

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**

Annex 1: Suggested wording on confidentiality

Your response may be made public by the Authority. If you do not want all or part of your response or name made public, please state this clearly in the response by marking your response as 'CONFIDENTIAL'. Any confidentiality disclaimer that may be generated by your organisation's IT system or included as a general statement in your fax cover sheet will be taken to apply only to information in your response for which confidentiality has been specifically requested.

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA) and the Data Protection Act 1998 (DPA)). If you want other information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Authority.