

EXPLANATORY MEMORANDUM TO
THE SMALLER AUTHORITIES (TRANSPARENCY REQUIREMENTS) (ENGLAND)
REGULATIONS 2015

2015 No. 494

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 certain authorities to publish the information contained in the Transparency Code for Smaller Authorities (“the Code”) issued on 17th December 2014¹ in the manner and form and on the occasions specified in 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 smaller authorities in England to which the Transparency Code for Smaller Authorities applies, that is parish councils, internal drainage boards, port health authorities and charter trustees, with an annual turnover not exceeding £25,000, to publish the information specified in the Transparency Code for Smaller Authorities which was issued by the Secretary of State for Communities and Local Government on 17 December 2014. Those authorities are required to publish such information in the manner and form and on the occasions specified in 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

¹ <https://www.gov.uk/government/publications/transparency-code-for-smaller-authorities>

and also to any further categories which the Secretary of State has directed by order it should apply. The Secretary of State has directed by the Local Government (Transparency) (Descriptions of Information) (England) Order 2015 that section 3(4) should apply to information relating to the meetings of those smaller authorities to which the Code applies, including the agendas, minutes and any other information concerning matters discussed at meetings.

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 Local Audit and Accountability Act 2014 introduces a new local audit regime for public bodies. Under the new audit framework, smaller authorities² with an annual turnover³ not exceeding £25,000 will be exempt from routine external audit.

In place of this, the relevant smaller authorities⁴ will be subject to the new transparency requirements set out in the Transparency Code for Smaller Authorities published in December 2014.¹

7.2 There are currently around 10,000 smaller authorities with around 5,300 having an annual 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.

7.3 The Code was issued as recommended practice on 17 December 2014. The Local Government (Transparency) (Descriptions of Information) (England) Order 2015 then directed that section 3(4) of the 1980 Act should apply to information relating to the meetings of those smaller authorities to which the Code applies, including the agendas, minutes and any other information concerning matters discussed at meetings. Following an approval motion in the House of Lords on 26 February 2015 and in the House of Commons on 3 March 2015, the Government now intends to make the Code mandatory through the making of Regulations under section 3 of the 1980 Act.

² 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.

³ Turnover means the higher of the authority's gross income for the year and its gross expenditure for the year.

⁴ The Transparency Code for smaller authorities applies to: parish councils, internal drainage boards, charter trustees and port health authorities, with an annual turnover not exceeding £25,000

- 7.4 The Code and these Regulations follow three consultations on the new audit and accountability framework for smaller authorities and on a mandatory transparency code for smaller authorities.
- 7.5 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.⁵ 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 2012.⁶
- 7.6 Subsequently consultation was undertaken, first, specifically on a transparency code for parish councils. Once the amendments to section 2 of the 1980 Act were made 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; 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.
- 7.7 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.¹
- 7.8 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 many 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.
- 7.9 Nevertheless we are keen to support the sector to comply with the Code. 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 2015/16 financial year.

⁵ Draft Local Audit Bill, 2012: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/8350/2174738.pdf, see paragraphs 94 – 100.

⁶ Draft Local Audit Bill: Summary of Consultation Responses, October 2012: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/11087/2242719.pdf

7.10 The effect of these Regulations is that smaller authorities will be required to publish the following information online, on a website which is publicly accessible free of charge:

The following must be published 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 per cent, 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).

The following should be published more frequently than once annually, on the specified occasions:

- draft minutes from all formal meetings (i.e. full council or board, committee and subcommittee meetings) not later than one month after the meeting has taken place, and;
- meeting agendas and background papers, no later than three clear days before the meeting is taking place.

7.11 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. 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.

7.12 The Government wants, therefore, to ensure that key information is published by all local authorities in a timely manner by making it a legal requirement to publish the data contained in the Code.

7.13 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.

- Consolidation

7.14 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 the local government sector over the last three years about the new local audit framework, transparency and accountability for smaller authorities and the publication of key datasets.
- 8.2 After consultation on the draft Local Audit Bill, the Government carried out two further consultations specifically in relation to transparency of smaller authorities. The first covered a draft code for parish councils with an annual turnover not exceeding £25,000.⁷ The second consultation concerned 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 health authorities with an annual turnover not exceeding £25,000.⁸
- 8.3 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 web links below. We had already engaged the sector through existing working groups before we launched the consultations and flagged this policy development to interested parties (those who had responded to the previous consultations on the audit reform).
- 8.4 The first consultation⁷ ran from 10 March 2014 to 9 May 2014 and received 150 responses. There was a minimum of 68 per cent support for each specific question raised in the consultation. The Government published its response to this consultation in August 2014.⁹
- 8.5 The second consultation ran for a 4 week period between 19 June and 18 July 2014 on a draft transparency code for charter trustees, internal drainage boards and port health authorities with an annual turnover not exceeding £25,000.⁸ 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.

⁷ 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

⁸ 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>

⁹ 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

- 8.6 In the first consultation 102 out of 135 responses (75.6 per cent) 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.
- 8.7 33 responses (24.4 per cent) 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 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.
- 8.8 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.⁸ 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.
- 8.9 In preparing these Regulations the Government has considered the responses to all three consultations, as well as evidence relating to the importance of the types of information required to be published, what local people want and current practice within local authorities in respect of publishing key data.

¹⁰ 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

9. Guidance

- 9.1 In line with comments received during the second consultation the Department is producing a guide to the new smaller authorities' local audit and accountability framework. This will be available for publication when these Regulations come into force and will include a section on the Code. We will be testing the guide with the sector before publication.
- 9.2 We anticipate that our funding programme will offer a range of support and guidance, to be delivered through the sector, to assist relevant bodies in understanding and becoming compliant with the Code's requirements.

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 accordingly.
- 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.
- 10.4 An Impact Assessment for the Local Government Transparency Code 2014¹² estimated an impact on local authorities of £2.2 million per year.

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

¹² Local Government Transparency Code 2014: Impact Assessment.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/326686/Local_Government_Transparency_code_2014_-_IA.pdf

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 Transparency Code for smaller authorities issued on 17 December 2014. No new enforcement frameworks or procedures will be created.

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.

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.