

Measures to ensure the quality of new regulations

Workshop on simpler and more effective
business regulations

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Content

1. Quality of regulations
2. Current situation in Iceland of *Measures to ensure the quality of new regulations*
3. Work in progress regarding *Measures to ensure the quality of new regulations*
4. "One In, One Out"



1. Quality of regulations – Overview

1. Preparation
2. Content
3. Language and Structure
4. Effectiveness/Outcome
5. "Input" from the UK
6. "Input" from Norway



1.1. – 1.4. Four "dimensions" of quality

1. Preparation

- Political/social/legal objectives identified (to be properly addressed)
- Consultation
- Impact assessment

2. Content

- Necessary
- Legally sound



1.1. – 1.4. Four "dimensions " of quality

3. Language and structure

- Clear
- Coherent

4. Effectiveness/Outcome

- Political/social/legal objectives addressed?

There are of course more – e.g. Access, ...



1.5. "Input" from the UK

"Good law is necessary, effective, clear, coherent and accessible. It is about the content of law, its architecture, its language and its accessibility – and about the links between those things."

– From *“When Laws Become Too Complex”* (2013), a review into the causes of complexity, conducted by The Office of the Parliamentary Counsel.



1.6. "Input" from Norway

- Content
- Limited volume
- Language
- Interaction between content and language
 - legally sufficient
 - plain and clear
- Structure

– Inger Riis-Johannessen, Legislation Department, Ministry of Justice and Public Security, Norway. Lecture „Språket i regelverket“ (Klarspråkskonferansen 2012).



2. Current Situation in Iceland – Overview

1. Legal framework
2. Quality control
3. What are the problems?



2.1. Legal framework

- Legal framework of PARLIAMENT bills:
 - Only subject to "Standing orders of Althingi " no. 55/1991, art.1. mgr. 37. gr., demanding only 1) "form of draft acts of law", and 2) "explanatory notes describing the general reason for its introduction and explaining its principal provisions".
- Legal framework of GOVERNMENT bills:
 - Subject to the same (very general) two conditions in "Standing orders of Althingi " no. 55/1991, plus needs "estimate of the expense to the State Treasury ".
 - The department of legislative affairs (DLA) in the Prime Minister´s Office is charged with the enforcement of rules concerning the preparation of government bills.
 - Rules of procedure in cabinet, no. 11/2013 (based on law no. 115/2011), stating that ...



2.1. Legal framework

... bills are to be prepared in accordance with these rules. Thus requiring:

- ✓ explanatory notes dealing with the **need for legislation, and other possible options**, deliberations (if risen) on constitutional matters or international obligations, **consultation** (internal/external?), **impact assessment** (in general/for the public interest and relevant parties/for public bodies/regarding the state budget (law no. 55/1991) /regarding financial impact on local government (see also law nr. 138/2011), other impact assessment (?), such as in regard of gender/minorities/government/competition/nordic collaboration,
- ✓ need for public surveillance, its value and societal cost (see also law no. 27/1999),
- ✓ relation to incorporation of EEA-rules and compliance to ESA-rules on that basis (see also law no. 55/1991),
- ✓ clear language

and...



2.1. Legal framework

- ✓ Compliance with Handbook on drafting parliamentary bills, issued in 2007 by PMO's Office and Office of Parliament. *A collection of best-practice standards and applicable rules, providing guidance and promoting coordination. Not dealing with secondary legislation or bills originating in Parliament. NOW UNDER REVISION*
- ✓ Compliance with list of contents in explanatory notes (issued by PMO's Office): **chapter on the need for legislation, impact assessment, consultation** etc.
- ✓ Compliance with checklist (issued by PMO's Office), regarding **need for legislation, impact assessment, consultation**, constitutional issues etc.



2.2. Quality control

- Quality control of PARLIAMENT bills (based on legal framework already mentioned)
 - Only subject to the *Parliament's Document Secretariats* proofreading, including whether bills are in plain language and traditional form
 - Parliamentary legal frame and (less) quality control applies when parliament makes changes to government bills.



2.2. Quality control

- Quality control of GOVERNMENT bills (based on legal framework already mentioned)
 - The Parliament's Document Secretariat proofreads all bills, also checking plain language and traditional form.
 - All government bills are scrutinised by DLA before they are presented to the cabinet.
 - Legal staff of DLA in the Prime Minister's Office read over bills. According to the Rules of Procedure in Cabinet, DLA has one week to deliver an opinion. In practice, most issues have been solved informally before a formal opinion is issued. **The DLA opinion** is attached to the bill when it comes to the cabinet, but not when it is presented in Parliament.



2.2. Quality control

- All government bills have also undergone impact assessment in regard of the state budget, carried out by the Ministry of Finance on the basis of information from the relevant Ministry. Presented with bill in cabinet and Parliament.
- Ministries have their own (individual) internal rules/procedure.
- Parliament scrutinises government bills (MP's, committees and staff).
- Limits of the quality control.



2.3. What are the problems?

2.3.1. Basis for assumptions:

- A report from the PM (in Nov. 2012) to Parliament, addressing some of the challenges in this field and reviewing the situation in Iceland in light of recommendations from OECD Council on Regulatory Policy and Governance (2012): on **impact assessment, need for legislation, consultation**, and more.
- A course/seminar in March 2013 with participants from ministries (legal staff), Parliament (legal and other staff from the Committee and Document Secretariat), Ombudsman, The Attorney General and a Norwegian specialist in impact assessment. Focus: **impact assessment; consultation**; clarity and coherence; EEA-related legislation
- Work of OECD and in other countries, such as Scandinavia and UK



2.3.2. General Issues

- Quality:
 - Coherent quality of all legislation

- Problems according to PM's report in Nov. 2012:
 - *Bills from members of Parliament are not subject to the same quality control as government bills. The same goes for changes made to government bills.*
 - *Secondary legislation is not subject to the same quality control as government bills.*



2.3.2. General Issues

- (Other) Challenges discussed by participants in course/seminar in March 2013:
 - *Lack of time (Ombudsman and others)*
 - *Too much legislation?*
 - *Need for more (formal) documentation/instructions/ criteria and increased awareness of the time and effort needed to prepare a bill.*



2.3.3. Preparation of Government Bills

- Quality:
 - Identifies political/social/legal objectives (to be addressed)
 - Consultation
 - Impact assessment

- Problems according to PM's report in Nov. 2012:
 - *We need to improve policy making when preparing legislation (also, Ombudsman).*
 - *We need to make use of project- and time management methods when bills are prepared and discussed throughout the whole process.*
 - *Consultation on draft rules needs to be more coordinated.*
 - *Assessment of the [...] impact of legislation needs to be improved and care taken to ensure that it objectively addresses the main issues.*



2.3.3. Preparation of Government Bills

- (Other) Challenges discussed by participants in course/seminar in March 2013:
 - *More long-term planning of drafting bills.*
 - *Lack of consultation means more time spent in Parliament.*
 - *More consultation with Parliament needed.*
 - *Impact assessment (in draft) needed to make full use of consultation.*
 - *Staff needs to be educated in impact assessment.*
 - *State budget assessment needs to be coordinated with other kinds of impact assessment.*
 - *EEA-issues (earlier participation, more coordination between ministeries, ...).*
 - *Questionable early participation of parties with invested interest, versus specialists (Ombudsman).*



2.3.4. Content of Government Bills

- Quality:
 - **Necessary**
 - Legally sound

- Problems according to PM's report in Nov. 2012:
 - *Assessment of the need for [...] legislation needs to be improved and care taken to ensure that it objectively addresses the main issues (also Attorney General).*
 - *Control of the constitutionality of new legislation needs to be improved.*



2.3.4. Content of Government Bills

- (Other) Challenges discussed by participants in course/seminar in March 2013:
 - *Unclear extent of public enforcement of rules versus private interaction (Ombudsman).*
 - *Unclear basis for and extent of secondary legislation (Ombudsman).*
 - *Purpose of law to be more clear and in view of proportionality principle and constitution (Ombudsman).*



2.3.5. Language and Structure

- Quality:
 - Clear
 - Coherent

- Challenges discussed by participants in course/seminar in March 2013:
 - *Standardised table of contents to be followed in all explanatory notes.*
 - *Translations of EEA-related legislation.*
 - *Lack of coherence is the biggest general problem (Attorney General).*
 - *Cases of insufficient clarity.*



2.3.6. Effectiveness/Outcome

- Quality:
 - Have the political/legal/social objectives been properly addressed?

- Problems according to PM's report in Nov. 2012:
 - *It needs to be reviewed more systematically whether existing law brings about the desired impact and whether an update or revision is needed.*



2.3.7. "Comparing problems" – The UK

Three quotes from "Ensuring standards in the quality of legislation" (2013).
Report, House of Commons Political and Constitutional Reform Committee:

The Constitution Society told us that the primary reason for poor-quality legislation was political: “There are very strong political pressures on governments, and individual ministers, to push through large quantities of new legislation on tight timetables and with insufficient preparation.

First Parliamentary Counsel said that he recognised the concept of “initiative-itis” where legislation is brought forward because a Minister wishes to be seen to be doing something. However, he suggested that most legislation was “pretty solid, worthy stuff.”



2.3.7. Comparing problems – The UK

One conclusion of the committee:

Proper preparation of policy is crucial. Clear, coherent policy which has been subject to challenge and revision will aid Parliamentary Counsel in drafting comprehensive and comprehensible bills. To require a formal draft to be produced before the policy preparation process has finished is to put the cart before the horse, necessarily increasing the risk of error and need for parliamentary time to be taken up with amendments.



2.3.8. Comparing problems – Norway

- Starts too late or goes on for too long.
- Low prioritising – or making inefficient use of resources?
- Pressure from political leadership
- Result of compromise
- Old habits die hard
- Insufficient knowledge of language-rules and rule-making
- Uncertain co-workers afraid to be write clearly
- Lack of understanding of the value of good formulation
- Insufficient quality control

– *Inger Riis-Johannessen, Legislation Department, Ministry of Justice and Public Security, Norway. Lecture "Språket i regelverket" (Klarspråkskonferansen 2012).*



3. Work in Progress – Overview

1. Three new handbooks, including revision of Handbook (from 2007) on drafting legislation
2. Emphasis of revision
3. Revision/action in view of problems



3.1. Three new handbooks

- New handbook on project- and time-management issued this summer
- New handbook on policy-making in final stage of preparation
- Revision of handbook on drafting legislation, in cooperation with Parliament administration
- Introduction/implementation/training in relation to all three handbooks to start autumn/winter 2013-2014



3.1. ... revision of Handbook (2007)

- Drafting team and supervisors
 - DLA
 - Parliamentary Office
- Consultation, user-testing, (this winter)
 - Ministeries
 - Parliament
 - Others
- Significance
 - Rules of procedure in cabinet require government bills to be prepared in accordance with (present) handbook.



3.2. Emphasis of revision

- Emphasis of revision: **IN ACTION PLAN**
 - Updates (since 2007) – rules
 - Necessity of legislation. **IN ACTION PLAN**
 - Impact assessment. **IN ACTION PLAN**
 - Consultation. **IN ACTION PLAN**
 - Incorporation of EEA-legislation
 - Penal clauses
 - Clarity and coherence (language and structure)



3.3. Revision/action in view of problems

- *Trying* to influence work based on unclear rules:
 - Secondary legislation. NOW PART OF HANDBOOK
 - Parliament bills/changes. COOPERATION WITH PARLIAMENT
- *Working* to coordinate different rules/methods in different ministries
 - Consultation on drafts. MORE IN HANDBOOK, IN ACTION PLAN
 - Need for legislation. MORE IN HANDBOOK, IN ACTION PLAN



3.3. Revision/action in view of problems

- *Providing* more clear and detailed information where compliance/enforcement has been lacking
 - Structure of explanatory notes. **NEW IN HANDBOOK**
 - Unclear basis for secondary legislation or purpose of law. **MORE IN HANDBOOK**
 - Coherence. **MORE IN HANDBOOK**
 - Clarity. **MORE IN HANDBOOK**



3.3. Revision/action in view of problems

- *Interacting* with two other new handbooks and providing additional information in areas where information/knowledge/resources has been lacking
 - Policy-making – Project-management. NEW IN HANDBOOK(S), IN ACTION PLAN
 - Too much legislation/Need for legislation – Awareness of time and effort needed to prepare a bill – Impact assessment – Incorporation of EEA-legislation – Unclear basis for secondary legislation or purpose of law – Constitutional dilemmas. MORE IN HANDBOOK, IN ACTION PLAN



3.3. Revision/action in view of problems

- Problems out of scope:
 - *More long-term planning of drafting bills*
 - *Control of the constitutionality of new legislation needs to be improved*
 - *Translations of EEA-related legislation*



4. One in, one out

1. Current basis
2. Further work
3. Ways of implementation



Thank you!

