OpenAIR@RGU

The Open Access Institutional Repository
at Robert Gordon University

This is an author produced version of a paper published in

This version may not include final proof corrections and does not include published layout or pagination.

Citation Details

Citation for the version of the work held in 'OpenAIR@RGU':

Citation for the publisher's version:

The Best-Laid Schemes? The Provision and Accessibility of Government Consultation Information in the UK

Graeme Baxter

Graeme Baxter, Research Assistant, Department of Information Management, Aberdeen Business School, The Robert Gordon University, Garthdee Road, Aberdeen, AB10 7QE, United Kingdom. Email: g.baxter@rgu.ac.uk

Abstract

In recent years, government at all levels in the UK has increasingly recognised the need for ongoing dialogue between policy makers and stakeholders during the policymaking process. Prompted by a number of factors, including devolution and New Labour's *Modernising Government* agenda, the number of public consultation exercises conducted annually has grown considerably since the late 1990s. Yet very little has been written on the information management and communication issues surrounding government consultations, nor on the mechanisms of the consultative process more broadly. This paper reports the results of a study (part of a larger ESRC-funded project) which has examined in some detail the provision and accessibility of government consultation information in the UK, with a particular emphasis on information relating to written consultation exercises conducted by the Scottish Government. This study examined the accessibility and communication of information at all stages of the consultation process, from the publication of the consultation paper at the beginning of the exercise, to the production of analysis and feedback at its conclusion. It revealed that, despite the existence of government good practice guidelines which emphasise the need for consultation information and documentation to be clear, accessible and responsive, in reality it is often missing, incomplete, or presented in inconsistent and often confusing ways. Post-consultation feedback, which provides details on how responses have influenced final policy decisions, was found to be particularly lacking.

Introduction and background

Over the last ten years, government at all levels in the UK has increasingly recognised the need for ongoing dialogue between policy makers and stakeholders during the policymaking process. This has been due to a number of different drivers, including New Labour's *Modernising Government* agenda, which devised five key principles aimed at improving central government policy making and service delivery, with a commitment to 'consult outside experts, those who implement policy and those affected by it early in the policy making process' (Cabinet Office 1999). The devolution of certain legislative powers from central government in London to three new bodies – the Scottish Parliament, the National Assembly for Wales, and the Northern Ireland Assembly – in the late 1990s has also been a key factor in increased levels of engagement with stakeholders. Indeed, prior to the election of the first Scottish Parliament in 1999, the Consultative Steering Group on the Scottish Parliament recommended that the Parliament and its associated Scottish Executive (now the Scottish Government) be 'accessible, open, responsive, and develop procedures which make possible a participative approach to the development, consideration and scrutiny of policy and legislation' (Consultative Steering Group on the Scottish Parliament 1998).

By 2004, the Consultation Institute estimated that around £100 million was being spent annually on consultation in the UK public sector, and that up to 10,000 public sector staff were engaged for a significant proportion of their time in organising public consultations (Jones and Gammell 2004). This emphasis on consultative processes seems set to continue unabated. In 2008, the UK Government reaffirmed its commitment to 'effective consultation; consultation which is targeted at, and easily accessible to, those with a clear interest in the policy in

question', and released a revised *Code of Practice on Consultation* (Better Regulation Executive 2008a) that highlighted seven key criteria, including the clarity, accessibility and responsiveness of consultation exercises. The Scottish Government (2008) also recently confirmed that 'the consultation process remains fundamental to good government', and revised its own good practice guidance, emphasising the need for consultation exercises to be open, inclusive and transparent.

Given the extent and stated importance of this dialogue between citizen and policy maker, it might be expected that appropriate consideration would be given by government to the effective management and communication of information relating to the consultation process. However, as some commentators have observed, the provision and accessibility of such information can leave a lot to be desired. The Consultation Institute (2007), for example, when conducting its regular 'one-year-after' audits of selected UK Government consultations in order to establish the impact of the exercises, "only too often discovers that the information … cannot be found (project teams dispersed, documents taken off websites, departmental re-organisations removing or blurring accountability, etc) …" Very little has been written on the information management issues surrounding government consultations, nor on the mechanisms of the consultative process more broadly, a fact bemoaned by Nicolson (2005a) in a literature review conducted on behalf of the Scottish Executive:

> The rapid rise in use of this traditional and well established approach particularly by central government since devolution demands a body of evaluative critique in order to ensure that best practice is being identified and followed. However, such material appears not to exist …

With these points in mind, this paper will report the results of a study which has examined in some detail the provision and accessibility of government consultation information in the UK, with a particular emphasis on information relating to written consultation exercises conducted by the Scottish Government. The study was part of a larger project, funded by the UK's Economic and Social Research Council (ESRC), which investigated the mobilisation of group interests in the policy-making process in Scotland [1].

One of the main aims of the ESRC project was to map responses to written consultation exercises, and, in doing so, the researchers compiled a dataset which represents over 185,000 written responses from almost 19,000 different groups and organisations, and thousands of individual citizens, to just under 1,700 consultations conducted by the Scottish Government (and its predecessors the Scottish Office and Scottish Executive) between 1982 and May 2007 (the date of the most recent Scottish Parliamentary election). This dataset was compiled largely using paper-based records held by the Scottish Government Library, but with the addition of more recent material only available electronically on the Scottish Government website. Collating the data raised some interesting issues concerning the accessibility, presentation and communication of consultation information, and it is these issues that this paper will address. It is not the purpose of the paper to compare critically the written consultation exercise with other, more deliberative methods of citizen engagement.

What is meant by 'consultation'?

Before proceeding to discuss the results of the study, it would perhaps be worthwhile to consider firstly what is meant by 'consultation'. The Better Regulation Executive (2008b), part of the Department for Business, Innovation and Skills, is responsible for improving consultation practices within UK central government, and defines consultation as a 'formal process for getting people's input on a specific issue, analysing this input and using it to inform the Government's policy development work'. The Scottish Government (2008), meanwhile, describes consultation as 'a time limited exercise when we provide specific opportunities for all those who wish to express their opinions on a proposed area of our work (such as identifying issues, developing or changing policies, testing proposals or evaluating provision) to do so in ways which will inform and enhance that work'. As the Scottish Government's definition suggests, there can be various 'types' of consultations, in terms of their policy-related purpose. For example, some consultations may ask for opinions on very broad conceptual policy developments; some may request views on specific draft legislation, or on proposed amendments to existing legislation; whilst some may seek comments on how

Figure 1: Number of Scottish Government consultations identified (1982-May 2007)
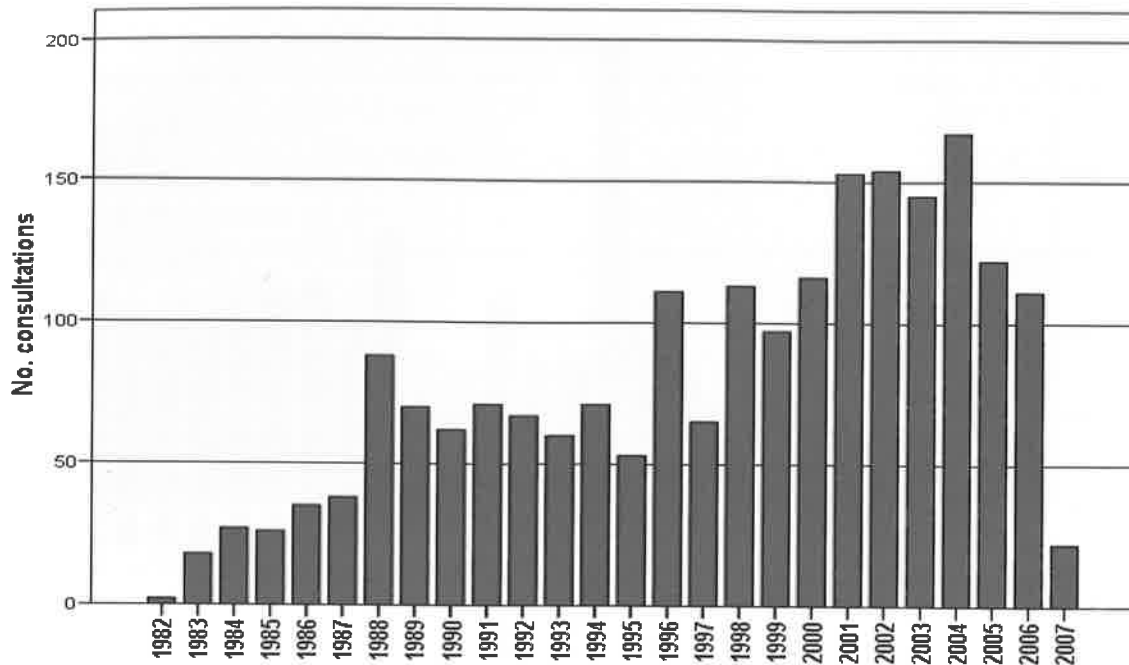
European Union Directives might be integrated into existing national or devolved legislative frameworks.

In terms of consultation *methods*, the traditional approach within UK government has been to conduct a written consultation exercise, where a consultation paper, detailing the policy issue(s) being considered, is circulated to interested parties and written responses are invited. It is probably fair to say that the written consultation is still the mainstay of the British consultative process; although, increasingly, this can be supplemented with additional face-to-face methods, such as public meetings, workshops and seminars, or with more deliberative methods, such as citizens' juries or deliberative polling. But it is the written consultation that has been the focus of this study.

The ESRC project dataset

As indicated above, the dataset for the ESRC project was collated largely using paper-based resources held by the Scottish Government Library in Edinburgh, where, traditionally, consultation responses have been deposited once a written consultation exercise has been completed. Indeed, the Scottish Government's internal *Consultation: Good Practice*

Guidance (2008) continues to advise that copies of consultation papers be deposited in the Library, together with lists of names and addresses of respondents, and copies of the responses themselves. This is in sharp contrast to the situation within UK central government, where responsibilities for retaining and archiving consultation documentation have been very much left at the departmental level: there is no central depository.

The Scottish Government Library very kindly gave the research team access to its document storage facilities, where consultation responses dating back to 1982 are held. However, despite the traditional archival arrangements and the good practice guidance, not all consultation papers and responses have found their way to the Library. Attempting to establish the extent to which the Library's holdings (and, of course, the project dataset) are representative of *all* Scottish Government consultation activity during the 25-year period, proved difficult, largely due to the fact that no *definitive* list of consultations exists. Instead, two points of reference were used: (i) the *Consultations* pages of the Scottish Government website, and an associated internal system called *CRES, the Consultation Registration and Evaluation System* (of which more will be discussed later); and (ii) a list of post-devolution consultations produced

Figure 2:   Average number of organisational responses per consultation (1982 to May 2007)
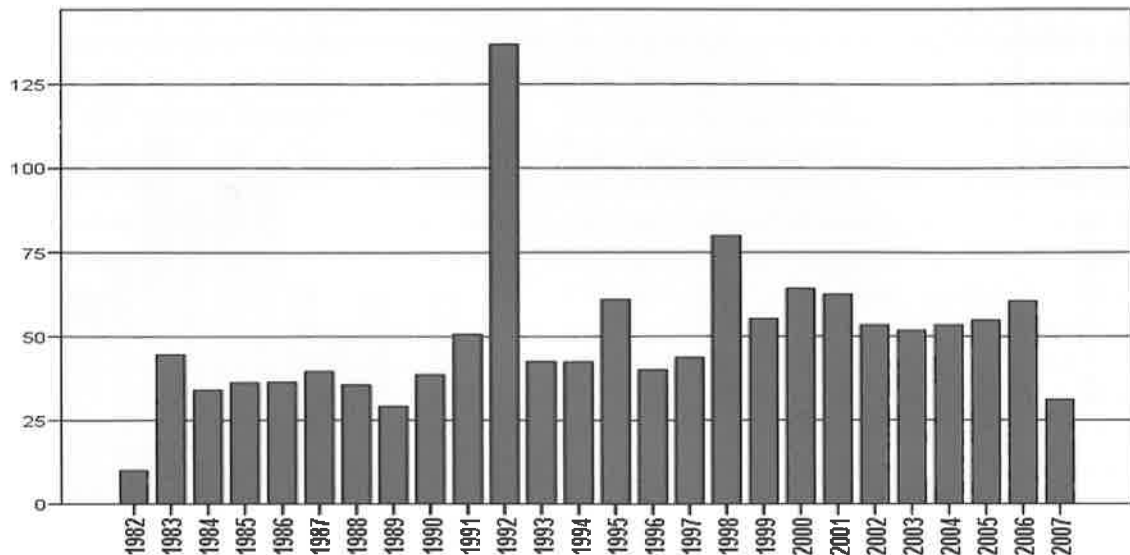
by the Scottish Government in 2005 in response to a Freedom of Information (FOI) request by the *Scotsman* newspaper. Exactly how, and by whom, the FOI request list was compiled is unclear, but based on the discovery of identical typographical errors, the Scottish Government website and *CRES* system would appear to be the most likely sources of its content. A lengthy comparison of these sources with the project dataset was undertaken and suggested that the dataset may represent around 60–70% of all Scottish Government consultation activity since 1982. But this is very much an estimate: inconsistent titling of consultations across the various sources made comparison difficult, and a more thorough cross-check would have required extensive additional work, beyond the scope of the study. What can be said, however, is that the dataset records every consultation and response where full details are publicly available: it is the most systematic and comprehensive record of consultation activity in Scotland currently available, and the first large-scale, UK-based dataset of its kind.

The dataset includes 2,064 discrete written consultation exercises conducted between 1982 and May 2007. Figure 1 illustrates the number of exercises conducted annually. As can be seen, in the early to mid-1980s, between 20 and 40 consultations were conducted each year; the late 1980s to mid-1990s saw this figure rise to between 60 and 70 per annum; in the late 1990s, corresponding with the

Modernising Government agenda, the numbers increased again to around 90 to 110 each year; the immediate post-devolution period saw consultations number between 120 and 160 per annum; while there has been a slight decrease again in more recent years (the very low number in 2007 is due to the research cut-off date of May 2007).

Data on responses were available for 1,691 of these 2,064 consultations, and Figure 2 illustrates the average number of *organisational* responses per consultation over the 25-year period. It should be emphasised that responses from *individual citizens* have been excluded from this bar chart. While the number of citizens participating in the majority of consultations tends to be modest, when a consultation exercise *does* capture the imagination of the Scottish public, levels of participation can be extensive (as will be seen later) and their inclusion would skew the figures somewhat. As can be seen, although the number of consultations conducted annually since the late 1990s has risen, the number of organisations responding to each one has remained relatively constant, usually 50-60 in each case (it should be noted that the 1992 figure was affected largely by a single consultation, on local government reorganisation, which received an unusually high number of organisational responses).

Table 1, meanwhile, indicates the ten consultations that have received the most responses over the 25-year period. These cover a wide range of policy are-

Table 1:   Consultations with most responses (1982 to May 2007)

Subject of Consultation	Year	Responses
1. Smoking in Public Places	2004	53,474
2. Water and Sewerage Restructuring	1992	4,715
3. Land Reform Bill	2001	3,624
4. Local Government Restructuring	1992	3,242
5. Draft Gaelic Language Bill	2004	2,952
6. Glasgow and Clyde Valley Joint Structure Plan	2006	2,051
7. Standards in Public Life	1999	2,003
8. National Education Debate	2002	1,356
9. Religious Observance in Schools	2002	1,344
10. Children's Oral Health	2002	1,289

as; but by far the most popular consultation, in terms of responses, was one conducted in 2004 which tested public opinion on the potential introduction of a ban on smoking in public places in Scotland. It received over 53,000 responses, with over 52,000 of these coming from individual citizens. At first glance, the level of response to the second most popular consultation [2] – on the rather mundane-sounding topic of water and sewerage restructuring – may appear surprising, until it is learned that it contained a controversial proposal to part-privatise the Scottish water industry. This resulted in over 4,700 responses, of which almost 4,000 were from members of the public. It is worthwhile mentioning here that, for many of the most popular consultations, examples can be found of 'standardised' or 'form' responses: pre-prepared, standard-worded responses, composed by particular pressure or interest groups (or, occasionally, newspapers) as part of a campaign, and which simply require the addition of the respondent's name, address and signature.

Table 2 gives a basic breakdown of the 'type' and number of consultation respondents, and the extent to which they have participated in consultation exercises over the 25-year period. As can be seen, half of the overall responses were made by individual citizens, with over half of these (52,459) being responses to the Smoking in Public Places consultation discussed above. In terms of organisational responses, the largest proportion (27.8%) came from government/public bodies, such as government departments, local authorities, universities, colleges and schools, and health boards and hospitals. Indeed, a more detailed analysis of individual organisational responses emphasised the prominence of local government in the consultation process: the most frequent respondent has been the Convention of Scottish Local Authorities (COSLA), the representative body for Scottish local government, and 29 of the top 40 places in the 'respondents' league table' are occupied by individual local authorities.

Almost 16% of responses were submitted by 'groups and collective actors', a term encompassing a wide variety of organisations, including professional and trade associations, trade unions, and pressure and interest groups of various kinds. Just under 4% of responses came from individual businesses,

Table 2:   'Type' and number of consultation respondents, and number of responses (1982 to May 2007)

'Type' of respondent	'actors'	Responses	%
Individual citizens	Not recorded	92,467	49.9
Government/public bodies	7,957	51,591	27.8
Groups/Collective actors	6,065	29,290	15.8
Individual businesses	3,748	7,032	3.8
Political parties and politicians	478	1,216	0.7
Religious organisations	85	807	0.4
Unknown/Anonymous	123	2,951	1.6
Totals	18,456	185,354	100

while smaller proportions came from political parties or religious groups. It should be mentioned here that over half (57%) of the 18,456 organisational actors responded just once over the 25-year period: they participated in one consultation exercise that was presumably of interest and relevance to their particular organisation and they then dropped off the 'consultation radar' completely.

Finding out about consultations

Distribution lists

So how does the potential participant find out about forthcoming consultation exercises? Traditionally, the emphasis has been on the use of distribution lists, where the various departments within national and devolved government have maintained lists and databases of relevant groups and stakeholders to whom they have routinely distributed copies of consultation papers. This approach has its critics, who suggest that it results in the 'same faces' continually being consulted, leading to unrepresentative responses (see, for example, Cook 2002; Consultation Institute 2005). Others, however, feel that the distribution list is far from being a 'closed shop': Grant (2004), for instance, believes that being placed on a consultation distribution list in the UK has become relatively easy, particularly under the New Labour government. This would certainly appear to be the case with the Scottish Government's departmental lists, where there is clear evidence of these having evolved over the years – organisations and individuals participating in a consultation to which they were not invited directly to respond will subsequently find themselves added to distribution lists for consultations on similar policy areas. Indeed, based on a representative sample of 173 Scottish Government distribution lists (these are sometimes also available in the Scottish Government Library and/or on the website) from across the 25-year period, the present study found that the average number of invited organisations had grown from 126 pre-devolution, to 217 post-devolution (see Table 3). There is also clear evidence of Scottish Government departments not simply relying on standard lists, but producing greatly expanded lists for specific consultations, where the additional recipients are regarded as having a direct interest in the policy topic. For example, consultation papers on the transport of livestock

were sent directly to hauliers, livestock markets and animal welfare groups throughout Scotland; while a consultation on the regulation of skin piercing was distributed to numerous acupuncture, tattooing and body piercing businesses across the country.

Interestingly, the Scottish Government's consultation guidance provides a list of 'core recipients' to which *all* consultation papers must be sent, some for potential comment, others, it would appear, for information purposes and for some form of bibliographic control:

- COSLA and all Scottish local authorities;
- the Clerk of the relevant Scottish Parliament committee;
- all Scottish MEPs (Members of the European Parliament);
- the Equal Opportunities Commission, the Commission for Racial Equality, and the Disability Rights commission (to allow them to respond on any equality aspects of consultations); and
- the Scottish Government Library, the Scottish Parliament Information Centre (SPICe) Library, and the six legal deposit/copyright libraries.

There are certainly cases where this does appear to take place; and the majority of consultations do appear to be sent to COSLA and the 32 Scottish local authorities. Equally, however, there are cases where this has not happened. And perhaps understandably so, for it is difficult to imagine why all of the core recipients would wish to comment on, for example, proposed amendments to the Seed Potatoes (Scotland) Regulations 2004, which instead was sent only to a small number of agricultural trade associations.

So, far from being restricted to the 'usual suspects', the Scottish Government's consultation distribution lists would appear to be relatively extensive and fluid in nature. Whether or not these organisations choose to accept the invitation to respond is, of course, a different matter. In fact, based on the aforementioned sample of 173 distribution lists, which were then compared with data on those organisations who eventually responded, it was found that in the pre-devolution period an average of 37% of organisations invited to comment did indeed do so (see Table 3). However, in the post-devolution period this figure has fallen to an average response rate of 22%. Of course, as has already been seen, the average size of distribution list has risen since 1999,

thus the average number of organisational responses per consultation has remained relatively constant, with just a slight increase from 52 to 56 in the post-devolution period. Interestingly, the post-devolution response rate of 22% is in line with Barnett's (2007) study of consultations conducted by the UK Government's Department for Environment, Food and Rural Affairs (Defra) in 2006, which found that on average 80% of those invited to contribute did not do so.

Reasons for the fall in the average response rate since devolution are unclear. Perhaps it suggests an element of 'consultation fatigue'. This is a phenomenon noted by several commentators (see, for example, Jones & Gammell 2004; Consultation Institute 2005), where the growth in public consultation in the UK has been such that stakeholders with limited resources are unable to participate in all exercises in which they have an interest, and instead adopt a more selective approach to consultation responses.

seConsult

In addition to maintaining departmental distribution lists, the Scottish Government has an email consultation notification service, *seConsult*, which provides weekly updates on new and forthcoming consultation exercises. At May 2009, it had almost 8,200 subscribers [3]. This type of system is lacking at the UK central government level, although the Department for Business Enterprise and Regulatory Reform (2007) note that one is currently being considered. Also worthy of mention here is the *info4local* website – at http://www.info4local.gov.uk – run by a group of eight UK Government departments, which includes an email consultation alert service. Although aimed primarily at local authorities in England, anyone can subscribe to this service.

When *seConsult* was launched, in March 2004, the then Scottish Executive was at pains to point out that the system was aimed at complementing and not replacing existing distribution lists, and that it was hoped that it would 'bring new voices into the policy arena' (Scottish Executive 2004). However, there is little real evidence that this has happened. On examining the overall proportion of responses that have come from organisations who were invited to participate, it was found that this has remained constant, at 77%, in both the pre- and post-devolution periods (see Table 3). This, of course, means that

Table 3: Consultation distribution lists: average size and response rates

|	Pre-devolution	Post-devolution
Average number of organisations invited to respond per consultation	126	217
Average response rate per consultation	37%	22%
Average number of organisational responses per consultation	52	56
Average percent of organisational respondents invited to comment, per consultation	77%	77%

the proportion of responses coming from organisations not on distribution lists has also remained constant, at 23%. Even when looking more specifically at the period since the introduction of *seConsult* (i.e. 2004-2007), the proportion of responses from non-invited organisations was almost identical, at 24%. This would suggest that very few 'new voices' are being attracted to the consultation process via *seConsult*: instead, it can perhaps be presumed that the majority of *seConsult* subscribers already appear on Scottish Government distribution lists.

Scottish Government website

The *seConsult* service is accessible via the *Consultations* area of the Scottish Government website (http://www.scotland.gov.uk/Consultations/Current, see Figure 3). This area of the website also includes a *Current* section, which, as the title suggests, contains details of consultations currently taking place. The entries here are arranged by the opening date of the consultation and provide links to the contact details of the civil servant coordinating the exercise, and to the consultation paper and any other relevant documentation. The area also contains a *Forthcoming* section, which provides brief details of consultations that are imminent, but for which the precise consultation period dates are still unknown. The contents of the *Consultations* pages of the website are very closely linked to the internal *CRES* system mentioned above: if a consultation is not registered in *CRES*, it will not appear on these pages and will not be included in the *seConsult* alerting service. Theoretically, therefore, from 2003 onwards, when

Figure 3:   Scottish Government website Consultations pages
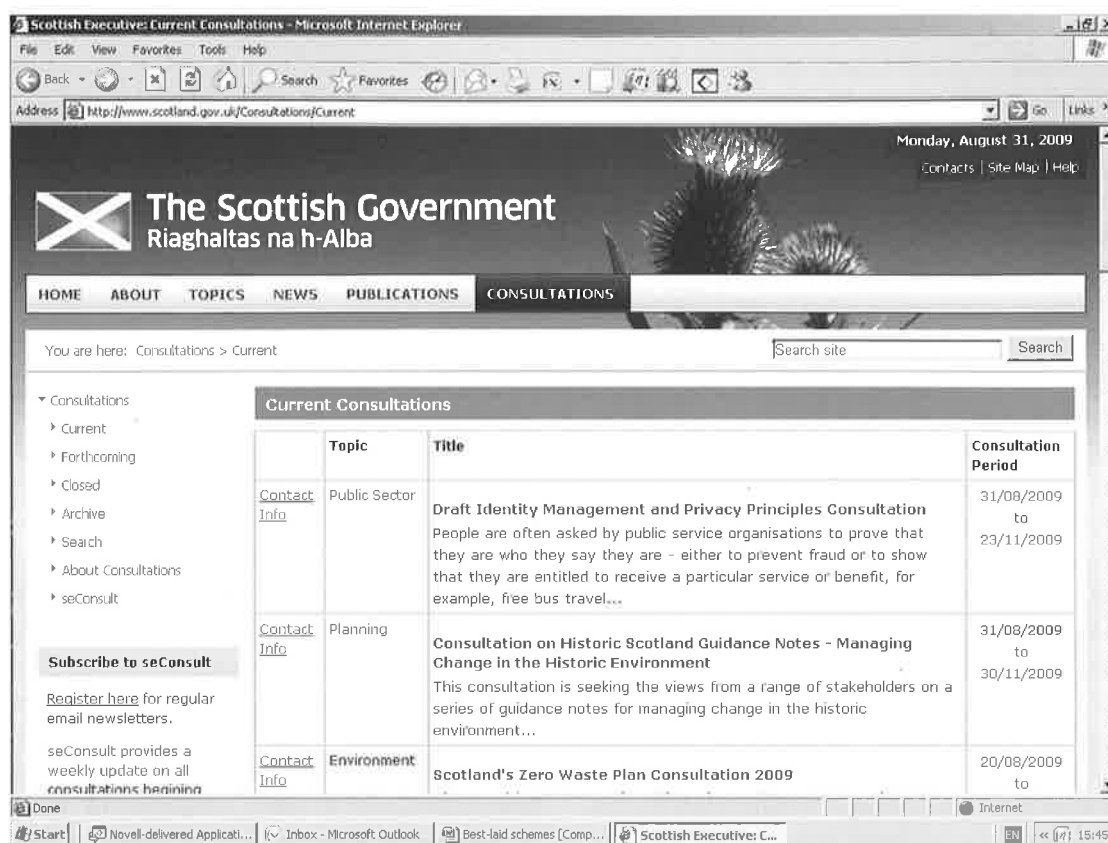
CRES was first introduced, these website pages should constitute the definitive list of consultations noted as lacking earlier. However, this current study certainly found evidence of consultation exercises having taken place which did not appear here. The extent to which this happens is unclear: a 2004 mapping exercise of civic participation activity in the Scottish Executive (Nicolson 2005b) suggested that only 84% of consultations are registered on CRES; although Scottish Government ISIS staff believe that CRES now has more than 90% coverage [4]. Why certain civil servants would choose not to use CRES remains a mystery (and gaining access to government officials in order to ask more detailed questions about the consultation process has proved impossible), for their consultations have the potential to reach a wide audience when included in the system: the main page of the Current consultations section, for example, is currently viewed around 185,000 times each year [3].

This centralised, Web-based 'index' of consultation activity is something that is currently lacking at the UK central government level. As the Cabinet Office (2007) notes, such an index did exist until 2006, but the decision was made to end the service as it was not comprehensive and was not providing value for money. Following criticism of this decision from, amongst others, the Consultation Institute (2007), the Department for Business Enterprise and Regulatory Reform (2007) promised that the Better Regulation Executive would investigate the feasibility of re-introducing a similar service; although, at the time of writing, no obvious progress has been made in this respect. The only current centralised access point to web-based consultation material is, therefore, a list of government consultation websites on the UK Government's Directgov (2009) Web portal. This provides links to the consultation pages of over 30 central government departments and agencies; although, as might be imagined, the structure, content and coverage of these individual sites vary widely.

The media

In its good practice guidance the Scottish Government (2008) states that 'most consultations are given a press launch and/or press release'. However, on

closer examination, this would appear to be far from the case. Table 4 illustrates the number of press releases relating to consultation exercises, from October 1997 to June 2009, found in the *News Archive* section of the Scottish Government website (http://www.scotland.gov.uk/News/Releases). As can be seen, over the 12-year period examined, there have been just under 350 press releases announcing the launch of a consultation; while there have also been modest numbers either announcing forthcoming consultations, providing progress reports on current consultations, or announcing the publication of the results of consultations or of government decisions following consultations. When the two most recent years (i.e. June 2007 to May 2009) only were examined, just 18% of written consultations appear to have been accompanied by a press release. Again, the reasons why civil servants would choose not to publicise their consultations with a press release are unclear, for media coverage would clearly have the potential to reach some of the 'new voices' the Scottish Government wishes to attract.

Responding to consultations

Postal and online responses

With regard to the ways in which interested organisations and individuals might respond to Scottish Government consultation exercises, historically of course the process would have been conducted entirely using the postal system. Now, however, all consultations provide both a postal address and an email address to which responses can be sent. Interestingly, the good practice guidance notes that, 'in keeping with the Scottish Government's Greening Government policy, wholly or partially on-line consultations should be considered'. Perhaps surprisingly, then, of the most recent written consultation exercises (June 2007 to May 2009), just 17% provide an online response form, which can be accessed, completed and submitted wholly electronically. An even smaller proportion (13%) additionally, or alternatively, provide a pre-prepared blank response form, in PDF or Word format, which can be completed (although not always electronically) and then emailed or posted back to the appropriate Scottish Government department. The majority of consultations instead simply provide a list of key questions, allowing the respondents to construct their own re-

Table 4: Number of press releases relating to consultations in News Archive section of Scottish Government website

Nature of press release	No.
Pre-consultation announcements	7
Launch of consultation	347
Progress reports	17
Publication of Analysis Reports	24
Publication of Consultation Reports	10

sponses around these questions, which can then be returned by email or post. While a systematic, comprehensive investigation of the situation throughout UK central government was not possible within the constraints of this study, an examination of current consultations being conducted by the major UK government departments reveals a similar pattern: all provide postal and email reply addresses, while a minority provide online response forms and/or response forms in Word or PDF. There are some exceptions, however: the Department for Transport provides Word/PDF response forms for the vast majority of its consultations, while the Department for Children, Schools and Families provides online response forms *and* Word/PDF response forms for *all* of its consultations.

Reaching marginalised communities

While the Scottish Government clearly encourages the use of the Internet as a mechanism for both distributing consultations and receiving responses, its good practice guidance does also emphasise the need to continue to make hardcopy consultation documents available, particularly for marginalised and minority communities with limited or no access to the Internet and email. Bearing this in mind, it was disappointing to discover that one particular Directorate within the Scottish Government has recently announced that, apart from a few exceptions, their publications, including consultation papers, will *only* be available electronically. As recent findings in the Scottish Household Survey (Scottish Government 2009) indicate that 40% of Scottish households still do not have Internet access, and 33% of the Scottish population never use the Internet, this is an unfortunate development, as it has the potential to prevent a significant proportion of the Scottish public becom-

ing one of the 'new voices'. This situation aside, the Scottish Government appears to be keen to ensure that written consultation exercises reach marginalised communities, and indeed has produced a separate good practice guidance document for consultation with 'hard to reach groups' (Reid-Howie Associates 2002). This present study certainly found evidence, for example, of consultations being distributed in public places, such as public libraries, Citizens Advice Bureaux or doctors' surgeries, and being produced in community languages or in easy-read versions for people with learning disabilities and literacy problems. Although it is relatively rare for consultations to be published in alternative languages and formats as a matter of course, the vast majority of consultation papers indicate that these will be provided on request. Again, it would appear to be a similar pattern within UK central government; although, notably, the Department of Health automatically produces easy-read and minority language versions of several of their consultation papers.

The Respondent Information Form

One way in which the Scottish Government consultation process differs significantly from that at the UK central government level is in its commitment to make most of the actual responses from organisations and individuals publicly available, in its Library and (now more commonly) on its website. In contrast, the UK Government's *Code of Practice on Consultation* (Better Regulation Executive 2008a) states merely that 'consideration should be given to publishing the individual responses', and an examination of their consultation pages reveals that most central government departments and agencies do not publish these.

The Scottish Government consultation responses, once screened for potentially defamatory statements, and if necessary redacted, are deposited in the Library and/or converted into PDF format and posted on the website. An important part of this process is the Respondent Information Form, completed by organisations and individuals when submitting their responses. Here, each participant either gives, or does not give, permission for their response, and their name and address, to be made publicly available. As is evident from Table 2, which indicates that less than 2% of the responses in the project dataset were

from 'Unknown' or 'Anonymous' organisations/individuals, the vast majority of Scottish participants choose to make their response and at least their name publicly available.
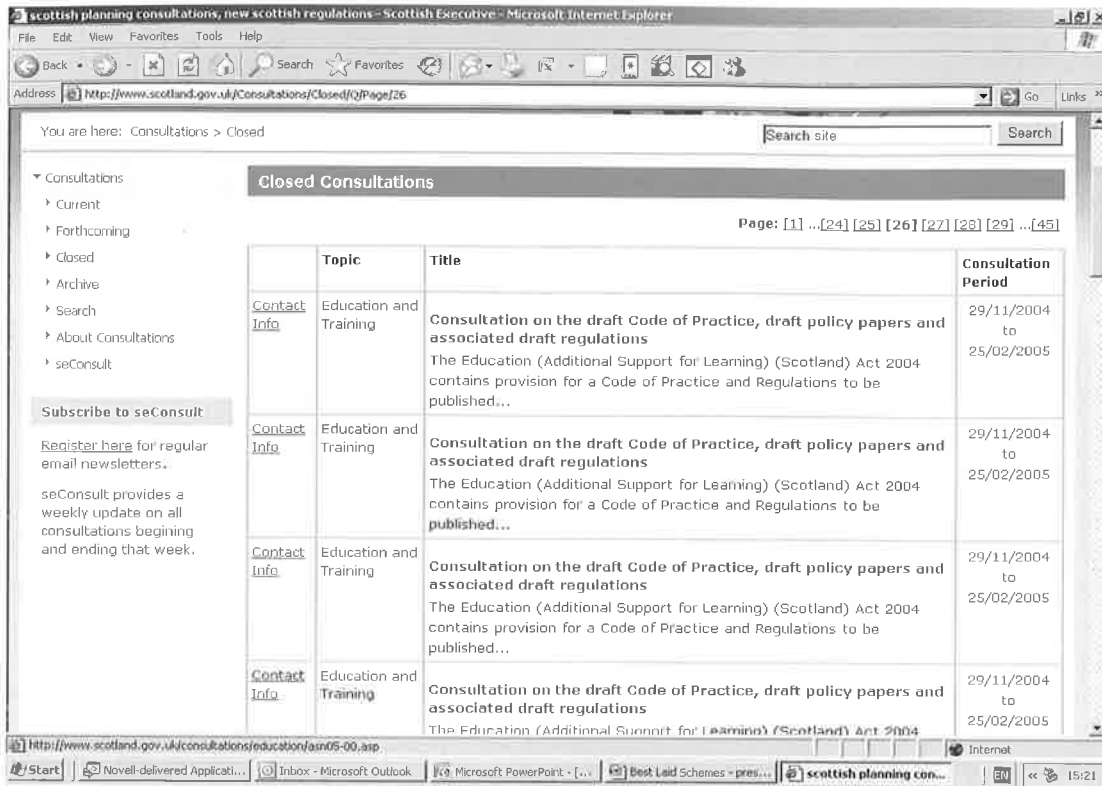
Provision of consultation feedback

The most frequent criticism aimed at the government consultative process in the UK concerns a lack of feedback to respondents on the results of consultation exercises, particularly on what policy decisions have been made following public consultation. A succession of commentators (e.g. Cook 2002; Jones & Gammell 2004; Consultation Institute 2005; Bartram 2007) have highlighted the mistrust and cynicism that can develop amongst participants if the outcomes of consultation exercises are not published and disseminated. This lack of transparency, it is argued, fuels suspicion that consultation exercises are meaningless, tokenistic gestures, where policy decisions have already been made. This is a danger that government itself recognises: the Better Regulation Executive (2008b), for example, notes that:

> … providing a summary of the responses submitted and stating how the responses received will affect policy development is key to the integrity of the whole exercise … When done badly or not at all it undermines the whole process and risks losing goodwill that might be required in future consultation exercises.

The Scottish Government good practice guidance states that feedback (e.g. an analysis report or summary) should be sent to *all* respondents, ideally within 12 weeks of the closing date of the consultation, or that respondents should at least be directed to where such feedback might be found on the Scottish Government website. From examining documentation on the website, it would certainly appear that there are cases where this is being done (although respondents are often simply signposted to the home page of the Scottish Government website, rather than to specific Web addresses). Equally, however, there are many cases where there is no obvious evidence of feedback being provided. This is an issue currently being explored further by the author in a series of telephone interviews with known respondents to Scottish Government consultations. The analysis of feedback provision presented here, there-

Figure 4: Closed Consultations section on Scottish Government website

fore, is based solely on a systematic examination of what has been made available on the Scottish Government website.

Scottish Government website: Consultations section

Consultation feedback can be accessed via two areas on the Scottish Government website: the *Consultations* section, mentioned earlier, and the *Publications* section. In the *Consultations* pages, in addition to the *Current* and *Forthcoming* sections already discussed, there exists a *Closed* section and an *Archive* section. The *Closed* section contains details of consultations conducted between May 2002 and the present time; while the *Archive* section covers the period October 1998 to September 2004. Despite there being a time-period overlap between the two sections (i.e. May 2002 to September 2004) there is no duplication of content; and while the website itself does not provide any explanation to the user, this chronological overlap is due to the introduction of a new content management system in 2003, when some of the older material was converted to the new system but other content was not [4].

The coverage of the *Closed* section also coincides with the introduction of the aforementioned *CRES* system, which, with the use of a unique *CRES* ID number, can group various documents relating to a single consultation (including any feedback) together. Unfortunately, however, when this feature is used, it simply replicates the consultation title in each entry (see Figure 4): there is no textual explanation or 'document type' tag with which to differentiate these entries without physically opening each link. As these replicated entries often run into double figures, this can prove rather frustrating for the user, as was mentioned briefly in the most recent of the Scottish Government's occasional website evaluation studies (Staniforth *et al.* 2007). And while the *Consultations* section does contain its own search engine, this is a far from effective tool. For example: it does not permit multiple keyword searches; for phrase searching it requires the inclusion of normally excluded characters, such as commas and colons; and the associated *Search Tips* give advice on phrase searching and the use of Boolean operators which simply does not work. In any case, a systematic 'trawl' through these pages revealed that just 8% of entries provided links to any form of feed-

Figure 5:   Proportions of consultations with feedback on Scottish Government website
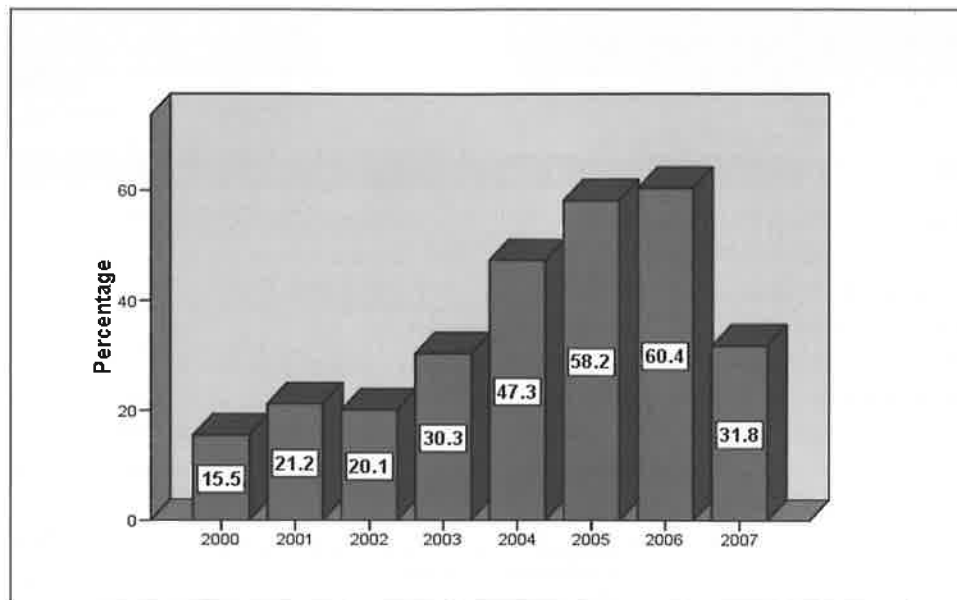
back, so for the consultation participant looking for the results of particular exercises, this part of the website is a less then fruitful source.

The *Archive* pages, meanwhile, cannot be searched using the *Consultations* search engine (although this is not stated on the website). Around 20% of the links on these pages are now broken, while less than 5% of the consultation entries contain links to any form of feedback, so again the user looking here for historical consultation analyses will be largely disappointed.

Scottish Government website: Publications section

The main source of post-consultation information on the Scottish Government website is the *Publications* section of the website, which at the time of writing is populated by over 11,000 publications, dated from 1997 onwards, and arranged in chronological order. While it also has its own associated search engine, it too has deficiencies, some of which have been mentioned briefly in the Scottish Government's own website evaluation report (Staniforth *et al.* 2007). For example, its search boxes imply that multiple keyword searches are possible, while the engine in fact automatically searches for phrases; and it is also not possible to search by publication 'type'. The

user wishing to filter their search by publication type can instead turn to the *Refine Your Search* option in the website's main search engine, but the inconsistent use of the metadata tag by the many different civil servants uploading consultation material to the website presents additional barriers. During the course of this present study, consultation feedback was found coded variously as 'Consultation', 'Consultation Responses', 'Publication', 'Report', 'Research Publications', 'Research Findings', 'Legislation', 'Info Page', 'Letter/Circular', 'Guidance' and 'Dataset'; which would suggest that additional guidance for government officials on the use of metadata tags would be beneficial.

Given these coding problems, and the limitations of the various search engines, the only way of compiling a comprehensive record of consultation feedback on the Scottish Government website was to conduct another systematic 'trawl', this time of the *Publications* section. In doing so, 447 documents providing feedback of some form were found, covering 363 written consultation exercises. Figure 5 illustrates the proportions of the written consultation exercises in the ESRC project dataset, for which feedback was found. As can be seen, the provision of feedback does appear to have improved during the post-devolution years. Back in 2000, feedback was provided for less than 16% of consultations, but

this has gradually risen over the years so that by 2006 over 60% of consultations had associated feedback posted on the website. There was, however, an inexplicable decrease in the level of feedback provided for those consultations conducted immediately prior to the last Scottish Parliament election in May 2007.

Types of feedback

The 447 feedback documents found varied dramatically in their style, extent and quality, but could be grouped into three main types, as defined in the Scottish Government's consultation guidance. The first and most basic type is the *Digest of Responses*, which simply brings together every response to a consultation into a single document. Of the 447 feedback documents, 33 (7.4%) were Digests. The value of such documents is questionable, as they can be lengthy and unwieldy (for more popular consultations some are over 500 pages long), and no effort is made to summarise or analyse any patterns of response. The *Analysis Report*, on the other hand, *is* designed to analyse, summarise and provide more of an in-depth discussion of all of the views expressed in a consultation exercise. Exactly two-thirds (66.6%) of the documents found could be classed as Analysis Reports, although these ranged from single-page lists of bullet points, to lengthy publications containing detailed analyses. The third type, the *Consultation Report*, is distinct from the Analysis Report, in that it describes what policy decisions have been made as a result of the consultation. Just one-quarter (25.3%) of the feedback documents found contained any explicit references as to how the consultation exercise had influenced final policy decisions; these represent only around 10% of all written consultations conducted in the post-devolution era. This is extremely disappointing, for both government and consultees alike have stressed that the provision of this kind of feedback is one of the most important elements of consultation, and one that is essential in maintaining public confidence in the process (see, for example, House of Commons Science and Technology Committee 2006).

While a comprehensive comparison with the situation throughout UK central government was not possible within the scope of this study, an examination of the websites of the UK government departments and agencies tends to reveal a similar story, in terms of variability in the provision, extent, style and quality of consultation feedback. What is notable, however, is that in those central government departments where feedback is routinely posted on their websites (e.g. the Department for Business, Enterprise and Regulatory Reform, and the Department for Communities and Local Government), then a significantly greater proportion of these documents do contain details of the policy decisions made as a result of the consultative process.

Consultation feedback: dominated by the 'usual suspects'?

A number of commentators (e.g. Grant 2004; Nicolson 2005a) have noted a suspicion amongst consultees in some (usually small) organisations that, when consultation feedback is provided, it is weighted heavily towards reflecting the opinion of the 'usual suspects' – the larger, better-known organisations – and that their own organisations' submissions are treated as 'second best', regardless of the substance and the quality of the content. With this in mind, the feedback documents found on the Scottish Government website were reviewed to establish if there was any obvious evidence of any weighting taking place; and certainly, in a handful of cases, the analyses clearly emphasise the opinions of what are described as 'key stakeholders'. In the majority of cases, however, it is incredibly difficult to tell, not least because two-thirds of the documents contain quotes and comments that are not directly attributable to any organisation. This is perhaps surprising, particularly as the vast majority of respondents give permission for their names and responses to be made publicly available. Why the majority of Analysis Reports and Consultation Reports are anonymised is unclear: perhaps government officials do so to prevent accusations of favouritism towards particular organisations. Further research is certainly needed here, including a more thorough content analysis of those feedback documents containing attributed quotes. The aforementioned telephone interviews with consultation respondents in Scotland will also explore this issue.

Conclusions

Largely using the Scottish Government's written consultation process as an illustrative example, this

paper has examined the provision and accessibility of government consultation information in the UK. As has been seen, there has been a significant rise in the number of government consultations conducted annually throughout the UK since the late 1990s, although in the majority of cases the number of responses made to each exercise has remained relatively constant, and modest. In Scotland at least, the responses to consultation exercises have been, and remain, dominated in terms of numbers by public bodies, and in particular by local government. And while there have been a number of initiatives, such as the *seConsult* email alerting service, aimed at attracting 'new voices' into the policy arena, there is no obvious evidence to suggest that these have had any great impact.

The rise in consultation activity has seen government at all levels in the UK produce a raft of advice and good practice guidance aimed at ensuring that consultation information and documentation is clear, accessible and responsive. However, there are question marks over how closely individual government departments and civil servants follow this advice. In reality, consultation information is often missing, incomplete, or presented in inconsistent and often confusing ways. And while government encourages the use of the Web for facilitating the consultation process, the websites provided are often badly structured, containing numerous broken links and duplicate entries, and information that has been indexed and/or coded incorrectly. Search engine limitations also mean that consultation information can be incredibly difficult to find online.

Perhaps most importantly, the provision of post-consultation feedback to respondents varies widely across government, in terms of its style, extent and quality. In particular, feedback on what policy decisions have been made as a result of public consultation is frequently negligible or non-existent. This does little to abate the scepticism that can surround the consultation process, and can only add fuel to the argument that consultation is a tokenistic gesture.

Notes

1. 'The mobilisation of organised interests in policy making: access, activity and bias in the "group system"' (RES-000-22-1932). This ESRC project was headed by Professor Darren Halpin, Department of Public Policy, Aberdeen Business School. While this paper includes some of the main map-

ping results, fuller details can be found on the project website at http://www.organisedinterests.co.uk/darrenhalpin/mobilisation. htm.
2. A consultation on a Climate Change Bill, conducted in early 2008, after the project cut-off date, received a total of 21,046 responses.
3. Figure provided by Scottish Government Information Systems and Information Services (ISIS).
4. Information provided by ISIS staff in an interview conducted October 14, 2008.

References

Barnett, J. 2007. *Making consultation meaningful ... putting consultation in its place.* URL – http://www.psy.surrey.ac.uk/people/staff/J.Barnett/pub/Making%20consultation%20meaningful.pdf [accessed 26 August 2009]

Bartram, M. 2007. Public consultation and user engagement. *Consumer Policy Review* 17(5): 224–226.

Better Regulation Executive. 2008a. *Code of practice on consultation.* URL: http://www.berr.gov.uk/files/file47158.pdf [accessed 14 August 2009]

Better Regulation Executive. 2008b. *Consultation guidance.* URL – http://www.berr.gov.uk/whatwedo/bre/consultation-guidance/page44420.html [accessed 17 August 2009]

Cabinet Office. 1999. *Modernising government.* White Paper, Cm 4310. URL – http://archive.cabinetoffice.gov.uk/moderngov/download/modgov.pdf [accessed 14 August 2009]

Cabinet Office. 2007. *Effective consultation.* URL – http://www.berr.gov.uk/files/file45139.pdf [accessed 1 September 2009]

Consultation Institute. 2005. *A consultation agenda for a new government.* Briefing Paper 6. URL – http://www.consultationinstitute.org/research/briefingpapers/BP%206%20Listening.pdf [accessed 24 August 2009]

Consultation Institute. 2007. *Response to Effective Consultation, the BRE consultation on government consultation policy.* URL – http://www.consultationinstitute.org/research/briefingpapers/Effective%20Consultation%20TCI%20response%20Sept%2007.pdf [accessed 14 August 2009]

Consultative Steering Group on the Scottish Parliament. 1998. *Shaping Scotland's Parliament.* URL – http://www.scotland.gov.uk/library/documents-w5/rcsg-00.htm [accessed 14 August 2009]

Cook, D. 2002. Consultation, for a change? Engaging users and communities in the policy process. *Social Policy and Administration* 36(5): 516–531.

Department for Business Enterprise and Regulatory Reform. 2007. *Effective consultation: Government response.* URL – http://www.berr.gov.uk/files/file44374.pdf [accessed 30 August 2009]

Directgov. 2009. *List of government consultation websites.* URL – http://www.direct.gov.uk/en/Governmentcitizensandrights/UKgovernment/PublicConsultations/DG_170463 [accessed 1 September 2009]

Grant, W. 2004. Pressure politics: the changing world of pressure groups. *Parliamentary Affairs* 57(2): 408–419.

House of Commons Science and Technology Committee. 2006. *Scientific advice, risk and evidence based policy making.*

URL – http://www.publications.parliament.uk/pa/cm200506/cmselect/cmsctech/900/900-i.pdf [accessed 3 September 2009]

Jones, R., and E. Gammell. 2004. *Was it worth it? Evaluating public and stakeholder consultation.* URL – http://www.consultationinstitute.org/research/briefingpapers/Was%20It%20Worth%20It.pdf [accessed 14 August 2009]

Nicolson, L. 2005a. *Civic participation in public policy-making: a literature review.* URL – http://openscotland.gov.uk/Resource/ Doc/69582/0017808.pdf [accessed 14 August 2009]

Nicolson, L. 2005b. *Civic participation activity in the Scottish Executive.* URL – http://www.scotland.gov.uk/Resource/Doc/69582/0017807.pdf [accessed 30 August 2009]

Reid-Howie Associates. 2002. *Good practice guidance: consultation with equalities groups.* URL – http://www.scotland.gov.uk/Resource/Doc/46729/0025644.pdf [accessed 1 September 2009]

Scottish Executive. 2004. *New online consultation system.* News Release, March 23, 2004. URL – http://www.scotland.gov.uk/News/Releases/2004/03/5258 [accessed 30 August 2009]

Scottish Government. 2008. *Consultation: good practice guidance.* Internal document provided by the Scottish Government Corporate Analytical Services Directorate, Office of Chief Researcher Division.

Scottish Government. 2009. *Scotland's people.* URL – http://www.scotland.gov.uk/Resource/Doc/282618/0085510.pdf [accessed 2 September 2009]

Staniforth, J., J. Fawcett, S. Granville, A. Hilliam, and S. Shakeshaft. 2007. *Scottish Executive website evaluation study 2007.* URL – http://www.scotland.gov.uk/Publications/2007/10/17135658/0 [accessed 3 September 2009]