



Code of Practice on Consultation



Foreword

by the Prime Minister



Effective consultation is a key part of the policy-making process. People's views can help shape policy developments and set the agenda for better public services. But we also need to make the process of consultation less burdensome and easier for people to engage with.

We have made progress in recent years. In November 2000, I launched the Code of Practice on Written Consultation, which set out principles for departments to follow. This has been effective in raising both the quality and quantity of consultation carried out by government.

We consult more extensively now than ever before. And, in the vast majority of cases, consultation periods are now at least 12 weeks long, enabling more time for responses and more people to be involved.

But there is much more we can do to improve the effectiveness of the way we consult with stakeholders. This new, revised code will help focus those efforts. It is shorter and clearer, and strengthens the commitment to providing respondents with feedback and to following better regulation best practice in developing policy options. I encourage all departments and relevant public bodies to use it effectively.

Tony Blair

January 2004

The six consultation criteria

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 co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

These criteria must be reproduced within all consultation documents.

Introduction

The code and the criteria within it apply to all UK public consultations by government departments and agencies, including consultations on EU directives.

UK non-departmental public bodies and local authorities are encouraged to follow this code. Devolved Administrations are free to adopt this code, but it does not apply to consultation documents issued by them unless they do so.¹

Though the code does not have legal force, and cannot prevail over statutory or mandatory external requirements (eg under European Community law), it should otherwise generally be regarded as binding on UK departments and their agencies, unless Ministers conclude that exceptional circumstances require a departure from it.

This code should be used in conjunction with the Code of Good Practice in Consultations and Policy Appraisal, which supports the Compact on Government's Relations with the Voluntary and Community Sector.

Ministers retain their existing discretion not to conduct a formal written consultation exercise under the terms of the code, for example where the issue is very specialised and where there is a very limited number of stakeholders who have been directly involved in the policy development process. In these circumstances the general principles of the code should still be followed as far as possible, and departments should consider how to ensure that the public is made aware of the policy, for example through a press notice or statement on the department's website. This should state the Minister's reason for their decision.

When you consult, care must be taken to comply with your legal duties, such as those that arise under the Human Rights Act, the Data Protection Act, the Freedom of Information Act and laws against discrimination and defamation. In addition, your Race Equality Scheme contains specific obligations relating to the assessment of the impact of proposed policies on the promotion of race equality and to consultation.

Any deviation from this code must be highlighted in the consultation document and should state the Minister's reasons for departing from the code, and what specific measures have been taken to ensure that consultation is as effective as possible.

The Cabinet Office are committed to reviewing the effectiveness of the code. Feedback is welcome to the address below:

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Web address: www.cabinet-office.gov.uk/regulation/consultation/code.htm

¹For non-Ministerial departments and other organisations, where 'department' is used it refers to the consulting organisation and where 'Minister' is used it means the decision-maker, for example the board, responsible for the consultation.

Criterion 1

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.

- 1.1 Consultation is a continuous process that needs to be **started early** in the policy development process.
- 1.2 It is important to identify proactively relevant interested parties and those whom the policy will be likely to affect. These groups should be contacted and engaged in discussion as early as possible in the policy development process.
- 1.3 Informal consultation with these stakeholders should be conducted prior to the written consultation period. Not only does this lead to a more informed consultation exercise but it also ensures that stakeholders are engaged early and have a better understanding of the policy.
- 1.4 The formal consultation period should always include a written consultation exercise. **This written consultation period should be a minimum of 12 weeks.** Departments should consider the specific circumstances of their stakeholders and consider longer consultation periods at certain times, for example during the summer holiday period.
- 1.5 Although there will sometimes be circumstances that require a consultation period of less than 12 weeks, this should be the exception and should be avoided wherever possible. Such circumstances may be timetables set out in statute; those unavoidably dictated by EU or other international processes; those tied to the Budget or other annual financial cycles; measures where there is a health and safety or security dimension; or some other urgent requirement for the introduction of new measures. Where re-consultation takes place on the basis of amendments made in the light of earlier consultation, a shorter period may also be appropriate.
- 1.6 Where a consultation takes place over a holiday period or lasts less than 12 weeks, extra effort should be made to ensure that the consultation is still effective, by supplementing the written exercise with other methods of consultation.
- 1.7 Where a consultation period is less than 12 weeks this must be highlighted in the consultation document, which should explain the Minister's reasons for this, and the extra efforts taken to ensure that the consultation is as effective as possible.
- 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. Other forms of consultation may help in this process. These might include:

- stakeholder meetings;
- public meetings;
- web forums;
- public surveys;
- focus groups;
- regional events; and
- targeted leaflet campaigns.

Criterion 2

2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.

- 2.1 Ask focused questions, and be clear about the areas of policy on which you are seeking views. Responses that do not refer to the specific questions asked should still be accepted. Encourage respondents to provide evidence, where appropriate, to support their responses.
- 2.2 Explicitly state any assumptions made about those who are likely to be affected by the proposed policy. Encourage respondents to challenge these assumptions.
- 2.3 As far as possible, consultation should be completely open, with no options ruled out. However, if there are things that cannot be changed because, for example, they are part of a European Directive or due to prior Ministerial commitments, then make this clear. The risks and consequences of doing nothing should be outlined.
- 2.4 If there are particular areas where respondents' input would be especially valuable, make this clear as well. Responses are likely to be more useful and focused if the respondents know where to concentrate their efforts.
- 2.5 Representative groups should be asked when responding to give a summary of the people and organisations they represent.
- 2.6 Provide a list of consultees as an annexe to your consultation document and ask for suggestions of other interested parties who should be consulted. It may also be helpful to refer to any earlier or informal consultation.
- 2.7 Clearly state the deadline for responses and any alternative ways of contributing to the process in the consultation document.
- 2.8 Explicitly state both who to respond to and who to direct queries to, giving a name, address, telephone number and e-mail address. This may be the same person.

Criterion 3

3. Ensure that your consultation is clear, concise and widely accessible.

3.1 Clear

Use plain language: avoid jargon and only use technical terms where absolutely necessary. A consultation should be as accessible as possible. Explain complicated concepts as clearly as possible and, where there are technical terms, use a glossary.

3.2 Concise

Provide an executive summary to the written consultation document that covers the main points of the document, preferably no longer than two pages. Even if the document is technical, ensure that the executive summary is accessible to all. Having read the executive summary consultees should be in a position to decide whether the consultation is relevant to them, and whether they need to read further.

3.3 Accessible

Ensure that the consultation documents are available in paper format and with the fullest use of electronic means. They should be available and easily found on the internet from the day that the consultation is launched.

- 3.4 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 Respondents should be able to respond electronically if they choose. Produce documents in electronic formats appropriate to achieving wide accessibility. Consider the range of electronic response methods to ensure that providing a response is simple, engages a broad range of people and encourages deliberation. Costs to users should never be such that they are an obstacle to effective consultation.
- 3.6 Consider groups who cannot access traditional written consultations or the online versions of these. It may be necessary to produce the document in different languages, including, for example, Welsh. There may be some circumstances in which written consultation is not the best way to reach your target audience.
- 3.7 With regard to equality issues, ensure that your consultation engages with the whole community. You may need to consider the format of the consultation to achieve this and to consider how to reach groups which could be overlooked. These groups could include black and minority ethnic communities, women or disabled people.
- 3.8 Ensure that the consultation is suitable for the topic and groups involved. Certain issues may demand particular approaches to consultation: for example, discussion groups or meetings may be appropriate, especially where representative groups' capacity to respond to formal consultation is limited and many bodies are seeking to consult with them.
- 3.9 The consultation criteria should be reproduced in all consultation documents. Explicitly state that the consultation should abide by these criteria. Invite respondents to comment on the extent to which the criteria have been adhered to and to suggest ways of further improving the consultation process. Explicitly state whom to contact if respondents have comments or complaints about the consultation process. This should be someone outside the team running the consultation, and is likely to be the consultation co-ordinator for the department.

Criterion 4

4. Give feedback regarding the responses received and how the consultation process influenced the policy.

- 4.1 Responses should be carefully and open-mindedly analysed. Do not simply count votes when analysing responses. Particular attention may need to be given to representative bodies, such as business associations, trade unions, voluntary and consumer groups and other organisations representing groups especially affected. In order to ensure that responses are analysed correctly, it is important to understand whom different bodies represent, and the methodology used to gain members' input into the response.
- 4.2 Particular attention should be paid to:
 - possible new approaches to the question consulted on;
 - further evidence of the impact of the proposals; and
 - strength of feeling among particular groups.
- 4.3 The consultation document should state the date when, and the web address where, the summary of responses will be published. As far as possible this should be within three months of the closing date of the consultation. Those without web access should be able to request a paper copy of this summary. Feedback should also be available in formats which are appropriate to the audience.
- 4.4 The summary should give an analysis of the responses to questions asked: for each question there should be a summary of responses to that question and then an explanation of how it is proposed to change the proposal in light of the responses received. There should also be information provided on themes that came out of the consultation which were not covered by the questions.
- 4.5 Wherever possible the summary of responses should also include a summary of the next steps for the policy, including reasons for decisions taken.
- 4.6 Explain that information provided in response will be dealt with 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). Please refer to the accompanying Guidance on the Code of Practice on Consultation <http://www.cabinetoffice.gov.uk/regulation/consultation/index.asp> for more information.
- 4.7 When providing copies of responses, it is legitimate to make a reasonable charge for copying and postage.

Criterion 5

5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.

- 5.1 Each department should have a nominated consultation co-ordinator, who should ensure that the consultation code is followed. They should act as an adviser to those conducting consultation exercises.
- 5.2 Consultation should be evaluated for effectiveness, looking at numbers and types of responses, whether some methods of consultation were more successful than others, and how the consultation responses clarified the policy options and affected the final decision.
- 5.3 This evaluation should be used to inform future consultations in the department, and lessons learnt can be disseminated across government.
- 5.4 The consultation co-ordinator should collate information regarding how many national consultations the department has carried out and any deviations from the code, with the reasons given for these. This data should be available for the Cabinet Office to collate annually, and will be made available to the public.

Criterion 6

6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

- 6.1 When consulting on a review of a policy area, ensure consideration is given to opportunities for **reducing** bureaucracy and regulatory burdens, for example simplification or repeal of existing regulations.
- 6.2 Ensure that a **Regulatory Impact Assessment (RIA)** is attached, where required, highlighting the costs, benefits and risks of the proposal. Respondents should be encouraged to comment on and challenge the assumptions in the RIA where one is included. For more guidance on RIAs please see www.cabinet-office.gov.uk/regulation/scrutiny/betterpolicy.htm
- 6.3 Consider **alternatives** to regulations, such as voluntary codes, and encourage respondents to suggest alternatives when responding to the consultation exercise.
- 6.4 Consider any unintended consequences of the proposal and ask respondents to highlight these in their response.
- 6.5 When consulting, ensure that you ask about the practical enforcement and implementation issues of your policy, including asking respondents for alternative approaches to implementation. For guidance on implementation issues please see www.sbs.gov.uk/content/pdf/implementationguidelines.pdf
- 6.6 More generally, seek to ensure that the Principles of Good Regulation are followed whenever policy is being developed. These are:
 - proportionality;
 - accountability;
 - consistency;
 - transparency; and
 - targeting.
- 6.7 For more information about these and their application, please see www.brtf.gov.uk/taskforce/reports/entry%20pages/principlesentry.htm

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