



**BRIEFING PAPER**

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# Local government transparency in England

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**Inside:**

1. Background
2. The Local Government Transparency Code
3. Pay policy statements
4. Code of recommended practice on local authority publicity
5. Filming and social media in council meetings



# Contents

<b>Summary</b>	<b>3</b>
<b>1. Background</b>	<b>4</b>
<b>2. The Local Government Transparency Code</b>	<b>5</b>
2.1 Drafting of the Code and its status as legally binding	5
2.2 Transparency code for smaller authorities	7
<b>3. Pay policy statements</b>	<b>8</b>
<b>4. Code of recommended practice on local authority publicity</b>	<b>9</b>
4.1 Statutory notices	10
<b>5. Filming and social media in council meetings</b>	<b>12</b>
5.1 The previous regime in England	12
5.2 Filming council meetings: Scotland, Wales and Northern Ireland	13

## Summary

The Coalition's *Programme for Government* promised to "throw open the doors of public bodies, to enable the public to hold politicians and public bodies to account".

This note provides details of the following related initiatives:

- A Code of recommended practice on local authority data transparency, setting out minimum expectations of the data to be published by local authorities. The Code has been made legally binding for most local authorities as of 31 October 2014;
- A legal requirement upon local authorities to publish 'pay policy statements', setting out the remuneration of chief officers, and the ratio between the highest-paid and lowest-paid employees;
- A revised code of recommended practice on local authority publicity, published in March 2011. The *Local Audit and Accountability Act 2014* permits the Secretary of State to direct authorities to comply with the code;
- Regulations requiring local authorities to permit members of the public to film and use social media in council meetings.

The matters covered in this note apply to England only, with the exception of pay policy statements, which also apply in Wales.

# 1. Background

The 2010-15 Coalition Government's *Programme for government* contained a section on government transparency. This stated:

The Government believes that we need to throw open the doors of public bodies, to enable the public to hold politicians and public bodies to account. We also recognise that this will help to deliver better value for money in public spending, and help us achieve our aim of cutting the record deficit. Setting government data free will bring significant economic benefits by enabling businesses and non-profit organisations to build innovative applications and websites.<sup>1</sup>

Among the commitments specifically affecting local authorities were the following:

We will require all councils to publish meeting minutes and local service and performance data.

We will require all councils to publish items of spending above £500, and to publish contracts and tenders in full.

We will ensure that all data published by public bodies is published in an open and standardised format, so that it can be used easily and with minimal cost by third parties.<sup>2</sup>

[Guidance on publishing local spending data](#) has been produced by the Local Public Data Panel. Additionally, the Local Government Group and "key partners" (including DCLG and CIPFA) have produced "additional practical guidance" for practitioners in a set of guides covering publication of local spending data, senior salary information, and new contracts and tenders data.<sup>3</sup>

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<sup>1</sup> HM Government, [The Coalition: Our programme for government](#), May 2010, p. 20

<sup>2</sup> *Ibid.*, p. 21

<sup>3</sup> See the [LG Group Transparency Programme](#) website.

## 2. The Local Government Transparency Code

### 2.1 Drafting of the Code and its status as legally binding

The Government consulted in February 2011 on producing a code of recommended practice for local authorities on data transparency.<sup>4</sup> Section 2 of the *Local Government, Planning and Land Act 1980* provides the power to issue such a code. A draft was published in October 2012, and a full Code in May 2014, with an update in October 2014.<sup>5</sup> The current [Local Government Transparency Code](#) was issued in February 2015. The Code applies to local authorities in England, including combined authorities, fire and rescue authorities and National Park authorities (see page 7 of the Code for a full list); and to parish councils with either gross income or expenditure over £200,000. It does not apply to Police and Crime Commissioners.

Following a consultation in 2012-13,<sup>6</sup> the Government made regulations, under section 3 of the 1980 Act, to require (rather than simply recommend) the publication of the data sets specified in part 2 of the Code.<sup>7</sup> These regulations apply to all of the categories of authority covered by the Code, with the exception of parish and town councils with either a gross income or expenditure of under £6.5 million (in practice, this means all parish and town councils); for those councils, the Code is recommended practice but not legally binding. Smaller parish and town councils are subject to a separate transparency code (see section 2.2 below).

The Government [published a consultation paper in May 2016](#), proposing to add a small number of categories of data to those required to be published, and to require the publication of some existing categories of data in standard format. The consultation closes on 8 July 2016.

The Code requires the publication of specified categories of data under the headings below. It also provides substantial detail about how the data should be presented, and what matters should be included under each heading. The following data must be published quarterly, a maximum of one month after the quarter to which it relates:

- Individual items of expenditure exceeding £500;

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<sup>4</sup> DCLG, [Code of recommended practice for local authorities on data transparency: consultation](#), February 2011.

<sup>5</sup> See DCLG, [Improving Local Government Transparency](#), October 2012

<sup>6</sup> DCLG, [Improving Practice for Local Government Transparency: Making 'The Code of Recommended Practice for Local Authorities on Data Transparency' enforceable by regulations](#), October 2012, p. 4

<sup>7</sup> The current regulations are the [Local Government \(Transparency Requirements\) \(England\) Regulations 2015](#) (SI 2015/480). They replaced the [Local Government \(Transparency Requirements\) \(England\) Regulations 2014](#) (SI 2014/2680) as of 1 April 2015.

- Information on invitations to tender, every contract, framework agreement, commissioned activity and purchase order, with a value of over £5,000;
- Details of every transaction on a Government Procurement Card used by the authority.

The following data must be published annually:

- Data on the land and buildings assets held by the authority;
- Grants to voluntary, community and social enterprise organisations;
- The authority's organisation chart, covering the top three levels in the organisation, including salary bands;
- Details of trade union facility time: number of representatives and spending upon them;
- The number of controlled parking spaces within their area;
- Data on the value of the authority's social housing stock;
- Data on senior salaries (see section 3 below);
- The pay multiple (see section 3 below);
- The authority's constitution;
- Details of counter-fraud work;
- Details of waste contracts (this need only be published once);
- Data on parking revenues.

The final three requirements on the list were introduced in the October 2014 version of the Code.

The information is expected to be published in a format that permits it to be used easily by members of the public. The Code states:

Public data should be published in a format and under a licence that allows open re-use, including for commercial and research activities, in order to maximise value to the public. The most recent Open Government Licence published by the National Archives should be used as the recommended standard.<sup>8</sup>

In March 2015 Kris Hopkins MP [wrote to Rother District Council](#), stating that the council had not published some of the mandatory data, whilst other categories of data were published in a way that made it difficult to access. Mr Hopkins stated that the DCLG would therefore withhold new burdens funding for data publication from the council. He also said that the council's 'approach' to data could be taken into account when determining eligibility for future grants.

At the outset of the transparency regime, the Government's response to consultation referred to the need to avoid "dumping" of data onto the public.<sup>9</sup> This issue was also tackled by Baroness Hanham, then Minister for Local Government, in a speech to the Centre for Public Scrutiny Conference in November 2010:

...pages of figures on endless excel spreadsheets will mean nothing to many ordinary citizens. Councils will, rightly, want to present their data in such a way as to make it more meaningful to

<sup>8</sup> DCLG, [Local Government Transparency Code](#), 2015, p. 22

<sup>9</sup> DCLG, [Code of recommended practice for local authorities on data transparency: summary of responses to consultation](#), September 2011, p.6

individuals and community groups. This is why transparency is integral to the Big Society.<sup>10</sup>

### 2.2 Transparency code for smaller authorities

In December 2014, the Government issued the [Transparency Code for smaller authorities](#). This Code, like the February 2015 one for larger councils, is issued under section 2 of the 1980 Act. It applies to parish councils, charter trustees, internal drainage boards and port health authorities with a 'turnover' (i.e. the higher of their income and expenditure) of under £25,000. It takes into account the limited requirements for routine audit for these councils.

This code requires annual publication of the following:

- a. all items of expenditure above £100;
- b. end of year accounts;
- c. annual governance statement;
- d. internal audit report;
- e. details of public land and building assets;
- f. agendas, approved minutes and papers of formal meetings; and
- g. list of councillor or member responsibilities.<sup>11</sup>

Meeting minutes and papers must be published in draft (if not yet approved) a maximum of one month after the meeting to which they relate. Agendas must be published at least three days in advance of the meeting to which they relate.

The information must be published by 1 July each year at the latest; items relating to agendas and minutes must be published more frequently.<sup>12</sup> The information must be published electronically: if the parish council has no website, it can use the website of its billing authority (the district or unitary authority).

The publication of this Code follows two separate consultations which ran during 2014.<sup>13</sup> Its requirements are mandatory on the relevant councils. The requirements will not apply to parish meetings.<sup>14</sup>

Parish councils with a 'turnover' of between £25,000 and £200,000 will be expected to follow the Local Government Transparency Code described in section 2.1 above, but are not legally required to do so.

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<sup>10</sup> Baroness Hanham, [Speech to Centre for Public Scrutiny Conference: Implications of new government](#), 10 November 2010

<sup>11</sup> DCLG, [Transparency code for smaller authorities](#), December 2014, p. 6

<sup>12</sup> See the [Local Government \(Transparency\) \(Descriptions of Information\) \(England\) Order 2015](#) (SI 2015/471)

<sup>13</sup> See DCLG, [Local Audit](#), June 2014, pp.57-65; DCLG, [Consultation on a draft transparency code for parish councils with a turnover not exceeding £25,000](#), March 2014

<sup>14</sup> A 'parish meeting' is a statutory annual meeting in each parish: the term does not refer to the meeting(s) of parish councils. Some parishes have no separate council, only a parish meeting with an elected chair.

### 3. Pay policy statements

Sections 38-43 of the [Localism Act 2011](#) require local authorities to prepare and publish a pay policy statement for each financial year. This must be approved by a resolution of the authority before it comes into force. The statement must set out the authority's policy on remuneration of its chief officers – including any policy on bonuses and performance-related pay – and remuneration of its lowest-paid employees. This requirement applies in England and Wales.

Alongside the authority's policy on the pay of its highest and lowest earners, the 'pay multiple' – the ratio between the highest salary and the median salary of the local authority's workforce – should also be published.<sup>15</sup> The 2011 Act does not require individuals' salaries to be published, but schedule 1 of the [Accounts and Audit \(England\) Regulations 2015](#) (SI 2015/234) requires publication of the number of staff paid over £50,000, in salary bands of £5,000, and individual (anonymised) salaries of staff paid over £150,000.<sup>16</sup> Government guidance on pay policy statements states that "authorities should consider how the information in their pay policy statements fits with that data on pay and reward that they publish separately".<sup>17</sup>

The DCLG guidance, applying to England, also recommends that salaries of over £100,000 should be subject to a vote in full council; that information about chief officers' remuneration should be included in the pay policy statement; and that the pay policy statement should be accessible on the local authority's website.<sup>18</sup> The guidance also states:

Each local authority is an individual employer in its own right and has the autonomy to make decisions on pay that are appropriate to local circumstances and which deliver value for money for local taxpayers. The provisions in the Act do not seek to change this or to determine what decisions on pay should be taken or what policies that individual employing authorities should have in place. Rather, they only require that authorities are more open about their own local policies and how their local decisions are made.<sup>19</sup>

Similar guidance was issued by the Welsh Government in February 2014.<sup>20</sup>

<sup>15</sup> DCLG, [Local Government Transparency Code](#), 2015, paragraphs 51-52.

<sup>16</sup> These requirements are not found in the equivalent [Accounts and Audit \(Wales\) Regulations 2014](#) (SI 2014/3362).

<sup>17</sup> DCLG, [Openness and accountability in local pay: guidance under section 40 of the Localism Act](#), 2012, p. 7

<sup>18</sup> *Ibid.*, p.6

<sup>19</sup> *Ibid.*, pp.4-5

<sup>20</sup> See Welsh Government, [Pay accountability in local government in Wales](#), 2014



## 4. Code of recommended practice on local authority publicity

The [Code of Recommended Practice on local authority publicity](#) is published under section 4 of the *Local Government Act 1986*. The latest version was published on 31 March 2011.<sup>21</sup> It applies to England only.

The Code recommends that any publicity should be lawful; cost effective; objective; even-handed; appropriate; have regard to equality and diversity; and be issued with care during periods of heightened sensitivity (including election periods). Specifically, it states:

Local authorities should not publish or incur expenditure in commissioning in hard copy or on any website, newsletters, newsheets or similar communications which seek to emulate commercial newspapers in style or content. Where local authorities do commission or publish newsletters, newsheets or similar communications, they should not issue them more frequently than quarterly, apart from parish councils which should not issue them more frequently than monthly.<sup>22</sup>

As of 30 March 2014, the Secretary of State has had the power to direct local authorities to comply with the Code, and to make secondary legislation requiring compliance.<sup>23</sup> The Secretary of State is not required to believe that an authority is failing to comply with the Code in order to give a direction.

A consultation on the power to direct was published in April 2013, after it had been added to the *Local Audit and Accountability Bill*, entitled [Protecting the independent press from unfair competition](#). The [response](#), published on 21 May 2013, noted the debate over the effects of local authority publications on local newspapers:

Whilst accepting that local newspapers are under commercial pressure, it is suggested that this is due to a variety of developments changing the reading habits of the public. In the Government's view, these arguments do not address the simple fact that if revenues are siphoned off from a fragile industry by taxpayer-backed competition, this necessarily puts the continuation of that industry at risk, in the case of local newspapers an industry vital to a healthy local democracy.<sup>24</sup>

The powers of direction in the 2014 Act were introduced in response to accusations that some local authorities were publishing newsheets weekly, fortnightly, or monthly, and that this constituted unfair competition with local newspapers. These concerns led to the Secretary of State sending eleven local authorities [proposals to direct them to comply with the Code](#), on 26 September 2014. On 6 March 2015,

<sup>21</sup> See DCLG, "[Tough new publicity rules for councils take effect today](#)", 1 April 2011. See also the report of the Communities and Local Government Select Committee, [Proposed Code of Recommended Practice on Local Authority Publicity](#), HC 666 2010-12, 24 January 2011.

<sup>22</sup> DCLG, [Code of recommended practice on local authority publicity](#), 2011, p.5

<sup>23</sup> The powers are in section 39 of the *Local Audit and Accountability Act 2014*. No regulations have been made under these powers at the time of writing.

<sup>24</sup> DCLG, [Protecting the independent press from unfair competition: Government response to the consultation](#), May 2013, p.8

[Greenwich was sent a further letter](#) directing it to comply with the Code; similar letters to Hackney, Newham and Waltham Forest were sent on 11 March 2015.<sup>25</sup> After launching a judicial review of the Secretary of State's decision to direct, Greenwich agreed in January 2016 to publish their newspaper only four times a year as of June 2016. Further letters were sent to Hackney, Newham and Waltham Forest on 2 December 2016, directing them to comply with the Code by 31 January 2017. The letters also included details of the discussions between the Government and the authorities concerned. Further directions were issued to Hackney and Waltham Forest in November 2017.

The Welsh Government initially published a code of recommended practice on local authority publicity, under the 1986 Act, in 2001. This was [revised, following consultation](#), in 2014. The power to direct authorities to comply with the Code does not apply in Wales.

## 4.1 Statutory notices

The debate over the frequency of publication of local authority newsheets became associated with debates regarding the future of statutory notices. Statutory notices are legal requirements, located in many different Acts, to publish information about specific matters of public interest. Examples include planning applications; details of councillors' allowances; and the creation and closure of footpaths.

In the last few years, there has been pressure from the Local Government Association and others to repeal these provisions *en bloc*, substituting them with provisions permitting councils to choose to publish the relevant information in online form.<sup>26</sup> It has been suggested that this change would save several million pounds across England. This issue was raised in debates on the [Local Audit and Accountability Bill 2013-14](#). Lord Tope tabled an amendment to the Bill which would have removed any requirement to publish a statutory notice in a newspaper, instead leaving the best method of publishing statutory notices to the judgement of the local authority.<sup>27</sup>

In July 2013, the *Local Government Chronicle* reported that the Secretary of State, Eric Pickles, had told a private meeting at the LGA conference that the requirement to publish statutory notices in newspapers would be ended "in two years' time".<sup>28</sup> DCLG announced in July 2014 that some pilots of future methods for statutory notice publication would take place, confirmed via an invitation issued in December 2014.<sup>29</sup> The aims of the pilots were to be to increase the

<sup>25</sup> See also House of Commons [HCWS337 2014-15](#); [HCWS364 2014-15](#). In late 2014 the Secretary of State appointed commissioners to run a number of services in Tower Hamlets, following allegations of poor practice in grant-making and accounting procedures.

<sup>26</sup> See, for instance, [written evidence submitted by the Local Government Association](#) to the Deregulation Bill 2013-14, DB13, March 2014. In this submission, the LGA estimated the cost of statutory notices at £26 million per year.

<sup>27</sup> [HLDeb 26 Jun 2013](#) cGC233

<sup>28</sup> Kaye Wiggins, "End to statutory notices in sight", [Local Government Chronicle](#), 12 July 2013

<sup>29</sup> DCLG, "[Innovation to bring statutory notices into the 21<sup>st</sup> century](#)", 9 July 2014

## 11 Local government transparency in England

accessibility of notices; increase their demand and use; increase their visibility; reduce costs; and obtain good evidence about costs, public demand, and the alternatives available.<sup>30</sup>

The successful bidders were announced in March 2015, and the pilots are to run through to November 2015. Many of the bidders were consortia formed between local councils and media organisations. [A list can be found on the DCLG website.](#)

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<sup>30</sup> See DCLG, [Statutory Notices for the 21st Century: Invitation to express an interest in becoming a pilot](#), December 2014

## 5. Filming and social media in council meetings

In July 2014, regulations were made obliging local authorities to permit members of the public to film and use social media in council meetings. These were the [Openness of Local Government Bodies Regulations 2014](#) (SI 2014/2095).<sup>31</sup> These were made under section 40 of the *Local Audit and Accountability Act 2014*, and came into force on 6 August 2014.

These regulations extend to England only. They require all local authorities, including parish and town councils, to permit filming, blogging and use of social media and to make reasonable provision for people wishing to do these things. Authorities are not required to make provision for activities that would disturb meetings e.g. live commentary on the proceedings.

### 5.1 The previous regime in England

Previously, whilst many councils permitted filming, tweeting and blogging from their meetings, others did not. The relevant legislation was section 100A of the [Local Government Act 1972](#):

Nothing in this section shall require a principal council to permit the taking of photographs of any proceedings, or the use of any means to enable persons not present to see or hear any proceedings (whether at the time or later), or the making of any oral report on any proceedings as they take place.

Thus, councils were not obliged to allow filming, but were free to permit it. The 1972 Act did not oblige councils to ban filming. Neither were data protection legislation or health and safety requirements sufficient grounds in themselves to prevent a council meeting from being filmed.<sup>32</sup>

The Government had also issued guidance, in 2011, stating that filming should be permitted:

Council meetings are public meetings. Elected representatives and council officers acting in the public sphere should expect to be held to account for their comments and votes in such meetings. The rules require councils to provide reasonable facilities for any member of the public to report on meetings. Councils should thus allow the filming of councillors and officers at meetings that are open to the public.

The Data Protection Act does not prohibit such overt filming of public meetings. Councils may reasonably ask for the filming to be undertaken in such a way that it is not disruptive or distracting to the good order and conduct of the meeting. As a courtesy, attendees should be informed at the start of the meeting that it is

<sup>31</sup> See also the short debate on the regulations in the House of Lords: [HLDeb 1 Jul 2014](#) cGC229-237

<sup>32</sup> See '[Access to Meetings](#)', letter from DCLG, 23 February 2011; DCLG, [Lights, Camera, Democracy in Action](#), 2013

being filmed; we recommend that those wanting to film liaise with council staff before the start of the meeting.

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Similarly under the new rules there can be social media reporting of meetings. Thus bloggers, tweeters, facebook and YouTube users, and individuals with their own website, should be able to report meetings. You should ask your council for details of the facilities they are providing for citizen journalists.<sup>33</sup>

Separately, in 2012 the Government closed a legal loophole which meant that local authority cabinets were only required to admit members of the public to certain meetings.<sup>34</sup>

### 5.2 Filming council meetings: Scotland, Wales and Northern Ireland

The *Local Audit and Accountability Act 2014* only gives powers to make such regulations in England. In Scotland, Wales and Northern Ireland, the legal situation is broadly the same as that in England before the 2014 Act:

- **Wales** is still covered by the provisions of the 1972 Act (see previous section). However, the National Assembly's [Recommended Code of Practice on Local Authority Publicity for Wales](#) encourages councils to permit filming:

Local authorities are encouraged to make arrangements for their proceedings to be made more accessible to the public by allowing them to be broadcast. This might be achieved through the authority itself carrying a live stream or recordings on the council's website or through some other internet-based medium. The Welsh Government encourages local authorities to use social media to communicate with the public.

There have been well-publicised cases of members of the public recording and broadcasting the proceedings of council meetings and the Welsh Government would urge local authorities to look favourably on this, provided those attending the meeting are aware this is taking place and other members of the public are not distracted or disturbed unduly by the process.<sup>35</sup>

In 2013, the Welsh Government provided £40,000 to each of the 22 principal councils in Wales to allow them to webcast their meetings.

- In **Scotland**, the relevant legislation is still section 50A of the *Local Government etc. (Scotland) Act 1973*, which is identical to section 100A of the 1972 Act in England and Wales. The Scottish Government has no plans to change this.
- In **Northern Ireland**, there has never been an equivalent provision to section 100A of the 1972 Act in England and Wales. Section 42 of the [Local Government Act 2014](#) (an Act of the Northern Ireland Assembly) states that councils are not required to

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<sup>33</sup> DCLG, *Your council's cabinet: going to its meetings, seeing how it works*, Jun 2013, p. 6

<sup>34</sup> See the *Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012* (SI 2012/2089).

<sup>35</sup> Welsh Government, [Code of Recommended Practice on Local Authority Publicity for Wales](#), 2014, p. 8

permit filming and photography: however, they are required to allow the use of social media, by councillors and others present at council meetings.

Section 47 of the [Local Government Act 2014](#) requires a council to make an audio recording of all full council meetings and to place it on its website for two years. This requirement does not apply to committee meetings.

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