

Dear Stakeholder

Consultation on the role of a Scottish Futures Trust in infrastructure investment in Scotland

The enclosed consultation paper sets out the Scottish Government's thinking on the Scottish Futures Trust initiative and seeks comments on its proposals.

The paper concludes by setting out a number of questions on which we would welcome your responses. But your answer need not be confined to a response to these questions: we would also welcome any general comments you may wish to offer on the proposals contained in the paper. We would be grateful if you could clearly indicate in any general comments which parts of the consultation paper you are responding to as this will assist our analysis of the responses received.

Consultation

This consultation, and all other Scottish Government consultation exercises, can be viewed online on the consultation web pages of the Scottish Government website at <http://www.scotland.gov.uk/consultations>. You can telephone Freephone 0800 77 1234 to find out where your nearest public internet access point is.

The Scottish Government has an email alert system for consultations ([SEconsult](http://www.scotland.gov.uk/consultations/seconsult.aspx) : <http://www.scotland.gov.uk/consultations/seconsult.aspx>). This system allows individuals, stakeholders and organisations to register and receive a weekly email containing details of all new consultations (including web links). SEconsult complements, but in no way replaces Scottish Government distribution lists, and is designed to allow stakeholders to keep up to date with all Scottish Government consultation activity, and therefore be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

Handling your response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the **Respondent Information Form** enclosed which will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

What happens next?

Where respondents have given permission for their response to be made public (see the attached Respondent Information Form), these will be made available to the public in the Scottish Government Library within 20 working days of the closing date and on the Scottish Government consultation web pages at <http://www.scotland.gov.uk/Consultations/Current> shortly after. We will check all responses where agreement to publish has been given for any

potentially defamatory material before logging them in the library or otherwise publishing them. You can make arrangements to view responses by contacting the Scottish Government library on 0131 244 4565. Responses can be copied and sent to you, but a charge may be made for this service.

Completed information

We are inviting responses to this consultation paper by 14 March 2008. Please send your completed Respondent Information Form, your responses to the consultation paper questions and any general comments to: fiona.mclellan@scotland.gsi.gov.uk

or write to: Fiona McLellan
Financial Partnerships Unit
Scottish Government
3B Bridge
Victoria Quay
Edinburgh
EH6 6QQ

What happens after that?

Following the closing date, all responses will be analysed and considered along with any other available evidence to help finalise how the Government intends to proceed.

Comments and complaints

If you have any queries or comments about this consultation exercise, please contact, Sandy Rosie, Director, Financial Partnerships, Unit 3 B Bridge, Victoria Quay EH6 6QQ. Sandy.Rosie@scotland.gsi.gov.uk.

Yours faithfully

SANDY ROSIE

SCOTTISH FUTURES TRUST: CONSULTATION PAPER

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Foreword

By the Cabinet Secretary for Finance and Sustainable Growth



The SNP entered government with a firm belief that there was a better way to fund our vital public infrastructure than traditional costly PFI.

We knew reform of PFI was essential to delivering the infrastructure Scotland needs to raise our economic performance and create the wealthier, smarter, greener and healthier nation that we all seek.

This paper sets out our plans for that better model for public procurement – a model that as a first step will direct the excess profits made from traditional PFI funding back into our communities and as a second will secure savings for the public purse through greater partnership, improved management and better value borrowing.

Together this is a package that will deliver clear short and long term benefits for Scottish taxpayers and for our public services – it is a package that secures best value and the best outcomes.

As a start, by making non-profit distributing organisations the core of public-private partnerships, we can remove the element of PFI that delivered the most extreme and unwarranted profits.

And then, as we work to the next stage of the Scottish Futures Trust, we will build up the potential of the public sector in Scotland to secure both the best deals and the best financing. These twin pillars of best value are central to our approach.

The consultation paper sets out in more detail the Government's proposals for the Scottish Futures Trust initiative and seeks general comments as well as a response to some specific questions. I hope you will take the opportunity to let the Government have your thoughts on this important subject.

Scotland has a proud history of developing financial models that serve the needs of today and stand the test of time - we know how finance works and through the Scottish Futures Trust we can make it work better for the people of Scotland.

A handwritten signature in black ink, which appears to read "John Swinney". The signature is written in a cursive style with a long horizontal stroke at the end.

John Swinney MSP

Cabinet Secretary for Finance and Sustainable Growth

CONSULTATION PAPER ON THE ROLE OF A SCOTTISH FUTURES TRUST IN INFRASTRUCTURE INVESTMENT

1. Introduction

1.1 The purpose of this consultation paper is to set out the Scottish Government's thinking on the role of the Scottish Futures Trust (SFT) initiative in infrastructure investment in Scotland, and to invite views on the proposals. To this end it:

- clarifies what the SFT concept entails;
- sets out the Scottish context against which the use of such an investment vehicle should be considered;
- describes the challenge which SFT will seek to address;
- sets out the Government's strategy; and
- proposes the development of a new investment vehicle

1.2 The paper concludes by setting out questions on which the Government would welcome your views. The answers to these questions, together with general comments on the proposals submitted by respondents, will be taken into account in finalising how the Scottish Government intends to proceed.

2. What exactly is the Scottish Futures Trust concept?

2.1. The Scottish Futures Trust is a Scottish Government initiative whose main aim is to provide alternative means to PFI* for channelling public and private capital into infrastructure investment programmes and projects in Scotland. It will provide a better deal for taxpayers than that currently being provided by PFI by combining the opportunities for maximising investment levels with those for securing cheaper funding costs.

2.2. However, it would be possible to extend this base remit for SFT to include the provision of a number of other services ranging from investment planning and project delivery to asset management. Such options are dealt with later in this paper.

3. Infrastructure investment – the Scottish context

3.1 The Scottish Government is committed to creating a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth. As highlighted in the Government Economic Strategy, the Government recognises the key role of efficient investment in Scotland's physical and electronic infrastructure toward achieving this aim.

3.2 All levels of government in Scotland have a duty to create and maintain the assets which underpin public services and economic activity, and they have a duty to ensure value for money through the most efficient forms of delivery and to provide for the long-term protection of these assets. While a significant start has been made since devolution to

*see Glossary

improve the fabric of Scotland, there is still a substantial task facing the Government to redress the decades of underinvestment in Scotland's infrastructure in the pre-devolution years.

3.3. Around 10% (upwards of £3 billion) of the Scottish Budget each year is currently devoted to 'capital' expenditure – most of which relates to the creation, replacement, or renewal of infrastructure across the range of Government responsibilities. This figure includes funding for the health service, Scottish Government support for local government, and Scottish Water borrowings.

3.4. The bulk of investment is through conventional 'capital' procurement, but some 2% (£0.5 billion) of the Scottish Budget is also committed to annual 'revenue' payments (the "unitary charge") required to meet existing contractual PFI repayments.

3.5 Under UK fiscal policies, there is a cap set by Treasury on what the Scottish Government, other devolved administrations and Whitehall Departments can spend on capital projects. This is designed to meet the UK's judgement and obligations as to what level of borrowing and investment can be sustained by the UK Government as a whole, and is in practice managed through the setting of public expenditure baselines in periodic Spending Reviews. However, PFI projects have counted as funding and assets of the private sector contracted partner, rather than of the public sector. This has meant a significant addition to the provision of public service facilities over the last 15 years – in Scotland projects with a capital value of some £5.3 billion contractually committed or in operation - on average the level of capital investment per year has increased by upwards of £300m.

4. Weaknesses in present arrangements

4.1. The Scottish Government welcomes the involvement of the private sector in infrastructure investment. It recognises the benefit of partnership between the public and private sectors, the value of private sector know-how and the due diligence it provides through having private capital at risk as well as the additionality their investment brings on top of public sector investment. However, it does not support the use of the standard PFI model to achieve this.

4.2 The Government considers the costs of projects which use the standard PFI model to be expensive and views the returns which the private sector equity* participants can realise as excessive, especially those obtained during the contract period and which have not been factored into the initial procurement and value for money assessments.

5. Challenge facing the Scottish Government

5.1 The Scottish Government has therefore committed to introducing the Scottish Futures Trust initiative. The objectives of the SFT initiative would be to:

- provide lower cost funding for projects and programmes than PFI;
- operate on non-profit distributing principles; and

*see Glossary

- continue to provide the additionality of public service facilities investment in Scottish infrastructure through private sector investment (paragraph 3.5).

5.2 The Government would like to see the initiative provide for individuals to make tax-exempt investments in Scotland's infrastructure and for the injection of oil revenues into this strategically important task. However, it recognises its current lack of powers to take forward these elements within the UK legislative and fiscal framework.

5.3 The Government has recently embarked on a National Conversation with the people of Scotland to discuss our constitutional and fiscal future and our aspiration over the long-term is to introduce as soon as practicable the additional investment capability which the measures described in paragraph 13 would offer. In the meantime, the following proposed SFT developments provide a platform for future enhancements of this nature.

6. Constraints

6.1 In taking the SFT concept forward the Government recognises that it has to operate within the constraints of a devolved administration. More specifically the Scottish Government has no borrowing powers under the terms of the Scotland Act.

6.2 Another new and significant potential constraint which needs to be factored into our thinking has emerged. From April 2008 the UK Government has committed the UK as a whole to move to accounting under the International Financial Reporting Standards. EU Member States are also committed to introducing these new standards.

6.3 These new accounting rules will change the basis on which the balance sheet position of PFIs is assessed and hence could potentially affect the decision on whether or not a project will score as public expenditure. Hence the changeover to IFRS is likely to make more difficult the task of designing an SFT which would continue to provide the additionality of investment in public service facilities which has been secured through private sector investment over the last 15 years. Accordingly, the SFT proposals in this paper will be developed in the light of the final IFRS outcome.

7. Development path

7.1 Recognising these constraints and the lead times involved in setting up any new investment vehicle, the Government views the SFT initiative as a development path moving from the present position in a series of stages to the realisation of all of our objectives, rather than a big bang approach.

7.2 The Government's starting point along this path has been a pragmatic one. It has taken action to protect those investments which were planned and put in place by the previous administration excepting only those few which quite simply did not meet the policies and priorities on which it was elected. The logic behind this approach is that these procurements are already expensive without the costs of re-starting, the delays that would be involved in completing the projects and, flowing from the delays, the reduction in buying power caused by the impact of construction inflation. That means that the "mixed economy" of delivery

methods used by the previous administration has inevitably run on. But this does not mean that delivery options will be left as before.

7.3 The Government has now moved into the second phase of the development path. For all new projects where the value for money assessment of a project or programme suggests that the use of private sector finance and delivery expertise combined with risk transfer, would be beneficial, the Non-Profit Distributing* (NPD) model will be used. NPD has already been extended from schools into the health sector and its use is expected to be extended to other sectors. The scope for uncapped investor returns as in the "standard PFI" has been discontinued and will only be considered in rare circumstances where the risks involved in a project are exceptionally high.

8. Design issues

8.1 In deciding how best to achieve the objectives set for the SFT investment vehicle (paragraph 13) the first consideration is the shape and positioning of the vehicle on the public/private spectrum.

8.2 One of the difficulties in attempting to devise a single body which secures all of the primary objectives is that there is a tension between securing cheaper funding costs on the one hand and continuing to secure the additionality of private sector investment on the other.

8.3 To secure the best borrowing rates, any SFT investment vehicle should be placed in the public sector and have clear government backing. This placement would offer the prospect of access to government funds such as those available at low rates from the Public Works Loans Board (PWLB) and strengthen its credit rating* when seeking to raise funds on the commercial money markets, for example by use of "municipal bonds"

8.4 Conversely, to secure the additionality of private sector investment, the vehicle would need to be positioned in the private sector, and, drawing on a provisional interpretation of IFRS, demonstrate it was independent of the public sector and was able to control the assets it creates.

8.5 Having taken this consideration into account, the Government has decided to introduce a body which is private sector classified but which has a public interest ethos. The decision to place SFT in the private sector seeks to build greater flexibility into the investment vehicle. It would also harness commercial know how and disciplines as well as offering the prospect of a significant annual addition to overall investment.

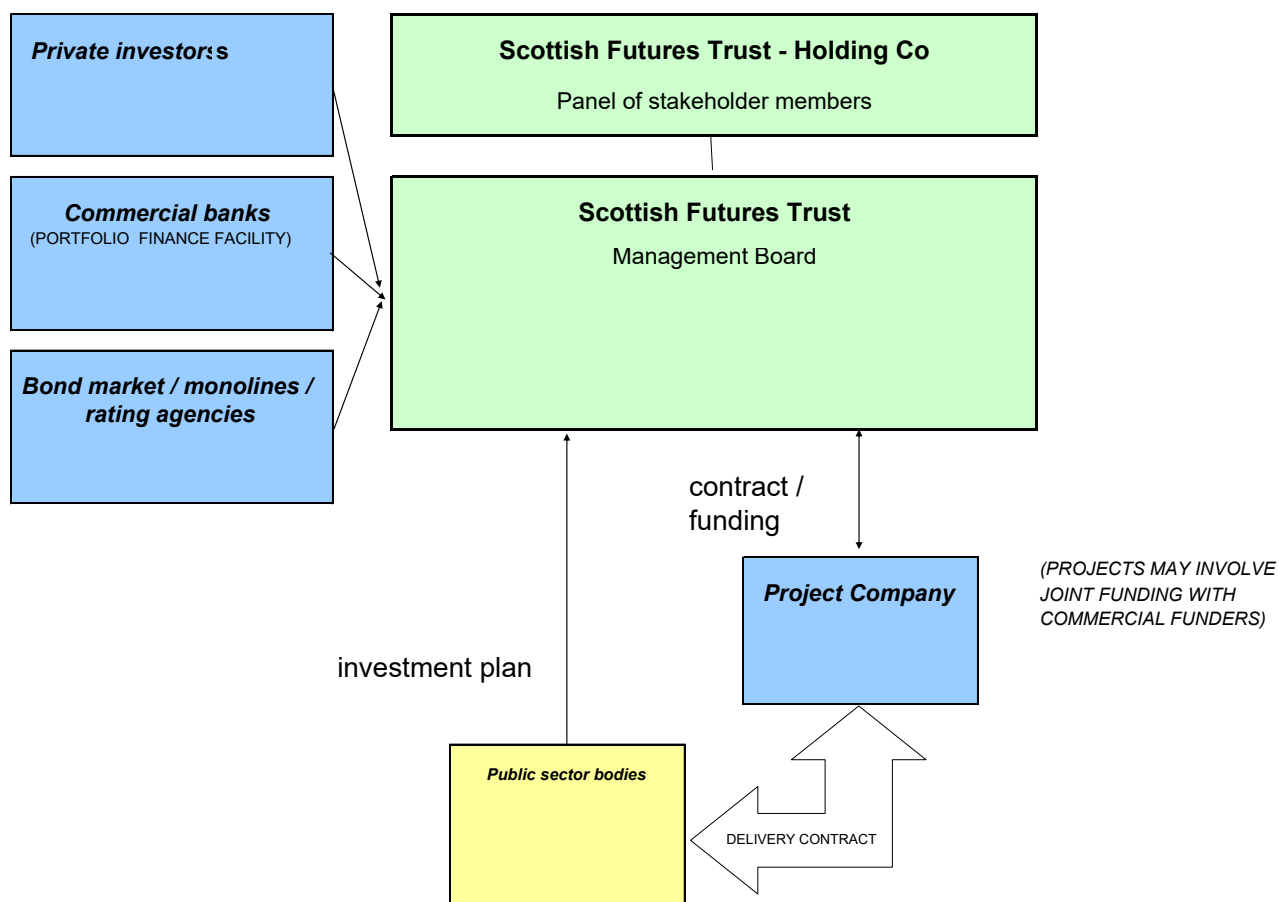
9. What would the new body look like and what would it do?

9.1 SFT is expected to be a limited company. The intended outline structure is set out below at Figure 1. The membership of the holding company will be representative of the Scottish public interest and have responsibility for appointment of the Board. The Memorandum and Articles of Association of the company would confine its activities to providing infrastructure within Scotland. In doing so the company would be constrained to the business of planning

*see Glossary

and supporting the delivery of national and local infrastructure plans published from time to time.

FIGURE 1 - STRUCTURE OF SCOTTISH FUTURES TRUST



9.2 SFT will be run on non-profit distributing principles and would obtain its funding through bonds and other appropriate commercial financial instruments at rates which would be cheaper than those involved in PFI procurements.

9.3 It will undertake the following range of functions:

- provide serviced assets to public authorities and others who provide public services;
- provide private finance to those who provide public services;
- provide other related financial services at cheaper cost through aggregation of demand;
- provide a centre of expertise for best practice advice and support to public authorities on the planning and delivery of infrastructure investment projects;
- provide co-ordination and support for the provision of shared infrastructure; and
- provide a forum and focus for public and private sector market engagement.

It is envisaged that in practical terms SFT will require to build up to a position where it offers the full range of services and secondly that the range of services used by individual authorities will vary depending on the public sector client.

9.4 The company would use margins around commercial lending rates to meet its costs and there might be a case for setting it up to generate surpluses for investment in further projects. There would be no uncapped equity returns under the SFT Articles of Association.

Provision of facilities to public authorities

9.5. There is no intention to transfer existing public sector facilities to this body although some strategic land assets could be transferred. For new projects only, the SFT vehicle could design, build, finance, operate, manage and own the facilities created. The corollary to this is that although the public authority would have use of the new facilities (schools, hospitals, transport infrastructure) it might not own them.

9.6 Public authorities seeking to make use of SFT facilities would be able to participate in advance discussions about the specification of energy efficient and sustainable exemplar designs which SFT would use as the starting point. A further aim would be to increase the flexibility of the use and maintenance of facilities compared to that currently available through PFI.

9.7 Before embarking on the design and construction of a facility, the SFT investment vehicle would conduct due diligence* over the business case outlining the public authority's needs and the funding commitment.

Provide cheaper private finance than PFI

9.8 Where public authorities choose to source funding from the commercial money markets there are gains to be had from aggregation of demand and of debt management. For example, SFT might act as adviser and agent for authorities in order to optimise borrowings through the issue of municipal bonds. Its expertise could also assist in the management of existing partnership contracts and borrowings. An SFT investment vehicle would seek to co-ordinate authorities' requirements before seeking finance. From the market perspective, providing finance for a mixed portfolio of projects would spread the risk involved and is likely to assist in minimising the overall cost of funds.

Provide other related financial services at cheaper cost through aggregation

9.9 It is expected that the body's powers of aggregation would be applied to uses other than solely achieving the optimum borrowing rates. It might, for example, act as a risk taker and organiser in order to achieve a reduction in insurance costs required to cover some elements of projects.

Provide a centre of expertise for advice and support to the public sector

9.10 The experience and expertise held by public bodies in planning and delivering major infrastructure investments varies from one to another. A shortfall in in-house expertise can mean that the planning and delivery of projects often does not have a clear focus and either takes a disproportionate time to come to the starting line or alternatively is taken to the

*see Glossary

market too early and results in significant re-scoping during procurement. The net effect on the project in both cases is to delay significantly the procurement process and the consequence of such delays is an erosion of buying power due to construction inflation eg a £50m project delayed by a month means a £250,000 loss in value/increase in budget at current construction inflation levels.

9.11 However, the specialist skills required to handle large scale infrastructure investment projects and programmes are scarce and expensive. The Government believes there is considerable potential for efficiency gains if the SFT investment vehicle were able to provide project planning and delivery advice and support to public bodies as well as applying due diligence on the readiness of projects to be released to the market. It would also be consistent with the shared services approach being adopted across government and the need for 2% efficiency savings across the public sector as part of the spending review outcome. The Government would therefore expect that all of the public sector would wish to co-operate with SFT and it would monitor SFT's use and impact routinely.

10. Early focus

10.1 SFT will operate across the whole public sector spectrum but as an early focus over the next few months the Government will be exploring with the primary health care, schools, housing, higher and further education and local government sectors how, more specifically, SFT can contribute to achieving the Government's objectives in these areas. The outcome of these discussions will be fed into the consultation exercise and taken into account along with the consultation responses in the final design of the Scottish Futures Trust investment vehicle.

11. Conclusion

11.1 The Scottish Government considers the proposals in this paper to be a sound basis for establishing a new infrastructure investment vehicle which will replace the stark choice between conventional and PFI methodology currently available. Some aspects of the proposals for SFT set out in this paper give rise to questions. These are listed below on page 15. You need not confine your response to the answers to these questions and any general views on these proposals and on the general aim of how to maximise the contribution of the SFT initiative to Scotland's infrastructure needs would be most welcome.

11.2 Your answers to the questions on page 15 and general comments together with the outcome of our parallel discussions (paragraph 10.1) will be taken into account in finalising how the Scottish Government intends to proceed. All responses will be fully considered as we move forward to the next stage of Business Case development and implementation of SFT in 2008.

12. Glossary

Credit rating

An indication by a Credit rating Agency of an entity's long-term or short-term credit worthiness. A long-term rating of Aaa/AAA is the most creditworthy (eg the UK Government). BBB represents the minimum investment grade rating.

Due diligence

The process of investigation performed by investors into the details of a potential investment. Due diligence is likely to be carried out on the legal, technical, insurance and financial aspects of a project

Equity

Ordinary share capital invested in the project company by the sponsors and any third party investor. Typically equity has the last claim upon the project's income, hence the highest risk and is therefore the most expensive source of finance.

NPD

The Non-Profit Distributing (NPD) model is a form of public private partnership but unlike PFI it is 100% debt financed. This means that there are no uncapped equity returns and that any surpluses in the delivery vehicle flow into a charitable body for community use. The model also provides for stakeholder representation on the Board of the delivery vehicle.

PFI

The Private Finance initiative was launched in 1992. PFI projects are one type of PPP project. The principle of PFI is a public sector body obtains a service rather than an asset. A private sector contractor funds any asset required and is then paid for the services provided. Usually payments will be made by the commissioning authority, but in some projects, payment, either in part or in whole, will be made by the users eg toll bridges, etc

PPP

Any contractual arrangement involving a partnership between the public and private sectors ranging from joint ventures to PFIs.

13. Respondent Information Form

Questionnaire

THE ROLE OF A SCOTTISH FUTURES TRUST IN INFRASTRUCTURE INVESTMENT

RESPONDENT INFORMATION FORM

Please complete the details below and return it with your response. This will help ensure we handle your response appropriately.

Thank you for your help.

Name:

Postal Address:

1. Are you responding: (please tick one box)
- (a) as an individual go to Q2a/b and then Q4
- (b) **on behalf of** a group/organisation go to Q3 and then Q4

INDIVIDUALS

- 2a. Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government website)?

Yes (go to 2b below)

No, not at all We will treat your response as confidential

- 2b. Where confidentiality is not requested**, we will make your response available to the public on the following basis (**please tick one** of the following boxes)

Yes, make my response, name and address all available

Yes, make my response available, but not my name or address

Yes, make my response and name available, but not my address

ON BEHALF OF GROUPS OR ORGANISATIONS:

- 3 The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government website). Are you also content for your **response** to be made available?

Yes

No We will treat your response as confidential

SHARING RESPONSES/FUTURE ENGAGEMENT

- 4 We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for the Scottish Government to contact you again in the future in relation to this consultation response?

Yes

No

14. Consultation Questions

SCOTTISH FUTURES TRUST (SFT) QUESTIONS

1. How would the availability of expertise and support from SFT change the way public bodies handle infrastructure investments?

.....
.....

2. What are the advantages and disadvantages in setting up SFT to generate surpluses to invest in further projects?

.....
.....

3. What are the advantages and disadvantages in public authorities entering into agreements with SFT for the use of facilities?

.....
.....

4. What would be the advantages and disadvantages of using a greater degree of standardisation based on exemplar, energy efficient, sustainable designs to meet public authority requirements?

.....
.....

5. Are there any difficulties envisaged in transferring/selling public sector owned sites to the SFT investment vehicle for use in providing the new facility?

- No
- Yes

Please explain.....
.....

15. The Scottish Government Consultation Process

Consultation is an essential and important aspect of Scottish Government working methods. Given the wide-ranging areas of work of the Scottish Government, there are many varied types of consultation. However, in general, Scottish Government consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways that will inform and enhance that work.

The Scottish Government encourages consultation that is thorough, effective and appropriate to the issue under consideration and the nature of the target audience. Consultation exercises take account of a wide range of factors, and no two exercises are likely to be the same.

Typically Scottish Government consultations involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the issue, and they are also placed on the Scottish Government web site enabling a wider audience to access the paper and submit [their responses](#). Consultation exercises may also involve seeking views in a number of different ways, such as through public meetings, focus groups or questionnaire exercises. Copies of all the written responses received to a consultation exercise (except those where the individual or organisation requested confidentiality) are placed in the Scottish Government library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4565).

All Scottish Government consultation papers and related publications (eg, analysis of response reports) can be accessed at <http://www.scotland.gov.uk/Consultations/Current>. The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process, along with a range of other available information and evidence. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

Final decisions on the issues under consideration will also take account of a range of other factors, including other available information and research evidence.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

16. Organisations consulted

Banks and other financial sector
Bond market companies
Financial advisers
Legal advisers
Technical advisers
Consultants
Federation of Small Businesses
CBI Scotland
Institute of Directors, Scotland
Scottish Financial Enterprise
PPP industry companies
 Construction
 FM
PPP Forum
Scottish Construction Forum
COSLA
Local authorities
Scottish Funding Council
Universities
FE Colleges
Scottish Water
STUC
Health Boards
Scottish Parliament Reference Centre
Clerk, Finance Committee Scottish Parliament
Scottish MEPs
Equal Opportunities Commission
Commission for Racial Equality
Disability Rights Commission
Historic Scotland
Scottish Enterprise
Highlands and Islands Enterprise
Transport Scotland
Scottish Prison Service
Scottish Court Service
Scottish Enterprise