



Subject	Review of ARB Code of Practice for Consultations		
Status	Open		
Purpose	For Decision		
From	Elaine Stowell		
History	Parent Committee	First Submitted	Revision Number
	Insert or N/A	19/11/2015	1

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### 1. Purpose

To review the Board's Code of Practice for Consultations against current guidelines and best practice and agree amendments.

### 2. Recommendations

It is recommended that the Board: considers and agrees the proposed amendments to the Code of Practice for Consultations (attached at [Annex A](#)) and adopts the recommendations set out in Key Point vi.

### 3. Terms of Reference

ARB Code of Practice for Consultations; Cabinet Office Consultation Principles, October 2013.

### 4. Open

### 5. Contribution to the Board's Purpose and Objectives

In delivering the Act, ARB's objectives are:

Protect the users and potential users of architects' services and support architects through regulation: Consultation with those representing the interests of both consumers and the profession before making any changes to the Board's Rules and policies ensures that these remain appropriate and proportionate and reduces the likelihood of creating unintended consequences. Consultation is an opportunity to involve stakeholders, to access their knowledge and expertise and to obtain their support.

### 6. Key Points

- i. Under the Architects Act 1997 there is a legal requirement for the Board to consult on the following matters:
  - S13(3): Before issuing or varying the code the Board must consult such professional bodies and such other persons with an interest in architecture as it

considers appropriate.

- S23(2): Those affected by the General Rules must be given the opportunity to make representations regarding any new rules or amendments.
  - Sch 1 2(1): Before making changes to the electoral scheme the Board must consult such bodies as appear to the Board to be representative of architects.
- ii. A different and separate consultation process is undertaken under S4(3) before prescribing qualifications or examinations for the purposes of S4(2) for the first time.
- This process has not been considered as part of this review.
- The Board also consult on any other rule changes, including the Prescribed Exam procedures and Investigation Rules.
- iii. ARB's current Code of Practice for Consultations was introduced in 2010 and was based on principles set out in the Code of Practice on Consultation published by the Better Regulation Executive in 2008.
- iv. The Cabinet Office updated the Code of Practice and published guidance in 2013. This guidance has formed the basis for this review of ARB's policy and practice, together with a benchmarking exercise of current practice among a range of regulatory bodies.
- v. Four principles were identified in the guidance:
1. **Subjects of consultation:**

The purpose or reason for undertaking the consultation should be made clear, whether it is an opportunity to influence the development of policy or comment at the final stages.

Organisations should also consider whether formal consultation is appropriate where the measure is to implement a minor technical change or where adequate consultation has taken place at an earlier stage.
  2. **Timing of consultation:**

Engagement should begin early in policy development when policy is still under consideration and views can genuinely be taken into account. It may be appropriate to engage in different ways at different stages.

Timeframes should be proportionate and realistic to allow stakeholders sufficient time to respond. This will depend on the nature and impact of the proposals, the diversity of interested parties and the complexity of the issue. This should be decided on a case-by-case basis.

**3. Making information useful and accessible:**

Organisations should be able to demonstrate that they have considered who needs to be consulted and that the consultation captures the full range of stakeholders affected. In particular, if the policy will affect hard to reach or vulnerable groups, they should take the necessary actions to engage effectively with these groups. To be taken into account therefore:

- a. The form of the consultation – consideration should be given to more informal forms including public meetings, working groups, focus groups and surveys rather than always a written consultation.
- b. How the information is presented – plain language, key issues clarified.

**4. Transparency and feedback:**

The purpose of the consultation process should be clearly stated as should the stage in development. To avoid creating unrealistic expectations, it should also be apparent what aspects of the policy are being consulted on and are open to change and what decisions have already been taken.

Sufficient information should be available to stakeholders to enable them to make informed comments.

Feedback encourages participation and should be published within 12 weeks of the consultation closing. This should include the number of responses, what they have been and how they have been used in formulating policy.

**vi. Observations and recommendations:**

- In view of the changes to government guidance it is recommended that the ARB Code of Practice for Consultations is amended. A draft is attached at [Annex A](#).
- It is also recommended that elements of practice are revised to take account of the guidance and current practice among other regulators as follows:
  - ARB has a statutory duty to consult on certain matters and it may not be possible, therefore, for ARB to be as flexible as current guidance suggests but it is recommended that consideration is given to the most appropriate method of consultation in all cases. Formal written consultation may not be the most appropriate method at every stage in policy development and for all stakeholders.
  - Those responding to ARB consultations are typically asked to submit general comments rather than being asked specific questions. It is recommended that ARB adopts the more focussed approach adopted by other regulators to assist consultees in understanding the issues being consulted upon and to improve the value of the feedback.
  - It is recommended that greater consideration is given to the most appropriate time or times for consultation on a project by project basis. Until the recent 'pre-consultation' prior to the review of the Code of Conduct and Practice, ARB practice has been to consult on policy or proposals that have been agreed by the Board 'subject to consultation'. This is no longer considered best practice and could be perceived as just going through the motions.

Current practice for the majority of other regulators is to consult at an earlier stage to inform and assist in the development of policy and to be seen to be actively taking stakeholders' views into account.

Where a pre-consultation has taken place, subject to Board approval on a case by case basis, it may not be necessary to undertake a further consultation at a later stage; again this should be considered on a project by project basis.

- To avoid 'consultation fatigue' it is recommended that, in accordance with practice among a number of regulators, a more targeted approach is taken so that only those stakeholders who are likely to be affected by the proposals are consulted directly rather than taking a blanket approach. This will necessitate maintaining a comprehensive list from which the most appropriate consultees may be selected on a case by case basis.
- It is recommended that in future consultations further clarification is provided regarding the opportunity to influence policy and more specifically what is not part of the consultation and therefore not open for comment in line with current practice.
- The guidance states feedback should be published within 12 weeks of the consultation closing. The ARB Code states that we will publish responses once the Board has agreed the policy. It is recommended that the feedback is published on the website within the 12 week timeframe in accordance with the guidance.
- It is also recommended that consideration be given to how feedback is presented. Currently ARB publishes the names of those who have responded and in the majority of cases, publishes those responses verbatim. Practice among other regulators suggests that feedback should be summarised and that it should be anonymised unless the consultee specifically requests that their response be made public. When giving quantitative feedback it should be borne in mind that the reasoning behind the response rather than weight of numbers should be the most persuasive.
- The current practice of responding to feedback with reasons why a comment or suggestion may not be taken forward is acknowledged as good practice and should continue.

## 7. Risk Implications

Failure to engage in effective consultation is a missed opportunity and a waste of resources. The confidence of the public and the profession will be undermined by consultations which do not follow a well-considered code or where the outcome is perceived as pre-determined. Lack of relevant responses to consultations could lead to decisions being made without stakeholder views and considerations being taken to the account.

## 8. Resource Implications

The cost of consultation, where needed, has been included in the budget for all projects within the Business Plan and it is unlikely that any changes as a result of the amended Code of practice will have a significant effect on these.

**9. Communication**

ARB is committed to reviewing its processes and procedures on a regular basis to ensure that they reflect current best practice. The Board is also committed to consulting with stakeholders whenever a review of its Rules and policies is undertaken or any changes are made. As such it is essential that the Board 's Code of Practice is reviewed to ensure that they remain current and reflect best practice.

**10. Growth Duty Considerations**

By reviewing the Code of Practice for Consultations and the associated procedures, ARB can ensure that they are up to date and take growth duty considerations into account.

**11. Equality and Diversity Implications**

To ensure that all those affected by the subject of the consultation, and in particular hard to reach groups, accessibility must be considered as an integral part of any consultation process.