Finance and Public Administration Committee

Summary of Evidence on Inquiry on Effective Scottish Government decision making

This paper provides a summary of the evidence received by the Committee on its call for views on Effective Scottish Government decision making.

The deadline for submitting views passed on Monday 7 February 2023. This summary takes each question asked by the Committee in turn.

Contents

What are key methodologies, processes and principles that should underpin an effective decision-making process in Government?

Beginning with some of the academic responses to this question. Some submissions made the point that there is a difference between the textbook answer to this question which might talk of principles and systems, and the actual reality of decision making which is often very messy. As Professor Matthew Flinders notes:

> "decisions do not emerge from a careful review of the available evidence. They emerge out of a combination of shaping factors born out of the need for compromise, bargaining and deal-making. This is not to suggest that methodologies, processes and principles should not be put in place, but it is to realise that flexibility and pragmatism will have to exist in partnership; and that different individuals, groups and organisations may have very different interpretation of what 'effective' means.

Professor Jonathan Baron was of the view that the answer to this question very much depends on the situation. Dr Helen Foster's submission identifies the policy cycle as comprising the following phases involving different players. She concludes that "ideally lessons learned from this cycle should inform future policy making."

> • **Problem identification** – this comes at the start of the process with issues deriving from a number of sources, including politicians, the public and media.
> • **Agenda setting** – this should bring in the views of others, including experts. It must consider if the issue is within competence of the Scottish Parliament.
> • **Consideration of potential actions** – this is when decisions are made. It is not only new policies and their effects that need to be considered, but also the effects of doing nothing – "non-decisions". Civil servants advise and ministers decide is a commonly held view. However, Bevan (2021) argues that modern bureaucracies (civil servants) are in practice far more independent than theory suggests and have a degree of capacity for some independent agenda building. Developing policy is one aspect, but policy is not self-enacting.
> • **Implementation** – this stage shapes how policy takes place on the ground. There should be some overlap of personnel between policy making and implementation. This should focus attention at the policy development stage on whether plans for delivery are realistic. It also reduces the opportunities to pass responsibility from one team to another.
> • **Evaluation** – this stage tends to take place after a relatively short period, while longer term evaluation is generally needed as the outcomes of many policies are not apparent until a number of years after adoption. Furthermore, where evaluation is concerned, the process may be distorted by using evidence selectively, to champion those policies which are intended to be rolled out further.

Paul Gray, a former civil servant, serving governments from 1979 to 2019 said that advice from the civil services "should be well researched, soundly based and impartial." He added:

- "The evidence and advice should reflect the range of views and experiences relevant to the issue under consideration. Narrowly based advice is likely to miss important contextual issues, and broadly based advice increases the likelihood that risks will be properly identified, quantified and mitigated. Broadly based advice increases the prospect of successful delivery. In straightforward terms, the more people and organisations with relevant experience and views that you ask, the more likely it is that your advice will be sound. You reduce the risk of the loudest voices and the best organised advocates being the only ones that are heard.
- Advice should not reflect the opinion of the adviser, unless that opinion is specifically sought – where for example the adviser has professional standing in an area such as the law, medicine or engineering. And where an opinion is sought, it ought to be clear from the advice both that it was sought, and the basis on which it is provided.
- Advice should make a clear distinction between facts (including evidence), analysis, and judgement or recommendations.
- Advice should be clear about whether a proposal is legal, represents good value for money, and is deliverable. However, Ministers can still decide to proceed, should they wish to do so, even if advice is against proceeding. In some cases, that would require a Ministerial Direction, and convention provides for that. Clearly, Ministers cannot (and in my 40 years of experience, have not) require public servants to do something illegal. But that is not the same as a government asking for something to be done that could be subject to legal challenge."

Roger Mullin distinguishes between decisions and the time available to take them. For example, some decisions require to be taken quickly and may be based on ideological intuition; other decisions may be afforded more time and thought (for example, parliamentary committee inquiries, Cabinet discussions, etc). He concludes that more time and deliberation "**if** done well" can result in better judgements and decisions. "Furthermore, in all democracies there is a high legitimacy given to this approach."

He argues for the inclusion of the following processes in decision making:

"a. Framing the issue. Too often groups of people can fail to agree a common framing of the problem at the outset. Framing involves agreeing the context, agreeing why a decision is needed, and agreeing the broad evidential basis that should be used.
b. Identify options.
c. Address uncertainties, including estimating chances /probabilities.
d. Identify potential outcomes from each option and evaluate them.
e. As a minimum ensure all of the above are purposefully discussed.
f. Where evidence allows, calculate the value of each option.
g. The result of such analysis should be open to further consideration prior to confirming the preferred option.

h. In probably rare and special circumstances where accuracy is critical (such as in considering the predictive value of tests during a pandemic) using appropriate statistical techniques (Such as Baysian statistics or table equivalents) would be appropriate."

The Fraser of Allander Institute (FAI) submission points to its recent work on emissions assessment of the Scottish Government's Budget which uncovered wider problems around Scottish Government policy making.

> "We expected to find a structured framework of processes which we could build from. We found no such framework. This concerning finding led to us unravelling the various processes and practices currently occurring across different parts of the Government. This was supported by conversations with over ninety people from the Scottish Government, public agencies, academia, and the wider policy community.
>
> The patchwork of policy development processes goes beyond impacting net zero progress. All intended Government outcomes are potentially harmed without effective policy development processes."

The submission reports the following problems in the Scottish Government:

- Piecemeal policy development processes
- Gaps between policy ambitions and delivery
- Difficulty in establishing value for money of policy
- Lack of evaluation and ineffectiveness of existing impact assessments.

The FAI recommend that the Scottish Government:

"1. Improves the clarity and transparency of Government decisions that impact on climate change (this extends to prioritisation of all targets), acknowledging that trade-offs will always exist between different objectives.
2. Pursues a cultural shift to ensure sufficient time and resource for robust decision-making processes, allowing business cases, carbon assessments and impact assessments to be undertaken, challenged and scrutinised.
3. Enhances cross-governmental policymaking governance. This would provide oversight and a challenge function on the existence and quality of processes and appraisal throughout the entire policymaking process.
4. Urgently expands their internal capacity and skills, including recognising that civil servants cannot expect to undertake processes as intended without enough time, resourcing, and a significant increase in practical policymaking and appraisal guidance.
5. Considers periodic external auditing of climate change (and all) policymaking governance, processes and carbon assessments."

[Professor Johannes Siebert, who submitted his TED talk](#) as part of his submission contends that more time should be taken at the front end of a decision process, by doing three things:

1. **Define what your decision is about** – don't formulate your decision too narrowly; broaden the decision out.
2. **know what you want (your objectives)** – most people think they know their objectives but research shows people are aware of just half of their relevant objectives in critical decision, and are often not aware of even the most important objectives. "In any decision situation, you can nudge yourself by actively reflecting what you care about. This will significantly enhance the likelihood that you will get what you want."
3. **know how you get what you want (your alternatives)** – it is beneficial to spend effort in identifying attractive alternatives. "First, separately identify alternatives that excel with respect to each objective—for example, when buying a car, cars that are very cheap and separately cars that are very environmentally friendly. Next, identify cars that are very good in two objectives, e.g., cheap and environmentally friendly. Finally, identify cars that are good in as many objectives as possible. With this method, you search broadly for alternatives, not missing attractive ones, and enhance the quality of the alternatives successively."

Carnegie UK believe that the National Outcomes, and National indicators "constitute a 'wellbeing framework' that should underpin decision-making across the public services," but that they don't. "National outcomes are not applied consistently by different departments; they are often seen as voluntary or applied post hoc."

The Chartered Institute of Public Finance and Accountability (CIPFA) agree that policy decisions should be driven by the pursuit of achieving outcomes, like those contained in the National Performance Framework.

> "CIPFA assists organisations demonstrate the value for money of outcome-oriented programmes through the Value for Money Toolkit. The toolkit provides a framework for thinking and learning about the economic validity of public programmes and promotes thinking about the longer-term effects of interventions."

CIPFA argue that effective decisions come from a "combination of factors, including considering available options and supporting data to achieve an intended outcome that is legal, sustainable, fair, efficient and accessible. An effective decision is one made following suitable engagement, communication and collaboration with stakeholders."

Children in Scotland believe that decision makers should include children and young people in their decisions, saying that despite some improvements, too many children and young people remain excluded from decision-making processes "and unable to share their unique experiences and ideas".

> "We would like to see improved engagement with children and young people to ensure they are able to realise their right to be heard as enshrined in Article 12 of the UNCRC. This aligns with the committee's interest in ensuring good practice across Scottish Government decision-making."

The Equalities and Human Rights Commission call for "a strong understanding of relevant equality issues and a commitment to take action where inequalities exist. This is in line with legal duties [cited throughout the submission] and with the National Performance Framework (NPF)." They see this as being something that should be mainstreamed within the culture of the Scottish Government as "integral, proactive parts of good-decision making, and equality must be understood as everybody's business."

The Scottish Council of Independent Schools argue that all policy which has a financial impact on a specific body or sector "should be subject to formal post-legislative scrutiny which includes independent cost benefit analysis and, if necessary, a "sunset" clause."

The submission by Engender, Scottish Women's Aid and Close the Gap (Engender) calls for the mainstreaming of gender, and intersecting inequalities as a key concern and focus of decision making. Such concerns have "not historically been adequately integrated or mainstreamed into Scottish Government and other bodies' approaches." They argue that the pandemic impacts have been particularly challenging for women and encourage greater consideration of women in the economic recovery phase and in future decision making.

Murray Blackburn Mackenzie provide a list in response to this question:

> "Demanding initial questioning of proposals - meaning, intention
> Definition of terms and concepts
> Clarification of aims
> Option appraisal
> Involvement of internal specialist input as needed
> Cross-government discussion as needed
> Evidence gathering
> Analysis of legal constraints
> Logical analysis of where a proposal leads if adopted
> Consideration of implementation issues
> Cost-benefit analysis
> Analysis of likely impact on various groups for which this is formally required
> Risk assessment
> Identification of competing interests
> Engagement with all affected interests
> Engagement with sources of expert advice as needed
> Consultation compliant with the Gunning principles, including "conscientious consideration" of responses
> Systematic assessment of final proposals for impacts, risks, cost, legal issues, as above.
> Implementation planning, including communications"

The Scottish Women's Budget Group (SWBG) and Engender argue for gender budget analysis in decision-making processes in Government to take into account the different experiences of women, different groups of women, and men.

> "This is to ensure that equality is at the heart of the process. For example, the intersectional gendered effects of the cost-of-living crisis highlighted in our

research with the Poverty Alliance with women engaged in the research reporting experiences of hardship, destitution and food insecurity due to the impact of low-incomes from work or social security benefits."

They consider that for effective gender budget analysis to be undertaken, there is a need for "gender and human rights competency" in people involved in decision-making processes in Government.

SWBG also want decisions aligned with the National Performance Framework (NPF). Having more comprehensive data and information are crucial for that to happen, and for high-quality equality impact assessments (EQIAs), a perspective also supported by Engender.

Engender argues that EQIAs need to be routine and undertaken at the very outset of policy development "in order to safeguard against ingrained bias and decision making that further entrenches existing inequalities."

Volunteer Scotland believe the following principles are key to effective decision-making:

> • Collaboration – meaningful collaboration with stakeholders, acknowledging the complexities in play.
> • Communication – should allow for diversity of voices to be heard, for example, allowing accessibility by allowing virtual contributions from those say, outside the central belt. Accessible language should be used and catering for all levels of digital literacy.
> • Achievability – decision making should be achievable – "any plan, strategy or legislation that is published without a clear indication on the resource required to achieve it, and where such resource will come from, is at higher risk of failing to achieve some or all intended outcomes."
> • Transparency – "transparency around decision-making processes is vital to ensure that relevant bodies are able to contribute in a meaningful way."

The Scottish Council for Voluntary Organisations (SCVO) raises similar issues. Citing work conducted over the 18 months, it argues that policy and legislation must be developed collaboratively, with "parity of esteem" being a key principle of effective decision-making. On the "parity of esteem point" the SCVO submission contends that there is a currently a "lack of recognition of the voluntary sector's fundamental role in how our society and economy functions" which "works against achieving that parity of esteem."

> "To achieve this, not only do we need to recognise the current imbalance of power existing between sectors, but we must also acknowledge that it takes time to build relationships and trust amongst partners."

SCVO also call for the Scottish Government to issue guidance "setting out expectations of the government and of those who wish to engage with it, including our sector."

> "Sectors must fully understand processes they are contributing to and must each understand the barriers/drivers of other partners. The Scottish

Government must also be clear about the scope for influence that voluntary organisations have on a process – and must seek to involve them as early as they can so that this influence is as great as possible."

SCVO argue there is a need to build in sufficient time for partners to engage with consultations and "think innovatively about different forms of engagement."

Scotland's International Development Alliance calls for the UN 2030 agenda and 17 Sustainable Development Goals (SDGs) to underpin all decision-making in Government. They argue that the key principle relates to policy coherence and having consistent polices aimed at sustainable development, "whereby no policy undermines any other policy."

> "Key to this definition is that development (social, economic or otherwise) must support ecological integrity and social equity within Scotland and elsewhere in the world, and support the self-defined sustainable development of other countries."

The submission notes that this "policy coherence for sustainable development" (PCSD) has been committed to by the Scottish Government:

> "However, it remains unclear how this approach is embedded in decision-making in practice. For example, the Scottish Government has convened a Ministerial Group on PCSD but there is a lack of transparency in how this group operates, what its role is and what it focuses on. It is not clear whether the group is being used in such a way as to enhance PCSD across government…
>
> A Ministerial group on PCSD would support effective decision making."

The submission also recommends regular Scottish Parliament scrutiny of such a ministerial group on sustainable development, with a lead committee responsible for such scrutiny. All relevant committees should consider using the Scottish Parliament's sustainable development impact assessment (SDIA) tool: https://www.parliament.scot/chamber-and-committees/research-prepared-for-parliament/sustainable-development-scrutiny.

Audit Scotland note that best practice in decision making may vary by area, and reflects context, as well as time, affordability and other potential constraints. However, there are common expectations that should be applied across most areas to ensure effective decision making.

- "Vision, leadership and governance" – including formal arrangements (eg boards, lines of delegation and accountability, appropriate project and quality management) and informal/cultural factors like leadership quality, values and practices.
- "Appraisal" – consider how proposals line up with wider policy (don't consider in isolation), costs and benefits, and ensure effective monitoring and evaluation.
- "Engagement and advice" – engage with impacted stakeholders and seek relevant professional/expert advice.

- "Evaluation" – systematically assess effectiveness to inform further decisions on maintaining or modifying initiatives. Learn broader lessons.
- "Transparency and accountability" – effective decisions must be underpinned by robust record keeping. Appropriate levels of reporting to Parliament and public, including explanation of key decisions, costs and performance.

Scottish Environment link argue that an "environmental lens needs to be applied to all decision making processes." The cite 5 tests which should be applied to all decision making.

"Every individual policy/action adopted must be based on sound evidence, must not increase carbon emissions, must not damage nature and must not harm social wellbeing and must contribute directly to one of the following:

- Reduction in pollution
- Reaching net-zero by 2045
- Improving adaptation to climate change
- Securing sustainable consumption of natural resources, reducing Scotland's footprints
- Improving biodiversity and ecosystem services."

What are the capabilities and skills necessary for civil servants to support effective decision making, and in what ways could these be developed further?

Citing the Economic and Social Research Council (ESRC's) Public Policy Fellowships and the Scottish Crucible Initiative, Professor Matthew Flinders notes the importance of the civil service allowing for mobility of people in and out of the civil service, and a need for the civil service to change "from being the traditional font of knowledge to not being the mediator or boundary-spanner connecting his or her department into the wider world."

Dr Helen Foster argues that "much depends on the skills of both the politicians and civil servants when developing and implementing policy."

"The skills required of politicians include the ability to clearly articulate what it is they want to achieve. They also need to be able to bring people with them and to compromise. Officials need to have in depth knowledge of the policy area. Project management skills are a key requirement in policy development and implementation. Expertise may be required from stakeholders such as local government and public bodies…

Churn among civil servants is an issue across the civil service in both Whitehall and across the devolved administrations, which is encouraged for the development of generalist civil servants. This mitigates against the development of in-depth expertise. Researchers have also commented

adversely about churn among politicians where short postings may result in little opportunity to build up expertise and networks in a policy area."

Paul Gray was also of the view that the skills and capabilities required depend on the context in which the advice is given and vary depending on the task in hand. For example procurement advice requires a different skillset to child poverty policy.

Professor Jonathan Baron argues it is worth having people trained in risk analysis and decision analysis. He also notes that "in group decision making, people should make an effort to ensure that doubters about an apparent group consensus have their say, thus avoiding "Groupthink". The leader should try not to present their own view as the one that others should accept."

The FAI say that civil servants should be able to undertake Business cases and perform economic appraisals, but "skills are not the core issue."

> "Most civil servants can undertake these processes. Instead, a lack of resourcing allocated to these projects creates a poor set of incentives to undertake decision-making processes as intended.
>
> Driving this lack of resourcing is (a) cultural issues and (b) a lack of internal scrutiny of decision-making process quality which is occurring because of governance structures."

CIPFA's submission calls for a "skills audit" to identify the strengths and weaknesses in teams of civil servants with training available where required.

> "There are also occasions where external specialist skills and expert advice is needed. In instances where necessary skills and knowledge are unavailable in-house, and it is not feasible to train civil servants in those necessary skills, then external services should be contracted in following a fair and open recruitment process."

Another list is provided by Murray Blackburn Mackenzie in response to this question:

> "detach personally from the government's political aims
> identify the nature of the wider public interest
> think logically
> be numerate
> understand formal process round finance and law
> deal respectfully with contrasting views
> listen and assimilate other arguments
> summarise other perspectives accurately
> scrutinise different views with detachment
> recognise when stages of the process should be recorded and record those accurately
> give difficult advice and support more junior staff in giving difficult advice
> work as part of a team"

The SCVO state that "when it comes to capabilities and skills of civil servants, data indicate that good relationships rely on individuals remaining in post for longer

periods of time, thus allowing them to get to know the organisation they support properly."

SCVO also argues the voluntary and third sector "value civil servants who understand their work, their organisation, and the significant contribution the sector makes", citing research claiming this is not always the case.

The Children and Young Peoples Commissioner wants the civil service to have training on children's rights, claiming:

> "There is a lack of demonstrable evidence of understanding across Scottish Government directorates of what children's rights obligations are or how they should be incorporated into policy development. In this respect, children rights are too often seen as an add on, rather than being viewed as a central framework to guide decision making. If rights obligations are being considered, it is not being done in a transparent way."

Carnegie UK argue for Scottish specific guidance for the model of governance the Scottish Government is aiming for. This would be a better approach than is currently taken whereby UK government guides are used despite the "different governance paradigm".

The SWBG believe civil servants should have the capabilities and skills necessary to have "gender competence" when supporting effective decision-making.

> "Some efforts within Government are underway to develop skills and capabilities necessary to build gender and equality competencies into policy. One example is the Centre of Expertise in Equality and Human Rights within the Office of the Chief Economic Adviser. These efforts need to be supported, including with staff time to attend and engage with learning through the centre. Inclusion of external expertise on issues around equalities and human rights as part of the aim of the centre should also provide a wider understanding."

Engender states:

> "Our organisations continue to be highly concerned by the lack of capacity and competence within government to carry out meaningful intersectional gender analysis. We need to see a gender and equalities competent workforce, as standard, across Government in order to ensure decision-making is not biased or undermining of equalities aims, is coherent and effective and secures the necessary outcomes for women, marginalised groups and communities across Scotland."

The submission states that expertise and gendered policymaking knowledge and expertise can be lost when civil servants move roles with a high degree of frequency.

This point is also raised by Children in Scotland (a similar point is made by the Children and Young People's Commissioner) who cite a frustration when officials move between roles and directorates.

"It is incredibly time consuming for organisations like ourselves to build relationships with officials and support their development of topic knowledge and expertise, only for them to move on to a new role and have to start all over again. We would strongly recommend that the Scottish Government establishes greater role stability within its directorates if we are to see the best possible policy making take place."

Roger Mullin argues that the following skills should apply to all key decision makers, including politicians, and others who support decision making, like special advisers:

1. "I believe all involved in making judgments and decisions should develop effective reflective skills, after the work of Donald Schöniv.
2. All involved in making or advising on decisions should be made aware of the range of biases, such as motivational bias and other cognitive biases, that can affect decision making.
3. Group discussion skills for judgment and decision making purposes should be developed, and this should include an understanding of issues of group think (after the work of Irving Janisv) and how to counteract it including the need for critical review during discussions.
4. A basic understanding of probability theory would be helpful, particularly in the context of modelling and understanding uncertainty.
5. Awareness raising of the components of risk would be valuable for all, including considering how deconstructing risk can be used during group discussions.
6. The development of skills in construction of decision trees would be very helpful, particularly for those supporting the decision making of ministers and committees. There is evidence that being able to "picture" decisions in this manner can of itself assist ensuring all key elements are discussed, even if it does not lead on to more sophisticated analysis.
7. Those supporting ministers and committees should be able to use Multi-criteria decision analysis and related tools, such balanced scorecards.
8. Ministers and committee members should ensure they take part as a minimum in awareness raising sessions, to ensure they understand the decision methods that may be deployed by those that support their decision making tasks."

What are the behaviours and culture that promote effective decision-making?

Professor Matthew Flinders states that:

"Effective decision-making generally depends upon (i) a clear and agreed understanding of the problem, (ii) a sound evidence base in terms of causal effects, (iii) a clear understanding of the choice architecture (i.e. range of options), (iv) where possible evidence of 'what works' from similar context, and (v) trust between advisor and decision-maker."

He cites "trust" as being central to decision making.

"Ministers generally want to be challenged. They do not want to be surrounded by 'yes men' or 'yes women' but they do want the evidence they are presented with to be critical and constructive and to be based on a sound evidence base. A strong culture of trust and respect must therefore exist between ministers and officials - clarity and respect into roles and reach."

Dr Helen Foster argues that "taking a longer-term view; excellent policy knowledge; excellent implementation; good cross-government working, and a broader outlook are requirements for effective decision making."

"We cannot attribute short-termism to politicians alone, who are often accused of only looking as far as the next election. Wilkes and Westlake (2014) argue that the funding structure in place encourages short-termism when a long-term approach to policy would be more productive. Sasse and Thomas (2022) go on to argue that stronger accountability for policy advice, decisions and outcomes is needed to improve the effectiveness of government policy making.

Increased accountability is required of both ministers and officials. Ministers must set clear policy objectives and create a questioning environment and be more accountable for the decisions they make, while officials must be held accountable for the advice they give. Sasse and Thomas (2022) argue that current accountability is too weak and reduces the incentives to make good policy. They suggest that outcomes need to be considered in the longer term. They further argue that there needs to be two lines of defence for good policy making - quality control by the civil service itself and scrutiny by the minister who receives its advice."

The FAI note that there should be greater clarity around prioritisation for the civil service when they face trade-offs between targets. Without such clarity there may be "a bias towards maintaining the statis quo."

The FAI also contend that culture around decision-making processes prioritised "getting money out the door" rather than identifying whether the spending was likely to produce value for money.

Carnegie UK again cite the National Performance as being something that should be used, but is not used when it comes to the culture of the civil service – specifically the values of kindness, dignity, compassion, respect openness and transparency. The values "are not applied consistently".

Volunteer Scotland argue that stakeholders should be able to express views without worrying about funding being cut:

"It is important that any existing power imbalances, particularly when key stakeholders are funded by the Scottish Government, are addressed to ensure that all parties are able to be open and honest without fear for the continuation of their funding."

SCVO, and others like the Children and Young People's Commissioner point to a culture of silos within the Scottish Government:

> "It will come as no surprise that there is also evidence suggesting that the Scottish Government works in silos, with not enough cross-cutting collaboration and relationships (at all levels) that would help towards greater consistency, alignment and accountability. This must change. Indeed it is important to emphasise that work must be done across all portfolios and directorates within the Scottish Government to improve decision-making across the board. Where there is good practice this must be shared more widely too."

Children in Scotland believe the following behaviours and cultures are key to promoting effective decision making:

- Ensuring inclusion
- Adopting rights-based approaches
- Ensuring decisions are outcomes-focused
- Prioritising wellbeing
- Making evidence-based decisions
- Thinking long-term
- Being honest, open and transparent.

Paul Gray's submission states:

> "If I could only offer one thing to this enquiry in relation to behaviours and cultures that promote effective decision making, it would be **learn to listen better** (his bold). Do not approach issues with your mind made up. Remember that communication styles differ. Remember that people and organisations who have not been listened to in the past might want to tell you that before they share their experiences and views. Some might be nervous about sharing their views, wondering if that could have a negative impact on them. Some will be well organised and will have marshalled their evidence carefully beforehand. Others might be less adept at conveying their views, but will still have value to add.
>
> If an organisation seeks views, it should also be willing to say what happened as a result. A culture of taking needs to be balanced with a culture of giving – it is a simple courtesy to let people know what became of their input. Even if the decision goes against some views, a transparent explanation will benefit everyone."

What is best practice in relation to what information is recorded, by whom and how should it be used to support effective decision-making?

Whilst it might seem obvious that as a principle of good governance and transparency every piece of information should be logged and recorded, some submissions cited the need to retain space for people, organisations and communities to talk with honest candour. Professor Matthew Flinders response to this question concludes:

> "The most effective best practice framework would probably adopt a principle of recording information or submissions of evidence to decision-making processes but with some clear and limited capacity for informal advice or information to be offered. This may seem a little messy but, as I have mentioned, the real world of policy-making and decision-making generally is messy. One way of addressing this reality might to be focus less on pre-decision information recording and more on post-decision explanations that provide a clear and coherent rationale for the decision that has been taken."

Michael Dolan said "it might seem a controversial view but I don't think too much information should be recorded. Recording too much information can lead to a lack of focus on the end product, and a diminution of responsiveness to evolving circumstances."

Paul Gray said that it is best practice for there to be clear, transparent and routine system for recording information, but the following questions should be kept in mind:

- "Who decides what is recorded, and on what basis?
- Who records it?
- Who verifies the accuracy of the record?
- With whom is the record shared, and when, and on what basis?"

The Scottish Council of Independent Schools argues that greater weight should be given to bodies directly affected by a proposed measure "than those of standard pressure groups or interest bodies who may not be in any way directly affected by proposed measures."

Engender calls for better capturing, analysis, publication and use of gendered intersectional data. This "equality evidence" is critical to "ensuring equitable and evidence-based decision-making across all major policy portfolios."

Dr Helen Foster says there is no evidence to suggest that a central repository of experiences exists upon which policy makers can draw.

> "This leads to policy reinvention and the same mistakes been made again. There is a growing tendency for ministers to have unrecorded meetings

without civil servants being present or notes taken (Durrant et al. 2022). Inquiries undertaken by the PAC have provided evidence of the inadequacy of an audit trail, for example, the Westminster committee inquiry into the award of Covid contracts to Randox and the Northern Ireland committee inquiry into Renewable Heat Incentives. Transparency is good in itself, but Rutter (2022) argues that greater transparency would force the civil service to improve the quality of the policy advise it gives. Moreover, transparency and accountability function together (Harrison and Sayogo 2014).

The advice given and a justification for the decisions taken should be recorded, and published retrospectively as in New Zealand (Rutter, 2022)."

What does effective decision-making by the Scottish Government 'look like' and how should it learn from what has worked well and not so well? Please share any best practice examples.

The Scottish Council of Independent schools cite the Covid-19 pandemic as an example of how effective decision making can happen.

> "In many cases and periods, there was no established line of action or precedent to follow. Often, the views of groups directly affected were given prominence in establishing sensible and measured reactions rather than blanket, one-size solutions with unintended consequences. For example, look at the process of drafting and agreeing Covid guidance for the small but discrete boarding school sector during Covid - disproportionately affected by restrictions such as lockdown and with a high percentage of overseas students under 18, who required sensitive support."

The Scottish Women's Convention cited the Period Products (Free Provision) (Scotland) Bill as an "effective and efficient policy, that shows collaboration and dynamism at its best."

The SWBG highlight the importance of following up how decisions are implemented:

> "For example, the early learning and childcare expansion in 2021 was an effective decision in terms of addressing inequality but has since lacked flexibility in its implementation leading to problematic effects. In our Women's Survey 2022, we asked a question regarding this expansion. Of the 41 respondents who stated they were eligible for the free childcare hours, 29 were able to access the hours whereas 12 were not able to due to the hours of availability not matching hours of their work. Even though this was a small sample, it highlights some experiences of the lack of flexibility regarding the early learning and childcare expansion.

Furthermore, budgets. and funding are required to fully implement decisions. The evaluation of the Domestic Abuse Act just published by the Government has shown that this legislation has not had its intended impact. Whilst developing a law that recognises the importance of lived experience, there are wider issues that need addressed. Effective decision making should also promote transparency in their decision-making and this will be explored further in the next question."

The Royal Town Planning Institute (RTPI)

"commend the Scottish Government's Planning, Architecture and Regeneration Division's approach to consultation through the development of the National Planning Framework 4. An open and collaborative approach was taken from the very beginning of the process. However, given the importance of the delivery programmes in supporting the delivery of the national strategies, in future scenarios RTPI Scotland would advocate for consultations to include draft delivery programmes as matter of course."

The FAI cite the example of the Scottish City Region and Growth Deals team.

"Through the lens of climate change, it was clear that they understood the value of having strong Business Cases, economic appraisal and carbon assessment all in one framework. The latter they introduced through the secondment of a specialist whole life carbon consultant.

Fundamentally, it was clear that this team cared about the intention of processes and not just ticking a box."

Transport Scotland is also singled out by FAI as where there "seemed to be scrutiny of business cases, and while some analytical gaps existed, they were aware of them and actively working to mitigate them." FAI suggest this may be because Audit Scotland places a particular focus on Businesses Cases from Transport Scotland and this external check may support strong internal scrutiny.

In general terms FAI argue that effective decision making includes:

"• Setting clear objectives for policies (that go beyond simply spending money).
• Considering how policy options could impact statutory targets at the earliest possible point in policy development so that the policy direction can be readjusted if necessary.
• Creating an environment where delivering value for money is prioritised over spending money.
• Having clear decision-maker review points with sign-off.
• Ensuring there is scrutiny and oversight of proposed policies (incl. programmes/projects). This oversight should be checking that processes exist and are of sufficient quality, that processes are occurring at the intended time, that an appraisal of financial and social/environmental impacts have taken place, and that these impacts are acceptable.
• There should be a degree of centralised oversight to identify lagging areas in

government that need support and ensure that the "macro" side of government targets matches the sum of the "micro" side of policymaking across all directorates. That is, do individual policies add up to support government-wide targets."

To what extent should there be similarities or differences in the process for decision-making across the Scottish Government?

This was the question which garnered fewest comments. Most respondents to this question emphasised that there is no one-size fits all and that the purpose of devolution across the UK nations is to allow differences to emerge, whilst learning from each other.

Engender want "consistent and vastly improved use of EQIAs in a standardised and competent was across the Scottish Government." This should include gender and equalities competencies as "essential" components of job descriptions for policy analysts, researchers and others.

The Scottish Women's Convention argue for a consistent approach across Government.

> "Collaboration with the Scottish populace should be consistent, with lived experience being at the centre of policy creation. This can be ensured through regular consultation, while including stakeholder groups throughout the policy process. Furthermore, by maintaining a similar approach across Government, clarity can be provided around how decision-making occurs."

The RTPI argued for common "high-level principles of decision-making within the Scottish Government" which "should be tied to the National Performance Framework."

What role should 'critical challenge' have in Government decision-making, when should it be used in the process and who should provide it?

There was a wide consensus that critical challenge is a vital element of decision making, preventing group think and helping innovation. Professor Matthew Flinders notes that:

> "Positive critical challenge should be embedded within the culture of public service and is itself a sign of a healthy and confident public sector. The bigger question is how that 'critical challenge' is designed and delivered This brings

the debate back to a focus on the facilitation of mobility (or ideas, people and talent across traditional policy, professional and organisational boundaries)."

The SCVO raised a point (also mentioned in other submissions) that some in the voluntary sector may feel limited in their ability to "challenge government while receiving funding from them."

Paul Gray is of the view that while not possible to answer this question precisely, "challenge should come from people and organisations with skills and experience relevant to the issue." The challenge, when it comes, should come before the final decision is made.

Roger Mullin argues that without "critical challenge" (or his preferred phrasing of "encourage rigorous questioning") "it is too easy to reach a lazy consensus" which can be as a result of "groupthink".

FAI note the importance of internal and external challenge functions in decision making. Much of their work focuses on the incentives of civil servants, but they argue also for consideration of incentives in any challenge function.

> "A challenge function that comes only at the end of policy development may feel pressure to let policies pass, as redevelopment may take significant time by this point. Challenge functions must therefore be engaged early in the process and have the clout to ensure they can enforce this timing.
>
> Unfortunately, these practices do not appear to occur in many parts of the Scottish Government. Where challenge does occur, it occurs in bulk towards the end of policy development. We have heard that this challenge was primarily interested in the financial feasibility of funding policies and not in whether the policy has been well-developed, whether processes have been followed as intended, whether objectives other than spending money have been set, or even what the expected impacts of the policy are."

They point to significant divergence in the quality of decision-making processes between different parts of Government. The Scottish Government's relatively decentralised system of directorates has many advantages. However, FAI argue that it is perhaps time to consider that the lack of centralised oversight leads to this divergence.

> "This does not necessarily mean that an explicit Treasury function is required, but rather that a central team has the clout to challenge policy development standards across Government. Some areas with poor practices do not always realise that they are below the intended standard."

FAI note the importance of external challenge from groups like Audit Scotland, but comment that it can often be very challenging for FAI to scrutinise the Budget or other areas due to a lack of transparency in how decisions have been made and the data that has been used.

> "When invited on to working groups, whilst we have the opportunity to make points to officials and policymakers, the impact on actual processes and

decisions is difficult to see, which makes us question whether we have been consulted just so the Scottish Government can say they have involved us, rather than because they seek our input. This makes us question whether it is worthwhile to invest our (limited) resources in these processes.

Ultimately, our most effective critical challenge function comes from outwith the decision-making process by us analysing policy development independently of government. We seek to inform and involve government officials in the hope that our analysis can feed into internal processes at the appropriate time. This external scrutiny role is important, and we play an important role in informing the public and the media. However, the extent of our effectiveness in informing effective policymaking can be hard to judge."

Carnegie UK discuss how they are often asked to carry out the role of "critical challenge", but in recent years have had experiences "where we have been given the impression that civil servants (and sometimes Ministers) were supportive of our contributions, but ultimately unable to adopt the changes that we suggest." This, they argue, can undermine trust between civil society and Government.

What is considered to be the most appropriate way of taking account of risk as part of effective Government decision-making?

Professor Matthew Flinders argues that "the law of unintended consequences will always exist but should not prevent action or innovation…doing nothing is also a risk in many contexts and that a risk free society is impossible…it is important to ensure that a risk averse culture does not emerge."

"Public sector organisations are generally very bad at taking risks, and even worse at rewarding those who have successfully taken risks. Redefining failure is therefore an important part of the discussion. Being willing to fail - although politically problematic - is very often vital to the development of effective service innovations. Indeed, there is a strong argument for teaching young civil servants to 'fail early, fail big, learn to learn from failure'. This is something we are particularly bad at doing in the UK.

The second point is about rewarding success. Accountability processes (formal parliamentary and public/media methods) are generally blame-focused and focused on a 'Gotcha!' approach. A positive public administration approach would proactively seek to reward policy success and explore where it might be 'scaled-up', scaled-out or scaled-down. Too often ministers and public servants have what is termed a 'tin hat mentality' which is (for understandable reasons) reluctant to take risks. But having a healthy risk appetite - and being honest about the likelihood of 'positive failure' - is critical."

FAI argue that risks, uncertainties and optimism bias are well-documented features of policy making, so if policy development processes like business cases and economic appraisal are missing or poor quality, these risk-factors will not come to light.

FAI also argue that Governments need to be aware of how sensitive whole-of-government targets are to individual assumptions or policies. Citing changes to treatment of peatland emissions in the emissions inventory this year, FAI point out that "this single methodological change will make it significantly harder to achieve the Government's net zero targets."

> "In general, our view is that strong Business Case and appraisal processes help take account of risk. However, there does need to be an effort to align findings at the policy level with an understanding of how policies support government-wide targets."

Murray Blackburn Mackenzie argue that "risk registers are a good focus for risk assessment", but that risk assessment should not be side-lined as a separate activity. Government should risk assessing its decision-making all the time, as a mindset. It's a constant process that should be embedded in thinking."

The RTPI submission contends that "risk analysis should be embedded in Government decision making and incorporated from the outset of policy formation and continually monitored throughout the process, perhaps aided through process of developing corresponding impact assessments."

Audit Scotland believe that "no options are likely to be risk free, and decision makers must "be clear about what their appetite or and tolerance is for different sorts of risk."

> "While they would not wish to expose public services or service users to undue risk, an entirely risk averse approach is often unlikely to achieve the overall impact sought.

> High quality appraisal involves an objective assessment of such risks, including the risks that are present in maintaining the status quo. It also means the Scottish Government being clear about how it will look to mitigate and manage any risks, including its plans to monitor and respond if risks become issues that are experienced or circumstances otherwise change during implementation."

A similar perspective is offered by Paul Gray who agrees that "any decision which attempts to prevent every risk will stifle innovation."

> "What is critical is that risks are properly identified and costed as part of the decision making process. There is a great deal of evidence about optimism bias in project and programme management for example. In essence, programmes – both public and private sector – underestimate the likelihood and impact of risks, and make assumptions about the prospects of successful delivery which often turn out to be over confident. Hence, decision making should learn from similar decisions in the past.

In the same way as there are experts in the law, or finance, or engineering, there are experts in risk. They should be consulted in all high tariff decisions."

Roger Mullin states that "if I were an elected politician or adviser whenever someone used the term risk I would ask them two things. First, define what you mean in using the term risk, and secondly ask them to describe BOTH the probabilities and the outcome harms they are referring to. Then we can start making progress."

Children in Scotland cite the following ways in which risk can be take into account:

- conducting relevant impact assessments (building on existing data and evidence)
- commissioning research before making decisions when the evidence base is insufficient or unclear
- engaging widely with stakeholders through a variety of methods (roundtable discussions, public consultations, advisory groups, etc.)
- exploring a range of methods for engaging with the public about policy issues (including Citizen Assemblies)
- engaging those with lived experience of the policy issues being debated
- learning from international policy and evidence.

How can transparency of the decision-making process be improved?

The Children and Young People's Commissioner raises concerns around Scottish Government bill consultations being published without any draft legislation or concrete legislative proposals. This can result in ineffective pre-legislative scrutiny and poorly drafted legislation.

> "At the consultation stage, proposals are rarely published alongside a full Child Rights Impact Assessment (CRIA). This is unacceptable, inconsistent with legal obligations, and reduces the scope for effective scrutiny of legislative proposals."

The Commissioner also raises concern that government consultations are "not accessible, lack diversity in engagement, are not child-friendly or promoted in ways suitable to children". An inadequate consultation process can result in poorly drafted legislation. The Commissioner also criticises the Scottish Government's consultation e-portal which it says is designed with adults and organisations in mind, not for children and young people and does not seek to help them fully participate."

> "Article 12 of the UNCRC (UN Convention on the Rights of the Child) places positive obligations to ensure meaningful participation of children of all ages in relation to matters which affect them. Active measures must therefore be taken to create dedicated spaces for children and young people to engage in their own right and in ways that are accessible, informative, and fun."

Children in Scotland agree with this perspective, arguing there is a need to make complex evidence and data more understandable by sharing it through different

formats like video, infographics, easy-read documents and via translations. There is also a need to explain why certain decisions have been taken (this is also relevant to the question below).

Not surprisingly, Transparency International UK focused its remarks on the importance of transparency in decision making. Specifically, it called for sufficient resourcing of "open governance across Scottish decision making" as a way to provide foundations for establishing "key principles and best practice to support effective decision making."

The roadmap to achieve open governance consists of three key steps:

- Transparency and participation must be recognised as human rights.
- The institutional architecture, policies and practices must exist to fulfil these rights and allow for effective control and oversight.
- These policies and practices must be supported by the necessary tools and the available infrastructure.

Transparency International UK also calls for consideration to be given to:

- Revising and streamlining the Scottish Ministerial Code and Civil Service Code, with consideration given to also applying a consistent approach to the MSP code of conduct.
- Extending the Lobbying (Scotland) Act 2016 to cover all forms of communications, in line with registers in Ireland and Canada, to ensure that the focus is on the lobbying itself rather than the medium through which it is made.
- Extending the coverage of the lobbying register to include civil servants, at least at the senior level, who have significant influence over the policymaking process, in line with best practice in Ireland.
- Appointing an Anti-Corruption Champion to monitor risks of corruption in decision making and the application of open governance principles in decision making.

Volunteer Scotland raise the issue of consultations occurring after decisions have been made (the examples cited are the programme for government and the Budget), meaning there are limitations for people wanting to input.

> "Ideally, the Government should provide public notification at the earliest stage when strategies or legislation are being developed or reviewed to ensure stakeholders have the opportunity to inform its development from the outset…
>
> When making decisions, the Scottish Government need to ensure that the process for submitting relevant evidence and insight is transparent and consistent. Similarly, if there is a need to make decisions without external input, the reasons for this need to be equally transparent."

In answering this question, FAI call for

1. Better documentation of processes and explanation of how this can be applied practically. Learning in this areas from other governments, like New Zealand.
2. Better access for Audit Scotland to scrutinise processes. Maintenance of a centralised database of projects and programmes, which Audit Scotland could interrogate, identifying gaps in processes.
3. Look at example of [New Zealand Government's decision to proactively release Cabinet Papers](#) – allowing the public to view why decisions occurred and the information leading to them.

The SWBG argue that currently, there is a lack of transparency about how Equality Impact assessments and Fairer Scotland Duty Assessments are used within the budget process.

> "There has not been consistent publication of the impact assessments by all government departments in previous years so it is not possible to fully scrutinise the process. SWBG looks forward to these publications and to improving openness in the impact assessment processes that are used within decision making. The Equality and Fairer Scotland Budget Statement (EFSBS) should act as a way of documenting the analysis that informs the budget decisions providing a clear relationship between how decisions in the budget are driving towards the National Performance Framework. This would serve again to make the relationship between impact assessments and decision making more transparent to the public. What is critical is that such processes are used to inform decision making and not be conducted at the end of a decision-making process and made to fit a decision already taken. Again, the recommendations set out by EBAG include recommendations on the process of the budget which would allow for greater understanding of the impact of past spend and budget allocations. Including, in-year reports, a mid-year review and work with public authorities funded through the Scottish Budget to develop processes to report impact of spend.
>
> SWBG also recommends producing a Citizen's Budget that links the budget announcements with everyday life. This would be an important step forward for the Scottish Government, making it a leader within the UK in transparency of budget information."

Carnegie UK suggest that the transparency of the budget could be improved, made all the more important given the move into another period of budget restrictions.

> "It is imperative that the public and those that advocate for them are able to assess the quality of the evidence produced by civil servants to justify spending decisions. Transparency in decision-making would be greatly improved by opening up policy appraisal to greater involvement, scrutiny and debate."

Professor Jonathan Baron says the level of transparency depends on the decision.

"Transparency is important when an individual or small group makes decisions that affect a much larger, and possibly more diverse, group. However, secrecy is important for other decisions, such as those involving hiring, promotion, or assignment of people to roles, or decisions involving competition with an outside group, especially military decisions. Secrecy is easier when the decision-making group is smaller. Larger groups are more likely to leak. Transparency is usually needed for rule making, but it can be important for case-by-case judgments too, as when judges write "opinions" justifying their decisions."

Not surprisingly, the Audit Scotland submission calls for "clear audit trails" and the importance of "writing down and retaining what has been decided and why" allowing others to look back and understand the "rationale and the processes" that led to decisions being taken.

Paul Gray sets out what he considers to be the options around improving transparency:

- "One option would be for all advice on decisions to be made public much more quickly than it is at present. Currently much advice is governed by conventions like the 30 Year Rule. On a personal note, as a public servant, I would have no objections to my advice being made public – subject of course to important considerations about the rights of individuals to confidentiality, for example.
- If the distinction between facts, analysis, and judgement is observed, another approach would be to be proactive in publishing the facts and analysis quickly.
- For key decisions, it could be required that a Decision Report is published, setting out the facts, analysis and recommendations that were taken into account, and the basis on which the final decision was reached. These reports could be published when the decision is made, or Decision Reports for a year could be published and scrutinised along with the annual accounts.
- There is one point I want to underline. The government of the day is not obliged to agree with the civil service. The government is elected, whereas the civil service is appointed. That distinction confers decision making powers on the government, which are not vested in the civil service. One issue which would militate against increased transparency would be the prospect that every time the government did not agree precisely with the advice of the civil service, this was characterised as a problem. It is in fact the opposite of a problem – it indicates a healthy relationship in which disagreement is possible, and where decisions are taken by the people elected to take them."

The Federation of Small Businesses (FSB) calls for greater transparency in Scottish Government budgets, citing the lack of transparency in how funding for business support during the pandemic was actually spend. They also call for more consistent and comparable presentation of budgets over years.

"We believe robust and transparent financial and performance reporting on the part of government is key to supporting the long-term decision making required for economic recovery and future growth."

The Children and Young People's Commissioner also raises concerns around the transparency of the Scottish budget – "children are still not visible in the latest Scottish Budget".

"There is a need for transparent, and accessible financial information in a sufficient level of detail. This is required to facilitate a child's rights analysis of the budget and determine impact on progressive realisation of economic and social rights.

In line with recommendations from the UN Committee on the Rights of the Child, it is important that Scottish Government data identifies the components of the Scottish Budget that are allocated directly and indirectly to children."

How can decisions by the Scottish Government be more effectively communicated with stakeholders?

Use of social media was cited as an effective way for the Scottish Government to reach a wider range of people and stakeholders.

Murray Blackburn Mackenzie talks about "an emerging "them and us" culture visible in parts of the Scottish Government… Those who disagree with government are as deserving of timely, accurate, courteous communication as those who do not."

FAI point to the opaque nature of much of the Scottish budget documentation which make it difficult to understand how budgetary decisions are linked to government priorities and ultimately the outcomes that Government is prioritising.

"Better and more consistent processes should make it possible to communicate more routinely the strategic fit for decisions and the rationale behind the particular policy options that are chosen. However, this must go hand in hand with a willingness to fully commit to transparency."

Audit Scotland sees it as "critical that taxpayers, users of public services and organisations across Scotland have clear and accessible information about that the Scottish Government had decided to do (and not do), the reasons for this and impact that this is likely to have on them."

"Planning the way this happens as part of a wider communication strategy should generally be a key part of any project or initiative. This should also make it clear when people should expect to find out about the decisions that are likely to affect them."

The SWBG say that people need to feel that information is created for their engagement in the process rather than only formal consultation processes. It is also

"important that people understand how the government makes decisions about what it prioritises and why."

"Formal consultation processes provide an important element of participation but the initiative to reach wider groups sits with organisations who may not have specific funding to participate in the processes, this initiative should sit with Government and Parliament to ensure meaningful participation is an option. This could be done through funding to particular organisations to reach out to key stakeholders, examples such as the work of the Inclusion Scotland People led policy panel supporting consideration of the National Care Service is just one option that could be considered.

The Scottish Government has committed to draw on expertise from groups including the Equalities and Human Rights Budget Advisory Group (EHRBAG) to support consideration on budget processes going forward. Within this process, ensuring particular efforts are made to hear from those who are marginalised and often excluded from such processes is vital. For example, ensuring that disabled women, women from ethnic minority communities, women on low incomes and carers are heard in the public conversation is particularly important from a gendered point of view. Organisations such as the Glasgow Disability Alliance have highlighted the importance of disabled women's voices and the role of disabled people's organisations in the formation on policy. Furthermore, resources could also be published using plain English guides or easy read to make them accessible.

Recent work by the SPiCE unit offer good examples of trying to make budget information more accessible. Tracking budget spend once the budget has been delivered is an important step which at present there is a serious lack of public information on. This makes scrutiny and evaluation of budget spend difficult for external organisations or individuals. The complexity of spend in some areas through multiple public bodies contributes to the difficulty in accessing clear information. As part of wider budget scrutiny measures the Committee should look at budget review processes and tracking the impact of spend against national outcomes."

Ross Burnside, Senior Researcher, SPICe Research
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