



**The Scottish
Government**

Guide to Collective Decision Making

**SCOTTISH GOVERNMENT
November 2008**

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Note: References in the guide to “the Cabinet” are references to the Scottish Cabinet. References to “the Scottish Ministers” include the Law Officers; References to “Ministers” generally include the Scottish Cabinet Secretaries, other Ministers and the Law Officers unless a different meaning is intended from the context.

PREFACE

The Scotland Act makes clear that any act or omission of any of the Scottish Ministers shall be treated as an act or omission of them all. This concept of the collective responsibility of the Scottish Ministers requires that procedures are in place, and are adhered to, for collective decision-making. This Guide sets out the principles of and procedures for collective decision-making. It works on the premise that:

- ◆ All the business of the Government, including decisions, announcements, expenditure plans, proposed legislation and appointments, engages the collective responsibility of the Government as a whole and must be handled with an appropriate degree of consultation and discussion so as to ensure the support of all Ministers;
- ◆ Ministers have the opportunity to express their views frankly as decisions are reached;
- ◆ Opinions expressed and advice offered within the Government remain private;
- ◆ Decisions of the Government are binding on and supported by the Scottish Ministers;
- ◆ Mechanisms for sharing information and resolving disputes are followed.

The following pages provide detailed guidance for colleagues on arrangements for supporting collective decision-making by the Scottish Ministers. These arrangements are designed to facilitate the efficient and effective conduct of business within the Government and it is important that all staff who are involved in working with Ministers are familiar with the guidance and implement it appropriately when taking forward work on issues on which a Ministerial decision is required.

The Cabinet Secretariat should be approached for advice in any case where there is doubt about the most appropriate way of handling such issues.

SIR JOHN ELVIDGE KCB
Permanent Secretary

2008

1. DECISION-MAKING IN THE SCOTTISH GOVERNMENT

Introduction

1.1 This Guide:

- (a) Outlines the arrangements for supporting collective decision-making within the Scottish Government;
- (b) Explains the role of the First Minister in the decision-making process; and
- (c) Explains the role that the Cabinet Secretariat plays in supporting these arrangements.

It builds upon the guidance set out in the [Scottish Ministerial Code](#).

Collective Responsibility

1.2 The Scottish Government operates on the basis of collective responsibility. This means that all decisions reached by the Scottish Ministers, individually or collectively, are binding on all members of the Government. It follows from this that every effort must normally be made to ensure that every Minister with an interest in an issue has a chance to have his or her say – in an appropriate forum or manner – before a decision is taken. It also means that the Scottish Ministers should have access to all the information held by the Government which they require in connection with their duties either as a Minister with specific functional responsibilities or as a member of a Government which accepts collective responsibility for the actions of all its members.

1.3 Some decisions taken by the Scottish Ministers - for example, decisions taken by them in a quasi-judicial capacity, such as decisions on planning appeals – may however require to be handled differently from other decisions in order to ensure that the process through which the decision is made does not provide grounds which might support an action challenging the decision in the courts. In some cases this may impose constraints on the extent to which the Minister to whom the function of taking the decision has been allocated can engage in collective discussion of the issue in question before the decision is made, although collective responsibility will apply to the decision once it is announced. Anyone who is in any doubt about how a particular decision should be handled should seek advice from the Scottish Government Legal Directorate (SGLD).

1.4 The key objective of the arrangements for supporting collective decision-making within the Scottish Government is to enable Ministers to reach clear, defensible and consistent decisions on the matters which they need to settle collectively in order to achieve their political objectives and fulfil their statutory and legal obligations.

1.5 It is clearly important that all officials supporting Ministers play their part in enabling Ministers to work together effectively in the spirit of collective responsibility.

The aim is to avoid a situation where Ministers engaged in collective decision-making do so on the basis of separate, and potentially conflicting, policy advice put forward by different Directorates. Officials can help by:

- (a) Keeping relevant colleagues in other Directorates informed of business which overlaps Ministerial portfolios (including SPQs which touch upon the responsibilities of more than one Minister);
- (b) At an appropriate point in the decision-making process, discussing and clearing with relevant colleagues advice and briefing to Ministers. Advice put to Ministers should be agreed collectively among the relevant officials and should where necessary spell out areas of tension between different policy objectives;
- (c) Developing policy based on evidence, and ensuring Ministers are advised of both the positive and negative implications of decisions – so that resulting policies can be agreed on the basis of full information, and are sufficiently robust to withstand external challenge;
- (d) Keeping the Cabinet Secretariat informed about issues which might require collective consideration by Ministers;
- (e) Ensuring advice put forward to their portfolio Minister is routinely copied to any Minister with an interest, including any Minister whose constituency is particularly affected by the issue under consideration; and
- (f) Seeking early advice from colleagues in the Scottish Government Legal Directorate and where necessary, the Law Officers, on the legal implications of policy proposals.

Arrangements for Supporting Collective Decision-Making

1.6 The remainder of this Guide provides more detailed guidance on arrangements for supporting collective decision-making within the Scottish Government, as follows:

- ◆ **Section 2** outlines the practical implications of collective responsibility and the role of the First Minister in the decision-making process;
- ◆ **Section 3** provides guidance on the range of mechanisms through which Ministers may arrive at the day-to-day decisions on policy matters by which they are collectively bound;
- ◆ **Section 4** provides detailed guidance on the arrangements for securing collective consideration of those issues which require to be considered by the Cabinet, whether at a Cabinet meeting or in correspondence; and
- ◆ **Section 5** explains the Cabinet Secretariat's role in helping Ministers collectively and the Office as a whole to manage the Government's business in a systematic way.

2. COLLECTIVE RESPONSIBILITY AND THE ROLE OF THE FIRST MINISTER

Collective Responsibility within the Scottish Government

2.1 As indicated above, the Scottish Government operates on the basis of collective responsibility and every effort must normally be made to ensure that every Minister with an interest in an issue is kept fully informed and has a chance to have his or her say – in an appropriate forum or manner – before a decision is taken. Collective responsibility also means that, once a decision has been announced, all Ministers are required to abide by it and to defend it as necessary.

2.2 The doctrine of collective responsibility bites after a decision has been reached; it does not mean that there must be unanimity (or even consensus) beforehand. Ministers can express their views frankly in internal discussion of an issue, but their membership of the Government requires them to maintain a united front once decisions have been reached. This is to ensure that the privacy of opinions expressed in internal discussions is maintained and to ensure that the internal processes through which a decision has been made are not disclosed.

2.3 The issue of collective responsibility is particularly acute where the portfolio Minister is likely to take a decision that will be unpopular in another Minister's constituency. Once a decision has been reached, the constituency Minister must be prepared to defend that decision, even if individually, he or she would have argued against it in private.

2.4 Where a Minister feels that he or she cannot support a decision reached collectively by the Scottish Government, and wishes publicly to dispute that decision, that Minister should consider whether it is appropriate to resign from his or her Ministerial role.

2.5 Collective responsibility also applies to Junior Ministers even though they do not formally come within the definition of "the Scottish Ministers" in Section 44 of the Scotland Act 1998.

2.6 The only exceptions to the doctrine of collective responsibility are (i) functions conferred on the First Minister alone, and (ii) the Lord Advocate's "retained functions" including in particular decisions taken by the Lord Advocate in his/her capacity as head of the systems of criminal prosecution and investigation of deaths in Scotland. In acting in that capacity, the Lord Advocate acts independently of other Ministers.

2.7 While decisions reached by Ministers individually or collectively are binding on all Ministers, they are normally announced and explained as the decision of the Minister (or Ministers) with functional responsibility for the relevant issue. On occasions it may be desirable to emphasise the importance of a decision by stating explicitly that it is the decision of the Scottish Government (or the Cabinet); but this will be very much the exception rather than the rule.

The Role of the First Minister

2.8 The First Minister has overall responsibility for the conduct of the business of the Government. Consequently, he will generally focus on strategic issues and will not normally become directly involved in matters that can properly be dealt with by the Minister(s) with functional responsibility for the issue in question.

2.9 The First Minister, therefore, should not routinely be copied into policy submissions. In particular, the First Minister should not be copied into submissions on a 'just in case' basis. Where an issue is sensitive or significant, then the relevant Minister's office should forward relevant correspondence to the First Minister's office seeking his agreement. As a general rule, an issue should be regarded as a 'significant or sensitive policy issue' if it is an issue which is likely to require collective discussion by Ministers in Cabinet or in a collective Ministerial meeting below the level of the Cabinet, or is likely to be dealt with as an item of Cabinet Correspondence, or is likely to generate significant public comment or criticism. On occasions when a submission is copied to the First Minister, the absence of intervention or comment by the First Minister should not be taken as an indication of his agreement. If his agreement is required, it should be sought explicitly.

2.10 Where it is thought appropriate for the First Minister to intervene in issues dealt with in minutes copied to him, such intervention will normally take one of the following forms:

- (a) A minute from the Private Secretary to the functional Minister's Private Secretary (with copies to relevant Ministers and officials etc) conveying the First Minister's views on the issue;
- (b) The convening of a meeting involving the First Minister, the relevant functional Minister(s) and (usually) relevant officials to discuss the issue;
- (c) A request that a paper on the issue be prepared for consideration by the Cabinet (either at a Cabinet meeting or in Cabinet Correspondence).

2.11 Where an ad hoc meeting is to be convened as in (b) above, the Cabinet Secretariat is available to arrange and service it. In this context the Cabinet Secretariat acts effectively as an extension of the relevant Private Office(s).

3. THE DECISION-MAKING PROCESS

Decision-Making Mechanisms

3.1 Much of the business which requires a Ministerial decision can be dealt with below the level of the Cabinet – normally in minuting to the Ministers with a direct portfolio interest followed, where necessary, by discussion among them. This helps to relieve the pressure on the Cabinet by enabling business to be settled at a lower level; or, failing that, by helping to clarify the issues and define the points of disagreement before an issue goes to the Cabinet. It also supports the principle of collective responsibility by ensuring that, even though an important issue may not be determined by the Cabinet itself, the decision will be fully considered by those Ministers with a direct portfolio interest in it and that the final judgement will be sufficiently authoritative to ensure that the Government as a whole can reasonably be expected to accept responsibility for it.

3.2 There are a range of mechanisms through which Ministers may arrive at the day-to-day decisions on policy matters by which they are collectively bound. The most strategically important and sensitive issues will require preparation of a paper for consideration at a meeting of the Cabinet. At the other end of the spectrum, however, a routine issue which falls wholly within the responsibilities of one Minister can normally be dealt with by officials submitting a minute to that Minister.

3.3 Between these 2 approaches there are a range of other options. Which option is appropriate in any particular case will depend very much on the circumstances of the case – with the principal determining factors being the strategic importance of the issue, its sensitivity, its complexity and the number of Ministerial portfolios on which it impinges. The guiding principles in the selection of an appropriate decision-making process are flexibility and fitness for purpose.

3.4 The principal mechanisms for reaching decisions on matters on which a Ministerial decision is required are:

- ◆ A minute addressed to the Minister with lead responsibility and copied to all other Ministers whose views are specifically required;
- ◆ A Ministerial meeting involving the Minister with lead responsibility for the issue in question and others with an interest;
- ◆ A meeting convened by the First Minister, the Deputy First Minister, the Cabinet Secretary for Finance and Sustainable Growth or the Minister for Parliamentary Business;
- ◆ Consideration by a Cabinet Sub-Committee; or
- ◆ Consideration by the Cabinet – either at a meeting of the Cabinet or under the arrangements for handling in correspondence issues which require a Cabinet decision (see Section 4).

3.5 The following paragraphs explain these options in greater detail.

Minutes to Ministers

3.6 Routine matters falling wholly within the responsibility of an individual Minister can normally be dealt with via a minute to that Minister - i.e. the Minister is invited to make a decision in response to a minute from the relevant official which sets out the issue, the relevant considerations and the options, and which makes a recommendation. These types of decision do not usually require collective consideration by Ministers – although Ministers are of course collectively bound by them. It is important that officials give Ministers sufficient time to deal with the issue in question and, if appropriate, set a clear deadline by which a response is required.

3.7 Similarly, non-contentious issues spanning the responsibilities of 2 or more Ministers can generally be dealt with via a minute agreed between the relevant officials (following consultation with other colleagues as necessary) and put to the Ministers concerned by:

- (a) Addressing it to the lead Minister and copying it to all other Ministers whose views are specifically required;
- (b) Addressing it directly to all the relevant Ministers; or
- (c) Putting it to the Ministers concerned on a '1-2' basis.

Such minutes should give Ministers sufficient time to deal with the issue in question and should set a clear deadline by which a response is required. If the minute raises issues which Ministers consider require collective discussion, it may be necessary to convene a meeting for this purpose (see paragraphs 3.11 -3.14 below).

3.8 The Cabinet Secretariat does not normally play any direct role in decision-making at this level. However, if it is to perform effectively its wider role of helping to co-ordinate and facilitate collective decision-making, it is obviously important that it is able to keep abreast of policy development across the office as a whole. Therefore, in drafting minutes to Ministers conveying advice on significant or sensitive policy issues, you may wish to consider whether the Permanent Secretary and the Head of Cabinet Secretariat should be included as copy recipients.

3.9 Minutes to Ministers which relate to preliminary consideration of an issue (and which are being sent to the Minister with lead responsibility for that issue) need not be copied to other Ministers with an interest or to the First Minister, Permanent Secretary or Cabinet Secretariat provided that, where appropriate, they will receive papers on the issue at a later stage in the decision-making process (in line with the guidance above), and certainly before any final decisions have been made.

3.10 In order to help Private Offices prioritise material which is to be seen by Ministers and to ensure that appropriate action is taken on it, minutes to Ministers should, wherever practical, begin with sections indicating purpose and priority and end with a conclusion or recommendation. **In general, however, all Ministerial submissions should be drafted to be as concise as is practicable (ideally a single page) with detailed, background information being placed in supporting annexes.**

Ministerial Meetings

3.11 For some issues spanning the responsibilities of 2 or more Ministers it may be appropriate for the Ministers concerned to discuss the issue in order to agree how matters should be taken forward. Many such discussions will be of an informal nature – a quick word in the margins of another meeting or a chat on the telephone etc – and this Guide does not seek to inhibit such flexibility and informality. Where follow-up action is required as a result of such a discussion, however, it is of course important that the Ministers concerned should arrange for a Private Secretary or an official to record the decisions reached and/or action agreed and for the note to be copied to all interested parties.

3.12 In some cases, however the appropriate course will be to convene a formal meeting of the relevant Ministers, supported as necessary and appropriate by officials. Where the issue to be discussed at a meeting is of a relatively routine nature – and is unlikely to require collective discussion in the Cabinet or in a Cabinet Sub-Committee at a later stage – arrangements for the meeting should be made in discussion between the relevant officials and Private Offices. The Cabinet Secretariat will not usually have a role in arranging or servicing such meetings (although it is available to take on such a role where any of the parties to the meeting think it appropriate for it to do so).

3.13 In other cases where a Ministerial meeting is to be held to discuss a significant or sensitive policy issue, or any other matter which may require collective consideration by the Cabinet at a later date, the Cabinet Secretariat should be contacted as soon as the need for a meeting is identified. It will then discuss and agree with the relevant policy Directorate(s) arrangements for setting up and servicing the meeting. Where the Cabinet Secretariat is to arrange and service the meeting, it will work in close consultation with officials in the relevant Directorates, particularly in relation to the preparation of an agenda and papers for the meeting and in relation to decisions about who should be invited to attend. Where a policy Directorate is to arrange and service the meeting, the Cabinet Secretariat should be kept informed of the arrangements and should be sent copies of relevant papers. The Cabinet Secretariat may send a representative to such meetings in order to ensure that it has a full understanding of the relevant issues and is therefore better able to advise, at the appropriate time, on whether and how the issue might best be taken forward at Cabinet level.

3.14 Wherever possible such Ministerial meetings should take place on the basis of policy analysis agreed collectively among officials. Where necessary the advice should spell out areas of tension between different policy objectives. All possible steps should be taken to avoid a situation where the Ministers participating in such meetings are doing so on the basis of separate, and potentially conflicting, policy analysis from different Directorates.

Meetings Convened by the First Minister, the Cabinet Secretary for Finance and Sustainable Growth or the Minister for Parliamentary Business

3.15 From time to time the First Minister, the Cabinet Secretary for Finance and Sustainable Growth or the Minister for Parliamentary Business may need to convene a meeting involving one or more other Ministers to discuss a particular issue for

which those other Ministers have functional responsibility but which may have significant implications for the Government's wider programme, or for public expenditure or Parliamentary business. Such meetings may be arranged and serviced by Cabinet Secretariat, the relevant part of the Finance Directorate or the relevant part of Constitution, Law and Courts Directorate. In discharging this role, the officials servicing the meeting act effectively as an extension of the relevant Minister's Private Office.

Cabinet Sub-Committees

3.16 Where it is clear that a particular issue that spans portfolios will require 2 or more Ministers and their officials to work together over a period, or that a matter falling within the portfolio of one Minister needs to be considered collectively, the Cabinet may decide to establish a Cabinet Sub-Committee to take forward consideration of the issue. Their size, membership, and length of life may vary significantly depending on the nature of the subject at issue. The principal existing Cabinet Sub-Committee is SGoRR which has a remit covering Scotland's resilience to deal with civil contingencies. SGoRR also manages emergency situations as they arise.

The Scottish Cabinet

3.17 The Scottish Cabinet is the appropriate forum for consideration of key policy issues, including major cross-cutting issues. It also maintains a broad overview of forthcoming business and impending announcements as well as looking ahead to forthcoming business in the Scottish Parliament.

3.18 Section 4 outlines the arrangements for securing collective consideration of those issues which require to be considered by the Cabinet.

4. THE SCOTTISH CABINET

Introduction

4.1 The Scottish Cabinet reconciles Ministers' individual responsibilities with their collective responsibility (see paragraphs 1.2-1.5 and 2.1-2.7 above) and is the ultimate arbiter of all policy on devolved matters.

Membership of the Cabinet

4.2 The Scottish Cabinet consists of the First Minister, the other senior Ministers ('Cabinet Secretaries') and the Minister for Parliamentary Business. Junior Ministers (appointed by the First Minister under the terms of Section 49 of the Scotland Act 1998) are not members of the Cabinet. The Lord Advocate is not a member of the Cabinet and does not normally attend meetings, although she receives all Cabinet papers. However, the Lord Advocate (or the Solicitor General as the Lord Advocate's deputy) retains the right to address Cabinet where he/she considers it appropriate to do so and will attend where the Cabinet is to discuss a matter relating to his/her retained functions or requires his/her advice on a particular issue.

4.3 If a Cabinet Secretary has permission to be absent from Cabinet (see paragraph 4.7 below) and the agenda for the meeting in question includes one or more items in which the Minister who has permission to be absent has a significant portfolio interest, the Cabinet Secretary may, if he/she considers it appropriate, seek permission from the First Minister for one of his/her Junior Ministers to attend Cabinet in his/her place. All such requests are considered on their merits and, if it is agreed that it would be appropriate for the Junior Minister to attend, a further decision needs to be taken on whether he/she should attend for the whole of the Cabinet meeting or only for the agenda item(s) in which the absent Cabinet Secretary has a significant interest. The final decision as to whether or not a substitute should attend Cabinet will in each instance rest with the First Minister.

4.4 Details of the membership of [the Scottish Cabinet](#) are set out on the Scottish Government website.

Meetings of the Cabinet

4.5 While the Scottish Parliament is in session, the Cabinet meets weekly – usually on a Tuesday afternoon. During recess, the Cabinet will not routinely meet but special arrangements may well be made, for example, over the summer period. Details of meeting dates can be obtained from the Cabinet Secretariat.

4.6 Meetings of the Cabinet take precedence over all other Ministerial business. There are however occasionally exceptional circumstances (e.g. Parliamentary business, business overseas or meetings with the European Commission or with UK Ministers) which mean that a Cabinet Secretary may have to be absent. Any absences must be approved by the First Minister. If the relevant Cabinet Secretary is due to take part in Government business overseas then in putting a request for permission up to the First Minister they should also indicate their proposed absence from Cabinet. This will give the First Minister early opportunity to consider whether he wishes to invite another Minister to attend Cabinet as a substitute. (As it is the

First Minister's prerogative to decide who attends Cabinet, he will decide when a substitute is necessary.) Requests for permission to be absent must be made at the earliest opportunity and by means of a personal minute from the Cabinet Secretary to the First Minister. Minutes seeking permission to be absent from Cabinet should be copied to the Permanent Secretary and to the Cabinet Secretariat.

Cabinet Business

4.7 The Cabinet should normally be invited to consider all matters which significantly engage the collective responsibility of the Government including, as a general rule, any proposal which involves a change in the Government's agreed objectives or priorities, a change in the general allocation of public expenditure, primary legislation (see paragraph 2.9 of [Scottish Ministerial Code](#)) or the making of a statement to the Parliament on a significant or sensitive policy issue. (More detailed guidance on arrangements for securing collective agreement for proposals involving primary legislation is set out in **Annex A**.)

4.8 The Cabinet should also be invited to consider any other matter on which a Cabinet Secretary wishes to have the advice of his/her Cabinet colleagues. Where there is a difference of view between Ministers, the matter should not be referred to the Cabinet until other means of resolving it have been exhausted, including discussions between the Ministers concerned if necessary.

4.9 It is clearly impossible to give a precise definition of what should and should not be referred to the Cabinet for decision and the above should therefore be regarded as a guide only. As a general rule, however, Cabinet Secretaries should put before their colleagues the sorts of issues on which they themselves would wish to be consulted. In cases of doubt, the advice of the Cabinet Secretariat should be sought.

Clearing Proposals with the Cabinet in Correspondence

4.10 Not all issues that require to be decided by the Cabinet need to be discussed at a Cabinet meeting. Many such issues can be dealt with in correspondence – that is, as an item of 'Cabinet Correspondence'. Just as there is no precise definition of issues requiring Cabinet consideration, so there are no absolute rules about what should be handled through correspondence rather than discussed at a Cabinet meeting. There are however a number of reasons why a paper requiring Cabinet consideration might be handled through correspondence, such as seeking clearance for the launch of a consultation exercise. Cabinet Secretariat should be contacted for advice.

Preparing the Agenda for Cabinet Meetings

4.11 The Cabinet Secretariat should be given as much notice as possible of any business likely to require discussion at a meeting of the Cabinet. This assists in the planning of agendas for meetings.

4.12 Where a Cabinet Secretary wishes to brief the Cabinet orally on an issue (e.g. a breaking news issue) which is not included on the agenda for the meeting in

question, his/her Private Office should alert the Cabinet Secretariat as soon as the need for the issue to be raised at Cabinet has been identified.

4.13 The Cabinet Secretariat maintains a running list of potential Cabinet business – including items which are likely to be dealt with in correspondence. It does so by drawing intelligence from side copies of minutes to Ministers, through feedback from the Strategic Board and Cabinet meetings and from informal contacts with staff throughout the office. Every few months, Cabinet Secretariat also asks Directorates formally to identify potential Cabinet business in the period ahead.

4.14 The Cabinet Secretariat prepares a draft agenda for each meeting of the Cabinet and submits it to the First Minister for approval.

Preparing Papers for the Cabinet

4.15 Where it is clear that an issue will require discussion at a Cabinet meeting, the lead Directorate should prepare a Cabinet paper. The paper should normally be approved by, and submitted in the name of, the Cabinet Secretary with functional responsibility for the issue dealt with in the paper. Where that issue spans the interests of 2 or more Cabinet Secretaries, the paper should normally be submitted jointly by the relevant Cabinet Secretaries.

4.16 Officials preparing papers for the Cabinet should always discuss the proposals with colleagues in other Directorates with an interest and reflect the results of those discussions in the 'Consultation' section of the paper. Where a paper involves proposals which have financial implications or which could raise issues of financial regularity or propriety, the paper must be agreed with Finance Directorate. The Law Officers must also be consulted – via the Scottish Government Legal Directorate (SGLD) - before the Government is committed to critical decisions involving legal considerations (see **Annex B**).

4.17 Where appropriate, officials preparing Cabinet papers should also ensure that Cabinet are enabled to take account of the perspective of the UK Government and/or the other devolved administrations, where consultation is required under the terms of the Memorandum of Understanding or an associated concordat or there are other reasons for taking the view that Cabinet would be assisted by information about views from those sources. In seeking such input to Cabinet's consideration of an issue, draft Cabinet papers must not be shown to anyone outwith the Scottish Government.

4.18 The information shared with those in other administrations for the purposes of consultation should focus on the options under consideration by Ministers and should not disclose Ministers' thinking, which would be premature in advance of Cabinet's consideration. In some cases, suitably anonymised extracts from the material being prepared for Cabinet may be an appropriate form in which to share information.

4.19 In planning timetables for the preparation and consideration of Cabinet papers (and items of Cabinet Correspondence), and for the subsequent announcement of policy decisions etc, Ministers and officials should take appropriate account of the need for Ministers to secure and retain the support of the Government's Parliamentary Group.

4.20 A paper for Cabinet should be as concise as is practicable with additional background material in supporting annexes. The paper should explain at the outset what the issue is, should outline the main considerations Cabinet Secretaries will need to keep in mind in reaching a decision, and should conclude with a clear statement of the decisions sought. Where, exceptionally, a lengthy paper is necessary, it should include a summary. The Cabinet Secretariat will provide advice on the preparation of Cabinet papers.

Circulating Papers

4.21 The Cabinet Secretariat is responsible for collating and circulating papers for Cabinet. Cabinet papers need to be circulated in sufficient time to enable Cabinet Secretaries to read and digest them. The aim is therefore to circulate the cleared papers on the Friday prior to the Tuesday Cabinet meeting. Papers on particularly complex issues may need to be circulated further in advance. If it becomes clear that insufficient time has been allowed for Cabinet Secretaries to consider any paper, discussion of the paper may need to be postponed.

4.22 Cabinet papers should therefore be passed to the Cabinet Secretariat, in final form and approved by the relevant Cabinet Secretary(s), no later than close of play on a Wednesday for meetings taking place the following Tuesday.

4.23 Papers which are not submitted by that deadline will normally be removed from the agenda for the Cabinet meeting in question unless:

(a) A different deadline for submission of the paper in question has been agreed with the Cabinet Secretariat; or

(b) The Cabinet Secretary responsible for the paper minutes the First Minister seeking his agreement that there are exceptional circumstances that justify the late paper remaining on the agenda for the following week's meeting. The minute should explain why the paper is late, why it must be considered at that particular meeting, and when it will be submitted.

Recording the Decisions Reached

4.24 The Cabinet Secretariat arranges and services all meetings of the Cabinet - and this includes the preparation of minutes of the meetings. The minutes are limited to a summary of the key issues as set out by the Cabinet Secretary introducing the paper, the conclusions reached and such summary of the discussion as is necessary for the guidance of those who have to take action. The minutes do not normally attribute to particular Cabinet Secretaries the opinions expressed in discussion.

4.25 Copies of the full minutes are sent to the members of the Cabinet, the Lord Advocate, the Solicitor-General, Junior Ministers, members of the Strategic Board, certain special advisers, The Queen's Private Secretary and The Duke of Rothesay's Private Secretary. The offices of the Directors General are responsible for forwarding copies of the Cabinet minutes (and agendas) to members of the Strategic Board and for passing relevant extracts from the Cabinet minutes to any other

officials in their Directorates with a 'need to know' – particularly those who are responsible for pursuing action points highlighted in the minutes. (Full sets of Cabinet papers are put into Public Folders in outlook and are held there for up to a year. Members of the Strategic Board have access to that archive if they need to refer to specific papers.)

4.26 The Cabinet minutes act as the official record of discussion, and Ministers will be expected to adhere to the decisions outlined therein. It is therefore particularly important that anomalies or misinterpretations are corrected. Any suggestions for amendments to the minutes must reach the Cabinet Secretariat no later than 24 hours before the next Cabinet meeting.

4.27 Decisions made by the Cabinet will usually require officials to take action to give effect to the decision. Where immediate action is required, the Cabinet Secretariat will ensure that a relevant senior official is notified straightaway. Where urgent action has to be taken a senior official may ask the Cabinet Secretariat for an advance copy of the relevant section of the (draft) minutes. In order to facilitate decision making the Cabinet Secretariat will produce a brief outline of actions agreed by the Cabinet and circulate this to relevant officials, as soon as possible after the Cabinet meeting.

Protecting the Confidentiality of Cabinet Papers Etc

4.28 All Cabinet papers (including minutes and agendas etc) are protectively marked documents. As a matter of practice, they must never therefore be made public and should be distributed strictly in accordance with the 'need to know' principle. They should be handled separately from other paper and not placed on Directorate files in Objective. A record should be maintained of those who have seen Cabinet papers. Cabinet papers which are no longer required for current reference should be disposed of as confidential waste. (The Cabinet Secretariat maintains a full set of Cabinet papers and, where appropriate, can provide access to previous papers as and when required.)

4.29 Other than in the context of a formal media briefing on the day, Ministers and officials should not normally disclose publicly whether a particular subject has or has not been discussed by the Cabinet, nor whether a particular Cabinet Secretary attended any meeting.

4.30 Similarly, the fact and content of opinions or advice given by the Law Officers must not be disclosed publicly without their authority.

4.31 The provisions of the Freedom of Information (Scotland) Act 2002 apply to all information held by the Scottish Government and therefore also apply to Cabinet and Cabinet Sub-Committee information. The working assumption is that the proceedings of the Cabinet (or any Cabinet Sub-Committee or other Ministerial group) are exempt from disclosure under the 2002 Act, subject to consideration of the public interest. There is, however, a strong public interest in maintaining the confidentiality of Cabinet proceedings and the above working assumption on Cabinet and Ministerial group information should be referred to when handling all requests for such information.

5. THE CABINET SECRETARIAT

5.1 The Cabinet Secretariat works on behalf of all Ministers and all Directorates in the Government to co-ordinate and facilitate collective decision-making. As described elsewhere in this Guide the Cabinet Secretariat's role includes:

- (a) Providing advice on the handling of issues and on the preparation and circulation of papers for consideration by Cabinet Secretaries in Cabinet and to Cabinet Secretaries and other Ministers in other fora;
- (b) Collating and distributing the papers for Cabinet meetings, briefing the First Minister for Cabinet, as required, recording Cabinet conclusions and following up decisions;
- (c) Working with Directorates and Ministers to help schedule business for Cabinet through regular dialogue and forward look exercises;
- (d) Servicing Cabinet Sub-Committees, working in close consultation with colleagues in relevant policy Directorates; and
- (e) Issuing Cabinet Correspondence and providing co-ordinated advice for the First Minister on any issue being handled in that way.

5.2 Full details of the names, locations and functions of staff in the Cabinet Secretariat are set out on-line in the Scottish Government Staff Directory.

6. CONCLUSION

6.1 The arrangements and procedures outlined in this Guide are not set in stone. They are kept under review and will undoubtedly continue to evolve over time. Updated editions of the Guide will be issued as and when appropriate.

6.2 The Cabinet Secretariat welcomes suggestions for amendments to the Guide – particularly any suggestions relating to gaps or ambiguities in the guidance or possible simplifications to or improvements in the arrangements described in the Guide. Any such suggestions should be communicated to the Cabinet Secretariat (ext: 42071).

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CABINET APPROVAL OF PROPOSALS FOR PRIMARY LEGISLATION

1. Paragraph 3.2 of the [Scottish Ministerial Code](#) provides that: “Ministers should not give undertakings either in or outside the Parliament to introduce primary legislation on any issue without the prior agreement of the Cabinet”. What this means in practice is that the Cabinet should be asked to:

(a) Approve the content of future legislative programmes (normally on the basis of a draft programme put forward by the Cabinet Sub-Committee on Legislation);

(b) Agree to the principle of legislation on an issue before any public commitment is given to bring forward primary legislation on that issue and before resources in the Scottish Government Legal Directorate and the Office of the Scottish Parliamentary Counsel are committed to the preparation of the relevant legislation. (This approval in principle will normally be given when the Cabinet discusses and agrees plans for future legislative programmes – see sub-paragraph (a) above);

(c) Approve publication of the consultation document on proposals from primary legislation;

(d) Approve the policy content, and scope and extent, of each Bill before the Bill is issued for consultation or otherwise published;

(e) Approve proposed changes to the agreed policy content of a Bill if the Cabinet Sub-Committee on Legislation considers that the proposed changes are of such significance or sensitivity as to require Cabinet consideration. (See paragraph 3 below)

2. In the case of major Bills, the approval referred to at paragraph 1(c) above should normally be sought in a Cabinet papers put forward by the lead Cabinet Secretary(s) for discussion at a Cabinet meeting. In other cases (particularly where a Bill deals with detailed policy issues that raise no new issues of special significance) it may be appropriate to seek Cabinet approval for the policy content and scope and extent of the Bill via Cabinet Correspondence. The Secretariat of the Cabinet Sub-Committee on Legislation (located within Constitution, Law and Courts Directorate – Constitution and Parliamentary Secretariat) should be given an opportunity to comment on a draft of any paper (Cabinet paper or Cabinet Correspondence) seeking Cabinet approval for the policy content etc of a Bill.

3. Where it is proposed to make (or accept) significant amendments to the policy content of a Bill after the policy content has been approved by the Cabinet, the amendments should be referred to the Cabinet Sub-Committee on Legislation for approval. As indicated in paragraph 1(e) above, where the Sub-Committee considers proposed changes to the policy content of a Bill to be of such significance or sensitivity as to require Cabinet consideration (or where it is unable to agree on a

course of action), the matter should be referred to the Cabinet for decision together with the Sub-Committee's recommendation (where appropriate).

4. The Cabinet Sub-Committee on Legislation is also responsible for:

(a) Considering proposals for Member's, Committee and Private Bills and making recommendations on the position to be taken by the Government on each proposal; and

(b) Approving proposals for the Parliament to be invited to give consent by means of a Legislative Consent Motion to the inclusion in UK Bills of legislation relating to devolved matters.

5. Where the Sub-Committee considers the subject matter of a proposed Legislative Consent Motion to be of such significance or sensitivity as to require Cabinet consideration (or where it is unable to agree on a course of action), it will refer the matter to the Cabinet for decision together with its recommendation (where appropriate). In other cases the Sub-Committee will take a final decision on behalf of the Cabinet.

6. In the case of Member's Bills and Committee Bills, the Cabinet should always be given an opportunity to comment on the Sub-Committee's recommendations in relation to the handling of the Bill. In most cases, the Cabinet will be notified of the Sub-Committee's recommendation in a minute from the lead Minister to all Cabinet Secretaries. Formal, and specific, endorsement by the Cabinet of the recommendation made by the Sub-Committee will normally only be sought where the Bill raises issues that are contentious or are otherwise not clear cut.

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CONSULTATION WITH THE LAW OFFICERS

1. The Law Officers must be consulted in good time before the Government is committed to critical decisions involving legal considerations. The opinion of the Law Officers should normally be obtained through a reference from the Scottish Government Legal Directorate.
2. It will normally be appropriate to consult the Law Officers in cases where:
 - (a) The legal consequences of proposed action might have important repercussions in the foreign, European Union or domestic fields;
 - (b) A legal adviser in the Scottish Government has doubts about the legality or constitutional propriety of proposed legislation or Government action, particularly where it concerns any devolution issue within the meaning of paragraph 1 of Schedule 6 to the Scotland Act 1998;
 - (c) Ministers, or their officials, wish to have the advice of the Law Officers on questions involving legal considerations before proposals are referred to the Cabinet or to a Cabinet Sub-Committee; or
 - (d) There is a particular legal difficulty that may raise sensitive policy issues.

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