



Briefing and request for comments on Cabinet Office's 'Effective Consultation' consultation – July 2007

Introduction

The Cabinet Office is currently reviewing the Government's consultation policy and as part of that exercise has issued a formal consultation entitled 'Effective Consultation'¹. The aim of the consultation is to seek views from a range of stakeholders to help the Cabinet Office to design an updated consultation policy that should lead to better consultation practices across Government.

Good consultation processes to enable civil society engagement for those working in international development is vital and so BOND is intending to submit a response to this consultation. This briefing document summarises the points made in the Cabinet Office's consultation and includes some initial comments (not proposed answers necessarily) about the questions they raise.

If you have any comments you would like to feed in to BOND's response or about the consultation generally please feed them in to [Fiona Howie](#) by **3 August**. Following that a draft response will be circulated to all members asking for people to sign up to the joint response. This of course does not prevent any organisations from submitting their own response.

Background

The Code of Practice on Consultation² (the Code) sets out how Government departments should consult; it was first published in 2000 and most recently reviewed in 2004. The Cabinet Office is now asking for views from those who engage in consultations so that the Code can be reviewed. It is hoped that this will improve the quality and effectiveness of Government consultations.

Those working in the voluntary sector will be aware of the Compact Code of Good Practice on Consultation and Policy Appraisal³. Although the Government's Code replicates much of the Compact Code it is important to remember that the Compact is between Government and the voluntary and community sector only. The Government's code sets out the criteria for carrying out formal, written consultations for all Government departments with stakeholders from any sector.

¹ Download the document at <http://www.cabinetoffice.gov.uk/regulation/documents/consultation/pdf/effectiveconsultation.pdf> (383 KB)

² Available at <http://www.cabinetoffice.gov.uk/regulation/documents/consultation/pdf/code.pdf> (26 KB)

³ See http://www.thecompact.org.uk/shared_asp_files/GFSR.asp?NodeID=100320 (111 KB)

Current policy

The Code contains six criteria which apply to all public consultations. Departure from these criteria requires clearance from a Minister. The criteria 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 the proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that the consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor the department's effectiveness at consultation, including through the use of a designated consultation coordinator.
6. Ensure the consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

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.

BOND comment: Generally BOND does believe that improvements have been seen in how departments conduct consultations. However there are still examples of bad practice, such as the Latin America Regional Assistance Plan. This RAP was issued for consultation recently but the deadline for comments was still well below the 12 weeks specified in the Code. We also believe that criterion 4 is important and not always adhered to.

Specific examples of good or bad practice that members would like to be highlighted in the response would be welcome.

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?

BOND comment: In light of the need for many BOND member organisations to consult with southern partners before they are able to feed in to UK Government consultations we believe that 12 weeks is the minimum time that is required. Even when organisations have been involved in discussions with DFID in the run up to the launch of the consultation time is needed to agree a formal position and to get sign off from senior staff.

Monitoring observance of the Code

Departments are required to provide information regarding their consultations in their annual report. According to the Cabinet Office, who also collate information on observance of the Code for all departments, around 75% of consultations in 2006 lasted at least 12 weeks.

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?

BOND comment: It seems sensible that departments have to include information on their compliance with the Code in their annual report but what happens to those who

are not adhering to it? Does the Better Regulation Executive have a role in ensuring departments work within the Code and if not should they?

Consultation and impact assessment

Impact Assessments are required under good practice guidelines to ensure that departments have considered and understood the various consequences of possible interventions on the public, private and third sectors. The Government believes such Assessments are vital tools and that the link between them and public consultations could be improved. Consequently they have recently implemented new guidance on how these Assessments should be written, this had the aim of presenting the data in a more open and accessible format. The guidance also stresses the importance of informal and formal pre-consultation and consultation as the Impact Assessment is developed.

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?

BOND comment: Impact Assessments should play an important role in consultations because it is essential that both the Government and those responding to the recommendations are aware of the cost/benefit implications of any recommendations or proposals. The new approach, assuming it is adhered to, sounds very sensible.

It is essential that the sector is able to feed in to these Assessments because they may be able to understand the resource implications proposed changes would place on them better than Government departments. It is also important that these implications are considered in relation to organisations of all sizes, not just large businesses.

When to consult

Concerns have been raised with the Cabinet Office about the impact views submitted by stakeholders can really make on current policies and at what stage in the process they should be consulted. The Code does not dictate at what stage of the consultation departments should consult and nor does the Government believe that it is sensible or desirable to formulate rules on when formal consultations should be issued.

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.

BOND comment: We do not believe that there is a specific point in policy development that can be identified that would always be the most appropriate time for a formal, written consultation. Sometimes a written consultation is most appropriate early in policy development so all aspects can be discussed, but in other cases it may be more appropriate to consult once major decisions have been made so stakeholders can feed in views on more detailed issues, or on implementation.

For example, BOND is currently working on a joint response to the Home Office's consultation on safeguarding charities from terrorist abuse⁴. The sector was aware of, and involved in negotiations around this piece of work for some time before the

⁴ See <http://www.bond.org.uk/sector/terrorreview.htm>

consultation document was issued which proved very useful, especially because this is a sensitive area. However, once the consultation was issued it was felt by the sector that a stage in the policy development process had been missed out because the document issued by the Home Office was a review of evidence to date on the issue. It went on to make recommendations and it was these recommendations that were being consulted on. The findings of the review could not be questioned even though the sector felt that some assumptions needed further explanation or justification.

How best to seek input?

It is quite possible to abide by the six criteria set out in the Code without carrying out any other form of stakeholder consultation to supplement the written consultation. Some departments do already supplement written consultations with other methods of seeking views, for example on-line discussion forums and meetings.

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?

BOND comment: We feel that meetings can play an important role in consultation processes because they allow ideas to be shared and thinking to be developed. This may be discussion between interested stakeholders or between stakeholders and the department managing the consultation. We do however appreciate that many of our members are not based in London and/or may not have the resources to spend a vast amount of time in meetings, so we would welcome your views. We would also be interested to know if members have found on-line discussions to be a useful forum in the past?

Awareness-raising

Obviously if stakeholders are to engage in consultations they have to be aware of their existence, in order to increase awareness departments generally issue targeted press releases, arrange launch events or send 'updates' to stakeholders they wish to engage. Departments also usually have a section dedicated to consultations on their website.

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

BOND comment: BOND generally monitors Government websites and receives invitations to launch events and then passes this information on to our members via both emails and our website. However we appreciate on occasion we are not made aware of all consultations that may be relevant to our members.

DFID has an e-update facility but unlike the similar service offered by the Foreign and Commonwealth Office it cannot be tailored to specific interests and is perhaps not regular enough. It would seem that if this facility could be improved and offered by all government departments it would be a useful tool that organisations could sign up to if they are interested in receiving information about new consultations.

Reporting back

The Code states that following the end of a consultation period departments should report back on the issues raised by respondents, the impact this had on decisions

and the next steps within three months. However the Cabinet Office have received feedback that this does not always happen.

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?

BOND comment: We welcome the inclusion of the need for feedback in the Code because for organisations to believe that they can influence policy through participating in consultations they must be able to see what impact responses can have. Transparency is therefore vital. However we do not feel that at the moment all departments are reporting back to respondents at all, let alone within three months and the Cabinet Office or the Better Regulation Executive should play a role in ensuring compliance with the Code in the area of feeding back improves.

Consultation fatigue

Central Government and its agencies currently launch around 600 consultations each year covering a range of topics. The Government has received feedback from both the private and third sectors suggesting that it is too time consuming to respond to all of the written consultations that touched on areas that interested them. Options for reducing this ‘consultation fatigue’ may be to coordinate consultations better across Government, or to change the current emphasis on written consultations to something less labour intensive.

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

BOND comment: ‘Consultation fatigue’ can be a problem, for example small and medium sized organizations may not have the staff capacity to respond to a large number of consultations each year. Equally, larger organisations that cover a broad range of issues may well also find that more consultations are relevant to them. However, BOND does not think it is appropriate to suggest that we would like to be consulted less. Rather we believe that it is essential that the sector is given the opportunity to feed in our views and opinions as often as possible but it is then up to organisations to prioritise and focus on more relevant consultations as and when required.

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.

Options

The consultation document suggests three options for an updated consultation policy. They are as follows:

Option 1 – Written consultation plus one other method

This option is based on the current Code but with a new criterion on supplementing all written consultation exercises with at least one form of consultation. The choice of supplementary form of consultation would depend on the stakeholders the department was trying to engage but the decision would have to be justified in the written consultation document.

Option 2 – A Code of Practice with a fast-tracked procedure

This Code would include the criteria in the current Code but with the possibility, under some circumstances, of carrying out a fast-track consultation. The example given is if the department can show that the consultation will be of interest to a very limited group of stakeholders who have already been involved in the policy discussions. The Government believes that this could be a more proportionate approach to consultations and would enable faster policy making.

Option 3 – A principles-based approach

This options suggests that the current criteria be replaced by core principles that would have to be taken into consideration when any department or government agency undertook a policy consultation. This would mean that the department could consult in a manner in which they deemed to be most appropriate and proportionate to the policy being discussed and the stakeholders involved.

The aim of this option would be to get departments to think more carefully about the stakeholders they are trying to engage with while designing their consultation exercise. So for example, 12 week written consultations would not be required if a department is already very engaged in discussions with a specific stakeholder group.

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?

BOND comment: BOND is inclined to support option 1 because this would mean that all Government departments and organisations would know what to expect from consultations. Although option 3 would be a more radical change we have concerns that this new flexibility would make it harder for all organizations and individuals to feed in to policy development on any issue if they so choose. We would very much welcome comments on these options from members.

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?

BOND comment: If any of the options resulted in meetings replacing written consultations, as option 3 could, this would mean that the cost of participating in a consultation would be higher for some organisations in light of travel and time away from the office. If option 1 meant that organisations could chose to travel to a meeting, submit a written comment, or do both at least they could consider in which way they could best feed in to the consultation in light of the importance of the policy issue and the cost the various options would place on them.