Draft Code of Practice on Consultation

Public Consultation

November 2007

Price: £1.20
1 Background

1.1 The Corporate Governance Principles and Code of Conduct were approved at November 2005 sitting of Tynwald for application across all Departments/Boards and Offices. The three principles adopted were: openness, accountability, and integrity. It is recognised that one of the important instruments required to support ‘openness’ is a Code of Practice on Consultation.

The Council of Ministers has recently agreed that there should be a standard approach to consultation practice across Government so that all respondents would know what to expect. Accordingly a Draft Code of Practice for Consultation has been agreed by the Council of Ministers for public consultation. The Draft Code is attached.

2 Scope

2.1 The Draft Code of Practice for Consultation has six criteria relating to:

- The length and breadth of consultation.
- Being clear about the Proposal and who is affected.
- Giving feedback on the responses received.
- Monitoring the Department’s effectiveness at consultation.
- Ensuring that the consultation follows best practice.

2.2 The Code would be applied to all consultations by Government/Boards and Offices. The code would not have legal force, and therefore could not prevail over statutory or mandatory requirements. It would be generally regarded as binding on Departments/Boards and Offices, unless Ministers conclude that exceptional circumstances require a departure from it.

3 Comments

3.1 The Council of Ministers invites comments on the Draft Code of Practice. Any comments on the draft Code should be forwarded to Linda McCauley, Acting Head of Council of Minister’s Administration, the Chief Secretary’s Office, Bucks Road, Douglas IM1 3PG by 23rd December 2007.
The Six Consultation Criteria

1. Consult widely throughout the process, allowing a minimum of 6 weeks for written consultation at least once during the development of the legislation or 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 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.

6. Ensure your consultation follows best practice, including carrying out an Impact Assessment if appropriate.

These criteria must be reproduced within all consultation documents.
Introduction

The code and criteria within it apply to all public consultations by government departments/boards/offices.

Non-departmental public bodies and local authorities are encouraged to follow this code.\(^1\)

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

This code should be used in conjunction with the Guidance on Consultations referenced at the end of this Code and any consultation requirements for new legislation.

Ministers have discretion not to conduct a formal written consultation exercise under the terms of the code, for example a national, international or operational need or where the issue involved is very specialised and where there is a very limited number of interested parties 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/boards/offices 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 and the Data Protection Act.

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.

Chief Secretary’s Office will review the effectiveness of the code after 12 months from its introduction and then at three year intervals. Feedback is welcome to the address below:

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Government Offices,
Bucks Road,
Douglas,
IM1 3PM

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\(^1\) For 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.
Consultation criterion 1

Consult widely throughout the process, allowing a minimum of 6 weeks for written consultation at least once during the development of legislation or 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 6 weeks. Departments should consider the specific circumstances of their interested parties and consider longer consultation periods at certain times, for example around TT fortnight.

1.5 Although there will sometimes be circumstances that require a consultation period of less than 6 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 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 6 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 6 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 and children, 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.
Consultation criterion 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 annex 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. Bodies which should be consulted on Primary Legislation are set out at 7.1 of this code.

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.
Consultation criterion 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. 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 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 legislation co-ordinator for the department.
Consultation criterion 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 Guidance on the Code of Practice on Consultation and the Code of Practice on Access to Information.

4.7 When providing copies of responses, it is legitimate to make a reasonable charge for copying and postage.
**Consultation criterion 5**

**Monitor your department’s effectiveness at consultation.**

5.1 Each department should have a nominated legislation 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 Chief Secretary’s Office to collate annually, and will be made available to the public.

**Consultation criterion 6**

**Ensure your consultation follows best practice, including carrying out an 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 an Impact Assessment (IA) 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 IA where one is included.

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.
Bodies to consult

7.1 Departments/Boards/offices will consult the following when drafting Primary Legislation:

- Tynwald members
- Local Authorities
- Chief Officers
- Chamber of Commerce
- Law Society
- Any Island based professional body relevant to the legislation
- Any Island based voluntary body relevant to the legislation

Consultation Guidance

Guidance on consultations can be obtained at:

www.cabinetoffice.gov.uk/regulation/consultation/
www.goodpracticeparticipate.govt.nz/

In addition, there are several sites about current consultations (such as the Scottish Exec. and the EU) but these are designed to be accessed by members of the public rather than government agencies embarking on the consultation process. Nevertheless, these sites might be useful as they have numerous examples of documents that have gone out for public consultation and brief explanations about the process.

www.scotland.gov.uk/Consultations/About
ec.europa.eu/yourvoice/consultations/index_en.htm