

## Chapter 2 Defining the policy objective and purpose of proposed legislation

The objective of a bill is its backbone and should be identified early in the development process. As the legislation or policy develops, the principles that follow should be revisited to ensure the policy objective is clear, and that the legislation is the best way of achieving that objective.

### Guidelines

#### 2.1 Is the policy objective and purpose of the legislation clearly defined?

*The policy objective must be clearly defined and discernible.*

Achieving the policy objective should drive the design of the legislation and all the detailed decisions made when drafting. Therefore, the broad underlying objective (the policy it is implementing or the reason for it) should be clearly defined before substantive work begins and clearly discernible in the legislation and policy documents (including the Cabinet policy papers and the departmental disclosure statement).

While it is not necessary to determine every detail of the policy at the beginning, it is highly desirable to settle as much policy detail as possible prior to writing drafting instructions and undertaking consultation on the proposed legislation. Providing more policy detail will enable others to properly assess the effects of the proposal and the ultimate legislation.

It may be helpful to look at examples of similar legislation to determine the level and nature of the policy analysis required. When developing policy, officials may also find it helpful to produce an outline of the key elements of the proposed bill as this can sometimes assist in identifying issues, especially more detailed ones, that need to be addressed.

#### 2.2 Do all the provisions of the proposed legislation clearly relate to the policy objective and purpose of the proposed legislation?

*The provisions of the proposed legislation should be consistent with its purpose and the policy objective that underlies it.*

Each provision should relate to a policy objective that underlies the legislation. A regular review of the content of proposed legislation can also help ensure consistency with the legislative objective, particularly in circumstances where the broad policy objectives have not been clearly identified at the outset or have developed during the legislative process.

#### 2.3 Is legislation the most appropriate way to achieve the policy objective?

*Legislation should only be made when it is necessary and is the most appropriate means of achieving the policy objective.*

Unnecessary legislation should be avoided because it involves significant costs.<sup>2</sup> Those costs

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<sup>2</sup> Cabinet Office [Cabinet Manual 2017](#) at 7.23.

take various forms, including:

- the costs of enacting the legislation itself, including its preparation (drafting, consulting, and reviewing); the process through the House (including House sitting time and the costs of the select committee process); and the publication of the legislation;
- the costs of complying with the legislation (including learning about it and adjusting processes); and
- the costs in administering, implementing, and enforcing it.

There is also a range of indirect costs of legislation. For example, new legislation can add size and complexity to the statute book resulting in costs to accessibility. It can also make the policy inflexible because amendments when circumstances change will require new legislation.

These costs should be considered in every proposal for legislation to ensure that the benefit of a legislative solution outweighs the costs. Particular caution should be taken when:

- the policy can be implemented equally well by non-legislative means;
- obligations are proposed without consequences or an intention that they will be enforced;
- obligations already in the common law or other statutes are proposed to be included in new legislation for an educative purpose; or
- legislation will provide a power to do something that can be achieved without legislation for example, providing a power for the Crown to acquire shares.

Legislation or provisions in legislation that expressly provide they have no legal effect or that are not intended to be enforced risk needless expenditure of public funds and bringing the law into disrepute. If material that does not have a legal effect is enacted in legislation, possible risks to the clarity or certainty of the legislation should be identified and considered. For example, is there a risk that a court may subsequently read in a legal effect to the provision that was not contemplated by the law maker?

In many cases, a number of alternatives to creating new legislation will exist. The policy objective might be achieved more effectively through the use of education programmes, reliance on the common law or existing legislation, or reliance on existing civil remedies (see [Chapter 22](#)). Where legislation is preferred over another suitable, non- legislative alternative, this decision should be capable of justification. It is a [Cabinet Manual](#) requirement that unnecessary legislation is avoided.<sup>3</sup>

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<sup>3</sup> Cabinet Office *Cabinet Manual 2017* at 7.23.

## 2.4 Has there been appropriate consultation within the government?

*All relevant government departments should be consulted at an early stage.*

It is important to consult with all relevant departments and resolve any inter-agency differences in respect of the proposed legislation before seeking Cabinet approval for both the policy papers and draft bill. This will help to identify possible conflicts or inconsistencies with any legislation or policies that may already exist or currently be in development. It will also help to identify interest groups or other sections of the public that should be consulted.

Effective and appropriate consultation within government is a [Cabinet requirement](#).<sup>4</sup> The [CabGuide](#) also provides some useful guidance on who to consult within the government.

## 2.5 Has effective consultation with the public occurred?

*Public consultation should take place.*

Public consultation is key to ensuring that the Government has all the information it requires to make good law. Information should be made available to the public (those outside the government) in a manner that enables people affected by the proposed legislation to make their views known. Public consultation can help to better identify the nature of the policy problem and more effective solutions for that problem. It also contributes to the legitimacy of the legislation in the eyes of the public and those affected. An effective consultation programme can increase public acceptance of the legislation, increase compliance with it, and lower the administration costs of implementing and enforcing it.

Public consultation is not required or possible in all cases. However, a failure to consult may result in valuable perspectives and information being overlooked and also risks unintended consequences. It may also result in a failure to identify alternative means of achieving the policy objective. Public consultation should occur as early as possible in the process of developing the legislation, preferably in the early stages of the policy development. At the least, it should occur at a point when it can still make a difference to the outcome.

Further information on planning and carrying out effective consultation is found in the Treasury's Guidance Note on [Effective Consultation for Impact Analysis](#).

[Link to supplementary material: [Exposure draft Bills](#)]

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<sup>4</sup> Cabinet Office *Cabinet Manual 2017* at 7.27.