EXPLANATORY MEMORANDUM TO

THE LOCAL GOVERNMENT (TRANSPARENCY) (DESCRIPTIONS OF INFORMATION) (ENGLAND) ORDER 2015

2015 No. 471

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. By this Order the Secretary of State directs that section 3(4) will apply to the further description of information listed in article 2 of the Order.

4.2 Section 2 of the 1980 Act was amended by section 38 of the Local Audit and Accountability Act 2014 so that sections 2 and 3 of the 1980 Act apply to certain additional categories of local authority including charter trustees, internal drainage boards and port health authorities.

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, Kris Hopkins MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Local Government (Transparency) (Descriptions of Information) (England) Order 2015 are compatible with the Convention rights."

7. Policy background

7.1 The Local Audit and Accountability Act 2014 introduces a new local audit regime for public bodies. In the new audit framework, smaller authorities[1] with an annual turnover[2] not exceeding £25,000 will be exempt from routine external audit. Instead, these authorities will be subject to the new transparency requirements set out in the Transparency Code for smaller authorities ("the Code") published in December 2014.[3]

7.2 There are currently around 10,000 smaller authorities with around 5,300 having turnover below £25,000. The purpose of the Code is to enable local electors to access relevant information about the authorities' accounts and governance and for this to represent a proportionate requirement on bodies of this size. The Code was issued as recommended practice on 17 December 2014 and the Government now intends to make it mandatory through the making of regulations under section 3 of the 1980 Act.

7.3 The Command Paper published alongside the Draft Local Audit Bill (July 2012) proposed a transparency code for smaller authorities and the types of information smaller authorities would be required to publish under a code of this nature.[4] It also set out the Government's intention that smaller authorities should publish this information online and that, as a direct substitute for external audit, the code would be mandatory. The Government consulted on these proposals in July - August 2012 and its response to the consultation was published in October 2012.[5]

7.4 Subsequently consultation was undertaken, first specifically on a Transparency Code for parish councils. Once Section 2 of the 1980 Act was amended, by the

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[1] All bodies listed in Schedule 2 to the Local Audit and Accountability Act 2014 whose turnover does not exceed £6.5m in a financial year – see sections 2 (relevant authorities) and 6 (meaning of "smaller authority") of the Local Audit and Accountability Act 2014.

[2] Turnover means the higher of the authority's gross income for the year and its gross expenditure for the year.

[3] Transparency Code for smaller authorities 2014: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/388541/Transparency_Code_for_Smaller_Authorities.pdf

[4] Draft Local Audit Bill, 2012: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/8350/2174738.pdf, see paragraphs 94 – 100.

[5] Draft Local Audit Bill: Summary of Consultation Responses, October 2012: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/11087/2242719.pdf

Local Audit and Accountability Act 2014, with the effect that sections 2 and 3 apply to charter trustees, internal drainage boards and port health authorities; a second consultation was undertaken. This included a specific question on the potential for a Transparency Code to also apply to Internal Drainage Boards, Charter Trustees and Port Health Authorities, with an annual turnover not exceeding £25,000.

7.5 With broad support for a Code to cover each of these types of authority, and in light of the consultation responses, the Transparency Code for smaller authorities was drafted.[3]

7.6 The Government considers that publication of the items in this Code will provide the local electorate with a clear picture of the activities of these smaller authorities. Since the requirements of the Code will represent a substitute for external audit under the new regime the Government believes that requiring compliance through Regulations is necessary. Consultation responses largely agreed with the need to make the Code mandatory. As most of this information is already produced by the majority of smaller authorities with a turnover not exceeding £25,000, the Government feels that compliance with this Code will not place a significant burden on these authorities.

7.7 We are keen to support the sector to meet these requirements. In particular we intend to deliver a programme of funding, through the sector, to assist smaller authorities meet these new requirements. An assessment of need is being undertaken with the sector and plans developed to best aid those authorities that are not already compliant with the Code's requirements to become so by the start of the 2015/16 financial year.

7.8 If this Order is approved, the Code and the intended underpinning Regulations will require the following information to be published online, annually, by no later than 1 July each year:

- all items of expenditure above £100;
- end of year accounts, annual governance statement, and internal audit report (as contained in the annual return), with the statement of accounts accompanied by:
    - a copy of the bank reconciliation for the relevant financial year;
    - an explanation of any significant variances (e.g. more than 10-15%, in line with proper practices) in the statement of accounts for the relevant year and previous year; and
    - an explanation of any differences between 'balances carried forward' and 'total cash and short term investments', if applicable.
- a list of councillor or member responsibilities; and
- details of public land and building assets owned by the smaller authority (except internal drainage boards and charter trustees).

7.9 It is also the Government's intention, following the consultation process, that the minutes of formal meetings during the year should be published more frequently than once annually, and meeting agendas and background papers be published in advance of meetings. This ensures members of the public are informed of what is happening at the meetings without having to wait until the end of the year to find out. As such this Order seeks to enable the Secretary of State to require that draft minutes from all formal meetings (i.e. full council or board, committee and sub-committee meetings) are published online not later than one month after the meeting to which the minutes relate has taken place, and meeting agendas and background papers are published online no later than three clear days before the meeting to which they relate.

7.10 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. It is clear that yearly publication of minutes and papers would limit proper local accountability, as local people will only be made aware of decisions long after they have been made and after opportunity to participate or influence the process has passed. Local agencies and people want the publication of key financial and governance data to be mandatory, as was demonstrated by the broad support of the Government's intention to increase transparency received in consultation responses.

7.11 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 Code.

7.12 Subject to Parliamentary approval of this instrument, the Government intends to produce regulations under section 3 of the 1980 Act to require authorities to publish the specified categories of information contained in the Code on the occasions and in the manner specified.

Consolidation

7.13 There is no consolidation of other relevant legislation.

8. Consultation outcome

8.1 After consultation on the draft Local Audit Bill, the Government carried out 2 consultations in relation to transparency of smaller authorities. The first covered a draft Code for parish councils with an annual turnover not exceeding £25,000.[6] The second consulted on secondary legislation relating to the Local Audit and Accountability Act 2014 and included a question on the potential for developing a transparency code to cover charter trustees, internal drainage boards and port

[6] Consultation on a draft transparency code for parish councils, March 2014: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/287921/140306_Consultation_on_a_draft_transparency_code_for_parish_councils.pdf

health authorities with an annual turnover not exceeding £25,000.[7] Section 2 of the 1980 Act was amended by the Local Audit and Accountability Act 2014 with the effect that sections 2 and 3 apply to charter trustees, internal drainage boards and port health authorities. With broad support for the proposals in both it was felt that one Code to cover all those authorities would be the most practicable. Detailed summaries of the responses are available at the weblinks below. We had already engaged the sector through existing working groups before we launched the consultations, plus flagged this policy development to interested parties (those who had responded to the previous consultations on the audit reform).

8.2 The first consultation[7] ran from 10 March 2014 to 9 May 2014 and received 150 responses. There was a minimum of 68% support for each specific question raised in the consultation. The Government published its response to this consultation in August 2014.[8]

8.3 The second consultation ran for a 4 week period between 19 June and 18 July on a draft transparency code for charter trustees, internal drainage boards and port health authorities with an annual turnover not exceeding £25,000.[9] This shorter period was due to the consultation being interactive and online. Again this was designed in collaboration with the sector and highlighted before publication. The proposed content of the Code had only minor changes from that included in the first consultation. As such many of the same parties responded and raised similar points in their comments.

8.4 In the first consultation 102 out of 135 responses (75.6%) to the question of making the Code mandatory explicitly supported the Government's proposal. These respondents welcomed the proportionate nature of the Code and stressed the necessity of making it mandatory since it will represent a substitute for external audit. The Information Commissioner's Office also noted how the proactive publication of key governance and financial information is in the spirit of the Freedom of Information Act 2000. Increased transparency should help reduce the administrative burden on parish councils when responding to Freedom of Information requests.

8.5 33 responses (24.4%) were not in favour of making the code mandatory at this time. These included responses from 27 parish councils, three representative bodies and the Audit Commission. While respondents were keen to express their support for the goals of transparency and proportionate accountability

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[7] Consultation on a draft transparency code for charter trustees, internal drainage boards and port health authorities, June 2014: http://localauditregulations.readandcomment.com/wp-content/uploads/2014/06/Local-Audit-Consultation.pdf

[8] Draft transparency code for parish councils with a turnover not exceeding £25,000: consultation summary of responses, published in August 2014: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/341231/140805-Transparency_Code_for_Parish_Councils_Consultation_Summary_and_Response.pdf

[9] Draft transparency code for internal drainage boards, charter trustees and port health authorities with a turnover not exceeding £25,000. Included in Future of Local Audit: Consultation on secondary legislation: summary of responses and the Government Response, published in December 2014, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/383694/Future_of_Local_Audit_Consultation_Summary_and_Response.pdf

arrangements, the most commonly cited concern was that the Code may not represent an adequate substitute for external audit. Another objection was the perceived burden (administrative and financial) of complying with the Code, particularly for the very smallest parish councils and those that do not have their own website. The Government intends to develop a programme of support to help authorities comply with the Code and reduce these concerns.

8.6 The second consultation as a whole received 123 responses with 20 specific to the question of the Code applying to these further types of authorities.[9] The Government published its response to this consultation in December 2014.[10] 14 of the 16 responses (87.5 per cent) which directly answered the question of whether the Code should be mandatory for the specified bodies explicitly supported the Government's proposal. Many of the comments both in support of and against the proposal were similar to those in response to the first consultation. The two (12.5 per cent) respondents that were not in favour of making the Code mandatory cited the burden of complying with the Code and suggested that it may not represent an adequate substitute for external audit. 95 per cent of responses also agreed that the information set out in the Code should be published electronically. There were 11 respondents to the question of how much additional staff time and cost would be involved in publishing the required data online. Of these, 4 thought the cost involved would be minimal, 4 believed that related costs would be significant, whilst 3 respondents were unable to estimate likely staff time and cost.

8.7 No question was asked on the specific frequency of meeting papers publication. However under provisions of Part 5A of the Local Government Act 1972 principal authorities are required to make meeting agendas available to members of the public five clear days in advance of the meeting, and minutes and papers immediately after the meeting. Our proposed requirements for smaller authorities are proportionate whilst also ensuring the timely availability of information to enable communities to hold their local authority to account.

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

9. Guidance

9.1 In line with comments received during the second consultation the Department is producing a Plain English guide to the legislation affecting Smaller Authorities. This will be available for publication when the Regulations to be made under

[10] Future of local audit consultation on secondary legislation: summary of responses and the government response, December 2014:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/383694/Future_of_Local_Audit_Consultation_Summary_and_Response.pdf

section 3 of the 1980 Act come into force and will include a section on the Code. We will be testing the guide with the sector before publication.

10. Impact

10.1 The impact on business, charities or voluntary bodies is none.

10.2 The impact on the public sector is being assessed with the sector. A new burdens assessment is being carried out to ensure that the dual burden of the Code and the continued requirement to have a limited assurance audit (the "lighter touch" audit smaller authorities are subject to, which is proportionate to the amounts of public money they handle) is funded. This dual burden will last from when the Code becomes mandatory until the new audit regime is completely in place in 2017/18. We are using the consultation responses which suggested this could cost a vast range of options, from as low as £0 to an unquantified amount, demonstrating the range of capacity and practices in these authorities at present. Further work is ongoing with the sector to better estimate this amount and develop our programme of support.

10.3 A revised Impact Assessment for the Government's proposals on implementation of the Local Audit and Accountability Act 2014 was published in September 2014.[11] This estimated that the ongoing costs of compliance with the Code would be fully offset by the anticipated savings in audit fees from reduced audit requirements under the new regime. This is being tested, in light of the additional transparency requirements, as part of the new burdens assessment.

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 this Order which simply enables the Secretary of State to require information to be published more frequently than annually for the category of information specified.

12.2 We have agreed to carry out a Post Implementation Review in 2019 as part of the review of the new audit system. This will consider the extent to which the aims of the Act, including the delivery of greater local accountability and transparency, have been met.

[11] Local Audit and Accountability Act 2014: Local audit impact assessment
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/349418/2014_FINAL_Local_Audit_IA.pdf

13. Contact

Donald Bogle at the Department for Communities and Local Government (Tel: 0303 444 4574 or email: Donald.bogle@communities.gsi.gov.uk) can answer any queries regarding the instrument.