

RESEARCH NOTE

Groups and the Limited Pluralism of the Set-Piece Consultation

The LSE GV314 Group

Set-piece consultations, through which government invites groups and individuals to comment on proposed legislation, codes of practice, guidance or some other measures, are a common feature of British policy-making, yet we know remarkably little about them. Above all, we do not know why anyone should respond to them when the chances of changing policy appear remote. This research note reports a survey of over 300 individuals in organisations that responded to government consultation requests and explores a range of hypotheses seeking to explain participation in set-piece consultations, including those relating to the role of membership, the 'outsider' status of the organisation and the role of the set-piece consultation in wider lobbying campaigns. The evidence suggests that set-piece consultations are more fruitfully viewed as distinctive forms of consultation in which respondents believe they have a chance of shaping some kinds of issues but not the policy itself.

Keywords: interest groups; consultations; pressure groups

Consultation as Routinised Participation

Set-piece consultations, through which government invites groups and individuals to comment on proposed legislation, codes of practice, guidance or some other measures, are a common feature of British policy-making. They are also highly visible. Informal or *ad hoc* consultations between government departments and interests go on all the time, usually without any publicly available documentation of their progress (see Richardson and Jordan 1979, 115). A set-piece consultation is 'a formal, time-bound, public, written consultation exercise' (BERR 2008, 5), usually seeking written views on documents (such as memoranda, reports or draft codes of guidance) outlining a department's proposals. These documents are usually made available on the Internet and are also sent in hard copy to groups and individuals believed to have a stake or interest in the matter. An accompanying letter usually directs attention to the kind of comments the department is looking for and sets a deadline by which comments should be sent. The comments received are then summarised within the department and often these summaries are made public along with the department's response to the points raised in the consultation.

At any one time there are dozens of such consultations in progress across government. Although they are common and arguably central to British democracy through inviting a wider public to participate in policy-making, we know remark-

ably little about them. Consultations certainly play an important part in *legitimising* government actions. Not only is it common for ministers to refer to the fact that the measures they are introducing have been well thought through and discussed with those affected through a consultation, in some cases consultation is also mandatory: some measures, notably regulations, can be challenged in court on the ground that they have not been consulted on (see Harlow and Rawlings 2009, 175–179). What set-piece consultations achieve in policy terms is far less certain.

We tend to think of formal set-piece consultations as an extension of the ‘normal’ process of government engagement with interest groups (see, for example, Richardson 2000; Halpin and Baxter 2008). Of course they are different in several respects from the kind of intense lobbying activities that surround other parts of the policy process, say in the early stages of the development of a piece of legislation or in the parliamentary stages of the legislative process. In a nutshell, the breadth of the coverage of the set-piece consultation is its virtue and limitation. Consultations represent an opportunity to reach a wide audience. For example, the Equalities Bill consultation in 2007 received responses from 597 organisations, a further 3,629 ‘private individuals’ and further views were solicited at regional events attended by 500 ‘stakeholders’. Most consultations are much smaller than this. Some even attract so little interest that officials have to make efforts to try and drum up some response. However, the general structure of set-piece consultations makes them open to anybody interested in contributing and it is this feature that appears to give them a significant role in enhancing the democratic legitimacy of the policy process.

Yet its breadth means that the set-piece consultation is also a routinised feature of the policy process. It comes at a distinctive stage in the development of a policy proposal which only starts once administrative and/or political effort has been devoted to developing the government’s view. A minister might not necessarily have been involved in developing a particular policy proposal (see Page 2001, 84; Halpin and Baxter 2008), but he or she is very likely to have approved the broad thrust of the proposed policy changes before they are sent out for consultation. Civil servants in Whitehall tend to regard ministerial endorsement, even if effectively tacit, as a *sine qua non* for going public with any policy through a formal consultation (Page 2001, 84). Collating views solicited in consultations is often not a matter directly for the people most closely involved in making decisions. It is a job for civil servants and not politicians (Page 2001, 139; Page and Jenkins 2005, 129) and those who collate responses might not even be central members of the team developing the policy but their juniors. In a large consultation any one group is competing to have its voice heard amid hundreds of others. This routinisation—the fact that groups are competing with others to catch, possibly rather indirectly, the ears of officials who may well have gone a long way towards committing the department to a certain course of action—suggests that the whole process might offer at best only very limited opportunities for any one group to shape the policy.

What is in it for the Respondent?

The continued appeal of the consultation system from the groups’ perspective—indeed the fact that enough groups and individuals tend to participate in them to

make them worth conducting—appears thus to be something of a puzzle. If consultations are not where the action is in policy-making, classical interest group theory would lead us to expect that the powerful interest groups would not waste their resources on them (Eckstein 1960). Why, then, do they continue to participate in them?

There are several possible answers to this puzzle. One is that consultations are an ‘outsider’ strategy of reaching government: like writing to the press or staging a demonstration, they are the only option left to the powerless (on outsiders see Grant 2000). Another, drawing on the work of David Lowery (2007), is that seeking to influence policies might not be the sole, or even prime, reason for participating in a consultation. Organisations are dependent upon members for support, and just as government likes to publicise a willingness to listen through consultations, so organisations can communicate a variety of positive features to their members by their responses: their active engagement in policy-making, their expertise and their willingness to support their members’ interests. A third expectation is not related to interest group theory directly, but rather is based on the intuitive proposition that those responding to consultations have unrealistic expectations about their impact, whether because of inexperience or wishful thinking. A fourth is that a public consultation is an extension of the more direct lobbying that might precede or follow it. One variant of this approach might stress the role of set-piece consultations as dues to be paid for later influence or maintaining a good relationship more generally with the ministry concerned (see Poppelaars 2009, 42ff.). Another variant of the same argument is that a response to a set-piece consultation might be a minor supplement to the more important ‘insider’ strategy of speaking directly to the department, primarily at an earlier stage. A fifth explanation derives from other accounts of interest group interaction (e.g. Grant 2000; Jordan and Maloney 2007): since the real action in shaping policies comes before the set-piece consultation, there is still enough action going on at the set-piece consultation stage, enough things decided and shaped, to merit participation.

These points are all, of course, speculation. To explore why groups actually participate requires an understanding of the motivations and expectations of those that respond to consultations. There have been surveys attempting to assess interest group views about consultations in general (see Page 2001; Halpin 2008). Moreover, lists of consultees in individual set-piece consultations—those *invited* to comment on proposals—have formed an important part of quantitative studies of interest group activity (see Halpin 2008). Yet there have been few studies directly of the experiences of those *responding to specific invitations* (for an exception see Page 2003). This shortage of studies of respondents to consultation requests is quite understandable as the process of surveying respondents in the UK poses severe logistical problems. To find out who responded one has to rely on government reports on individual set-piece consultations. Contact then has to be established with each organisation reported as responding (the reports are not always accurate) to find out precisely which individual(s) wrote its response and then one contacts these people directly. By the time all this is completed several months are likely to have passed since the consultation response deadline, raising problems related to the accuracy of recall.

Nevertheless, to explore what groups expect and gain from participation in set-piece consultations we conducted a survey of the respondents to 44 consultations by 12 different ministries in the 12 months up to January 2010. We discovered the names of those actually responding to the set-piece consultation request through the 'government response' documents that departments frequently (but not always) produce by way of a report on the process. We included only named organisations (including firms and local authorities) but not named individuals with no organisational affiliation. A total of 1,383 initial emails were sent out and we received replies from 549 groups giving contact details of individuals who wrote the organisation's response to the consultation. If we exclude the 110 responses that could not give us the name of a contact person, this is a response rate of 43.1 per cent. We sent online questionnaires to these 549 names and received 383 replies—a response rate of 30.0 per cent when measured against all those organisations we contacted or 69.8 per cent of those named individuals to whom we sent invitations to participate in the survey. Respondents belonged to a variety of different types of organisation including trade unions or business associations (24 per cent), public sector organisations (such as local councils) (24 per cent), 'cause' groups (18 per cent), individual businesses (14 per cent) and learned societies (3 per cent). Eighteen per cent placed themselves in an 'other' category, a diverse group containing some types of organisation not included in the above list (such as service-providing charities and statutory bodies) and some types that were, such as 'manufacturers' or university research centres.

The questionnaire focused on experiences of respondents in whichever one of the particular 44 consultations the individual responded to. We also, however, included questions covering feelings about consultations in general.

The Puzzle

Before exploring the reasons for responding to set-piece consultations discussed above, it is worth noting that the central premise that there is a puzzle to be explained here is supported by our survey data. Interest groups appear to devote a significant amount of time to responding to consultations, yet they do so with few expectations of making much of a difference. Of those who responded to a consultation in our sample, only a third managed a response in under a day's full-time equivalent work, somewhat over a third managed it in a day or two while over a quarter took longer than three days to compile their response. Moreover, organisations that respond to consultations typically get numerous requests (an average of just over 23)¹ to respond to consultations each year. We can estimate the average length of time the groups in the sample spent on responding to a government consultation (an average of 2.06 days spent on each consultation with 23.4 consultation requests from government received each year answered 77.5 per cent of the time); an average organisation can be expected to devote the equivalent of one person working for over nine weeks a year just responding to government consultations.²

Those who respond to consultations do so despite the majority believing that the government has already decided what it wants to do before sending out the

consultation document. Fifty-six per cent agreed with the proposition in general that government had usually made up its mind what it was going to do before conducting any consultation and only 12 per cent disagreed, with 32 per cent neither disagreeing nor agreeing ($n = 346$). This figure did not differ significantly according to the size of the organisation responding to the survey (as measured by the number of full-time employees), or whether it represented specific or broad interests (as indicated by the number of consultation invitations each receives every year).

An Arena for the Outsider?

A full evaluation of the argument that the set-piece consultation is an arena predominantly or even significantly for the 'outsider' would require a comparison of those not taking part in consultations with those that do. Nevertheless, our data offer little to support the argument. Just under two-thirds of our sample³ (64 per cent, $n = 380$) participated in the consultation as they were on the ministry's mailing list as regular consultees and only just over a third participated without a direct invitation. To be on a ministry mailing list is not, however, much of a sign of being an 'insider'—for most such lists one only has to express an interest in a subject and one will be kept on the mailing list for a very long time afterwards.

A somewhat better indicator of 'insider' status is whether those that respond to the consultation have other, more direct, contacts with the ministry. When we asked whether the ministry had contacts with the group in connection with the matter on which they were consulting *before* the formal consultation—a sign of the dialogue between the group and the ministry associated with 'insider' status—43 per cent had such prior contact ($n = 344$). Moreover 32 per cent contacted the ministry *after* the consultation with 23 per cent discussing the matter with the ministry *both* before and after. This means that a minority, 48 per cent of respondents to the survey, had no other contact with the ministry either before or after. Of course, we do not know how many 'insiders' by this definition did not participate in the formal consultation, but the available evidence suggests that 'insiders' form at least a significant part of the body of respondents to formal consultations.

The Pressures of Membership

As Lowery (2007, 29–30) argues, interest group lobbying behaviour has been understood from two broad perspectives. The first, which he suggests has been adopted by 'virtually all studies of interest organizations' is based on 'the simplifying assumption that they are motivated actors whose prime purpose is to influence public policy'. The second perspective is based on the assumption that 'interest organizations are motivated actors whose primary purpose is to survive'. This second perspective highlights the point that it is the wider organisational, institutional and political environment of an interest organisation that helps explain its objectives and strategies. This perspective is also suggested by Michael Heaney's (2004) discussion in the US context of the need for groups to maintain their distinct identity in an often crowded group policy-making environment.

Table 1: Reasons for Responding to Consultation

	One reason %	Most important reason %
Because of members' concerns	60	32
To offer facts	55	14
To voice opposition	30	14
To voice support	39	13
To help us to clarify our position	33	4
Because the ministry expects us to reply	24	3
Members asked us to reply	21	2
Don't know	na	1
Other	27	16
N	383	370

In practice, the distinction between influence and organisational survival is always likely to be difficult to make. For example, whether a group like The Badger Trust voiced its opposition to DEFRA (2010) plans to approve badger culling because of some need to maintain its identity and profile in relation to its members or because it felt it had a chance of succeeding in stopping it, is what might be termed a *mens rea* issue. One needs to know the mind of the person in question—in the case of an organisation this is complicated by the fact that there are typically many individuals at work and defining whose state of mind is decisive makes the whole question exceptionally difficult to analyse.

Fortunately our questionnaire allows us to explore this question, albeit indirectly. We included two questions asking which of the reasons in Table 1 explain why their group responded to the consultation in question. The first column of Table 1 gives responses to the question of whether the reason was *one among several possible reasons*, thus 60 per cent indicated that members' concerns were one reason for responding. The second column indicates the percentages choosing each reason as *the* single main reason in this list. Thus 32 per cent said members' concerns were the most important reason for replying.

If we take those who gave membership pressures as one reason for responding to the consultation, we would expect them to be disproportionately sceptical about the value of consultations. If these organisations do perceive pressures from their membership to respond to consultations we might expect that they reply to consultations *despite* the fact that they believe their response will not make a large difference to what the government decides to do in the end, while those without such membership pressures respond because they seek to influence policy and are thus more likely to believe they can.

Table 2 presents the results of a cross-tabulation of the responses to our question of whether respondents agree with the general proposition that government has made up its mind what it wants to do before sending out a consultation broken down by

Table 2: Membership and Perceived Effect of Consultations

Government has made up its mind already	Pressure from members	
	Absent	Present
% Agree	50	60
% Neither agree nor disagree	37	28
% Disagree	13	12
Total	100	100
N	126	220

whether membership was given as a reason for responding. The difference is both statistically significant (at the $P < 0.05$ level) and in the expected direction: those with membership pressures are more likely (60 per cent) to agree that the government makes up its mind before sending out consultations than those without them (50 per cent).

While this offers some support for the Lowery view of the impact of membership on group strategies, the impact is not strikingly powerful—even half of those replying without pressure from their members still think that the government consults without an open mind and so are likely to perceive the impact of their responses to be limited.

The Triumph of Hope over Experience

If it were the inexperienced who have higher expectations of the results of the set-piece consultation we would expect to find those individuals who actually wrote the responses to the specific named consultations that formed the focus for the bulk of our questions to be largely inexperienced. Again, while we lack the comparison with those *not* responding to the consultation, the evidence from our sample of groups that did respond to consultations does not support the inexperience explanation. Those for whom the consultation in question was the first they had ever responded to tended to be substantially less likely to agree that the government makes up its mind before sending out the consultation (36 per cent) than those with more experience (for those with experience of between 2 and 5 previous consultations this was 56 per cent, 6–10 previous consultations 54 per cent, 11–20 consultations 57 per cent, over 20 consultations 63 per cent). While the one group of completely inexperienced respondents is likely to have much higher expectations of what a consultation can achieve, this group is a small proportion of our total sample (25 cases or 7 per cent of the valid responses to this question). Those who have done a couple of consultation responses are not that much more likely to be doubtful of the value of consultations than those who have done over 20, and the link between inexperience and perceptions that the government consults only after it has made up its mind is not statistically significant.

Linkages to the Wider Process of Lobbying

As we have seen, a substantial proportion of the sample, 43 per cent, were not prompted by the set-piece consultation alone to get their views across to government since they had contact with government on the matter *before* the set-piece consultation. This adds plausibility to the proposition that responding to set-piece consultations is a necessary price to pay for, or a minor addition to, effective direct lobbying.

Our evidence does not allow us to cast a particularly strong light on the question of whether participating in a consultation where one is broadly disinclined to do so (perhaps because one's expectations of influencing outcomes are low and/or one has no strong feelings about the issue at stake) is a method of 'keeping in' with the ministry in the hope of being given greater credibility and influence on another more pressing issue later on. The fact that 24 per cent of respondents gave a perceived obligation to the ministry as a reason for responding (i.e. giving 'the ministry expects us to' as an answer to the question of why they responded to the consultation) suggests that the maintenance of longer-term relations with the ministry is a significant consideration in replying to the consultation (see Table 1). That it might not be particularly powerful is suggested by the finding (also Table 1) that only 3 per cent give this as the most important reason.

Moving to the question of whether responding to set-piece consultations was a minor adjunct to a wider campaign of lobbying, one measure of assessing this employs a similar logic to that used when we examined the impact of membership above. We might expect those who respond to consultations as an adjunct to direct lobbying to be more sceptical of the value of consultations in general as they are more likely to believe that the real influence comes through other direct forms of contact. However, those for whom the response to the particular consultation was a supplement to other direct contacts with the ministry on the consultation in question were no more likely to doubt that the ministry consults after it has made up its mind than others. In fact, though the differences are not statistically significant, the opposite was the case: 48 per cent of those who had direct contacts with the ministry both before and after the set-piece consultation thought the ministry made up its mind before consulting compared with 54 per cent of those who had contact neither before nor after, 49 per cent of those with contact before only and 79 per cent of those with contact after only (the latter is a percentage of only 29 respondents).

Another way of assessing whether responding to a consultation is perceived as a supplement to other more powerful direct forms of lobbying is to examine outcomes: whether those who responded to a consultation and used other forms of lobbying felt they had more influence than those who used the set-piece consultation alone to get their views across to government. We asked a series of questions based on the respondents' reading of the government's published response to the consultation in which it set out the views the consultation produced and how the government proposed to react to them.

Those with no other contacts were significantly less likely (59 per cent) than those with contacts (79 per cent) to have read the government response and thus answer this series of questions, and the results need to be treated with some caution.

Table 3: Respondents' Views of Government's Response to the Consultation (%)

	Other contacts		
	No	Yes	All
<i>The government summarised our responses fairly</i>			
Agree	39	44	41
Neither	41	34	37
Disagree	20	23	21
Total	100	100	100
N	111	131	242
<i>The government gave enough weight to our views</i>			
Agree	20	33	27
Neither	44	28	36
Disagree	35	39	37
Total	100	100	100
N	113	131	244
<i>The government responded by changing its proposals with respect to</i>			
The direction or direction and details	9	18	14
The details only	65	58	62
Neither	25	24	25
Total	100	100	100
N	111	137	248

However, there is some evidence of a consistently more favourable outcome for those using other additional contacts with the ministry (Table 3).

The results are somewhat mixed. Those with no other contacts were marginally less likely (39 per cent) to feel that their views were summarised fairly than those with other contacts (44 per cent). They were also significantly less likely to agree that the government gave weight to their views—20 per cent as compared with 33 per cent of those with additional contact before or after the set-piece consultation. This difference is significant at the $P < .05$ level. The groups using other contacts were somewhat less likely to believe that the comments from the consultation were able to change details of the policy (58 per cent compared with 65 per cent of those without contacts) and no more or less likely to believe that consultations changed neither details nor policy. Yet those without other contact were more likely (18 per cent compared with 9 per cent) to believe that the government responded to the consultation by changing the policy direction. The latter question in Table 3, however, relates to a perception of government changing policy or detail as in response to all comments received in the consultation and not to government changing policy or details in line with the group's own suggestions. Therefore this question might be considered a less reliable measure of perceived group influence than the question of 'giving weight to our views'.

The evidence overall tends to suggest that closer contacts to the ministry through prior and subsequent contact modestly enhances the perceived impact of what groups say in their responses to set-piece consultations. Those only using the set-piece consultation appear less likely to see favourable outcomes from the consultation. The missing piece in our assessment of the additional value of consultations, however, remains data about those who made direct representations but did not respond to the set-piece consultation.

Conclusions

Few participants in consultations, 12 per cent, believe that governments are prepared to change their minds on the policy proposals they send out in a set-piece consultation. However, as Table 3 shows, only one quarter of respondents (25 per cent) believe, after reading the government's published response to the consultation to which they contributed, that the government changed absolutely nothing on the basis of the responses received. Fewer, 14 per cent, seem to think that the government changed its mind on the main thrust of the consultation. The clear majority, 62 per cent, believed there was some movement on the details. This finding that respondents to a set-piece consultation exercise believe they may have made some limited changes to detail is of a scale to help explain why groups should devote such attention to responding to them despite harbouring few illusions about their impact.

Those responding to set-piece consultation requests appear to be able to live with the idea that the broad outcome of the consultation might be a foregone conclusion and still remain satisfied with the transaction overall. A large proportion (43 per cent) believed the specific consultation to which they responded to be 'biased'. However there was a stronger tendency to believe that the *process* was fair, with only 13 per cent believing that the government's consultation document 'did not set out the issues clearly' (71 per cent agreeing it did) and 23 per cent believing the document 'did not focus attention on relevant issues' (59 per cent agreeing it did). As Table 3 shows, only 21 per cent believed that the government's published response to the consultation did not summarise the points made by consultees fairly. The process does not appear to be off-putting even if the outcome is likely to be only limited change.

This suggests that set-piece consultations occupy a distinctive role in the development of policies. Battles over the structure of policy proposals, including whether they should go ahead at all, are usually won or lost long before the issue is sent out for consultation. Governments might regard the set-piece consultation in part as a legitimising procedure. They are also, for government, likely to be something more than this. Evidence from the study of secondary legislation suggests that officials do not necessarily look to consultations for advice about the full range of details of implementation—they seek to assure themselves that they have got most of these right *before* they get to the formal consultation stage and usually remain unsurprised by the responses to them which they often discount in advance (Page 2001, 144–146). Rather they tend to treat them in part as publicity (e.g. informing people that a change in the law is coming), as a means of verifying that they have

understood the consequences of their proposals (i.e. making sure that they have not neglected to consider issues that could affect the operation of the proposed measure) and a general means of some very limited 'fine-tuning' implementation issues and avoiding unintended consequences.

Thus from the government's perspective, set-piece consultations are understood in general to be about the issues involved in making policies work. While the development of this argument lies outside the results of the survey, reading consultation documents and government responses to them in the light of our findings endorses the view that the principles of the proposal are not normally up for question. Moreover consultees appreciate this and understand the kinds of issues likely to carry weight with the government—above all comments relating to factual or technical issues which government may have overlooked or underestimated or to suggestions that might sugar the pill among those claiming some kind of harm from the proposals.

The idea that set-piece consultations are the place where the powerless air their views had no support since those who have characteristics of 'insiders' form a large proportion of respondents to them. We found some support for the impact of perceived membership expectations, rather than expectations of success, motivating some to respond to consultations, as well as some support for the argument that set-piece consultations were responded to in order to bolster more important direct lobbying efforts. Yet these were relatively small effects; strong enough to endorse the validity of the theoretical perspectives that produced them but not strong enough to explain our central puzzle.

Set-piece consultations should not be confused with the more general processes of consultation and negotiation with interest groups. Group consultation and lobbying usually take place both before and after this particular stage. They take place not only within the executive; rather, the briefs and positions developed by groups in the set-piece consultations can also be deployed again in the legislative process, albeit with the executive then becoming the indirect target for groups (Hansard Society 2008). Set-piece consultations are a distinctive and limited form of pluralism which strongly privilege the perspective already reached by the government but which offer sufficient prospects that the government will change details to make the whole process worthwhile for the large number of interest groups that respond to them. There are distinct issues that are handled at the set-piece consultation stage, and while it helps to have had other direct contacts to make sure your views are given sufficient weight, even those without such contacts feel good enough about the process, and feel they have been taken seriously enough in the past, to believe that they are in with a chance to shape the details next time around.

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Notes

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1. This figure and the other in the paragraph are estimates using mid-point estimation, from answers producing ordinal variables, $n = 341$.
2. One has to bear in mind that the sample is of groups that actually responded to at least one consultation, so the groups in the survey might be expected to be more diligent in responding to consultations than a random sample of groups.
3. Excluding the 'don't knows' and those who stated they found out about it through 'other' routes.

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