

Via email to:

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- [Effective Consultation: asking the right questions, asking the right people, listening to the answers](#)

## **RESPONSE FROM EDUCATION OTHERWISE GOVERNMENT POLICY GROUP**

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### **INTRODUCTION**

**Education Otherwise is the largest home education support organisation in the UK. For 30 years it has represented the interests of families undertaking home-based education. During this time membership has increased from a small group of families in the 1970s to almost 5,000 member families in 2007. Latest estimates of children and young people educated at home by parents put the likely figure at between 40,000 and 60,000.**

**Education Otherwise Government Policy Group responds steadily to Government consultations. Indeed we have responded to 12 DfES/DCSF consultations in the past 9 months, yet we received no notification of this Cabinet Office consultation.**

**The Third Sector may be harder to reach in the first instance but our members need their voice to be heard and Education Otherwise Government Policy Group has made repeated requests for meetings and dialogue with officials and Ministers.**

**Our organisation was not initially identified as a stakeholder by the BRE, but the Cabinet Office readily agreed to send an invitation once a connection had been made by Education Otherwise.**

### **QUESTION ONE**

**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 Code has led to some positive changes, but there is room for further improvement. At present the 6 consultation criteria listed in the Code can be observed without any additional commitment from a Government department to engage more fully with stakeholders as recommended by the full Code.

We would not like to see the present Code abolished, but rather we would like to see it fulfilled and made more robust.

We agree with the position stated in the Cabinet Office consultation document paragraph 3.14

“It is therefore possible to abide by the spirit of the Code without carrying out an form of consultation prior to the written consultation and without supplementing the written consultation with any other kind of stakeholder engagement. “

### **DISTINCTION BETWEEN 6 SHORT CRITERIA AND THE FULLER CODE ?**

The DfES, the Government department with which we have had the most experience, appears to make a distinction between the 6 short criteria and the fuller Code. The 6 short criteria are much more limited in scope than the full Code of practice.

For example the full Code states

“ 1.1 Consultation is a continuous process that needs to be started early in the policy development process.

1.2 It is important to identify pro actively relevant interested parties and those whom the policy will be likely to affect. These groups should be contacted and engaged in discussion as early as possible in the policy development process.”

Sadly, this has not been our experience. We give two examples of this in our Case Studies : Consultation on Home Education Guidelines and Consultation on Raising Expectations. Nor is it our experience that the Department is proactive.

The new Elective Home Education team in the DCSF have recently described their remit as

“ The home education team advises Ministers of the Department for Children , Schools and Families on matters related to home education. The team liaises with internal and external partners as necessary, including other government departments and non departmental public bodies”

We have had little evidence in that past of this role being exercised.

*Please see our case study and Cabinet Office seminar notes for more details*

## **CONSULTATION CRITERIA SHOULD BE EXPANDED**

We believe that the consultation criteria for the Code should be extended to include the following requirements to the list :

### **The ten consultation criteria**

- 1. Identify and engage with stakeholders**
- 2. Constantly monitor and revise the usual channels for identifying stakeholders**
- 3. Commit to pre-consultation dialogue and engagement with stakeholders**
- 4. Take account of what is said by people who have grass roots experience**
- 5. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.**
- 6. Be clear about what your proposals are, who may be affected, what questions are being asked and the time scale for responses.**
- 7. Ensure that your consultation is clear, concise and widely accessible.**
- 8. Give feedback regarding the responses received and how the consultation process influenced the policy.**
- 9. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.**
- 10. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.**

We would also like to see more thoroughgoing Impact Assessments, better figures for which will be reached through advance dialogue with stakeholders. However, we are unable to see what redress there might be if this does not materialise and we would welcome more on monitoring in the Code of Practice.

*Please see our case study and Cabinet Office seminar notes for more details*

## **QUESTION 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?**

In our experience, 12 weeks is a MINIMUM, and should only be reduced to this period if there has been sufficient engagement with stakeholders before the written consultation begins. Education Otherwise needs time to contact members and consult on our response. We are viewed as a “hard-to-reach group” and there is no major institutional framework through which all our members can easily be contacted directly by a government department.

The ways in which we keep in contact with our members are outlined in the case studies appended to this consultation response.

We are aware of other communities which appear to be marginalised even further. For instance, during the recent DCSF consultation on guidelines for local authorities, sweeping and prejudicial statements were made in research documents and Impact Assessments about the Gypsy Roma and Traveller communities, but the DfES did not put itself in a position to speak directly with members of these communities to ascertain their views.

*Please see our case study and Cabinet Office seminar notes for more details*

**PARENTS NOT VIEWED AS STAKEHOLDERS**

In our experience, home educating parents and Education Otherwise are frequently not viewed as stakeholders. Parents are often sidelined in consultations which will have a great impact on their children and their families. For example, the recent QCA consultation on reform of the secondary curriculum did not consult with parents at all. As Jim Knight said in the House of Commons in July [<http://tinyurl.com/2fobnb>] “There were no specific consultations with parents covering the programmes of study for particular subjects. “

**Monitoring compliance**

**QUESTION 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?**

In the absence of any voluntary dialogue with the DfES the home education community has had frequent recourse to Freedom of Information requests which at times have provided virtually our sole source of information from the department.

*Please see our case study and Cabinet Office seminar notes for more details*

## **NO REDRESS FROM GOVERNMENT DEPARTMENTS**

It is not clear to us what redress if any our organisation has against a government department if we believe that the consultation criteria have been flouted. For example, a recent consultation complaint by a home educators' action group to the Better Regulation Executive resulted in the complaint being passed back to the same department which had occasioned the criticism.

To assist with transparency, there should be a requirement for departments to publish a list of all the organisations who were asked their views and invited to participate.

### **Consultation and Impact Assessment**

#### **QUESTION 4**

**Is the new approach to Impact Assessment sufficient to improve public consultation on the evidence base for Government policy-making? How could consultation policy improve consultation on Impact Assessments?**

#### **IMPACT ASSESSMENTS CURRENTLY NOT FIT FOR PURPOSE**

Education Otherwise has responded to 12 DfES/DCSF consultations in the past 9 months. References for these are given at the end of this consultation response. Without exception, the Impact Assessments which have accompanied these consultations have not been fit for the purpose. The most striking example of this was the recent DfES consultation on written home education guidelines for local authorities, where the Impact Assessments were completely out of step with the consultation document itself and appeared to relate to a completely different set of options. In addition, research information was used incorrectly in the Regulatory, Race and Disability Impact Assessments and was cited as a justification for the consultation, exerting a wholly disproportionate influence on the framing of the options for the consultation. Moreover, the department failed to heed the author's own warning as to the limits of his research. We are now aware of a number of other respondents to the consultation who have made a similar point.

*Please see our case study and Cabinet Office seminar notes for more details*

#### **IMPACT ASSESSMENTS HAVE INHERENT BIAS**

Another example would be the PRIA for the Information Sharing Index, where the costings for the 3 sets of options remained completely unwarranted ( the clearly favoured option allegedly costing a third less than the next option ) The potential cost of data protection issues was swept under the carpet in these Impact Assessments.

#### **DISABILITY IMPACT ASSESSMENTS ARE NOT ROBUST**

Moreover, the Disability Impact Assessments from the DfES/DCSF fail to take account of children with SEN and learning difficulties. This was particularly noticeable in the DfES Skills Strategy Equality Impact Assessment consultation held earlier this year.

*Please see our case study and Cabinet Office seminar notes for more details*

## **NEED FOR HOME EDUCATION IMPACT ASSESSMENT**

Education Otherwise believes there should be an Elective Home Education Impact Assessment in ALL proposals pertaining to children, young people and families, in order to determine what effect the policy options would have on home educated children and young people. This community is overlooked while legislation and guidelines are drafted and home education support organisations are then left to pick up the pieces.

**Consulting for the right reasons at the right time.**

### **QUESTION 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.**

We note that paragraph 2.10 states that “the new guidance on IA stresses the importance of conducting informal and formal pre-consultation as the IA is developed. “ During the recent consultation on written home education guidelines for local authorities, the department was not willing to engage with home education support organisations and recognise us as stakeholders during the pre-consultation process. The department's preferred option appeared to be to try and gather confirmatory evidence for its current proposal.

*Please see our case study and Cabinet Office seminar notes for more details*

During the same consultation on home education guidelines for local authorities, the pre-consultation contact with our organisation was very poor. We made repeated representations to Ministers and officials requesting a meeting, but these were turned down with the statement that we would be contacted when the department had decided, “on the way forward. “ A complaint to BRE about DfES' inadequate engagement with stakeholders was passed back to the same department for monitoring.

Moreover the department did not appear to recognise that our organisation could bring extensive background knowledge, useful experience and practical suggestions to the discussion table before any written consultation. When the written documents were

launched after a long delay, we were disheartened to see that much of the legislation and guidance cited was at least 2 years out of date. We were also dismayed at the Impact Assessments, which not only bore little relevance to the consultation material but were also noticeable in singling out minority ethnic groups and making prejudicial statements based on hearsay. We are now aware of a number of other respondents to the consultation who have made a similar point.

*Please see our case study and Cabinet Office seminar notes for more details*

Ideally, departments would work to have a positive relationship and regular contact with stakeholders including the time spent outside the formal written consultation period. We are not aware of any officials or Ministers who have direct experience of home education or who have links with our community. In most situations officers and Ministers would welcome the input of those involved in the issue under consultation, they might also have experience of some of the issues involved. This is less likely to be true in the case of home education.

### **How best to seek stakeholder input?**

#### **QUESTION 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?**

2.12 “There is a concern that emphasis on written consultation can lead to a grudging compliance and a tendency to go through the motions, without policy makers having a genuine desire to listen and respond to stakeholders' views “

Education Otherwise believes that there should be concise written procedures for consultations and that there must be robust monitoring systems. In our experience the officials who oversee home education on a day to day basis are then replaced for the written consultation by the Consultations Unit at the DCSF who have no background or experience in the area.

*Please see our case study and Cabinet Office seminar notes for more details*

2.13 Concerns have also been expressed that consultation sometimes takes place at a relatively advanced stage of policy formulation, limiting the department's room for manoeuvre and reducing the likely impact of stakeholders' comments.

Education Otherwise would agree with the above statement. However, we would be even more concerned if meetings replaced written consultation, as appears to be suggested in several options. We fear that this would limit the range of input as some stakeholders would be more equal than others. In particular, we fear that the voice of the parents would be lost, as already happened in the QCA consultation on reform of the secondary

curriculum.

Home educating parents must be recognised as stakeholders by Government departments who frame laws and regulations which affect *all* children and young people.

Education Otherwise believes that home educating parents and the major home education support charities can also offer practical models of good practice to the Government departments concerned with Elective Home Education.

We feel that the framework of the Code of Practice is adequate but needs to be made more robust. There needs to be a mechanism for complaints which will be answered in sufficient time before the end of the consultation period.

### [Awareness-raising](#)

#### **QUESTION 7**

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

To date our experience has been with the DfES now DCSF. It has been possible to register with the DCSF on-line consultation website, but at present we are not automatically notified of new consultations, which we are required to check manually. In addition, we receive no notification from other departments and we have to make speculative searches. Nevertheless, we have responded to 12 departmental consultations within the past 9 months.

However, there seems little appetite for cross-government working. We have a particular difficulty in the case of Elective Home Education since the Minister with responsibility is Lord Adonis but questions in the House of Commons are taken by Jim Knight. We are not getting a lot of information about which Minister will assume responsibility for comment once the consultation report is published. Requests to talk to ministers have been declined.

*Please see our case study and Cabinet Office seminar notes for more details*

We would like to see a much more pro-active cross-department role for the Elective Home Education Team at the DCSF. At present this does not happen, possibly because of lack of awareness that all proposals involving children young people and families will affect Education Otherwise members, not just proposals and options relating directly to home education.

### [Reporting back following consultations](#)

#### **QUESTION 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?**

3.8 Organisations complained that they are unaware of Government's response to consultations that they have participated in [ ] The Code of Practice does not offer much guidance on what [ ] responses should look like or how they should be distributed or published [ ] Government responses to closed consultations can be downloaded but this is perhaps not enough.

We agree with paragraph 3.8 above. More guidelines should be added to point 4 of the current Code of Practice which needs amplifying in this area : “ Give feedback regarding the responses received and how the consultation process influenced the policy.”

We would also appreciate a date being given for publication of the consultation report, instead of the report just appearing out of the blue some time during the 12 weeks after the consultation closed. At the time of writing, we are awaiting the outcome of a public consultation into home education. We have very little information about what will happen next and we have not been made aware of the options which might be considered by Ministers following the publication of the consultation report. This follows an earlier consultation covering some of the same ground in 2005 which was abruptly terminated by the DfES and no decision was ever made public over what the department intended to do next. As indicated elsewhere in this document, one of our few sources of information is the material obtained in Freedom of Information requests, which have to go through the correct channels and which tell us in retrospect what was taking place behind the scenes when the department was unwilling to meet or talk.

*Please see our case study and Cabinet Office seminar notes for more details*

## **CONSULTATION FATIGUE**

### **Consultation fatigue**

#### **QUESTION 9**

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

Education Otherwise has responded to 12 consultations affecting England in the past 9 months.

<http://www.education-otherwise.org/Legal/Consultations/GovConsultFrtPg.htm>

<http://tinyurl.com/yakk4t>

Consultation fatigue is a factor for the Third Sector, especially in organisations such as

ours which are staffed by volunteers. However, it is relatively painless to take part in a written consultation ; the difficulty is more in the area of trying to find out about consultations in the first place and trying to engage Government departments in any kind of meaningful dialogue or arrange a meeting. It is equally time-consuming and disheartening to take issue with any items in the consultation report or to make repeated attempts to have any impact on future policy. In the case studies enclosed with this consultation response we outline instance where our major point is acknowledged in a covering email but not addressed in the consultation report or any public document or policy statement. When the points we make in consultation responses are not incorporated into the written guidance, this causes problems down the line with local authorities some of whom would remain a law unto themselves.

*Please see our case study and Cabinet Office seminar notes for more details*

We would be against any move in which Government departments rationalised the number of consultations by their own criteria. When we have seen this happen it is not successful. For example, a recent consultation from the DfES on early years, schools and 14-16 funding had 40 questions and as we said in answer to question 39 *“This consultation has a huge number of questions. It addresses two very different areas, 14- 16 and Early Years and it does not make a lot of sense to put them together like this here in terms of attracting in depth responses. The area of 14-16 funding is of tremendous interest to non-mainstream educators such as home educators. EO is pleased to note that there appears to be a willingness to engage with these issues and promote increased flexibility outside the traditional funding for the maintained sector.”*

<http://www.education-otherwise.org/Legal/Consultations/english/consultationonschool,early%20years%20and%2014-16%20funding.pdf>

<http://tinyurl.com/yw5qyl>

**Other issues**

### **QUESTION 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.**

We should like to see the cross-department brief for the small home education team at the DCSF undertaken in conjunction with representatives from the home education community. Work needs to be done to identify issues from all departments which are likely to have an impact on home educated children and home educating families. To take an example, some home educating families are headed by a single parent. Therefore, changes to the benefit system will affect some of our members. A consultation was

launched by the DWP but Education Otherwise was not approached for pre-consultation exchange of views, so once more we see that a consultation is launched which simply does not take into account the experience of home educating families. Too often we are in the position of fire-fighting only after the public consultation is launched. This experience is discussed in our case study of the DfES Raising Expectations consultation.

*Please see our case study and Cabinet Office seminar notes for more details*

In the absence of any voluntary dialogue with the DfES the home education community has had frequent recourse to Freedom of Information requests which at times have provided virtually our sole source of information from the department.

## **Options**

### **QUESTION 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?**

Education Otherwise has studied the options set out in the Cabinet Office consultation document. We feel that none of the options is a substitute for a proper working relationship between stakeholders and departments. However, many of the problems can be addressed by amplifying the current Code of Practice and requiring departments to adhere to it. There should also be a rapid-response independent complaints procedure so that stakeholders and potential stakeholders have some means of redress if they feel that a consultation has not been dealt with adequately.

### **OPTION 1**

#### **Written consultation plus one other method**

A primary disadvantage of this option is the likely setting by Government departments of a hierarchy or pecking order of stakeholders. Under Option 1 this would be at the department's discretion, which would exclude parents as stakeholders. We also believe it is likely that certain confirmatory views would be sought more readily to fit in with a pre-determined policy and correspondence uncovered in Freedom of Information requests made to the DfES would seem to bear out this view.

*Please see our case study and Cabinet Office seminar notes for more details*

### **OPTION 2**

#### **A code of practice with a fast-track procedure**

Education Otherwise disagrees with the proposition that measures affecting a relatively

smaller number of people should be rushed through without the same degree of scrutiny or time for parents to be involved as stakeholders. The numbers may be small, but the measures proposed could have serious and far-reaching consequences. In addition, some smaller communities require more time to consult with their members.

There seems to be an assumption in the Cabinet Office paper that all organisations have access to the same resources and information networks, which is not our experience. For example in the recent DfES consultation on home education guidelines, the Impact Assessments singled out a piece of research which was said to have prompted the consultation. This research covered the second hand views and comments of the Traveller Education Service on the out-of-school experience of Traveller Gypsy Roma families, but neither the report nor the departmental follow-up took into account the views of these communities themselves.

We concur that the advantage in Option 2 falls primarily to government departments. If this procedure were adopted we would be less able to consult with our members prior to making a response to the Government department. There are too many “ifs” in paragraph 5.16. In order for this option to work, there would have to be a far greater basis of trust. An organisation would need a high level of resources in order to take advantage of this option, which we feel is discriminatory and works against a level playing field.

During the recent consultation on home education guidelines, we feel that under Option 2 the department could simply have said that the area consisted “ of a largely closed list of known specialists or technical organisations most of whom are expecting the consultation and who have the skills and infrastructure to respond in a shorter period of time. “ This would have excluded regional local and individual responses.

*Please see our case study and Cabinet Office seminar notes for more details*

### **OPTION 3**

#### **A principles-based approach.**

The call for consultations to be proportionate to the issues being discussed, and designed around the needs of stakeholders sounds superficially attractive, but leaves the decision in the hands of the Government department with little recourse for stakeholders who disagree with the department's assessment. In addition, the problems and difficulties faced by minority communities may be complex.

Education Otherwise is not convinced that monetary thresholds are the best criteria on which to decide a proportionate response.

The 4 principles outlined in paragraph 5.24 could be applied to any of the 3 options and indeed to the present Consultation Code of Practice. We would like to see them applied in order to make the present system more robust.

With reference to paragraph 5.26, our experience does not convince us that the Government best knows the stakeholders.

Option 3 would not work for Education Otherwise because we would not be considered stakeholders by Government departments and yet our members are adversely affected by proposals contained in recent consultations on Early Years, Special Educational Needs, the definition of full-time education, truancy, exclusions, the national database, 14-16 funding, community cohesion and so on.

*Please see our case study and Cabinet Office seminar notes for more details*

## **QUESTION 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?**

Education Otherwise is curious about the “handful of stakeholder organisations which regularly respond to Government consultations. “ We wonder how many were from the Third Sector and how many from local voluntary and community groups.

We should also like to ask what independent research has been undertaken to examine the barriers to participation in Government consultations?

## **APPENDIX**

### **A/ HOW WE CONSULT WITH OUR MEMBERS**

As an organisation, we consult widely with our membership via local, regional and national internet support lists run by Education Otherwise. We canvass the views of members via the Education Otherwise newsletter, which is sent to 5,000 member families. In addition we have recently run eight regional workshops for home educators as part of the process of drafting our last consultation response.

### **B/ LIST OF EO CONSULTATIONS via EO website**

<http://www.education-otherwise.org/Legal/Consultations/GovConsultFrtP>

### **C/ CASE STUDIES**

#### **CASE STUDY 1. SKILLS STRATEGY EQUALITY IMPACT ASSESSMENT CONSULTATION**

<http://www.education-otherwise.org/Legal/Consultations/english/skills%20equality%20impact%20consultation%20april%202007%20.pdf> is the Education Otherwise consultation response.

Education Otherwise was not identified as a stakeholder and was not notified of the this consultation nor of the regional events nor of the report which followed the consultation. The report can be found on the DCSF website where it then becomes necessary to follow a convoluted path to the Government's reactions and proposed course of action.

<http://www.dfes.gov.uk/consultations/conResults.cfm?consultationId=1463>.

From this link we can follow the trail to the DCSF Skills Strategy Site

<http://www.dfes.gov.uk/skillsstrategy/index.cfm?fuseaction=content.view&CategoryID=6> and finally at the foot of the page, we reach the relevant June 2007 documents.

<http://www.dfes.gov.uk/skillsstrategy/uploads/documents/Exec%20Summary%20v%204%20060607%20page%20numbers%20changed.pdf>

We are told that “numerous changes have been made in the EQUIA to reflect comments made during the consultation. Among these are the decisions to assess on the basis of age equality alongside disability, ethnicity and gender, and to consider issues of multiple disadvantage wherever possible, as noted above .” [ p. 4 Executive Summary and also in the 121 page Equality Impact Assessment itself

<http://www.dfes.gov.uk/skillsstrategy/uploads/documents/SSEQIAfull.pdf> ]

However, even after ploughing through these 121 pages ( with much repetition ) it is still not clear which changes have been made to reflect the consultation process, apart from including Age Impact Assessments. We read that “it is also important to note - as the consultation highlighted - that some of the most serious inequalities are of long standing and are affected by a wide range of factors which cannot be fully addressed by the Skills Strategy on its own. Nor can they be removed overnight. These include deep-seated patterns of gender segregation throughout the labour market, and high levels of unemployment amongst disabled people and certain ethnic minority communities. “ [ p.94 EQUIA ]

There is an acknowledgement that this is an issue, but very little information about what is to be done. This makes it hard to see the point of responding to the consultation.

## **CASE STUDY 2. RAISING EXPECTATIONS CONSULTATION**

Education Otherwise was not recognised as a stakeholder and not invited to participate in this consultation. Nor we were asked as an organisation to promote the Youth Matters consultation to the teenage young people among our membership . However, once the consultation was underway, an officer from the DfES Policy and Performance Division became interested in Education Otherwise's view. Post 16 education and training was narrowly defined in the consultation documents as attendance at an institution working towards accredited qualifications, which is completely contrary to section 7 of the

Education Act 1996 allowing for full time education to take place by attendance at school “or otherwise”. This could have been averted if Education Otherwise had been recognised as a stakeholder earlier in the process.

Education Otherwise responded to the consultation questions.

<http://www.education-otherwise.org/Legal/Consultations/english/raisingexpectationsconsultationjune07website.pdf>

<http://tinyurl.com/26e4p3>

We were surprised to see that the consultation did not include any questions about the accompanying Impact Assessments, so we wrote to the DfES 14-19 Unit setting out our reservations . It was therefore the 14-19 Unit who alerted us to the early publication of the Consultation Report. We have been informed by the 14-19 Unit that home education will continue to be a legal and valid option, but this is in no way reflected in the consultation report Nor is home education mentioned as a valid option in subsequent press releases from Jim Knight, Minister for Schools, who is the Minister with responsibility for home education in the House of Commons. We are concerned that our consultation response will be marginalised as home education continues to be ignored in Departmental policy statements. It is unclear how officials and Ministers will be aware that home education is to be considered a valid legal option if the consultation report itself does not make this plain. It is further unclear how this situation might be remedied, though we intend to test the facilities offered by the Department’s designated consultation policy co-ordinator.

This consultation is a classic example of the need for an Elective Home Education Impact Assessment to be undertaken routinely whenever there is a government proposal which affects children and young people.

### **CASE STUDY 3. HOME EDUCATION GUIDELINES CONSULTATION**

Education Otherwise was recognised as a stakeholder in this consultation.

#### **EARLY 2003: DEPARTMENTAL DRAFT GUIDELINES LEAKED**

The saga began in 2003 when an early Departmental draft of new guidelines on home education was leaked.

#### **JULY 2004: EO MEETING WITH DEPARTMENT**

DfES subsequently withdrew most of this text and over a year later finally agreed to a meeting with Education Otherwise in July 2004. As the agreed notes to the meeting stated “DfES expressed awareness that the unintentionally released draft guidance ( which was

at an early stage of drafting and not intended for circulation) was flawed and controversial, and invited EO to comment on the contentious issues. “

### **JULY 2004 : NO MONEY FOR FULL PUBLIC CONSULTATION**

The home education support organisations reviewed the DfES text and submitted a revised version to the Department for consideration. Education Otherwise was told that there was not enough money for a full public consultation and that the small team with the remit for home education also had many other responsibilities.

### **JULY 2004: LIMITED CONSULTATION IMMINENT**

However, EO was told that there would shortly be a limited consultation and that a draft of the guidelines would be circulated before the consultation was launched.

### **FEBRUARY 2005 : STILL NO CONSULTATION**

7 months later, in February 2005 Education Otherwise requested a further meeting with the Department, having been given no news in the intervening period. Officials from the Department agreed to another meeting and supplied a pre-consultation draft, confirming that the guidelines were in an advanced state of drafting, and that they would be completed and issued for consultation the following month.

Once more Education Otherwise raised objections to the very limited consultation which was being proposed. EO repeated suggestions from the earlier meeting that the Department accept submissions from the online home education community.

### **MARCH-MAY 2005 VERY LIMITED CONSULTATION**

The limited consultation closed in May 2005.

The home education community then heard nothing from the Department. There was no consultation report.

### **DECEMBER 2005: DfES EXPECTS TO PUBLISH GUIDELINES BY THE END OF 2005**

In December 2005 EO learned that the Department was in discussion with a small number of Local Education Authorities.

EO protested about this, saying that the limited consultation had closed in May and that we had not had consultation feedback within 3 months. The Department said that it expected to publish the Guidelines “around the end of the year.”

## **FEBRUARY-MARCH 2006 NO NEWS FROM DfES. WE GET OUR INFORMATION FROM FOI REQUESTS**

In February 2006 a home educator issued Freedom of Information requests to discover what had been the response of Local Authorities to the consultation on written guidelines. Results of the FOIs were released in March 2006.

## **FEBRUARY 2006: DfES SAYS GUIDELINES “WILL BE PUBLISHED SOON”**

February 2006 also saw a letter from DfES stating that the guidelines would be published “soon”.

## **OCTOBER 2006: DfES PRESS OFFICE ANNOUNCED CONSULTATION INTO LIGHT TOUCH CHANGES TO MONITORING**

The home education community heard nothing for the next 8 months, until early October 2006 when another home educator, in correspondence with the Department over Freedom of Information requests, received an email from the DfES Public Communications Unit announcing “We will be launching a consultation early in 2007, to explore what light touch changes we might implement to strengthen the monitoring arrangements for home education.”

## **DECEMBER 2006: HASTILY CONVENED PRE-CONSULTATION MEETING. WE ARE TOLD CONSULTATION WILL BE IN EARLY NEW YEAR AND THAT FINISHED GUIDELINES WILL BE PUBLISHED IN FEBRUARY 2007**

Despite repeated requests for information about follow-up to the guidelines consultation and clarification of “light touch changes” EO had no formal news from the Department until a meeting was hastily arranged in December 2006, at which we were told that a full consultation was to be launched early in the New Year and that the Guidelines were to be published with no further input, by the end of February 2007.

January 2007 came and went with no sight of the consultation on “light touch changes” which would have a major impact on all home educating families. At the end of January, EO wrote to the Department asking what was happening and requesting a meeting, which was turned down.

## **MAY 2007: LIGHT TOUCH CHANGES CONSULTATION FINALLY WITHDRAWN. FULL PUBLIC CONSULTATION INTO GUIDELINES LAUNCHED INSTEAD.**

Officials did not communicate with the home education community until May 8<sup>th</sup> when hundreds of home educators who had registered an interest with the Department into “light touch changes” were notified that these plans had now been dropped and were to be replaced by a full public consultation on written guidelines for local authorities. The draft

text of the guidelines for consideration was almost identical to the last drafts seen in May 2005.

### **IMPACT ASSESSMENTS BELONGED TO PREVIOUS DISSIMILAR CONSULTATION PLAN**

The Impact Assessments for this consultation had very little relevance to the consultation document. The results of Freedom of Information requests to the Department confirmed our suspicion that the Impact Assessments for the proposed earlier consultation on “light touch changes to monitoring” had been placed into the consultation on written guidelines, with very little revision to make them more pertinent to the new consultation. This seems completely to miss the point of Impact Assessments and was extremely misleading. Education Otherwise is aware that a number of respondents to the consultation have commented on this, as did EO Government Policy Group. We are waiting to see whether this will be acknowledged in the consultation report which is due by mid October.

### **JUNE 2007: DEPARTMENTAL RESHUFFLE**

Following the division of the DfES into 2 departments, responsibility for the consultation passed from the Consultation Unit and Policy and Performance Division in London to the Elective Home Education representative at the DCSF in Darlington.

### **EARLY AUGUST 2007: HOME EDUCATION TEAM CHANGE IN LINE-UP**

Immediately after the public consultation ended, the Elective Home Education team in Darlington changed. The person who had been in post moved to another department and was replaced. Education Otherwise and the home education community now have to build a relationship with the new team.

### **CABINET OFFICE SEMINAR IN LEEDS 4 SEPTEMBER 2007 BETTER REGULATION EXECUTIVE**

Government Officials: Margaret Jackson (GOYH), Andrew Van Der Lem (BRE), Ian Ascough (BRE)

Annette Taberner from Education Otherwise Government Policy Group attended the cabinet office seminar in Leeds which is one of a series of events where BRE is looking into improving Government consultation practice.

The following is from the official notes of the meeting which were sent to the Policy Group by the Cabinet Office :

### **HOME EDUCATION GUIDELINES CONSULTATION 2003-2007 CITED AS EXAMPLE OF BAD PRACTICE**

“Bad practice

In terms of bad practice, work on education matters, especially guidance on home education, were raised. Issues raised included: no feedback following consultation exercises; very short notice of meetings; lack of clarity in scope; lack of expertise among the officials running the consultation exercise; key stakeholders not identified; poor impact assessment work; and misuse of research. Under the current system, stakeholders have no recourse. “

### **DURATION OF CONSULTATION; 12 WEEKS MAY NOT BE LONG ENOUGH WHEN STAKEHOLDER ORGANISATIONS WILL WANT TO CONSULT WITH MEMBERS**

Duration of consultation exercises

In terms of the duration of consultation exercises, the Government should be proportionate in its approach. Duration could vary according to scale, complexity and stakeholders' needs. Some consultation exercises can cover huge swathes of policy and can be very long and so it can take a long time to digest before working out how to respond and who to work with in preparing a response.

Engaging partners, members, etc. can make it necessary to summarise the documents before seeking input. Secondary consultation can be time-consuming. Some consultations are so long and complex that 12 weeks may not be long enough.

12 weeks would usually be plenty of time if people were aware of consultation exercises at the beginning of this period, but 12 weeks is the minimum and a longer period can sometimes be necessary. “

### **BETTER UNDERSTANDING OF STAKEHOLDERS IS REQUIRED**

The Government should ask people how they want to be consulted and should develop a better understanding of its stakeholders so that it can design its consultation processes around stakeholders' needs.

Better governance of consultations would help considerably.

Recognition, in the form of a thank you letter, is often lacking and would be appreciated. As would an email to announce to those who have been involved when documents are being published.

### **CENTRAL ONLINE PORTAL**

A central portal for all Government consultations would help solve the awareness problem and stakeholders could be self-selecting, choosing the policy areas they are interested in and receiving automatic alerts.

An online portal where people could nominate themselves as stakeholders through signing up for certain consultations would ensure that responses did not just come for the "usual suspects".

### **SHORT NOTICE TO STAKEHOLDERS FOR CONSULTATION MEETINGS IS NOT ACCEPTABLE**

It is unacceptable to receive short notice of meetings, especially when travel will be required. Travel and time have associated costs – train tickets, childcare, loss of earnings etc.

Is it not a flaw in the system that the Government selects its own stakeholders for its consultation exercises? Should they not be self-selecting?

### **NEED TO MAKE CONSULTATION DOCUMENTS MORE USER FRIENDLY**

Consultation is a highly skilled exercise and some people will not be able to cope with long, technical documents. Meetings may require simultaneous interpretation to allow those whose first language is not English to get involved.

Discussions need to be well facilitated and the whole process needs to be made as positive as possible for all involved.

### **PROBLEMS OCCUR WHEN STAKEHOLDERS ARE NOT GIVEN FEEDBACK**

When there is no feedback or the feedback does not reach the people who have contributed, the process can be insulting. It can be particularly hard to engage some groups and not to give feedback reduces the chances of further engagement.

### **NEED TO GUARD AGAINST BIAS WHEN IDENTIFYING STAKEHOLDERS**

Consultations can be biased/leading, a current consultation on nuclear energy being cited. Consultations need to be more neutral. However, some bias is inevitable given that consultations are on government policy. Some of the bias comes from the selection of stakeholders. Clarity in scope is essential but often it is not clear what is decided and what is not yet decided.

### **HAS THE GOVERNMENT ALREADY MADE UP ITS MIND BEFORE THE CONSULTATION BEGINS ?**

The questions can sometimes lead people to believe that more is, as yet, undecided than is actually the case.

Including options in a consultation document can be misleading – is the Government genuinely open to all of them and what about alternatives to these options? It would be good to ask for other ideas on options too.

### **NATIONAL POLICY MAKERS COULD LEARN MORE FROM GRASSROOTS EXPERIENCE**

Sometimes, Government could learn by looking at research and consultation work carried out elsewhere, e.g. at the local level, rather than consulting again.

Some consultations are rather farcical, e.g. on assisted areas – of course no one wanted to lose the status and therefore see reduced funding. The Government needs to measure/evaluate its consultations so that it can improve/engage more effectively in future.

### **FLAWED IMPACT ASSESSMENTS: 1/ ADDED AT LAST MINUTE ; 2/ STAKEHOLDERS NOT ENGAGED WITH IMPACT ASSESSMENTS PRIOR TO CONSULTATION; 3/ IMPACT ASSESSMENT BIAS FAVOURING GOVERNMENT OPTION**

Impact Assessment work seems often to be a last-minute add-on to consultation documents rather than integral parts of the consultation. There are therefore sometimes no procedures in place to engage stakeholders in the impact assessment work. Is there any evidence of impact assessments actually affecting policy decisions?

Where minds have already been made up, this should be made absolutely clear so as not to waste people's time.

Rewarding people for participating may prove cheaper in the long run than getting a policy wrong!

### **COSTS ARE BARRIER TO PARTICIPATION**

Reimbursing costs associated with participation – train fares, childcare costs, etc. – would enable a wider range of people to get involved. Video conferencing would also allow wider participation and local cinemas could be used for this.

The Change Management literature might prove useful for changing cultures so that good consultation gets truly embedded in policy development.

## **WHAT IS THE FUTURE OF THE CODE OF PRACTICE FOR CONSULTATIONS ?**

In discussion as to the future of the Code of Practice some people thought the Code should be kept but enforced more and a principles of good practice should be added.

## **“TIME TO TALK” CONSULTATION:IS THE CODE OF PRACTICE FOR CONSULTATIONS “PURELY ADVISORY”?**

On 6<sup>th</sup> September 2 days after the Cabinet Office seminar, the DCSF announced the “Time to Talk” consultation with a duration of only 5 weeks, thus breaking the code recommendation of a minimum of 12 weeks.

Education Otherwise was told by the DCSF that the consultation code of practice was “purely advisory”

We are pleased to see that the Cabinet Office is now looking into this on behalf of Education Otherwise.





