Strengthening Local Government Transparency

**Local Government Association Response
July 2016**

Purpose

The Government is consulting on extending the scope of the Local Government Transparency Code 2015 and proposes changes in the way local authorities record details of their land and property assets, publish information about procurement, their contracts and the delivery of some of their services. The proposal includes new requirements about information on parking charges and enforcement, the way transparency data is published and presented, and makes recommendations that local authorities publish information about their dealings with small and medium-sized enterprises. Government is seeking views on the proposed changes, any benefits or disbenefits and the likely additional costs to local authorities for meeting the requirements.

The Local Government Association (LGA) has sought views from its members which informed our response.

About the LGA

The LGA is the national voice of local government. We work with councils to support, promote and improve local government.

We are a politically-led, cross party organisation, which works on behalf of local authorities to ensure local government has a strong, credible voice with national government. We aim to influence and set the political agenda on the issues that matter to councils so they are able to deliver local solutions to national problems.

The LGA covers every part of England and Wales, supporting local government as the most efficient and accountable part of the public sector.

Our position

Local government supports local transparency to meet local needs and demands. It is already one of the most transparent part of the public sector when it comes to publishing information, being accountable to, and engaging with its residents .[1]

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[1] Local Transparency Programme http://www.local.gov.uk/local-transparency;jsessionid=845064477C4DD2FF84834B6C48288EF0.tomcat1

The Transparency Code sets out to make defined information available to the public in order to "place more power in citizen's 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". Through decentralisation, policies and service delivery plans are set locally and may vary considerably from region to region. To make sense and be effective, transparency should be placed into local context and linked to those plans, so that local authorities are accountable to their communities.

The Code already sets out significant requirments for local authorities to publish information. The new demands being suggested by this consulatation are in danger of introducing burdens to local authorities which add little or no value. Councils already publish a huge amount of information that goes beyond the current Code and they are best placed to decide what additional information should be published based on local needs and demands.

The proposed changes to the Transparency Code ask for the centralisation of data. In respect of some of the proposals it is not clear whether the changes relate only to transparency or form part of a wider public sector transformation to make it easier in particular for businesses and national organisations to make use of information. Centralisation of data will represent an additional burden for local government which will require compensation.

We are also concerned that local transparency is seen in isolation and applied to local authorities despite the fact most services are now delivered and commissioned in partnership with other local public sector organisations, the private and voluntary sector. For local transparency to work effectively the requirements should apply to all local public sector organisations including the local health and emergency services in the same way as it applies to local government.

Extending the scope set out in the consultation will, if adopted, place some new burdens on local government. The extent of the new burdens is difficult to assess without further detail about the specific requirements.

Our overall position about some specific changes to the Code are summarised below.

Land Assets:
The LGA and Cabinet Office Government Property Unit, through the One Public Estate Programme, already work with local authorities to support them in collating and publishing land and property asset information to help local authorities to make the most from their estates and to release public land for building more homes[2]. The publication of data in a consistent way through the electronic Property Informaiton Management Sysem (ePIMS) will help to get a better understanding of what land is available but should not introduce an

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[2] The budget 2016 referred to the housebuilding programme under para
2.300 Local Authority land – Local Authorities will collaborate with central government on a local government land ambition, working with their partners to release land with capacity for at least 160,000 homes, helping to support the government's policy of regenerating council housing estates. The government will continue to work with the sector to look for opportunities to go further, with a view to raising the ambition.

additional burden to local authorities by duplicating information that is already published elsewhere.

Procurement:
Local authorities already publish information about contracts through their websites and regional portals to meet their local and regional procurement and commissioning requirements. The LGA is supporting councils in publishing data in a consistent and meaningful way and has worked with the open data community and local government to develop a schema for publishing standardised contract and procurement information. We have published practical guidance on publishing information but leave it to local authorities in how far they want to adopt the guidance on a voluntary basis.

The proposal for central publication of procurement information based on what is required in the Transparency Code will be of limited value to residents and communities. Councils have different approaches to local economic growth and social value, and procurement is not just about the cheapest price. It is about the contribution that procurement can make to achieving the organisation's corporate objectives, outcomes for people etc as recognised in the Best Value Duty and the Social Value Act. The LGA has published a National Procurement Strategy for local authorities to procure goods and services more effectively and efficiently.[3]

Contracts:
Local government is already the most efficient part of the public sector. In the period from 2010-11 to 2015-16 the National Audit Office has estimated that councils have seen a 25 per cent real terms reduction in income. Through innovation and vigilance on providing value for money councils have been able to maintain the quality of key services whether they have been provided in-house or through external providers. Councils regularly review their services to ensure that they are providing value for money. They do this through benchmarking clubs, options appraisals and by gathering soft information on markets. Much of this information is publicly available on councils' websites and on platforms such as LGInform[4].

It is essential that councils are given the freedom to continue to drive efficiencies through these channels taking into account cost and importantly other factors including quality and social value. A top down approach which seeks to reintroduce a process very similar to the discredited compulsory competitive tendering regime will not add to the quality of local decision making and will be expensive for councils and private sector companies. The government's proposal for local authorities to reassess the costs and benefits of in-house services against provision by private firms goes beyond transparency and exceeds the remit of the code[5]. Introducing a new process for market testing of in-house services would require a different parliamentary approval's process then simply changing the Code.

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[3] National procurement strategy http://www.local.gov.uk/web/lg-procurement
[4] LG Inform http://lginform.local.gov.uk/
[5] See 2016 Budget under 1.256:
government procurement – the public sector can drive competition via open procurement practices. The government wants to ensure the £60 billion local authorities spend to procure services is done in an efficient and competitive way. **The government will consult on new rules requiring local authorities to be transparent about the cost of the in-house services they provide,** and whether there could be savings from using competitive external providers

Parking
Most of the parking information provision is already covered under Section 55 of the Road Traffic Regulation Act 1984 and data collection should not place an additional burden on local authorities as long as the requirements of the Code are the same as stated in the statutory guidance.

Method of Publication and Compliance with the Code
The LGA is supporting councils in publishing data in a consistent and meaningful way where it helps local authorities to share and compare information and make better use of it. Openness and consistency of data supports innovation and the transformation of services[6]. We have published [practical guidance on publishing information](#) under the transparency code but leave it to local authorities in how far they want to adopt the guidance on a voluntary basis. We welcome further discussions with local communities and government about how to further improve local openness and consistency of data to help transform services without placing an additional unfunded burden on local authorities.

Compliance with the Code should be aligned to the Freedom of Information Act.

Small and Medium Sized Enterprises
Local authorities, through their procurement strategies, set their own criteria for procuring goods and services which are linked to their corporate strategies and local needs and demands. For many, supporting SMEs, helps foster their local economic growth and meeting local needs and this should not be constrained by government.

Further details answering the questions of the consultation are provided in the Appendix.

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[6] Local open data case studies: http://www.local.gov.uk/web/guest/local-transparency/-/journal_content/56/10180/4049888/ARTICLE

Appendix: Detailed responses to the questions

LAND

Questions 1 to 4 related to publishing data on electronic Property Information Management System

Views from local authorities vary whether details of land and property assets should be recorded in a consistent way on ePIMS. Some authorities said if data is recorded in a consistent way in the same place, it enables wider access and greater sharing of data with citizens, business and other public organisations giving the opportunity for potential future joint ventures.

Other authorities argued that the information can be accessed already by local people from their websites and that councils structure their property databases in various different ways to suit their business needs. Recording the data in a central register to a specific format may result in losing local context and missing some specific information or meaning relevant to the specific land and property portfolio. Furthermore, data would become unreliable on ePIMS if published annually. However, to update more frequently would become burdensome especially if two different systems are supported.

The LGA and Cabinet Office Government Property Unit through the One Public Estate Programme already work with local authorities to support them in collating and publishing land and property asset information to help authorities to make the most from their estates and to release public land for building more homes[7]. The LGA has published more detailed guidance on how and what to publish under the current Local Government Transparency Code in a consistent and meaningful way[8] .

The publication of data in a consistent way through ePIMS will help to get a better understanding what land is available but should not introduce an additional burden to local authorities by duplicating information that is already published elsewhere.

Publishing data in a consistent way on ePIMS would create an additional burden to local authorities in different ways as
- the current ePIMS system would not meet all the needs for local property management and hence dual running of systems would be required.
- Data is held in different formats and structures in local databases which do not easily translate into the ePIMS structure. Some systems may not hold the data required in ePIMS.

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[7] The budget 2016 referred to the housebuilding programme under para
2.300 Local Authority land – Local Authorities will collaborate with central government on a local government land ambition, working with their partners to release land with capacity for at least 160,000 homes, helping to support the government's policy of regenerating council housing estates. The government will continue to work with the sector to look for opportunities to go further, with a view to raising the ambition.

[8] Guidance for publishing information under the Local Transparency Code
http://www.local.gov.uk/documents/10180/11655/Transparency+guidance+2014+-+land+assets+parking+20141201.pdf/36c495a3-9c3a-4acb-8401-4718494e78fb

- Extracting and converting data from local databases to meet the ePIMS excel spreadsheet standard or rekeying data into ePIMS would be an additional burden.

Authorities proposed for government to work with suppliers of existing systems to provide extracts or uploads that meet ePIMS compliance and for ePIMS to directly harvest data from local authority websites. This would also ensure that data in ePIMS is consistent with data held locally.

Questions 5 to 8 relating to publishing additional land and property information:

Local authorities expressed concern about the government's proposal to publish additional information on e-PIMS. These concerns include:

- Some authorities already publish in hectares the amount of land they own as they hold the information digitally. However, a proportion of local authorities only hold this information in paper records and would have to digitise the boundaries of land to calculate the extent. One authority indicated that the information is held in thousands of acquisition orders which would need to be investigated for each property to record the exact size of a piece of land. Land may have been subdivided and partially sold or leased off which makes the detailed recording in digital form costly. Mandating the publication of this data may add a huge financial burden to some authorities and needs to be funded. For this reason, the existing code only recommends local authorities to publish the information

- Some local authorities were concerned about publishing information on land that is surplus to requirements as this my impact on the commercial interest to sell or lease the property in the future.

- The Housing and Planning Act 2016 makes provision for councils to prepare, maintain and publish a register of brownfield (previously developed) land that is suitable for housing. The register will comprise a standard set of information, including location, current planning status and how many homes can be accommodated, which will need to be regularly reviewed and updated by councils. However, holding the information in two separate registers (ePIMS and the brownfield register) increases the risk of mismatches and differences in currency. Cross referencing the brownfield register to individual council properties for publication on ePIMS require additional resources to match and check the data with no extra benefit to the council. We believe that it is sufficient if the data is published in the brownfield register only. We would like to see a justification from government as to why the additional publication of this information is required on ePIMS while it can possibly be more cheaply analysed matching the two data sources nationally.

- Publishing the floor area for properties of 10,000 square foot or larger, the number of floors and the number of car parking spaces would add an additional burden as many authorities do not hold this information,particularly if properties are leased out. We do not understand why there is a sudden switch to Imperial measurements when the extent of the land is to be in hectares.

PROCUREMENT

Questions 9 to 12 related to procurement

Local authorities are already required to publish contracts information and they do this through their websites, regional or national portals to meet their local and regional procurement and commissioning requirements[9]. The LGA is supporting councils in publishing data in a consistent and meaningful way and have worked with the open data community and local government to develop a schema for publishing standardised contract and procurement information taking into consideration the open contract standards approach. We have published practical guidance on publishing information but leave it to local authorities in terms of how far they want to adopt the guidance on a voluntary basis. Local authorities see the benefit of transparency and publication of procurement information in a consistent format as this maximises its usefulness for the purposes of analysis.

The LGA has published a National Procurement Strategy for local authorities to procure goods and services more effectively and efficiently.[10] We argue that procurement is not just about the cheapest price. It is about the contribution that a procurement can make in achieving the organisation's corporate objectives, outcomes for people etc as recognised in the Best Value Duty and the Social Value Act. The criteria for judging the value for money of a contract is much wider than simply the cost of services and includes quality, social value, anticipated outcomes for the service user and other local priorities that will differ between local authorities. This makes it difficult to compare like-for-like, which could be misleading for the public.

With differing corporate objectives and procurement priorities between local authorities it is difficult to see how central publication of procurement information can achieve the stated aim of detecting fraud and bribery. Prevention hinges on having sufficiently robust procurement processes, good governance and checks and balances in place to ensure oversight of the entire procurement process[11].

Without knowing the detail of what will be required, local authorities find it difficult to assess fully any costs or savings. Currently, the process for publication of procurement data is automated for some local authorities, and changes to the outputs will require some action, including from suppliers, and the costs for this are unknown. To be successful the key software providers would need to support this initiative with an automated upload.

Norfolk County Council received open data breakthrough funding for publishing procurement data in a consistent way and created a dashboard to enable greater analysis of the data. The Council, businesses and the public are able to gain new insights; giving them greater understanding of the council's spending, procurement and contracting. The project received

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[9] One year on survey of the National Procurement Strategy http://www.local.gov.uk/web/lg-procurement/pcr-2015/-/journal_content/56/6281932/7719870
[10] National procurement strategy http://www.local.gov.uk/web/lg-procurement
[11] Public Finance: Buying into Fraud: the procurement problem http://www.publicfinance.co.uk/feature/2016/06/buying-fraud-procurement-problem

£40K in funding of which approximately a quarter was spent on extracting, cleaning and matching data so that they could be loaded into the dashboard[12].

CONTRACTS

Questions 13 to 19 related to contracts and the delivery of some services

Local government is already the most efficient part of the public sector. While councils saw an estimated 25 percent reduction in income over 5 years they have been able to maintain the quality of key services whether they have been provided in-house or through external providers. Councils regularly review their services to ensure that they are providing value for money. They do this through benchmarking clubs, options appraisals and by gathering soft information on markets. Much of this information is publicly available on councils websites and on platforms such as LGInform[13].

It is essential that councils are given the freedom to continue to drive efficiencies through these channels taking into account cost but also other factors including quality and social value and outcomes for the service user. A top down approach which seeks to reintroduce a process very similar to the compulsory competitive tendering regine will not add to the quality of local decision making and will be expensive for councils and private sector companies. The government's proposal for local authorities to reassess the costs and benefits of in-house services against provision by private firms goes beyond transparency and exceeds the remit of the code[14] and requires different parliamentary approval than simply changing the Code.

The majority of authorities that responded do not agree with a prescriptive top-down approach about contracts and the delivery of services for the following reasons:

- The proposal in paragraph 35 falls outside the enabling powers in section 2 of the Local Government, Planning and Land Act 1980. Councils can be required to publish information about the discharge of their functions. But the code cannot be used to require them to "reassess the costs and benefits of in-house services against provision by private firms...every 7 years". The proposal exceeds the remit of the transparency code. We urge that Government reconsiders whether it has the power to include this requirement in the Code. If the Government wants to reintroduce a compulsory competitive tendering regime, then it needs explicit authorisation from Parliament.
- The prescriptive top-down approach proposed in this consultation is not consistent with passing powers for local decision making from Central Government to Local Government. It is likely that the increasing Devolution taking place in Local Government, often including partners from other public sector organisations, will lead

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[12] Norfolk County Council Enhanced spend data evaluation report:
http://www.local.gov.uk/documents/10180/7206578/NCC+Local+Government+Breakthrough+Funding+final+report.pdf/6b2e3c91-3bf2-4bb0-bdda-7f1505c1e89e

[13] LG Inform http://lginform.local.gov.uk/
[14] See 2016 Budget under 1.256:
government procurement – the public sector can drive competition via open procurement practices. The government wants to ensure the £60 billion local authorities spend to procure services is done in an efficient and competitive way. **The government will consult on new rules requiring local authorities to be transparent about the cost of the in-house services they provide,** and whether there could be savings from using competitive external providers

to new ways of sharing services and new governance structures. We would therefore expect that such a regime to apply to all public bodies including central government departments, NHS and other public bodies (proportionately, far more services are provided in house by other public bodies than by councils).

- Many authorities run a very mixed model of service delivery such as shared services, or local authority trading companies. Some clarity and more detail would be required around publishing information for alternative delivery models than in-house services.

- External auditors each year provide a value for money judgement as part of the final accounts audit and we believe that this provides sufficient assurance for councils' local taxpayers regarding the service delivery arrangements that they have made.

- Key decisions in relation to choices about in-house or external delivery of services is already published locally in Cabinet papers in a format that has been devised locally.

Authorities vary in size and in how services are delivered in packages so a standard approach to assessing in-house services and setting a threshold for the value of services would be difficult to apply. Local authorities provide over 800 services which are packaged in different ways. It will be impossible to define consistent service packages for comparison. Furthermore, in house service provision does not involve contracts as a council cannot enter into a contract with itself.

It is clear that this requirement will impose an additional burden and, as it is unlikely that services as diverse as, for example, refuse collection and HR will have been reviewed using a consistent methodology. Reassessing and market testing the value of a service every 7 years even if limited to services over £ 500k in value could potentially be very burdensome with the potential costs running into millions of pounds. It is impossible to more closley quantify the "additional burden" that the requirements will impose unless the scope of the proposal is known.

PARKING

Questions 20 to 23 relating to publishing information about parking charges and enforcement.

Under Section 55 of the Road Traffic Regulation Act 1984 local authorities already provide most of the parking information proposed in the Code to the Department for Transport (DfT). The DfT's statutory guidance[15] to local authorities on civil enforcement on parking contraventions based on the Traffic Management Act 2004 prescribes a list of information that should be provided (not all is mandated) in an annual report. The current government consultation proposes to make mandatory the publication of the list of "what enforcement authority annual reports should include". The LGA generally encourages transparency to keep the public informed and to reduce FOI requests about parking. We have produced guidance for practitioners to help with publishing parking data.

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[15] Statutory guidance on to local authorities on civil enforcement on parking contraventions
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/479849/final-statutory-guidance.pdf

The majority of local authorities that responded agree to the publication of data as long as the requirements of the Code are the same as stated in the statutory guidance. Currently the timescale for publication / provision of data in the Code (one month after year end) differs to Section 55 of the Road Traffic Regulation Act 1984 which allows data to be compiled into an annual report up to six months after year end. The two statutory legislation should be complimentary.

Some authorities raised concerns of publishing additional details about penalty charge notices currently not covered in the statutory guidance as it would introduce an extra cost to collate the number of penalty charges notices (PCNs) against which an information or formal representation was made and those cancelled after appeal. To estimate the extra cost needs a more deailed specification of requirements in the Code.

Further clarity is also required to specify:

- what is meant by number of penalty charge notices written off for other reasons (for example an error by the civil enforcement officer or driver untraceable). There is a difference between a cancellation and a write off and authorities are reporting these differently. A cancellation is a PCN that is cancelled for any reason prior to it being registered as a debt. A write off would be any PCN that is "cancelled" that has been registered as a debt. On this basis the majority of write offs are due to bailiffs (EAs) being unable to collect the debt.

- whether a case that has an informal and formal representation be counted as one or two

- whether the case of a PCN can span a considerable amount of time and cross financial years. An example would be where a PCN could be issued at the end of March and thereby appear unpaid in the financial year report when it is in fact paid at the discounted rate at the beginning of April.

METHOD OF PUBLISHING

Questions 24 to 30 relating to the way transparency data is published and presented

Overall, local authorities responded positively to the proposal publishing transparency information and presenting it in a way that is clearly signposted and easy to navigate. Many local authorities have open data pages for publishing their data and have developed platforms for doing this in an efficient and consistent way.

One authority in favour of consistency to publishing data said that
> "We have found the landing page makes publication of the information easier through a set administration process. It reduces queries about location of datasets and encourages additional publications which reduce the need for services to respond to FOIAs."

Local authorities welcome the work carried out by the LGA in supporting councils to publish data in a consistent and meaningful way where it helps local authorities to share information and make better use of it. The LGA have created local open data pages and tools for councils

to access and publish information, have developed [practical guidance on publishing information](#) under the transparency code and offer online learning modules to help councils to publish open data.

Around 100 authorities already publish their data through our tools [16]on a voluntary basis as they see the benefit of sharing their data with others. However, we leave it to local authorities in how far they want to adopt the guidance on a voluntary basis. Openness and and consistency of data supports innovation and the transformation of services as demonstrated in many open data case studies[17].

Some local authorities expressed various reservation about publishing data to a central place as

- Through decentralisation and localism, policies and service delivery plans are set locally and may vary by local authority and by region. For open data to make sense, it should be placed into local context.
- Data will be easily outdated unless it is harvested from the page where local authorities publish it.
- Publishing data in a local and central place may duplicate publishing costs unless there are better procedures in place to harvest the data and the burden for publishing consistent data is funded.
- There is currently little evidence for user demand at national level. The remit of local authorities is to meet local needs and not the demands of multinationals. If the data is already available in a consistent format then the cost for combining the data should be borne by organisations who want to use it.

There are also barriers and costs associated with providing data in a consistent format. The most common are the lack of resources and inflexible systems that do not allow to extract data easily in prescribed formats. The LGA received funding from central government in 2014 to run a pilot scheme[18] to incentivise local authorities to publish planning applications, public conveniences and licensed premises in a specific format to be harvested in a central place on the local government open data pages. Ninety authorities took part and 240 datasets were as a result centrally published. Local authorities received £2000 per dataset they published. Yet, 21 out of 111 councils that originally participated in the scheme withdrew due to barriers related to data quality, senior buy-in and cuts in staff resources. Further details and feedback about the incentive scheme have been recorded in the open data incentive scheme user survey report[19].

COMPLIANCE

Local authorities are in favour of a light touch approach to measuring compliance through self-assessment and improvement, underpinned by central support and guidance to minimise costs and resource demands.

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[16] Local open data pages: http://opendata.esd.org.uk
[17] Local open data case studies: http://www.local.gov.uk/web/guest/local-transparency/-/journal_content/56/10180/4049888/ARTICLE
[18] Local Government Incentive Scheme http://incentive.opendata.esd.org.uk/ and evaluation report http://www.local.gov.uk/documents/10180/11655/LG+Open+Data+Incentive+Scheme+Outcomes+Report+May+2015.pdf/c21a5621-df57-42fa-ba8a-9b6891699014
[19] open data incentive scheme user survey report http://e-sd.org/FYPmk

The Freedom of Information Act already provides a route for enforcement if an authority is deliberately non-compliant. There is no further enforcement required.

SMALL AND MEDIUM SIZED ENTERPRISES

Questions 32 to 36 related to recommendations to publish information about local authority dealings with small and medium-sized enterprises (SMEs)

As part of the current Local Government Transparency Code local authorities already identify contracts and spending that goes towards SMEs. Many local authorities already publish their dealings with SMEs especially if it forms part of their procurement strategy.

However, procurement rules are a local matter and should not be prescribed top down. Each local authority sets their own criteria and priorities for procurement and awarding contracts often linked to local authorities corporate strategies. Depending on the procurement rules, other criteria may be considered alongside SMEs hence local authorities select the best organisation to deliver the required outcomes rather than aiming to achieve targets set by central government. As each local authority has different criteria, publishing of SME spend should be recommended and not mandated. Local authorities should be left to publish data that they consider relevant to their own localities.

Local Authorities have an aspiration that spend should be with local SMEs – this is in keeping with the localism agenda and the consistent theme within all devolution agreements that the proposal to devolve decision making will benefit the local economy by growing local gross value added (GVA) of goods and services produced in an area.

Furthermore, it is difficult to identify SMEs that are subcontracted by larger suppliers. This leads to a misrepresentation of work with SMEs, does not add value and detracts from delivery of better outcomes for local taxpayers.

Most councils publish data on the time it takes to pay invoices. It is not necessary to add a specific requirements for SMEs as all suppliers should be treated equally. Introducing a system of recording for a specific sector only would add substantial burden for recording and analysing the data.

None of the recommendations should therefore be mandated for the reasons given above.

Currently the definition of SMEs in the Code differs from the European definition which is more widely used in government policy[20]. We therefore recommend that a consistent definition for SMEs is used in government policy and tools and that the definition in the Code is adjusted to the most commonly used European definition. For example the Crown Commercial services is using its own definition which causes confusion when organisations describe themselves as SMEs.

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[20] SME definitions http://blog.thecompanywarehouse.co.uk/2012/07/31/what-is-an-sme/

For more information please contact

Gesche Schmid
Programme Manager Data and Transparency
Local Government Association

Local Government House
Smith Square
London SW1P 3HZ

Email: transparency@local.gov.uk

Contact the Local Government Association
Telephone: 020 7664 3000
Email: info@lga.gov.uk
Website: www.local.gov.uk

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