



THE INSTITUTE
OF CHARTERED
ACCOUNTANTS
IN ENGLAND AND WALES

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Our ref: ICAEW Rep 81/07

Your ref:

Ian Ascough
Better Regulation Executive
Department for Business Enterprise & Regulatory Reform
1 Victoria Street
London
SW1H 0ET

By email to Ian.Ascough@berr.gsi.gov.uk

Dear Ian

EFFECTIVE CONSULTATION

The Institute of Chartered Accountants in England and Wales (the ICAEW) is pleased to respond to your request for comments on Effective Consultation.

Please contact me should you wish to discuss any of the points raised in the attached response.

Yours sincerely

Clive Lewis
Head, SME Issues, Technical Strategy
ICAEW
T +44 (0)20 7920 8667
E clive.lewis@icaew.com



ICAEW Representation

ICAEW REP 81/07

EFFECTIVE CONSULTATION

Memorandum of comment submitted in September 2007 by The Institute of Chartered Accountants in England and Wales, in response to the Better Regulation Executive of the Cabinet Office (now a Directorate within the Department for Business Enterprise & Regulatory Reform) consultation paper Effective Consultation published in June 2007

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INTRODUCTION

1. The Institute of Chartered Accountants in England and Wales (the ICAEW) welcomes the opportunity to comment on the consultation paper *Effective Consultation* published by the Better Regulation Executive of the Cabinet Office (now a Directorate within the Department for Business Enterprise & Regulatory Reform).

WHO WE ARE

2. The Institute operates under a Royal Charter, working in the public interest. Its regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the Financial Reporting Council. As a world leading professional accountancy body, the Institute provides leadership and practical support to over 128,000 members in more than 140 countries, working with governments, regulators and industry in order to ensure the highest standards are maintained. The Institute is a founding member of the Global Accounting Alliance with over 700,000 members worldwide.
3. Our members provide financial knowledge and guidance based on the highest technical and ethical standards. They are trained to challenge people and organisations to think and act differently, to provide clarity and rigour, and so help create and sustain prosperity. The Institute ensures these skills are constantly developed, recognised and valued.

MAJOR POINTS

Support for the *Effective Consultation* initiative

4. The Governments Code of Practice has improved the way in which Government consults and has lead to improved policy outcomes. But there remains a need to make the consultation process more holistic and less mechanistic
5. The ICAEW believes a 12 week consultation period is appropriate for written consultations.
6. In general whilst informal consultations, consultative fora, etc can be useful, the ICAEW believes that there is no substitute for well publicised and considered formal written consultations.
7. The ICAEW believes that, unless there is a clear need for confidentiality, there should be a presumption that Government should be open and transparent on every issue.
8. The ICAEW prefers Option 1 (Written consultation plus one other).

Email: clive.lewis@icaew.com

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Effective Consultation

9 Detailed Response to Consultation Questions

Current policy

1. Do you think the Government's Code of Practice has led to an improvement in the way the Government consults and to improved policy outcomes? Please illustrate your answer with any concrete examples you may have.

The ICAEW believes that the Government's Code of Practice has improved the way in which Government consults and has led to improved policy outcomes. But there remains a need to make the consultation process more holistic and less mechanistic. Written consultation is sometimes the first (and only) opportunity for stakeholders to express their views on proposed regulation or legislation.

We note the practice in Sweden (Case Study 2) that the requirement to consult is enshrined in law and, whilst there is always a danger of excessive consultation (and 200 Committees of Enquiry may be on that end of the scale), perhaps more frequent use of "Committees of Enquiry" such as used in the UK on the Company Law Reform proposals might be necessary for large scale reform.

2. Are 12 weeks generally the right amount of time for the formal, written element of Government consultations to last? Do you think that there are circumstances where a shorter or longer duration may be more appropriate?

The ICAEW believes that a 12 week consultation period is appropriate for written consultations. Indeed there are situations such as consultations over significant holiday periods, such as August and Christmas/ New Year when longer is desirable. We note that the period of this consultation is longer than the minimum 12 weeks presumably because of the intervening August holidays.

Monitoring compliance

3. Is the system for monitoring and promoting performance of departments in relation to the criteria in the current Code of Practice on Consultation right? What improvements could be made?

See our response to question 11.

Consultation and Impact Assessment

4. Is the new approach to Impact Assessment sufficient to improve public consultation on the evidence base for Government policymaking? How could consultation policy improve consultation on Impact Assessments?

The ICAEW welcomed the new approach to Impact Assessment (IA). It is still very early on in the life of the new approach to fully reflect on its success. Having said that, the ICAEW believes that earlier consultation would be the best way to enhance the Impact Assessment system. (See our responses to question 5). We would also like to see IAs become more visible and perhaps by establishing a central registry which was visible to the public through an internet website and which showed the stage each IA was at would achieve that objective. The Impact Assessment Guidance (Paragraph 21) suggests that a new area of the internet will be established where summaries of all published Impact Assessments will be available. When this is fully implemented this should meet our requirements but it will need to be well publicized and maintained.

5. When in the policy development process do you think the Government should consult stakeholders? Please cite any relevant examples when you have been consulted at the right or wrong time.

The ICAEW believes that early consultation is essential, although this might not always be in the form of written consultation. This is particularly the case when framing policy options and in the early stages of formulating Impact Assessments. We are strongly of the opinion that, in many circumstances, civil servants working in a Department will not be able to appreciate the full options for change without engaging, at least informally, with those who will have to implement the change. It is also essential for consideration of self- or co-regulation and other light touch options such as development of principles and guidance.

How best to seek stakeholder input?

6. Do you think that more emphasis should be placed on alternative or supplementary approaches to consultation in a revised consultation policy? What supplementary approach or approaches would work best for you/your organisation?

As stated in our response to question 5 there are circumstances when other forms of consultation may be appropriate but these are generally limited to early consideration of policy options and the formulation of Impact Assessments. But in general the ICAEW preference is to remain with the written consultation process. The ICAEW has access to members who work in every sector of the economy, size of business and public body, from global company boardrooms and government departments to high street practitioners, small businesses and charities. As business owners, financiers, finance directors or advisors to business, our members are at the centre of business strategy to deal with regulation.

The ICAEW is organised around Technical Committees and Faculties (centres of excellence). Our volunteers are busy people and formal written consultation can be communicated to them electronically for prior consideration at formal meetings. Responses, often to detailed technical or regulatory issues, can be summarised in writing and formal responses drafted for approval by the appropriate committees. Occasionally, ICAEW responses have to be approved by the Institute's Council - often when public interest considerations require it. This injects a further stage in the process of responding to consultations. Accordingly, in general, whilst informal consultations, consultative fora, etc can be useful, the ICAEW believes that they are no substitute for well publicised and considered formal written consultations.

We are aware of government attempts to consult with businesses directly through "Consultation Panels", particularly on issues affecting small businesses. However because the SME sector is so diverse, the ICAEW is concerned that these Panels are unlikely to be representative of small business as a whole. The latest government statistics (August 2007) reveal that there are approaching 4.5 million smaller businesses in the UK. This means that business representative organisations such as the British Chambers of Commerce and the Federation of Small Business are a vital part of the consultation process. The total input of these business representative bodies is essential to understand the response of Small businesses. However government has to avoid the accusation that it only talks to "the usual suspects". That is why the contribution of bodies such as the ICAEW which can marshal experience across a wide range of businesses of differing sizes, representing all sectors of the economy is also essential.

Awareness-raising

7. How do you generally become aware of Government consultations and how would you like to learn about upcoming and current Government consultations?

The Institute has regular contact with a number of government departments mainly DBERR, HMRC, and HM Treasury, and is accordingly on a number of databases. Being informed of other departments' consultations is more haphazard. We wonder whether a central database of all consultations might be appropriate or perhaps a regular email informing interested parties of current and perhaps even upcoming consultations might be investigated.

Reporting back following consultations

8. How do you rate the feedback you have seen from Government departments following consultations and what improvements or changes would you like to see in relation to reporting back?

This is an area which could be improved. Sometimes a summary of responses is published but this appears not to be consistent across all consultations. The summaries tend to be rather descriptive (x % supported this proposal). There is often little or no guidance on how policy development will be influenced by the responses, and consultees sometimes have to wait until the final regulation or bill is published or guidance drafted to understand the outcome of the consultation process..

Consultation fatigue

9. Is “consultation fatigue” an issue for you? If so, why is this and how do you think this issue could be overcome?

The ICAEW submits in an average year between 100 and 150 responses to consultations. This may suggest “consultation fatigue” but as mentioned in the response to question 6 our public interest requirement necessitates active participation in policy formation in relevant areas.

The ICAEW believes that earlier stakeholder engagement coupled with better feedback on the consultation process would encourage more responses to consultation.

Other issues

10. Please feel free to give us any other views you may have about the effectiveness of current consultation policy, the future of consultation policy, the case studies in this paper and other examples from the UK or elsewhere.

No further comment.

Options

11. Do you think any of these options would make for a good consultation policy? If so, which option and what changes could be made to improve it?

The ICAEW believes that, unless there is a clear need for confidentiality, there should be a presumption that Government should be open and transparent on every issue. Our experience, particularly with HMRC, is that officials are sometimes reluctant to discuss policy options because they have not received appropriate authority from Ministers. This is sometimes the most appropriate time to discuss policy with those outside government as open consultation can contribute to enhanced understanding of the policy options and the consequences of each option.

As a body the ICAEW favours “principles based regulation” but we are concerned that option 3 would give too much discretion to central government departments and regulators. In an consultation earlier in 2007 the ICAEW Tax Faculty were asked to comment on some principles for regulation but the principles identified fell far short of a comprehensive set of workable proposals.

As previously stated, the ICAEW generally favours written formal consultations. We would accordingly prefer Option 1 so that in the written consultation document the department or agency would state what other consultation activity it was planning and why it had chosen this supplementary method.

12. Are you content with the Government's preliminary analysis that the options identified in the consultation document would not impose costs on the private or third sectors?

As mentioned previously the ICAEW (and others in the private sector) already undertake a significant number of responses to public consultations. It is important that those organisations involved in regular consultation feel they are "making a difference" i.e. government listens and the process results in bodies such as the ICAEW making a contribution to policy formation, achieving more balanced assessments of the costs and benefits of regulation and providing a fuller understanding the regulatory impact on business. "Making a difference" is undoubtedly a greater priority than possible additional costs.