

Legislative drafting at the Ministry of Social Affairs and Health

In recent years legislative drafting has been criticised in public discussion. Parliament has also drawn attention to problems in legislative drafting at the Government level as a whole. Criticism has been voiced by committees, the Speaker's Council and the supreme guardians of the law.

The effects of poor legislative drafting on public finances can be both direct and indirect. Shortcomings can be visible in decision-making friction and in costs resulting from delays in the entry into force of legislation. Poor impact evaluations increase the risk that the objectives of legislation will not be met or will be achieved at unnecessarily large costs. Poor legislation also causes demarcation and interpretation problems, which are reflected in undesirable citizen impacts and costs for authorities and the courts. Furthermore poor legislation often has to be amended later on.

The objective of the audit of legislative drafting at the Ministry of Social Affairs and Health was to evaluate how different aspects of a particular ministry's legislative drafting work in practice. The main question was whether the Ministry of Social Affairs and Health in its drafting work implements the principles of good legislative drafting prescribed by the Government. The audit consisted of three parts. The first part focused on whether legislative drafting at the Ministry of Social Affairs and Health has been directed systematically and according to stated objectives. In the second part of the audit the picture was deepened by looking at cases, and in the third part the functioning of legislative drafting was evaluated from the viewpoint of parliamentary consideration and decision-making.

On the basis of findings the overall evaluation of legislative drafting at the Ministry of Social Affairs and Health is fairly positive. The ministry's legislative work is demanding, since legislation in the administrative sector has significant impacts on citizens, central government and local government finances and the social partners in the labour market. The legislation that needs to be drafted

and drafting procedures vary in the ministry's different departments. This makes it more difficult to direct legislative drafting. A functioning and non-bureaucratic overall picture was nevertheless formed of the management of the drafting process. As a rule the ministry also complies with the principles of good legislative drafting set out by the Government and the Ministry of Justice.

The most significant shortcomings in the drafting process concern the inadequacy of available personnel resources. Drafters often feel that the quantity of legislation that has to be drafted is too large and timetables are too tight. Timetables are due largely to the Government Programme, which determines most of the legislative proposals that must be drafted during the Government's term of office. In addition to the Government Programme, other commissions not included in the plan also have to be carried out. The ministry's management should pay attention to providing sufficient personnel resources and a reasonable timetable for commissions outside planned drafting work. This is important for drafters' occupational health as well as the quality of work.

The ministry has systematically developed preconditions for good legislative drafting in various ways, for example by supporting impact assessments and developing expertise. Most often a drafter is assisted by a partner or working group or drafting itself takes place in a working group. On the other hand drafters do not always receive sufficient support from their supervisors for the progress of drafting work and content policy. Support for drafters could be improved by increasing supervisors' participation in drafting work at all stages.

The audit indicated that the programmes used to manage documents produced in legislative drafting do not support drafting work in the ministry adequately. In future the objective should be for the Government to have a uniform system for managing matters and documents to support the drafting and implementation of legislation. The use of ministries' websites in providing information on legislative projects should also be developed.

The audit found that guidelines for legislative drafters serve the preparation of government proposals technically and systematically. Although the guidelines improve the readability and coherence of proposals, they are only part of good legislative drafting. Often problems regarding the drafting of a proposal or its content are not

connected to guidelines or compliance with them, but with the complexity of a ministry's operating environment and related political priorities. In evaluating legislative drafting and the quality of legislation one must always consider the complexity of the operating field and the political steering of the matters that are prepared.

Legislation must form a consistent and logical whole technically and in terms of content and impacts. This is a special challenge in the administrative sector of the Ministry of Social Affairs and Health, owing to the large number of legislative proposals, the fragmented nature of legislation and constant reforms. On the basis of audit findings, during the 2007-2010 parliamentary terms well over half of government proposals were approved without amendment. On the whole amendments were small, but in particular cases the need for corrections was considerable. Government proposals' technical and other problems have most often concerned broad proposals. From the viewpoint of Parliament's committee counsellors, legislative drafting at the Ministry of Social Affairs and Health has been fairly good, however.

Audit findings suggest that in some legislative proposals prepared by the Ministry of Social Affairs and Health justifications are lacking or are not comprehensive. In some other cases justifications have been presented but they have contained errors or have been misleading. Justifications are especially important so that the need for regulation can be realistically evaluated in legislative drafting and parliamentary consideration. Furthermore in legislative drafting attention must be paid to the constitutionality of legislative proposals and existing legislation as well as provisions concerning entry into force and grounds concerning the order in which legislation is enacted. There is also room for improvement in impact assessments. These should be performed carefully and thoroughly, including uncertainty factors.

If during the committee stage a large number of technical errors and other shortcomings need to be corrected, the focus in considering legislative proposals shifts from legislation to the continuation of drafting. The ministry should ensure sufficient resources and the focusing of expertise on problem areas in legislative drafting. A commitment should be made to improving the quality of drafting work through an open drafting procedure and by ensuring that drafters can work in peace during the drafting process and particu-

larly its final stage. The audit also pointed out that Parliament should be given sufficient time to consider legislative proposals and that legislative proposals should be submitted in complete entities.