

Best Value Statutory Guidance Consultation: Involve Response

13 June 2011

Introduction

This document has been developed in response to the Department for Communities and Local Government's (CLG) Consultation by The Involve Foundation (Registered Charity No – 1130568).

About Involve

Involve are experts in public engagement, participation and dialogue. We carry out research and deliver training to inspire citizens, communities and institutions to run and take part in high-quality public participation processes, consultations and community engagement. We believe passionately in a democracy where citizens are empowered to take and influence the decisions that affect their lives.

Background

Involve works with a broad network of people interested in giving citizens a voice; people with an interest in the Duty to Involve. At Involve we feel that the decision to repeal the duty is worthy of a more in depth discussion than it was afforded in the official consultation paper and as a result we organised our own evidence gathering process.

Summary of findings

- There is very limited evidence of any impact of the duty to date, either in terms of positive influences on democratic engagement or evidence of the duty being a negative burden on authorities. Many people commented that it is too early to tell what impact the duty has had.
- Many people who responded felt that the repeal of the duty sends out a message that runs counter to the message of the big society. The repeal seems to risk creating confusion and mixed messages amongst the public and local government. There was also a sense that the timing of the decision was not good.
- A fear expressed by a number of respondents was that the repeal of the duty would be used as an excuse by councils to cut their citizen engagement to the bone. If CLG does not want this to happen they need to send out a message to councils that engagement is still important even though the duty has been repealed.
- Most of the respondents did not agree that the new rights to bid, buy and challenge are replacements for the Duty to Involve.
- Most of the respondents did they feel that the duty at the moment is a significant bureaucratic burden to councils.

- Regardless of the decision about the Duty to Involve many people we spoke to highlighted the importance of encouraging culture change at the local level to make consultations and engagement meaningful for local people.
- The majority of people we spoke to seemed to favour reforming the duty rather than abolishing it outright

Existing evidence on the Duty to Involve

The Urban Forum has carried out what is to date the only research on the impact of the duty. It looked at perceptions and involved surveying their members and contacts at the time of the introduction of the duty and the same people again one year later. The report can be found here: <http://www.urbanforum.org.uk/research-reports/involving-communities-a-legal-duty>

The research shows that:

- Almost 9 out of 10 people felt their involvement would not make any difference
- Confidence in the Duty's ability to improve involvement had fallen significantly
- The numbers of people that felt councillors did nothing to implement the Duty had increased substantially.
- There was virtually no change in levels of awareness of the Duty one year after its introduction.

Involve, NCVO and the Institute for Volunteering Research have also carried out research into individual motivations for participation under the Pathways through Participation project <http://pathwaysthroughparticipation.org.uk/>. The emerging findings show that 'tick box' consultation and engagement done in a manipulative fashion has a very negative impact on public perceptions of councils and other public bodies. This suggests that if the Duty to Involve has encouraged an increase in quantity but not quality of public consultation, it may be doing more harm than good.

Methodology

The document has been developed through a process of evidence gathering amongst Involve's network. During the consultation period we have gathered views using a wide range of methods, including meetings, blogs, twitter an online survey and a review of debates on other websites. We focussed in particular on the suggestion of repealing the Duty to Involve, which is of interest to our network. This document aims to inform CLG about the likely impacts of the repeal of the duty, as well as highlight areas where more research is needed. We asked our network the following questions:

1. Have you found the Duty to Involve helpful, harmful or irrelevant in your work?
2. What do you think the impact will be of repealing the Duty to Involve?
3. What do you think the impact will be of repealing the Creating Strong, Safe and Prosperous Communities guidance?
4. Do you think the existing Duty to Involve can be improved? If so, what would you do to make it better?

5. Do you know of any situation when the Duty has prompted a council to engage the community where it wouldn't have otherwise done so? Was this engagement successful or unsuccessful?

We have ensured that no one who contributed can be identified in this report. We have also created a Bit.ly bundle of links which gives an overview of the debate that has been developing over the last months online. <http://bit.ly/bundles/timjhughes/2>

General overview

We received responses from a variety of sources, including councillors, citizens and public sector employees. Our focus was always on gathering qualitative responses to help increase our understanding of the duty in practice. The respondents are not a stratified sample and thus we have not included quantitative assessments of how many people supported or opposed repealing the duty. This is a listing of views and opinions, not a poll. We have grouped the responses according to if they advocated retaining, reforming or repealing the duty.

Arguments for retaining the Duty to Involve

A number of people we spoke to were against the repeal of the duty. The majority (but not all) of people who work professionally with engagement and consultation in councils that we spoke to favoured keeping the duty.

The proposal to repeal the duty has, according to some consultation officers, led to confusion within councils. Senior managers are confusing the Duty to Involve with the Code of Conduct on consultation and assume that both are being repealed. There is also confusion about why the duty for councils, police and fire & rescue is being repealed, but not the duty for health bodies (Section 242). The general feeling was that the message sent out was inconsistent.

A number of people felt that the decision to abolish the duty is inconsistent with the big society message of giving ordinary citizens a say.

Many people felt that it was too early to make a statement about the effectiveness of the duty and wanted to retain it until its impacts were better understood.

A few people suggested that the duty is a form of normative legislation, similar to for example seat belts or drink driving legislation. They felt the duty needed a significant amount of time to bed in and change culture and that abolishing it now would do far more harm than good.

One engagement manager said that the duty had been useful because it forced the council to look at informing, consulting & involving as a whole rather than approach it piecemeal.

One representative from a charity had used the Duty to Involve to make arguments for greater voluntary and community sector involvement in decisions at both the local and regional level.

Some people felt that a likely impact of the repeal would be that it is less likely that voluntary and community sector organisations and the people they work with will be involved in decision-making processes by local and regional agencies. It might lead to a reduction in the practice of inclusion in decision making which could weaken the effectiveness and local ownership of public decisions.

A representative from a civil society network opposed the repeal because she felt it would worsen a situation where civil society groups are already being excluded from local partnerships. She feared that the repeal of Duty to Involve would make it much worse, undermining partnership and the role of local charities.

Some people valued the Duty to Involve as a potential legal right that can be used to hold councils to account. Without it the fear is that citizens will have less ability to influence decision making.

Some council employees said that the duty was useful for their councils as a framework for strengthening engagement. This seems to vary from council to council however. In some areas employees claimed the duty was rarely referenced to.

CLG has suggested that the Duty to Involve is no longer necessary as the new community rights to buy, bid and challenge now fill the same function as the duty did. In our gathering of evidence we found no support for this amongst the people we spoke to. The general feeling was that while the right to buy, bid etc are important new rights, they are very different to the Duty to Involve. The new

rights are seen to be ones that strengthen the position of those individuals and communities who are already motivated to take part. In support of the Duty, some respondents quoted [Ipsos MORI research](#) which shows that more citizens want say in decisions than who want to run services.

One respondent was not overly concerned about the Duty to Involve disappearing but feared that repealing this duty would be the thin end of the wedge and that other (and in the respondent's view more important) duties, such as equalities or planning consultations would be next.

Some voices supporting the duty:

"I feel the Duty to Involve should be strengthened not weakened. Having the duty far outweighs the drawbacks. It is not perfect but it is far better than nothing. The duty supports me at work and helps promote the need to do things properly. I see the impact day to day the duty has made unlike many people that don't work in my field at a local government level."

"Guidance is not a binding obligation therefore whilst it encourages good practice the repeal of this merely indicates poor judgement on the side of the government."

"The Duty provides those of us who care about public involvement and engagement a powerful argument."

"Is there any evidence to show that the Duty to Involve is a significant (and costly) bureaucratic burden on public bodies?"

"If there are no carrots or sticks it is unlikely that local government would be willing to 'share power'."

"I see more risks in changing the Duty than I see opportunities."

Arguments for reforming the Duty to Involve

There were also a number of people who suggested ways that the Duty to Involve could be amended or improved.

One suggestion was that the current duty was too broad and needed to be split into its constituent parts: one looking at information provision (a legal requirement), one looking at formal consultation and one looking at more in depth involvement (with no legally binding guidance but encouragement and support). The focus should be on quality of involvement, rather than quantity.

Some respondents felt that the duty is currently so vague it is largely meaningless. One analyst pointed out that all successful legal cases based on the duty have been based on failure of informing, never on failures of consultation or involvement. This doesn't mean that these failures don't happen just that the duty is so vague that it is almost impossible to use it effectively to challenge these failures.

One respondent called for efforts to build greater awareness of the Duty to Involve amongst statutory sector agencies and more training to ensure that staff see it as a worthwhile exercise.

One criticism of the duty we have come across is that it does not encourage councils to focus their efforts. One consultation manager pointed out that councils have very little budget allocated to engagement/consultation and these resources should be spent on the key strategies, plans or projects that really matter.

Others felt that the duty needed to be replaced with efforts to change council culture through training and support.

Some suggested replacing the Duty to Involve with a "Duty to Empower" or a "Right to have a say" – which requires authorities to engage with communities and promote dialogue about the issues that matter. The issues that matter could be determined by local residents.

Voices suggesting changes to the duty:

"Perhaps the current Duty to Involve is imperfect and could be streamlined – it's certainly possible to see the argument that if everything is a priority then nothing is. But the truth is it's impossible to judge the success of a policy that only came into force in April 2009, almost exactly two years ago."

"At worst, the Duty to Involve merely acted as a means to get 'bums on seats' and they promoted a 'tyranny of inclusion', in which the focus on the process of involvement, became the end game, rather than the means to better and more inclusive services. However, this is not the duty's problem, it is how it is deployed."

"What is really needed is a cultural change, which can't be mandated, and a good democratic substructure to local public services"

"Attached to the Duty should be adequate training, guidance and resources to ensure public bodies are able to utilise participative approaches effectively. There is considerable rhetoric in the public sector about 'consultation fatigue'. When participation is done badly it has not been allowed to influence and enhance decision making - leading to lack of trust and reduced engagement."

Arguments for repealing the Duty to Involve

There was some support for the removal of the duty. This support was stronger amongst citizens and councillors, but not amongst consultation managers and other professionals.

Some felt the duty leads councils to consult to cover their backs, even when their minds are made up. This pointless consultation was seen as driving citizen apathy and cynicism.

Some felt that the theoretical wide ranging powers given to citizens under the duty had actually done little to change things on the ground. Entrenched corporate culture was blamed a number of times; something many people felt the duty could do little about.

One respondent suggested that the duty could be replaced with a presumption that all council information will be published unless there are good reasons not to.

Some people questioned whether the duty is an effective legal tool for citizens to use to appeal against cuts. The current vague guidance is not a strong foundation on which to build legal cases on.

Some voices supporting the repeal of the duty

“My concern is that the duty is doing more harm than good by forcing public institutions to involve the public before the culture change has been embedded that ensures this is genuine. For me public engagement is all about the subtlety of who you involve, and when, where, how and - most importantly - why you do so. I don't think that laws tend to cope well with subtlety such as this.”

“The duty has led to little more than an exercise in bureaucratic box ticking rather than a genuine attempt to solicit public opinion. Also, such consultations often sidestep the established process whereby elected councillors talk to their constituents and replace it with something managed solely by unelected insiders. I don't think that's helpful for democracy.”

“Duties are usually only enforceable through legal action. Combine a vague duty, the need for challenge in the courts, and an issue that is a little bit of everyone's work (and so not a focus for anyone) and it feels like the duty is a prod with a bit of wet string.”

“It may have added to some level of bureaucracy and some have lacked adequate training to fulfil it properly resulting in poor outcomes.”

“The duty is often an obstacle - that and the poorly structured policy itself! It acts as a box to be ticked rather than a subject to be looked into, understood and used to its best advantage... However it has highlighted the issue and given it much needed publicity.”

In conclusion

We have been impressed by the willingness of people to engage in conversation about this topic. Clearly it is an important issue, worthy of a proper debate. It is clear that the evidence base at the moment is too weak to fully understand the impact of repealing the Duty to Involve. The duty may be a bureaucratic burden to councils that they would love to get rid of; conversely its repeal may do damage to local democratic engagement and public trust. Both scenarios have been proposed and without more research and reflection it is impossible to know which lies closer to the truth.

Many people we spoke to asked what will replace the duty, and wanted to know if it is better or worse than what we have now.

For more information about this consultation response, or Involve's work generally please contact Edward Andersson, Deputy Director on 020 7920 6472 or edward@involve.org.uk. More information can be found at www.involve.org.uk.