EXPLANATORY MEMORANDUM TO

THE LOCAL GOVERNMENT (TRANSPARENCY REQUIREMENTS) (ENGLAND) REGULATIONS 2014

2014 No. 2680

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 authorities in England to publish the information specified in Part 2 of the Local Government Transparency Code 2014 issued on 3 October 2014[1] 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.

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 Local Government Transparency Code 2014, which was issued by the Secretary of State for Communities and Local Government on 3 October 2014. 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 applies. Section 3(4) applies to the description 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

[1] https://www.gov.uk/government/publications/local-government-transparency-code-2014

order it should apply. 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 These Regulations are 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 Transparency[2] 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 transparency[3] and publication of the Government's response to that consultation[4]. 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.

[2] 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
[3] 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
[4] 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

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 regulations[5]. The Government published its response to this consultation in December 2013[6] 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 these Regulations, 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 Deloitte[7] 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 which is attached to and published alongside this Explanatory Memorandum on the legislation.gov.uk website and is also available on the Department's website[8].

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

- 80 per cent of those responding to a transparency survey[9] 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;

[5] Improving Local Government Transparency: Making 'The Code of Recommended Practice for Local Authorities on Data Transparency' enforceable by regulations consultation document, October 2012, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/14855/Making_the_Code_of_Recommended_Practice_mandatory_-_consultation.pdf

[6] 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

[7] "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

[8] https://www.gov.uk/government/publications/local-government-transparency-code-2014-impact-assessment

[9] "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

- A survey of 800 members of Bedford's Citizens Panel[10] 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 MORI[11] 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 Office[12] 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 To summarise, the Government believes that evidence shows that local data is valuable, local people want to see key information published and local authorities' performance in publishing key information has been inconsistent.

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 their authority spends its money, the goods and services it buys and provides, how and who takes decisions in their local authority and issues of local interest. Part 2 of the Code sets out the minimum data that the Government believes should be published by local authorities to help local people hold their authorities to account. The Government wants, therefore, to ensure that this information is published by all local authorities in a timely manner, giving people more equal access to the data set out in the Code, by making it a legal requirement for local authorities to publish the data contained in Part 2 of the Local Government Transparency Code 2014 issued on 3 October 2014.

[10] "Citizens Panel Summer 2011 Survey Results Data Transparency" Bedford Borough Council, August 2011 (unpublished)
[11] "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
[12] Implementing Transparency was published by the National Audit Office in 2012, http://www.nao.org.uk/wp-content/uploads/2012/04/10121833.pdf

- Consolidation

7.10 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 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; and,

- 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 document[13] which addresses the points raised through these channels.

8.3 The majority of the 219 respondents in the second consultation did not seek to oppose regulation – only 91 respondents were of the view that it was unnecessary to make Regulations to require local authorities to publish information contained in a transparency code. And, only a handful of the 58 respondents in 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 majority of respondents in two consultations have not, therefore, sought to oppose regulation.

[13] Local government transparency code 2014: frequently asked questions, May 2014, https://www.gov.uk/government/publications/local-government-transparency-code-2014

8.4 However, the Government believes that there is also evidence pointing to the value and importance of local authorities publishing timely information, particularly about how they spend money and deliver services, and that too many local authorities are not publishing sufficient information. Therefore, the Government is satisfied that there is a need for these Regulations which require local authorities in England to publish the information specified in Part 2 of the Local Government Transparency Code 2014 issued on 3 October 2014.

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 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 many of the technical issues that have been brought to the Department's attention.

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. The estimated impact on local authorities is £2.2 million per year.

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 2014 issued on 3 October 2014, 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.