



WESTMINSTER
FOUNDATION FOR
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POST-LEGISLATIVE SCRUTINY

GUIDE FOR PARLIAMENTS





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Franklin De Vrieze

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Acronyms

CoE	Council of Europe
CSO	Civil Society Organization
HoC	House of Commons
MP	Member of Parliament
NGO	Non-Governmental Organization
SWOT	Strengths, Weaknesses, Opportunities and Threats
UK	United Kingdom
WFD	Westminster Foundation for Democracy

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EXECUTIVE SUMMARY

One of the main roles of parliament is to create laws that meet the needs of the country's citizens. It is also a parliament's role to evaluate whether the laws it has passed achieve their intended outcome(s). Post-Legislative Scrutiny refers to the stage at which a parliament applies itself to this question: whether the laws of a country are producing expected outcomes, to what extent, and if not, why not.

While there is no single blueprint for conducting Post-Legislative Scrutiny by parliament, through this publication, the Westminster Foundation for Democracy (WFD) hopes to assist and enable better organized Post-Legislative Scrutiny inquiries by parliament. This "Post-Legislative Scrutiny: guide for parliaments" provides practical guidance for organizing Post-Legislative Scrutiny inquiries in parliament. It has three main sections.

1 The first section describes the framework for conducting Post-Legislative Scrutiny by parliament. It provides a short introduction to the why and what of Post-Legislative Scrutiny and addresses the question of which laws require priority focus for Post-Legislative Scrutiny. There are examples of typical questions addressed in ex-post facto evaluation of legislation. The first section discusses use of Post-Legislative Scrutiny to pursue cross-cutting policy themes or priorities, such as gender analysis. It relies on some key issues discussed in the "Principles for Post-Legislative Scrutiny by Parliament", published by WFD in 2017.

2 The second section describes the methodological steps for parliamentary staff in organizing a Post-Legislative Scrutiny inquiry. This is the most substantive and detailed section, divided over four phases: pre-planning phase, planning phase, implementation phase and follow-up phase. The guide is centred around short sections, methodological steps that allow readers to focus on individual topics or challenges. Each section includes a short bullet-point summary highlighting the main action points for parliamentary staff and MPs.

Pre-planning phase.

Before parliament can engage in planning Post-Legislative Scrutiny activities, several key issues need to be clarified: consideration of approving possible binding requirements for Post-Legislative Scrutiny, trigger points for Post-Legislative Scrutiny, and the needed resources to conduct Post-Legislative Scrutiny.

Discussions and decisions on these issues go beyond the organization of Post-Legislative Scrutiny inquiries and are important for the functioning of parliament as a whole or are relevant for the entire legislative process. The discussions on these issues often take place at the political and managerial level of parliament, and over a longer period, prior to a specific Post-Legislative Scrutiny inquiry. We count these issues as part of the pre-planning phase of conducting Post-Legislative Scrutiny.

Planning phase.

Before a Post-Legislative Scrutiny inquiry can start the following issues must be addressed: selecting the law(s) which will be evaluated; defining the goals or objectives of the review; identifying the implementing agencies and relevant stakeholders; collecting the necessary information and data; and determining the timeframe and schedule of Post-Legislative Scrutiny activities. We count these issues as part of the planning phase of Post-Legislative Scrutiny.

Implementation phase.

As a Post-Legislative Scrutiny inquiry starts, the following issues are anticipated: consulting stakeholders and implementing agencies; reviewing the effects of delegated legislation; working with media and considering an information campaign; analysing the Post-Legislative Scrutiny inquiry findings; and, drafting the report. These issues count as part of the implementation phase of Post-Legislative Scrutiny.

Follow-up phase.

As a Post-Legislative Scrutiny inquiry comes to an end, several subsequent issues need to be taken care of: distributing the report and making it publicly accessible, policy follow-up to the inquiry, and evaluating the Post-Legislative Scrutiny inquiry results and process. These issues count as part of the follow-up phase.

3 The third section of the guide offers the concluding remarks. Reviewing the implementation of legislation is closely linked to the oversight function of parliament. To take charge of this responsibility, parliaments can establish specialised committees and conduct their own analysis and/or they can rely on the information and reports provided by the government. In its policy advice and capacity building support to parliaments, WFD could suggest various options (or combination of options) on how to introduce Post-Legislative Scrutiny:

1. Ministries could be asked to provide regular reporting to parliament on the implementation of laws, possibly based upon the UK model where the ministries prepare a Memorandum for parliament on implementation of each law - three to five years after its enactment.
2. Parliament could outsource or commission research on law implementation to external institutions, either autonomous official institutions (such as the Auditor General's Office) or external independent institutions such as universities.
3. Parliament could conduct its own inquiries on the implementation of selected laws by holding public hearings, collecting evidence and conducting in-

house research by staff of the Parliament, such as through a Research Unit or Legislative Unit.

In contexts in which a parliament has limited resources to sustain a fully integrated system of Post-Legislative Review, WFD suggest the planning and implementation of a two-year pilot project approach in which the parliament examines the implementation of a limited set of laws (two to three). After this two-year period, the pilot project can be evaluated, and lessons learned identified for a more generalised and institutionalised approach. The pilot project could take the form of a Committee review of Ministry reports on the implementation of selected law(s), Committee review of outsourcing research by external institutions or Committee-led inquiries and in-house research on implementation of selected legislation. Finally, the Post-Legislative Scrutiny work needs to show its relevance to the public and needs to be conducted in a way that citizens can contribute to evaluation of legislation.

This guide contains several annexes, including a comprehensive check-list of all staff actions to be taken for a Post-Legislative Scrutiny inquiry during the planning phase, implementation phase and follow-up phase (Annex 1), and guidance for witnesses of the Post-Legislative Scrutiny hearing or consultation (Annex 2). A Glossary of Parliamentary Terms has been annexed to the guide (Annex 3), and a bibliography of relevant literature (Annex 4).

The guide has been drafted because WFD sees value in the argument that Post-Legislative Scrutiny should be a more integral part of the parliamentary process. WFD is aware of the resource constraints that parliaments face and the need for a flexible approach. The guide therefore seeks, as much as possible, to build on existing systems and procedures in the beneficiary parliaments.



Post-legislative scrutiny can ensure legislation guaranteeing quality education is implemented.

I. INTRODUCTION: WHY THIS GUIDE?

One of the roles of parliament is to create laws that meet the needs of the country's citizens. It is also a parliament's role to evaluate whether the laws it has passed achieve their intended outcome(s). Post-Legislative Scrutiny refers to the stage at which a parliament applies itself to this particular question: whether the laws of a country are producing expected outcomes, to what extent, and if not, why not.

PURPOSE OF THE GUIDE

This guide aims to upgrade and enhance the functioning of parliaments in preparing, organizing and following up to Post-Legislative Scrutiny inquiries. The guide also proposes new or additional parliamentary practices with a view to enhancing the efficiency of Post-Legislative Scrutiny inquiries and/or increasing its outreach to the public.

AUDIENCE FOR THE GUIDE

The guide can be used by parliaments who want to introduce and guide a pilot-project on Post-Legislative Scrutiny in parliament, or strengthen Post-Legislative Scrutiny practices. Parliaments interested in advancing Post-Legislative Scrutiny practices often do not have the time or resources to document the internal operating structures and the practical and sometimes policy dilemmas they face. This guide has therefore been written primarily with the needs of this audience in mind and draws most of its recommendations from practice in the field.

The guide has been written primarily for parliamentary staff. This publication will assist newly recruited parliamentary staff who are keen to expand their knowledge about the challenges they are likely to face when preparing a Post-Legislative Scrutiny inquiry. Newcomers derive the greatest benefit from guides since they find a source of written guidance that enables them to start working with greater confidence and to begin making a useful contribution more quickly. The guide can also be

useful for experienced staff to provide a structured framework for what they already know and as a source of authority in the event of discussion on how to organise Post-Legislative Scrutiny matters.

The guide may also form a basis for training programmes, and can be instrumental to make the proceedings of parliament more accessible and understandable to those outside the process, in particular for citizens.

While the manual is primarily intended as guidelines for the parliamentary staff, at the same time, it can be a useful document for the leadership of the Secretariat of Parliament (Secretary General and Directors of Departments) as well as Members of Parliament (MPs) who have a key role in the conduct of Post-Legislative Scrutiny inquiries.

The guide may be useful for staff from MPs' personal offices, as it may include useful advice for personal office staff who may want to take the initiative to persuade a committee to move on Post-Legislative Scrutiny as part of his/her Member's personal legislative agenda. This is clearly more likely in first-past-the-post and other nominal systems of election.

This guide will also be useful for other state institutions, civil society, media, and other organizations and institutions that interact with the Parliament. Finally, the guide can be of use for witnesses, organizations, implementing agencies and the public interested in the work of the parliament and/or invited to participate in a public hearing or Post-Legislative Scrutiny consultation.

LIMITATIONS

This guide does not aim to provide an one-size-fits-all method of conducting Post-Legislative Scrutiny inquiries or an exhaustive overview of scenarios. Instead, it limits itself to suggesting possible options for preparing and conducting Post-Legislative Scrutiny inquiries. This has been done to give the

reader a chance to think about what would be his/her own preferred choice in each situation. The topics discussed in this guide should be considered building blocks for a practical decision-making framework.

While the guide is based on contemporary experiences, it is hoped that, as Post-Legislative Scrutiny inquiries develop, feedback on this guide will be received over time. This feedback would also

allow the basic framework offered by this guide to be further strengthened and expanded in the years ahead.

The guide is not exhaustive nor exclusive, but is intended to provide practical recommendations in establishing realistic Post-Legislative Scrutiny practices, in line with the legal and procedural framework specific to each parliament.



WFD MATERIALS ON POST-LEGISLATIVE SCRUTINY

This guide is part of a wider initiative by WFD on Post-Legislative Scrutiny which includes the Comparative Study on Post-Legislative Scrutiny by parliaments in 10 countries and a policy document called “Principles for Post-Legislative Scrutiny by parliament”. In addition to this guide, WFD intends to assist interested parliaments in rolling-out a pilot project on Post-Legislative Scrutiny.

II. THE FRAMEWORK FOR POST-LEGISLATIVE SCRUTINY

Prior to outlining the methodological steps in organizing a Post-Legislative Scrutiny inquiry by parliament, this chapter provides a short introduction to the why and what of Post-Legislative Scrutiny and addresses the question of which laws require priority focus for Post-Legislative Scrutiny.

This chapter is based upon the WFD 2017 policy document “Principles for Post-Legislative Scrutiny by Parliament” and the UK Law Commission’s consultation document on Post-Legislative Scrutiny.¹

2.1. WHY IS POST-LEGISLATIVE SCRUTINY RELEVANT TO PARLIAMENT?

While parliaments devote a large part of their human and financial resources to the process of adopting legislation, it is not uncommon to overlook the review of implementation of legislation. Implementation is a complex matter depending on the mobilization of resources and different actors, as well as the commitment to the policies and legislation, coordination and cooperation among all parties involved.

Implementation does not happen automatically and several incidents can affect its course, including: changes in facts on the ground, diversion of resources, deflection of goals, resistance from stakeholders and changes in the legal framework of related policy fields. Implementation of legislation and policies may also be undermined by power asymmetries, exclusion, state capture and clientelism.²

Despite these challenges there are four overarching reasons why parliaments are compelled to monitor and evaluate the implementation of legislation: (1) to ensure the requirements of democratic governance and the need to implement legislation in accordance

to the principles of legality and legal certainty, are being met; (2) to enable the adverse effects of new legislation to be apprehended easily and expeditiously; (3) to support a consolidated system of appraisal for assessing how effective a law is at regulating and responding to problems and events; (4) to support improvements in legislative quality by learning from experience both in terms of what works and what does not, and in terms of the relationship between objectives and outcomes.³



2.2. WHAT IS POST-LEGISLATIVE SCRUTINY?

As Post-Legislative Scrutiny is a broad concept, it is recognized that it might mean different things to different parliaments and stakeholders.

In its stricter sense, Post-Legislative Scrutiny looks at the enactment of the law, whether the legal provisions of the law have been brought into force, how courts have interpreted the law and how legal practitioners and citizens have used the law.

In a broader sense, Post-Legislative Scrutiny looks at the impact of legislation; whether the intended policy objectives of the law have been met and how effectively.

These are two dimensions of Post-Legislative Scrutiny: (1) to evaluate the technical entrance and enactment of a piece of legislation; (2) to evaluate its relationship with intended policy outcomes. It

¹ UK Law Commission, Post-Legislative Scrutiny – consultation paper, Published as LAW COM No 302, London, October 2006, 62 p.

² See: The World Bank, Governance and the Law - World Development Report 2017, Washington DC, 307 p., <http://www.worldbank.org/en/publication/wdr2017>

³ Westminster Foundation for Democracy, Comparative Study On Practices Of Post-Legislative Scrutiny In Selected Parliaments And The Rationale For Its Place In Democracy Assistance, London, 2017, 68 p.



is recommended that parliaments seek to carry out both forms of Post-Legislative Scrutiny: the enactment of law and its impact.

2.3. WHICH LAWS TO REVIEW? SELECT WISELY!

To make use of time and resources in the most effective way, parliament needs to carefully identify the pieces of legislation that are selected for Post-Legislative Scrutiny review. While in principle there may be benefits to carrying out Post-Legislative Scrutiny on most acts, a careful selection of legislation for review will be needed given the time and resources required, which presents a challenge for even the world's most resourced parliaments. It is preferable for limited resources to be applied in a manner that enables quality and effective post-legislative review of a few pieces of legislation a year, rather than less thorough evaluations of multiple acts. For the same reason, it may be desirable to review just one provision or section(s) of an act. This approach may be a particularly appropriate for large acts that contain different parts and which serve different purposes. The decision as to whether an act is suitable for review should be on a case-by-case basis.

It is possible to identify the types of acts that, in

general, may or may not be suitable for Post-Legislative Scrutiny review. Legislation generally not suitable for Post-Legislative Scrutiny review include: 1/ appropriation acts; 2/ consolidation legislation; 3/ legislation that makes minor technical changes only; and, 4/ legislation where the scheme of the legislation contains its own method of independent analysis and reporting.

On the other hand, legislation related to a state of emergency in the country, particularly where it affects civil liberties, and legislation adopted under fast-track procedures should always be subject to Post-Legislative Scrutiny. This type of legislation is often adopted without proper parliamentary scrutiny in time-pressured circumstances. Therefore, it is advisable to ensure that emergency legislation is subject to Post-Legislative Scrutiny.

In addition, when analysing the impact of legislation, one needs to consider the cumulative effect of legislation, as well as how the state of affairs within a policy area has been shaped by different pieces of legislation. Legislative impact is rarely the effect of one single piece of legislation; hence the usefulness of considering the cumulative effect of legislation.

To have a comprehensive understanding of the implementation and impact of legislation, it is useful to review secondary or delegated legislation at the

same time as reviewing the primary act. Acts of parliament often grant ministers powers to make delegated or secondary legislation. It is ideal to review secondary legislation post-enactment at the same time as reviewing the parent legislation from which it owes its authority. This is particularly the case at times when most of the provisions giving effect to a piece of legislation are held within the secondary, rather than the primary legislation. As with primary legislation, it would be open to parliamentary committees to commission research on the effect of specific secondary legislation or to undertake an inquiry.

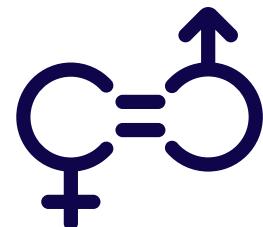
2.4. POST-LEGISLATIVE SCRUTINY AS A MEANS OF PURSUING CROSS-CUTTING ISSUES, SUCH AS GENDER ANALYSIS

A system of Post-Legislative scrutiny of past legislation allows a parliament to look at cross-cutting impacts which it has decided to treat as a priority. Particularly interesting topics to look upon could be gender or human rights, regulatory or environmental burdens.

For example, legislative initiatives frequently affect men and women differently. Systematic analysis

and evaluation of law and policy, based on how they impact women, men and other relevant demographic groups can help to identify and avert or redress any potential disadvantages they may create. This technical approach, referred to as gender analysis, also helps to ensure women and men have access to the same opportunities and legal protections. Gender analysis is also used to safeguard value for money and promote government efficiency and transparency.

Gender analysis requires the collection and analysis of evidence, such as sex-disaggregated data or qualitative assessments of government services.



It also requires policy makers to challenge assumptions about how a government programme or service should be structured, and to ask detailed questions about who is affected by a problem or issue and how they would be impacted by proposed solutions. It is therefore preferable to plan for this process during the early stages of the legislative process, prior to adoption of the law, to ensure systems are in place to collect and collate necessary evidence and information.

Box 1: Typical questions addressed in ex-post facto evaluation of legislation

- Have the original objectives of the law been achieved in quality, quantity and time, when measured against the baseline of what would have happened without the intervention of this law?
- To what extent has the law brought about the achievement of the objectives or has it induced activity that would not otherwise have occurred?
- Has implementation been affected, adversely or advantageously, by external factors?
- Have any significant unexpected side effects resulted?
- Have all the inputs required from Government and the private sector been made as planned?
- Have any of the allocated resources been wasted or misused?
- Has implementation led to any unfairness or disadvantage to any sector of the community?
- Could a more cost-effective approach have been used?
- What improvements could be made to the law and its implementation that might make it more effective or cost-efficient?
- Overall is the law and how it has been applied well suited to meeting the desired objectives?
- Have assumptions made during the passage of legislation (on costs, or timings, or impact) held true and if not, why not?
- Has the law affected different groups in different, or unintended ways? Have unforeseen disadvantages or burdens been created for women, young people, or other groups?

III. METHODOLOGICAL STEPS IN ORGANIZING POST-LEGISLATIVE SCRUTINY IN PARLIAMENT

For offering guidance on how parliament may conduct Post-Legislative Scrutiny, we have identified a series of methodological steps in organizing Post-

Legislative Scrutiny in Parliament, divided over four phases: pre-planning phase, planning phase, implementation phase and follow-up phase.

Box 2: Methodological steps in organizing Post-Legislative Scrutiny in Parliament

Phase	Steps	Staff action	MP's action
1 <i>Pre-planning phase</i>	Consider establishing binding requirement for Post-Legislative Scrutiny prior to adoption legislation	Drafting amendments to legislation	Adopt amendments or debate ministerial undertaking
	Identify trigger points for Post-Legislative Scrutiny if there is no binding requirement	Proposal on trigger points	-
	Engage human resources for Post-Legislative Scrutiny	-	Decide on human resources needed
	Engage other financial resources for Post-Legislative Scrutiny	Draft budget for Post-Legislative Scrutiny inquiry	Decide on budget resources needed
2 <i>Planning phase</i>	Select legislation for Post-Legislative Scrutiny and scope of legislation under review	Project outline for conducting Post-Legislative Scrutiny	Approve project outline
	Establish objectives for Post-Legislative Scrutiny inquiry and hearings	-	Approve project outline
	Identify and review the role of implementing agencies	Research	-
	Identify relevant stakeholders	Research	-
3 <i>Implementation phase</i>	Collect background information and data	Prepare data collection plan	-
	Determine timeframe for Post-Legislative Scrutiny	Project outline	Approve timetable
	Consult stakeholders and implementing agencies	Organize	Conduct consultation or hearing
	Review the effects of delegated legislation	Research	-
4 <i>Follow-up phase</i>	Making the consultation public	Engage	-
	Analysis of Post-Legislative Scrutiny findings	Analyse	-
	Drafting the Report	Drafting report	Debate and approve report
	Distributing the report and making it publicly accessible	Develop communication strategy	-
5 <i>Follow-up phase</i>	Conduct policy follow-up to the Post-Legislative Scrutiny inquiry	Post-inquiry monitoring mechanism	Seek government response to report
	Evaluate the Post-Legislative Scrutiny inquiry results and process	Drafting Note	-

3.1. PRE-PLANNING PHASE

Before parliament can engage on planning Post-Legislative Scrutiny activities, several key issues need to be considered and clarified: consideration on possible binding requirements for Post-Legislative Scrutiny, trigger points for Post-Legislative Scrutiny, and the needed resources to conduct Post-Legislative Scrutiny.

Discussions and decisions on these issues go beyond the organization of Post-Legislative Scrutiny inquiries and are important for the functioning of parliament as a whole or are relevant for the entire legislative process.

The discussions on these issues often take place at the political and managerial level of parliament, and over a longer period, prior to a specific Post-Legislative Scrutiny inquiry, and way before the other phases mentioned further in this publication. We count these issues part of the pre-planning phase of conducting Post-Legislative Scrutiny.



STEP 1: CONSIDER ESTABLISHING BINDING REQUIREMENT FOR POST-LEGISLATIVE SCRUTINY PRIOR TO ADOPTION LEGISLATION

The most effective mechanism to guarantee that Post-Legislative Scrutiny takes place is by securing binding requirements to the review of the implementation of legislation prior to its adoption by parliament.⁴ There are various ways to establishing this binding requirement:

- Firstly, at some point during the passage of the Bill, Ministers of the Executive may be asked to make a commitment (ministerial undertaking) to conduct a review of legislation, indicating what it should cover and when.
- Alternatively, as a second option, MPs could table amendments during the passage of a Bill which seek to insert a review clause. A review clause requires the operation of the Act or part of the Act to be reviewed after a specified time period. A review clause may be a useful tool because it is enshrined in statute and therefore has the force of law. It may simply provide for a general review or specify the specific provisions

that should be reviewed, the timescale for review and who should carry it out.

- A third option are sunset clauses, which go one step further. The utility of a sunset clause is to enable an Act or provision to automatically cease in its effect after a certain time period, unless another criterion is met, e.g. a review that keeps it in place.

Often a review clause or a sunset clause reflects a political compromise, representing the price the Government will pay for getting a Bill through parliament. It is recommended that parliaments establish as a binding requirement the review of the implementation of legislation as much as possible. While MPs and Committees debate and possibly adopt amendments to insert a review clause or sunset clause or debate ministerial undertakings to review legislation, parliamentary staff need to provide the required support and expertise, including drafting amendments.

Action for parliament staff

- Draft legislative amendments aimed at inserting a review clause or sunset clause
- Draft the MPs' statement requesting the Executive to commit to a ministerial review of legislation.

Action for MPs

- Consider which legislation one wants to establish a binding requirement to review implementation for
- Debate and adopt amendments inserting a review clause or sunset clause in draft legislation, or request during the parliamentary debate a ministerial undertaking to review the implementation of legislation.

⁴ Westminster Foundation for Democracy, Principles for Post-Legislative Scrutiny by parliament, London, 2017, 16 p.

Box 3: Sunset clauses and review clauses

The utility of a sunset clause is to enable an Act or provision to cease to have effect automatically, after a certain period of time, unless something that is specified, e.g. an evaluation, is done in order to keep it in place. Following is the sample language from three examples from the UK (UK statutes).

ELECTRONIC COMMUNICATIONS ACT 2000

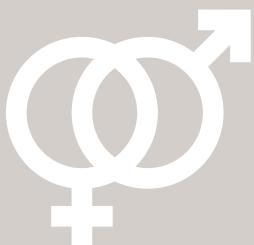
Part I of that Act concerns the arrangements for registering providers of cryptography support services, such as electronic signature services and confidentiality services. Section 16(4) is the sunset clause which states:



'If no order for bringing Part I of this Act into force has been made under subsection (2) by the end of the period of five years beginning with the day on which this Act is passed, that Part shall, by virtue of this subsection, be repealed at the end of that period.'

SEX DISCRIMINATION (ELECTION CANDIDATES) ACT 2002

A good example of a simple sunset – ‘this Act ceases by a certain date, unless extended; extension requires approval of each House.’ (In fact it was subsequently extended to 2030.)



- (1) *This Act shall expire at the end of 2015 unless an order is made under this section.*
- (2) *At any time before this Act expires the Secretary of State may by order provide that subsection (1) shall have effect with the substitution of a later time for the time specified there (whether originally or by virtue of a previous order).*
- (3) *An order under this section shall be made by statutory instrument; but no order shall be made unless a draft has been laid before, and approved by resolution of, each House of Parliament.*

The review clause is much softer in language than a sunset clause. There is a requirement to carry out a Review by a certain date, and then to act on the findings. The following example is from Section 7 of the Fixed-term Parliaments Act 2011:

7(4) The Prime Minister must make arrangements

- (a) *for a committee to carry out a review of the operation of this Act and, if appropriate in consequence of its findings, to make recommendations for the repeal or amendment of this Act, and*
- (b) *for the publication of the committee's findings and recommendations (if any).*
- (5) *A majority of the members of the committee are to be members of the House of Commons.*
- (6) *Arrangements under subsection (4)(a) are to be made no earlier than 1 June 2020 and no later than 30 November 2020.*





STEP 2: IDENTIFY TRIGGER POINTS FOR POST-LEGISLATIVE SCRUTINY IF THERE IS NO BINDING REQUIREMENT

Binding requirements to conduct Post-Legislative Scrutiny are not possible or desirable in all circumstances. An alternative approach is to leave the decision for reviewing a piece of legislation to a later point in time. To facilitate a decision on Post-Legislative Scrutiny post-enactment, it is useful to identify and agree on different triggers for post-legislative scrutiny, realizing that parliament has a main responsibility to trigger Post-Legislative Scrutiny at the right time.

While the Government might have an important role in identifying, post-enactment, legislation that should be reviewed to kick-start a review process, alternatively, the departmental, sectorial or subject committee in parliament, [or alternatively a dedicated Special Committee on Post-Legislative Scrutiny] may decide that an Act or provisions within an Act should be reviewed.

Trigger points which generate consideration of whether or not to initiate Post-Legislative Scrutiny might include representations by citizens or organizations that a piece of legislation needs reviewing, media reports or petitions indicating the

need for Post-Legislative Scrutiny, and/or members of the judiciary commenting that a piece of legislation should be revisited.⁵ In the next box, there is a list of possible trigger points to initiate Post-Legislative Scrutiny in parliament. The list of trigger points can either be approved as a working document of the Committee staff or a decision by Committees or parliament Bureau, depending on the political system and organizational culture of the respective parliament.

Action for parliament staff

- Analyse which trigger points are relevant for legislation in the remit of the Committee;
- Draft a proposal to the Committee or parliament on the legal and policy considerations relevant to the trigger points.

Action for MPs

- Determine at which level the list of trigger points should be adopted: by Committee staff as a working document, or by Committees or the Parliament Bureau as a formal decision.

⁵ Westminster Foundation for Democracy, Comparative Study On Practices Of Post-Legislative Scrutiny In Selected Parliaments And The Rationale For Its Place In Democracy Assistance, London, 2017, 68 p.



Effective post-legislative scrutiny relies on a range of evidence

Box 4: Possible trigger points to initiate Post-Legislative Scrutiny in Parliament

Representations being made to a committee from individuals or organisations that a piece of legislation needs to be reviewed due to a particular policy impact.



Publicity in the media indicating that Post-Legislative Scrutiny is required.

A sunset clause or a statutory review period being included in legislation requiring it to be revisited by the Parliament.



Members of the judiciary commenting that a piece of legislation should be revisited.



A bill being passed containing a requirement that the Government must report to the Parliament on a particular provision.

Committee deciding that it will undertake regular scrutiny of the implementation of a law.

A committee inquiry being undertaken into an issue which includes an examination of current legislation.



STEP 3: ENGAGE HUMAN RESOURCES FOR POST-LEGISLATIVE SCRUTINY

There are various ways to engage the needed human and financial resources for Post-Legislative Scrutiny in parliament. Regular Committee staff may be tasked with organizational and research tasks to conduct Post-Legislative Scrutiny (as is the case in the UK House of Commons). Alternatively, where a separate Committee for Post-Legislative Scrutiny has been established, the dedicated staff for this Committee takes care of Post-Legislative Scrutiny. In some cases, there might be a separate Secretariat

research service for Post-Legislative Scrutiny (as is the case in Indonesia and Switzerland). Where there is a separate Committee for Post-Legislative Scrutiny with its own staff or a separate research service on Post-Legislative Scrutiny with dedicated staff, it will be important to ensure the smooth coordination with the relevant thematic or sectoral Committees and the staff working for them. Such coordination will ensure rational use of human resources and avoid unnecessary overlap. Where parliament decides to commission the research from an independent body or expert panel (as is the case in South Africa), the required staff support in parliament will be limited to regular liaison and consultation, where needed.

Each approach has its rationale and advantages;

and the approach chosen will depend a lot on the parliamentary Rules of Procedure, capacity and interest of sectoral Committees, parliamentary culture, established practices and available human resources.

The common denominator for each of the above models is that Post-Legislative Scrutiny is the responsibility of a team, which is in charge of all the operational work, compiling research and leading the process towards the Post-Legislative Scrutiny report and the changes recommended.⁶ The team should ideally include persons with proven objectivity, research capacities and communication skills. A successful team is often one that brings together people from different disciplines, backgrounds and genders. The interdisciplinary team should possess as many of the necessary skills as possible so its members can complement each other and support the assessment process. As part of the responsibility for managing the process and conducting research, the Post-Legislative Scrutiny team should distribute work and responsibilities among its members based on their skills. In order to avoid misunderstandings and achieve a synergy in terms of the members' skills and capacities, clear management agreements should be made from the outset of the project.

Action for parliament leadership (Secretary General, parliament Bureau or Speaker)

- Determine which human resources structure is best placed to conduct Post-Legislative Scrutiny: regular Committee staff, a separate Unit or Department for Post-Legislative Scrutiny, or a team of external experts working with parliament on Post-Legislative Scrutiny inquiries.
- Ensure coordination and consultation between all staff required to be involved in Post-Legislative Scrutiny and the follow-up to its findings: Committee staff, staff from research department, legal staff and communications staff; and put in place the required management arrangements to enable all staff involved working together as a team.

⁶ Based upon: International IDEA, Democratic Accountability in Service Delivery. A practical guide to identify improvements through assessment, Stockholm, 2014, 92 p.



STEP 4: ENGAGE OTHER FINANCIAL RESOURCES FOR POST-LEGISLATIVE SCRUTINY

To conduct Post-Legislative Scrutiny effectively, a limited amount of additional financial resources might be required, for instance to collect data, conduct field visits in-country, hosts public hearings inside or outside of parliament or ensure contributions of external experts.

Before embarking on the Post-Legislative Scrutiny assessment, it is advised that parliament agrees on a work plan that includes feasible milestones, communication approach, timelines and an estimated budget. The amount of resources available will impact the Post-Legislative Scrutiny assessment's depth.

The elaboration of a working budget should include estimated costs for: human resources, study or field trips, consultations, including costs of meetings, witnesses' expenses and communications. The Committee or Post-Legislative Scrutiny team ought to plan the Post-Legislative Scrutiny process according to both the human and material resources available. To ensure efficiency, parliament can build on knowledge that is already easily available, for instance, research reports produced in the country, statistics produced by national agencies, country reports by international organizations, or opinion surveys by local academics and think tanks. The team can then focus its work on the substantive areas that have been left uncovered and are worth following up.

In order to complete the work plan and its budget, the Committee or Post-Legislative Scrutiny team must identify factors with the potential to increase costs or cause delays in the process, such as: overdependence on expensive consultants, numerous field trips, extensive studies or surveys.

A promising way to get a realistic idea about the work plan and the budget is to carry out a desk review of existing literature, reports and data on service provision from relevant institutions. An initial exploration of these resources should be undertaken prior to a decision on the budget.

Obtaining external funds for the Post-Legislative Scrutiny assessment might be a welcome addition to

the budget provided by parliament. An ideal scenario would be for the parliament to cover all costs from its budget. If that is not realistic, fundraising to cover core expenses related to technical needs and human resources might be crucial. One positive side effect of doing so is that the donors' involvement could possibly increase the likelihood of their guidance and endorsement of the Post-Leg's conclusions. Realistically, some stakeholders and potential users of the recommendations might not be involved with the parliament at present yet, but could be in the future, and might be potential contributors to funding the Post-Legislative Scrutiny assessment process, such as: multilateral development banks, development cooperation agencies, non-governmental organizations, philanthropic foundations or private-sector companies, and research institutions.

Action for parliament staff

- Verify what financial resources are available or how many financial resources should be requested to conduct Post-Legislative Scrutiny, and prepare a draft budget for Post-Legislative Scrutiny inquiries.
- Assess whether external donor funding for the Post-Legislative Scrutiny assessment is needed and constructive for the process.

- Assess the capacity of civil society organisations to contribute to the process on an in-kind basis (for expenses).

Action for parliament leadership (Secretary General, parliament Bureau or Speaker)

- Make a decision on the suggested budget for the Post-Legislative Scrutiny inquiries, and allocate required resources, including possible external donor funding.

3.2. PLANNING PHASE

Before a Post-Legislative Scrutiny inquiry can start the following issues must be addressed: selecting the law(s) which will be evaluated; defining the goals or objectives of the review; identifying the implementing agencies and relevant stakeholders; collecting the necessary information and data; and determining the timeframe and schedule of Post-Legislative Scrutiny activities. We count these issues as part of the planning phase for Post-Legislative Scrutiny.

Annex 1 to this document provides a comprehensive check-list of all staff actions to be taken for a Post-Legislative Scrutiny inquiry in parliament, as described in further detail on the following pages.

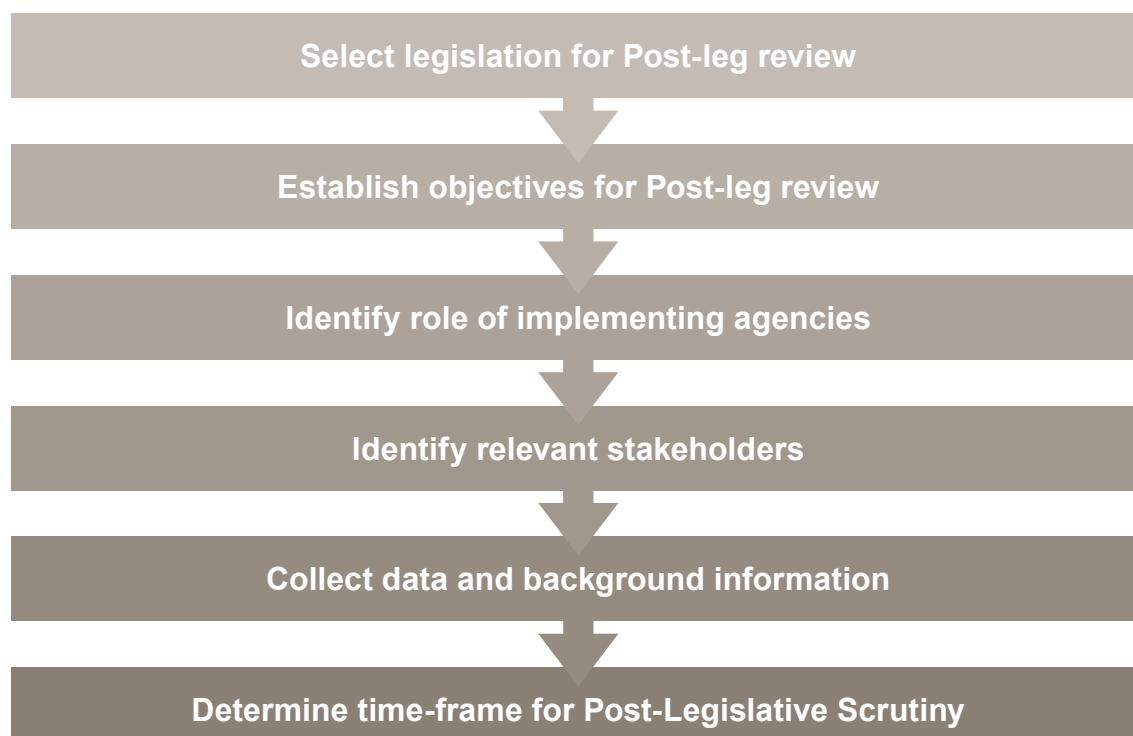


Fig. 1: Overview of steps in the planning phase for Post-Legislative Scrutiny



STEP 5: SELECT THE LAWS AND LEGAL DOCUMENTS FOR POST-LEGISLATIVE SCRUTINY REVIEW

In principle, all legal documents can be subject to an ex-post evaluation, but such an examination is not always required or appropriate. In practice, the selection of the law or the set of legal documents for evaluation is based on several criteria which include the nature and the complexity of the legal act, the time needed to review the implementation of the law, the anticipated nature of difficulties of implementation, strategic policy goals or temporary ones, emergence of new risks and threats as result of law implementation, etc.

Usually, it would be advised that Post-Legislative Scrutiny is initiated after a period of minimum of three years following the enactment of the law. The argument for this period is that scrutiny must be initiated only when the law provisions have generated visible and sufficient effects.

When defining the scope of the scrutiny it is important to decide if it is necessary to evaluate:

- The entire law;
- Only a few legal provisions of the law (a specific area covered by law);
- Several laws governing together specific area (for example, social welfare, health, business, etc.);
- Secondary legal acts ensuring implementation of the law or arising from the basic laws.

The decision on the scope of Post-Legislative Scrutiny scrutiny will depend on the priorities and strategic objectives of Parliament and Government, the complexity and costs of examination, legal, political, economic and social effects, the innovative nature of the law.

Generally, all the legal provisions which create [legal political, economic and social] effects on citizens, population and business should be evaluated. There are laws which include only a few provisions with an immediate impact, or only a few new provisions, which have never previously existed in the legal framework. In this situation, it would make sense

that the evaluation will be focused only on these specific laws or legal provisions.

It is important to take into consideration the fact that legal, political, economic and social effects are cumulative and result from simultaneous implementation of several laws and/or secondary legislation. Hence, the cumulative effect of legislation needs to become an important consideration when selecting the laws under review. For example, the effects of implementation of the Criminal Code in some cases cannot be assessed without examination of the Criminal Procedure Code; the impact assessment of the Law on Police can be assisted by the assessment of the Law on the status of Police officers or the Code of Administrative Procedures, etc.

Action for parliament staff

- Prepare a “project outline” for conducting Post-Legislative Scrutiny, including the situational analysis in the policy field under review, proposal of the law(s) to be examined, the scope of inquiry and the objectives for conducting Post-Legislative Scrutiny (see next point). The “project outline” may be a briefing paper between 3 to 5 pages.
- Discuss the draft “project outline” with the chairperson of the relevant Committee, adjust and finetune it before adoption of the final version of the “project outline”.

Action for MPs

- Committee adopts or approves the “project outline” for proposed Post-Legislative Scrutiny inquiry.



STEP 6: DEFINE OBJECTIVES FOR CONDUCTING POST-LEGISLATIVE SCRUTINY AND POSSIBLE PUBLIC HEARINGS

In principle, Post-Legislative Scrutiny addresses the review of both the enactment of the law and its impact. In the narrower sense, Post-Legislative Scrutiny looks at the enactment of the law, whether the legal provisions of the law have been brought into

force, how courts have interpreted the law and how legal practitioners and citizens have used the law. In a broader sense, Post-Legislative Scrutiny looks at the impact of legislation, whether the intended policy objectives of the law have been met and how effectively. It is recommended for parliament to look at both forms of Post-Legislative Scrutiny, the enactment of the law and its impact.

The objectives for evaluation may be determined by the purpose pursued at the time of adoption of the law. That can be established from the provisions contained in the law (general provisions of the law, goals and objectives of the law, etc.), memos, information notes and other explanatory documents that have described the problems, the necessity to adopt the law and estimated the law impact, as well as ministerial statements and parliamentary debates at the time of adoption of the law.

Therefore, it is suggested that the objectives of Post-Legislative Scrutiny should be to examine:

- the impact (legal, political, social, economic, etc.) of the legislation;
- if the primary and secondary legislation are fully implemented in the most efficient manner;
- if the policy objectives of the law have been met;
- if the expected effects, costs and benefits were correctly anticipated;
- if the law has unintended effects (economic, social, etc.);
- if there are difficulties in the implementation process;
- if the law is well known by the stakeholders and beneficiaries;
- if the law has been challenged in court;
- the law's impact on gender inequalities;
- if the law is still necessary.

As part of the Post-Legislative Scrutiny, it might be useful to organize a public hearing. In that case, the objectives of the public hearing require careful consideration as well. To make best use of the possibilities offered by holding a public hearing, and before investing time, energy and resources into planning and executing a public hearing, the purpose of the public hearing needs to be clearly defined.

Most likely, the purpose of the public hearing is aiming

to seek opinions, suggestions and recommendations from the experts, stakeholders or representatives of the public about the extent to which legislation has been implemented and its objectives achieved. Alternatively, the purpose could be to inform the public of the ongoing review of the implementation of the legislation and raise public awareness. Of course, it is possible, and often necessary, to achieve both objectives through a public hearing, but the relevant Committee conducting the Post-Legislative Scrutiny should decide what is the primary objective of the hearing.

Clarifying the purpose of a public hearing will allow the Committee to manage public expectations more effectively. If the objectives are not clearly communicated, citizens and experts will develop their own differing expectations of what the public hearing should be, making it more difficult for Committee members to satisfy public needs and concerns.

If the purpose of the public hearing is to seek opinions, suggestions and recommendations on the implementation of specific pieces of legislation, MPs suggesting a public hearing should clearly indicate what kind of information they wish to obtain, and in which way a public hearing is a useful mechanism to obtain this information. Often staff will be asked to draft such a justification for a hearing.

Action for parliament staff

- Prepare a “project outline” for conducting Post-Legislative Scrutiny, including the proposed objectives to be achieved from conducting the Post-Legislative Scrutiny as well as list of laws and scope to be examined (see previous point).
- Assess the possible contribution of organizing a public hearing for the inquiry on the implementation of the identified law(s) and include in the “project outline” the rationale for it.

Action for MPs

- Committee adopts or approves the “project outline” for proposed Post-Legislative Scrutiny inquiry.

"We see force in the argument that post-legislative scrutiny should be a more integral part of the Parliamentary process. There is potential to fill the gaps in the system by adopting a more systematic approach. We recognise that there is a tension between the desirability of an objective review and the need to entrench the process of review within Parliament. We are also aware of the ever-present resource constraints and the need for flexibility of approach. We recognise the need, so far as possible, to build on existing scrutiny systems and procedures. Above all, post-legislative scrutiny mechanisms are ultimately for Parliament to decide."

UK Law Commission, Post-Legislative Scrutiny – A consultation paper, London, 2006, p. 34.



STEP 7: IDENTIFY AND REVIEW THE ROLE OF IMPLEMENTING AGENCIES

To claim that 'we have good laws but they remain poorly implemented' constitutes a contradiction in terms. A law that does not provide for its own effective implementation often indicates a poorly prepared law. As an important step in the Post-Legislative Scrutiny inquiry, one must assess a law's prescription for an implementing agency. As part of the preparations for a Post-Legislative Scrutiny inquiry, a key issue is related to the correct assessment of the role and performance of the implementing agency or agencies as foreseen in the act.

Implementing agencies generally confront five sets of issues: implementing the law's conformity-inducing measures, maintaining itself as an organization, making regulations to fill in the law's details, settling disputes, and monitoring agency officials' law-implementing behaviours.

A Post-Legislative Scrutiny inquiry may also assess the choice of the drafters of the law as to whether an existing agency could cope adequately with the new law's demands, or the drafters deemed it better to establish a new agency. A Post-Legislative Scrutiny inquiry can ask whether the implementing model, chosen at the time of adoption of the law, has worked and why / why not.

In general, a law may prescribe one or a combination of four forms of implementing agency:

- A. a court or other dispute-settlement agency;
- B. a ministry, autonomous government agency or local administration;
- C. a public corporation;
- D. a private enterprise or non-profit (civil society) organization.

A. Court or another dispute-settlement agency

For a limited range of laws, a dispute-settlement agency or court can also serve as the implementing agency. For many laws, however, dispute settlement calls for different input, feedback and conversion processes, and different capacities, than implementation does. If an act expressly or implicitly specifies implementation through dispute settlement, a Post-Legislative Scrutiny inquiry may assess the sufficiency of its procedures and structures for the task required.

B. A ministry, autonomous government agency or local administration

A second potential implementing agency can be a ministry, autonomous government agency or local administration. Such administrative institution, properly structured by law, seems an efficient and effective form of doing government business and implement legislation.

In many countries, the civil service is relatively independent of partisan political influence, and well equipped to be in charge for implementing legislation. Similarly, local authorities can be entrusted with implementing legislation.

In contrast to courts acting as implementing agency, ministries and government agencies serve as specialized institutions. They generally employ experts to make decisions. Ministerial officials may bring zeal to their task — a strong plus in implementing legislation.

On the other hand, ministerial agencies sometimes do prove 'bureaucratic': bound by antique rules ('red tape'), slow, ponderous. Ministry administrators may sometimes become hidebound, incapable of behaving as entrepreneurs, or trying out new ideas.

A Post-Legislative Scrutiny inquiry may assess to what extent the hierarchical organization of an administrative agency (ministry, local authority) encourages officials to behave in a manner that defies transparency, accountability, and stakeholder participation.

C. A public corporation

A government corporation usually has considerable freedom from ministerial control. Some people claim this enables it to respond more readily to business or quasi-business opportunities, and to foster greater managerial creativity and entrepreneurship. In dealing with personnel, a government department invariably must follow the general rules for the public service; a public corporation usually does not. Precisely because of their freedom from oversight and its accompanying rules, in some countries public corporations have frequently become the site of serious corruption. A Post-Legislative Scrutiny inquiry may assess these and other issues relevant to the performance of a public corporation as implementing agency for the law.

D. A private enterprise or non-profit organization

In some countries and in a variety of circumstances, governments implement legislation through the private sector. For example, a hospitals law may empower a health ministry to contract with private companies or individuals to manage public hospitals for a fee; a prisons law may permit a ministry of justice to contract with private companies to manage prisons for a specified price. In many countries, legislation permits welfare ministries to negotiate contracts with NGOs to administer welfare

programmes, for instance vaccinations campaigns, support to disabled people, etc.

Private enterprises may bring their own resources — personnel, financial or physical — to the implementation task. Some people may claim that private enterprises, presumably because of some form of competition, operate more efficiently than government enterprise.

However, there might also be potential downsizes. Private enterprises seek to maximize profits. For government activities that require redistribution of resources, or improved services for the poor, the profit motive may conflict with the agency's mission (for example, welfare agencies, old-age homes, prisons, hospitals, etc.). Practices purporting to enhance efficiency may conceal behaviours that government agency rules characterize as corrupt. Unlike most government agencies, no generally applicable rules subject private enterprises to requirements of transparency, accountability, and participation.

A Post-Legislative Scrutiny inquiry may assess these and other issues relevant to the performance of a private enterprise as implementing agency for the law.

Action for parliament staff

- Prepare a thorough assessment of the role and performance of the implementing agency as foreseen in the law, and make it available to the Committee(s) conducting the Post-Legislative Scrutiny inquiry. The check-list in following box can generate the baseline information required for the assessment.



Photo: UK Parliament. A select Committee of the UK House of Commons in session at Portcullis House

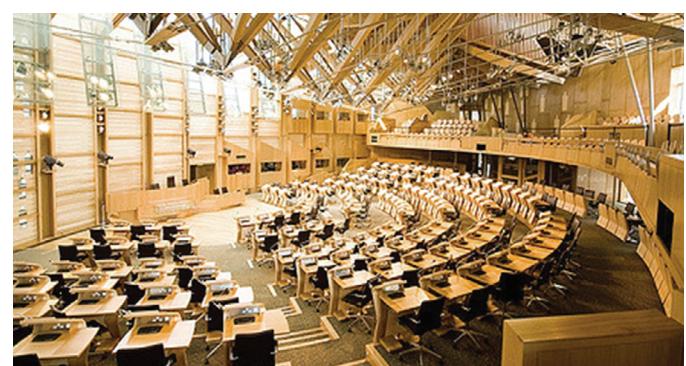


Photo: VerseVend. Scottish Parliaments approach to post-legislative scrutiny is explored in the WFD's comparative study.

Box 5: Checklist for assessing implementing agencies⁷



I. Duties and powers of the implementing agency:

1. What responsibilities have been assigned to the agency? Has the agency performed those duties, and to what extent has it contributed to altering or eliminating the causes of the stakeholders' dysfunctional behaviours?
2. What conformity-inducing measures have the agency officials used to carry out their responsibilities? Have these measures addressed the causes of the problematic behaviours that the law aimed to help resolve?
3. Has the implementing agency the authority to impose sanctions? What kinds of sanctions? How often were sanctions issued? How useful did these seem to help resolve the identified problematic behaviours?

II. Human resources of implementing agencies:

1. How many officials of the agency are envisaged? Has this been followed? Why (not)?
2. How does the legislation describe their qualifications, process for selection and appointment? How has it happened in practice?
3. By what process can which official or institution remove an official from office (e.g. end of term, resignation, removal for cause, retirement age, etc.)? On which occasions has this been applied; and how effective were the existing procedures to implement these rules?

III. Input functions:

1. Whom have agency officials consulted about how to implement the law's details? Did these include all the stakeholders? Especially, did the legislation require them to consult advocates for the poor, women, children, minorities, the environment, human rights and the Rule of Law?
2. How and from whom have agency officials gathered facts to help them decide how to implement the law's detailed provisions?

IV. Feedback functions:

1. How did the agency learn about whether the law's stakeholders obeyed its prescriptions?
2. Did the agency wait until people came forward with complaints?
3. Almost every implementation agency permits complaints; but did the agency also have an obligation to search out violations? How did it make use of this in practice?
4. Who had the authority to make complaints?
5. By what procedures were relevant actors able to make their complaints? Were these procedures clear and efficient?
6. Did the agency obtain facts about whether the law's addressees obeyed the law through investigations by agency employees? Public hearings? By soliciting responses from those affected, particularly vulnerable or historically disadvantaged populations?

V. Decision making processes and appeals:

1. If the agency has a decision-making body empowered to make implementation decisions, what proportion of its members must vote in favour of a proposition? Must they meet and discuss the issue, or do they each write their own opinion?
2. Must decision-makers accompany their decisions with a written justification? Should they include findings of fact as well as reasons? How has it been applied in practice?
3. Must decision-makers notify stakeholders when they have an issue under consideration, and invite their inputs? How must the agency respond to those inputs? How has it been applied in practice?
4. Did a person aggrieved by an agency decision have a forum to which to appeal?
5. How frequently were appeals filed?
6. How effective was the appeals procedure? How many initial decisions were altered following the appeals procedure?

⁷ Based upon and further adjusted from: Ann Seidman, Robert Seidman and Nalin Abeysekere, Assessing Legislation - A Manual for Legislators, February 2003, Boston, Massachusetts, p. 105.



STEP 8: IDENTIFY RELEVANT STAKEHOLDERS

The selection of stakeholders is one of the most important steps in planning a Post-Legislative Scrutiny inquiry. The stakeholders might be all those who possess and can provide information about the implementation and impact of the law, as well as those who have been impacted by law.

A Post-Legislative Scrutiny inquiry may assess the following questions:

- What social groups are affected?
- How big are these groups?
- What is the nature of the impact of the law on each group?
- How important are these effects?
- How long will these effects be provided?

Stakeholders can include experts and specialists who comment on legislative proposals or policies, academia and professionals, representatives of stakeholder bodies and representative organizations, professional institutions and individuals, and any other person who may contribute to Post-Legislative Scrutiny inquiry.⁸ The process of selecting stakeholders is important, as the parliamentary Committee must ensure that all relevant perspectives on the legislation are represented.

The parliament must ensure the inclusion of a well-considered selection of potential stakeholders. The selection procedure may be facilitated by answering the following questions at the beginning of the process:

- Who has an interest or a stake in the law?
- Who may be potentially affected by the legislation or the subject matter, in positive or negative way?
- Whose support is critical to the success of the legislation or the policy?

Even if there is a draft list of initial stakeholders prepared by the staff of the Committee, the Committee as a whole, or the chairperson on behalf of the Committee, takes responsibility for the selection.

⁸ Individual citizens can play an important role in a Post-Legislative Scrutiny, as they can provide a first-hand testimony of the impact of legislation and its efficiency or lack thereof. For instance, one can think about survivors of different types of gender-based violence and how important their personal experiences can be to Post-Legislative Scrutiny. Another example is the citizens' account of disasters due to failure to implement regulations (for instance on fire safety).

Stakeholders can be invited to a public hearing or consultation organized by the Committee. Any draft list of initial invitees needs to be endorsed by the Committee. When there is a good collegiality between members and the chairperson has good leadership skills, the list of witnesses may be largely determined by the chairperson after a brief conversation with the members belonging to different parties.

In the selection of the stakeholders or witnesses for the hearing or consultation, it is important to ensure that the views of minority groups are included, especially when the issues under consideration can have a direct impact or bearing on their livelihood and well-being.

The gender dimension should also be considered in selecting witnesses. It is important to have, as much as possible, a balance between men and women in selecting witnesses to ensure that all views are represented and to give credence to any findings. The balance or unbalance between male and female witnesses as portrayed on television or during live broadcast very much shapes the public image of parliament. In more and more countries, an all-male table of witnesses and speakers is perceived as reflecting the practices and behaviours that prevent women's full participation in democratic processes.

Incorporating gender in Post-Legislative Scrutiny is not just about the optics of the process, but also about its integrity. Gender imbalance in Post-Legislative Scrutiny processes also frequently suggests that the evidence being used to analyse the legislation is incomplete, and possibly inadequate or inaccurate, as it may lack the perspective of half the population.

Action for parliament staff

- Compile an overview of relevant stakeholders, affected by a piece of legislation, both in terms of individual citizens and groups;
- Prepare a selection of stakeholders who can be invited as witnesses to a public hearing organized by the parliamentary Committee, for consideration by the Committee and its chairperson.



STEP 9: COLLECT BACKGROUND INFORMATION AND RELEVANT DATA

Collecting background information and relevant data is one of the other important steps in planning a Post-Legislative Scrutiny inquiry.

There are two types of data one could collect: primary and secondary. Primary data are generated directly by the Post-Legislative Scrutiny team, while secondary data are generated by others but used by the team. Using secondary data, where reliable and relevant, is preferable to creating new or duplicating existing data. It is advised to consider collecting primary data after secondary sources have been exhausted, as collection is time- and resource-consuming. The advantage of using primary data is originality. Ideally, a Post-Legislative Scrutiny inquiry should choose a combination of sources, including existing sources, allowing for a balanced body of data. Depending on the context, a considerable amount of information might already be available.

Examples of sources are:

- disaggregated statistics;
- academic research;
- opinion surveys;
- official sector-specific reports published by public agencies;
- news or investigative reports;
- local government associations' reports;
- reports published by independent organizations and NGOs;
- a state party report to, and the general conclusions from, a treaty monitoring body on relevant UN human rights conventions or their regional equivalents;
- civil society shadow reports to those state party reports; and
- country-oriented reports by global or regional organizations such as the WHO, UNESCO, the World Bank, the Organization of American States, the Asian Development Bank, or the UN Economic Commission for Africa.



Fig. 2: Data collection sources for Post-Legislative Scrutiny inquiry

Quantitative and qualitative data complement each other. Quantitative data can provide a representative sample of the population that will help identify trends and tendencies in social, economic or political behaviour. Such data are, obviously, numerically represented. Qualitative information can be used to

describe people's views and experiences, which can potentially be helpful sources for devising change. During interviews, the assessment team should therefore be sure to ask what the interviewees think needs to be improved or changed and how to make change happen.



Box 6: Ten considerations when planning for data collection

1. What basic data need to be gathered to give reliable and consistent measurement against policy objectives? Which data needs to be broken down by gender, age, level of education, location, etc.?
2. What additional data should be collected to support the planned evaluation?
3. What information should be presented in writing, what information will be required orally?
4. What are the quality indicators for collected data?
5. What institutions should be involved in primary data collection and analysis?
6. What are the key timeframes for data collection and analysis?
7. Who will have responsibility for gathering data?
8. How will the quality and consistency of information be assured?
9. What hearings are necessary and who should be heard (representatives of the Government, public administration, civil society, victims, witnesses, etc.)?
10. What field visits are required for data collection and validation of the findings?

A parliament can prepare a data-collection methodology in a flexible way. Examples are: (1.) stakeholder interviews or in-depth interviews that are semi-structured, face-to-face or conducted by telephone; (2.) focus groups or workshops; (3.) participant observation; (4.) structured discussions and consultations; and (5.) quantitative surveys.

A plurality of perspectives on how to collect data is positive; consensus is not required at this point. Differences in opinion about how to interpret data can be provided in the report(s).

The next box includes a series of questions to consider when planning for data collection.

Action for parliament staff

- Prepare a data collection plan, describing how the relevant data for the Post-Legislative Scrutiny inquiry will be collected and assessed, and by whom, what institutions will be involved, and what hearings and field visits are required for data collection and validation of findings
- Make a mid-term review of the data collection as the Post-Legislative Scrutiny inquiry is under way.



STEP 10: DETERMINE TIMEFRAME OF THE POST-LEGISLATIVE SCRUTINY PROCESS

The timeframe of the process depends on several factors: the complexity of the objectives, the volume and scope of the evaluation, its organisation, the frequency of meetings and the work plan of the Committee, the resources, the quality of analyses and experts, etc.

Ideally, the whole process should be completed in 3 to 6 months.

Action for parliament staff

- Prepare a proposal for the Committee chairperson on a realistic timeframe for the entire Post-Legislative Scrutiny inquiry, with milestones for each step in the process.

Action by Committee chair

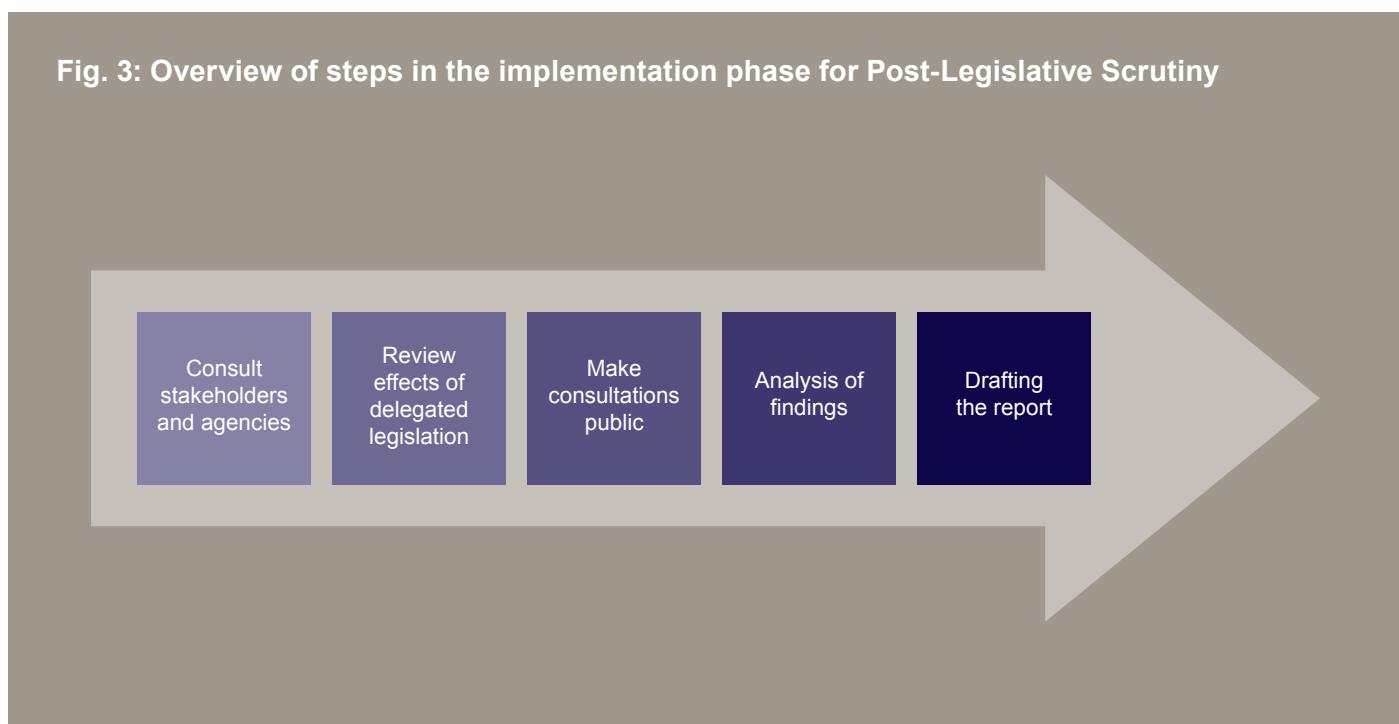
- Approve time table for the Post-Legislative Scrutiny inquiry process

3.3. IMPLEMENTATION PHASE

As a Post-Legislative Scrutiny inquiry starts, the following issues must be anticipated: consulting stakeholders and implementing agencies; reviewing the mechanism of delegated legislation; working with media and considering an information campaign; analysing the Post-Legislative Scrutiny inquiry findings and drafting the report. These issues

count as part of the implementation phase for Post-Legislative Scrutiny.

In the following pages, the steps are described quite in detail; though it is up to each parliament to decide to what extent it can organize the process in such detail. A lighter tough consultation process is possible as well.



STEP 11: CONSULT STAKEHOLDERS AND IMPLEMENTING AGENCIES

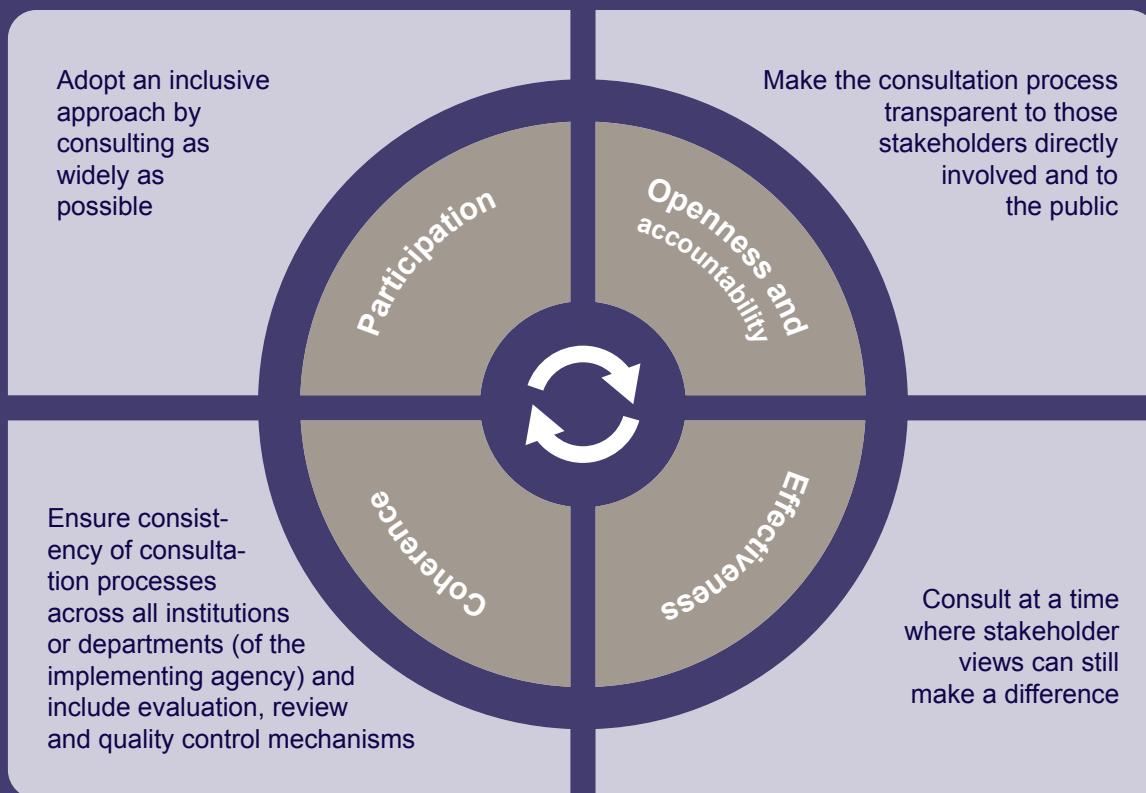
Conducting a stakeholder consultation is one of the key moments in the Post-Legislative Scrutiny inquiry. The stakeholder consultation enables MPs, parliamentary staff, invited experts and interested stakeholders and the public to review, scrutinize and investigate the state of implementation of one law or a series of laws relevant to the governance of the country. They help MPs determine the measures needed to improve a piece of legislation and/or the work of government institutions in implementing legislation. The stakeholder consultation also informs MPs and parliament about the level of public support for a law and related policy.

There are many ways to consult stakeholders and implementing agencies as part of Post-Legislative Scrutiny: through public hearings, written evidence, oral testimony, individual or constituency based meetings, etc. – and a parliament may employ one or a combination of these. Public hearings are thus one form of stakeholder consultations.

When investigating particularly sensitive or difficult issues, such as domestic violence or child marriage, for example, parliamentary staff and MPs should be sure to design consultation processes that consider the circumstances and situation of witnesses and stakeholders and that protect their identity and dignity. There are important duty of care responsibilities to incorporate when engaging survivors of such circumstances. Consultation processes must be amended to adapt to these.

Box 7: General principles and minimum standards for stakeholder consultation⁹

Relations with stakeholders are governed by four general principles:



There are five Minimum Standards that all consultations with stakeholders should respect:

- A. Clear content of the consultation process: All communication and the consultation documents should be clear, concise and include all necessary information to facilitate responses;
- B. Consultation of target groups: When defining the target group(s) in a consultation process, the parliament should ensure that all relevant parties have an opportunity to express their opinions;
- C. Publication: The parliament should ensure adequate awareness-raising publicity and adapt its communication channels to meet the needs of all target audiences;
- D. Time limits: The parliament should provide sufficient time for planning and responses to invitations and written contributions;
- E. Acknowledgement of feedback: Receipt of contributions should be acknowledged and contributions published.

⁹ These “General principles and minimum standards for stakeholder consultation” have been based upon the outline published at: http://ec.europa.eu/smart-regulation/guidelines/ug_chap7_en.htm

The success of a Post-Legislative Scrutiny stakeholder consultation depends very much on the quality of the contribution of the persons that engage in it. Persons that appear at a public consultation are usually required to provide written evidence to Committee members in advance of the consultation – though specific circumstances (soliciting inputs by victims of disasters or violence) might allow for another course of action. At the meeting, the person usually provides an opening statement followed by a brief presentation on the written evidence s/he has submitted. The person then answers questions posed by Committee members, before another witness starts her or his testimony. The Committee will decide on the format and the sequence of testimonies before the consultation.

The sequence of testimonies of academics, representatives of educational institutions, industry, NGOs and other citizens should be decided in such a way that the information is provided in a logical, consistent and progressive manner. For example, the Committee may decide on a sequence in which one person might challenge or support the testimony of another.

To allow ministry staff to attend a stakeholder consultation it is customary to send advance notice and invitations. If clearance is needed for a staff member to testify, the invitation should be sent in good time, for instance five days in advance.



Fig. 4: Stakeholders for Post-Legislative Scrutiny in Parliament

Written evidence

Written evidence should be submitted (for example, ten days) in advance so that all Committee members can examine and read the document before the person testifies. When inviting a person to testify, the Committee staff will specify whether the Committee expects to receive a written brief.¹⁰

There are no rules about the format which the written evidence should take. It has proven useful to Committees in other countries to do it as follows. Written evidence should contain:

- the name and address of the person or organization providing testimony;
- a brief introduction of the persons or organization, perhaps stating their area of expertise;
- any information they have to offer from which the Committee might be able to draw conclusions or which could be put to other persons for their reactions.

It is also helpful to include any recommendations for action by the government or others which the person would like the Committee to consider.

If written evidence is very brief, it can be sent as a letter, but otherwise it is helpful for the evidence to be in the form of a memorandum. If the memorandum is particularly lengthy it should have a one-page summary of the main points and, if appropriate, a table of contents.

The preferred form of submission is by e-mail attachment to the Committee's mailbox address as set out in the Press Notice, and shown on the website. Submissions should be sent to either the Head of the Committee staff or otherwise as instructed in the Press Notice.

Beside written evidence, the person(s) should bring with them any additional information they feel might prove useful. For example: background information on their organization, other sources of information on the subject under review, copies of presentations they are giving etc. If possible, they should submit this information in advance or be ready to provide a copy to the Committee secretary during the meeting.

If an electronic presentation is required, witnesses may be asked to submit it in advance, if circumstances permit. The invitation should detail the equipment available for witnesses to make their presentation.

¹⁰ See: UK House of Commons, Guide for witnesses giving written or oral evidence to a House of Commons select committee, London, February 2016, 16 p.; National Democratic Institute for International Affairs (NDI), Service and Accountability – Public Hearings Manual, Washington DC, November 2009, 84 p.

Box 8: Guidelines for written submissions¹¹

Committee staff should inform the persons of the Guidelines regarding written submissions, such as:

- The submission should include factual information to substantiate the views of the testimony;
- Recommendations should be as specific as possible;
- The name and address of the organization or person submitting the paper should appear on the cover page;
- All submissions should contain a summary;
- Any line drawings or graphs should be done in black ink for photocopying purposes;
- Those signing on behalf of an organization should indicate the level at which the submission has been authorized;
- It is helpful if submissions can be made available both electronically and in paper copy;
- Public distribution of the submission remains within the discretion of the Committee;
- Material already published elsewhere should not form the basis of a submission but may be referred to within or attached to a submission, in which case it should be clearly referenced;
- Witnesses should be careful not to comment on matters currently before a court of law or matters in respect of which court proceedings are imminent.



What happens to written evidence once submitted to parliament can also be communicated to the witnesses, and mentioned on the parliament web page announcement for the consultation.

- Committees publish most of the written evidence they receive on the parliament web page;
- If someone does not wish his/her submission to be published, s/he must clearly say so and explain the reasons for not wishing its disclosure. The Committee will take this into account in deciding whether to publish;
- A Committee is not obliged to accept a written submission as evidence, nor to publish any or all of the submission if it has been accepted as evidence. This may occur where a submission is very long or contains material to which it is inappropriate to give parliamentary privilege.



¹¹ Based upon and further adjusted from: Parliament of Georgia, Manual for Committee staff, Tbilisi, 2016, 82 p.

Oral evidence

Committees sometimes ask witnesses for a brief opening statement. The witnesses should briefly state their name, and if applicable their occupation and the type of work their organization does. Each Committee should request witnesses to limit their testimonies to a brief presentation of arguments. To save time and, since written statements are available, it is usually not necessary for a witness to read her/his entire statement.

The usual duration of the opening statement is five to ten minutes. In some cases, the chair may limit the duration. If needed, however the chair may extend this period.

As a Committee's time for taking oral evidence is limited, all witnesses, even those whom a Committee invites to give oral evidence, are encouraged to submit written evidence. This makes oral evidence hearings more productive, as members have the witnesses' statements in front of them, and means that if witnesses are not called to give oral evidence a Committee still has the benefit of their views.

Annex 2 to this document provides guidance for witnesses of the Post-Legislative Scrutiny hearing or consultation.



Questioning witnesses

The question and answer time starts when the witness has finished her/his opening statement. Committee members use this time to ask questions and obtain additional information that may support future actions and decisions of the Committee. The Head of the Committee staff may be asked in advance to prepare questions for the chairperson and other members to ask the witnesses. In some cases, the line of questioning may be presented to and discussed with witnesses prior to the hearing.

Each Committee member should be able to ask questions to each witness. The order of questioning may be determined in accordance with the seats of each party in parliament, or at the discretion of the chairperson. In some countries, an MP who is not a member of the Committee organizing the consultation but interested or competent on the matter may also be invited to ask questions to witnesses.

Committees may also provide witnesses, for their private use, uncorrected copies of evidence already given by others. Committees should also try to inform witnesses in advance when some research or collection of information or views might be needed to answer questions raised by the Committee. If

a person does not have immediately available the information to answer a question, the Committee may ask for this to be submitted in writing afterwards.

Action for parliament staff

- Invite stakeholders, experts and implementing agencies for the consultation / public hearing
- Determine best format for consultation (e.g., public hearings, written evidence, etc.)
- Develop the agenda for the meeting and consult with the Committee chairperson
- Request written evidence prior to the consultation based on the guidelines for written evidence
- Prepare a proposal for the Committee chairperson and members with questions and issues to be raised during the consultation / public hearing.

Action for MPs / Committee

- Conduct Post-Legislative Scrutiny consultation / public hearing and question the witnesses.

STEP 12: REVIEW THE EFFECTS OF DELEGATED LEGISLATION

Sometimes, to achieve desired policy ends, one must direct specified officials to use their discretion to solve a problem too complex, too dynamic, too multifaceted to resolve now by specifying the details in a law. Hence, acts of parliament often grant ministers of the Executive powers to make delegated or secondary legislation. However, very often, secondary legislation is not well publicised, unlike parliamentary debates on bills; and it is not reviewed by parliament properly.

For a Post-Legislative Scrutiny inquiry, it is ideal to review secondary legislation post-enactment at the same time as reviewing the parent legislation from which it owes its authority. This is particularly the case at times when most of the provisions giving effect to a piece of legislation are held within the secondary, rather than the primary, legislation. It requires a specific approach to conduct Post-Legislative Scrutiny of a law which delegates to another authority — government agency, state

corporation, or private entity — the power to make and implement detailed rules (regulations, subsidiary legislation) that prescribe the desired actions of the stakeholders.

As an important aspect of Post-Legislative Scrutiny, one may assess whether there is a right balance between issues regulated in the primary and in the secondary legislation, and hence, whether there is a right balance between issues determined by the lawmakers and issues left to be determined by the implementing agency.

There are however questions on the effectiveness of

the use of delegated or secondary legislation.

- How to grant a limited part of the legislative power without weakening parliament substantially?
- How to devolve discretionary power to administrators in a measured amount, to the extent necessarily required in the given circumstances?
- How to ensure that agencies use the delegated power for public, not for private purposes?
- How can MPs claim to represent the people, and at the same time conscientiously give away a part of the legislative power to the Executive?

Box 9: Analysing the implementation of the Law on Road Safety and its secondary legislation¹²

While primary legislation empowers an agency to make rules, there is need for criteria to limit officials' rule-making discretion and to prevent unaccountable and non-transparent practices. Following are a number of questions to review the effectiveness of the balance between primary and secondary legislation in limiting officials' rule-making discretion. The questions are directed to the example of the Law on Road Safety, in a country where such law has been enacted.

- *Does the law state the law's objectives sufficiently precisely to constrain discretion?*

For example, does a law giving the Motor Vehicle Commissioner the power to set maximum permissible speeds on sections of the highway, include a statement that the bill aims to balance the safety of motorists, passengers and others against the need for economical, swift transport? Are the objectives of the law widely known and to what extent is the Motor Vehicle Commissioner aware of the objectives?

- *Does the law limit the agency officials' power to prescribe remedies?*

For example, does the speeding act mentioned above limit the Commissioner's power to make rules specifying penalties? How has the Commissioner used his/her power to make rules specifying penalties?

- *Does the law specify the kinds of factual propositions which most experts in the field consider relevant to explaining the behaviour at issue?*

For example, in setting speed limits, does the law require the Commissioner to take into account only the state of the highway, the weather, the amount of traffic, and perhaps the driver's reasons for speeding -someone bringing a wife in labour to a hospital may have a more socially-acceptable reason to speed than a young man showing his girlfriend how fast his car can go? In which way has the Commissioner taken into account various factors influencing breaches of the law?

- *Does the law require that the agency establish rules that embody current practice?*

For example, does it require that the Commissioner set speed limits at 10 kilometres per hour less than the average speed that vehicles actually drive over that section of the highway? How often has the agency made use of these rules and what was the effect?

- *Does the law require the rule-making authority to state exactly what criteria it used in making a particular rule, and authorize a reviewing authority to review those criteria before the rule goes into effect?*

For example, does the law permit the Commissioner to set a 'reasonable' speed limit for a section of the highway, but require that, in such a case, the Commissioner state the reasons for that decision in writing, and suspend the operation of the rule until a court reviews the new speed limit and approves the criteria used? How often has this been done over the last five years? What was the effect?

¹² Source: Assessing Legislation - A manual for legislators written by Ann Seidman, Robert Seidman, and Nalin Abeysekere, February 2003, Boston, Massachusetts, p. 129.

Therefore, a Post-Legislative Scrutiny inquiry dealing with secondary legislation should always look at two issues: (1.) *how primary legislation authorizes the issuing of secondary legislation*, and (2.) *how secondary legislation is in conformity with principles of legality and legitimacy*.

Firstly, reviewing how primary legislation authorizes the issuing of secondary legislation means asking what essential evidence and logic do the law's

sponsors claim justifies a law authorizing secondary legislation in a substantial way. Have the sponsors of the law been correct in choosing this agency to make and promulgate the new rules? What was the effect of choosing this agency and prescribing these procedures? To find answers to these questions, the check list in the following box might be useful. They reflect the criteria to review how primary legislation authorizes the issuing of secondary legislation (see fig. 5 on next pages).

Box 10: Questions for Post-Legislative Scrutiny of primary legislation authorizing secondary legislation in substantial way

1. Has it proven correct that the law is effectively addressing problematic behaviours by people in widely differing circumstances, for instance in a geographically large country, which served as justification for a law authorizing secondary legislation in a substantial way?
2. Has it proven correct that the law addresses a problem embedded in rapidly-changing socio-economic circumstances for which no one, in advance, could specify all the detailed behaviours, and which served as justification for a law authorizing secondary legislation in a substantial way?
3. Has it proven correct that the law addresses little understood issues which require on-going study together with some power to experiment with different solutions, which served as justification for a law authorizing secondary legislation in a substantial way?
4. What alternative modes of generating a detailed set of rules for the substantive problem addressed did the sponsors consider? Have events proved their judgement correct?
5. What constitute the law's prescribed criteria and procedures for each of the agency's decision-making processes relating to substantive issues? Have they worked?
6. Has the implementing agency the procedures in place that limit officials' capacity to make arbitrary rules, and does it have the procedures to protect against the danger that administrators may use their rule-making power to aggrandize their power or personal wealth?
7. Have those procedures and criteria led to transparency, accountability, participation by relevant stakeholders? Have those procedures and criteria led to reasoned, non-arbitrary rule-making?

Secondly, it is important to assess to what extent secondary legislation is in conformity with principles of legality and legitimacy¹³. Based upon its practice over several years, the Canadian Parliament Standing Committee on the Scrutiny of Regulations has established a set of criteria to review secondary legislation. The Committee reviews whether any regulation or statutory instrument:

1. is not authorized by the terms of the enabling legislation or has not complied with any condition set forth in the legislation;

2. does not conform to the Canadian Charter of Rights and Freedoms or the Canadian Bill of Rights;
3. purports to have retroactive effect without express authority having been provided for in the enabling legislation;
4. imposes a charge on the public revenues or requires payment to be made to the Crown or to any other authority, or prescribes the amount of any such charge or payment, without express authority having been provided for in the enabling legislation;
5. imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation;
6. tends directly or indirectly to exclude the

¹³ Check-list is based on the criteria established by the Canadian Parliament Standing Committee on the Scrutiny of Regulations. See: Westminster Foundation for Democracy, Comparative Study on practices of Post-Legislative Scrutiny in selected parliaments and the rationale for its place in democracy assistance, London, 2017, p. 41.

- jurisdiction of the courts without express authority having been provided for in the enabling legislation;
7. has not complied with the Statutory Instruments Act with respect to transmission, registration or publication;
 8. appears for any reason to infringe the rule of law;
 9. trespasses unduly on rights and liberties;
 10. makes the rights and liberties of the person unduly dependent on administrative discretion or is not consistent with the rules of natural justice;
 11. makes some unusual or unexpected use of the powers conferred by the enabling legislation;
 12. amounts to the exercise of a substantive legislative power which is the subject of direct parliamentary enactment;
 13. is defective in its drafting or for any other reason requires elucidation as to its form or purport.
- These criteria can form the basis for a check-

list to assess the legality and legitimacy of secondary legislation (see fig. 5 on next pages).

Action for parliament staff

- Prepare an analysis paper for the Committee chairperson on the balance between primary and secondary legislation for the Act(s) under review, based on the “Criteria to review how primary legislation authorizes the issuing of secondary legislation” and the “Check-list to assess legality and legitimacy of secondary legislation” (Fig. 5);
- Discuss the analysis paper with the Committee chairperson and provide it to all Committee members;
- Solicit input from the implementing agency on the regulations and decisions taken, and draft questions for further inquiry.



Effective monitoring of legislation ensures vital services are funded and implemented.

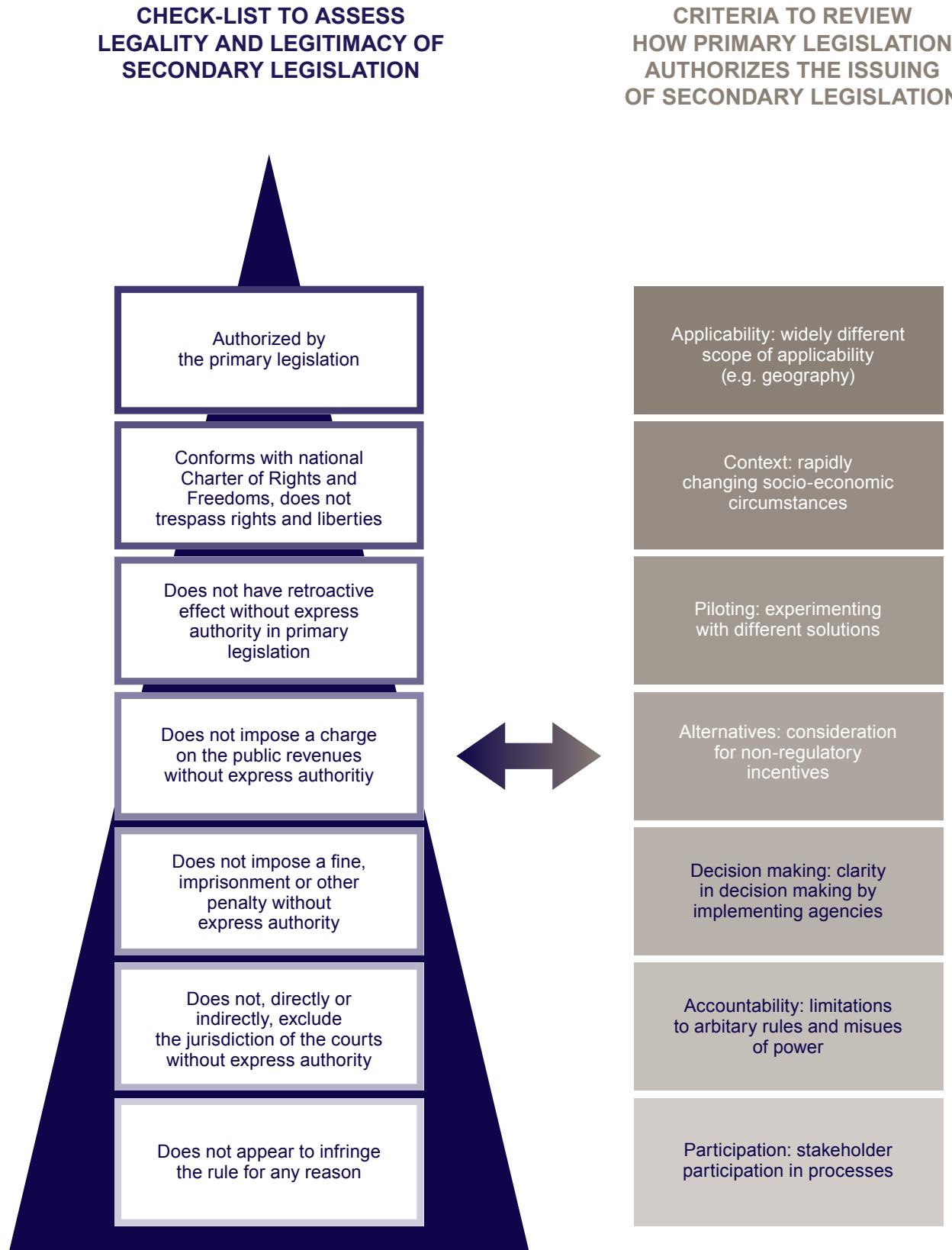


Fig. 5: Assessing secondary legislation and how it is issued through primary legislation.



STEP 13: MAKING THE CONSULTATION PUBLIC

A Post-Legislative Scrutiny stakeholder consultation or public hearing is more than an information gathering exercise for MPs on the state of implementation of legislation. It is an opportunity for broader public discussion on legislation and around issues of public interest. It can serve to raise public awareness of the important work of parliament in seeking solutions to society's demands.

Inviting the media

It is often the case that public institutions, and those who manage them, are more likely to respond to an issue that has been widely publicized in the media. To publicize the Post-Legislative Scrutiny stakeholder consultation, the Committee may decide to invite the media and issue a press release.

Whether the media can be present or not depends upon the rules of the parliament and the decision of the Committee. A Committee may decide that (part of) a) Post-Legislative Scrutiny stakeholder consultation may be closed to the public but only for a limited number of specified reasons (e.g. if the information under consideration could compromise national security or affect the privacy of persons involved). The press and public information department of the Parliament needs to be closely involved in the preparations of the consultation.

In addition to inviting the media, a Committee may also decide to design a full-fledged information campaign. While invitations to journalists and TV-crews refer to the media sector within the civil society, a full-fledged information campaign is designed to encompass the public, NGOs and interested stakeholders, the government, civil servants in the ministries and all Members of Parliament. If the Committee intends not only to receive expert opinions, but also inform all stakeholders and the public of a law or give coverage to the issues discussed, then a full-fledged information campaign can be useful.

Preparing a briefing package for media and CSOs

For the Committee to provide the information in relation to a scheduled Post-Legislative Scrutiny

consultation in a more structured way, it is recommended to prepare a briefing package with relevant documents. The briefing package can be directed towards media, CSOs and citizens. The Committee staff is responsible for compiling the briefing package. The Committee staff may carefully examine the nature and quality of the resource materials; as the type of information disseminated will ultimately affect the way how the public and stakeholders provide input. It may include the following documents:

- Press release on the consultation process;
- Agenda of the consultation meeting;
- List of Committee members;
- List of expert witnesses;
- Presentations or biography of witnesses, if available;
- Copy of relevant legislation and/or summary of the legislation;
- Desirably, other background information and analysis of the subject matter of the consultation, which may also include reference to the manner in which other countries regulate the respective issue;
- Procedural guidance for the media attending the consultation.

Consultation on the web-page of the Parliament

There are various ways in which a Committee in the Parliament can make use of the internet as part of the outreach for a public hearing. Following are the most sensible approaches.

- The parliament's web-page may contain a permanent link to consultation, displaying upcoming meetings in the form of a media advisory (with subject matter, date, time, venue, contact information, invited witnesses and purpose of the meeting);
- The internet also constitutes an efficient means of registering individuals from the public who wish to attend the meeting;
- In addition, via Twitter or email, the public can suggest questions to be put forward to the witnesses through the Members of Parliament and the Committee chairperson;
- During the post-consultation period, a section on the parliament's web-page can be foreseen for comments, opinions, recommendations submitted by the public. The web-page then indicates to which e-mail address comments,

- further suggestions or complaints on the proceedings of the consultation itself, or requests for more information can be sent. The staff needs to check the email regularly.
- The parliament should use the web-site to post the Committee's report on the Post-Legislative Scrutiny inquiry, as well as periodic updates on the status of the follow-up.

Action for parliament staff

- Prepare a proposal for the Committee chairperson on inviting the media, conducting a full-fledged information campaign;
- Prepare content of the briefing package and the consultation approach via parliament's web page.



STEP 14: ANALYSIS OF POST-LEGISLATIVE SCRUTINY FINDINGS

The translation of information into conclusions is an important step in the Post-Legislative Scrutiny inquiry process, but this is by no means automatic or easy. The challenge is to provide a structure for the information, and to use it to answer the questions posed by the objectives for the Post-Legislative Scrutiny.

Analysis of Post-Legislative Scrutiny findings requires a creative, forward-looking effort. Using consistent, objective methods to draw conclusions ensures that they will suit the needs of the inquiry.

To draw conclusions, Committee staff should analyse the information shared by people, posing broad questions such as: What is working and what is not working? Why? Who has the formal or informal power to bring about change? Who could cooperate with whom to bring about or prevent change? These questions, among others, will provide information that can be used to conduct a general analysis of the topic.

Committee staff might benefit from structuring information and start looking for patterns and explanations for why any problems are occurring, including by a SWOT analysis (Strengths, Weaknesses, Opportunities and Threats). The information collected, ideally both quantitative and qualitative, will highlight trends, but it can also provide explanations for the process, including reasons for why it is being conducted

in the first place.

Committee staff should also use their findings to gain an understanding of which priorities for making improvements and recommendations are the most urgent, which goals will be more or less challenging to achieve and to which level of government their findings should be addressed.

Action for parliament staff

- Compile relevant preliminary findings of the Post-Legislative Scrutiny inquiry, based on established methodologies for data analysis, SWOT analysis, stakeholder analysis and legal review;
- Discuss preliminary findings between parliament staff working for different Committees, Research and Legal Departments. Parliament staff may consult the preliminary findings with external experts and implementing agencies.



STEP 15: DRAFTING THE REPORT

Each Post-Legislative Scrutiny inquiry process needs to result in a report. The report needs to provide an accurate summary of the main information collected, presentations of the consultations and points of discussion between MPs and the witnesses, findings and recommendations.



It is important to separate the findings of the inquiry, which are factual and as such listed in the report, from the political process of developing recommendations on the topics and policy questions discussed. Finalizing and approving of the report with findings should not be delayed because of ongoing political discussions on the recommendations. The adoption of recommendations is a separate Committee decision, since they can be based upon the findings of the inquiry as well as upon other input from political parties, Prime Minister, government ministries, and national and international organizations.

While the Committee staff prepares the report, the Committee takes responsibility for the final version

of the report on the Post-Legislative Scrutiny inquiry process, including the findings and recommendations. The Committee needs to consider what documents, if any, to accompany the report. Accompanying documents may include written witness statements, tables, Committee research findings and written testimonies submitted by persons unable to attend the consultation, as well as witness responses to questions asked by Committee members during the Post-Legislative Scrutiny inquiry process.

Action for parliament staff

- Finalize the draft report with findings of the Post-Legislative Scrutiny inquiry

- Prepare for the Committee chairperson a proposal on possible recommendations, or different options for possible recommendations;
- Assist the chairperson in bilateral meetings with other committee members in finding common ground on the possible recommendations.

Action by MPs / Committee

- Review and approve the report with findings of the Post-Legislative Scrutiny inquiry
- Debate and approve recommendations



Post-Legislative Scrutiny inquiry should result in a final report.

Box 11: How Post-Legislative Scrutiny leads to Private Member's Bill - Case Study on Gender Equality Legislation¹⁴



The Istanbul Convention on preventing and combating violence against women and domestic violence was adopted by the Council of Europe (CoE) in 2011. The United Kingdom was active in drafting the Convention and signed it in 2012, but was slow to take action to ratify it.

Existing British law already contained strong legal frameworks for protection against violence and prosecution for offences, but Member of Parliament of the UK House of Commons Dr Eilidh Whiteford identified a number of gaps. These included weak authority in cases of forced marriage, honour killings and aspects of modern slavery, and lack of jurisdiction for offences committed by British nationals outside of UK territory.

Dr Whiteford additionally noted that existing legal protections were housed in different pieces of legislation. The Convention would bring these together into a broader strategy around addressing violence and ending discrimination, ideally making it easier to track progress and consistency in implementation.

Further, the Convention would deliver higher levels of accountability and protection for resource commitments, as well as providing a framework to deal with emerging forms of violence, such as revenge pornography.

Finally, the reporting requirements built into the Convention would ensure regular intervals for post-legislative scrutiny, which would not only track the Government's efforts to address violence but would also require regular reports on its commitments to advance gender equality.

Dr Whiteford tabled a Private Member's Bill to compel the Government to take all reasonable steps to enable the United Kingdom to become compliant with the terms of the Istanbul Convention. While there was considerable debate around issues of extra-territorial jurisdiction in particular, the bill ultimately passed and became an Act of Parliament in April 2017.

What worked? Dr Whiteford identified a number of factors as important to this process.

1. A strong partnership with civil society.

Working in partnership with civil society organisations created momentum to push forward both the scrutiny of existing legislation (identifying the gaps in the existing legal framework) and the proposed remedy (the Istanbul Convention). Civil society played a key role in both providing evidence that made the need for the Convention more compelling and generating public support and political pressure for MPs and the Government to support Dr Whiteford's bill.

2. Building post-legislative scrutiny mechanisms into the process.

Dr Whiteford's original bill contained rigorous reporting requirements for the Government, in addition to those integrated into the Convention itself. While the terms contained in Dr Whiteford's bill were ultimately reduced during the parliamentary debate, their initial inclusion focused attention on the importance of being able to track, monitor and assess impact and implementation of the Convention.

¹⁴ All Post-Legislative Scrutiny documents related to domestic violence in the UK can be found at: <http://services.parliament.uk/bills/2016-17/preventingandcombatingviolenceagainstwomenanddomesticviolence.html>

3.4. FOLLOW-UP PHASE

As a Post-Legislative Scrutiny inquiry comes to an end, a number of subsequent issues need to be taken care of. We count these issues part of the follow-up phase for a Post-Legislative Scrutiny

inquiry: distributing the report and making it publicly accessible, policy follow-up to the inquiry, and evaluating the Post-Legislative Scrutiny inquiry results and process. These issues count as part of the follow-up phase.

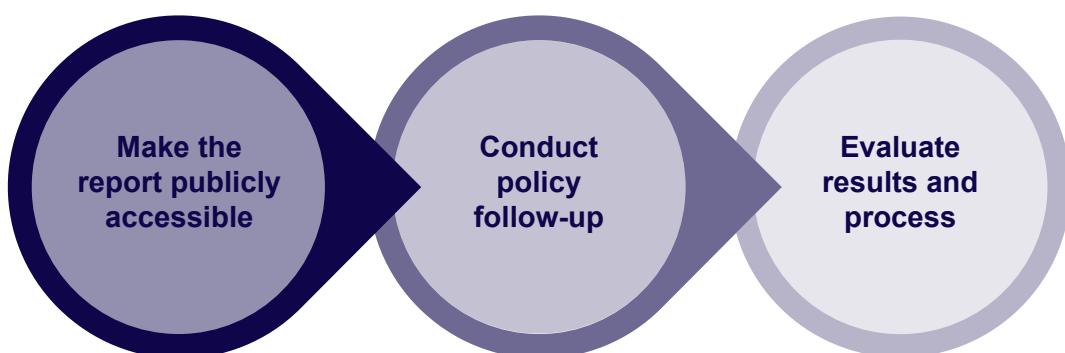


Fig. 6: Overview of steps in the follow-up phase for Post-Legislative Scrutiny



STEP 16: DISTRIBUTING THE REPORT AND MAKING IT PUBLICLY ACCESSIBLE

A report of a Post-Legislative Scrutiny inquiry process needs to be published and publicly accessible. Publication of the report on the parliament's website is a first means of publication. The Committee may also decide to publish the report in hard copy for further distribution. In specific circumstances, the Committee may hold a press conference to present the report and attract public attention to its findings. In such a case, the Committee needs to discuss follow-up to the Post-Legislative Scrutiny inquiry ahead of any press conference.

If the Committee wishes to publish some of the written evidence with the Committee's report, but the witness wishes to publish the evidence beforehand, the witness should inform and ask permission from the Committee (which normally should not cause any problem).

It is recommended that a copy of the report of the public hearing is sent to the witnesses and all persons participating in the consultations or public hearing. This is the responsibility of the Committee staff.

In addition, the staff can distribute a copy of the report to government ministries, stakeholders and interest groups, civil society organizations and NGOs, specialized journalists, international organizations and other institutions which might have an interest in the topic under consideration. A wide distribution of the report can contribute to the public information campaign and enhance the outreach of the parliament.

The Committee staff should liaise with the Press and Public Information Department of the parliament in compiling the list of interlocutors to receive a copy of the report, and rely on parliament services for mailing of any hard-copies of the report. In addition, parliament staff should produce a brief summary of the inquiry and its findings and send it to media sources, and update the parliamentary web-site.

Action for parliament staff

- Prepare a proposal on the outreach and communication for the Post-Legislative Scrutiny inquiry report and discuss the proposal with the Press and Public Information Department of parliament.
- Distribute the report to all persons and agencies which have contributed to the Post-Legislative Scrutiny inquiry.



STEP 17: CONDUCT POLICY FOLLOW-UP TO THE POST-LEGISLATIVE SCRUTINY INQUIRY

The adoption and distribution of the report on the Post-Legislative Scrutiny inquiry are not the end of the process. In fact, it is attention to the post-inquiry follow-up that may determine what happens to public input offered during the inquiry and whether it will contribute to improved service delivery and improved implementation of the legislation on which an inquiry was organized.

While momentum and interest will possibly diminish in the aftermath of the inquiry, it is essential that post-inquiry monitoring mechanisms are put into place. Here are several possible follow-up initiatives to be undertaken by the staff and the Committee chairperson.¹⁵

- After the completion of a Post-Legislative Scrutiny inquiry, it is recommended that the Committee seeks a response from the government on the report and the recommendations.
- During plenary meetings of parliament, the chairperson and members of the Committee can make use of the findings of the inquiry.
- A further option would be to seek a debate in the plenary on the report.
- Reports could also be considered on substantive motions expressing the agreement or disagreement of the parliament with the report as a whole or with certain paragraphs of it, or agreeing to the recommendations contained in the report generally or with certain exceptions.

Action for parliament staff

- Prepare a proposal for the Committee chairperson and members on policy follow-up to the inquiry.

Action for MPs

- Seek government response to report and recommendations
- Reference the reports and its findings in parliament plenary debates.



STEP 18: EVALUATE THE POST-LEGISLATIVE SCRUTINY INQUIRY RESULTS AND PROCESS

After a certain period following the end of the inquiry, the Committee needs to conduct an evaluation of the inquiry results and the process. It is suggested to conduct the evaluation after 9 to 12 months. The Committee can then review what progress has been made on the recommendations of the inquiry, consider possible additional initiatives to advocate for the recommendations of the inquiry including possible new amendments to the legislation under review.

The evaluation may also address the Post-Legislative Scrutiny process, such as the timeline, human and financial resources applied for the inquiry, interaction with stakeholders. The evaluation may look at the legal and procedural framework applicable to conducting Post-Legislative Scrutiny inquiries by parliament.

Action for parliament staff

- Prepare a draft evaluation on the inquiry results and process, for discussion at a meeting of the Committee which conducted the Post-Legislative Scrutiny inquiry.

¹⁵ For analysis on the policy follow-up and impact of the Post-Legislative Scrutiny inquiries in Westminster parliament, the research conducted by Thomas Caygill, PhD at Newcastle University, is worth reviewing. See bibliography.

IV. CONCLUSION: PARLIAMENTARY STRENGTHENING THROUGH POST-LEGISLATIVE SCRUTINY

Reviewing the implementation of legislation is a responsibility of parliament closely linked to its oversight function. To take charge of this responsibility, Parliaments can establish specialised committees and conduct their own analysis and/or they can rely on the information and reports provided by the Government. Government and the Parliament have distinct roles and contribute to different steps of the evaluation process. The Government, being responsible for the execution of the law, has the means to collect and compile information on how the law is being implemented. On the other hand, the Parliament has the responsibility to exercise oversight of this work.

In its policy advice and capacity building support to parliaments, WFD could suggest various options (or combination of options) on how to introduce Post-Legislative Scrutiny:

(1.) Ministries could be asked to provide regular reporting to parliament on the implementation

of laws, possibly based upon the UK model where the ministries prepare a Memorandum for parliament on implementation of each law - three to five years after its enactment.

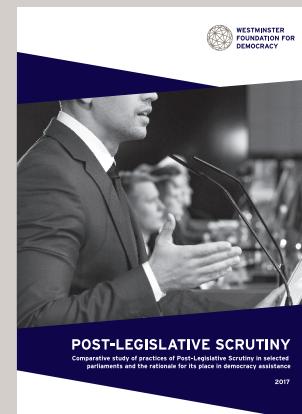
- (2.) Parliament could outsource or commission research on law implementation to external institutions, either autonomous official institutions (such as the Auditor General's Office) or external independent institutions such as universities.
- (3.) Parliament could conduct its own inquiries on the implementation of selected laws by holding public hearings, collecting evidence and conducting in-house research by staff of the Parliament, such as through a Research Unit or Legislative Unit.

The evident and practical questions arising out of these potential avenues of support that any parliament seeking to develop this area of its work include: (1.) What form it should take?; (2.) What priority should it have?; (3.) When should it be used? In answering these questions, parliament may consider the experiences of other parliaments as

Box 12: Comparative Study on Post-Legislative Scrutiny

The Westminster Foundation for Democracy has published a comparative study on Post-Legislative Scrutiny in parliaments in 10 countries. The study informs on relevant practices, procedures, structures and lessons learned on Post-Legislative Scrutiny in the United Kingdom, Belgium, Canada, India, Indonesia, Lebanon, Montenegro, Pakistan, South Africa and Switzerland. The document also discusses the role of secondary legislation, the linkages between gender and Post-Legislative Scrutiny, and the rationale for the place of Post-Legislative Scrutiny in democracy assistance.

The document was published in September 2017 and is accessible on the www.wfd.org



captured within the recently published “Comparative Study”. To do so formally may entail assigning the task to an ad-hoc, special or existing permanent Standing Committee. It may also consider the merits of creating additional layers of post-legislative support by establishing the framework for setting sunset clauses in legislation to prompt mandatory legislative evaluations, or establishing ‘trigger’ points in which a parliament is prompted to conduct specific review.

In contexts in which a parliament has limited resources to sustain a fully integrated system of Post-Legislative Review, WFD suggest the planning and implementation of a two-years pilot project approach in which the Parliament examines the

implementation of a limited set of laws (two to three). After this two-year period, the pilot project can be evaluated, and lessons learned identified for a more generalised and institutionalised approach. The pilot project could take the form of a Committee review of Ministry reports on the implementation of selected law(s), Committee review of outsourcing research by external institutions or Committee-led inquiries and in-house research on implementation of selected legislation.

Finally, the post legislative scrutiny work needs to show its relevance to the public and needs to be conducted in a way that citizens can contribute to evaluation of legislation.



*Engaging the public in the evaluation of legislation is important
for determining if laws have the intended impact.*

ANNEXES

ANNEX 1: PARLIAMENTARY STAFF CHECK-LIST FOR A POST-LEGISLATIVE SCRUTINY¹⁶

TIMELINE	Post-Legislative Scrutiny inquiry	WHO
	PLANNING PHASE	
Adoption of bill	Draft legislative amendments aimed at inserting a review clause or sunset clause	Legal staff
Adoption of bill	Draft language for possible request to Executive on ministerial commitment to review legislation	Legal staff
Ongoing	Analyse which trigger points are relevant for legislation in the remit of the respective parliamentary Committee	Legal staff / Cmt staff
Ongoing	Draft a proposal to the Committee and/ or parliament on the legal and policy considerations relevant to the trigger points	Legal staff / Cmt staff
Any time	Make a recommendation to parliament leadership which human resources structure is best placed to conduct Post-Legislative Scrutiny	Cmt staff / HR Dep
Ongoing	Ensure coordination and consultation between all staff required to be involved in Post-Legislative Scrutiny	Cmt staff
- 8 weeks	Verify what financial resources are available or how many financial resources should be requested to conduct Post-Legislative Scrutiny	Cmt staff / budget dep.
- 8 weeks	Assess whether external donor funding for the Post-Legislative Scrutiny assessment is needed and constructive	Cmt staff / budget dep.
- 8 weeks	Prepare “project outline” for Post-Legislative Scrutiny inquiry, including situational analysis, law(s) to be examined, scope of inquiry and objectives	Cmt staff
- 7 weeks	Discuss the “project outline” with the chairperson of Committee	Cmt staff
- 7 weeks	Prepare a proposal on a realistic timeframe for the entire Post-Legislative Scrutiny inquiry, with milestones	Cmt staff
- 6 weeks	Assess the possible contribution of a public hearing for the inquiry on the implementation of the identified law(s)	Cmt staff
- 6 weeks	Prepare a thorough assessment of the role and performance of the implementing agency or agencies as foreseen in the act	Cmt staff
- 5 weeks	Compile an overview of relevant stakeholders, affected by the legislation	Cmt staff
- 4 weeks	Prepare a selection of stakeholders who can be invited as witnesses to a public hearing	Cmt staff
- 4 weeks	Prepare a data collection plan	Cmt staff
TBD	Make a mid-term review of the data collection plan as the Post-Legislative Scrutiny inquiry is under way	Cmt staff

16 Based upon and further adjusted from: Parliament of Georgia, Manual for Committee staff, Tbilisi, 2016, 82 p.

TIMELINE	Post-Legislative Scrutiny inquiry IMPLEMENTATION PHASE		WHO
- 3 weeks	Invite stakeholders, experts and implementing agencies for the stakeholder consultation / public hearing	Cmt staff	
- 3 weeks	Develop the agenda for the meeting and consult with the Committee chairperson	Cmt staff	
- 3 weeks	Request written evidence from stakeholders	Cmt staff	
- 3 weeks	Draft a proposal on questions and issues to be raised	Cmt staff	
- 3 weeks	Prepare an analysis paper on the balance between primary and secondary legislation for the Act(s) under review	Legal staff	
- 2 weeks	Solicit input from the implementing agency on the regulations and decisions taken, and draft questions for further inquiry	Cmt staff	
- 2 weeks	Prepare proposal on inviting the media and information campaign	Press Dept	
- 1 week	Prepare briefing package and approach for consultation via the parliament's web page	Cmt staff, Press Dept	
TBD	Organize Post-Legislative Scrutiny public hearing or consultation	Cmt staff	

TIMELINE	Post-Legislative Scrutiny inquiry FOLLOW-UP PHASE		WHO
+ 1 week	Compile relevant preliminary findings of the Post-Legislative Scrutiny inquiry	Cmt staff	
+ 2 weeks	Discuss preliminary findings with parliament staff, external experts and implementing agencies.	Cmt staff	
+ 2 weeks	Prepare a proposal on possible recommendations	Cmt staff, Legal staff	
+ 3 weeks	Assist the chairperson in bilateral meetings with other committee members in finding common ground on the possible recommendations	Cmt staff	
+ 3 weeks	Prepare proposal on the outreach and communication for the Post-Legislative Scrutiny inquiry report and discuss the proposal with the Press and Public Information Department of parliament.	Cmt staff Press Dept	
+ 4 weeks	Distribute the report to all persons and implementing agencies involved in the inquiry	Cmt staff	
+ 4 weeks	Prepare a proposal on policy follow-up to the inquiry.	Cmt staff	
+ 6 months	Prepare a draft evaluation on the inquiry results and process	Cmt staff	

ANNEX 2: GUIDANCE FOR WITNESSES PARTICIPATING IN POST-LEGISLATIVE SCRUTINY HEARING OR CONSULTATION

- Confirm your invitation to attend the hearing/consultation both by telephone and in writing (letter or email);
- Plan your testimony. You will be more effective getting your message across if you have prepared your testimony in writing;
- An invitation to attend a hearing often contains a request for written evidence. If written evidence is requested it should:
 - be short and concise and, if possible, not exceed eight pages. Where it is longer than eight pages a summary should be provided
 - keep to the terms of reference of the hearing, concentrate on factual information, be specific in references to legislation (both existing and proposed) and be supportive of the verbal testimony you will give when you appear before the Committee
 - be submitted at least two weeks in advance of the hearing when circumstances permit, so that the brief can be distributed to Committee members for their consideration. Witnesses are encouraged to submit briefs electronically where possible
 - also be provided, if possible, on disc, formatted in Microsoft Word;
- Arrive early at the hearing in plenty of time to sign in so the Committee knows you are present. Each Committee runs their hearings differently, but the first hour (or more) of the hearing is often reserved for public officials – other legislators, government representatives, other elected officials. Then the Committee chairs begin calling speakers from the public sign up list, usually in the order you signed up. If you have a disability or a special need, talk to the Committee staff in advance of the Committee so that your need can be met;

- When you are called to speak remember:
 - identify who you are and, if you represent a group, give the name of the group
 - you have only a short time for the opening statement (usually no longer than 10 minutes), but do not rush (your words may be being interpreted and are being recorded by parliamentary reporters) and if you use less than your allotted time don't worry that's OK
 - address all questions, inquiries or concerns regarding the proceedings through the chair
 - when told that your time is over, finish the sentence, thank the Committee and stop
 - to use your speaking time to summarize your points and refer the Committee members to your written testimony for more details
 - that speaking from your own experience is most persuasive. Try not to just repeat other speakers' remarks
 - that after you have finished Committee members may have questions for you. Answer briefly and accurately. If you don't know an answer, say so and tell them that you will get back to them
 - to be polite and respectful. Do not disparage anyone who testifies against your position. Point out the differences, answer any concerns, but do not get personal
 - don't be offended if legislators come and go during the meeting. They have other simultaneous commitments including the need to be present in other meetings during the day;
- After the hearing write a thank you letter to the Committee, again attaching a copy of your testimony, and any updates or answers to questions that you promised to provide.

ANNEX 3: GLOSSARY OF PARLIAMENTARY TERMS¹⁷

Ad hoc committees

Committees established to meet temporary needs.
See also *Permanent committees*.

Amendment

An amendment is a change to the wording of a Bill or a motion that is proposed by an Member of Parliament.

Appropriations

The withdrawal of public money from the total tax receipts that fund all government expenditure and the allocation of money to units of expenditures.

Audit

The examination of and the resulting report on accounts relating to the use of funds. An internal audit is conducted by the institution concerned. An external audit is conducted by a supreme audit institution. The word usually refers to a financial audit – the examination and verification of government accounts. Supreme audit institutions can also conduct performance audits.

See also *Value for money, Supreme audit institution*.

Budget

The government's programme of collecting revenues (taxes, excise, etc.), spending public money, and lending or borrowing money for a specified fiscal year. A draft budget contains both aggregate figures and appropriations for the administration of programmes. In many countries, the government's draft budget is in the form of a budget bill(s). In Commonwealth parliaments, the budget is sometimes composed of different types of documents, and parliament may approve Appropriations that appear in Estimates.

Censure (motion of)

A parliamentary procedure to formally condemn the government or its members for some positions they hold or for a lack of action for which they are responsible. It is not always synonymous with withdrawal of confidence.

Committee (parliamentary)

A parliamentary body that is appointed by one chamber (or both, in the case of joint committees in a

bicameral parliament) to undertake certain specified tasks and is subordinate to the parent chamber. The parent chamber either refers matters to committees or empowers the latter to choose issues to examine. Committees can be either permanent or ad hoc. See also *Permanent committees, Ad hoc committees*.

Draft Bills

Draft Bills are Government Bills that are issued first in a draft form to allow them to be looked at in detail before they are introduced. In the UK Westminster Parliament, they are usually examined either by a Commons or Lords select committee or by a specially created joint committee of both Houses of Parliament. This process is known as 'pre-legislative scrutiny'.

Debate

An exchange of speeches that is intended to help Members of Parliament reach an informed, collective decision on a subject. Votes are often held to conclude a debate. These may involve passing a proposal or simply registering opinions on a subject.

Delegated legislation

An Act of Parliament (primary legislation) will often empower ministers to make further regulations within its scope after it has become law. These regulations are 'secondary' or 'delegated' legislation.

Estimates

Programmes of appropriations for each budgetary unit that are usually prepared by each department of the government. After the approval of the main estimate for the year, supplementary estimates are used to modify the authorized figures.

Hearings

Procedures used by parliamentary bodies to obtain oral information from persons outside the bodies concerned. Hearings can be either consultative or evidence-taking sessions.

Interpellation

A formulated question on the conduct of the government or its departments that often determines accountability by means of votes on motions. The procedure of interpellations differs between parliaments. It can be launched as a single inquiry or moved as follow-up to other written or oral questions.

Joint committee

A committee that draws its membership from both chambers of a bicameral parliament.

¹⁷ Based on: IPU, Tools for parliamentary oversight. A comparative study of 88 national parliaments, Geneva, 2007, p. 77-81; Westminster Parliament, Glossary of Parliamentary Terms, London, UK: <http://www.parliament.uk/site-information/glossary/>

Ombudsperson

A person, independent from the government and sometimes also independent of parliament, who heads a constitutional or statutory public institution that handles complaints from the public regarding the decisions, actions or omissions of the public administration. The office is called the ombudsman, mediator, parliamentary commissioner, people's defender, inspector-general or a similar title.

Opposition (parliamentary)

Political parties or their corresponding groups in parliament which do not participate in the government of the day. In presidential systems, the word "minority" is more frequently used.

Permanent committees

Committees that are established for the lifetime of the legislature according to the rules of procedure. In some parliaments, they are called Standing Committees.

Petition (to parliament)

A request from one or several members of the public to an authority for an action. The public can seek redress for personal grievances.

Primary legislation

Act of Parliament

Private Members' Bills

Private Members' Bills are introduced by individual MPs rather than by the Government. As with other Public Bills their purpose is to change the law as it applies to the general population. In the UK, very few Private Members' Bills become law but, by creating publicity around an issue, they may affect legislation indirectly.

Qualified majority

A majority larger than a simple majority, such as three-fifths, two-thirds, three-quarters or four-fifths.

Questions

Requests made by an individual member of parliament or a group of members for information about a subject. A question can be either written or oral.

See also *Interpellation*.

Question time

A period in the parliamentary agenda that is allocated to oral questions and the answers to them.

Rapporteurs

One or more members of a committee who act on behalf of the committee. Rapporteurs prepare draft reports to the committee or present the committee's report to the plenary.

Regulation

A term used in constitutional texts to refer to a category of rules other than statutes enacted by parliament which have the effect of law. Regulations are often known as, or fall within, delegated legislation, or secondary legislation, in some systems. In the legal tradition of continental Europe, regulation belongs to the domain of the executive, while legislation is the domain of the legislative branch.

Rules of procedure

A set of codified rules governing the organization of parliament and its procedures. Each parliament has a name to refer to these kinds of rules. "Internal rules" in French-speaking countries and Spanish-speaking countries are often enacted in the form of organic law. In Commonwealth parliaments, the term "standing orders" is often used.

Scrutiny (parliamentary scrutiny)

Parliamentary scrutiny is the close examination and investigation of government policies, actions and spending that is carried out by the parliament and their committees.

Secondary legislation

An Act of Parliament (primary legislation) will often empower ministers to make further regulations within its scope after it has become law. These regulations are 'secondary' or 'delegated' legislation.

Select Committee

Select committees are small groups of MPs that are set up to investigate a specific issue in detail or to perform a specific scrutiny role. They may call in officials and experts for questioning and can demand information from the government. Select committees publish their findings in a report and the government is expected to respond to any recommendations that are made.

Standing orders

See *Rules of procedure*.

Sunset clause

A provision in a Bill that gives it an expiry date once it is passed into law. Sunset clauses are included in legislation when it is felt that Parliament should have

the chance to decide on its merits again after a fixed period.

Supplementary question

A question that seeks clarification or further information following the government's response to a member's question during question time.

Supreme audit institution

A state institution that conducts external audits of the state accounts.

System of government

The way in which the state's power is distributed between the three branches of government (the legislature, the executive and the judiciary) and the way in which these branches exercise checks on the others. In a presidential system, the president is simultaneously the head of state and the head of the executive branch, and his/her status as such does not depend on legislative support. In a parliamentary system, the head of the executive branch leads the government which is dependent on the confidence

or tolerance of the majority in the parliament; and there may be a monarch or a figurehead president as head of state. In a semi-presidential system, the elected president is the head of state and shares his/her status as the head of the executive branch with a prime minister, whose status rests on parliamentary confidence.

Value for money

A colloquial expression for cost-effectiveness. In a value-for-money audit, economy, efficiency and effectiveness are the three key qualities sought.

Witnesses

Persons which participate in the proceedings of the public hearing, in particular experts and specialists who comment on legislative proposals or policies, academia and professionals, representatives of stakeholder bodies, professional institutions and individuals, and any other person invited to contribute to the discussions at the public hearings. The term 'witness' need not have the same legal character as used for a witness in a court of law.

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