

## Chapter 3

### Transparency through consultation and communication

Transparency is one of the central pillars of effective regulation, supporting accountability, sustaining confidence in the legal environment, making regulations more secure and accessible, less influenced by special interests, and therefore more open to competition, trade and investment. It involves a range of actions including standardised procedures for making and changing regulations, consultation with stakeholders, effective communication and publication of regulations and plain language drafting, codification, controls on administrative discretion, and effective appeals processes. It can involve a mix of formal and informal processes. Techniques such as common commencement dates (CCDs) can make it easier for business to digest regulatory requirements. The contribution of e-Government to improve transparency, consultation and communication is of growing importance.

This chapter focuses on two main elements of transparency: public consultation and communication on regulations (other aspects are considered elsewhere in the text, for example appeals are considered in Chapter 6).<sup>1</sup>

#### Assessment and recommendations

##### *Public consultation on regulations*

**Ireland has a strong tradition of public consultation, based on informality and social partnership.** Consultation in the development of regulations is well embedded in the administrative culture. It has traditionally relied heavily on informal interaction between departments and external stakeholders, as well as social partnership since the late 1980s. Social partnership has played an important role in developing a consensus on major public policy issues. By contrast, formal requirements relevant to all potential external stakeholders have been handled with a light touch. For example, the Cabinet Handbook briefly raises the issue of public consultation without going into detail.

**A recognition of the need for evolution with the 2004 White Paper, combined with a growing use of ICT, has generated significant developments which have opened up the traditional processes.** There have been noteworthy changes since the 2001 OECD report. With transparency identified as one of the six core principles of Better Regulation in the 2004 White Paper, steps have been taken to promote a more formal and structured approach to public consultation. The approach nonetheless leaves an important margin for departments to define specific arrangements. The aim is to allow room for the relevant dose of informality, linked to Ireland's small size, as well as allowing for innovation, which has been grasped with enthusiasm by some departments and for some consultations, through their use of ICT.

**The BRU's consultation guidelines set clear best practice standards, which need to be enforced.** The BRU's 2005 guidelines on public consultation are clear and comprehensive. They were designed to be a practical tool to help departments, and as such, fully meet this objective. Any Department which reads the guidelines (especially the checklist and the flowchart) should be in no doubt over how to apply best practice. The guidelines are not prescriptive. There are no sanctions for non-compliance. Departments are left to define the appropriate level of consultation, which can go from a full formal public consultation to informal consultation. They are "advised" or "encouraged" to publish submissions and provide feedback. Specific approaches therefore, and as might be expected, vary. The use of ICT appears to be spreading and to be handled with sophistication in some cases (just using ICT without proper follow through does not guarantee a quality consultation), which means that some consultations engage a wide range of stakeholders.

**Echoing the situation in some other EU countries, Ireland is in a period of transition, and the full engagement of relevant stakeholders is not always achieved.** The testimony of a wide range of stakeholders to the OECD peer review team suggests strongly that there are issues, as well as a demand for more effective consultation from the wider community. While everybody consults (usual practice), the capacity of departments to reach out to a broader public (where relevant) and develop new forms of consultation varies a lot. Public consultation within the RIA process also does not seem, as yet, to play a strong formal role in practice for gathering evidence. The consultation guidelines are not universally known. Issues raised by stakeholders included the problem of being heard if one was not an insider; the need to reach out to all sizes of company, not just the larger ones; the need for stronger efforts to reach out to citizens and the broader public; and the need to step up efforts to make the consumer voice heard. There seems to be a growing demand for the government to be more inclusive and to hear citizens.

**Informality continues to play an important role, the argument sometimes being advanced that the size of the country dictates that this should be so.** This argument needs to be treated with caution, as size is not necessarily a barrier to a more formal approach, and it should not limit efforts at the consistent deployment of best practice, especially in the Irish context where the political system (multi-seat constituencies with a tradition of direct links between citizens and their local politicians for the discussion and resolution of issues) may in fact require the promotion of a more centralised and structured approach. Some stakeholders suggested that the lack of formal safeguards can lead to undue influence from some groups or lack of consultation in cases of political pressure. Informality can easily turn into a self-referential insiders' debate.

**For social partnership or dialogue to remain an important process and must continue to evolve.** Social partnership has been helpful in bringing consensus on key issues since the late 1980s when it was developed. It has also evolved, encompassing new parts of the society (community groups). However, while it has integrated community and environmental groups, it has not always adapted easily, excludes many, and may not adapt easily to new technological and societal developments. The 2001 OECD report had already drawn attention to the fact that over time, and given the open nature of the Irish economy, new participants (for example, non-nationals) are affected by Irish regulatory affairs. In tandem with any ongoing social partnership process, it is important that divergent and external voices are heard. The consensual approach can also lead to the avoidance or exclusion of some issues from the agenda.

**Recommendation 3.1. Share best practices for public consultation across departments (and agencies). Consider how to give the consultation guidelines some teeth so that they are observed and so that consultation is applied to the same consistent high standards. Ensure as a first step that the guidelines are fully known across departments and relevant agencies. Benchmark Irish consultation arrangements with those of other small countries in the EU to see what could be of value in the Irish context. Consider how the social dialogue can best evolve to take account of societal developments.**

### *Public communication on regulations*

Ireland faces considerable challenges, which it is addressing, in the accessibility of its regulatory stock, which harms transparency. There is no single consolidated Irish statute book. The historical development of the Irish legislative landscape and methods for enacting legislation have combined to generate a complex regulatory stock. The government has stressed the importance of ensuring accessibility of legislation and taken a number of initiatives since the 2001 OECD report to make the law more accessible. Efforts to make regulations publicly available sit alongside efforts at simplification of the regulatory stock. A major initiative in the former category is the electronic Irish statute book, a free of charge database, as well as the Legislation Directory. These initiatives may not be “politically interesting” but are highly valuable and necessary for future progress on transparency. As matters stand, despite the efforts of recent years, the state of the statute book combined with uneven performances in public consultation significantly reduce regulatory transparency, which has to be assessed as rather poor in comparison with many other European countries, and which has knock on effects for government accountability.

**Recommendation 3.2. Sustain the efforts at improving the accessibility of regulations and if necessary, increase funding. Communicate more clearly and broadly the value of these initiatives, as part of an enhanced general communications strategy for Better Regulation.**

#### **Box 3.1. Transparency: 2001 OECD Report and 2008 Public Service Report**

##### **2001 report**

##### **Increase transparency by formalising administrative procedures, including those concerning public consultation and rule making.**

It is accepted that the small size of the country, the political culture of openness, the number of elected representatives relative to the size of the population and the *Freedom of Information Act* contribute to a climate of openness that facilitates an effective consultation process. **However, as relationships evolve, new participants, including non-nationals, become affected by Irish regulatory affairs.** Likewise, lack of minimum rules may complicate public consultation and regulatory procedures reducing effectiveness, speed and timeliness of regulatory responses. The recognition of such new circumstances is reflected in the increasing formalisation of basic administration duties (e.g., the *Cabinet Handbook*, the *Public Service Management Act*). However, accessibility may still be needed. As a precautionary step, **consideration should be given to establish as a safeguard a “notice and comment” mandatory requirement for all regulatory proposals** (perhaps managed by the RIA central unit). As a complementary measure, Ireland may wish to **establish the minimum criteria and disciplines for the public consultation** required by the *Reduce Red Tape* action plan. Furthermore, these efforts may be integrated into an encompassing initiative to prepare an Administrative Procedure Act. This would consolidate the recent effort to publish the basic rule-making procedures in the *Cabinet Handbook*, and on the other hand would provide in a single text clear rights to citizens and businesses to know and challenge the rules to be followed when making regulations (RIA, consultation, publication, etc.) and when adjudicating regulatory matters (make a decision on a formality). The nearly universal

support for the social partner mechanism signals a general satisfaction with existing consultation and participation practices.

#### **Background comments**

Although the processes are transparent, the efficiency and expediency of the consultation process could be enhanced by **improved information and though the creation of safeguard mechanisms to avoid potential abuse**. It can then be counter-argued that in a small open economy, with a strong media and a strong tradition of local politicians' accessibility, formalised procedures would be costly and counter-productive. But important interests, notably consumer groups, report that they have not been able to participate and defend their interests. Equally, consultation processes on zoning or reforming local public transportation have raised criticism that the consultation system can be unduly influenced by influential groups. In this sense, **clear guidelines and training, establishing “notice and comments” requirements prior to acceptance at the cabinet and general improvement in the quality of the documents subject to consultation may be required, without unnecessarily formalising the processes**.

Rethinking the institutional setting might also be desirable to sustain public support on reforms and adapt Irish institutions to new circumstances. As the Netherlands discovered in the early 90s, too many advisory bodies focusing on details do not increase the quality of the public consultation and slow down government responsiveness to a changing environment. The existence of more than 90 different groups established under the last Social Partnership Agreement, for instance, makes it difficult for a newcomer to the process to understand where the decisions will be made, before considering the substance of the decision.

Lastly, **existing institutions and procedures for consensus building, either formalised or *ad hoc*, may not be adequate to deal with a rapidly changing society**. Some interlocutors such as the unions or “big business” representatives may play too large a role. Changing priorities and strategies involve assessing the representativeness of traditional participants. For instance, a new pro-competition stance should require a re-balancing of powers between the views of producers and those of consumers – an interest group which does not participate in the partnership process. Economic and social developments also mean that new interest groups can become increasingly vocal, and require further transparency and accountability safeguards. Interest groups, sometimes supported internationally or in the case of local issues nationally, may exert a significant influence and control over the policy-making and the lawmaking processes. Here again precautionary steps, as full disclosure of interests, can be the best way to maintain a healthy consultation process.

#### **2008 public service report**

An open public service is a necessary element of user satisfaction and a source of input for improving services and policies. Ireland has shown a willingness and leadership to have an open public service. This is reflected in its recent consultation guidelines and the frequency of consultation both through administrative channels and through the mechanisms of Social Partnership. The culture of openness needs, however, to be further encouraged.

While much public information is already available under the Freedom of Information Act, the public service should consolidate information in order to make it more transparent and easily accessible. For example, in addition to ensuring that the results of RIA are made available through the relevant department's website, they should also be available from one centralised location. The requirement that annual reports from 2006 onwards should include information on RIA published in the preceding year (as outlined in the partnership agreement “Towards 2016” will also help to improve transparency and openness. Renewed effort should also be made to streamline information about public service contacts, regulations and service standards in order to promote clear public service delivery standards and to make them more accessible to citizens.

Greater openness can slow implementation, but this can be eased by providing a framework for consultation in order to match the purpose of the consultation with the type of consultation needed. The public service should explore greater cross departmental and cross agency communication on proposed public consultation processes, so that greater co-ordination of consultation efforts can take place. The creation of a consultation portal – a central database where the public can see what processes are underway in thematic areas and allows them to submit comments on line, could improve response rates. Who is consulted and how their input is used is also important. There should be feedback to consultees.

The commitment to greater openness should extend beyond the public service management and unions, to the broader civil society. Social Partners are well placed to enhance common cause with citizens to

bring their voices in. This can be achieved by continuing other forms of consultation and participation as a complement to Social Partnership – both directly by the public service and by using Social Partnership consultation mechanisms.

Source: OECD.

## Background

### *Public consultation on regulations*

#### *History and general context*

Ireland's approach to public consultation has traditionally relied heavily on informal interaction between departments and external stakeholders, with a presumption that draft regulations should not be disseminated externally until formal approval by the government and parliament. Formal requirements were limited to the *Cabinet Handbook*, which provides that during the stage of drafting a regulation, "consultations may take place with outside organisations if necessary" and adds that departments "should refrain from disclosing the actual legal text prior to approval by the cabinet and presentation to the parliament in the case of bills".<sup>23</sup> In practice, departments have often relied on an array of advisory and liaison bodies to support them.

A key factor in the overall approach has been social partnership, which was developed in the 1980s (Chapter 2, Box 2.4). Social partnership has been an important vehicle for formal consultation on high-level national policies, embedding a corporatist and consensus building approach to public consultation. It has helped to promote a common understanding of the problems facing the country and to secure industrial peace.<sup>4</sup> The system (which originally brought together employers, unions and the farming community) has also shown a capacity to evolve through an extension to community and environmental groups and has become a forum for the entire social and economic agenda. The financial crisis challenged social partnership's capacity to react quickly and effectively to urgent needs. While the government reached an agreement with social partners on a "Framework for Stabilisation, Social Solidarity and Economic Renewal" in January 2009, it did not subsequently prove possible to conclude a broader national social partnership agreement in 2009. However the Public Service Agreement 2010-14 was concluded with public service unions in 2010.

#### *Developments*

The overall approach started to change a few years ago, when transparency was identified as one of the six principles of Better Regulation in the 2004 White Paper "Regulating Better". The government recognised the need for greater consistency and openness in its approach to public consultation and committed to developing procedures and guidelines to this effect. The Department of the *Taoiseach* was responsible for taking this forward, and issued public consultation guidelines (*Reaching Out: Guidelines on Consultation for Public Sector Bodies*) in 2005, at the same time as it embedded public consultation as a formal part of the Regulatory Impact Assessment process, which was also being renewed. Meanwhile, many departments and other public bodies started to experiment with new approaches, not least via the Internet (see below).

## Public consultation guidelines

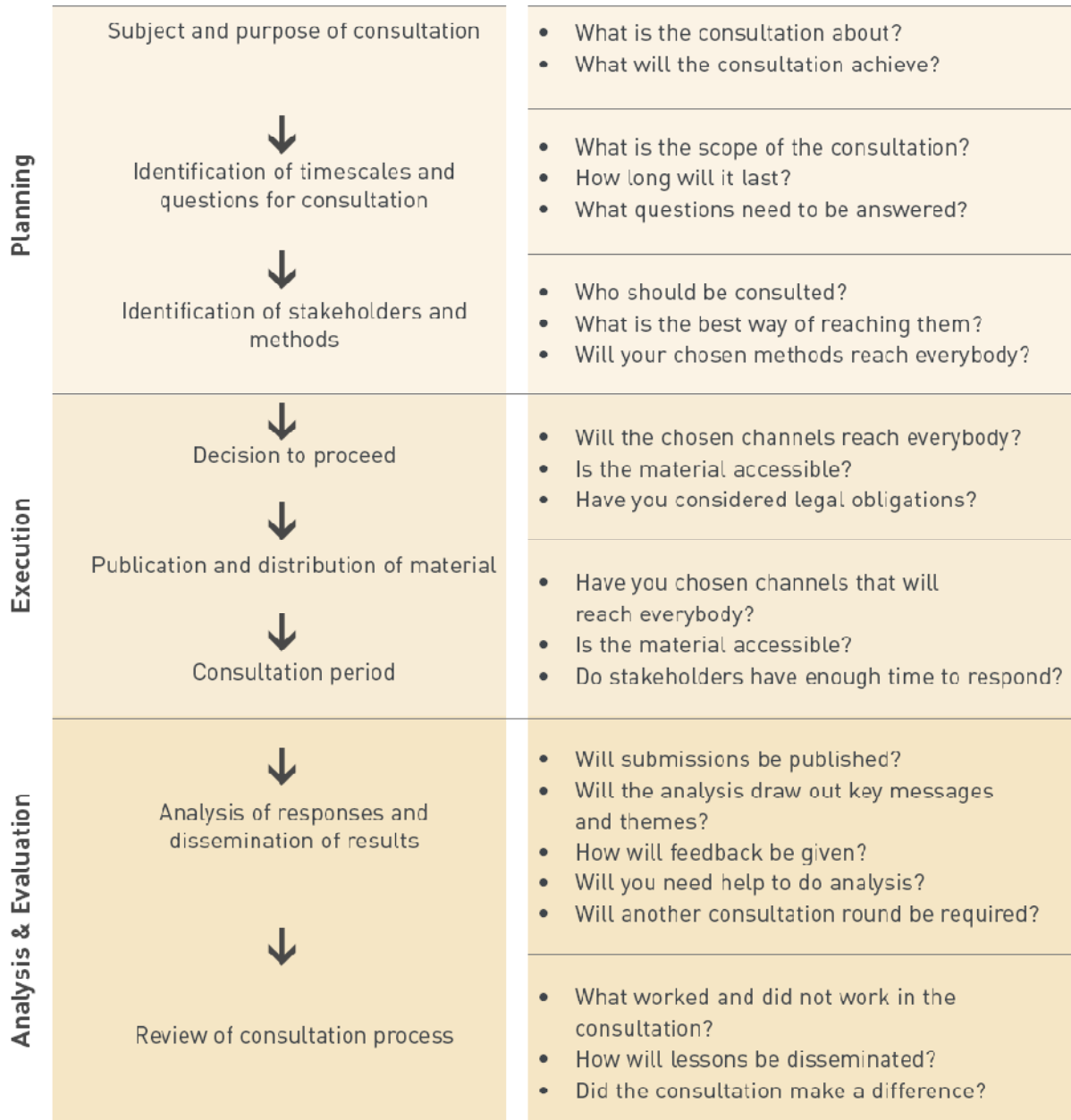
The 2005 guidelines on consultation have been designed not as a prescription, but more as a practical tool, as it was considered that very formal procedures are not appropriate to the size and administrative tradition of the country. The 60-page document sets out the components of an effective consultation process when preparing new regulations, outlines the different methods (written consultation, advisory committees, face-to-face interviews, focus groups, etc.) and provides a practical checklist (Box 3.2) as well as a flow chart (Figure 3.1). It promotes a number of quality standards regarding documentation, scope, publicity, time to respond, and feedback to those who provide comments. It recommends that officials acknowledge and publish all submissions received, subject to considerations of confidentiality and/or defamation, and give feedback to those who have taken part in consultation.

### Box 3.2. Checklist for consultation

- Are you clear on the purpose and objectives of your consultation?
- Are you clear on the questions you want to ask in your consultation?
- Have you identified all of the stakeholder groups and individuals that should be consulted?
- Have you chosen the most appropriate and inclusive methods of consultation, including those that meet the needs of “non-traditional” stakeholders?
- Have you allowed for sufficient resources for the consultation?
- Have you considered all of your legal obligations?
- Have you publicised your consultation in online and offline media?
- Have you allowed sufficient time to give stakeholders an opportunity to consider the issues fully?
- Have you planned how you will analyse the submissions received during your consultation?
- Have you planned to evaluate your consultation process and to ensure any lessons learned are taken into account for the future?

Source: Department of *Taoiseach*, *Reaching Out: Guidelines on Consultation for Public Sector Bodies*.

**Figure 3.1. Consultation flow chart**



Source: Department of *Taoiseach* (2005), *Reaching Out – Guidelines on Consultation for Public Sector Bodies*.

Departments and public bodies<sup>5</sup> are left to define how they consult external stakeholders. In practice, consultation procedures vary across departments as well as circumstances. Departments define the approach to be taken and identify key players to be consulted on a case-by-case basis. Some proposals go through a full formal public consultation whereas others, normally less significant proposals, go through a more informal consultation, which mainly means that less publicity is given to the request for comments. In the case of major policy issues departments occasionally publish a green paper, setting out the options for regulation and inviting formal submissions from the

general public. While details of the consultation process vary, stakeholders are usually asked to provide views on alternative options or any impacts or costs which have not already been identified.

### *Public consultation and impact assessment*

Public consultation is integrated in the regulatory impact analysis (RIA) process which is required to be conducted on all primary legislation, EU directives, significant secondary legislation and significant EU regulations (Chapter 4). The RIA guidelines specify that officials should engage consultation with key stakeholders as early as possible in the RIA process so that it can feed into the analysis of costs, benefits and impacts. They also encourage them, where possible, to use a draft RIA as the basis for consultation. A summary of views conveyed through the consultation process should be set out as part of the RIA, as well as a brief response to key issues expressed.

### *New forms of public consultation and use of the web*

There is awareness of the need to reach out to a wider range of stakeholders, as seen for example with the 2007 report of the government-appointed independent Taskforce on Active Citizenship.<sup>6</sup>

Some departments have developed a pro-active approach to public consultation to encourage participation by the wider public. A recent example is the broad consultation scheme put in place by the Department of Health and Children for a major policy (Box 3.3). Relevant organisations across the country were identified and invited to take part in workshops, using experts as facilitators. The experience was considered to be a great success, with quality contributions. But it also highlighted that significant effort and resources are needed to engage pro actively in this way. The Department nonetheless considered that it had been very worthwhile and hoped that others might be encouraged to follow suit.

#### **Box 3.3. Department of Health and Children consultation on the Health Information Bill**

The process unfolded in the following way:

1. Decision taken at a high political level for a wide ranging consultation.
2. Search carried out to identify the widest range possible of organisations with a potential interest (150 found).
3. Consultation via writing to the identified organisations in the first place, plus media campaign to engage the wider public, and use of the Departmental website.
4. Consultation documentation careful not to “pre-impose” views.
5. Conference organised with as many as possible who had expressed an interest.
6. One day workshop.
7. The Department commented that the experience had overall been enriching and very positive. The public was much better informed than expected. However, inviting a broad range of participants required effort and resource for digestion of the views expressed.

*Source:* Interview of the OECD peer review team with the Department of Health.

Use of the Internet, as elsewhere in the OECD, has been enthusiastically embraced for some consultations, opening these up to a wide audience. Departments are encouraged to

consider a range of ICT tools – web based consultation documents, online submissions, electronic mailboxes, email distribution, issue based website forums, online focus groups, web-based surveys. However, whilst there is ample evidence of the use of ICT, this does not necessarily mean that the consultation is effectively carried out (for example, website postings may not be effective if they are not pro-actively followed through).

#### Box 3.4. Public consultation: Examples of new approaches, including ICT

##### Statute Law Revision

The Statute Law Revision Bill 2009 has been accompanied by a process of consultation<sup>7</sup> which commenced in September 2007. This involved the placing of public advertisements in newspapers and a notice on the Attorney General's website in September 2007 inviting submissions. In addition, letters were issued to certain organisations and interested parties. In November 2008 all departments, local authorities and other relevant parties were sent a schedule of Acts that were relevant to them. A specific email address was set up and made available to the public to facilitate electronic communication.

##### Statute Law Restatement and Legislation Directory

The Consultation Paper on Statute Law Restatement was published in July 2007 in print and was put on the Law Reform Commission's website, inviting submissions. The Report on the same topic was also published on the website as well as in print. Many of the submissions were received by email.

The Consultation Paper on The Legislation Directory: Towards a Best Practice Model was also published in July 2008<sup>8</sup> simultaneously on line and in print, and invited submissions by e-mail as well by other means.

##### Broadcasting Bill

An eConsultation project was conducted on the Broadcasting Bill 2006, the first ever e-Consultation process carried out in relation to legislation in Ireland. The project consisted of a website which was set up solely for the purpose of public consultation on the draft Heads of the proposed Bill and was conducted by the Joint *Oireachtas* Committee on Communications, Marine and Natural Resources. The Universities e-Consultation Research Group (ECRG) evaluated this pilot project and published its independent report in May 2007. The ECRG found that the process, in relation to the draft Heads of the proposed Broadcasting Bill, had improved the transparency of the workings of parliament, was efficient and had facilitated public participation. More information on this project is available at *eConsultation.ie*.

##### Green Paper on Pensions

Publication of the Green Paper on Pensions was followed by an extensive period of consultation which was supported by a dedicated website (*www.pensionsgreenpaper.ie*) through which members of public/organisations could make submissions. In addition, all the submissions made (including those not made through the website) were made available on the website at: *www.pensionsgreenpaper.ie/consultation.html*.

##### Transport Sector

All proposals involve a public consultation process, which includes publication on the Department of Transport website. In some instances which involve proposals for significant regulatory change, the Department establishes a dedicated website for consultation which enables interested parties to submit their comments/observations through it. The comments, unless requested otherwise, are published on the website. A recent example is the proposal for a new vessel registration regime.

ICT is mainly used to provide information on the Department website, e.g. information on legislation and practice is supplied and Marine Notices are posted on a dedicated page of the Department's website. Contact addresses are supplied online and electronic communication is normal and frequent.

##### Justice Sector

The Anti-Human Trafficking Unit (AHTU) has a total of 7 working groups and communication within these groups is made through email. The AHTU set up a webpage in October 2008 giving information on the blue blindfold campaign and a Facebook account (social networking site) was opened in February

2009 inviting members of the public to become friends on line. The national Action Plan to prevent and combat Trafficking in Human Beings can be accessed at [www.blueblindfold.gov.ie](http://www.blueblindfold.gov.ie) as well as through the Department's website ([www.justice.ie](http://www.justice.ie)).

#### **Revenue Commissioners**

The Revenue Commissioners consults with stakeholders regarding administrative changes and regarding legislative changes where possible. An example of the latter is the recent consultation exercise regarding the simplification of the administration and collection of Capital Acquisitions Tax.<sup>9</sup>

#### **Department of Agriculture, Fisheries and Food**

ICT is used extensively for internal consultation and the circulation of Community documentation, draft regulations and SIs. Draft legislation and accompanying regulatory impact assessments are made available on the Department's website for a period of consultation. Responses are generally accepted in writing and by email. All secondary legislation relevant to the Department is contained in a link on the Department's website. There is also a link to the Irish Statute Book.

*Source:* Irish government responses to OECD questionnaire.

### **Strengthening the consumer voice**

A major specific concern has been that the consumer voice is not heard enough. The 2001 OECD review noted a poorly developed consumer culture and an entrenched policy bias in favour of producer interests. In response to a critical 2005 report by the Consumer Strategy Group, the government established the National Consumer Agency (NCA), which was charged with consumer advocacy in addition to consumer law enforcement (Box 3.5). While the establishment of the NCA has helped to build up a consumer culture, several interviewees pointed out that the consumer voice is still weak relative to producer interests, departments still paying insufficient attention to the consumer perspective. The NCA pointed out that there are powerful economic arguments for paying closer attention to the consumer voice. The OECD peer review team could not form a view on whether the proposed merger of the NCA with the Competition Authority (done it seems more from an efficiency savings than a policy point of view) would help or hinder the consumer cause. This will need to be monitored.

Some regulators (such as the energy regulator and the telecom regulator) have set up specific consumer panels or committees but are confronted with the limited capacities of the consumer organisations. The energy regulator (CER) has introduced a consultation calendar, following a review of its consultation processes, to outline major initiatives in the year as well as help overcome consultation fatigue.

#### **Box 3.5. The National Consumer Agency**

The National Consumer Agency (NCA) is a statutory body (a form of government agency) established by the Irish government in May 2007.

The NCA's mandate is to enforce consumer legislation, and to advocate for and defend consumer interests at the highest levels of national and local decision-making. Its overall mission is to embed a robust consumer culture in Ireland and to represent the voice of the consumer. Its advocacy role includes research, consumer information, education and awareness programmes.

The Agency was established in response to the publication of a critical 2005 report by the Consumer Strategy Group entitled: *Make Consumers Count*.<sup>10</sup> This identified important deficiencies in the protection and promotion of consumer rights in Ireland. It found that consumer voices were very weak, and needed to be strengthened.

Its parent ministry is the DETI, which is overall responsible for consumer policy. 95% of staff are

from the parent Department. The NCA considers the relationship to be a good one, in which its independence is respected. There are quarterly meetings with the DETI as well as informal contact (both at official and political levels). The NCA produces an annual report which goes to the DETI minister, as well as to parliament, and is published on the web. The OECD peer review team were told that the main issue is a chronic understaffing. The NCA has a staff of 44 full-time equivalents.

The NCA will shortly be merged with the Competition Authority.

### *Evaluation of progress*

The picture is mixed and not always easy to read, as is the case in a number of other European countries which, like Ireland, are in a transition from traditional approaches to the new more open forms of consultation and the use of new technologies.

The OECD peer review team found evidence that the practice of prior consultation in the development of regulations is well-anchored in the Irish administration. There is frequent interaction, both formal and informal, between stakeholders and the government, usually at an early stage of policy development. It appears that departments make a growing use of the Internet, and hence a wide audience, to gather information (*e.g.* consultation documents posted on their websites, email distribution, website forums). The recommendations of the BRU seem to have been taken to heart, at least in some departments and for some consultations.

There are, however, issues, which suggest that there is a demand for more effective consultation from the wider community as well as from some insiders, and that putting more pressure on departments to be consistent in applying the (very clear and comprehensive) consultation guidelines would help. SMEs, consumers and citizens appear to be often out of the loop. There seems to be a continuing reluctance to include unknown or uncommon stakeholders:

- **The problem of insiders.** A number of stakeholders (including some who might be considered insiders) noted that the system overall still appeared to work best for insiders. Comments received included: “legislation is developed by insiders for insiders”; “the social partners are inside the tent, others are outside”; “social partnership has outlived its usefulness”; “stakeholder groups don’t always represent the interests of the public”; and “there is a habit of secrecy”. There are concerns that the social partnership had developed an inward-focused approach, excluding some stakeholders from the discussion.
- **Reaching out to all sizes of company.** Large companies are, it seems, more readily heard than others. This is partly due to the important role played by social partnership. Comments received included: “there is a lack of consultation with business”; “big firms have the ear of the minister”; and “micro firms can’t get their voice heard – they are excluded from the partnership”. Consultation seems to favour the “usual suspects” in the business community. However there are issues in all countries concerning the part played by small companies due to their resource constraints.
- **Reaching out to citizens and the broader public.** There appears to be a thirst for more effective consultation in the wider community: “the government is reluctant to engage with the public”; “ordinary citizens are kept out of the system”; “citizens should be consulted more”; “the government does not respect the legitimate right to participate”; “the government is not listening”; “more dialogue with the government please”; “consultation is done for the sake of it”. Establishing more inclusive policy making is a challenge for Ireland as for other

OECD countries (OECD, 2009).<sup>11</sup> In the Irish case there is also “competition” with the political tradition of easy accessibility to local politicians to resolve issues on an individual basis or to make broader views known. But is the tide beginning to turn?

- **Hearing consumers.** There appears still to be some way to go in rebalancing the producer/consumer perspective, despite the efforts made with the establishment of the NCA. “The consumer voice is lost”.

There were several calls for more formalised consultation which works better because it broadens out the range of consultees, and because it secures a more consistent quality of consultation across departments and projects (for example with respect to feedback). The consultation code is far from being universally known, and interviews showed discrepancy in its implementation. Several interviewees noted that the lack of formal safeguards can lead to undue influence by some groups or lack of consultation in cases of political pressure. The political commitment to take on board information resulting from consultation could be limited.<sup>12</sup>

### ***Public communication on regulations***

#### *Access to government information*

The Freedom of Information (FOI) Act 1997 entitles individuals to request any record held by a public body (and produced after April 1998). It was amended by the Freedom of Information (Amendment) Act 2003. The FOI acts require public bodies to publish information relating to their structure, functions, duties, descriptions of records, and the internal rules, procedures, practices, guidelines and interpretations. Public bodies must respond within four weeks and justify why information is withheld. The FOI acts also require that agencies provide a written explanation to individuals of decisions that affect their interests. The Department of Finance maintains a dedicated website which provides information, guidelines and other relevant information. Most departments and offices also have FOI arrangements in place, including a designated FOI officer and a published information system to assist those who might wish to make a request for the release of information. The FOI acts have contributed to a culture of openness and enhanced the accountability of the administration. The Office of the Information Commissioner (whose independence and powers are set in the FOI Act) oversees and enforces the act. Her decisions are binding and can be appealed only on a point of law.

There are, however, a number of restrictions on access to information. In particular, requests may be declined if they fail either “public interest” or “harm” criteria. A key restriction stems from the fact that a number of public bodies are not covered by the act. While the list of covered bodies has expanded over the years, the FOI act still does not apply to the *Garda Síochána* (national police service), vocational education committees, the Central Bank, the Financial Services Authority, the National Treasury Management Agency, the National Pensions Reserve Fund Commission, and the State Claims Agency. In her annual reports, the Commissioner has regularly criticised the exclusion of a number of bodies, in particular the police, from the act’s provisions. In the 2008 report (OIC, 2008),<sup>13</sup> she outlined the need to re-assess the role of the Freedom of Information Act in holding financial institutions, to account on the background of the financial downturn and the subsequent increased demand for transparency and accountability. Another restriction has come from the introduction of up-front fees by the FOI Act 2003 for requests and appeals (although not for requests relating to personal information). While user charges may limit frivolous requests and reduce burdens on the public service, they have also

created a disincentive as seen in the drop in requests in the years following their introduction (the trend was reversed in 2008).<sup>14</sup>

### *Accessibility of regulations (through publication)*

The government has stressed the importance of ensuring accessibility of legislation, and has taken a number of initiatives over the past decade to make the law more accessible. This has combined efforts to improve the way regulations are made publicly available (in particular through the publication of the electronic Irish Statute Book – see below) and efforts to simplify the existing stock of regulations through repeal of obsolete regulations, consolidation and codification. In the Irish context, this simplification is especially important, as the historical development of the Irish legislative landscape and the methods of enacting legislation create specific challenges (see Chapter 5).

### The electronic Irish Statute Book

The central instrument for accessing Irish regulations is the electronic Irish Statute Book (eISB).<sup>15</sup> This is a free of charge online database, managed by the Office of the Attorney General, which registers all primary and secondary regulations. It is now updated promptly, on a regular basis. It includes all acts of the *Oireachtas* from 1922 to present, statutory instruments (from 1922 to present), and the Legislation Directory (a searchable database of amendments to primary regulations).

A bill becomes law (an act of the *Oireachtas*) on the day it is signed by the President who is also required to promulgate every law. This is done by publication of a notice in the *Iris Oifigiúil* (the official journal, published twice a week and available on line<sup>16</sup>). The Act is then published. Responsibility for the publication of primary regulation rests with the Houses of the *Oireachtas* Commission. The text of the acts is made available on the *Oireachtas*' website<sup>17</sup> and on the eISB. Acts are published in their enacted form only.

The publication of statutory instruments (secondary regulations) is governed by the Statutory Instruments Act 1947, according to which they are announced in the *Iris Oifigiúil*. The electronic Statutory Instrument System (eSIS), introduced in 2007, was developed to allow for faster and more accurate production of Statutory Instruments (SIs) in both final printed format and in electronic format that is suitable for placing SIs on the online Irish Statute Book. The key element of the revised system is that SIs are converted into the required print and web ready formats before the SI is signed into law. In this way, the SI is ready for publication, both in hard copy and electronically, within 4 working days of signature. Overall this enables the statute book to be updated more quickly and efficiently. In early 2008, the Department of the *Taoiseach* produced guidelines on the use of eSIS to provide support to the officials preparing statutory instruments.<sup>18</sup> In 2007 the government also agreed that departments should put a “pdf” version of statutory instruments signed by their minister on their websites as soon as possible after signature. This is currently done by a number of departments, although not all of them.

In addition to a registry of primary and secondary regulations, the eISB contains the Legislation Directory, which improves access to primary regulations by documenting modifications made to primary legislation by subsequent legislation. The Legislation Directory is a major source of information for the public, particularly legal professionals and officials, on the current state of the law.<sup>19</sup> It enables users of the Irish Statute Book to identify whether a particular provision has been amended or otherwise affected since its enactment. It is thus a very useful tool for navigation in the complex Irish regulatory framework, where amendments typically pile up. It is developed and managed by the Law Reform Commission (LRC). The Legislation Directory covers only amendments made to

primary regulations. According to the LRC, the same work could be done for secondary regulations but would require additional resources (currently the LRC's staff includes one manager and two researchers).

The Law Reform Commission (LRC) uses the Legislation Directory to prepare statute law restatement (a form of consolidation of primary regulations).

### e-Legislation Group

The Department of the *Taoiseach* has drawn together an informal group, the e-Legislation Group, to examine how the Irish Statute Book could be improved in the short- to medium-term. The group includes representatives from the Department, the Office of the Attorney General, the Office of the Chief Parliamentary Counsel, the Houses of the *Oireachtas*, the Civil Service Training and Development Centre and the Law Reform Commission.

The LRC also published a consultation paper on the Legislation Directory in 2008 to provide a focus for public discussion on how the Directory could best serve its users in terms of content provision and accessibility. It contained 36 recommendations, spanning from technical recommendations to broader ones (such as the recommendation that Ireland should adopt a more comprehensive *eLegislationmodel*). The key challenge, from what the OECD peer review team understood, is to gain sufficient support and consequently resources to make further progress, both for the development of the eISB and for consolidation initiatives (see Chapter 5).

## Notes

1. Procedures for rule-making (Chapter 4); codification (Chapter 5); appeals (Chapter 6).
2. Department of the Prime Minister, *Cabinet Handbook*, Rule 4.16.
3. Text from the handbook: "During this stage (drafting of the text) consultations may take place with outside organisations if necessary (on the basis of the general scheme or outline of the approach being considered) but the text should not be disclosed to third parties prior to approval by Government and presentation to the Houses of the *Oireachtas*".
4. OECD Economic survey 2003, page 33.
5. The guidelines define public bodies as "the range of organisations, including government departments and offices, state-sponsored bodies, independent sectoral regulators, bodies in the health and education sectors, and local authorities, who may have a role in framing, developing or implementing policies, including through regulation".
6. The Taskforce on Active Citizenship was established to advise the government on the steps that can be taken "to ensure that the wealth of civic spirit and active

participation already present in Ireland continues to grow and develop”. The Taskforce conducted a nationwide consultation process and produced a set of recommendations in its final report in March, 2007. The report, which addressed a larger scope than regulatory making, outlined the need to promote awareness and understanding amongst public bodies about how to engage more effectively with citizens and community and voluntary organisations, including through consultation. The government accepted the recommendations and appointed a Steering Group to oversee the implementation of the Taskforce’s recommendations in October, 2008. There has been so far no other follow on.

7. Information on this consultation is available at:  
*www.attorneygeneral.ie/slru/slrp.html.*
8. The following links provide more information on the consultation papers and reports, *www.lawreform.ie/publications/consultpapers.htm* and *www.lawreform.ie/publications/reports.htm.*
9. More information is available at: *www.revenue.ie/en/practitioner/ebrief/2009/no-352009.html.*
10. *www.consumerconnect.ie.*
11. OECD Studies on Public Engagement – Focus on Citizens: Public Engagement for Better Policy and Services.
12. For example, the OECD peer review team heard that transposition of the EU data protection directive generated a large number of comments which could not be used as the political decision on how to proceed had already been taken.
13. Office of Information Commissioner (2008), Annual Report.  
*www.oic.gov.ie/en/Publications/AnnualReports/AnnualReport2008/File,9998,en.pdf.*
14. From the Office of Information Annual report 2008.
15. *www.irishstatutebook.ie.*
16. *www.irisoifigiuil.ie.*
17. *www.oireachtas.ie.*
18. The guidelines are available on the Better Regulation website, at:  
*www.betterregulation.ie/eng/Publications/SI-System-Guidelines\_jan\_08.pdf.*
19. The Legislation Directory was known as the Chronological Tables of the Statutes until 2006, at which date the responsibility was transferred from the Office of the Attorney General to the Law Reform Commission. The change in name marked the new allocation of responsibility but was mainly done to give more visibility to potential users.