

## The duty to consult

In 2000 the English Government issued a code of practice on consultation which has been repeatedly revised – most recently to become considerably less prescriptive. The 2016 version<sup>1</sup> expressly does not have legal force (though it would be a relevant consideration in the performance of a consultation exercise).

While earlier guidance specified 12 weeks as a standard minimum period for consultations, the 2016 guidance merely requires that they ‘last for a proportionate amount of time’ noting that ‘consulting for too long will unnecessarily delay policy development. Consulting too quickly will not give enough time for consideration and will reduce the quality of responses.’ It also notes that some organisations may need more time to respond than others and that account needs to be taken if the consultation spans a holiday period. The 2016 guidance also requires (among other things) that consultations:

- should be clear and concise and avoid acronyms: for example, by being clear what questions you are asking and limit the number of questions to those that are necessary;
- should have enough information for the issues to be comprehensible and include ‘validated assessments of the costs and benefits of the options being considered when possible’;
- should not be undertaken simply ‘for the sake of it’: they should take place at a formative stage and not when the department already has a final view. They should also be ‘only part of a process of engagement’;
- should be targeted – accordingly departments should consider ‘how to tailor consultation to the needs and preferences of particular groups, such as older people, younger people or people with disabilities that may not respond to traditional consultation methods’;
- should be published within 12 weeks of the consultation if possible, and all relevant materials should be available on the GOV.UK website – such as the original consultation, responses from consultees and how these have informed the policy.

More detail on the duty to consult can be found in L Clements [Community Care and the Law](#) (Legal Action 2017) para 20.200

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<sup>1</sup> Cabinet Office, *Consultation principles*, 2016.