. Regulating small business

¹⁴ Local government transparency code 2014: frequently asked questions, May 2014, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/308186/Local_Government_Transparency_Code_2014_Frequently_Asked_Questions_Final.pdf

¹⁵ <https://www.gov.uk/government/publications/local-government-transparency-code-2014-impact-assessment>

11.1 The legislation does not apply to small business.

12. Monitoring & review

- 12.1 There will be no direct monitoring or review of this Order which simply enables the Secretary of State to require information to be published more frequently than annually for the categories of information specified.
- 12.2 Existing mechanisms will be used to enforce the Local Government Transparency Code 2014, no new enforcement frameworks and burdens will be created.

13. Contact

- 13.1 Ashley Pottier at the Department for Communities and Local Government Tel: 0303 444 3214 or email: Ashley.Pottier@communities.gsi.gov.uk can answer queries regarding the instrument.