



Making a Reality of Consultation

Introduction

In recent years there has been a significant and welcome increase in the extent to which government consults individuals and organisations on policy proposals and decisions. Within the Modernising Government agenda, there is evidence of a serious wish to improve the methods used. The main driving force appears to be a growing tendency to respond to the uncertainties of change by seeking framework legislation which leaves Secretaries of State to devise regulations and codes of conduct. Many EU Directives are similarly implemented by regulation. The devolution of powers to un-elected bodies (including industry regulators) also entails a need to review approaches to consultation at all levels, not just for primary and secondary legislation and local government.

The quality of current consultation exercises varies and the shortcomings of some of the consequent regulatory impact assessments are such that the National Audit Office is about to embark on a study. Some departments still appear to consult because they have to, rather than because they want to and many non-departmental public bodies are not required to consult at all. Attempts to coordinate consultation exercises between departments and agencies appear limited and there is a growing problem of consultation overload for those organisations and individuals asked to respond to multiple exercises on similar subjects.

Recognising the increasing burden of consultation on the ICT industries, EURIM two years ago produced a Briefing Paper which examined the issues in a European context. This paper reviews the situation in the UK, relating to both central and local government. We examine how the consultation process could be made more effective, more manageable and more likely to leave people feeling that their views have been taken into account.

Recommendations

1. Open, public and published consultation processes should be mandatory for all organisations with powers devolved from Parliament or other directly elected assemblies.
2. The current Cabinet Office guidance, identifying which proposals and decisions should be subject to consultation, should be strengthened and extended and be monitored by the Select Committee on Public Administration.
3. All consultation exercises and their results should be made available to the relevant Select Committee and other elected representatives (MPs, MSPs, Councillors etc).
4. Select Committees might also wish to consider taking active oversight of specific consultation exercises.
5. There should be easy access to all documents via the *UK online* website (and avoiding the use of lengthy URLs). Their existence should be drawn to the attention of all interested groups and individuals as well as through the press. Publicity should also be given to the outcome of consultations, including the effect of the responses on that outcome.
6. Consultation documents should be drafted in plain language and be candid about the objectives of the exercise. They should state clearly whether the consultation is about ends or means. Wherever possible the focus should be on ends.
7. Consultation costs should be fully budgeted for any policy initiative and take into account the risk that not consulting effectively may lead to wasted spend and ineffective or counter-productive policy. Thought should also be given to the costs incurred by those who respond.
8. Departments should be encouraged to share consultations and results. Wherever practicable they should co-ordinate plans for consultation exercises to minimise the burden on respondents.
9. All departments and agencies should produce annual forecasts of the consultation exercises they expect to carry out (including estimated timetables) so those likely to be affected can plan the work needed to provide an effective response. Only in exceptional circumstances should consultations be carried out if they are not on the list.

Why is Action Needed?

There is a growing tendency in Whitehall to respond to the uncertainties of change by seeking framework legislation which leaves Secretaries of State to devise regulations and codes of conduct. Many EU Directives are similarly implemented by regulation. The means of consulting those affected, whether organisations or individuals, are many and varied.

The Sixth Report of the Public Administration Select Committee, *Innovations in Citizen Participation in Government*¹ made robust suggestions for improvement. If, however, these are juxtaposed with the analyses in its Fifth Report, *Mapping the Quango State*² and Seventh Report *Making Government Work: the Emerging Issues*³, it becomes apparent that the massive devolution of powers to un-elected bodies should entail major changes in the approaches to consultation at all levels, not just for primary and secondary legislation and local government.

Two years ago EURIM produced a Briefing Paper⁴ which examined the issues in a European context. Since then there has recently been a significant increase in the amount of consultation taking place within the UK, much of it affecting the ICT industries. Meanwhile the private and voluntary sectors are reducing management overheads in the face of increasing cost pressures. They have limited time to read and respond to consultation exercises. This has led to a growing divide between those who complain of duplication, fragmentation and overload (they are on the departmental lists) and those who complain they are never consulted (they are not on the lists).

There is evidence of a serious wish by government and most officials to improve processes. A Code

of Practice for Written Consultation⁵ was published on the Cabinet Office website in November 2000 and a Register of Consultations⁶ is available via *UK online*.

However, the quality of consultation exercises varies. Some departments still appear to be consulting because they have to, not because they want to. Organisations and individuals are not always given sufficient time to respond or a clear understanding of the aims of the consultation and particularly whether they are being consulted about ends or means. The results of consultation exercises are not always published in a timely manner or even at all. Current guidance is strong on the "how" of consultation but says little about which policy proposals and decisions should be subject to consultation. Although in some cases consultation and public participation are mandated (e.g. in local planning processes and in many major health policy decisions) in the majority of cases the decision on whether to consult and on what is left to the discretion of the organisation concerned. The Select Committee on Public Administration (*Mapping the Quango State*² Para 38) found that only 3% of Non-Departmental Government Bodies are required to consult the public, although another 11% do so.

The time pressure on respondents is often increased by a lack of co-ordination between departments. Effective consultation would be improved by a more integrated approach to planning consultation exercises across government organisations. Moreover, the implications of devolution, with different procedures in Scotland, Wales and Northern Ireland, increase the complexity of some types of consultation.

Democratic Process v. Market Research

Citizens feel more confident in the machinery of government if it is clear that their views are being listened to and taken into account. Full and timely feedback is essential and should include not only the text of contributions but also an explanation of how they were used in reaching conclusions.

Consultation exercises and public participation approaches (from referenda to focus groups) need to distinguish between those about what should be the ends and those on the means to achieve predetermined ends. When a consultation is only about means, it is essential that this is made absolutely clear. It is recognised that occasionally consultation serves as a political expedient, but this should be kept to a minimum.

There are many different ways to consult and there will often be a need to use more than one method. Current Cabinet Office guidelines cover only written consultations and should be extended to embrace other methods, including electronic media, which should become more widespread as the Modernising Government programme develops. The cost of tailoring material to fit the medium of the web would be justified in terms of easier and better responses, but it must at the same time be recognised that non-automated methods of consultation will continue to be of vital importance.

People like to respond to defined options and the less structured the exercise, the more necessary

it is for face-to-face contact between officials and those consulted. But options need to be researched and good consultation overlaps with market and academic research. Different types of consultation may be undertaken as market testing exercises to find out whether policy ideas will fly, to develop consensus or to assess public priorities.

Those undertaking consultation need to be open about what will happen with the input, as well as about the background to the consultation. There

can be conflicts between the openness required for effective consultation and the need to keep policy or commercial information confidential. This is a particular problem in handling planning enquiries. Central government departments differ in the importance they attach to the consultation process and this is reflected in the results. At the worst extreme, we can have unworkable legislation because of failure to consult all the groups affected or to listen to their concerns. Such risks increase as it becomes more difficult to predict, identify and consult those who may be affected.

More Effective Consultation through Better Planning

Many organisations are becoming concerned about their ability to react effectively to consultation exercises. This is partly because of the increase in the number of consultations and partly because of deadlines which do not take account of the time necessary for trade associations (for example) to consult members or for companies to agree policy. There is also a polarisation between “professional respondents” (pressure groups, consultancies and law firms creating business and employment opportunities on the back of the policy) and those “too busy surviving” to have time to monitor whether policy proposals might affect them.

Few organisations still have in-house public affairs teams monitoring government policy, ready to

respond to those consultations which might be of concern. Most bin the papers unread or rely on their trade association or professional body. But few of them have the resource to handle more than a dozen consultations a year. Yet it is common for them to receive a dozen a month and to be aware of many more that might affect their members. Moreover it can take up to three months to organise a genuine membership consultation and collate and agree the response. In consequence those who want their submission to be more than the prejudices of a handful of activists tend to respond only to those consultations of which they received advance notice or where it is immediately obvious that the cost to members could be significant.

Effective Consultation

Effective consultation exercises are those that:-

- o encourage all relevant respondents to contribute;
- o contribute to better decisions and more effective policies;
- o give stakeholders confidence that their views are being taken into account; and
- o fit in with the democratic process rather than bypass it.

It is also important that the timing of consultation exercises allows the results to be taken into account in the formulation of both the detail of policy and the implementation plans. This is particularly vital if an outside contractor is to conduct the consultation, since their appointment may well be subject to the procurement rules. There may also be a need for more than one iteration, with the results of each made widely available.

Consultation exercises need to be publicised to ensure that all with an interest are aware of them

within the response time. Many now feel they have legitimate cause for complaint if an electronic version of a consultation document is not available over the Internet at the time of the announcement of the consultation and there is a case for stating that consultations have not “legally” started until the consultation papers are available over the Internet and the location has been announced to both Members of Parliament and the Press.

All consulting bodies within both central and local government should provide access to consultation documents and their results through the *UK online* website and in addition be required to list their forward consultation programme.

The cost of consultation, both to departments and to those responding, is rarely assessed and can be substantial. Such costs should, however, be balanced against the cost of implementing poorly targeted or constructed policies: the very real knock-on effects on parliamentary time, and industry and departmental resources. There is, also, evidence of considerable duplication of effort,

with multiple departments consulting the same groups on the same issues. It can, however, be dangerous (and may be contrary to the Data Protection Act) to rely on answers obtained elsewhere for a different purpose. Responses also change over time. A significant amount of work is required by the consulting department to ensure that responses are obtained from the appropriate range of people and organisations.

Analysis of the results and determining the weighting to give to various views are also critical. There is a shortage of officials with the expertise to plan consultations, evaluate the results (or sometimes even understand the issues being addressed). This is especially acute in complex areas requiring technical or business knowledge. The problems are probably worst with regard to

regulatory impact analyses which suffer particularly from the lack of involvement by those with experience of the practical workings of those who may be affected. It is perhaps significant that the analyses cited as examples of good practice (e.g. *National Standards for the Regulation of Day Care*) were produced as part of the original research into how the policy would achieve the results targeted and were not an afterthought.

Both timing and length of consultation need to recognise that it is sometimes in the public interest to move rapidly to a decision and implementation. There are also circumstances when there is no opportunity to consult because of the political imperative for rapid action or a surprise announcement. If so, the risk of error or opposition needs to be taken into account.

Encouraging Participation

Whilst welcoming the opportunity to participate, many organisational recipients of consultation documents find it difficult to do so effectively. Many have to be ruthless in deciding which to attempt to deal with and which to ignore. It is essential that sufficient time is allowed for response; the current guidelines state 12 weeks as the **minimum** response time. Shorter deadlines allow for neither the necessary internal consultation nor formal ratification of responses through the organisation's constitutional channels. Better results can also be obtained if the timetable for the exercise can be trailed in advance so organisations can plan their responses effectively. Better co-ordination between departments and agencies will help avoid overload, overlap and duplication.

Many organisations are consulted frequently and would benefit from more feedback on the results and how their own submissions were received. This would also improve the quality of future responses.

Organisations and individuals will find it easier to respond if they are clear about the purpose of the consultation and particularly whether they are being consulted about ends or means. It is also helpful

if the implications of policy initiatives and proposals can be drawn out in the documentation. It is essential that accessible language is used and that documentation is made available electronically.

Pre-consultation exercises (including market research) can help to ensure that **all** relevant stakeholders are invited to participate rather than just the usual suspects. Where appropriate, availability of the documentation in minority languages and in forms that cater for people with disabilities (e.g. Braille) is required. Particular care and creativity is needed to capture the views of marginalised sections of society although, once contacted, these are more likely to have the time to respond.

More should be done to publicise the results of consultations in line with the Public Accounts Select Committee's endorsement of transparency in the policy making process. Some departments already place responses on their websites (in an agreed anonymous version if required). As a minimum, a summary of responses and an indication of how they have made a difference to the outcome should be made widely available both electronically and through press reports.

Appendix 1 – References and Sources

1. Public Administration Select Committee, Sixth Report, April 2001:- *Public Participation: Issues & Innovations*
2. Public Administration Select Committee, Fifth Report, March 2001:- *Mapping the Quango State*
3. Public Administration Select Committee, Seventh Report, April 2001:- *Making Government Work: the Emerging Issues*
4. EURIM Briefing No 26:- *Consultation, Concealment or Confusion: Practices and Principles for European Policy Formation*
5. Cabinet Office Code of Practice on Written Consultation
<http://www.cabinet-office.gov.uk/servicefirst/index/consultation.htm>
6. Register of Consultations
<http://www.ukonline.gov.uk/online/citizenspace/default.asp?url=consultation/consult.asp>
7. House of Lords Select Committee: Third Report (chapter 5)
8. National Consumer Council: Government consultations: not just a paper exercise
http://www.ncc.org.uk/pubs/govt_consultations.htm
9. Trade Associations Forum : The Business of Representation report (Alastair McDonald)
www.taforum.org.uk

Appendix 2 – A cross-section of recent consultations:

DfEE: Towards Inclusion : Civil Rights for Disabled People DfEE 2001 ISBN 1 84185 480 8
National Standards for the Regulation of Day Care : consultation pack DfEE 2000

Cabinet Office Social Exclusion Unit: Consultation on young runaways
<http://www.ukonline.gov.uk/online/citizenspace/default.asp?url=/online/citizenspace/consultation/viewtopic.asp?TopicID=3250>

DTI: Consultation on draft guidance on Intellectual Property in Government funded research
<http://www.ukonline.gov.uk/online/citizenspace/default.asp?url=/online/citizenspace/consultation/viewtopic.asp?TopicID=1760>

Inland Revenue: A review of small business taxation:
<http://www.ukonline.gov.uk/online/citizenspace/default.asp?url=/online/citizenspace/consultation/viewtopic.asp?TopicID=3110>

Home Office: A review of the Rehabilitation of Offenders Act 1974
<http://www.ukonline.gov.uk/online/citizenspace/default.asp?url=/online/citizenspace/consultation/viewtopic.asp?TopicID=3830>

Patent Office: Software and Business Methods
<http://www.ukonline.gov.uk/online/citizenspace/default.asp?url=/online/citizenspace/consultation/viewtopic.asp?TopicID=1970>

Food Standards Agency: Application for national approval of a new sweetener 'Sucralose' under the sweeteners in food regulations 1995 (as amended)
<http://www.ukonline.gov.uk/online/citizenspace/default.asp?url=/online/citizenspace/consultation/viewtopic.asp?TopicID=3750>