

Effective Consultation

- asking the right questions
- asking the right people
- listening to the answers



Basic information

Basic information regarding this consultation

- To:** Anyone with an interest in responding to government consultation exercises, from those who regularly respond to the Government's consultations to those who might be interested in doing so. These might include business organisations, voluntary and charitable sector organisations, campaigning bodies, trades unions, citizens, etc.
- Duration:** From 14/06/2007 to 28/09/2007
- Enquiries to:** Ian Ascough, 020 7276 2175 or
Consultation.Policy@cabinet-office.x.gsi.gov.uk
- How to respond:** In writing: Cabinet Office, 4th Floor, 22 Whitehall, London SW1A 2WH
By email: Consultation.Policy@cabinet-office.x.gsi.gov.uk
- Additional ways to feed in your views:** This consultation exercise is accompanied by an online discussion space which can be found via <http://www.consultations.gov.uk>
- The Cabinet Office will also organise regional events where the future of Government consultation policy will be discussed. If you are interested in participating in such events, please contact Ian Ascough via the address or phone number above.
- Government response:** The Government will publish a response to this consultation exercise by 30/11/2007 at <http://www.cabinetoffice.gov.uk/regulation/>

Contents

	Page no
Basic information regarding this consultation	2
Foreword by Hilary Armstrong MP	4
Minister for the Cabinet Office and Social Exclusion	
Executive summary	5
1. Introduction	6
Why are we carrying out this consultation?	6
Scope of this consultation	6
Definitions	7
What happens next?	8
2. Current Policy	9
Monitoring observance of the Code's criteria	9
Consultation and Impact Assessment	10
Consulting for the right reasons at the right time	11
3. Effective Consultation	13
How best to seek stakeholder input?	13
Awareness-raising	14
Reporting back to stakeholders following consultations	15
Consultation fatigue	15
4. Other issues	18
5. Options	19
Option 1: Written consultation plus one other method	20
Option 2: A Code of Practice with a fast-track procedure	21
Option 3: A flexible, principles-based policy	22
6. Summary of questions	24
7. About the consultation	26
Annexes	
Who we are consulting	28
Definitions	30
Impact Tests	32
Case studies	
1 Consultation Guidelines in the Republic of Ireland	12
2 Consultation Policy and Practice in Sweden	12
3 Defra asks stakeholders how they want to be consulted	13
4 Your health, your care, your say, Department of Health	14
5 HMRC's "Consultative Forums"	14
6 Consultation of the third sector	16
7 Your Voice in Europe	17
8-11 International examples of definitions	31

Foreword by Hilary Armstrong MP Minister for the Cabinet Office and Social Exclusion

Consultation helps. It helps public bodies make better-informed decisions on matters of policy. It helps them improve public-service delivery. And it helps improve the accountability of these bodies to the public, to business and to civil society. Government is most credible when it listens and shows that it is listening to the customers of public services, the country's experts, businesses, charities and NGOs and those who are most directly affected by the Government's actions.

There are many ways in which Government can listen and learn effectively, from informal contacts with interested parties to formal policy forums. And in recent years, many departments have gone the extra mile, using online tools, regional events, citizens' juries, and so on. Through the many available communication channels, Ministers and officials in Government departments have broadened their engagement with stakeholders, fostering a more inclusive approach to policymaking and improving the evidence on which proposals are grounded.

The Consultation Code has been in place since 2001 and has spread best practice across Government, facilitating effective stakeholder engagement in relation to formal, written consultations.

This paper looks to the future of consultation policy; it asks how Government can improve its consultation work so that we truly get to hear the views of those who use public services, those who might be affected by changes to policy or new legislation, and the country's experts. Please use this opportunity to tell us about your experiences of Government consultations, how consultation exercises could be improved and how we can ensure that the views of all those who should have a say in future policies are heard. I look forward to hearing from you.



A handwritten signature in black ink that reads "Hilary Armstrong". The signature is written in a cursive, flowing style.

Hilary Armstrong MP
*Minister for the Cabinet Office
and Social Exclusion*

Executive summary

This consultation exercise, aimed at those with an interest in how the Government currently consults, forms the centre-piece of a review of consultation policy. It follows discussions within Government and with a number of external organisations with regard to how consultation exercises can be improved. This consultation exercise is intended to seek evidence on this topic from a wider range of stakeholders to help in the design of an updated consultation policy which will lead to better consultation practices across Government.

Consultation is an integral part of policy development whereby the Government seeks evidence, validates existing evidence and exposes preliminary policy analysis and options to scrutiny. The Government's current policy on consultation is set out in the Code of Practice on Consultation.¹ This sets out the criteria for carrying out formal, written Government consultations. Observance of these criteria is monitored by Consultation Coordinators in departments and the Cabinet Office reports annually on observance of the first criterion of the Code – the "12-week criterion".

This consultation document is in two parts. The first part discusses how Government currently consults and how this can be improved upon. It asks questions about what the principles for Government consultations should be and how fulfilment of these principles should be monitored. It also explores the relationship between consultation and impact assessment and discusses how departments should consult.

Issues including awareness-raising, Government responses to consultations and consultation fatigue are also addressed.

In the second part of this consultation document three options for consultation policy are presented. These options have been designed to address, to varying degrees, some of the issues addressed in the first part of the document. They are intended to stimulate discussion and should not be regarded as an exhaustive list. Combinations of various elements from each option might also make for an improved consultation policy.

¹ <http://www.cabinetoffice.gov.uk/regulation/consultation/code/index.asp> or see page 26 of this document for the six criteria of the Code

1. Introduction

Why are we carrying out this consultation?

- 1.1 This exercise is the centre-piece of a review of Government consultation policy.
- 1.2 Public engagement, including effective consultation on policy development and service design, is key to a healthy democracy. Moreover, by exposing preliminary policy analysis and options to scrutiny and listening carefully to the views of stakeholders, the Government can build up a broad evidence-base which allows for effective and efficient policymaking. Good consultations which truly reach those concerned, lead to better policies and reduce the risks of policies failing to meet their objectives and of unintended consequences.
- 1.3 The Code of Practice on Consultation², setting out how Government departments should consult, is now firmly embedded across Government. However, observance of the criteria in the Code is not an end in itself. It is now time to review the Code and to consider ways of supplementing or replacing the existing criteria so as to improve the quality and effectiveness of Government consultations and ultimately improve policy design.
- 1.4 The aim of this consultation, therefore, is to hear the views of those who regularly respond to Government consultations and those who may feel that Government consultations do not sufficiently engage them. The written consultation is being supplemented with consultation events

across the country and an online discussion. Taken together, these will help the Government bring its consultation policy up to date.

- 1.5 While the Code of Practice has achieved a lot since it was first introduced in 2001, it is not perfect. It has, for example, been argued that a 12-week, written consultation is sometimes, on its own, not enough; may sometimes be superfluous to requirements; and is not always the most effective way of getting views from those who might be affected by what is being discussed or proposed. The Code does not fully address these issues. A consultation on a technical issue affecting only a small number of large companies is very different from one, for example, on schools policy where teachers, parents and children might need to be consulted. Again, the Code does not address such issues. In short, the most appropriate medium and the optimum amount of time required by potential respondents will depend on the policy area and on the stakeholders – something which is not reflected in current policy. These and other issues are addressed in this paper.

Scope of this consultation

- 1.6 It is important at the outset to set some parameters to the debate.
- 1.7 First, the Government is committed to maintaining a central consultation policy and does not plan to open this point up for discussion. Such a policy, undoubtedly, plays an essential role in maintaining a healthy

² <http://www.cabinetoffice.gov.uk/regulation/consultation/code/index.asp>

democracy where public engagement is encouraged and enabled, and also helps bring about better public services and a better regulatory environment. The Cabinet Office is, however, open-minded at this stage as to the form this consultation policy should take in the future and wants to stimulate an open and broad debate on this matter.

- 1.8 Second, the Government's current policy on consultation does not amount to a commitment to consult on everything and this will remain the case in future, irrespective of any changes made to the Government's consultation policy as a result of this consultation exercise. It is right and reasonable that the Government sometimes takes policy decisions without any consultation: how and when the Government consults will depend on the circumstances in each case and, on some occasions, consultation will not be considered appropriate. For example, one would not expect the Government to launch a consultation on a policy that had been a manifesto commitment. However, further down the line, effective implementation will often depend on consultation with affected parties.
- 1.9 Third, it is the Government's intention that Ministers will retain the discretion in future, irrespective of the outcome of this review, to consult but to consider it inappropriate or unnecessary to follow all of the best practice criteria.
- 1.10 Through discussions within Government and through various informal meetings with business associations and third sector organisations, the Cabinet Office has already heard many views on how Government currently consults; where there is room for improvement and the role that central policies and guidance might play in this. Also, the Government's Office of the Third Sector has recently sought views formally on how Government can best listen to and work with the sector (see case study 6).

This consultation seeks further evidence, building on what has already been learned, to feed into the design of a renewed cross-Government consultation policy. We are asking for views on current practice and on three options for a revised consultation policy. These are intended to stimulate debate. However, respondents need not feel restricted by the structure of this paper or by the questions – views on other matters relating to Government consultations are also welcome.

Definitions

- 1.11 In addition to setting out the scope of this paper it is important to define some of the terms used in this document.
- 1.12 Consultation is generally considered to be a form of engagement that is appropriate when the policy process is already underway and there is an intention to make changes or deliver specific outcomes. It therefore does not invite an open debate on very broad areas of public policy, nor does it empower those who participate with the final decision.³ However, things are not always clear-cut and there are cases where it may make sense to carry out some other types of public engagement, as well as consultation as part of one exercise. Some of the case studies in this document illustrate this and annex 2 discusses public engagement further.
- 1.13 Consultation should generally be seen as an integral part of policy development: consultations are an opportunity to seek evidence, validate existing evidence and expose preliminary policy analysis and options to scrutiny, so as to help the development of effective, efficient and proportionate solutions to a particular issue.
- 1.14 Consultations are generally aimed at "stakeholders". For the purposes of this exercise, the term is used in a wide sense,

³ There have been several attempts to define the various forms of public engagement, see for example Richard Harris's paper for the Environment Council "stakeholder_dialogue_language", <http://www.rkpartnership.co.uk/documents/Typography%20of%20Engagement%20article.pdf>

meaning those outside of central Government with an interest in the topics under discussion. These may be organisations or associations, companies or individuals who take an interest in, or who might be affected by the new policy, the policy change or the proposed legislation. In many cases, members of the public are interested in Government consultations even if they might not be directly or immediately affected by the topics under discussion. Getting involved in Government consultations can lead to deeper levels of engagement and the Government maintaining a relationship with those who want to remain involved in specific policy areas.

- 1.15 A fuller definition of the terms “consultation”, “public engagement” and “stakeholder” as well as some international examples of definitions can be found in annex 2.

What happens next?

- 1.16 This consultation exercise will be accompanied by an online discussion forum⁴ and by workshops. These will provide additional opportunities to discuss the issues addressed in this document and thereby supplement our evidence-gathering. If you would be interested in attending a workshop, please get in touch with the Cabinet Office using the contact details at the beginning of this document.
- 1.17 Following the close of this consultation, the Cabinet Office will analyse carefully all the responses received (formal written responses, online discussions and points made at events), and by 30 November 2007 on the Cabinet Office website <http://www.cabinetoffice.gov.uk/regulation/> publish a summary of the responses and state how these views are being taken on board in the design of an updated consultation policy.

⁴ See link from www.consultations.gov.uk

2. Current Policy

- 2.1 The Code of Practice on Consultation was first published in November 2000 and outlined minimum standards for central Government departments and any of their agencies when they are carrying out national, written consultation exercises. A revised Code was published in January 2004 and came into force on 1 April 2004; the accompanying guidance on the Code of Practice was also re-issued. The current Code is now firmly embedded in the practices of Government departments (see below).
- 2.2 The Code contains six criteria which apply to all public consultations. Departure from the Code requires clearance from the responsible Minister.⁵ The reasons for the deviation should be set out in the consultation document.
- 2.3 The first of the Code's six criteria is perhaps the best known: departments should "Consult widely throughout the [policy development] process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy". This criterion is widely observed across Government. The Code does however acknowledge that, at times, it will not be possible for a consultation to last 12 weeks, e.g. when timetables are dictated by EU or other international processes or where there is a health and safety or security dimension dictating fast action (criterion 1.5).
- 2.4 Stakeholders who regularly respond to Government consultations have argued that they generally need at least 12 weeks

within which to provide their responses. Representative organisations, in particular, have suggested that they rely on the minimum period in order to confer with their membership and then draft a considered, detailed response to Government consultations. Meanwhile, some other stakeholder organisations have suggested that for certain consultations 12 weeks, e.g. on detailed, technical matters, is too long a period as this can delay what for these stakeholders can be important changes or updates in policy.

Question 1:

Do you think the Government's Code of Practice has led to an improvement in the way the Government consults and to improved policy outcomes? Please illustrate your answer with any concrete examples you may have.

Question 2:

Are 12 weeks generally the right amount of time for the formal, written element of Government consultations to last? Do you think that there are circumstances where a shorter or longer duration may be more appropriate?

Monitoring observance of the Code's criteria

- 2.5 Under the current policy, departments are required to nominate Consultation Coordinators. These are officials who help policy teams with their consultations; raise awareness of the Consultation Code; help

⁵ Throughout this document, the term Minister can be replaced by other terms such as Chairman or Commissioner where the consultation is being carried out by a non-Ministerial body

spread best practice; and monitor their department's own effectiveness at consultation. In the majority of cases, Consultation Coordinators work in departmental Better Regulation Units or in Communications Teams. The onus is therefore, by and large, on departments to monitor their observance of the criteria and on policy teams to explain to the Consultation Coordinator any departures from the Code.

- 2.6 Departments are required to provide information regarding their consultations in the Better Regulation section of their annual departmental reports. The Cabinet Office produces annual reports on the whole of central Government's performance in relation to the Code ("Assessments of Performance").⁶ These reports focus on the 12-week criterion but also highlight examples of best practice from the year. This information is provided to the Cabinet Office by departmental Consultation Coordinators. According to the report on consultations launched during 2005, the Government carried out 583 formal consultations, 80% of which lasted at least 12 weeks (the period for which departments should consult at least once during their policy development). The report on Government consultations launched in 2006 was not available at the time of going to print. However, indications show that around 75% of these consultations lasted at least 12 weeks.
- 2.7 The Government considers this system of devolving responsibility and accountability to departments, with a lesser role for central compilation of key statistics and promotion of best practice by the Cabinet Office, to be a proportionate approach for the current policy on consultation. However, views on this are invited especially in regard to spreading best practice and promoting innovative and effective consultation.

Question 3:

Is the system for monitoring and promoting performance of departments in relation to the criteria in the current Code of Practice on Consultation right? What improvements could be made?

Consultation and Impact Assessment

- 2.8 Many consultation documents relate to or include an Impact Assessment. Impact Assessment is a continuous process to help the policymaker understand the various consequences of possible and actual Government interventions in the public, private and third sectors. Impact Assessment is also a tool to enable the Government to weigh and present the relevant evidence on the effects of such interventions. Impact Assessments are generally applicable to all Government interventions affecting the private sector, the third sector and public services, regardless of source (domestic or international). The link between Impact Assessment and consultation is therefore essential in improving the Government's understanding, and allowing stakeholders to challenge the Government's understanding, of the impact of its proposals. The Government believes that publishing Impact Assessments as part of consultation exercises has improved the quality both of public consultations and of impact assessments themselves.
- 2.9 However, the Government believes that Impact Assessments and the way they are used alongside public consultations could be improved. The Government has introduced a new template for Impact Assessments and new guidance, with the intention of improving the analytical quality and quantification of Impact Assessments, and of presenting key data in a more open and accessible fashion.

⁶ http://www.cabinetoffice.gov.uk/regulation/consultation/annual_reports/index.asp

- 2.10 The recent reforms of Impact Assessment should improve the quality of public consultations on Impact Assessments, not least because stakeholders will be able to form a more immediate view of the quality and sufficiency of the analysis underpinning the consultation options. The new guidance on Impact Assessment stresses the importance of conducting informal and formal pre-consultation and consultation as the Impact Assessment is developed.⁷
- 2.11 The Government is open to further ideas about how to improve the link between consultation and Impact Assessment. Should there, for example, be a stated policy for departments to seek input from key stakeholders at the time an Impact Assessment is being put together and policy options are being generated? Would it be helpful to require or encourage departments to ask specific questions in their consultation documents about the quality of the accompanying Impact Assessments? How can the link between Impact Assessment and consultation be improved?

Question 4:

Is the new approach to Impact Assessment sufficient to improve public consultation on the evidence base for Government policy-making? How could consultation policy improve consultation on Impact Assessments?

Consulting for the right reasons at the right time

- 2.12 There is a concern among some stakeholders that the Code's list of criteria and emphasis on written consultation can lead to grudging compliance and a tendency to go through the motions, without policymakers having a genuine desire to listen and respond to stakeholders' views.
- 2.13 Concerns have also been expressed that consultation sometimes take place at a relatively advanced stage of policy formulation, limiting a department's room for manoeuvre and reducing the likely

impact of stakeholders' comments. The Code of Practice does not offer clear guidance to departments on the stage at which formal consultation should happen. In part, this reflects the difficulty of defining appropriate criteria to cover a multitude of different circumstances; in part, it acknowledges the need to allow Ministers and policymakers the latitude to exercise their discretion, according to the particular issue with which they are faced. The Government does not believe that it is desirable to formulate rules on this point but would welcome views on whether it might be possible to identify and share good practice.

- 2.14 In other cases, consultation takes place at various stages throughout the policy development process, consulting first on the high-level topics, then consulting on options and finally consulting to seek input on implementation of the chosen option. Different methods of seeking input can be more or less effective/appropriate depending on when in the policy development process input is being sought. Some stakeholders see this staged approach as best practice while others see it as contributing to consultation fatigue (see page 15).
- 2.15 At times, the Government has also broken down consultations on big issues into "bite-sized chunks". While at first sight this may seem sensible, there are potential negative aspects to this practice which some stakeholders have pointed out to the Cabinet Office. For example, this can obscure the totality of the costs, benefits and impacts associated with a particular proposal. Also, it might be thought that this approach suits the Government department's resources rather than the users' needs.

Question 5:

When in the policy development process do you think the Government should consult stakeholders? Please cite any relevant examples when you feel you have been consulted at the right or wrong time.

⁷ See <http://www.cabinetoffice.gov.uk/regulation/ria/> for information regarding the new impact assessment template and guidance

Case Study 1: Consultation Guidelines in the Republic of Ireland

The Government of the Republic of Ireland has guidelines for consultation called “Reaching Out”⁸ which are intended for use by Government departments, public bodies and any other organisations that may wish to consult with stakeholders. These guidelines include advice on planning, methods of consultation and analysis of responses. They also contain a list of questions that officials should ask themselves when planning a consultation:

- Are you clear on the purpose and objectives of your consultation?
- Are you clear on the questions you want to ask in your consultation?
- Have you identified all of the stakeholder groups and individuals that should be consulted?
- Have you chosen the most appropriate and inclusive methods of consultation, including those that meet the needs of ‘non-traditional’ stakeholders?
- Have you allowed for sufficient resources for the consultation?
- Have you considered all of your legal obligations?
- Have you publicised your consultation in online and offline media?
- Have you allowed sufficient time to give stakeholders an opportunity to consider the issues fully?
- Have you planned how you will analyse the submissions received during your consultation?
- Have you planned to evaluate your consultation process and to ensure any lessons learned are taken into account for the future?

Case Study 2: Consultation Policy and Practice in Sweden

In Sweden, the requirement to consult is enshrined in law: the 1974 Instrument of Government, one of the four fundamental laws on which the Swedish Constitution is based, states in Chapter 7, article 2, that “In preparing Government business the necessary information and opinions shall be obtained from the public authorities concerned. Organisations and private persons shall be afforded an opportunity to express an opinion as necessary.”

When extensive analysis is required before a proposal can be drafted, the Government may choose to appoint a special group, known officially as a Committee of Inquiry. These committees normally consist of relevant authorities, NGOs and other interest groups and political parties and it is not unusual for there to be up to 200 Committees in existence at any one time.

After a Committee’s report has been submitted to the responsible Minister, its contents are referred to the relevant authorities and to the public for consideration. They are given the opportunity to express their views on the conclusions of the inquiry before the Government formulates a legislative proposal.

⁸ http://www.betterregulation.ie/attached_files/Rtfs/Consultation%20Guidelines.doc

3. Effective Consultation

How best to seek stakeholder input?

- 3.1 A concern expressed to the Cabinet Office prior to the launch of this consultation is that the Code of Practice, because of its strong focus on written consultations, may sometimes act as blinkers for policy teams. Although the Code and accompanying guidance do discuss the limitations of written consultations for reaching certain groups, such as those whose voices are seldom heard in policy debates, and emphasise the value of other forms of consultation⁹ in reaching such groups, the six headline criteria of the Code do not cover this issue. It is, therefore, possible to abide by the spirit of the Code without carrying out any form of consultation prior to the written consultation and without supplementing the written consultation with any other kind of stakeholder engagement.
- 3.2 Moreover, the Code does not fully reflect the fact that an alternative form of consultation may, at times, be manifestly more relevant to the matter under consideration and those potentially affected

by the proposals than a formal, written consultation exercise. Departments undertaking innovative forms of consultation get no credit for doing so under the current policy.

- 3.3 However, many departments do already supplement their written consultations with other means of seeking views on their policy proposals, clearly designing their activities around stakeholders, e.g. holding events to discuss the issues at a level and in a locality suitable to the target audience. Some departments have internal guidance on this and provide staff with information on various methods that have been successfully used in the past, e.g. online consultations, focus groups and citizens' juries.

Question 6:

Do you think that more emphasis should be placed on alternative or supplementary approaches to consultation in a revised consultation policy? What supplementary approach or approaches would work best for you/your organisation?

Case Study 3: Defra asks stakeholders how they want to be consulted

The Department for Environment, Food and Rural Affairs (Defra) piloted the use of surveys on consultation with animal health and welfare stakeholder organisations in the spring of 2006.¹⁰ The aim was to listen to stakeholder organisations not just about the issues on which Defra consults but also about the way Defra informs and consults them. The surveys were designed to encourage constructive suggestions. A summary of the survey results and proposed actions in response to these was sent to respondents so that they could check their preferences were registered.

⁹ Criterion 1.8: Some stakeholders, for example small businesses, children, consumers and those from minority communities, may be particularly difficult to reach. It is important to engage proactively with individuals, organisations and trade associations. Written consultation is not the only or even always the most effective means of consultation <http://www.cabinetoffice.gov.uk/regulation/consultation/code/criteria1.asp>

¹⁰ <http://www.defra.gov.uk/animalh/ahws/consumer/index.htm>

Case Study 4: Your health, your care, your say, Department of Health

The “Your health, your care, your say” consultation,¹¹ which closed on 4 November 2005, set out to improve community health and social care services for everyone. The recommendations put forward by the public and health care professionals during the consultation helped shape the resulting White Paper entitled “Our health, our care, our say” of January 2006.

The programme involved healthcare professionals and the public, including the homeless, people with learning difficulties and teenagers who are often not heard in consultation exercises. A number of events took place as part of the consultation process at which between 50 and 100 people had the chance to give their views on what they wanted from health and social care services in their everyday lives. Deliberative events aimed to involve people in the big decisions that affect their lives. They were used to talk about issues where members of the public may not have had a great deal of knowledge or information. These events gave people the chance to exchange ideas on important issues with each other and with people working in those services. Anyone who could not attend one of the listening events but wanted to contribute was able to do so online.

The events and the online survey gave more than 100,000 people the chance to put forward their ideas.

Case Study 5: Her Majesty's Revenue and Customs' “Consultative Forums”

HMRC also consult with customers and their representatives through a number of consultative forums. These forums provide an opportunity for HMRC to consult with its customers on a wide range of issues. HMRC have reviewed the working of these forums and have considered their effectiveness, their customer focus and their relevance. As part of the review they have spoken to many people who attend these forums to find out their views and opinions.

HMRC have reviewed the terms of reference of all of the forums and have ensured that there is a streamlined structure with clear reporting lines. As part of the recently introduced HMRC Consultation Framework, HMRC have committed to reviewing the terms of reference of these forums every two years.

As a result of the review HMRC have also recently announced some changes to the arrangements, which they believe will improve the communication and accountabilities around the various consultative forums. HMRC now publish the full list of standing forums on the HMRC website¹² as well as a brief description of the purpose of the various forums and all agendas and meeting notes.

Awareness-raising

3.4 Criterion 3 of the Consultation Code is “Ensure that your consultation is clear, concise and widely accessible”. Sub-point 3.4 states that “Efforts should be made to bring the consultation to the attention of all interested parties. As well as using the internet you should consider publicising the consultation in ways most appropriate for the groups you wish to reach.”

3.5 In the run-up to this consultation, one representative association told us of their surprise at having been left off the distribution list of a recent consultation exercise, for which they considered themselves a key stakeholder. This body did, nevertheless, become aware of the consultation in good time as they regularly visited the websites of the Government departments active in their sphere of

¹¹ http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4127357

¹² <http://www.hmrc.gov.uk/consultations/consultative-forums.htm>

interest. There are many angles to this issue. Policy teams in departments need to have a clear understanding of who their stakeholders are and to engage with them, particularly when launching a consultation. These stakeholders also need to keep Government informed when contact details change. Some departments have dedicated staff members to own the relationship with key stakeholders and so are regularly in touch with these people.

- 3.6 Government departments usually have, on their websites, an area dedicated to their consultation exercises where current and recent consultation documents can be downloaded. The Cabinet Office Better Regulation Executive website¹³ provides links to these. This page replaced in 2006 a Consultation Index which provided links to most on-going consultations. The decision was taken to end this service as it was not comprehensive and was not providing value for money. The DTI's Small Business Service does provide an index, including summaries, of all the consultations that it thinks will be of interest to small and medium-sized enterprises. The idea of similar services, run by representative organisations or by Government, for other sectors could also be considered or encouraged, e.g. by the National Council for Voluntary Organisations or the Trades Union Congress. Alternatively, a private enterprise might offer a valuable service along these lines by indexing consultations of interest to certain groups of stakeholders.

Question 7:

How do you generally become aware of Government consultations and how would you like to learn about upcoming and current Government consultations?

Reporting back to stakeholders following consultations

- 3.7 One of the perceived strengths of the current Code is that departments should report back within three months of the
- 3.8 However, prior to the launch of this consultation exercise, business and third sector organisations complained that often they are unaware of Government responses to consultations that they have participated in and that the responses they have seen are sometimes of poor quality. The Code of Practice does not offer much guidance on what these responses should look like or how they should be distributed or published. The guidance accompanying the Code goes into more detail but is not very prescriptive. On the consultation pages of most departmental websites, Government's responses to closed consultations can be downloaded¹⁵ but perhaps this is not enough.
- 3.9 Central Government and its agencies currently launch around 600 consultations each year covering a very wide range of topics. The number of formal, written consultations per department varies greatly across Government. Larger departments such as the Department for Environment, Food and Rural Affairs and the Department for Trade and Industry launch many more consultations than smaller departments.
- 3.10 In the run-up to the launch of this consultation, organisations representing the private sector and the third sector raised the

close of consultation exercises on the issues raised by respondents, the impact on policy and the next steps in the policy development process.¹⁴ This serves several purposes such as ensuring Government departments take seriously the responses received, and aiding transparency and stakeholder confidence.

Question 8:

How do you rate the feedback you have seen from Government departments following consultations and what improvements or changes would you like to see in relation to reporting back?

Consultation fatigue

¹³ <http://www.cabinetoffice.gov.uk/regulation/consultation/government/index.asp>

¹⁴ Criterion 4 of the Code: "Give feedback regarding the responses received and how the consultation influenced the policy"

¹⁵ See for example <http://www.homeoffice.gov.uk/about-us/haveyoursay/responses/>

issue of *consultation fatigue*. These organisations stated that it was impossible or very expensive (as external assistance had to be bought in) to provide responses to all the written consultations produced by the Government that touched on areas of interest to them.

- 3.11 Part of the solution to this issue might be better coordination within and between Government departments. Working together could mean that departments would have a better understanding of the existing relationships between other departments and organisations and groups. Greater coordination could then lead to some consultations being merged when they cover similar issues and are aimed at similar stakeholder groups.

- 3.12 Another way of reducing consultation fatigue might be to change the current emphasis on written consultations and, where appropriate, to adopt other procedures for listening to the views of, and garnering evidence from, stakeholders.

- 3.13 Consultation fatigue may also be attributable to poor design of consultations and weak Government responses to consultations.

Question 9:

Is “consultation fatigue” an issue for you? If so, why is this and how do you think this issue could be overcome?

Case Study 6: Consultation of the third sector

In Budget 2006, the Government announced a review of the future role of the third sector in social and economic regeneration in England to inform outcomes of the 2007 Comprehensive Spending Review.¹⁶ HM Treasury and the Cabinet Office in collaboration with the third sector carried out the largest ever consultation with the sector. It was designed to get ideas from all parts of the sector and especially from small, community-based organisations. Contributions were summarised in the interim report on the review¹⁷ published on 6 December 2006 as part of the Pre-Budget Report.

Nine regional events were attended by Ministers and 83 sub-regional events were held across England. These events were attended by people from many small, local community based-groups, charities, social enterprises, faith groups, and equalities organisations representing women, black and ethnic minority groups, disabled groups and Lesbian, Gay, Bisexual and Transgender communities. These listening events were held in both urban and rural areas, and there were themed events for particular sub-sections to ensure that all parts of this diverse sector had a chance to make their voices heard.

Parallel to this exercise, the Government also received over 250 written consultation responses.

In November 2006, Compact Voice awarded a commendation for excellence to HM Treasury and Cabinet Office for the consultation process.

The second stage of the review consisted of an online dialogue and a series of round-table events with respondents from the first stage who were particularly expert or keen to be involved. The final outcomes of the review will be informed by both stages of the review and will be published as part of the conclusion of the Comprehensive Spending Review.

¹⁶ http://www.cabinetoffice.gov.uk/third_sector/third_sector_review/

¹⁷ http://www.hm-treasury.gov.uk/media/53E/94/pbr06_3rd_sector_428.pdf

Case Study 7: Your Voice in Europe

“Your Voice in Europe” is a European Commission website providing a variety of interactive tools such as online consultations and chat-rooms which allow citizens to contribute to the policymaking process in Europe. All consultations from any part of the European Commission are now supposed to be available through this service and the Commission states that over 10 000 citizens and businesses use this web portal every day.

4. Other issues

Question 10:

Please feel free to give us any other views you may have about the effectiveness of current consultation policy, the future of consultation policy, the case studies in this paper and other examples from the UK or elsewhere.

5. Options

- 5.1 Over the next few pages you will find three possible options for an updated consultation policy. These have been designed to address, to varying degrees, some of the analysis offered above and comments made, over recent months, to the Cabinet Office about Government consultations.
- 5.2 Preliminary work suggests that there is no need to publish an Impact Assessment alongside this consultation document. None of the options would impose costs on the private or third sectors, and the costs on the public sector are expected to be minimal. For information about other impact tests, see Annex 3.
- 5.3 The three options are intended to stimulate discussion and should not be regarded as an exhaustive list. Combinations of various elements from each option might also make for an improved consultation policy.
- 5.4 This consultation exercise is very much an open discussion where all options are open for consideration within the scope set out at the beginning of the document (chapter 1). Please, therefore, do not feel restricted to the three options set out in this document – we would be most interested to hear other ideas for an updated Government consultation policy.
- 5.5 Please share with us your views on these options, in particular:

Question 11:

Do you think any of these options would make for a good consultation policy? If so, which option and what changes could be made to improve it?

Question 12:

Are you content with the Government's preliminary analysis that the options identified in the consultation document would not impose costs on the private or third sectors?

Option 1 Written consultation plus one other method

Introduction

- 5.6 This option is based around the current Code of Practice on Consultation but with a new criterion on supplementing all written consultation exercises with at least one other form of consultation. The decision as to which form or forms of consultation to use would rest with the Minister in the Government department and this supplementary consultation would have to be appropriate for the stakeholders. In the written consultation document the department or agency would state what other consultative activity it was planning and why it had chosen this supplementary method. As is currently the case, a departure from the policy would require an explanation.
- 5.7 In many instances, the Government already supplements its written consultations with other methods and some departments have their own internal guidance on this.

Reasoning

- 5.8 The thinking behind this option is that written consultation may not always be sufficient for certain stakeholders and an additional form of consultation would allow their views to be heard.

In practice

- 5.9 With such a policy, departments may decide to issue internal guidance on the best methods for particular groups of stakeholders. If the proposals under consideration could affect more than one stakeholder group, and the best way of reaching these two groups differed, then departments may consider running more than one additional form of consultation.

- 5.10 Additional forms of consultation could include stakeholder workshops, public meetings, citizens' juries, expert panels, online forums, etc. The Cabinet Office would facilitate the sharing of best practice across Government and provide guidance regarding the effectiveness of supplementary forms of consultation for different stakeholder groups.
- 5.11 Government consultations are available online. Making available hard copies and online versions of the same Consultation Document would not meet the goal of having a written consultation plus one other form.

Possible pros

- 5.11
- Greater opportunity for stakeholders not currently engaged with Government consultations to share their views/feed in their evidence
 - Little disruption and few one-off costs as Consultation Code largely unchanged

Possible cons

- 5.12
- Extra costs to Government of always supplementing written consultations with other means of consultation
 - Potential extra costs to stakeholders already participating in Government consultations should they wish also to be involved in the supplementary consultation methods
 - Issue of consultation fatigue not addressed, and possibly worsened

Option 2 A Code of Practice with a fast-track procedure

Introduction

- 5.13 This option consists of a set of criteria largely similar to the current Code but with the possibility, in clearly defined circumstances, of carrying out a fast-track consultation. It might, for example, be possible to allow the fast-track procedure when the policy team can demonstrate that its consultation would be of interest to only a very limited number of stakeholders who are already engaged with the department on the policy area in question. However, the definition of suitable circumstances would need to balance a variety of different factors. The Government would welcome views on suitable definitions.
- 5.14 Under the current Code, departments can indeed carry out shorter consultations – the Code states that “Ministers retain their existing discretion not to conduct a formal written consultation exercise under the terms of the code”.¹⁸ However, this policy would set out circumstances where shorter consultation periods might be considered sensible without being seen as departures from the Code or from best practice.

Reasoning

- 5.15 While 12-week consultations are welcomed by many stakeholders for reasons set out earlier in this document, it can be argued that it is not necessary in all circumstances to carry out a written consultation lasting 12 weeks and that there are disadvantages to 12-week consultations. The Consultation Institute¹⁹ has produced a discussion paper on the topic²⁰ in which the disadvantages of 12-week consultations are listed as the following:
- It slows down the decision-making process;
 - It can deter departments from mounting consultations even when there is a clear need for stakeholder input;

- It is a disincentive to the development and implementation of e-consultation and other fast-response techniques; and
- It can increase the delay between stakeholders expressing their views and being able to see the eventual output and outcome.

In practice

- 5.16 It can be argued that the benefits of shorter consultation periods fall primarily on the side of the Government department. However, if, for example, the primary stakeholders “consist of a largely closed list of known specialist or technical organisations, most of whom are expecting the consultation, and who have the skills and infrastructure to respond in a shorter period of time...”²¹ then fast-tracking would make sense for all parties.
- 5.17 The proposed fast-track option would allow for consultations to last, for example, for six weeks, with advance notice of the consultation being given to the stakeholders.

Possible pros

- 5.18
- More proportionate approach to consultation
 - Faster policymaking but still with stakeholders engaged
 - A disincentive to consult is removed

Possible cons

- 5.19
- Risk that the fast-track procedure might be used when a longer consultation would be more appropriate
 - The risk of misuse might require a stronger monitoring mechanism

¹⁸ Introduction to the Code of Practice on Consultation <http://www.cabinetoffice.gov.uk/regulation/consultation/code/introduction.asp>

¹⁹ <http://www.consultationinstitute.org>

²⁰ The Consultation Institute, The case for fast-track consultation, Sandy (Beds), 17.10.2006

²¹ The Consultation Institute, idem

Option 3 A principles-based approach

Introduction

5.20 Under this option, the criteria in the current Code would be replaced by core principles that would have to be taken into account by central Government departments and agencies when consulting on policy ideas or proposals. Departments would consult in a manner which they deemed to be appropriate and proportionate to the policy under discussion and to the stakeholders affected.

Reasoning

5.21 The rationale for a principles-based approach is that a consultation exercise will be most effective, efficient and proportionate when it is designed around the needs of the stakeholders and is proportionate to the issues being discussed. Observance of the principles would ensure that consultations are designed to meet these requirements and achieve certain standards.

5.22 The goal of this option therefore is to encourage departments to think more carefully about their stakeholders when designing their consultation exercises and to encourage innovation in designing their processes. This would lead to a greater diversity in responses, from those already engaging with Government to those whose voices had previously gone unheard.

In practice

5.23 If, for example, a department needed to consider views relating to a matter affecting only a handful of stakeholders and the Government had been holding regular meetings with them about this, the department may decide that no formal, written consultation is required as it would be considered excessive – the responses

would simply set out what that the Government already knew. Alternatively, for a consultation on a policy area concerning many different stakeholders, including those rarely engaged in Government matters, an entirely different approach might be appropriate, going far beyond the typical, written consultation exercise. Minimum standards for such consultations could apply for certain sorts of policies or proposals. Thresholds already exist: for example, major proposals with a potential cost of over £20 million currently require approval from a special Cabinet committee chaired by the Prime Minister (the Panel for Regulatory Accountability). Consultations on issues over this threshold could warrant a specific level of consultation so as to reduce the risk of abusing the system.

5.24 The principles of a policy of this kind might be drafted in the form of questions or a check-list along the lines of those in case study 1 on Ireland or be based around broad best practice principles, e.g.:

- the *identification of stakeholders* at an early stage; designing the consultation around the needs of those whose views will be sought;
- *transparency* about why the consultation is taking place, who it is aimed at and what preceded and will follow;
- *reporting back to respondents* following consultation exercises regarding the responses received and how they have affected/will affect policymaking; and
- *cooperation* with other teams in the same department and with other Government departments so as to avoid excessively consulting the same people on similar issues and to make use of evidence already gathered.

5.25 The Cabinet Office might supplement the principles by regularly publishing examples from across Government of successful consultation exercises which had used a

variety of methods to seek stakeholders' views. Departmental Consultation Coordinators would work with policy leads to ensure their consultations respect the principles. The Government would welcome views on what the core principles might be and whether there is merit in a checklist of questions to ensure the consultation is handled appropriately.

Possible pros

5.26

- More flexibility for departments – the decision of how to consult rests with those in Government who best know their stakeholders
- Consultation exercises designed around stakeholders would lead to improved engagement, and higher quality and a broader range of responses
- Consultation fatigue addressed as there might be fewer written consultations

Possible cons

5.27

- Change of culture required across Government
- Some methods of consultation might be more expensive to carry out than traditional written consultation exercises

6. Summary of questions

If you are thinking of submitting a formal response to this consultation, please do not feel obliged to answer every question and feel free to make other comments on the topic of Government consultation practice, process and policy that you consider relevant.

Current policy

1. Do you think the Government's Code of Practice has led to an improvement in the way the Government consults and to improved policy outcomes? Please illustrate your answer with any concrete examples you may have.
2. Are 12 weeks generally the right amount of time for the formal, written element of Government consultations to last? Do you think that there are circumstances where a shorter or longer duration may be more appropriate?

Monitoring compliance

3. Is the system for monitoring and promoting performance of departments in relation to the criteria in the current Code of Practice on Consultation right? What improvements could be made?

Consultation and Impact Assessment

4. Is the new approach to Impact Assessment sufficient to improve public consultation on the evidence base for Government policy-making? How could consultation policy improve consultation on Impact Assessments?

Consulting for the right reasons at the right time

5. When in the policy development process do you think the Government should consult stakeholders? Please cite any relevant examples when you have been consulted at the right or wrong time.

How best to seek stakeholder input?

6. Do you think that more emphasis should be placed on alternative or supplementary approaches to consultation in a revised consultation policy? What supplementary approach or approaches would work best for you/your organisation?

Awareness-raising

7. How do you generally become aware of Government consultations and how would you like to learn about upcoming and current Government consultations?

Reporting back following consultations

8. How do you rate the feedback you have seen from Government departments following consultations and what improvements or changes would you like to see in relation to reporting back?

Consultation fatigue

9. Is “consultation fatigue” an issue for you? If so, why is this and how do you think this issue could be overcome?

Other issues

10. Please feel free to give us any other views you may have about the effectiveness of current consultation policy, the future of consultation policy, the case studies in this paper and other examples from the UK or elsewhere.

Options

11. Do you think any of these options would make for a good consultation policy? If so, which option and what changes could be made to improve it?
12. Are you content with the Government’s preliminary analysis that the options identified in the consultation document would not impose costs on the private or third sectors?

7. About the consultation

- 7.1 The Government wishes to consult individuals and organisations about the future of consultation policy over the period 14/06/2007 to 28/09/2007.
- 7.2 This consultation exercise will be accompanied by an online discussion and by events to discuss the future of consultation policy – see www.consultations.gov.uk. If you have any queries, please contact the Cabinet Office at Consultation.Policy@cabinet-office.x.gsi.gov.uk.
- 7.3 Following the consultation, the Government will consider responses and, by 30/11/2007, publish a document containing a summary of the responses received; a statement of how these will affect future policy; and an outline of future activity as regards consultation policy. This will be published at www.cabinetoffice.gov.uk/regulation.
- 7.4 Electronic versions of this document can be found at www.cabinetoffice.gov.uk/regulation.
- 7.5 You can also contact us via email at Consultation.Policy@cabinet-office.x.gsi.gov.uk.
- 7.6 We are able to supply copies of this consultation document in alternative formats (such as large print or Braille) upon request.
- 7.7 **Please send your responses to this consultation by 28/09/2007 to:**
- Cabinet Office
4th Floor
22 Whitehall
London SW1A 2WH**
- Email: Consultation.Policy@cabinet-office.x.gsi.gov.uk**
- 7.8 For enquiries, contact Ian Ascough at the above postal address, via Ian.Ascough@cabinet-office.x.gsi.gov.uk or on 020 7276 2175.
- 7.9 This document and the consultation process have been planned to adhere to the Code of Practice on Consultation issued by the Cabinet Office and is in line with the six consultation criteria, which are:
1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy
 2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses
 3. Ensure that your consultation is clear, concise and widely accessible
 4. Give feedback regarding the responses received and how the consultation

- process influenced the policy
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation coordinator
 6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.
- 7.10 Representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions, when they respond.
- 7.11 Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004)
- 7.12 If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.
- 7.13 The Cabinet Office will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties
- 7.14 Individual contributions will not be acknowledged unless specifically requested.
- 7.15 Your opinions are valuable to us. Thank you for taking the time to read this document and respond.
- 7.16 **If you have comments or complaints about how this consultation is being handled, please contact Ian Ascough in the Better Regulation Executive: Ian.Ascough@cabinet-office.x.gsi.gov.uk or 020 7276 2175**

Annex 1: Who we are consulting

This consultation document has been sent electronically to the organisations listed below. Government departments and agencies will also be alerting their key stakeholders to the launch of this consultation exercise.

Please feel free to forward this document, a link to it or the contact details set out at the beginning of this document to any individuals, organisations or businesses who you think might be interested.

Action with Communities in Rural England	Centre for Environment, Fisheries and Aquaculture Science
Adam Smith Institute	Chartered Institute of Environmental Health
Advertising Association	Chartered Institution of Water and Environmental Management
Advertising Standards Authority	Chemical Industries Association
Age Concern	Citizens Advice Bureau
Agricultural Industries Confederation AIC	City of London Corporation
Amicus	Civil Aviation Authority
Association of British Insurers	Cleaning and Support Services Association
Association of British Offshore Industries (ABOI)	Coal Authority
Association of British Oil Industries (ABOI)	Commission for Equality and Human Rights
Association of British Travel Agents (ABTA)	Commission for Rural Communities
Association of Chartered Certified Accountants	Confederation of British Industry (CBI)
Association of Chief Executives of Voluntary Organisations	Consultation Institute
Association of Chief Police Officers	Consumer Council for Water
Association of Convenience Stores	Countrywide Farmers Plc
Association of Police Authorities	Demos
Association of Port Health Authorities	Economic and Social Research Council
Association of River Trusts	Electrical Contractors Association of Scotland
Association of the British Pharmaceutical Industry	Energy Industries Council
Better Regulation Commission	Energy Networks Association
Bio Industry Association	Energywatch
Black Environment Network	Engineering Employers Federation (EEF)
Black Training and Enterprise Group	English Partnerships
British Association of Record Dealers (BARD)	Environmental Services Association
British Bankers Association	Environment Council
British Beer and Pub Association	Environmental Health Institute
British Cement Association	Environmental Industries Commission (EIC)
British Chambers of Commerce (BCC)	Environmental Services Agency
British Chemical Distributors and Traders Association Ltd	Environmental Services Association
British Dental Trade Association	Equal Opportunities Commission
British Hallmarking Council	European Commission
British Metals Recycling Association	Federation of Environmental Trade Associations
British Overseas NGOs for Development	Federation of Master Builders
British Potato Council	Federation of Small Businesses
British Poultry Council	Financial Reporting Council
British Retail Consortium	Financial Services Authority
British Vehicle Rental and Leasing Association	Fire and Rescue authorities
British Woodworking Federation	Fire Industry Confederation
Campaign to Protect Rural England	Food and Drinks Federation

Food Standards Agency
 Foodaware
 Football Licensing Authority
 Forestry Commissioners
 Forum of Private Business
 Friends of the Earth
 General Optical Council
 General Medical Council
 Genewatch UK
 Green Alliance
 Greenpeace
 Hearing Aid Council
 Historic Buildings & Monuments Commission
 Home Grown Cereals Authority
 Homebuilders Federation
 Homeless Link
 House Builders Federation
 Housing Corporation
 Human Fertilisation & Embryology Authority
 Institute for Economic Affairs
 Institute of Asian Business
 Institute of Chartered Accountants of England
 and Wales
 Institute of Directors (IoD)
 Institute of Interim Managers
 Involve
 Judicial Studies Board
 Justice
 Justices' Clerks' Society
 Law Society
 Liberty
 Local Government Association
 London Investment Banking Association
 London School of Economics
 MIND
 National Consumer Council
 National Council for Voluntary Organisations
 National Energy Foundation
 National Grid
 National Landlords Association
 National Union of Farmers
 Natural England
 Oxfam
 Path National UK
 Policy Exchange
 Policy Studies Institute
 Proprietary Association of Great Britain
 Radio Electrical and Television Retailers
 Association (RETRA)
 Regulatory Policy Institute
 Restorative Justice Consortium
 Royal Institute of British Architects
 Royal Institute of Chartered Surveyors
 Royal National Institute for the Blind
 Royal National Institute for the Deaf
 Royal Society for the Prevention of Accidents
 Royal Society for the Protection of Birds
 Royal Town and Planning Institute
 Sea Fish Industry Authority
 Security Industry Authority
 Shelter
 Small Business Council
 Small Business Europe
 Small Business Service
 Society of Chief Officers of Trading Standards in
 Scotland (SCOTSS)
 Society of Motor Manufacturers and Traders
 Society of Pension Consultants
 Sports Industries Federation
 Stonewall
 Trades Union Congress (TUC)
 Trading Standards Institute
 Trademarks, Patents and Designs Federation
 Turning Point
 United Kingdom Environmental Law Association
 (UKELA)
 United Kingdom Sports Council
 Waste Working Party of the UK Environmental
 Lawyers Assoc.
 Water UK
 Wellcome Trust
 Which?
 Wine and Spirit Trade Association
 World Wildlife Fund

Annex 2: Definitions

It is important to define the terms “consultation” and “stakeholders” to clarify the context and scope of this consultation exercise.

Public Engagement and Consultation

Public engagement in policy development and service design underpins a representative democracy. This engagement can take many shapes and forms and be undertaken at any stage of the policy process - from gathering ideas about how best to address an issue through to evaluating how well policy objectives were met.

Engagement can lead to improved governance and accountability; build social capital, networks, inclusion and shared ownership of issues and help develop citizens’ confidence and knowledge about operating in the public realm.

Another key benefit, of course, is delivering better policy and services. At those stages in the policy process where the Government has formed a preliminary policy analysis and developed options for scrutiny, it is right that this engagement takes the form of consultation. Here the objective is to listen fully and carefully so the Government can build up a broad evidence-base which allows for effective and efficient policymaking before decisions are made. Consultations which truly reach all those with an interest lead to better policies and reduce the risks of policies failing to meet their objectives and of unintended consequences and can lead to further engagement from experts and interested parties further down the line. It is sensible therefore to set out clearly a consistent set of expectations that Government sets itself at these policy stages where consultation, rather than other forms of engagement, is needed.

However, while consultation serves a specific purpose in seeking evidence for policymaking and exposing preliminary analysis and options to scrutiny, it need not be a restrictive term when it comes to method. In other words, consultation should not be understood purely as meaning written consultation. While this may often be the

most useful method for consultation, it is not the only medium, and certain policy areas, particularly because of those people who might be affected, may better be served by other forms of consultation. There is, for example, considerable value to be gained through supplementing written consultations with other forms of consultation and in maintaining regular contact with principal stakeholders. Many Government departments hold regular meetings with key players in their policy areas, referring to these as Policy Forums or Stakeholder Forums. Such forums allow constructive dialogue to take place on policy objectives as well as on the detail of proposals. These discussions should be considered as consultation.

Stakeholders

Consultations are aimed at “stakeholders”. By stakeholders we mean those outside of central Government with a specific interest in the topics under discussion. These may be organisations or associations, companies or individuals who have a specialist interest or who might be affected by the new policy, the policy change or the proposed legislation. In very many cases members of the public are also stakeholders.

Insofar as central Government department consultations are concerned, other central Government departments should not be considered “stakeholders”; Whitehall has internal procedures to co-ordinate and join up policymaking across Government. However, the public sector outside of central Government can be considered stakeholders and is free to respond to central Government consultations. The Cabinet Office strongly advises departments to work closely, before any public consultation takes place, with colleagues in other departments, agencies or local government bodies, etc. as relevant, and especially with those who may have to administer and/or enforce the policy.

International examples of definitions

Case Study 8: The Organisation for Economic Cooperation and Development (OECD)

defines consultation as “a two-way relationship in which citizens provide feedback to government. It is based on the prior definition of information. Governments define the issues for consultation, set the questions and manage the process, while citizens are invited to contribute their views and opinions.”²²

Case Study 9: The Government of the Republic of Ireland, in its “Reaching Out”²³ guidelines

for consultation, defines consultation as “a structured public engagement which involves seeking, receiving, analysing and responding to feedback from stakeholders. A structured consultation process entails defining the purpose and subject of the consultation (such as a policy initiative, a regulatory change, a legislative proposal or a service delivery). It also entails identifying the key audience whose views are to be sought, framing the questions to be asked, providing information and receiving and analysing the responses. It is important to differentiate between ongoing consultative mechanisms (involving standing committees, forums or groups) and one-off consultation exercises.”

Case Study 10: Australia’s Department of the Environment and Heritage defines the term as “a process of discussion between those proposing a course of action and those likely to be affected by those actions”.²⁴

Case Study 11: New Zealand’s Department of Conservation has defined consultation as “a genuine invitation to give advice and genuine consideration of that advice”.²⁵ The Department states New Zealand case law which says that consultation can include:

- a statement or proposal not yet fully decided
- listening to what others have to say and considering responses
- sufficient time and genuine effort
- enough information to make useful, intelligent responses
- an open mind and readiness to change and to start afresh
- an intermediate situation involving meaningful discussion

²² OECD, Public Management Policy Brief: Engaging Citizens in Policy Making: Information, Consultation, and Public Participation Paris, OECD, 2001

²³ http://www.betterregulation.ie/attached_files/Rtfs/Consultation%20Guidelines.doc

²⁴ www.deh.gov.au/soe/2001/heritage/glossary.html

²⁵ <http://www.doc.govt.nz/upload/documents/about-doc/role/policies-and-plans/cms1-glossary.pdf>

Annex 3: Impact Tests

In collaboration with Government departments and a handful of stakeholder organisations which regularly respond to Government consultations, and through surveying small businesses (facilitated by the Small Business Service) the Cabinet Office has carried out initial analysis of the costs and benefits of Government consultation for the private and third sectors as well as the costs and benefits for Government.

There are, of course, no mandatory costs associated with consultation for individuals or the private and third sectors, and in responding to a consultation stakeholders will, at least informally, have to carry out a cost-benefit analysis to weigh up the resources required to respond and the potential pay-back in better policies. Effective consultation should reduce the risk of policy failure.

None of the options set out in this consultation document imposes costs on the private or third sectors, and the costs on the public sector are expected to be minimal.

The Cabinet Office has carried out screening on the following impact tests:

- Small Firms Impact Test
- Competition Assessment
- Legal Aid
- Sustainable Development
- Environment
- Health
- Race Equality
- Gender Equality
- Disability
- Rural Proofing
- Human Rights

In all of these except the Small Firms Impact Test (SFIT) it was decided that, at this stage, there was no impact from the proposals set out in this consultation document so the tests were not taken any further. It was decided that an SFIT should be carried out to Stage 1 level.

Small Firms Impact Test (Stage 1)

Discussions have been held with bodies representing small business interests about how

Government consultations could be improved. Also, facilitated by the Small Business Service, small businesses were surveyed as to their views on how Government currently consults and the scope for improvements. Twelve small businesses responded to this survey expressing a range of views regarding the adequacy of Government consultations in a variety of policy areas.

Comments received from small businesses included:

- the need for greater transparency in consultation processes (e.g. clearer definition of scope in consultation documents, timetables for prospective action in consultation documents, better provision of feedback from Government following consultation);
- the importance of consultations aimed at small businesses lasting at least 12 weeks;
- the need for effective awareness-raising and the use of a range of communications channels;
- the need for concrete examples of what implementation of specific options might mean for small businesses;
- the need to challenge the assumption that all small businesses operate locally when modern communications channels allow small businesses to operate globally. Because of this assumption, Government can sometimes forget that small businesses might be affected by what is being proposed in a consultation document;
- the need for small businesses to be able to feed in their views quickly;
- the idea of Government paying for input from small businesses; and
- the perception that consultations seem to occur late in the policy development process and so it is difficult to influence policy options.

The consultation document addresses many of these issues and in the options looks at how they might be addressed in practice. Adopting any of these options would lead to no mandatory costs and no significant or disproportionate impact on small businesses.

**Cabinet Office
4th Floor
22 Whitehall
London SW1A 2WH**

e-mail: consultation.policy@cabinet-office.x.gsi.gov.uk

Published: June 2007
© Crown copyright 2007

The text in this document may be reproduced free of charge in any format or media without requiring specific permission. This is subject to the material not being used in a derogatory manner or in a misleading context. The source of the material must be acknowledged as Crown copyright and the title of the document must be included when being reproduced as part of another publication or service.

The material used in this publication is constituted from 75% post consumer waste and 25% virgin fibre.