Comments on Draft Code of Practice on Consultations

The Positive Action Group welcomes this preliminary consultation. The following observations are offered in a spirit of constructive feedback.

Introduction

‘Non-departmental public bodies … are encouraged to follow this code.’ This reads like an expression of pious hope rather than confidence. ‘Urged’ would be a slight improvement.

Will the response of such bodies in following the code be monitored, and if so, how? If there were to be a clear lack of response on their part, would the question be considered of legislation being introduced to give a code (adapted for such bodies) legal force requiring compliance?

Ministers will reserve the option of departing from the code in ‘exceptional circumstances’. What might these be?

Presence of ‘ … a national, international, or operational need’ will excuse from compliance. Any or all of these needs might be deemed to be present in many if not all issues, so in practice carte blanche could be extended for non–compliance.

Exemption will also be available if ‘the issue involved is very specialised’. Members of the public may well have worthwhile experience and views even on ‘specialised’ topics and should not necessarily be excluded from consultation.
Consultation may not be required ‘where there is a very limited number of interested parties who have been directly involved in the policy development process’. Surely members of the public should be viewed as interested parties in all aspects of policy development and have a right to be consulted before policy is finally formulated. In some cases where ‘a very limited number of interested parties have been involved’, some if not all of those involved may be ‘self-interested parties’ and public consultation will be more rather less necessary.

‘In these circumstances the general principles of the code should still be followed as far as possible …’ The phrase ‘as far as possible’ is a comprehensive get-out clause. It is rather like saying ‘I’ll try’ rather than ‘I will.’ Why not delete it?

‘Chief Secretary’s Office will review the effectiveness of the code…’ Will this review involve consultation with interested parties? What parameters will be considered in such a review? Will it be published?

**Consultation criterion 1**

1.2 How will judgement be made on whether parties are ‘relevant’?

Why not omit ‘proactively relevant’?

1.3 In some cases ‘stakeholders’ may include the general public. In what form might ‘informal consultation’ be offered so that it is available to the public at large?
1.4 Is there to be a maximum period?

1.5 ‘Where re-consultation takes place ... a shorter period ...’
What would the minimum be in such a case?

1.8 ‘Written consultation is not the only or even always the most effective means of consultation.’ In that case, it is surprising that the phrasing of this section with ‘may’ and ‘might’ is somewhat tentative.
‘Would’ or ‘should’ would be more positive.

Criterion 2
2.3 Why not omit ‘as far as possible’?

2.8 ‘These may be the same person.’ Or not, as the case may be?
Perhaps this sentence could be omitted or the section be rephrased for greater clarity.

Criterion 3
3.7 Add men? In some cases they may be overlooked (for example, child care provision is a concern for both sexes but that is not always appreciated.)