

Policy Making Framework

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Ascension Island Government



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Introduction

Whilst there are many well established legal principles concerning public law, government policy is critical to all of these.

If a public body is carrying out a public function, members of the public have an expectation that this will be done fairly, consistently, and in line with established policy.

Everyone is affected by government policy, from someone enjoying a bank holiday to a person being charged for an offence, and everything in between.

This framework applies to all AIG actions and the public can therefore expect that this is applied consistently in matters of governance. As such, it is the responsibility of directorates, and individual officials, to ensure compliance with this.

What is policy?

Put simply, the basic principle of governance is that when government policy or legislation is put in place, it should clearly define duties, limits of power, and the rationale or reasoning that the Government has used when making decisions around that particular issue. Doing so provides the parameters for what is considered to be lawful in terms of the decision-making process followed by the Government or a public body. This ensures that government, public bodies and decision-makers are accountable by providing protection for individuals against state powers.

Without clear policy in place it is unlikely that fair, transparent or consistent decisions will be made as the Government has not defined through an appropriate framework as to how a decision should be reached. As it is government acting in this way, it creates significant risks. Acting in a way that treats two parties differently in similar circumstances provides the ground for legal challenge as decisions will not have been made consistently. Similarly, treating two different parties the same way without consideration of the wider issues that may be in place, may also create a ground for challenge. Without an appropriate decision making framework in place, it also means that the Government is at risk of overreaching its powers.

As such, substantive government policy on issues of governance, regulation or criminality should always be in place, published and made available to the public. This means that those affected by such matters are able to understand the way in which that particular issue is to be dealt with and are able to challenge this if they consider that the Government has acted outside of this. When this is lacking, the legitimacy of the state's power is called into question.

Whilst policy is ideally ordinarily contained in a single document covering the issue concerned, it can take many forms.

Ultimately, policy is the established practice that a member of the public can expect the Government to take in certain circumstances. Whether that is how they can expect to be taxed, the rules concerning successfully applying for a driving licence, or the laws around violent offending, the public should be able to enter the process knowing what the likely outcome in their circumstances will be.

As such, policy can also include guidance, forms and declarations, and published standard operating procedures.

Another way to think of it is this; the Government is exclusively able to wield authority and power over the public, with the threat of prosecution for those that do not comply with its directions, and policy is the way by which this is effectively controlled and proportionally restrained.

Clear, well considered, sound policy is therefore a key cornerstone of effective governance.

Ultimately, it provides the parameters and order within which society functions. As such it also provides the foundation for legislation, and once legislation is in place it dictates the scope of powers provided to the Government and how these are applied in practice.

When legislative changes are proposed, these will be underpinned by changes to the policy currently in place, or will require a new policy document to be developed and put into effect.

Starting with a policy is of vital importance when it comes to legislation, as it enables policy makers to be clear about what it is they want to achieve. This is important when assessing how well the legislation ultimately meets these ends, and also whether the interpretation of the legislation introduced is accurate compared to policy objectives. It is in no-one's interest to introduce legislation that massively overextends the Government's powers or responsibilities beyond that which is strictly necessary. Policy is the measure by which that is tested.

This process also enables meaningful engagement during the development of the policy through consultation with those likely to be affected by it. This is critical, as when the Government expands its powers, or alters how it uses the powers that it already has over the public, it has a duty to consult those to be affected and take this into account before proceeding. Failing to do so leaves the Government open to legal challenge, which is time consuming, costly and potentially reputationally damaging. It also gives the opportunity for flaws or controversial aspects of the policy to be noted early on by others who may have better subject matter knowledge than those in government, in particular a small organisation such as AIG.

Given government policy is the foundation of the governance structures that AIG uses day-to-day, it is important that the process for the development of policy is done consistently and in a legally sound manner.

Poorly thought out or badly policy has real world costs. It costs end users in terms of time lost, and can quickly become very expensive for government. The cost of managing a poorly or ill designed system should not be underestimated. Well-designed policy, along with supporting procedures and protocols, means that officials are only required to manage an ordinarily well-functioning system.

Poorly designed policy and procedures has the opposite effect. Lack of clarity means that users must access systems multiple times rather than once, have many follow-up questions or queries, appeal decisions taken because of a lack of transparency through the various stages of decision-making. Managing this is the responsibility of the Government and individual officials, and becomes a drain on the limited resources of the Government and the end users time. This can be avoided when policy is designed effectively, in line with this framework.

AIG therefore has in place a Policy Making Framework. AIG officials should only develop policy in line with this so as to ensure consistency of approach and reduce the chances of legal challenge.

Grounds for challenge will exist where someone is of the opinion that a decision was not made within the parameters of a published policy, in accordance with defined and published procedures, or if they consider that a decision taken by government impinges on their constitutional rights. More information on making sure you are making decisions properly can be found in [The Judge Over Your Shoulder guidance](#).

This may be challenged through an appeals process, or more likely where suitable policy does not exist, via judicial review. Judicial review is an important cornerstone of the judicial process, but creating grounds for potential judicial review due to poor (or absent) policy-making should be avoided. More information on judicial review and its importance can be found at the [Law Society website](#).

Elected members of the Council can expect AIG to follow this when developing policy or adapting policy currently in place, and as such should familiarise themselves with this framework so that they are able to effectively hold AIG to account on this important topic.

Once sound policy has been developed, it may be considered necessary to make legislative adaptations to help enforce that policy.

Ascension Legal Context

In 2009 a new constitution was introduced. Whilst the island remained part of the wider Overseas Territory of St Helena, Ascension and Tristan da Cunha, this change formally separated Ascension from St Helena in that the island was no longer legally defined as a dependency of St Helena.

Constitution

The constitution affirms fundamental rights of the individual, the administration of justice and outlines the governance structure of Ascension.

Executive power is reserved by the Crown, with the Governor exercising this power in respect of Ascension. In practice much of this is delegated to an appointed Administrator through various Ordinances and Regulations, with each piece of legislation or its respective policy then determining how this power is further delegated and exercised in practice (such as by appointed officials within AIG).

Laws of Ascension

All of the current laws of Ascension are available online through the [Laws of Ascension page](#) on the Attorney-General's Chambers section of the St Helena Government website. Where there is not a law on a specific issue, if there is an applicable law from St Helena in place from before 2017, that is considered to apply. If there is still no relevant law, then if there is an applicable Act from England and Wales from before 2005, that will apply.

As a small territory, the laws in effect in Ascension generally are only those which are necessary for the good governance of the territory. This broadly means that they are limited to those that protect the fundamental rights of the individual, provide the means to raise taxes, meet Ascension's international obligations or safeguard against abuses of authority and employers.

Principles to be understood

Before government officials begin in the policy development process, there are several key legal principles which must be understood.

These principles have developed in English Common Law over many years and provide the legal underpinning for much public law, and in particular administrative law.

Public law and administrative law

Put simply, public law is the part of law that governs the relationship between the state and individuals. This is in contrast to the part of the law that concern relationship between individuals and other individuals, which is private law.

Whilst government, and government bodies, can make decisions about the rights of persons, they must act within the law. The basic principles of public law are that public bodies discharge their legal duties, do not abuse the powers provided to them and act in accordance with the constitutional rights of the persons affected by their actions¹.

The way in which this is established and determined is through the part of public law known as administrative law.

Administrative law therefore concerns government rule / law making, and the enforcement and adjudication of those laws, and specifically the decision-making that takes place within government bodies.

This is therefore the main area of law that concerns government policy.

Natural justice

The principle of natural justice governs all types of administrative decision taken by government². At its most basic, this legal principle establishes that any person subject to a decision by the state (or a public or governmental body) may have a reasonable expectation that they be treated fairly and in line with established procedures.

A public body that exercises power over the public, and the officials employed by that body, are therefore expected to exercise that power rationally, fairly and consistently. To avoid arbitrary administrative action, there must be regularity, predictability and certainty in the way in which public administrators deal with members of the public

This is the key role policy plays in the administration of government.

Without clear and published policy in place, the Government (and therefore government officials wielding power over the public) creates points of legitimate legal challenge. This undermines the ability of government to go about its business in a practical sense in that its officials do not have clear operating procedures to follow, meaning that decisions will not be made in a timely and objective manner.

Failing to treat two similar or identical cases in the same way also creates a significant legitimacy gap between the public and its government, which then only serves to undermine other government institutions.

¹ Public Law Project – [An introduction to Judicial Review](#)

² *Ridge v Baldwin*[1964] AC 40

Where this happens, the Government creates grounds for legal challenge based on the doctrine of legitimate expectation.

Legitimate Expectation

A legitimate expectation arises where someone has a clear expectation that a particular course of action or procedure will be followed by the Government. This is based on either the presumption that a legal authority will follow a certain procedure before it takes a decision, as it has consistently done so in the past, or that a public authority will follow a published course of action, such as an express promise to the public.

Where codified policy exists, it is the expectation that this will be applied in their case. Where codified policy does not exist but a certain procedure is consistently followed, it is the expectation that this will also be applied in their case.

Failure to do so provides the grounds for legal challenge through judicial review.

Judicial Review

Judicial review is an established principle in Common Law that is designed to allow people to hold the Government, and public bodies, to account through the court system. Almost any public body can be the subject of judicial review. In the case of Ascension, this is most likely to be AIG.

The main purpose of judicial review is to test or challenge the lawfulness of a government decision or action. It allows the courts to have oversight of the Government decision making process through the procedure being examined by a judge. In doing so they will seek to establish whether or not the Government has acted within the law.

There are seven main grounds of judicial review, for when a government body:

- exceeded the lawful power of the body, or used its power for an improper purpose
- violated a legitimate expectation
- made a decision that was irrational
- failed to exercise relevant and independent judgement
- failed to adequately consult relevant parties
- exhibited bias or a conflict of interest, or failed to give a fair hearing
- violated a constitutional right

Judicial reviews are an integral part of administrative law and an important check on the power of the Government. However, by following the policy making framework the risk of having a judicial review brought forward can be effectively managed.

If someone brings a judicial review against the Government, it will begin legal proceedings which are both time consuming and costly for the Government to manage. This is particularly true in AIGs case given its size and resources.

If a court upholds the review, the court will likely declare the Government's decision to be unlawful, and has a variety of actions at its disposal, such as striking a law down, directing the Government to act in a certain way, or ordering compensation.

In order to minimise the risk of creating avenues of legal challenge, which are not only timely and costly but may also then bind the Government to follow the ruling of the court, it is essential that officials follow the process and procedures outlined in this document.

Responsibilities of officials

When developing government policy, appointed and elected officials are required to abide by the seven principles of public life, also known as the Nolan Principles:

Selflessness

Holders of public office should act solely in terms of the public interest.

Integrity

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

Objectivity

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

Accountability

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

Openness

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

Honesty

Holders of public office should be truthful.

Leadership

Holders of public office should exhibit these principles in their own behaviour and treat others with respect. They should actively promote and robustly support the principles and challenge poor behaviour wherever it occurs.

In practice the following must be followed in each instance:

Officials should follow the procedural steps outlined in [policy development stages / process section](#). This ensures that a sufficient audit trail of decision-making exists, including what was and was not considered as part of that process, how decisions were taken and on what evidence.

Officials should constructively challenge colleagues as part of the policy development process, even when this is a person in their own line management chain.

Officials must ensure that all interested parties are sighted on issues as they are being developed. If only two people are included in a discussion or email trail then this test is likely being failed. Doing this helps to avoid group think, whereby dysfunctional and ineffective decision-making and problem solving becomes established due to a lack of critique and constructive challenge.

The Policy Officer, Crown Counsel and Administrator should be engaged in the policy development and decision-making process throughout, even from its very early stages. This will ensure consistency of approach, and application of policy and legislative tools, across the Government and its various areas of competence.

Policy development stages / process

As already noted, developing well considered sound policy, is the cornerstone and good and effective governance.

Policy serves to provide the Government with power over the public to effect good governance, and also to limit the power of government over the public to only that which is necessary in accordance with the law and the fundamental rights of individuals.

Government power should therefore be targeted at managing specific real-world issues, and limited to only that which is necessary to address those issues.

Policy may be implemented by administrative processes and procedures, or even through legislation. Which elements will be needed to address the issue at hand will depend on the circumstances, but in each case the following procedure should be followed:

1. Identification of issue
2. Collection of evidence and evidence-based policy making
3. Engagement
4. Proposed solution / intervention
5. Consultation
6. Review and amendments
7. Developing standard operating procedures
8. Council protocol
9. Implementation and review

The two principle considerations to be met whenever policy is being developed are:

- Is the intervention identified necessary?
- Is the intervention identified proportionate?

If it is considered that either of these tests are not being met, officials should review what is being proposed and reconsider these.

To help better understand how each stage would be applied in practice, each section below contains a consistent case study example relating to e-scooters, an emerging technology that is currently unregulated in Ascension but is becoming popular in some of Ascension's feeder territories. These examples are contained in the blue boxes within each sub-heading. These are provided for indicative purposes only, and it should be remembered that each situation should be approached on its own merit in line with this framework.

Identification of issues to be addressed

AIG is a very small organisation and has limited resources at its disposal.

As such, it is vital that policy interventions are well considered and targeted. Given local dynamics this is even more important than would be the case in other jurisdictions. Ascension has a small but focused economy, with high operating costs for island organisations and limited scope to heavily adapt how these function.

Interventions should therefore only look to address issues which have been identified as real life practical issues being faced by people, or the Government, in Ascension.

Case study

A road accident occurs involving someone riding a motorised e-scooter. As these are a new technology, they are not covered by the existing road traffic legislation meaning that as things stand anyone can import them and anyone can ride them on the road. In view of the risk to public safety, AIG begins to consider whether or not a policy intervention is required to manage this risk effectively.

Evidence and evidence-based policymaking

All decisions taken by officials should be evidence-based. This means that decisions should be based on data or facts, and a clear audit trail should record how the decision was taken and on what evidence.

Doing so ensures that the decision taken was rooted in the best available evidence at that point in time. Of course, in time it may be that new evidence comes to light which means that the original decision is reviewed and a different decision subsequently taken.

Taking this approach means that officials avoid making opinion-based decisions, which are rooted in their own subjective view of an issue or the selective use of evidence, and as such are likely not to provide the best answer to the question being asked. Taking a decision in an opinion-based manner usually means it has been taken hastily and without due consideration of the implications of that decision.

The same principles apply to policy making.

After an issue has been identified, officials should begin gathering evidence on the subject to be used to consider possible policy solutions.

Generally, this will fall into two main categories of hard data and facts.

Hard data will usually be things such as economic evidence, published research or internal AIG data. On the other hand, facts are more focused on contextual or experiential evidence. As such this will be things like concerns from stakeholders or users, internal or external professional expertise, and the experiences of AIG officials.

It is up to officials to identify what is needed and to gather the evidence necessary to allow for an informed decision to be made.

To gather the evidence necessary to begin formulating policy solutions, officials might want to consider looking at practical examples they themselves have experienced, liaising with colleagues or end users to understand issues they have faced, analysing hard data on the subject, or looking at available published evidence from elsewhere.

Ascension is a small territory and as a result the economy is therefore relatively finely balanced. Before AIG commits resources to starting down a certain path, officials should consider engaging with stakeholders, even at this very early stage. This will allow officials,

who often may not be experts in this particular area, to gather locally relevant data, facts and perspectives and help to frame the issue more clearly in their minds.

The identification and diagnosis stage should therefore bring together existing knowledge, evidence and people to share understanding and define and create a clear objective, or set of objectives, that need to be met by policy intervention.

This stage should be defined by group work and collaboration across officials, directorates and organisations. This will ensure that those tasked with undertaking the policy or project work are fully aware of facts relevant to the issue, and the next steps can be planned fully.

It should be noted here that a lack of evidence is not a reason for not making a decision, but where evidence is lacking decision-makers are more likely to take action based on their own subjective bias rather a truly objective assessment of the issues at hand. Certain parties involved in the policy-making process are also likely to interpret evidence through the prism of their own predispositions.

Given the nature of Ascension, it may be that circumstantially more evidence exists to support one policy pathway when compared to another, such as where specific research has been commissioned from outside experts. It is the responsibility of decision-makers to recognise this and ensure that policies identify where information may be lacking and reflect this in their output.

Once gathered the evidence then needs to be interpreted. In doing so officials should consider the strength of each piece of evidence and its relevance in the specific context of the problem in front of them.

At this stage it is important that officials stay mindful of the local limitations that Ascension's unique circumstances present, and the need for any intervention to be reasonable and proportionate.

Case study

The official tasked with looking into this issue recognises that they have only limited expertise in this policy area. They form a small working group with the Crown Counsel, the Police Inspector and the officials in the Post Office that process vehicle licences.

The working group establishes a number of issues that need to be addressed, but also recognise they only have a limited local perspective on matters. They therefore reach out to a number of people both on and off the island, and invites their views on the issue.

The Senior Medical Officer is asked for input on potential injuries to riders and what can be done to mitigate these. Bristol Council is contacted to find out more about their experience as one of the UK trial cities where e-scooters have been immediately permitted for use on public roads. St Helena Government is asked to provide feedback on their own recent policy of allowing the importation of e-scooter within a bespoke, St Helena specific, licencing regime.

Proposed solution and / or intervention

Given the nature of public policy, often there is no one correct answer to an issue. Each issue is specific to the circumstances surrounding an issue at that point in time.

It may appear that another jurisdiction, such as the UK or St Helena, has encountered the same problem and so the solution they have devised can be transplanted directly into

Ascension. This should be avoided at all costs. Ascension is a unique territory with unique problems. Sometimes these will be similar to those faced by other places, but these will almost never be exactly the same.

As such officials must be mindful of how the jurisdictions differ if they are looking at solutions put in place elsewhere for inspiration as to how to address Ascension's problem.

The exception to this rule is if it is related to a very specific issue regarding cross-border matters of international importance, for example international tax avoidance or global criminal networks. The reason for this is that these solutions will likely have been negotiated at intra-governmental level through multi-lateral frameworks, with countries then agreeing to a coordinated and consistent approach to an issue. As such, Ascension may simply enact that unified approach in its own territorial policies, procedures or legislation. Even then, if this approach is taken officials must remain conscious of the requirements that this introduces onto AIG, and whether or not AIG can actually achieve these.

Ordinarily though, once evidence has been gathered and all relevant, available facts, have been considered, officials should be in opposition to propose a solution.

In doing so it is important that there is a distinct clarity of purpose in that which is proposed. Given the size and nature of Ascension, the delicate balance within the territory is arguably even more exposed to the consequences of policy decisions than most other jurisdictions.

Policy interventions should therefore be targeted and necessary. As policy-making often leads to the Government wielding power over private individuals, interventions should be limited to addressing problems which exist and for which evidence that they exist is available.

This ensures that the rights of individuals and persons living, working or visiting Ascension are adequately considered, catered for and safeguarded.

Policy intervention does not need to produce a significant dramatic change. In fact, generally the policy-making process is about adaptation of existing policies, procedures and practices. It is rare that something entirely new is brought forward from the policy making process, but instead it is usually the case that something already there is built upon, refined and improved.

Officials should remain mindful that it is likely that there will be conflict during the policy-making process. Interests will not always align. It is the responsibility of officials (and legislators) to carefully consider these and strike an appropriate balance. For instance, some sections of the community or government are likely to want to be more inclined to pursue policies that lead to economic growth or lower operating costs, whereas others are likely to want to pursue alternative policies which might come into conflict with these, such as safeguarding physical and cultural heritage or the protection of the environment.

Policy making should not be a zero-sum game, where one party or interest loses and the other wins. Matters of governance should take a holistic view and the Government has a legal obligation to ensure that the various interests of the public and stakeholders have been taken into consideration in the policy development process.

Case study

Officials received feedback from everyone asked.

Bristol Council noted that there had been a number of accidents of people using e-scooters outside of the guidelines that had been put in place, such as from people riding them on pavements and when under the influence of alcohol.

St Helena Government noted that they had recently become aware that a number of e-scooters had been imported that were more powerful than local policy had considered during the policy making process, and as such the entire island approach to managing these was under review.

The Senior Medical Officer provided evidence showing cyclists involved in accidents when wearing a helmet were significantly more likely to survive when compared to those that were not wearing a helmet.

The Post Office provided comprehensive feedback on the current licencing regime for vehicles and drivers, including what legislation this is supported by.

As a result of the evidence gathered, the working group is able to devise a high-level strategy outlining its initial thinking and proposed interventions. This includes limiting use of e-scooters to the road only, aligning age requirements with those in the Road Traffic Ordinance, requiring the wearing of a helmet at all times and requiring the e-scooters to be imported under licence.

Engaging with stakeholders

Engaging with a broad range of those to be affected by policy changes early and regularly is essential during the policy-making process. The people with the most knowledge and experience of how a policy is likely to affect them, are those who are already operating within the sphere of influence of that policy or who are already experiencing it first-hand, the end users.

Co-design is therefore a key principal of policy-making, placing users at the core of policy creation. Doing so ensures solutions proposed are well-informed and fit-for-purpose, and are limited to only that which is necessary to address the problem identified.

For instance, if new customs or biosecurity policy is to be implemented, officials should look to engage with importers as early as possible in the process. This will ensure that they get a full picture of what processes those importers already have in place, and how their operation functions on a practical level.

Doing so will ensure that interventions are streamlined and targeted. For instance, it may be possible to understand where existing procedures can be adapted or built upon, rather than trying to design and implement an entire new system from scratch. Doing so means that AIG is able to realise its policy goals, whilst also doing so in a way which costs both AIG and the end user in adaptations compared to trying to build a new system from the ground up.

The ultimate goal is to design novel policy and legislative solutions which recognise the resource limitations, and fragility, of being an isolated island community whilst ensuring any solutions implemented are as robust as possible.

Before a comprehensive policy is fleshed out, it might therefore be appropriate to develop a high-level strategy, or call to action, outlining the overall approach. This can then be considered by stakeholders with feedback providing the Government with invaluable information about the approach put forward, ahead of a detailed policy approach being fleshed out.

If stakeholders have already been closely engaged and their views fed into the design process, the Government may already be in a position to put the draft policy out to a period of formal consultation.

Case study

Officials publish and circulate the high-level strategy and invite comments on this from members of the public.

As this is currently such a niche in Ascension and key relevant officials and colleagues have already been engaged, there is little feedback provided.

As a result, officials begin developing the strategy into a more comprehensive policy document that establishes hard limits on certain aspects of the strategy and detailed provisions around other elements.

Consultation

As noted, the Government has a legal duty to consider how its policies will impact those affected by them. Whilst officials should already have been engaging with these stakeholders throughout the development process, it is important that they are nonetheless formally consulted.

Consultation allows those to be affected to provide views, and also opens the Government's thinking up to important critical analysis from others. Given the size of AIG and the limited capacity and specialist knowledge it has in its ranks, this is an important element of the policy making process.

A consultation needs to be well publicised so that everyone officials can be assured that views of all relevant parties were sought. They may therefore want to consider also sending requests for input directly to certain parties, as well as issuing an open call to the public. During consultation views on the draft policy should be invited, and in some circumstances, it may also be appropriate to ask specific questions to be answered as well.

Officials should consider the type of policy under consideration when determining by which methods to consult. At a minimum, an open consultation inviting written responses by a certain deadline should take place.

However, there may be certain representative groups that should be engaged as the policy related to that particular section of the community, or it might be considered to be helpful to host public forums to allow others to engage and probe the proposals directly.

The practical steps to be followed during the consultation process are detailed in the [consultation](#) part of the [practical guidance section](#).

Case study

Officials agreed that sufficient evidence gathering and policy development has taken place that they now have a comprehensive draft policy in place. As such, they determine it would be appropriate to seek views of the public through a public consultation exercise.

The consultation was announced locally and online with a public notice, and copies of the draft policy were made available through AIG premises and the website. To give people sufficient time to consider the policy and return views, the consultation runs for four weeks.

In order to cater for as wide a cross-section of the community as possible, several small public meetings are held during this time where views were recorded.

Review and amendments

Once the consultation has ended, officials should begin to digest the responses received.

Sometimes views expressed might be in agreement with each other. Other times you will find that certain views are in direct contradiction to each other. It is not the job of officials to reflect the feedback received in the draft policy in every instance.

Everyone will be affected by policy in a different way, and it is up to officials to determine whether the views expressed are valid and can be accommodated in line with the principles set out in the draft policy. If so then officials need to determine what impact this has on their thinking, and whether suitable adaptations should be made to the draft policy as a result.

Officials will need to draft a Government Response to Consultation document which details how the consultation took place, the responses received and how the Government took these into consideration. This creates an audit trail of the evidence used by the Government and the deliberations it took. This ensures that its considerations are open to public scrutiny but also that a solid legal record exists that establishes the thinking of officials at that time. This is important when the policy is reviewed by officials further down the line, as well as if someone challenges the Government and it is required to demonstrate how it reached certain conclusions during the policy making process.

Once amendments have been made to the draft policy, this should be published alongside the Government Response to Consultation document.

Case study

AIG undertakes a four week consultation on the draft policy. It invites views from the public, but in recognition that many e-scooter users are aged below 21 years of age, it also organises public forums in the hope of encouraging younger people to come along and listen to the changes being explained to them directly.

A number of responses were received. Current e-scooter owners raised concerns about plans to introduce licence requirements and the likely cost of these, as well as the fact that some may now fall foul of the new restrictions placed on the power and speed of e-scooters given they have imported their device before the changes were proposed.

Some members of the public raised concerns with these being permitted for use on the roads in light of the collisions with pedestrians that had been reported in other territories, most notably in UK pilot cities.

In light of the feedback received, officials made a number of amendments to the draft policy, such as staggering the introduction of new requirements to allow more time for those to be affected to prepare for the rule changes.

Operational protocols and standard operating procedures

Policy making does not take place in a vacuum.

It is the Government administration (AIG, the Administrator and officials) that is responsible for the fair and consistent implementation, application and review of government policy. This is the intention of the policy development process. Policy in effect is a set of rules by which the Government agrees to act, and which the public can expect the Government to observe.

As such, there is no point in making policy without also developing appropriate operational protocols to ensure that the policy developed is then effectively implemented in practice.

Considerations around how these will operate in practice should be in the minds of officials throughout the policy making process. Policies should consider and reflect the level of resources required to implement them. If policies cannot be effectively implemented, the policies are not fit for purpose and the Government will be exposed to legal challenge.

Before policy is actually put into effect then, officials must be assured that colleagues required to abide by the new policy have been appropriately trained, standard operating procedures have been issued to ensure officials all act in accordance with the new protocols, and relevant forms and guidance have been issued for public use.

Doing so ensures that not only do officials act in a consistent, open and fair manner, but that a record of this is kept through the forms that have been completed by applicants and (where appropriate) licences or permits then issued by authorities in response. Doing so creates a clear audit trail, protecting the Government from legal challenge and safeguarding members of the public against maladministration or governmental errors.

Case study

In preparation for the implementation of the policy, and its various new provisions, officials begin working with relevant colleagues to develop standard operating procedures to ensure these were effectively enacted.

They engage with customs officials to adapt forms already in place. These will now require persons to declare whether or not they are importing an e-scooter, and if so that it is compliant with the new requirements.

They work with Post Office colleagues and the police to develop new guidance materials to be provided to licence applicants. This includes a form for completion, and internal procedural steps that must be followed by officials when they receive an application.

In order to ensure the information collected from applicants is appropriately sorted and easily accessible, they develop a numbering and filing system for licence applications. For ease of reference this is also contained in a single spreadsheet hyperlinking to materials from each application.

Guidance is also provided to the police to allow them to confidently assess an e-scooter and its compliance with the new policy provisions.

Implementation and review

Depending on the nature of the policy, the process of implementation can take several forms.

Government policy should be taken to the Island Council for consideration and agreement. Ideally, they will have been consulted throughout the policy making process and will therefore be aware of the policy before them.

If agreed by the Island Council officials will then need to consider whether suitable powers already exist in current legislation to enforce the provisions of the new policy. If so, then the policy can be put into place immediately. If it is considered that suitable powers do not currently exist, then officials will need to work with the Crown Counsel and legislative

drafters to develop proposed changes to legislation. Any changes proposed should provide the Government with only the power necessary to enforce the provisions of the policy. Once drafted these changes will then be put to the Island Council and a recommendation to the Governor will be sought. If agreed, the changes can be publicly announced and the policy can then begin to be applied in practice.

Policy does not stand still. Once implemented it is the responsibility of officials to monitor the policy and ensure that it is working as planned, is not causing any unforeseen issues or problems for either AIG or stakeholders, and to review and suggest amendments to the policy as and when required. This ensure that government action and intervention continues to meet the two critical tests identified in the beginning of this section, whereby policy intervention must be necessary and proportionate.

Case study

Following redrafting, the policy is taken to the Island Council for consideration. Officials present the policy and receive feedback. Some final tweaks to the policy and the licence application process are made in light of this and the redrafted policy is published.

In order to implement the provisions of the new policy, some legislative changes are identified as being necessary. As such, edits to the Customs Ordinance and Road Traffic Ordinance are put to Council for consideration. The Council agrees that these accurately reflect the underlying policy document, and therefore recommend to the Governor that these changes are made.

The Governor signs the changes into law and the policy begins to be applied in practice.

Practical guidance

Whilst the section above details the stages to be followed through the policy making process, the following section provides some more detailed guidance on how to go about writing a policy and running a consultation process.

Drafting a policy document

In order to ensure consistency of approach across AIG and its subsidiary administrative bodies, the broad outline of a policy document should follow the template provided for in Appendix A **[to insert blank template]**.

Whilst there is brief description of what each section of the document should contain in the template, to understand how this looks in practice, officials can refer to the policies published on the public documents section of the AIG website.

Drafting a policy document should only take place once officials have been through the steps detailed above, and are assured that not only that intervention is required but that which is being proposed is proportionate and underpinned by the evidence available.

Consultation

What is the purpose of consultation?

Whenever a change is being introduced that can be expected to have an impact on the people affected by it, be that to a system already in place or the introduction of new rules / regulations / procedures, the Government has a duty to consult those to be affected by the change. In practice this means that the Government should seek to run a public consultation on any such changes.

There are several reasons for this.

Those affected will have a legitimate expectation in the eyes of the law to be treated in a certain manner by the Government. If the Government is to change the way in which they can expect to be treated, then they must be given the opportunity to input into the considerations underway.

Consulting demonstrates that government has taken into due consideration those to be affected by potential changes. This is important as changes can have all sorts of impacts, from financial to social.

Consultation is therefore a critical step in policy development and legislating more broadly, whether developing new policy or changing current policy. Failing to consult can lead to legal challenges where the Government may be found to have not taken due consideration of potential impacts and be told its proposals or changes are unlawful by the courts.

When and how should consultation take place?

Consultation must take place before a decision has been made. If the Government only consults after it has made its mind up, then the public has not been given a chance to influence the decision making process.

Draft policies should be made readily available for interrogation. In practice this means making them available online and in physical form from the relevant AIG directorate.

The consultation needs to allow sufficient time for the public to become aware of the consultation taking place, to familiarise themselves with the subject matter and properly understand it, and then formulate and submit a response.

Whilst this will vary from subject matter to subject matter, it should be considered that a minimum of a four week consultation period should be applied, and longer for more complex issues with more significant impacts.

In exceptional circumstances where a matter is very straightforward and the impacts are expected to be minimal, it may be appropriate to observe a shorter consultation period. However, officials must be minded that if someone considers that the length of consultation was not long enough, judicial review may be used to challenge the Government.

The consultation should be well publicised so that those to be affected will be aware of it. In practice this means publicising it locally, online and where appropriate reaching out directly to certain parties to invite them to participate.

The minimum action required is that written views are sought from the public and other stakeholders through an open invitation to submit responses. However, depending on the subject matter it might be appropriate to write directly to certain groups or stakeholders, or host drop-in sessions or public forums to allow people to hear directly from officials about the changes and submit their views orally.

What happens after the consultation has finished?

Once the consultation period has ended, the Government will need to consider the responses provided.

As part of the consultation process you will need to publish a Government Response to Consultation document following the completion of the consultation period. This should briefly explain what the issue was that was consulted on and in what manner the consultation took place. It should then record what issues were raised in the consultation and how the Government considered these.

In order to ensure consistency of approach across AIG and its subsidiary administrative bodies, the broad outline of a Government Response to Consultation document should follow the template provided for in Appendix B.

Whilst there is brief description of what each section of the document should contain in the template, to understand how this looks in practice, officials can refer to the Government Responses published on the public documents section of the AIG website.

Anything included in this document will need to be anonymised so as to remove indicating markers to individuals, organisations or employers. Issues raised can therefore be grouped around key themes, where practical. Critically, the document should include where changes were made to the policy as a result of the consultation process, or equally why changes were not made despite the feedback received.

Alongside the Government Response to Consultation document, the revised draft of the policy document will also need to be published. Once this step has been completed, it should be taken to Council for further consideration ahead of implementation.

Legislation

Once sound policy has been developed, consulted on and refined, it may be considered necessary to make legislative adaptations to help enforce that policy.

Legislation is the most powerful tool at the disposal of the Government. It allows the Government to set in place rules by which the public must abide, less they be prosecuted.

As such, any change to legislation, or introduction of new legislation, must be carefully thought through and should be subject to a rigorous process of consideration and critique.

All changes should be underpinned by an accompanying policy document which has been made in line with the Policy Making Framework.

Legislation not only introduces requirements onto the public, but also onto AIG. AIG will be required to effectively oversee, manage, regulate and enforce the new provisions of the legislation. In order to do so, supporting structures and frameworks will be needed and specific resource dedicated to this.

Considering legislative changes

Where it is thought that legislative changes may be required following the completion of the policy development stage, whether that be changes to current legislation or the introduction of new legislation, officials should satisfy themselves that the following conditions have been met:

- Are you satisfied that these changes are needed to address a real-world problem?

- Has the rationale for change been adequately outlined and published, and have the changes been through the policy development and consultation process?
- Is the legislation proposed in line with the policy that has been developed and published?
- Is the legislation proportionate to the issue identified, and do adequate safeguards exist to limit the powers being provided to the Government?
- Is all necessary supporting framework in place to ensure the changes can be effectively implemented (guidance for the public, guidance for decision makers, legal forms and declarations, etc.)?
- Does AIG have dedicated staff resources to managing this, and are they suitably trained to do so?

Island Council procedure

Section 151 of the constitution provides that whilst the Governor retains executive power, before making any law they must first consult with the Island Council, although they are not required to act in accordance with the advice provided by the Council. In practice this means that for any legislative changes being proposed, whether that is the introduction of new laws or changes to current legislation, the Council will be consulted.

The Governor has to consult Council on the ‘formulation of policy’ and shall act in accordance with that advice unless acting on instructions from a Secretary of State, on a matter of urgency or it would be ‘inexpedient in the interest of public order, public faith or good government to act in accordance with that advice.’ This means that the Governor needs an instruction from the Secretary of State to overturn Council advice on a policy issue. In practice, AIG would always seek to find a compromise that avoids this.

In doing so a proposal will be put to the Council and the Governor will seek a recommendation from the Council as to a course of action. The Council will be asked whether the changes meet the tests outlined in the section above.

Once consideration has been given to this by the Council, any input will need to be considered by officials and a revised draft put back to Council for a recommendation. At this point elected members will be asked to vote either for or against a motion to recommend to the Governor that the legislation be adopted into law.

Procedural practice policy

In many instances, the enactment of legislation will see the policy development process pause for a time. If the Policy Making Framework has been followed then at this stage an underpinning policy should exist which determines what actions the Government will take and how, with accompanying legislation in effect which provides the power to enforce the policy.

Although in an ideal world a comprehensive policy document would underpin legislation, this may not always be the case. For instance, there is much law in effect in Ascension which provides powers to the Government, but does not have an accompanying underlying policy document in place to detail how these powers were intended to be discharged.

Where it is the case that such underpinning policy does not exist, it is necessary to ensure that appropriate procedural practice policy is put into effect.

For the purposes of the Policy Making Framework document, procedural practice policy can be considered to be the procedures and processes deployed by public bodies in the execution of their powers where this is not already contained within an underlying policy document.

Maladministration

Where procedural practice policy does not exist, AIG runs the risk of operating inconsistent practices when it deals with members of the public, or introducing errors into the system due to a lack of clarity amongst officials as to what the correct process should be.

If this is the case, it might be considered that an injustice has occurred and the Government may be subjected to legal challenge.

The definition of what constitutes maladministration is broad, but can include things such as delay, incorrect action or failure to take any action, failure to follow procedures or the law, failure to provide information, inadequate record-keeping, misleading or inaccurate statements, inadequate consultation or even broken promises.

Implementing suitable procedural practice policies should serve to avoid this.

Implementing procedural practices

As established in the [operational protocols and standard operating procedures](#) section in order for fair and consistent decision to be made a series of complimentary documents are likely going to be needed. These will include internal documents for use by officials, such as forms, guidance, standard operating procedures, and external documentation for use by members of the public, such as application forms, declarations and guidance for completing these sorts of forms.

When developing this documentation officials should be working closely with colleagues that are employed in that specific area. They will have the invaluable knowledge around what will be most appropriate and how it might fit into systems and practices already in place.

It is also vital that accurate records are kept, so that the documentation developed is not only used in practice but that an audit trail of this is stored in a coherent and easily accessible way. This is important when officials are given consideration to an issue that they may not have originally been involved in, such as if they are the appellant authority and need to consider all of the evidence upon which an original decision was made.

Changing procedures already in effect

Just like any other policy, procedures and practices are subject to an ever developing world. As such, it will often be the case that an issue arises that calls into question whether or not the process needs to change, either to make it clearer, more efficient or more open.

If so, then the changes to this need to be well considered and well publicised before they are put into effect. If the changes do not substantially alter what those to be affected can expect from the Government, then ordinarily these changes can be implemented as part of the procedural refinement process. However, where changes remove or reduce a provision to which someone previously has access to, those affected should be consulted.

For instance, if a process was changed that significantly reduced the time an applicant had to appeal a decision, then this has in effect eroded a right that person previously had, so the Government should seek views on this from the public before making such a change.

There is fixed rule on when this should be done, so officials should consult with the Policy Officer and Crown Counsel before making such changes to ensure that the potential legal risk has been fully considered.

Appendix A – Policy Document Template



Policy Document
[TEMPLATE].docx

Appendix B – Government Response to Consultation Template



Government
Response to Consutla_