Chapter 4

The development of new regulations

Predictable and systematic procedures for making regulations improve the transparency of the regulatory system and the quality of decisions. These include forward planning (the periodic listing of forthcoming regulations), administrative procedures for the management of rule-making, and procedures to secure the legal quality of new regulations (including training and guidance for legal drafting, plain language drafting, and oversight by expert bodies).

*Ex ante* impact assessment of new regulations is one of the most important regulatory tools available to governments. Its aim is to assist policy makers in adopting the most efficient and effective regulatory options (including the “no regulation” option), using evidence-based techniques to justify the best option and identify the trade-offs involved when pursuing different policy objectives. The costs of regulations should not exceed their benefits, and alternatives should also be examined. However the deployment of impact assessment is often resisted or poorly applied, for a variety of reasons, ranging from a political concern that it may substitute for policy making (not true—impact assessment is a tool that helps to ensure a policy which has already been identified and agreed is supported by effective regulations, if they are needed), to the demands that it makes on already hard pressed officials. There is no single remedy to these issues. However experience around the OECD shows that a strong and coherent focal point with adequate resourcing helps to ensure that impact assessment finds an appropriate and timely place in the policy and rule making process, and helps to raise the quality of assessments.

Effective consultation needs to be an integral part of impact assessment. Impact assessment processes have or should have a close link with general consultation processes for the development of new regulations. There is also an important potential link with the measurement of administrative burdens (use of the Standard Cost Model technique can contribute to the benefit-cost analysis for an effective impact assessment).

The use of a wide range of mechanisms, not just traditional “command and control” regulation, for meeting policy goals helps to ensure that the most efficient and effective approaches are used. Experience shows that governments must lead strongly on this to overcome inbuilt inertia and risk aversion. The first response to a problem is often still to regulate. The range of alternative approaches is broad, from voluntary agreements, standardisation, conformity assessment, to self regulation in sectors such as corporate governance, financial markets and professional services such as accounting. At the same time care must be taken when deciding to use “soft” approaches such as self regulation, to ensure that regulatory quality is maintained.

An issue that is attracting increasing attention for the development of new regulations is risk management. Regulation is a fundamental tool for managing the risks present in society and the economy, and can help to reduce the incidence of hazardous events and their severity. A few countries have started to explore how rule-making can better reflect the need to assess and manage risks appropriately.
Assessment and recommendations

Processes for making new regulations

Well-structured, effective and transparent mechanisms govern the preparation of laws. The development of new regulations is carried out within a well-organised and carefully-orchestrated framework. A key element of this framework is the annual Law Programme, which is a detailed list of all bills that the government plans to send to the parliament during the year. The Law Programme has the dual objective of acting as a steering instrument for the government’s work, and of engaging the parliament early and closely in forward planning. It includes all draft bills to parliament, makes the schedule public and sets a timeframe for ministries. The information provided by ministries must identify expected secondary regulations which will be needed to implement the laws. The process is supported by two important ministerial committees (the Co-ordination Committee and the Economic Committee, see Chapter 3) which play a key role in evaluation and approval of the Law Programme. Last but not least, the process for making new regulations benefits from clear and comprehensive procedural guidelines established by the Ministry of Justice for the development of regulations, and a specific website on the law-making process. All these documents are publicly available. However, tools in place focus on the production of primary regulations, with less attention given to secondary regulations. The Ministry of Justice has issued specific guidelines on secondary regulations, but they are given less visibility.

Ex ante impact assessment of new regulations

Requirements for ex ante impact assessment, which go back to the early 1990s, have been significantly reinforced since 2005. The OECD in its 2000 review drew attention to the need for improvement. Many of its recommendations have been acted on, including greater rigour and strengthened guidance, and a stronger commitment to tackling economic effects (Box 4.1). Ministries evaluate the consequences of their bills at an early stage, when they make proposals for the Law Programme. They need to refine the evaluation in a second stage, before the bill can be tabled before the parliament. The initial impact assessment also serves to identify proposals which require a more thorough impact assessment regarding business administrative burdens (with a specific procedure introduced in 2005) and local government (VAKKS procedure, established in 2006). In addition, any regulatory proposal (primary or secondary), which would lead to significant administrative burdens on business requires the approval of the Economic Committee. Transparency at the end of the impact assessment process is strong. The full impact assessment is accessible both to the parliament and to the wider public, once a bill is tabled before the parliament. This supports quality control.

Reflecting the broader scope and detail of impact assessment processes, guidance material has been developed and brought together on the online law-making guide. This is an important step for helping ministries to digest and understand what they need to do, and when. It also contributes to a more unified approach. The OECD team was told that the expanded guidance and online availability have contributed to improving the development of regulations, and making impact assessment more consistent and thorough.

As in most other OECD countries, however, controlling the flow and complexity of new regulations remains a challenge. There are concerns among external stakeholders and local governments that the flow of new regulations shows no sign of abating, and in particular,
that new regulation produced by some ministries can be increasingly detailed and complex. Some inside central government also remarked on the growing number of new regulations. In the specific Danish context, there appears to be two sets of issues. There is a tension between pressures for higher levels of safety implying more regulations, and efforts to reduce regulatory burdens. There is also a tension between efforts to move towards more outcome-based regulations and the consequent need for documentation which is, in effect, another form of regulation.

Box 4.1. Recommendations and comments from the 2000 OECD report: Ex ante impact assessment

Improve the value of regulatory impact assessments for policy officials by adopting the benefit-cost principle, gradually increasing the rigor of analysis for important regulations, expanding its scope to apply to lower level rules, and requiring ministries to include RIA in public consultation processes.

Danish regulatory reform efforts continue to have a legal focus, with less attention given to the economic aspects of regulatory quality. Issues of ensuring good procedural performance, including adequate parliamentary debate, plain language drafting and guidelines for public consultation have been prominent. Establishment of a benefit-cost principle, consistent assessment of regulations against alternatives and the integration of benefit/cost assessments with consultation procedures have been neglected. The legal focus may reflect the strong influence of the Danish Bar and Law Society on the establishment and early development of the programme. It may also be partly due to difficulties of integrating economic decision tools into the processes of debating and adopting primary legislation, vis-à-vis more administratively based mechanisms used to make lower-level rules. An important step forward was taken in 1998, when the Regulation Committee began reviewing proposed additions to the legislative programme in terms of a preliminary assessment of impacts and consideration of regulatory alternatives. Strengthening this process will represent a key development for Danish regulatory reform. Integration of RIA disciplines at very early stages of the policy process is a very positive move.

Use of regulatory impact assessment in Denmark is at an early stage and, unsurprisingly, requires strengthening if the potential benefits of this policy tool in improving regulatory quality are to be achieved. RIA should be improved in four dimensions. First, a universal benefit-cost principle should be adopted, with step by step strategies to gradually improve the quantification of regulatory impacts for the most important regulations, while making qualitative assessments more consistent and reliable. Second, application of RIA should be extended to lower level rules as well as primary legislation. Third, RIA should be used in the review of existing regulations. Fourth, the cost of RIA would be reduced, and its quality increased, if it were integrated with public consultation processes. RIA should be made available as key inputs to participants in consultation and the results of consultation should be used as inputs for refining and developing RIA. The incentives for ministries to develop high-quality RIA are not strong; public disclosure is a powerful incentive to produce realistic estimates of regulatory impacts.


Despite major improvements since the 2000 OECD report, the overall framework for impact assessments needs to be strengthened further if Denmark is to make a sustained positive impact on the flow and quality of new regulations. Although impact assessment procedures are well known throughout the administration, evidence from interviews by the OECD peer review team suggests that they are not applied evenly across ministries, and are often applied too late in the decision making process. This finding is supported by the 2007
The complex and dispersed institutional framework for monitoring the application of impact assessments needs to be strengthened and streamlined, in order to promote quality control, and to embed the process as part of evidence-based decision making. Although the first stage process for impact assessment (when preparing the Law Programme) has a focal point through the role of the Ministry of Finance and the Regulation Committee, the responsibility for conducting the second stage institutional framework is spread across a range of ministries and other entities. Dispersed institutional responsibilities weaken overall management and monitoring, and slow the spread of further culture change among ministries. Although the need to evaluate likely costs for businesses has concentrated minds on this particular aspect of impact assessment, interviews showed that ministries may still be reluctant to share emerging policies before they have a full draft ready, by which time it can be too late to make necessary changes.

Recommendation 4.2. Denmark could consider the following actions to strengthen its institutional framework for impact assessment.

- First, consider whether a single lead unit of officials should be clearly designated with a general responsibility for monitoring the overall effectiveness of all impact assessments, including specific responsibility for assuring the overall quality of the stage two impact assessments, and of the local government dimension (see also Chapter 2 recommendation for the consideration of a single Better Regulation unit).

- Second, individual ministries should be encouraged to consider whether their institutional capacities to manage impact assessment need strengthening (for example by setting up a small internal unit responsible for providing advice, support and encouragement to officials in the development of impact assessments).

The Danish impact assessment system could benefit from a more comprehensive interaction with public consultation. The current public consultation processes (Chapter 3) imply that ministries must consult on draft regulations. Many ministries publish the impact assessment done in the first stage of bill preparation when they post the draft for comment on the Consultation Portal. This is often done for laws, but not for secondary regulations. The specific assessments on business administrative burdens (done by DCCA) and local governments (VAKKS) also make an integral use of public consultation. These are positive developments, which need to be applied across the whole impact assessment process. In particular more attention could be given to using public consultation in the development of second stage impact assessments. This is a separate issue from the accessibility of impact assessment to the parliament and the wider public, once a bill has been tabled.
Recommendation 4.3. Denmark should consider how public consultation could be made an integral and systematic part of the process of impact assessment (and just not for some parts of it), with particular regard to timing, so that stakeholders’ views can be taken into account as part of evaluating impacts.

The progress achieved in developing impact assessment could be further consolidated with action in other areas. First, there is a need to further develop methodologies (including the necessary guidance and training for ministries) for quantification of costs and benefits, building on the significant elements which are already in place for some key parts of the process. The 2000 OECD report emphasised the need to increase the rigour of analysis for important regulations. The team heard that some ministries face technical difficulties in making effective assessments, despite the updated guidance, whilst others are developing their own systems. There is a need for greater clarity, coherence and rigour in the methodologies to be applied. Second, the links between the different parts of impact assessment need to be clarified. For example the guidance material does not provide a clear view of the overall process and its different elements. The online law-making guide provides information on impact assessment, but this information is not highly visible, and does not provide an understanding of the whole process. Finally it is not clear to what extent the current system covers secondary regulations. It is important that ex ante impact assessment capture all significant regulations. At the same time the principle of proportionality should be observed (not all regulations will need the same in-depth treatment).

Recommendation 4.4. Denmark should consider promoting the use of quantitative methods alongside qualitative methods, further improving guidance material on impact assessment, and establishing appropriate training in assessment techniques. The online Lovprocessguide could be further improved to give impact assessment higher visibility, outline the process in a comprehensive way, and provide methodological tools. Denmark should also consider whether the current impact assessment system adequately covers all significant regulations, including significant secondary regulations.

Alternatives to regulation

Alternatives to regulation² are among the tools of Better Regulation policy in Denmark, but it is unclear to what extent they have been used in practice in recent years. The 2000 OECD report noted that Denmark has for some time deployed various alternatives policy instruments to “command and control” regulation (for example co-regulation). It has made significant efforts to integrate the consideration of alternatives to regulation into the rule making process, and provided officials with thorough guidance. It was beyond the scope of this report to assess how these efforts have translated – or not – in increased use of alternatives (including the option of not regulating).

Recommendation 4.5. Consideration could be given to evaluating the actual uptake of alternatives and the use made of the current guidance, which dates back to 2001.
Background

General context

The structure of regulations in Denmark

Both government and parliament can initiate a law proposal (primary regulation). However, most new laws come from the executive. Secondary regulations include royal decrees and executive orders, which put binding requirements on citizens. Regulations on subordinate administrations include circulars (binding) and guidelines (not binding). (For details, see Box 4.2).

Box 4.2. Structure of regulations in Denmark

The constitution. The Constitutional Act represents the highest national legal authority. It first came into force in 1849. It was last revised in 1953.

Statutory laws (lov). Statutory law has primacy over other written legal sources, save for the constitution. It is enacted only by the Folketing (parliament), and published in the Official Gazette.

Royal decrees and executive orders (kgl. anordning, Bekendtgørelser) are issued by ministries only if explicitly permitted by the constitution or a law, and within the framework set by the law. They are signed by the ministry (not by an agency) and by the monarch in case of a royal decree. They put binding requirements on citizens, and are published in the Official Gazette.

Circulars (cirkulærer). These are mandatory general provisions issued by ministries and agencies, which are only addressed to the subordinate administration.

Guides (Vejledninger) provide support to subordinate administration in understanding the rules and their application. They cannot set binding rules. Publication is not mandatory.

Circulars and guides can be published in the Ministerialtidende, if the Ministry considers that it in the general interest. There are no legal consequences attached to the publication of regulations in Ministerialtidende.

Trends in the production of new regulations

The number of primary laws submitted by the government to the parliament every year has varied from 180 to 260 over the past decade. While there has not been any significant inflation in the number of laws produced every year, there is no sign of a consistent downward trend over time either. The number of new regulations gives only part of the overall picture as the complexity of laws can vary. However health, safety, the environment, and education are examples of policy areas in which interviewees indicated to the team that there is or will likely be a significant flow of new regulations. In addition the team was told that many regulations in these areas tend to be increasingly detailed and complex.
The development of new regulations

Processes for making new regulations

The law making process

The preparation of a new regulation by the government usually takes place in two steps. In the first step, ministries (either individually or through the Economic Committee) propose that a bill be included in the Law Programme, which is presented each year by the government to the Folketing. Once the bill has been included (which goes through assessment by inter-ministerial co-ordination committees and final approval in Cabinet meeting), the ministry prepares the draft, using a number of guidelines, as detailed in the paragraphs below (for an overview of the law making process, see Box 4.3 and Figure 4.2).

Box 4.3. The law making process in Denmark

Development of the Law Programme

Ministries provide a list of their proposals for new legislation with the expected date of submission, and documentation (see below). The Regulation Committee evaluates draft bills for inclusion in the Law Programme, in the light of the government’s general policy goals. The Co-ordination Committee reviews the finalised Law Programme, before final approval at a Cabinet meeting.

Preparation of draft laws

The preparation of a draft law by a ministry usually takes place within the framework of the Law Programme. When preparing its proposal for inclusion in the Law Programme, the ministry has to provide specific information, which will be further developed once the proposal has been included in the Law Programme and the drafting of the proposal starts. The documentation elaborated by the ministry includes the following elements:

- Title.
- Summary (three to six lines).
• Description (including background such as committee report, political and economic situation), purpose and main element of the proposal. Indication whether the proposal is submitted on basis of review clause, if relevant.

• Description of economic and administrative consequences for the state, regions and communities, for businesses, and for citizens. Description of environmental consequences. This includes examining the need for in-depth impact assessment on local governments (and justification if the answer is no).

• Relation to EU regulations (and if relevant indication whether the proposal relates to the implementation of an EU directive).

• Identification of any aspects relating to state aids.

• Relation with other legislation.

• Coherence with other legislation.

• Consideration of alternatives to regulation.

• Examination of need for in-depth impact assessment regarding administrative burdens on businesses by DCCA (systematically done for some ministries).

All draft bills must be submitted as early as possible to the Prime Minister’s Office, the Ministry of Finance (financial consequences) and the Ministry of Justice (legal scrutiny), as well as other relevant ministries who may have a particular interest in the matter.

The preparation of the draft bill can entail preparatory work in committees (which can consist of representatives from other ministries, external stakeholders, local governments, experts, as required). Public consultation usually takes place once a “complete” draft version is available.

**Final approval by the executive**

Before presentation to Cabinet (usually in a few weeks before the meeting), the proposal must be approved by the Co-ordination Committee in a written procedure. The Co-ordination Committee includes the most important ministries. It receives a summary of the draft, and an explanatory memorandum including the information mentioned above (such as results of impact assessment). The draft then goes for approval to the weekly Cabinet meeting, before submission to the *Folketing*.

**Adoption by the parliament**

• First reading: Before the first reading, a parliamentary committee will have discussed the text and appointed a *rapporteur*. At the first reading, the bill is discussed in general. No amendments may be moved. Normally, the bill is referred to a committee.

• Report: After having read the bill, the committee may make a report. The report contains recommendations to the parliament as well as eventual amendments

• Second reading: The bill is discussed in general and in detail. The individual sections and eventual amendments to the bill are put to the vote. Usually, the bill passes on directly to the third reading

• Supplementary report: The bill can also be referred to a new committee reading. Subsequent to this reading, the committee usually makes a supplementary report which may among other things contain amendments

• Third reading: At the third reading, eventual new amendments are discussed and put to the vote. Subsequently, the bill is discussed in its entirety and it is put to the final vote

**Confirmation**

When the law has been passed after its third reading, it is given assent by the monarch and countersigned by the minister, who thus assumes responsibility for the act. Confirmation must be done within 30 days after adoption by the *Folketing*. It is then published in the official journal.
Figure 4.2. Danish government's process for preparing draft laws

1. Identify new regulation issue:
   - Committee of experts
   - Committee of officials
   - External involvement of general public

2. Formulation of draft regulation

3. Law prints
   - Cabinet
   - Coordination Committee

4. Check for any severe regulatory impact:
   - Ministry of Finance + Ministry of Economic and Business Affairs

5. Further checks:
   - Regulation Committee
   - Economic Committee

6. Final draft
   - Cabinet
   - Coordination Committee

7. Formal advice of:
   - Prime Minister's Office
   - Ministry of Finance
   - Ministry of Justice

8. Transnational consultation

9. Call for comments on consultation portal

10. Impact assessment

11. Risk assessment (including attached documents)

12. Arrangement and administrative costs for central government domestic and covered?
   - If minimized, state burdens below 10,000 hours / EUR 350,000

13. cabinet chairmen and administered costs for central government domestic and covered?
   - No

14. Cabinet approval

15. Cabinet decision
   - Yes
   - No

16. Draft and documentation (including BUT and amendment) published on Parliament's website

17. Publication on Prime Minister's and Parliament's websites
Forward planning

The production of new draft regulations by the executive takes place within the framework of the Law Programme, which is adopted every year and is presented by the Prime Minister in her/his annual opening speech to the Folketing. The preparation of the Law Programme follows a structured process, stretching from February to October, in which ministries propose draft bills and the Prime Minister’s Office co-ordinates the initiatives. The objective of the Law Programme is to provide the parliament with an overview of the bills relating to government policy over the coming year. The Law Programme is also used as a steering instrument in the government’s work. It is made public on the Internet websites of the Prime Minister’s Office and of the Folketing.

- The Law Programme consists of a list of the planned bills by ministry, with a three- to six-line description and mention of the expected date of submission of the bills to the parliament. It can also include more general topics, such as the cohesion of the Law Programme and the general policy goals of the government. It covers all primary regulations, and also addresses the production of secondary regulations indirectly. It includes proposals originating from the EU. (For more on the Law Programme process, see Box 4.4).

- Ministry officials are required to provide detailed information on the draft bills which they submit for inclusion in the Law Programme. This includes spelling out purpose and content, and assessing the consequences of the bills on citizens, business and the administration, highlighting relationships to other laws, and considering the use of alternatives to regulation. These documents are not included in the Law Programme available to the public.

- The Regulation Committee (chaired by the Prime Minister and consisting of the permanent secretaries of core ministries), evaluates contributions in the light of the government’s general policy goals and the Coalition Agreement. Ministry of Finance’s KAL gives advice to the Regulation Committee, and interacts with other ministries in the preparation of submissions (e.g. asking to clarify or complete their submission). The finalisation of the Law Programme is then discussed by (or handled by written procedure in) the Co-ordination Committee (the “inner Cabinet”, also chaired by the Prime Minister, which approves most major new policy initiatives) and then by the Cabinet.

- The Prime Minister’s Office sends a status report to the Folketing at the beginning of December, February, March, and April. The status reports show bills not yet submitted and their dates of expected submission. They also include possible new proposals with their description. The process for preparing the status of the report is similar to the process for preparing the Law Programme, with each ministry making contributions.
Box 4.4. Process for issuing the Law Programme

According to Section 38 of the Danish constitution, the Prime Minister makes an opening speech to the Folketing every year. The Law Programme of the current government – including bills for the coming parliamentary year – makes up part of the Prime Minister’s speech.

Preparation of the Law Programme

The Prime Minister’s Office invites the other ministries to contribute to the Law Programme. These summons are normally sent, by paper as well as electronically, in the beginning of February and the deadline for handing in contributions is at the beginning of May.

The various ministries’ contributions to the Law Programme – which come in a format different to the presentation of the final Law Programme – encompass among other things a description of the individual bills, decision proposals and reports, which have all been manufactured according to the form attached to the summons. All contributions are delivered electronically.

After first having been discussed in a civil servants’ subgroup, the ministries’ contributions to the Law Programme are discussed by a special Secretary of State Group in the Prime Minister’s Office with participants from the Ministry of Economic and Business Affairs, Ministry of Finance and Ministry of Justice (the Regulation Committee). This group evaluates the proposals in light of the government’s general financial politics and other central political goals, as for example Better Regulation in relation to the public and the private sector. This group also evaluates the suitability of the time plan for the legislative work. Finally, the group also evaluates possible questions in relation to the cohesion of the individual bills/proposals in the Law Programme.

Consolidation of the Law Programme

The consolidated Law Programme is compiled by the Prime Minister’s Office on the basis of contributions from the other ministries, discussions in the Secretary of State Group as well as continuous contact to the other ministries.

The main body of the Law Programme is a short description of the planned bills and decision proposals. An expected date of submission of the bills/proposals is indicated, for example October I and October II. The proposals are grouped according to ministers concerned and the ministers are listed alphabetically. The bills/proposals pertaining to each minister are then listed according to the time of submission. A short review of more general topics sometimes appears in the Law Programme, for example the cohesion of the Law Programme and the general political goals of the government. The Law Programme is published as mentioned below.

Finalisation

The Law Programme is normally discussed at meetings in the Co-ordination Committee of the Cabinet (“the inner Cabinet”) in June and in September.

The final draft of the Law Programme is also normally discussed at one or more Cabinet meetings during the month of September. It is also subject to a discussion between the Prime Minister and the Parliamentary Standing Orders Committee prior to the start of the parliamentary year, which addresses general aspects of the legislative work (number of bills, expected submission dates) and not the content of the legislative work.

The Law Programme in its final form is published on the first Tuesday of October, which is the start of the new parliamentary year. It is published in hard copy as well as electronically on the Internet (on the websites of the Prime Minister’s Office and of the Folketing). The document
published on the Internet consists of a list of all the draft bills, with a summary and dates of expected submission to the parliament.

**Status report on work progress**

A status report of the work progress on the Law Programme is handed over to the parliament in the beginning of December, February, March and April. The reports show bills not yet submitted and their dates of expected submission. Possible new proposals are also incorporated, as well as their dates of expected submission, and are marked “New”.

The status reports are being compiled in the Prime Minister’s Office on the basis of contributions from the various ministries. If ministries present new proposals, a description of the proposal is being made as well, according to the form used for contributions to the Law Programme, as mentioned above.

**Administrative procedures**

Denmark has no specific law to frame the development of new regulations, but a number of guidelines which law drafters must follow. A key document is the “Guidelines on Quality of Regulations” established by the Ministry of Justice, and updated in 2005. The guide is comprehensive, covering legal quality and processes. It provides information on the whole process for drafting a bill, from the original proposal for including a draft law in the Law Programme to the detailed preparation of the draft law and adoption by the parliament. It defines a set of rules, aimed both at promoting the legal quality of the text, and ensuring adequate consultation and examination of the expected consequences of the bill (Box 4.5). It sets specific requirements concerning drafting techniques, the language to be used, etc. This includes rules on the definition of the title, the structure of the text, and the type of language. The guidelines have been integrated in Lovprocessguide, the government online guide for law making.

The Ministry of Justice has also issued guidelines on the preparation of secondary regulations in a separate document. More specific guidance may also be available, such as the guide issued in 2001 by the Ministry of Welfare on how to incorporate local government concerns in new regulation (Ministry of Welfare, 2001).

**Box 4.5. Guidelines on the Quality of Regulation**

The Guidelines on the Quality of Regulation (Vejledning om Lovkvalitet) sets out rules on the procedures for making draft laws, including:

- When should a bill be prepared and would other ways of regulation be more suitable in a particular case.
- The main principles for layout of bills.
- A number of legal limits and common legal principles contained in the considerations when preparing bills concerning for example the constitution, the EU law, international human rights conventions, retrospective bills and authorisations.
- Planning of the legislative work including:
  - the need for a schedule for the individual bill;
  - the form of a bill preparation (e.g. in commissions, committees or in the individual ministries);
− hearing of bills;
− involvement of other ministries, the public auditors and the European Commission;
− submission to the government’s committees, including the Co-ordination Committee;
− submission to ministerial meeting;
− submission to the Queen in Council prior to submission to the Folketing; and
− royal assent by the Queen in Council.

Follow up to bills passed with a view to evaluating the effect, including expiry clauses, audit regulations and regulations on law surveillance.

Source: Ministry of Justice, Denmark (http://jm.schultzboghandel.dk/publikationer/publikationsdetail.aspx?PId=a9e0219b-967e-467b-ac3c-4a685a6106c).

Legal quality

Individual ministers are responsible for the legal quality of primary and secondary regulations issued within their area of responsibility. Draft regulations (as well as revision of existing regulations) are prepared by officials responsible for the specific policy field, rather than by specialised law drafters. Most ministries have a legal unit to support officials. Interviews showed some concerns about the capacities of individual ministries to provide adequate resources with respect to legal quality, given other demands on drafters (such as the need to carry out different impact assessments), as well as the need to deal with pressures from the overall flow of regulations, and the occasional use of fast-track processes in response to political pressure.

The Ministry of Justice has a supervisory role in relation to legal quality. In addition to providing legal quality guidance to other ministries, it controls the legal quality of regulations. All bills (except for the proposal for the annual budget) are submitted to its scrutiny before they are sent to the parliament.

The role of the parliament

The Law Programme ensures co-ordination between the government and the parliament in the process of making laws. First of all, the Law Programme sets a detailed timetable for the production of laws. According to a longstanding practice, the Prime Minister and the Parliamentary Standing Orders Committee meet to discuss the number of laws and timetable set in the Law Programme before the start of the parliamentary year. As part of the Law Programme preparation, one of the tasks of the Co-ordination Committee is to ensure that draft laws are forwarded to the parliament early in the parliamentary session, providing more time for committee review and parliamentary debate. In addition, draft bills submitted to the parliament must include the information provided internally as part of the development of the Law Programme, as well as the conclusions of subsequent assessments of administrative burdens on business and impacts on local government, in the form of an attached explanatory memorandum.

When the draft law is sent to the parliament, an explanatory memorandum is attached in which all the comments received by the government during consultation are made available, including whether they have led to amendments of the draft. This information is published on the Folketing’s website.
Ex ante assessment of the impact of new regulations

Policy on impact assessment

A formal requirement for impact assessment dates back to 1993. There is no single integrated policy. Ex ante impact assessment today consists of a series of processes which follow the development of the Law Programme and the elaboration of specific draft bills. The range of impact assessments has been broadened over the last few years, to include analyses of impacts on local governments and on administrative burdens for business. An important aim is to capture administrative burdens on different stakeholders.

- In 1993 a circular of the Prime Minister’s Office required all ministries to provide a detailed description, and where possible quantification, of the expected administrative effects on business of the planned regulation as part of the process for developing a draft bill.

- In 1998 the Prime Minister’s Office revised its circular on law drafting to incorporate assessment of the administrative costs for businesses and citizens, and document the results in the explanatory notes that accompany draft bills to the parliament. The requirement to carry out impact assessments was incorporated into the Ministry of Justice Guidelines on Quality of Regulation. It was progressively expanded to cover a range of impacts such as on the environment, and to extend beyond administrative burdens.

- In 2005, the government introduced a specific mechanism to assess expected administrative burdens on business (through scrutiny by DCCA).

- In 2006 the government introduced a further specific mechanism to assess expected administrative impacts on local government (VAKKS procedure).

Institutional framework

Responsibilities are shared across a network of different authorities and committees, either to supervise the process or to perform impact assessment (or both).

- Assessment prior to inclusion in the Law Programme. Individual ministries are responsible for carrying out the evaluations in the first stage of the process (preparation of the Law Programme). The Ministry of Finance has a general responsibility to check the assessments (including the need for a VAKKS procedure and in-depth analysis of administrative burdens). It sends its recommendations to the Regulation Committee (Group of Permanent Secretaries), which makes the formal decisions. As members of the Regulation Committee, the Ministry of Justice and the Ministry of Economic and Business Affairs can also check the evaluations. The Ministry of Finance may call on other ministries for support in its evaluation (for example the Ministry of Environment). When it considers that an impact assessment is unsatisfactory, it engages a dialogue with the responsible ministry. When this process does not resolve the concern, it can block the proposal from going to Cabinet for final approval of the draft’s inclusion in the Law Programme sent to the parliament.

- Assessment prior to tabling a draft bill. The process is much more decentralised once the drafting of the bill starts. The Ministry of Finance vets the analysis of economic consequences on government, but does not assess the overall analysis. The DCCA
screens all drafts published on the Consultation Portal, and can decide to carry out an impact assessment of administrative burdens on businesses on any the draft regulations.

**Guidance and training**

Several guidelines have been published regarding impact assessment. They provide background information on processes in addition to specific instructions which can be given to ministries through specific circulars (for example, letter of instruction from the Prime Ministry’s Office about the process for preparing the Law Programme). The key guidelines are:

- “Guidelines on Impact Assessment”, issued by the Ministry of Finance in 2005;
- “Guidelines on Quality of Regulation” (“Justitministeriets Vejledning om Lovkvalitet”), issued by the Ministry of Justice (updated in 2005); and

The first two guides have been integrated in the online guide, *Lovprocessguide*,³ which was launched in January 2007, as a result of co-operation between the Ministry of Justice, the Ministry of Finance and the Ministry of Economic and Business Affairs. The integrated guide makes available in one place, accessible on the Internet, most of the rules, procedure descriptions, contact data and guidelines in the form of templates for law-making. It also contains a tool for the preparation of time schedules and a law dictionary. The website spells out the different stages for preparing a regulation, through a set of sections and sub-sections. *Lovprocessguide* is very comprehensive and detailed for primary regulations, but does not specifically examine the processes for preparing secondary regulations. With respect to impact assessment, it provides definition and explanation, but does not provide specific methodological guidance (such as cost-benefit analysis).

The Ministry of Finance considers that these guidelines have helped promote coherence in law making across the administration, as well as increased planning and co-ordination between ministries. There has not been however a formal evaluation of the different guidelines and their actual use by law drafters.

The Ministry of Finance organised a training session on impact assessment in 2005. Since then, there has been no specific training on impact assessment. Individual ministries have organised training sessions on the preparation of regulations, mostly on legal issues.

**Process and methodology**

*Ex ante* impact assessment is carried out into two main stages. The first stage takes place with the preparation of the Law Programme. Ministries are required to make an initial impact assessment when preparing their proposals for inclusion in the Law Programme. The main objective of this stage is to ensure that the proposed regulation is necessary, and to consider whether there could be an alternative to “command and control” regulation. In a second stage, when specific bills are drafted, ministries have to develop their initial impact assessment. In some cases the proposal is subject to in-depth analysis in terms of administrative burdens on business and local governments.
Stage one: impact assessment during preparation of Law Programme

As part of preparing its proposals for inclusion in the Law Programme, the responsible ministry must assess the impact of its proposal, mainly in qualitative terms, using appropriate guides (see below). Without this evaluation, the draft bill cannot be included in the Law Programme.

- The evaluation entails answering a number of questions regarding the economic and administrative consequences for central government, the regions and municipalities, administrative consequences for citizens, major economic and administrative consequences for businesses, and major environmental consequences. Ministries must also examine the relationship to EU law, and if necessary assess other consequences such as regional politics, gender equality, and voluntary work.

- The evaluation required is largely qualitative, and focuses on the costs of a draft regulation, with less attention given to benefits. Some parts of the Lovprocessguide encourage ministries to quantify the impact, but this is not mandatory (except for the evaluation of the economic costs on central government and local governments) and is seldom done. With respect to business administrative costs, ministries are requested to provide a rough estimate (no impact, below EUR 10 000, or over EUR 10 000) both in terms of transition costs and operational costs. The guidelines provide information on the different set of issues, such as definitions and suggestions for questions to assess the impact. They do not specify a methodology for collecting the information necessary to the analysis. Ministries can elaborate their own methodology (as done for example by the Ministry of Environment, which has a specialised unit for impact assessment).

- A key element of this first evaluation is to assess whether traditional regulation is really necessary, and whether alternatives (such as economic incentives or voluntary agreements) could be deployed instead. Is a new regulation actually needed?

- The need for to carry out an in-depth assessment of impacts on local government (VAKKS) and on administrative burdens on businesses is also considered at this stage.

Stage two: preparing draft bills

When preparing the draft bill, ministries are required to expand the initial results of their impact assessment. The different elements of the analysis are assembled into a synthesis table (Table 4.1). Except for in-depth assessment regarding administrative burdens on businesses, the analysis remains largely qualitative (as for the first stage of impact assessment).
Table 4.1. Summary table for impact assessment

<table>
<thead>
<tr>
<th>Positive Consequences / lower costs (If yes, please extent)</th>
<th>Negative Effects / costs (If yes, please extent)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Economic consequences on central government, regions or municipalities</td>
<td></td>
</tr>
<tr>
<td>Administrative consequences on central government, regions or municipalities</td>
<td></td>
</tr>
<tr>
<td>Economic consequences on businesses</td>
<td></td>
</tr>
<tr>
<td>Administrative consequences on businesses</td>
<td></td>
</tr>
<tr>
<td>Environmental consequences</td>
<td></td>
</tr>
<tr>
<td>Administrative consequences on citizens</td>
<td></td>
</tr>
<tr>
<td>Relationship with EU regulations</td>
<td></td>
</tr>
</tbody>
</table>

Source: www.lovprocessguide.dk (Ministry of Justice, Ministry of Economic and Business Affairs, Ministry of Finance).

Impact assessment in terms of administrative burdens on businesses. A number of ministries are requested to send all their draft regulations relating to economic issues to the DCCA. Other ministries are requested to do it when they estimate that the proposal will result in “substantial” administrative burdens. In addition the DCCA reviews all draft (primary or secondary) regulations which are posted on the Consultation Portal and, based on a preliminary assessment of their impact on businesses, decides whether to make a detailed measurement of their estimated costs. The DCCA performs this measurement in co-operation with the relevant ministries, a consultancy firm and relevant business organisations. Unlike most of the other impact assessments, this is a quantitative assessment, based on the Standard Cost Model (SCM). When expected administrative costs are substantial the DCCA sets up a business panel to make a more detailed assessment. When the costs for businesses are above 10 000 hours (approximately EUR 350 000), the draft regulation must be approved by the Economic Committee before it goes to the parliament or is adopted by the ministry in case of secondary regulation. In addition to the *ex ante* estimate of costs, the DCCA updates its estimate of administrative costs of the new regulations once a year (*ex post* estimate).

Impact assessment in terms of administrative burdens on local governments (*VAKKS procedure*). When preparing its proposal for the Law Programme, the ministry has to propose whether or not the law proposal should be subject to a VAKKS investigation, where the proposal will be studied in depth in order to evaluate administrative consequences for the municipalities and consequences relating to their autonomy (Box 4.6). This evaluation is qualitative and is performed by an independent body (KREVI). It is based on interviews with the ministry and a number of municipalities. It must be carried out within a ten-week period. If the relevant ministry does not want proposals with the above-mentioned consequences on municipalities to be the subject of a VAKKS investigation, it has to justify this.

**Box 4.6. VAKKS**

The Ministry of Finance has developed a new system called “VAKKS”, which stands for “assessment of administrative impact on municipalities by new government regulation”. The methodology has been developed by a consulting firm on the initiative of the STS Committee, under the supervision of a working party composed of the Ministry of Finance, the Ministry of Interior, and LGDK, the Danish association of municipalities.

The responsibility for conducting VAKKS study has been given to KREVI, an independent
institution (see Chapter 8).

A VAKKS study examines the one-shot and recurrent costs implied by a new regulation for municipalities as well as the changes required from municipalities to implement the regulation (such as changes in the administrative organisation, requirements for specific skills). It is similar to the SCM method used for measuring burdens on businesses to some extent, as it breaks down the various rules into specific activities which local government have to carry out. However the VAKKS methodology differs since it includes the costs related to the adjustment of new regulation, and provides an assessment on the consequences in terms of organisation, work processes, budget, etc. New regulatory proposals with significant administrative costs for business are measured ex ante to estimate costs. Once a year the SCM-measurement is updated ex post with the costs / reductions of all new regulation.

The ministry in charge of the draft regulation has to identify whether the planned rule should be subject to a VAKKS when it presents it for inclusion in the Law Programme. VAKKS can be conducted before the bill goes to the parliament, and occasionally after it is adopted by the parliament. In both cases the objective is to improve the implementation process and reduce the costs of implementation.

KREVI uses inputs from the relevant ministries as well as municipalities through interviews with staff.

The result of a VAKKS is an informed estimate of the expected time and resources used by the 98 municipalities in the implementation and ongoing operation of the legislation. In addition a VAKKS study assesses the adaptations required in the organisations of municipalities and can recommend measures of simplifications in the bill or regulation.

The VAKKS system is now being implemented in the regular process of preparing regulations, following a phase of test in 2007 during which KREVI conducted four pilot studies (three draft laws – law on competition, law on day care, law on supervision of retirement homes – and a draft ministerial notice on the application of quality standards in schools). Two VAKKS are currently under preparation.

The standard time for performing a VAKKS study has been around ten weeks so far according to KREVI. Reports are published on KREVI’s website (www.krevi.dk/materiale/rapporter).

Public consultation and communication

There are clear formal recommendations for public consultation in the preparation of draft bills. The Ministry of Justice Guidelines on Quality of Regulation recommend holding consultations on draft bills, unless a shortage of time prevents it, and hearing all stakeholders (public organisations, private organisations), which will be affected by the draft law. They advise law drafters to organise consultation on a “ready” version of the draft, as early as possible before the draft is sent to the parliament. All draft regulations are published on the Consultation Portal to allow interested parties to comment on them (see Chapter 3).

As part of this consultation process, the impact assessments prepared by ministries are also made available. Ministries now usually publish the impact assessment material which they have prepared in support of their proposal to include a bill in the Law Programme. When a draft bill is sent to the parliament, the explanatory memorandum attached to the bill, which assembles information on the final impact assessments and on the results of public consultation, is published on the Folketing’s website and thus made available to the wider public. The VAKKS procedure to assess administrative burdens for local
governments and the assessment of administrative burdens on business may each entail specific public consultation exercises (interviews, panels). KREVI publishes its VAKKS impact assessment reports on its website.

Although considerable material is made available to the public on the development of bills, it is not clear that ministries apply the guidance on consultation consistently. With the notable exception of the VAKKS and KREVI processes, the extent to which external stakeholders are specifically asked to help shape the development of impact assessments is not clear. There was some feedback to the OECD peer review team that the timing of impact assessments may not allow the effective use of public consultation in the shaping of impact assessments. Inadequate timing (for example impact assessment on administrative burdens by DCCA done after the public consultation period) and short deadlines were mentioned by several interviewees. It is also not clear to what extent stakeholders take the opportunity in practice to comment on the development of bills.

**Evaluation**

In 2007, a report of the National Audit Office (NAOD) on the impact of Better Regulation and simplification included a statement on impact analysis based on a sample of assessments:

> "The NAOD’s review of four regulatory impact assessments showed that the extent and depth of the analyses inherently varied, and that the assessments were subject to some uncertainty. However, the review also showed that the ministries had adhered to the Guideline on Impact Assessment. There has not been an overall evaluation of impact assessment, which could provide additional insights."

Interviews however corroborated the conclusions of the NAOD. Individual ministries have been more or less active in developing methodologies and using the impact assessment as a tool for regulatory quality. Interviews showed that some ministries have technical difficulties in developing adequate methodologies, which can raise doubts over the relevance of the exercise relative to the resources and time it requires. Promoting further co-ordination and co-operation may require further changes in culture, as interviews also showed that ministries are still often reluctant to share emerging policies before they have a full draft ready. Despite significant effort to communicate on the development of draft laws, impact assessment is still not always used adequately by relevant stakeholders within and outside the administration.

**Alternatives to regulation**

The 2000 OECD review of regulatory reform in Denmark noted that Denmark has a generally strong performance in using a wide range of policy instruments, including economic instruments such as taxes, subsidies and tradable permits, and voluntary agreements. Environmental policy is an area where Denmark has used economic instruments and voluntary agreements extensively (Box 4.7). Public authorities also use training and information campaigns, usually in combination with other types of instruments.

The law profession is an example of co-regulatory and self-regulatory arrangements, under which authorities delegate some regulatory powers to non-governmental bodies. It is regulated by public law as well by rules set by the Danish Bar and Law Society (Advokasamfundet), which is a private organisation. Another example of self-regulation is the regulation of Internet domain names. The Ministry of Science, Technology and Innovation has made an agreement, in co-operation with the industry, on minimum requirements on the organisation in charge of managing domain names.
Some aspects of employment policy are not regulated by law, but through collective agreements covering issues such as minimum wages and notice periods (“Flexicurity”). Self and co-regulation, when effectively covered, can be an effective alternative to command-and-control regulation. But care must be taken to ensure that regulatory quality is maintained.

Box 4.7. Comments from the 2000 OECD report: Alternatives to regulation

Denmark is relatively experienced in the use of alternatives to traditional regulation, including a range of economic instruments and voluntary and co-regulatory approaches. Use of these tools has expanded recently, notably adoption of a green taxes programme. The relative underdevelopment of regulatory impact analysis is notable. Promising new practices include a model enterprise project under development to obtain more detailed information on likely regulatory costs and benefits, and adoption of an annual report to the parliament summarising aggregate regulatory costs due to new legislation.


The process for making regulations in Denmark includes a requirement to consider alternatives to regulation at an early stage. In their contributions to the Law Programme, ministries send a description of planned individual laws, which has to include an assessment of possible alternatives to regulation. As noted above, a key objective at this stage is in fact to determine whether or not to go ahead with a draft law.

The Ministry of Economic and Business Affairs has issued guidance material to strengthen the capacities of ministries to assess the possibility of using alternatives to “command and control” regulation. The guidelines, which are available on the Internet, were published in March 2001. They define alternatives to regulation, review the main types of alternatives, and give examples of how to use them in a number of practical situations. They list self-certification, voluntary agreements, co-regulation, and information, as the major alternatives to regulation. The guidelines are embedded in the law process description available to all rule drafters. OECD interviews showed that the concept of alternatives to regulation is well known across ministries. It was however beyond the scope of this review to assess the extent to which alternatives have been developed or used since the 2000 OECD report.

Notes

1. According to the 1997 OECD report on impact assessment, “experiences in OECD countries show no exceptions to the general rule that” [regulatory impact analysis (RIA)] “will fail if it is left entirely to regulators, but will also fail if it is too centralised. Regulators must take primary responsibility under a system of incentives overseen by reformers. Much RIA, for example, is carried out because
central overseers are able to convince regulators and policy officials that it is worth the benefits.” Source: OECD (1997), p. 19.

2. Alternatives to regulation are policy instruments other than “command and control” regulation used to obtain policy goals. They include instruments such as performance based regulation, process regulation, waiver or variance provisions, delegated, self and co-regulation, contractual arrangements, voluntary commitments, tradable permits, taxes and subsidies, insurance schemes, information campaigns.

3. There are no available statistics on the number of secondary regulations.


7. As part of its report, the NAOD reviewed four regulatory impact assessments – one from each of the selected ministries for the review. The objective was to assess whether the regulatory impact assessments secured that the Parliament is provided with the best possible basis for decision-making. It did not review the ministries’ work with regulatory impact assessments aimed at the government’s internal decision process. The NAOD had selected the following four ministries for the examination: the Ministry of Finance, the Ministry of Economic and Business Affairs, the Ministry of Taxation, the Ministry of Justice, and the Ministry of Social Affairs. The selection was based on the overall co-ordinating role of the ministries and/or their prominent role in producing regulation affecting citizens and businesses.

8. Since the design of the Green Tax System in 1993, the tax system has been used to pursue successfully objectives in relation to air, water and waste management policies. The OECD’s Environmental Performance Review states that green taxes, such as the tax on sulphur emissions (1996) and the waste water tax (1997) have contributed to significant improvement on the environment.

9. For example, the Marketing Act of 2006 indicates that the Consumer Ombudsman “will seek to influence the conduct of traders by the preparation and issue of guidelines for marketing in specified areas that must be considered essential, especially in the interests of the consumer”.

10. The law requires that the Bar and Law Society establish rules regarding the duties of lawyers in certain areas. The law also sets some safeguards. The rules must be approved by the Minister of Justice and the Bar and Law Society must establish a disciplinary board.