



SECONDARY LEGISLATION SCRUTINY COMMITTEE **The Government's new Approach to Consultation** **Written Evidence**

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Earl of Lytton – Written Evidence

The Government may reasonably decide not to consult where the matter has effectively been through some other form of consultation relevant to the issue, beforehand – in other words it is a detail to something that is covered by a consultation of wider scope and the principle has already been decided. There was a recent such case where a consultation affecting parish councils' financial dealings was put out this last summer.

It may also reasonably decide not to consult where the matter is of great urgency though this should never be used simply because the government has a political or internal administrative reason alone for wanting greater speed. This might legitimately be for reasons of animal health or biosecurity and there are many examples of this in recent years. The recent consultation on *chalara fraxinea* could have been truncated for this reason.

It is recognised that in some cases the consultation affects a narrow class of people or bodies who may have themselves lobbied for change and the subject is of a particular or specialist nature. It may even have been under discussion with a national representative body for the relevant sector for some time. In such cases consultation might reasonably be shorter than 12 weeks (see reference to a parish councils consultation mentioned above)

It has become something of a parliamentary joke that certain consultations are commenced on truncated timeframes, just before summer or turn of year holiday periods. This gives the impression – even if not actual evidence – of an abuse of process which in part gave rise to the Code of 2008. It is important to public confidence that the Code or something close to it, is adhered to save for compelling reasons. I have encountered many instances of this where the clear impression is that the whole approach to consultation is to limit exposure, and opportunity for response as far as possible though I have no current examples to cite.

New and contentious matters should certainly have a full consultation period but also the target audience needs to be considered; for instance if the issue affects parish councils all of whom have meeting cycles, it is very difficult to put items on a parish agenda and get feedback without a generous timescale. The same applies to bodies which have a local branch structure, meeting perhaps only 4-6 times a year. 12 weeks is a minimum in such cases and holiday periods should be avoided or extra time factored in to compensate.

The 'digital by default' approach is understandable but not everyone has access to digital media. Moreover, unless those who are 'wired up' have reason to know about a particular consultation, it is very easy to miss in the welter of digital information swirling about already. Not all consultations are particularly well publicised. It would be easy for government departments and others to 'bury' consultations in such a complex digital environment. It seems pertinent to ask how better promulgation of the consultations going on at any time can be achieved. Meanwhile, a paper copy should be available if requested and existence of new consultations announced by digital and non digital means.

There is no self evident reason in my experience to believe that shorter consultation periods generally, would achieve greater transparency, inclusiveness or lead to better outcomes. That of course must be distinguished from the desire of all administrations to fast forward certain aspects of their work which is a different matter. The high volume of consultations

going on at any given time is a problem in itself. Cutting consultation timeframes would do no more than tend to exacerbate an existing state of consultation 'overload'.

For most matters of human endeavour there is an organic process of assimilation of information, contemplation of issues and response. It is far from the case that all respondees are experts with detailed facts at their fingertips or even skilled in creating cogent responses but they may have knowledge and experience highly relevant to the informed decisions that consultation is supposed to elicit. Localism must also mean that consultation in part at least, is aimed at garnering meaningful and cogent responses from community-level sources.

There is I believe a case for shortening some consultation periods (which already happens because the present code gives discretion for a reasoned departure) but this does not provide grounds for wholesale shortening of the process across the board. It would be for the Government to identify classes of consultation that might be fast-tracked but either way, the matter should first be for parliamentary debate and proper consideration given at that level and not for a unilateral decision by the government of the day.

John Leech MP – Written Evidence

I am writing to register my opposition to the proposed changes to guidance for consultation periods. I feel that 2 weeks is clearly not long enough to give a reasonable time for consultation, and there is the potential for people to simply miss it – you could be away on holiday for the consultation period. I do agree that the period could potentially be reduced from 12 weeks but 2 weeks is simply not long enough for proper consultation to take place.

I also enclose a letter which I have received from one of my constituents, Mr Peter J Eccles and would appreciate your comments on this matter.

Academy of Medical Sciences – Written Evidence

In October 2012 the President of the Academy of Medical Sciences wrote to the Rt Hon Oliver Letwin MP, Minister for Government Policy, in regard to the Government's new approach to consultation.¹ Our letter welcomed the move to adopt a more proportionate and targeted approach that focuses on meaningful engagement with stakeholders, rather than following a set process. However, we also highlighted concerns that a consultation period of less than 12 weeks could hamper the ability of membership organisations to provide an appropriately considered response.

We recognise the need for some decisions to be made quickly and support the need for flexibility in the timeframes for consultations. However, we are concerned that if adopting a consultation response time of less than 12 weeks becomes the default, this may prevent expert membership organisations from being able to provide considered responses to support evidence-based decision-making in policy.

The Academy of Medical Sciences promotes advances in medical science and works to ensure these are converted into healthcare benefits for society. Our elected Fellows are the UK's leading medical scientists from hospitals and general practice, academia, industry and the public service. Like the other national academies and learned societies, we draw on the expertise of our Fellows, who number over 1,000, to develop our responses to consultations from Government.

The Academy is able to respond to specific requests from Government for policy advice at very short notice; however, to enable us to provide the most authoritative and detailed response on critically important issues, we require sufficient time to gather the full range of perspectives from across our Fellowship and subsequently to enable Fellows to provide feedback on our draft response. The value of our Fellowship is that they are deeply involved in research and, in many cases, also in clinical practice, but this means that they have other commitments that can impact on their ability to respond rapidly. We hope that the value of responses from membership organisations will be reflected in guidance to Government Departments about how the new principles will be implemented.

We know that these views are shared by similar organisations, such as the Society of Biology, who wrote to the Rt Hon Oliver Letwin MP about this matter on 6 September 2012 and we supported their recommendations. We understand that they will be submitting a detailed response to this inquiry.

¹ Academy of Medical Sciences, Letter to the Minister for Government Policy regarding the new Consultation Principles, October 2012: <http://www.acmedsci.ac.uk/p47prid116.html>.

Academy of Social Sciences – Written Evidence

The Academy of Social Sciences exists to be the voice of the social sciences in the UK for the public benefit. The Academy represents a membership composed of over 800 individual Academicians and 44 Learned Societies. The Academy responds to Government consultations in areas relevant to our membership, including: social science research and innovation, higher education policy, the use of research evidence in policymaking.

In order to provide a collective voice for social sciences, we consult with our membership in responding to Consultations, and in wider policy work. The comments below reflect our awareness of the sometimes time-consuming work which goes into evidence-gathering and consensus-building in a network of organisations, in order to provide an effective and informed response to government.

There is much to be welcomed in the proposals to produce a ‘lighter touch’ Consultation process, with less costly bureaucracy; and as a charity the Academy welcomes the importance placed on preserving the Compact between Government and CSOs. But a move away from more formal, longer-term Consultations may also carry some possible risks, which we outline under the Committee’s headings below.

Under what circumstances it might be reasonable for the Government to decide not to consult on policy development?

It is quite difficult to envisage a hard-and-fast rule to determine that no consultation is necessary for a specific measure. In the Cabinet Office’s **‘Consultations Principles’** document, it is proposed that:

There may be circumstances where consultation is not appropriate, for example, for minor or technical amendments to regulation or existing policy frameworks, where the measure is necessary to deal with a court judgment or where adequate consultation has taken place at an earlier stage.

Whilst minor changes to existing regulations may be relatively unproblematic, how it is to be decided that ‘adequate consultation’ has taken place, needs clarification in order to avoid any conflict with the Government’s objective to increase both transparency and stakeholder engagement through the new principles for consultations.

Members of the Academy have expressed concern that at times notification of consultations has been somewhat restricted, or that some of those affected have only become aware of potential issues relatively late in the process. Therefore, whilst a trend towards earlier and less formal means of involvement could be advantageous to all, it must be clear how interested stakeholders are to be identified and engaged, and to what extent their views may shape the need (or otherwise) for formal consultations.

When - and for how long - consultation exercises should be held

The current model of a twelve-week period for response to consultation documents may sometimes seem lengthy, but consideration needs to be given to the ‘group(s)’ or

‘community’ who may need to respond. From a social science perspective, any policy changes need to take account of existing evidence bases – where they exist – or to take account of gaps in evidence where proposals are more innovative, or more contested. Both evidence-gathering and collating responses can take some time, and require information to move back and forth between individuals and organisations before a final response is ready to submit.

The Government should consider the following factors in deciding the timing and nature of responses sought:

- Are responses from individuals, or representatives who may need to collate responses?
- Are groups professional bodies who have good communication channels and who meet frequently? Or do they operate on a voluntary informal basis with slower communication networks?
- Do individuals need to seek assistance in reading and responding to consultations?
- What are the technical complexities of the policy change? What are the financial implications for beneficiaries? Have cost-benefit analyses already been conducted or could they be easily performed?
- Is there extensive, accessible, relevant research and policy documentation (in the UK or abroad) or is the policy novel or untested?
- The new principles state that ‘Every effort should be made to make available the Government’s evidence base at an early stage to enable contestability and challenge’. In light of the above, how will this be achieved and through which channels/media and at what stage of the consultation process?

How the expectation that consultations would happen digitally will impact on different groups in society

Policy changes often impact on vulnerable groups, who may not have access to computers or the internet for financial or other reasons. Consideration needs to be given to those without access to digital resources, and to voluntary or community groups who may have limited access. Does digital

include a range of media i.e. audio files, large print? Where appropriate will hard copies of notifications be made available for distribution through alternative channels e.g. Libraries, Health centres, AgeUK etc.? If the policy impacts on children (especially vulnerable ones), how might their views or the views of responsible adults around them be sought digitally?

Even within professional communities there can be considerable differences between organisations in the extent to which it is possible to deal with large amounts of data, or to operate across large networks efficiently, or to access publications, and these factors also need to be borne in mind.

Whether this new approach to consultation will lead to improvements in the process and outcomes

With the information to hand, it is not possible to answer this question definitively. A greater emphasis on early involvement of stakeholders, and on 'real engagement' can only be welcomed, but how this occurs in practice remains to be seen. The 'digital by default' model is attractive in terms of speed and cost of consultations, but it may exclude less well-connected individuals and organisations who are still affected by policy changes, and whose perspectives may enhance policymaking. The new principles state that:

Consideration should be given to more informal ways of engaging that may be appropriate – for example, email or web-based forums, public meetings, working groups, focus groups, and surveys – rather than always reverting to a written consultation. The medium should be appropriate for the subject and those being consulted. Policy-makers should avoid disproportionate cost to the Government or the stakeholders concerned.

As principles these are not objectionable, but by providing a myriad of response options, the result may risk being less transparent, as it is less apparent to stakeholders who has been invited to consult, on what basis, and at what point in the process. Therefore what 'real engagement' means needs to be more clear.

The Academy of Social Sciences is committed to the appropriate use of evidence in policymaking, and to the ability to represent the views of its members, to Government. Any changes to the consultation process need to account for the complexities of collecting data and opinions in a timely and constructive manner.

Giampaolo D'Alessandro – Written Evidence

I have been alerted by the Institute of Employment Rights that the government is issuing new guidance on public consultation which states that consultations may run for just two weeks instead of the usual twelve.

I am far from an expert in legislative procedures, but it seems to me that such drastic reduction of the consultation period will make it impossible to outside parties to analyse proposed legislation and prepare an informed response. Such a short consultation period seems thus a contradiction in terms and a further weakening of the systems of checks and balances that is at the heart of a well functioning legislative system. I urge you to rescind this new guidance.

Association for the Conservation of Energy – Written Evidence

We would make three specific recommendations:

- a) That there should be a time limit for published results of responses received, within no more than three months after completion of the consultation, together with a presumption of a relevant policy statement (even if only of a holding variety). This Association still awaits a response from the Communities department to a key consultation of enormous commercial importance, completed in mid-April 2012.
- b) That a consultation ,referring to a possible approach to a draft European directive, should not be deemed to obviate the need for any further consultation, either formal or informal, regarding detailed implementation once the Directive's text is agreed (again, a policy recently adopted by the Communities department, leading to some stupid decisions from that Department detrimental to industrial efficiency)
- c) That ideally consultations should run to a standard time, no shorter than 2 calendar months, and longer where very large documents are under consideration. This Association was recently invited to comment upon a key Department of Energy consultation which required studying and commenting upon an average of 51 pages for each day of the consultation

Association of Manufacturers of Domestic Appliances – Written Evidence

AMDEA is the UK trade association for large and small domestic appliances, heating, water heating, floor care and ventilation. We represent manufacturers at UK, European and International level; in standards and with non-governmental organisations, consumers and the media. AMDEA protects and promotes its members' interests in all these fields

In the past we have contributed to many consultations on aspects affecting our industry. While our primary consideration is to represent our members we do believe that our comments are also extremely helpful, particularly in areas where our technical expertise can provide valuable assistance to policy makers. We believe that the involvement of a wide range of contributors is crucial to informing government policy and that the public consultation process provides the electorate with a valuable opportunity to participate in the democratic process as well as transparency of how decisions may be reached. Curtailing this process to save money in the short term may well lead to an increase in unforeseen, and possibly costly, consequences if decisions are taken without due consideration.

As a trade association we have to consult our members before making any response. In the case of complex proposals for major legislative change we may even need to call meetings to discuss all the issues. The 12 week period has generally provided us with sufficient time to enable us to carry out this democratic process. However in some cases even this may not be sufficient time to elicit the views of all interested parties. We would like to see 12 weeks as the default option with the facility to shorten or extend this period where necessary.

While it could be argued that for very minor issues a full 12 week period may be overlong, we would point out that two weeks is a fairly standard holiday period so is therefore always too short a timescale, particularly for SMEs that are unlikely to have cover. In our case we need time to consider proposals and draft a response which we then circulate to our members for comment. After which we need more time to amend any response before submitting it. As we are a small organisation there is also the possibility that the relevant staff member might be out of the office - AMDEA 's technical staff are frequent travellers to standards committees and it is difficult to coordinate a consultation response among our members when the co-ordinator maybe in a different time zone using limited facilities in an hotel.

The concept of “digital by default” is liable to disadvantage the poor and/or elderly/disabled whose access to internet facilities is more likely to be limited/unaffordable. However, it is also a problem for organisations such as ours. Generally we are quite happy to submit responses by e-mail (indeed we have done so in this instance). However, we do need to be able to print a copy of our draft responses to circulate to our members and a webpage and locked pdfs do not provide this facility. On some recent consultations we have been forced to copy out sections from the website into Word and manually re-format them. This has dramatically increased the amount of time it takes us to consult our members and respond. We would ask that you present the information in such a way that consultees do not need to waste time exporting and editing the information.

It would also be useful to know in advance when consultations were imminent – would it be possible to publish a draft programme, say every three months?

It would also be beneficial to review the consultation process in a more targeted way. We would suggest that, say, one year after publishing new legislation those who commented on the consultation could be asked to review how effective they felt the process had been and to what extent the legislation was fit for purpose without unintended consequences. This could inform future consultations.

AMDEA seeks to engage with relevant parties outside the formal consultation process but while we welcome the opportunity to exchange information and even advise government we would not wish to see such interaction viewed as a substitute for the formal consultation process.

Essentially, except in the case of very minor amendments we would recommend retaining the 12 week consultation period as a default position. We would also argue that most businesses will respond electronically so there seems no reason why you cannot continue to offer a hard copy facility for those that need it. This would avoid potential grievances and allegations of exclusion.

We accept that in certain cases allowing anyone to comment on issues that may well be quite specialised risks a certain percentage of the responses being less than useful. However, the principles of open government would suggest that this is a necessary price to pay to ensure that all efforts are made to make legislation proportionate and enforceable.

Association of School and College Leaders – Written Evidence

The Association of School and College Leaders (ASCL) represents over 17,000 heads, principals, deputies, vice-principals, assistant heads, business managers and other senior staff of maintained and independent schools and colleges throughout the UK. ASCL has members in more than 90 per cent of secondary schools and colleges of all types, responsible for the education of more than four million young people. This places the association in a unique position to consider this issue from the viewpoint of the leaders of secondary schools and of colleges.

ASCL welcomes this inquiry, and is grateful for the opportunity to express its views on this topic.

The main points raised by Mr Letwin on 17 July were to do with timescale and digital responses. Both were very reasonable, but require more analysis in the context of the volume of government business.

Volume of government business

On 20 November the ASCL log of consultations to which we have responded, or will respond, in 2012 shows 161 entries:

- DfE 54
- BIS 13
- Other UK Government departments 15
- UK Government agencies 32
- Devolved governments 26
- Parliament 10
- Other 11

The other government departments include DWP, DCLG, the Home Office, the Ministry of Justice, and HMRC. The agencies include Ofsted, Ofqual, the Office of the Children's Commissioner, NICE, and MAC. The devolved governments include Wales and Northern Ireland but not Scotland, as Scottish consultations are handled by our sister organisation School Leaders Scotland. Most of the Parliament consultations are by Select Committees.

Though the education departments are naturally the main source of consultations of interest to ASCL, it is worth noting the presence of the other departments. It is not just education legislation and regulation that bear upon schools and colleges, they are also employers, and they also quite rightly have to abide by general legislation to do with equality, human rights, health and safety, discrimination, immigration, and taxation.

Not all of these consultations require extensive responses, but in total they still represent a considerable volume of work. ASCL is a relatively small organisation, and the cost, especially opportunity cost, of writing these responses is significant. Half the time of a senior officer is taken up with noting and distributing consultations, assigning them to appropriate committees and colleagues, collating the responses from representative members, and signing off the responses. Some consultations are extensively discussed by the Council of ASCL or one of its committees. And when detailed or closely argued responses are needed they are often written by one of the team of ASCL specialists with expertise in the area of work.

The school and college leaders who are the members of ASCL do not respond to more than 150 consultations per year. They are far too busy leading their institutions and ensuring that the young people in their care receive good quality education and training. On most issues they therefore rely on intermediary organisations like ASCL to express their views for them.

It should be stressed that ASCL and its members want to be consulted. The response by government to a realisation that it consults so frequently should not be to set out to reduce the number of consultations. There was a time a decade or so ago when school and college leaders complained of the weight of the post bag they received from the then education department. This was a proxy for there being too many initiatives and too little stability. The response from government was to shift to publishing on the web, whilst continuing to produce just as much regulation and guidance - treating the symptom not the disease. The same mistake should not be made with respect to consultation.

The present government is trying to reduce the burden that its activities can represent to businesses and public bodies, but it has not apparently understood the fundamental message that there are too many initiatives and too much legislation, both primary and secondary.

The number of consultations is again a symptom of hyper-activity in government rather than being an issue in itself.

Consultation is or should be of value to government by using the expertise and experience of those who will implement or in other ways be affected by an initiative to bring out any unintended consequences. Consultation can be seen as delaying necessary or desirable changes, but in the long run it saves time as fewer amendments need to be made after implementation.

It is therefore important to good government that there be full and genuine consultation about all initiatives, conducted in ways that enable those with an interest to express their views fully.

Timing of consultations

The idea of variable timescales is not unreasonable; clearly some consultations can be responded to more briefly and more quickly than others. However, it is imperative that the effect is not simply to reduce the average time available for response.

How will Mr Letwin prevent human nature driving down the time allowed for consultations? There are already examples of consultations being issued that have clearly been under preparation for months, and that require a considered response, accompanied by an apology

to the effect that the short deadline will enable the new regulations to come into force on some significant date. Civil servants and ministers are busy people, and often find it hard to meet their own targets for issuing consultations. The temptation is then to reduce the time for response. But those whom they are consulting are busy people too.

Will there be any monitoring of consultations to see if the average time allowed for responses is falling? Will there be any analysis of whether the time allowed for consideration and response is sensibly related to the length of the consultation document, and complexity and significance of the initiative being considered?

Some absolute minimum time for response should be set that will not be broken except in case of a crisis. This minimum time should be at least six weeks. Even an apparently innocuous change to a statutory instrument to make some essentially uncontroversial change, for example, can have unintended and damaging consequences. If these were obvious they would have been corrected at an earlier stage, but they are sometimes seen in time by the wider community if the latter is allowed time to reflect on them.

A very short consultation time engenders cynicism amongst respondents, who take it as an indication that the consultation is not genuine.

Organisations like ASCL need to respond to a great many consultations, as set out above. Consultations are not coordinated within a department and still less between them, and probably cannot be so. There are therefore peaks of activity, which means that the decision to allow only a short time for a consultation might be reasonable if it were the only one, but in the context of the many other consultations a short deadline can make a response effectively impossible.

Organisations like ASCL, if their responses are to be as meaningful as possible, need time to discuss them with members. Occasionally, ASCL does this by consulting its whole membership via digital means. Usually, it is by consulting representative members who have been elected by their colleagues. This still takes time. All ASCL members have very demanding, usually full-time, jobs and their distribution across the country means that meetings are cannot be frequent. The ASCL Council mentioned above for example meets only four times per year, which means that consultation periods often do not include an opportunity to meet. That will be all the more frequent if response times are reduced.

Consideration needs to be given not only to the number of weeks allowed for responses to consultations, but also which weeks they are. The Christmas and summer holiday periods should not be counted against the time for response. This is very noticeable in education with its year divided into terms, and DfE and BIS in particular should bear it in mind. School and college leaders greet a consultation issued in late July for response by early September, for example, with cynicism. But others, such as Parliament and the law have terms; and in all walks of life late December and August are not the best times to gain people's attention. This point is all the more pertinent if response times are to be less than the current nominal twelve weeks.

Digital consultations

A presumption in favour of digital means is fine in principle, and welcome. But the digital means chosen must work well to enable easy responses. This is not always the case, as

systems are sometimes designed to make the job of those collating the responses easier, without regard to the experience of the respondent.

There should therefore be some flexibility in modes of response to reflect the preference of the respondent, not just an on-line survey.

Questions in such surveys should not lead the respondent. There is a tendency for there to be a long list of questions of the kind that begin “Do you agree that...?” At the very least any such question should include “Not sure”, and “No comment” amongst its options.

Surveys should allow for saving and returning to a response, for printing the response, and for saving it to the respondent’s own computer.

Forms should not unduly restrict the respondent in order to have an easily collated set of responses. It should be possible to make responses of any length. Forms should not prevent the use of spell checking and the insertion of ‘boiler plate’ text (for example a standard description of the organisation, or simply its name and address).

All instruments should allow (optional) free text for general comment and comment related to each separate question. All responses should allow free text for description of the respondent. It should be easy to insert text and references to other documents such as policy documents and responses to earlier consultations.

Responses should not be counted in a simple-minded way. This overlooks the value of intermediary organisations like ASCL, and invites lobby groups to mobilize their members to swamp consultations. Normally, school and college leaders are simply too busy to respond individually and rely on ASCL to consult representative members and respond on their behalf.

Conclusion

Consultation is important to good government. It can improve legislation and regulation, help to head off mistakes, and make later changes less necessary. If done well it can help to keep key stakeholders engaged.

Fewer initiatives and less legislation, done better and with due time for consideration, would be welcome.

Bodies such as ASCL and the school and college leaders who are its members, want to be consulted, and should be. They willingly devote resources to responding to consultations.

Respondents should be treated with respect by allowing sufficient time for them to respond, taking into account that they are also busy and that there are usually many consultations taking place simultaneously.

Respondents should not be led towards an apparent endorsement of aspects of a policy they have not had time to consider.

Bar Council – Written Evidence

The Bar Council is the governing body and the Approved Regulator for all barristers in England and Wales. It represents and, through the independent Bar Standards Board (BSB), regulates over 15,000 barristers in self-employed and employed practice. Its principal objectives are to ensure access to justice on terms that are fair to the public and practitioners; to represent the Bar as a modern and forward-looking profession which seeks to maintain and improve the quality and standard of high quality specialist advocacy and advisory services to all clients, based upon the highest standards of ethics, equality and diversity; and to work for the efficient and cost-effective administration of justice.

Overview

The Bar Council welcomes the opportunity to give evidence on the government's public consultation process to the House of Lords Secondary Legislation Scrutiny Committee. The Bar Council considers responding to approximately 13 consultations each month (ranging from those where we are statutory consultee to regulations, to those concerning wide-ranging public policy). Of those, the Bar Council will respond to approximately half.

Given the time the Bar Council invests in consultations, we are concerned that the number of consultations issued by government departments is increasing and the reduction in consultation period will increase the burden on consultees. The tighter the deadlines, the greater the burden.

The Bar Council would like to make the following points to each of the questions raised in the Committee's call for evidence. We also raise a number of other issues that could also be explored with Mr Oliver Letwin, Minister for Government Policy.

Under what circumstances it might be reasonable for the Government to decide not to consult on policy development

The Bar Council recognises that this already happens. However, a decision not to consult at all on a proposal is one that should be taken only in a very limited range of circumstances. It is too easy for decision-makers to assume that no useful information might flow from consultation. Guidance when consultation is unnecessary should be incorporated into the Consultation Principles and should make clear that a decision not to consult is not to be taken lightly. There should be a non-exhaustive list of examples which signal the narrow circumstances that might justify non-consultation, which may include:

- where the proposal involves a purely technical or otherwise immaterial change to policy or legislation
- where the matter has already been fully consulted on and the proposed course of action is simply confirmation or progression of the original proposal in the light of the responses, and
- where the proposal will clearly have no impact outside government itself.

Urgency alone is not a good reason for not consulting, it is precisely when policy or legislation is made in haste that errors are likely. Consultation, even if brief and focused, is therefore particularly valuable in these circumstances. Additionally, if the government's aim is for a more transparent approach to policy development, then any positive decisions not to consult should be clearly communicated. The Bar Council notes that one of the Consultation Principles is that:

Policy-makers should avoid disproportionate cost to the Government or the stakeholders concerned.

Again, any positive decision not to consult and the reasons why should be made available by the government department involved.

When - and for how long - consultation exercises should be held

The Bar Council agrees that the 12 week period may not be appropriate in all circumstances. However, we do believe that there should be further guidance which details a minimum consultation period for different types of consultation (for example, draft regulations, scoping consultations and full "Bill defining" public policy consultations). Having certainty in minimum consultation periods will allow representative organisations such as the Bar Council to prepare well researched and evidenced responses on behalf of their members. While internal management issues are different depending on the structure and working practices of a representative consultee, the government should at least have regard for the need for a representative body to sign-off and approve the release of a publicly available document.

It is also important that any minimum consultation period is not seen as the default period. If government departments truly wish to engage with people and representative bodies then they must give consultees the time to develop well thought out and evidenced responses. Failure to do so will result in less helpful or less useful responses or no response at all. Either result would defeat the very aim of the Consultation Principles and be to the detriment of public policy and the effective implementation of policy.

The Bar Council believes that the government should include on every consultation a justification on the length of the consultation period. If the civil service use any set criteria or guidance then this should be published and made generally available.

How the expectation that consultations would happen digitally will impact on different groups in society

The Bar Council would welcome more clarity as to what is envisaged in terms of consultations being digital.

The Bar Council appreciates that the written consultation approach might not be the best approach in all cases, particularly if the consultation needs to reach those who would otherwise not respond. If the government is seeking the views of representative bodies, then the best way to approach this would be the "traditional" written consultation. However, consultation should take place throughout the policy making process and engagement with stakeholders at an early stage will allow the government to obtain an expert views to inform the "traditional" consultation paper.

Whether this new approach to consultation will lead to improvements in the process and outcomes

The Bar Council believes that there is potential for vast improvements in policy development if consultees are involved at an earlier stage of the policy process. However, the Bar Council would not like the shift towards early consultation to be at the expense of consultations relating to the implementation of policy. It is often at this later stage that difficulties may emerge due to the government not understanding the full practicalities of their proposed legislation. The Bar Council believes that it should be best practice that any consultation strategy made as part of the policy development process should be published.

More specifically, the Bar Council responds to consultations on government legislation both in terms of primary legislation and subordinate legislation. It would be extremely useful for government departments to make available instructions to Parliamentary Counsel. This would be especially helpful when responding to consultations on implementation issues where previous policy battles have been won or lost and the key concern has shifted towards effective implementation.

Other issues that could be raised

The Bar Council believes that for every “traditional” consultation, the full responses should be published on the relevant department’s website (unless the consultee opts out).

The Bar Council has also noticed a recent trend in government departments issuing multiple consultations in discrete areas of policy, all with short and overlapping deadlines, which show no regard to the burden on consultees. Recent examples include consultations on employment law and consumer law.

The sheer volume of delegated legislation makes it difficult to keep track of the laying of secondary legislation in time to enable the Bar to raise issues of concern with Parliamentarians. There is a need, more generally, for a far more effective and proactive way to publicise the making and laying of instruments.

There appears to be little consistency in the application of statutory consultee status. For example, the Bar Council is a statutory consultee to the Conditional Fee Agreements Regulations but not the Order. Statutory consultee status is important because it notifies the body concerned that there is to be a legislative change and gives a further opportunity to provide suggestions to ultimately improve the implementation of a legislative instrument. In the recent Legal Aid, Sentencing and Punishment of Offenders Act 2012, the Bar Council was removed as statutory consultee from legal aid funding orders. This marked a shift away from many years of consultee status. In future, if a body is to lose such status it should be communicated clearly to Parliament who previously granted the body that status.

The Bar Council receives a number of consultation letters (normally accompanying draft regulations) which state that the department is interested in the views of others. However, the letters are often not put in the public domain by the department which, of course, makes responding rather difficult. Given there are a large number of Specialist Bar Associations, the Bar Council has started to publish a list of open consultations that it is responding to². On a

² Bar Council (2012) Open Consultations
(http://www.barcouncil.org.uk/media/166863/open_consultation_external_.pdf)

number of occasions we have had to host the document ourselves rather than linking direct to a government website. Clearly, this does not embody transparent policy-making.

The Bar Council believes that the requirement in the Consultation Principles that “as far as possible departments should use the government’s single web platform to enable stakeholders to find information on consultations as easily as possible” should become mandatory for all government (and non-government) departments that are accountable to Parliament and include all consultations on draft legislation.

With regard to consultation letters accompanying draft regulations, the Bar Council has had concerns in the past with the inadequate level of detail on the policy intent of the key aspects of the draft regulations and their potential intentional and unintentional impact. This is of particular concern when the consultation period is short, which it often is with regard to consultation on draft statutory instruments.

Whilst it is understandable that consultations on draft regulations will be shorter than other consultations, if the regulations are of sufficient depth and scope then a consultation period similar to a public policy consultation might be needed to satisfy the Consultation Principles. In addition, whilst Parliamentary Counsel will be able to frame the legislation in a legally appropriate fashion, consultees will often be better placed to draw attention to practical difficulties and potential unintended consequences.

Lorien Barber - Written Evidence

Newcastle-under-Lyme Borough Council have just used the revised guidance in relation to the current consultation on reforms to Council tax benefit. This meant that the primary opportunity to respond was “digital by default”. In practice this then excluded the majority of people likely to be adversely affected by the proposals being made: the poor.

There remains a significant digital divide in this country and it is the hardest to reach groups and those at greatest disadvantage that are most greatly affected by this. It is inherently undemocratic to effectively exclude a significant proportion of the population (16 million if today’s news is correct) from taking part in decisions which can have significant consequences on their lives.

I would ask that the committee consider if an effective impact assessment has been carried out, as it is particularly those who are disabled and poor who are likely to be the most discriminated against by this policy.

All too often consultations are done without directly consulting those it will have a greatest impact on and this policy gives further opportunity for this – ever increasing and widening the inequalities in our society.

Bradford and Airedale LINK – Written Evidence

We are pleased to be invited to respond and agree with many of the underlying principles of the consultation.

In particular we agree with:

- The intention to have more proportionate and targeted consultation processes.
- An increased emphasis on ensuring real engagement with people who are actively involved.
- An Increased emphasis on constructive, targeted and earlier engagement to influence policy development rather than being restricted to consulting on policies when they have been almost finalised.

We support the principle of a greater use of digital consultation but would like to stress that this must not be at the expense of people who for whatever reason are not able or willing to use such technologies.

For some people it is important that they have time to understanding the often complex issues if they are to fully engage in the consultation processes. It is important that an emphasis on digital first does not prevent this essential part of the consultation.

It is important that the final guidelines stress the need for a variety of methods of involving, communicating with and collating the views of all of the people at each stage of the process.

Wendy Bradley – Written Evidence

I am writing in response to the call for evidence on the Government's new approach to consultations

Until April of this year I was the Impact Assessment programme manager in the Better Regulation team in HMRC. I am now a PhD student at Sheffield University, writing a thesis on tax simplification and better regulation. I also write a blog about tax consultations, at <http://tiintax.com>

In summary, I am writing to suggest that the government does not appear to have put in place the necessary infrastructure to allow for a flexible consultation process, digital by default, which might last for as little as two weeks. I have two suggestions: firstly some general steps for enabling digital consultation, and secondly a proposal that the government put resource into consultation with small business.

I suggest the **minimum necessary steps** the government needs to take to make consultation “digital by default” a reality are as follows. In my view this **digital infrastructure** needs to be in place before the twelve week expectation can be safely abandoned. The steps are:

- set up a single website listing all open consultations
- list consultations in order of closure date
- push consultations via a dedicated twitter feed
- push consultation closure reminders via a dedicated twitter feed
- provide an RSS feed from the central consultation website
- duplicate the open consultation list on a facebook page
- use search engine optimisation tools to put consultations into other relevant hands

To expand this a little, then, first of all there is no **central source of information** on what consultations are scheduled, open or coming to an end. I strongly believe that in the 21st Century it should be possible for the government to have a single website listing its open consultations *in the order in which they close*. This would, for example, enable someone going on holiday for a fortnight to be assured that an issue vital to them wasn't going to be decided in their absence. Currently the [publications page](#) on the new [gov.uk](#) website only covers two departments but includes open consultations on a mixed list of consultations and responses, guidance and statistics - and they are ordered by date of publication. Even this is a small improvement on the [direct.gov offering](#), which was a page that simply listed different government departments' consultation pages. Trying to find a consultation in my own specialism, tax, meant you needed to look on the [Treasury list](#), the [HMRC list](#), or on the separate pdf “[tax tracker](#)” list - and, again, they were ordered by date of publication rather than closure.

Secondly, if the government is serious about making consultations “digital by default”, then it needs to use “**push**” rather than “**pull**” mechanisms to disseminate them. In other words, to make use of the digital technology available to **put consultations into people’s hands** at a time when they can make use of them rather than expecting them to seek them out for themselves. At present the expectation that consultations will last for twelve weeks allows for interested parties to learn about consultations indirectly, for example via trade or professional organisations or from lobby groups. If that is not to be the case then in my view there should be a @GovConsult twitter feed which pushes links to consultations towards interested parties on the day they are published, and a @GovRemind feed which reminds them again a week before the closing date. An RSS feed (which would notify subscribers of updates to the central consultation page) and a Facebook page should in my view be set up with the same information, so that there is a single authoritative source of information, but that information is then “pushed” to anyone who is digitally connected, so that they can readily find information about open consultations on a **platform they already use**.

It is also important that, since people “don’t know what they don’t know”, that people are able to come across consultations **serendipitously** - so that, for example, you don’t have to be a better regulation policy wonk to know there is a government consultation on changing the VAT rate on [cable car](#) transport. If you have an interest in cable cars you should come across the consultation in, say, looking for the **ordinary words** on google. This could be achieved by using the ordinary language in the metadata of the web page where the consultation is launched. That particular consultation doesn’t come up in the first 42 pages of google searches, presumably because the words used are “VAT on cable-suspended transport” rather than the ordinary language of “cable cars”. There are recognised **search optimisation tools** which could help put open consultations where they are more likely to be seen by people interested in the topic but not aware of the consultation; the government should, in my view, be using these before changing the current rules.

A more difficult topic is, what about **small businesses**? One of the more interesting tools in the Better Regulation toolkit was the [Small Firms Impact Test](#) . Although the requirement to think about small firms is written into Statutory Instrument Practice and it remains a mandatory part of the Explanatory Memorandum, the instructions to civil servants on **how** to consult with small business seem to have been quietly archived.

There is a cost to business in responding to consultations, which can more readily be absorbed by large businesses and trade associations than by small and micro businesses. Small business proprietors cannot realistically be expected to take time out, in office hours, to travel to London, to talk to civil servants. Best practice in conducting a proper **small firms impact test** would be for the policy team to go out, proactively, and talk out of hours to a volunteer sample of affected small businesses. However this puts the expense of the consultation onto the government department rather than onto the affected businesses - and so in times of austerity is easily dropped.

My solution to this issue would be for the government to fund the small firms impact test. This would involve providing funds either to the BIS Enterprise Directorate, to individual Departments’ Better Regulation teams, or to an external provider such as a market research organisation, in order to conduct proper research into small business impacts from policy changes that were subject to consultation. Until the digital infrastructure described in paras

Wendy Bradley – Written Evidence

3-6 are in place it seems to me that a small amount of “seed corn” funding to assess the impact of changes in policy on small firms would be a reasonable investment.

British Chambers of Commerce – Written Evidence

The British Chambers of Commerce (BCC) welcomes the opportunity to respond to the Secondary Legislative Scrutiny Committee inquiry into the Government's consultation process.

The BCC is an influential network of 53 Accredited Chambers across the UK. No other business organisation has the geographic spread or multi-size, multi-sector membership that characterises the Chamber Network. Every Chamber sits at the heart of its local business community, providing representation, services, information and guidance to member businesses and the wider local business community.

The BCC appreciates the need for a targeted and proportionate approach to the consultation process. The BCC also understands the government's aim to replace potentially unproductive practices with real engagement with those who are affected. For minor or technical amendments to the law, the BCC accepts that a 12 week consultation period may not be necessary.

However, we are concerned that the changes to the government consultation process announced in July 2012 have the potential to significantly undermine policy making and implementation. The government's aim is to ensure a greater focus on robust evidence and transparency in policymaking; however these changes could have the opposite effect if the right safeguards are not in place.

The government's consultation principles state that timeframes for consultation should be proportionate and realistic to allow stakeholders sufficient time to provide a considered response. The principles also state that the amount of time required will depend on the nature and impact of the proposal. The BCC has found examples of this principle not being adhered to since these changes to the system were introduced.

The Department for Business, Innovation and Skills (BIS) recently launched a three-week consultation process about the implementation of the new employee owner status. This was shortly followed by a consultation on implementation of Nuttall Review recommendations, which allowed 13 working days for stakeholders to consult their members and experts, conduct research, formulate their responses and achieve sign-off. These two consultations largely overlapped with each other and with the end period of two other important BIS consultations relating to employment regulation: 'Ending the employment relationship' and 'Employment tribunal rules'.

Such short timescales make it difficult for stakeholders to gather proper evidence about the questions asked, and in recent months have not proved to be proportionate to the potential impact of the subjects consulted on. Simultaneous consultations across different issues further reduce the capacity of stakeholders to play their part in the democratic legislative process and beg the question of whether Departments have a process for planning the timing of consultations in a given area of policy to ensure sufficient stakeholder capacity to respond. If departments do currently give consideration to the impact of simultaneous consultations, one must conclude that they either misunderstand the capacity of stakeholders to respond or do not value their input.

Stakeholders responding to a consultation need an appropriate amount of time in which to do so. Consultations around complex pieces of legislation, or which have a significant effect on employers or employees, require time to be fully understood and for an evidence-based conclusion to be reached on the part of stakeholders. In the case of membership organisations such as the BCC, time is also needed to consult with members on new proposals. The timescales mentioned for the above consultations have not been adequate for such discussions with BCC members to take place.

Recent changes to the system regarding the need for some regulations to no longer pass through the Regulatory Policy Committee and go through an Impact Assessment will reduce the transparency of the regulatory system. We are concerned that the changes to the consultation process alongside these recent alterations to the regulatory framework could potentially create a situation where alternatives to regulation are not fully scrutinised.

British Dental Association – Written Evidence

The British Dental Association appreciates this opportunity to comment on the Government's new consultation practice guidance. We will respond to the specific questions posed by the Committee and comment on the guidelines.

Under what circumstances might it be reasonable for the Government to decide not to consult on policy development?

In principle it might be reasonable not to consult publicly where there have previously been adequately extensive discussions with interested parties, where those parties are readily identifiable and there are no omissions, where there is consensus between the parties on the way forward and where the parties agree that further or public consultation on the particular issue is unnecessary.

When - and for how long - should consultation exercises be held?

We now have some experience of how the new practice is working and have some concerns. We have some sympathy with the need for efficiency in issues which have had wide pre-consultation and to ensure that consultation is proportionate and targeted and so does not unnecessarily waste time and resources. But the main difficulties lie in determining when it might be appropriate to reduce the timescale and who might be affected. The guidance suggests that the timescale might be reduced where there has been 'extensive engagement' beforehand but this can be open to abuse and political expediency.

We have a current example of where the prior consultation principle can fall down. The Department of Health is currently consulting on major changes to the NHS Performers Lists regulations which govern who can work in NHS primary medical, dental and ophthalmic services. The consultation period is eight weeks, the stated justification for which is that the proposals had been discussed with interested parties which had included the British Medical Association, the Royal College of General Practitioners and the NHS. They had not been discussed with the British Dental Association, a common omission, whose interests differ and cannot be represented by the medical profession or the NHS. It gives us very little time to ensure that all our affected spheres of practice are fully consulted. Although this particular example is not serious, it serves to demonstrate that the system is fragile. There have also been recent examples of consultation on the removal of fundamental employment rights being less than three months.

The British Dental Association has, however, on numerous occasions agreed with the Department of Health to reduce consultation periods and cooperates with it in responding in a timely way.

The concern is that there appears to be no oversight of individual Department's decisions and with the increasing use of enabling legislation, the system is open to abuse.

How the expectation that consultations would happen digitally will impact on different groups in society

Digital consultation is acceptable to us and we do not comment here on those groups which might find digital access difficult. But we do have views on how digital consultations take place.

It is common practice for the questions in consultations to follow the arguments set out in the consultation paper, which on the face of it appears sensible and reasonable. The problem here is one of bias in that the questions are often phrased to elicit the desired response, are too restrictive to a requirement to give a yes/no answer and the digital response form is designed in such a way that it is difficult to answer in detail with reasoned arguments, giving little confidence that comments over and above the yes/no response will be heeded or responded to. Another problem is the way in which results are analysed in that consulting organisations, where it suits their purpose, frequently give equal weight to each individual response when reporting on those in favour or against. This has resulted in campaigns by pressure groups which have been left with no alternative but to emulate others which have adopted the practice of urging their supporters to respond individually in order to boost numbers. This is wasteful of resources.

Whether this new approach to consultation will lead to improvements in the process and outcomes

Of course there will be improvements in efficiency but there need to be sufficient safeguards and scrutiny of the way in which the new approach is implemented. It may be that a formal appeals mechanism is needed, but it would be better if all parties could have confidence that the process will be reasonably applied.

British Medical Association – Written Evidence

The BMA is an independent trade union and voluntary professional association which represents doctors and medical students from all branches of medicine throughout the UK. With a membership of over 150,000 worldwide, we promote the medical and allied sciences, seek to maintain the honour and interests of the medical profession and promote the achievement of high quality healthcare.

The BMA welcomes the opportunity to contribute evidence to the Inquiry into the Government's new approach to consultation. The BMA views fair and quality consultation process as an essential part of Government policy making and welcomes the Committee's timely inquiry. Following recent changes to the consultation principles, the BMA has a number of specific observations on the new approach to Government consultations.

Whilst the BMA recognises that it may not be appropriate to consult on every detail of policy making, as this would be costly and over-bureaucratic, where suggested policy reform is contentious, it is essential that there is adherence to a fair and open process of consultation. The BMA believes that in many situations, especially where there is potential for a lack of consensus, a full consultation should be conducted on all aspects of the proposals rather than only on the relatively smaller technical details of reforms.

The BMA favours a default consultation period of 12 weeks. As would be expected of a large national body, the BMA has a variety of policy making and representative bodies within it and responding to consultation topics can often cut across many internal committees and groups. In order to provide sufficient notice and leave time for proper consideration of consultation topics, 12 weeks is a suitable consultation period.

Reducing the consultation period is not conducive to embarking on genuine consultation exercise. The BMA has concerns about the motivations of the Government to take steps to reduce this. Open and transparent consultation is essential for any Government seeking to develop sound, evidence-based policy. Removing consistency within the consultation process of a standard period for responses adds an extra complexity for organisations who may respond to a number of consultations on a frequent basis.

The Government has expressed that the introduction of these changes is to make 'engagement proportional to the potential impacts of the proposal'. One of the benefits of consultation is that it can highlight unintended or potential hidden consequences of a proposal. Having a standard uniform approach to Government consultation through timing and length of consultation periods is a fair approach to ensuring that proposals can be properly considered at scrutinised by potential stakeholders.

The Government has also indicated that timescales for consultation could be altered 'where extensive engagement has occurred before.' Whilst the BMA acknowledges the perceived benefit of adapting timescales under these circumstances, there is also a risk that the Government will consult with a group of stakeholders specifically selected to develop proposals and then limit the amount of time a wider group of stakeholders have to respond to proposals. A standard consultation timescale would help limit this risk.

The BMA does not favour the recent move to online digital consultations where the questions are set up like an online survey. These often appear to be set up for individuals' responses and do not often lend themselves easily for responses on behalf of organisations. The BMA is not opposed to the format per se but would like there to always be an alternative method for responding to consultations such as postal and/or email submission. This would allow, where required, organisations such as the BMA to provide full and considered responses to the consultation.

British Retail Consortium – Written Evidence

Introduction

The British Retail Consortium (BRC) is the lead trade association representing the whole range of retailers, from independents through to the large multiples and department stores, selling a wide selection of products through town centre, out of town, neighbourhood, rural and online stores.

The BRC values the ability to engage with the policy making process through formal consultations. We are able to call on the expertise from across our diverse membership to explain how a policy decision will impact on the retail sector as a whole.

The BRC is disappointed that the Government has moved away from a standard consultation participation window. Given the number of consultations that take place across the UK (both at Westminster and in the devolved administrations), standardised timescales are helpful to both us and our members and allow us to plan better our engagement.

The BRC believes that these changes will also have a negative impact on the policy making process, as there is less opportunity for the Government to refine ideas in the light of sectoral insights.

Given that the UK Government has recently convinced the EU to adopt a 12 week standard approach to consultations, the BRC fails to understand why the Government is simultaneously attempting to move away from that as a standard for domestic consultations.

In what circumstances the Government may reasonably decide not to consult on policy development

Input from key stakeholders leads directly to better policy making. However, we can only provide this valuable insight if we are given sufficient time to consider the Government's proposals. Therefore, the default position for government should be to consult on policy development. In previous cases the effect of not running a formal consultation process has resulted in a number of valid concerns being raised after a policy has been announced. This has led to policies being significantly altered or reversed weeks or months after they have been formally announced. This creates uncertainty and undermines confidence. This does not simply affect specific policy areas; confidence in government as a whole is undermined if policy development is conducted opaquely and subject to change moments after its launch.

The BRC also cautions the Government against announcing new policy that has a direct impact on large numbers of stakeholders without prior consultation. For example, the Government's recent announcement of the postponement of the five-yearly business rates revaluation was made without any consultation with the business community and took many by surprise. This decision has a direct financial impact on thousands of businesses across the country yet no consultation was undertaken. Far from being helpful to business, this kind of quickly-taken decision breeds uncertainty.

The BRC accepts, however, that there are circumstances in which limited or informal consultation would be appropriate. For example, if a policy decision has been subject to

previous formal consultation, but significant time had passed between consultation and proposed implementation.

A full formal consultation may not be necessary where key stakeholders agree that further consultation would not be beneficial.

Appropriate timing and duration of consultation exercises

The BRC considers that the previous twelve week standard consultation was appropriate. This period allows respondents who are speaking on behalf of a wide range of stakeholders, such as trade associations, sufficient time to consult with members, gather views and evidence and draw them into a single coherent response. It also allows larger businesses to gather information from across their operations while observing internal governance requirements, and gives flexibility to small and medium sized businesses that have to juggle the demands of running their business and formally responding to a consultation.

Less than twelve weeks is generally not enough time to allow organisations such as trade associations to gather the necessary information to submit a response which reflects the views of a diverse membership.

A twelve week time-frame also provides scope for responses to be compiled around one-off events such as public holidays. For example, if a consultation period coincides with Easter, a twelve week period allows respondents to juggle the demands of the time of year with compiling consultation submissions. It is notable that a number of recent shorter consultations have taken place across holiday periods, causing considerable challenges for those seeking to respond.

The twelve week period also allows flexibility if the consultation corresponds with a particularly busy period. In retail, the school summer holidays and the Christmas period are particularly busy trading times where little other than core business is focussed on. The BRC strongly objected to the process for the Government's consultation on the Midata scheme. Not only was it limited to six weeks but also the six weeks chosen were over the summer period which this year coincided with the Olympics.

The BRC strongly supports the retention of a twelve week standard and would encourage government to avoid public holidays, festivals and other key trading periods where possible.

What factors the Government should take into account when deciding on the length of the consultation period, such as when policy is new and contentious

As stated previously, the BRC believes the Government should use a twelve week standard for consultations. Any deviation from this should be due to significant previous consultation having been undertaken and, crucially, the responses to that consultation remaining relevant.

New policy, especially where it is viewed as contentious, should be open to the fullest possible scrutiny. In these cases, the BRC would expect the Government to have had pre-consultation discussions with key stakeholders with the formal consultation period lasting for a minimum of twelve weeks.

The implications for different groups in society of the Government’s expectation that consultation will be “digital by default”

The BRC fully supports the Government’s decision to make appropriate use of new technology when consulting. However, it is crucial that those who do not have access to digital technology are able to play their full part in the consultation process.

Whether the Government’s new approach overall will lead to improvements in the consultation process and outcomes.

Introducing uncertainty into the consultation system will do nothing to improve it. Setting standards that can be relied upon by those wishing to input into the policy making process is the way to drive participation. It also provides those who regularly engage with consultation processes across a wide range of policy areas (such as trade associations) with a framework in which to plan their work and ensure that all responses draw on high quality evidence from a range of sources.

Centre for Public Scrutiny – Written Evidence

This submission draws on our thinking about transparent, inclusive and accountable public services; our work on involvement and consultation to date; our experience of developing policy and supporting successful practical action; and our work to support good decision-making and accountability locally.

About the Centre for Public Scrutiny (CfPS)

CfPS (an independent charity) is the leading national organisation for ideas, thinking and the application and development of policy and practice to promote transparent, inclusive and accountable public services. We support individuals, organisations and communities to put our principles into practice in the design, delivery and monitoring of public services in ways that build knowledge, skills and trust so that effective solutions are identified together by decision-makers, practitioners and people who use services.

We work across government (for example with the Department of Health, Communities and Local Government, Home Office, Department of Work and Pensions), with the Local Government Association and with a range of other stakeholders in the public and voluntary/civil society sectors through our comprehensive programmes, published guidance, events and network of expert advisers.

We believe public services should be transparent, inclusive and accountable. In the context of public consultation these principles should be applied to ensure that those carrying out public consultations are clear about the value, process and expected outcome of consultation, hear the right voices and provide credible responses to consultation.

Why transparency, involvement and accountability are important

Putting our principles at the heart of public consultation will help government (and public bodies influenced by the new principles) to demonstrate credibility. In the context of public consultation, four mutually reinforcing principles leading to improved decision-making need to be embedded:

- clarity about how new policies are developed.
- optimise participation through the right information; to the right people; in the right ways; to achieve a credible outcome.
- provide a credible response to what is heard.
- evaluate implementation of new policies to demonstrate improvement.

CfPS submission

Our policy paper 'Accountability Works' (2010) and our practical framework for action 'Accountability Works for You' (2011) set out the case for stronger local accountability, arguing for joined up approaches that encourage the development of co-production i.e.

professionals, the public and their representatives finding solutions to problems together. The need to improve outcomes at a time of economic and demographic challenge makes this an imperative and our 'Accountability Works for You' framework is helping public organisations take forward these ideas in their areas in tangible ways. The Committee may wish to endorse our principles – the idea that the 'culture and values' underpinning consultation are more important than the 'structures and processes' through which consultation is carried out - when it is considering its report about the new approach.

We think that public consultation can be a catalyst for re-defining relationships and behaviours between:

- professionals and people who use services (by understanding and acting on insight)
- professionals and communities (by understanding and acting on aspirations)
- professionals and representatives of people who use services and the public (by understanding and acting on individual and collective voices)

We welcome the review of the approach to public consultation because we think the new principles could radically improve the culture and values of public consultation. We also think the new principles present some risks.

We think that government, in seeking to streamline consultation structures and processes they consider to be 'red tape' that delay economic growth, risks removing an important check and balance – that good decisions depend on good insight. But we recognise that a 'one size fits all' approach has not always worked in the past and that decision-makers have not always felt the freedom to adapt their approach to different circumstances. In this context we think the new principles could drive a positive approach to consultation (one that focuses on culture and values) so that there is clarity about how new policy proposals are developed; what is consulted on and why; how people can have their voices heard; how final decisions are made; and how credible responses are given. We would be delighted if this approach to consultation became reality.

However, we think there is a risk that the new principles may re-enforce a negative approach to consultation (one that focuses on structures and processes) so that consultation becomes about 'minimum compliance' – doing only what is necessary to avoid sanctions but missing the value of co-production. Given the challenges facing the country we think it would be a mistake to assume that solutions to problems can be identified only by professionals. So a relaxation of consultation after proposals are developed must be accompanied by better involvement before proposals are developed.

We think the 'proportionality' principle has potential to make public consultations more valuable but only if departments and public bodies involve the right people to help develop new ideas before new policies are published. In this respect, the Committee might wish to consider practice elsewhere in government – for example, the Department of Health has attempted to learn lessons from poor consultations in the past by introducing four 'tests' to be satisfied *before* proposals for change are published for consultation. These 'tests' are about providing assurance that proposals for new policies and changes to services have not

been developed without people who use services and the public being involved. The four 'tests' require proposals for service changes to demonstrate:

- support of clinical commissioners
- the clinical evidence base;
- promotion of choice for patients
- engagement of the public, patients and councils

In the context of the new principles, these health related 'tests' could be re-framed more generally so that departments and public bodies have to demonstrate that new policies:

- are supported by people who will implement them
- reflect best known practice
- have been developed with people and groups affected
- elected representatives have been able to comment

Outcomes from the 'tests' could be judged on the basis of 'reasonableness' which considers the balance of evidence and stakeholder views in support of new policies. This could include consideration of the overall evidence and support for change, taking steps to address outstanding issues (recognising that all issues cannot always be resolved). Such an approach would help departments and public bodies take credible advantage of the greater discretion provided in the new principles. On the flip side, local stakeholders or individuals who have concerns need to demonstrate reasonable evidence to support their position.

The new principles appear to uphold current practice developed under the Voluntary and Community Sector Compact and the Committee might also wish to consider how existing legal duties 'to involve' (inserted in to the NHS Act 2006 by the Health and Social Care Act 2012) are impacted by the new principles.

We think a further aspect that needs clarity is the requirement for feedback – a principle about feedback should be part of the principles for public consultation. If people are asked for their views, there should be feedback about what has been learnt through consultation and informing people about final decisions made and why/how decisions were reached. Feedback is essential to demonstrate credibility.

Our answers to specific questions the Committee is asking:

Under what circumstances might it be reasonable for government to decide not to consult on policy development?

We think flexibility is important so that consultation is proportionate – a 'compliance' approach i.e adherence to a 'one size fits all' regime has not always had valuable outcomes in the past. But we think government should be wary about implementing new policies without involving anyone at all. Culture and values are important – being transparent, inclusive and credible - so any decisions not to consult need to be in the public domain, otherwise there is a risk of the perception of secrecy.

We think the Committee should also consider that the new principles will influence public bodies so this issue does not just affect government. Government has put significant emphasis on localism and greater involvement of people in decisions about their lives and their areas – it would be odd if the effect of the new principles was to reduce the numbers of people participating in local decisions.

When - and for how long – should consultation exercises be held?

We don't have a fixed view on this because we think the timing and length of consultations depends on the extent to which new policies have been developed with the right people. We are aware that it is important to respect the views of vulnerable people and groups about changes in policies that might have been developed by others. If there are 'tests' to provide assurance about how new policies are developed, it will help everyone judge when and for how long consultation should be carried out. We think that local elected representatives should be consulted as a minimum – this would need to take account of purdah.

How will the expectation for digital consultations impact on different groups in society?

Many people use digital technology to access information and express opinions and we think many people will be happy to be informed about, and participate in, consultations through digital channels. But there are significant groups that do not use digital technology frequently and there are some that do not use it at all – so we think it would be a mistake to consider traditional methods of consultation redundant. We think the culture and values underpinning consultation will drive the methods used.

We think a 'digital by default' approach to consultation risks missing some of the rich insight that can be gathered through human interaction – feelings and emotions that underpin people's views and opinions are not easily captured through digital channels. There may be costs associated with gathering and analysing this kind of insight but we think this is something that government and public bodies need to plan for and build in to their risk assessment of change processes.

We think there is a risk that 'digital by default' may encourage consultation questions to which answers are expressed quantitatively (because they are easy to capture and analyse) rather than often more insightful qualitative responses (that need investment to capture and analyse).

Will the new approach to consultation lead to improvements in the process and outcomes?

We think there is no guarantee that the new principles will result in better consultations or outcomes. The answer will depend on the extent to which government and public bodies embrace a culture of transparency, inclusiveness and accountability towards policy development as a whole. We are not arguing for 'red tape' but for a partnership between citizens, government and public bodies. The civil service reform plan hints at the creation of a new relationship through 'open policy making' – time will tell.

Chartered Institute of Taxation – Written Evidence

The Chartered Institute of Taxation (CIOT) is pleased to submit some comments to the House of Lords Secondary Legislation Scrutiny Committee to assist its consideration of the Government's new approach to consultation.

Our comments are informed by our extensive experience of being involved in consultations on changes to taxation law and practice. As a body, we believe strongly in the value of proper consultation. Such consultation produces better law that is more likely to be effective and less likely to impose unnecessary administrative burdens. The crucial gain from consultation is often that it allows input on practical implications, based on consultees' practical experience; quite simply, it allows more time to get the proposals right.

We are very supportive of the Government's framework for tax consultations as set out in 'Tax Policy Making: a new approach'³. Its principles parallel our views on what makes effective consultation, views we have put forward many times over the years:

- Consult in stages (principles, then direction, then detail)
- Proper evaluation of input and good feedback
- All carried out over a proper timescale
- Only consult if there is a real chance of change – a willingness to listen

Most of our dealings over consultations are with HM Revenue & Customs (HMRC); we also have many dealings with HM Treasury and other government departments such as the Department for Work and Pensions (DWP). In general we think HMRC consult well, much better than was the case 5-10 years ago, though their record is far from perfect.

We recently compiled a paper commenting on our experience of the consultative process over the past 12 months, encompassing our experience of consultations driven by all these bodies. A summary of some of our main points are in an Annex to this memorandum. These points and our general experience of consultations have been drawn on to comment on the five issues raised in the Committee's call for evidence.

Issue 1: in what circumstances the Government may reasonably decide not to consult on policy development

The principle must be that all tax policy changes are consulted on. The main exception would be changes in tax rates. We do accept that changes in rates are always going to be a matter for the government and would not normally be susceptible to consultation, though

³ http://www.hm-treasury.gov.uk/d/junebudget_tax_policy_making.pdf, published 1 June 2010; with response documents and further comments published 9 December 2010 at http://www.hm-treasury.gov.uk/tax_policy_making_new_approach.htm.

there have been instances where the implications of what seemed to be rate changes would have emerged with consultation⁴.

If, exceptionally, a policy change is not consulted on, it should be a requirement for the Minister to explain why consultation is felt to be unnecessary or inappropriate. Tax is such a complex subject that a lack of consultation opens up a serious risk of the policy being developed badly and misfiring.

Anti-avoidance is often cited as an area that cannot be consulted on. We disagree: we accept that there may be a need to make an immediate announcement on blocking a tax loophole, but it should still be possible (and sensible) to consult on the detail. If there is a policy change in anti-avoidance, that undoubtedly needs to be consulted on⁵.

Issue 2: the appropriate timing and duration of consultation exercises

The simple answer on duration is ‘enough’: the quality of input will be proportionate to the time consultees have to respond. At times we are asked for comments on HMRC guidance material and are only allowed a few days: we can respond in this timescale but this is challenging and likely to mean only limited responses can be generated.

We do not say that all consultations need to be over the standard 12-week period. But that is necessary for significant policy changes, especially if it something that will affect a wide range of taxpayers (individuals or businesses). Time needs to be allowed for gathering opinions from the affected groups⁶.

Issue 3: what factors the Government should take into account when deciding on the length of the consultation period, such as when policy is new and contentious

Clearly new, contentious matters need a longer period. So do changes that affect a wide range of taxpayers. Changes that would have a major impact on some people – perhaps in tax terms changing the tax treatment of a transaction – also needs careful evaluation, even if the group affected is small.

If the proper policy development process is followed, then the later stages may well need less time than earlier ones, especially if there is broad consensus on the proposed direction of reform. Similarly, if the initial draft of legislation to effect a change has received broadly positive comment and only detailed change, the final draft may only need time for a relatively brief review.

Issue 4: the implications for different groups in society of the Government’s expectation that consultation will be “digital by default”

As a professional body, the CIOT’s main concern with a ‘digital by default’ approach is that we are alerted properly and promptly to a new tax consultation. That should be easy with digital methods but at times distribution lists/alerts do slip. The ‘consultation tracker’ developed by HMRC/HM Treasury has been useful but does not seem to be guaranteed.

However, we do have concerns about a purely digital approach in certain areas. The CIOT has a very active group that provides a voice for unrepresented (and often vulnerable)

⁴ An example would be the changes to CGT Rates in the summer 2010 Budget.

⁵ A good example of such consultation has been the work on the development of a General Anti-Abuse Rule.

⁶ The CIOT will always seek views from members of its various technical committees; on major issues it will try and survey members.

taxpayers, the Low Incomes Tax Reform Group (LITRG). They will be able to monitor activity for the impact on such groups of taxpayers but we wonder whether there are enough such bodies 'on the case'. Some proposals will benefit from discussions/testing with individuals and even in a digital age, it can be time-consuming to contact appropriate groups of people who may well not be aware of the change proposed. In short, we think that careful evaluation of those likely to be impacted by a proposal needs to be part of planning the consultation, with provision made to ensure vulnerable groups in particular are contacted in some way. Merely placing a consultative document on a website is unlikely to be sufficient.

Issue 5: whether the Government's new approach overall will lead to improvements in the consultation process and outcomes.

If this new approach means more consultation and that those consultations are better planned and targeted, then that will lead to improvements to the benefit of all. Consultations do need to be tailored in all senses; they must not be seen as being a standard, formulaic approach, nor simply a box-ticking exercise. In short, if this new approach means trying to make consultations more effective, we support it and believe it will improve matters. If it is all about allowing policy changes to be pushed through without external input, then we would be very concerned and disappointed.

Annex: some comments by the CIOT on our experience of recent tax consultations

Some consultation has been very good - though stretched resources on both HMRC's side and the private sector mean dealing with the volume of proposed change is a challenge, resulting in less discussion on some issues than might be ideal.

Often the examples of bad consultation come into sharp focus because of what might have been, had there been full consultation, and by comparison with good exercises.

Consultation often starts too late in the process, omitting the first stages of the Tax Consultation Framework, launching into consultation on the detail of a particular option. Consultation is best when it elicits input at an early stage in the thought process.

Minister has decided - we are often told by officials that 'the minister has (or ministers have) decided'. What is the point of consulting if there is not an open mind? In any event, when consultees highlight practical problems we think that civil servants should revert to the minister to discuss the policy again.

Timing – we fully accept that consultation periods do sometimes have to be brief but proper planning should minimise such instances.

Immediate action needed – we appreciate that the need to tackle anti-avoidance can sometimes mean decisions have to be taken without consultation. But that should not preclude consultation on details, to ensure that the new measure is properly targeted.

Effort required to get change – sometimes this seems almost out of proportion with the change sought. The CIOT works towards a better tax system for all. Recommendations for change are invariably made to improve proposals, iron out practical problems and reduce burdens for HMRC, taxpayers and agents. At times it seems to be extremely difficult to persuade those running a consultation that we are also working towards the 'greater good' of the public and the economy, rather than as interest groups.

The Chartered Institute of Taxation

The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT's comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

The CIOT's 16,500 members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

Chemical Business Association – Written Evidence

CBA welcomes the opportunity to comment on the Government's new approach to consultation.

We are the main UK association for companies operating in the heavily regulated chemical supply chain. A more detailed profile of CBA appears at the end of this submission. CBA is consulted on more than 50 formal UK and European Union regulatory or legislative changes each year and makes detailed submissions in respect of many of these documents. In a number of these cases, CBA is also a pre-consultation partner of the Ministry or Agency concerned.

In relation to the current proposals, we can find no evidence of the Cabinet Office seeking views on their proposed changes before or since the Written Ministerial Statement of 17 July 2012. We have discussed this question with the Confederation of British Industry and they were also unaware of any consultation on the proposed changes.

The Ministerial Statement confirms this absence of consultation by indicating in its final paragraph that 'the new consultation principles will be promoted in Whitehall now and the public will begin to see the new guidance take effect after the recess.' The fact that these changes appear to have been introduced with no consultation whatsoever provokes scepticism about their real intentions. If the House of Lords Secondary Legislation Scrutiny Committee had not issued a call for evidence, these proposals would have taken effect without any formal examination or the relevant Minister being called to account

Basic assumptions

CBA believes that Government consultation should be under-pinned by three basic assumptions that appear to have been largely ignored in the current proposals:

- That consultation with stakeholders generally has a positive effect on legislation;
- That consultation should operate for the benefit of stakeholders, not the convenience of Ministers or officials; and;
- That the process of consultation is crucial to the subsequent operation of legislation as, in the case of CBA and other business organisations, we are then able to assist our member companies to implement the new measures successfully.

The current consultation period

The previous Code of Practice on Consultation (2008) referred to a minimum period of consultation as 12 weeks. Over the years this has been applied de facto as a 12 week period and the current proposals simply refer to a 12-week period. Any reference to this being a minimum period required by the previous provisions has been omitted both in practice and from the current proposals. CBA believes that proposals can only be discussed using a minimum period of 12 weeks as the starting point. To do otherwise fails to recognise the scale of the change sometimes being proposed.

Who decides?

Before addressing the Committee's questions relevant to CBA, we wish to make two preliminary points. Firstly, we recognise that every proposed legislative or regulatory change does not require a minimum period of 12 weeks consultation. Some minor measures can be dealt with in a shorter period of time. By the same token, other measures – particularly those with major complexity and or cost impacts for business – may require a longer period.

Secondly, the only real issue in the current proposals relates to who decides what may or may not be the relevant consultation period for any given legislative proposals. The clear implication from the Ministerial Statement is that officials in a sponsoring department will decide – apparently without external reference to the stakeholders affected by the proposals.

The Ministerial Statement states, 'policy makers will need to give more thought to how we consult with people. The aim is to replace a potentially unproductive process with real engagement with those affected.' The first of these statements implies that the decision on whom (and whether) to consult and over what time period will be a matter for officials – no doubt acting in response to a Ministerial instruction based on the political imperative of the moment. The second statement implies that current consultation is 'unproductive' – a description that devalues the time and effort stakeholders commit to a process they have previously believed to be worthwhile.

In CBA's opinion this key aspect of the proposals places absolute control in the hands of Ministers. The timetable for legislation is already under political control and the current proposals – in the absence of more specific provisions relating to the nature and conduct of consultation – militate against transparency and could be used to prevent those affected by legislation from commenting upon it. Accordingly, we believe the current proposals require urgent revision.

Specific issues

The Committee asks 'in what circumstances the Government may reasonably decide not to consult'. The answer to this question depends on the extent of the dialogue and working relationship that exists between the sponsoring department and its stakeholders. If a relationship of trust exists, then it is quite possible to envisage circumstances in which proposals could proceed without a formal consultation period. However, this implies that the stakeholders concerned have been given prior and full disclosure in relation to the proposals in order to reach an informed decision. In any other circumstances, CBA believes it would not be reasonable for Government to proceed without consultation.

CBA believes that the 'appropriate timing and duration of consultation exercises' should use the current 12-week minimum period as a starting point. Any variation from this should be agreed with key stakeholders and based on the nature and complexity of the legislation. On timing CBA is concerned at the increasing propensity for consultations to be issued in the run up to the annual holiday periods which, when linked to the proposed reduction of durations, has the potential to seriously undermine the ability of stakeholders to respond effectively.

Many of the 'factors to be taken into account by Government when deciding the length of the consultation period' have already been dealt with earlier. CBA, in common with many other business associations, always tries to respond promptly to consultation. However, as

so many legislative proposals impose additional costs on business, calculating their actual cost impact (as opposed to simple estimates contained in legislative Impact Assessments) can often take time and resources. This is another reason why CBA believes the benchmark for consultation should remain at a minimum of 12 weeks and any variation, in relation to a shorter or longer period, should be pre-agreed with key stakeholders.

CBA has no objection to consultations being ‘digital by default’.

CBA does not believe the ‘new approach overall will lead to improvements in the consultation process and outcomes.’ We believe the current proposals lack transparency, could be used to marginalise key stakeholders; they place too much power in the hands of Ministers and officials; and will generally weaken many effective working relationships which have been developed between business and Government departments. It follows that we do not believe that outcomes will improve. Quite the reverse: they will almost certainly deteriorate.

About CBA

CBA’s membership consists mainly of chemical distributors and providers of logistic services to the chemical supply chain. Each year, CBA’S distributor members handle more than 2.2 million tonnes of chemicals with a market value of almost three billion euros; its logistics services providers handle over 6 million tonnes of chemicals.

Most of CBA’s members are SMEs, though its membership also includes major pan-European and global distributors. CBA members are the key industry interface with thousands of downstream chemical users.

City of London Law Society – Written Evidence

Four points are notable about the adoption of the new Consultation Principles.

First, the catalyst. Neither the Civil Service Reform Plan, nor its companion document, the Context for the Civil Service Reform Plan, discusses the topic of consultations. Both documents are wholly silent on the substance of the issue. But it is clear that the Government's (and Prime Minister's) desire for a 'pacier' and more responsive policy process has been translated crudely into a corresponding desire for a 'pacier' consultation process. This translation might have some merit if anyone had correlated either the length, or contribution, of past consultations with the outcome of their corresponding policy decisions. In part, this is unsurprising, because it would be exceptional for the duration of even a 12-week consultation to be a critical factor in the duration of the wider decision-making and implementation process. Anyway, no attempt at such a correlation is apparent.

Second, the proportionate approach. Proportionality cuts both ways. It is undeniable that a further long consultation process would be disproportionate to a minor and well-informed policy proposal. Similarly, a short consultation would be disproportionate to a complex and vital issue. But the disproportionality here in insisting on a 'pacier' consultation process is the disproportionate attention paid to the consultation process, in comparison to the attention paid to the other components of the policy process. Frankly, there is no point in trimming one, four or twelve weeks off the consultation if that merely leads to greater uncertainty, or creates additional headroom for prevarication, elsewhere in the policy process. There is a clear (and risible) illustration of this false economy in the new Consultation Principles: 'for a new and contentious policy, such as a new policy on nuclear energy, the full 12 weeks may still be appropriate'. Set against the cacophony of several cans being kicked down the road, does anyone still believe that a 4- or 12-week duration of a public consultation is material to the length of today's major policy changes and their implementation?

Third, a comment about the 'new approach and real engagement' in the public consultation preceding the launch of these Consultation Principles: what consultation? To simply substitute the Consultation Principles for the previous Code of Conduct, with no consultation, suggests either that there is no change worthy of public consultation, or that there has already been sufficient real engagement for policy makers to know the views of the stakeholders. But even a simple comparison of the old and new positions casts doubt on these propositions.

The 2008 BIS Code of Conduct, founded on BERR's 2007 public consultation, was itself the third and final iteration of the Code since 2000. In the absence of any public debate or consultation since 2007, it is not unreasonable to believe that the majority of those organisations and individuals who wish, or at least are willing, to contribute to the public policy debate, still support the outcome of the 2008 Code that 'consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible'. Specifically, the 2008 Code expected that 'if a consultation exercise is to take place over a period when consultees are less able to respond, e.g., over the summer or Christmas break, or if the policy under consideration is particularly complex,

consideration should be given to the feasibility of allowing a longer period for the consultation'. If, as I suggest above, there is no discernible correlation between the length of a consultation and the length of the eventual policy decision and implementation, i.e., that 'pacier' consultations do not lead to faster policy outcomes, it is difficult to understand why the new Consultation Guidelines have deleted any mention of consultations over the summer and Christmas period; clearly, consultees since 2008 are no more able to respond at these times, and officials are no more able to learn from the responses. It is difficult to avoid the conclusion that Government is more interested in reducing the burden of handling public responses than it is in learning what the responses have to offer.

Fourth, there is a further feature of the Consultation Guidelines that marks a fundamental change in the Government's attitude to consultations (and which should have been reason enough to prompt further consultation). The 2007 consultation opined that 'consultations should only happen at a stage when there are still elements of policy to influence', to which the then-Government agreed in the 2008 Code by saying 'clearly there is no point in consulting when everything is already settled'. Contrast that with the penultimate paragraph of today's Guidelines, which positively discourage any public engagement ahead of collective agreement in policy making. Policy making is to be the preserve of Westminster, Whitehall and experts, but increasingly immune to public influence.

In conclusion, I believe the pendulum has swung too far against public consultations; crucially, for no obviously good reason. Well-managed public consultations are spend-to-save measures that improve public policy decision-making. **In** the case of the City of London law firms, our work provides Government with free, world class, legal advice that Government could not otherwise get.

I accept entirely that the process of consultations represents a significant burden for a smaller Civil Service, and that badly managed consultations can result in poorer and slower decision-making. But that is no argument for not seeking to manage public consultations in such a way that they are parallel activities to the critical path of policy-making, rather than sitting uncomfortably on the critical path. Above all, 'pacier' consultations will not lead to better decision-making.

Confederation of British Industry – Written Evidence

The CBI's response to the House of Lords' Secondary Legislation Scrutiny Committee inquiry on the government's new approach to consultations

The CBI is the UK's leading business organisation, speaking for some 240,000 businesses that together employ around a third of the private sector workforce. With offices across the UK as well as representation in Brussels, Washington, Beijing and Delhi, the CBI communicates the British business voice around the world.

Consultation is a central part of the policy making process, allowing policy makers the opportunity to seek the input, advice and expertise of a wide range of stakeholders. This drives up the quality of policy and provides transparency and confidence in the policy making process. Conversely, ineffective consultation reduces the capacity of policy to meet end-users' needs and undermines transparency and confidence in the policy-making process.

CBI members believe that:

- **consultations must be designed so policy makers can get the right information from the right places**
- **clear principles for determining what factors should be considered when deciding how long to consult for would improve consistency**
- **greater flexibility must be matched with greater accountability if stakeholders are to have confidence in the system.**

Consultations should be designed to get the right information from the right places

The nature and extent of consultation should reflect the issue being consulted on. Consultation should neither be a bureaucratic process to be followed, nor simply pay lip service to stakeholder engagement. Consultations should be, as the principles say, proportionate and aim to achieve "real engagement" with stakeholders.

Not every change to policy or legislation will require consultation. Minor technical changes to existing regulations may not need consultation, while other changes may be forced due to challenge in the courts. There may also be cases where changes to policy are directly linked to other policy consultations, and have therefore already been considered; for instance, where changes to benefits or compensation payments are linked to an inflation index. Where there is no consultation, the government should make clear why the decision has been taken not to consult and include this when policy changes are announced.

Most policy, however, will require some form of consultation. Consultations may range from 'calls for evidence', which simply seek evidence and information to help inform a later policy proposals; they may seek to gather ideas on how existing or future policy can be amended to achieve policy goals; finally, they may seek stakeholders' input on specific policy proposals

and how stakeholders may be affected by them. How consultations are designed and who they are targeted at will depend on what information is needed to inform the policy.

How not to do it: changing the Consultation Principles

Consultations are an important part of the way in which stakeholders engage with the government. The principles, in their form until this summer and particularly the 12 week requirement, were developed with the input from a wide range of stakeholders in 2007. The change the government introduced in July 2012 was taken with no notice and little input from stakeholders. Given the fundamental change that the new rules will have on the engagement of stakeholders with government departments, steps should have been taken to ensure that they were engaged and that they supported the changes to the Consultation Principles.

New technology should make it easier for the government to distribute and publicise consultations, and for stakeholders to respond. Most stakeholders will learn about consultations via email or the internet. Stakeholders with the most interest in responding will usually have access to digital media. Therefore, we do not believe that a “digital by default” will have an adverse impact on the ability of interested parties to respond. However, should people wish to respond in ‘hard copy’ they should be able to do so.

Clear principles for determining what factors should be considered when deciding how long to consult for would improve consistency

A rigid requirement to consult for twelve weeks may not always be necessary. The appropriate length and method of consultation will not just depend on the purpose of the consultation, as listed above, but also on a number of other different factors. These factors affecting the consultation period may include:

- **The scale of the impact.** Some policy changes might affect a very large number of people and organisations. Others will impact on just a single sector or a handful of organisations. The extent to which these stakeholders are affected is also a vital factor.
- **The complexity of the problem.** Some consultations will be very simple to respond to. Others may require more time for stakeholders to analyse and develop useful and comprehensive responses. Rushed responses to complicated matters are of no benefit.
- **The information being requested.** Some consultations or calls for evidence may require data which takes time for stakeholders to compile.
- **The nature of those being affected and targeted for consultation.** Organisations vary in their capacity to respond to consultations quickly. Smaller bodies will have fewer resources to develop responses to consultations, and therefore require more time to respond. Not all organisations will necessarily be able to be alert to every consultation, so more time will be required.
- **The timing of the consultation.** Consultations conducted over the summer or during Christmas breaks, for example, will need longer periods to respond. Staff are more likely to be on leave during these periods and so capacity to respond fully may

be reduced. Government should be realistic about this fact and consultations should either avoid these periods, or their length should take this into account.

The government needs to set out a clearer framework of issues that should be considered by ministers to ensure that there is consistency and accountability in the process and decisions over how long to consult for.

How not to do it: employee-owner status

It was disappointing that one of the first consultations issued under the new principles by the Department of Business, Innovation and Skills failed to live up to these expectations. The consultation on implementing employee-owner status opened on 18 October 2012 and closed just three weeks later on 9 November. Given the complicated interaction of employment, tax and company law, the CBI believes it unlikely that many of those affected – the policy is primarily focussed on small businesses – would have been able to respond fully or adequately. This situation was exacerbated by the fact that the policy was only announced by the government the week prior to the consultation opening.

Greater flexibility must be matched with greater accountability if stakeholders are to have confidence in the system

The Consultation Principles state that timelines “should be proportionate and realistic to allow stakeholders sufficient time to provide a considered response.” It is essential that when consultations are held, policy makers explain how the length of the consultation was determined, and what factors were considered when coming to the decision. Accountability and transparency in this regard are of the utmost importance if confidence in the system is to be maintained and to prevent new or controversial policies being pushed through unsuitably quickly.

We hope that the above example was a one off case and that in future the length of consultations will properly reflect the principles on proportionality and time needed to respond. When they do not, it is necessary for there to be a way for stakeholders to raise their concerns and for decision makers to be held accountable. The government should consider how stakeholders who have concerns about short or inadequate consultations can either raise these within government or seek redress, if necessary. This should be through the Cabinet Office, which is responsible for the Consultation Principles and is should be clear what action government can take in these circumstances and what the consequences would be for the department concerned.

Overall, the new principles will help improve the consultations – particularly for deregulatory measures – with policy processes becoming quicker and consultations period better reflecting the issue under consideration. However, with more flexible guidelines, there needs to be greater accountability, the capacity for stakeholders to raise concerns if the principles are being breached and a clear understanding of how stakeholders can seek redress if they are.

Consultation Institute – Written Evidence

Section One: Background and Introduction

The Consultation Institute is pleased to offer its evidence in respect of the new Cabinet Office **Statement of Consultation Principles**

Since its inception in 2003, the Consultation Institute has specialised in developing and disseminating best practice in public engagement in general and public and stakeholder consultation in particular. As a not-for-profit organisation with a substantial membership base it is completely independent of Government. In almost 10 years, it has delivered almost 14,000 person-days of training and seminars on all conceivable aspects of public consultation. It has also published a wide range of specialist Briefing Papers and over 220 ‘Topic’ papers. We are seriously practitioner-led, with approx 700 individuals qualified through our Certificate of Professional Development; most of these are from the public sector or from parts of the private sector concerned with spending public money or seeking approval through the regulatory system.

In addition to thought-leadership and training, the Institute is increasingly used by public bodies to provide quality assurance that their public consultation exercises conform to best practice standards. We do this through a rigorous process called Compliance Assessment, which provides the dual benefit of helping hard-pressed officers minimise procedural errors, as well as giving a sceptical public independent reassurance that the consultation is indeed being undertaken properly. Right now, we are involved in helping with major and contentious consultations in the NHS in England and Wales, as well as contested proposals for change in local authorities, Fire & Rescue and transport.

For the purpose of preparing this evidence, we have drawn extensively on discussions with our Advisory Board, our membership base and the views of specialist Associates who deliver training and consultancy on behalf of the Institute. We also ran a comprehensive Roundtable session with some of our members on 11 September 2012 to consider the implications of the Cabinet Office Principles. Present at this event were officials from key Government departments as well as staff from Regulatory bodies, Executive Agencies and non-departmental public bodies.

Although we cannot enter into such detail in this short submission, the Committee might like to know that the Institute has published what we believe to be the definitive Guide to the Cabinet Office Principles. This is in the form of **Briefing Paper 32: Putting Principles into Practice** which was published in August following discussions with Cabinet Office staff.

In that paper we have tried to distil the three-page narrative into ten clear propositions which we believe makes an otherwise confusing document more meaningful and useable. **Appendix One** is a Summary Table explaining the Institute’s observations on each of the Ten propositions.

Section Two: The case for change

This is the fourth attempt by Whitehall to spell out the rules for organising public consultation.

- The first Code in 2000 was focused almost entirely on documentary consultation and was regarded by many to be over-prescriptive
- The second version in 2004 proposed six general principles and introduced helpful additions such as a complaints route.
- The 2008 Code of Practice followed widespread dialogue with Government departments and was a classic product of well-informed engagement. In the profession, it was highly-regarded, but suffered two significant drawbacks.
 - It failed to resolve the 8-year old debate as to which parts of the public sector was bound by it (in the end, organisations, aside from Government departments ‘opted-in’ if they chose to follow it)
 - No-one received professional training in how to work to the Code, so observance was always hit-or-miss

In our Briefing Paper 32, we believe we have discerned several reasons why pressure may have built up to withdraw the 2008 Code of Practice. Many of the same forces may have influenced the Government in preparing the Civil Service Reform Plan – which had been published shortly before the Consultation Principles.

In brief we believe that there are four widely-held perceptions

- A view that consultation is ‘bureaucracy’
- There are too many consultations – and they take too long
- The Courts are interfering.
- The standards are too prescriptive

Evidence for some of these is sketchy at best, and in some cases these sentiments are based on a misunderstanding. High-profile cases of consultations declared unlawful at judicial reviews in the High Court (eg Dept of Education, Dept of Energy & Climate Change etc) did not turn on any aspects of the 2008 Code of Practice but rather on Equalities legislation or the common-law ‘Gunning principles’ which date back to 1985!

We acknowledge however that these views are widespread and that policy-makers face a real dilemma. On the one hand they genuinely want a robust evidence-base for their decisions. On the other hand, they do not wish to spend the money or take the time to produce such evidence. We can see how pressure mounts to do less consultation and when it is necessary, to do it cheaper and faster.

Section 3: The Principles – What’s welcome...and what are the mistakes...?

Given that Cabinet Office officials were given only a few days to prepare a replacement for the 2008 Code, they have done a commendable job. It would have been better however if:

- Ministers had indicated earlier that they wished to revise the Guidance, and sought advice
- The changes had been integrated into the Civil Service Reform Plan
- The document had been written as a set of Principles rather than a discursive narrative
- Other Government departments and Parliamentarians has been consulted

Despite this there are many **useful and welcome messages** in the new Principles:

- Greater discretion in the decision whether or not to consult.
- This is welcome because everyone suffers when decision-makers go through the motions of a consultation when, essentially the decision has already been made. It leads to the tick-box-exercise syndrome and is a waste of everyone’s time and money. The Institute wants to see fewer consultations – effectively only when there is genuine opportunity to influence the outcome.
- A sense of proportionality
- The previous Code never envisaged a one-size-fits-all approach, but lack of training and over-cautious legal advice led many to adopt a gold-plated approach. It meant that technical stakeholder engagement exercises of real interest to only a few specialists received the same treatment as an issue such as Hi-Speed2 rail – which affected hundreds of thousands. The Principles shift the balance decisively away from the general public and places a focus on key stakeholders.
- Efficiency
- A lot of money has been wasted on poorly-designed consultations, but the search for efficiencies in this field is a complex equation. The Principles suggests greater use of e-consultation and social media, but (curiously) does not mention the phrase digital-by-default – which Ministers used in the announcement and Press Release. We welcome moves to take better decisions in how to run consultations, but this will not happen without professional training.
- Clarity re the coverage of the Principles
- We are delighted to see the end of the long-running debate. By stating boldly that they should be adopted by ‘Government departments and other public bodies’, it usefully clarifies the position, and everyone can now know where they stand when public bodies seek their advice through a consultation

Sadly, we think the Principles contain **avoidable mistakes**. In particular, we wish to highlight:

- **Abandoning the requirement for Feedback**

We still do not know whether this is an intentional change of practice or an omission by those who drafted the document – and those who checked it and signed it off.

Every practitioner we know with experience of public consultation – and every public communications professional would advise that if you ask people for their views, you owe it to them to provide feedback. This takes two forms – telling people what evidence has been gathered in the consultation - and informing them subsequently of the decision, and how that outcome took account of the consultation. Failure to provide feedback means that when asked for their views the next time around, stakeholders will see no reason to co-operate.

This error has to be corrected. Feedback is essential if consultors are to maintain credibility with those whose views they say they want to hear.

- **Confused messages regarding timescales**

The Institute has long believed that far too much attention is given to the duration of consultations – rather than their quality. Many people find the '12 week' practice a simple 'rule-of-thumb' that is helpful in planning either to hold a consultation or respond to one.

However, despite the Prime Minister's assertion on 19 November (speech to the CBI) that when he came into office, all consultations were 12 weeks, the truth is that the previous Code (and its predecessors) provided for exceptions, and Ministers frequently took advantage of it.

On our calculations, of the approx 550 consultations organised by the Coalition Government between June 2010 and December 2011, almost a third (31%) were shorter than 12 weeks. If the aim of the Government was to introduce flexibility, there was evidently no need to replace the 2008 Guidance.

The Principles say three things

- Departments should be flexible and the duration of a consultation '*might vary between 2 and 12 weeks*'
- In deciding the duration, '*the capacity of the groups being consulted should be taken into consideration*'
- The Compact with the voluntary and community sectors will continue to be respected – in particular its commitment to 12 week consultations '*under normal circumstances*'

Unsurprisingly these can be viewed as contradictory. A high proportion of Whitehall consultations – and even more of local authorities' exercises come within the purview of the Compact. So whilst loudly proclaiming the end of the 12 week rule, the Government's intention to retain the Compact commitment means that most of these will continue to be for 12 weeks.

The other mistake, we believe is to offer the prospect of 2 weeks. We know of very few circumstances where a meaningful exercise can be conducted so quickly. The Institute

instead believes that a 4-week fast-track process – which we initially recommended in 2008 – would be a more predictable and practical method. It will be absolutely ideal for consultations that met three important criteria:

- A known reachable audience of stakeholders
- ... who are expecting the consultation
- Stakeholders who can be reasonably expected to have access to electronic response methods and be comfortable using it

Finally, letting policy-makers make up the process as they go along is a sure recipe for more judicial reviews. If, for example, a Department chooses to opt for a 3 week consultation, unhappy consultees unable to complain about the consultation may legally challenge the exercise (as ‘Gunning Principle’ Two) and be able to quote the ‘capacity’ test from the Principles to support their case. Surely this is the opposite of what the Government intends.

- **Loss of the ‘complaints route’**

The postbags of Parliamentarians (both houses!) often contain complaints about the ways in which public bodies consult. A few years ago, MPs were queuing up to speak in debates about post office closures when Royal Mail refused to explain why it ran its consultations in a particular way. As we speak, there are large volumes of correspondence between Government departments, politicians and campaigners on either side of arguments about high-speed rail, energy from waste plants, wind farms or regrettable closures to hospital A & E units, care homes or libraries.

This torrent of public engagement usually has an interesting characteristic – confusion between people complaining about the substantive issue – and about the consultation process. In general, they argue about both.

One of the failsafes that is needed in the rules of consultation is a way that the process problems can be isolated from the substantive issue. By introducing the concept of a Consultation *Co-ordinator* for each Government department, whose name was prominently displayed in the consultation document as a route to investigate and address any process problems, the 2008 Code introduced a really useful practice.

The Institute believes that abandoning this requirement shows that the Government has little interest in accommodating consultee views on process issues and further fuels the enthusiasm for legal challenges as being the only route available for dissatisfied stakeholders.

Section 4: Detailed answers to the Committee’s Questions

Under what circumstances it might be reasonable for the Government to decide not to consult on policy development;

Other than the exclusions mentioned in the Principles, the Government should be free to proceed without formal consultation if there are no significant aspects of the policy where it is open to influence. This means that we need a degree of candour – with Ministers, civil servants and public officials telling the truth about their willingness to listen. Too often, they have wanted to be seen to be listening, when in fact, minds have already been made up. This is what has led to an avalanche of consultations – many of which are a waste of time.

We therefore welcome a more realistic approach, but it must be transparent. So a decision not to consult should be made openly, with a formula such as “*On this occasion, the Department has decided not to hold a formal consultation, but expects to produce proposals on (such-and-such an issue) on (date)*”

When - and for how long - consultation exercises should be held;

We advocate a simple rule-of-thumb default as follows:-

Short consultations – 4 weeks

Medium consultations – 8 weeks

Long consultations – 12 weeks

Allowance should always be made for the effect of summer holidays and Christmas

How the expectation that consultations would happen digitally will impact on different groups in society;

We are satisfied that for many statutory stakeholders, business and commercial organisations, and an increasing range of voluntary and community groups, digitally-based consultations will be satisfactory. However, they do not provide the means for effective dialogue in all cases, and more traditional means of discussion –including one-to-one meetings, focus groups, deliberative events etc are much better ways to understand the views being expressed.

There is real concern that the ‘digital-by-default’ principle is seen as a cost-saving, enabling civil servants to discontinue the practice of meeting stakeholders face-to-face.

In addition, there are many individuals who have little or no access to new technology, or feel less comfortable using it. Figures showing 70% + internet access or 50% + social media usage are misleading. Just because people have access does not mean that they are comfortable using these tools to express their views to public bodies.

Relying too much too soon on digital channels reinforces the influence of organisations that already have considerable clout. They are the ones that already use digital technologies and unless we are careful, we may make the voices of hard-to-reach/seldom-heard groups even more difficult to heed.

Whether this new approach to consultation will lead to improvements in the process and outcomes.

There are welcome developments in the new Principles, and provided they are re-written and placed into a more professionally presented document, and provided also that the mistakes we illustrate above are addressed, there is no reason why it cannot be a satisfactory basis for public sector Consultations in the future.

Section 5: Conclusions & Recommendations

The Principles were written in a hurry and without any meaningful discussion with specialists in public engagement and consultation. Upon their announcement, the Minister declared:-

“In line with the principles of open policy-making, we welcome views on how ...(they) ...should operate in practice.”

The reality is that they were presented a *‘fait accompli’*, and no mechanism was created to receive representations.

The Scrutiny Committee therefore has an opportunity to make a real impact if it can persuade the Government to take a fresh look at these Principles. If they were re-written (the Institute would be happy to help) and some of the issues identified above properly addressed, we feel there is a every opportunity to have a satisfactory document that could form a sound basis for moving forward.

Having a document – no matter how excellent, however is not of itself likely to improve the practice of consultation and engagement. Public bodies must invest in first-class professional training so that the complexities are understood and best practice application of the Principles encouraged.

Appendix One

Principle Number	Institute observations
View consultation as part of the policy-making lifecycle	The Institute strongly approves the concept of the policy-lifecycle though the Principles would be clearer if they made specific use of this terminology
Avoid unnecessary ‘tickbox’ exercises	We agree with eliminating wasteful consultation exercises, but policy-makers in return must be open and truthful in stating that they do not require consultation. They will therefore be accountable for these judgements – and may find that key stakeholders disagree.
<i>Real engagement</i> rather than a bureaucratic process	<p>We fear that the words ‘real engagement’ as used in the Preamble is not fully understood in Government. They are fine words, but it costs money and takes time that hard-pressed Departments seem reluctant to commit.</p> <p>Done properly, this is without doubt the right approach. But it seems contradicted by other elements of the Principles – with their emphasis on doing as little as possible.</p> <p>This potential conflict needs to be resolved.</p>
De-emphasise documentary consultation, but promote online	<p>Experienced consultors recognise that it is almost impossible to move entirely from a base consultation document, for somewhere there has to be an authoritative statement of the problem, an indication of the options under consideration and their impact.</p> <p>New technology can certainly be used to publish this material, but it certainly has to be made available properly to potential consultees – otherwise the Courts will intervene as a breach of Gunning principle Two</p>

<p>A greater focus on targeting key stakeholders</p>	<p>The move away from consulting the general public and placing the focus exclusively on key stakeholders will be welcomed by many. But it contradicts the Government’s localism agenda and attempts (eg through Neighbourhood Planning) to involve more citizens – not fewer.</p>
<p>More flexible timeframes</p>	<p>The Institute believes that timeframes have become an inappropriate obsession in this debate, and see little virtue in a consultation lasting 12 weeks unless it also meets other best practice standards!</p> <p>We disagree with such flexibility as allows any Department to decide the timescale to suit itself on each and every occasion; it leads to uncertainty, and will provoke even more legal challenges.</p> <p>Instead we advocate a clear choice of three timeframes – Long, Medium and Short (see above)</p>
<p>Observe the Compact with the Voluntary/Community Sector</p>	<p>If the Government is determined to go for shorter consultations, then it should be bold enough to re-negotiate these aspects of the Compact.</p> <p>If it retains this Principle, then we believe it might be wiser to talk less about abandoning 12 weeks as the default</p>
<p>Collective responsibility for consultations</p>	<p>We were surprised to find this in the Principles and suspect that it had more to do with internal discussions in the Coalition.</p> <p>However it is a useful principle if applied properly to inter-agency consultations at local levels, so on that basis we welcome it.</p>
<p>No prescribed requirement for Feedback</p>	<p>The Institute feels strongly that this omission from the Principles should be rectified without delay.</p>

<p>Applies to public bodies</p>	<p>It would be helpful to clarify even further by using the words 'all public bodies' but we strongly support the intention that all Government agencies – national and local stick to the same Principles.</p> <p>It would also help if the Principles are re-written to reflect this intention better. At present it seems exclusively to talk the language of Whitehall whereas much of the most important consultations are undertaken by the NHS, local authorities, the Police and other public bodies</p>
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Tony Conway – Written Evidence

I understand that the Government is considering allowing Ministers to reduce the timescale for Public Consultations from 12 to 2 weeks. I am not aware that there is any justification for such a change.

2 weeks is totally inadequate for any consultation. It will inevitably result in fewer responses and of those either they will come from professional bodies or they will be by necessity rushed and even if the Government ignores the responses (which it often does) it must lead to poorer decisions and less scrutiny of matters that are of importance to people

When this Government was elected it made great play of breaking the secrecy in Whitehall should the time-scales alter it can only lead to more closed decisions. I would expect your committee to oppose the change AND if you are not minded to explain why.

Council of Mortgage Lenders – Written Evidence

The CML makes representations on a significant number of consultations issued by a large and variable number of regulators, Government Departments and other public bodies. Some of these bodies are ones with whom we have a long-standing relationship and with whom we are in frequent contact, especially in the run-up to a consultation. Others are bodies where our interest may lie in one particular aspect of one particular proposal – where the interests of the mortgage sector may not be immediately apparent to those issuing the consultation. This is not infrequent; loans secured on property – ie mortgages – have an impact which goes well beyond the financial services sector and affects areas such as property law, flood defences etc. And on occasion it is only through consultation that we can ensure that the impact on the mortgage sector is recognised as those drawing together the consultation have not recognised it themselves.

With the removal of the automatic default period of twelve weeks for consultations, those who issue them and plan their time-lines for response should always remember that, however thorough their pre-consultation, there will be other parties whose interest will be affected by an element of the proposals – perhaps quite crucially – yet will not have been party to the pre-consultation. Consultation periods should be set to a timetable which allows bodies with this interest to become aware of what is afoot and then have time to prepare the sort of nuanced and evidenced response which will be of greatest help to its authors. It is this sort of response which can best steer a proposal away from the curse of unintended consequences.

It would be helpful if the Government explicitly acknowledged that timetables had to accommodate those with peripheral or limited interests in the consultation as a whole but with a significant contribution to make on some aspect of it.

Whilst a twelve week standard has drawbacks and may at times seem superfluous to those who feel that they have squared every conceivable interest, there should be a recognition that there will be many areas where a longer time spent in consultation will be well justified because the breadth of response will improve and problems will be identified – and quite possible resolved – which otherwise would only become visible when it was too late to deal with them.

Disability Charities Consortium – Written Evidence

Summary of DCC's concerns

- In replacing the commitment to 12-week consultation and setting two weeks as the lower limit for the length of consultations, the new consultation principles represent a significant change to the expectations of how consultations should be carried out.
- We are concerned that the new approach would significantly restrict our organisations' ability to engage with our members to produce evidence-based responses to Government consultations. In some circumstances, involving disabled people may require a greater amount of time due to the need to make reasonable adjustments. This would be prohibitively more difficult under shorter periods for consultation.
- This will impede the ability of disabled people themselves to directly engage with public consultations and comment on the decisions that will most affect them. Shorter timescales for consultations would only exacerbate difficulties from poor practice in the past with delays from Government departments in making consultations available in alternative formats.
- There is potential for too little time being given to consultations on key policies, for consultations to be reduced on the basis that they involve technical changes even though they may have far-reaching implications for disabled people, or for the voices of disabled people to be overlooked if they are not perceived as needed to be involved in a consultation exercise.
- The new principles are less specific in the requirements they set for a valid consultation, rather the focus is more on providing express justification for adopting a shorter period. As a result, they provide much less certainty that adequate consultations will take place.

DCC's comments on the Government's consultation principles

The Government's approach is arguably intended to allow flexibility to adapt the scope and duration of the consultation period as needed. There are inherent risks in this approach, as detailed below:

I. Potential for disabled people's participation in consultation to be limited as a result of shorter timescales

We are concerned that the radically lower minimum threshold may well lead to a consultation 'race to the bottom', so that two-week consultations would become the default across the board. The new guidance means that the length of consultations in the future could be determined by departmental convenience, not by a focus on good policy-making.

Shorter consultations pose significant difficulties for disabled people who want to make their voices heard. For example, across our organisations, we are aware of considerable delays by some Government departments in meeting requests for alternative formats of the consultation papers.

On repeated occasions, these delays have in actual fact reduced the available time to respond consultation for those disabled people who rely on materials in alternative formats and therefore undermined their ability to engage in the process. Within a much shorter consultation period, more disabled people would be at a risk of being locked out of the consultation process entirely.

2. Potential for the impact of policy changes to be buried under the guise of minor or technical amendments

The guidance proposes using “minor or technical amendments to regulation or existing policy frameworks” as a justification for less extensive or no consultation. This fails to acknowledge that by its nature, policy-making involves a great deal of technical amendments within existing policy, but which may nonetheless have far-reaching implications.

An illustrative example of where this could happen is in the constant changes made by the Government to the regulations which set out the eligibility criteria for out of work benefits (such as the regulations on the work capability descriptors for the Employment and Support Allowance). Such changes have, over time, resulted in a significant narrowing of eligibility for ESA, but could be argued to be about making technical amendments within existing policy.

Under the new guidance, presenting policy changes as simply technical amendments could potentially be used as a justification not to consult or do so less extensively, despite the significant implications that a loss of support which ESA provides would have for many disabled people. This opens up the potential for the technicality of the policy changes under consideration to be used as justification for carrying a more reduced consultation exercise than would otherwise have been needed.

On the whole, we are extremely concerned about the potential for the circumstances in which no (or less extensive) consultation is deemed acceptable to be interpreted widely (and variably) across the Government, even where critical issues are at stake.

3. Potential for important dimensions of policy proposals to be overlooked

The new approach is underpinned by an emphasis from the Government on carrying out consultations in a more targeted way. One way in which the guidance seeks to achieve this is by stating that the duration and methods of consultations should be decided on the basis of an understanding of who needs to be involved in the consultation.

This is inherently problematic, as specific implications of policy proposals (such as the impact on disabled people) might not be identified other than through wide engagement of a diverse range of organisations.

Moreover, the collective experience of our organisations has been that disability continues to be treated as a separate programme of work across Government. Unless disability issues are effectively mainstreamed into all areas of policy and reform, we believe that there is a danger that disabled people will not be identified as a group to be consulted, and subsequently their views not being sought, on wider agendas of reform.

4. Potential for the inclusiveness of Government consultations to be undermined overall

The guidance sets out the expectation that consultations will be made “digital by demand”. Past experience of inaccessible online consultations suggest that if these were to be used as the default means of response to consultations, many disabled people would be effectively excluded from taking part.

We are concerned that a move for consultations to be made “digital by default” would undermine disabled people’s participation of disabled people given barriers such as inaccessible web based platforms or a lack of access to technology. Such a move fails to meet the principle of accessibility which was one of the principles previously outlined in the 2008 Code of Practice.

Conclusion

We hope the Committee will encourage the Government to recognise the value of consultation as an essential element to successful policy development. While we recognise that there are implications for resources which are needed to carry out a rigorous consultation exercise, these are far exceeded by the costs of policies which are ill thought through, or badly implemented.

The Government should also recognise that the new guidance is creating a potential for an increase in legal challenges if the duration or form of the consultation exercises raise doubts as to the extent to which Government departments and other public bodies have demonstrated due regard to the impact of changes on disabled people (and other protected characteristics under equality legislation).

Further points for the Committee to consider

In light of the above, there are a number of points for the Committee to discuss in its scrutiny of the new approach being proposed by the Government:

- **How does the Government expect the proposed new approach to consultations to impact on its obligations to involve disabled people in policy development and decision-making under the UN Convention on the Rights of Persons with Disabilities?**

Article 4(3) of the Convention specifically provides that State Parties shall “closely consult with and actively involve persons with disabilities... through their representative organisations” in any decision-making concerning issues relating to persons with disabilities. The Committee may wish to seek clarification from the Government about how it will ensure the new approach does not restrict opportunities for disabled people to input into policy changes.

- **What further mechanisms will be put in place to enable the public and voluntary sector to challenge decisions by Government departments and other public bodies about consultation processes?**

The previous Code was clear that Government departments are expected to consult carefully on policy changes. The requirement for a 12-week minimum period for consultation attained considerable importance as a yardstick for how a valid consultation should be carried out.

Disability Charities Consortium – Written Evidence

Consultation processes can be subject to legal challenges, however the significantly greater scope for discretion to determine whether, whom, how and how widely to consult creates a need for further mechanisms, outside the legal route, for challenging where the level of consultation is not perceived to be “proportionate” or where there are deficiencies in the way consultations are conducted.

The Committee may wish to seek clarification from the Government about how it plans to ensure departments are transparent and provide clear explanations about the way in which they have chosen to carry out a consultation.

Disability Rights UK – Written Evidence

About Disability Rights UK

Disability Rights UK works to create a society where everyone with lived experience of disability or health conditions can participate equally as full citizens.

We strengthen the voice of disabled people to make our rights real, as an effective national organisation led by people with a wide range of impairments or health conditions.

Introduction

We understand that the Lord's Secondary Legislation Select Committee is taking evidence on the Government's "new approach to consultation" which is intended to adopt a "more proportionate and targeted approach" to consultation.

We are writing to express our strong concerns about the appropriate timing and duration of consultations and the 'digital by default' approach. We fully support the memorandum by the Equality and Diversity Forum.

Consultation periods

We are extremely concerned that consultation periods could be reduced to as little as 2 weeks. We are a small organisation and a consultation period shorter than 12 weeks would put significant strain on our resources and severely restrict our ability to respond to government's proposals.

As an organisation led and run by disabled people, our legitimacy is grounded in the involvement of our members in our responses to consultations. This means that we can gather evidence to inform our position on particular issues raised in the consultation.

However many of our members are disabled people who have impairments that means accessing information and communicating takes longer. For example a person with learning disabilities may need help to explain the proposals, the questions and to respond. Reducing the consultation period to below 12 weeks would exclude organisations like ours and vast numbers of disabled people from providing robust evidence that government officials need to develop and deliver policies and services that meet their objectives, are cost-effective and do not discriminate against population groups.

Digital by Default

We are also very concerned by the proposal to conduct consultations online only. This will have a disproportionate adverse impact on disabled people who are significantly less likely to have access to internet or being able to use computer technology. In 2010 58 per cent of disabled people lived in households with internet access, compared to 84 per cent of non-disabled people (British Social Attitudes Survey 2010).

Furthermore it is our experience that online consultations do not allow organisations to respond effectively and to provide our perspective.

Disability Rights UK – Written Evidence

In conclusion, these proposals would make it very difficult for the voluntary sector and members of the public to make their voices heard in Whitehall.

We urge the Select Committee to reject the Government's proposals to reduce the democratic legitimacy and quality of decision-making.

Richard Edwards – Written Evidence

I am writing to object to the proposed reduction in the consultation period from twelve to just two weeks.

It seems that the main motivation for doing this is to reduce the capacity of individuals and organisations to react to government initiatives. This will impact in particular on small organisations with limited resources.

This smacks of bullying by central government and a further erosion of the democratic process.

EDF Energy – Written Evidence

Executive Summary

EDF Energy recognises why the Government has felt it necessary to update its approach to consultation. We agree that the previous ‘one size fits all’ approach can be seen as bureaucratic and process driven. This can undermine the value of consultation, because it can be seen to be undertaken for the sake of it, rather than as meaningful engagement as part of the policy making process.

However, the manner in which the new approach is used by Government will be crucial to its success. It is important for Government to recognise the legitimate concern that the new approach could result in less, as opposed to more, effective and transparent consultation. In particular, the Government will need to ensure that the new approach is not used to circumvent proper consultation, for example by using the new guidance to justify rushed or inadequate engagement with those affected by policy decisions or not to consult at all.

Recognising the flexible nature of the new guidance, post-consultation reviews of how government departments have applied the new guidance should be undertaken to ensure that the consultation undertaken was appropriate for the issue at hand. This should also include the appropriateness of any decision not to consult, and the findings should be made public. This will be particularly important in the early period following the introduction of the new guidance, to provide confidence that it is being interpreted correctly, used properly and applied consistently.

About EDF Energy

EDF Energy is one of the UK’s largest energy companies with activities throughout the energy chain. We provide 50% of the UK’s low carbon generation. Our interests include nuclear, coal and gas-fired electricity generation, renewables, and energy supply to end users. We have over five million electricity and gas customer accounts in the UK, including both residential and business users.

Our response to the specific issues highlighted by the Committee follows.

In what circumstances the Government may reasonably decide not to consult on policy development

Aside from minor or technical amendments to regulation or existing policy, we believe the only justifiable grounds for not consulting would be where the Government needs to act as a matter of urgency. To preserve confidence in the policy process, and to allay concerns of

potential abuse of the guidance, it will be important for Government to ensure that any reason not to consult is publicly explained (e.g. by publishing a short explanation of why consultation is not felt necessary). This will help ensure the transparency of any decision not to consult and also provide comfort on the credibility of such decisions. In addition, in circumstances where Government decides not to consult, we would expect no major shift in policy (which should always be supported by full consultation), and to be informed of the relevant development or issue at hand.

In addition to the issue of trust and transparency to which not consulting can give rise, it is also important to recognise the other problems that can arise. Chief amongst these is the scope for poorer decision making if evidence is not gathered. Difficulties can also arise for those charged with implementing decisions when the intentions of the decision maker are not clear because of the absence of consultation, or where a decision requires rapid changes to systems and processes as part of implementation. These factors risk giving rise to confusion about what is required and sub-optimal implementation of decisions not supported by consultation.

The appropriate timing and duration of consultation exercises

The principle should be that the consultation period is commensurate with the issue at hand. This must always allow a sufficient period for the issue and policy options to be understood by those being consulted and to ensure considered responses. Policy makers need to recognise that responding to consultations can itself be time and resource consuming. This often involves the need to consult internally and to conduct internal impact assessments to understand better the implications of policy options. Invariably this cannot be done quickly. Our experience is that the current twelve week period is adequate for responding to consultations. We would be concerned if this period was reduced for significant or major policy consultations.

We agree that engagement should always begin early in policy development so that views can genuinely be taken into account.

What factors the Government should take into account when deciding on the length of the consultation period, such as when policy is new and contentious

From an energy policy perspective, there are a number of factors beyond those highlighted above that should be taken into account when deciding the period of consultation. These include the complexity of the issue involved, the extent to which a change in the value of assets or liabilities might occur as a result of the policy (consideration of winners and losers), and the number and range of interested parties affected, particularly where end consumers are impacted (for example where policy proposals result in additional costs being borne by consumers). In capital intensive industries such as energy, the cumulative impact on investment certainty of policy proposals will also be an important consideration.

More generally, the contentiousness of a policy will itself be subjective and will depend on one's point of view. Therefore, the Government might wish to consider providing additional guidance to government departments on when policy might be considered contentious. For example, it could look back at previous policy initiatives and debates to help identify what characterises contentious policy. We think the use of new policy on nuclear energy as an example of contentious policy is both inappropriate and unhelpful, recognising the wide support for nuclear energy that now exists and the important role it has to play in helping to address climate change and security of energy supplies.

The implications for different groups in society of the Government’s expectation that consultation will be “digital by default”

A benefit of the new approach is that by embracing new ways of consulting the Government will make it easier and more efficient for interested parties to respond to consultations, resulting in a more inclusive and engaging policy making process. Equally, the Government will need to ensure that its expectation that consultation will be ‘digital by default’ does not exclude from the policy making process those for whom access to digital media is limited or not available. While the move to ‘digital by default’ should not impact the ability of Government to engage with those organisations representing the interests of such people, the Government must ensure that the ability of individual voices to be heard is not eroded by a move to digital consultation.

Whether the Government’s new approach overall will lead to improvements in the consultation process and outcomes

As explained above, the manner in which the new approach is implemented and interpreted will be crucial to its success. It certainly offers benefits in terms of making the consultation process more flexible, responsive and accessible. But, if it is implemented poorly, it risks policy decisions being based on ill-informed consultation to the detriment of Government and society as a whole, and a further erosion of trust in the machinery of Government.

Equality and Diversity Forum – Written Evidence

We understand that the Lord’s Secondary Legislation Select Committee is taking evidence on the Government’s “new approach to consultation” which is intended to adopt a “more proportionate and targeted approach” to consultation. The Committee is particularly interested in the appropriate timing and duration of consultation exercises, and the implications for different groups in society of the Government’s expectation that consultation will be “digital by default”. We understand that the intention is to put emphasis is on understanding the effects of a proposal and ensuring real engagement rather than following the same bureaucratic process. The objective will be to improve policy making and implementation with a greater focus on robust evidence, transparency and engaging with key groups earlier in the process.

The Equality and Diversity Forum (EDF) is a network of national non-governmental organisations committed to equal opportunities, social justice, good community relations, respect for human rights and an end to discrimination based on age, disability, gender and gender identity, race, religion or belief, and sexual orientation. Further information about our work is available at www.edf.org.uk.

EDF members wish to be able to contribute information and analysis to relevant consultations so that the impact of proposals on the groups they represent can be heard and understood. Consultation should be meaningful and, as the Compact between the public and voluntary sector recognises, to achieve that both the quality and the form of consultation are important. The Compact Voice guidance on meaningful consultation⁷ provides useful illustration of these principles.

We have some significant concerns about the Government’s proposals and it appears to our members that they risk creating a democratic deficit. We are extremely concerned that consultation periods could be reduced to as little as 2 weeks.

We see the following problems with the proposals-

- **communicating the consultation** questions to all the relevant affected groups: we understand that the Government would do its best to notify all the groups whom it believes would be affected by a particular proposal, however, part of the reason for consultation is to be able to identify any unintended consequences. These may well come from groups whom the Government has not foreseen will be affected by the proposal in question. A two week consultation period will be unlikely to reach them.
- **meeting deadlines:** Many NGOs operate on a consensus basis and would have difficulty in meeting much shorter deadlines. For example, the Equality and Diversity Forum, like many similar organisations, needs its members’ consent before making a response on issues of policy and this cannot be done within a fortnight. Smaller NGOs that have few if any professional staff are likely to find it particularly difficult to respond quickly. Shorter deadlines would also be likely to make it practically impossible for disabled people and their organisations to engage in consultation.

⁷ http://www.compactvoice.org.uk/sites/default/files/ensuring_meaningful_engagement_when_consulting.pdf

- **Having a poor evidence base:** it will prohibitively difficult for organisations and interested parties to gather evidence and submit a clear and considered response to proposals which require an evidential response.

This approach seems to be based to receiving a ‘yes’/‘no’ response from trusted insiders rather than being ‘a more proportionate or targeted approach’ and it has some obvious adverse impacts -

- The proposals to restrict responses to ‘digital only’ will undoubtedly adversely affect older people, people with disabilities and some ethnic minorities for whom English is not their first language as well as those unable to afford access to this technology. It would disempower those without access to technology. It should be noted that the 2010 British Social Attitudes survey found that disabled people are significantly less likely to live in households with access to the internet than non-disabled people. In 2010 58 per cent of disabled people lived in households with internet access, compared to 84 per cent of non-disabled people.
- Additionally, on-line responses tend to allow less flexibility in the way respondents can answer the questions.

We agree with the RNIB’s comments that consultation periods should be 12 weeks long in order to ensure all interested parties, regardless of their wealth or size, are able to provide evidence, unless there are exceptional reasons why a shorter period is necessary. We urge you to reject the Government’s new approach to consultation and ensure the voices of the public and of civil society continue to be heard in Whitehall.

Fawcett Society – Written Evidence

The Fawcett Society has the following concerns about Government’s new approach to consultation:

The value of consultation must be preserved within the new approach

Consultation should be meaningful and, as the Compact between the public and voluntary sector recognises, to achieve that, both the quality and the form of consultation are important. The Compact Voice guidance on meaningful consultation provides useful illustration of these principles. It is integral that Government considers the lives of everyday people in its formulation of policy and in the outcomes of its policies. As part of this process, communicating proposed policy changes and ensuring appropriate consultation with stakeholders across business, civil society and the voluntary sector is integral. Effective consultation allows the Government to make informed decisions on matters of policy, to improve the delivery of public services, and to improve the accountability of public bodies. Consultations should be open to anyone to respond but should be designed to seek views from those who would be affected by, or those who have a particular interest in, the new policy or change in policy. Formal consultation exercises can expose to scrutiny the Government’s preliminary policy analysis and the policy or implementation options under consideration. The current Code of Practice on Consultations is comprehensive in identifying the underlying principles that should guide consultation exercises whilst providing clear guidance on how and why these exercises should be undertaken.

The written statement delivered by Rt. Hon Oliver Letwin states that the Code of Practice on Consultations (issued in July 2008) will be replaced by guidance on the new approach that will deliver more proportionate and targeted consultation. The new approach seems to be based to receiving a ‘yes’/‘no’ response from trusted insiders rather than being ‘a more proportionate or targeted approach’ which will limit meaningful consultation with experts and groups affected by the policy and will undermine the value of the consultation process. **It is important that a clear overarching Code/guidance underlines Government departments’ responsibilities in terms of consultation practice. Fawcett recommends that the new guidance is as explicit as the Code of Practice in communicating that restricting timescales and avenues to engage will make it difficult for organisations and interested parties to gather evidence and submit a clear and considered response to proposals which require an evidential response.**

Fawcett has concerns that the new approach to consultations will not build and improve on current practice. Of particular concern are recent assertions that Government consultation exercises and Equality Impact Assessments (EIAs) are bureaucratic and constitute ‘red tape’. Firstly, these assertions imply that EIAs are a specific and prescribed process whereby in fact the term “EIA” refers to a number of different process and methods, of varying complexity that consider the equality impact of any given policy proposal. In other words, the shape of an EIA can be designed to be proportionate and appropriate to the type of decision or policy areas being considered. **Fawcett recommends that there is a clearly communicated process for how Government will fulfil its duties under Equalities legislation and**

consider potential impacts of its policy on different groups and take action to mitigate against risks if they are identified.

It is equally important that stakeholders from across business, civil society and the voluntary sector are able to appropriately engage and consult with Whitehall on policy proposals in order to communicate the interests and needs of their members, supporters and the people they seek to represent and advocate on behalf of. Quality consultation exercises have supported an increase in the voices of the public and of civil society are heard and considered in Whitehall, so that policy reflects the needs of those that it is targeted at; Fawcett is concerned that Government's new approach to consultations will diminish these voices in the policy making realm. This is particularly the case for groups who are the most marginalised and excluded in our society and who otherwise at best will continue not to be considered and at worst pushed into further exclusion by government policies that by default maintain the status quo. Although women are neither a homogenous group nor by virtue of our gender to be automatically considered as at high risk of exclusion, it is clear that how policies may impact on us differently to men is routinely unconsidered in policy making.

Transparency, accountability and consistency

Fawcett understands that according to the new approach, Government would do its best to notify all the groups whom it believes would be affected by a particular proposal, and would endeavour to consult with them appropriately. However, part of the value of undertaking public consultations is to be able to identify any unintended consequences of proposed policy measures. These may well come from groups whom the Government has not foreseen will be affected by the proposal in question, or will not have chosen to engage in the consultation process.

Restricting time periods for Government consultation exercises may have further unintended consequences. For example, a two week consultation period will be unlikely to reach a wide group of informed stakeholders and will not allow for real engagement with experts on the policy area or groups affected by the policy. Moreover, leaving the format and parameters of Government consultations up to the discretion of individual ministers, in other than exceptional circumstances, undermines transparency and accountability around how the terms of the consultation have been reached.

Government's suggested approach will lead to inconsistent practice across Whitehall which may not uniformly yield the appropriate expertise from relevant stakeholders to inform policy. At worst, under the new approach, consultation may be considered an 'add on' rather than an embedded part of the policy making process. **Fawcett has concerns that allowing individual ministers/Government departments to determine the remit of consultation on their policies will have an impact on the quality of meaningful consultation with stakeholders and ultimately the outcomes of Government policy.** Even with a robust Code of Practice in place, existing practice of consultation does at times lead to inconsistent quality in the levels of engagement with stakeholders and in Government's subsequent responses to such exercises.

Considering impact on equality in policy formulation

Fawcett has serious concerns that women are already underrepresented within Government, and in positions of power and public policy making; thus their views,

experiences, needs and interests are not proportionately informing Government policy making processes. Women and women's organisations play a crucial role across the UK in bringing women's voices to Government, advocating on behalf of women, campaigning for change and delivering services. With the abolition of the Women's National Commission in 2010, communicating the voices of women and the women's sector to Government has become more precarious. **Fawcett recommends that guidance on the new approach must set out how Government consultation practice will meet Government's duties under the Public Sector Equality Duty, and will consider the views of women and the women's sector to ensure that there are not unintended negative outcomes for women's equality as a result of Government policy. For example the recent EHRC report into HMT practice in budgetary policy making found clear evidence that failure to adequately consider equality impacts had led to poorer outcomes for women and some minority groups.**

Fawcett is concerned that the principles of the new guidance, including restricting time periods for consultation exercises, limiting the reach of consultation to certain groups and allowing for individual ministers/Government departments to determine the remit of consultation exercises will not necessarily deliver robust and adequately informed policy that specifically considers the impact of equality between men and women in its outcomes. Under s. 149 of the Equality Act 2010, there are requirements for the Government to consult certain groups on certain issues. **The Fawcett Society urges Government to duly consider its duties under the Equality Act 2010 and consider that any new guidance must subject to any such legal requirement.**

Making consultations accessible to all groups

Fawcett has concerns that the proposals to restrict responses to 'digital only' could adversely affect older people, people with disabilities and some ethnic minorities for whom English is not their first language, as well as those from disadvantaged socio-economic backgrounds, who would not be able to afford access to this technology. The result of this would be that certain groups of people without access to technology would be disempowered and discouraged from engaging in consultation exercises. Additionally, on-line responses tend to allow less flexibility in the way respondents can answer the questions which would further restrict meaningful engagement with stakeholders. **It is important that Government's 'digital by default' approach does not come at the expense of all other forms of consultation, such as focus groups and engagement events, that have been fruitful in engaging a wide range of stakeholders in public policy making.**

Federation of Small Business – Written Evidence

I am writing to you in my position as National Policy Chairman at the Federation of Small Businesses (FSB). The FSB is the UK's largest campaigning pressure group promoting and protecting the interests of the self-employed and owners of small firms. Formed in 1974, it now has around 200,000 members across 33 regions and 194 branches.

The FSB welcomes the committee's focus on the issue of consultation and looks forward to working with the committee on this inquiry. Below is a brief summary of some of the key issues from the small business perspective. If you need any more information please do get in touch.

General Position

The FSB understands the need to be efficient and effective in the way that regulations are developed and policy changes are made. Therefore the FSB understands why changes have been made to consultations.

There will be consultations that attract few, if any, responses and yet under the old rules many would need to continue for 12 weeks. Some of these consultations may have been about minor issues that had limited impact on businesses and other stakeholders.

The FSB also understands the need for consultations to become digital by default. This will also drive efficiency and for the majority of respondents – stakeholder groups and representative bodies – this will not be a concern.

The FSB believes that the principle of transparency should be retained throughout the development of regulatory processes. Small businesses need to be confident that representative groups have had the opportunity to comment on major policy proposals that may affect their firms.

Therefore, for these changes to work the necessary safeguards need to be in place to ensure that where changes are being made that will affect a significant number of businesses, proper consultation take place.

Consultations need to allow enough time for representative bodies to be able to scrutinise the proposal and to consult with members.

FSB proposals

The process which departments use to make the decision to use a 12 week consultation or a shorter time period should be transparent.

Consultations that propose significant and complex changes should retain the full 12 week consultation period where possible. In that context, the FSB was disappointed that the recent proposal 'Implementing employee owner status' had a limited 3 week consultation time. For business groups to respond, more time than 3 weeks will be needed for these types of complex issues if we are to get policy design right from the outset. Often, proposals

will be complex and will need time to be digested and understood and proper consultation with the membership will be necessary.

The FSB therefore proposes that departments undertake some form of a test when deciding upon the method of consultation. Potentially, if a proposal will have the potential to affect a certain number of businesses or the cost is thought to be significant, the formal consultation period should remain at 12 weeks or similar.

Furthermore, if it becomes clear from stakeholder feedback that a particular consultation needs a greater time period that should be the case. Guidelines should be produced for departments on how this could operate with consultation with relevant stakeholders.

Conclusion

The FSB understands why the changes to consultations have been made and does not oppose this change. However, it is important that where changes are significant and important to businesses and other stakeholders, a longer time period of 12 weeks should be retained.

It is also important that departments use consultations as an opportunity to gather helpful suggestions and evidence from stakeholders.

Friends of the Earth – Written Evidence

Friends of the Earth England, Wales and Northern Ireland welcome the opportunity to respond to call for evidence into public engagement in policy-making. Friends of the Earth is an NGO with over 100,000 supporters and local campaigning groups in over 200 communities. Friends of the Earth works with disproportionately affected communities to help empower them in decision-making and continues to be closely engaged with the implementation of the Aarhus Convention. The UK's sustainable development strategy (2005) includes the principle of good governance which should underpin public engagement in policy making.

Summary

- The previous Code was produced following a review of government consultation practices, a consultation that drew 100 responses, 20 meetings around the UK, an online discussion forum and market research. The result was a set of clear criteria that in our view represented minimum best practice for carrying out adequate consultation.
- There is no evidence for or explanation of why the changes are necessary and no evidence to demonstrate that the changes will be beneficial, particularly for hard to reach groups.
- Changing a minimum of 12 weeks on consultation to a variable time period, with a minimum of 2 weeks is confusing for the public and risks poor decision-making that could be subject to challenge.
- Consultation that is 'digital by default' could discriminate against those who do not have access to the internet.
- The focus on 'stakeholders' could bias consultation views towards those with vested interest –risking the wider public interest and undermining public legitimacy and trust.

Friends of the Earth believe that the Government should always carry out full public consultation on policy development as a basic principle of good governance. Public knowledge, information, and experience are vital to formulating robust policy. Limiting the input into policy to a small number of people obviously risks adverse impacts as gaps and weaknesses could be missed or issues misunderstood.

Time

When consulting the public the time required for people to either find out about or be informed of the consultation should be considered. Then there needs to be some time for gathering evidence and information and presenting this information. The Government then needs to leave time to consider the responses in the round. Faster decisions can lead to poorer and more expensive outcomes, as the wider impacts are not understood.

Access to internet

While the ONS state that 77 per cent of households had Internet access (31 August 2011), there is the remaining 23 per cent who do not. It is hard to see where some people might go to get this information – and therefore public services such as libraries need to play a part in promoting access to public consultations. Literacy is also an issue to consider as in some of the disproportionately affected communities in the UK, this is a barrier to accessing and responding to online information. In addition there is navigating the Government's websites to gain access to consultation documents which can be a barrier.

Lack of consultation

The Government's recent Growth and Infrastructure Bill was published without a prior white paper – some parts are now being consulted on as the Bill is undergoing Commons bill committee scrutiny. Both MPs and the public will have difficulty in dealing with this dual process - which makes it very unclear as to the impact and purpose of the legislation as well as the lack of evidence for the legislative measures themselves. It also undermines public trust in UK governance.

Conclusion

Consultation is not a "tick box" exercise or opinion poll of views, but should be a meaningful and thoughtful collection of evidence experience, both professional and lay. When carried out correctly it enhances good decision-making and when carried out incorrectly, it risks lengthy and costly challenges in the courts.

Friends of the Earth is not convinced that the Government's approach to consultation will lead to any improvements in the process – reduction of timeframes will certainly not benefit the public as it is their chance to have their say that is being reduced. In terms of outcomes, it is hard to see how drawing on a smaller evidence and experience base will improve the outcome – it is far more likely, particularly if only small groups or stakeholders with vested interests are engaged – that the outcome will have unforeseen adverse impacts.

Alison Harvey – Written Evidence

I am writing to indicate my opposition to the government's new approach to consultation, in which new guidance states consultations may run for just two weeks instead of the usual 12.

I believe every consultation period should be 12 weeks long in order to ensure all interested parties, regardless of their wealth or size, are able to provide evidence.

Immigration Law Practitioners' Association – Written Evidence

ILPA provide the following case study of Statement of Changes of Immigration Rules HC760 as an illustration of why Departments should not be given complete discretion over whether to consult or not.

The Immigration Law Practitioners' Association (ILPA) is a professional membership association the majority of whose members are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics, non-governmental organisations and individuals with an interest in the law are also members. Established over 25 years ago, ILPA exists to promote and improve advice and representation in immigration, asylum and nationality law through an extensive programme of training and disseminating information and by providing evidence-based research and opinion. ILPA is represented on numerous Government, including UK Border Agency, and other consultative and advisory groups.

The statements in the Explanatory Memorandum to HC760 that the changes will have no impact on business, charities or the public sector are as follows:

8. Consultation

8.1 The changes in this Statement have not been subject to consultations as this would be disproportionate to the nature of the changes.

...

10. Impact

10.1 There is limited or no impact on business, charities, the public sector or voluntary bodies such that an impact assessment is unnecessary.

11. Regulating small business

11.1 The changes relating to Tier 2, Tier 4 and Tier 5 will apply to small businesses that are licensed as Sponsors in these tiers. The changes are minor, and are not expected to have any negative impact on small businesses.

They are inaccurate. We have described this with reference to HC 760 but observe that HC 760 is atypical of recent Statements of Changes as follows:

- HC 760 was ordered to be printed on 22 November and most provisions come into force on 13 December. This is a much longer lead in time than has been the case for most recent statements of changes. For example Cm 84233 appeared on the UK Border Agency website late on the evening of 19 July 2012 and came into force at midnight on 20 July 2012.

- A number of the changes relax requirements rather than tighten them.
- (Applying only to ILPA) Unusually, ILPA was aware that the instrument was to be laid, but we do not know of anyone outside the ILPA membership and the Home Office/UK Border Agency who was. We did not know anything of the contents of the new rules in advance save that they included minor changes and not major changes to the rules on investors. We were told because we asked the Agency having become aware of rumours circulating and wanting to scotch those that were unfounded.

The reasons set out above mean that HC 760 had less impact than other recent statements of changes. Nonetheless, it had an impact and as such provides an excellent test of whether the statements highlighted in the Committee's question are ever justified. In what follows we by no means deal with the all changes effected by the rules, but just highlight some examples.

The Explanatory Note says at 7.64 "A number of corrections are being made to paragraph numbering and other minor drafting errors." This is an understatement. Drafting errors and paragraph numbering may be technical matters but they are not minor matters for the UK Border Agency staff, legal representatives and unrepresented individuals and businesses seeking to use the rules.

Effect on business

There are 14 working days between the instrument being ordered to be printed and its coming into force. Its contents were unknown in advance. The immigration rules on the UK Border Agency website will only be consolidated with the changes when they come into force. Until then one has only the Statement of Changes which reads as a series of instructions to amend the rules, and explanatory material produced by the UK Border Agency. HC 760 comprises 67 pages of changes in immigration rules. Guidance has also been amended. Firms affected or who may be affected by them must read them and take advice from lawyers on their meaning.

Students will no longer be able to switch directly into Tier 1 (Graduate Entrepreneur) route, unless they have £50,000 funding from a specified source (registered venture capitalist firms, UK Government or Devolved Administration Departments, or listed seed funding competitions). Universities and colleges who have advised their students of the possibility of this route will now have to advise them of the change. This may affect the relationship between student and college as the student may feel that the college has been overoptimistic about their chances of staying, or sought to persuade them to undertake further study with a view to applying under this route. Or a student may decide to go and study in another country now that the Graduate Entrepreneur route has been restricted, thus depriving the college of income. Venture capitalist firms can anticipate more applications from students seeking funding. The students themselves who propose to say as "Graduate Entrepreneurs" are setting up businesses. These may not be businesses yet in existence, but they may be in development and now halted.

A "correction" is being made to ensure applicants are not automatically awarded points for English language ability unless they have proven their ability, or proven that they are exempt from the requirement, in an earlier application. Employers wishing to employ persons qualifying as persons of exceptional talent who previously anticipated those persons' levels of

English not being a barrier to their recruitment will need to revise their plans. Many persons exceptionally talented in a whole range of fields: the arts and the sciences, do not speak English.

The rules for Tier 2 are changed to “make clear” that the use of head-hunters does not obviate the requirement for vacancies to be advertised. Employers who had relied on the previous version of the rules and used headhunters alone will now need to change their recruitment. Recruitment plans that have been developed, some of which will be in the process of being implemented, may need to be altered

Institutions are added to the list of financial institution with which the UK Border Agency is unable to make satisfactory verification checks. This may affect the reputation of these institutions and their business.

An amendment is being made to conditions of leave to prevent Tier 1 (Investor) migrants working as professional sportspeople, although we do not know how many actual cases this affects. The requirements of the investor category are not difficult for persons with large sums of money to meet, providing that they do not have criminal convictions. There are thus a number of highly paid professional sportspeople potentially affected by this change. Where they were to be employed by a club, the club will also be affected.

Amendments are made to the provision enabling a Tier 4 applicant to use a loan letter to evidence the required level of maintenance, limiting this to loan schemes provided by a government, or a government sponsored student loan company or where the loan is part of an academic or educational loans scheme. Where an applicant uses another type of loan then the funds will need to have been held for at least 28 days prior to application. This may affect colleges who had anticipated accepting students using other loan schemes for places.

Amendments are made to the Tier 5 (International Agreement) sub-category which provides for workers who may be admitted under the UK's international commitments, but who are not otherwise covered by provisions in the immigration rules, to make more specific provision for contractual service suppliers (who do not otherwise have a UK presence) seeking admission under the relevant commitments in certain international trade agreements to which the UK is a party. These changes are complex but their overall effect is to restrict entry in this category.

Changes that relax requirements rather than tighten them

Because these provisions relax requirements it is unlikely that anyone will be moaning about them. We include them here however to: illustrate the myriad ways in which changes in immigration rules do affect business. The requirements being relaxed in this statement of changes have been imposed, often unnecessarily and without being thought through, in previous statements of changes.

It is also the case that even where new rules are more favourable, they are likely to necessitate changes of plan: delays to wait for them to come into force, revisions of previous plans etc.

HC 760 makes changes to Tier 2 of the Points-Based System so that the length of time that senior intra-company transferees earning £150,000 or above can stay increases from five

years to nine years, to make provision for barristers to apply, and to make the operation of 12-month periods between one period of leave and the next (known as “cooling-off” periods) more flexible. Cooling off periods have been a source of tremendous vexation to businesses, who do not think that the amendments made in HC 760 go far enough.

These changes might cause companies to rethink their plans on who to locate where and indeed to revisit strategic planning decisions based on not being able to have particular staff in the country. It may lead to their wishing to withdraw offers of relocation allowances. Vacancies for barristers may have been filled while those who would otherwise have applied for them are now rethinking their decision to leave the UK.

What is described as a “correction” is made to Tier 1 (Exceptional Talent) category to allow those who switch into it while in the UK with leave in another category to be granted three years’ leave to remain (as intended), rather than two years. The previous rules have already affected businesses who are challenging them, suggesting that this is a change of stance rather than a mere ‘correction’.

The English language requirement for entrepreneurs and graduate entrepreneurs is being lowered from level C1 (advanced) to level B1 (intermediate), in line with other Points-Based System categories. While this is likely to be welcomed by the entrepreneurs and those who wish to do business with them, it may result in persons withdrawing from or not taking up places in, English language courses and affect the businesses providing those courses.

What the explanatory note describes as “a clarification” is made, that employer pension contributions do not count towards appropriate salary points for Tier 2 (General) and Tier 2 (Intra-Company Transfer). Employers who had included these in their calculations may find recruitment affected: the person does not earn enough and is not eligible to come to the UK in the category previously identified.

Those changes that provide greater flexibility may give candidates for employment more options leading them to throw one business over in favour of another.

Statement of Changes HC565 included amendments relating to Points-Based System dependants. Those amendments removed the ability of a child to come to the UK with or to join parents other than where one is a Points-Based System migrant and the other has leave as that parent’s partner. The amendments to paragraphs 319H and 319J restore the possibility of a child entering or being granted leave to remain or indefinite leave to remain where, for instance, both parents are Points-Based System migrants. This change, while beneficial, was necessitated by drafting errors. Firstly, Statement of Changes HC 194 failed to make any provision for these dependants at all, an error, which ILPA pointed out to the Agency in meetings and correspondence. HC 565 was supposed to address this but created the problem described above.

The rules are amended to increase the absences that are permitted from the UK during the continuous period of lawful residence required for indefinite leave to remain in work – related categories leading to indefinite leave to remain. ILPA has long (since at least 2005) argued for this change.

Effect on law firms

Law firms are businesses too. On 21 November a client might have been given an accurate statement of the rules as they would apply to them when they made their application. The first necessity is to get on top of the changes – to spend time reading them, or reading what others have to say about them, to attend meetings or training courses, many of which will cost money. Any rule change has cost implications for a law firm working in immigration or on cases affected by immigration status.

On 22 November the client is told that either they must bring forward the date of application or that they no longer qualify. This affects for example lawyers advising employers, those advising diplomats on the employment of private servants. This does little for the relationship of trust and confidence between lawyer and client.

It is necessary to explain to clients who do not qualify under the current rules but may qualify under the new ones whether they have the option to delay until the new rules come into force to make their application and to identify any associated risks. Or it may be necessary to

Law firms advising diplomats on the rules for employing a private servant in a diplomatic household must take account of the rules requiring the employer enjoy certain privileges and immunity under UK or international law, and not a family member. This could change the advice previously given to these clients.

Not only immigration lawyers are affected. A criminal lawyer, who is much less likely to be aware of the minutiae of changes in the immigration rules will fail to advise their client adequately if they do not advise that leave can be curtailed if a person commits an offence within the first six months of being given leave to enter the UK and is sentenced to a period of imprisonment. This may affect whether a person enters a guilty plea or alternatives to imprisonment that are put forward.

Where the existing rules are more beneficial to particular clients than the old rules, law firms work round the clock to ensure that their clients can make applications under the existing rules. Similarly businesses may be convulsed by trying to squeeze persons in before the rules change in ways that are disadvantageous to them.

Effect on charities

Charities are also employers and may be affected in the same ways as businesses.

Law Centres and other charities offering advice may face the same difficulties as described for law firms above, although they are less likely to be advising business clients and more likely to be advising individuals, for example students and workers.

Effect on the public sector

In a meeting with the Criminal Casework Directorate of the UK Border Agency on 27 November 2012, which an ILPA representative attended, UK Border Agency staff responsible for quality assurance explained that rule changes could lead to a “spike” in errors. There is no reason to think that this directorate is different from any other part of

the Agency. The errors affect the Agency, those whose claims are wrongly determined and those representing or assisting them.

The public sector is one employer of migrants and thus the effects on the public sector will in many cases mirror the effect on business.

Other public sector bodies take account of immigration status, for examples those dealing with benefits. See above re the implications for those advising persons accused of crimes, which may also be relevant to those sentencing or writing probation reports.

Students will no longer be able to switch directly into Tier 1 (Graduate Entrepreneur) route, unless they have £50,000 funding from a specified source (registered venture capitalist firms, UK Government or Devolved Administration Departments). UK Government and Devolved Administration Departments may have to deal with an increased number of applications, which will require increased resources.

The Legal Services Commission provides legal aid, which is currently provided for immigration and asylum cases (although not for business cases) subject to means and merits tests. When the rules change, those affected need advice. Those previously advised need new and amended advice. It is extremely likely that elements of new rules will be unclear. There may be errors on ambiguities.

In letters to the UK Border Agency since 1 August 2012 ILPA has pointed out numerous errors in recent statements of changes in immigration rules, a number of which are corrected by HC 760. We counted and across two of our letters the Agency had accepted some 29 errors we had pointed out as needing rapid correction (others were to be looked at).

Those affected by rules containing errors are likely at the very least to need to make lengthy representations and at worst to have to bring appeals. What is true for the Legal Services Commission is also true for those funding their own applications and thus for businesses and charities.

Changes that relax requirements rather than tighten them

Applicants under the Tier 1 (Entrepreneur) category, which caters for those with financial backing who are coming to the UK to set up, take over, or otherwise be actively involved in the running of a business normally require funding of £200,000, but this is reduced to £50,000 if the funding is from a specified source, which includes UK Government Departments. HC 760 expands this provision to include funding from Departments of Devolved Administrations. Those departments are affected by this change, quite possibly in a beneficial manner, but nonetheless guidance needs to be revised etc.

One effect is very clearly described in the Explanatory note

“A temporary exemption from the requirement to advertise in Jobcentre Plus (or JobCentre Online in Northern Ireland) is being made for positions in the NHS advertised on NHS Jobs between 19 November 2012 and 6 April 2013. This is due to downtime in the automatic posting of vacancies from NHS Jobs to Jobcentre Plus while DWP systems are upgraded. A workaround could only be put in place for this period at significant cost to the public purse, so it has been agreed to temporarily waive the requirement.”

Another change, which appears beneficial, is to conditions of leave that prevent Tier 4 (General) Students working as a doctor or dentist in training unless they have been granted leave to do a recognised NHS Foundation Programme. These changes allow students to start working as a doctor or dentist as soon as they have submitted an application in which they are sponsored to do a recognised NHS Foundation Programme, while they are waiting for that application to be decided. This is stated to be to avoid potential delays for medical degree students in beginning the next stage of their training.

The Tier 5 Government Authorised Exchange sub-category, which caters for people coming to the UK through approved schemes that aim to share knowledge, experience and best practice is amended by the addition, *inter alia*, of training by HM Armed Forces or by UK emergency services to the training programmes that may be up to two years in length (as opposed to one year for work experience schemes).

Miscellaneous effects

We have not, despite the length of this memorandum, attempted to address all changes covered by the rules. However, a few effects not easily categorised under the categories above, merit mention.

The requirements for entry clearance, leave to remain and indefinite leave to remain as a private servant in a diplomatic household are amended to specify that the employer must be diplomat, or in the case of an employee of an international organisation enjoying certain immunities and privileges in the UK, that employee, and not a member of their family living in the household. While this is described as though it were a mere technical change, there is nothing to prevent the UK being more generous than its international obligations require and thus the changes represent a restriction.

Changes are made to the conditions of leave that prevent Tier 4 (General) Students from working in self-employment to allow students who have been endorsed by their institution for the Tier 1 (Graduate Entrepreneur) category to work in self-employment as they have submitted their Tier 1 (Graduate Entrepreneur) application and while they are waiting for it to be decided.

The role of consultation

ILPA met with Home Office officials when HC 194 was published in the June 2012. We pointed out numerous errors in the instrument. We met with officials again on 3 July 2013 only to find, to our despair, that nothing was being done to amend HC 194 before it was coming into force and that they had not even got to the stage of satisfying themselves that the errors we had pointed out were indeed errors or discussing them with staff who had not been present at the meeting. In that meeting we pointed out that the decision of the Supreme Court in the case of *Alvi* was imminent and that it was likely to confirm the decision of the Court of Appeal in *Pankina v SSHD* [2010] EWCA Civ 719, which the Home Office had not appealed and by which it was already bound, that requirements, failure to comply with which would result in a mandatory refusal, should be contained in the immigration rules not in guidance. This time we followed up the meeting with a detailed letter, running to some 11 pages, enumerating our concerns.

On 18 July 2012 the Supreme Court gave judgment in *Alvi v SSHD* [2012] UKSC, confirming the decision in *Pankina*. CM 8423 was laid on 19 July 2012, appearing on the UK Border Agency website late at night, and coming into force on 20 July 2012.

Cm 8423 contained numerous errors. ILPA detailed these in a letter that ran to 13 pages. Just as that letter was being finalised, HC 565 was published. It addressed some of errors, and introduced new ones.

We do place on record that officials have expressed their gratitude for the enormous amount of work that ILPA members have done on these rules. Had there been proper consultation we could have done that work in good time and done it once, rather than having to point out where corrections to errors had introduced new errors.

Errors pointed out by ILPA that have been addressed in HC 760 include

For family members:

- Amendments to address the calculation of annual income for workers paid an hourly rate.
- Treatment of salary increases
- Clarity in the definition of gross income
- Changes to allow income from self-employment by a director of a company in the UK to be counted
- Treatment of self-employment income of fiancé(e)s and civil partners
- Provisions as to the format of bank statements
- Provisions as to the treatment of wage slips/P45s
- Provisions as to evidence of employment
- Provisions as to providing the contract of employment
- Provisions as to providing bank statements
- Provisions as to furnishing tax returns
- Provisions as to evidence of registration as a self-employed person
- Provisions as furnishing audited accounts
- Provisions as to furnishing the VAT return
- Provisions as to furnishing title deeds.

All these changes bring the family rules into line with the existing rules for Points-Based System dependants. The confusion created by requirements as originally placed in the rules was thus unnecessary.

Amendments to align the bereaved partner and domestic violence provisions of Part 8 with the policy for partners and allow those who cannot qualify for indefinite leave to remain because of past criminal convictions to be granted further leave to remain.

Amendments to allow applicants last granted limited leave to enter the UK under Part 8 to benefit from the same transitional provisions as those last granted limited leave to remain under Part 8.

Amendments making provision for dependants of points-based system migrants, as discussed above.

Amendments to allow a parent who was granted leave on the basis of a child in the UK to be allowed to remain in the UK once the child has turned 18, provided the child has not formed an independent family unit and is not living an independent life.

Amendments to allow child dependants to be granted the same leave as a parent granted after five or ten years on the basis of that parent's relationship with another child.

Amendments to the settlement (indefinite leave to remain) requirements for children to allow a child who has overstayed to qualify for settlement.

Amendments to make provision for a migrant parent and child to be able to apply for leave to remain in the UK on the basis of the migrant parent's shared parental responsibility for the child's upbringing, in addition to circumstances in which the migrant parent has sole parental responsibility.

Amendments to provide that Appendix FM does not apply to applications for family reunion from a pre-flight partner or child of a refugee or person with humanitarian protection.

Had there been consultation, ILPA would have pointed out errors and infelicities before the event, rather than asking for them to be corrected afterwards.

We emphasise that we have not dealt exhaustively with the effects of HC 760 in this paper, but have instead given examples.

Institute of Chartered Accountants of Scotland – Written Evidence

Introduction

The Institute of Chartered Accountants of Scotland (ICAS) welcomes the opportunity to comment on this inquiry. We are a professional body for over 19,000 members who work in the UK and in more than 100 countries around the world. Our members represent different sizes of accountancy practice, financial services, industry, the investment community and the public sector. Almost two thirds of our working membership work in business, many leading some of the UK's and the world's great companies.

Our Charter requires its committees to act primarily in the public interest, and our responses to consultations are therefore intended to place the public interest first. Our Charter also requires us to represent our members' views and to protect their interests, but in the rare cases where these are at odds with the public interest, it is the public interest which must be paramount.

Key messages

We agree with the principle of “proportionality of the type and scale of consultation” but do not agree that this should be the governing principle which others are assessed against. In our view the prime objective is to achieve high quality policy, through effective engagement. High quality policy tested with a range of stakeholders using various methods of engagement at different stages of the policy development cycle leads to sensible consultation papers and a far more efficient consultation process. This should not be undermined by speed or lighter touch stakeholder engagement. This needs to be more explicit in the guidance to avoid the pitfalls of rushed policy making.

We agree with the principles of early engagement, employing varied methods of engagement, making the Government's evidence base available at an early stage and for timeframes to be proportionate and realistic. This supports the objective of high quality policy through effective engagement. We would also encourage more face to face consultation particularly for complex, technical or specialist topics but believe this should support, not replace written consultation.

We suggest that the Government becomes more proactive to identify and get to know the wider pool of stakeholders to minimise potential reliance on the same old players as this encourages diversity of thought. Better engagement should precede efficiencies in the consultation process.

Setting and applying a robust stakeholder engagement strategy (what, who, how many, when, how and how long to consult) which takes into consideration the policy risk and impact assessment should together inform consultation timescales. Further guidance is required to promulgate best practice and avoid greater freedoms in judgement resulting in a drop in standards. A traffic light system could be used to identify high/medium/low risk and impact policies to match against expected timescales.

Obtaining “customer” (stakeholder) feedback should be an integral part of continuous improvement (for example through satisfaction and ideas for improvement surveys).

Current mechanisms need to allow greater opportunities for gathering improvement points and comments.

Greater transparency to open up the policy making process throughout the policy development cycle is welcomed. Maximising the use of technology to open this up, gather information and consult more efficiently is helpful. Care is required that digitalisation is carried out sensitively to avoid over prescriptive online forms which fail to gather the true picture and to keep access open for those without easy access to IT.

There is a balance when issuing guidance to provide both best practice and flexibility in application without too much freedom to let standards drop. We are concerned that the new guidance has not got this balance quite right and further guidance is needed to ensure consistent application of best practice.

Significance of changes to the new consultation guidance and engagement

The revised guidance was published on the Cabinet Office website in July 2012⁸ where it states “new Consultation Principles will be promoted within Whitehall now, and the public will begin to see the new guidance take effect in early autumn 2012. The guidance below replaces the [Code of Practice on Consultation](#) issued in July 2008 on the BIS website”.

The scope and revisions for the new guidance are significantly different from the BIS Code. The introduction of wording that, the full 12 weeks only “may” still be appropriate for a new and contentious policy is dramatically different from the BIS 2008 guidance the “*consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible*”. There are also considerable deletions from the BIS Code relating to the 7 criteria, which no longer exist (or are significantly adapted).

In view of the significance of the changes and the impact on a wide range of stakeholders and potential respondents, we would have expected this revised approach to be open to public consultation. However, we are not aware of a preliminary consultation having taken place. There is no reference to such a consultation on the website⁹ or any kind of explanation of the drivers for change, the objectives of replacing the BIS Code, evidence from stakeholders of what was working and not working in the BIS Code. There also does not appear to be an outline of how the changes have been developed and discussed with those who would be impacted by such changes or consultation feedback report. Without clear evidence and objectives it is difficult to evaluate what this revision is trying to do. This contrasts strongly with the open and consultative approach taken by BIS when it published its 2008 guidance¹⁰ and indeed good practice consultation.

The whole exercise could have been more effectively communicated. We identified the existence of the inquiry through a charities sector news bulletin, although the changes affect other sectors they did not appear to be disseminated through other channels we would normally identify updates such as Cabinet Office and BIS consultation pages on the website and news alerts. As a result we identified this inquiry and the revised guidance by chance. There are likely to be other stakeholders who may be interested in this exercise who are unaware.

⁸ <http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>

⁹ <http://www.cabinetoffice.gov.uk/content/cabinet-office-consultations>

¹⁰ <http://webarchive.nationalarchives.gov.uk/+http://www.bis.gov.uk/policies/bre/consultation-guidance/code-of-practice>

We note some very recent updates to the BIS consultation web page. Our website review and references relate mostly to 23/11/12; some subsequent updates have been noted such as the new reference to Consultation Principles on <http://www.bis.gov.uk/Consultations> and a mailbox for any comments on the changes. This information should have been provided at the start of the application period not several weeks later and observations on the revisions requested before the new guidance was applied rather than after and just prior to the inquiry.

We welcome the statement by BIS that they “aim to respond to all comments received within three months of a consultation ending”. A published report of how feedback has informed policy development would be useful.

Responses to specific questions

In what circumstances the Government may reasonably decide not to consult on policy development

It would not be reasonable to avoid open consultation where there is a possible risk of impact of the changes on citizens, business or civil entities. Non-consultation may be reasonable where there is a negligible or zero impact of the changes, as concluded in the (publicly accessible) policy impact assessment. There may be other good reasons not to consult such as where HMRC need to introduce urgent anti-avoidance measures. These instances need to be clearly illustrated in guidance to maintain consistent high standards in consultation practice.

In the case of minor, very low impact amendments to a policy which has already been consulted on, it would be helpful to note any amendments on the website to maintain an audit trail, consistent with the commitment for greater transparency and to communicate this, perhaps via news alerts. This would need to be confirmed (not assumed) to be minor and the explanation communicated, demonstrating that appropriate evidence and views have been taken into account.

The appropriate timing and duration of consultation exercises

Although we support proportionality and flexibility, our view is that 12 weeks should remain the norm for key public consultations and any less treated as an exception which should be justified in terms of the risk impact assessment and stakeholder engagement plan as to how the principle of high quality policy and effective engagement is met.

Shortening timescales for contribution without understanding what is involved to develop a response endangers negatively impacting on the goodwill of the organisations providing input. Where public consultation is required sufficient time is needed for potential respondents to identify the consultation, analyse the paper, circulate, gather views, analyse and consolidate these views, prepare a response and pass internal organisational quality review checks before submission. Representative bodies are in turn liaising with members in different organisations with their own different set of priorities and workloads. Two weeks may be adequate for an internal exercise where there is a very clear group of respondents with some existing involvement in the area, but it is not adequate for external parties. It must be recognised that other organisations will need to reorganise their workloads and cannot just drop everything to organise a lightning response in 2 weeks. Even where it is perceived that the consultation topic is straightforward, notification is not always automatic,

resource needs to be managed and evidence may need to be gathered to substantiate the view.

The circumstances for shorter consultation should be more clearly defined to minimise instances of reducing timescales below 12 weeks inappropriately. Further guidance is required to provide examples of what would be deemed to be a high/medium/low risk policy and timescales thresholds set accordingly. For example high and perhaps medium risk policies (including new, complex, specialist and contentious) would need 12 weeks whereas a follow up consultation with a low and perhaps medium risk policy, particularly where a small stakeholder population is involved, may require less.

We would encourage greater use of a variety of engagements methods such as working groups. Often this type of face to face engagement works well if it supplements but does not replace, a written consultation response. Where this contributes to a reduction in timescales, it should demonstrate that the objective of effective comprehensive, balanced engagement has been effectively implemented. In many cases HMRC conduct very useful and effective consultations on an informal basis, seeking input from key bodies such as ICAS in strict confidence without carrying out a public consultation. Bodies such as ICAS have an important role to play in such cases, by demonstrating that we can provide constructive input based on experience from our side of the fence without ‘leaking’ any of the confidential information. We do quite a lot of this with HMRC and other organisations and believe it is very important that this should continue and indeed be extended across other departments.

What factors the Government should take into account when deciding on the length of the consultation period, such as when policy is new and contentious

The guidance would benefit from greater clarity of where shorter consultation periods might be appropriate to avoid consultation periods being shortened inappropriately. This should include:

- Policy topics which are new, contentious, complex, sensitive or have a media profile
- Risk and impact assessment ratings such as impact on cost, economic growth, citizens, civil organisations and business, level of regulation (including the cumulative impact)
- Significance of change
- External consultation groups will need more time than internal organisational groups
- The size of the stakeholder population

With regards to stakeholder populations, many tax consultations affect a wide section of the population and should undoubtedly be open for at least 12 weeks. Others may affect only a specialist minority (for example, insurance companies or real estate investment trusts), and in such cases, where there are relatively few experts to consult, it might be acceptable to work on a much tighter timescale.

The implications for different groups in society of the Government’s expectation that consultation will be “digital by default”

Although we recognise the potential efficiencies which may be generated by greater use of online consultations, including government analysis of the responses, we would be wary of a solely digital approach. We have seen a number of consultations recently, including one by BIS¹¹ and the EC, where respondents were given a very restrictive online form setting out specific questions. This format can discourage input on other areas which may be relevant. We would stress the importance that bodies such as ICAS should be able to comment more widely – not simply respond to prescribed questions. In such circumstances we need some reassurance that our more wide-ranging submissions will be studied, even where they deviate from the standard questions.

Care is also required that the format of consultation does not act to inhibit or restrict a wide range of responses and respondents. For example, digital consultation only may preclude the elderly or people most involved in the debt and bankruptcy processes as those in debt are often poorer and have less access to computers. Our preference is to retain some flexibility in the mediums used.

Whether the Government's new approach overall will lead to improvements in the consultation process and outcomes

The risks and impact of inadequate consultation are well documented. Case studies have been provided in our response to the EC on smart regulation of where inadequate consultation contributed to flawed policy¹², we have also outlined our suggestions for improvement. One need only look at the example of the AIFMD to see the torturous experience of uninformed and poorly tested policy development. Indeed we cited both BIS and the Scottish Government in our consultation response to the EC on Smart Regulation¹³ as examples of good practice for adhering to a 12 week consultation period. The revised guidance appears to go against the direction of improvements in engagement with the brevity of guidance and reduction in timescales in digitalisation.

We firmly believe that timescales should not compromise the delivery of high quality, informed policy or applying best practice engagement with stakeholders. We would urge these principles to be included in revised consultation guidance.

We have serious concerns that the revised guidance will lead to less effective consultation and less satisfactory outcomes. This is confirmed by the observation that although the revised guidance has only been applicable from autumn 2012, we have already seen a notable and remarkably rapid drop in consultation timescales by BIS. Examples are cited on the BIS consultation page¹⁴ and include:

- Implementing Employee Owner Status
- Employee Ownership and Share Buy Backs - Consultation on implementation of Nuttall Review recommendations
- Consultation on implementing Directive 2011/7/EU on Combating Late Payment in Commercial Transactions

¹¹ Consultation on implementing employee owner status - BIS

¹² http://icas.org.uk/Business_Issues/Submissions/

¹³ http://icas.org.uk/Business_Issues/Submissions/

¹⁴ <http://www.bis.gov.uk/Consultations/category/closedawaitingresponse>

Further details on (a) are provided in Annex I. This highlights that truncated timescales were followed without considering risk factors such as a new policy that had not been consulted previously, complexity, lack of robustness of the policy and not supported by alternative additional engagement methods to justify the shorter timescales. This is not an efficient way of working for either the respondent or the policy setter. This is not keeping up with best practice. Ideally the UK should be leading on better regulation to encourage more consistent improvements across Europe and other jurisdictions.

We support the principle of “proportionality of the type and scale of consultation” but this should be assessed against the greater principle of achieving high quality policy through effective engagement. This should not be undermined by speed or lighter touch stakeholder engagement. Effective engagement arrangements (including awareness raising) that are proportionate to the level of risk and impact should be demonstrated before selecting a quicker turn around.

Further guidance is also required to set out how to enhance consultation and widen engagement. An example is accessibility and stating what is acceptable in terms of advertising the consultation (an obscure press statement is not as effective as the main website news alerts). The guidance should also distinguish between internal and external consultation. It should state a minimum timescale for internal consultation and a significantly more generous timescale minimum for external organisations.

Proportionality should also be viewed in terms of the volume of consultations. In absolute terms our members believe there are certainly too many tax consultations. However, this should not be regarded as a shortcoming of the consultation process. On the contrary, it illustrates a much more serious issue of the Government in introducing far too many tax changes. One of the principal flaws in our tax system, and a key aspect that makes it uncompetitive internationally, is the degree of uncertainty created by too many changes in tax law. We need much more stability.

We note that HMRC¹⁵ have well developed consultation practices including both a framework and the BIS 2008 code of practice. We support consistent standards across Government, where this is best practice to maintain consistent levels of quality. When unexpectedly critical responses are received or grave concerns raised, we believe that it may be worthwhile following up with the respondent directly.

¹⁵ <http://www.hmrc.gov.uk/consultations/>

Institute of Employment Rights – Written Evidence

Government's new approach to consultations

The Institute of Employment Rights was established in 1989 as a think tank supported by the trade union movement. The Institute conducts a wide range of research and educational activities, and in 1994 was granted charitable status. It produces a broad range of papers on employment and human rights and regularly responds to government consultations on those issues where the Institute has an interest.

The last code of practice for consultation was published in July 2008 following an enquiry by the select committee. The Minister at the time, John Hutton MP, said in the introduction to the Code: “Put simply, effective consultation allows the Government to make informed decisions on matters of policy, to improve the delivery of public services, and to improve the accountability of public bodies.” The Institute supports that view and believes that the changes introduced by the present government in July of this year (without consultation) undermines each of the principles outlined in the statement above.

The Coalition at the start of its term of office entered into a Compact with Civil Society in which it stated it would:

“Give early notice of forthcoming consultations, where possible, allowing enough time for CSOs to involve their service users, beneficiaries, members, volunteers and trustees in preparing responses. Where it is appropriate, and enables meaningful engagement, conduct 12-week formal written consultations, with clear explanations and rationale for shorter time-frames or a more informal approach.”¹⁶

The new consultation principles, whilst acknowledging this commitment, proceed to contradict it by removing the commitment to a 12 week period of consultation as a default position. The Institute believes that this will impede the ability of civil society to engage with public consultations given their limited resources and capacity. As such, the new approach to consultation effectively leaves some sections of the public without a voice.

This has been evidenced in a recent case of a consultation period that was reduced to three weeks. Responses to the Department for Business, Innovation and Skills' consultation on "Implementing Employee Owner Status" required a large amount of research due to the far-reaching implications of creating a new status of worker. Three weeks was insufficient for organisations to gather strong evidence of the repercussions to workers, employers, tribunal procedures and any complications with EU law. In the absence of considered opinion, this consultation failed to meet the government's own principle where it states that “timeframes for consultation should be realistic to allow stakeholders sufficient time to provide a considered response.”¹⁷

The Institute believes that in place of the commitment to 12-week consultations, what will be left is an incredibly arbitrary system that will result in too little time being given to consultations on key policies and will severely limit the opportunities many organisations

¹⁶ The Compact (Cabinet Office 2010) para. 2.4

¹⁷ Consultation Principles (July 2012) Cabinet Office – Timing of Consultation

have to engage in public policy development and comment on the decisions that will most affect them and the people they represent. Therefore, the Institute believes that the default consultation period should be 12 weeks in order to ensure all interested parties, regardless of their wealth or size, are able to provide evidence. Where for practical reasons this is deemed impossible, clear explanations must be given by the government department promoting the consultation.

In order to ensure open and democratic government, the Institute cannot envisage situations where changes to or new policy is being developed which would not require consultation with interested stakeholders. Whilst there should be many opportunities for stakeholders and civil society to engage in the preliminary debate on policy development outside of the formality of a public consultation, once a formal proposal has been formulated this should be subject to formal public consultation. The argument that some policy changes are simply technical amendments can often hide significant impacts on UK legislation.

A recent example of this is evidenced by the case of the amendment to (s) 47 of the Health and Safety at Work Act 1974 that was added to the Enterprise and Regulatory Reform Bill without consultation. This amendment is not simply a technicality but in fact overturns employers' 114-year-old strict liability for the health and safety of their employees, causing major changes to people's real-life experience of employment law. The Institute is firmly of the opinion that the government should have consulted the public before making this amendment.

A number of professional bodies have already criticised these changes. One highly respected body The Institute of Occupational Safety and Health (IOSH) believes that slashing timescales so severely would be 'foolhardy' and could potentially put lives at risk.

In an article for Workplace Law the IOSH was reported as saying: "It's vital that those who may have important intelligence to contribute and those who may be affected by government proposals, are given full opportunity to have their voices heard. Consultation isn't about rushing, it's about listening."¹⁸

The Institute recognises that technology now offers alternative means of responding to formal consultations including email and web based formats. The Institute does not oppose the use of such formats as an option for stakeholders but would be strongly against the introduction of this as the default means of response. It believes that such a move would disempower those without access to technology and thus fail to meet the principle of accessibility which was one of the principles previously outlined in the 2008 Code of Practice¹⁹.

Past experience of on-line responses also suggest that less flexibility in the way respondents address the issues is allowed. Questions are often framed in a manner which limits open responses and guides the writer in a pre-conceived direction.

One final issue which the Institute would ask the Committee to consider is the timing of consultations. Introducing consultations during major holiday breaks such as just before Christmas or Easter detracts from the available time for organisations to prepare responses.

¹⁸ <http://www.workplacelaw.net/content/43374>

¹⁹ Code of Practice on Consultation - Department for Business, Enterprise and Regulatory Reform July 2008 – Criterion 4 page 10

The Institute therefore suggests that where such breaks occur this should be added to the period of the consultation.

It is clear to the Institute that there is little to be gained from the changes which this government has introduced without consultation. On 19th November 2012 the Prime Minister in an address to the CBI said timescales would be reduced where possible and the number of consultations would also be reduced:

“When we came to power there had to be a three month consultation on everything and I mean everything, no matter how big or small. So we are saying to ministers: here’s a revolutionary idea - you decide how long a consultation period this actually needs. If you can get it done properly in a fortnight, great. And we are going further, saying: if there is no need for a consultation, then don’t have one.”

Notwithstanding this current enquiry by the Scrutiny Committee, the Prime Minister would appear to have determined the outcome – yet a further indication that the impetus for these changes is not to improve accountability and consultation but to stifle it.

The last time government reviewed this code, the OECD, commenting on the regulatory policy of the UK government²⁰, said that there was a need for effective quality assurance of the Code of Practice on Consultation. Experience suggested that departments left to themselves do not always meet the highest standards.

The Institute suggests that if government continues to apply the new principles with limited timeframes for consultation then it, at least, takes on board the comments of the OECD and introduces a quality assurance process which monitors the effectiveness of the code.

²⁰ BETTER REGULATION IN EUROPE: UNITED KINGDOM © OECD 2010 Chapter 3 Recommendation 3.1

Institution of Occupational Safety and Health – Written Evidence

Background

The Institution of Occupational Safety and Health ([IOSH](#)) is the Chartered body for health and safety professionals, with more than 41,500 members in over 85 countries. Regularly consulted by Government departments and other external bodies, we are the voice of the profession and also campaign on issues affecting millions of working people. Formed in 1945, IOSH is a registered charity and is recognised by the ILO as an international NGO. Our vision is: ‘A world of work which is safe, healthy and sustainable’

IOSH very much welcomes the opportunity to contribute to this discussion and to raise concerns about the Government’s new approach to consultation. As an active participant in numerous consultations, IOSH would like to comment on the new Cabinet Office [guidelines](#) on consultations, which we note advise:

“Timeframes for consultation should be proportionate and realistic to allow stakeholders sufficient time to provide a considered response...and might typically vary between two and 12 weeks. In some cases there will be no requirement for consultation at all and that may depend on the issue and whether interested groups have already been engaged in the policy making process. For a new and contentious policy, such as a new policy on nuclear energy, the full 12 weeks may still be appropriate...”

Summary position

Occupational safety and health (OSH) affects millions of working people, their families, their employers and the wider economy. There were over 12,000 work-related deaths and 27 million working days lost through health and safety failure in Britain last year.²¹ IOSH therefore believes that proposed changes to OSH policy and law need to be carefully considered, evidence-based and properly consulted on.²²

Key stakeholders, such as IOSH, can provide invaluable information and suggestions that consulting bodies may otherwise fail to consider. IOSH members can offer practical health and safety input for helping to determine what is workable, effective and enforceable. The aim must be to create well-crafted policy and law that avoids negative unintended consequences and that operates as required. We need to ensure good quality outputs and positive outcomes. IOSH believes that this means greater and more meaningful dialogue with relevant stakeholders, professionals and experts, and not less. While we would support the Government’s ‘**digital by default**’ proposal in principle, this is with the proviso that there must also be alternative facilities for those who are unable to respond in this way (see paragraphs 11, 12 and 21 below).

IOSH is pleased to take a constructive part in many consultations each year. We believe that good consultation is about taking time to listen, gather and consider relevant input and produce policy that works well. So, we would be concerned at any changes that reduced the

²¹ Health and Safety Executive. *At a glance guide to health and safety statistics 2011-12*. HSE website 2012. www.hse.gov.uk/statistics/at-a-glance.pdf

²² IOSH submission to *Löfstedt review of health and safety legislation*. Wigston: IOSH, 2011. www.iosh.co.uk/condocs (archive section)

opportunity for our members to contribute adequately to this important process. Our members work in all employment sectors and at strategic and operational levels within organisations all across the world. They lead busy and active professional lives and so require **sufficient time** to be able to respond to consultation, calls for evidence and debate.

IOSH believes a minimum 12-week period is needed for OSH-related consultations. Factors that should be considered if an extension to this period is to be granted include:

- Importance and purpose
- Stakeholder ability to respond
- Method(s) deployed
- Need to avoid 'overload'
- Scope and complexity
- Timing

IOSH responses to the five issues identified by the Committee

Q1 In what circumstances the Government may reasonably decide not to consult on policy development?

IOSH does not believe there are circumstances in which the Government should not consult on health and safety policy development or on other areas of policy that may significantly impact on health and safety. Even in situations where the UK is required to take certain action to transpose legal requirements; stakeholders should be kept informed and involved concerning the proposed timeframe, implementation and review process. Facilitating the input of relevant professionals can help ensure proportionality and efficacy; and avoid costly errors for Government and stakeholders.

Q2 The appropriate timing and duration of consultation exercises?

IOSH firmly believes that consultation exercises on health and safety matters should retain the current 12-weeks or longer if necessary. Timing of consultations can be a factor and may mean that longer is required – for example, if they take place over the Christmas period or (as currently) where many 'simultaneous consultations' compete for attention at any one time.

The UK is in the fortunate position of having many Chartered professional bodies, such as IOSH, whose members have a wide range of skills, expertise and experience that can usefully be drawn on. We believe that Government and others should do more to engage with and consult them. Allowing adequate time for relevant membership bodies to solicit the views of their diverse members should be key when consulting bodies are deciding on consultation periods. We believe that 12-week consultations allow time for relevant evidence to emerge, helping ensure better informed policy and legislation.

Q3 What factors the Government should take into account when deciding on the length of the consultation period, such as when policy is new and contentious?

IOSH believes the factors the Government should take into account when deciding consultation periods should include:

- The importance of the issues concerned: we believe that policy or legal changes that can affect OSH (and ultimately 'life and limb') and may also impact our economy and society are sufficiently important to warrant at least 12-weeks consultation.
- The purpose of the consultation and type of information sought: if stakeholders are asked to provide historic, statistical or projected data to help support impact assessments (as is the case for many health and safety consultations) then again, this requires time.
- The accessibility / availability of relevant stakeholder groups: if they are diverse, hard to reach, under-resourced or 'time poor', then more time should be allowed.
- The method of consultation: if, for example, stakeholder workshops or focus groups are required; then sufficient time for running and analysing the outputs from these should be factored in.
- Other simultaneous consultations: if relevant stakeholder groups have other consultations competing for their time, with similar deadlines, then this should be taken into account wherever feasible to avoid 'overload'.
- The scope and complexity of the consultation: for example, if there are multiple topics within a single consultation (such as the recent HSE consultation on 30 different Approved Codes of Practice), then more time is clearly needed for responses.
- The time of the year: for example the Christmas period and popular holiday months such as July / August may mean stakeholders are unavailable and require more time.

Q4 The implications for different groups in society of the Government's expectation that consultation will be 'digital by default'?

IOSH is content in principle with 'digital by default' for consultation and has provided on-line facilities for our members for some years via our website. However, we are concerned that some groups in society may be disadvantaged by this Government approach. People who might be negatively affected could include those without Internet access; those lacking computer skills; those with disabilities such as sight impairment; or those who have difficulty with English or literacy. In addition to Braille, audio and verbal options (see paragraph 21 below), consultees should also have the option of sending hard copy responses, if this is their only communication channel.

Also, small- and medium-sized enterprises (SMEs) that may have a verbal culture and prefer to take part in verbal discussion, rather than make written submissions, may be less inclined to participate in a system that is 'digital by default'. We would advocate that bureaucracy (e.g. obtaining user-name and password) is minimised in order to encourage participation.

Q5 Whether the Government’s new approach overall will lead to improvements in the consultation process and outcomes?

IOSH is concerned that the new approach of shortened consultation periods could be harmful for health and safety and damage the consultation process and outcomes. We believe that relevant professional experience and expertise, as well as information from ‘grassroots’; are all vital to effective policy- and law-making on health and safety matters.

We know that Professor Löfstedt recommended action on impact assessments in his 2011 [report](#)²³ ‘Reclaiming health and safety for all: an independent review of health and safety legislation’. He said that there was “...a case for strengthening the role of both Impact Assessments and the Impact Assessment Board to ensure that recommendations are based on sound science and are risk-based.”

We also know that the Regulatory Policy Committee, in their recent [report](#)²⁴ on ‘assessing regulation’ for the first eight months of this year, highlight speed as one of the risks. The report says “Whilst it is desirable that deregulatory measures may be implemented more quickly, there is a risk that these measures may be implemented without a robust assessment of the full range of issues and impacts on society.” It also found that almost one in five impact assessments were ‘not fit for purpose’ and gave them a ‘red opinion’.

Just one example of the negative impact of insufficient time is found in the recent [impact assessment](#)²⁵ on ‘strict liability’ and the proposed changes to Section 47 of the Health and Safety at Work etc Act (civil liability). This states in two different places that elements of the analysis were “...not feasible in the time available...”

The solution, in IOSH’s view, is for those who can provide relevant supporting data and evidence – such as health and safety professionals – to be given sufficient time and opportunity to do so. The range of stakeholders for OSH is wide and varied and includes employers, workers, OSH professionals, HR personnel, engineers, planners, regulators, insurers, standards bodies, local authorities, central government departments and others.

IOSH has raised serious concerns about the large number of changes following Professor Löfstedt’s review. Though his report found the system ‘broadly fit for purpose’, it has resulted in numerous consultations including some multiple ones. For example: one on revoking 7 statutory instruments; one on removing 14 legislative measures; and one on changes to 30 Approved Codes of Practice.

Indeed, since January 2012, IOSH has provided member responses to a total of 65 different consultations. And we have now also been asked to comment on another extensive and wide-ranging one on EU OSH law covering 21 Directives by 31 December 2012.

²³ Löfstedt RE, Professor. *Reclaiming health and safety for all: An independent review of health and safety legislation*. London: TSO, 2011. www.dwp.gov.uk/docs/lofstedt-report.pdf

²⁴ Regulatory Policy Committee. *Assessing Regulation – An independent report on the evidence and analysis supporting regulatory proposals, January-August 2012*. London: Regulatory Policy Committee, 2012. <http://regulatorypolicycommittee.independent.gov.uk/wp-content/uploads/2012/11/11/RPC-Report-November-2012-Final1.pdf>

²⁵ Health and Safety Executive. *Strict Liability in Health and Safety at Work Legislation – Impact Assessment*. Bootle: Health and Safety Executive, 2012. www.bis.gov.uk/assets/biscore/corporate/docs/s/12-1219-strict-liability-health-safety-at-work-impact

IOSH is aware that other stakeholders share our concerns that the post-Löfstedt change process is being unduly and unwisely rushed. The HSE Board paper on the initial analysis on the Approved Codes of Practice consultation, [HSE/12/77](#) (26 September 2012)²⁶ reports that “A number of respondents, including some large organisations representing employers, employees or health and safety professionals raised concerns about the timescale for the review. They suggested that the pace of the review would not allow for sufficient engagement on the content of any revised ACOPs and guidance and would also present too much change for business over too short a timescale.” And a recent ‘business perceptions’ report also highlighted the difficulties that speed can create for businesses, finding “Increasing the pace of change associated with reform of regulation can be a source of regulatory burden.” The same report also found “...there is scope for improving the consultation process and how expectations regarding reduction in regulatory burden is managed.”²⁷

A stated aim of these new Government guidelines is to make the ‘type and scale of engagement proportional to the potential impacts of the proposal’. However, the difficulty with this approach is that the potential impacts of proposals may not be fully known to those conducting the consultation in advance. It is the consultation process that can help facilitate this type of insight and assessment. Reference is made (under ‘consultation principles’) to “achieving real engagement rather than following bureaucratic process” with proposals for email or web-based forums, public meetings, working groups, focus groups and surveys. IOSH would support these additional methods of engagement, but as supplements and support for the consultation process and not as substitutes for it.

IOSH suggests that introductory sections to individual consultation documents should outline whether and how the principles and practice of good consultation have been satisfied and also the rationale for the approach that has been taken.

²⁶ Health and Safety Executive. *Preliminary analysis of the response to the consultation on proposals to review HSE’s Approved Codes of Practice (CD241)* HSE/12/77. HSE website, 2012.

www.hse.gov.uk/aboutus/meetings/hseboard/2012/260912/psepb1277.pdf

²⁷ Peck F, Mulvey G, Jackson K and Jackson J. *Business perceptions of regulatory burden*. Carlisle: Centre for Regional Economic Development, University of Cumbria, 2012. www.bis.gov.uk/assets/biscore/better-regulation/docs/b/12-913-business-perceptions-of-regulatory-burden

Involve – Written Evidence

Introduction:

This is Involve's submission to the House of Lords Secondary Legislation Scrutiny Committee on the Government's new approach to consultation.

Involve are a charity specialised in public participation. We passionately believe in a democracy where citizens are able to take and influence decisions that affect their lives. Through both research and practice we seek to transform the relationship between citizens and governments to better use the creativity, energy, knowledge, skills and resources of all.

Since Involve was founded in 2004 we have worked closely with public organisations at a local, national and international level to transform how they engage with citizens. These include the Home Office, Ministry of Justice, World Health Organisation Europe, the European Commission, the OECD and numerous Local Authorities.

Involve is focussed on public and stakeholder participation; consultation forms part of the spectrum of public participation²⁸. Our submission tries to draw lessons from the wider field of public participation that are relevant to consultation.

Involve welcomes the increased interest in public engagement and consultation, but we are worried that an increase in the volume of activity has not been matched by an improvement in quality. We argue that we need a more nuanced conversation about consultation than the one currently being held around the 12 week period. Much effort is being spent on defining the quantitative measures of consultation rather than the quality.

The predominant model of policy making continues to be one where policy options are developed and decisions taken within a sole Government department, with public engagement restricted to assessing the acceptability of a policy idea during formation (e.g. through focus groups) or after a policy has been developed (e.g. through formal consultations). Consultation is frequently sold on the premise that it increases trust, leads to better and more inclusive decisions. As it is practiced much consultation actually does the opposite - it undermines public trust, consumes resource without producing information of value and does little to broaden the range of voices heard.

The range of methods²⁹ used in consultation and engagement has in many organisations been limited (i.e. written consultations, public meetings, satisfaction surveys and questionnaires). Unintentionally, blanket rules like the 12 week rule may have further stifled the adoption of new methods or the enhancement of existing ones through a more creative delivery.

²⁸ See for example the International Association for Public Participation's Spectrum of Public Participation for more information on where consultation fits in the wider picture.

http://www.iap2.org/associations/4748/files/IAP2%20Spectrum_vertical.pdf

²⁹ Involve's practitioner website, ParticipationCompass.org, exists to support Government engage more creatively. The site contains an array of participatory methods and case studies that have been implemented across the UK (and the world) by central government, local government, health and policing authorities, and more. The planning tool allows those seeking to engage to assess the situation at hand including what they wish to gain, the participants they are dealing with, the amount of time they have, and the issues at stake. The site will then produce results outlining the best approach to take.

In what circumstances the Government may reasonably decide not to consult on policy development.

There are clearly times when participation is not the right approach. For example, using consultation to try to legitimise a decision that has already been taken behind closed doors and which participants are misled into thinking they can affect the outcome. A number of consultations in recent years, on topics as diverse as national energy policy and hospital closures, have been the subject of judicial reviews.³⁰ Other consultations, such as those on legislation on smoking and the third runway at Heathrow, have not been found unlawful but have been widely criticised in the media for being ‘sham’ exercises.

Clearly establishing and communicating what can actually change as a result of consultation is critical. The scope for a consultation to make a difference to the policy or decision needs to be explicitly declared at the start; in particular being clear about things that cannot be changed as a result of the process. One example which was extensively reviewed by Consumer Focus is the consultation process on Post Office closures where the review uncovered a number of problems. The report found that the majority of respondents were dissatisfied with the way in which Post Office Limited (POL) carried out its communications about the closures in terms of the information provided, and about the nature of the consultation and how people could voice their concerns.³¹ The authors noted that, ““The reality was that the closure programme was driven by an existing decision that up to 2,500 post offices would close, meaning that the basis of consultation was to determine which, not whether, branches would shut. This was not made clear to consumers.”³² The Public Accounts Committee also argued in favour of consultations that can have actual influence: “In the event of future managed closures, the Government and POL should carry out consultation early enough in the decision making process for the public’s view to have a real influence on outcomes, rather than make simply minor adjustments to details of implementation.”³³

Involve’s view is that if nothing can change engagement and consultation is counterproductive. Bad engagement is worse than none at all. Insisting on consultation for the sake of it risks alienating people as they can sense that they are a part of a box-ticking exercise. Findings from our ‘Pathways through Participation’ research indicate that bad engagement leads to public cynicism and reluctance to participate in the future.³⁴ A number of our interviewees spoke about participating in consultations where they felt the decision had already been made and that their involvement had not achieved anything.³⁵ It is therefore important to define the scope behind the purpose of the engagement exercise.

³⁰ See for example: Pitt, V; *Another council faces prospect of judicial review over cuts*. Community Care: 2011. <http://www.communitycare.co.uk/blogs/adult-care-blog/2011/03/another-council-faces-judicial-review-over-cuts.html>

³¹ Burrows, A; & Griffiths, C. (2007) How was it for you? Consumer engagement in the post office closure programme. Consumer Focus, 7.

³² *Ibid.*

³³ House of Commons Public Accounts Committee (2009) Oversight of the Post Office Network Change Programme, p5. Nov 12 2009. Fifty-third report of session 2008-2009

³⁴ Brodie, E; Hughes, T; Jochum, V; Miller, S; Ockenden, N; & Warburton, D. (2011) *Pathways through participation: What creates and sustains active citizenship*. London: NCVO, IVR & Involve.

³⁵ *Ibid.*

The appropriate timing and duration of consultation exercises.

In the debate surrounding Government consultation a disproportionate amount of time has been spent discussing quantitative measures such as the merits of the 12 week rule as opposed to focussing on the quality of consultation. In our opinion this is counterproductive and often leads to generic consultation, which wastes both Government and citizen time and resources. There can be no one-size-fits-all time frame that will effectively capture the range of situations. The 12 week period was originally intended as a minimum yet in our experience it was soon adopted as a default by civil servants. The problem is not the 12 weeks per se but that it became a standard. While we argue against a set time limit it is clear that there is such a thing as too little time to respond – a one week consultation would, for example, be hard to justify. However a well planned and delivered 8 week consultation will in most cases achieve more than a formulaic 12 week consultation with limited scope for influence. The minimum amount of time for a consultation needs to be agreed in each case; in many cases the optimum time will be more than 12 weeks.

Time frames for consultation need to be fluid and should vary depending on the *purpose, process, people, and the context*. No two will therefore be the same making the notions of time frames difficult to apply. Consumer Focus found that the 12 week time frame adopted during the POL consultation was not popular amongst stakeholders and citizens; instead they argue that time frames should reflect the needs of communities.³⁶

Time should be allocated towards effectively communicating *back* to the participants after their involvement. This is a fundamental, yet overlooked, aspect of engagement. Participants need to be reassured that their inclusion in the decision making was real and meaningful. In our opinion this is often more important for public trust than the length of the consultation process itself.

The implications for different groups in society of the Government's expectation that consultation will be "digital by default".

Government should not start with the consultation method. The first steps must be establishing if consultation is appropriate, what the purpose of involving the public is, and defining the participants and issue. Only once these factors have been addressed can a meaningful decision be made about whether a digital method is the best choice. Digital engagement is a very dynamic and innovative field with a number of benefits and it should certainly play a key role in public engagement in future. It also has a number of comparative weaknesses (e.g. difficulty of achieving meaningful deliberation) and should therefore not be used to the exclusion of other methods where they are more appropriate. Digital consultation needs to be an option; it will rarely be the only option. The Consumer Focus report argues for convenience and accessibility, "Consumers should be able to respond to consultations through a range of convenient means."³⁷

Consultation on complex issues often requires going beyond digital. Whilst digital can complement face-to-face methods, it should not be a replacement. Digital by default, if interpreted simplistically, runs the real risk of narrowing the Government's options in terms of appropriate platforms when delivering public engagement. The 12 week period in the previous reform was intended as a minimum but very soon became the default. There is now a growing risk that developments will soon focus on restricting space instead of time. Digital

³⁶ *Ibid*, 13.

³⁷ *Ibid*, 11.

by default should be interpreted as digital platforms *plus* face to face process, but precedent in the time sphere suggests that often any such guideline is quickly understood to indicate an acceptable bare minimum. Jordanka Tomkova from the European University Institute has noted in his research that the “outcomes of econsultation initiatives have been poorly and arbitrarily integrated in the respective policies they intended to inform. Their inclusion has remained contingent on the political will and discretion of the political actors.”³⁸ Ultimately if consultation is to be meaningful there needs to be a shift in Government culture to one where public servants recognise the inherent worth of engagement. Without this shift targets will often be interpreted in a way which leads to the bare minimum of activity.

Whether the Government’s new approach overall will lead to improvements in the consultation process and outcomes.

In order to encourage members of the public to get and stay involved, our research and experience has shown that public engagement needs to:

- Focus on developing an ongoing relationship with citizens rather than gathering data;
- Provide a range of opportunities for engagement that meet the needs of a wide variety of people and offer opportunities that are sociable and enjoyable;
- Be linked to the possibility for real change or influence;
- Be tailored to the needs of the least powerful;
- Lead to action that is reported back to participants; and
- Involve people throughout decision-making processes, from scoping and defining the problem to implementing the decision.

Involve believes that we need a fundamentally different approach to consultation. This requires thinking about engagement strategically beyond each individual consultation process. We need a mind shift from viewing consultation as a mechanistic activity akin to opinion research to a people focussed relationship building process.

To a great extent, consultations, as currently formulated, are products of a mechanistic outlook. They are narrow in their scope, formalistic and are characterised by limited opportunities for participant influence. The Consultation Institute has stated that only 40 per cent of consultations can draw a link between the responses and the outcomes.³⁹

Involve’s experience is that it is possible to increase public trust in government, develop better decisions and include a wider range of voices; but often not through consultation but rather through approaches such as Deliberative methods and Participatory Budgeting. For this reason consultation needs to be radically reformed. We call for a relational shift where the centre point for the consultation is the citizen and not the issue or the institution running the consultation.

Consultation remains a vital part of the Open Policy Making agenda. The question of the optimum length of a consultation distracts us from more fundamental questions. Involve’s view is that the most significant problem is not that consultations are too short or solely

³⁸ Tomkova, J. (2009). e-consultations: New tools for civic engagement or façades for political correctness?. *European Journal of ePractice*, 7, 45-55.

³⁹ Mike Harris, “Open policy is a challenge to government consultations – and an opportunity”, The Democratic Society, 2012.

Involve – Written Evidence

reliant on digital methods (although both criticisms have merit). Rather the key problem is that many consultations are designed in a way which gives little scope for influence and are merely rubber stamping policy decisions. We need guidance which encourages civil servants to do better, not just more, consultation. We need central support and training to enable civil servants to design processes that give citizens a real say on decisions that affect their lives.

Julie Gillam – Written Evidence

I am emailing to oppose the reduction of the normal time period for consultation on delegated legislation from 12 weeks to as little as 2 weeks. In a democracy it is extremely important that interested groups and individuals are allowed sufficient time to consider and respond to proposed changes in our legislation.

Luke Gilmour – Written Evidence

I am writing to voice my opposition to the government's new approach to consultation. The new guidance states consultations may run for only two weeks instead of the usual 12. This shortening of consultations makes it all most impossible for organisations or individuals to gather evidence and submit well-thought-out response to proposals. As such, the new approach to consultation effectively leaves the general public without a voice.

I believe all consultation period should be 12 weeks long to ensure all interested parties, regardless of their size, wealth or political persuasion are able to provide evidence. I also strongly disagree with the view that previous public consultations have been unnecessary. So called “technical amendment”, can and do have far reaching repercussions to UK law. The recent amendments to the Health and Safety at Work Act 1974 shows were a so called technicality can overturn and change a UK law without the British public being consulted. This in my view only increases the public perception that politicians are out of touch, arrogant and untrustworthy.

Finally, I oppose any attempt to restrict responses to digital only. I believe this dis-empowers the 20% of UK households that do not have asses to the internet.

Joanna Griffiths – Written Evidence

I am writing with particular reference to the 'digital by default' policy and the impact of this.

It should be noted that:

- not everybody knows how to use a computer;
- not everybody has easy access to a computer; and
- some people with disabilities are unable to use a computer or can only do so via assistive technology to which they may not have access outside the workplace.

It follows that consultation should never be on an entirely electronic basis. If it were, this would:

- exclude some people from the democratic process and would most likely be in breach of human rights legislation on access to public administration; and
- breach equality legislation, e.g. it would be likely to constitute discrimination against disabled people.

It also follows that consultation processes need to be advertised via non-electronic media so that those who are unable to use a computer can be made aware of them.

The timescales for consultation need to take into account the fact that some people with disabilities will need longer to reply.

M.E. Goldby – Written Evidence

I write to express opposition to proposals to shorten the consultation period for govt. legislation. I understand it is suggested that two weeks may be considered sufficient. I find this alarming. In the educatio field we have been subjected to a blizzard of change and even as things stand, not really enough consultation. A two week period would be hopelessly inadequate in view of the research needed to ensure that a considered response can be made to proposed changes. Failure to consult properly has already led to some contradictory policy making.. Twelve weeks should be the minimum period required.

Jeff Hearn – Written Evidence

I consider the proposal to move from 12 to 2 weeks' consultation period profoundly undemocratic

Afzal Khan – Written Evidence

I am writing to indicate that the government's new approach to consultation, in which new guidance states consultations may run for just two weeks instead of the usual twelve. While on the surface this guidance is sensible and balanced approach, it appears to be disadvantaging disabled persons who are unable to arrange to visit me so that I may convey their views to you as is their wish.

Please note that as a result of this new practice it would appear that your guidance is having the effect of disadvantaging certain groups of disabled people and that the disadvantage is greater than its impact on those without disability. These people are simply unable to get to us in time to convey their wishes through an advocate of their choice. Article 6 of the HRA appears to have been breached as a result of this new policy.

Please accept our sympathies in respect of your predicament, but it is clear that this guidance must be amended. We have previously been involved in legal action against the government and were successful. We sincerely hope that this will be a matter that may be dealt with, in full confidentiality and with a view to avoiding unnecessary legal costs.

Please note that this letter is written as part of the CPR pre-action protocol.

John Kierans – Written Evidence

John Kierans – Written Evidence

its undemocratic

Deborah King – Written Evidence

I am opposed to reducing the consultation period to as low as two weeks.

I am shocked that there is a consultation period as low as two weeks.

Unless there is a national emergency then there should be at least a 12 week consultation period for new proposals. We are supposed to live in a democracy not a dictatorship.

Liberty – Written Evidence

Liberty welcomes the opportunity to submit its views to the Committee regarding the Government's new 'Consultation Principles', which replaced the 2008 *Code of Practice on Consultation*. Liberty believes that this new approach to consultation is a significant shift which will be detrimental to the process of policy development and which will damage the relationship between the Government and the public.

Liberty is a small, independent human rights campaigning organisation. We work in parliament, the courts and in the media to protect and promote fundamental rights and freedoms in the UK. Our policy department, consisting of three staff members, endeavours to engage constructively and positively with all stages of Government policy development. We are frequently invited to take part in consultant advisory groups created by Government departments to feed in to early policy development. We also submit detailed written responses to formal consultations and Green Papers. We provide written and oral briefing to Members of both Houses of Parliament during the parliamentary passage of any legislation which emerges from a consultation exercise. Where laws are approved by Parliament which we believe to be in breach of our human rights framework, we continue to seek to uphold those principles by challenging the legality of offending provisions in the courts.

Liberty believes that it is incumbent upon Government, in developing policy which will impact on the lives of those it governs, to properly and genuinely consult with those who have elected them to govern. Consultation is a crucial part of that process and we believe meaningful engagement with policy development is beneficial to government and public alike. In responding to consultations, we rely on our legal expertise and public policy experience developed over 78 years of litigation, lobbying and public campaigning. We also frequently retain expert counsel to provide legal opinions as to whether a policy or aspect of a proposal will be compatible with human rights and related legislation. It is evident from our ongoing engagement with civil servants and from formal Government responses to consultations that our input is valued and of assistance in the creation of new Government proposals.

Given this experience, we are dismayed by the new approach to Government consultations announced in the statement of the Minister for Government Policy, the Rt Hon Oliver Letwin MP, on 17th July 2012.

The most significant change is the shift from a default period of 12 weeks for consultation to a minimum of two. Liberty will simply be unable to respond in a meaningful way or at all to consultations of two weeks in length; as it is, with a large number of Bills and consultations simultaneously underway, 12 weeks can be a difficult deadline to meet. The shortening of time frames, as well as a stated assumption that consultation may not be required where expert groups have been engaged at an early stage, also ignores the necessity of engaging everyday members of the public whose views are just as important as those with relevant expertise. In our experience it can take weeks and even months for public awareness to be raised about Government proposals; the changes will mean many views are no longer heard. While it will no doubt be argued that the Principles will not lead to short consultations on areas of controversy or complexity, there is already evidence that short deadlines are being

imposed on complicated changes which will adversely affect employment rights. Recent proposals to scrap the Agricultural Wages Board and the minimum wage for agricultural workers for example were given a three week period for consultation. Requests for an extension from Unite to enable their lawyers to assess whether the proposals are legal were ignored.

We are further concerned generally about the lack of detail in the Principles, which lack proper guidance and instead offer baseless assumptions and examples as to when consultation might be necessary or avoided. The Principles heavily qualify the duty to consult, leaving it open to departments and Ministers to sidestep consultation altogether and rush through policy change. The temptation to do so will undoubtedly be high, which will be to the detriment of the public and vulnerable individuals impacted. It is also likely to be costly. Consultation provides the opportunity for misconceptions to be corrected, unintended consequences to be pointed out and legal incompatibilities to be highlighted. The absence of a consultation, or poor consultation, will almost always lead to ill conceived policy. This will likely lead to more public and legal challenges - which will cost more in time and money than had these concerns been raised and dealt with at a preliminary consultation stage.

It is also imperative to view the new Consultation Principles in context. We are currently facing an unprecedented assault on the public's opportunity to participate in Government decision-making and to challenge decisions made which have adverse effect. In recent weeks the Government has announced that Equality Impact Assessments will be scrapped; outlined new proposals to drastically curtail the opportunity to judicially review government decision-making; and regulations which will dramatically reduce access to legal aid for individuals seeking to challenge an administrative decision through judicial review are currently being considered by Parliament. Not only do all of these functions support the work of Parliament, they form a vital constitutional safeguard by keeping a check on Executive decision-making. Undermining the role of the public and civil society to engage in policy development and challenge decisions made bodes extremely ill for the proper functioning of our democracy.

Local Government Association – Written Evidence

Introduction

The Local Government Association (LGA) is the national voice of local government. We work with councils to support, promote and improve local government.

We are a politically-led, cross party organisation which works on behalf of councils to ensure local government has a strong, credible voice with national government. We aim to influence and set the political agenda on the issues that matter to councils so they are able to deliver local solutions to national problems.

The LGA covers every part of England and Wales, supporting local government as the most efficient and accountable part of the public sector.

Summary

- The Cabinet Office issued a set of Consultation Principles in July 2012 to replace the Code of Practice on Consultation issued in July 2008. As far as we are aware, no consultation took place in relation to this document and the Committee’s invitation for views represents our first opportunity to register comments.
- This new set of guidance represents a marked shift in approach from the detailed document that preceded it, intending to move towards more flexible consultation procedures based upon a “proportionate and targeted” approach.
- A clear and consistent consultation is fundamental to a healthy democracy and leaving this open for government to decide itself on a case by case basis could be problematic for accountability.
- In this submission, we present our views on the questions posed by the Committee, focussing in particular on the principle of No Consultation; and a range of timeframes for consultation.
- We are concerned that reductions in the consultation periods may compromise the effectiveness of the process and inhibit real and meaningful consultation. This may mean that practical implications upon implementation are not fully understood and a full twelve week period will become the exception rather than the rule even in circumstances where it might be justified.
- However, we would also point out that it is also important to consider the quality of policy making. Policy changes need to be underpinned by a high-quality evidence base.

In what circumstances might the Government reasonably decide not to consult on policy development?

A clear and consistent consultation is fundamental to a healthy democracy and leaving this open for government to decide itself on a case by case basis could be problematic for accountability.

The new guidance provides that there will be instances in which no consultation is required. It cites “minor or technical amendments” as being examples of such circumstances and suggests that it will depend on the nature of the issue and whether prior consultation was carried out.

This approach provides for the exercise of wide discretion by Government with these questions (prior consultation aside) being inherently subjective in nature. For example, the decision as to what constitutes a minor or technical amendment may be difficult to accurately determine without consultation, as the effect(s) of that amendment in practice may mean that it assumes greater significance than was initially expected.

In addition, no consultation may be considered appropriate where there has been previous engagement with interested groups in the policy making process. Again, there is no detail as to the expected extent of that previous engagement and what constitutes ‘meaningful’ such that it would justify a departure from the need to undertake further consultation.

The Committee has specifically sought views on when it might be considered reasonable for Government not to consult and our view would be that only in circumstances where the above issues have been adequately addressed.

We would also point out that it is also important to consider the quality of policy making. Policy changes need to be underpinned by a high-quality evidence base.

What is the appropriate timing and duration of consultation exercises?

There is a marked shift in emphasis from the 2008 guidance which stated that “consultations should normally last for at least 12 weeks with consideration being given to longer timescales where feasible and sensible” (emphasis added).

There are now a range of potential timeframes for consultation, from a minimum of two weeks to a maximum of twelve.

Our concern is that twelve week period will now become the exception rather than the rule, even in circumstances where a twelve week consultation period would best secure the stated aim of the guidance of “real engagement” with timeframes being “proportionate and realistic to allow stakeholders sufficient time to provide a considered response”.

In particular, the time for a Green Paper consultation should be for a full twelve weeks because they form the discussions upon which White Papers, and then following the White Paper, primary legislation are based.

As highlighted above in relation to scenarios of ‘no consultation’, a further subjective term is used as the basis upon which the decision to set the time period is to be made. The term “proportionate” is inherently subjective and presents difficulties particularly given the lack of interpretation ascribed to it in the guidance.

It is also difficult to see how this aim can be achieved where a consultation period is too short to allow sufficient time in which to engage stakeholders and allow them to consider fully the issues raised and respond.

The best way to illustrate the potentially detrimental effects of prescribing too short a time period is by highlighting two recent examples of the new consultation approach in practice:

(i) CLG Consultation: ‘Improving Local Government Transparency’

The consultation proposes to make the code of practice for local government on transparency mandatory. The consultation period provided for in this situation is eight weeks, closing on 20th December 2012. We would argue that such an important piece of policy which introduces a new statutory duty requires a longer time period in which to carry out the consultation process as often they require political sign off. These are often linked to committee cycles and the preparation of a consolidated view from individuals, groups or sectors which takes considerable time and resources. We therefore suggest that consultation on statutory duties remain 12 weeks in length.

(ii) Cabinet Office Consultation: ‘Code of Practice (Datasets)’

This consultation period is seven weeks, ending on 10th January 2013. While consultation took place on the actual legislative change, this guidance defines the details of implementation and sets for the first time a commencement date for the legislative changes to come into effect. Again, Local Authorities will be affected by these statutory changes and are experiencing very real difficulties in consulting fully with those affected by the proposals.

The guidance note recognises that consultations should not generally be launched during local or national election periods. This consultation period falls over the festive period which further reduces what is already a truncated timeframe for response.

The timing of consultations is crucial and need to reflect the context surrounding the subject such as consultations on schools and the timing of school holidays. For example, a consultation on academies funding was launched in 2011 at the end of July for four weeks during the school holidays when school staff who were central to the response would have been on holiday.

We would therefore argue that concentrated periods of public holidays such as the Christmas break, key national events (such as the Olympics) or major emergencies should be taken into account when determining the question of proportionality and whether the timeframe proposed is realistic.

Some consultations will also be very technical and therefore require specialist analysis which needs to be reflected in the duration of the consultation. Without sufficient time, vital information could be missed which could also leave decisions open to legal challenge.

We would also point out that there often multiple consultations running at any one time, to which councils need to respond. We are concerned that reducing the timeframes will curtail councils’ ability to respond to policy changes that will have a significant impact on them. The two above consultations are a case in point as both relate to similar statutory changes. We would welcome for future related consultations to be coordinated in such as way that they are issued together and reference each other to make it easier, more efficient and most importantly more meaningful to respond.

What factors should the Government take into account when deciding on the length of the consultation period, such as when policy is new and contentious?

If the consultation proposes a statutory change such as the consultation on improving local government transparency which proposes to make the code of practice mandatory, a 12

week period should be given as the proposals will have fundamental implications on delivery and the public task of an organisation.

For consultation which relates to a statutory duty such as the code of practice related to datasets but which is not the actual proposal of a statutory duty, an 8 week period may be sufficient given the caveats as pointed out in question 2 to consider holidays, major national events (such as the Olympics), emergencies (flooding) or elections.

For local authorities, a minimum consultation of 6 weeks would be required to seek views from across the sector and formulate a sector wide response. Consultations often seek an agreed view from a committee, group or sector rather than individual personal responses which have to consider committee cycles, time and resources to seek and consolidate views. This cannot be achieved within a 2 week consultation period.

In addition, Government should take into account how Departments will alert local authorities and other stakeholders to consultations when they are published and - even better - in advance of publication. Giving stakeholders sufficient notification of impending/published consultations should improve the thoroughness of consultation responses.

What will the implications be for different groups in society of the Government's expectation that consultation will be "digital by default"?

The move towards a method of consultation which is 'digital by default' is considered to be broadly acceptable. However, we would emphasise the risk that certain groups may be disadvantaged by such a method of communication, for example, those without internet access or with unreliable internet access. The Government would need to take this into account on a case by case basis when deciding its preferred methods of engagement.

We would also expect the Government to take account of the possibility of IT difficulties and/or technical failures.

Will the Government's new approach lead to improvements in the consultation process and outcomes overall?

The practical problems highlighted above with regard to unrealistic timeframes and the level of discretion afforded to Government mean that there is a risk that some of the stated aims of the new guidance are compromised.

In simple terms, if consultation is insufficiently effective to flush out any practical issues upon implementation, there could be precisely those unintended consequences that the guidance note seeks to avoid.

Local Authorities and other stakeholders play a key role in informing and adding value to policy development. The recent guidance has led to concerns that this role might be marginalised and, as a result, the efficacy of consultation be called into question.

In such circumstances, the Committee will doubtless find it difficult to place the same level of reliance upon consultation being an integral part of assessing practical implications that might have done in the past.

Lynn Jamieson – Written Evidence

I am writing to ask you to reconsider the government's new approach to consultation, which suggests consultations may run for just two weeks instead of the usual 12.

This shortening makes it too difficult for organisations, academics and members of the public to gather evidence and submit a clear and considered response to proposals. As such, the new approach to consultation effectively leaves some sections of the public without a voice.

I believe every consultation period should be 12 weeks long in order to ensure all interested parties, regardless of their wealth or size, are able to provide evidence and that public consultation should remain the norm. Even where a change to legislation may be described by some as a "technical amendment", there can be far-reaching implications to UK law. Finally, I oppose the idea of restricting responses to digital only. This is premature given that particular groups of the population lack digital literacy or access.

Melian Mansfield – Written Evidence

I write to urge the government to reconsider its new approach to consultation. Guidance states that consultations may run for just two weeks instead of the usual twelve.

Two weeks is not long enough for organisations and interested parties to gather evidence and submit a clear and considered response to proposals. This means that the new approach to consultation effectively leaves many sections of the public without a voice.

I believe every consultation period should be 12 weeks long in order to ensure all interested parties are able to provide evidence.

I do not agree that some policies can be legislated on without public consultation. Any change in any area has consequences which not everyone can identify. Different individuals and organisations can make clear the impact of any new law. Even where a change to legislation may be described by some as a "technical amendment", there can be far-reaching implications .

Finally, there should be no attempt to restrict responses to digital only. I believe that this would disempower those without access to technology. I also believe on-line responses allow less flexibility in the way respondents answer the questions.

I urge the Secondary Legislation Scrutiny Committee to rescind this change in approach to consultation to ensure the voice of the public continues to be heard in Whitehall. It is essential that in a democratic country the views of the people and experts are heard in order to achieve good legislation. Politicians cannot be experts in every field and listening to those that are and the people who will be the recipients of the changes can only help make the best laws.

Mencap – Written Evidence

Mencap welcomes the opportunity to submit written evidence to the Secondary Legislation Scrutiny Committee to support its inquiry into the Government's new approach to consultations.

Mencap welcomes the Government's desire to achieve genuine engagement through consultation rather than simply following a bureaucratic process. If consultations are viewed as merely a 'tick box exercise' by public bodies, those seeking to make their views heard and influence decisions will not be able to do either of those things.

However Mencap is very concerned that proposals to reduce the period of time that the public, charities and others have to respond to consultations will lead to public policy being developed in a vacuum without real involvement of hard-to-reach groups.

The reduction in consultation timescales together with proposals to scrap Equality Impact Assessments and limit people's access to challenging the decisions of public authorities through Judicial Review, will almost certainly lead to the further marginalisation of such groups, including people with a learning disability.

These proposals must also be contextualised in a time when local authorities and other public authorities are making decisions on cutting important budgets which fund social care and support. Informed policy making that assesses the impact of these decisions on people with a learning disability and other affected groups is critical.

Mencap believes guidance must be in place in order to let the public and voluntary sector organisations know what they can expect from consultations and to give public bodies a set framework to work within.

Mencap further believes that without guidance, specifically on timings, public authorities will not fulfil their duty to properly consult with the public on issues that affect them.

Reducing the number of consultations and timescales for responding

Government guidance set out in the WMS of 17 July 2012 stated that public body consultation periods "might typically vary between two and 12 weeks". This has been taken further by the Prime Minister recently who, in addition to endorsing two week consultations, stated that:

"we are going further: if there is no need for a consultation, then don't have one." (David Cameron in his speech at the CBI, 19th November 2012)

This is a significant departure from the existing situation and effectively changes the Government's position on consultation timescales from expecting a 12 week minimum to a 12 week maximum. Mencap believes this will have a detrimental impact on effective public participation, and a particularly severe impact on participation of people with a learning disability.

The Government recognises that “the capacity of the groups being consulted to respond should be taken into consideration”, and that “longer and more detailed consultation will be needed... where smaller... organisations such as small charities could be affected” and “for a new and contentious policy... the full 12 weeks may still be appropriate”.

The Government also reaffirms its commitment to the principles of the Compact between Government and the voluntary and community sector, which includes guidelines on consultations, and we know the Government has engaged with Compact Voice regarding this change in policy.

Despite the above reassurance, Mencap remains very concerned that the new guidance and the Prime Minister’s recent statements will encourage public bodies such as local authorities to reduce consultation periods or scrap them completely.

Without very clear guidelines as to what time period is appropriate for what type of proposal, we believe it is inevitable that public bodies, particularly in light of shrinking budgets, will time their consultations closer to the two week mark and in some cases choose not to hold them at all.

Furthermore, we believe that such an approach would be incompatible with Equality Act duties on public bodies to involve disabled people in decision making processes and make reasonable adjustments.⁴⁰ In many cases we believe that a two week consultation period would barely allow members of the public to even become aware of the consultation, let alone engage with it and respond.

Significant time needs to be built into a consultation timescale to allow communication with members of the public, promotion of the consultation, and the organisation of meetings and events, where necessary. This is even more crucial when consulting with people with a learning disability and their families. Such a short minimum makes this virtually impossible in our view.

We understand that producing clear guidelines on how to conduct different types of consultation would be demanding to draw up, it must be in place so public and voluntary sector organisations know what they can expect from consultations and to give public bodies a framework to work within.

Mencap further believes that without guidance, specifically on timings, public authorities will not fulfil their duty to properly consult with the public on issues that affect them.

Equality Impact Assessments

It is important to contextualise the proposed approach to reducing public consultation in light of the Prime Minister recent speech, in which he said:

"we are calling time on Equality Impact Assessments. You no longer have to do them if these issues have been properly considered. That way policy-makers are free to use their judgement and do the right thing to meet the equalities duty rather than wasting their own time and taxpayers' money"

⁴⁰ Reasonable adjustments under the Equality Act 2012 are adaptations, changes or ways of working that allow disabled people to access something. For people with a learning disability this might be providing information in an easy read format.

((David Cameron in his speech at the CBI, 19th November 2012).

While Mencap accepts Equality Impact Assessments (EIA) vary in terms of quality, the principal behind them is important. This is that public authorities should proactively look at the potential impact on marginalised groups as they are developing public policy.

Mencap is concerned that ‘calling time’ on EIAs sends a message to public authorities that assessing the impact on equality of policy is unimportant.

Scrapping EIAs together with reducing public consultation will lead to policy being developed within a vacuum, with little involvement and ultimately to the detriment of vulnerable groups, whose voices will go unheard.

Judicial reviews

In context it is likely that such changes would lead to an increase in Judicial Reviews as members of the public seek to challenge decisions reached by public authorities who have carried out little or no consultation and haven’t examined the impact on equality.

However, the Prime Minister has announced that this important route of redress is to be limited. The proposals are to:

- Reduce the time limit when people can bring cases.
- Charge more for Judicial reviews.
- Reduce the number of appeals against a decision from four to two.

((Proposals above made by PM in his speech at the CBI, 19th November 2012).

Mencap is very concerned by these proposals as Judicial Reviews have been used in the past to challenge local authorities who have implemented poorly developed policy, due to inadequate or no consultation or impact analysis, to the detriment of disabled people.

In one particular case against Birmingham City Council in 2011, four disabled people brought a Judicial Review against the council's proposal to only provide care and support to those with critical care needs. The judge concluded that the council had failed to comply with s49A of the Disability Discrimination Act (DDA) and the common law requirements around consultation. The main reason was because in the material considered by the council (and by the public), there was no detail about the impact on individuals who were currently assessed as substantial.⁴¹

If the council had carried out a thorough and accessible consultation with disabled people and listened to their views and experiences, as well as carrying out a robust Equality Impact Assessment, a Judicial review may not have been necessary. In the event, without recourse to Judicial Review, the local authority would have been able to make the policy change unlawfully, to the substantial detriment of the claimants and the many other disabled people who would have lost out on care and support.

⁴¹ We have provided a short summary of relevant Judicial Reviews as an annex to this document.

Consulting with people with a learning disability

We believe two weeks would never be long enough to properly engage anyone affected by changes to their services or policies that impact on them, it would be especially difficult to gauge the views of people with a learning disability in such a short timeframe.

This is because they are very likely to need support to fully understand the proposals and how they would be affected by them, and to express their views. Rushing this process would deprive people with a learning disability of the right to have their say in central and local government decisions that affect their lives. Therefore, if the Government does lower the minimum threshold, Mencap would like to see specific guidance on the need for 12-week consultations as a minimum where people with learning disabilities and their families/carers are being consulted on changes that will impact on them.

Research on changes to local authority day services carried out by Mencap earlier this year showed that service users and their families did not feel they were being properly consulted on changes. 88% of respondents to our online survey, which ran between February and April 2012, did not feel that they had been adequately consulted on changes to their day services; 64% of respondents stated that they were not in any way asked what they thought about the changes, and a further 24% felt that their views were not listened to.

Mencap is concerned that allowing councils to reduce the length of the consultation period or not consult at all will make this situation worse and further exclude people with a learning disability and their families from the decision-making process. This is particularly worrying at a time when local and central government are making big changes to services and benefits that disproportionately affect people with a learning disability and their families, and therefore effective consultation is all the more important.

Making information useful and accessible

Mencap welcomes the Government's guidance that "information should be disseminated and presented in a way likely to be accessible and useful to the stakeholders with a substantial interest in the subject matter... Information provided to stakeholders should be easy to comprehend – it should be in an easily understandable format, use plain language and clarify the key issues".

This fundamental principle, enshrined in the Equality Act's reasonable adjustment duties, is not always adhered to, and so we would like to see guidance extended explicitly to cover the use of easy read when engaging people with a learning disability.

Without easy read information public bodies are not fulfilling their duty to actively engage and inform relevant stakeholders. We believe this duty should extend beyond providing easy read information, to using the skills of experts in communicating with people with severe and profound and multiple learning disabilities, to ensure all members of the community are meaningfully engaged in consultations and are pro-actively supported to make their views known.

Annex

The following is a short summary of Judicial Reviews which have found that public authorities have failed to either consult adequately or carry out a robust equality impact assessment.

(R (W, M and others) v Birmingham City Council [2011])

This was a claim by 4 disabled people against the council's proposal to only provide care and support to those with critical care needs. The judge concluded that the council had failed to comply with s49A of the Disability Discrimination Act (DDA) and the common law requirements around consultation. The main reason was because in the material considered by the council (and by the public), there was no detail about the impact on individuals who were currently assessed as substantial.

(R (JM) v Isle of Wight Council [2011])

This was a claim by 2 disabled people against the council's proposal to only provide care and support to those with critical care needs or those who had substantial needs but were at risk of becoming critical. The council lost because of a failure to have due regard to s49A of the DDA. The judge considered that the consultation document provided insufficient information to enable those consulted “to give intelligent consideration and an intelligent response” and there was no adequate equality impact assessment.

(R (Rahman) v Birmingham City Council [2011])

This was a claim by 5 users of Legal Entitlement Advice Services that were funded by Birmingham council, against the council's decision to terminate funding of the services. The judge concluded that the council failed to have due regard to the PSED (with respect to race and disability) because there was no evidence that the decision makers were aware of the duty and how it was engaged in these decisions at the time they took the decision. Included in the judgment was the specific conclusion that there were substantial defects in the equality impact assessment. The judge also included the consultation was inadequate.

(R (Green) v Gloucestershire County Council [2011])

This was a claim against the closure of libraries. The judge found that the equality impact assessment carried out by Gloucestershire CC failed to address the differential impact of their decision on women.

(R (Hajrula) v London Councils [2011])

This was a claim brought by users of the Roma Support Group against the London Councils' plans to cut £10m from the funding it provided to voluntary sector organisations in London. The Court found that the London Councils' consultation process was flawed and they had failed to comply with their equality duties. The Court quashed the decisions and ordered the London Councils to re-consider their decisions having done full equality impact assessments. The Court commented 'in a case where large numbers of vulnerable people, many of whom fall within one or more of the protected groups, are affected, the due regard necessary is very high.'

Migrant and Refugee Communities Forum – Written Evidence

About The Forum

The Forum was formed in 1993, in response to the needs of newly arrived refugee and migrant communities, as well as those that had settled in north and west London. A registered charity, the Migrant and Refugee Communities Forum is user-led and works to promote the rights of refugees and migrants in the capital. Its founders had hoped that mutual support would be an effective means of tackling the barriers commonly experienced by members of their communities in accessing services.

The Forum's work practically addresses the social exclusion of refugee, migrant and ethnic minority communities. We also advocate strategically for change to national policies, with the overall aim of achieving equality for all. The Forum brings together those with different migration experiences, origins, cultures and languages, to work together towards common goals; be it access to legal advice or petitioning policymakers, holding cultural events or running supplementary schools, fighting deportation or starting a charity, writing a blog on an issue of common concern or studying for a qualification verification exam. The underlying purpose of all these activities is meaningful integration into British society.

Four problems with the new approach to consultations

We would like to discuss four of the issues outlined in the list provided by the Lord Select Committee.

Response to "the appropriate timing and duration of consultations"

Mr Letwin's proposal states that "departments will follow a range of timescales rather than defaulting to a 12-week period" but it does not specify if the timescales will be shorter or longer than 12 weeks. This needs to be clarified. We assume he intends to shorten most consultations. Our experience in participating in decades of consultations has taught us that time is essential to gather significant and productive ideas from our constituents and member organisations. For example, two consultations in which we recently took part show the importance of at least 12-week consultations:

Example #1: In autumn 2010, we promoted the consultation on the proposal of reforms of Legal Aid on our website and in newsletters to our members and stakeholder who we know would be affected by the changes. We realised after one month that these community organisations and individuals were not submitting their responses. Because this issue is so important to our clients, we decided to organise our own consultation event in order to inform people, gather their opinions and write a joint submission. We organised the consultation event with a range of stakeholders included representatives from migrant and refugee groups and legal centres for the 8th of February. Because the deadline for the submission was the 14th of February, we had only one week to analyse the material we gathered and write the submission. It must also be noted much of the consultation period occurred over the holiday season. We needed the extended period of time in order to gauge how community groups were responding to the proposals and then to organise what are traditionally thought of as 'hard-to-reach' groups. If the timing and duration were shortened, it would exclude hard-to-reach groups like migrants and refugees from being able to share their opinion and participate in the consultations.

Details on our submission to Legal Aid can be found here - <http://migrantforum.org.uk/respond-to-the-consultation-on-legal-aid-deadline-feb-14-noon/>.

As well as our full report on how migrants and refugees would like to be involved in political participation: <http://migrantforum.org.uk/strange-or-citizens-refugee-and-migrant-participation-in-local-political-processes-in-london/>.

Example #2: On the 16th of November 2012, representatives from The Forum took part in the Ofqual ESOL Consultation on English for Speakers of Other Languages (ESOL) Qualifications that took place in London. The consultation was on three proposals of the government which consisted of a focus group with 45 minutes for each proposal. We witnessed how wrong this can go. The only documentation we received before the event was the agenda for the day. We did not receive the full details of proposals or links to background information and documents. The result of this poor preparation was that every participant at the consultation had a different interpretation of why we were there. Because the documents were not sent ahead of time, we were unable to have a wide consultation with other groups. Luckily we had just completed a 2 month research project on how to reform ESOL (<http://migrantforum.org.uk/category/revising-esol/>), which directly informed how we could respond.

We received detailed information on the day of the event related to the proposals but it is unacceptable to provide this in one presentation and expect full feedback and response in the next. Moreover, the individuals conducting the focus groups were not Ofqual officers but professional consultants, who were not able to answer technical questions about the proposals. ***This may appear as unprofessional by Ofqual but it also further restricts and limits the response of migrants and refugees on the topic that will greatly impact their lives.***

After the consultation event, we were so disappointed with the impact of the face-to-face event that we attempted to complete the written questionnaire. Even as two professional researchers with university degrees and advanced computer skills, we failed to find necessary information to complete the questionnaire. No web links were provided to necessary resources and we could not find the additional regulations which were one of the main subjects of reform. We searched the website, on search engines, through keywords and other documents on the site but were met with 'NOT FOUND'. Some links which were labeled exactly as we needed led to dead or broken websites. This was not only disappointing but irresponsible of Ofqual- they both wasted our time and have gone through the tick box of meaningless consultation.

After this explanation, we hope it is obvious how time-consuming it is to respond to a consultation without the necessary information. **If the Government wants to reduce the duration of consultations, the first thing it must do is provide accessible and complete information about the proposals being made and the existing regulations.**

In our estimation, we require **at least 12 weeks (two months) duration** for any consultation to be meaningful with the migrant and refugee population based in London. During this time, we analyse the proposed changes, raise awareness of the issue in question, gather information, encourage others to submit responses, and finally submit joint responses. This takes serious time and staff need notice to plan their work around such consultation. Ideally, longer periods of consultation could go in cycles with different levels of engagement

in each cycle (written, focus group, site visits, etc). These different types of engagement are important for including vulnerable people because written evidence is the most difficult to collect.

The timing of consultations should also be taken into account, especially cultural and religious holidays. Busy holiday seasons (December and Ramadan, for instance) make consultations impossible during this time. It would be inappropriate to schedule shorter consultations, especially during these times as large groups would be excluded.

Response to 'what factors the Government should take into account when deciding on the length of the consultation period, such as when policy is new and contentious'

The experiences with consultation above are only two examples of many which we have participated in our almost 20 years as a charity. We believe that if the Government is going to ask for citizen participation, it should take into account the following factors when determining the length of a consultation period:

If the proposed policy could impact vulnerable people, the consultation period must be at least 2 months.

Consultations are especially difficult when dealing with vulnerable people or with organisations dealing with hard-to-reach groups. The individuals we work with often do not know about the consultation, or the current government policy for that matter, and are not familiar with how consultation processes work. We face many barriers including those who are afraid of interacting with the government, scared of “contradicting the government,” or those who think it will not make any difference.

Moreover, many of these people are coping with serious issues (mental health, housing, immigration, etc.) and responding to a short-notice or brief consultation is not a priority, even if it will have a major impact on their lives. It is for this reason that organisations like The Forum need an extended period of time to contact our clients and members, to gain their trust and convince them of the importance of their response.

Additionally, charities and community organisations often do not have time to fill in online consultations because we are under-resourced. We struggle every day to help people in need and solve very serious issues. When dealing with domestic violence, asylum applications, homelessness, destitution, mental illness, it is difficult to find time to stop helping others and respond to consultations. If consultations are short notice or brief in duration, frontline workers will not be able to set aside time to participate in this important process. We want our voices and opinions to be heard by the government but our clients will always be our priority. It will only be possible to participate in consultations if we are given longer time periods to respond and if consultation is designed and conducted in a meaningful way.

Scale of impact and severity of issue

Government proposals can have a large impact on the lives of migrants in the UK. Often it feels like every right we have in the UK could change and put our lives and careers in jeopardy. Examples of this are the changes to family migration, changes to post-study work visa, or changes to legal aid-- in just the last year. These changes will effect hundreds of

thousands of people and drastically change our lives. In these cases, it may be convenient to shorten consultations or rush through policies but we have the right to be consulted and explain why such policies would be disastrous for our communities and our lives.

We believe that if proposals have the potential for large scale impact it is absolutely necessary for a longer consultation period. One example is the changes to student visa consultation which had huge number of responses (over 30,000) and would not have been so wide sweeping without a longer consultation period. That being said, the UKBA's reaction to these largely critical responses was to ignore the public's opinion and go ahead with changes.

Additionally, the severity of changes makes many of the consultations we deal with very important. The proposals will have an enormously negative impact on the lives of many migrants. We believe that in cases like these ones that affect so strongly our lives a long consultation period is absolutely necessary to hear our voices and to carefully consider the effects of the proposal from different perspectives. In particular to spend time to analyze and consider an unintended consequences of proposed changes which are often missed from single perspective.

Technical and complex proposals

Often government proposals are technical, complex, and use a legal framework that is difficult for the general public to understand. As part of our work, we write reports, briefings, and blogs to explain how policies will effect migrants and refugees. This is important so migrants will know how future policies will impact them. This takes time though. **We cannot conduct thorough research, publish reports and hold information meetings within two weeks.** This may be possible at a large charity, but we work with community groups that sometimes only meet once a month. This process becomes even more complicated and long if individuals do not have a high level of English, or formal education, and sometimes our clients are illiterate. This vulnerable group takes time to explain how complex changes will eventually touch their lives.

Even for highly educated people, it is sometimes hard to understand the bureaucratic jargon of the government. While completing the ESOL consultation's questionnaire, we had to skip whole sections because their wording was incomprehensible. Moreover, the government should also take into consideration that in some cases, like with proposals related to migration or asylum issues, people whose responses would be useful cannot directly take part to the consultation because of their lack of English proficiency. **The Government should recognize that on these occasions more time should be given to the consultation to allow support organization to explain the proposal to people, gather their opinions and write a submission.** As our example of the Legal Aid consultation showed, this process takes a long time to be meaningful.

Response to 'The implications for different groups in society of the Government's expectation that consultation will be "digital by default".'

'Digital by Default' accentuates the digital divide excluding many migrants, refugees, and asylum seekers from consultations

Over the last two years, The Forum has coordinated a digital activism training in order to address the digital divide amongst migrants and refugees in London. We trained 100

community leaders each through our intensive 7 weeks course. This was necessary to give them the skills and confidence to participate online. By the end of the course, our evaluation showed that most individuals felt confident enough to find information online and to sign e-petitions but few have ever participated in an online consultation. **The reason is simple - the migrants and refugees we worked with did not trust they are being heard when they participate online.** They prefer to participate in workshops or face-to-face sessions because they can see the value in participation. **Digital by Default consultations have the impression in the migrant and refugee communities to be faux consultations that just tick the box.**

Additional barriers exist such as lack of computer, lack of regular Internet access, fear of privacy and security issues. Many individuals we work with only have Internet access once a week for 15 minutes at the public library or at our centre. This severely limits their ability to participate in consultations that are only digital. Additionally, if it is a short duration (two weeks), individuals may not access their emails during this time and find out about the consultation.

Make participation as easy as possible. Provide background information, details on proposals and all appendices in one space, not hidden on outdated websites.

As we described in detail in 3.1.2 - consultations are only meaningful if the proper background information and details on the proposal are available for the public to comment on. Our experience has been that this is not always the case and it is a significant barrier to participation by migrants and refugees.

Additionally, posting this information on websites rather than to email lists, and constituent groups risks excluding migrant and refugee groups because it is rare that hard-to-reach groups such as these engage via website and online forms.

Another example of the limitation of 'Digital by Default' was our experience (described above in 3.1.3) in consultation about the reform of Legal Aid. We promoted the consultation online on our website and social networks, but, nonetheless, after one month we realized that very few groups had submitted responses. The reasons of this failure lied partly in the lack of time that characterizes many community organisations, but also in the use of the Internet as method to promote participation to the consultation. **We know that the Internet is very useful and that it saves time and paper, but we ask the Government to take special consideration for certain consultations that will impact vulnerable people to ensure alternative engagement other than digital.**

Response to 'Whether the Government's new approach overall will lead to improvements in the consultation process and outcomes'

From our experience at The Forum, we are concerned that the Government's new approach on consultations will decrease the effectiveness of policies because they will miss out on important information. A rushed and sloppy consultation will be detrimental to the lives of migrants and refugees. It will further and make changes to policy less considered and less informed. It will not allow time for considering the unintended consequences of policies and it will exclude participation of individuals and groups who are harder to reach.

Conclusion

In summary, we have outlined a few examples of our experience with consultations in the last year and recommended how they can be improved. We do not believe that the new approach to consultations will improve policy outcomes, especially as they relate to migrants and refugees.

As stated above, we recommend that all consultations should be at least 12 weeks long and be scheduled outside of religious and cultural holidays. Consultations that impact vulnerable people must be extended in order to ensure the meaningful inclusion of individuals who are harder to reach. The scale of impact, severity of the issue, and technically complex proposals all require extended consultations periods. We concluded from our evaluation of the two year digital project that consultations with migrant and refugee groups should offer multiple ways of engagement in order to not exclude vulnerable populations.

Finally, while we understand a shortened consultation process will reduce costs, we do not believe this will improve the outcomes for the public at large and migrants specifically. It will rather create an environment for bad policy formation and make decision makers even more inaccessible.

Multiple Sclerosis Society – Written Evidence

About The MS Society

Multiple sclerosis (MS) is the most common disabling neurological condition affecting young adults; more than 100,000 people in the UK have MS. The MS Society is the UK's largest charity dedicated to supporting everyone whose life is affected by MS and exists to help people living with MS across the UK by funding research, providing high quality information and support and raising standards of care.

Introduction

Responding to government consultation is an intrinsic part of the MS Society's role. As the largest charity supporting people with MS, responding to consultation is just one way we engage with government departments on draft policy. Consultation provides us with an opportunity to seek out the MS community's opinions and views on matters affecting them and to ensure these are fed back to, and represented at, local and national government level.

We undertake widespread consultation with our members, using a variety of methods: contacting local branches; working with local staff; via our campaigns community; through social networking sites; using surveys; and involving focus groups. We believe these approaches lead to better quality, evidence based responses that are representative of the views and opinions of people affected by MS.

This briefing paper summarises the MS Society's main concerns and recommendations in relation to the Government's new approach to consultation. It responds to the key areas highlighted in the consultation principles, namely: subjects of consultation; timing of consultation; making information useful and accessible; transparency and feedback; and practical considerations.

Subjects of consultation

The MS Society believes that whilst the Government might believe that there are times when consultation is not appropriate, **there needs to be clearer rules on when consultation should (or should not) take place and the type of information that must be consulted on.**

If a department decides not to consult, because they believe considerable engagement to have already been undertaken on the issue, **we argue that Government must demonstrate why and how their decision not to consult is justified. We strongly recommend that, where this is the case, an impact assessment should always be undertaken.** This will enable the Government to decide whether or not (and how) the issue they are consulting on will impact on its target audiences and provides a valid reason for the lack of engagement and/or consultation.

Additionally, **we recommend that if commitments are made to consult on issues at a later date, interested parties must also be able to call departments to task if this doesn't happen.** Commitments were made in the recent consultation on the detailed design of Personal Independence Payment to consult on the guidance for the different lengths of award for the benefit. Thus far, no engagement with stakeholders or charities

representing disabled people has taken place on this issue but it will have a direct impact on how Personal Independence Payment works for people with MS.

Timing of consultation

If departments want evidence based, high quality consultation responses, they must allow time for organisations to collect the necessary information and they must recognise how long this can take.

A key example that illustrates this is the consultation on the second draft of the Personal Independence Payment criteria. Twelve weeks enabled us to contact a sufficient number of people with MS to test out how the criteria would impact on them. This allowed us to develop strong, evidence based recommendations on how the criteria could be improved for people with fluctuating conditions like MS. Without this time we would not have been able to provide such robust and constructive feedback. 46,000 people with MS are likely to be reassessed for PIP – it is therefore vital that we ensure the system is as fair as it can be and that the proposals reflect their very real concerns and experiences.

In addition, we would argue that consultation periods of less time (for example, consultation periods of the proposed two weeks listed in the Consultation Principles document) will place immeasurable pressure on small and medium sized organisations and community groups that wish to respond but cannot (due to a lack of capacity). It will also make effective consultation responses virtually impossible for children, young people and adults that may require additional support, either because of the additional needs they have or because the policy issue is so complex that they require help to understand it. With a considerably shorter response time, there will be little time for them to arrange and put into place additional measures that means they can effectively respond.

For these reasons, **we therefore believe that a 12 week consultation period is a minimum requirement for effective consultation.**

Making information useful and accessible

We fully support a consultation process that is as inclusive and accessible to as many groups and individuals as possible and believe that both formal and informal approaches to consultation should take place in tandem.

We recognise the opportunity modern technology and communications provide us in terms of gathering information and consulting more quickly and in a more targeted way than ever before. However, whilst the Government's expectation is that consultation should be 'digital by default', it is imperative that other approaches are taken in order to ensure that as many individuals, communities and organisations can be involved in the process as possible. It is wrong to assume that everybody is online, that they are able to respond electronically, and in writing, and **we recommend that traditional written consultation responses should be complemented by other methods**, including focus groups, public meetings, surveys etc.

We strongly agree that a range of information needs to be made available and in different formats. This is especially helpful in enabling children and young people, those with learning disabilities and older people to be able to participate in the consultation process. However, in order for this to be meaningful, it is imperative that all formats are made available at the same time. Releasing a consultation response online and in writing,

only to follow up with a range of different formats at a later stage (thereby reducing the consultation timeframe) is not suitable.

Transparency and feedback

The MS Society fully supports the principles of transparency and feedback and their application during the consultation process. However, our experience has been one that, at times, has meant the consultation process has not felt fully transparent.

At times, we feel that there has been an element of ‘sneaking’ consultations out. For example, the recent vision for nursing consultation document was published on September 21 but only picked up by colleagues in mid October. There was little announcement or communication around this piece of work- and the timing of its publication meant that colleagues at party conference were not aware of it (see below for more information on practical considerations).

We believe strongly that the amount of time a consultation takes must be built into timescales before reforms are implemented to ensure that the concerns of relevant stakeholders are listened to and the evidence gathered is able to be used. Otherwise the consultation process feels tokenistic and meaningless.

Our work around Value Based Pricing highlights a lack of transparency in the process. It is now almost two years since the initial consultation and the Department of Health has not published any further information on how a new system for valuing medicines will work in practice, nor have they involved patient groups in the designing of any new system. Yet, VBP will be up and running in January 2014. There has been one stakeholder event at the Department of Health that we are aware of; this was a selective affair and not interactive or consultative in its form. It would appear that even when Ministers are questioned on the lack of engagement with patient groups on this very issue, they answer incorrectly. The Specialised Healthcare Alliance wrote to Earl Howe to outline the lack of stakeholder engagement. On 1 Nov 2012 he responded and stated that “whilst places were limited, and we could not invite all who showed an interest in the technical workshops, participants included representatives from patent organisations...” Only in the past two months have selected patient groups been invited to attend workshops or ‘engagement events’. At the first workshop, there was one representative from patient groups; the chair of patients involved in NICE, who is also Head of Policy and Campaigns for the MS Society. This had increased to two at the second workshop, but is still unacceptable.

Finally, with regards to ensuring the consultation process is, and remains, transparent, we seek clarity on what process various arm’s length bodies (ALBs) (such as NICE and the NHS Commissioning Board) will go through. At a time of significant structural change in the health and social care landscape, these bodies have been given significant powers and are responsible for delivering on new processes and systems. Will they follow the same consultation principles as have been outlined by Government? **We recommend that ALBs should also follow clear and communicated rules on when consultation should (or should not) take place and the type of information that must be consulted on, as well as the processes they will follow.**

Practical considerations

We support the acknowledgement that consultations should not be launched during local or national election periods. **We also strongly recommend that the same principle**

should apply to periods including (but not limited to) the Christmas and summer holidays when large portions of the workforce are unavailable and which significantly reduces the time that people have to respond effectively.

For example, we are aware that a forthcoming NHS Commissioning Board's consultation on specialised commissioning will be published on December 10th and be open for just four weeks. This short timescale will impact on staff taking holiday during this time, making it imminently more difficult for them to provide a quality response.

Additionally, **we also believe that consultations should not be published in party conference season**, when significant numbers of public affairs and policy teams are unable to work on these documents for up to three weeks (as a minimum) at a time. This year, during conference season alone, our policy team was working on four consultation responses: the consultation on Blue Badges (2 October 2012 deadline), the future of the Independent Living Fund (this deadline was extended until 12 October 2012), the consultation on joint strategic needs assessments and joint health and wellbeing strategy guidance (28 September 2012 deadline) and also the consultation on the NHS Commissioning Board mandate (26 September 2012 deadline).

This point is also related to another concern we have: that of the 'bulk release' of consultations. In addition to the example above, earlier this year, the MS Society policy team responded to a number of consultations launched by the same department (Department of Health) around the same time on: the joint strategic needs assessments and joint health and wellbeing strategy guidance; the NHS Commissioning Board mandate; and shared decision making (31 August 2012). This approach makes it hard for stakeholders to effectively engage with, and respond to, any one consultation. This is especially the case for those organisations affected by these policies and who are comprised of one or two individuals whose responsibility it is to coordinate a national response. Additionally, ensuring that all consultations are dealt with and all the evidence that is generated is used effectively must surely place significant pressure on the department publishing the consultations. **We argue that it would be more helpful, for everybody involved, if teams within the same department could communicate more effectively and stagger the release of consultation documents.**

National Farmers' Union – Written Evidence

Introduction

The National Farmers Union represents 55,000 farmer and grower members. In addition we have 40,000 countryside members with an interest in farming and the country. We welcome the opportunity to respond to the call for evidence on the Government's new approach to consultations.

The NFU responds to a large number of consultations on behalf of our members, from a wide range of Government departments and agencies. These include, but are not limited to, Defra, DECC, Food Standards Agency, BIS, Environment Agency and HSE. Therefore the new approach to consultations is of interest to us and could affect the way we gather views from our members and respond to consultations.

We believe that formal consultations are a key part of the policy making process but are only part of the decision making process. They should be open for anyone to respond to, but in particular designed to seek views from those who could be affected by, or those who have a particular interest in a new policy or policy development. It is important that consultations are meaningful and inform the decision making process. They should not be issued to simply enact a decision that has already been made, at the convenience of Government officials.

Instead the entire policy making process should be open and transparent, and proportionate with the 'consultation' segment taking a 'no surprises' approach for those stakeholders already involved. To achieve this, on-going dialogue throughout the policy making process, right from the stage where policy is still under consideration is essential.

It is vital that Government departments continually engage with stakeholders. Not only will Government gain an understanding of the issues that will need to be raised in the formal consultation, but it will also help with a number of critical stages before a consultation is issued. These include identifying and understanding the impact of any potential changes on stakeholders, identifying who should be consulted, what information is required and scoping out the options available.

The NFU welcomes early and open engagement with key stakeholders on relevant policy issues and policy development. In some cases we already work closely with Government officials through both formal and informal working groups and this makes it easier for us to engage with our members and elicit their views when there is a major piece of Government policy development that will impact on their businesses.

However we fully recognise that there are cases where not every stakeholder will be alert to consultations and there are examples where we have been unaware of consultations being issued. It can therefore be argued that a formal consultation can also be viewed as a 'safety net', providing the chance for engagement and to capture views from all affected stakeholders.

It is important well before the consultation stage that Government goes to considerable effort to identify those stakeholders and businesses that will be affected by the policy options being considered. In this way, these interests can be engaged earlier in any process with benefit to a shorter consultation period.

Government approach to consultations

The NFU believes that:

- In principle Government departments should take a more proportionate and targeted approach to consultations. This means the timing and form of consultations should be more flexible, as long as proper consideration is given on a case-by-case basis to what is suitable for each consultation.
- In deciding on the timeframe provided for any particular consultation a number of factors should be considered. These include how well publicised proposals being consulted on have been, the existing level of understanding of the issue amongst those likely to be affected, the extent of prior engagement with stakeholders and the complexity of the issue. Consideration should also be given to the purpose of the consultation and information being requested – for example whether the consultation is seeking views on something that may become obsolete, whether it is a minor amendment, or a more technical issue.
- Greater accountability should be included as part of the process. Consultations should be signed off by the relevant Minister. As part of this process a short explanation should be included outlining the considerations taken into account in deciding upon the timescale used. This will provide extra accountability and form part of the open and transparent process with stakeholders.

Duration of Consultation

The Government's new approach to consultation states that 'timeframes for consultation should be proportionate and realistic to allow stakeholders sufficient time to provide a considered response. The amount of time required will depend on the nature and impact of the proposal and might typically vary between two and 12 weeks'.

In principle the NFU agrees with and supports the greater flexibility that the new approach offers Government departments and agencies, providing consideration is given to a number of factors and there is sufficient accountability through the relevant Minister.

The factors affecting the timeframe for consultations may include:

- **Extent of Prior engagement.** Government departments often engage through formal or informal stakeholder groups and the level and extent of this engagement should be taken into account when deciding upon the timeframe for a formal consultation. Effective and extensive engagement prior to formal consultation would normally reduce the time needed to consult stakeholders
- **Assessments of the familiarity key stakeholders have with the issue.** Some policy developments and option choices are well-trialled and publicised ahead of a consultation. This should be considered in the consultation process

- **Information being requested.** Some consultations seek evidence around the impact potential changes will make. For example a recent consultation the NFU responded to from the Environment Agency on SRC No8 consultation proposed changes to permit conditions. Further time may be needed in these instances where representative organisations will need to seek specific examples from their members
- **Purpose of the consultation.** Consideration should be given as to whether the consultation is seeking to make a policy obsolete, consulting on minor amendments or obtaining views on implementation of new policy where more time may be required. Government may also need to consider that stakeholders will have divergent views, when issuing consultations
- **Business Sensitivities** In the past we have seen consultations that are directly relevant to rural businesses published over peak business periods (e.g. conducted over the summer during harvest periods). We believe routinely that consultations issued at peak periods for businesses should be afforded longer timescales, or avoided at these times altogether if possible. On-going engagement with stakeholders will help to identify these periods.

In many cases we can see the benefit of shortening the consultation timescale. This is especially the case where deregulatory measures are being consulted on and quicker changes in the regulatory process are needed. These outcomes can often benefit businesses by removing regulatory barriers or enabling changes to regulation which can ultimately encourage growth.

Longer timescales may sometimes be required by stakeholders including representative organisations as they allow them to consult properly with members and gather views. However, often such groups and their members have well established positions on an issue, and so can canvass members' opinions and incorporate them into a consultation response fairly efficiently. The important point when departments and agencies issue consultations is that they make an accurate assessment of the familiarity of key stakeholders have with a particular issue, and the extent to which prior engagement, whether formal or informal, has been undertaken.

For example the recent Agricultural Wages Board consultation was given a four week deadline. However stakeholders had been aware of the AWB abolition plans since they were first announced in July 2010. This period has allowed more than sufficient time for formulating a robust position and communication on this development. Since then stakeholders – employers, workers, and other affected parties – have had the opportunity to thoroughly and publicly debate the proposal since the initial announcement, whilst the AWB Secretariat has provided an effective channel for concerned parties to express their views to Defra.

We believe that where Government departments are adopting a flexible approach extra accountability should be built into the consultation process. We propose that a Minister, or senior official, responsible for issuing the consultation should sign-off the consultation with a short summary or explanation outlining the reasons behind the provided timeframe. While we wouldn't want to make this a bureaucratic process for Government officials to follow, we believe this further explanation or justification would provide clarity and help make the process more open and transparent. It would also encourage stakeholders to recognise that

the onus is on them to respond in the time and manner laid down by Government, and prevent challenges on the timeframe provided from being raised.

Consulting on policy development

The NFU believe consultations are necessary in the majority of cases where policy changes or developments are being considered. We would agree with the 'Consultation Principles' document where it states 'Increasing the level of transparency improves the quality of policy making by bringing expertise and alternative perspectives, and identifying unintended effects and practical problems'.

Government should also be aware of the pressures they place on businesses, stakeholders and representatives, best summarised as 'consultation overload' or 'consultation fatigue'. While we understand that Government are also conscious of this, a number of different approaches could be considered to help alleviate this issue. Under some circumstances, short online or 'digital' responses may be appropriate. In all cases Ministers should have oversight of the range of formal consultations being undertaken to ensure stakeholders effectively manage these opportunities.

One example of this relates to the Department of Energy and Climate Change (DECC) where over the past year they have issued a number of consultations on the same theme, subject to different timescales, and accompanied by additional Calls for Evidence.

Recent consultations on the Renewable Heat Incentive are a case in point (this was supposed to have been borne as one fully-formed scheme, instead of which it has been broken down into about five subsidiary measures). For example, this quote is taken from the consultation dated 20th September:

The Government is launching three consultations relating to the RHI: "Renewable Heat Incentive: proposals for a domestic scheme", detailing proposals of introducing RHI support for households; this consultation [closing date 7th December], detailing our plans for introducing support for new technologies and energy efficiency; and the accompanying consultation, "Air to Water Heat Pumps and Energy from Waste". Both the other consultations are available on the DECC website and have closing dates of 11 December and 18 October respectively.

The NFU would again suggest that greater, more advanced engagement with stakeholders would help provide views and an understanding of the issue and allow for shorter, more rapid online consultations, on minor aspects of policy change, leaving more time for stakeholders to put together formal, detailed responses on consultations which are more technical.

Where minor amendments on existing regulation are being consulted on we would agree with a web-based approach where quick views or suggested changes can be submitted. For example the 2012 review of the Defra Contingency plan for England took the approach of asking stakeholders to submit via tracked changes. This consultation seeks views on minor changes on an annual basis and we felt this approach was workable for this particular established guidance document, but wouldn't want to see this approach adopted for more complex consultations as it would be difficult to interpret and discuss policy connotations.

We would also urge Government departments to be aware of which consultations are being put out across different departments and look to co-ordinate timings as part of a joined up approach. It is possible that within stakeholder organisations the same person will be dealing

with every consultation under quite a broad subject area. This is something that could become an issue where several consultations are published by different Government departments and agencies at the same time with tight deadlines. There needs to be greater awareness by Government officials regarding this situation and further engagement with stakeholders across Government can help to avoid this becoming an issue.

More information could also be provided to businesses regarding consultation issue dates and timescales. If businesses know when to expect consultations it will help them to be better prepared and enable them to plan ahead. Government should be able to take advantage of the move to a single website and point of contact through Gov.UK and provide a 'diary of consultations'. This can provide sufficient notice to businesses as to when to expect a consultation and the timeframe that will be provided in which to respond.

Making consultations accessible

The NFU strongly believe that Government officials need to think carefully about the policy being consulted on and who needs to be consulted.

In many cases we feel there needs to be a better preparatory work to understand who the policy issue may impact upon. There can be a lack of understanding as to the extent to which some issues could impact on micro and rural businesses, with the rural proofing element of consultations sometimes ignored or not considered fully. This can be frustrating given the unique situations which can apply to rural businesses.

For example HMRC have issued a number of consultations over the past two years on PAYE Real Time Information (RTI) which will impose frequent online filing requirements on businesses. In response we identified several key areas of concern with the proposals for rural businesses. However when a Customer User Group was established to further explore issues raised during the consultations we found it a challenge to secure a place on these groups. As a result it has been necessary to continuously raise our concerns directly with HMRC, although we have more recently been included in some Customer User Group discussions. This is far from ideal given the significant impact that RTI is likely to have on our members businesses. In examples like this we would urge Government departments to consider ways in which all stakeholders wanting to respond can be reached and kept informed of progress instead of relying on a 'first come first serve' approach.

Consultations should also be presented in way likely to make the consultation accessible and useful to the stakeholders with an interest in the subject matter. We can agree in principle with a digital-by-default approach in the majority of cases. As a business representative organisation we respond on behalf of our members and will usually access consultations through email or websites directly. We are also able to gather further views from our members through meetings and our communication channels.

However consideration still needs to be given to the affected stakeholders. Where the content of the consultation is particularly pertinent to rural businesses and communities then a 'hard copy' should be an acceptable form of response as broadband access and IT capability may prevent a significant proportion of rural businesses and communities from engaging in the process.

NSPCC – Written Evidence

Call for Evidence on the Government's new approach to consultations

The NSPCC would like to make a number of points in response to House of Lord's call for evidence on the Government's new approach to consultations. You have identified a number of questions that we answer below.

In what circumstances may the Government reasonably decide not to consult on policy development?

We note that the new guidance on Consultation Principles states that there are "circumstances where consultation is not appropriate, for example for minor or technical amendments to regulation or existing policy frameworks, where the measure is necessary to deal with a court judgement or where adequate consultation has taken place at an earlier stage".

The NSPCC take the view that minor or technical amendments can have significant impacts. The Government is not best placed to fully understand these consequences. There are instances where a minor amendment in secondary legislation will essentially remove the implementation of a policy previously consulted upon. For example a new requirement contained in the Apprenticeships, Skills, Children and Learners Act 2009 to record and report significant incidents of the use of force in schools was due to be introduced in September 2010. Without consulting or even making an announcement the Government amended secondary legislation to remove the implementation date of this measure, thus in effect scrapping the duty. This example also shows that transparency is arguably decreasing rather than increasing as suggested by the Government's Consultation Principles.

What is the appropriate timing and duration of consultation exercises? What factors should the Government take into account when deciding on the length of the consultation period, such as when policy is new and contentious?

We take the view that where substantial changes are being proposed in a policy area a longer period of consultation is required and we take the view that this period should be the usual 12 weeks.

For example a key consultation relevant for child protection this year was the revision of the Working Together Guidance to Protect Children. We were pleased that a standard three month consultation period was put in place for this. The NSPCC has a large social workforce and we worked internally to ensure that their views were reflected in our response to the Government. Running an internal participatory process in a large organisation takes some time (please note that these comments relate exclusively to the consultation process and not to the outcome of the consultation.)

However we can also point to an example where the process of consultation has been too short and not in line with the Government's own code of practice.

For example in 2011 the Government consulted on the Inspection of Residential Provision in Boarding and Residential Special Schools. The consultation ran from 30 March 2011 until 25 May 2011.

As part of this response the NSPCC made the following points:

“The NSPCC produced a detailed response to the consultation on proposed revisions to the National Minimum Standards (NMS) and Independent School Regulations in July 2010. Although the consultation states that these views have been taken into account in formulating the proposals in this document we are not sure of the extent to which this will have been possible, since the previous consultation was about the proposal to merge the NMS into a single document. We would have welcomed the opportunity to contribute to the most recent ‘four week follow-up consultation’ on the new NMS, which was only shared with schools directly affected by the proposals for a four-week period in February. It would have been helpful for the consultation have lasted for 12 weeks and open to a wider group of stakeholders, in line with the Government Code of Practice on Consultation. Given the short timescales involved in developing the new approach, we consider that piloting the new arrangements, as the document suggests, is sensible.....”

It is also important that detailed and technical documents are consulted upon for the usual 12 week period. The example we would like to point to is the *Government’s Consultation on Business Rate Retention: technical details*. This consultation ran from 17 July 2012 for a ten week period. The shortened time period was justified on the basis that extensive discussions and consultation had already taken place and it was necessary to provide local authorities with certainty on their 2013/14 funding as soon as possible. On the face of it, this does not appear to be relevant to child protection, however this was the first time to our knowledge that future funding for the Early Intervention Grant was made public. The figures were tucked away on page 141 of the consultation document and show a significant decrease in the level of the Early Intervention Grant compared with previous years. It appears that the Government is using a shortened time period to reduce rather than increase transparency.

What the implications for different groups in society will be of the Government’s expectation that consultation will be “digital by default”?

The NSPCC is broadly content with the Government’s expectation that consultations will be digital by default.

Will the Government’s new approach overall will lead to improvements in the consultation process and outcomes?

It is not clear the Government’s new approach will lead to improvements in the consultation process and outcomes. We are not aware of any positive examples.

Open Source Consortium – Written Evidence

The changes signal a preference for technocratic efficiency and a lack of concern for the importance of proper participation.

A formal code of practice has only existed since 2000. It includes a series of underlying principles that would be worth revisiting before changes are contemplated. Other good reminders are available⁴². Similar principles are expressed internationally⁴³.

Short time scales already exist for technical consultation, e.g., modifying regulations or licences for the energy generation or supply industry. Here the number of potential participants is both finite and informed.

Accordingly it is difficult to avoid the conclusion that the desire to signal reduced times in more open ended consultations is against the spirit if not the letter of openness, good governance and improved polity.

Given the over time taken in the overall process it is difficult to believe that a twelve week period for formal evidence collection is seen as a significant problem in policy formulation:

- it might be helpful to revisit the history of this twelve week period along with the other measures designed to ensure adequate public participation including avoiding running a consultation at a time when potential respondents might not be available, e.g., the summer holiday period.
- Attempts to consult rooted in expediency can lead to greater delay as affected parties reach for other measures in order to be heard, including seeking Judicial Review⁴⁴

Similarly the proposal for digital by default similarly fails to acknowledge the principle of ensuring adequate engagement

- the recently published “Government Digital Strategy” provides the statistic that a large section of the population remains unable to access or indifferent to using the internet
- despite all the effort to increase take-up, use of online public services has dropped to 2008 levels rather than increasing as might be expected⁴⁵
- digital by default skews the participation demographics. Essentially this is about ensuring equality, inclusion and diversity⁴⁶ as discussed⁴⁷ (section 2.19 et seq)

⁴² <http://www.nidirect.gov.uk/what-are-consultations-and-tips-on-taking-part>

⁴³ <http://www.finance.gov.au/obpr/consultation/gov-consultation.html>

⁴⁴ e.g., Home Information Packs

http://news.bbc.co.uk/1/hi/uk_politics/6680131.stm

HoC Library Research Paper 10/69 www.parliament.uk/briefing-papers/RP10-69.pdf

⁴⁵ <http://www.cio.co.uk/news/3365196/uks-use-of-online-government-services-declines-2008-levels/>

An example – open standards for IT – illustrating the consequences of poorly thought through policy development including poor consultation⁴⁸

An otherwise undefined need for open standards in IT appeared in the 2002 government action plan for open source software⁴⁹. The next version of this action plan was published in 2004⁵⁰ which was itself updated in 2009⁵¹ and replaced by proposals formulated by the coalition administration in 2010⁵². The need remained identified but not the definition.

The policy development journey from 2002 to the definition published on 1 November 2012⁵³ might best be described as one step forward, two steps back and several steps sideways.

It was not until January 2011, nine years after a need was identified, that the first government definition of an open standard arrived⁵⁴ without warning or consultation. This definition lasted three months until March 2011 when Cabinet Office published a standards “survey” which reduced the status of the definition to a draft.

Cabinet Office erroneously described⁵⁵ the survey as a consultation even though the survey did not meet government guidelines. This survey showed no links with other relevant policy (discussed in depth⁵⁶)

Despite all that, the survey attracted 970 responses of whom 87% expressed a common preference for a particular approach⁵⁷.

Regardless, in November 2011⁵⁸ Cabinet Office announced a further “consultation”:

[the] Cabinet Office director of ICT futures, told Computer Weekly the consultation was intended to reach a broader constituency than he had reached through trade association Intellect informally since [...] September.

"There's a large amount of people who aren't members of that trade organisation who may feel they didn't know what was happening."

This consultation only emerged in April 2012⁵⁹ but was almost immediately mired in controversy due to poor process⁶⁰ requiring an extension to the closing date.

⁴⁶ e.g. <http://www.london2012.com/documents/oda-consultations/code-of-consultation-final.pdf>

⁴⁷ <http://www.dhsspsni.gov.uk/consultationguidance.pdf>

⁴⁸ This is an evidence based counter factual not a discussion of the evidence or parties involved

⁴⁹ Open Source Software - Use within UK Government, July 2002 available from

<http://ctpr.org/wp-content/uploads/2011/03/Open-Source-Software-Policy-2002.pdf>

⁵⁰ <http://www.epractice.eu/en/library/281032>

⁵¹ http://webarchive.nationalarchives.gov.uk/+http://www.cabinetoffice.gov.uk/government_it/open_source.aspx

⁵² <http://www.cabinetoffice.gov.uk/resource-library/open-source-open-standards-and-re-use-government-action-plan>

⁵³ <http://www.cabinetoffice.gov.uk/content/government-ict-strategy-strategic-implementation-plan>

⁵⁴ http://www.cabinetoffice.gov.uk/sites/default/files/resources/PPN_3_11_Open_Standards.pdf

⁵⁵ http://www.whatdotheyknow.com/request/process_leading_to_publication_o

⁵⁶ “Cabinet Office does not appear to have standards expertise” from www.royaltyfreeopenstandard.info

⁵⁷

http://www.cabinetoffice.gov.uk/sites/default/files/resources/20111124_OpenStandardsSurveyOutcome_FINAL.pdf

⁵⁸ <http://www.computerweekly.com/news/2240111553/Government-opens-consultation-on-definition-of-IT-open-standards>

It then took five months for the government response to emerge.

Regardless of the issues raised or the parties identified, a properly constructed policy development process and careful adherence to rigorous guidelines, including 12 weeks for responses would likely to have been more efficient than the informal and seemingly casual approach actually adopted.

⁵⁹ <http://consultation.cabinetoffice.gov.uk/openstandards/>

⁶⁰ <http://www.computerweekly.com/news/2240149216/Cabinet-Office-resets-conflict-of-interest-consultation>

Pact – Written Evidence

Executive Summary

We welcome the Government's proposals to adopt a more proportionate and targeted approach to consultations.

In order to gather sufficient evidence and ensure transparency in the policy-making process it is important that the Government continues to seek input from interested parties about its proposals.

We understand that different policy issues have different consultation requirements depending on the potential impact of the policy and the risks involved with implementation.

We support the Government's proposals that Departments should be able to adopt different timescales for consultation, depending on the likely economic, social and environmental impact of the issue in question.

It is important, however, that the Government keeps relevant stakeholders appropriately informed about forthcoming consultations to allow sufficient time for relevant parties to respond should they wish to do so.

Introduction

Pact is the trade association which represents the commercial interests of the independent production sector. The sector produces and distributes approximately half of all new UK television programmes⁶¹ as well as content in digital media and feature film.

The UK independent television sector is one of the biggest in the world. Sector revenues have grown from £1.3 billion in 2005 to nearly £2.4 billion in 2011.⁶²

Pact regularly responds to Government consultations on issues of relevance to our members. In addition, we have participated in the Government's industry working groups such as the Creative Industries Council and the Treasury working groups on high-end television and animation.

In what circumstances the Government may reasonably decide not to consult on policy development

Public consultation is an important part of the Government's policy-making process.

As a trade organisation which represents over 450 independent production companies, Pact regularly responds to Government consultations on behalf of our members.

⁶¹ Ofcom, Communications Market Report 2010: independents produced more than 50% of qualifying network programming by hours and 46% by value

⁶² Pact Census Independent Production Sector Financial Census and Survey 2012, by Oliver & Ohlbaum Associates Limited, August 2012

Pact – Written Evidence

Whilst it is important that the Government takes into account the views of those who will be affected by its policies, we agree with the Government's aim to make the type and scale of engagement proportional to the potential impacts of the proposal.

We therefore agree that a 12-week public consultation is not always necessary.

In the interests of transparency we urge the Government to continue to adopt an approach which involves Ministers and Officials engaging with key groups early in the decision-making process, but we agree that this need not always take the shape of a formal written consultation.

We have participated in some of the Government's consultation processes such as the HMT working groups for the animation and high-end tax reliefs and by contributing to the DCMS seminars on the communications review. These forums have, in our opinion, provided a useful opportunity to input into areas of policy development which are relevant to our members.

We consider that the length of time for which the consultation should run should be directly proportionate to the likely impact of the policy under consideration.

If the proposed policy change is likely to have a significant economic, social or cultural impact on British citizens or businesses then we would expect that the Government would consider that a formal consultation process running for a period of several weeks or months would still be necessary. However, if the policy under consideration was more technical or procedural, then the Government might choose to adopt another method of seeking input from relevant stakeholders.

The appropriate timing and duration of consultation exercises

We welcome the Government's proposals that departments will follow a range of timescales rather than defaulting to a 12-week consultation period.

With regards to the timing of Government consultations, we urge Government departments to give as much notice as possible of the consultations which they are planning to launch over the coming months.

This is particularly important to small organisations wishing to respond to a range of consultations, such as Pact, as the more advance notice we receive, the better we and organisations like ours will be able to plan resources to ensure that we are adequately prepared to respond to relevant consultations as they arise.

What factors the Government should take into account when deciding on the length of the consultation period, such as when policy is new and contentious

The Government has experience of assessing the likely impact of policy in impact assessments which provide a framework of assessing the costs and benefits of new legislation.

The Government might wish to consider adopting a similar approach when deciding on the length of the consultation period by taking into account the economic, financial, social and environmental impacts of the proposals. As a general rule, we would expect that the greater the potential impact of the proposal, the longer the consultation period would be to ensure that the maximum number of interested parties have an opportunity to respond.

The implications for different groups in society of the Government's expectation that consultation will be 'digital by default'

The Government's approach that consultations should be 'digital by default' seems appropriate. Pact primarily responds to Government and Parliamentary consultations electronically.

It is important, however, that the Government continues to offer an alternative method of responding to ensure that this does not create a barrier to anyone wishing to engaging with the policy-making process.

Whether the Government's new approach overall will lead to improvements the consultation process and outcomes

We welcome the Government's new approach to consultations and we consider that, provided that sufficient notice is given to interested parties about forthcoming consultations, this will lead to improvements in the consultation process.

Lorraine Paddison – Written Evidence

Like many others in the field, I wish to express my grave concerns about the proposed changes to the public consultation process.

The Pegasus Group – Written Evidence

Response to Questions Posed

The specific questions posed in the call for evidence are addressed below.

In what circumstances the Government may reasonably decide not to consult on policy development. No comment

The appropriate timing and duration of consultation exercises. The timing and duration of consultation should be proportionate to the size and impact of the policy changes proposed. The Consultation Institute advocate in their response a simple formula for short (4 weeks), medium (8 weeks) and long consultations (12 weeks). Whilst agreeing with the need for predictability we would recommend that their proposed formula has a greater flexibility, ie:

- Short consultations 4 – 6 weeks
- Medium consultations 6 – 8 weeks
- Large consultations 9 -12 weeks

This would ensure that in reaching a view on timing and duration, the decision maker is required to give proper consideration to factors which influence timing and duration of a consultation (see paragraph 1.4 below).

What factors the Government should take into account when deciding on the length of the consultation period, such as when policy is new and contentious. Where larger organisations / stakeholders with paid employees are responding, then a lengthy period of time may not be required for them to assemble their response as they are able to draw upon informed staff and often have access to material which can support their response. Where voluntary / smaller organisations are responding, they may need to rely upon volunteers to commission / undertake research / assemble the response in their spare time – thus a longer time period is required. Their response is however equally important and often throws a different light / raises new issues e.g unforeseen impacts of a policy changes. The impact of a policy change on different groups should therefore also be a factor in considering the time period considered ‘appropriate’.

The implications for different groups in society of the Government’s expectation that consultation will be “digital by default”. The Joint Written Ministerial Statement by Oliver Letwin MP and Mark Prisk MP (17 July 2012) notes that “this approach will need to be varied for vulnerable or other groups whose access to information technology is limited, but in short it should mean that departments can be more, not less, effective at reaching particular groups affected by policies.” Where consultations may impact upon groups who do not have access to the internet, then it will be important to raise awareness of the consultation with groups who represent them. It is also important to recognise that 6 - 8 million adults in the UK are illiterate (World Literacy Foundation March 2012) with more struggling to read and write, and as such simply providing material in a ‘hard copy’ form will

not address the problem – different approaches / ways of reaching such people may be required. For example the Tottenham Hotspur manager is a high profile example of someone who has declared in public that he has trouble reading - his views on changes which impact on football would however be considered important and other approaches to seeking his opinion would need to be sought. Whilst a digital focus is good, it should not be assumed that this will necessarily attract balanced, representative and informed views on which sound decisions can be based – a variety of approaches will always need to be considered as part of process.

Whether the Government's new approach overall will lead to improvements in the consultation process and outcomes. Overly long consultations do not always result in more informed responses. It is interesting to note that the time periods adopted by other public bodies when consulting on policy changes are significantly less than 12 weeks – for example consultations on emerging Local Plans are usually 6 weeks. In terms of outcomes, once a change in direction has been announced, it is important that decisions regarding the final shape of the policy and its implementation are not unnecessarily delayed. Lengthy consultations followed by lengthy deliberations on the responses cause frustration and uncertainty. Aligning the announcement of policy changes with the commencement of a consultation is important. For example, the proposed changes to the planning requirements to allow people to build larger domestic extensions without having to apply for planning permission were announced well before the consultation commenced. Once the consultation closes, there will be a need to consider the responses before the proposed changes are announced – the time period from announcement of the proposed change to implementation could well be a year – a lengthy and unacceptable period of uncertainty for all involved (whether in favour or against).

Additional comments

As the Call for Evidence notes, “Done properly, Government consultation exercises and analyses of responses provide the Committee, and Parliament, with an effective overview of interested parties’ concerns and their impact on Government policy development.” However the danger when consulting is that those who respond tend not to be representative of society.

A company developing a new product will usually seek views on the product, for example the shape and appearance, prior to making a decision as to whether to proceed. The purpose of this process is to help ensure that the product meets the needs of the market in a way which is most likely to result in a sustainable product which will bring positive benefits for the company. If the respondent profile was not balanced and representative, for example came predominantly from over 55 white males, then it is unlikely that the company would make changes without seeking to ‘test’ how representative it was of other groups. We need to learn from this approach to ensure that decisions taken are done so on the basis of balanced and representative views.

Consultation needs to be managed in such a way that the responses received are balanced and representative of those who would be most affected by the policy change. In particular, one of the biggest challenges faced by those seeking to ‘consult’ is how to capture the views of those who are least represented in consultation responses, namely the 18 – 35 age group, whose aspirations may differ from the better represented older age groups, yet will live longest with the consequences of the policy decisions.

It is important however that the views of the vociferous ‘minority’ do not drown out those of the wider society. There is an increasing awareness within the general public that they have a legitimate role to play in shaping policy and that their voices should be heard, understood and responded to. As a result there have been a growing number of challenges regarding the adequacy of consultation. Indeed as an organisation we have experienced this first hand, with objectors to a wind turbine challenging the quality of the consultation undertaken in order to delay / stop a scheme.

Change, or fear of change (especially if it is perceived to be negative), often causes stress and human reactions to stressful events differ widely. At the most basic level, change induced stress may attract a ‘freeze, flight or fight’ response from those affected. Many people who have been involved in consultation will recognise the aggressive participant who will shout loudly, dominate proceedings and make it very clear that the development / change will never occur (fight response). Campaigners are becoming increasingly experienced in harnessing the ‘power of the press’ to spread their message. These people can have an undue impact on the nature and outcome of a consultation. The challenge therefore is how to engage positively, lowering stress, capturing balanced and inclusive responses from the wider community, which in turn will enable sound and informed decisions to be taken in response.

The aim of good consultation is to reach the people, organisations, businesses and communities that could be impacted by a proposal, capturing their views and considering how they could / should shape policy. Consultation is not ‘good’ because it tells people they can make changes and a difference when in reality they cannot. Good consultation invites interested parties to have a say on elements which they can realistically influence, and aspects that can be changed, altered etc. The process should enable debate to be properly informed rather than based on ‘myth’ or ‘perception’. Recent decisions by the Advertising Standards Agency with regard to wind farm development demonstrate how local opposition can be based upon mis-information. Such misinformation can adversely affect the responses to other related consultations, raise stress levels and impact upon the ability of individuals to engage constructively.

It is important to recognise that not everyone consulted will wish to ‘engage’ to the same extent. For some people simply providing appropriate information about a potential policy change is sufficient and will enable them to decide whether to engage more fully (which has time / cost implications for them) or whether, based on the information that they have been provided with, they do not wish to comment. The importance of ensuring a variety of quick and simple ways in which feedback / views can be made known by those who are ‘time poor’ or do not feel strongly enough to get engaged (the silent majority) cannot be underestimated.

There is a need to ensure that consultation is undertaken in such a way as it can withstand challenge – such challenges can create significant delay and unnecessary additional costs.

The Gunning Principles (**R v Brent LBC ex parte Gunning (1985)**) require that “To be proper; consultation must be undertaken at a time when proposals are still at a formative stage. It must include sufficient reasons for particular proposals to allow those consulted to give an intelligent response; adequate time must be given for the purpose; and the product of consultation must be conscientiously taken into account when the ultimate decision is made.” These principles underpin the ‘process’ of consultation. However challenges are now growing with regard to the ‘adequacy’ of consultation.

The Pegasus Group – Written Evidence

The Pegasus Group has developed a set of indicators which can be used to establish what can be regarded as ‘good’ consultation. These indicators (which are set out below) are based upon case law, guidance, experience and good practice and can be used to ‘test’ the approach to consultation. The indicators provide a degree of comfort to those undertaking consultation, that if challenged on its ‘adequacy’ i.e did it reach those who should have been consulted, they will be able to demonstrate that the consultation which they have undertaken can be considered ‘good’ and that the outcomes from the process can be relied upon.

The Pegasus Consultation ‘Quality Indicators’

Consultation Quality Indicator	Notes
Early engagement	To what extent was there an opportunity to influence and shape policy?
Meaningful	Was it ‘real’ consultation, how did policy change as a result of the comments received?
Inclusive	Was the wider community involved – what steps were taken to ‘reach out’ to those who would not normally be reached?
Effective – map, gap and take action	Was it effective – were the views expressed balanced and representative? Monitoring should reflect the geography and demography of respondents, was this reviewed and what action took place to address gaps which were considered to be significant?

Privacy International – Written Evidence

Privacy is an area in which unintended side-effects can have catastrophic consequences. For example, it seemed irrelevant to post CDs between departments containing HMRC data on all those receive child benefit, until it was very relevant .

A lot of Privacy International's work is therefore collaborative - we bring together and work with multiple organisations in order to ensure that we consider privacy issues from a diverse range of interacting perspectives. This is a time-consuming process, and in the case of a government consultation response, a process that cannot meaningfully commence until the detail (and timing) of the consultation is known. Formulating and writing a comprehensive, nuanced response within just a few weeks is a significant challenge, even under ideal conditions. Additionally, in respect of privacy, the statutory requirements often leave gaps which must be queried by letter or through the Freedom of Information Act, taking 20 working days, before key detail can be considered. In a period as short as four weeks, that is effectively impossible.

The new rules in practice

The Department for Education is currently running a consultation on widening access to the National Pupil Database, with a deadline only six weeks after the original announcement . That consultation seeks to grant new access to organisations "providing information, advice and guidance" , or "data based products and services" (e.g. the media, websites), for a variety of new reasons (including "education, training and recreation" and "social and economic well-being"), to 500 data points on every state school child connected from nursery to university. Given the broad scope and minimal detail provided, it will be almost impossible to provide an in-depth analysis, formulated with input from multiple organisations, in the single week between the statutory deadline for a departmental response to a key Freedom of Information Act request (made as soon as possible), and the deadline for submission of a consultation response to that same Department.

While there are undoubtedly topics where a shorter period is appropriate, but it may have already been inappropriately applied in this case.

Public and Commercial Services Union – Written Evidence

Introduction and summary

PCS represents around 270,000 members, which means we're the largest civil service union with around 10% of our members working in the commercial/private sector. We have extensive experience of responding to formal government consultations on changes to legislation or policy, of responding to a wide range of other consultations, and in working with policymakers on a wide range of policies. As a democratic organisation we consult our members and representatives on such matters.

We respond to consultations on behalf of our members in relation to their employment rights, terms and conditions at work and in line with our policy positions on issues of importance not only to our members, but also to users of services our members provide and to wider society.

Our submission first addresses the particular issues on which the committee has sought our views, which include:

- Circumstances the government may reasonably decide not to consult on policy development
- Appropriate timing and duration of consultation exercises
- Factors the government should take into account when deciding the length of the consultation period
- Implications for different groups in society of the Government's expectation that consultation will be "digital by default"
- Whether the government's new approach overall will lead to improvements in the consultation process and outcomes

We then outline concerns on other aspects of the government's new approach to consultations, this includes; equality impact assessments, analysis of consultation responses and consultation on environmental proposals.

PCS strongly believes that the 2008 Code of Practice on Consultation (2008 Code) provided a balanced and effective set of criteria for consultations, and we regret the introduction without consultation of the government's new principles on consultation and the further measures announced by the Prime Minister on 19 November.

Circumstances the government may reasonably decide not to consult on policy development

We cannot see any circumstances on which the government could reasonably decide not to consult stakeholders, the public, and others affected by or with an interest in the particular issue.

The new consultation principles announced July 2012⁶³ suggest that this could be the case if interested groups have already been engaged in the process or if the policy is not contentious – and sometimes ministers will not become aware that an issue is contentious until it is consulted upon. We would argue it is crucial to engage interested groups early in the process of developing policy, but this should not be a substitute for proper formal consultation when the policy has been developed further.

It has been suggested that there is no need for consultation on minor or technical changes. But we believe that apparently technical points can have important implications. For instance the removal of employers' strict liability for health and safety of their employees from health and safety legislation (in the amendment added to the Enterprise and Regulatory Reform Bill without consultation) has far from minor implications. It will mean major changes to employment law and to people's working experience. We believe that it is equally important to consult on technical changes, so that those who will be impacted by the change can influence it.

Ironically, there was no consultation on the change to the principles and practice in carrying out formal consultation. However the impact of this change is likely to be substantial.

Appropriate timing and duration of consultation exercises

PCS is anxious that consultation exercises should be undertaken early enough to genuinely influence the policy or change. The new consultation principles refer to 'real engagement', but no information is given on what this means or how to achieve it. We think it is more likely to be achieved under criterion 1 of the 2008 Code: "*Formal consultations should take place at a stage when there is scope to influence the policy outcome*", together with advice given on implementing that criterion.

If consultation is to take place over the Christmas, summer or other holiday periods and PCS would urge the government to ensure that an adequate amount of time should be added to the consultation period. The 2008 Code covered this but the new principles do not.

We believe that it is appropriate to have a default period of 12 weeks, as in the 2008 Code. Any variation from this should be for clearly defined reasons, and these should be made clear.

Creating government and public policy is extremely important, and effectively consulting people will help ensure that that policy is well constructed.

Shorter periods will make it more difficult for organisations to do a proper considered response, and in our case to ensure that the response properly reflects the concerns of our

⁶³ <http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>

members. Time is needed to consult those members or their representatives. Similar concerns will apply to many other organisations and most particularly those that represent vulnerable people or people who are less easy to reach.

Legislation or government policies drafted following rushed consultations are far more likely to be faulty and later need reversing or amending, which is costly, wasteful, disruptive and damaging.

Shorter periods for consultation or rushed consultation processes display a lack of proper planning and strategic thinking. The government and others should build a proper period of consultation (which we consider should be 12 weeks) into the process of developing policy.

The new consultation principles say that “... *timeframes for consultation should be realistic to allow stakeholders sufficient time to provide a considered response*”. But this has not been operating in practice. So far we have seen two very important consultations lasting only three weeks.

- The consultation on implementing employee owner status had potentially far reaching implications and complex legal ramifications impacting directly on employees. The introduction on the Business, Innovation and Skills website emphasised that in consulting the department wanted to understand the implications for employers, individuals and the labour market in general, and to ensure that there are no unintended consequences. But in order to respond to this radical proposal and to help them with these aims three weeks is a totally inadequate time to analyse and respond effectively.
- The Department for Environment Food and Rural Affairs consultation on the future of the Agricultural Wages Board (AWB) purported to seek the views of interested parties. It had to do this because of the requirement in the Public Bodies Act 2011, clauses 10 and 11 (3). The requirement to consult and the requirement that the order cannot be laid until 12 weeks after that consultation has commenced were safeguards included following extremely lengthy debate in Parliament. It is very disappointing that these requirements appear to be given only lip service by a totally inadequate three-week consultation.

The AWB example highlights the problem of a short consultation period. Organisations representing those affected by the change had limited time to consult their members, who are scattered around the countryside, based in rural areas with poor broadband so electronic communication was less viable, and some of the lowest paid and most vulnerable members of society.

Trade unions bring expertise and represent millions of members on a myriad of issues, but we need to be able to have the time to do that. Other democratic membership organisations also require time to consult their members.

An example of a consultation on complex matters where PCS had a general view but no specific policy and therefore needed to talk these through with our lay representative structures was around paternity leave entitlements and models.

Another example where we sought to consult our members was about changes to the education sector bodies, which had implications not just for staff moves and redundancies but also for continuity for service users and for the way to services could best be delivered.

We are concerned that as review and change to organisations on a regular basis is part of the civil service reform plan there are likely to be many more changes, so we would want to see effective consultation practices with sufficient timescales.

There is a useful example of a productive engagement over reasonable timescale in which PCS was involved in an on-going project - the work on Workforce health led by the Health and Safety Executive and Dame Carol Black. This took place over several years and was an iterative process with consultation built in at specific stages of the process. This allowed real progress to be made, until resources for the project were reduced.

Another example of a constructive consultation over a reasonable timescale was the newly announced fair deal consultation around pensions. In 2011 the Treasury talked to interested groups first, including public sector unions and employers at round table sessions, then drew up questions and went to formal consultation, and later published the responses.

PCS strongly believes there is much room for improvement in announcing consultations to ensure the government seek the widest base of views, and this should happen as a priority rather than reduce in the length of time that consultations are open for.

Factors the government should take into account when deciding the length of the consultation period

We believe that the consultation period should be 12 weeks in virtually all cases. As the 2008 Code very clearly laid out, exceptions to this should be genuine emergencies or situations that couldn't have been foreseen that require a more swift response, for instance the swine flu outbreak.

Policy does not have to be new or contentious to require a reasonable period of consultation. PCS asserts that all policy benefits from undertaking consultation properly, i.e. by allowing a reasonable period – we would suggest 12 weeks.

Implications for different groups in society of the government's expectation that consultation will be 'digital by default'

PCS is extremely concerned at the impact of the expectation that all consultations will be 'digital by default'. This will hit members of the public in particular, and the most vulnerable groups within society will be hit hardest, including those who cannot afford access to digital technology, those without the educational skills to use it, older people, people with disabilities, and those in rural areas where internet access can be poor.

The 2008 Code included guidance on making particular efforts to reach those which the proposed policy will impact upon but who are often difficult to reach, by using different ways of reaching them. The new consultation principles do not give much concrete advice about this, despite the assertion that policymakers would need to make information accessible. The 2008 Code criterion 4 gave useful advice on doing this. We would therefore recommend that government takes on board this guidance to ensure that future consultations are meaningful exercises.

We are concerned at the impact of requirements to respond using electronic survey mechanisms. We fear that a requirement to submit our responses in that way is likely to be used to encourage narrow biased responses to consultations without allowing flexibility for us to put across the important issues that are relevant to our members. We often prefer not to complete the electronic survey version of consultations because they have in our view been tailored to get a particular response.

Whether the government's new approach overall will lead to improvements in the consultation process and outcomes

We are extremely concerned that the new approach will not lead to improvements. We believe in fact it will drastically weaken the process and make the outcomes worse. It will mean the exclusion of those already most excluded. It will mean missed opportunities to hear the views of those who can most usefully explain how the proposed policy will work in practice. Also most importantly it will lead to worse policy and legislation and to the mistrust of any legislation which will be seen as having been pushed through hastily without good reason.

We are concerned that this has already started to happen. We have already seen arbitrary and opaque decisions to set extremely short periods for complex policy consultations.

The OECD in its 2010 report⁶⁴ on better regulation reviewed consultation practice in the UK, amongst other things. It praised the 2008 Code as promoting a very open approach, and being "*brief, clear and to the point.*" However it did recommend effective quality assurance of the process.

At the very least we believe there must be continued evaluation of how the government's new principles for consultation operate in practice.

Equality impact assessments

We are extremely concerned at the announcement by the Prime Minister on 19 November in his speech to the CBI, that equality impact assessments will no longer be required when making policy.

Ceri Goddard, Chief Executive of the Fawcett Society stated following this announcement:

"Successive governments have failed to properly consider the way in which particular policies impact on different groups within society; equality impact assessments - while far from perfect – have started to challenge 'one size fits all' accountable policy making."

The prime minister said in his speech to the CBI: "*We have smart people in Whitehall who consider equalities issues while they're making the policy*". However PCS does not believe that this not a substitute for properly considering the impact of a policy proposal on groups in society that face discrimination.

The minister also said that these policymakers will use their judgement to decide whether these issues have been properly considered. But we question how that would provide transparent and accountable policy making if there can be no external assessment or scrutiny of that consideration.

⁶⁴ Better Regulation In Europe: United Kingdom, OECD 2010, chapter 3, recommendation 3.1, <http://www.oecd.org/gov/regulatorypolicy/44912087.pdf>

Analysis of consultation responses

The new consultation principles do not cover evaluation and analysis of responses to consultations, unlike the 2008 Code. Criterion 6 states: "*Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.*" It is not clear what guidance is being given to departments conducting consultations on doing this. This is an important part of open policy-making.

We already have concerns about that analysis, in particular in the way that the number of responses in general and on specific points is counted. One organisation such as PCS representing 270,000 people or the TUC representing 6 million people and a large number of trade unions, are each counted as one response.

Consultation on environmental proposals

There are particular requirements for consultation on environmental proposals. Under the Aarhus Convention⁶⁵ the public must have the chance to participate during the decision-making and legislative processes. The convention recognises that this benefits decision-makers who can take advantage from people's knowledge and expertise and take the opportunity to improve the quality of the environmental decisions and outcomes resulting in procedural legitimacy. This legally binding convention requires that "... authorities must provide reasonable time frames for participation and opportunities for early participation, and they must take 'due account' of the outcomes of participation in their decision."

So PCS would agree that at the very least, there must be proper timescales in the environmental area of policy making, but we believe that these principles should apply throughout the whole range of issues that government consult on.

Conclusion

PCS believes that the government's new approach to consultations will not produce good policy and legislation because it will not give an opportunity to consult those who should have a voice and whose input would be useful to the process.

We are already seeing inappropriately short consultation periods and the lack of transparency in how consultations are being conducted.

We are also extremely concerned at the proposal to drop the requirement for equality impact assessments in making policy, which we believe will be a serious setback for ensuring protected groups are listened to and ensuring that the impacts of those policies are positive, not negative.

We would therefore argue for:

- Reinstatement of the 12 week period for all consultations
- The government to follow the advice in the 2008 Code to ensure they reach out to all groups, including those who are difficult to reach

⁶⁵ UNECE, 2006. *Your right to a healthy environment: a simplified guide to the Aarhus convention on access to information, public participation in decision making and access to justice in environmental matters*. New York: Geneva: United Nations, http://www.unece.org/fileadmin/DAM/env/documents/2006/pp/ece%20mp%20pp%205_E.pdf

Public and Commercial Services Union – Written Evidence

- The flexibility to submit consultation responses in documents like these answering the questions and outlining our own concerns with the proposals posed rather than simply filling out an online survey
- Equality impact assessments to continue to be undertaken to assess the impact of policy proposals on different groups within society; and
- Transparency on the analysis of consultation responses

Regional Studies Association – Written Evidence

The Regional Studies Association (RSA) is a leading UK-based, international learned society with global membership, representing a cross-disciplinary range of academics and policy makers engaged in questions of regional development in its many facets. RSA members hail from academia, consultancies and government.

The following response to the *Call for Evidence on the (UK) Government's New Approach to Consultations* by the Lords Select Committee draws on the Association's well established record of engaging with policy makers through public policy consultations as well as direct engagement with policy makers through, and as part of the Association's work.

Proportionality, Consistency and Transparency of the Consultation Process – the 'Devil is in the Detail'

The main objective of the suggested changes to the modus operandi of public consultations is to reduce bureaucracy and therefore current workload, as well as maintain a level of proportionality between resources invested and changes proposed. This is to enhance the robustness of evidence and transparency through a "more proportionate and targeted approach" to consultations. The proposal therefore suggests a degree of selectivity in who to consult and include in the process. This, of course, raises a few questions.

The Regional Studies Association welcomes the principle of the proposed changes to the ways in which Calls for Evidence are managed and responses are 'processed'. But the devil is in the detail and there needs to be awareness raised with regards to the potential danger of constraining scope for scrutiny and discussion. 'Simplifying' should not mean 'rationalising, 'mainstreaming' or again, selective listening. The challenge rests upon defining 'appropriateness' and 'proportionality' when deciding on the very need for consultations and if deemed necessary, who to consult.

Where and how is the line to be drawn?

If the originator of the legislative changes at the centre of a consultation is to decide on whom to consult preferentially and on what subjects, then what is the mechanism to prevent opportunism that in turn may lead to abandonment of consultations from happening? Time pressures to implement new policies, for instance, should not be a criterion in such decisions, as this may open the whole process to hostages of political fortune.

The challenge rests in the balance between appropriateness and proportionality on the one hand, and broadness, representativeness, depth and substance, and openness of procedures on the other. Procedures need to be consistent, transparent, inclusive and incorporate the very technical scope to register one's views. Rationalising, including reduction of administrative burdens, however welcome they may appear, must not lead to exclusion and 'streamlining' out of the process for those involved and seeking the opportunity to respond. So, who decides on the 'value' and 'appropriateness' of such process in relation to a legislative initiative and on what grounds are these decisions made?

Coming to the four key points raised in the Committee's consultation in this instance, the Regional Studies Association holds the view that:

- Distinguishing between what to consult on or not may open a door to a gradual erosion of the values of the consultation process in public policy, as more policies may be 'slipped' into the 'no need for consultation' category. Drawing up clear and robust guidance criteria would be crucial to counteract such risks and maintain the credibility of the process. But this may be difficult to implement and monitor.
- There is an argument to be made to relate complexity and detail of legislation and subject matter to the length of time available to respond during a consultation exercise. Simpler matters could be dealt with quicker than more fundamental changes could and in the case of organizations and societies, to survey views and relevant expertise of their own membership. If enough time is provided, sufficiently meaningful and substantial responses may then be generated. However, a more fundamental and time-consuming process may not always be required thus permitting a form of variable time-scale to be applied, but again, how and by whom are these decisions taken?
- A shift to digital procedures seems to be going with the flow of times and it would seem appropriate to have this process as standard practice. However, alternative processes also need to be considered if this was to be specifically requested by a consulted party. Access to digital communication ought not to decide on access to consultation processes per se.
- It is difficult to speculate on the likely outcome(s) of the expected changes, as this depends on the details of the arrangements. In any case, scope to participate and thus inclusiveness and representativeness, must not be detrimentally affected by the proposed changes, nor should consistency and transparency in subjecting the legislation process to such engagement with civil society. Creating different categories of 'worthiness' of consultation per se raises questions of where and how to draw up such categories. Who decides on 'appropriateness' and 'proportionality', on what grounds and who falls under the category of 'key groups'? Clear, robust rules, criteria and guidance are essential.

To conclude, while some improvements to the 'responsiveness' of the consultation process may seem desirable and advantageous, especially in the time used for such processes, the implications on the validity, credibility and democratic legitimacy of the process need to be maintained. This includes access, representativeness, consistency and transparency. There also should not be different 'classes' of legislation (those that can be ignored and those that are worth considering).

Leroy Richards – Written Evidence

I am responding to this call for evidence on an individual basis in my role as Policy Officer with responsibility for Consultation at Thurrock Council. Thurrock along with most other Councils has adopted a set of principles and guidelines to aid consultation. These principles are included in Thurrock's Community Engagement Toolkit and my response is based on these principles.

In what circumstances the Government may reasonably decide not to consult on policy development;

Firstly the guidelines should apply across the entire public sector and should include local authorities as well as Government departments. My view is that Consultation should only be carried out when there is an opportunity to influence a decision. If the decision has already been made then there is no point in consulting stakeholders, otherwise it would be a complete waste of their time. The exercise should be to inform those whom the decision will impact upon. This approach will help to reduce the number irrelevant and time-consuming consultations.

The appropriate timing and duration of consultation exercises;

The timing of consultations should be sufficient to allow stakeholders to participate and respond. There should be transparency around the reasons for engagement and what will happen with the information gained. It should be clear why participants are being consulted/engaged – accurate and timely information is crucial for effective and inclusive engagement. It also indicates a well-planned and thought out approach. Two weeks is far too short to consult. Usually this indicates a rushed and badly planned consultation.

What factors the Government should take into account when deciding on the length of the consultation period, such as when policy is new and contentious;

Consultation should be proportionate to the subject issue and should also allow the stakeholder sufficient time to respond. Two weeks is not sufficient. If a resident were to be away on holiday and usually holidays last for two weeks, it is possible that a consultation could take place during their absence. In practice this could happen. I would therefore suggest the following range:

- 4 weeks - minimum for short consultations that are not contentious.
- 6 to 8 weeks – for medium consultations
- 12 weeks for contentious issues.

Consider things where there is little control such as public holidays, elections (purdah period), and key religious festivals such as Christmas and, Easter.

The implications for different groups in society of the Government’s expectation that consultation will be “digital by default”; and

I welcome the suggestion to have different forms of engagement as this approach would enable different groups to participate who perhaps may be otherwise excluded. For example, a significant number of residents have difficulty with reading 25%, therefore consultation using a digital format or paper format would exclude a significant number of residents from participating. In Thurrock we encourage a targeted approach whereby the consultor carries out a stakeholder mapping exercise, and then uses the results to determine the method of engagement. This approach often avoids methods of engagement that will exclude a key stakeholder group.

Whether the Government’s new approach overall will lead to improvements in the consultation process and outcomes.

These guidelines should apply across the public sector and should include all local authorities. There should also be a commitment to provide feedback to respondents and a commitment to evaluate the process. The results of consultation should be readily accessible to anyone who wishes to view it as part of open decision-making and the transparency agenda. It is important that respondents are aware of how their input has and will be used and what it will affect. Options considered and the decisions and actions that have been agreed as a result of the consultation process, should be effectively communicated as part of feedback.

This approach will lead to improvements in consultation processes and outcomes. All Councils have their own consultation principles which can, and do vary up and down the country. In order to embed these principles, and develop a consistent approach, the Government should circulate these new guidelines to all Chief Executives by means of a circular to encourage local authorities to adopt the principles in their respective consultation and engagement processes.

Sciencewise – Written Evidence

Introduction

Sciencewise is the UK's national centre for public dialogue in policy making involving science and technology issues, funded by the Department for Business, Innovation and Skills (BIS). We welcome the opportunity to provide evidence to the Committee. The main aim of Sciencewise is to improve policy making involving science and technology across Government by increasing the effectiveness with which public dialogue is used, and encouraging its wider use where appropriate. This will ensure that future policy involving science, technology and innovation is robustly developed, informed by public concerns and aspirations and based on all the available evidence.

About Public Dialogue

Sciencewise promotes⁶⁶ and supports public dialogue which is a particular type of public engagement which brings together members of the public, policy makers, scientists and other expert stakeholders to deliberate and come to conclusions on public policy issues, which can be at a national or local policy level. It is related to, but distinct from, consultation.

Evaluations⁶⁷ of Sciencewise projects show that public dialogue has significant benefits to citizens and policy makers. We acknowledge that public engagement is a broad field of practice and that it is important not to impose a “one size fits all” approach. However, Sciencewise believes that some aspects of public dialogue (which are included in the Sciencewise Guiding Principles⁶⁸) could be valuable if used more widely in consultation.

Sciencewise public dialogues differ from most consultations because public dialogue:

- typically happens earlier in the decision making cycle
- involves specially recruited, diverse groups of citizens
- invites informed deliberation and the interaction between experts and citizens

Under what circumstances it might be reasonable for the Government to decide not to consult on policy development?

We take the view that engaging the public is unsuitable:

- when crucial decisions have already been made; or
- if there is no realistic possibility that the engagement process will influence decisions.

⁶⁶ A good overview of different approaches can be found here:

<http://scienceandsociety.bis.gov.uk/all/files/2010/10/PE-conversational-tool-Final-251010.pdf>

⁶⁷ <http://www.sciencewise-erc.org.uk/cms/assets/Uploads/Publications/Sciencewise-Evaluation-Report-FINAL.pdf>

⁶⁸ <http://www.sciencewise-erc.org.uk/cms/assets/Uploads/Project-files/Sciencewise-ERC-Guiding-Principles.pdf>

Our research⁶⁹ has found that public engagement in national decision-making has sometimes tended to be a reactive process. Sciencewise was established as part of the move towards ‘upstream’, or earlier engagement with citizens. Upstream engagement aims to shape better policy decisions and to prevent the loss of public trust, rather than trying to rebuild it after policy failure.

Consultations are often framed in a narrow way, limiting the opportunities for citizens to influence. Our experience shows it is possible to work with participants to agree framings that focus on broad questions and a range of alternatives. For example, focusing on a question like “How do we provide for our energy needs in the future?” rather than “should we build new nuclear power stations?”.

When - and for how long - consultation exercises should be held;

We do not believe that the number of participants or the length of a consultation is necessarily a good measure of success or legitimacy. The depth and quality of the deliberation and understanding is also a vital consideration.

If consultations are to happen in short time frames large pre-consultation engagement will be crucial to ensure that the views of the public and other stakeholders are meaningfully included. Upstream public dialogue provides a solid evidence base on which to build effective consultations.

Some may view consultation with greater numbers of participants as more representative and legitimate. This is a fallacy. The ‘right’ number of participants depends on the purpose of a consultation and, more specifically, which groups or aspects of the public the participants are intended to represent. There can be a trade-off between the depth of a discussion and the number of people who can be involved in it.

In-depth deliberation, such as that carried out in Sciencewise dialogues, is an intense process requiring high-quality facilitation and the opportunity for participants to interact with one another and directly with experts in order to develop their views and delve beyond them to uncover the values, beliefs, experiences, interests and needs that underlie them (particularly important for complex policy areas). In these cases a smaller number of participants engaged in a more in depth deliberation will be far more valuable than a larger (but more superficial) engagement.

A key consideration alongside the time allocated for consultation is the quality of the information and views participants are provided with. We believe that in order to elicit informed opinions citizens and stakeholders should have access to a range of perspectives, and access information from other sources. Only a limited number of consultations today provide substantial background information or opportunities for deliberation.

How the expectation that consultations would happen digitally will impact on different groups in society;

Online and digital modes of engagement are and will continue to be important. New technological developments will transform what is possible offering the opportunity of greater levels of involvement of more members of the public and other stakeholders. A number of online and digital initiatives have already made a significant impact on the

⁶⁹ <http://www.sciencewise-erc.org.uk/cms/assets/Uploads/What-the-public-say-report-FINAL-v4.pdf>

development of policy⁷⁰. However Sciencewise feels the need to reiterate the importance for face-to-face deliberation in many cases, especially on very contested or complex policy areas. Recent ESRC-funded research found that "Face-to-face techniques, more so than on-line, offer the potential for a richer and more complex platform for discussion and participation."⁷¹

We believe that formal consultations are an important part of Government policy making, but that the way they are designed today often means that responses are dominated by organised stakeholders and/or those with very strong views. Depending on how they are designed online consultations may exacerbate or reduce this tension. Dialogue of the type Sciencewise supports is designed to reach a cross-section of members of the public. Past research shows that formal consultations are mistrusted by many members of the public.⁷² It is also important to remember that public engagement must sit alongside wider stakeholder engagement to be truly effective.

Whether this new approach to consultation will lead to improvements in the process and outcomes;

Sciencewise specialises in public dialogue, which complement consultations and other methods of engagement. However many complex decisions are not so readily amenable to public consultation, but rather require participants to become informed about an issue before they comment on it. Consultation without pre-consultation activities, such as public dialogue, would in these cases be counterproductive.

Deliberative methods generally involve a smaller number of participants, who are given the time and resources to discuss pertinent issues before coming to conclusions. There is a significant body of evidence to say that deliberative processes provide very different qualitative results compared to other forms of engagement.⁷³ At the moment the consultation guidance does not make civil servants aware of deliberative methods or how to engage in creative pre-consultation activities at different stages in the policy development cycle.

We believe there are a number of factors that need to be considered in the Government's approach to consultation. The success or failure of engagement goes beyond the choice of method and often depends on the principles that underlie the process. Sciencewise has developed a set of guiding principles for Government.⁷⁴ While these are specifically focussed on public dialogue in science and technology we believe that consultation would be strengthened by adapting some of these principles.

In particular we think Government consultation should aim to:

⁷⁰ See for example: <http://www.sciencewise-erc.org.uk/cms/assets/Uploads/Project-files/Evaluation-and-learning-from-the-2050-public-engagement-programme.pdf>

⁷¹ http://www.esrc.ac.uk/news-and-events/press-releases/23323/nudge-or-think-what-works-best-for-our-society.aspx?utm_source=feedburner&utm_medium=twitter&utm_campaign=Feed%3A+ESRCPressReleases+%28ESRC+press+releases+this+month%29

⁷² See for example: <http://pathwaysthroughparticipation.org.uk/>

⁷³ McIver S. 'Healthy debate? An independent evaluation of citizen's juries in health settings'. 1998, J Maxwell, S Rosell, PG Forest 'Giving citizens a voice in healthcare policy in Canada' BMJ: British Medical Journal, 2003,

⁷⁴ (Sciencewise-ERC guiding principles) [i] Sciencewise-ERC (2007) *The Government's Approach to Public Dialogue on Science and Technology*. Harwell: Sciencewise-ERC <http://www.sciencewise-erc.org.uk/cms/assets/Uploads/Project-files/Sciencewise-ERC-Guiding-Principles.pdf>

Sciencewise – Written Evidence

- Be clear in its purposes and objectives from the outset
- Be well timed in relation to public and political concerns
- Commence as early as possible in the policy/decision process
- Feature commitment and buy-in from policy actors
- Have sufficient resources in terms of time, skills and funding
- Be governed in a way appropriate to the context and objectives
- Be clear about the extent to which participants will be able to influence outcomes
- Involve a number and demographic of the population that is appropriate to the task to give robustness to the eventual outcomes

Sciencewise research⁷⁵ has shown the important role that internal operating culture plays in facilitating successful engagement, with different Government Departments and Agencies having very different starting points for their work. Generally, we have found that where policy-makers attend engagement events and get involved directly, they find the process much more valuable. The new consultation guidance does not touch on public sector culture. We believe that not enough thought has been given to including public engagement in training for policy-making and that it should be an integral part of what it means to be a policy-maker.

⁷⁵ <http://www.sciencewise-erc.org.uk/cms/assets/Uploads/Strategic-Research-documents/Summary-DDI.pdf>

Alan Sneddon – Written Evidence

On behalf of North Lanarkshire Disability Access Panel I must protest in the strongest terms against the Government plans to reduce the consultation exercise period from 12 to 2 weeks. Many voluntary organisations meet on a monthly basis and this proposal would make it impossible for them to have meaningful discussions on the Government's proposals. Many proposals involve complex issues and two weeks would be totally inadequate for organisation or individuals to carry out the necessary research. I would also protest any suggestion that only digital media should be employed in consultations, as many disadvantaged persons or groups do not have access to this technology. This whole proposal is a serious erosion of democracy, as it apparently seeks to reduce responses to consultations and to make it more difficult for interested parties to make a meaningful response to proposed legislation, this effectively disenfranchising them.

Society of Biology – Written Evidence

The Society of Biology is a single unified voice for Biology: advising Government and influencing policy; advancing education and professional development; supporting our members, and engaging and encouraging public interest in the life sciences. The Society represents a diverse membership of over 80,000 - including practicing scientists, students and interested non-professionals - as individuals, or through the learned societies and other organisations listed below.

The Society welcomes the interest of the Committee and is pleased to offer these comments, gathered in consultation with our members and advisors for your consideration.

On the circumstances in which the Government may reasonably decide not to consult on policy development:

The Society of Biology strongly recommends consultation wherever possible, except in the unusual circumstances of obligation where the Government has no choice in how policy is developed. In these cases, transparency is required to inform the public of the source of the policy change, its implications, and to measures taken to allow consideration of any outcomes.

On the appropriate timing and duration of consultation exercises:

We agree that ‘engagement should begin early in policy development when the policy is still under consideration and views can genuinely be taken into account’, as stated in the new Consultation Principles and would regard this as a common sense approach. The length of consultations should be proportionate to their scope and topic, and must take into account both the ability of the respondents to reply and the implications for stakeholders. Short timeframes are likely to deter engagement, result in less considered responses, or most worryingly both.

Paragraph 2.2 of the 2008 Code of Practice on Consultation states:

‘If a consultation exercise is to take place over a period when consultees are less able to respond, e.g. over the summer or Christmas break, or if the policy under consideration is particularly complex, consideration should be given to the feasibility of allowing a longer period for the consultation.’

This flexibility and guidance should be incorporated into the new Principles, along with the stated expectation that ‘consultation exercises should not generally be launched during local or national election periods.’

On what factors the Government should take into account when deciding on the length of the consultation period, such as when policy is new and contentious:

Respondents must be given adequate time to consider the consultation questions, identify appropriate expertise, collate replies, resolve or reflect different viewpoints and formally approve the final response. This is vital for stakeholders who are resource-constrained and do not have professional policy expertise, and for organisational collaborations and umbrella bodies (such as the Society of Biology), and cross-sector groups such as SCORE (Science

Community Representing Education). Governments have indicated that they value the considered opinions of groups with a broad base in their sector, and many groups have responded to this challenge and come together to speak collectively; it is vital now that the functioning of these groups can be accommodated within consultation procedures.

The 2008 Code of Practice states that ‘allowing at least 12 weeks will enhance the quality of the responses’. We agree that at least this period is needed for consideration of weighty topics. We are concerned that the revised Consultation Principles state that ‘for new and contentious policy, such as a new policy on nuclear energy, the full 12 weeks *may* still be appropriate’ (our italics). We are surprised by the suggestion that a short period could be considered for a topic of this gravity and strongly recommend that at a 12 week-period is the expected standard for a contentious topic such as nuclear energy policy or similar. Furthermore, there should be a presumption that stakeholders will be adequately informed of the reasons if this is not provided.

On the implications for different groups in society of the Government’s expectation that consultation will be “digital by default”:

The ability to disseminate information and collect views rapidly through digital technology should be used to encourage broad stakeholder engagement, however any citizen-focused consultation open to the broad public, must have sufficient routes of communication so as not to marginalise particular groups or significant portions of the population. There is a danger that the significant part of the population that is not IT literate will experience discrimination if consultation processes are exclusively digital. For these reasons, facilities to make everyone aware of and able to answer public calls for views must remain open to non-digital users.

On whether the Government’s new approach overall will lead to improvements in the consultation process and outcomes:

While we support the focus on “real and meaningful engagement” with stakeholders, we are concerned that the Government’s new approach to consultation may exclude certain stakeholder groups from engaging in calls for views, and that the outcomes of the consultation process are not mentioned in the revised Principles.

Although these Principles are based on laudable ideals, we are concerned that the lack of procedural guidance will result in little help for departments and gives similarly little expectation to potential consultees of how engagement will occur or how their submissions will be assessed.

The 2008 Code of Practice acknowledges the difficulty of contacting the full range of stakeholders, and identifies the risk of an ‘over-reliance on standard lists of consultees’. It also explicitly states that ‘it is vital to be proactive in the dissemination of consultation documents’. Although the revised Principles identify that policy makers should ‘think carefully about who needs to be consulted and ensure the consultation captures the full range of stakeholders affected’, it fails to address the need for proactive engagement. This, along with potentially shorter consultation periods for civil servants to work within, and the apparent emphasis on ‘key’ stakeholders is concerning, and risks the pre-stated over reliance on standard lists of consultees. Transparency and accountability are enhanced by consulting widely, not restricting consultation to particular stakeholders with whom Government interacts regularly.

In order to have transparent and meaningful engagement, stakeholders must be able to track the progress of policy development and see if and when their recommendations have been influential, or considered. Furthermore, reflecting on the conduct and outcome of consultations can be instructive for all and help to gradually improve the process (and thereby, possibly the outcomes). Variable and unreported processes may leave no one the wiser for their engagement. We outlined these concerns in a letter to the Rt. Hon. Oliver Letwin MP in September this year, and attach this letter and the response we received as Appendix A and Appendix B respectively.

We will continue to keep track of consultation processes and assess the impact of their structure on our ability to provide considered responses to relevant calls for views. Recent events give cause for concern, for example the Natural Environment Research Council consultation on the proposal to merge British Antarctic Survey and National Oceanography Centre generated sufficient general controversy to trigger an investigation by the Commons Science and Technology Select Committee. They considered that ‘the consultation has been confused and lacks transparency’⁷⁶.

There is a danger that the broad parameters of the new consultation principles allow for inadequate consultation processes among Non-Departmental Public Bodies and set a worrying example to voluntary organisations in allowing fewer than 12 weeks for a consultation, despite guidance through the Compact⁷⁷. This may compromise the ability for Government and others to obtain the sound advice required to develop policies.

The Society of Biology believes that time and resource should be devoted to ensuring all consultation processes are planned appropriately, to avoid the need for further policy reversals. Not all topics are as headline-worthy as the arctic survey and thus may not draw rapid attention, despite the need.

⁷⁶ [House of Commons Science and Technology Committee Proposed merger of British Antarctic Survey and National Oceanography Centre Sixth Report of Session 2012–13 Paragraph 23.](#)

⁷⁷ [The Compact](#)

Duncan Stone – Written Evidence

My opposition to the proposed changes to the consultation periods can not be expressed too strongly. Ministers allocation of two or three week periods for groups such as The Institute of Employment Rights to collate and produce adequate replies to complex policy amendments etc. is wholly unsatisfactory – and morally dubious.

Changes to policies that are bound to assist corporate employers (who frequently avoid paying their fair share of tax – if any) at the expense and possibly physical harm of the lowest paid (and hardworking) within our society require serious and considered thought.

I implore the Committee to reconsider this approach.

Paul Taylor – Written Evidence

This proposal is a disgrace and undermines the democratic process. Remember, it is us the people who elect you to represent us.

This proposal reeks of self-interest and is an affront to democracy.

I urge you to reject this `New Approach to Consultation.

Trade Association Forum – Written Evidence

Introduction

This paper sets out the views of the Trade Association Forum and its members. The Forum was established in 1997 by the CBI and the DTI to assist trade associations to improve their effectiveness. The Forum currently represents 300 trade associations and membership bodies. In many cases, but not all, trade association core activity includes representation to Government and as such, this issue is of particular importance to members of the Forum. The Forum and its members welcome the opportunity to make comment on the Government's new proposals with regard to consultation, and this final response takes account of the comments received from members. Consultation is a central part of the policy making process and it allows policy makers to seek input, advice and expertise of a wide range of stakeholders in which Trade Associations play a major role. This will ultimately ensure that new policy is of a good quality and provides transparency and confidence in the policy making process.

Summary

In July 2012, the Cabinet Office published guidance on the principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation. It is intended that these proposals will replace the Code of Practice on Consultation issued in July 2008. In relation to these proposals, we can find no evidence of the Cabinet Office seeking views on their proposed changes either before or since the Ministerial Statement of 17th July 2012.

This appears to be confirmed by this Ministerial Statement confirming that 'The new Consultation proposals will be promoted within Whitehall now, and the public will begin to see the new guidance taking effect after the recess.' It is disappointing that these changes appear to have been introduced with no consultation process. If the House of Lords Secondary Legislation Scrutiny Committee had not issued a call for evidence, these proposals would have automatically have taken effect without due process. Given the changes to the engagement of stakeholders with government departments as a result of these proposals, steps should have been taken to ensure that there was support for the proposals.

Consultation is a central part of the policy making process and it allows policy makers to seek input, advice and expertise of a wide range of stakeholders including Trade Associations who play a major role in this. This ultimately ensures that new policy is of a good quality and provides transparency and confidence in the policy making process.

The Forum believes that Government consultation should be underpinned by the following:

- Consultation with Stakeholders should have a positive effect on legislation and should be designed to obtain the correct information from the right people;
- Clear principles for determining the deciding factors for the length of consultation must be ascertained;

- The process of Consultation is crucial to the operation of legislation, particularly from a Trade Association point of view as it enables them to assist their member organisations to implement any new measures successfully.

Specific Issues

Whether to consult

The question is also asked 'in what circumstances the Government may reasonably decide not to consult'. The answer to this question will depend upon the extent of the dialogue and working relationship that exists between the sponsoring department and its stakeholders. It is perhaps possible to envisage circumstances where proposals could proceed without a formal consultation period when a relationship of trust exists with all Stakeholders. However, this implies that stakeholders have been given full disclosure in relation to the proposals and an informed decision has been reached. If the decision is made not to consult, then it must be made abundantly clear how and why the decision has been reached at the time when the policy changes are announced.

However, TAF believes it would be unacceptable for the Government to proceed without consultation as most policy will require some form of this.

Practical considerations

The appropriate length and method of consultation will not just depend upon its purpose, but there are other considerations which must be made.

The scale of the impact should be considered. Some policy may affect a great number of people and organisations, others may only impact on a minority. The extent to which these stakeholders are affected is of considerable importance.

Some consultations will be simple to respond to, where others may be more complex in terms of the time needed for stakeholders to develop useful and evidence based responses as a result of extensive analysis and time spent compiling necessary data. It is important to remember that responses that are rushed are of no benefit.

Trade Associations vary in their capacity to respond quickly to consultations. Those smaller bodies have much less available resource and this will have an impact on their ability to respond as will their possible reduced capacity to be alert to every consultation.

Timing of consultations

The Forum agrees that timeframes for consultation should be proportionate and realistic, and we recognise that not every proposed legislative or regulatory change may require a minimum period of twelve weeks. However, other measures with particular complexity and those that have significant cost implications for an industry will require a longer period than the minimum.

Trade Associations work hard to respond promptly to consultations, however, many proposals have implications on additional costs on business and calculation of this impact can often take time and resource. The Forum therefore believes that the benchmark for consultation periods should remain at twelve weeks and any variation whether it be a longer or shorter period should be agreed in advance with key stakeholders.

Consultations over certain times of the year, for example Christmas breaks and the summer period, will require longer periods for response. Staff will more than likely be on leave and therefore capacity to put forward a full response may be reduced significantly. Consultations should, therefore, either avoid these periods completely or be lengthened to take this into account.

Making information useful and accessible

Many trade associations deal with consultation documents from a wide range of government departments and agencies. They observe significant differences in the quality of consultation exercises.

There is an issue in the current proposals relating to who decides what may or may not be an appropriate consultation period for legislative proposals. The Ministerial Statement says that ‘policy makers will need to give more thought to how we consult with people.’ The implication of this is that officials in a sponsoring department will take the decision on whom (and whether) to consult and over what timer period without external reference to the stakeholders which may be affected.

This has potential to exclude some very relevant stakeholders from commenting upon legislative change and this should therefore be revised to allow for greater transparency.

The Forum supports the view that information should be easy to comprehend and is also supportive of other more informal ways of engagement. The Forum has no objection to consultations being ‘digital by default’. Modern technology should ensure that it is easier for consultations to be distributed and also for stakeholders to respond. We do not believe, therefore, that a digital by default approach will have a detrimental effect of the ability of interested parties to respond. However, if stakeholders wish to respond with a hard copy there should be a mechanism for them to do so.

The Forum also believes that it is important that disproportionate costs to all parties should be avoided.

Accountability

The Forum believes that any greater flexibility in the Consultation process must be matched with greater accountability. Accountability is of vital importance if confidence in the process is to be maintained that reassurance is given that new and controversial policies are not to be pushed through without due process. It is also necessary for there to be a mechanism where stakeholders are able to raise their concerns with government or seek redress where necessary. This should be through the Cabinet Office as the department responsible for the Consultation Principles and it should also be clear what actions the government may take in these circumstances as well as what the consequences would be for the department concerned.

Trades Union Congress – Written Evidence

Background

The Trades Union Congress (TUC) has 53 affiliated unions, which represent approximately 6 million members working in a wide variety of sectors and occupations across the UK. On this basis the TUC regularly conveys the views of trade unions to the Government. We regard the consultation process as being critical to good policy making. There are a variety of ways in which this can happen and in this submission we identify different ways that we have found, or would find, productive.

The TUC welcomed the previous Government's decision to introduce a protocol on consultation, which stipulated that under normal circumstances public consultation on proposed measures would take place for no less than 12 weeks. This was one of several better regulation initiatives and was supported by both employers and unions.

The TUC is therefore deeply concerned that the Government appears to have decided that consultation need last no longer than two weeks. Recent guidance to departments says that consultations may run for just two weeks instead of the usual twelve. In other words, in advance of this House of Lords consultation, the Government has already decided to change the previous protocol without any public consultation whatsoever. Consequently there was only three weeks consultation on the current Planning and Infrastructure Bill, despite the Bill including some controversial measures. In addition no public Impact Assessment has been produced. This flies in the face of previous Coalition government guidance on better regulation and the "One in One (now Two) Out" policy operated by the Better Regulation Executive.

In this submission we provide our views on the questions being asked by the House of Lords Committee and set out what we consider to be good principles on consultation.

Questions

Under what circumstances might it be reasonable for the Government to decide not to consult on policy development?

It would only be reasonable for the Government not to consult under very limited circumstances. These would be where there was a national emergency or a security issue that required a very speedy response. A trigger for suspending the normal requirement to consult could be a matter that was being dealt with by the Cabinet's COBRA committee. Other than where these exceptional conditions were present the Government should always consult on policy development.

When – and for how long – consultation exercises should be held

Ideally there should be a period of pre-consultation with key stakeholders that have a particular interest in the policy area. This could be done collectively by means of a forum, or individually through meetings and/or electronic and postal communications. This should take place at the point when the Government is drawing up the consultation document. This would help the Government, or regulatory body, with the Impact Assessment which should accompany all consultation documents.

The Government should then publish the consultation document, which should reflect concerns raised by key stakeholders in the pre-consultation phase, together with the Impact Assessment. The consultation should be for no less than twelve weeks.

How the expectation that consultation would happen digitally will impact on different groups in society

This depends on what is meant by “digitally”. Publishing a consultation document on a Government website is perfectly acceptable as long as printed versions are available to download. Using other forms of digital communication is acceptable as long as it is not a substitute for publication of a consultation document – in other words communications via Twitter or Facebook are acceptable and indeed could be helpful as long as they simply refer people to a website where the consultation document can be read. It would be completely unacceptable for a Government Minister to put out a Tweet announcing that they are intending to do something and inviting people to tweet their views. This reduces what should be a serious and properly argued proposal to a soundbite or trivial matter.

Whether this new approach to consultation will lead to improvements in the process and outcomes

This new approach will not lead to improvements in the process and outcomes – indeed it is likely to have the reverse effect. Some areas of policy are extremely complex, for example, the recent changes to pension provision. Others are controversial, for example, the proposal to allow employers to ask employees to give up certain employment rights in return for becoming share owners in the business. On the latter proposal there was a perfunctory three week proposal, with no Impact Assessment. For federal representative organisations such as the TUC this makes it extremely difficult to consult our members and get important and informed views on the impact of the policy.

Principles for Good Consultation

When the Government or a regulatory body believes that regulatory change is necessary the first stage in developing the policy and putting it onto the statute book should be an early stage consultation with interested bodies or stakeholders. For example, when the Government decided that minimum pricing of alcohol would be a way of preventing alcohol abuse the first stage would be meetings with the industry, retailers, health bodies and consumer organisations. If that consultation reinforced the Government’s belief then a full public consultation should follow. Similarly, when a change to employment law is proposed, early stakeholder consultation should take place with the TUC and employers’ organisations.

This early stage consultation will provide the Government with expert views as well as opinions as to whether or not the policy will secure the objective. It will also encourage proposals for alternatives to regulation – this fits in very well with the Government’s policy objective of reducing regulation.

This early stage consultation could take place via forums, where views can be exchanged and areas of agreement may emerge, which will be of great assistance in developing the policy. It will also help to identify any unintended consequences and other issues such as enforcement of the policy.

Full consultation should follow, assuming the Government still believes the policy or the proposed regulation is necessary. As indicated above, this should take the form of the publication of a consultation document, with an Impact Assessment that has been scrutinised by the Regulatory Policy Committee. The document must be made as widely accessible as possible, including by use of information technology but not by exclusively using social media such as Twitter.

The consultation period must be a minimum of twelve weeks, other than in exceptional circumstances as described above. The timing should be sensitive to holiday periods – twelve weeks that includes the Christmas period will effectively only be ten weeks.

Those responding to the consultation, usually a Government department or regulatory body, should be aware of and sensitive to the role of representative organisations. For example, the TUC represents the views of millions of trade union members; the National Farmers' Union the views of farmers and so on. Sufficient weight should be given to membership organisations compared to individual respondents. Their evidence should be carefully examined to ensure as far as possible that they have made efforts to consult and properly represent the views of their members.

On the other hand recipients should be aware that some organisations will encourage mass individual responses, often suggesting a particular line to adopt. This is going to be a very significant issue if the Government does decide to use social media more extensively. Government departments should also be sensitive to lobbying organisations, such as the Society for the Protection of the Unborn Child or Abortion Rights, which have been set up to pursue a particular policy objective.

Consultation documents should be accompanied by an Impact Assessment and should provide as much information as possible and guide respondents to other sources of information where possible. Including questions designed to elicit specific information and comments is likely to be very helpful to respondents and to the Government.

In some policy areas targeted consultation may be most appropriate, to ensure that the key stakeholders are encouraged to respond. Notices should be sent to these groups and ideally they will have been involved in pre-consultation too.

Use of leading questions should be avoided, or conditional questions, for example, if this or that were to happen which of the following would you do. Where possible, various options for implementation should be included and explored.

Conclusion

The TUC believes that proper, open consultation is an essential part of a democracy. Although Governments are elected on the basis of policy commitments, situations can change and even if that is not the case, the nature of the policy to be introduced needs to be designed in the best possible way to achieve the desired outcome. Testing the proposals via public consultation is essential for good government. The TUC is deeply concerned about the Government's proposal to reduce the time limits for consultation to two weeks and to rely in some cases entirely on communication via social media. We urge the Government not to proceed on this basis but to retain the current policy.

UNITE – The Union – Written Evidence

Introduction

This evidence is submitted by Unite the Union. Unite is the UK's largest trade union with over 1 million members across the private and public sectors. The union's members work in a range of industries including manufacturing, financial services, print, media, construction, not for profit sectors, local government, education and health services.

Unite the Union is active in the development and implementation of policy and makes many submissions to consultations by government and other agencies .

Unite does not support the replacement of the Code of Practice on Consultation with the 'Consultation Principles' announced in July 2012. This undermines the ability of legitimate interested parties to contribute effectively, makes for a poorer policy making process and questions the Government's integrity in respect of meaningfully engaging with appropriate groups. We have raised our concerns about the 'Consultation Principles' in recent submissions and have also expressed concern about breaches of the Code prior to its replacement.

This move will make for a more arbitrary system that will lead to the disenfranchising of organisations and citizens, limiting their ability to contribute to public policy development in a meaningful and effective way. A 12 week consultation period should be the default position and, where this is not deemed possible, clear explanations must be given.

Our key concerns are amply illustrated in respect of the recent DEFRA 'consultation' concerning the abolition of the Agricultural Wages Board (AWB) for England and Wales to which Unite made a submission and which we draw on in this brief note to the Committee's call for evidence. Other examples of where consultations have been inadequate, such as in health and safety are also cited.

Inadequate time to respond

The range of time scales permitted in the guidance allows for inadequate consultation on key issues. In the case of the AWB, it is wholly unacceptable to allow just four weeks for consultation in England and one week in Wales on the future pay and conditions of 154,000 workers directly covered by the AWB Order, with many thousands more in associated rural occupations. This is particularly so given the isolated nature of agricultural workers.

The recent BIS consultation on 'Implementing Employee Owner Status' which had significant implications for workers and their representatives, not to mention employers, had a three week consultation period which, contrary to the Government's own principle, was a completely unrealistic timeframe "to allow stakeholders sufficient time to provide a considered response."

Health and safety is another area where Unite has experienced poor consultation. For example, the current consultation on proposals to revise the Health and Safety (First Aid) Regulations 1981 and make changes to the Approved Code of Practice (ACOP) to these regulations has been given only a six week consultation period. The special legal status of

ACOPS is important for worker protection and we do not consider that the period allowed is at all adequate for us to give this proper consideration and canvass members' views.

Also in health and safety, a recommendation from Professor Lofstedt's report 'Reclaiming Health and Safety for All' that "regulatory provisions that impose strict liability should be reviewed by June 2013" has been acted on through tabling of amendments to the Regulatory and Reform Bill without consultation at all.

Upon questioning the Health and Safety Executive we have been advised that "the Budget Report of 2012 stated the Government's commitment to legislate in this area following Professor Lofstedt's recommendation. HSE officials are therefore involved in directly implementing Government policy (rather than policy that has been agreed by HSE Board)". Reference was also made to updates to the Bill on the BIS website, although it was acknowledged that "clearly this operates in a somewhat different way from the form of consultation operated by HSE on its own proposed measures".

Very short consultation periods, such as those cited above, fail to take into account the structure of many organisations, including civil society and voluntary groups, which are often affiliations of local groups, and their resources. Trade unions' responses to consultations are also enhanced by our ability to engage with our membership and relevant units of organisation. Internal consultation on key issues requires sufficient time to be conducted properly (which makes for a more informed response) and recognition of limited resources (many organisations do not have large departments dedicated to policy and public affairs).

Consideration should also be given to the effect that the volume of consultations can have on consultees' ability to respond and the effect of 'consultation overload'. This is not to say that organisations should not be consulted, but that the Government's drive against 'red tape' is confronting organisations with a large number of consultations to respond to and a shortening of response times makes this even more difficult.

Voluntary and community sector compact

The tight timescale of the AWB consultation is, in our view, in breach of the Compact between government and the voluntary and community sector which the 'Consultation Principles' state "will continue to be respected". This is particularly relevant because of the omission of a range of significant voluntary organisations from the list of consultees.

Timing of consultations

In addition to the issue of short consultation periods, there is also an issue concerning the timing of consultations. Most notably, consideration should be given to the ability of people to respond and what the real consultation period is for consultations taking place over traditional breaks such as Christmas (e.g. Collective Redundancies Call for Evidence 2011) or summer (e.g. the 'listening exercise' associated with the 'Open Public Services White Paper'). Where such breaks occur these should be added to the consultation period.

Access and 'digital by default'

The principle that consultation should be 'digital by default' is inappropriate in a number of areas. In the case of the AWB consultation, workers in rural areas are, by definition, a 'hard to reach' group. DEFRA's website states that 47% of households in sparse hamlets or isolated dwellings have no or slow broadband. Internet access in rural areas is low and the low pay of the agricultural workforce means access to new technology is limited. We

welcome the use of technology as one of a variety of ways to assist the consultation process, but do not support a blanket move to ‘digital by default’.

In addition, our experience of on-line consultations has been that they often restrict the ability to respond in a full and open manner as the format is often restricted to specific questions which are framed from a particular position and leave little scope for broader comments or challenge.

The AWB consultation experience also exposed some other access issues. Those phoning to order hard copies of the consultation document experienced long waiting times (one union activist requested copies on 17th October, the day after the consultation was launched, and received them on 29th October – leaving less than two weeks to respond).

Meaningful engagement

The failure of the Government to meaningfully engage with representative bodies or misrepresent the consultation process is evidenced in other ways. For example, in respect of the recent BIS consultation on collective redundancies the ‘list of individuals/organisations consulted’ named both Unite the Union and the Transport and General Workers Union (which was one of the merger partners forming Unite in 2007). When pursued with BIS, the response given was that the list was not a list of organisations that had responded but a list of organisations that the consultation had been sent to.

Evaluation of consultation responses

Unite would also like to draw attention to a concern in respect of the evaluation of consultation responses. All too often, reports of consultation responses concentrate on a numerical exercise relating to the simple numbers of responses (i.e. X per cent said A compared to Y per cent saying B) without proper consideration of the nature of the organisation responding. Unite, for example, represents over 1 million members working across the whole economy and, given appropriate time and process, is able to consult within its own internal democratic structures giving our responses a depth and significance that may not be matched by others.

Universities UK – Written Evidence

Universities UK (UUK) is the representative organisation for the UK's universities. Founded in 1918, its mission is to be the definitive voice for all universities in the UK, providing high quality leadership and support to its members to promote a successful and diverse higher education sector. With 133 members and offices in London, Cardiff and Edinburgh, it promotes the strength and success of UK universities nationally and internationally.

University UK's is a representative membership organisation, and therefore it needs to ensure that the content of its contributions to government consultations are representative of the views of its members. It is often necessary to consult with members before any formal response to a government consultation can be given. As our members are university vice-chancellors, who have great pressures on their time, it can be challenging to carry out this consultation process to very short timescales. Universities UK therefore has concerns about a consultation period as short as short as two weeks, as is proposed for some cases by the government's new guidance, even for consultations on apparently straightforward issues.

The guidance suggests that the duration of consultation required 'will depend on the nature and impact of the proposal (for example, the diversity of interested parties or the complexity of the issue)'. This is reasonable, but as the guidance also points out part of the purpose of consultation is 'to understand possible unintended consequences of a policy'. These unintended consequences could be complex, or else consultation could uncover complexities involved in a policy or in its implementation which had not previously been considered. It is not always possible for the government to accurately assess, in advance, how complex the issues covered by a consultation are.

The government's proposal to consider the use of 'more informal ways of engaging [...] rather than always reverting to a written consultation' has the potential to be a sensible move. While it would make the consultation process and the response from government more difficult to audit, round-table discussions and working groups could prove a fruitful way to engage with membership organisations such as Universities UK.

We would welcome efforts to improve the quality of consultation documents. They can often have many overlapping questions which lead to repetition when responding to a consultation in a comprehensive manner. Sharpening the focus of questions could improve the quality and clarity of responses received.

Daniel Vulliamy – Written Evidence

I write to express strong opposition to the government's new approach to consultation, in which new guidance states consultations may run for just two weeks instead of the usual 12. This is far too little time for interested parties to gather evidence and make submissions, and makes a nonsense of politicians' claimed commitment to open government.

As former branch chair for the National Union of Agricultural and Allied Workers, I was particularly concerned that the Department for Environment, Food and Rural Affairs allowed just 3 weeks' consultation on "The future of the Agricultural Wages Board for England and Wales, and Agricultural Wages Committees and Agricultural Dwelling House Advisory Committees in England". My present union, UNITE believes that the proposals may actually be unlawful but did not have time to investigate this possibly flawed legislation. If a large organisation like UNITE struggles to meet such a tight deadline, bodies with fewer resources will be effectively excluded from consultation.

The Department for Business, Innovation and Skills' consultation on "Implementing Employee Owner Status" also allowed just three weeks to respond to a radical and largely untried proposal with implications for workers, employers, employment tribunals and higher courts. I suggest that all consultation periods should be at least 12 weeks long in order to ensure that all interested parties are able to provide evidence.

I also oppose any change in guidance to ministers that suggests some policies can be legislated on without public consultation. A minister's "minor technical amendment" can have far-reaching implications for citizens. A recent example is provided by the amendment to (s)47 of the Health and Safety at Work Act 1974 added to the Enterprise and Regulatory Reform Bill without prior consultation. The amendment is not a simple technicality. It ends employers' strict liability for the health and safety of their employees, in place for over a century, which will cause major additional barriers for injured workers, as well as additional work for lawyers. There really should have been public consultation before making such a significant amendment.

I also oppose any attempt to only allow digital responses to consultations. This would wholly disempower those without access to technology. On-line responses also restrict the manner in which respondents answer questions.

I ask that the Secondary Legislation Scrutiny Committee rescinds the government's new approach to consultation to ensure the voice of the public continues to be heard in Whitehall.

Patrick Walsh – Written Evidence

I wish to register my strong objection to the proposal that the consultation period be reduced from 12 weeks to 2 weeks.

It takes time to gather evidence to be submitted to consultations, particularly given the complex and detailed nature of the issues raised.

A reduction such as this means that in reality properly considered and prepared responses to consultations will become impractical. Consequently even more badly thought through and ill-considered decisions will be made by the government than are made at present (which in itself is hard to believe possible) as fewer properly crafted responses to consultations will be submitted.

Penny Welch – Written Evidence

The government's new approach to consultation reduces the length of the normal consultation period from 12 weeks to as little as 2 weeks. The document 'Consultation Principles' states on p. 2: 'The amount of time required will depend on the nature and impact of the proposal (for example, the diversity of interested parties or the complexity of the issue, or even external events), and might typically vary between two and 12 weeks'.

This will make it impossible for membership organisations to consult their own members before making a response to the consultation and/or to gather evidence and submit a full response to proposals.

This will effectively leave some sections of the public without a voice and could easily result in bad legislation with unforeseen consequences

I believe every consultation period should be 12 weeks long in order to ensure all interested parties, regardless of their wealth or size, are able to provide evidence.

I urge the Secondary Legislation Scrutiny Committee to rescind the government's new approach to consultation to ensure the voice of the public continues to be heard in Whitehall.

Liz Williams – Written Evidence

I wish to state my opposition to the government's proposals for changing the arrangements for consultations, saying these may run for two weeks rather than the usual twelve.

I think it is quite wrong not to give to the public and specialist organisations a reasonable opportunity to respond to proposals before they become law. For many years I worked for a charity that advised parents on education issues. We responded regularly to government consultations, our expertise that came from working with parents on a daily basis was welcomed, and in many cases our recommendations were taken on board. Without a 12 week consultation this kind of improvement to government proposals will not be possible.

I trust the government does not believe it necessarily knows what effects - both intended and unintended - its proposals may have and it should be prepared to provide the time for those with hands-on experience of grass roots activities to contribute to the improvement of its proposals.

I also do not agree that previously held public consultations have been unnecessary, and therefore oppose any change in guidance to ministers that suggests some policies can be legislated on without public consultation. Even where a change to legislation may be described by some as a 'technical amendment', there can be far-reaching implications for UK law.

Please also do not restrict consultation responses to digital format only. This is really disempowering for disadvantaged families.

I do hope you will retreat from this new approach to consultation, so that members of the public can continue to make constructive improvements to government proposals, and the voice of a wide range of constituents can be taken into account.

Christine Windridge – Written Evidence

I have neither affiliations to organisations, political or otherwise, nor any specific qualifications or expertise of interest to this Committee.

The Ministerial Written Statement, July 2012, also referenced as the new Consultation Principles (the “Principles”), has cited The Civil Service Reform Plan as the primary reason to supersede The Code of Practice on Consultation, 2008 (the “Code”). Two specific areas have been identified for discussion, that of “digital by default” submissions and scrapping the previous 12-week period recommendation. It also offers an opportunity to consider measures that actively pursue contributions from individual members of the public.

My interest in such matters is recent, beginning in 2008 with the various Codes of Practice under section 14 of the Animal Welfare Act, 2006. The extract below is from one of the summaries of responses:

The Codes were subject to an eight week public consultation. A shorter consultation period was agreed because the English draft code was almost identical to the final Welsh version which had already been subject to a 12 week consultation in Wales, where most key stakeholders (national organisations) had seen and commented upon them.⁷⁸

Note: Defra’s website had a similar preamble when announcing the consultations in the autumn of 2008.

To me, this serves to highlight the on-going problems to date: it does not name those involved in agreeing the eight week period; it is irrational to alter the consultation time due to a consultation held in a part of the UK with varying legal powers; and it identified a handful of national organisations as key to the process while simultaneously reducing the potential input, in this case, from the millions of animal owners directly affected. Simply, the perception was of a government doing everything it could to avoid engaging with the public in England.

I realised that eight or, indeed, twelve weeks would not be adequate for an average person to research and develop arguments based mainly on interest and hunch; it is clear that professional groups have the advantage of time and all groups, whether lay or professional, have the advantage of numbers.

Nevertheless, these consultations did not directly breach the 2008 Code. Indeed, its introduction makes plain that the public should be grateful for formal opportunities to engage in constructive debate on policy:

This Code is not intended to create a commitment to consult on anything, to give rise to a duty to consult, or to be relied on as creating expectations that the Government will consult

⁷⁸ <http://archive.defra.gov.uk/wildlife-pets/pets/cruelty/documents/summary-responses-cat-code.pdf>

in any particular case. The issues on which the Government decides to consult depend on the circumstances in each case.⁷⁹

Exceptions to this, it further advises, include statutory requirements to consult with certain groups or on certain issues, and the Compact on Government's Relations with the Voluntary and Community Sector, and the Central-Local Government Concordat; I freely admit that I have not had time to get to grips with these concepts, but these concessions further underline the Government's desire to interact with groups and organisations rather than with individuals.

The new Principles have retained all of the previous authority of the Government while reducing the scope for individuals and groups to prepare useful submissions. Yet, within the latest incarnation of the No. 10 website, the message is positive and encouraging⁸⁰, and the linked site Inside Government⁸¹ is clear and easy to follow. (To date, just two out of 23 Government Departments have moved across to the new gov.uk portal, but the project is most promising.) The contrast between the Principles and the No. 10 site is glaring - Governments must not create difficulties designed to deter the public. In turn, the public has a responsibility to understand the policy and explicit questions asked within a consultation.

Individual members of the public generally struggle to be heard as the collective forces of lobbyists, media, and protest groups set about their respective quests. It is understandable that single-interest groups are forming as a response to perceived indifference, often spawning other groups holding alternate opinions. The internet enables such groups to form quickly and at low cost, perhaps inspiring the media (for its own reasons) to provide their online readers with facilities to comment directly on articles, swiftly followed by site moderation: give the public a stick and anonymity and they will use both.

Recent administrations have been catching up with the public in its understanding of how internet developments such as blogs, Twitter, and Facebook, can be positive forces, although the online rants and tsunamis of consciousness emanating from these examples entitle the Government to maintain elements that cause the public to have its say in a defined and methodical procedure.

Email is now the default method for submissions and, according to the Principles, this measure, in itself, will increase the effectiveness of departments in reaching those affected by policies. No-one can dispute the global and (largely) positive impact IT has made. Email can be cheaper and more convenient but only when both sender and recipient have access to a computer which is also connected to the internet. Libraries have played a big part in providing public access to IT particularly in deprived areas but a large number of them are closing. Thus the timing of the new digital-by-default instruction is regrettable but as a consequence the measure is also set to fail its own test. This is because it reduces the opportunities for the public to provide evidence and, thus, reduces the likelihood that those affected by policies will be served better than they would have been prior to July of this year.

There are other issues to be addressed such as data security, storage of email addresses, and verification that require a formal statement from the Cabinet Office.

⁷⁹ <http://www.bis.gov.uk/files/file47158.pdf>

⁸⁰ <http://www.number10.gov.uk/take-part/public-engagement/government-consultations/>

⁸¹ https://www.gov.uk/government/publications?publication_type=consultations

No Committee has been, or will be, enriched by minimising the amount of time made available for consultation; rather, short timescales will minimise independent thinking. If that holds true, and there is sufficient will to increase public participation, then an alternative is to encourage submissions at a time suited to the public. One solution is to introduce permanent and on-going consultations.

The All-Party Groups (APGs) present lobbyists with a cheap opportunity to gain access to Parliament by providing administrative or secretarial support. A report, *Speakers' Working Group on All-Party Groups*⁸², June 2012, revealed that 48% of MPs and Peers responding to its survey agreed that, "APGs are prone to be manipulated by public affairs and lobby groups for their own purposes". Having followed a few APGs I am surprised that the percentage isn't a little higher but the report followed up with the fact that 89% of respondents belonged to an APG.

However, many APGs are valuable to the wider public and it would be a pity to regulate them out of existence. Instead, some thought might go towards giving them sufficient resources to eliminate the need for external help and to increase public awareness of the Groups enabling them to become a permanent focal point for submitting ideas and comments from any source. It must be clearly distinctive from other methods of communications to parliamentarians, probably including a requirement to register (along with relevant declarations of interests), guidelines for submissions, and, initially at least, topics to be chosen by the Chair of the APG. Importantly, all submissions must be made public, preferably via a portal similar to Inside Government. Thereafter, the value of material within submissions would be matters for Government and parliamentarians.

Of course, I expect reasons will be found to explain why such steps would be impossible but a Register of lobbyists will not stop the suspicion and resentment the public has towards those who enjoy privileged and regular access to parliamentarians and others with influence. Whether calls for evidence last 12 or 52 weeks, the Principles diminish the opportunities to obtain evidence from people who may or may not be directly affected by policies dreamt up in ivory towers. However, if the Principles remain extant, perpetual consultations could help post-legislative scrutiny processes (ie how new legislation is meeting respective impact statements and stated aims) by making them faster and with evidence from a larger pool.

⁸² <http://www.parliament.uk/documents/speaker/Speakers-Working-Group-on-APGs-report.pdf>

Women's Resource Centre – Written Evidence

The Women's Resource Centre and its members have some significant concerns about the Government's proposals to change consultation processes. We believe the proposed changes will reduce the quality of public decision-making and limit the participation of equalities groups and voluntary organisations in the policy making process.

WRC and its members are alarmed that consultation periods could be reduced to as little as 2 weeks and urge the Lords Select Committee to take action to ensure the government's approach to consultation is both challenged and actively changed. In the current economic climate, it is even more vital that government decisions are taken in partnership with members of the public and that the diverse needs of communities are fully taken into consideration.

Like the Equality and Diversity Forum, WRC's members see the following problems with the proposals-

- **communicating the consultation** questions to the all the relevant affected groups: we understand that the Government would do its best to notify all the groups whom it believes would be affected by a particular proposal, however, part of the reason for consultation is to be able to identify any unintended consequences. These may well come from groups whom the Government has not foreseen will be affected by the proposal in question. A two week consultation period will be unlikely to reach them.
- **meeting deadlines:** Many NGOs operate on a consensus basis and would have difficulty in meeting much shorter deadlines. For example, the Women's Resource Centre, like many similar organisations, needs its members' consent before making a response on issues of policy and this cannot be done within a fortnight. Smaller NGOs that have few if any professional staff are likely to find it particularly difficult to respond quickly. Shorter deadlines would also be likely to make it much harder for disabled people and their organisations to engage in consultation.
- **Having a poor evidence base:** it will be prohibitively difficult for organisations and interested parties to gather evidence and submit a clear and considered response to proposals which require an evidential response.

This approach seems to be based to receiving a 'yes'/'no' response from trusted insiders rather than being 'a more proportionate or targeted approach' and it has some obvious adverse impacts –

- The proposals to restrict responses to 'digital only' will undoubtedly adversely affect older people, people with disabilities and some ethnic minorities for whom English is not their first language as well as those unable to afford access to this technology. It would disempower those without access to technology.

Women's Resource Centre – Written Evidence

- Additionally, on-line responses tend to allow less flexibility in the way respondents can answer the questions.

We agree with the RNIB's comments that consultation periods should be 12 weeks long in order to ensure all interested parties, regardless of their wealth or size, are able to provide evidence, unless there are exceptional reasons why a shorter period is necessary. We urge you to reject the Government's new approach to consultation and ensure the voices of the public and of civil society continue to be heard in Whitehall.

We hope that the Committee takes our organisation's concerns into consideration as part of the Inquiry and continues a dialogue with WRC and its members on this topic in the future.

Nigel van Zwanenberg – Written Evidence

I am writing to indicate my opposition to the government's new approach to consultation, in which new guidance states consultations may run for just two weeks instead of the usual 12.

This drastic shortening of consultations makes it prohibitively difficult for individuals, organisations and interested parties to gather evidence and submit a clear and considered response to proposals. As such, the new approach to consultation effectively leaves some sections of the public without a voice and is inherently anti-democratic.

Please remember that all MPs are in Parliament merely because it is inconvenient for the rest of us to be there and you have a duty to govern on our behalf and in our interest.

I urge the Secondary Legislation Scrutiny Committee to rescind the government's new approach to consultation to ensure the voice of the public continues to be heard in Whitehall and the creep to totalitarianism is rejected.

Email campaign instigated by the Institute of Employment Rights

The Committee has been in receipt of 477 emails on the basis of the following text, sent at the invitation of the Institute of Employment Rights:

For the attention of the Secondary Legislation Scrutiny Committee

I am writing to indicate my opposition to the government's new approach to consultation, in which new guidance states consultations may run for just two weeks instead of the usual 12.

This drastic shortening of consultations makes it prohibitively difficult for organisations and interested parties to gather evidence and submit a clear and considered response to proposals. As such, the new approach to consultation effectively leaves some sections of the public without a voice.

This has been recently evidenced in the cases of two consultation periods that were reduced to three weeks. Responses to the Department for Business, Innovation and Skills' consultation on "Implementing Employee Owner Status" required a large amount of research due to the far-reaching implications of creating a new status of worker. Three weeks was insufficient for organisations to gather strong evidence of the repercussions to workers, employers, tribunal procedures and any complications with EU law.

Elsewhere, the Department for Environment, Food and Rural Affairs' "The future of the Agricultural Wages Board for England and Wales, and Agricultural Wages Committees and Agricultural Dwelling House Advisory Committees in England" consultation did not provide enough time for Unite the Union to complete its legal analysis of the proposals, which it was suggested may have been illegal. Where major organisations like Unite are struggling to meet such tight deadlines, smaller bodies with fewer resources are effectively locked out of the consultation altogether.

I believe every consultation period should be 12 weeks long in order to ensure all interested parties, regardless of their wealth or size, are able to provide evidence.

I also do not agree that any previously held public consultations have been unnecessary and thus oppose any change in guidance to ministers that suggests some policies can be legislated on without public consultation. Even where a change to legislation may be described by some as a "technical amendment", there can be far-reaching implications to UK law.

This has recently been evidenced by the case of the amendment to (s)47 of the Health and Safety at Work Act 1974 that was added to the Enterprise and Regulatory Reform Bill without consultation. This amendment is not simply a technicality but in fact overturns employers' 114-year-old strict liability for the health and safety of their employees, causing major changes to people's real-life experience of employment law. The government should have consulted the public before making this amendment.

Finally, I oppose any attempt to restrict responses to digital only. I believe such a move would disempower those without access to technology. I also believe on-line responses allow less flexibility in the way respondents answer the questions.

Email campaign instigated by the Institute of Employment Rights

I urge the Secondary Legislation Scrutiny Committee to rescind the government's new approach to consultation to ensure the voice of the public continues to be heard in Whitehall.