

EXPLANATORY MEMORANDUM TO
THE LOCAL GOVERNMENT (TRANSPARENCY REQUIREMENTS) (ENGLAND)
REGULATIONS 2015

2015 No. 480

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 these Regulations is to require local authorities in England to publish the information specified in Part 2 of the Local Government Transparency Code 2015¹ issued on 27th February 2015 in the manner and form and on the occasions specified in Part 2 of that Code.

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. On 3rd October 2014, the Secretary of State issued a code of practice under section 2, the Local Government Transparency Code 2014² (“the 2014 Code”), and subsequently made regulations under section 3 which made compliance with Part 2 of that code mandatory: the Local Government (Transparency Requirements) (England) Regulations 2014³ (“the 2014 Regulations”). Since then, the Government has been decided that a further category of information should be added to the code, namely information about the value of local housing authorities’ social housing assets. Therefore the Government has published a revised code – the Local Government Transparency Code 2015. These Regulations make compliance with Part 2 of the 2015 Code mandatory and revoke the 2014 Regulations. The 2014 Code will be withdrawn once these Regulations come into force.

¹ www.gov.uk/government/publications/local-government-transparency-code-2015

² The Local Government Transparency Code 2014,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/360711/Local_Government_Transparency_Code_2014.pdf

³ S.I. 2014/2680

- 4.2 These Regulations require authorities in England to which section 2(1) of the 1980 Act applies, other than parish councils whose gross annual income or expenditure (whichever is the higher) is £6.5 million or less and parish meetings, to publish the information specified in Part 2 of the 2015 Code, which was issued by the Secretary of State for Communities and Local Government on 27th February 2015. Those authorities are required to publish such information in the manner and form and on the occasions specified in Part 2 of that Code.
- 4.3 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 applies⁴. The Secretary of State has directed by the Local Government (Transparency) (Descriptions of Information) (England) Order 2014 (S.I. 2014/2060) that section 3(4) should apply to information about any expenditure incurred by local authorities and information about any legally enforceable agreement entered into by authorities and any invitations to tender for such agreements.

5. Territorial Extent and Application

- 5.1 This instrument applies to England.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- 7.1 The Government wants to put more power into the hands of local people and make it easier for them to hold local public bodies to account for the decisions they make, particularly about how they spend money and deliver public services. It believes that transparency is the foundation of local accountability. Transparency is the key that gives people the tools and information they need to play a bigger role in society and to contribute to local decision making and help shape public services. 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.

⁴ The categories are: information about the discharge of authorities' functions relating to housing or land; information about the number of their employees or the number of any description of their employees; information about the determination of applications for planning permission; and such other categories of information which the Secretary of State may, by order, direct.

- 7.2 Analysis by Deloitte⁵ 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.
- 7.3 Local agencies and people want to see published open data:
- 80 per cent of those responding to a transparency survey⁶ by the Local Government Association 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 Panel⁷ 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,
 - Research by Ipsos MORI⁸ found that the more citizens feel informed, the more they tend to be satisfied with public services and their local authorities.
- 7.4 Despite the substantial benefits of transparency, local authorities' adherence to the Government's Code of Recommended Practice (2011)⁹ was inconsistent:
- Whilst there was a good response to publishing spending transactions over £500, a review by the National Audit Office¹⁰ 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.

⁵ "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

⁶ "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

⁷ "Citizens Panel Summer 2011 Survey Results Data Transparency" Bedford Borough Council, August 2011 (unpublished)

⁸ "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

⁹ 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

¹⁰ Implementing Transparency was published by the National Audit Office in 2012, <http://www.nao.org.uk/wp-content/uploads/2012/04/10121833.pdf>

- 7.5 For these reasons, following a number of consultations (see section 8 below) the Government published the 2014 Code and subsequently made regulations which made compliance with Part 2 of the 2014 Code mandatory.
- 7.6 Under the 2014 Code, local authorities were required to start publishing quarterly information (on expenditure, tenders and contracts) by 31 December 2014 and publish the first set of annual information (including about land and assets) by 2 February 2015.
- 7.7 However, the 2014 Code made data on social housing exempt from publication. In total, local authorities own land and assets worth about £220 billion and the value of a local housing authority's social housing stock is a key component of the amount of housing debt the authority can hold. Housing debt is debt which is held by local housing authorities in connection with the exercise of their functions relating to houses and other property within their Housing Revenue Account¹¹. The Government considers that information on the value of local housing authorities' social housing assets would be useful to local people. It would allow them to hold local housing authorities to account on how they are managing their assets and on whether authorities can do more with their assets to enable the development of new homes and to reduce the number of people on a waiting list for a council home.
- 7.8 As such, following consultation (see section 8 below), the Government decided that local housing authorities should be required to publish information about the value of their social housing assets and has published a revised code – the 2015 Code - which includes a requirement to publish social housing assets values. The new requirement builds on existing requirements for annual Housing Revenue Account statements¹².
- 7.9 This new dataset has been incorporated into the main code to make it easier for local authorities, the public and other interested parties to see what they should publish, rather than having two separate codes. These regulations are necessary, therefore, to make compliance with Part 2 of the new 2015 Code mandatory.
- 7.10 In preparing these Regulations, the Government has considered the responses to all of these 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.

¹¹ All local housing authorities (district councils, unitary councils and London Borough councils) who hold housing stock are required to account for all income and expenditure in relation to that stock in a separate account which is called the Housing Revenue Account.

¹² The Housing Revenue Account (Accounting Practices) Directions 2011 requires local authorities' annual statement of accounts to include information about the total balance sheet value of the land, houses and other property and the vacant possession value of dwellings within the authority's Housing Revenue Account

- Consolidation

7.11 As these Regulations do not amend another statutory instrument, consolidation is not necessary.

8. Consultation outcome

8.1 The Department for Communities and Local Government has had a regular dialogue with local government about transparency and the publication of key datasets.

8.2 Four consultations have taken place between 2011 and 2014. These have informed the various developments that have now led to the 2015 Code:

8.2.1 Between 7 February and 14 March 2011, the Government consulted on 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 2011¹³.

8.2.2 Between 25 October and 20 December 2012, the Government consulted on 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 2013¹⁴.

8.2.3 Between 12 December 2013 and 17 January 2014, the Government consulted about revising the code for local transparency, including to ensure there were clear obligations, definitions and timings. The Government received 58 responses. In addition, 63 organisations attended technical workshops.

8.2.4 Between 11 July and 8 August 2014, the Government consulted on delivering greater transparency on the value of local housing authorities' housing stock. There were 34 respondents. The Government published its analysis of the responses and its response to them on 26 November 2014¹⁵.

8.3 In terms of the most recent consultation, a majority of the 34 respondents agreed with the Government's aim to increase the transparency of the value of the social housing stock held by local housing authorities.

¹³ Code of Recommended Practice for Local Authorities on Data Transparency – Summary of Consultation Responses, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/8501/1985219.pdf

¹⁴ Code of Recommended Practice for Local Authorities on Data Transparency – Government Response to Consultation, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/266815/Transparency_Code_Government_Response.pdf

¹⁵ Transparency in Social Housing Assets Values – Summary of Consultation Responses and Government Response, <https://www.gov.uk/government/consultations/transparency-in-social-housing-assets-value>

- 8.4 There were some views raised by respondents about the need to have a separate mandatory requirement given that local housing authorities are already required to publish some information about their housing assets under existing reporting requirements under the Housing Revenue Account (Accounting Practices) Direction 2011. However, it was considered preferable to require publication of this data as part of the Local Government Transparency Code to separate this information from accountancy practices and to ensure that it is seen as an element of the Government's transparency agenda. There were also some concerns raised regarding the risk of valuation data becoming disclosive of individual properties if published at postal sector level. As a result, the 2015 Code requires data to be published in line with the protocol set out in the Code to ensure that individual dwellings will not be identifiable.

9. Guidance

- 9.1 The Local Government Association has developed and published technical guidance on how to implement the Code, including best practice examples and case studies¹⁶. The Department has also compiled and published answers to technical Frequently Asked Questions¹⁷.

10. Impact

- 10.1 An Impact Assessment is attached to and published alongside this Explanatory Memorandum on the legislation.gov.uk website and is also available on the Department's website.
- 10.2 The estimated impact on local housing authorities from the additional requirement on social housing assets values is a one-off set-up cost of £80,000 and annual running costs of £20,000. This works out as a set-up cost of £470 and annual running costs of £120 per local housing authority.
- 10.3 Such negligible costs to local housing authorities would be offset by the benefits arising from the release of this information, including savings from more efficient decision making regarding the management of authorities' social housing stock.
- 10.4 The additional information requirements have no impact on business, charities or voluntary bodies.

¹⁶ <http://www.local.gov.uk/practitioners-guides-to-publishing-data>

¹⁷ Local Government Transparency Code 2015: Frequently Asked Questions (Feb 2015)

<https://www.gov.uk/government/publications/local-government-transparency-code-2015> and the Local government transparency code 2014: frequently asked questions, May 2014, <https://www.gov.uk/government/publications/local-government-transparency-code-2014>.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 There will be no direct monitoring or review of these Regulations. Existing mechanisms will be used to enforce the Local Government Transparency Code 2015 issued on 27th February 2015. No new enforcement frameworks and burdens will be created.

13. Contact

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

Begoña Vilaplana at the Department for Communities and Local Government (Tel: 0303 444 199 or email: begona.vilaplana@communities.gsi.gov.uk) can answer any queries regarding the instrument in relation to the information requirements on social housing asset value.