

Department for Communities & Local Government, Payments by parish and community councils and charter trustees - consultation

This consultation document was circulated to Councillors over the summer period due to its release and response dates.

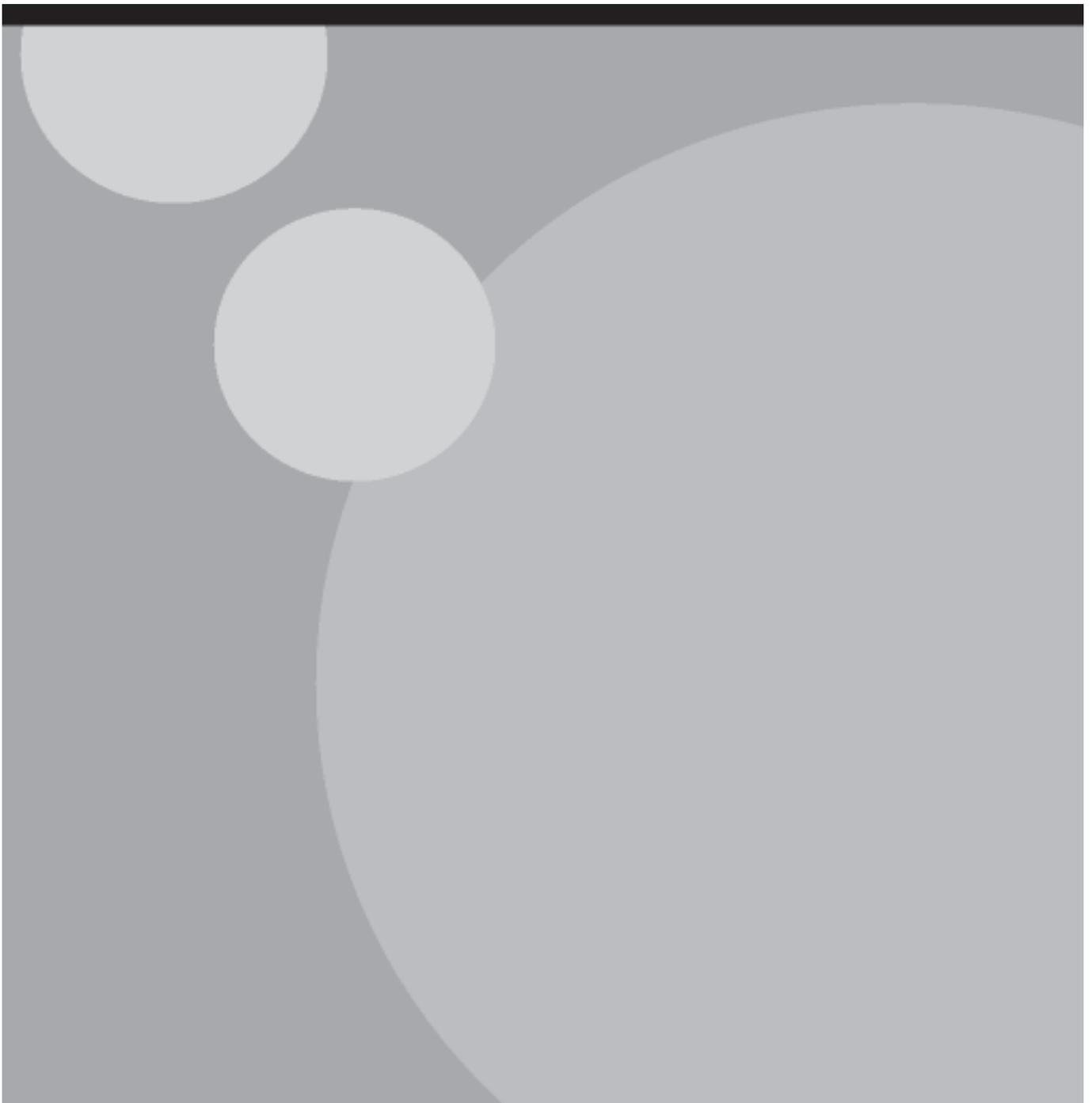
Comments were requested from Councillors so that these could be made into a response by the Clerk on behalf of the Council.

The Clerk only received one response back and therefore did not respond back to DCLG with any comments or observations.



# Payments by parish and community councils and charter trustees

## **A Consultation Paper**





Payments by parish and community councils  
and charter trustees

**A Consultation Paper**

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# Table of contents

Ministerial foreword

Summary of proposals

1. Introduction
2. Background to the policy and legislation at issue
3. The proposals
4. Legal analysis

Annex A: Legislative Reform Orders – scope and procedures

Annex B: List of Consultees

Annex C: Response Form

Annex D: Legislative Reform Orders – Parliamentary consideration

Annex E: Partial Impact Assessment

# Ministerial foreword

Parish councils have a highly significant role in the Government's agenda for promoting localism and open public services. It is right therefore that the Government should help them take on this new role by seeking to remove outdated and cumbersome legal controls wherever possible.

I am happy to be presenting this proposal to remove one such piece of red tape. The "two signature rule", requiring all parish council cheques to be signed by two councillors, puts barriers in the way of them using modern electronic methods of payment and adopting proportionate controls to authorise payments. This paper asks for your views on the use of a legislative reform order to remove this requirement from all parish councils in England and community councils in Wales. It explains the robust but flexible framework that will ensure safe control is maintained over these councils' payments once the rule is abolished. I am grateful to the parish council sector for their contribution to developing this framework.

Your views are important, and will be taken into account by Parliament when the order is considered. Any evidence you can provide on the effects and costs of the two signature rule would be particularly welcome.

Rt Hon Grant Shapps MP  
Minister for Housing and Local Government

# Summary of Proposals

<p><b>What is being consulted on?</b></p>	<p>The proposals relate to: the repeal of legislation placing restrictions on parish councils in England and community councils in Wales when making payments, and the repeal of similar legislation relating to Charter Trustees.</p>	
<p><b>How will these proposals be taken forward, and when will they be implemented?</b></p>	<p>We intend that the proposed changes to legislation are made through a Legislative Reform Order under the Legislative and Regulatory Reform Act 2006. Subject to the outcome of consultation and Parliamentary consideration, we propose that the Order is brought into force as soon as possible after the Parliamentary procedures are complete.</p>	
<p><b>Consultation</b></p>	<p>This consultation is being made in accordance with the requirements of the Legislative and Regulatory Reform Act 2006.</p> <p>All responses should be received by Tuesday 11 September 2012.</p>	<p>Annex C</p>

# Chapter 1

## Introduction

- 1.1 This consultation paper is issued on behalf of the Secretary of State for Communities and Local Government, and sets out the Government's proposals for reforming the legislation governing payments made by parish councils and charter trustees in England and community councils in Wales.
- 1.2 The Local Government Act 1972 states at section 150(5) "Every cheque or other order for the payment of money by a parish or community council shall be signed by two members of the council". This provision is virtually unchanged from that used in the Local Government Act 1894 and puts barriers in the way of the councils using electronic means of payment and adopting proportionate controls on payments.
- 1.3 It is proposed that section 150(5) be repealed so that the councils can adopt modern methods of payment and alternative means of control. Authoritative guidance on control systems will be provided by the sector.
- 1.4 The change will affect all parish councils in England and all community councils in Wales. There are over 9000 parish councils in England and 734 community councils in Wales. In addition it is proposed that the change will apply to those categories of charter trustees to which the two signature rule applies. Charter trustees are bodies that take charge of the charters and regalia of a borough or city abolished in local government reorganisation. There are currently 18 of them, all in England, of which 13 are covered by the two signature rule.
- 1.5 The burden will be removed by the repeal / revocation of the legislative provisions, without replacement. However, at the same time new guidance on payments procedures will be issued by the sector which will help the councils to comply with their existing general statutory duties to make proper arrangements for their financial affairs and to have a sound system of internal control. The bodies will be free to retain the two signature rule if they consider that appropriate.
- 1.6 We propose to introduce the reform by means of a Legislative Reform Order under section 1 of the Legislative and Regulatory Reform Act 2006. This consultation is being conducted in accordance with the provisions of section 13 of the Act. Views are invited on all aspects of the consultation paper, and a number of specific questions are set out below and in the response form at Annex C.
- 1.7 Information on the scope of the power to make Legislative Reform Orders and the procedures involved in making them is set out in Annex A.

## **Consultation**

- 1.8 The Legislative and Regulatory Reform Act 2006 requires Departments to consult widely on all Legislative Reform Order proposals. The list of consultees to whom this document has been sent is at Annex B.
- 1.9 Comments are invited from all interested parties, and not just from those to whom the document has been sent. The consultation questions are set out in the box below. A response form is at Annex C, and this form is available separately in WORD format.

### **Consultation questions**

- a) Do you agree that the two signature rule for parish and community councils and charter trustees should be removed from legislation?**
- b) Are you aware of any empirical evidence on the reduction of burdens or the other benefits identified in chapter 3 of the consultation paper that supports the need for these reforms? If so, please provide details here or in an attachment.**
- c) Do the proposals put forward in this consultation document remove any necessary protection?**
- d) Do you agree that:**
- the proposals satisfy the preconditions for a Legislative Reform Order (see Annex A and Chapter 4)**
  - the negative Parliamentary resolution procedure (as outlined in paragraph 3.12) should apply to the scrutiny of this proposal?**

- 1.10 A note explaining the Parliamentary process for Legislative Reform Orders can be found at Annex D. This will help consultees understand when and to whom they are able to put their views should they wish to do so.
- 1.11 This consultation document follows the format recommended by the Better Regulation Executive for such proposals.

### **Disclosure of responses**

- 1.12 Normal practice will be for details of representations received in response to this consultation document to be disclosed, and for respondents to be identified. While the Legislative and Regulatory Reform Act provides for non-disclosure of representations, the Minister will include the names of all respondents in the list submitted to Parliament alongside the draft Legislative Reform Order. The Minister is also obliged to disclose any representations that are requested by, or made to, the relevant Parliamentary Scrutiny Committees. This is a safeguard against attempts to bring improper influence to bear on the

Minister. We envisage that, in the normal course of events, this provision will be used rarely and only in exceptional circumstances.

1.13 You should note that:

- If you request that your representation is not disclosed, the Minister will not be able to disclose the contents of your representation without your express consent and, if the representation concerns a third party, their consent too. Alternatively, the Minister may disclose the content of your representation but only in such a way as to anonymise it.
- In all cases where your representation concerns information on a third party, the Minister is not obliged to pass it on to Parliament if he considers that disclosure could adversely affect the interests of that third party and he is unable to obtain the consent of the third party.

1.14 Please identify any information which you or any other person involved do not wish to be disclosed. You should note that many facsimile and e-mail messages carry, as a matter of course, a statement that the contents are for the eyes only of the intended recipient. In the context of this consultation such appended statements will not be construed as being requests for non- inclusion in the post consultation review unless accompanied by an additional specific request for confidentiality, such as an indication in the tick-box provided for that purpose in the response form at Annex C.

### **Confidentiality and Freedom of Information**

1.15 It is possible that requests for information contained in consultation responses may be made in accordance with access to information regimes (these are primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004). If you do not want your response to be disclosed in response to such requests for information, you should identify the information you wish to be withheld and explain why confidentiality is necessary. Your request will only be acceded to if it is appropriate in all the circumstances. An automatic confidentiality disclaimer generated by your IT system will not of itself be regarded as binding on the Department.

### **Responding to the Consultation**

1.16 Any comments on the proposals in this consultation document should be sent by **Tuesday 11 September 2012** at the latest to:

[parishpaymentslro@communities.gsi.gov.uk](mailto:parishpaymentslro@communities.gsi.gov.uk) (email)

or by post to:

Graham Fletcher, Local Government Finance Directorate, Department for Communities and Local Government, Zone 5/J4. Eland House, Bressenden Place, London, SW1E 5DU

# Chapter 2

## Background to the policy and legislation at issue

### Current arrangements

#### **Parish and community councils**

- 2.1 Parish councils owe their origin in England and Wales to the Local Government Act 1894. The 1974 reorganisation of local government retained parish councils in England, but in Wales their place was taken by community councils. There are over 9000 parish councils in England and 734 community councils in Wales.
- 2.2 Parish and community councils are elected by their local electorate and have various powers and duties to provide local services and to represent the interests of their area. They can raise income from council tax by issuing a precept to the relevant billing authority. Some parish councils are named town, village, community, neighbourhood or city councils, and some community councils are named town councils; the terms “parish council” and “community council” in this document are intended to include councils bearing these alternative designations.

#### **Charter trustees**

- 2.3 Charter trustees were established as a consequence of the local government reorganisations since 1974. They were established for the areas of abolished local authorities which held a royal charter giving them the status of a city or borough where there was no successor body covering the same area as the abolished authority. There are currently charter trustees for 18 areas, all of them in England.
- 2.4 Charter trustees comprise the members of the current principal council elected for wards within the area of the abolished borough or city. They can appoint local officers of dignity and hold and manage the charters, insignia and plate of the abolished authority. They have power to raise income from council tax by issuing a precept to the relevant billing authority.

## Financial management

2.5 The rule requiring cheques and other orders for the payment of money to be signed by two members of the council applies to all parish and community councils by virtue of section 150(5) of the Local Government Act 1972. The rule had its origin in the Local Government Act 1894, Schedule I, Part 2, paragraph (14). The equivalent rule for charter trustees requires signature by two of the trustees, and this applies only to trustees established under the Local Government Acts of 1972 and 1992 (of which there are currently 13) by virtue of the following provisions:

- section 246(12) of the Local Government Act 1972
- regulation 15(2) of the Charter Trustees Regulations 1996 (SI 1996/263)

2.6 All parish and community councils and charter trustees are also subject to the duties on effective financial management set out in the Accounts and Audit Regulations for the two countries. Regulations 4(1) and (2) of the Accounts and Audit (England) Regulations 2011, SI 2011/817, which apply to England, provide:

*“4(1) The relevant body is responsible for ensuring that the financial management of the body is adequate and effective and that the body has a sound system of internal control which facilitates the effective exercise of that body’s functions and which includes arrangements for the management of risk.*

*“(2) The relevant body must conduct a review at least once in a year of the effectiveness of its system of internal control.”*

The equivalent provisions for Wales, regulations 4(1) and (2) of the Accounts and Audit (Wales) Regulations 2005, SI 2005/368, provide:

*“4(1) The local government body shall be responsible for putting in place and ensuring that there is a sound system of internal control which facilitates the effective exercise of that body’s functions and which includes*

- (a) arrangements for the management of risk; and*
- (b) adequate and effective financial management.*

*“(2) The local government body shall conduct a review at least once in a year of the effectiveness of its system of internal control...”*

2.7 In addition regulation 5 in both sets of regulations requires a body’s responsible financial officer to determine the accounting records to be kept by the body and its accounting control systems, and to ensure that the control systems are observed and the records kept up to date. The control systems are required to include measures to enable the prevention and detection of fraud and inaccuracies, and the identification of the duties of officers dealing with financial transactions and the division of responsibilities for significant transactions.

## Audit

- 2.8 Parish and community councils and charter trustees are subject to external audit by an auditor appointed, in England, by the Audit Commission, or, in Wales, by the Wales Audit Office (Swyddfa Archwilio Cymru). In addition an adequate and effective internal audit is required by the respective Accounts and Audit Regulations.
- 2.9 Almost all of these bodies are subject to a limited assurance review rather than a full audit, and are required to complete an annual return including:
- a summary of their financial transactions, balances, assets and liabilities
  - an annual governance statement containing confirmation by the body that key aspects of sound financial management have been observed during the year
  - an annual internal audit report stating the conclusions of the internal auditor on compliance with key objectives of internal control.
- 2.10 The external auditors review the return and other required documentation, complete any further required tests, and then give the annual audit opinion and certificate. In a very few cases councils are subject to a full audit rather than a limited assurance review.

## Explanation for current arrangements

- 2.11 The two signature rule is a remnant of various controls on local government payments laid down in nineteenth century local government legislation. For other councils these controls have been replaced by the general provision in section 151 of the Local Government Act 1972:
- “.....every local authority shall make arrangements for the proper administration of their financial affairs and shall secure that one of their officers has responsibility for the administration of those affairs.”*
- Section 151 also applies to parish councils, but the two signature rule was retained alongside it.
- 2.12 The financial management requirements of the Accounts and Audit Regulations have developed since 1974 in line with similar developments in the private sector, central government and charities under their respective control frameworks.
- 2.13 The Accounts and Audit Regulations apply to parish and community councils and to charter trustees. But additional advice for these smaller bodies has been provided by the Practitioners’ Guide on Governance and Accountability for Local Councils, issued jointly by the National Association of Local Councils and the Society of Local Council Clerks. A separate edition is produced for Wales by One Voice Wales and the Society of Local Council Clerks. The Practitioners’ Guide provides

guidance on the application of the regulations to smaller bodies such as parish and community councils and supports the limited assurance audit framework outlined in paragraphs 2.9 and 10 above.

## Development of the reform

- 2.14 The need to reform section 150(5) has been acknowledged for some years. A more limited proposal in 2001 to authorise electronic payments while retaining the two signature rule was abandoned when the practical difficulties of providing two signatures for an electronic payment became clear.
- 2.15 Subsequent discussions with the parish and community council sector led to the current proposal. The intention to seek a Legislative Reform Order was announced in a Departmental press release in October 2010. The release said that safeguards would be put in place to ensure that payments were legitimate and there was no misuse of the system. The safeguards would be designed by the National Association of Local Councils and the Society of Local Council Clerks. The release included a statement by the chairman of the National Association supporting the proposals.

## Why this reform?

- 2.16 Figures published by the Payments Council show that cheques accounted, by number, for 3 per cent of the payments made in the UK in 2010 (see detail in table below). This represented a 59 per cent decline since 2000. Increasing numbers of organisations are refusing to accept payment by cheque or allowing discounts on other methods of payment. There is no indication that these trends will not continue.

### The UK Payments Markets - numbers by method in 2010

Method	Percentage
Cheque	3%
Credit Card	6%
Debit Card	18%
Automated	18%
Cash	56%
Non Cash Payments: 15.8 billion	
Cash Payments: 20.4 billion	
Total Payments: 36.2 billion	

Source: *Updating the National Payments Plan - A consultation for the 2011 Review of the NPP*

- 2.17 Although two signature authorisation facilities are made available by some banks for electronic payments, this service is not generally

available and, where it is, may be difficult for some parish council members to operate. There is anecdotal evidence of the operational difficulties that the councils encounter because of the rule, for example in paying for items that are only available through electronic ordering and payment, such as anti-virus software updates.

- 2.18 The effect of section 150(5) of the 1972 Act is therefore to put barriers in the way of parish and community councils adopting modern methods of payments so that they lose the benefits of using those methods and find it difficult to obtain some goods and services.
- 2.19 The rule also places a burden on those who receive payments from the councils, who may be small or large businesses or other public bodies. Electronic methods are generally more convenient and cheaper for suppliers to operate, and the two signature rule means that exceptions have to be made in their moves to electronic methods if they wish or need to deal with these councils.
- 2.20 A further drawback of the two signature rule particularly affects the larger councils. Where numerous cheques are signed by members, the effectiveness of the check members provide may be reduced and an unjustified burden put on their service to the council. A more effective system would involve a tiered approach, with, for example, small payments made by the clerk from a petty cash account. At present such an arrangement is unlikely to be consistent with section 150(5).
- 2.21 The Legislative Reform Order will not in itself impose any new burden. It will be accompanied by new guidance on payments procedures published by the sector which will help the councils to comply with their general statutory duties to make proper arrangements for their financial affairs and to have a sound system of internal control.
- 2.22 The National Association of Local Councils, One Voice Wales and the sector generally have been pressing for the reform of this provision, citing the burdens outlined above.

# Chapter 3

## The proposals

- 3.1 The proposed Legislative Reform Order would
  - repeal sections 150(5) and 246(12) of the Local Government Act 1972
  - revoke regulation 15(2) of the Charter Trustees Regulations 1996 (SI 2006/263)
- 3.2 It would thus remove the two signature rule as a statutory requirement from all parish councils in England, all community councils in Wales, and the two categories of charter trustees to which it applies.
- 3.3 These bodies would then be free to develop their payments systems in the same way as any other part of their system of financial controls, in accordance with the general duties set out in the Accounts and Audit Regulations. Any that wished would be free to retain the two signature rule provided that they were satisfied that it was an effective and proportionate control.
- 3.4 The National Association of Local Councils and the Society of Local Council Clerks intend to add to the Practitioners' Guide (see paragraph 2.13 above) a section giving guidance on payment procedures. Compliance with the guidance would need to be confirmed in the annual return (see paragraph 2.9), and this would be subject to review by the external auditor.
- 3.5 The Government announced on 13 August 2010 that the Audit Commission would be disbanded and a new framework for local public audit would be established in England. The Government has made clear that high standards of auditing will be maintained. The proposals in the Welsh Government's consultation on the draft Public Audit (Wales) Bill (published March 2012) are also not expected to affect the standards of audit applied to community councils.
- 3.6 The effect of removal of section 150(5) is set out in the earlier sections of this paper and the partial impact assessment attached as Annex E. In summary the effects would be:
  - the affected bodies would be free to adopt new controls on making payments, compliant with their general duty to maintain an effective system of internal control
  - this would allow them to adopt systems that were compatible with electronic payments

- the use of electronic systems would remove barriers to the bodies paying for some types of goods or services and allow them to take advantage of benefits available when these systems are used
- suppliers to the bodies would find transactions with them easier
- larger bodies would be able to adopt a tiered approach to payment control that would make better use of members' time and improve control
- effective financial control would be maintained or enhanced.

Specific aspects of the proposals are covered in the following sections.

### **Extent**

- 3.7 The proposals will cover England and Wales. The proposal has the support of the Welsh Government, and, as the order will make provision which would be within the legislative competence of the National Assembly for Wales if the provision were contained in an Act of the Assembly, the agreement of the Assembly must be obtained (see section 11 of the Legislative and Regulatory Reform Act 2006). Consent will be sought by the Welsh Government at the point when the draft order is laid before Parliament.

### **Related Controversial Issue**

- 3.8 The reform is a low key and straightforward proposal. It seeks to remove an outdated control and adds no new burden. Safeguards introduced by the sector will ensure effective financial control is maintained. The reform has been robustly sought by the bodies affected.

### **Binding the Crown**

- 3.9 The proposals will not affect the Crown.

### **Possible Parliamentary Procedure**

- 3.10 The Minister can recommend one of three alternative procedures for Parliamentary scrutiny, dependent on the size and importance of the Legislative Reform Order. The negative resolution procedure is the least onerous and therefore may be suitable for Orders delivering small regulatory reform. The super-affirmative procedure is the most onerous involving the most in-depth Parliamentary scrutiny. Although the Minister can make the recommendation, Parliamentary Scrutiny Committees have the final say about which procedure will apply.

### **Parliamentary procedures for Legislative Reform Orders**

**Negative Resolution Procedure** – This allows Parliament 40 days to scrutinise a draft Order after which the Minister can make the Order if neither House of Parliament has resolved during that period that the Order should not be made.

**Affirmative Resolution Procedure** – This allows Parliament 40 days to scrutinise a draft Order after which the Minister can make the Order if it is approved by a resolution of each House of Parliament.

**Super-Affirmative Resolution Procedure** – This is a two-stage procedure during which there is opportunity for the draft Order to be revised by the Minister.

This allows Parliament 60 days of initial scrutiny, when the Parliamentary Committees may report on the draft Order, or either House may make a resolution with regard to the draft Order.

If, after the expiry of the 60 day period, the Minister wishes to make the Order with no changes, he must lay a statement. After 15 days, the Minister may then make a Order in the terms of the draft, but only if it is approved by a resolution of each House of Parliament.

If the Minister wishes to make material changes to the draft Order he must lay the revised draft Order and a statement giving details of any representations made during the scrutiny period and of the revised proposal before Parliament. After 25 days, the Minister may only make the Order if it is approved by a resolution of each House of Parliament.

- 3.11 Under each procedure, the Parliamentary Scrutiny Committees have the power to recommend that the Minister not make the Legislative Reform Order. If one of the Parliamentary Committees makes such a recommendation, a Minister may only proceed with it if the recommendation is overturned by a resolution of the relevant House.
- 3.12 **The Department for Communities and Local Government believes that the negative resolution procedure should apply to this Order.** This is a low key and straightforward proposal which does not introduce any new controls. It does not reverse any decisions recently taken by Parliament, but simply responds to developments in technology that make a nineteenth century provision inappropriate for the twenty first century. It has been requested by the parish council sector and is a high priority for them. It is not envisaged that any other interested parties would object to it.

# Chapter 4

## Legal analysis against requirements of the Legislative and Regulatory Reform Act 2006

- 4.1 This chapter assesses the proposal against the preconditions for Legislative Reform Orders laid down in the Legislative and Regulatory Reform Act 2006. The preconditions are set out in Annex A and are summarised in the heading to each section below.

### **1. Non-Legislative Solutions**

- 4.2 No non-legislative solution is possible. Section 150(5) of the 1972 Act and related provisions can only be removed by other primary legislation or by a Legislative Reform Order. While regulation 15(2) of the Charter Trustee Regulations 1996 could be revoked without an LRO, it would not make sense to make that change in a separate instrument. It is desirable to make all the changes together in the same instrument.

### **2. Proportionality**

- 4.3 Only the specific provisions that create the barrier to using modern payment methods and proportionate controls are being removed. The proposal is therefore considered proportionate to the problem it is addressing.

### **3. Fair Balance**

- 4.4 No individual will be adversely affected. The Order does not stop the present arrangements continuing if a parish or community council prefers to maintain the two signature rule.

### **4. Necessary protection**

- 4.5 Our proposals maintain necessary protection by bringing payment procedures within the same control framework as applies to all other aspects of the bodies' financial procedures. In addition, specific guidance will be given by the sector on effective payment procedures.

## **5. Rights and Freedoms**

- 4.6 No rights or freedoms are affected. The affected bodies remain free to maintain the two signature rule if they wish.

## **6. Constitutional Significance**

- 4.7 The proposal has no constitutional significance.

# Annex A

## Legislative Reform Orders

### Scope and Procedure

#### What can be delivered by a Legislative Reform Order?

##### Section 1:

Under section 1 of the Legislative and Regulatory Reform Act 2006 a Minister can make a Legislative Reform Order for the purpose of 'removing or reducing any burden, or overall burdens, resulting directly or indirectly for any person from any legislation'.

Section 1(3) of the Act defines a 'burden' as:

- a financial cost;
- an administrative inconvenience;
- an obstacle to efficiency, productivity or profitability; or
- a sanction, criminal or otherwise, which affects the carrying on of any lawful activity

##### Section 2:

Under section 2 of the Act a Minister can make a Legislative Reform Order for the purpose of securing that regulatory activities are exercised in a way that is transparent, accountable, proportionate, consistent, and targeted only at cases in which action is needed.

'Regulatory functions' is defined in section 32 as:

- a function under any enactment of imposing requirements, restrictions or conditions, or setting standards or giving guidance, in relation to any activity; or
- a function which relates to the securing of compliance with, or the enforcement of, requirements, restrictions, conditions, standards or guidance which under or by virtue of any enactment relate to any activity.

##### Section 20 Orders

Section 20 of the Act enables a Minister to exercise the order-making powers under sections 1 and 2 together with the power to make an order under section 2(2) of the European Communities Act 1972 in a single instrument. This enables a single order to implement Community law under section 2(2) of

the 1972 Act and, for example, to remove or reduce burdens resulting from pre-existing statutory provisions.

## Preconditions

Each proposal for a Legislative Reform Order must satisfy the preconditions set out in section 3 of the Act. The questions in this document are designed to elicit the information that the Minister will need in order to satisfy the Parliamentary Scrutiny Committees that, among other things, the proposal satisfies these preconditions.

For this reason, we would particularly welcome your views on whether and how each aspect of the proposed changes in this consultation document meets the following preconditions:

- **Non-Legislative Solutions** – A Legislative Reform Order may not be made if there are non-legislative solutions which will satisfactorily remedy the difficulty which the Order is intended to address. An example of a non-legislative solution might be issuing guidance about a particular legislative regime.
- **Proportionality** – The effect of a provision made by an Order must be proportionate to its policy objective. A policy objective might be achieved in a number of different ways, one of which may be more onerous than others and may be considered to be a disproportionate means of securing the desired outcome. Before making an Order the Minister must consider that this is not the case and that there is an appropriate relationship between the policy aim and the means chosen to achieve it.
- **Fair Balance** – Before making an Order, the Minister must be of the opinion that a fair balance is being struck between the public interest and the interests of any person adversely affected by the Order. It is possible to make an Order which will have an adverse effect on the interests of one or more persons only if the Minister is satisfied that there will be beneficial effects which are in the public interest.
- **Necessary protection** – A Minister may not make an Order if he considers that the proposals would remove any necessary protection. The notion of necessary protection can extend to economic protection, health and safety protection, and the protection of civil liberties, the environment and national heritage.
- **Rights and freedoms** – An Order cannot be made unless the Minister is satisfied that it will not prevent any person from continuing to exercise any right or freedom which they might reasonably expect to continue to exercise. This condition recognises that there are certain rights that it would not be fair to take away from people using an Order.
- **Constitutional Significance** – A Minister may not make an Order if he considers that the provision made by the Order is of constitutional significance.

## **Devolution:**

The 2006 Act imposes certain restriction regarding Legislative Reform Orders and the devolution agreements:

- Scotland – A Minister cannot make an Order under Part 1 of the Act which would be within the legislative competence of the Scottish Parliament. This does not affect the powers to make consequential, supplementary, incidental or transitional provisions.
- Northern Ireland – A Minister cannot make an Order under Part 1 of the Act that amends or repeals any Northern Ireland legislation, unless it is to make consequential, supplementary, incidental or transitional provisions.
- Wales – The agreement of the Welsh Ministers is required for any provision in an Order which confers a function upon the Welsh Ministers, modifies or removes a function of the Welsh Ministers, or restates a provision conferring a function upon the Welsh Ministers. The agreement of the National Assembly for Wales is required for any provision in an Order which is within the legislative competence of the Assembly.

# Annex B

## List of consultees

National Association of Local Councils

Association of Charter Trustees and Charter Town Councils

Audit Commission

British Bankers' Association

Chartered Institute of Public Finance and Accountancy

Payments Council

Society of Local Council Clerks

### **Wales:**

Welsh Government

One Voice Wales

Wales Audit Office

Through the National Association of Local Councils and One Voice Wales the proposal will be brought to the attention of those bodies' county associations and the parish and community councils that make up their membership.

# Annex C

## Response form

*A separate version of this form is available in WORD format to facilitate responses*

**RESPONSE FORM FOR THE CONSULTATION PAPER ON: the proposed use of a legislative reform order to reform legislation on payments by parish and community councils and charter trustees**

<b>Respondent details</b>	<b>Please respond by Tuesday 11 September 2012 to:</b>
Name: Organisation: Address: Town/City: County/Postcode: Telephone: Fax: E-mail	<a href="mailto:parishpaymentslro@communities.gsi.gov.uk">parishpaymentslro@communities.gsi.gov.uk</a> (email), or  Graham Fletcher, Local Government Finance Directorate, Department for Communities and Local Government, Zone 5/J4. Eland House, Bressenden Place, London, SW1E 5DU (post)

Tick this box if you are requesting non-disclosure of your response.

**a) Do you agree that the two signature rule for parish and community councils and charter trustees should be removed from legislation?**

Comments

**b) Are you aware of any empirical evidence on the reduction of burdens or the other benefits identified in chapter 3 of the consultation paper that supports the need for these reforms? If so, please provide details here or in an attachment.**

Comments

**c) Do the proposals put forward in this consultation document remove any necessary protection?**

Comments

**d) Do you agree that:**

- **the proposals satisfy the preconditions for a Legislative Reform Order (see Annex A and Chapter 4)**
- **the negative Parliamentary resolution procedure (as outlined in paragraph 3.12) should apply to the scrutiny of this proposal?**

Comments

# Annex D

## Legislative Reform Orders – Parliamentary consideration

### Introduction

1. These reform proposals in relation to the repeal of current legislation on the signature of cheques and other orders for the payment of money issued by parish and community councils and by charter trustees will require changes to primary legislation in order to give effect to them. The Minister could achieve these changes by making a Legislative Reform Order under the Legislative and Regulatory Reform Act 2006. Legislative Reform Orders are subject to preliminary consultation and to rigorous Parliamentary scrutiny by Committees in each House of Parliament. On that basis, the Minister invites comments on these reform proposals in relation to a change in legislation on payments by parish and community councils and by charter trustees as a measure that might be carried forward by a Legislative Reform Order.

### Legislative Reform Proposals

2. This consultation document on the proposed use of a Legislative Reform Order to change legislation on payments by parish and community councils and charter trustees has been produced because the starting point for Legislative reform Order proposals is thorough and effective consultation with interested parties. In undertaking this preliminary consultation, the Minister is expected to seek out actively the views of those concerned, including those who may be adversely affected, and then to demonstrate to the Scrutiny Committees that he or she has addressed those concerns.

3. Following the consultation exercise, when the Minister lays proposals before Parliament under section 14 of the Legislative and Regulatory Reform Act 2006, he or she must lay before Parliament an Explanatory Document which must:

- a. Explain under which power or powers in the Act the provisions contained in the order are being made;
- b. Introduce and give reasons for the provisions in the Order;
- c. Explain why the Minister considers that:
  - There are no non-legislative solutions which will satisfactorily remedy the difficulty which the provisions of the Order are intended to address;
  - The effect of the provisions are proportionate to the policy

objective;

- The provisions made in the Order strike a fair balance between the public interest and the interests of any person adversely affected by it;
  - The provisions do not remove any necessary protection;
  - The provisions do not prevent anyone from continuing to exercise any right or freedom which they might reasonably expect to continue to exercise;
  - The provisions in the proposal are not constitutionally significant; and
  - Where the proposals will restate an enactment, they make the law more accessible or more easily understood.
- d. Include, so far as appropriate, an assessment of the extent to which the provision made by the order would remove or reduce any burden or burdens;
- e. Identify and give reasons for any functions of legislating conferred by the order and the procedural requirements attaching to the exercise of those functions; and
- f. Give details of any consultation undertaken, any representations received as a result of the consultation and the changes (if any) made as a result of those representations.

4. On the day the Minister lays the proposals and explanatory document, the period for Parliamentary consideration begins. This lasts 40 days under negative and affirmative resolution procedure and 60 days under super-affirmative resolution procedure. If you want a copy of the proposals and the Minister's explanatory document laid before Parliament, you will be able to get them either from the Government department concerned or by contacting the Better Regulation Executive: <http://www.bis.gov.uk/policies/bre>

### **Parliamentary Scrutiny**

5. Both Houses of Parliament scrutinise legislative reform proposals and draft Legislative Reform Orders. This is done by the Regulatory Reform Committee in the House of Commons and the Delegated Powers and Regulatory Reform Committee in the House of Lords.

6. Standing Orders for the Regulatory Reform Committee in the Commons stipulate that the Committee considers whether proposals:

- a. appear to make an inappropriate use of delegated legislation;
- b. serve the purpose of removing or reducing a burden, or the overall burdens, resulting directly or indirectly for any person from any legislation (in respect of a draft Order under section 1 of the Act);

- c. serve the purpose of securing that regulatory functions are exercised so as to comply with the regulatory principles, as set out in section 2(3) of the Act (in respect of a draft Order under section 2 of the Act);
- d. secure a policy objective which could not be satisfactorily secured by non-legislative means;
- e. have an effect which is proportionate to the policy objective;
- f. strike a fair balance between the public interest and the interests of any person adversely affected by it;
- g. do not remove any necessary protection;
- h. do not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise;
- i. are not of constitutional significance;
- j. make the law more accessible or more easily understood (in the case of provisions restating enactments);
- k. have been the subject of, and takes appropriate account of, adequate consultation;
- l. give rise to an issue under such criteria for consideration of statutory instruments laid down in paragraph (1) of Standing Order No 151 (Statutory Instruments (Joint Committee)) as are relevant, such as defective drafting or failure of the department to provide information where it was required for elucidation;
- m. appear to be incompatible with any obligation resulting from membership of the European Union.

7. The Committee in the House of Lords will consider each proposal in terms of similar criteria, although these are not laid down in Standing Orders.

8. Each Committee might take oral or written evidence to help it decide these matters, and each Committee would then be expected to report.

9. Copies of Committee Reports, as Parliamentary papers, can be obtained through HMSO. They are also made available on the Parliament website at:

- [Regulatory Reform Committee](#) in the Commons; and
- [Delegated Powers and Regulatory Reform Committee](#) in the Lords.

10. Under negative resolution procedure, each of the Scrutiny Committees is given 40 days to scrutinise a Legislative Reform Order, after which the Minister can make the order if neither House of Parliament has resolved during that period that the order should not be made or to veto the Order.

11. Under affirmative resolution procedure, each of the Scrutiny Committees is given 40 days to scrutinise an Order, after which the Minister can make the Order if it is not vetoed by either or both of the Committees and it is approved by a resolution of each House of Parliament.

12. Under super-affirmative procedure each of the Scrutiny Committees is given 60 days to scrutinise the Order. If, after the 60 day period, the Minister wishes to make the order with no changes, he may do so only after he has laid a statement in Parliament giving details of any representations made and the Order is approved by a resolution of each House of Parliament. If the Minister wishes to make changes to the draft Order he must lay the revised Order, as well as a statement giving details of any representations made during the scrutiny period and of the proposed revisions to the order, before Parliament. The Minister may only make the Order if it is approved by a resolution of each House of Parliament and has not been vetoed by either or both relevant Committees.

### **How to make your views known**

13. Responding to this consultation document is your first and main opportunity to make your views known to the relevant department as part of the consultation process. You should send your views to the person named in the consultation document. When the Minister lays proposals before Parliament you are welcome to put your views before either or both of the Scrutiny Committees.

14. In the first instance, this should be in writing. The Committees will normally decide on the basis of written submissions whether to take oral evidence.

15. Your submission should be as concise as possible, and should focus on one or more of the criteria listed in paragraph 6 above.

16. The Scrutiny Committees appointed to scrutinise Legislative Reform Orders can be contacted at:

Delegated Powers and Regulatory Reform Committee  
House of Lords  
London  
SW1A 0PW

Tel: 020 7219 3103  
Fax: 020 7219 2571  
[DPRR@parliament.uk](mailto:DPRR@parliament.uk)

Regulatory Reform Committee  
House of Commons  
7 Millbank  
London  
SW1P 3JA

Tel: 020 7219 2830/4404/2837  
Fax: 020 7219 2509  
[regrefcom@parliament.uk](mailto:regrefcom@parliament.uk)

## **Non-disclosure of responses**

17. Section 14(3) of the Act provides what should happen when someone responding to the consultation exercise on a proposed Legislative Reform Order requests that their response should not be disclosed.

18. The name of the person who has made representations will always be disclosed to Parliament. If you ask for your representation not to be disclosed, the Minister should not disclose the content of that representation without your express consent and, if the representation relates to a third party, their consent too. Alternatively, the Minister may disclose the content of the representation in such a way as to preserve your anonymity and that of any third party involved.

## **Information about Third Parties**

19. If you give information about a third party which the Minister believes may be damaging to the interests of that third party, the Minister does not have to pass on such information to Parliament if he does not believe it is true or he is unable to obtain the consent of the third party to disclose. This applies whether or not you ask for your representation not to be disclosed.

20. The Scrutiny Committees may, however, be given access on request to all representations as originally submitted, as a safeguard against improper influence being brought to bear on Ministers in their formulation of Legislative Reform Orders.

**Better Regulation Executive**  
**Department for Business, Innovation and Skills**

# Annex E

## Partial impact assessment

<p><b>Title:</b> Impact Assessment on the proposal to use a Legislative Reform Order to change legislation on payments by parish and community councils and charter trustees.</p> <p><b>IA No:</b> DCLG 12003</p> <p><b>Lead department or agency:</b> DCLG</p> <p><b>Other departments or agencies:</b></p>	<p><b>Date:</b> 01/05/12</p> <p><b>Stage:</b> Consultation</p> <p><b>Source of intervention:</b> Domestic</p> <p><b>Type of measure:</b> Secondary legislation</p> <p><b>Contact for enquiries:</b> Graham Fletcher Tel: 0303 44 41740</p>
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<b>Summary: Intervention and Options</b>	<b>RPC Opinion:</b> Green
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Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, One-Out?	Measure qualifies as
			Yes	Out

**What is the problem under consideration? Why is government intervention necessary?**

The Local Government Act 1972 requires that cheques and other orders for the payment of money by a parish council must be signed by two members of the council. The same rule applies to community councils in Wales and (under the 1972 Act and regulations made under the Local Government Act 1992) some categories of charter trustees.

**What are the policy objectives and the intended effects?**

The removal of the burden will allow parish councils to use modern methods of banking for payment whilst maintaining sound financial control.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

To do nothing would leave the burden in place and therefore it is proposed that a Legislative Reform Order is introduced to remove the burden and make electronic banking easier.

**Will the policy be reviewed?** It will not be reviewed. **If applicable, set review date:** N/A

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	<b>Micro</b> Yes	<b>&lt; 20</b> Yes	<b>Small</b> Yes	<b>Medium</b> Yes	<b>Large</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b>	<b>Non-traded:</b>	

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible  
SELECT SIGNATORY:

Grant Shapps Date: 30/04/2012

## Summary: Analysis & Evidence Policy Option 1

Description:

### FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition (Constant Price)	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			

#### Description and scale of key monetised costs by 'main affected groups'

No costs have been identified.

#### Other key non-monetised costs by 'main affected groups'

No costs have been identified.

BENEFITS (£m)	Total Transition (Constant Price)	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			

#### Description and scale of key monetised benefits by 'main affected groups'

No benefits have been monetised.

**Other key non-monetised benefits by 'main affected groups'**

For parish councils the benefits would include the simplification of financial transactions, saving time and would make electronic payment easier, thus allowing access to discounts for electronic payment and avoiding bank charges associated with previous payment methods.

For businesses the benefits would include more prompt and convenient payment.

**Key assumptions/sensitivities/risks**

The provisions being repealed constitute an important control over the disbursement of money by parish councils. It is considered that the new guidance to be published by the parish council sector will provide equal or better protection for public funds while also permitting the use of modern methods of payment and more efficient control procedures.

**BUSINESS ASSESSMENT (Option 1)**

Direct impact on business (Equivalent Annual) £m:			In scope of	Measure
Costs:	Benefits:	Net:	Yes	OUT

## Evidence Base (for summary sheets)

### 1. Problem under consideration

The legislative provisions that are the subject of this proposal are as follows:

*For parish and community councils:*

“Every cheque or other order for the payment of money by a parish or community council shall be signed by two members of the council.” (section 150(5), Local Government Act 1972)

*For charter trustees established under the Local Government Act 1972 or the Local Government Act 1992:*

“Every cheque or other order for the payment of money by charter trustees shall be signed by two of them.” (section 246(12), Local Government Act 1972, and regulation 15(2), Charter Trustees Regulations 1996, SI 1996 No 263)

These provisions place barriers in the way of those bodies making payments by electronic means, and are a disproportionate requirement for the larger councils. The bodies affected are not able easily to adopt modern methods of payment.

### 2. Rationale for intervention

The burden will be removed by the repeal / revocation of the provisions set out in section 1 above, without replacement. However, this will be accompanied by new guidance on payments procedures published by the sector which will help the councils to comply with their general statutory duties to make proper arrangements for their financial affairs and to have a sound system of internal control. It is considered that the new guidance to be published by the parish council sector will provide equal or better protection for public funds while also permitting the use of modern methods of payment and more efficient control procedures. More detail of the proposed framework of financial safeguards is given in section 7 below.

### 3. Policy objective

The policy objective is to remove the existing burden arising directly from the terms of the legislation. It will allow parish councils to use modern methods of banking for payment whilst maintaining sound financial control.

### 4. Description of options considered

- **Do nothing:** The option of doing nothing is not practicable because of pressure from parish/community councils, the National Association of Local Councils in England and other bodies for removal of this burden. The current legislation is an obstacle to efficiency, productivity and profitability.
- **Option 1:** The removal of the burden requiring two signatories to cheques and other orders for the payment of money will enable parish/community councils to use modern banking methods and make payments by electronic means. The rule is a disproportionate requirement for larger councils and does not allow them to adopt tiered rules for payment certification. The removal of the burden will be accompanied by new guidance on payment procedures published by the sector which will provide equal or better protection for public funds whilst permitting modern methods of payment and more efficient control procedures.

## 5. Monetised and non-monetised costs and benefits of each option

### • Benefits

#### *Bodies directly affected*

The parish and community councils and charter trustees directly affected are not easily able to adopt modern methods of payment and the larger councils are not able to adopt tiered rules for payment certification so that the certification requirement is proportionate to the amount of payment. Removal of the two signature rule would lift these constraints, with savings in time and effort for the bodies affected. The following are examples of the ways in which savings would be achieved:

- Electronic payments would become practicable. The processes for making electronic payments are quicker than the preparation of and dispatch of cheques, saving time for staff, avoiding the cost of posting, and allowing quicker payment (and so perhaps securing discounts for prompt payment). Discounts may also be available for making a payment electronically.
- In cases where suppliers require payment by electronic means the body's staff would not have to seek other channels of payment, such as the use of the staff's personal accounts, which may not only be inappropriate but would also add to administrative burdens because both the original payment and a reimbursement payment would be necessary.
- Adoption of tiered controls over payments would be possible for the larger bodies. This would allow, for example, small payments to be made by staff from a petty cash account with control being exercised by council members when the account is replenished and vouchers for the payments made are produced for scrutiny. In addition to the time saving, such a system will generally provide a more effective control than when members sign off large numbers of small payments individually. The batching of the small payments allows comparisons to be made and patterns identified.

The benefits of these opportunities cannot be monetised because we do not know how long such financial transactions currently take, the exact time-savings the policy will allow, nor the number or value of the financial transactions affected. In addition, the large number of, and variations between, the councils make any estimate more difficult, and to get a meaningful estimate would be an unjustifiable burden on individual councils. However, we can get a sense of their scale by looking at the number of parish councils and how many financial transactions they would typically carry out in a year. There are over 9000 parish councils in England, 734 community councils in Wales and 13 Charter Trustees (all in England) to which the two signature rule applies.

There are no central records of the typical number of financial transactions of each council but the National Association of Local Councils has provided estimates for England, based on a selection of enquiries:

- Largest councils (around 100) – approx 2400 payments every year
- Medium sized councils (around 250) – approx 600 payments every year
- Smallest councils – the remainder will make a minimum of 30 payments rising to 60 payments a year for the clerk's salary, PAYE, insurance, audit, grants, grass-cutting etc. Some 1000 of these councils will make more than 60 payments probably rising to 100+ payments.

#### *Other bodies, including private and voluntary sector*

Suppliers to the bodies affected and others who receive payments from them would also benefit from the removal of the two signature rule. The following are examples of specific ways in which other organisations would benefit:

- The credit in the bank accounts of other organisations would be immediate rather than having to wait for the delivery of cheques through the post and the subsequent banking of the cheques. Savings in elapsed time of two to seven days might be expected, with consequent benefits to cash flow and interest costs.
- Administrative costs in processing post and cheques would be avoided.
- Organisations that have otherwise moved exclusively to receiving payment by electronic means would not have either to refuse custom from parish and community councils or to make special arrangements for handling their payments. We are aware that HM Revenue and Customs had to make special arrangements for receiving VAT and PAYE payments from the councils because of the constraints imposed by the two signature rule.
- Faster processing of payments by the councils, for example because of the ability of staff to authorise small payments, would add a further reduction in the time taken for other organisations to receive payments.

We do not have sufficient information about the number and size of payments to attach a monetary value to these savings for the same reasons that we cannot monetise the savings to the parish and community councils.

- **Costs**

We do not envisage that the reform would add to costs, and, if they are satisfied that it provides an effective control, any body affected will always have the option of retaining the two signature rule.

## **6. Rationale and evidence that justify the level of analysis used in the Impact Assessment**

The Legislative Reform Order procedure requires that an Impact Assessment is carried out and presented as part of the evidence to the Parliamentary Committees. Given that the policy reduces costs for both businesses and parish and community councils and that those costs are small to begin with the level of analysis used is proportionate. Nevertheless we would welcome any evidence that others may be able to provide on the monetary value of the benefits of the reform, and a question requesting such evidence is to be included in the consultation document. Any suitable evidence received will be taken into account in preparing the final Impact Assessment to accompany any submission of the order to Parliament.

## **7. Risks and assumptions**

The provisions being repealed constitute an important control over the disbursement of money by parish councils. However, it is considered that the framework that will take its place, including new guidance to be published by the parish council sector, will provide equal or better protection for public funds while also permitting the use of modern methods of payment and more efficient control procedures.

The new framework will comprise three elements:

- The existing general legislative duties on financial management will continue to apply to parish and community councils. These duties require them to make arrangements for the proper administration of their financial affairs, to ensure that the financial management of the body is adequate and effective, to maintain a sound system of internal control and to have an adequate and effective internal audit. These duties are set out in section 151 of the Local Government Act 1972, (for bodies in England) the Accounts and Audit

(England) Regulations 2011 (SI 2011 No 817) and (for bodies in Wales) the Accounts and Audit (Wales) Regulations 2005 (SI 2005 No 368)

- A chapter on managing money will be added to *Governance and Accountability for Local Councils, a Practitioners' Guide*. This guide (published in separate editions for England, by the National Association of Local Councils and the Society of Local Council Clerks, and for Wales, by One Voice Wales and the SLCC) provides authoritative guidance for parishes and communities on their accounts and financial processes. The guide is kept under review by committees in the two countries that include representation from the sector and from professional accountancy and audit bodies; those committees must endorse any changes. A draft of the new chapter has already been the subject of consultation, and will be finalised in time for the coming into force of the legislative reform order. It will spell out how the bodies should develop and maintain controls over money that meet the legislative duties set out above. The consultation draft included requirements for the bodies to embed controls over money in their standing orders and financial regulations, not to relinquish the two signature rule until safe and efficient alternative arrangements have been put in place, and to practice a clear segregation of duties regarding money and investments. Further guidance is given in the draft filling out the general principles to ensure that each body develops an effective control system appropriate to its size and the transactions it enters into.
- The annual return that forms the basis of the external audit scrutiny for these bodies will include a requirement to declare that the body has complied with the guidance and will allow the internal auditor to draw the attention of the external auditor to any shortcomings. The annual return forms part of the Practitioners' Guide. This aspect of the Guide is identified by regulations made in both countries under section 21 of the Local Government Act 2003 as proper practices in relation to accounts, and there is therefore a legal obligation on the bodies to complete the return. The external auditor will be able to follow up any deficiencies identified and, in serious cases, to issue a public report recommending change.

Charter trustees are subject to broadly the same framework of controls and audit as parish and community councils, though there are differences in some of the legislative requirements. A very small number (understood to be two currently) of community councils in Wales are subject to a more demanding form of audit which does not involve the completion of an annual return. In the case of these councils compliance with the guidance would form part of the auditor's annual review of accounting and financial control systems.

The transition to the new arrangements once the two signature rule was removed as a legal obligation would be safeguarded by the proposed requirement in the guidance that bodies must not relinquish the two signature rule until safe and efficient arrangements have been put in place in accordance with the guidance.

## **8. Summary and preferred option with description of implementation plan**

The preferred option is to remove the requirement that cheques and other orders for the payment of money by a parish council must be signed by two members of the council. This will simplify financial payments for parish council and the businesses they are paying.

The Legislative Reform Order, which will repeal and revoke the existing legislation, is expected to be enacted before the end of 2012. The revised Practitioners' Guide will be in place at the same time, and the revisions to the audit arrangements would take effect for the financial year ending 31 March 2012.

No specific review of the policy is planned, but regular liaison on matters of financial management and control is maintained between the Department for Communities and Local Government and the parish council sector, and action is taken on any issues arising. Similar arrangements exist in Wales.