

Reviewing our consultation guidance

A discussion paper

5 December 2012

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1 Introduction

Both the Energy Order (Northern Ireland) 2003 and the Water Sewerage Order (Northern Ireland) 2006 set out requirements for the Utility Regulator to consult on specific functions. This includes consultation on things like the granting of, and modifications to, licences and our forward work plan.

Guidance by Government¹ reinforces the importance of public bodies demonstrating their accountability and openness through consultation. The Department of Business Innovation and Skills' 'Principles for Economic Regulation' (2011) emphasizes that 'Open and committed consultation strengthens transparency'.

In January 2010 we published guidance to staff on consultation. This has not been reviewed since publication.

Following the mid-term review of our corporate strategy, in 2011, we indicated that we would be reviewing our approach to consultation. Our Forward Work Plan 2012-13 also indicates that we will review our approach to consultation.

The purpose of this discussion paper is to provide a basis for eliciting views on our consultation practice.

¹ See for instance the Cabinet Office's Consultation Principles guidance, 2012.

The objectives of this consultation are to:

- review our existing guidance on consultation;
- identify ways of enhancing our existing consultation practice; and
- develop, as appropriate, a revised guide to consultation.

2 Overview of consultation guidance from elsewhere

Our guidance on consultation was developed with reference to other published documentation.

It is in line with the Cabinet Office's Code of Practice on consultation (2004) (see Annex 2) and the later 'Code of Practice on Consultation' (published by the Department of Business, Enterprise, and Regulatory Reform (BERR) (2008). The Council of European Energy Regulator (CEER) also produced guidelines on CEER's Public Consultation Practices (2011) which draws on much of the good practice from elsewhere.

The Cabinet Office introduced new guidance on consultation in 2012. The new guidance focused on principles of consultation. Key aspects of the guidance included:

- an emphasis on engagement and targeting stakeholders;
- ensuring that consultation should begin as early as

possible in the consultation process;

- more flexibility about consultation timeframes – depending on the nature and impact of proposals;
- promoting accessible information as part of the consultation process; and,
- considering the most appropriate way and means engaging with stakeholders.

3 Current consultation guidance

Our current consultation guidance is attached at Annex 1.

The guidance places on emphasis on what may be called ‘customised’ consultation. This means that all consultations should focus on engaging with those most affected by consultation. Consequently, each consultation should have a target audience and focus resources and approaches accordingly.

Another key feature of the guidance relates to timing. It is recommended that all ‘public policy’ consultations last for a minimum of 12 weeks and ‘more technical, non-public policy’ consultations should last for a minimum of 8 weeks. The guidance also notes that these time limits do not apply to normal regulatory matters, where prescriptive consultation times are stipulated by statute.

The guidance also outlines administrative arrangements, and options, for providing feedback.

Finally, the guidance promotes accessibility. This includes the layout of consultation documents and making these available in alternative formats.

4 Issues for discussion

Taking account of our existing guidance, and being aware of consultation practice elsewhere, we consider that there are four general discussion areas.

We briefly discuss each area below and outline our thinking on how we might reflect this through new consultation guidance.

1. General format of our consultation guidance

Our existing guidance focuses on recommended practice, and differentiates between ‘Must dos’ versus ‘Should dos’.

We think that revised guidance should more clearly and concisely set out how we will carry out consultation. The Government’s recent consultation guidance was noteworthy for its relative brevity.

We consider that a one-page ‘Consultation Standard’, which sets out how we carry out consultation, may bring benefits of clarity and brevity. Briefer, more direct guidance may also provide a more practical reference point for our staff in carrying out consultation.

2. Process

Our consultation process is defined by a formal start and finish through the publication of documents on our website. Our existing guidance promotes feedback to those that have responded to the consultation.

We consider that the provision of feedback is central to accountability and transparency and think this should remain an integral and important aspect of the consultation process.

There is however some scope to consider enhancements to the process. Our current guidance identifies as best practice a period for providing feedback following consultation. We might, for instance define the process more from start to conclusion by setting a timeframe for publishing documentation following consultation.

We normally hold a stakeholder workshop during our annual FWP consultation to discuss the work programme including issues that will be the subject of consultation in the forthcoming year and could consider alternative approaches in that regard.

3. Engagement

Much of the guidance on consultation stresses the importance of knowing the audience and reflecting this in

approaches and methods used to consultation.

We agree with this focus and think that it is the optimum way of increasing participation.

We think that revised guidance should pro-actively reinforce our preference for customized consultation where this is appropriate. This could be achieved by ensuring that staff are prompted, before a consultation commences, to consider the best approach to securing maximum participation. We also think that staff should be prompted to consider alternatives to traditional consultation (i.e. the routine approach which involves publication of a document and seeks comment without any further engagement with stakeholders). This includes pre-consultation, stakeholder workshops and stakeholder briefings where appropriate on significant issues.

Moreover, we intend to promote the value of ongoing stakeholder engagement initiatives.

4. Timing

The Government's recent guidance on consultation was noteworthy for a more pragmatic approach to time limits. While we consider the ability to be flexible on consultation time limits is important, we think that setting standards for the length of consultation gives certainty to stakeholders.

In this regard, we intend to retain time limits for consultation for all types of consultation. Indeed, we think that an approach which categorises consultation in terms of a long (up to 12 weeks), medium (up to 8 weeks) and short (up to 4 weeks) might be more straightforward. This categorization would also include an indication of the type of activity falling under each category.

5. Accessibility

We are committed to enhancing the accessibility of the documents we produce. This commitment is consistent with better regulation principles and is included in our current consultation guidance. We consider that revised guidance might more clearly set out the types of things that we will do to improve accessibility to our documents. This might include the following:

- a common template for all our documents including elements that promote accessibility – executive summary, abstract and glossary;
- a focus on shorter core documents with more technical detail to supporting annexes;
- more consideration to the use of ‘open letter’ document formats, such as those increasingly used by the GB regulator Ofgem;
- greater use of online formats for responding to consultations;
- taking steps to improve the accessibility of our website –

cross referencing of information, better organisation of detail etc.

5 **Responding to this consultation**

We would like to hear the views of external stakeholders to our review of how we consult.

We would particularly like to receive comments on the issues raised in Section 4 and our thinking on possible amendments to our consultation practice. Comments are also welcome on other aspects of good consultation practice (e.g. the extent to which Regulatory Impact Assessment requirements are covered) referencing relevant guidance where appropriate.

We intend to consult on this discussion paper for 12 weeks. During that time we will seek to engage with various stakeholders to inform them and facilitate discussions as necessary. We expect to publish our final view on consultation practice within 3 months of the close of the consultation. This final view will include how we have addressed comments raised and we will alert respondents when the document is published.

A paper copy of this document can be obtained from:

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Copies of the document will be made available in alternative formats on request. Your response

to this consultation may be made public by us. If you do not wish your response or name made public, please state this clearly by marking the response as confidential.

Annex 1: Current UR consultation guidance

Introduction

A series of statutory obligations (such as Section 75 of the Northern Ireland Act – equality legislation), a general tendency to improve the accountability and responsiveness of the public service and the restoration of devolution has tended to increase the extent of public consultation by public bodies in Northern Ireland.

Consultation is and should be a part of how the Utility Regulator carries out its business and this briefing is intended to promote a consistent approach by staff to consultation and to help ensure the adequacy and fairness of consultations.

What is consultation?

The term ‘Consultation’ is used here as shorthand for public consultation with external organisations or individuals, and has three elements:

- (1) seeking the views of others on a proposal, policy or proposed course of action – while not unduly restricting the range of options under consideration - in advance of making a final decision on the proposal or course of action
- (2) providing those being consulted with sufficient reasons for proposals and in terms clear to them to allow intelligent consideration and response. Appropriate time must be allowed for the matter being consulted on.
- (3) taking account of the views of those being consulted in the final proposal, policy or course of action.

Why is consultation important?

There are several reasons why consultation is important:

- ✓ It enables the Utility Regulator to comply with statutory requirements to consult (e.g. on a licence)
- ✓ It should improve policy and decision making by giving external key stakeholders an opportunity to make a contribution to Utility Regulator decisions/ policy
- ✓ Generally enhances the professional working partnership between the organisation and those being consulted

- ✓ Leads to more accountable and transparent public organisations
- ✓ Is in line with central Government policy.

How do I carry out consultation?

It is impossible to provide a template for every single consultation, since circumstances vary, but there are things that those Utility Regulator staff carrying out consultation should do to ensure a professional and consistent approach.

Consultation Must Dos

- ✓ ***Include consultation into the workplan for the*** project/proposals/policy from the outset so that thought is given to the timing of and method of consultation

- ✓ When planning all consultations, ***think about the audience*** (those being consulted). This may involve, for example, keeping a database of key stakeholders, which is updated regularly. It is important - if possible - to distinguish between the target audience (those who are likely to have a significant or obvious interest in the consultation topic) and the peripheral audience (those who are likely to have a minor or negligible interest in the consultation topic). Being able to make this distinction helps focus consultation resources and approaches

- ✓ ***Think about the method of consultation to secure the maximum response and avoid wasted effort.*** Tie in the method with the audience – focus on *making sure* that the *target audience responds* to your consultation and the *peripheral audience is given an opportunity* to respond. Practically, this might mean sending a copy of the full consultation document to the target audience and perhaps also inviting the target audience to attend a consultation meeting. Conversely there is little worth in sending a full document to those from the peripheral audience although letting them know that the consultation is underway is important (e.g. by an e-mail at the start of the consultation)

- ✓ ***All Utility Regulator consultation documentation must strictly follow branding guidelines*** (see forthcoming Communications briefing – Branding)

- ✓ Unless there are unavoidable reasons, ***all public policy consultations should last for a minimum of 12 weeks – perhaps more if over a holiday period, more technical (non-public policy) consultations should last a minimum of 8 weeks. Neither of these time limits apply to normal regulatory matters (e.g. enforcement orders) for which prescriptive consultation times are stipulated by statute.***

- ✓ ***All consultations should be announced on the Utility Regulator website*** with the appropriate documentation attached

- ✓ Any consultation document should be as simple and concise as possible. It should include standard text on the Utility Regulator a summary, clearly set out the proposals and timescales for response and make it as easy as possible for readers to respond (e.g. a questionnaire), make contact or complain (identifying a named contact)

- ✓ ***Provide feedback on consultation responses.*** All responses should be acknowledged and an indication given of when we hope to provide feedback - best practice is as soon as possible or within 3 months of the close of consultation. This can be done via the publication of a final document/s which provides feedback and on the website. This needs to record in some way how we have taken account or otherwise of consultees' responses or otherwise. This might be in the form of a thematic response to a series of comments or a specific response on an individual comment (which might be in the latter case only practical in smaller consultations). It is important that consultees are advised in advance that their comments, unless identified as confidential, will be published (Annex 1 to this document provides a suggested form of wording). The document should be sent to those consultees that have contributed preferably by e-mail and a notification should be sent to all others on the consultation list (who did not respond to the consultation).

- ✓ Aside from ensuring that consultation documentation is written in plain English, ***you should make a commitment to making documentation available in accessible formats on request and include this in consultation documents*** (e.g. in large print for those with sight impairments)

- ✓ Consider whether any impact assessments are required (e.g. Equality or Regulatory Impact Assessments)

Consultation Should Dos

- ✓ **Consider** carrying out **pre-consultation work** with key stakeholders to help shape the consultation documentation and inform consultation methods
- ✓ **Use electronic formats (e.g. e-mail) for consultation as far as possible**
- ✓ **Review contact lists regularly** to ensure that they are up to date and accurate
- ✓ **Review each consultation** to see what worked and what didn't work – appoint someone to act as a consultation co-ordinator

Consultation – Don't Dos

- ✓ **Failing to consult publicly on a course of action** that affects the public or is required by regulatory practice
- ✓ **Carrying out consultation in a way that makes it difficult for affected parties to participate** – timescale too short, limited range of options being considered, documentation includes missing information, is not accessible for the audience being consulted
- ✓ **Not providing feedback** to those consulted
- ✓ **Taking a course of action without giving consideration to consultation comments**

