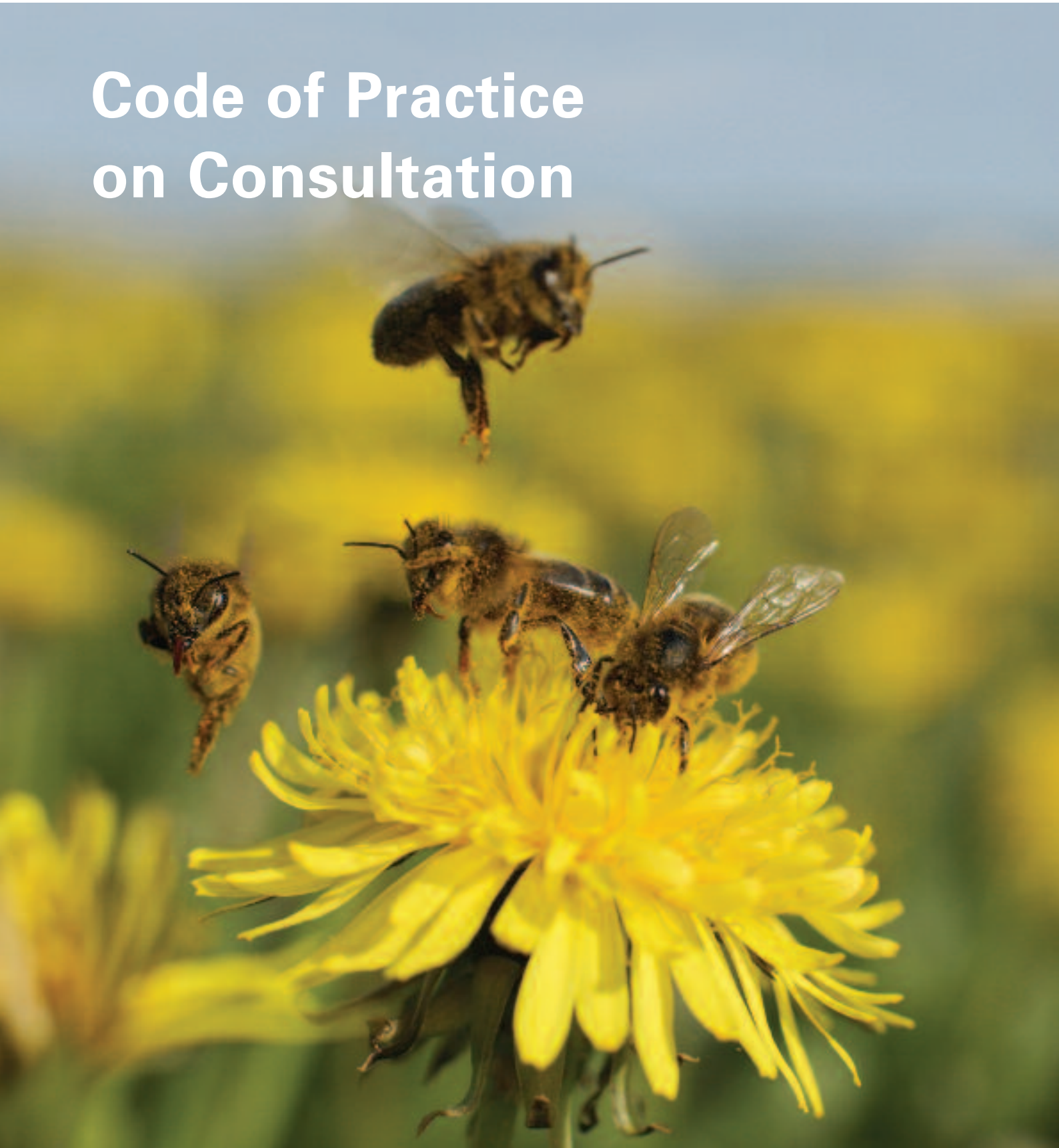


Code of Practice on Consultation



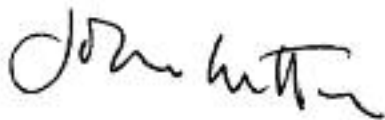
FOREWORD

This Government is committed to effective consultation; consultation which is targeted at, and easily accessible to, those with a clear interest in the policy in question. Effective consultation brings to light valuable information which the Government can use to design effective solutions. 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 Government has had a Code of Practice on Consultation since 2000 setting out how consultation exercises are best run and what people can expect from the Government when it has decided to run a formal consultation exercise.

This third version of the Code is itself the result of listening to those who regularly respond to Government consultations. This Code should help improve the transparency, responsiveness and accessibility of consultations, and help in reducing the burden of engaging in Government policy development.

As part of the Government's commitment to effective consultation, we will continue to monitor how we consult and we appreciate feedback on how we can improve.



John Hutton
BERR SoS

July 2008



THE SEVEN CONSULTATION CRITERIA

Criterion 1 When to consult

Formal consultation should take place at a stage when there is scope to influence the policy outcome.

Criterion 2 Duration of consultation exercises

Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

Criterion 3 Clarity of scope and impact

Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

Criterion 4 Accessibility of consultation exercises

Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

Criterion 5 The burden of consultation

Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

Criterion 6 Responsiveness of consultation exercises

Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

Criterion 7 Capacity to consult

Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

These criteria should be reproduced in consultation documents.

INTRODUCTION

Ongoing dialogue between Government and stakeholders is an important part of policymaking. This dialogue will, at times, need to become more formal and more public. When developing a new policy or considering a change to existing policies, processes or practices, it will often be desirable to carry out a formal, time-bound, public, written consultation exercise. This kind of exercise 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.¹ Formal consultation exercises can expose to scrutiny the Government’s preliminary policy analysis and the policy or implementation options under consideration.

STATUS OF THE CODE

This Code sets out the approach the Government will take when it has decided to run a formal, written, public consultation exercise. It supersedes and replaces previous versions of the Code. The Code does not have legal force and cannot prevail over statutory or mandatory requirements. The Code sets out the Government’s general policy on formal, public, written consultation exercises. A list of the UK departments² and agencies adopting the Code is available on the Better Regulation Executive’s website.³ Other public sector organisations are free to make use of this Code for their consultation purposes, but it does not apply to consultation exercises run by them unless they explicitly adopt it.

Ministers retain their existing discretion not to conduct formal consultation exercises under the terms of the Code. At times, a formal, written, public consultation will not be the most effective or proportionate way of seeking input from interested parties, e.g. when engaging with stakeholders very early in policy development (preceding formal consultation) or when the scope of an exercise is very narrow and the level of interest highly specialised. In such cases an exercise under this Code would not be appropriate. There is, moreover, a variety of other ways available to seek input from interested parties other than formal consultation.⁴ Such engagement work is not the subject of this Code. When departments decide only to carry out engagement with interested parties in ways other than formal, written consultation, they are encouraged to be clear about the reasons why the methods being used have been chosen.

¹ In order to reach certain groups this may mean going beyond the traditional, written consultation exercise - see criterion 5

² Reference to “department” includes reference to non-Ministerial departments and other organisations that this Code applies to. Reference to a “Minister” includes the senior decision maker(s) in those organisations, e.g. the chief executive or the board responsible for the consultation.

³ <http://www.berr.gov.uk/bre>

⁴ In addition to the guidance supporting this Code, useful information on alternative forms of engagement may be found at www.peopleandparticipation.net.

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 in any particular case. The issues on which the Government decides to consult depend on the circumstances in each case.

Moreover, deviation from the Code will, at times, be unavoidable when running a formal, written, public consultation. It is recommended that departments be open about such deviations, stating the reasons for the deviation and what measures will be employed to make the exercise as effective as possible in the circumstances.

Under some laws there are requirements for the Government to consult certain groups on certain issues. This Code is subject to any such legal requirement. Care must also be taken to comply with any other legal requirements which may affect a consultation exercise such as confidentiality issues and equality schemes. More information on such matters can be found in the guidance which accompanies this Code.⁵

This Code should also be used in conjunction with the *Consultation and Policy Appraisal – Compact Code of Good Practice* which supports the Compact on Government's Relations with the Voluntary and Community Sector⁶ and with the *Central-Local Government Concordat* which establishes a framework of principles for how central and local government work together to serve the public.⁷

The Better Regulation Executive in the Department for Business, Enterprise and Regulatory Reform welcomes feedback regarding the effectiveness of the Code and the accompanying guidance. If you have any comments, please feel free to contact the Better Regulation Executive at:

Better Regulation Executive
Department for Business, Enterprise and Regulatory Reform
1 Victoria Street
London
SW1H 0ET

Telephone: 020 7215 0352
E-mail: regulation@berr.gsi.gov.uk

⁵ See <http://www.berr.gov.uk/bre>

⁶ <http://www.thecompact.org.uk/information/100023/publications/>

⁷ <http://www.communities.gov.uk/publications/localgovernment/centrallocalconcordat>

Criterion 1 When to consult

Formal consultation should take place at a stage when there is scope to influence the policy outcome.

- 1.1 Formal, written, public consultation will often be an important stage in the policymaking process. Consultation makes preliminary analysis available for public scrutiny and allows additional evidence to be sought from a range of interested parties so as to inform the development of the policy or its implementation.
- 1.2 It is important that consultation takes place when the Government is ready to put sufficient information into the public domain to enable an effective and informed dialogue on the issues being consulted on. But equally, there is no point in consulting when everything is already settled. The consultation exercise should be scheduled as early as possible in the project plan as these factors allow.
- 1.3 When the Government is making information available to stakeholders rather than seeking views or evidence to influence policy, e.g. communicating a policy decision or clarifying an issue, this should not be labelled as a consultation and is therefore not in the scope of this Code. Moreover, informal consultation of interested parties, outside the scope of this Code, is sometimes an option and there is separate guidance on this.⁸
- 1.4 It will often be necessary to engage in an informal dialogue with stakeholders prior to a formal consultation to obtain initial evidence and to gain an understanding of the issues that will need to be raised in the formal consultation. These informal dialogues are also outside the scope of this code.
- 1.5 Over the course of the development of some policies, the Government may decide that more than one formal consultation exercise is appropriate. When further consultation is a more detailed look at specific elements of the policy, a decision will need to be taken regarding the scale of these additional consultative activities. In deciding how to carry out such re-consultation, the department will need to weigh up the level of interest expressed by consultees in the initial exercise and the burden that running several consultation exercises will place on consultees and any potential delay in implementing the policy. In most cases where additional exercises are appropriate, consultation on a more limited scale will be more appropriate. In these cases this Code need not be observed but may provide useful guidance.
- 1.6 Consultation exercises should not generally be launched during election periods. If there are exceptional circumstances where launching a consultation is considered absolutely essential (for example, for safeguarding public health), departments should seek advice from the Propriety and Ethics team in the Cabinet Office. If a consultation is ongoing at the time an election is called, it should continue. However, departments should avoid taking action during election periods which will compete with candidates for the attention of the public.⁹

⁸ See <http://www.berr.gov.uk/bre>

⁹ For further guidance see <http://www.berr.gov.uk/bre>

Criterion 2 Duration of consultation exercises

Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

- 2.1** Under normal circumstances, consultations should last for a minimum of 12 weeks. This should be factored into project plans for policy development work. Allowing at least 12 weeks will help enhance the quality of the responses. This is because many organisations will want to consult the people they represent or work with before drafting a response to Government and to do so takes time.
- 2.2** 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.¹⁰
- 2.3** When timing is tight, for example when dealing with emergency measures, or international, legally-binding deadlines, or when the consultation needs to fit into fixed timetables such as the Budget cycle, consideration should be given to whether a formal, written, public consultation is the best way of seeking views. Where a formal consultation exercise is considered appropriate and there are good reasons for it to last for a shorter period (e.g. to seek views to inform the UK's negotiating position on EU proposals soon to be discussed in the Council of Ministers), the consultation document should be clear as to the reasons for the shortened consultation period and ministerial clearance (or equivalent, e.g. in non-Ministerial departments) for the shorter timeframe should be sought. In such circumstances it is important to consider the provision of additional means through which people can express their views.
- 2.4** When planning a consultation, it is important to take steps to raise awareness of the exercise among those who are likely to be interested. In particular, departments should consider ways to publicise consultations at the time of, or if possible before, the launch-date so that consultees can take advantage of the full consultation period to prepare considered responses.

¹⁰ For more on this, see the accompanying guidance at <http://www.berr.gov.uk/bre>

Criterion 3 Clarity of scope and impact

Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

- 3.1 Consultation exercises should be clear about the consultation process, i.e. what has taken place in the development of the policy prior to the consultation exercise, how the consultation exercise will be run and, as far as is possible, what can be expected after the consultation exercise has formally closed.
- 3.2 Consultation exercises should be clear about the scope of the exercise, setting out where there is room to influence policy development and what has already been decided, and so is not in the scope of the consultation.
- 3.3 Estimates of the costs and benefits of the policy options under consideration should normally form an integral part of consultation exercises, setting out the Government's current understanding of these costs and benefits. A "consultation stage Impact Assessment"¹¹ should normally be published alongside a formal consultation, with questions on its contents included in the body of the consultation exercise. An Impact Assessment should be carried out for most policy decisions and consultation of interested parties on the Impact Assessment and on equality assessments can bring greater transparency to the policymaking process and should lead to departments having more robust evidence on which to base decisions. It is important to read the guidance on specific impact tests, including the race equality impact assessment which is required by statute.¹²
- 3.4 Consideration should also be given to asking questions about which groups or sectors would be affected by the policy in question, and about any groups or sectors (e.g. small businesses or third sector organisations) that may be disproportionately affected by the proposals as presented in the consultation document. Consultation exercises can be used to seek views on the coverage of new policies, ideas of how specific groups or sectors might be exempted from new requirements, or used to seek views on approaches to specific groups or sectors that would ensure proportionate implementation.
- 3.5 The subject matter, any assumptions the Government has made, and the questions in the consultation should all be as clear as possible. A mixture of open and closed questions will often be desirable, and consideration should be given to offering consultees the opportunity to express views on related issues not specifically addressed in the questions.

¹¹ See guidance on impact assessment at <http://www.berr.gov.uk/bre/policy/scrutinising-new-regulations/page44076.html>

¹² See <http://www.berr.gov.uk/bre/policy/scrutinising-new-regulations/preparing-impact-assessments/toolkit/page44263.html>

Criterion 4 Accessibility of consultation exercises

Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

- 4.1** It is essential that interested parties are identified early in the process so that consultation exercises can be designed and targeted accordingly. When consultation exercises need to reach a diverse audience, several approaches may be required. In the consultation document it should be stated what ways are available for people to participate, how exactly to get involved, and why any supplementary channels have been chosen. Over-reliance on standard lists of consultees to disseminate consultation papers can mean that key groups are excluded and others receive consultation documents that are not relevant to them.
- 4.2** As far as is possible, consultation documents should be easy to understand: they should be concise, self-contained and free of jargon. This will also help reduce the burden of consultation. While consultation exercises on technical details may need to seek input from experts, when the views of non-experts are also required, simpler documents should be produced.
- 4.3** It is vital to be proactive in disseminating consultation documents. Careful consideration should be given to how to alert potential consultees to the consultation exercise and how to get views from relevant sectors of the community and the economy. While many interested parties can usually be contacted directly, there will often be other interested parties not known to Government or who can only be reached through intermediary bodies. Working with appropriate trade, community or third sector organisations can help the Government to hear from those who would otherwise go unheard. Using specialist media or events can also help promote consultation exercises among interested groups.
- 4.4** Thought should also be given to alternative versions of consultation documents which could be used to reach a wider audience, e.g. a young person's version, a Braille and audio version, Welsh and other language versions, an "easy-read" version, etc., and to alternative methods of consultation. Guidance on methods to support formal consultation exercises to help reach specific groups and sectors (regional, public meetings, online tools, focus groups, etc.) is available.¹³
- 4.5** It is important that people can decide quickly whether a consultation exercise is relevant to them. For this reason, a standard table of basic information should be used for all consultation exercises produced by any public body. This will mean that all the key information is readily accessible when potential consultees are first presented with a new consultation document and that regular consultees will become familiar with the format.¹⁴

¹³ See <http://www.berr.gov.uk/bre>

¹⁴ For an example template which can be used to provide key information at the beginning of a consultation document, see the guidance available at <http://www.berr.gov.uk/bre>

Criterion 5 The burden of consultation

Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

- 5.1 When preparing a consultation exercise it is important to consider carefully how the burden of consultation can be minimised. While interested parties may welcome the opportunity to contribute their views or evidence, they will not welcome being asked the same questions time and time again. If the Government has previously obtained relevant information from the same audience, consideration should be given as to whether this information could be re-used to inform the policymaking process, e.g. is the information still relevant and were all interested groups canvassed? Details of how any such information was gained should be clearly stated so that consultees can comment on the existing information or contribute further to this evidence-base.
- 5.2 If some of the information that the Government is looking for is already in the public domain through market research, surveys, position papers, etc., it should be considered how this can be used to inform the consultation exercise and thereby reduce the burden of consultation.
- 5.3 In the planning phase, policy teams should speak to their Consultation Coordinator and other policy teams with an interest in similar sectors in order to look for opportunities for joining up work so as to minimise the burden of consultations aimed at the same groups.
- 5.4 Consultation exercises that allow consultees to answer questions directly online can help reduce the burden of consultation for those with the technology to participate. However, the bureaucracy involved in registering (e.g. to obtain a username and password) should be kept to a minimum.
- 5.5 Formal consultation should not be entered into lightly. Departmental Consultation Coordinators and, most importantly, potential consultees will often be happy to advise about the need to carry out a formal consultation exercise and acceptable alternatives to a formal exercise.¹⁵

¹⁵ Guidance on alternative means of seeking input are available. See <http://www.berr.gov.uk/bre>

Criterion 6 Responsiveness of consultation exercises

Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

- 6.1 All responses (both written responses and those fed in through other channels such as discussion forums and public meetings) should be analysed carefully, using the expertise, experiences and views of respondents to develop a more effective and efficient policy. The focus should be on the evidence given by consultees to back up their arguments. Analysing consultation responses is primarily a qualitative rather than a quantitative exercise.
- 6.2 In order to ensure that responses are analysed correctly, it is important to understand who different bodies represent, and how the response has been pulled together, e.g. whether the views of members of a representative body were sought prior to drafting the response.
- 6.3 Consultation documents should, where possible, give an indication as to the likely timetable for further policy development. Should any significant changes in the timing arise, steps should be taken to communicate these to potential consultees.
- 6.4 Following a consultation exercise, the Government should provide a summary of who responded to the consultation exercise and a summary of the views expressed to each question. A summary of any other significant comments should also be provided. This feedback should normally set out what decisions have been taken in light of what was learnt from the consultation exercise. This information should normally be published before or alongside any further action, e.g. laying legislation before Parliament.¹⁶ Those who have participated in a consultation exercise should normally be alerted to the publication of this information.
- 6.5 Consideration should be given to publishing the individual responses received to consultation exercises.
- 6.6 The criteria of this Code should be reproduced in consultation papers alongside the contact details of the departmental Consultation Coordinator. Consultees should be invited to submit comments to the Consultation Coordinator about the extent to which the criteria have been observed and any ways of improving consultation processes.

¹⁶ Where Statutory Instruments are being brought forward it is a requirement to include within the accompanying Explanatory Memorandum a summary of the consultation exercise and its outcome (*Statutory Instrument Practice* paragraph 4.12 refers <http://www.opsi.gov.uk/si/statutory-instrument-practice.htm>)

Criterion 7 Capacity to consult

Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

- 7.1** Every organisation to which this Code applies should appoint a Consultation Coordinator. The Consultation Coordinator should be named in consultation documents as the person to contact with any queries or complaints regarding consultation process (the policy lead should be the contact point for queries regarding content).
- 7.2** Policy officials who are to run a consultation exercise should seek advice from their Consultation Coordinator early in the planning stages.
- 7.3** Government departments should monitor the effectiveness of their consultation exercises. Learning from consultation exercises should be shared with the department's Consultation Coordinator who will facilitate the sharing of lessons learned within the department and between departments and agencies.

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